

**THE COLLECTED WORKS  
OF HERMAN DOOYEWEERD**

*Series B, Volume 17*

GENERAL EDITOR: D.F.M. Strauss



*The Struggle for a Christian Politics*



An Essay in Grounding the Calvinistic  
Worldview in Its Law-Idea

Series B, Volume 17

Herman Dooyeweerd

Edited by D.F.M. Strauss

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## Foreword

This volume contains one of the first extensive studies by Herman Dooyeweerd after he and Dirk Vollenhoven had begun to articulate their new philosophical understanding of reality. This early study (1924-27) reveals the depth and scope of Dooyeweerd's emerging philosophy. The historical topics covered include Early Christianity and the birth of the idea of the *Corpus Christianum*; the unitary ecclesiastical culture of the Middle Ages and its dissolution; the emergence of modern Humanism in the Renaissance; and the rise and self-destruction of the Humanist theories of natural law. The attention that Dooyeweerd pays to the development of the modern concept of science and the new concept of matter may appear a needless digression yet paves the way for his probing analysis of the mathematical method prevalent in the views of political theorists like Grotius and Hobbes.

The erudition evinced in this work is impressive and inviting — the reader is soon absorbed in the line of argumentation and will constantly be invited by the style and manner of presentation to continue to read. Studying this work will be a richly rewarding experience for anyone interested in the vital material covered here.

The work is a translation of a series of articles that appeared in the monthly journal *Antirevolutionaire Staatskunde* (*Antirevolutionary Politics*) in 1924-26, and in the quarterly journal with the same name in 1927. The Dutch title of the series is “In den strijd om een Christelijke Staatskunde: Proeve van een fundeering der calvinistische levens- en wereldbeschouwing in hare wetsidee.”<sup>1</sup> We have used this title for chapter 1 of the translation, but have reverted to section headings in the original for the titles of chapters 2 to 13. Several times the author refers to subsequent “hoofdstukken” still to be written, but these never appeared; the last

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<sup>1</sup> The term “Antirevolutionary” was used by Abraham Kuyper as the name of the political party he organized in 1870. It indicated opposition to the principles of the French Revolution articulated in the phrase “neither God nor master.” Dooyeweerd wrote his series of articles at the newly established think tank of the Antirevolutionary Party in his capacity as its associate director, a position he held for several years prior to his appointment as professor of law at the Vrije Universiteit in Amsterdam, which was also founded by Kuyper. The fifteen installments, bearing Roman numerals which are omitted here, appeared in vol. 1 (1924/25): 7-25, 62-79, 104-18, 161-73, 189-200, 228-44, 309-24, 433-60, 489-504, 528-42, 581-98, 617-34; in vol. 2 (1926): 244-65, 425-45; and in vol. 1 of the quarterly journal by the same name (1927): 142-95. Our translation includes two “interim summaries” that were parts of the main text, but it omits the separate summaries that appeared in vol. 2 on pp. 63-84 and in the quarterly on pp. 73-75, 96-107. The author gave the entire series the heading “Hoofdstuk I” (chapter 1) and entitled it “The Age-Old Problem of Christian Politics.”

installment concludes with the customary “To be continued” but no further installments appeared, either in the journal or anywhere else.

The translation by Phil Brouwer was made possible by a grant from the Association for Christian Higher Education of Bloemfontein, South Africa. It was edited by Natexa Verbrugge and Kathleen Kennedy, while Richard Van Holst edited the footnotes. Final editors are Daniël Strauss, General Editor of *The Collected Works of Herman Dooyeweerd*, and Harry Van Dyke, Director of the Dooyeweerd Centre for Christian Philosophy, Redeemer University College, Ancaster, Ontario, Canada. Publication of this volume was made possible by a generous grant from the Stichting Dr. A. Kuyperfonds of the Netherlands.

A number of textual idiosyncrasies had to be dealt with in the interest of readable prose. For example, the author’s interchangeable use of the concepts “levens- en werelddeshouwing,” “wereld- en levensdeshouwing,” “levensdeshouwing” and “werelddeshouwing” have all been rendered by the term “worldview.” A number of section headings have been shortened for the sake of clarity. Wherever feasible, footnote references have been brought into conformity with current scholarly practice.

Our copy-editors faced further problems. The author’s brilliant grasp of historical trends in the sweep of Western political theory did not save the text from a good number of minor slip-ups and inaccuracies, confusing cross-references and other such details. However time-consuming the task turned out to be, the editors have tried to rectify as many of these as possible and they believe they have caught most of the blemishes that required cosmetic intervention.

Dooyeweerd’s unique terminology has of course been retained. This translation does not pretend to be a definitive version in the form of an annotated critical edition which a text by Dooyeweerd deserves and should someday receive. Nevertheless, the editors are confident they have preserved the meaning intended by the author at every critical point in his exposition, resulting in a faithful and reliable English rendition of a seminal Dutch work.

D.F.M. Strauss  
September, 2008

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# The Struggle for a Christian Politics

## *An Essay in Grounding the Calvinistic Worldview in Its Law-Idea*

### **Introduction**

The following chapters are the result of an attempt to discover the *organon* or manner of operation of Calvinism as a worldview.<sup>1</sup> Many thoughtful people in our circles are concerned about how Calvinism can be developed for this purpose.

Take the field of politics. Because of sharp criticism leveled at the “anti-revolutionary political doctrine” from various quarters, many people doubt whether this is possible. Professor Willem van der Vlugt once compared this doctrine to a Christmas tree hastily decorated with a pot-pourri of gifts to surprise the waiting children. Apparently the truth has not become sufficiently obvious to the most intense critics outside our circles that despite shared Christian beliefs a difference in worldviews must also lead to a difference in political thought. Hence it is a gross error to speak of the “anti-revolutionary political doctrine” as a closed system without further definition.

Criticism by men like Van der Vlugt and Brockhaus was largely aimed at views bearing a very one-sided imprint of historical Lutheranism. It simply did not deal with the Calvinistic world of ideas. As a result, people grew accustomed to viewing the anti-revolutionary theories as evolving in

1 *Editorial Note (DS)*: During his later development, Dooyeweerd rejected the term “Calvinist” or “Calvinistic.” Compare his remarks in his magnum opus, *A New Critique of Theoretical Thought*, 4 vols., trans. David H. Freeman and William S. Young (Amsterdam: Uitgeverij H. J. Paris, and Philadelphia: Presbyterian and Reformed Publishing Company, 1953-58; Lewiston, NY: The Edwin Mellen Press, 1997), 1:524 (hereafter cited as *A New Critique*), where, in view of its basic religious motive and its law-idea, he preferred to designate his intellectual enterprise as “*Christian philosophy* without any further qualification.” This choice was affirmed in the valedictory address which he delivered at the Free University of Amsterdam on 16 October 1965 under the title “Het oecumenisch-reformatorisch grondmotief van *De wijsbegeerte der wetstidee* en de grondslag der Vrije Universiteit” (The ecumenical-reformatinal ground-motive of the Philosophy of the Law-Idea and the foundation of the Free University), published in *Philosophia Reformata: Orgaan van de Vereniging voor Calvinistische Wijsbegeerte* 31 (1966): 3-15. In *A New Critique* the term “law-idea” is translated as “cosmonomic idea”; cf. 1:93, et passim.

a straight line from Edmund Burke, over Von Haller, to Stahl, and thence to Groen van Prinsterer and Abraham Kuyper. This mistaken view lost sight of boundary markers and did not shed any light on the totally different atmosphere one enters when making the transition from a Lutheran to a Calvinist approach to politics. It certainly did not do justice to Calvinist elements in political thought, which at that time operated mainly on an intuitive level. With few exceptions, any criticism that noted differences between Lutheranism and Calvinism as a political principle did so only in passing. As a rule, the differences were not traced to their deepest roots, namely their starting point in a different worldview. That is why the term “Calvinist political thought” is rarely found in works on the philosophy of law. People know only of the term “anti-revolutionary political thought.”

Thus the way was gradually paved for a skepticism that expects little from Calvinism as a Christian starting point in its own right, allows all criticism leveled at von Haller and Stahl to apply equally to the Calvinist position, and so utterly fails to appreciate the mighty cultural task of a worldview based on God's Word. This skepticism about the existence of an all-embracing Calvinist worldview – and therefore also about a Calvinist understanding of politics – is not limited to historians who study the work of John Calvin. It is also found among those who acknowledge the current value of his work for a specific field (especially theology) yet who doubt that a Calvinist starting point could yield an independent position in contemporary cultural life or that such a starting point could guide and govern cultural development.

In the following series of studies I shall attempt to demonstrate to these skeptics why they are wrong and I shall show that Calvinism as a worldview does have a distinctive starting point which determines an independent approach and an independent method of operation in every area of thought and action. In other words, I shall trace the architectural line which penetrates the entire structure of our worldview as its governing style of thought and which gives each component part its unique character, its unique key.

In seeking this starting point it is not enough to confess, in a merely general sense, God's sovereignty. For such a starting point will find ready support among all who have not lost faith in a sovereign God. Dr. J. Th. de Visser has correctly observed: “All the Reformers sing the song of Paul: For of Him, through Him, and unto Him are all things, to Him be the glory forever.”<sup>1</sup>

Nor is it our task to come up with a brand new construction of thought that must then at all costs be presented as a basis for Calvinism. No, the world-encompassing starting point is there, anchored in history, fixed and immovable. All the Reformed thinkers have applied it intuitively, each major Calvinist idea shows its clearly etched mark. The doctrine of provi-

<sup>1</sup> *Translator's Note:* Cf. the special Reformation issue of *Stemmen des Tijds*, Oct. 1917.



dence and predestination, the doctrine of the church, the doctrine of common grace, the theory of sphere sovereignty – all of them breathe the same spirit, they all build upon a synthetic, theocentric idea that determines the approach and governs the *modus operandi* in every field of thought and action.

What then is this starting point, and how can it be applied to the various societal fields? What is the *organon* of Calvinist thought?

I want to demonstrate that the organon of Calvinism as a worldview is only to be found in its specific idea of law,<sup>1</sup> that is, in its particular conception of a universal law of God that underlies all that exists, including human thought and action, and in which all specific ordinances are anchored and determined.

This universal idea of law is deeply rooted in the consciousness of our reformational community. Its worship services, after the *votum*, begin with the reading of the law. In its church order, its science, its ethics, its politics – in all areas it asks for the Lord's ordinances, for the law of God! The point is, however, that we should analyze this intuitively operative idea of law in its specific character and examine its applicability within various disciplines.

Every major worldview manifests an idea of law. At what point does the Calvinist line diverge from other systems?

Moreover, in a political journal such as *Antirevolutionaire Staatskunde* (Antirevolutionary Politics), the field of politics should be the central concern. Epistemological views can only be inserted insofar as they are necessary for a correct understanding of the subject matter. Our inquiry, therefore, will focus on politics. Nothing seems to me more fit for our orientation than a global, bird's-eye view of the forms in which the problem of Christian politics has appeared in the course of the centuries and of the various starting points that have been chosen in order to solve it. The present study contains such a summary. A brief summary does not allow us to enter deeply into dogmatic, political, and philosophical questions. Our aim here is merely to highlight the difficulties and the ways taken to solve them and so to come to a programmatic indication of matters to be considered more fully in subsequent studies.

In subsequent studies we shall turn to a historical and thetical or positive elaboration of the idea of law and of the doctrines that are inseparably determined by it. Still further studies will focus our inquiry on the sci-

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<sup>1</sup> In this connection I draw attention to the excellent and extensive study of Matthias Schneckenburger, *Vergleichende Darstellung des lutherischen und reformierten Lehrbegriffs* (Stuttgart, 1855), pp. 109-13, where he clearly grasped, though in a limited sense, the significance of the reformational idea of law. The study of this classical work especially led me to the conception that the reformational idea of law, so distinctly conceived in Schneckenburger's Christology and ethics, indeed must be of universal significance and of decisive importance for the Calvinist starting point in an all-encompassing worldview.

ences of law and politics in connection with the age-old problem of natural law in its two-fold significance. Our purpose will be to determine what impact these disciplines undergo when anchored and penetrated by the Calvinist idea of law. The antithetical treatment will, I trust, contribute to a clarification of our own point of view.<sup>1</sup>

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<sup>1</sup> *Translator's Note:* Dooyeweerd does not carry out this latter part of his purpose with these articles, but does so in his Inaugural Address of 1926: *De Beteekenis der Wetsidee voor Rechtswetenschap en Rechtsphilosophie* (The Significance of the Law-Idea for Jurisprudence and the Philosophy of Law) (Kampen: Kok, 1926).

## Chapter 1

### *The Age-Old Problem of Christian Politics*

The tensions that were from the beginning inherent in Christianity as a universal cultural phenomenon are pushed to their highest conceivable intensity within the Calvinist worldview. The life of faith, which knows no rest, is propelled by the *cor ecclesiae*, the confession of divine sovereignty in predestination. It is the knowledge of *Christus non otiosus*, the Christ who works until now, that inspires the Calvinist spirit and drives it on to reformation, not beyond but within the world. The spirit that conquers the world while in the world knows only one motto in its restless culture war: the honor of God. This spirit, once it embarked on the fields of politics and scholarship, had to prepare for a struggle that demanded all its powers of thought and will.

The problem facing Christianity from its earliest organized existence was the same old problem in countless variations: the relationship of the Kingdom of God to the world, of nature to grace, of state to church, of faith to knowledge, of Christianity to culture. Calvinism had to tackle that problem from its own viewpoint. What it encountered here was a history stretching over centuries, a history from which it could not detach itself.

#### **The problem as initially stated in the Early Church was still quite simplistic**

The church fathers of the first century after Christ – when the state and its secular institutions were sunk in paganism and persecuted the church of Christ – had sought safety in a negative attitude towards the world. This attitude was not revolutionary but ascetic. The state was Satan's realm in which Caesar required divine honor from people while he persecuted the church of Christ with fire and sword.

During the decline of the Roman Empire the whole of culture lay under the curse of sin. Immorality and oppression ruled the day. The idea of power, which had pervaded Roman imperialism from the start, turned into the most arbitrary tyranny by the absolute despot whose cruel whims were law. The ancient idea of the state, which claimed every area of life for the

state, recognizing no sphere-sovereignty,<sup>1</sup> became doubly dangerous for the church of Christ.

The pagan state saw the church as its archenemy, because the church denied the state the control of souls and set her own sovereignty over against the all-encompassing sovereignty of secular power. In secular matters she did subject herself to government, but at the same time she posited the sovereignty of a spiritual, supernatural kingdom in which Caesar had no power. So the first battle that Christianity had to fight in the area of politics was a struggle for the church's existence against the usurpation of spiritual power. This struggle did not as yet have a place for Christianity's cultural task. It was not possible to transform the world whose institutions (state compulsion, slavery) clashed with the Christian teaching of love and were viewed as divine punishment for sin. The Christians adapted themselves outwardly to these institutions and justified them on the basis of so-called relative natural law, that is, the divine law of nature altered by the effects of sin.

The dualism of church and state was posited, but the problem as stated presented little complexity as yet. However, it resurfaced in a truly harrowing complication when the great barrier between church and state was removed.

### **Constantine's conversion to Christianity. The second statement of the problem**

While the church was gradually being forced to view secular institutions in a more positive light because of the demands of public life, the emperor Constantine converted to Christianity. Suddenly Christianity, a religion persecuted by fire and sword, became officially recognized, and shortly thereafter became the state religion. Forcefully torn out of its eschatological, otherworldly isolation, Christianity was confronted with the gigantic task (at least as a program) of shedding its own light, in line with the eternal truths of its religion, on the relationships between state and society, art and learning. Christianity could no longer confine itself to a negative struggle for the sovereignty of the church as against the absolutistic pagan Caesar state; no, it had to take a positive approach to the political conditions of its time. It had to practice politics in the

<sup>1</sup> *Editorial Note (DS)*: Dooyeweerd inherited the "principle of sphere-sovereignty" from Abraham Kuyper, the influential and well-known Dutch theologian and statesman who lived at the turn of the nineteenth and twentieth centuries. Kuyper used this phrase for his famous address held on the occasion of the inauguration of the Free University of Amsterdam, Oct. 20, 1880. Eventually Dooyeweerd worked out the broader cosmic implications of this principle, which is informed by the biblical idea that God created everything after its kind. He did this in order to articulate the basic distinctions of his new reformational philosophy – particularly in connection with his theory of the modal law-spheres and the typical structures of individuality of created reality.

Christian spirit, and from that time dates the acute tension between the spiritual ideal of Christianity and its cultural task in the world.

### **The two great difficulties in this statement of the problem**

Two tremendous difficulties stood in the way of the church in the fulfillment of her task: the actual conditions in an established culture, and the spiritual nature of the Christian religion.

Let us start with the latter point: no Christian politics is possible without a Christian worldview in which every part is architecturally ordered and governed by major, central thoughts. Such a system ought to include not only the spiritual, supernatural things but also the *secularia*, the secular things, and it ought to indicate the proper relationship between the two. Now Christ, during his sojourn on earth, did not begin to reform the world by concentrating on external things. His preaching struck directly at inner spiritual things: "Seek ye first the kingdom of God, and all these things shall be added unto you!"

This inner transformation of spiritual values, however, had to bear fruit outwardly as well. Quietism,<sup>1</sup> from the start, was in conflict with the spirit of vibrant Christianity. The realization of eternal spiritual Christian values in a world cursed by sin demanded first of all the constructive development of a Christian mind. This was an important part of the task that the divine Master left to his disciples.

### **Development of dogmatic teaching.**

#### **The Council of Nicaea**

This work of construction had to be done both internally and externally. The truths of faith had to be secured against the heresies that threatened the church of Christ at her very foundations. At the same time the second flowering of pagan philosophy required that Christian thinking take a stand against it.

The Council of Nicaea (A.D. 325) affirmed the fundamental dogma concerning the *homoousion* (unity of being) of the Son and the Father and so confirmed one of the pillars of the Christian church.

### **First attempts to reconcile faith and knowledge.**

#### **Gnostics and anti-Gnostics**

The church fathers worked on the philosophical elaboration of Christianity very early. The first comprehensive attempts in this field led to the dangerous errors of the Gnostics during the second century A.D. These Gnostics sought to bridge Christian faith and Christian conscience by mystical, theosophical, and mythological speculation. Reaction against these Gnostic errors among the apologetic fathers who opposed Gnosticism – Irenaeus (ca. 130 (142?)-202), Tertullian (ca. 160-222), Cyprian (ca. 200-258), and others – outwardly showed them

1 Quietism means total resignation and the resultant undisturbed soul.

to be suspicious of all philosophy, which Tertullian called the mother of heresy. The saying (wrongly attributed to Tertullian) *Credo quia absurdum* (I believe because it is absurd) did somewhat typify the mood in these circles. Still, rejection of philosophy could not be the final word of the Christian church. Tertullian himself studied a good deal in Stoicism and did not stay free of the speculative materialism that predominated in the school.

Yet all these were only passing influences. Despite her by-paths and stumbles in the field of philosophy, the church adhered strictly to her truths of salvation. She kept getting closer to the point where the Christian religion could be worked out into an architectural worldview. It became increasingly clear that culture entailed a historical course of development which could not be demolished overnight in order to make way for a brand-new Christian culture. The apostle Paul had taught that the heathens, who do not have the law (that is, the written Mosaic law), nevertheless by nature have the law written in their hearts, and therefore the effects of common grace in heathen culture could not be underestimated. All that had to be done was to redirect the historical course of development along the line of grace revealed in Christ and, acknowledging the relative truths of pagan systems, to give these truths a new foundation as well as a new basis for development in the absolute truth revealed in Christ.

#### **The Alexandrian School and the Greek church fathers of the fourth century. Christian ethics in the School of Antioch of the fourth century**

It was from this historical perspective that the church now set to work on her immensely difficult cultural task. The Alexandrian School – Clement of Alexandria, Origen, Dionysius the Great and others – openly began a program for placing Greek science and philosophy in the service of Christian theology.<sup>1</sup> The great Greek church fathers of the fourth century, such as Gregory of Nyssa and Macarius the Great, worked in the same direction.

In this process the church fathers also seriously explored a Christian ethics, in which they naturally had to determine a stance towards the state of the day and its institutions. Apart from the great church fathers of the so-called School of Antioch (Chrysostom and others), the Latin church fathers of the fourth century, Arnobius and especially Lactantius, deserve credit in this respect.

However, it appeared extremely difficult to work out a stance towards the world in ethical doctrine, which in those days also included legal and political theory. Jesus' spiritual teaching and ethics of love clashed mercilessly with the foundation of the established power-based culture of the

<sup>1</sup> Platonic, Stoic-Aristotelian, and Jewish-Hellenic philosophy (Philo) together provided the basic capital that the Alexandrians latched on to in a Christian theistic sense, partly eliminating pagan elements.

Romans. Slavery; monarchial despotism; unmitigated class distinctions between rich and poor; an increasingly degenerating administration of justice in which bribery and class favoritism put the old glory of impartial Roman jurisdiction to shame; an overripe decadent culture, onto which new shoots could hardly be grafted: all these conditions cried out against the Christian conscience. Here too the force of history bore down like a hundredweight.

### **The first task of Christian ethics**

In these circumstances Christian ethics first of all had to distinguish what is natural and divine from what is sinful in worldly institutions, and to correct the opinion of simple souls within the church who wanted to abandon the world along with its sin. The church furthermore had to guard against revolutionary enthusiasm which, intoxicated by conversion, would wish to reform in one fell swoop, according to the requirements of Christian love, institutions infected and deformed by sin.

That would not have worked and would have jeopardized the still precarious position of the church herself. To counter such reforming zeal, the church was compelled to preach Christian patience and humility, to point out the punishing hand of God in institutions of repression and violence, and to posit a historically sensitive, realistic line of conduct in contrast to an abstract revolutionary one.

### **Necessity of an ultimate starting point in a worldview**

The task of the church in this context was first of all to find in her worldview a firm foundation for her ethical teaching *before* she could consider drawing up a progressive political program. The Old and New Testaments had to be seen as a unity. The law of Moses and the law of Christ were not to be set up as dualistic opposites.

But how was the relationship between natural institutions and Christ's teaching of grace to be understood? Where lay the point of contact between the spiritual-supernatural and the natural in creation? How could state power, legal force, inequality, property be reconciled with the radical demand for love of neighbor as found in the Sermon on the Mount? To be sure, Christ and his apostles had provided guidelines for acknowledging the divine character of the state by preaching obedience to the powers ordained by God. However, this did not relieve Christianity of the task to develop a comprehensive worldview based on Christ's preaching. This was precisely what was necessary to fulfil the apostolic calling in all areas of life. A fixed point of departure for thought had to be found, one in which the apparent contradictions could be resolved into a unity.

### **Tying in with Greco-Roman philosophy**

Just at this time, ancient thought offered valuable points of contact in the form of the major speculative systems of Plato, Aristotle, and the Stoics. All these thinkers had considered the problem – albeit at a lower



level – and had discovered the consistency of an eternal cosmic order established by the Deity. The apparently contradictory arrangements in the world are all directed at such a cosmic order, in which all the multiplicity and confusing diversity are ultimately reconciled in the unity of a divine cosmic plan.

### **The idea of law**

This idea of an eternal immutable cosmic order, which can be called *the law-idea* of a worldview, cemented all ancient thought. Christian philosophy had first to track down its own law-idea before it could think about gradually emancipating itself from pagan philosophy and pursuing its own path in natural ethics, legal philosophy and political theory. The entire direction of its thought was implicit in this law-idea, such that life and world were seen in this or that light, depending on the content given to this starting point of thought.

From Tertullian to the prince of the church fathers, Augustine, the Christian church struggled for her law-idea. This law-idea came to a provisional consummation in the Augustinian conception of a *lex aeterna* (eternal law), only to be steered into new channels by Thomas Aquinas during the period of High Scholasticism. Every phase of development in this law-idea faithfully reflected the development of the Christian worldview itself. Before long, once the Thomist law-idea prevailed entirely, Christian thought had reached a provisional state of equilibrium, until the Reformers once more probed this law-idea to its very core and provided the Christian worldview with a modified starting point while maintaining historical continuity.

The theory of the law-idea, which unfortunately has been neglected far too much in Protestant circles, provides the key to the systematics of Christian thought.

### **The Greek Stoic natural law as toned down by the Roman Stoics**

Lactantius and even Augustine's great teacher, bishop Ambrose of Milan, just like the earlier church fathers, agreed in part, in their ethics, with the Stoic idea of an eternal law of nature in which justice, the state, and morality are grounded. The stern, apathetic ethics of duty advanced by the Greek Stoics had already been toned down considerably by Roman Stoics such as Cicero and Seneca. Its basically materialistic law-idea, culminating in the idea of an all-ruling destiny (*heimarmenè tuchè, fatum*), was maintained, but the materialistic core was emptied of meaning by a noble ethical-religious outlook on life; *aequitas* (equity) was increasingly emphasized over against *strictum jus* (strict justice). The Roman Stoics (among them especially Seneca, the great philosopher of Nero's time) were also keenly aware of the gulf separating a moral ideal and a decadent reality. They too were unable to reverse the existing conditions of monarchial despotism, slavery, stark inequality of



ownership, and the politics of brute force. They too sought a point of view that could justify acceptance of the unalterable for the time being, since the system of force and inequality was rooted in the entire historic development of culture.

### **Absolute and relative natural justice**

So the Stoics came up with the idea of a golden age, an original state governed by the absolute natural rights of liberty, equality, and fraternity. In the course of centuries, evil passions had bent and toned down this absolute natural justice. Inequality entered the world and governmental force became necessary to control the passions. In this way, under the influence of sin, this relative natural justice became a comparative good. Beneath all Seneca's pessimism, inspired by the tragic decline of the Roman Empire, there continually sounded the hopeful note that precisely by way of this relative natural justice, a gradual improvement would occur which might well eventually ring in a new golden age.

### **Starting points with Christ and Paul**

All these ideas, particularly the lofty Stoic conception of eternal justice and equity, coupled with the explicit awareness of sin and desire for salvation, appealed to the Christian mind. The church fathers regarded them as the aftereffects of the natural moral law as taught by the apostle Paul. Nor was the idea of a relative natural justice altogether foreign to the Christian mind. Had not Jesus himself explained the Mosaic marriage laws in terms of the hardness of hearts of the Jews? And had he not contrasted it with the noble Christian conception of marriage? What was more natural than to link all these elements in a historical course of development to an ever progressing revelation of God's will? In this way the Stoic natural law was gradually declared to be identical with the Decalogue, and Christ's law of love was set up as the high point of God's revelation, as a more precise divine explanation of the Decalogue, as the fulfillment of the law. The relative natural justice of the sinful world and of patriarchalism (to which we shall return below) justified state compulsion, stark inequality of ownership, the dominion of man in marriage, and slavery. In this manner a rather conservative political point of view was gained for the time being.

### **Attempts by Lactantius and others to penetrate Stoic natural justice with Christ's law of love**

In the meantime, the church fathers were aware that the Stoic-Roman conception of justice, summarized in the jurist Ulpian's famous definition, "Live honestly, do not injure another, give each his due," was still permeated by the leaven of individualistic Roman power.

This conception – essentially of a purely private legal nature – was entirely devoid of any idea that there is a positive communal duty. The Spirit of Christ required much more than this triad of Stoic prescriptions. And

true to their tenet that Christ did not abrogate natural law but had only explained its deeply spiritual significance, natural law now started to be interpreted in terms of Jesus' law of love. Thus Lactantius, in his *Epitome Divinarum Institutionum*, defines justice in the Christian sense as the duty to know God, to fear Him as Lord, and to love Him as Father, and secondly, to acknowledge one's fellow-man as one's brother and to know oneself to be intimately bound up with him.

### **Ambrose and the notion of the mystical body of Christ**

In the same vein Augustine's teacher, Ambrose, also attempted to elucidate natural law with Christ's law of love. He was especially struck by the Christian organic idea of community, which despite all the inequality of its members still acknowledges the equality of all in their subservience to the same goal.<sup>1</sup> This idea of organism – as Otto von Guericke has shown from many primary sources – dominated Christian thought among the church fathers and throughout the Middle Ages. It came from Paul's comparison of the church of Christ to a mystical body of which all are members and in which the least valued often receive the greatest honor. This idea nurtured an attitude of meekly submitting to inequality in life and generated a patriarchal spirit manifested in a willingness to conform to the given ordinances, but on the other hand it also inspired the demand of natural law to give each member his due according to his particular place in the body of Christ.

In this manner the Christian patriarchalism of the organic idea of community was easily tied to the absolute and relative natural justice of the Stoics. By being grafted onto Jesus' love ethic, however, it gained a deeper meaning than that of Stoic teachings. Yet it was not recognized that love and justice cannot be reduced to a common denominator. Justice and morality were not yet distinguished. Hence it was impossible to derive concrete principles for the formation of law from this Christian-Stoic natural justice.

### **The shortcoming: the lack of a distinctive Christian law-idea**

Essentially, a Christian law-idea was still without a central observation tower from which one can acquire a firm orientation in respect of all areas of one's worldview. A love ethic and legal principles are simply not mutually reducible. Unity cannot be achieved by blurring the boundaries between diverse orderings, but rather by recognizing, via an ultimate final law, an eternal divine cosmic order, where all diversity of being is reconciled in a divine harmony, a cosmic plan ordained from

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<sup>1</sup> See among others the passage in his work on duties (*De officiis* 3.3.17) in which the Christian idea of organism is in its narrowest sense connected with the Stoic (Ciceronian and Senecan) theory of natural law.

eternity.<sup>1</sup> Instead, for the time being people limited themselves to revising the Stoic concept of law at a certain point. As before, they eclectically continued to glean useful elements from pagan philosophy, but without uniting the various fragments by means of a central Christian law-idea into a new fruitful synthesis. And so, in spite of everything, the Christian worldview continued to suffer from a fragmentation that could not satisfy in the long run. At this stage, however, God gave his church a brilliantly talented man who would provide Christian thought with its own starting point, its own synthetic law-idea. This man was Augustine.

### Augustine

Born in 354 from the union of a pagan father and a Christian mother, Augustine came into contact with Stoic and Neoplatonic philosophy during his student days in Carthage. The latter especially continued to exercise a great influence on his thought, even after his conversion. Converted to Christianity through the preaching of the Milanese bishop Ambrose, and having become bishop of Hippo in 396, he was on fire for the ideal of elaborating the Christian religion into a consistent worldview.

An apologist for Christianity<sup>2</sup> by the “grace of God,” he parried the blows leveled even then against Christian politics in masterly fashion, refuting the accusations of those who sought the cause for the gradual decline of the massive power of the Roman Empire in the rise of the Chris-

1 *Editorial Note (DS)*: In his later systematic works Dooyeweerd no longer speaks of “an eternal divine cosmic order.” The development of his philosophy of time was decisive in this respect. It was first published in 1931 in his work *De Crisis der humanistische staatsleer in het licht eener calvinistische kosmologie en kennis-theorie* (The crisis in humanist political science in the light of a Calvinist cosmology and theory of knowledge) (Amsterdam: Ten Have, 1931); cf. pp. 89-99. In *A New Critique*, 1:507, he simply states that our cosmos is the creation of God with respect to its law-side and subject-side alike (cf. also *A New Critique*, 1:23-34). However, he did advocate the notion that in the religious center of human existence, in one’s “heart,” the human being transcends time. This does not mean that Dooyeweerd accepts the metaphysical Greek idea of supratemporality which is supposed to be founded on a rigid and static immobility (cf. *A New Critique*, 1:31, n. 1). Compare also his comments in the articles on time, “Het tijdsprobleem en zijn antinomieën op het immanentiestandpunt [part 2],” *Philosophia Reformata* 4 (1939): 5, and “Het tijdsprobleem in *De Wijsbegeerte der Wetsidee*,” *Philosophia Reformata* 5 (1940): 178 ff.). Dooyeweerd *first* acquired the insight that the human selfhood transcends the dimensions of aspects and entities and *then* developed his theory of (modal and typical) time. The dimension of time manifests itself within the modal and typical dimensions of reality. Therefore, in terms of his philosophy, if the human selfhood transcends the dimensions of aspects and entities it also transcends that of time.

2 We do not, of course, employ this term here in its technical sense. Augustine was least of all an apologist in the sense of the first school of apologists which was generally averse to philosophy.

tian religion and who advocated a return to the venerable, muscular morality of the Stoics as a remedy. Apologist for Christianity! But infinitely more than an apologist, a Christian philosopher by the grace of God, he developed, in bold outline, the plan for a Christian worldview. In doing so he sought his starting point in idealistic Neoplatonic philosophy, but then in such a way that this pagan idealism was enveloped, penetrated, and purified with a *Christian law-idea*, anchored in the sovereignty of the Creator, the Triune God.

Founder of the Christian view of history, Augustine in a masterly way worked out a Universal History painted on the canvas of a perennial dualism between the *Civitas Dei*, the city of God, and the *civitas terrena diaboli*, the realm of the devil. A theologian of overwhelming power of thought, he developed a doctrine of God's providence and a Christology with which Calvin would later agree in many respects. In his doctrine of original sin he also fought powerfully against Pelagianism which by its doctrine of free will assailed God's sovereignty. As a result of these wide-ranging intellectual labors Augustine dominated all of Christian civilization until the age of High Scholasticism. Even when Thomas Aquinas, the greatest mind produced by the cultural phenomenon of medieval Romanism, led Christian thought into Aristotelian pathways, Augustine's idealism continued to live in the Franciscan order. In recent times it is even undergoing a very powerful revival.

If one wishes to come to a proper evaluation of a system such as that of Augustine, one must look at it not just in terms of its intrinsic logical structure but also within the framework of its time.<sup>1</sup> For this is the relative and the finite in all products of human thought, that even in their greatest upsurge they remain bathed in the relations of time, place and circumstance. It often took a struggle of centuries to arrive at truths which today are recognized as indisputable, and each step in this struggle shows how slow and difficult it was for such truth to divest itself of initial errors.

The great problem of Christian politics since the Christianization of the Roman state was to find the proper relationship between the Pauline idea of the *corpus mysticum*, the mystical body of Christ, and the natural institutions of state and society.

In the ancient idea of the state, which placed both the *imperium* and the *sacerdotium* (worldly rule and priestly power) in the hands of the state, a breach was made, from the beginning of Christianity onwards, by the Christian conception of the kingdom of God which is removed from worldly control. But Christian thought had not yet established the correct relation between the kingdom of God and worldly institutions. Between

<sup>1</sup> This is the relative correctness of the historical-sociological method as applied particularly by Troeltsch, Weber and Sombart. This method becomes one-sided and mistaken only when it makes not just the *evaluation* but also the *knowledge* of a system dependent on an inquiry into the originating existential social conditions of a system.

natural justice and the law of grace a gulf remained which could not be bridged by a simple identification of both in their ideal state.

### The Augustinian law-idea

What is exceptional in Augustine's conception is precisely that he was looking for the missing connection and indeed managed to demonstrate it in his law-idea. From that law-idea, the idea of the *Corpus Christianum* gained immediate significance not only for the church but also for the relationship between church and state.

Augustine's law-idea was that God established a harmonious cosmic order from eternity, an eternal law (*lex aeterna*), according to which every part of creation, even the least significant, is assigned its fixed place, value, and function, and from which all particular ordinances derive their origin and validity. It was this idea of the *lex aeterna* which brought liberating conclusiveness to Christian thought. It was the Neoplatonic idea of cosmic harmony, based on a step-by-step emanation of all reality from the oneness of the "ideal," in which matter was the lowest and spirit the highest step, but cleansed of its pantheistic meaning by its connection with and penetration by the personal sovereignty of God the Father and the foreordination of all that happens according to the immutable plan of creation.<sup>1</sup>

In this plan of creation, both nature corrupted by sin and grace were ordained, but natural life, affected by sin, was merely the paltry shadow of the idea of grace. In this way, all that was secular and material was ordered and directed to the eternal and highest, the beatific communion with God; but in that ordering towards eternity the *secularia* also derived their relative value. Now justice and the ethics of grace could be separated without objection, since the *lex secularis* (or the human legal order) as well as the ethics of grace ultimately emanated from the *lex aeterna*, the eternal cosmic order of God, in which the human being participated through the *lex naturalis* (natural law).

The Christianized state and its institutions could now also be seen as part of the *Corpus Christianum*, but – being but the inferior shadow of the divine idea of justice – only in a position of service. The purpose of the state was not exclusively in the secular but in the eternal. The state, as an

1 Later, in our study of the law-idea [*General Editor*: not part of the present series], the differences between Augustine's system and that of the Neoplatonic school will have to be analyzed more fully. Here it should be pointed out that the Neoplatonic divinity (*hen kai pan*) is an abstract idea, while Augustine most emphatically posits the real personality of God at the beginning of his thought. Neoplatonism totally neglects history in order to immerse itself in the only true being of the highest idea. Augustine, by contrast, prefers to turn to history, in which he reverently sees the almighty will of God carrying out the eternal master plan, as well as the struggle, from the beginning, between the city of God and the realm of Satan, a struggle centralized in the appearance of the Son of God in the flesh. Cf. Joseph Mausbach, *Die Ethik des heiligen Augustinus*, vol. 1, *Die sittliche Ordnung und ihre Grundlagen* (Freiburg im Breisgau: Herder, 1909), p. 69 ff.

institution of God founded in human nature, was to put itself, as *membrum saeculare*, as secular member of the body of Christ, in the service of the church for the eradication of heresies, and was to let itself be guided by divine justice.<sup>1</sup> The state which did not do so, but rather sought its goal either in its own cultivation of power or exclusively in the secular welfare of its citizens, remained submerged in the *civitas terrena*, in the realm of the devil.<sup>2</sup> This does not mean that the state which seeks its highest purpose in the *pax terrena*, secular peace and welfare, is denied its right of existence, as a plethora of authors have maintained in a thorough misunderstanding of Augustine's actual idea. On the contrary, the pagan state too is based, as state, in human nature, and in its laws too a certain natural justice may come to expression. However, where the final purpose is natural justice, and not the highest and divine justice, that state will have no place in the *Corpus Christianum*. When removed from this source of justice, nature, which only receives its full content and essence from the absolute, is robbed of the fullness of its divine being through the negative workings of sin. It is then merely a stump of a tree, unable to grow to full maturity. For sin, consisting of the rejection of God as Creator and Sustainer of all things, is a deprivation of essence, a *privatio*.<sup>3</sup>

This is, in brief, the idealistic conception of Augustine's law-idea.

### **The societal substructure of Augustine's system**

Augustine's conception had a substructure in the societal conditions of those times, conditions which also define the relativity of this brilliant construction. Here we touch upon the second major problem that the church had to struggle with in developing a Christian politics. It was with difficulty that the church had earned public legal recognition, and now she felt herself growing into a distinctive sovereign state whose king is Christ. But it was still a culturally weak and organizationally very feeble state, which in every area of worldly culture and justice, science and philosophy, was forced to borrow from the overripe culture of the Roman Empire. Even the developing organization of the church was not obtained independently. Ever since Constantine had embraced Christianity, the state had applied to the Christian church the old principle of Roman law, namely, that the *jus sacrum*, the right of religion, was part of the *jus publicum*, public law.<sup>4</sup> As the representative of all legal subjectivity of public law the emperor was also seen as the living source

1 Cf. *De civitate Dei* 2.19; 5.24.19; 11.4; 19.14.

2 Concerning the different meanings of this word as used by Augustine, see Bruno Seidel, *Die Lehre vom Staat beim heiligen Augustinus* (Breslau: Nischkowsky, 1910): p. 5 ff.

3 *Editorial Note (DS)*: In his *A New Critique*, 1:63, Dooyeweerd returns to this time-honored conception of the fall as a *privatio* where he explains that the fall is a *privatio*, a deprivation of meaning, a *negation*, a *nothingness*.

4 In the *Corpus Juris Civilis* compiled under Justinian, this system is worked out in



and active bearer of ecclesiastical unity. Even the ecumenical council, convened by and dependent on him, could only establish the organizational unity of the church with the permission and cooperation of the emperor. In the Roman legal sense, the emperor was considered the *lex animata*, the living law, not bound to any legal limits. The ancient Roman principle of will, so dominant in the conceptions of private law concerning property, marriage, and contract, had also penetrated public law and hardly allowed for the rise of any notion of *political* liberties of citizens and social corporations. Under these circumstances the church should be grateful if the absolute secular monarch placed his secular legal power at the service of the as yet weak church of Christ by suppressing heresy, Christianizing pagan peoples, albeit by the power of the sword, and granting privileges to the church in relation to property law and public law.

The church was not yet able to develop her own legal principles in distinction from the centuries-old tradition of Greco-Roman legal philosophy. Against this superior secular knowledge she could only posit the all-surpassing teaching of love by Jesus, whose spirit was also to pervade the state and its legal order. Liberating power could flow into the world only from the church's center of grace. Indeed, bishops at the time did individually concern themselves to an important extent with affairs of state, especially with the administration of justice, so much so that Augustine complained that worldly cares allowed him almost no time for spiritual activity. On some points the Christian worldview did penetrate legislation (such as in matrimonial law to some extent); but in general the social influence of the church was still restricted among its members to the practice of charity and a moral alleviation of the secular institutions of slavery<sup>1</sup> and inequality of property. The church reminded the faithful of the necessity of a sober life, of remaining in the station in life where one was placed by God, and she called on all to offer anything beyond the necessities of that station to the poor brethren in Christ and to ecclesiastical institutions. In general, the most effective Christian social activity of the times developed in the monasteries, where the ascetic orders of monks lived in a radical, more or less anarchistic-communistic community of Christians. The relationship of these monastic orders to the church was not clear at the

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the first 13 *codex tituli* and even more sharply in the *Novellae* (e.g., Nov. 123, 131, and esp. Nov. 6 ff., 535 with their exposition of *sacerdotium* and *imperium*).

1 Otto Schilling, for example, in his *Naturrecht und Staat nach der Lehre der alten Kirche* (Paderborn: Schöningh, 1914), p. 197 ff., points out how Augustine in particular justifies slavery for morally low-standing individuals who would abuse liberty in order to lead a debauched and wicked life. When, however, the slave shows himself worthy of freedom, the bishop welcomes his release and certainly understands why slaves will try to achieve their freedom by lawful means. He also urges that the master exercise his ownership and right of disposal with paternal generosity and love. But in Augustine, too, this concerns only a moral softening, not a juridical undermining of slavery as an institution.

time, and they constituted somewhat of a threat to the increasingly hierarchically organized institution of grace (provided with sacraments and the office of priests). These orders laid the foundation for individual spiritual care and a Christian educational system which the church herself had not thought of at that time. Knowledge was also eagerly pursued in the monasteries, and from there the theory that all worldly possessions ought to be acquired by strenuous labor made its way into Christian social thought.

Add to all this the circumstance that the Roman Empire, split apart into the western and the eastern empires, was threatened on all sides by onslaughts of barbaric tribes that were soon to capture and sack Rome, and that more than one voice arose blaming all these calamities on the crucified Nazarene's effeminate teaching of love, and one can understand that the church had to be very careful in her politics and was obviously forced to take a conservative stand since the political situation was not at all amenable to radical reform.

All these social influences, only briefly indicated here,<sup>1</sup> find their repercussion in Augustine's theocratic idealist conception of the *Corpus Christianum*. The state, a mere shadow or copy of divine justice emanating from Christ's law of love, is accorded independent existence but no independent purpose, no independent political ideal within the body of Christ. Augustine did not unfold a political program of inner reformation. The world, torn apart into the realms of idea and reality by Platonism, is mystically experienced as a unity only in the various levels of pious contemplation, but it lacks the real immanent cement that reconciles these two realms into a higher rational unity.

Nevertheless, Augustine's conception worked spiritual liberation for its time. Asceticism and the relative appreciation of the natural world had balanced each other in the teachings of the early church fathers, but without the rational foundation of a synthetic idea. In Augustine's law-idea the conservative patriarchal worldview held by the church fathers merged into an idealist system which, as an admirable, brilliant synthesis, was to dominate Christian civilization for centuries to come and which even today claims grateful recognition of what God gave his people in this church father.

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<sup>1</sup> One finds a full description of these influences in Anne Anema's series "Augustinus' rechts- en staatsleer," *Stemmen des Tijds* 5 (1915/16), vol. I. [*Translator's Note*: Dooyeweerd goes on to state that he considers himself absolved of the task of describing the sociological substructure of Augustine's system since it was well done in the articles cited which were readily accessible to his readers.] In this our first study we merely provide a bird's eye view of history. Later we shall return to Augustine's political ideas at length when we discuss natural law.



## Chapter 2

### *The Idea of the Corpus Christianum*

The idea of the *Corpus Christianum*, fruit of the first positive theory of a Christian politics, became a politically operative force of the first order during the Middle Ages. And in the measure that the program, envisioned only as an idea by Augustine, was to realize itself in entirely altered social circumstances, it took on a totally different character.

#### **The Byzantine state church**

In the eastern Roman or Byzantine Empire the political program of the theocratic *Corpus Christianum* was never realized. Here, after a severe internal struggle, the idea developed in a direction opposite to that which Chrysostom, Leo I, Gelasius, and Augustine had suggested. The state was not led by the church nor mobilized in her service. On the contrary, the emperorship elevated itself to a spiritual value and absorbed the goals of religion and church. To that end the church was made a department of the state's administration. The culture of the Byzantine Empire, orientalized and secular, and the culture of the Christian church, still rather otherworldly, actually continued to exist side by side as parallel forces. The connecting link was purely external. The eastern Roman emperor united in his person the *sacerdotium* and the *imperium*, spiritual dignity and temporal authority, thus more or less linking church and state into a unity.

#### **The development in the West**

In the West, by contrast, things took quite a different turn. Troeltsch has sketched the development of Western political and social life thoroughly and clearly in his masterly work on the "social teachings of the Christian churches and groups."<sup>1</sup> Here we can only highlight the most prominent features of his sketch for the purpose of our orientation, in

<sup>1</sup> Ernst Troeltsch, *Die Soziallehren der christlichen Kirchen und Gruppen* (Tübingen: Mohr 1909). It is common knowledge today that this brilliant and ingenious work does not present a reliable picture of Christian social theories in all respects. Among others, Schilling and Mausbach have pointed out, for example, that in his rendition of the teachings of the church fathers, especially Augustine, Troeltsch oriented himself far too one-sidedly to the incorrect view of Gierke and Overbeck, according to whom Augustine's understanding of the *civitas Dei* had an expressly political meaning so that he reckoned the state and its institutions simply among the works of the

which we shall also make supplementary use of Weber's excellent study of agrarian history in Roman Antiquity and the third volume of Gierke's *Genossenschaftsrecht*.<sup>1</sup>

### **The Germanic territorial churches**

After the fall of the western Roman Empire at the hands of the Germanic-Roman tribes, the Empire's church also disappeared, along with the canon law of the early universal church (that is, the ecclesiastical legislation which encompassed both the spiritual and the secular realm). They had to make room for the Germanic territorial church system with its totally different church law. The basic feature of this new territorial church law was the feudal lord's proprietary right and patronage with regard to the church on his soil. This made the development of ecclesiastical vassalage and feudalism initially possible, a development which completely delivered the church into the hands of landowners and feudal lords, first of all the king. In this way the church entered into a very close relationship with the state, yet in a manner quite different from that of the eastern state church. Where the latter was incorporated into the culturally and politically much stronger body of the state, it was the other way around in the Germanic states where the church, because of her ancient Christian culture, was by far superior to the as yet weak state in organization and culture. In the west the church could provide leadership in the development of the new state system. When Charlemagne<sup>2</sup> had united all the northern parts of the former Roman Empire and brought these new mission fields under his sway, the territorial

devil. This view was held almost unanimously for a long time by many of those who wrote about Augustine, such as Kolde, Dorner, Gierke, Sommerlad, Felix Dahn, and even Hermann Reuter in his in many respects excellent *Augustinische Studien* (Gotha, 1887). It is certainly incorrect and was effectively refuted with an appeal to the sources by Schilling, Mausbach, Seidel, and others. With his *civitas Dei* Augustine meant only a purely spiritual-religious entity, and he certainly appreciated the state according to its natural-law essence. I hope to show below that Troeltsch's conception of Calvinism also fails to go to the heart of the matter because of his slanted representation of the reformational law-idea.

- 1 Max Weber, *Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht* (Stuttgart, 1896), and Otto von Gierke, *Das deutsche Genossenschaftsrecht*, vol. 3, *Die Staats- und Korporationslehre des Alterthums und des Mittelalters und ihre Aufnahme in Deutschland* (Berlin, 1881).
- 2 Historians admit, almost universally, that Charlemagne was heavily influenced by Augustine's view of the state. Einhard, in his *Vita Karoli Magni* (chapter 24) reports that the king of the Franks liked to have the writings of St. Augustine read to him, especially *De civitate Dei*. Wilhelm Ohr, in his *Der karolingische Gottesstaat in Theorie und Praxis* (Leipzig: Körner, 1902), p. 5, even thinks that Charlemagne was out to build the Augustinian city of God. On the other hand, Bruno Seidel counters by observing in *Die Lehre des heiligen Augustinus vom Staate* (Breslau: Aderholz, 1909), p. 3, n. 3), in some sense correctly, that Augustine's city of God in its visible appearance is not an empire to be built, but a church established by Christ.

church became the church of an empire, but in the sense of the Frankish national church. It was a national church which now included also the pope in Rome. The emperor ruled the church and used her as the fundamental bearer of the organization and civilization of his peoples. The ecclesiastical system retained this trend even after the division of the Carolingian Empire. The Carolingian idea of the state placed the church in the service of the state and its cultural task. This enabled the church during the course of 500 years to totally permeate the state with her spiritual culture. But that permeation in turn had only become possible *because the ancient idea of the state had been replaced by the Germanic one.*

### **The Ancient and Germanic conceptions of the state**

The Germanic conception of the state shared nothing with the Byzantine one. It is true that both based the ruler's authority on the grace of God; but whereas the Byzantine emperorship took on an absolutistic form, the Germanic kingship was founded on the idea that it was the ruler's duty to maintain the law, that is, the welfare and legal protection of the members of his people. Hence, in the Germanic state the king could be deposed if he proved unworthy and disloyal. The Christianization of the Germanic kingship made the ideal ruler the representative of justice and care for all his people, whose loyalty he rewarded with loyalty. It is on this new basis then that the doctrine of kingship by the grace of God, derived from the ancient view of the state, was given a new meaning. The basis of divine kingship according to the Christian-Germanic conception is not the divine institution into power, merely to be borne and suffered, but rather the content of that power as directed toward the goal of justice. The king is God's vice-regent only in and through the realization of the Christian order of life.<sup>1</sup>

On the other hand the church also gradually established herself firmly with a thousand ties to the social foundations of the state by way of an increasing position of power through landed property and the assumption by the bishops of important public functions. What is more, the character of missionary work was gradually changed as it was attended by an increase in political and cultural activity that reached its peak in the Crusades.

### **The idea of the universal church**

Beginning in the tenth century, the idea of the universal church was revived to counter the development of territorial churches, in close conjunction with a new wave of the ascetic ideal and a reaction of the Roman world to the supremacy of the German church. This was accompanied by the elevation of the universal canon law over that of the territo-

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<sup>1</sup> See R. W. Carlyle and A. J. Carlyle, *A History of Mediaeval Political Theory in the West* (Edinburgh and London: Blackwood, 1903), 1:214 ff.

rial churches. The push for unification in canon law, which was in the foreground of this whole movement, slowly led to a closing of the ranks around the pope, since the pope alone could be counted on for protection against the political bishops. The German emperors themselves furthered the cause of this movement since they thought they could only have complete mastery in their church if they controlled the pope, and furthermore their involvement in the politics of northern Italy forced them repeatedly to enter into relations with the pope.

This entire universal-ecclesiastical movement was precipitated by the theological developments of the twelfth and thirteenth centuries, which added three new specifically medieval dogmas to the existing three basic dogmas (that of the church, the canon and tradition, and the Trinity): (1) that of the universal episcopacy of the pope; (2) that of the supremacy of spiritual authority over secular authority; and (3) that of the infusion of grace by the seven sacraments. It is true that only the last of these dogmas was officially formulated in the Middle Ages, but, according to Troeltsch, the first two, not settled until the First Vatican Council (1869-70) under Pope Pius IX, did influence the societal conditions during the Middle Ages as latent dogmas.

### **The doctrine of the two swords**

Gregory VII (1073-1085), the famous pope of the investiture controversy between spiritual and secular power in a struggle for the right to appoint land-holding bishops, was the living embodiment of both of these latent dogmas. The papal party formulated the doctrine of the two swords (see Luke 22:38) according to which Christ had given both the secular and the spiritual sword to Peter, while the pope as Peter's successor and Christ's vicar had passed the secular sword on to the perpetuator of the Roman Empire who showed himself worthy of it by his service to the church. However, at the consummation of all things when Christ returns, both swords would again be handed over to Christ so that He might rule his kingdom in justice.<sup>1</sup>

This doctrine of the two swords and the entire position adopted towards the secular power by popes like Gregory VII and Boniface VIII was but an outworking of the idea of the universal sovereign church. This idea was directed against any intervention by secular authority in the affairs of the church. The ancient parallelism of church and state which existed in the

<sup>1</sup> In juridical terms the theory was formulated to say that the pope possessed both swords *habitu* (in property) but only one sword *actu* (that is, he wielded only one). He granted the secular authority an independent right to use the secular sword only, a right that was characterized as *usus immediatus* (immediate use) or also as *dominium utile*. In its ecclesiastical form this theory was first defended by Bernard of Clairvaux. It was the official position of Pope Innocent III, Gregory IX, Innocent IV, and Boniface VIII (in his bull *Unam Sanctam*), while several emperors (Otto IV, Frederick II, and Albrecht) also acknowledged it. Cf. Gierke, *Genossenschaftsrecht*, 3:528 ff.

time of the church fathers and which many in medieval times still longed for (among others Peter Damiani, the Augustinian Franciscans, and Dante), had led repeatedly, as history showed, to infractions by state authority against the sovereignty of the church. Two completely independent powers existing side by side proved to be an ideal which could not be put into practice. Hence the ensuing struggle for the supremacy of one of the two, a supremacy which the papal side sought for the church in direct opposition to the imperial side.<sup>1</sup> Full freedom and independence for the church could be achieved if the secular power were to be subject to the church and to be guided by the church in all matters which, under certain circumstances, concerned the cure of souls. However, since all sorts of matters might, under certain circumstances, concern the cure of souls, and since it was considered the church's task to determine whether such circumstances were present, this statement of the church's liberty indeed implied the absolute sovereignty of the church over the state.<sup>2</sup>

The Augustinian contrast between the city of God and the city of the world was politically exploited to serve the purposes of this theory. The great church father was made out to have said what he had never intended, namely, that the state with all its institutions was, as such, the work of the devil, fell under the curse of sin, and could only be redeemed by placing itself in the service of the sacramental church of grace.

The universal church movement, which gained ascendancy under the slogan "separation of the church from the state," became in fact a movement for the subordination of the state to the church. It also signified the introduction of the struggle for a unified ecclesiastical culture which was to guide the state in all things through the intermediary of the church with its ancient Christian culture.

The ecclesiastical political program now indeed became a positive program. It involved no less than applying Christian standards to the juridical forms of state and society, trade, economics, and family life.

1 During the Middle Ages the imperial party attempted only sporadically to interpret the doctrine of the two swords in its own favor by deducing the supremacy of the empire over the church from the idea of unity. Even Ockham (whose philosophical and political system we will treat at length below) only hypothetically dared to develop the thesis that should a universal state of humanity under one single earthly ruler be really necessary, the emperor alone could be that head and the church nothing but a part of his empire. Only Marsilius of Padua taught the complete absorption of the church by the state. But, as Gierke points out (*ibid.*, p. 533), the idea of unity from which he drew his conclusions already had a non-medieval form: it changed into the ancient-modern idea of the all-devouring internal unity of the state, and thus presaged the slowly but surely penetrating basic principles of state absolutism.

2 The independent origin and relative autonomy of the state over against the church is maintained by moderate medieval authors such as Thomas Aquinas, although the guidance of the church was still required for all matters which, in the judgment of the church, touched on salvation. Currently these views are still dominant in Roman Catholic circles.

**Incorporation of the ascetic monastic orders and knighthood into the unified ecclesiastical culture**

The program of the unified ecclesiastical culture, in the form in which it was laid down, could only be realized with a societal scheme in which all social groups and classes were unified in every area of life under the guidance of the church. The ascetic monasticism which pursued the old ideal of world-flight in the quiet cloister had always been, in the early Christian world, an irrational, disruptive factor in the face of the institutional church with her priests and sacraments. These anarchistic and individualistic tendencies would have to be removed from the monastic system if it were to be merged with the scheme of the unified ecclesiastical culture. On the other hand, the secular orders of knights with their instincts for frivolous adventure and rugged power would also have to be incorporated into this scheme. This incorporation could only be achieved by relativizing Christian standards. In this way the church, as the central and only true institution for salvation, mediated between the radical Christianity of monastic asceticism and the conformity to the world of the laity.

The monastic orders were first brought under the bishops, later the pope. Those orders that would not comply with such subordination were declared to be heretical. Asceticism – monastic life – was denied its independent end. Its end was to be found in the *Corpus Christianum*, in which it acquired a respectable, but by no means exclusive, place. Through prayer, self-chastisement, and abstinence, the monastic orders could earn merits that could vicariously make up for the moral shortcomings in the lives of the laity.

On the other hand, the knights' lust for adventure and drive for power were made useful through the veneration of Mary and the Crusades. Confession and penance gained the church's absolution for gross sins and errors, while the special merits of the monks benefitted those whose walk of life could not pass the test of ecclesiastical ethics. Along with all this there was a relative adjustment of the societal forms of life to the Christian ideal. If the early church had, in her attitude towards the world, always clashed with a rather rigid pagan culture of power which was firmly entrenched in the institutions of social and political life, by the Middle Ages the picture had changed entirely. During the Roman Empire's period of decline, despite all the catastrophes of that culture of power, the shaping of a Christian unified culture was hampered by the persistence of the ancient idea of the state, by the bureaucratic control of a legal order which formalized life's relationships, and, finally, by the part that money continued to play in trade and commerce and which displayed a strongly secularizing tendency.

In absolute contrast with the foregoing, the Middle Ages had a very weakly organized political community which, because of the special na-



ture of its feudal system, cannot be compared with either the ancient nor our modern idea of the public legal unitary state.

**Natural economy, feudal system, professional classes, fragmentation of law**

Within the prevailing natural economy (the exchange of goods without the fundamental role of money as the measure of value), the services of state officials were rewarded by the territorial rulers with sizeable land grants. This resulted in the formation of a class of hereditary landowners and a subjective linking of authority to land ownership, leading to the false suggestion, maintained by some even in modern counter-revolutionary writings (Von Haller and others), that authority itself was a private right. Military organization in particular depended on this system of feoffment and the granting of privileges in view of the impossibility of funding lengthy wars out of taxes. As a result, the military class – later also the class of knights – separated itself from the peasants and the middle class, and so two political classes arose within the state, to which the spiritual class was added later.

The church claimed feudal lordship over the rulers<sup>1</sup> and so incorporated the entire class system into its hierarchical ordering. Finally, slavery in its ancient form was increasingly superseded by the system of serfdom which rested on ties to the soil, with the obligation to perform various soil-related services accompanied by a growing measure of personal freedom. Hence, there was no strong central authority; rather, a federation of classes which organized themselves more and more into closed cooperative societies (*Genossenschaften*). The latter, each of them out to defend its own rights, saw their relationship to the whole as governed more by loyalty to treaties, manly honor, and piety than by the authority of the central government. Until the reception of Roman law, a unified central legal order was nowhere to be found other than in canon law, that is, within the church. Add to this the significance of the so-called “natural economy” which was based on simple relationships and a sparse and stable population reliant on primitive means of transport, resulting in a markedly agrarian economy in which everything was viewed as a gift of nature and a divine ordering, and you have in broad strokes a picture of the social relationships in the Middle Ages.

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<sup>1</sup> This claim of the church was supported by writers of the first order. Thomas Aquinas wrote (*Quaestiones quodlibetales* 12, q. 13, a. 19, ad. 2): *Reges sunt vassalli Ecclesiae* (Kings are vassals of the church); similarly, Pope Innocent IV and Clement V. Thus the oath sworn by the emperor to the pope at his coronation was indeed seen as a *homagium*, a vassal oath, which bound the emperor to use the wordly sword entrusted to him in the service and under the direction of the church.

**Medieval towns<sup>1</sup>**

Even before social life was permeated by ecclesiastical ethics, these primitive relationships were more favorable [to further differentiation] than they had been under the Roman Empire. The church found the ideal of a truly Christian society, as envisaged by Thomas Aquinas, in the medieval industrial town which evolved in the twelfth century as a result of a decline in status of landed property. We are referring to the rise of towns as civilization gradually shifted inland, away from the ancient coastal cities, a process that had already begun in the time of the Roman emperors. Max Weber has sketched in some detail the difference between this inland medieval industrial town and the ancient coastal *polis* or city-community as Augustine still knew it.<sup>2</sup> The ancient *polis* with its coastal culture was, in the classical period, the most complete military organization of power ever produced in ancient times. Civil rights here were closely bound to military service. Military service resulted in large land grants in conquered territories, land that could only be worked by means of the gigantic system of agrarian slavery found on the Roman plantations. The small free farmers had no opportunity to gain an economic and political position of any importance in the face of this large-scale exploitation of slaves in the service of the rentier class of the Roman nobility. Under the land-hungry militarism of classical Roman times neither free agricultural enterprise nor the free industrial trades managed to develop any kind of significant, independent organization. By contrast, the medieval towns of the interior were not focused first of all on military but on economic goals. Here, not the military landed aristocracy but the guilds of free artisans took control of the towns.

While the powerful Italian maritime cities (Genoa, Venice, Pisa, and others) with their coastal culture constituted, both in their organization and in their politics of expansion, the medieval analogy of the ancient *polis*, the inland medieval town was from the outset committed to a peaceful expansion of its economic market. A military policy of conquest was therefore out of the question as interior towns were entirely embedded within the large feudal states, dependent on the rulers and landowners for their privileges and concessions, and surrounded by the territory of these powerful lords. The core of the population in these towns consisted of peaceful middle-class artisans and merchants, not military nobles, as in the ancient city-states and the medieval coastal cities. The nobles preferred to stay on the land in their fortresses and castles, and they even at-

- 1 *Editorial Note (DS)*: One of the distinctive merits of Dooyeweerd's philosophy of society is his analysis of an undifferentiated society; cf. *A New Critique*, vol. 3, *The Structures of Individuality of Secular Reality*, pp. 346-76.
- 2 See his article "Agrarverhältnisse im Altertum" in *Handwörterbuch der Staatswissenschaften*, 3<sup>rd</sup> ed. (Jena: Fischer, 1909), 1:171 ff.



tempted to insulate their sphere of influence against increasing pressure from the towns to draw them into the free cooperative society of the urban community.

In this way the medieval urban centers of the interior, whose artisans and merchants in large part consisted of serfs whom the landowner allowed to go to these towns in order to profit from their taxes and inheritances, were able gradually and peacefully to develop their guilds and marketplaces. Here ecclesiastical culture found a pre-eminently suitable basis for development.

The period of town civilization which . . . is characterized by its great cathedrals and intensive church life; its religiously consecrated guilds and corporations; its social and political efforts for the spiritual and material welfare of its citizens; its Christian parochial schools and its charitable institutions; its peace and its public spirit . . . constitutes the high-water mark of the development of the mediaeval spirit.<sup>1</sup>

In this peaceable work community, which needed military power only for defense against outsiders, the crudities of the feudal system were also overcome. In its first development, the basic features of a society resting on a natural economy were retained, and a Christian spirit and a strong sense of solidarity largely answered to the ideal of ecclesiastical ethics.

### **The Roman Catholic idea of mediation (*Vermittlung*)**

This then, in brief, presents the main features of medieval society that has been so richly portrayed by Troeltsch and Weber. From it we see how that which the early church during the Roman Empire, under the inertia of a rigidified entrenched culture of power, had not been able to achieve was effected by the medieval church amidst a confluence of spiritual and material-societal factors. The venerable idea of the *Corpus Christianum* with its spiritual and worldly sides, as it had been conceived by Augustine in his Neoplatonic idealism, was drawn into the sphere of reality. It had taken on a realistic shape in the societal scheme of the unified ecclesiastical culture.

But this realization of a lofty spiritual idea did not occur without an inner modification of that idea itself. The truly medieval idea of mediation relativized Christian standards in order to incorporate the radical Christianity of asceticism as well as the morally deficient laity into the unified ecclesiastical culture. This was the new element, introduced into the Augustinian concept, which gave that idea a totally different meaning. The intrinsic changes of worldly institutions proved to be a natural basis upon which the church could unfold her works of grace. The Platonic gap between idea and reality had been bridged. Nature and grace had been

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<sup>1</sup> Troeltsch, *The Social Teaching of the Christian Churches*, trans. Olive Wyon, 2 vols. (New York: Macmillan, 1931), 1:255.

brought as close together as possible within the total hierarchy of the medieval social schemes. The church had incorporated the Christianized world and had chosen nature to be the basis of operation for her sacramental work of salvation.

### **Altered appraisal of nature and grace**

Now the times were also ripe for a closer appraisal of that nature. There were now no scruples about attributing to nature its own divine value as a stepping-stone to grace. It was no longer necessary – as it was with Augustine – to contrast nature so sharply with the city of God to the extent that nature remained outside the sphere of divine justice. The Christian law-idea demanded revision. It had to be pulled out of the idealistic Augustinian sphere and transplanted into the soil of the Christian reality of life.

For Augustine, grace had really meant the restoration of the absolute law of nature that had been relativized by sin. In the Roman Catholic Middle Ages, absolute and relative natural law together became the rational antechamber or preliminary stage, to which the sacramental institution of grace added a supernatural and superrational perfection by means of the infusion of miracles with its instruments of grace.

The altered appraisal of nature as opposed to grace showed up clearly in the conception of the state of paradise.<sup>1</sup> The Roman Catholic church attributed the natural perfection of Adam and Eve before the fall to their being made in the *imago Dei*, the image of God. However, God had in unconditional grace also granted the human being a *donum superadditum*, a special gift, the *similitudo Dei*, the essential likeness to God. Through the fall the *donum superadditum* had been lost. Rational nature, however, was not canceled but merely obscured by the effects of sin. Through grace, nature was restored, and the supernatural communion with God was miraculously given back to humankind. Accordingly Thomas Aquinas wrote, "*Gratia naturam non tollit sed perficit*" (grace does not cancel nature but perfects it).

### **Transformation of the Christian law-idea in Thomism**

The Christian law-idea required a revision. To effect that revision was the task of the period of High Scholasticism from about A.D. 1200. Albert the Great and especially his pupil, Thomas Aquinas, embarked on this task with great brilliance.

Augustine's idealism, in which grace from on high descended as the ideal original image of nature along the natural hierarchy, had to be realistically transformed. Depending upon the various levels of the medieval

<sup>1</sup> On the difference between Augustine's theory and that of Thomist Scholasticism concerning nature and grace in the state of paradise, see Mausbach, *Ethik des heiligen Augustinus*, vol. 2, *Die sittliche Befähigung des Menschen und ihre Verwirklichung* (Freiburg im Breisgau: Herder, 1909), p. 100 ff.

Roman Catholic system of mediation and relativization, the idea had to be sown like a seed in the reality of nature, in order that reason might be able to comprehend (as far as possible) the development to a higher or lower degree of perfection. Once again ancient philosophy offered a starting point for this approach in the teaching of Aristotle.

Aristotle had found no peace with Plato's theory which had divided the cosmos into two worlds, that of the eternal ideas and that of material reality, ascribing true being to the ideas while reality was represented as being but the (distorted) shadow or copy of the idea. Aristotle sought to reconcile these two worlds and did so by placing the idea as a seed (potentiality) in matter itself, no longer seeing it as an abstraction above and beyond reality. The seed (potentiality) strives towards its perfection (actuality).

What Aristotle had in mind here was the biological organism of plant, animal, and man. A plant develops gradually from a seed, animal and human organism from an embryo. The entire organism, in its complete development, is already contained in this seed in principle. During his biological research, Aristotle observed in that organism an amazing mutual purposefulness of its various organs which all served a definite innate purpose. At the same time, he also noted a purposeful functional relationship between the organisms present in all of nature with respect to metabolism and food intake. The soil, with its nutritious matter, serves plants, plants serve as food for humans and animals, and animals likewise for humans.

This thought of an innate purposefulness of the organism continued to fascinate Aristotle. His philosophical spirit expanded this principle of innate purpose (entelechy) to the entire cosmos and he anchored it in the old idea of an eternal cosmic order, an immutable law of nature. The grand movement of every creature towards its special purpose, its own perfection, and its ultimate purpose, the perfection of a higher creature, the continual movement from potentiality to actuality – from matter to form, from seed to perfection – required an ultimate conclusion. Motion presupposed a prime mover and the chain of purposeful causes likewise presupposed a final cause and ultimate purpose of the entire cosmos. That prime moving cause and that ultimate goal of creation was God the Unmoved Mover, the Uncaused Cause, who guides all things in creation, both rational and non-rational creatures, to their goal by means of an innate impulsion. But each creature is guided in a manner that is true to its particular nature, the non-rational by a blind natural urge, the rational by a rational nature. In this way God was placed above creation in a theistic sense, yet at the same time was the moving prime cause and the ultimate end of that creation. In this way as well, nature was opened to the fruitful idea of development, an idea that acknowledged every creature in its own purposeful being, the perfection of its own nature, yet at the same time turned the limited perfection of the lower beings into the first step or preliminary stage (namely,

“matter”) for the development to perfection of higher beings, while all things collectively were to serve God.

The purposeful idea of development was now incorporated into the law-idea, and it is precisely that idea which High Scholasticism needed in order to provide the Roman Catholic mediating system in the *Corpus Christianum* with its philosophical foundation.

### **Thomism as the official teaching of the Roman Catholic Church and the foundation of modern Roman Catholic philosophy, science, and politics**

During the Middle Ages nature and grace had been reconciled by a progression of stages of development. The state and all its worldly institutions had been absorbed by the *Corpus Christianum* and in its relative autonomy was placed under the authority of the church. All that was needed now was to incorporate this idea of mediation into the worldview as well. The towering intellect of Thomas Aquinas took on this work.

Born in A.D. 1225 (or 1227), Thomas Aquinas entered the Dominican order at an early age. He was trained in Paris and Cologne under Albert the Great and worked as a professor of theology in Paris at the papal Curia. He died in 1274. In 1323 the Roman Catholic Church officially pronounced him one of the saints and in 1567 he was proclaimed the fifth Doctor of the church by Pope Pius V. His authority within the Roman Catholic church was confirmed anew by Pope Leo XIII, well-known for his social thought, who in his encyclical *Aeterni Patris* of 4 August 1879 wrote: “We then, while we declare that people must accept with joy and gratitude all that has been wisely said and is useful, discovered and devised no matter by whom, do most urgently admonish you, Venerable Brethren, for the maintenance and splendor of the catholic faith, for the welfare of society, for the progress of all sciences, to restore the golden wisdom of the holy Thomas and to disseminate it as widely as possible.”

More recent Roman Catholic philosophers and students of law, politics, economics, and ethics, such as Hertling, Bäumker, Geijser, von Pesch, Victor Cathrein, Beijssens, and many other noted persons, collectively accept the authority of the *pater angelicus*, Aquinas, even if to a greater or lesser degree they attempt to adapt his system to modern times.

All modern Roman Catholic politics is still based on Thomism. Thus in the course of our study we shall have to make a very thorough comparison between this powerful system and that of Calvinism in order to more clearly understand the Calvinist worldview, a worldview that is based on a totally different law-idea as to its foundations and its historical deviation from Romanism. Thomas, by borrowing from Augustine and absorbing numerous elements from other systems (Neoplatonism and Arabic philosophy), introduced Aristotelianism into a new Christian law-idea. August-

tine's eternal law, that is the wisdom of God in divine reason, in the providence of his cosmic plan, was now infused with Aristotle's notion of entelechy. This meant that henceforth the eternal cosmic order was conceived as a purposeful ordering of the entire creation in a two-fold direction: (1) the ordering according to which each entity in creation is moved to its immediate perfection by its own innate purpose, its natural good; (2) the ordering according to which all creatures are primarily ordained to the glory of God and secondarily to each other in a hierarchical order, where within the realm of the finite the human being is the relative final purpose of creation.

In this way Thomas views the universe as infinitely varied motion due to the fact of creation. Each part achieves its own purpose, its own *good*, its own perfection, through its purposeful development according to its innate nature. At the same time each part serves a higher being to achieve its purpose and perfection, thus contributing to the achievement of the ultimate purpose of creation. Primary cause and ultimate purpose of this appropriate motion is God as Creator and Ruler. The secondary cause is nature as implanted by God in his creatures, that is, the principle of action according to the purpose proper to that creature. By participating in movement towards the final purpose, each being achieves its own perfection.

Human reason participates in the *lex aeterna* by means of the *lex naturalis* or natural moral law, that is, the law which according to Paul's testimony is written in the hearts of men.

### **The rationalistic bent of Thomism**

In a purely Aristotelian sense – and this is highly characteristic also of the current position of Roman Catholic philosophy – rational nature becomes the nearest norm for moral behavior. Referring to Aristotle's *Nicomachean Ethics*, Thomas reasons as follows: The innate purpose of every being is the driving principle of its activity, therefore every being naturally strives towards *its good*, which, in view of its particular nature, is at once *the good*. For each being, the good consists in whatever harmonizes with its form of being while evil is that which lies outside the order of its nature.<sup>1</sup> Now, the form which provides human nature with its particular character is the rational soul. Thus, for the human being the good consists of that which befits his rational soul. Knowledge of this good is given to us by natural reason. And so Thomas concludes: Therefore that which is contrary to the rational order is at variance with the nature of man and hence evil for him; by contrast, that which agrees with reason is in harmony with his nature, hence the good.<sup>2</sup>

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1 Cf. e.g. *Summa Theologiae*, Ia-IIae, q. 18 a. 5 co.: “Unicunque rei enim est bonum quod convenit secundum suam *formam* et malum quod est praeter ordinem suae formae.”

2 Ibid., Ia-IIae, q. 81 a. 2.

The highest principle of morality, which has the same meaning for ethics as the *principium identitatis* and *contradictionis* has for logic, is: "Do good, avoid evil," which in the Thomist view comes down to: Act according to your rational nature, for that answers to the *lex aeterna*, the eternal law of God.

### **Natural reason and revelation**

In immediate connection with this, natural reason is in a certain sense emancipated from revelation. Each human being carries the natural law within himself and is thus able to know by his reason, without recourse to revelation, what the natural moral law requires of him, just as the discourse of natural reason, without recourse to revelation, must conclude *a posteriori* that God exists. The renewed proclamation of the natural moral law in the Decalogue was only necessitated by sin. Here lies the speculative rationalistic bent of the Thomist-Romanist worldview as grounded in its law-idea which is steeped in the principle of innate purpose (entelechy).

This rationalistic bent markedly reveals itself in the notion that the good is not good because God commanded it, but that God had to command the good because it is good, that is, because it is in accord with rational human nature.

Using this principle, it was no longer necessary to force the natural institutions of state and society into the mold of Jesus' teaching of grace. The urge for political community is innate in human nature. Good, therefore, is whatever is beneficial for the state, whatever the state requires to promote its inherent purpose, the protection of the rights and welfare of its citizens; evil is whatever hampers the state in the achievement of this purpose.

Natural reason has become the guideline for politics. Politics, too, belongs to the *preambulae gratiae*, to the steps leading to grace, but it is ruled by the law of nature, not by grace.

The closed character of the rationalistic system is interrupted only by the inner transition from nature to grace itself.

### **The law of grace and the law of nature**

Indeed, grace is governed by the law of God (*lex divina*) grounded in the *lex aeterna*, but the truths of grace themselves are supernatural, above nature. They are inaccessible to natural reason and are apprehended only mystically in faith, just as grace itself is infused into the soul by a mystical wonder through the church's sacraments. Here too we find the mystical bent of the Thomist doctrine of predestination which cannot be understood by rational nature. Augustinian irrationalism appears wherever natural reason falls short.



**External mediation between nature and grace**

In spite of this, the *external* transition from nature to grace has been made comprehensible to reason. Nature is presented as lower material for the form of grace, as a rational stepping-stone leading to supernatural grace. Hence the entire doctrine of providence is treated by Thomas as a branch of *theologia naturalis*, the science of the natural knowledge of God. In moral theory, in which politics is also placed, the Roman Catholic idea of mediation takes characteristic shape in the teachings of the *consilia* and the *praecepta* (counsel and commandments).

**Counsel and commandments**

The natural moral law requires only whatever is strictly necessary for the maintenance of God's cosmic order (this includes all the commandments of the Decalogue). Anything beyond this simply amounts to counsel for the life of grace, just as the entire content of Christ's Sermon on the Mount is intended only for the highest level of perfection in grace, not for the lower level of natural perfection.

In this way, the mediation between the ascetic monastic morality and the natural morality of the laity was philosophically grounded in the Thomist law-idea. The doctrine of innate purpose, specific for each nature, made possible this relativization of Christian criteria and with that the reconciliation between nature and grace, world and church, culture and Christianity.

\* \* \*

**Interim summary: from the earliest phase down to Thomism**

Let us briefly review the results reached by Christian thought up to this point concerning the problem of Christian politics.

The problem as posited during the early period of the Christian church appeared to be rather simple. The concern here was only to proclaim the independence of the kingdom of God over against the absolutism of the pagan state which swallows up all spheres of life. During the next period, which comes to a provisional close in Augustinianism, the problem becomes much more complicated and concerns a positive program for Christian politics in a state which, at least outwardly, is no longer anti-Christian. The great gain of this period is the first formulation of the Christian law-idea in its Augustinian sense, the development of the Christian worldview into a well-rounded system, grounded in an eternal creation order and cosmic harmony in which everything from low to high is assigned its proper place, while creation as a single whole praises God its Creator. The political program, however, has become positive only in the requirement that the state should seek its final purpose in the advancement of the kingdom of God and therefore place itself in the service of the

church. Secular institutions, still pervaded by a rigidified pagan culture of power, are justified by an appeal to the relative natural law of the state of sin. Unblemished nature before the fall into sin is not contrasted by Augustine with the state of grace. Rather, it is the ideal original image in contrast with nature as darkened by sin. The transition between that relative sinful nature and the state of grace of absolute natural law is only reached along the road of a mystical irrational infusion of grace. There is no talk of a rational reconciliation.

As a result the idea of the *Corpus Christianum*, the mystical body of Christ, with its spiritual and secular side, does not display a rational, internal unity. Nor does the divisive nature of Platonic idealism, which knows no reasonable transition between idea and reality, allow for a rational unity in the Augustinian conception of the *Corpus Christianum*.

Then, in the Middle Ages, due to the total transformation of society, the problem of Christian politics enters a third phase, that of the unified ecclesiastical culture. Societal institutions, thanks in part to the practical influence of Christianity itself, take shape in a way that is relatively close to the Christian ideal. Hence their intrinsic value can also be incorporated into the *Corpus Christianum*. In practice, unity is realized in a hierarchical structure of levels in which the church as the central institution of grace, built up as a strict hierarchy, plays the mediating role between the radical Christianity of the monasteries and the worldly Christianity of the church.

Nature is given its own value opposite grace. The concepts of mediation and reconciliation become embodied in the concept of a development of a lower level of perfection to a higher one.

Thomas Aquinas, the high priest of High Scholasticism, philosophically anchors the mediation idea in a new law-idea, pervaded by the Aristotelian concept of natural innate purpose (entelechy), which necessarily reveals itself in every being's striving towards its natural perfection. The cosmic order (*lex aeterna*) is rationalized as much as possible. Rational nature becomes the nearest norm for moral action.

As in Aristotle, the Stoics and Augustine, so in Thomas the state with its social institutions is grounded in human nature. Novel in Thomism is that now the social nature of humankind also becomes the nearest norm for politics. In this way the law of nature is emancipated from the ethics of grace revealed in the coming of Christ. The guideline for the state in the area of secular communal life must be the general welfare of the citizens, consisting of the provision of all that the individual cannot achieve, whether in isolation or in the family or tribal community. Included in this is, first of all, the protection of natural rights (property, right to life, natural liberty, etc.) and the maintenance of "commutative justice" (this concept will be discussed later in dealing with the law of nature).

The bond to the church and hence to the sphere of grace is located in the spiritual. In spiritual matters the state must follow the guidance of the



church – in the final analysis, of the pope. Hence even today Roman Catholicism still opposes the separation of church and state most strenuously. Accordingly the state, too, becomes a natural stepping-stone to grace. Its citizens must use the secular goods, provided to them under the direction of the church, for the higher purpose of communion with God.

## Chapter 3

### *Weaknesses in the Medieval worldview*

The medieval hierarchical worldview reconciled nature and grace by a series of transitions and mediations and combined church and state within the visible unity of the *Corpus Christianum* (the visible body of Christ with its spiritual side, the church, and its secular side, the state). This medieval worldview found a firm philosophical foundation in the rationalistic system of Thomas Aquinas, as we have noted.

The challenge was to determine, in the light of the eternal truths of Christianity, the proper relationship between temporal and eternal things, between nature and grace. Now then, the Thomist law-idea, metaphorically speaking, had drawn an ascending line through the whole of natural life, from the lowest to the highest level. As purpose and moving cause, the higher levels were presumed to be operative in the lower, while the highest level of natural life was construed as the point of connection and preparatory basis for the sacramental infusion of grace. In this way the church could encompass all of natural life in state and society with its means of grace. The various spheres of life were hierarchically coordinated with each other (that is to say, ordered in a relationship of lower to higher) into a merely relative independence within the body of Christ. The official hierarchy in church and state, culminating in one sovereign personal office (pope and emperor), could also be rationally grounded in this manner.

Nevertheless, this entire imposing intellectual edifice displayed numerous weaknesses which became just so many points of attack for subsequent spiritual movements. As a result, the very core of Thomism, its law-idea, was affected, thus disrupting the entire ingenious hierarchical construction of the spheres of life and of personal offices. These weaknesses lurked partly in the system itself and partly in the historical material of ecclesiastical-political relationships regulated by this system.

#### **The primacy of the intellect in Thomas**

First of all, Thomism was founded on the so-called primacy of reason, that is to say, on the unproven assumption that reason is of greater value than the will. Only at the gateway to the mysteries of grace was (natural) reason called to a halt; but for the rest it was declared sovereign over the entire realm of nature. When it was assumed, moreover, that natural reason shares with divine reason in the eternal law (*lex aeterna*

or God's rational cosmic order) the way was cleared for speculations in a natural theology which led to a critical erasure of the boundaries between human and divine wisdom.

The above in turn was intimately connected with a peculiar attitude which, characteristic of the entire Thomist worldview, failed to appreciate the specific character of the will as against the intellect. This spiritual attitude was transposed into the Christian worldview from Greek philosophy, particularly Aristotle. The Greek spirit was speculative, inclined to contemplation. The original character of the human activity of the will with its unpredictable behavior and expressions, often apparently disrupting the harmonious world order, was hidden from Greek thought. The Greeks naturally sought the serene beauty of a rational harmony which would display the unity of the world in clear-cut lines.

To trace this rational harmony also in the works of the Divine was the ultimate purpose of speculative Greek philosophy – the kind of harmony portrayed by the Greek sculptor in the balanced beauty of a marble Apollo. For all that, this rational harmony in the universe had to be discovered by way of dialectic, that is to say, through intellectual argument. This dialectic, however, simultaneously pushed the Divine into an infinite distance. To approach the Divine of Greek philosophy, one had to stumble along the whole tiresome, rocky road of philosophic thought, and the temple of the Divine, when finally reached, contained nothing but the cold, lifeless sculpture of an abstract *idea*.

How different, the God who had revealed himself in Christ Jesus! He was the almighty Lord of Heaven and Earth, the Righteous and Merciful One, wonderful in all his works, infinitely exalted above human comprehension, and yet very near the human soul that yearns after him, the God who does great things in history, who will not allow himself to be dictated to by laws of finite human logic, the sovereign Creator and Preserver of the universe and at the same time our loving Father who is in Heaven. From the beginning Christian reflection sensed this contrast between the Greek and the Christian view of God most profoundly. Where Christian thought, for lack of independent preparation in the elaboration of its worldview, began to adopt numerous elements of Greco-Roman philosophy, it was possible to smooth over many rough spots, but inwardly the tension between the mutually conflicting elements continued unabated.

No one sensed that tension more deeply than did Augustine, the man with the fiery temperament and an irrepressible contemplative urge. He sensed most powerfully that God is the omnipotent One, the Sovereign, the Lord. Yet in his law-idea, discussed above, he had also introduced many speculative elements of Neoplatonism. These speculative elements continued to be at odds with the conception of God as the personal Creator and Upholder of the universe. The Neoplatonic idea of a logical hierarchy in the universe ordered everything into a higher or lower position accord-

ing to the measure of participation in God as the Absolute Being. This idea had once again interposed the thinking process between God and the soul. Neoplatonism then sought to bridge the gap again by a contemplative mysticism, in which the soul ascended the various levels of contemplation towards God in order to lose itself at the highest level in a beatific contemplation of God.

### **The primacy of the will in Augustine**

These features are also encountered in Augustine the thinker.<sup>1</sup> Through his work, however, runs the red thread of a truly Christian passion for the Father who is in Heaven yet who is fully near unto man.<sup>2</sup> Despite all speculative elements, this Christian idea of a personal God predominates in Augustine's worldview, and he expressed it in his teaching concerning the primacy of the will. For him, God was above all the omnipotent will, the unlimited personal power, the mighty Lord, who carries out his work in creation, not according to the smooth path of logic, but in self-determined ways. Most prominent in Augustine is the realm of the contingent, that is, of all that does not take place according to a necessary chain of cause and effect. Hence he had a preference for the mysterious works of God in history; hence he gave prominence to the sovereign will of God in the doctrine of providence and predestination; and hence he was absolutely innocent of the intellectual mediation and relativization of Thomistic Scholasticism.

Towering over everything, for Augustine, is the suprarational sovereignty of God in the all-encompassing predestination of world events. World history, as Seeberg puts it, is the eternal Lord's absolute will that realizes itself in justice and mercy, through sin and death, in Christ's works – He is our guide to God –, in the birth and growth of the church, in her doctrines and institutions, through Word and sacrament, until the final judgment with salvation and perdition. This idea cast its light on all the harshness and terrors of present times, on all the enigmas of history, and on everything external and harmful to the church. In the final analysis, everything was, after all, the expression of God's eternal will. Therefore the present-day church, despite all her sins and omissions, is nevertheless the kingdom of God.<sup>3</sup>

1 In earlier times they were especially present, as we have seen, in the church father Origen.

2 This contrast in Augustine's thought has been worked out excellently by Reinhold Seeberg in his *Die Theologie des Johannes Duns Scotus: Eine dogmengeschichtliche Untersuchung* (Leipzig: Weicher, 1900), p. 586 ff; and by Wilhelm Dilthey, *Gesammelte Schriften*, vol. 1, *Einleitung in die Geisteswissenschaften: Versuch einer Grundlegung für das Studium der Gesellschaft und der Geschichte*, p. 335 ff.; see also Wilhelm Kahl, *Die Lehre vom Primat des Willens bei Augustinus, Duns Scotus und Descartes* (Strassburg, 1886).

3 Seeberg, *Die Theologie des Johannes Duns Scotus*, p. 589.

On the basis of this truly Christian conception of God, Augustine also extended the primacy of the will to his theory of knowledge and his doctrine of the soul – Augustine is the scientific father of modern psychology – and adopted a position here that differs fundamentally from that of Greek thought (both Platonic and Aristotelian).

So there were two streams of thought – that of the Neoplatonic contemplative, and that of the Christian will – vying for priority in Augustine's thought. For Christian thought after Augustine, it came down to which stream was to gain precedence.<sup>1</sup>

The Augustinian stream that defended the primacy of the will continued unchallenged until the time of Albert the Great and Thomas Aquinas. It came into its own in the comprehensive systems of John Scotus Eriugena and Anselm of Canterbury, in the twelfth-century mysticism of Bernard of Clairvaux, Hugh of Saint-Victor and Richard of Saint-Victor, and in the partly speculative, partly mystical systems of the Arabic philosopher Avicenna, in William of Auvergne, Henry of Ghent, and Bonaventure. Then Thomism introduced the primacy of the intellect<sup>2</sup> in an entirely Aristotelian, that is, Greek speculative, way. Only through the *rational* soul is the spiritual nature imprinted with that peculiar form, that peculiar stamp, which distinguishes it from the lower animated world. Thus in Aristotle and Thomas the will, too, does not receive its spiritual stamp except from reason. The will in and of itself is forced back to the sphere of the *anima sensitiva*, the sphere of natural appetites.<sup>3</sup> Only as *intellectivus appetitus*, that is, as rational inclination, does the will belong to the higher level of the soul.

Thus the primacy of the intellect was now proclaimed all across the board. Next, the Thomist law-idea, which constructed the entire rational cosmic plan using the concept of entelechy (the universally innate rational purposiveness) and positioned it on a lower or a higher rung according to the Neoplatonic hierarchy, now supplied the infallible means to erect a hierarchy in the various spheres of life and the world in a rational way.

However, when this principle of the primacy of the intellect was abandoned, the danger was always present that the proudly ascending line of

1 *Editorial Note (DS)*: In his *Encyclopedia of the Science of Law*, vol. 2 (forthcoming), Dooyeweerd no longer makes a choice between the primacy of the "will" or that of the "intellect." On the contrary, he explicitly states that this whole controversy was nothing but a family quarrel within the domain of anti-Christian immanence philosophy.

2 For a historical survey of the opposition between the primacy of the will and that of the intellect, see Kahl, *Die Lehre vom Primat des Willens*, passim, and Clemens Baeumker, "Die europäische Philosophie des Mittelalters," in *Allgemeine Geschichte der Philosophie*, vol. 1, pt. 5 of *Die Kultur der Gegenwart* (Berlin and Leipzig: Teubner, 1909), pp. 288-390

3 Cf. Thomas Aquinas, *Summa contra gentiles* 3.26.1: "The will, to the extent that it is inclination (desire), is not privy to intellectual nature, but only to the extent that it depends on the intellect."

the hierarchical pyramid in any one plane would be cut. Were that to happen, the only factors that could save the hierarchy would be ecclesiastical positivism, the ingrained faith in authority, and the well-nigh ineradicable medieval urge to imagine the entire cosmic plan as a closed unity. Speculative philosophy, however, would then have proved inadequate. The recognition of the hierarchy of the spheres of life and of the hierarchical organization both in the secular imperium (the idea of the Holy Roman Empire) and in the church (the supremacy of the pope's episcopate) depended entirely on the subjective belief in the divine sanction of the existing hierarchically unified culture. This belief, embodied in the ecclesiastical positivism of the Middle Ages, would then have to demonstrate its ability to survive the tremendous upheavals of the actual course of historical development.

**First line of development in the primacy of the will.  
The undermining of the Thomist law-idea by medieval sects.  
The uncertain position of Wycliffe and Huss**

A twofold line of development became prominent during the Middle Ages when the speculative Thomist position was abandoned in favor of the primacy of the will.

First there was the development of a type of sect which, in complete rejection of the Thomist law-idea with its speculative transitions and mediations, continued to expand on the Augustinian idea of predestination yet at the same time abandoned the Augustinian universal law-idea, reducing its entire law-idea to a simple evangelical law of grace for the kingdom of God.

This line of development, which began as a form of radical but relatively primitive thought in the Waldensian and Franciscan sects, received a new impetus in the fourteenth century in the emergence of John Wycliffe of Oxford and his Bohemian disciple John Huss, and would soon show its anarchistic tendencies in the bloody Hussite wars. As regards the connection between this whole movement and the teachings of Wycliffe (and Huss), we deliberately express ourselves with caution since in light of the latest research<sup>1</sup> (which we were unable to verify for ourselves by going back to the original sources) we consider it highly doubtful at best

<sup>1</sup> See the concluding essay in F. J. C. Hearnshaw, "John Wycliffe and Divine Dominion," in *The Social and Political Ideas of Some Great Mediaeval Thinkers* (London: Harrap, 1923), pp. 192-223, and Reginald Lane Poole, *Illustrations of the History of Medieval Thought and Learning*, 2<sup>nd</sup> rev. ed. (London: SPCK; New York: Macmillan, 1920). For the conservative elements in Huss' theory of the church see also the study of Johannes Gottschick, "Husz', Luther's und Zwingli's Lehre von der Kirche, mit Rücksicht auf das zwischen denselben bestehende Verhältnis der Verwandtschaft oder Abhängigkeit," *Zeitschrift für Kirchengeschichte* 8 (1886): 345-94, 543-616.

whether one can join Troeltsch<sup>1</sup> in simply classifying Wycliffe among the medieval sectarians.

In support of his opinion, Troeltsch refers mainly to Wycliffe's *De civili dominio* where the latter places great emphasis on absolute natural law, which for him is identical with evangelical law. According to this law only the just and elect have an inalienable right to property and power as God's gift of grace, while they are at once obliged to employ such property in loving service to the community (in a communistic sense). By contrast, human or civil law entered the world only through sin and, since it maintains selfish property only by force and fails to distinguish between the elect and the damned, it may for the time being be acknowledged only if it has preserved a remnant of evangelical natural law and if it bridles sin. Hearnshaw, however, suggests that this entire property theory was not developed by Wycliffe but rather borrowed from the archbishop Fitzralph of Armagh, who had directed it against the rich prelates, just as Wycliffe himself used it exclusively against the clergy.<sup>2</sup> Actually, Wycliffe became prominent as a political thinker only in the last decade of his life. During his academic tenure at Oxford he was the ornament of the college, a figure quite as much at home in Scholastic philosophy as in Augustine and Plato.<sup>3</sup> Unfortunately his works were written in the same barren syllogistic style as the treatises of the Scholastics. He did side with Augustine in his prominent theory of predestination, and later somewhat in his ecclesiology; in theory he raised the Holy Scriptures as God's revelation to the position of the exclusive standard of truth, and in so doing exercised great influence later upon the German reformers. Nevertheless, in his rationalism he totally agreed with Thomistic Scholasticism. In Wycliffe, the authority of Scripture often has to make way for the authority of reason, as is plain from his definition of revelation: "the supernatural light is the perfect form of the natural light."<sup>4</sup> Wycliffe was a committed nationalist. His entire theory of property, church, and authority was aimed at the papacy and the ecclesiastical hierarchy which, since the transfer of the papal seat to Avignon, had for some time become a willing tool in the hands of the French king. The Hundred Years' War between England and France had fueled Wycliffe's opposition to the papacy, which had begun once again to exact the tribute extorted from King John of England in 1213 by Innocent III in recognition of the pope's suzerainty over his kingdom. The abominable schism of 1378, when two contenders for the papal dignity, Urban VI of Rome and Clement VII, fought each other for thirty-nine years

1 Troeltsch, *Die Soziallehren der christlichen Kirchen und Gruppen*, p. 395 ff., with the exposé of Wycliffe's natural-law theory, supported in n. 177 with quotations from Wycliffe's work *De civili dominio* [Eng. trans., pp. 358, 437].

2 Hearnshaw, "John Wycliffe and Divine Dominion," p. 200.

3 Of the Scholastics, Duns Scotus and Bradwardine in particular were his teachers.

4 Lumen supernaturale est forma perfecta luminis naturalis (*De civili dominio* 1.11.)



and hurled anathemas at each other's head, was more than Wycliffe could bear. His attacks on the church's hierarchy as a system became ever more vehement, until he struck its central nerve, the theory of the sacraments.<sup>1</sup>

Wycliffe's property theory must also be seen in this light. It was meant to criticize the clergy for relinquishing the Franciscan ideal of poverty. It was above all by way of worldly possessions that the church had managed to acquire a position of power in secular affairs, allowing it to intervene in the internal affairs of the state. Wycliffe's ideal was a national state with a national church subject to the state in an Erastian sense. He championed most strongly the independence of secular authority basing the absolute duty of obedience to the king on the clear instruction of Scripture (“the powers that be are of God”) and on the telling examples of Christ and the apostles. That he, with Augustine and the church fathers, called the state an institution of sin did not weaken the position of the government for him in any way. Indeed, in defense of authority he went so far as to observe *Deus debet obedire diabolo* (God must obey the devil), by which he meant that even the greatest worldly tyrant has the divine right to obedience.<sup>2</sup>

The above may suffice to raise serious doubt as to the correctness of Troeltsch's thesis that Wycliffe's teachings are actually to be classified among the medieval sectarian types.<sup>3</sup> (Troeltsch himself admits that Wycliffe did not think through the sectarian consequences of his teachings). Rather, in certain respects Wycliffe is a connecting link between Scotism and the Reformation, as we shall see below. Nevertheless, it is true that Wycliffe's theory of predestination, his conception of the church as a congregation of believers, his attack on the hierarchical church of sacraments and priests, and especially his spiritually focused theory of property were joyfully embraced by medieval Hussite sects in their struggle against secular authority. It is also true that Wycliffe's vehement tirades against the unjust conditions of his day were welcome instruments in the peasants' revolt against their oppressors. Thus the great Oxford thinker, once the sects had given his theories a revolutionary point, was deserted by almost all his friends and died a lonely death, burdened by the stigma

1 Huss does not go as far on this point as does Wycliffe. He does not share at all the latter's criticism of the sacraments and he also adheres much more to the mediating role of the priesthood. On these points Huss is rather close to Thomas, who saw in the sacraments and the priesthood the means through which predestination takes place in life. See Gottschick, “Husz', Luther's und Zwingli's Lehre von der Kirche,” p. 365 ff. Thus on principle Huss also keeps to the distinction between the orders of clergy and laity.

2 Hearnshaw, “John Wycliffe and Divine Dominion,” p. 218.

3 *Editorial Note (DS)*: A decade later Dooyeweerd commented: “The gradual clarification of my insights in that study will not escape the reader. Thus I can no longer take responsibility for everything I wrote in the first part of the series, which subscribes too closely to Troeltsch and Dilthey's take on the Middle Ages and the Reformation.” *Wijsbegeerte der Wetsidee*, 1:143 n. 1; cf. *A New Critique*, 1:172 n. 2.



of being a preacher of revolution. His work did, in any event, serve as a stimulus in the development of medieval types of sects.

In these sects the age-old ascetic element, given a modest place by the Roman Catholic Church in its hierarchical mediation system, emancipated itself from the hierarchical connection. It rejected the medieval conception of the church which under the influence of the canonist view had become almost entirely absorbed into a hierarchical institution of offices.<sup>1</sup> It restored, by contrast, the age-old evangelical and Augustinian view, founded on the *idea of predestination*, of the church as *congregatio fidelium* (association of believers) whose only head is Christ. Accordingly it proclaimed the general priesthood of believers and restored the *lex Christi*, Christ's law of grace as embodied in the Holy Scriptures, as the only authority in its original sense of a rule that *binds all* believers irrespective of their office, rank or standing. Insofar as this was aimed at the ecclesiastical hierarchy (and Wycliffe and Huss, quite unlike their followers, drew no radical consequences from their starting point for secular affairs), this was nothing less than a rebirth of original Christianity, an event which can be viewed as a harbinger of the great Reformation of the church. Still, the starting point did also harbor an extremely dangerous and fundamentally wrong idea that only awaited a consistent elaboration in order to undermine the foundations of both the visible church and the state and all other temporal institutions. When the idea of predestination, in the sense of eternal salvation or eternal damnation, is taken as the starting point of a worldview,<sup>2</sup> and when the doctrine of God's providence as an all-encompassing cosmic plan is narrowed down to a man-centered vision, then there is no longer any real place for all those ordinances and decrees of God which do not specifically concern the kingdom of Heaven. Then the institutional character of the church herself becomes an absurdity. And in the secular domain the idea of predestination may then tolerate social inequality, yet that inequality can only be understood among the elect. By contrast, government, property, punishment, indeed the entire worldly presence of law and society must appear a sinful caricature. The believer, who acknowledges no law except Christ's teaching of grace, must replace this caricature as soon as possible with the evangelical ideal

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1 See Gierke, "Die Korporationslehre der Kanonisten," in *Das deutsche Genossenschaftsrecht*, vol. 3, *Staats- und Korporationslehre*, pp. 243-351.

2 Here is the fundamental difference with the Calvinist starting point, which does not start with predestination unto salvation but with the all-encompassing sovereignty of God, and from there moves on to predestination.

situation. Among the most radical Hussites, the Taborites,<sup>1</sup> this entire train of thought takes on a violent character. *Holy war* is proclaimed against the state with its institutions of property, family, and class, with the rallying cry of extending Christ's absolute law of love, which preaches liberty and equality, to every area of society. The idea of predestination is here inverted into a democratic ideal of Christian communism, an ideal which in no way is implied in the idea of predestination.

**The second line of development in the primacy of the will.  
Duns Scotus as precursor of the development  
of the reformational law-idea**

Medieval sectarianism, in rejecting the Thomist view of the world, reduced the Christian law-idea to the *lex evangelica*, or Christ's law of love, valid for all areas of life. A second, much more moderate and more valuable line of development in the transformation of the law-idea became prominent shortly after the death of Thomas Aquinas. This was the teaching of the great Oxford professor, John Duns Scotus (ca. 1266-1308). Duns Scotus, of whose life we know very little with certainty, entered the Franciscan order at an early age and spent the greatest part of his life in Oxford where he gained renown as *Doctor subtilis*. The Oxford school was characterized, through numerous great representatives, by its Augustinian orientation and its strict mathematical and empirical bent. Here bishop Robert Grosseteste (d. ca. 1253), strongly influenced by Anselm of Canterbury, had established his school which was to produce an empirical researcher of the quality of Roger Bacon as well as the razor-sharp critical philosophical intellect of a Duns Scotus. "They started at the bottom, with observation, but they also drew conclusions; and whatever the logic of the thinking mind concluded was truth and reality."<sup>2</sup> Just as Roger Bacon proceeded from what was given in nature and, after the boldest speculations, returned to the solid ground of experiments, so in philosophy Duns Scotus began with the given formulas of the church and considered these the unassailable truth even where rational proof fell short. This was more than mere imitation of the program of Anselm of Canterbury's *Credo ut intelligam*<sup>3</sup> (I believe, so that I may rationally understand). It was especially Duns Scotus' strict empiricism that brought him to this ecclesiastical positivism.

Duns Scotus combined this empirical attitude with a markedly critical

1 On the Taborite movement and its sorry defeat, see Troeltsch, *Soziallehren*, p. 404 ff. [Eng. trans., p. 366 ff.]. The Taborites argued that their holy war was a just war by referring to examples from the Old Testament.

2 Seeberg, *Die Theologie des Johannes Duns Scotus*, p. 13.

3 In this, Anselm went so far as to address this question to philosophy: *Cur Deus homo?* (Why did God become man?) See Friedrich Ueberweg, *Grundriss der Geschichte der Philosophie*, ed. Matthias Baumgartner, vol. 2, *Die mittlere oder die patristische und scholastische Zeit* (Berlin: Mittler, 1915), p. 265 ff.

sense which subjected science to the exacting demands of mathematics. Consequently he drew the limits of reason far more rigidly than did Thomas Aquinas. Because of Duns Scotus' critically realistic epistemology (a term to be explained below) the doctrine of the primacy of the will, that is, of the greater value of the will as compared to the intellect, took a direction which was to prove very fruitful in the time of the Reformation: it prepared the way for the gradual transformation of the Thomist law-idea into a Christian universal law-idea of a reformational stamp.

What strikes us first of all is an entirely new focus in the Augustinian line of thought. Augustine accepted, just as his followers did, the *real* existence of the eternal ideas of creation in God and further posited that human reason could only rise to an understanding of these ideas through one of God's gifts of grace (divine inspiration).<sup>1</sup> The moment Augustine began to speculate about the divine ideas he lost touch with given reality,<sup>2</sup> and in his followers, like Anselm of Canterbury, this uncritical realism, divorced as it was from all experience, led to dizzying fantasies out of the blue, devoid of real value (take, for example, his speculations about the Trinity and the Incarnation). Not so Duns Scotus, who subjected thinking itself to an examination, starting, not with the ideas in divine thought that are unknown to us, but with the sensory experience of things from which thinking derives its ideas. If things produce concepts in thought, then, according to the law of cause and effect, the cause of those concepts must also reside in those things. In other words, concepts must have reality. Both the individual and the universal, of which our thinking has concepts, must have reality in the things themselves, not just in the divine Mind.<sup>3</sup> This realistic epistemology, proceeding from its own experience of the laws of thought, must now be viewed in conjunction with Duns Scotus' strong defense of the primacy of the will.<sup>4</sup> One may agree<sup>5</sup> with Baeumker who cautions against drawing too great a contrast between the theory of Thomas and that of Duns Scotus, yet it cannot be denied that the primacy of the will gives Duns Scotus' worldview quite a different character.

Thomas does indeed admit that the will influences thought in focusing on its objects and choosing between various possibilities, yet without the control of reason the will is for him a purely animal inclination. The primacy of reason affects the entire range of his worldview. If we accept, with Thomas, one final general rational principle of law (entelechy) that discloses itself step by step in all of creation, then all the spheres of life

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1 See Kahl, *Die Lehre vom Primat des Willens*, p. 40 and the passage quoted there from Augustine's treatise *De Trinitate*.

2 By contrast, Augustine is predominantly empirical in his psychology.

3 This realism of concepts sounds very naive to the modern mind. Yet it suggests a much more critical sense than the naive realism of Anselm.

4 On this point Duns Scotus is strongly influenced by Richard of Middleton (d. ca. 1300).

5 Baeumker, "Die europäische Philosophie des Mittelalters," p. 363 ff.

and the world can be ordered according to this rational principle, as we saw earlier. Then even religion becomes a mere extension of philosophy, revelation merely the perfection of natural reason, and faith in the revelation in Christ Jesus nothing more than an intellectual acceptance of supernatural truths. Then, to be sure, faith is produced by grace yet still is not a function independent of reason. This intellectualistic conception of religion can be found equally in all those Scholastics – even in a thinker like Henry of Ghent – who in an Augustinian vein cling to the primacy of the will.

It is true that the second half of the eleventh century saw the rise of a movement in Scholasticism<sup>1</sup> which strongly opposed intellectualism and in which the Italian Petrus Damiani even went so far as to deny the universal and absolute validity of the principle of contradiction (namely, that something cannot simultaneously be and not be). This position led of necessity to the acceptance of a double truth. However, the medieval mind on the whole held the view that theology and philosophy are indissolubly intertwined.<sup>2</sup>

This intellectualism in matters of faith had a desiccating effect on spiritual life. The religious spirit sought a way out in mysticism but did not tamper with the dogma concerning the unity of religion and philosophy.

Now then, on this point Duns Scotus represents the start of a new period which, though influenced by humanism, the Renaissance, and numerous other factors, was to last beyond the Reformation and to prepare the way for the disintegration of the medieval worldview.

### **The relation of theology and philosophy according to Scotism**

Duns Scotus gave clear expression to the principle of the independence of theology over against philosophy. That he does, nevertheless, weave gigantic chunks of metaphysics (speculative philosophy) into his theology (Seeberg) only proves that he was a child of his time, but does not take away from the value of his thesis.

Theology does not have to track down necessary laws by means of the principle of cause and effect. Its concern is religion, and religion is *a historical given*. Its concern is the contingent acts of God, that is to say, of acts not necessitated by the law of cause and effect. God revealed Himself in the Scriptures, and that revelation was continued in the church. The Scriptures are complemented by the positive law of the church. In the one as in the other, God is revealed as the guide and ruler of Christianity. His rule intends the honor of his Name; men must get to know this purpose and strive for it in action. God is *Will*, and He has revealed what the final

1 The most important representatives of this anti-intellectualist movement were Petrus Damiani and Manegold von Lautenbach, among others. Damiani regarded philosophy as the *ancilla theologiae*, the handmaiden of theology.

2 See Baeumker, “Die europäische Philosophie des Mittelalters,” p. 299 ff.

purpose of that will is, and by what means He is served. To get to know this is the task of theology. This is not about speculative philosophical knowledge but about an attitude of will; not about rational causes and effects but about revealed purposes and means. The guidelines here are not the intrinsic principles of reason but the revealed will of God.<sup>1</sup> It is true that faith is robbed of its Christian essence here more than in Early Scholasticism: it becomes mere submission to the revealed will of God; but love for God is preached that much more emphatically as the essence of religion.

### **Points of contact in Duns Scotus for the development of the reformational limiting character of the law**

The primacy of the will first of all is operative in God, but also in man. In his view of divine willpower, Duns Scotus set out to eliminate the law, as a determining factor, from the being of God. This touches on an extremely important issue that we shall have to consider in depth when we come to analyze the Calvinist law-idea in our second chapter.<sup>2</sup> This issue may appear to be of theological import only, but in fact it controls the whole fabric of Duns Scotus' worldview, hence also his position concerning law and state. Duns Scotus not only denied that the law is above God (Thomas denied this, too), but also that the law is necessarily founded in the rational being of God. An entirely new tendency is manifest here, one that was not found even in Augustine who was governed by the Neoplatonic view on this issue.

Duns Scotus was so impressed by the sovereignty of God that, save for a few restrictions and serious inconsistencies in the application of this idea (see note below about his relapse into Aristotelian rationalism), he saw the origin of the law essentially in God's creative will alone. Thomas had merely traced the obligatory force of the eternal law back to God's will, but nevertheless he had placed the will under the control of reason in the divine being as well. Accordingly, the entire Decalogue became an emanation of divine reason, an immanent necessity of God's nature as well as of the nature of moral creatures. The good is not good because God commands it, but God, according to his essence, must command the good because it is good.<sup>3</sup>

Duns Scotus radically changed this thesis. The good knows no higher

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1 Cf. Seeberg, *Die Theologie des Johannes Duns Scotus*, p. 647.

2 *Editorial Note (DS)*: The reader is reminded that this "second chapter" was never written.

3 *Editorial Note (DS)*: Augustine had already defended a similar conviction. For example, in his *De civitate Dei* (11.30) we read that God created heaven and earth in six days because the number six is a *perfect* number! (Greek mathematics considered a number to be perfect when its prime factors add up to itself: in the case of the number six: 1+2+3=6. Only one such number was discovered between 0 and 10, another one between 10 and 100, namely 28, still another one between 100 and

criterion than the will of God.<sup>1</sup> In terms of his sovereignty as Creator, God could have willed a different order that would then have been just as good. Duns Scotus expressed this omnipotence of God also in the area of law and morals in the often misunderstood phrase: *potentia Dei absoluta*, as opposed to *potentia Dei ordinata*, the omnipotence of God as revealed in the order that has been established. The Reformers (including Calvin)<sup>2</sup> as well as modern theologians (Baur, among others) have taken exception to this phrase since they thought that Duns Scotus here separated God's wisdom and justice from his omnipotence, reducing God's sovereignty to a kind of lawless arbitrariness.<sup>3</sup> Seeberg,<sup>4</sup> Minges,<sup>5</sup> and Klein<sup>6</sup> deserve credit for correcting this mistaken opinion. Duns Scotus, too, acknowledged that God is bound to his essence in decreeing his laws. Hence God cannot deviate from the first table of the law, nor can God will what is logically impossible.<sup>7</sup> Nor is there arbitrariness as humans know it in God's will itself. God's will is immutable and eternal in every respect. Duns Scotus just wanted human reason to make room for the sovereign contingent action of God in history (think of the spoliation of the Egyptians by the Israelites) which will not let itself be bound by the laws of natural justice, natural morality, or natural causality (the law of cause and effect).

### The import of this idea

All in all, this whole conception reveals a radical change in the Thomist law-idea, the scope of which was hardly clear even to Duns Scotus himself. For never before in the history of Christian thought were the sovereignty of God on the one hand and the limiting character of the law in every form on the other hand expressed in such radical terms. The entire

1,000, namely 496, and still another one between 1,000 and 10,000, namely 8,128. However, no number between 10,000 and 100,000 turned out to be "perfect," thus breaking the seemingly natural chain of perfect numbers.)

- 1 John Duns Scotus, *Quaestiones in quattuor libros Sententiarum*, bk. 3, dist. 19, quaest. unic. par. 7.
- 2 See John Calvin, *Institutes of the Christian Religion* 1.17.2 towards the end.
- 3 *Editorial Note (DS)*: In his *A New Critique* (cf. 1:186-88), Dooyeweerd treats the problems surrounding the notion of *potestas Dei absoluta* very lucidly, showing, among other things, that it resulted in placing God's creative will under the boundary line of the *lex (nomos)*.
- 4 Seeberg, *Die Theologie des Johannes Duns Scotus*, pp. 161-67.
- 5 Parthenius Minges, *Das Verhältnis zwischen Glauben und Wissen, Theologie und Philosophie nach Duns Scotus* (Paderborn: Schöningh, 1908), p. 197 ff., and especially his important work *Der Gottesbegriff des Duns Scotus auf seinen angeblich exzessiven Indeterminismus* (Vienna: Mayer, 1907).
- 6 See Joseph Klein, *Der Gottesbegriff des Johannes Duns Skotus* (Paderborn: Schöningh, 1913), p. 133 ff.
- 7 Here we see a relapse into Aristotelian rationalism. This reservation within divine sovereignty once again makes the logical and mathematical laws independent of God's decree and order and contains a naive error in thinking, to which we shall return later.



distinction between the *potentia Dei absoluta* and *ordinata* could not but lead to the conclusion that law as ordinance, rooted solely in God's sovereignty, is the dividing line between God and creature. Where the law begins we meet the limit of human reason, ability, and will; where the law ends, divine will and divine reason begin.

But the law of God is manifold; it is different in religion than it is in thought – as Duns Scotus himself expressly stated. If this is so, however, human reason and the human will also encounter a manifold law, for the law is the dividing line between God and creature.

Granted the foregoing, this admission signifies the end of the Thomist speculative law-idea that one single supreme principle of law (entelechy or inherent purposiveness) lies at the foundation of all specific laws (those of nature and those of the mind). Thus, the rational foundation of the Roman Catholic hierarchy is struck at the root.

Here we are at the heart of Calvin's line of thought, of a Calvin who had irrevocably burned the bridges to Aristotle and Thomas behind him. Here we come to rest at the mutual independence of all spheres of life according to their own proper nature, their own divine ordinances. Here state and church, science and art, nature and spirit must each follow their own laws, in sole dependence on God's sovereign will, not on a hierarchical church institution or a higher rational principle of law. Here, in other words, the medieval unified culture has turned out to be nothing but a temporary guardianship by the church over spheres of life that were not yet emancipated. Here the merely relative independence of the spheres of law is transformed, on principle, into complete independence. To be sure, Duns Scotus himself did not draw these conclusions with their vast implications. Not only were the times not yet ripe for drawing such radical conclusions, but preventing it as well was the fact that in spite of everything Duns Scotus reverted to the rationalism of Aristotle,<sup>1</sup> while in his ecclesiastical positivism he acknowledged in the precepts of the church an ongoing revelation of God's will next to Holy Scripture. He was, however, very critical of developments in the church and of the life of the clergy. In keeping with the Franciscan ideal of poverty for the clergy, he saw the heart of the church, the *cor ecclesiae*, in penniless monasticism with its vibrant preaching of the gospel, and he severely criticized the prelates who failed to honor the calling of their office. But this was only a material value judgment which did not attack the hierarchical structure in its formal juridical character.

If the Scotist idea was to have any influence, the practical untenability of the unified ecclesiastical culture would first have to become apparent.

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1 The fact that, as a result, Duns Scotus' law-idea does not exhibit a unified picture is apparent, for example, from the fact that he makes the laws of mathematics (according to him, the foundation of science) so independent of God's will that they would be valid even if there were no God, no matter how much he calls such a supposition "godless." In a similar vein, Grotius and Leibniz would later proclaim natural justice and natural moral law to be independent of God's existence.

## Chapter 4

### *Dissolution of the Unified Ecclesiastical Culture*

We now return to the historical course of development in medieval society in which creative forces began to emerge from all sides that would dissolve the unified ecclesiastical culture in which the church embraced every sphere of life. To understand the true significance of these solvents, one should recall that the medieval view, in its prime, was imbued with the idea of the one Christian state (*Corpus Christianum*) with a spiritual and a temporal head (pope and emperor). As yet, the idea of *national* sovereign states had cropped up only sporadically. Feudalism, manorialism, and the towns were ever so many hindrances to the growth of a central unified state. The pretenders to the crown of the Holy Roman Empire attempted to embody the unity of their realm in the dynasty, the royal lineage. The investiture controversy between the Curia and the worldly empire had ended in complete defeat for the emperors. The Empire lacked the unifying force of nationality and was from the beginning a colossus with feet of clay. By contrast, the church with its hierarchical structure was a force of the first order, which in the course of a century managed to take over hegemony from the collapsing Empire. Aside from the importance of the papal states, the church possessed the means by which to retain custody over secular rule, especially in the areas of law and finance.

#### **The secular significance of canon law**

Owing to the existing confusion and disintegration of the laws of the different nations, canon law proved to be an eminently suitable means for the church to intervene in secular legal relationships. It was expanded into a central legal order also for secular matters. This occurred particularly because Pope Gregory IX had codified all collections of papal decretals since the compilation of the *Decretum Gratiani* into a definitive papal law book (the so-called *Liber extra*), patterned after Justinian's *Corpus juris*.<sup>1</sup> The papal law book was published in 1234 when

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<sup>1</sup> Boniface VIII ordered the compilation of a new official collection of the post-Gregorian decretals, called *Liber sextus*, produced in 1298. Finally, Clement V had a third papal law book compiled of decisions of the Council of Vienne (1311/12) and some of his own decretals. This collection was later named *Clementinae*. Since



it was sent to the colleges of law at Paris and Bologna.<sup>1</sup> This papal law book, together with the law books and collections of decretals compiled under subsequent popes, contained central ecclesiastical legislation as well as detailed regulations for the areas of civil law, civil procedure, criminal law and criminal procedure. These it borrowed chiefly from Roman law, meshing them as closely as possible with Germanic national law (*Sachsenspiegel*, *Schwabenspiegel*, and the like) but at the same time reforming them in numerous respects in a positive Christian sense.<sup>2</sup>

From a historico-cultural point of view the significance of canon law in this sense can hardly be overestimated, also insofar as it contributed powerfully to the later reception of Roman law. New Christian principles were expressed in the law of persons, marriage, contract, and inheritance law; loans at interest were prohibited.<sup>3</sup>

Canon law greatly influenced the secular order of law especially via its procedural law. The secular courts patterned themselves after the spiritual. In criminal law, canon law embodied humanitarian Christian ideas and attempted to check the practice of torture. The goal of punishment became the improvement and enhancement of the lawbreaker's soul. Finally, canon law broke new ground in the area of international law as well. One has only to remember the condemnation of piracy, the development of the church's right of asylum, promotion of public order, the papal diplomacy at secular courts, and so on.

Nevertheless, at stake here was an area where the church was bound to clash with the state's authority once the latter had consolidated itself into a position of sufficient independence. The pope's right of central legislation extended the limits of ecclesiastical affairs well into the sphere of the state, and the broad expansion of the spiritual jurisdiction caused large areas of purely secular legal cases to be brought before the ecclesiastical courts. As a result, the church itself became a large universal state whose monarch, the pope, claimed supreme control over secular rulers and their governments.<sup>4</sup>

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then no comprehensive papal law books have been compiled. Later, several different collections of papal decretals were incorporated in the canonic code as *extravagantes*. The *Decretum Gratiani* with the *Liber extra* (mentioned in the text), the *Liber sextus*, the *Clementinae* and the *extravagantes* were combined during the sixteenth century under the name *Corpus juris canonici*.

- 1 Cf. Wilhelm Kahl, *Das Lehrsystem des Kirchenrechts und der Kirchenpolitik*, pt. 1, *Einleitung und allgemeiner Theil* (Freiburg im Breisgau and Leipzig, 1894), p. 139 ff.
- 2 For further details see *Staats- und Gesellschafts Lexikon*, vol. 11, ed. Hermann Wagener, s.v. "Kanonisches Recht."
- 3 One proven guilty of usury was even declared incompetent to make a will as long as he had not repaid the prohibited interest; cf. *ibid.*
- 4 Paul Hinschius, "Staat und Kirche," in *Handbuch des öffentlichen Rechts*, ed. Heinrich Marquardsen, p. 198.

### **The medieval church as financial power**

The second foundation on which the papacy built its dominant position in political life during the Middle Ages was its financial status. Even in the early Middle Ages, when a natural economy was the dominant economic form, papal Rome was a financial power of great significance. The administration of papal church properties, free from state control, was managed very well by an entire staff of officials who were subject to a strict administrative law and were generally paid a salary in coin. This money bureaucracy, centralized in the *Camera Apostolica*, would provide the papacy with excellent services in administering the ever growing monetary income (tithes, the proceeds of the sale of indulgences, revenues from the papal states, and so forth) which it required in ever greater amounts in order to maintain its political power. In his recent handbook about medieval economic history, Köttschke calls the Curia during the High Middle Ages “the greatest financial power of the West.”<sup>1</sup>

In this way the church itself played a major part in the gradual rise and development of a money economy, international finance, and the credit and banking system. Universally acknowledged in this respect is the influence of ecclesiastical lending institutions (*montes pietatis*, *monti di pietà*).<sup>2</sup> The Curia in particular provided a major stimulus. The nature and expansion of papal income induced an increase in money circulation.

However, both of the above-mentioned foundations of papal power in the state entailed weaknesses which of necessity had to become manifest during the transformation of the political and economic relationships of the later Middle Ages.

### **The rise of nation-states. Expansion of secular jurisdiction, social changes, and a leveling of social classes**

First of all, the rise of national states posed a serious threat to the dominant position of the church in the secular order of law.

In Western Europe, England, France and the kingdoms of Castile and Aragon (subsequently unified as Spain) evolved into political superpowers on an ever more sharply delineated national basis. In the North, the three Germanic kingdoms [of Scandinavia] were amalgamated into one powerful national unity under Danish leadership at the Union of Kalmar (1397). In the East as well, the national political movement gained strength in Hungary and Poland (unified with Lithuania in 1386). By contrast, Germany, under the shadow of a decaying Holy Roman Empire, re-

1 Rudolf Köttschke, *Allgemeine Wirtschaftsgeschichte des Mittelalters*, vol. 2 of *Handbuch der Wirtschaftsgeschichte*, ed. Georg Brodnitz (Jena: Fischer, 1924), p. 351.

2 *Ibid.*, p. 531. See also Antoni von Kostanecki, “Der öffentliche Kredit im Mittelalter,” *Staats- und sozialwissenschaftliche Forschungen* 9.1 (1889).

mained a model of political impotence in which the territorial rulers each assumed political leadership in their own domains<sup>1</sup> – a circumstance Luther later made the most of to save the cause of Protestantism.

At the same time, in the national states and princely territories a strong centralization of governmental authority took place in the growing power of the crown, although the latter was obliged to acknowledge the prerogatives of the estates. This consolidation of central authority was accompanied by the establishment of a powerful bureaucracy whose officials had frequently received a training in law at the universities. In this way a capable administration with its various branches could span the entire country.

Also at this time, a substantial change took place in the social relations within the state. With the discovery of gunpowder, the military significance of the nobility was seriously diminished. As a result, feudal relationships within the state lost influence even though they continued to exist in a formal legal sense. As well, personal relationships among the general populace were leveled. To be sure, the nobility continued to be a special class with special privileges according to tradition, but henceforth non-military distinction (for instance, great learning) could make one eligible for elevation to the nobility. In the Italian city-states the nobility even lost its entire position of leadership. In the towns, where all inhabitants essentially enjoyed equality before the general civil law, social classes grouped themselves mainly according to property and profession, groupings which usually participated to varying degrees in the town's administration. Slavery disappeared from the social structure in all countries north of the Alps.<sup>2</sup> All these influences assisted state authority in its efforts to centralize.

This state authority tried to assert itself on all sides and to subject the population in all regions of the country to its direct control. The extent of the state's task increased considerably; more and more the government took on a far greater cultural task than that of the narrow Germanic political ideal of protecting private rights and territorial peace. In the national states of the later Middle Ages, one encounters strong efforts at imposing an economic policy with a mercantilist bent (accumulation of bullion, protection of industries, and so on). Legislation affected ever more areas of legal intercourse. To the extent that the national states thus took the lead in the development of law, they sought at the same time to forcefully reduce the church's guardianship in this area. In France and England espe-

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1 See the instructive study of Friedrich von Bezold, "Staat und Gesellschaft des Reformationszeitalters," in *Staat und Gesellschaft der neueren Zeit (bis zur Französischen Revolution)*, vol. 2, pt. 5, no. 1 of *Die Kultur der Gegenwart* (Berlin and Leipzig: Teubner, 1908), pp. 55-63. For the political situation in Italy, see chap. 5 below.

2 See Kurt Breysig, "Die soziale Entwicklung der führenden Völker Europas in der neueren und neuesten Zeit," *Schmoller's Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, n. s., 20 (1896).

cially, governments acted against the excessive expansion which the church had granted to the competency of the spiritual courts. Towards the close of the Middle Ages this entire movement would receive strong support from the general reception of Roman law, which gave the secular jurists a great advantage over the (usually clerical) canonists.

### **Development of a money economy, banking, and credit systems**

The second social foundation of ecclesiastical supremacy over secular affairs, namely finance, had already led in the very bosom of the church to serious attacks by the Franciscans on the clergy and the Curia. The ecclesiastical reform movements first aimed their attacks at the worldliness of popes and prelates and the abuses in the monasteries. These abuses included an alarming accumulation of *mortmains* (gifts in perpetuity of lands or other properties to religious bodies) and the use of purchase of interest and other legal devices to evade the canonic prohibition against interest.

In the meantime the money economy also began gradually to wrest itself free from the supremacy of the church. Newly discovered gold and silver mines in Bohemia, Silesia, Hungary, Italy, and Spain stimulated an upsurge of a money economy, while the Crusades and commerce brought large supplies of gold and coin to Europe.<sup>1</sup> Minted coin, also issued by the towns, increasingly became the means of payment. As commerce spread across land and sea, a system of credit became increasingly necessary to avoid the risks and burdens of taking along hard cash. Such a system used transferable letters of credit (bills of exchange) and concentrated the provision of money in banking institutions. This system of banking and credit developed from Italy throughout Europe, and the popes themselves were the principal debtors of the great Italian banking houses of the fourteenth and fifteenth centuries.

### **New economic mentality**

This gradual development of economic life on the basis of the management of money, induced by the church herself, was accompanied by a totally new economic mentality as well. Instead of the modest relationships of a natural economy, where everyone obviously had to stay in the class to which he belonged, there arose a restless ambition to get ahead in the world and to work one's way up from a lower to a higher class. Many bought their episcopal or secular dignity with money (among the clergy the malpractice of simony revived). Money gradually became the exclusive standard by which to measure social status. In this way, economic relationships outgrew the economic moral teaching of the church with her prohibition against interest, her doctrine of fair price (*justum pretium*) and the concomitant legal and moral condemnation of compe-

<sup>1</sup> See Kötzschke, *Allgemeine Wirtschaftsgeschichte des Mittelalters*, p. 528 ff.

tion.<sup>1</sup> The awakened power of money could no longer be stopped in its development, and slowly but surely the economic sphere became separated from the unified ecclesiastical culture. Before long, the discovery of America, with its tremendous consequences for trade, commerce, and culture, would accelerate this emancipation in a feverish tempo.

This entire inversion of the ecclesiastical, political, and social frame could not but have repercussions for theory as well. A worldview that had justified the unified ecclesiastical culture with the aid of Thomism eventually was bound to run up against criticism which, by rejecting the Thomist law-idea, would carry on the emancipation of the spheres of life from control by the church as the sacramental institution of grace.

### **Historical development of the Scotist law-idea in the school of Ockham**

The Scotist law-idea, which Duns Scotus had worked out only for the relationship between theology and philosophy and, to a small extent, for ethics and epistemology, was to go through a period of development in which its consequences would become increasingly clear. The first step in this direction was the system of William of Ockham (ca. 1285-1349). Ockham, like Duns Scotus, was a student at Oxford and a member of the Franciscan order which untiringly defended the ideal of Christian poverty against the secularized church. Already as a young man, Ockham was under suspicion with the Curia. Thus in 1324 the pope summoned him to Avignon to answer to the charge of maintaining heretical doctrines. In 1328 he had to flee to Pisa where he placed himself under the protection of the emperor, Louis of Bavaria. The emperor, himself involved in a fierce struggle with the Curia,<sup>2</sup> had granted protection to Marsilius of Padua and John of Jandun two years earlier. During that same year the papal anathema was proclaimed against Ockham. Having gone to Munich with the emperor, Ockham sent his ecclesiastical-political writings, with their barbed attacks against the papacy, into the world from the Franciscan monastery there.

- 1 On this see Werner Sombart, *Der moderne Kapitalismus: Historisch-systematische Darstellung des gesamteuropäischen Wirtschaftsleben von seinen Anfängen bis zur Gegenwart*, 2<sup>nd</sup> rev. ed., vol. 2, *Das europäische Wirtschaftsleben im Zeitalter des Frühkapitalismus, vornehmlich im 16., 17., und 18. Jahrhundert* (Munich and Leipzig: Duncker & Humblot, 1917), p. 40 ff. Sombart correctly points out (p. 46) that the medieval problem of the fair price was closely connected with the harsh denunciation of competition by medieval legal and moral theory and that the prohibition against competition itself was easily enforced through the guild system.
- 2 For the struggle between Louis of Bavaria and Pope John XXII see, among others, Carl Müller, *Der Kampf Ludwigs des Baiern mit der Römischen Curie: Ein Beitrag zur kirchlichen Geschichte des 14. Jahrhunderts*, vol. 1, *Ludwig der Baier und Johann XXII* (Tübingen, 1879). On the struggle between the Minorite order and the pope concerning the permissibility of the ideal of total poverty, as defended by the Franciscans, and about Ockham's role in this struggle, see *ibid.*, p. 83 ff.

Historically, Ockham is especially important because Luther was educated in his school (“*Ich bin von Occam's Schule*”)<sup>1</sup> and found an excellent starting point for his spiritual work of reformation in Ockham's fierce criticism of the ecclesiastical hierarchy. Ockham further extended the line of the Scotist law-idea in an anti-speculative direction. However, at the same time he thoroughly ruined the relative good that Duns Scotus had provided for the Christian worldview because of the influence of his nominalistic views.

### **Ockham's nominalism**

Although this historical overview does not warrant a thorough discussion of nominalism as an epistemological school, a proper understanding of Ockham's position concerning the law-idea, and his concomitant position concerning moral, legal, and political theory, does require a brief sketch of the meaning and significance of this nominalism.

Nominalism during the Middle Ages is an intrinsically anti-speculative trend of thought which denies real existence to generalities and abstractions and ascribes reality only to that which immediately presents itself to our experience as datum. Experience finds the immediately given, and therefore the real, only in individuality, in particular things. Accordingly, only this horse, that book, this person, really exists, but not the type-concept of horse, book, or person. The abstract concepts and ideas of thought are but images of individual reality, existing only in the soul, not in reality itself. Here medieval empiricism (which assumes that experience is the sole source of knowledge) runs up against metaphysics (which strives for knowledge that transcends experience). To the extent that the *limits* of human knowledge are referred to here, nominalism is a step closer toward modern critical epistemology as well as the reformational law-idea. At the same time its uncritical attitude toward experience, consistently applied with an unrestricted skepticism, threatens to undermine the very essence of the laws of thought. Where nominalism appears in ethical, legal, and political theory, its consistent application cannot but lead to the annihilation of all moral consciousness and a sense of justice, since its very essence must reduce the concepts of justice and injustice, and good and evil, to mere abstractions from reality, denying these ideas any existence in and of themselves (apart from our reason and will). That these consequences of the empirical starting point do not appear either in Ockham or his medieval nominalist predecessors and immediate disciples is due only to an inconsistent application of their starting point. Ecclesiastical positivism

<sup>1</sup> See the detailed study of Hartmann Grisar, S.J., *Luther*, vol. 1, *Luthers Werden: Grundlegung der Spaltung bis 1530* (Freiburg im Breisgau: Herder, 1911), p. 102 ff. We shall have to refer to this work again during our discussion of the Reformation. Luther became acquainted with Ockham's system mainly through the works of his teacher, Gabriel Biel. That he did not find a pure source for the knowledge of classic Scholasticism in Biel's epigonic work has been noted by numerous writers, including Protestant ones (e.g., Seeberg).



with its faith in Scripture and Tradition on the one hand, and remnants of Stoic-Aristotelian rationalism on the other hand, shielded Ockham from that skepticism which undermines equally the laws of thought and action.

### **The sovereignty of God and the limiting character of the law in Ockham**

While Ockham in his epistemology opposed Duns Scotus' realism most resolutely, by advancing the primacy of the will and the limiting character of the law he went much further than Duns Scotus. Ockham completely did away with the remnants of natural theology that seeks to know God, whether in his essence (Anselm) or only from his works, by way of natural reason. For all questions touching matters beyond direct experience Ockham refers to faith. He demands freedom of thought for philosophy insofar as it does not concern theology. He defends God's absolute omnipotence in such strong terms that his propositions sound almost blasphemous, as when he states that God, had He so willed, could have come into the world in the form of an ass, a rock, or a piece of wood. For him, not only the second table of the Law but the entire Decalogue is founded exclusively in the divine arbitrary will. God by his will could just as well have sanctioned an egoistic morality. At work here is the disintegrative effect of Ockham's nominalism, which not only sees the law as the limit between human and divine will, and between human and divine reason, but which also denies the existence of eternal ideas in God himself<sup>1</sup> and so undermines the essence of law itself.

### **Elaboration of the pluralistic law-idea in Ockham's political and ecclesiastical theory**

In his theory concerning the relation between church and state, Ockham clearly furthers the trend to undermine the theory behind the ecclesiastically hierarchical unified culture. While Duns Scotus had in principle defended the independence of the domain of faith over against reason, Ockham further expands on the numerous sovereign domains of law. Now church and state are also seen as two completely independent spheres existing side by side. According to Ockham, the state must exclusively look after the law and temporal welfare, that is, welfare in the material sense. Thomas had allocated an educational task to the state as well, and on this point had subordinated the state to the church. Yet this spiritual task practically disappears in Ockham.<sup>2</sup> The state must maintain its sovereignty in legislation and the legal order without any inter-

1 See Ueberweg, *Die mittlere oder die patristische und scholastische Zeit*, p. 602; Baeumker, "Die europäische Philosophie des Mittelalters," p. 371.

2 In special cases (namely, when the rulers of the church or the secular government ride roughshod over the requirements of their respective offices), Ockham reserves the right of the pope to intervene in the state and conversely of the emperor to in-

ference from the church. Ockham accepts the ancient Stoic-Aristotelian classification of *jus naturale*, *jus gentium*, and *jus positivum* as the foundation of law and, unlike Thomas, defends the proposition that the state itself ultimately and in complete sovereignty decides on the law as it operates in common among all nations, as well as on positive law.<sup>1</sup>

Indeed, in purely natural legal affairs (for example, the regulation of matrimony between a believer and an unbeliever, or between two unbelievers), *the state may also deviate from the canon laws of the church*, should that be necessary for the general interest. Ockham ultimately based natural law on the will of God, yet he derived it directly from human reason (a rationalistic inconsistency!). Natural law is the purely natural domain, completely independent of God's revelation of grace in the Scriptures (an anti-reformational delimitation!).

### **Attacking the rationality of the official hierarchy**

Ockham's law-idea goes even further. He attacks not only the rational hierarchy of spheres of law but also questions the rational hierarchy of offices within the spheres of law. Here too his nominalism influences both his concept of the state and that of the church.

In his concept of the state he proceeds from the multitude of the state's citizens. According to natural law the state's authority originally resides in the sum of its individual citizens. Via a social contract (*generale pactum societatis humanae*) the citizens unite into a state and by way of a contract they institute a government. The emperor holds no greater power over the state's citizens than the populace which invested him with the authority, while the duty to obey is delimited by *the common interest of all the members of the populace*. This theory of social contract ties in with a line of thought running throughout the Middle Ages (though as a sideline), which was often defended juridically by appealing to a monarchical law (*lex regia*) in the *Corpus juris* of Justinian, according to which the Roman people (*populus Romanus*) had delegated their power to Caesar.

Of greater moment is Ockham's theory of the church, in which a parallel view of authority also undermines the official church hierarchy.<sup>2</sup> Here one finds the concept of the church most clearly restored to that of an assem-

tervene in the church. In Ockham's line of thought, this does not affect the perfectly mutual independence of the spheres of state and church. Pope and emperor, in his opinion, do not in such cases intervene by virtue of their spiritual or secular office, but rather as a believer or a citizen of the state respectively. Here again we see Ockham's nominalism in operation; cf. August Dorner, "Das Verhältniss von Kirche und Staat nach Ockham," *Studiën und Kritiken* (1886), p. 620 ff.

1 See e.g. William of Ockham, *Tractatus de jurisdictione imperatoris in causis matrimonialibus*, in Melchior Goldast, ed., *Monarchia Sancti Romani Imperii* (Hanover and Frankfurt, 1611-1614), 1:23 ff.

2 The parallelism of the medieval theory of authority in church and state has been pointed out by numerous authors, especially by Gierke in *Staats- und Korporationslehre*; by John N. Figgis, *Studies of Political Thought from Gerson to Grotius*,



bly of believers (*congregatio fidelium*). This conception, which goes back to Augustine and the early church, had been swallowed up almost entirely in canon law by the concept of the church as a hierarchical institution of an order of offices. However, it had never entirely disappeared during the Middle Ages. The fifteenth-century Councils of Pisa, Constance and Basel which (unsuccessfully) sought to uphold the sovereignty of councils as the lawful representative of believers as against the papal claim to supremacy, were evidence of the survival of the original conception.<sup>1</sup> Next to that, however, the institutional character of the church was acknowledged as well.

Occham places all the emphasis on the congregation of individual believers as a constituent part of the church and draws consequences from it that not only attack papal supremacy but call the entire hierarchy of the church in question.

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#### **Interim summary: from Thomism to the close of the Middle Ages**

We are now ready to move on to the problem of Christian politics in the Modern Age, the age in which humanism and the Reformation will give the law-idea a direction which by and large is normative to this day for a Christian politics in a reformational spirit.

To remain aware of the historical continuity with the previous periods, we would like to look back for a moment and summarize the results that Christian thought had achieved concerning the problem of Christian politics from Thomism until the close of the Middle Ages.

We began by noting that the hierarchic, unified ecclesiastical culture, both in the hierarchical subordination of spheres of law and in the hierarchy of offices within these spheres (church and state), had found a rational foundation in Thomism as a worldview with its speculative law-idea. Even so, Thomism itself was constructed as a historico-cultural theory on the basis of two hypotheses:

- (1) That the intellect is of a higher value as compared to the will;
- (2) That a framework of political and social conditions exists which allows for the realization of a unified ecclesiastical culture.

Next, we discussed how especially since Augustine (but in fact even

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1414-1625 (Cambridge: Cambridge University Press, 1907); and by Friedrich von Bezold, "Die Lehre von der Volkssouveränität während des Mittelalters," *Historische Zeitschrift* 36 (1876): 352 ff. It can readily be explained from the medieval conception of the *Corpus Christianum*.

1 See Figgis, *From Gerson to Grotius*, especially the second lecture concerning the struggle between the councils and the popes, "The Conciliar Movement and the Papalist Reaction," p. 35 ff.

earlier) two opposing streams of thought within the Christian worldview clashed:

- (1) The Greek-contemplative stream which desired to construct a rational harmony in the cosmos, beginning with a rational ultimate basic principle (speculative law-idea) and thus proceeding from the assumed primacy of the intellect;
- (2) The specifically Christian stream which emphasized the element of personal will both in God and in man and which subjected human reason to the creator-sovereignty of God the Lord (primacy of the will).

We further examined how, once the primacy of the intellect was abandoned in the Middle Ages, two schools became prominent:

- (1) A kind of sectarianism (Franciscan, Waldensian, and Hussite) that received a new stimulus during the fourteenth century from Wycliffe and Huss (though not themselves sectarians in theory). This kind of sect proceeded from the predestination (in God's secret counsel) of the elect and the damned and reduced the entire Christian law-idea to Christ's law of grace. A religious-anarchistic consequence of this sectarian restriction of the law-idea was that state and worldly institutions were to be rejected as conflicting with the law of the gospel. In effect, the institutional character of the church was rejected.
- (2) A reformational school which began with Duns Scotus, tying in with the Augustinian emphasis on the will and declaring theology and philosophy to be independent and sovereign law-spheres on principle, thus theoretically delivering the first blow against the unified ecclesiastical culture.

In Duns Scotus began to emerge a concept of law as a limiting boundary between God the absolute Sovereign and the creature as absolutely subject to God. In *principle*, this concept signified the end of the speculative Thomist law-idea. The far-reaching consequences of this law-idea, although it was conceived in a fundamentally different way, were for the time being hampered by Duns Scotus' positivism which maintained, alongside the Bible, the tradition of the church as a norm for faith. What was different about this law-idea was its acceptance of a multiplicity of law-spheres: an order of law (the state), a life of grace (the church), science, art, and so on, which were completely independent of each other and grounded solely in distinctive sovereign ordinances of God. Ecclesiastical positivism, however, was gradually undermined by real changes in the church's role in society. The two most important pillars of the unified ecclesiastical culture – canon law and the church's financial power – were threatened by the rise of national states with their more consolidated secular order of law and by the development of a money economy and all that it entails (including a gradual shift in the medieval professional classes).

Thus the times ripened for drawing further conclusions from the Scotist

law-idea. The first stage in this unfolding theory was Ockham's system which proclaims state and church – legal order and ethics of grace – to be two completely sovereign spheres of law, and which attacks the rational foundations of the hierarchical ordering of offices both in the state and in the church by seeking the origin of all authority in individuals (in the church, the congregation of individual believers; in the state, the sum of individual citizens of the state). At the same time we noted that Ockham's nominalism threatened to undermine the essence of law itself.

In any event, towards the close of the Middle Ages the problem of Christian politics began to enter a fourth phase, even though the Thomist statement of the problem (the third stage) continued to exist unabated. In principle, the question was now formulated as follows: *If state and church are two completely sovereign, mutually independent spheres of law, where then can the guidelines for Christian politics be found?* Under the aegis of the law-idea of the Reformation, these guidelines had to be sought in an entirely independent law of God – not a law that would at the same time be applicable (even in part) to the church.

It was at this stage, then, that the Reformation commenced its task of seeking the solution to this problem in a Protestant way.

## Chapter 5

### *Humanism and the Renaissance: Severing the Bond between Nature and Grace*

The transition from the Middle Ages to the Modern Age (we will gladly leave to professional historians the scholarly debate about their proper demarcation) presented both the drama of a tragic collapse of former grandeur and the awakening of new forces of life, as yet difficult to assess. Perhaps never before in world history has a new historical period announced itself in such a turbulent, promising, and convincing manner as in the blows which Renaissance and Reformation rained down on the powerless and fundamentally decayed unified culture of Romanism. It was a universal spiritual-cultural movement with a background in world-shaking events such as the discovery of America, inventions of immense significance (compass, printing), a total transformation in ecclesiastical-political relations, the rise of modern political superpowers (see the previous chapter), the fall of Constantinople, the expansion of Turkish power, and so on and so forth.

All and sundry sensed that a great revolution was at hand; everything seemed ripe for a radical renewal of the Christian worldview.

The nominalism of Ockham and his successors – Gerson, d'Ailly, and Biel – could at this point only serve as a transitional stage. What new ideas had these *moderni*, as they were called in distinction from the Scholastic *antiqui*, advanced once they had destroyed the massive system of High Scholasticism? They had annihilated the integrative, creative force of the medieval worldview, the Thomist law-idea with its nucleus, the reality of creative substantial forms (*formae substantiales*); they had severed the speculative tie between the realm of nature and the realm of grace; they had simply juxtaposed state and church, unreconciled; they had abandoned natural life to itself and to natural reason and had attacked the rational foundation of the hierarchy of the sacramental church institution. But what was their new inspiring program for reconstruction? Late Scholasticism, being in decline, could not offer such a program. Despite all the erudition, despite the unrivaled acuity of the critical intellect present everywhere in the Ockhamist School, there was an atmosphere of decadence in the endless conceptual distinctions and hair-splitting subtleties with

which the *moderni* fought the *antiqui* in the battle between the philosophical schools. The rigidifying effect of the spirit of Scholasticism with its swearing by authorities, its scholastic methodology,<sup>1</sup> and its lack of any pertinent treatment of the material showed up even more, if possible, among the Ockhamists than among the Thomists. Ockham had proclaimed the independence of the secular legal order over against the church, but he had been unable to provide the state with any foundation in the religious context of life. For purposes of developing a Christian politics this had to be considered a fatal flaw in Ockhamist theory.

Despite the fact that Ockham held on to natural law and recognized divine sovereignty as the *causa remota* (remote cause) of state authority, he actually relegated the state in its intrinsic worth to the realm of sinful mammon. The Franciscan ideal of the strictest poverty could not but show its fatal effect at this point. What sort of inspiration could the Christian mind derive from a politics that has its realm restricted to purely secular things if those *secularia* are not simultaneously illumined by the light of eternity, which elevates also the purely natural to a higher level?

Ockham had accorded the state complete independence but at the expense of its intrinsic value. The state's charter of freedom really had as its true "legal ground" the attempt to purify the church from contamination by the natural world. It was a sacrifice to the development of modern political relationships but a sacrifice that was motivated more by the salvation of the church than that of the state.

All the same, that temporary disassociation of nature and grace was of immense importance for the future. What now began to diverge were two fundamentally conflicting worldviews, the Greco-Roman and the Christian, which two had been held together by a speculative law-idea that eventually became impotent. The Greco-Roman worldview would be continued in the speculative movements of humanism and the Renaissance and would thoroughly develop the so-called natural system of the humanities.<sup>2</sup> The Christian worldview would again tackle the problem of nature and grace and launch a bold attempt at its solution in the Reformation. It is remarkable that to some extent the Reformation passed through humanism for its training in the modern spirit, a training that was indeed indispensable for mastering the new formidable problems of culture.

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1 On Scholastic methodology see the standard work of Martin Grabmann, *Die Geschichte der scholastischen Methode nach den gedruckten und ungedruckten Quellen*, 2 vols. (Freiburg im Breisgau: Herder, 1909-1911) and Baeumker, "Charakteristik der mittelalterlichen Philosophie" in *Allgemeine Geschichte der Philosophie*, p. 288 ff.

2 See the brilliant work of Wilhelm Dilthey, *Weltanschauung und Analyse des Menschen seit Renaissance und Reformation: Abhandlungen zur Geschichte der Philosophie und Religion*, vol. 2 of *Gesammelte Schriften*, 3<sup>rd</sup> ed. (Leipzig: Teubner, 1923), esp. pp. 90 ff and 312 ff.

### **The Renaissance as a universal phenomenon of culture**

Humanism and Renaissance should not be viewed as movements that were purely Italian in origin and then imparted to other countries. Rather, they are to be seen as a general phenomenon that manifested itself in different degrees and with quite different tendencies in the new cultural states. By no means did they constitute a deeper philosophical or religious unity, but in a certain sense they formed a *historical* unity. It is customary to speak of an early humanist movement already in the twelfth century, insofar as a powerful movement then began to revive Aristotelian wisdom following the rediscovery of Aristotle's metaphysical, physical, psychological, ethical, and political works.<sup>1</sup> However, the later Renaissance was born of a completely different spirit of the times. These were the times of Italian thinkers like Petrarch, Plethon, Lorenzo Valla, the two Picos of Mirandola,<sup>2</sup> Machiavelli, Leonardo da Vinci, Giordano Bruno, and Galileo; Dutch minds like Erasmus, Coornhert, and Grotius; Germans like Sebastian Franck, Agricola, and Reuchlin; Frenchmen like Alciat, Budé, Charron, Montaigne, and Descartes; Englishmen like Herbert of Cherbury, Bacon, Hobbes, Thomas More, and Shaftesbury. The essence of this impressive cultural movement may be debated, but it is beyond doubt that its rise was related to the entire historical complex of phenomena that is commonly summarized as the problem of the transition from medieval times to the modern period.

The development of science and culture, commerce and industry, law, morals and religion had outgrown Scholasticism. People were looking for a new coherence of life, a new idea of life, a new philosophical or a new religious orientation. As if with a common take-off point, all these humanistic movements began with the program: Back to the well-springs of Antiquity, war on the *Barbarei* of Scholasticism with its impossible Latin and its misrepresentation of ancient authorities! Simultaneously, as an almost universal feature of all these movements there was a heightened appreciation for the living *individuality*, for the empirical, both in the ethical realm (the ideal of personal *virtù* in the individual) and in nature, where more than previously one beheld divine beauty (compare the art of landscape painting emerging in Italy and the Low Countries).

A new zest for life began to focus on affairs, on life, instead of on the endless game of syllogisms that had enthralled the Scholastic masters. A true Faustian mentality emerged, evident in a renewed interest in astrology and occult sciences (alchemy) and in the Pythagorean mysticism of

1 See Wilhelm Windelband, "Die Philosophie der Renaissance," in *Allgemeine Geschichte der Philosophie* p. 385, and Ueberweg, *Die mittlere oder die patristische und scholastische Zeit*, p. 403 ff.

2 *Editorial Note*: Dooyeweerd in subsequent references does not always indicate to which Pico he is referring.

numbers (the whole of nature is written in numbers) that tries to extract the mysteries of nature in terms of numerical relationships. It was a process of fermentation, still unmethodical, of naive mystical searching and sensing, from which would presently be born the young phoenix of modern natural science.

Since it is impossible in the present context even to approximate an analysis of the Renaissance in all its different nuances, only the following question will be raised, a question of singular importance within the framework of our subject. To the extent that it stood apart from the Reformation, did the humanist movement provide a worldview with a different law-idea, and if so, what is the significance of that law-idea for the problem of Christian politics?

The answer to this question is tied to four momentous phenomena that occurred during the great humanist intellectual movement:

1. *The emergence of the doctrine of raison d'état (reason of state).*
2. *The development of the modern concept of science in the foundation of the natural sciences.*
3. *The development of notions of toleration as symptomatic of the modern approach to religion.*
4. *The emergence of the modern theory of natural law and the science of constitutional law.*

### **The doctrine of *raison d'état*; its cultural significance**

In its origin, the doctrine of *reason of state*, first advanced by the renowned Machiavelli (1469-1527), is a typical phenomenon of the movement of Italian humanism, but one which, stripped of its specifically Italian features, has a universal cultural significance. To this day, *Realpolitik*<sup>1</sup> can be traced back to the theory as developed by Machiavelli. Realpolitik views politics as an independent sphere where only one principle can be valid: the interest of the state, to which all personal, ethical and legal considerations must yield. The main reason we should take an interest in the doctrine of *reason of state*, apart from the defective form in which it appears in Machiavelli, is that its basic idea intends the independence of politics as a sovereign, suprapersonal sphere of law.<sup>2</sup>

The latter was possible only under societal conditions in which the

1 *Translator's Note:* roughly equivalent to "political realism" or "power politics."

2 This meaning of the doctrine of *raison d'état* has been lost sight of too much in Friedrich Meinecke, *Die Idee der Staatsräson in der neueren Geschichte* (Munich and Berlin: Oldenbourg, 1924). This historian sees the heart of the doctrine in the construction of a suprapersonal link between the brute amoral *force of nature*, which breaks through in the egoism of states, and *ethics*, insofar as the political realism practiced by national states is ultimately not pursued as a goal in itself, but rather as an instrument in the service of maintaining and promoting the state as bearer of the highest ethical good (*ibid.*, pp. 1-28, esp. 13).



modern state itself appeared as a sovereign organization of law with clearly delineated features. In the medieval *Corpus Christianum*, with its shifting boundaries between secular and spiritual authority, the problem underlying the doctrine of *raison d'état*, namely, the search for a special law with independent ordinances valid only for state policy but not for private life, could not even have arisen. In that type of society, natural ethics naturally appeared to be the common basis of both individual and communal life. The church, which held a monopoly in explicating the moral law of nature, also provided secular authority with the norms or guidelines for its behavior.

Even Ockham, usually so critical of the ecclesiastical hierarchy, would not dream of searching for a political guideline other than the natural moral law. The independence he demanded for the state was entirely within what today would be called the area of competence in positive legislation. Ockham was only concerned with the question: how far does the church's right to legislate go, and how far that of the state?

Now, however, Machiavelli comes with a totally new problem for politics. How can the state, which after all has a completely different form of existence and a totally different calling than the individual person, nevertheless accept the same law (the moral law) as supreme guide for its behavior as that which holds good for individuals? Viewed this broadly, Machiavelli's *statement of the problem* is also extremely important for the development of Christian politics.

The *solution* which Machiavelli provided and which even today is accepted by those who advocate Realpolitik, even if in less crass terms, completely separates Machiavellianism from Christian politics and reveals his theory to be a typical moment in the vast intellectual movement that was to generate a new law-idea, that of *nature as a closed system regulated by law*.

### **The idea of *raison d'état* as a typical phenomenon of Italian humanism**

To appreciate Machiavellianism historically as such a moment, it is necessary to trace the origin of the doctrine of *raison d'état* to the intellectual world of Italian humanism.

First, to be able to picture the political and social background of Machiavelli's theory a brief comment is in order about the political situation of Italy in the fourteenth and fifteenth centuries.

The modern concept of the state as the highest organization of secular power first appeared in Italy. There the term *status* was first generally used in its new meaning.<sup>1</sup> It was here that the unlimited absolutism of the secular state, not without Turkish influence, first developed in the south-

<sup>1</sup> The word "sovereignty" is of French origin (Bodin); cf. Bezold, "Staat und Gesellschaft des Reformationszeitalters," p. 31.



ern Italian kingdom of Naples-Sicily ruled by Emperor Frederick II (of the Hohenstaufen dynasty). Frederick's injunctions (especially since 1231) had the clearly delineated goal of establishing an omnipotent royal authority, completely destroying the feudal state and transforming the people into a will-less, unarmed mass that would pay the largest amount of taxes possible.<sup>1</sup>

The politics of Frederick II and his terrible vicar, Ezzelino da Romano, which, following the Saracen example, established a monarchical centralization of power at the expense of much bloodshed involving the most cunning assassinations and mass murders, had already become the prototype for a practical Machiavellianism that would be difficult to match even by a Cesare Borgia and a Catherine de Medici.<sup>2</sup> With the fiasco of Hohenstaufen imperialism in its confrontation with the papacy, all hope for a political union of Italy disappeared; instead, numerous middle-sized and smaller states, each armed to the teeth, arose from the tangle of economic and political forces unleashed during the fourteenth century. Many of these state communities were the personal creations of the unrestrained ambition of adventurers who, unconcerned about their parentage (many were bastards), had respect for nothing but courage and cunning. They despised the nobility and clergy with their class privileges and shrank from nothing in defending their tyrannical rule against enemies who lay in wait on all sides. Demonic instincts were awakened in this continual power struggle and revealed the overt godlessness of many of those tyrants. When the last of the Carraras was no longer able, in 1405, to occupy the ramparts and towers of Padua, which had been decimated by the plague, and while the Venetians surrounded the city, his bodyguards often heard him calling to the devil at night, requesting death at the devil's hand.<sup>3</sup>

During the fifteenth century these local tyrannies went under, or else the petty tyrants would enter the service of the more powerful ones as *condottieri*. During the second half of this century, Venice, Milan, the papal states, and Naples together made for a balance of power (Florence, although the leader in the areas of humanist art and philosophy, was politically a constant picture of divisiveness and confusion). These were the things that characterized the times in which Machiavelli lived: a reduction in military forces, regimes of purely pragmatic, completely amoral political calculation aimed at maintaining a balance between these larger powers and ensuring the cooperation of the smaller ones; a shocking level of

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1 See Jacob Burckhardt, *Die Kultur der Renaissance in Italien*, 11<sup>th</sup> ed. by Ludwig Geiger (Leipzig: Seemann, 1913), 1:3 ff.

2 Ibid.

3 Ibid., p. 12, where one also finds an excellent characterization of the various fourteenth-century tyrant rulers in Italy. In Dante's *Inferno*, many places refer to the terrible political circumstances of Italy in those days.

corruption in diplomacy.<sup>1</sup> No means was off-limits provided it was justified by its end: the interest of the state. A policy of adventure like that pursued by the madcap Charles the Bold was held up for much ridicule in Italian diplomatic circles. In this climate, diplomacy, which was then beginning to consolidate in the form of permanent embassies, developed into an unprecedentedly refined art. Venetian diplomats were counted among the first masters at their trade.

The same spirit of almost mechanical political calculation penetrated the internal organization of the Italian states. Here, for the first time, arose the idea that the state is an *artificial creation*, that a state organization can be *made* and can be adapted perfectly to the needs of the situation. Florence as well as other central and northern Italian republics were unsurpassed in embodying the city-state with its centrally directed economic policies, its practically countless number of competing short-term offices, its enormous financial muscle (mainly derived from the Levant trade), and its deficient army.<sup>2</sup>

In Venice one finds an even more artificial political organization: a large number of state organs were centralized in the Council of Ten, with three fresh leaders elected every month. This centralization of political power was so complete in all areas of governmental policy that even the most advanced monarchies of the sixteenth century could hardly surpass it.

It was in this Italian political setting, fostered by all the realistic elements of Renaissance culture reminiscent of the ancient Roman idea of power even in its most decadent form, that Machiavelli was trained. As secretary and diplomat in the Florentine republic until 1512 he learned all the angles of this kind of statecraft. In Rome he witnessed how the terrible Pope Sixtus IV used his financial resources gained from the sale of indulgences and dignities to put down the great leaders of Romagna along with the bands of brigands under their protection. Then too he witnessed how Innocent VIII filled the papal states with robbers by granting absolution for murder and manslaughter in exchange for certain payments in coin while the pope and his son divided the booty between them. Finally he experienced the bloody regime of Alexander VI and his son Cesare Borgia, who controlled his father by his diabolical genius and entertained plans for the secularization of the papal states following his father's death.

In the meantime, from 1494 on, catastrophes befell Italy: the invasion by the French and the Spanish which meant the end of the independence of Milan and Naples; the revolutionary change of government in Machiavelli's own Florence where the Medicis once again undermined

1 Dilthey, *Weltanschauung und Analyse*, p. 25.

2 Bezold, "Staat und Gesellschaft des Reformationszeitalters," p. 32. On the economic organization and the world-wide commerce engaged in by Florence, see the classic work of Robert Davidsohn, *Die Frühzeit der florentiner Kultur*, vol. 4 of *Geschichte von Florenz* (Berlin: Mittler, 1925), parts 1 and 2.

the republic so that Machiavelli was forced to seek the favor of the new rulers; and especially the superior collective pressure brought to bear on Italy by foreign powers. Through these catastrophes a political mind matured to that passionate strength, depth, and keenness so evident in Machiavelli.<sup>1</sup>

To these circumstance we owe Machiavelli's two principal writings: *Il Principe* (The Prince) and the *Discorsi sopra la prima deca di Tito Livio* (Discourse on the first ten books of Livy). These works combined a reaction to the entire political situation of Italy as sketched above with general ideas that arose from his study of the ancient Roman world and its controlling idea of power. What follows is a brief discussion of the main features of these two works insofar as they fit in with the general naturalistic current in the modern humanist intellectual movement.

### **Machiavelli's political theory as a component in the development of the modern naturalistic law-idea**

The first striking feature in Machiavellianism is the complete eradication of the Christian sphere of grace. As a result, the entire problem of earlier Christian politics, the proper relation between nature and grace, is disposed of.

Machiavelli, like many of his humanist contemporaries, was a total pagan. He saw nothing supernatural in the origin of our religion and he did not believe that a moral development of personality, a moral regulation of life, could be achieved in Italy along ecclesiastical ways.<sup>2</sup> What he thought of the Roman Curia, which he as envoy had come to know so well, is clear from statements like the following: "The nations closest to Rome have the least religion." "We Italians owe it to the church and the priests that we have become irreligious and wicked."<sup>3</sup> Yet Machiavelli went even further. He showed himself to be a conscious opponent of the Christian religion:

It causes us to esteem the honor of this world less highly and so makes us softer and milder. The ancients, however, cherished this honor as the highest good and were therefore bolder in deeds and sacrifices. The ancient religion, moreover, declared only those men blessed who were full of worldly luster, such as commanders of armies and administrators of the state. Our religion has honored modest and contemplative men rather than men of action. It reposed the highest good in meekness, humility, and contempt of earthly things; the ancient religion found the highest good in grandeur of spirit, strength of body, and all that is conducive to making men courageous. Our religion desires the strength to suffer rather than to execute acts of courage. So the world has become the

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1 Meinecke, *Idee der Staatsräson*, p. 37.

2 See Dilthey, *Weltanschauung und Analyse*, p. 27, and Meinecke, *Idee der Staatsräson*, p. 38 ff.

3 Niccolò Machiavelli, *Discorsi sopra la prima deca di Tito Livio* 1.12.

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booty of evil men who can rule over it securely, while men seeking to enter paradise are more concerned to suffer their misdeeds than to avenge them.<sup>1</sup>

It is as if we hear a Roman Stoic judging the Christian religion. And indeed, Machiavelli viewed religion entirely from the viewpoint of nature, as an invention of human beings for the satisfaction of certain natural needs. So he made a clean break with the Christian contrast of *Diesseits* (this world) and *Jenseits* (the world beyond), retaining certain general concepts from Christian ethics relative to the distinction between good and evil, but trying mainly to achieve *a new naturalistic ethics that would impartially and resolutely follow the voice of nature.*<sup>2</sup>

Here we touch upon a most important element in Machiavelli's train of thought. His basic idea is the *equality of human nature*, an idea strongly inspired by the Greco-Stoic conception of natural law as a flawless instance of the law of cause and effect. He reasons as follows: We cannot change ourselves but must follow those inclinations which nature has implanted in us.<sup>3</sup> "To predict the future, one must review the past. The reason for this is that since the men who act on the great world stage always have the same passions, the same results must necessarily appear."<sup>4</sup> According to him, this is the basis for the possibility of political science.

Machiavelli's naturalism acquires a mechanistic streak as a result of his incisively developed concept of *necessità* (necessity). *Discorsi* 1.4 claims that people of themselves will not do good unless a *necessità* drives them to it. Unless a brake is put on them, they have an irresistible urge to be tempted by their desires to do evil. Brutality, passions, and affections are the stuff of human nature, especially love and fear. The affective nature is also the origin of the state, morality, law, and religion. On this point, with only slight deviation, Machiavelli followed the Greek Stoic author Polybius, who taught that political life arises from the herd-life of men. Like the animals, humans congregate in herds and follow the most courageous and strong among them. This explains the rise of primitive monarchy. In such a society, good is that which concurs with the interest of him who judges. This accounts for the concepts of law and ethics. These moral concepts are enhanced inasmuch as primitive monarchy makes them valid, and they in turn strengthen the monarchy.

Machiavelli gives this theory a slight twist. Primitive people want to avoid the evil of violence which hurts others; therefore the original horde instituted laws and punishments – hence the concept of justice. Once this concept became operative, the horde no longer chose the strongest but looked for a combination of strength, intellect, and justice in their leader.

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1 Quoted by Dilthey, *Weltanschauung und Analyse*, pp. 27-28.

2 Meinecke, *Idee der Staatsräson*, p. 39.

3 Machiavelli, *Discorsi* 3.9.

4 Ibid. 3.43, quoted in Dilthey, *Weltanschauung und Analyse*, p. 30.

Through punishments that followed infractions of the law, people attained a knowledge of justice. Morality and justice, for Machiavelli, are therefore values that are *made, made by the state* for the benefit of the state.<sup>1</sup>

This spelled a strong revival of the ancient pagan conception which claimed all of life's spheres for the state, considered all morality to be *state morality*, and was therefore not aware of the problem of the relation between individual conscience and state law.

Curiously, however, Machiavelli's naturalistic view of *necessità* is interlaced with a second motif, that of *virtù*,<sup>2</sup> the semi-Stoic ideal of a creative capacity of the ruler's will. It is doubly curious that this virtue is again conceived along primitive lines as an element of raw nature. Originally, Machiavelli's virtue is a dynamic vitalistic concept of nature implying a certain quality of barbarity (*ferocia*). But now – and this is characteristic of the humanist spirit in which Machiavelli was trained – this virtue does not remain a blind natural force but subjects itself to reason, thus elevating itself as *virtù ordinata* to become a rational and goal-directed force that gives strength to a government and virtue to its citizens. Through the wise ordinances provided by the *virtù ordinata* of the state, the average level of citizens is also raised to the level of a new derivative virtue. Still, a kind of mechanistic and fatalistic concept of nature does continue to dominate here: Machiavelli thinks that since the world always remains the same and all things repeat themselves in cycles, so too virtue is not present in unlimited quantities in this world but it travels through the world, as it were, to choose now this, now that nation as its bearer.

It is clear that Machiavelli's theory is essentially based on a naive monism which sees all of life's forces as natural forces that operate according to the same law. As he works it out, however, he still gets stuck in a dualism. *Virtù* and *fortuna* are ever at odds.<sup>3</sup>

Where men have little *virtù*, the more *fortuna* shows her force. And since she varies, republics and states often vary. And they will always vary until finally a person arises who loves antiquity so much that he regulates *fortuna* in such a way that she cannot at every revolution of the sun display how much she is capable of.<sup>4</sup>

In the final analysis, Machiavelli exhibits the same kind of conflict as that encountered in the Stoic law of nature which, as continuous law of

1 For Machiavelli, *raison d'état* is the true goal of the state. It is not correct to state that the doctrine of the goal of the state is absent from his theory; cf. Karl Heyer, *Der Machiavellismus* (Berlin: Dümmler, 1918).

2 For the concept of *virtù* in Machiavelli, see Eduard Wilhelm Mayer, *Machiavellis Geschichtsauffassung und sein Begriff virtù: Studien zu seiner Historik* (Munich and Berlin: Oldenbourg, 1912).

3 Meinecke, *Idee der Staatsräson*, p. 44.

4 Machiavelli, *Discorsi* 2.30.

cause and effect, must necessarily clash with the freedom of the will demanded by moral theory.<sup>1</sup>

### The universal law of nature

At any rate – and most important for our enquiry – Machiavelli's politics is essentially based on the supposition that there is a universal natural law of *necessità* that also serves as the basis for rational politics. The practical intellect of the statesman must, with objective logic, base its calculations and conclusions on this law of nature (whose validity Machiavelli repeatedly tries to support by appealing to history) and subdue those natural inclinations that lead to evil by means of stronger natural inclinations. Neither traditional morality nor religion can establish limits for politics here. After all, *necessità* as political inevitability, as *raison d'état*, also justifies crime, deception, and lies. In *Il Principe* Machiavelli writes: “A wise ruler cannot, and therefore must not, keep his word if that should work against him and if the reasons for which he gave his word no longer exist. If all men were good, this counsel would be worthless; but since they are not very virtuous and tend to break their promises to you, so neither are you obliged to keep yours to them.”<sup>2</sup> And the conflict with religion and morality to which such radical politics must necessarily lead is essentially resolved in that Machiavelli sees morality and religion as mere, albeit necessary, instruments in the service of virtue, whose sole guideline is state necessity.

The all-controlling *historical* motive behind this entire theory is the ideal of the *political* elevation of Italy with the aid of a national monarchy (the house of the Medicis). Stripped of this historical motive, Machiavelli's naturalism everywhere penetrated both practical politics and theory. It received a systematic elaboration in Hobbes' naturalistic understanding of natural law. Its basic ideas were revived by modern positivism in political science (conceived as sociology) in the work of Comte, Spencer, Gustav Diezel, Gumplowicz,<sup>3</sup> Ratzenhofer, Ward, Kjellen, and others. But that impressive penetration into modern times of a new, rather naively conceived, law-idea was only possible in political science after the concept of an all-controlling law of nature had been adapted to the results of the rapidly developing modern natural science; and it was natural science that radically upset Machiavelli's Stoic basic premise of the equality of human nature untouched by any development.

- 1 The Greek Stoic, Chrysippus, tried to save moral liberty from the fatalistic causality of the *lex naturalis* by distinguishing between *causae primae* and *causae secundae* (cf. Cicero, *De fato* 18.41.).
- 2 Machiavelli, *Il Principe* 18 (“To what extent rulers must keep their promises”). Machiavelli's appeal in this connection to Cicero, *De officiis* 1.34, is noteworthy.
- 3 See the favorable assessment of Machiavelli by the otherwise harshly critical Ludwig Gumplowicz in his *Geschichte der Staatstheorien* (Innsbruck: Wagner'sche Universitäts-Buchhandlung, 1905), pp. 135-136.



## Chapter 6

### *The Development of the Modern Concept of Science*

The gradual development of the modern humanist law-idea is tied to the development of modern mathematical natural science, above all mechanics. The latter, which had been prepared by the Ockhamists of the University of Paris (Buridan, Albert of Saxony, and Nicole Oresme), was further advanced by the powerful universal intellects of Nicholas of Cusa, Leonardo da Vinci and the astronomical theories of Copernicus and Kepler, and would receive its broader scientific foundation from Galileo.

In order to understand this modern law-idea (in whatever form it may appear) it is necessary thoroughly to explore the modern concept of science in natural-scientific thought, the theoretical elaboration of which has not unjustly been hailed as a lasting and powerful result of the Renaissance movement. Anyone seriously interested in the problem of Christian politics will realize that this excursion into the area of natural science is not just an arbitrary deviation from our topic but is in fact necessary because of the paramount objective of our enquiry: to determine the place of Christian politics as an independent *science* according to the Calvinist law-idea. The humanist law-idea, oriented to the new concept of science, puts questions and demands to the science and theory of politics which previous periods could hardly have dreamed of and which serious researchers cannot just wave aside. Particularly in the midst of the modern complicated relations of political life, no one who wishes to provide guidance can be content any longer with knowing a certain number of seemingly independent principles. Even the simple person faced with difficult political questions is asking for guidance as to how he is to apply his principles to the fluctuating circumstances. Essentially that is the same question that theory must face when it considers politics to be an *object of science*, a science in which the interconnection of principles and the relationship of this interconnection to the facts emerges as a rational *systematic* whole.

In our present historical survey, which allows only for a bird's-eye view of the forms in which the problem of Christian politics has appeared in the course of history, these questions and demands of the modern concept of



science can only be considered in the most cursory fashion. The thread of these analyses, which at this juncture we drop, will be picked up again for an in-depth discussion of these crucial matters in the thetical part of our study.<sup>1</sup>

**Modern science and the Platonic concept of science;  
the rejection of the Aristotelian concept**

While Aristotle, Thomistically reinterpreted,<sup>2</sup> had become a practically unassailable authority during the Middle Ages, the Renaissance, in conjunction with the later Ockhamists, began with an almost full-scale assault on this great philosopher and especially championed against the Peripatetics (followers of Aristotle) Aristotle's great predecessor, Plato. Anyone who interprets this rejection of Aristotle and the return to Plato as simply a reversion to Augustine's worldview shows a lack of understanding the heart of the humanist intellectual movement. Certainly, in the time of the church fathers, Plato (actually the Neoplatonic Plato) was the beloved authority consulted for the development of a worldview. But the church fathers and the early Middle Ages were only after Plato's metaphysics, his speculative idealistic view of the world which, in its suppression of the material, offered points of connection for the teaching of Christianity. From very early on, however, Aristotle was consulted for logic and the view of science. After all, it was Aristotle who first provided a well-rounded system of logic.

The significance of the rebirth of Platonism during the Renaissance is quite different. Of course here too, Neoplatonic metaphysics played an important part, especially in mysticism. However, only the revival of Plato's *view of science* was of permanent importance to the formation of the modern mind, for this view of science was the shared *point of contact* for modern natural science.

In order to understand the modern concept of science, at least provisionally, it is necessary to appreciate the contrast between Plato's and Aristotle's concept of science.

Considered superficially, it seems rather odd that modern natural science turned from Aristotle to Plato. One of the major legacies of Galileo,

1 *Editorial Note (DS)*: The thetical part is probably found in the inaugural address.

2 See chapter 2 above. It must be remembered that Aquinas altered Aristotle's theory in various essential points to make it usable for Christian philosophy. Aristotle's concept of divinity, for example, was conceived deistically – with him the entire realm of grace was lacking, and he advanced heretical ideas such as the eternity of matter in which he was at odds with the Christian doctrine of creation. In its philological and historical research, the Renaissance rediscovered the *true unadulterated* theory of Aristotle as distinct from its confusing Scholastic transformation. This original Aristotelianism did gain adherents among a limited number of humanists (Leonardo Bruni and Giovanni Pico della Mirandola, among others.) See Ernst Cassirer, *Das Erkenntnisproblem in der Philosophie und Wissenschaft der neueren Zeit*, 2<sup>nd</sup> rev. ed. (Berlin: Bruno Cassirer, 1911), 1:98 ff.

the father of modern physics, is the experimental method, which researches natural phenomena experimentally, thus making use of experience and sensory observation in tracking down the as yet unknown laws of nature. But Aristotle was the one who had declared experience – sensory observation aided by the abstracting intellect – to be the sole source of knowledge and who had himself collected a wealth of factual material via fundamental biological research. Indeed, early Aristotelian Scholasticism had not been idle in this respect. According to competent specialists in the biological sciences of zoology and botany, Albert the Great, Thomas Aquinas's teacher, counts as the most outstanding observer of nature produced by the Middle Ages.<sup>1</sup> In regard to method, Albert placed the greatest emphasis on the necessity of experimental research.<sup>2</sup> Indeed, in the area of physics, too, Scholasticism had initiated ground-breaking preliminary research, mainly in relation to the connection between the phenomena of heat and motion.<sup>3</sup>

By contrast, Platonic idealism seems to strike a sorry figure. The factual material available to Plato in his scientific research was much less than that at the time of Aristotle; indeed, the separation made by Plato between idea and phenomenon, and, for epistemology, between *noesis* and *aesthesis* (ideal knowledge and observation) appeared at first sight to be of little use to the experimental method.

Therefore it cannot be the experimental method as such that urged the Renaissance towards Plato. But Galileo's fundamental importance for natural science does not consist in the introduction of the experimental method *as such*, but rather in the application of that method on the *basis of mathematics*. For this foundation of modern physics Aristotle had no point of connection,<sup>4</sup> whereas Plato had clearly fathomed the fundamental methodological importance of mathematics.

1 See e.g. Hermann Stadler in *Verhandlungen der Gesellschaft deutscher Naturforscher und Ärzte*, 1: 35.

2 Cf. Beati Alberti Magni Ratisbonensis episcopi O.P., *Opera*, ed. Petrus Jammy (Lyons, 1621), 5:430a: "Earum autem, quas ponemus, quasdam quidem ipsi non experimento probavimus, quasdam autem referimus ex dictis eorum, quos comperimus, non de facili aliqua dicere, nisi probata per experimentum. *Experimentum enim solum certificat in talibus . . .*"

3 See Jakob Freudenthal, "Spinoza und die Scholastik," in *Philosophische Aufsätze: Eduard Zeller zu seinem fünfzigjährigen Doctor-Jubiläum gewidmet* (Leipzig, 1887), p. 89. Laurenz Müllner: "Die Bedeutung Galileis für die Philosophie," in *Die Feierliche Inauguration des Rectors der Wiener Universität für das Studienjahr 1894-95* (Vienna, 1894), p. 73, and Enrico de Portu, "Galileis Begriff der Wissenschaft" (diss., Marburg, 1904), pp. 2 ff., 14.

4 We do not in the least deny that in certain points, e.g., the *doctrine of infinity*, Aristotle, too, influenced mathematical thought fruitfully; cf. e.g. Jonas Cohn, *Geschichte des Unendlichkeitsproblems im abendländischen Denken bis Kant* (Leipzig, 1896), pp. 36-38. Aristotle deals with this problem in *Physics* 3.

### Aristotle's syllogistics; the naive realism of its biological orientation

With his logic Aristotle sought to provide a universal *organon* or working method for all scientific and philosophical enquiry, and this logic, whose crowing achievements were his *syllogistics* or theory of the logical syllogism and his *apodeictics* or theory of proofs, enjoyed an indisputable authority right into modern times. Indeed, it penetrated the whole of life to such an extent that even the modern science of law has not yet managed to shake itself loose from the hold of Aristotelian logic.<sup>1</sup> The emerging natural science of the Renaissance, although preceded by Late Scholasticism (Jean Buridan, Albert of Saxony, and Nicole Oresme),<sup>2</sup> cast light on the unscientific nature and uselessness of this logic as a methodology. For what had given rise to Aristotle's organon? None other than his entire philosophical system, founded on a law-idea oriented to biological purposiveness, as we saw in chapter 2. Indeed, Aristotle's logic as a *universal working method* was the faithful expression of this law-idea,<sup>3</sup> just as his logic stands or falls with his entire metaphysical system. Aristotle's logic is based on his ontology or theory of essential being (substance).

As the true being of things in reality, as substance (*ousia*), *individual* reality (the man Socrates, the horse Bucephalus, etc.) came first. Yet, this proceeding from *things*, from *individual* realities, was not as such possible in science. Heraclitus had already uttered the profound statement: *Panta rei*, with which he wished to express that all sensory things are subject to steady change and transience. The Eleatic School of Greek philosophy had even denied the sensory world any real existence and had placed the essence of phenomena exclusively in the idea of one and indivisible *being*. Aristotle too realized that substance, to be useful to science, must be abstracted from the transitoriness in sensation and must constitute a fixed and constant concept. Furthermore, in proceeding only from individual things, science would entangle itself in an endlessly varied multiplicity and boundlessness (the *apeiron* as Plato characteristically calls it) in which there would be no point of connection for the scientific method. At this point Aristotle's teleological metaphysics (proceeding from the prin-

1 Cf. e.g. the dogmatic conception of jurisprudence as a logical syllogism in which the legal rule is the major premise, the case to be decided is the minor premise, and the juridical verdict is the conclusion – a view which unfortunately, due to the rigid dogmatism of Von Savigny's epigones, extended far into the nineteenth century.

2 See chapter 7 below for Pierre Duhem's epoch-making historical research about the significance of these Ockhamists for modern natural science.

3 Concerning this biological bent, see the thorough work of Léon Brunschvicg, *Les étapes de la philosophie mathématique*, 2<sup>nd</sup> ed. (Paris: Félix Alcan, 1922), p. 71 ff.; Paul Tannery, "Sur un point de la méthode d'Aristote," *Archiv für Geschichte der Philosophie* 6 (1893): 468 ff.; De Portu, "Galileis Begriff der Wissenschaft" (cited above); and Cassirer, "Die Reform der aristotelischen Psychologie," in idem, *Das Erkenntnisproblem*, 1:98-120.

principle of purposiveness) came to his rescue. This metaphysics, as we saw, assumed a universal law in the cosmos according to which all matter (potentiality) strives toward its perfection (actuality) or *form*, according to its inherent or externally assigned purpose or goal (*telos*), while according to the same law, the *form* of the lower becomes matter for a higher *form*. All *becoming* then is the (goal-directed) actualization of a potentiality. Accordingly, Aristotle saw matter as the principle of potentiality and form as actuality. Now then, this metaphysical distinction of the principles of potentiality and actuality was also applied to substance. Aristotle ascribed two moments to the thing (*tode ti*): the material *substrate* (*hypokeimenon*), and the *form*, in which he saw the essence, the imperishable being of the substance (*ousia hē protē*). The form is the eternal being which, however, only appears in transient concrete things.<sup>1</sup> What meaning and content does that eternal form of the thing have, according to Aristotle? None other than that of the definition of the thing (e.g., man, plant, table) according to the features which the *healthy intellect's general idea* establishes as universal rather than accidental features. The concept of species, which is closest to the individual being, thus expresses the form which gives the individual thing *reality* (man, book, etc.). Now the species concept, by dropping certain features, can be expanded into a universal generic concept (genus). Thus the more universal a concept becomes, the poorer it is in features, in content.

In Aristotle, a thing's matter (*dunamis, hulē*) or material substrate (*hypokeimenon*) expresses the logical possibility of change as transition of eternal form from one subject to another (e.g., the transformation of ore into a statue); it must also explain the concreteness of the thing (as opposed to its specific or generic features).

From the *material* sensory image (*phantasma*) which is absorbed by the *passive* capacity of thought (*nous patheticos*) into consciousness, the *active* capacity of thought abstracts the intellectual *form* that constitutes the true essence of the thing.

Thus the question remains: How did Aristotle's universal concepts come about? The individual thing is comprised of a multiplicity of features. How are these features, which constitute the species and genus concept, interrelated? Aristotle answered: through their intrinsic purposiveness. That inherent purposiveness becomes the creative force in Aristotle's philosophy of nature. It not only *makes* the concept of species and the concept of genus, but also the thing itself. Form, being, and purpose coincide in nature, just as concept and thing regularly coincide in Aristotle (conceptual realism). It is on this ontology (the theory of the enduring *being* in phenomena) that Aristotle's theory of syllogism or syllogistics is based. Aristotle defines the syllogism as a thought process by which, given two premises, a judgment different from these two can be necessarily deduced. For example:

<sup>1</sup> See Aristotle, *Metaphysics* 999b1 ff. and 1633b5.

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Premise I	All men are mortal.
Premise II	Socrates is a man.
Conclusion III	Ergo Socrates is mortal.

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Each of the two premises contains a subject and a predicate [known as the *terms* of the syllogism]. However, in order to make a conclusion possible they must have one concept, the middle term, in common (in the above example the concept “man”) and therefore contain not more than three concepts (man, Socrates, and mortal).

In the syllogism, of which Aristotle also distinguished several forms, the individual is deduced from the universal (at least if the syllogism is in the proper form). The method of syllogistics therefore is *deductive*. Its opposite is the *inductive method*,<sup>1</sup> in which the universal judgment is inferred from the individual facts of experience. The inductive method establishes that which holds for all individual entities of one species as predicate of the species concept, and that which holds for all the species of the same genus as predicate of the genus concept. Induction is valid only when it is *complete* (an impossible requirement, which renders induction useless) and provides the preparation for deduction, which alone provides true knowledge. What then is required to turn the syllogism into a scientific proof? Aristotle answers: the truth and the necessity of the premises. Where then, according to him, lies the criterion of scientific truth? In the correspondence of our judgment with reality, whose being (*ousia*, form) we grasp in a concept through our *active* intellect. And so syllogistics and the theory of proof circles back to Aristotle's ontology. According to Aristotle, proof consists of the deduction of new knowledge from ever higher and more universal judgments. But such deduction cannot continue *ad infinitum*. Deduction finds its lowest limit in the species concepts which merely entail an unlimited multiplicity of individuals that are, at best, distinguishable only in terms of accidental features, and to that extent have nothing to do with science. Thus the chain of deductions from higher to lower must start in certain highest and universal principles and conceptual definitions that are not themselves provable by deduction, but are directly evident. These highest principles are in part principles of the several sciences, and in part principles of every science without distinction. The principles of each separate science can only be determined inductively. Aristotle attaches considerable importance to the so-called dialectical inferences, that is, inferences drawn from plausible premises (*endoxa*).

1 For more on this inductive method in Aristotle, see P. Lenckfeld, “Zur logischen Lehre von der Induktion: Geschichtliche Untersuchungen,” *Archiv für Geschichte der Philosophie* 8 (n.s. 1) (1895): 353 ff. That Aristotle *must* demand comprehensiveness of induction is connected with the fact that he has empirical research start with the *individual thing*. The *law-conformative relations* between things, which modern natural science sees solely by *abstraction from the particular qualities of those things*, are in Aristotle the *qualitative properties of the things themselves* (color, matter, space, motion, etc.).

The foregoing briefly summarizes Aristotle's theory of syllogisms. At first glance it is clear that his theory, like his ontology (the theory of the true essence of phenomena), is totally oriented to biology. His conception of the syllogism is indeed entirely analogous to that of the organic life of plants and animals.<sup>1</sup> According to the *Analytica*, the two premises concluded a marriage, so to speak, and procreated the conclusion.<sup>2</sup> Syllogistics applies entirely to the method of classification such as occurs in botany and zoology. That no universally valid scientific method can be gained in this manner is obvious. What do the Aristotelian concepts of substance, entelechy, and potentiality have to do with, for example, mathematics? The worst of it is that the entire basis of syllogistics is unscientific insofar as it does not discriminate between *concepts* that are valid only in science and the *general ideas* of everyday life. And then, immeditate, actual, and true existence is accorded, usually in an uncritical manner, to human eyes, to sensory impressions. Aristotle does not account for the boundaries between law-spheres, the conditions of our knowledge.

### The Platonic concept of science

Plato's concept of science is oriented to the mathematical philosophy of the Pythagorean School in Greek philosophy. Thus from the start it is almost diametrically opposed to Aristotle's theory of method. The Pythagoreans had identified the *substance* or the eternal and constant essence of things with its mathematical determination in *number*. Number as the true essence (*ousia*) of things first makes the world into a *cosmos*, an ordered whole. The naive mystical speculations about number as found in the Pythagorean school<sup>3</sup> will not be further discussed here. However, two stages of the Pythagorean theory are most important, also for the future:

1. *The discovery of irrational numbers (e.g., the square root of 2) in terms of the relation between the sides and the diagonal of a square, and*
2. *the application of the theory of numbers to acoustics (theory of sound).*

1 See Brunschvicg, *Les étapes de la philosophie mathématique*, p. 79.

2 Aristotle, *Analytica posteriora* 1.3 – 73 a 7. Cf. *Analytica posteriora* 2. – 94 a 24. Curiously, this Aristotelian idea reappears fully in the *Begriffsjurisprudenz*, ridiculed so bitterly by von Jhering.

3 On this and on the mathematics of Plato, see the excellent study by D. H. Th. Vollenhoven, *De Wijsbegeerte der wiskunde van theistisch standpunt* (diss., Vrije Universiteit; Amsterdam: Van Soest, 1918), p. 33 ff.; Brunschvicg, *Les étapes de la philosophie mathématique*, p. 33 ff.; Cohn, *Geschichte des Unendlichkeitsproblems*, p. 29 ff.; and Hermann Hankel, *Zur Geschichte der Mathematik in Alterthum und Mittelalter* (Leipzig, 1874), p. 108 ff.



The discovery of irrational numbers (imputed by the classical Greek mind to the Pythagoreans as though it were a mortal sin since it appeared to upset the ordered cosmic harmony as required by the ideal of beauty), if thought through correctly, meant a death blow for naive realism, which in Aristotle considered number to be a real property of things. The application of the theory of number to acoustics signified the first, though not yet very methodical, step towards the mathematization of nature, a prelude to the method of modern natural science.

Plato extended the Pythagorean line of thought to the concept of science but abandoned the identification of number and thing (substance). This correction of Pythagorean naive realism was undoubtedly inspired by the irrational numbers (such as the square roots of 2, 3, 5, 7, etc.), which do not allow of visual representation.<sup>1</sup> To Plato the test for truth resided in mathematics. It is very characteristic that he accorded mathematical ideas a special place between the sensory world of appearances (*phaenomena*) and the ideal world of the remaining ideas (*noumena*),<sup>2</sup> and that he attributed reality to mathematics through its participation in the highest idea (the good, the One). Accordingly, mathematics is given the task of discovering the truth in sensory phenomena, in other words, of grasping these sensory phenomena in a scientific form and placing them in a scientific context. Thus Plato accorded the highest position to mathematics as a universal working method,<sup>3</sup> whereas Aristotle's theory of syllogisms actually raised biology, which was founded by Aristotle, above mathematics. Aristotle limited mathematics to the narrow area of size (quantity) as a special property (category) of *substance*. The science of nature for him did not orient itself to mathematics but to biology, and it is curious that the classic mathematical work of Greek antiquity, the *Elements* of Euclid, tried unsuccessfully to accommodate itself to the Aristotelian conception of science.<sup>4</sup>

Plato assigned mathematics (algebra and geometry) the task of expressing the sensory world in pure concepts of thought (numbers and geometrical figures), concepts which use sensory things (material geometrical figures) only as *paradeigma* (example) but which themselves no longer contain sensory transitory elements.

1 See the introduction to the dialogue *Theaetetus*; Brunschvicg, *Les étapes de la philosophie mathématique*, p. 48.

2 See Plato, *Republic*, 6.20-21, where he distinguishes between the visible world, consisting of images of things and the things themselves, and the ideal world, consisting of ideas and mathematical forms.

3 Ibid. 7.6-9.

4 See Brunschvicg, *Les étapes de la philosophie mathématique*, p. 84 ff. The fundamental significance of *mathesis* for mathematical natural science was so little appreciated until shortly before the Renaissance due to this methodological accommodation to Aristotle's syllogistics.



As paradigm of mathematics, however, sensory things also participate (*methexis*) in the ideas, in true being. In this way the sensory finally becomes a *problema*<sup>1</sup> for mathematics. Hence Plato corrected both the Pythagorean and the Eleatic Schools: the Pythagoreans, by separating the ideal mathematical construct from sensory reality; and the Eleatics, by once more allowing the sensory world as paradigm to participate in the achievement of true knowledge.

Of great importance in this connection was Plato's warning not to reject a phenomenon if the initial observation does not yield satisfactory results, but rather to continue searching, using the *method of hypothesis*, until a strict regularity (*orthotes, taxis*) expressible in a mathematical formula is discovered in the sensory phenomena. Plato here spoke of a "holding fast to" (literally, rescuing) the phenomena (*ta phaenomena diazoizein*).<sup>2</sup> According to Plato, the empirical should not be rejected, but neither should science regard it as true being on the basis of visual, sensory appearance.

Now it is highly significant that Plato, albeit largely in concurrence with his predecessor Hippocrates of Chios,<sup>3</sup> assigned mathematics the task of *analytical method* by which it reduces more complex questions to simpler, already proven statements (hypotheses). It is on this reduction of more complicated to simpler statements that Plato bases the possibility of logical proof (the *logon didonai*). To that end all knowledge must be reduced to the simplest general basic tenets of *science* (the final hypotheses).<sup>4</sup> These latter, in turn, have no other source than the requirement for science itself, insofar as ordered knowledge of the sensory multiplicity is possible only with the aid of these hypotheses.

Thereafter Plato, especially in his *Republic* 7.6-12, presented a kind of descending series of sciences according to their value for knowledge: first of all algebra, then geometry (which he said must also include stereometry, a new requirement in his day), then astronomy, by which he meant the theory of the movement of heavenly bodies in space (therefore, in the widest sense of the term, our contemporary mechanics), then acoustics (Plato called it "music" in line with the Pythagoreans), and so on. This in principle formulated the requirement of modern natural science: to determine sensory phenomena scientifically according to their mathematical

1 Plato, *Republic* 7.6-9.

2 Thus Simplicius of Cilicia, *Aristotelis De caelo commentaria* [on Aristotle's *De caelo*], 292 b24, quoted by Paul Natorp, *Platos Ideenlehre: Eine Einführung in den Idealismus* (Leipzig: Meiner, 1903), p. 364 ff. Natorp's interpretation of Plato, which, too tendentiously, favors the Neokantian philosophy of the Marburg school, cannot be accepted as entirely correct from a historical viewpoint. See also Brunschvicg, *Les étapes de la philosophie mathématique*, pp. 55-67, and Paul Tannery, "L'éducation platonicienne [pt. 7]: l'analyse géométrique," *Revue philosophique* 11 (1881), 1:297 ff.

3 See Brunschvicg, *Les étapes de la philosophie mathématique*, p. 53.

4 This teaching is found especially in Plato's *Phaedo* (cf. 101d) and his *Republic*, bk. 6.

relations.<sup>1</sup> The fact that in the synthetic method of his dialectic Plato ends by characterizing scientific knowledge as *provisional* knowledge (*dianoia*), as *the way to* comprehending ideas (especially the idea of the good, which idea is at the same time the highest absolute mathematical unity, and the fact that in this dialectic he relapses into the ancient fruitless symbolism of number (cf. the dialogue *Timaeus*),<sup>2</sup> only go to show that in the end Plato did not succeed in steering clear of speculative metaphysics. Yet the manner in which he unfolded a program for scientific thought contained an immensely fruitful principle (at least for natural science) to which the Renaissance would naturally revert in its development of modern natural science.<sup>3</sup>

### **How the Renaissance applied the Platonic ideal of science. Nicholas of Cusa**

Credit for first connecting the modern line of thought to Plato's concept of science is nowadays generally given to Nicholas of Cusa (1401-1464).<sup>4</sup> He was a German cardinal, who, to some extent still living in the Middle Ages (he participated in the Council of Basel), nevertheless developed so many modern humanist notions in his writings that his system is rightly singled out as the turning point in the history of philosophy, as the harbinger of modern philosophy.<sup>5</sup> He appears in literally every field as the pioneer of the modern humanist idea. In the *political field* he developed a system of parliamentarianism almost modern in appearance, cast in the mold of organic, corporative electoral colleges whose elected members *were to represent the entire people* in a parliament (*in uno compendio representativo*).<sup>6</sup> In the field of *theology* he

1 Brunschvicg, *Les étapes de la philosophie mathématique*, p. 60.

2 See Vollenhoven, *De Wijsbegeerte der wiskunde van theistisch standpunt*, p. 80 ff., and Brunschvicg, *Les étapes de la philosophie mathématique*, p. 57.

3 See Brunschvicg, *Les étapes de la philosophie mathématique*, pp. 53, 62: "It is a fact that the flow of the last speculative dialogues of Plato, the *Philebus*, the *Sophist*, the *Republic*, the *Timaeus*, is marked, as Gompertz has put it, by a change of dynasty: 'the scepter here passes from dialectic to mathematics.' But it is also a fact that the duration of the new dynasty was short, and that with Aristotle the scepter reverted back to the heir of the dethroned dialectic, formal logic, which was to hold it until the Renaissance." (This last suggestion is not entirely correct; see below.)

4 For his biography see Johann Übinger, "Zur Lebensgeschichte des Nikolaus Cusanus," *Historisches Jahrbuch*, 1893.

5 Of course one also still finds numerous Scholastic elements in his work; on this, see Richard Falckenberg, *Grundzüge der Philosophie des Nikolaus Cusanus mit besonderer Berücksichtigung der Lehre vom Erkennen* (Breslau, 1880).

6 See Gierke, *Staats- und Korporationslehre*, p. 602, and even more, Chr. Schmidt, "Nikolaus von Cusa und die Reform von Staat und Kirche," *Historisch-politische Blätter für das katholische Deutschland* 141 (1908): 557, 701-21, and Theodor Stumpf, *Die politischen Ideen des Nikolaus von Cues: Ein Beitrag zur Geschichte der deutschen Reformbestrebungen im 15. Jahrhundert* (Cologne, 1865). Earlier,

was the forerunner of humanistic pantheism; in the field of *mathematics* he intuitively anticipated Newton's and Leibniz's discovery of infinitesimal calculus; in the field of *epistemology* he broke new ground for the modern concept of science; finally, in the field of *philosophy* he was the great trailblazer for the modern humanist law-idea.

In this historical survey we shall only discuss Nicholas of Cusa's concept of science. In the development of his conception of science his independent modern spirit is immediately evident. With a bold gesture he throws off the oppressive yoke of authorities which had almost rendered independent thought and inquiry impossible during Scholasticism's period of decline, in order to go resolutely his own way.

In his work *De docta ignorantia* (On learned ignorance) he calls truth an *infinity* that our finite knowing can only gradually *approximate* but never embrace.<sup>1</sup> However, Nicholas of Cusa did not restrict himself to this – in itself not original – thesis concerning the approximating character of our knowledge, but instead pointed science *the way* to approach the truth in this infinite process. For him the infinite is not just the inaccessible goal of our knowledge, but at the same time also the *means by which to attain true knowledge*. Just as everything has its origin in the infinite, so also all things can be known only in the infinite and by means of the infinite.<sup>2</sup> He applied this principle of infinity first of all to mathematics and philosophy, albeit rather naively. It serves as a reconciliation of opposites and as a means for inferring the particular from the infinite. His epistemology<sup>3</sup> distinguishes four steps of knowledge:

1. the *sensory*, which only presents confused images; above it,
2. the *intellectual*, which places sensory images in time and space, determines them numerically, and keeps opposites apart by the principle of logical contradiction; then
3. the *rational*, which manages to reconcile opposites with each other; and finally,
4. the *visionary (contemplative)*, by which the opposites come together in the infinite unity (God).

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similar ideas concerning politics had been developed by Marsilius of Padua who, moreover, already defended a radically modern theory of popular sovereignty.

- 1 Nicholas of Cusa, *De docta ignorantia* (Basel ed., 1565) 1.1. For the development of Nicholas of Cusa's conceptions in his various works, which cannot be further dwelt on here, see Johann Übinger, "Die philosophischen Schriften des Nikolaus Cusanus," *Zeitschrift für Philosophie* 103 (1893): 65-121; 105 (1894): 46-105; 107 (1895): 48-103). See also Übinger, "Die mathematischen Schriften des Nikolaus Cusanus," *Philosophisches Jahrbuch der Görres-Gesellschaft* 8 (1895): 301-17, 403-22; 9 (1896): 54-66, 391-410; 10 (1897): 144-59.
- 2 See Cohn, *Geschichte des Unendlichkeitsproblems*, p. 87.
- 3 More on this in Falckenberg, *Grundzüge der Philosophie des Nikolaus Cusanus*, and especially Cassirer's excellent *Das Erkenntnisproblem*, 1:22-61.

According to Nicholas, these four steps cooperate organically. The higher always includes the lower. In the infinite process of knowledge he attributes the greatest value to mathematics. There he introduces the extremely fruitful concept of the *infinitely small*, with the aid of which he wants to calculate finite quantities (see his *De mathematica perfectione*). He wants to understand all geometrical figures in terms of the infinitesimally small *point*. Whatever is found in a geometrical body or figure is but the unfolding of the indivisibility of the point. Hence in the infinitely small circle and sphere, circumference and center coincide. Triangle, circle, and sphere are reduced to the infinite line, itself reducible to the point. Similarly, all numbers are merely the unfolding of unity, as the indivisible number. That the foundation and application of his principle of infinity are still very naive and not very methodical does not detract from the value of the basic idea. In any case, for him the principle is *universal*. That is, Nicholas carried this (essentially mathematical) principle of infinity through to the entire realm of knowledge. The universe, viewed as finite and limited by Scholasticism (in line with Aristotle), was seen by him as infinite. He saw the earth, viewed as the fixed center of the universe according to the medieval Ptolemaic world-picture, as a moving, infinitely small point in the endless movement of worlds, an idea that boldly anticipated the discovery of Copernicus and the philosophy of Giordano Bruno. He also saw the particular as infinite in a certain way, since it contains all that exists (as the infinitely small) in its own way; it reflects the whole world from its limited vantage point, and is an abridged and condensed expression of the universe.<sup>1</sup> Even more so, the human being, too, is a small world (microcosmos) since he is a *conscious* mirror of the universe. Each thing coheres organically, as it were, with all other things; it differs from them and yet coincides with them again in infinity; it potentially contains all the others; and it is, inversely, contained in all the others. Only in God is there absolute unity without multiplicity, and only in Him are all opposites reconciled into absolute unity.<sup>2</sup>

This entire conception of the infinite is permeated by a humanistic optimism, which, unlike Greek antiquity and the Middle Ages, no longer sees evil in the world's infinity, but the good and the beautiful.<sup>3</sup> The principle of infinity became the point of contact for a reformation of mathematics,<sup>4</sup>

1 On this point Nicholas of Cusa's theory contains the germs of Leibniz's monadology.

2 We shall return to Nicholas of Cusa's theology below.

3 In Plato and Aristotle, the infinite (*apeiron*) is still an expression of evil. This certainly has to do with the ideal of beauty of the Greek worldview.

4 Through Newton's theory of fluxion and Leibniz's differential and integral calculus, both already prepared by Benedetti's mathematical investigations. (More on this later.)

whereby mathematics could better fulfill its task with respect to natural science. The characterization of our knowledge as an endless process anticipated the classic expression of the modern concept of science.

**The concept of science in modern physics. The school of Buridan and the Copernican revolution in astronomy**

Until recently it was customary to trace the foundations of modern natural science to the trio of Copernicus, Kepler, and Galileo, and as a matter of courtesy the pioneering achievements of the great painter, intellectual and philosopher, Leonardo da Vinci, would also be commemorated.

This customary approach has become untenable since the historical research of Pierre Duhem about Leonardo da Vinci.<sup>1</sup> Duhem has shown that already in the fourteenth century the Ockhamist school of Jean Buridan, Albert of Saxony, and Nicole Oresme at the University of Paris, in essence gave a scholarly defense of all the basic tenets that were later rediscovered, so to speak, by Copernicus and Galileo.<sup>2</sup> This school in fact began the *systematic* assault on Aristotelian physics as being clearly inadequate for the explanation of natural phenomena. Buridan (ca. 1300-1358) brilliantly utilized the Platonic concept of science in mechanics, which he reduced to the previously formulated concept of *impetus* (urge to move), in the process clearly anticipating the law of inertia and the physical concept of force.

Through Albert of Saxony (d. ca.1390) this theory gained influence with Leonardo da Vinci (1452-1519). In the sixteenth century it was disseminated among the Italian natural scientists until the great Galileo adopted the "Parisian legacy."

Similarly, Nicole Oresme (d. ca. 1382), on purely scientific grounds, had already advocated Copernicus' theory of the daily motion of the earth while heaven remains at rest (a thesis which for that matter had also been defended earlier), and he anticipated Descartes' theory of coordinate geometry (which established analytic geometry as a science) as well as Galileo's discovery of the laws of falling bodies.<sup>3</sup>

This does not alter the fact that modern natural science first achieved its world-historical significance through the scientific work of Copernicus, Kepler, and Galileo, since they were the first to combine the new ideal of science with the turbulent intellectual movement of the Renaissance that

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1 Pierre Duhem, *Etudes sur Léonard da Vinci* (Paris: Hermann), of which the first series appeared in 1906.

2 Ibid., 3<sup>rd</sup> ser. (1913): "The physicists of Paris had conceived this mechanics by taking observation as their guide; they had substituted it for the dynamics of Aristotle, convinced of its impotence to rescue the phenomena." One might trace the historical line back still further to Grosseteste and Roger Bacon (for these representatives of the famous Oxford school see above, chapter 3.

3 Ibid., pp. 350-60 and 375-88.

was capable of generating a new law-idea, whereas the Ockhamist law-idea (see above, chapter 4) was not in the least oriented to natural science. From this point of view Copernicus' fresh discovery of the double motion of the earth, which definitively upset the Ptolemaic world-picture, must undoubtedly be seen as a milestone in the history of science<sup>1</sup> – so much so, that the great Königsberg philosopher Immanuel Kant qualified the revolution he himself brought about in philosophy as a *Copernican* act. As Kant remarked, the birth of natural science was complete the moment it was understood that one must learn from nature, but not as a schoolboy who accepts whatever the teacher says, but rather as a judge who compels witnesses to answer his questions.<sup>2</sup>

In this respect, Nicolaus Copernicus (1473-1543) did no more than what the Ockhamist school of Buridan had already started before him. In his immortal work *De revolutionibus orbium coelestium*, which appeared just before his death with a dedication to Pope Paul III, he did not so much incorporate new observations concerning the firmament as fundamentally transform the theory on which the world-picture of the day was built. What was the significance of this scientific revolution?

The theory of the so-called Ptolemaic world-picture, which had entered the Middle Ages by way of Aristotle's physics, was no theory in the scientific sense of the word. The thesis that all heavenly bodies moved in a circular orbit about the earth as the fixed and inert center of the universe was a hypothesis that arose out of a mixture of the Greek mythical conception of beauty, which saw the ideal of harmony in circular motion, and an unchecked view of phenomena according to the sense of sight. Aristotle took the earth as starting point for his view. Seen from earth, it indeed appears as though our planet lies still while all heavenly bodies revolve around it. Furthermore the immovable inertia of the earth appeared to be accounted for by the heavy elements of its composition, which *naturally* choose a downward direction towards the center. And the most important incontrovertible proof of the thesis that the earth was indeed the center of the universe was found in the belief *that according to sensory appearance* every circle described around an arbitrary observation point on earth divided the heavenly sphere into two halves. It was thought that this could not be the case if the earth were not placed precisely in the center of the universe. In the meantime this theory, resting as it did on such a weak hypothesis, had long before appeared to be at odds with natural phenomena themselves. In particular, the orbits of the planets posed great problems for astronomers when they were represented as movements around the earth. It had be-

1 See Paul Natorp, "Die kosmologische Reform des Kopernikus in ihrer Bedeutung für die Philosophie," *Preussische Jahrbücher* 49 (1882): 355-75, a study which for that matter, no more than the well-known study of Thomas-Henri Martin, *Galilée: Les droits de la science et la méthode des sciences physiques* (Paris, 1868), takes the historical significance of Buridan's school into account.

2 Immanuel Kant, Preface to *Kritik der reinen Vernunft*, 2<sup>nd</sup> rev. ed. (Riga, 1787).



come apparent that on this hypothesis the orbits of the planets were not circular at all. To save the hypothesis nevertheless, a number of spheres were concentrically interrelated, but in such a way that each could revolve independently of the others. Since this construct did not fully account for the phenomena either, a further image was resorted to, namely that the planets did not circle directly around the earth, but in a smaller revolution (epicycle) around an empty, merely imaginary center which, in its turn, described a circle about the earth (*circulus deferens*). Yet, the more advanced the knowledge of the phenomena, the more obvious became the weaknesses of the Ptolemaic picture of the universe. Even the ancients had felt compelled to abandon the homocentric spheres and allow for eccentric ones, which considerably jolted the admired harmony of the system. Since epicycles could not do the job, epicycles around epicycles were required in order to explain the phenomena, and in the end the system needed so many props and supports that King Alfonso of Castile once exclaimed derisively that “had God asked him for advice, things would be in better shape.”

Thus natural science neglected Plato's warning that the hypothesis must serve to save the phenomena. Instead, it appeared as though the hypothesis was to be saved at the expense of the phenomena.

Now the outstanding feature in Copernicus, as in his predecessor Nicole Oresme, was that he conceived and applied his theory of the twofold revolution of the earth around its own axis and around the sun as a *scientific* theory, a theory based on evidence that the *phenomena repeatedly confirmed it and that it alone was capable of ordering them integrally and harmoniously into a world system, into a true cosmos*.<sup>1</sup> Above all, the *simplicity* and *clarity* with which his theory allowed the phenomena to fit under a single law convinced Copernicus of the truth of this hypothesis. No longer an unmethodical search for connections between phenomena, his was an empirical scientific investigation on a strictly mathematical basis.

### Kepler and Galileo

Plato's program of the mathematization of nature received further elaboration through the scientific work of Johannes Kepler (1571-1630).<sup>2</sup> Kepler's work marks the resolute modern breakthrough of a *quantitative* worldview in clearest contrast with the *qualitative* view of Aristotle. The concepts by which the Aristotelian-Scholastic philosophy of nature had tried to comprehend phenomena – substantial form, properties, qualitative change – were set aside; the purposive view of nature that had

1 Natorp, “Die kosmologische Reform des Kopernikus,” p. 361.

2 On Kepler's significance for science see Carl von Prantl, *Galilee und Kepler als Logiker* (Munich, 1875); Christoph von Sigwart, *Kleine Schriften* (Freiburg im Bressgau, 1889), 1:182 ff.; Ernst Goldbeck, *Keplers Lehre von der Gravitation: Ein Beitrag zur Geschichte der mechanistischen Weltanschauung* (Halle an der Saale, 1896); and Cassirer, *Das Erkenntnisproblem*, 1:328-77.



continued to influence the Renaissance's philosophy of nature (Telesio, Campanella, Giordano Bruno) was cast aside as unscientific; size, shape, number, motion and law became the only adequate principles of explanation. Mathematical relationships constituted the only knowable objects of exact science.

With this new turn the philosophical application of mathematics lost its mystical symbolic character which it still had in the Pythagorean number mysticism and also in Nicholas of Cusa. All true knowledge is knowledge of relationships that can be expressed in mathematical concepts. Nature loves simplicity and avoids superfluity; with the fewest possible means it achieves the most. Thought must adapt itself to that truth and explain as much as possible with the fewest principles of explanation (economy of thought). A scientific hypothesis must not be an artificial construct of fictions adapted to phenomena with difficulty, but must reduce phenomena to their true and simple elements. With the aid of this modern natural-scientific method Kepler discovered his three famous laws of the motions of the planets.<sup>1</sup> These laws could later be deduced more generally from Newton's law of gravity, which also proved that Kepler's laws hold good for every body revolving around a central body according to gravity.<sup>2</sup> This is the first time that the concept of a "law of nature" appeared in its modern form.

The modern concept of a law of nature, a law equally valid for all physical phenomena in the universe, could only make its appearance after Aristotelian-Scholastic physics had been firmly rejected. The old physics, which proceeded from the qualitative properties of physical things as substance and which allowed quantitative relationships to depend on those qualities, could not arrive at a truly mathematical regularity (lawfulness) of phenomena. It assumed a difference in principle between the earthly and the celestial sphere. According to this view, the sphere of celestial bodies is governed by immutability and perfection in form and motion; but earth, the sublunar sphere, is governed by change and transience. The physical concepts of motion, rest, weight and lightness,<sup>3</sup> cold and heat, fluidity and stability, counted as absolute qualities of things which the op-

- 1 I. The paths of the planets about the sun are ellipses with the center of the sun being located at one focus. II. The "radius vector" (that is, the imaginary line drawn from the center of the sun to that of a planet) sweeps out equal areas in equal intervals of time. III. The ratio of the square of a planet's rotation time to the cube of its average distance from the sun is a constant.
- 2 Newton's law of gravity is as follows: Two bodies attract each other with a force that is proportional to the product of their masses and inversely proportional to the square of the distance between them.
- 3 By way of illustration, we refer to Aristotle's conception that bodies are either heavy or light by nature, and that the movement of the former tends upwards and that of the latter downwards. With this conception he argued against the followers of Democritus who taught that all atoms are similar and heavy, but because some of them are heavier they fall down, while pushing up the lighter ones. See

erations of nature effected by mutual affinity or opposition. In the Italian Renaissance, philosophy of nature for the longest time combined this view with the conception of the animated nature of matter, of guiding intelligences (cf. Scaliger's theory) which move the world and its different spheres from within. This view found its grandiose poetic expression in the first part of Dante's *Paradiso* with its depiction of the unity and coherence of the heavenly spheres and their beatific movers.

When, however, in Plato's line mathematics replaced biology in the explanation of natural phenomena, this entire biological and animistic physics had to collapse. Continuing in the footsteps of Gilbert, whose fundamental work on magnetic phenomena (appearing in 1600) dealt a fatal blow to Aristotle's physics,<sup>1</sup> Kepler posited *the unity of the modern concept of nature* over against the old dualism of the sublunar world and the celestial world. The law-idea in its modern conception does require the *multiplicity of phenomena*, but it excludes the *exception* (by appealing to Plato's construct of the *hen kai polla*, the one and the many): it is one and the same law in the universe that meets us equally in each of its points. Hence one may proceed from an ordinary single phenomenon, say that of the earth's gravity, and still be sure that it is an example of universally valid cosmic relationships. But this concept of a law of nature, first verbalized in Kepler's famous laws concerning the motions of the planets,<sup>2</sup> demanded a definitive break with the ancient teleological view of nature from which not even Copernicus had totally freed himself. Nature had to present itself to scientific research not as an animated organism but as a mathematically ordered clockwork. Therefore the object of natural science must henceforth not be the qualitative properties of things in nature, according to their mutual affinity or opposition, but the mathematical relationships and connections among natural phenomena. The concept of relation, of connection, began to replace that of substance (*entelechy*) in order to accomplish, through a mathematical ordering and regularity, the construction of a unitary world-picture from what appears to be incongruous.

Kepler was not completely clear on all this, nor on the scientific hopelessness and uselessness of the old metaphysical way of posing the problem which sought to explain the origins of *being* itself, until late in his development. He was no doubt influenced by his correspondence with his friend Galileo. Euclid's ancient synthetic geometry especially continued to retain its hold on Kepler. In his *Harmonia mundi* the idea still persists

Simplicius of Cilicia's commentary on Aristotle's *De caelo* 257b; Heinrich Ritter and Ludwig Preller, *Historia philosophiae Graeco-Romanae*, 7<sup>th</sup> ed. (Gotha, 1888), sec. 109 B.C., as quoted in Leopold Löwenheim, "Der Einfluss Demokrits auf Galilei," *Archiv für Geschichte der Philosophie* 7 (1894): 234.

1 See Cassirer, *Das Erkenntnisproblem*, 1:359 ff.

2 Hanc (secundam inaequalitatem planetarum) pernitacissimis laboribus tantis pertractavi, ut denique sese naturae legibus accomodet . . .," Kepler to Fabricius, May 1605, in *Opera omnia*, ed. Christian Frisch (Frankfurt am Main and Erlangen, 1858-71), 3:37, as quoted in Cassirer, *Das Erkenntnisproblem*, 1:375.

that geometrical forms, which are engraved in the mind, represent the archetype of the external world and also that all value attached to algebraic analysis ultimately derives from geometry. According to Kepler, algebraic analysis still says nothing about the existence, the form of being, of things. Real scientific being, the *essentia scientialis* of an element, can only be discovered through geometry.<sup>1</sup> Once again the old fruitless metaphysics, which inquires after the unknowable essence of things, prevailed.

The fundamental separation of metaphysics and natural science and hence the complete emancipation of the latter was finally accomplished by Galileo (1564-1642), who thus carried the modern concept of science through to its full consequence. The entire life of this brilliant founder of modern science<sup>2</sup> was one continuous tragic illustration of the unbridgeable gap that separated the Aristotelian-Scholastic way of thought from the modern one.<sup>3</sup>

Born in Pisa in 1564 and called at an early age to a professorship at Pisa and later Padua, Galileo Galilei was summoned to the court of the Medici in Florence in 1610, where he became court astronomer for the ruling patrons of art and science, Cosimo II and Ferdinand II. Because of his avid and passionate defense of the Copernican system of the universe<sup>4</sup> he became embroiled in a serious conflict with the Curia which forced him in 1633 to abjure this system as heretical. Blind and spiritually broken, he died in 1642 in his villa at Arcetri near Florence.

Throughout his entire life Galileo had to battle against the Scholastic concept of science whose most naive defender was one of Galileo's Aris-

1 Cassirer, *Das Erkenntnisproblem*, 1:368-70, and Kurt Lasswitz, "Galileis Theorie der Materie," *Vierteljahrsschrift für wissenschaftliche Philosophie* 12 (1888): 465. Kepler himself tells us how difficult it was for him to give up the absolute geometrical "perfection" of the orbits of the planets, which, as he had assumed, could only consist in strictly circular motion.

2 On this see Thomas-Henri Martin, *Galilée*.

3 *General Editor's Note (DS)*: Galileo was not rehabilitated until 1984, by Pope John Paul II.

4 It would be better, really, to speak of Giordano Bruno's system of the universe which he had created by combining it with the philosophy of Democritus and Epicurus. *Giordano Bruno*, unlike Copernicus, who thought that there was but one world system and that the world was limited, adopted the Democritean-Epicurean conception that there is an infinite number of world systems. We shall return to this later. For more on the matter see Löwenheim, "Der Einfluss Demokrits auf Galilei," p. 252 ff. Löwenheim's view of the influence of Plato and Democritus on Galileo, expressly one-sided in favor of Democritus, does not appear to me to be tenable, at least as far as the methodological point of view is concerned, since Löwenheim is out to obscure the basic difference between the Platonic and the Aristotelian concepts of science. But we certainly do not wish to detract from the enormous influence of Democritus on the rise of modern science, as will be evident below.

totelian opponents who refused to look through the master's telescope since it "would only confuse his brain."

### **The new natural-scientific method and Scholasticism**

The contrast with the Scholastic way of thinking finds its clearest expression in a place in Galileo's *Dialogue Concerning the Two Chief World Systems* that explains the possibility of applying geometrical concepts and propositions to the entities of immediate sensory experience. Scholastic philosophy, personified by the speaker Simplicio, sees no difficulty here. One may apply mathematical subtleties in the abstract, but one must not demand a precise and exact validity for them in sensory and physical matter. That a sphere touches a plane only in one point is correct in theory, but not in the world of reality. Thus matter as "substance" is contrasted with mathematics as impeding the full application of its pure concepts. However, Galileo argues against the dualism between truth and reality that is presupposed here. Sphere and plane have no other existence than that of the truth and the properties that flow from their geometrical definitions.

The certainty of the conclusions drawn by abstract mathematics is not impeded by the special area in which mathematics is applied – in this case the area of nature – any more than the objects of nature are inaccessible to purely algebraic computation. It is at this point, however, that the modern concept of science is most clearly highlighted. Galileo readily admits that abstract theory and concrete phenomena are never entirely reconciled at any level of our scientific experience. Without a doubt, the complicated phenomenon in its totality as observed by sensory experience is not immediately comprehensible in purely mathematical concepts. Thought must first analyze complex sensory observations in purely quantitative terms before applying purely mathematical computations to natural phenomena. In this way the motto of Italian natural philosophy, "the book of nature is written in numbers," acquires a new meaning. Accordingly, in modern scientific thought nature does not, as in Aristotelian Scholasticism, appear as a totality of closed things which experience would have to represent in consciousness. Rather, nature appears as a *task*, a *problem*, a *challenge* to mathematical computation, a challenge which science never completely meets. The unending task of science is constantly to track down new relations between phenomena by means of discursive thought. But it cannot even begin to do so without accounting for the hypotheses (*supposizioni*) which thought itself lays down in support of, and in reference to, empirical research.<sup>1</sup> Without such hypotheses, definable in mathematical concepts, the mathematical science of nature is impossible.

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<sup>1</sup> See De Portu, "Galileis Begriff der Wissenschaft," p. 29, with citations from the works of Galileo.

These hypotheses are not discovered through an inductive analysis of the greatest possible number of cases of the same class, but through the complete analysis of a single case. If inductive analysis, as in Aristotle's view, would actually have to go through all possible cases, then it would be impossible where the individual case endlessly repeats itself, and useless wherever it were possible. The Aristotelian syllogism teaches nothing that is not already known. For in the syllogism (all a's are b, c is b, therefore a is like c) the premises already contain all the knowledge that the conclusion is to provide. However, true science seeks the *expansion* of our knowledge, knowledge of that which is knowable but not as yet known, and this knowledge is provided by the analytical method (*metodo risolutivo*), which by a mathematical analysis of a particular natural phenomenon discovers the law that necessarily causes the phenomenon. A particular phenomenon, say the falling of a stone, already contains the entire law of its causation, though mixed in with the operations of other causes. If one thinks one has discovered the law in an analytical manner, the law may be tested as an hypothesis by an experiment, and if the hypothesis is confirmed experimentally, then by means of the synthetic method (*metodo compositivo*) the cause of other phenomena can be inferred from the natural law thus established.<sup>1</sup> Purely mathematical analysis therefore must be applied to natural phenomena if the experiment is to take us a step closer to the knowledge of the system of nature.

With this method Galileo discovered his famous *law of falling bodies* based on the hypothesis of uniform accelerated motion, with which he gave the science of mechanics its strict mathematical structure. Of course it had been known all along that a falling stone and a flying arrow demonstrate an impetus or urge to move, but these effects were known only as sensory observations. Galileo's achievement consisted in finding a mathematical concept for these sensory observations in learning how to measure motion and determine it according to laws of nature. The famous physicist Benedetti, following in the footsteps of the school of Buridan and no doubt partly influenced by Nicholas of Cusa and Italian natural philosophy, had taken the initiative to define uniform accelerated motion in terms of pure mathematics.<sup>2</sup> He had already learned to define motion mathematically in its intensive sense, in that he accepted it as a tendency even where the trajectory, and therefore also the time of motion, become infinitely

1 See Alois Riehl, "Über den Begriff der Wissenschaft bei Galilei," *Vierteljahrschrift für wissenschaftliche Philosophie* 15 (1891): 4 ff.

2 To have demonstrated this is one of the achievements of Wohlwill's well-known study, "Die Entdeckung des Beharrungsgesetzes," *Zeitschrift für Völkerpsychologie und Sprachwissenschaft* 14 (1883): 25-31. See also Lasswitz, "Galileis Theorie der Materie," pp. 465-70, and Löwenheim, "Der Einfluss Demokrits auf Galilei," p. 242.

small.<sup>1</sup> Galileo called this intensive unity of motion *momentum*, and he succeeded in defining uniform accelerated motion purely mathematically by tracing the quantitative relations between this momentum and the durations and velocities of motion: “Steady or uniform acceleration I call that which, proceeding from rest, increases the speed by equal momentum in equal intervals of time.” Following this definition, Galileo declared expressly that the speed does not remain the same in any single finite moment of time, no matter how infinitesimal. Only in the infinitely small moment of time can thought accept that the speed remains unchanged. In so doing, the *continuity* of motion was mathematically defined with the aid of the concept of the *infinitely small*. At the same time, changes in nature were made accessible to mathematical conceptualization: in every infinitely small moment of time, motion increases by the same infinitely small quantity.

Thus emerged, as a conclusion from mathematical contemplation, the law of falling bodies, establishing the mathematical relations between the duration, space, and speed of motion. Their confirmation by Galileo's experiments in Pisa proved the correctness of the hypothesis underlying them. The mathematical necessity and universal validity of this law of nature was thus incontrovertibly demonstrated. Contrary to the ancient physics of Aristotle, according to whom the continuation of motion was caused by an external medium (air), motion was here recognized in its intrinsic regularity (lawfulness). Thus, de facto, in opposition to Aristotelian physics, the law of the continuation of motion, barring disturbing influences, became the foundation of mechanics.<sup>2 3</sup>

Now it was no longer necessary to require the impossible, namely, that *all* phenomena must be investigated experimentally in order to come to a universally valid conclusion. No, even if the underlying hypothesis was confirmed by only a limited number of experiments, a universally valid law of nature could be inferred with mathematical certainty, since the relations established between phenomena were reduced to purely mathematical quantities and were therefore made accessible to mathematical calcu-

1 Benedetti in his major work of 1585 [*Diversarum speculationum mathematicorum et physicarum liber*] taught that the direction of a curved motion is determined by the tangent to the trajectory and that therefore a body that is in circular motion has the tendency to move for some time in the direction of the tangent, a tendency which he thought of as gradually diminishing, just as did his predecessors.

2 Wohlwill's opinion that Galileo never knew this so-called *Beharrungsgesetz* cannot be accepted as correct. See Löwenheim, “Der Einfluss Demokrits auf Galilei,” pp. 244-45. Wohlwill did show convincingly that Galileo did not arrive at the discovery of the continuation of motion by way of his law of falling bodies.

3 *Editorial Note (DS)*: Further research has shown that Galileo was not as original in this respect as we are accustomed to think. The law of inertia was actually anticipated by thinkers in the fourteenth century. Cf. Anneliese Maier, *Die Vorläufer Galileis im 14. Jahrhundert* (Rome: Edizioni di Storia et Letteratura, 1949), pp. 132-215.

lation, providing objective certainty. It could, of course, turn out that the established law of nature was only a special case of a more comprehensive law, and it is precisely the never-ending task of science to continue this process of generalization by discovering ever fresh relations.

Such was the methodological significance of the *nuova scienza* (new science) of Galileo.



## Chapter 7

### *The New Conception of Matter*

The new science entailed a completely different conception of *matter* from the view that was common in Scholasticism. Galileo rejected – and had to reject resolutely because of his new conception of natural law – the Aristotelian-Scholastic notion that there can occur in nature *absolute change*, *absolute genesis*, and *absolute dissolution* of matter. It is in character when, in the *Dialogue Concerning the Two Chief World Systems*, Galileo has his Aristotelian opponents defend this conception by appealing to the immediacy of sensory experience: “for do we not day by day see herbs, plants, and animals coming to be and passing away before our eyes, do we not see how opposites are continually struggling with each other, how earth turns to water, and water to air and the latter again condenses into clouds and rain?”<sup>1</sup>

This naive view of the causality of natural phenomena explains how Aristotle could write that no proofs of mathematical rigidity can be looked for or demanded in nature. Matter conceived in terms of substance is indeed a hindrance to a consistent application of mathematical calculation. But for Galileo as well as the whole of modern natural science, only that concept of science is valid which posits mathematics as a necessary aid to understanding natural phenomena. Therefore, if it is to be meaningful to natural science, matter too must be viewed through the spectrum of mathematical concepts. Matter will not be *understood* unless it is conceived as possessing the properties of *limitation*, *spatial form*, and *quantity*; unless, furthermore, to the extent that it is to be investigated in its *individual* determination (body), it is described according to time, place, and state of motion. All these points of view, which can be summarized by the basic categories of number, time, space, and motion, necessarily belong to the mathematical concept of matter. By contrast, the *sensory qualities of color, odor, taste, and so on*, are but changing subjective qualities which depend on our ability to observe but which do not belong to the constant and necessary properties of matter. Matter, in mathematical thought, must be conceived as a homogeneous constant unity in which all change can mean only a relative movement of infinitely small particles of matter

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<sup>1</sup> Galileo, *Dialogue Concerning the Two Chief World Systems*, First Day, Op. 1:48, quoted in Cassirer, *Das Erkenntnisproblem*, 1:393.

(*atomi non quanti*)<sup>1</sup> but never an absolute passing away or a coming to be. The law of the constancy and permanence of matter as mathematical unity is the basic law without which not a single phenomenon of nature can be understood as a special case of a necessary law of nature.

**The influence of Democritus and Epicurean philosophy on modern natural-scientific thought and on the development of atomism and the modern naturalistic law-idea**

The new theory of motion and matter involved a factor that would be of particular importance for the development of the modern naturalistic law-idea, namely the influence of the Greek philosopher Democritus and of Epicurean philosophy on modern natural-scientific thought. As far as Galileo is concerned, only Democritus is significant, since Galileo himself testified that he did not know the works of Epicurus.<sup>2</sup> And as far as Democritus' influence on Galileo is concerned, any attempt to stamp him as simply a follower of the atheistic, materialistic philosophy of Democritus must immediately be nipped in the bud.

Democritus' influence on Galileo, according to the great founder of modern physics himself, was strictly limited to the area of natural science proper (the theory of motion, including astronomy, the theory of matter and that of the subjectivity of sensory qualities such as color, odor, and taste). The natural-scientific concept of law, according to Galileo, has no validity in the area of *legal science, politics*, or any other discipline which involves the human will.<sup>3</sup>

In the meantime it cannot be denied that the specifically modern naturalistic law-idea, which will be discussed below, also embraces the area of politics, and its content approximates the Democritean idea quite closely. Further, amid the rebirth of the various ancient systems, next to the philosophy of Plato the law-idea of Democritus held pride of place. The Renaissance introduced everyone to Lucretius, the Roman follower of Epicurus, who in turn derived his philosophy of nature mainly from Democritus.<sup>4</sup> Giordano Bruno combined Copernicus' conception of the motion of the

1 Galileo, deviating from Democritus, taught that homogenous matter is *infinitely* divisible; here the principle of infinity is thus also applied to matter; see Lasswitz, "Galileis Theorie der Materie," *Vierteljahrschrift für wissenschaftliche Philosophie* 13 (1889): 40 ff.

2 See Löwenheim, "Der Einfluss Demokrits auf Galilei," p. 232, and Paul Natorp, "Galilei als Philosoph: Eine Skizze," *Philosophische Monatshefte* 18 (1882): 214 n.

3 See Galileo, *Dialogue Concerning the Two Chief World Systems*, First Day, Op. 1:61 ff.; Third Day, Op. 1:439 ff.

4 The difference between the philosophy of Democritus and that of Epicurus lies mainly in the fact that in Epicurus the mechanistic view of nature, which expelled all fear of eternal punishment and of demons, wholly served his hedonistic ethics. See Eduard Zeller, *Die nacharistotelische Philosophie*, vol. 3 of *Die Philosophie*

earth with the Democritean idea of an infinity of worlds, and it was still during Galileo's lifetime that the famous Gassendi tried to revive the atomistic system of Epicurus.<sup>1</sup>

In the interest of a correct characterization of the naturalistic law-idea in its various nuances, our overview of the development of the modern concept of science during the Renaissance will conclude with a brief discussion of Democritus' worldview.

As a worldview, the system of Democritus of Abdera (b. 460 B.C.), a disciple of Leucippus, occupies a special place in Greek philosophy. This is not primarily due to its particular philosophy of nature but above all on account of its expressly *materialistic* and *mechanistic* law-idea. It was based on *atomism*, that is to say, on the theory that true and eternal *being* is to be attributed only to empty infinite space (the unbounded *apeiron* and *mè on*, Plato's rejection of non-being) and to the infinite number of atoms that are eternally in motion in it. These atoms are all composed of the same matter, they differ only in terms of the mathematical properties of size, form, place, and mass, and their combination and separation must explain all phenomena.<sup>2</sup>

This atomism implied a comprehensive law-idea of *mechanical natural necessity* (*anangkè* or *heimarmenè*). Whatever occurs is mechanical movement of atoms; forever in motion, they come into contact with each other by pressure and impact, and effect combinations and separations which are manifested as the coming to be and the passing away of particular things. *This is the sole basis of explanation of all that happens. Not a single phenomenon in this world lacks such a mechanical cause.*

Accordingly, any teleological conception of nature (oriented to the view of purposiveness), such as is still found in Plato's doctrine of the world-soul, is excluded from the start, even though it often returns unexpectedly in the view of the organic world.<sup>3</sup>

Undoubtedly the mathematical conception of nature was more advanced here than in Plato.<sup>4</sup> It led inevitably to the theory of the subjectivity of sensory qualities, a theory adopted by Galileo. The so-called secondary qualities (color, taste, heat) are but states of observation that arise due to the independent motion of soul-atoms that occurs when agitated by

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*der Griechen in ihrer geschichtlichen Entwicklung dargestellt*, 4<sup>th</sup> ed. (Leipzig: Reisland, 1903), pp. 475-76.

1 Natorp, "Galilei als Philosoph," pp. 213-14.

2 On the relation of this theory to the Eleatic and Heraclitean school, see Zeller, *Vorsokratische Philosophie*, vol. 1 of *Die Philosophie der Griechen*, p. 769 ff.

3 See e.g. Friedrich Albert Lange, *Geschichte des Materialismus bis auf Kant*, vol. 1 of *Geschichte des Materialismus und Kritik seiner Bedeutung in der Gegenwart*, 10<sup>th</sup> ed. (Leipzig: Brandstetter, 1921), p. 22.

4 Mechanical natural motion (*anangkè*) is repeatedly represented by Plato in his *Timaeus* as a contrast and a hindrance on the part of matter to the spirit, which strives purposively.

the minute particles of matter (*idoles*) which proceed from things and penetrate our organs of observation.

The Democritean law-idea, once consistently thought through, also led to atheism. In his mechanistic world system, in which only matter and empty space constitute true being, there was no room for a provident and omnipotent god. For Democritus, all spheres of life and the world are penetrated by the materialistic law-idea. The soul becomes fine matter, the process of observation and thought becomes a purely mechanistic motion of atoms.

### **Influence of the mechanistic law-idea in Democritus' ethics and legal and political philosophy**

Democritus' ethics and political theory are far from being developed in a scientific, systematic sense.<sup>1</sup> However, in the more or less aphoristic form in which he treats them, they clearly display traces of the mechanistic law-idea.<sup>2</sup> Desires and feelings too are nothing but motions of soul-atoms, which Democritus conceived as extremely fine fire-atoms. Just as he distinguished in the realm of theory between the value of *crude atomic movement* (triggered by *sensory organs*, leading only to unclear, impure knowledge of phenomena) and *the more refined atomistic movement of thought* (which yields pure knowledge of the mathematical essence of things), so he applied the same distinction in the realm of ethics. As theory's goal is knowledge, so the goal of ethics is bliss, and it is important to distinguish between appearance and essence in order to achieve bliss. Sensual lust only counted as a valuable good due to the wrong habit (*nomoi*) of men; according to the law of nature (*phusei*) it is the harmonious lifestyle that is governed by rational thought. The passions upset the balance of soul-atoms and, in the long run, necessarily result in frustration. The *tenor* of this ethics is by no means as base as that of the later Epicureans or that of the refined egoism associated with the materialism of the eighteenth century. But, as Lange observes, every criterion for an idealistic morality is lacking. The materialistic law-idea will not allow for such criteria. The mechanistic-atomistic principle also penetrates his political theory. As Lucretius informs us,<sup>3</sup> Democritus was the first to found the state on a contract of individuals, who as it were combine with each other like atoms.

Cosmopolitan ideas now appear for the first time in history. The wise person does not need the state but lives according to the universal law of nature without the sanction of the state. Nevertheless the state does have a necessary and lofty reason for existing insofar as its legislation keeps those individuals in check who do not live according to nature. All these

1 In this vein see also Wilhelm Windelband, *Geschichte der alten Philosophie*, 2<sup>nd</sup> rev. ed. (Munich, 1894), pp. 103-04, and Lange, *Geschichte des Materialismus bis auf Kant*, p. 21, contra Zeller, *Vorsokratische Philosophie*.

2 Lucretius, *De rerum natura* 5.1017-1025, 1141-1148.

3 Ibid.

ideas reappear via Epicurus and Lucretius and become common property of political thought thanks to the Renaissance.

**Relation between the Platonic and Democritean view of science. Platonic and Democritean law-ideas**

In view of the historically traceable influences of ancient philosophy on the development of the modern view of science in the Renaissance, it is a curious fact that the two otherwise so diametrically opposed systems of Plato and Democritus combined to root out the Aristotelian concept of science in the later Renaissance. The obvious question, then, is to ask what the connection between Plato and Democritus might be,<sup>1</sup> and at what point they irrevocably go their separate ways. *The answer to this question runs parallel to the answer to a question to be dealt with below, namely, to what extent the Reformation and humanism, oriented as the latter is to the modern law-idea, can go hand in hand and at what point their irrevocable separation occurs.*

As for Plato and Democritus, it can be said that the Platonic concept of science concurs with that of Democritus in its appreciation of the importance of mathematics for the knowledge of natural phenomena, and the investigator of nature, Democritus, must undoubtedly be credited for having worked out his mathematically oriented concept of science much more radically than Plato, who did not advance much beyond a program.

The point of separation between these two thinkers of antiquity, however, lies irrevocably in *their law-idea, their conception of the deepest ground and mutual relationship of the various law-spheres*, the universal principle of any worldview. Plato never dreamed of attributing universal validity in all areas of knowledge and action to his prevailing mathematical concept of science with its mathematical concept of law. His view of the world, his law-idea, is teleologically oriented; beyond mathematical knowledge the final goal is always – also in his philosophy of nature – the view of purposiveness, which leads in a rational way to the deity. *But in Democritus the mathematical concept of science is expanded into a mechanistic-materialistic law-idea which reduces everything to atomic motion and in so doing expels from the worldview any deity, including providence and cosmic purpose.*

Now the question is, would the Renaissance align itself with Plato or with Democritus in its law-idea?

**Sociological conditions for the development of natural scientific thought. Industry and science**

natural-scientific thought in the Renaissance, whose development we have partially sketched above,<sup>2</sup> would soon span all branches of knowl-

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1 In the literature that we consulted nothing was to be found on this. Yet it is the crucial point for understanding the development of all of modern philosophy!

2 The scope of this inquiry permits only a passing glance at the preparatory work of

edge with mathematical methods and concepts. The peculiar conditions for its rise in turn stemmed largely from socio-economic developments during the Renaissance period.

The practical goals of the rising towns in the new society, becoming more pointed all the time, demanded ever fresh techniques for industry and commerce, and also for medical practice which soon received an entirely new scientific basis through Paracelsus' new theory and especially through *Harvey's discovery of the circulatory system* of the blood. New means of production and faster ocean routes had to be discovered to provide industry and commerce with that intensive development which modern society demanded. Human thought could not meet these requirements by means of the barren Scholastic art of disputation practiced at the old universities, but only by means of mathematical calculation, discovery and invention.

Naturally this also effected a totally different relationship between industry, manual labor and science. During the Middle Ages, science and manual labor were two areas of life separated by an unbridgeable gap. By contrast, intrinsic developmental tendencies in modern society led to a close connection between these two spheres. "This connection of labor with the spirit of scientific research in the bosom of a free bourgeois society," as Dilthey remarked,<sup>1</sup> "produced the age of the autonomy and dominance of human reason." Aids for experimental and exact science were developed, inventions by which industry could establish control over nature, such as the compass, gunpowder, the art of printing, advancements in grinding lenses which made possible the invention of the telescope, and so on and so forth. The new natural science quickly became popular in the true sense of the word. In the course of the seventeenth century, mathematics and mechanics became a fashionable novelty, especially in France. The circles of Peiresc, Mersenne, and Pascal grafted, as it were, the new scientific ideal onto social life. In Italy, a fascinated public followed Galileo's discoveries with national pride, and even the Curia and the Jesuit order, ever keen to assimilate as many of the fruitful modern ideas as possible, eventually showed a somewhat friendlier attitude.<sup>2</sup> Simultaneously, the social conditions were thus created for natural-scientific thought to penetrate the worldview of modern man.

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Italian natural philosophy. For this part of the development of the modern concept of science in the Renaissance, see the excellent survey contained in Cassirer's oft-quoted work *Das Erkenntnisproblem*.

1 See Dilthey, *Weltanschauung und Analyse*, p. 258.

2 See Eberhard Gothein, "Staat und Gesellschaft des Zeitalters der Gegenreformation," in *Staat und Gesellschaft der neueren Zeit*, vol. 2, pt. 5, no. 1 of *Die Kultur der Gegenwart* (Berlin and Leipzig: Teubner, 1908), p. 210ff.



## Chapter 8

### *Toleration: Symptom of the Modern Approach to Religion*

The Renaissance marks a process so important and so unique in the history of the world that our gaze is riveted, as it were, to the awesome panorama of a great intellectual movement that unfolded in the course of scarcely three centuries!

The Renaissance simply had to produce a new law-idea if it were to develop a systematic worldview that could take on the ancient Aristotelian-Scholastic and the Platonic-Augustinian worldviews. This further development, known as the High Renaissance, culminated in the Enlightenment,<sup>1</sup> to be discussed later. The Renaissance had to develop a law-idea if it was to gain an influence on *life*, an influence that had been lacking in its first period of aristocratic intellectual culture.<sup>2</sup> However, it could not re-

1 Following Gothein, Troeltsch, in his study "Renaissance und Reformation" [*Historische Zeitschrift* 110 (1913)], which is included in his *Aufsätze zur Geistesgeschichte und Religionssoziologie*, ed. Hans Baron, vol. 4 of *Gesammelte Schriften* (Tübingen: Mohr [Paul Siebeck], 1925): pp. 261-97], defends the opinion that the Renaissance was never the independent cultural principle that modern historians have sought to find there. According to him, the Enlightenment does not descend directly from the Renaissance but from a merger of the Renaissance with the Counter-Reformation, partly also with modern Calvinism. See also Paul Wernle, *Renaissance und Reformation* (Tübingen: Mohr, 1912); Troeltsch's review of this work in *Theologische Literaturzeitung* 38 (1913): 341 ff.; and especially Gothein, "Staat und Gesellschaft des Zeitalters der Gegenreformation," p. 137 ff. It would not be fruitful for us to enter into this difficult controversy here, although it should be observed that Troeltsch's conception of the complexity of both the Renaissance and the Enlightenment would seem to be correct. That we do not see a unified system in the Renaissance has already been pointed out in chapter 5 above, but let me say again that in reviewing the development of the modern humanist law-idea my only focus is on *certain permanent tendencies* from the Renaissance and that, according to the conviction shared by most historians, those tendencies that collectively result in the proclamation of the sovereignty of human reason are not to be seen as closed off but continue to operate unabated in the modern world. In that sense we are still living in a Renaissance culture, even though recent times show powerful counter-movements of various kinds which could indicate the breakthrough of a new period.

2 See Wernle, *Renaissance und Reformation*, p. 62 ff.; Karl Brandi, *Die Renaissance in Florenz und Rom*, 3<sup>rd</sup> ed. (Leipzig: Teubner, 1909), passim; and Paul Mestwerdt,



vert to Augustine or Thomas. The growing secularization of the humanist outlook on nature and life, together with the youthful natural science in which the process of the emancipation of human reason had been initiated, made such a return impossible.

Ockham, as we saw earlier, had severed the connection between nature and grace and had placed the sphere of the world and the sphere of life next to each other without any *synthetic* law-idea. Between faith and knowledge there returned once again the old gap which Christianity had to bridge in order to elaborate its worldview from a unitary vantage point. Ecclesiastical positivism, which in the domain of faith had still anchored Duns Scotus in the tradition of ecclesiastical authority, was severely stricken in the first part of the sixteenth century by the blows which the great reformer of Wittenberg delivered against the papacy. The Reformation with its priesthood of all believers triumphantly proclaimed the autonomy of the Christian man over against all the authority of ecclesiastical hierarchy and tradition. Justification by faith alone was the message, which meant liberation from juridical authority over the souls of believers as had been claimed by the church. The Reformation thus grounded authority in matters of faith on the testimony of Holy Writ exclusively. However, modern humanism could not simply accept this objective, suprapersonal authority either. It could only concur with the autonomy of the moral personality as defended by Luther, and it adapted this principle to the individualistic spirit which characterized the entire humanist period with all its hero-worship.<sup>1</sup> In doing so it could formally remain, for a good part, within the bounds of the Roman Catholic Church community, the more easily since humanist popes had turned the Curia itself into a center of Renaissance culture.

What path did the humanist movement take to erect a new structure of a worldview out of the old ruins, one that would suit modern man? It took the opposite path of Early Scholasticism as exemplified in Anselm of Canterbury. In place of the old *Credo ut intelligam* (I believe, so that I may understand rationally) came the modern *Intelligo ut credam* (I first grasp by reason, so that I may believe). In other words, nature and grace exchanged scepters. Natural reason now demanded that Christianity justify itself before the tribunal of reason. In principle, to hold to the faith on the authority of the church had become obsolete. In the meantime, natural science had not yet advanced sufficiently to establish at once the sover-

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*Die Anfänge des Erasmus: Humanismus und Devotio moderna*, ed. Hans von Schubert (Leipzig: Haupt, 1917), p. 20 ff.

1 Lorenzo Valla especially could be mentioned here. He branded blind obedience to church authority and the conception of the gospel as law to be a repristination of the Jewish legalistic position. See Mestwerdt, *Anfänge des Erasmus*, p. 67 ff. The strong advocacy of *human moral liberty* by Pico della Mirandola and Leonardo da Vinci also falls in this category. See Brandi, *Renaissance in Florenz und Rom*, p. 107 and Mestwerdt, *Anfänge des Erasmus*, p. 61 ff.

eignty of human reason in every area. That was reserved for the Enlightenment. *Besides, there were powerful, even dominant trends in humanism which had no inner connection with the new natural science and almost exclusively strove for a revival of the humaniora (literature, art, morals, etc.).*<sup>1</sup> Initially, therefore, human reason had to seek support elsewhere when questions of religion, law, and morality were at issue. Now it is most remarkable that the Renaissance looked for help in the same system that had earlier served the church fathers in justifying the natural institutions of law and the state: that of the Stoics.<sup>2</sup> But through Stoicism the modern view of religion also led to the modern law-idea. Natural science and the revival of Stoic philosophy chose to direct themselves toward the same goal: the proclamation of the sovereignty of natural reason.

The individualistic tendencies of the Renaissance, going back well into the Middle Ages, contrasted very sharply with the *corporative, anti-individualistic spirit of the Middle Ages*.<sup>3</sup> The glorification of the ideal of virtue (see chapter 5 above), of the strong-willed, balanced personality (nowhere expressed more massively and impressively in the plastic art of the Renaissance than in the superhuman statues of strength sculpted by Michelangelo) in themselves reflected a revival of Stoic ethics. But added to all this at this time was the new *religious frame of mind*, inspired by the elevation of ancient pagan culture as unassailable norm, and subsequently nourished in part by the liberation of the religious personality in the vast movement of the Reformation. This humanist view of religion first revealed its *political tendencies* in the rise of *concepts of toleration* which propagated the separation of church and state in the *civil* liberty of the various religions.

I would not be misunderstood. I do not claim in the least that the ideas of religious toleration are the *exclusive* fruit of modern humanism. On the contrary, Calvinism (Independentism), Anabaptism, Enlightenment and

1 More recent interpretations of humanism as an intellectual movement, by scholars like Burckhardt, Voigt, Burdach, Wernle, among others, focus on these trends. We do not choose sides here. For an orientation see Karl Brandi, *Das Werden der Renaissance* (Göttingen: Vandenhoeck und Ruprecht, 1910).

2 This influence has been demonstrated from the sources most fully and thoroughly by Dilthey in his oft-cited work *Weltanschauung und Analyse*.

3 We shall return to this corporate spirit of the Middle Ages. It came to expression in the *Genossenschaften* (guilds), upon which the whole of social life was constructed; in Scholasticism as the suprapersonal philosophy of the schoolmen; in the feudalistic, corporate organization of the state, and so on. For the present see Kurt Breysig, "Die soziale Entwicklung der führenden Völker Europas in der neueren und neuesten Zeit," *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, n. s., 20 (1896): 1091 ff., and Lujo Brentano, *Zur Geschichte der englischen Gewerksvereine*, vol. 1 of *Die Arbeitergilden der Gegenwart* (Leipzig, 1871), pp. 1-89.

purely political utilitarianism,<sup>1</sup> with their totally divergent motives and tendencies, have probably contributed to the realization of religious freedom much more powerfully than original humanism. But our concern is the specifically *humanistic* tendencies in the toleration movement. These were supported by the gradually developing *idea of humanity*, thus clearly marking the process of the ongoing rationalization of the worldview.

Here again the process was far from simple. All kinds of influences were at work: [a] the *growing secularization* of the worldview accompanying the Renaissance as a revival of ancient pagan culture; [b] the rise of *historical criticism*, employed by both humanism and the Reformation; [c] humanism's program for the purification of the sources of antiquity, the gospels and the church fathers; [d] the Reformation's break with Rome's tradition and authority; [e] the intellectual fatigue which overtook many superior minds during the continual religious wars and bloody persecution of heretics, nourished by the further fragmentation of ecclesiastical unity in Protestant countries, the dogmatic struggles between Lutherans, Calvinists, Anabaptists<sup>2</sup> and Roman Catholics, and which kindled a longing to transcend all that dissension and dispute for a Christianity above sectarian divisions, a Christianity that could be reconciled with reason; [f] the more direct contact with Mohammedan culture that disclosed to Western culture a totally new world with different ethical, religious and aesthetic ideals; [g] the expansion of the doctrine of *raison d'état* which subordinated religion to rational state policy; [h] the influence of the Copernican world system which, in its connection with Democritean and Epicurean views, had revealed the insignificance of earthly life as compared with the infinity of nature; and finally, [i] the rise of modern natural science that had ushered in the emancipation of human reason. All these factors worked together in the development of a specifically humanistic attitude toward religion.

Still, the impulse towards the modern humanistic view of religion was an original spiritual force that cannot be explained as such by any of the sociological and scientific factors described above, even though these factors had a powerful influence on subsequent developments. The early hu-

1 On this see Figgis, "Lecture 4: The *Politiques* and Religious Toleration," in *From Gerson to Grotius*, p. 94 ff., and Henri Baudrillart, *J. Bodin et son temps: tableau des théories politiques et des idées économiques au seizième siècle* (Paris, 1853), p. 111, and Gothein, "Staat und Gesellschaft des Zeitalters der Gegenreformation," p. 195 ff. We will discuss this *political* movement for toleration later.

2 For the persecution of the Anabaptists in German Protestant territories, see especially the prosecution of Hans Denck in Austin Patterson Evans, *An Episode in the Struggle for Religious Freedom: The Sectaries of Nuremberg, 1524-1528* (New York: Columbia University Press, 1924), and for the entire humanistic toleration movement, among others, Dilthey, *Weltanschauung und Analyse*, p. 93 ff., and Gothein, "Staat und Gesellschaft des Zeitalters der Gegenreformation," p. 194 ff.

manist movement in Italy as introduced by Petrarch received its driving force from a mystical expectation of a religious ecclesiastical and political rebirth. Even Dante's grandiose creations *La Vita nuova* and *La Divina Commedia* vibrate in nervous tension with these hopes for the future. The renewal of the Christian religion, its ethics, church, state, arts, and science; the inauguration of a new golden era of an earthly paradise, the ideal that gained religious consecration especially in the late Stoic philosophy of Seneca; in short, the regeneration of all of life through a new reconciliation between Christianity and ancient national Greco-Roman culture that would at once unite holy Roman Italy all basically set the mood for this religious expectation of the future in the early Renaissance.

Christianity and secular life, the *Jenseits* and the *Diesseits*, had ruined each other in the unified culture of Roman Catholicism, and the damage was practically irreparable. Now the secular life which had shriveled up in ecclesiastical, Scholastic unnaturalness had to be awakened to new beauty and truth by the national culture in Italy of the ancient Roman Empire and at the same time this pagan culture had to be penetrated in a new way by a truthful and straightforward Christian ethics. This could only be possible by a regeneration of the individual human soul. This entire spiritual attitude was, as it were, compressed in the tragic revolution of Cola di Rienzi (1347) who, following the liberation of his home city of Rome from the tyranny of the barons, had himself proclaimed first tribune of the "regenerated Rome." In the conduct of this modern Roman revolutionary, the original ideal of life nursed by Christian humanism briefly flashed like a blinding meteor in the sky, only to disappear rapidly in the dark night of political ruin.

Here the pentecostal mood of Christian regeneration linked up with the ideal of renewing natural life by restoring the Greco-Roman cultural tradition. It was no coincidence that Rienzi carried out his coup d'état on Pentecost Sunday. Rienzi's consecration as a Knight of the Holy Ghost, his knightly submersion in the baptistry of the Lateran basilica (where, as legend had it, the Emperor Constantine had received Christian baptism), his crowning with the laurel wreath as tribune of Rome: all these, together with Petrarch's coronation as poet a few years earlier on the Capitol, constitute a series of symbolic acts which would usher in the return to the golden age of innocence, the restoration of the ancient Greco-Roman ideal of humanity purified by the spirit, not the letter, of Christianity.<sup>1</sup>

Here the Christian idea of regeneration is paired with the rationalistic

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<sup>1</sup> See Konrad Burdach, *Reformation, Renaissance, Humanismus: Zwei Abhandlungen über die Grundlage moderner Bildung und Sprachkunst* (Berlin: Paetel, 1918), p. 19 ff.

Stoic ideal of virtù,<sup>1</sup> since the renewal of the golden age of culture was expected to come from the aristocratic elite, not from the common people.

The atmosphere changed rapidly, however. The program of early humanism envisaged the radical emancipation of ancient culture, of its philosophy, science, art,<sup>2</sup> and natural morality from the supremacy of the church and Scholasticism. Gradually this endeavor was joined by the secularization also of religion, the expansion of original Christianity into a universal *natural* religion.

In the rediscovery of ancient learning, culture and civilization, spiritual values had been uncovered that had arisen independently of Christianity and were now fervently maintained in the face of ecclesiastical Scholasticism. There was a tendency to link these independent spiritual values, without any mediation of the church, directly to God as the sole source of truth and beauty. What appears to be no more than a mere concession to the world in Petrarch and Boccaccio was raised to a consciously proclaimed and well-founded conviction of the equality of all ranks of life and of every honestly practiced vocation before God<sup>3</sup> by the famous Florentine state chancellor Salutati, who admired the Stoic outlook on life. To be sure, he joined this conception to an unconditional belief in the authority of Holy Scripture.<sup>4</sup>

In this undoubtedly still Christian humanist, the concept of virtue, which he frequently identified with the study of the ancients, already clearly shows its *verdiessseitigt* character, its independence from religion.

The celebrated Lorenzo Valla expressed the same idea, though not quite

- 1 See chapter 5 above. About the rationalization of this concept during the Renaissance, when virtue gradually takes on the meaning of humanist learning, see Alfred von Martin, *Coluccio Salutati und das humanistische Lebensideal: Ein Kapitel aus der Genesis der Renaissance*, vol. 23 in *Beiträge zur Kulturgeschichte des Mittelalters und der Renaissance*, ed. Walter Goetz (Berlin: Teubner, 1916), p. 92 ff. So we read in *Epistolario di Coluccio Salutati*, ed. Francesco Novati (Rome: Forzani, 1891), 1:122, “[V]irtuti vel studio litterarum quod proculdubio compendiosa via est ad virtutis apicem.” Humanism in the Low Countries and the Germanies is similarly marked by this development; cf. J. Lindeboom, *Het bijbelsch humanisme in Nederland* (Leiden: Adriani, 1913), p. 29 ff.
- 2 The concepts of science and art were hardly distinguished during the Renaissance. By the seven liberal arts was meant: grammar, dialectics (logic), rhetoric, music, arithmetic, geometry, and astronomy. The first three (the so-called *trivium*) constituted the curriculum of the ordinary “trivial” school.
- 3 Cf. *Epistolario di Coluccio Salutati*, 3:539. Salutati defended himself against an attack from the side of the Camaldulensian monk Fra Giovanni di San Martino in words like these: “Noli, venerabilis in Christo frater, sic austere me ab honestis studiis revocare. . . . Noli putare quod, cum vel in poetis vel aliis Gentilium libris veritas quaeritur, in vias Domini non eatur. Omnis enim veritas a Deo est, imo, quo rectius loquar, aliquid est Dei.”
- 4 Alfred von Martin in his well-researched study *Coluccio Salutati und das humanistische Lebensideal*, p. 35 ff., has convincingly refuted the opinion, maintained by Voigt and Mestwerdt, that Salutati was highly critical of the Scriptures.

as accentuated. In his speech in Rome at the start of a new academic year he placed the *religio sancta* and the *vera litteratura* on a par as two quantities that need and benefit each other, with the express aim of claiming an independent spiritual purpose for classical study unrelated to the purpose assigned to it by the church.<sup>1</sup>

From here, however, the lack of a new independent Christian view of life arising from faith quickly led also to a religious naturalism. Thus men like Poggio,<sup>2</sup> Leonardo Bruni, Pontano and Aeneas Silvius de' Piccolomino (prior to his elevation as pope) opted in a thinly veiled way for pagan religious or ethical wisdom where it conflicted with Christianity. In Valla's work *De Voluptate* the Epicurean ethic is deliberately played off against Stoic and Christian ethics, and towards the end it sounds rather forced when he relates the morality of desire or lust to the Christian religion which promises beatitude to its true confessors.

Pontano, the great humanist poet and Aristotelian philosopher of Naples, went so far as to declare the Christian doctrine of immortality to be an idea that was scarcely known anymore, even though later, pro forma, he tacitly retracted this bold claim. In his treatise *On Inhumanity* he assured pious people who had taken offence at his writings that his religion consisted of getting to know the moral nature of man.<sup>3</sup> In his poem *Urania*, called unchristian by Erasmus, he reintroduced pagan polytheism in its ancient form by calling the stars gods or angels, and in his work on happiness he championed the worship of pagan *Fortuna*, who is but the handmaiden of the Stoic *fatum* (fate, the uninterrupted force of the law of cause and effect), as opposed to the Christian doctrine of the universal providence of God. He defended the theory, encountered earlier in Machiavelli and very prevalent among humanists,<sup>4</sup> that those who are by nature created as *Fortuna's* favorites cannot be restricted by any limits of

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- 1 See the text from the *Opuscula tria* quoted by Mestwerdt, *Anfänge des Erasmus*, p. 39, n. 3.
  - 2 Poggio on his deathbed indicated that he knew no other way of deliverance, after all, than the church's means of grace. See Georg Voigt, *Die Wiederbelebung des classischen Alterthums, oder das erste Jahrhundert des Humanismus* (Berlin: Reimer, n.d.), 2:220.
  - 3 See Eberhard Gothein, *Die Renaissance in Süd-Italiën*, vol. 1 of *Schriften zur Kulturgeschichte der Renaissance, Reformation und Gegenreformation* (Munich and Leipzig: Duncker & Humblot, 1924), p. 115.
  - 4 Petrarch had already complained of the "very many, who in his day believed in fortune, elevating her like a goddess in heaven and regarding her favor more important than their own virtue, and even more than divine assistance." See his letter to the Florentine medic Tommaso del Garbo, quoted by Graf, cited below. The cult of *Fortuna* is found even in the very early Middle Ages; see Arturo Graf, "La credenza nella fatalità della Medio Evo," *Nuova Antologia*, 3<sup>rd</sup> ser., 28:204, and Alfred von Martin, *Coluccio Salutati und das humanistische Lebensideal*, p. 68 ff.



morality or religion, and that for these great personalities the only rule for life is: "Legitimate is that to which instinct drives them."

Galateo's famous dialogue *Eremita* ridiculed both the prophets of the Old Testament and the apostles of the New Testament and found no higher expression of religion than a glowing melodramatic epilogue about the beauty of aesthetic Madonna veneration.<sup>1</sup>

This religious naturalism became downright paganism in the circles frequented by Machiavelli and his disciples Paruta and Sarpi. These humanist circles had a general distaste for Christian faith in miracles, even if this distaste focused mainly on the popular faith in daily occurring miracles, a belief strongly abused by the clergy in those days.<sup>2</sup> Yet, curiously, occultism and witchcraft did find adherents in humanist circles.<sup>3</sup> As well, the struggle against Christian supernaturalism as it clashed with natural reason often went hand in hand with an almost unassailable confidence in astrology, which was considered to be in agreement with the laws of nature.<sup>4</sup> Pico della Mirandola opposed astrology in order to save the freedom of the human will, which he championed in the strongest terms, but he was practically the only humanist in his day to do so.

Now it would be rash to conclude from all these examples that Italian humanism amounted to nothing but modern paganism. Nothing is further from the truth. Most humanists continued, at least nominally, to be faithful sons of the church. But utterances like the foregoing, in which a certain measure of *bravado and showy classicism* must be taken into account, reveal a symptom of a generally increasing secularization of the religious view.

### **The new religious ideal of life in humanism**

In tune with this increasing secularization of the religious view during the Renaissance was the new religious ideal of life. The theory of the talented personality, of the *uomo universale* who must develop his natural gifts and aptitude to perfection, was undoubtedly of Italian origin. Leon Battista Alberti and Leonardo da Vinci gave classic expression to this ideal. It placed all the emphasis on the *activity*, on the *deed* not beyond but within the world. There is a world of difference between the

1 Goethein, *Die Renaissance in Süd-Italiën*, p. 128 ff.

2 E.g. about the exploitation by priests of the so-called miracles of the cross, see Goethein, *Reformation und Gegenreformation*, vol. 2 of *Schriften zur Kulturgeschichte*, p. 62 ff.

3 Cf. Bodin's *De la démonomanie des sorciers*.

4 See Graf, "La credenza nella fatalità della Medio Evo," and Alfred von Martin, *Coluccio Salutati und das humanistische Lebensideal*. See also Bezold's interesting study "Jean Bodin als Okkultist und seine Demonomanie," essay 10 in *Aus Mittelalter und Renaissance: Kulturgeschichtliche Studien* (Munich and Berlin: Oldenbourg, 1918).



monastic ideal of medieval asceticism and this new personality ideal of Italian humanism.

But the new religious ideal of life in various forms affected humanism in every country. In France, Rabelais expressed it thus in his depiction of an ideal monastic community in *Gargantua* (1534): “En leur reigle n'estoit que ceste clause: Fay ce que vouldras. Parce que gens liberes, bien nayz, bien instructz, conversans en compeignies honnestes, ont par nature ung instinct et aguillon qui tousjours les poulse a faictz vertueux, et retire de vice: le quel ilz nommoient *honneur*.”<sup>1</sup> Likewise in England, Thomas More in his political fiction *Utopia* (1516) founded the religious ground rules of immortality and faith on reason and regarded them as the preconditions for human happiness and human society. *The laws of nature are also the laws of that which the Christian faith provides*; and true religiosity lies not in monastic asceticism but in the honorable performance of daily duties.<sup>2</sup>

In another, more Christian form this new religious ideal of life was manifested in German humanism by men like Gregor von Heimburg, Hutten, Pirckheimer, Thamer, the popular poet Sebastian Brant and others, in whom the new ideal aligned itself, in part, with certain basic tendencies of the *devotio moderna* (to be discussed below). But everywhere the common basic feature is in evidence: the ideal of a strong, self-reliant personality of manly virtue whose activity compels the admiration of the world, an ideal that was strongly influenced by the ancient ideal of culture, including the glorification of *eloquentia* and *eruditio*. As well, it almost always reverted to the natural personality as the final arbiter. This distinguishes the new religious ideal of life irrevocably from Luther's or Calvin's idea of calling. Religious naturalism is almost always its common basic feature.<sup>3</sup>

And so the emphasis, which in the fervent Christian soul of Dante was still most definitely placed on the realm of Christian grace, quickly shifted to nature as reflected in the soul of the *uomo universale*, the modern *Übermensch* (superman). In most cases there was, to be sure, a tendency to acknowledge Christianity as the highest manifestation of religion.

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1 “They had only one rule: Do as you wish. Because free men, well-born, well-instructed, talking things over honestly, have by nature an instinct and manner which always impels them towards virtuous things and withdraws them from vice: this they call honor.” François Rabelais, *Gargantua*, book 1, chapter 57, quoted by Dilthey, *Weltanschauung und Analyse*, p. 49.

2 See Dilthey, *ibid.*

3 This explains why, despite their initial enthusiasm for Luther's vehement attacks on the Roman hierarchy, men like Pirckheimer and Thamer turned their backs on the great Reformer when he, in his controversy with Erasmus, forcefully maintained the doctrine of original sin and justification by faith alone. Such a doctrine of grace did not suit the Stoic life-ideal of these humanists.

There was also, often from fear of martyrdom, a formal submission to ecclesiastical authority. But any reconciliation between Christianity and the world – at least where that problem was considered seriously – was, at bottom, no longer sought in the medieval Scholastic graded ascent from nature to grace, but rather in a graded development of nature itself. The reclaimed ancient ideal of culture was prominent in everything. Christianity was often forced to strike compromises of the most tortuous kind with this ideal of culture. Just think of Pontano's almost ludicrous attempt to reconcile the pagan *Fortuna* worship with Christian doctrine by reinterpreting it as a cult of the saints of the church.<sup>1</sup>

The first clearly defined religious trend to emerge from this fermenting and as yet undefined movement was that of *universal theism*. This *universal theism* subsequently branched out into *transcendental theology*, *moral-religious rationalism*, and *naturalistic pantheism*. The various adherents of all these movements carried the banner of *religious toleration*. Numerous individuals in these circles opposed the persecution of pagans and heretics on the basis of a new religious view which presumably could effect a compromise between Christianity and ancient culture through relativizing specific religious dogmas on the one hand and acknowledging the absoluteness of the universal religious nature of humanity on the other.

The philosophy of the eclectic Roman Stoics, which focused on practical ethics (with its *lex naturalis*, the indestructible ethical-religious basis of human nature), was, so to speak, naturally suited to bring a certain unity to the rather diverse tendencies of modern religious development.

That task was especially reserved for the theory of natural inner light (*lumen naturale*), first proclaimed in this form by Cicero, which expresses itself in the immediate certainty of moral consciousness and the general consensus about basic moral concepts among all nations (*consensus gentium*).<sup>2</sup> Both these expressions necessarily point to the existence of innate concepts (*notiones innatae, naturae nobis insitae*)<sup>3</sup> as opposed to the *koinai ennoiai* of the Greek Stoics, that were not thought of as innate.<sup>4</sup>

1 See Gothein, *Renaissance in Süd-Italiën*, p. 115 ff.

2 Cf. among others Cicero, *Tusculanae disputationes* in *Opera quae supersunt omnia*, ed. Baier and Halm, 2<sup>nd</sup> rev. ed. (Zurich, 1859), 3.1.2: “Sunt enim ingeniis nostris semina innata virtutum; quae si adolescere liceret, ipsa nos ad beatam vitam natura perduceret.”

3 It is curious how Groen van Prinsterer accepted this Stoic touchstone as one of the marks of truth. See his well-known work *Proeve over de middelen waardoor de waarheid wordt gekend en gestaafd* (Leyden, 1834), 172–175, in which “general consensus” is mentioned as such a test of truth. For that matter, in Scholasticism, too, the appeal to the *consensus gentium* was frequent even though the doctrine of innate ideas found no support in Thomas Aquinas.

4 See Zeller, *Die nacharistotelische Philosophie*, p. 659 ff.

The revival of this Ciceronian theory was accompanied by a general preference for the late Stoic religious ethics of Seneca, with its cult of the moral personality independent of all sensory things, tempered by a moral pessimism inspired by the decline of the Roman Empire. Meanwhile, lighting up repeatedly throughout the foregoing was the prophetic expectation of a return to the golden age in which passions would be controlled, the universal love of mankind restored, and the absolute natural law reinstated without violence, property, state, or slavery.

This late Stoic, basically individualistic philosophy of life was easily combined with the Augustinian-Platonic notions that had been kept alive all along by the Franciscan sects. Similarly, the individualism in the nominalistic theory of the Franciscan orders had from the start remained overtly or covertly opposed to the ecclesiastical hierarchy with its supra-individual relational character, and opposed to the whole anti-individualistic sociological structure of the medieval unified ecclesiastical culture.<sup>1</sup> This connection emerged quite naturally in Petrarch's treatises on moral philosophy written in the style of Cicero and Seneca. Precisely because of their eclectic nature the late Roman Stoics pre-eminently met the requirements that Renaissance culture looked for in a philosophy of life. Initially, a certain relativism that could do justice almost equally well to the most diverse philosophical systems such as Stoicism, Platonism, Aristotelianism and Epicureanism best suited the needs of the humanist *uomo universale*. If Christianity were nothing but the perfected step in the development of the views of God offered by all these philosophical systems, then the way was paved for a purely natural appreciation of religion; then also, tolerance towards non-conformists could be advocated, at least in theory, even if not universally.<sup>2</sup>

### Universal theism

In this respect universal theism undoubtedly represented the basic tenor of the religious humanist movements. The term refers to the conviction that the divine has gradually revealed itself equally in the various religions and philosophical systems and that it is still doing so today. Divine revelation is expressed in the moral consciousness of every noble human being – a thesis that presupposes the idea of a universal operation of the divine in the whole of nature as well as in human consciousness.<sup>3</sup>

This religious universal theism had already occurred to some keen

1 On this, see the important study of Paul Hönigsheim, "Zur Soziologie der mittelalterlichen Scholastik," in *Hauptprobleme der Soziologie: Erinnerungsgabe für Max Weber*, vol. 2, ed. Melchior Palyi (Munich and Leipzig: Duncker & Humblot, 1923), pp. 173–217.

2 Notably not by the teachers of *raison d'état* (Machiavelli, Sarpi, Hobbes, etc.) who recognized only a state religion, as did their masters Polybius and Cicero.

3 Dilthey, *Weltanschauung und Analyse*, p. 95.

thinkers during the Middle Ages when they compared the moral attitude to life of the various religions. Arab philosophy in particular, quite influential in Scholasticism, had occasioned a certain universalism in the domain of religion. This universalism, furthermore, had set the tone of life in the court circles of the Hohenstauffer Emperor Frederick II (see chapter 5 above) as a result of its more immediate contact with Mohammedan culture. Sultan Saladin had already become a paragon of pride, dignity, and nobility for Petrarch's disciple Boccaccio and other Italian novelists. This religiously neutral theism is embodied in the tale of the three rings. In Italian epic poetry, glorifying the wars between Christianity and Islam, the poets frequently had the Moslem, or the demons of a non-Christian religion, express what they did not have the nerve to say themselves. In this vein Pulci expressed views concerning the relative value of religions through the demon Astarott.<sup>1</sup>

This same point of view was derived from the humanists' study of the classics during the fifteenth century. Humanists found their daily mental nourishment in the writings of Cicero and Seneca in which the religious universalistic point of view had reached the highest stage of ancient civilization, in close conjunction with their relativistic, eclectic perception of the religions and systems of the past.

Universal theism acquired enormous influence in the Neoplatonic academy of Florence, where ideas of tolerance made their first explicit appearance in humanist circles. The spiritual father of this academy, Georgios Gemistos Plethon of Constantinople (ca. 1355-1450), who had lived at the court of Cosimo de' Medici (1389-1464) since 1438, adopted an extremely radical point of view on the matter. A passionate opponent of Aristotle, he consciously elevated Neoplatonism in a theosophic sense as being superior to the Christian religion. Christianity should not serve as norm for Platonic philosophy, but, conversely, Christianity should subject itself to the authority of the divine Plato. Phleto was accused of trying to introduce a polytheism "in philosophical garb." His deepest aim was to introduce a religious universal theism on Platonic foundations, during which he did not even scruple to borrow the names for God and divine powers from ancient Greek mythology, consciously spurning Christian terminology.<sup>2</sup> Through his influence, Cosimo de' Medici was converted to a fervent Platonism and established the Academy of Florence with Marsilio Ficino as its first head. The Academy was less a permanent institution than a free association of all those who shared a love of studying Platonism.

From here Platonism spread throughout not just Italy but the whole of

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1 See the excellent sketch of this course of development by Dilthey, *ibid.*, and Burckhardt, *Die Kultur der Renaissance in Italien*, 2:299 ff.

2 See Fritz Schultze, *Geschichte der Philosophie der Renaissance* (Jena, 1874).

civilized Europe. The basic feature of the Academy's theism was the Neoplatonic doctrine that all religions, without distinction, are but higher or lower stages in achieving universal knowledge of God. It was a doctrine that could easily be combined with the eclectic-Stoic idea of the inner light (*lumen naturale*). Universal theism was mystically expressed in the hymns of Lorenzo de' Medici, the Academy's last great representative. Michelangelo's poems were also influenced by these hymns. This universal theism also counted convinced Roman Catholics like Ficino and Pico della Mirandola among its followers, although they accepted the teachings of the church unconditionally.

Reuchlin and Zwingli were equally influenced by it, even though the latter lacks all points of contact with the notions of toleration advocated by the Florentine Academy.<sup>1</sup>

The entire movement, supported by historical criticism of the Catholic tradition brilliantly initiated by Lorenzo Valla, found its German center among the Erfurt humanists, an array of freethinkers whose mentor was the Erfurt canon Mutianus Rufus (Konrad Mudt). The mysticism of Jakob Böhme and Valentin Weigel betrays a basic universalist tenor. Among the sects and spiritualists, numerous exceptional individuals were taken in by it. Thus the famous Hans Denck anchored Christian conviction in the inner voice, the conscience, and in religious feeling, in which he saw a spark of the divine spirit. This spirit is operative everywhere in all people, independent of Holy Scripture. Indeed, the validity of Scripture can only be demonstrated by that inner spirit.<sup>2</sup> During the age of humanism, universal theism culminated in the theology and philosophy of history of the highly gifted Sebastian Franck.

### **Sebastian Franck's transcendental universal theism**

As has been shown by Dilthey in particular, it is evident that Franck combined the Stoic doctrine of the *lumen naturale* with the universalist tendencies of the Neoplatonic school. Here universal theism acquired its expressly *transcendental* character. Powerfully stimulated by the conflict among ecclesiastical schools above which it sought a higher, natu-

1 Cf. Marsilio Ficino, *De religione Christiana*, cap. 8 (in *Opera*, Basel ed., p. 11), where he explains that the Christian religion, unlike the Talmud and the Koran, commands "adversarios fidei ... vel ratione ... docere, vel oratione converti, vel patientia tolerari."

2 On Denck see Austin P. Evans, *An Episode in the Struggle for Religious Freedom*, and Ludwig Keller, *Ein Apostel der Wiedertäufer* (Leipzig, 1882). From the point of view of the Quakers see particularly Rufus M. Jones, *Spiritual Reformers in the 16<sup>th</sup> & 17<sup>th</sup> centuries* (London: Macmillan, 1914) and Adolf Metus Schwindt, *Hans Denck: Ein Vorkämpfer undogmatischen Christentums, 1495-1527* (1923). I think Schwindt is correct in opposing Keller's opinion that Denck was a typical exponent of the sectarian spirit. Rather, the most important features of his religiosity can be traced to the mystical tradition. See also Alfred Hegler's article about Denck in *Realencyklopädie für protestantische Theologie und Kirche* (Leipzig, 1898).

ral authority, this transcendental school has continued to be a force in theology. It was expanded by historical study, deepened by acceptance on the part of a wide range of sects, until in due course it acquired its philosophical foundation in transcendental philosophy.

According to Dilthey's description, transcendental universal theism includes all those diverse schools and currents that look beyond the received formulas, histories and dogmas in order to return to an eternal and everywhere operative divine power in the moral nature of man, a power that produces all the diverse forms of religious life. The whole of history is its realm, and in whatever form the relationship between divine and human things is conceived this religious school is ultimately based on the awareness of an essential unity of these two elements and on the sovereign sense of man's moral worth. That is why this school in its later development easily turns into pantheism.

The school also sets its limits much more widely, has a much broader and even more vaguely delineated conception of Christianity than moral rationalism (which at least proceeded from a rational Christianity as *absolute truth*, to be discussed below), even though it did leave enough room to be able to merge with this rationalism. Its nature is to see Christianity as the universal natural religion of mankind. In essence it is directed against organized religion. In principle, Hans Denck and numerous mystics and spiritualists of the fifteenth and sixteenth centuries already held this view. Sebastian Franck was its most gifted representative during the sixteenth century.

Born around 1500 in Donauwörth, Schwabia, Sebastian Franck experienced inwardly the immense spiritual struggle of his times. He was influenced by the German mysticism of Eckhardt and Tauler as well as the reformational theology of Luther and Zwingli and the ideas of the spiritualists (especially Denck and Schwenckfeld). And yet he stood alone among his contemporaries.

Beyond the fragmentation of faith in his day Franck sought peace in the belief in a universal operation of God in all creatures. Behind all ecclesiastical institutions and behind all external formulas he sought the one invisible church whose members are all "truly devout and good-hearted people," a church without ceremonies and without external religion: "I am in it and with it, my spirit longs for it, wherever it moves, scattered among the heathens and the tares."<sup>1</sup>

What then is the criterion for this invisible church? It is the Stoic light of nature (*lumen naturale*) present in the moral personality of all people, which shows their prime task to be to follow nature, reason, or God. Thus Franck declared *reason* to be a "source of all human law, hence elevated

<sup>1</sup> Sebastian Franck, Preface to *Paradoxa*, ed. Heinrich Ziegler (Jena: Diederichs, 1909), quoted by Dilthey, *Weltanschauung und Analyse*, p. 89: "alle recht Gotts frommen und gutherzigen Menschen"; "in und bei dieser bin ich, zu der Sehne ich mich in meinem Geist wo sie zerstreuet unter den Heiden und Unkraut umfährt."



beyond all written law.” What Plato, Seneca, Cicero, and all enlightened pagans called the light of nature and reason, Christian theology calls the Word, the Son of God and the Invisible Christ. But the latter are present as much in Seneca and Cicero as in Paul. The Christ or Logos is nothing but the immanence of ethical religious ideas in God as it operates in, and is imparted to, man's moral nature.

According to Franck, the internal process of the workings of this impersonal Christ at war with egoistic, self-seeking inclinations in the human soul (which Christian theology calls the “old Adam”) is the central drama of world history and the heart of all theology. God, the omni-active Good, the Unmoved One, in whom everything moves and who is immanently present in everything, God who becomes angry with no one, whose omni-activity can easily tolerate the freedom of the will of autonomous man,<sup>1</sup> indeed, who first becomes *will* in man, has nevertheless determined the coherence of the cosmos in such a way that all the activity of man's free will in the final analysis works together for the good of the whole. And Holy Scripture is nothing but an eternally true allegory in which the “symbols” of Adam and Christ depict the religious antagonism between the inner divine light of rational moral nature and the egoism that leads people away from God.

Franck's world-historical view of religion must also be seen in this context. The inner light is present in noble pagans as much as it is in biblical persons. But just as universal is the “Adam” effect of egoism, which externalizes the inwardness of religion, which shackles liberty in external ordinances, which rips the one religious truth apart into sects and dogmatic formulas, and which materializes the invisible process of faith in ceremonies. Indeed, there are more children of Adam than children of God. The world *must* have a *papacy*, else it will not know what to believe or what to do. With the historical sources<sup>2</sup> at his disposal, Franck showed in his major work on world history how in this respect the eras of religious history depend on each other, how the papal Roman church arose from the institutions of the Roman Empire. The same temples, priests, and ceremonies are found throughout the whole history of religion in a continuity that Franck traced back to the Egyptians. All of it is a shadow of the inner Word!

### **Transcendental universal theism in Bodin's *Heptaplomeres* and the political movement for toleration**

In a certain sense, universal theism sowed the seeds for political tolera-

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1 See *Paradoxa* 267-268, against Luther's *De servo arbitrio*, quoted by Dilthey, *Weltanschauung und Analyse*, p. 88.

2 On this see Hermann Bischof, *Sebastian Franck und die deutsche Geschichtsschreibung* (Tübingen, 1857), p. 71 ff.



tion among the various church-state relationships that appeared from the fourteenth to the seventeenth century. While the Florentine academy was thriving, the nature of these relationships was of course totally different from that of the times of Denck and Franck. The notions of toleration recommended by Ficino<sup>1</sup> could not possibly intervene in political relationships with any significant effect. The Roman Catholic Church with her powerful unified culture did not yet have to ride out the storm of the Reformation movement. The sectarian movements of Waldensians and Hussites had been squelched in blood, and the individual attacks from the circles of a few radical reformers (for example, William of Ockham, John of Jandun, Marsilius of Padua, Hieronymus of Prague, and a few radical humanists) did not possess enough organizational influence with the masses to pose an immediate threat. The University of Paris and its theological faculty, the Sorbonne, which for a long time was the bulwark of Thomist Scholasticism,<sup>2</sup> used its learned authority to support the verdicts of heresy and the papal anathemas that were pronounced against such theoretical attacks on the sacred.

For the time being, early humanism's notions of tolerance remained purely academic. The Florentine academics continued to amuse themselves with speculations about the attitude that Christendom – then still undivided – should adopt toward the one religion which, practically speaking, competed with it: Mohammedanism. The humanists themselves, even the most radical among them, took the greatest care not to come into conflict with the Curia. In England as well, More's ideas of tolerance were merely academic. Thomas More (1480-1535) was strongly influenced by Platonic universal theism and the humanist ideal of life. His *Utopia* was a free fantasy of an ideal state, a Platonic paradigm in which, next to communism, *religious tolerance* was accepted as a basic principle. But of what significance were all such utopian fantasies for hard political realities? The *Utopia* appeared in 1516, thus before the great church schism. That says enough about the practical significance of its ideals of toleration.

The humanist notions of tolerance acquired a totally different significance in the second half of the sixteenth century when, following the great schism between Rome and Protestantism, the so-called Counter-Reformation launched its tremendous attack on the Reformation and the Renaissance, and, in its famous Tridentine Council (1545-1563), undertook the moral reform of the church as well as the determination of contested Catholic doctrines. From this time dates the enormous activity of the Jesuit or-

1 See Ficino, *De religione Christiana*, p. 11.

2 Cf. Leopold von Ranke, *Französische Geschichte, vornehmlich in sechzehnten und siebzehnten Jahrhundert* (Leipzig, 1868), 1:111 ff. This traditional orthodoxy by no means prevented the University of Paris from defending the Gallican liberties on various occasions against the ecclesiastical hierarchy; cf. Gottlob von Polenz, *Die Geschichte des französischen Calvinismus bis zur Nationalversammlung i[m] J[ahre] 1789* (Gotha, 1857), 1:188.

der founded by the famous Ignatius of Loyola,<sup>1</sup> who had chosen as an international program the return of the whole of life, in state, science and society, to the unified ecclesiastical culture, albeit a unified culture which absorbed the fruitful and useful tendencies of the Renaissance while repelling everything of the Reformation.

### **The political situation in France and the problem of the relationship between church and state**

The old problem of Christian politics now revived in full force: the relationship between nature and grace. France in particular began to oscillate between the old watchword of the Thomist period – politics, when touching on spiritual matters, is subject to the supremacy of the church – and the new, humanist slogan of *raison d'état* – politics is an end in itself, if need be against the interests of the Church of Rome. From the drive towards a revived Roman Catholic unified culture that again raised Thomism and its characteristic law-idea as an unassailable norm, there emerged the political theory of the famous Jesuits Suarez, Bellarmine, Molina, Mariana and others, who wished to relegate the state as much as possible to the realm of sinful nature, all the more to be able to demonstrate the necessity of the church's leadership. Thus the ancient struggle for the church's supremacy in secular matters was revived, albeit under totally different circumstances. In this struggle Jesuits and humanist lawyers in particular engaged each other in fierce polemics.<sup>2</sup>

The civil wars between Huguenots and followers of the Guises in France unleashed a political hatred and urge for destruction that shook the state's foundations and caused it to fall a prey to the game of foreign intrigues. Following the tragedy of the St. Bartholomew's Day Massacre, France found itself flooded by political tracts from Jesuits and Calvinists, both sides unstintingly advocating the ancient doctrine of popular sovereignty, defending the people's right of armed resistance against the violator of the state contract, and justifying tyrannicide.<sup>3</sup> In the midst of that

1 On Loyola and his order see Eberhard Gothein, *Ignatius von Loyola und die Gegenreformation* (Halle, 1895).

2 See e.g. from the side of the jurists, William Barclay's *De potestate Papae* (1609), with a preface by his son John Barclay, quoted in Goldast, *Monarchia*, 3:624 ff.; Jean Bedé de la GormandiPre, *Jus regum contra Cardinalem Bellarminum et alios Jesuitos* (1611), in *ibid.*, 801 ff.; and esp. Etienne Pasquier, *Recherches de la France* (1560), vol. 3, and Charles du Moulin, *Tractatus de origine, progressu et excellentia regni et monarchiae Francorum et coronae Franciae* (1561), in *ibid.*, 45 ff.

3 In our exposition of the Calvinist theory of authority, planned for the 3<sup>rd</sup> part of this series [*Editorial note (DS)*: Apparently this third part never appeared in print.], we shall examine the theory of popular sovereignty at length, both historically and systematically. As far as the right of resistance against the ruler who violates the state

general disruption of political life, a number of *politiques*, among them many humanist jurists, joined forces to contain the flood of ecclesiastical passions within the limits of state interest. The toleration movement had become a *political* one in the true sense of the word. But also in the movement for toleration by the party of the *politiques*, universal theism continued to influence some of its most important representatives.

In general the direction of the *politiques* was purely utilitarian. It knew many moments of doubt, which found their clearest reflection in the *Lettres* of Etienne Pasquier. The basis on which it advocated toleration was, at least for those who were not in it for secular gain, the welfare of the state, to which in *the given political situation* the interests of religious unity would have to yield. Religious unity could not be attained at the time without pushing the state over the edge of the precipice.<sup>1</sup> Michel de l'Hôpital, the chancellor, had already given the movement its program even before there had been any talk of a political party, and, what is more, what was for most subsequent politicians but a question of utility, was based for L'Hôpital upon deeply rooted principles. His belief in the universality of reason and of divine justice in man's moral nature also inspired his theory that the power of the state may not, contrary to reason, be employed for the suppression of the natural freedom of conscience.<sup>2</sup>

In the "Harangue" with which L'Hôpital opened the gathering of the estates in Orleans in 1560, he championed his two ideals: freedom of religion for Protestants, and a monarchy that stood above the ecclesiastical parties and embodied the unity of the state. In January 1562, at the meeting of the Parlements<sup>3</sup> at Saint-Germain, where matters of faith were discussed, he asked whether the king wanted to kill so many of his subjects who in every respect were honorable men. What benefits, he wanted to know, had resulted from the harshness of earlier edicts against heresy? According to L'Hôpital, the issue was not which religion might be the true one, but how people would be able to live peaceably together.<sup>4</sup>

Unfortunately, L'Hôpital's fervent pleas for freedom of conscience did not have a lasting effect just then. January 1562 did bring the well-known

contract is concerned, we refer to the excellent, wide-ranging study of Kurt Wolzendorff, *Staatsrecht und Naturrecht in der Lehre vom Widerstandsrecht des Volkes gegen rechtswidrige Ausübung der Staatsgewalt*, in Otto von Gierke, ed., *Untersuchungen zur deutschen Staats- und Rechtsgeschichte*, vol. 126 (Breslau: Marcus, 1916), which demonstrates with copious source materials that the theory of a state contract and the people's right of resistance against a tyrant were not mere speculation but had, in fact, a basis in the positive constitutional law of the time.

1 See Figgis, *From Gerson to Grotius*, p. 102 ff.

2 See the excerpts from L'Hôpital's *Oeuvres inédites* in Baudrillart, *Bodin et son temps*, p. 49 ff.

3 These were adjudicating colleges, so they had nothing to do with what we call parliaments today.

4 See Ranke, *Französischer Geschichte*, 1:168.

Edict of Saint-Germain which allowed the Huguenots unhindered preaching, prayer, and worship, but this edict of toleration would all too soon be set aside.

Next, the *politiques* adopted L'Hôpital's program. It counted among its members jurists like Du Moulin,<sup>1</sup> Pasquier, and Bodin, historians like de Thou, but also schemers like the duke d'Alençon. Like her son King Henry III, Catherine de' Medici considered toleration a political option. King Henry IV and his famous chief minister Sully<sup>2</sup> based their entire politics on freedom of religion for all the king's subjects. This politics of toleration won out in the Edict of Nantes (1598).

The humanist influences in this whole movement are unmistakable. The very theory of the state as an end in itself was of humanist origin. To be sure, the majority of the *politiques* considered toleration simply a question of *raison d'état* without implying a principle for all circumstances. But some eminent members of the movement stand out in that universal theism had etched the ideals of toleration more deeply in their minds than the theory of political utility alone could have done. L'Hôpital and Bodin are the greatest literary representatives of this school of thought in sixteenth-century France.

Michel de Montaigne (1533-1592), who is sometimes counted among those who defended the ideas of toleration from principle, deserves this honor in but a small measure. He was the humanistic apostle of a relativistic skepticism like that which had blossomed in the newer academy of philosophy in ancient Rome. Montaigne combined late-Stoic natural ethics with an Epicurean ideal of life, and with a skeptical smile vented the boldest criticism of both philosophical authorities and ecclesiastical authority. However, he was not made of the stuff that enables a person to stand up for freedom of conscience as a matter of principle. His rich and prodigal mind drew a caricature of the fierce religious feuds in his country. "In our present quarrel," he exclaims, "where there are a hundred things to get rid of and great and profound matters to restore, God knows how many people there are who can boast of having precisely recognized the reasons and grounds of both parties; it is a number, if it is a number, that will have no great capacity to trouble us."<sup>3</sup>

He was disgusted by the new teachings of the Reformation, if only because they attempted to introduce something new; in his opinion this not

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1 Charles du Moulin, the well-known Calvinist civil lawyer, was as much opposed to the political exploits of the Huguenots as to the interventions by the Council of Trent in the sphere of the state, which he opposed with all his acumen in science and logic; see Baudrillart, *Bodin et son temps*, p. 76.

2 In his *Economies royales d'Etat* one finds the theory of the balance of power in foreign politics coupled with the ideal of a universal freedom of trade and religious toleration.

3 Montaigne, "De la coustume, et de ne changer aysément une loi receüe," in *Essais*, vol. 1.

only testified to intellectual pride since human reason cannot discover the absolute truth anyway, but it was also sure to be accompanied by unrest and revolution: "I am disgusted by novelty, whatever face it wears," he wrote in his *Essays*.<sup>1</sup> And when he, nevertheless, lauded toleration, its defense was for him but a pure *pis-aller*, a solution of last resort, the result of a cool calculation of the advantages and disadvantages of persecution.<sup>2</sup> On the other hand it cannot be denied that Montaigne's skepticism concerning all questions that humans cannot answer via their moral nature, and his powerful defense of a natural morality entirely independent of religion, was hardly capable of reconciliation with moral constraint. He, the audacious critic of all traditional authority, in his skeptical humanism the trailblazer for Descartes, could hardly recommend blind submission to ecclesiastical authority, even though elsewhere he was seduced into saying that "one must submit in everything to the ecclesiastical police or dispense with it altogether!" – a statement that was hardly in line with the program of the *politiques*.

Jean Bodin's *Heptaplomeres* brought the mature fruit of universalistic theism in an emphatic defense of freedom of conscience in religious affairs as a fundamental *requirement of reason*. In this bold work, which the author did not dare to entrust to the publisher during his lifetime, universal theism took possession of the historical material of the various religions and aligned itself with a well-nigh completely modern criticism of religious dogmas. To that extent Dilthey is right in calling this work a combination of the transcendental movement in theology (which, with universal theism, ultimately comes down to the inner light in the moral nature of every man) and the moral rationalism (see below) of Erasmus, the Socinians, and so on.<sup>3</sup>

Born in 1530 in Angers, Bodin as a young student in Toulouse was fascinated by the new historical humanist school of jurisprudence. This school also counted Calvin among its adherents and via the trio of Zasius, Alciat (the Italian professor at Bourges) and Budé inaugurated a renaissance of the science of law with a curriculum that joined the study of law to the *bonae litterae* of humanism. It also introduced the philological and historical method to the science of law.<sup>4</sup> Finding little satisfaction in the legal profession which he had practiced in Paris since 1561, and jealous of

1 Ibid.

2 Montaigne, "De la liberté de la conscience," in *Essais* 2.

3 Dilthey, *Weltanschauung und Analyse*, p. 145.

4 On this renaissance of the science of law see Roderich von Stintzing, *Ulrich Zasius: Ein Beitrag zur Geschichte der Rechtswissenschaft im Zeitalter der Reformation* (Basel, 1857), p. 194 ff.; Henry Lemonnier, *La lutte contre la maison d'Autriche: la France sous Henri II (1519-1559)*, vol. 5, pt. 2 of *Histoire de France depuis les origines jusqu'à la Révolution*, comp. Ernest Lavisse (Paris: Hachette, 1904), p. 310 ff.; Charles Borgeaud, *L'Académie de Calvin, 1559-1798*, vol. 1 of *Histoire de l'Université de Genève* (Geneva: Georg & Co., 1900), p. 188. This

the early reputation acquired by Pierre Séguier, Christofle de Thou, Charles du Moulin and Etienne Pasquier (all of them future members of the *politiques*), Bodin embarked on a profound philosophical study of history and law and in the process collected a wealth of material to be used in his later masterpieces. The first fruit of this intensive labor was his well-known *Methodus ad facilem historiarum cognitionem* (1566).

It is most important, beginning with this great work, to trace the development of Bodin's religious ideas, which were also, to be sure, influenced by the development of his political career. During this glorious period in his life – he was treated with all possible honors at the court of King Henry III, as reported by his friend, the historian de Thou – Bodin appears to have been sympathetic towards Calvinism. This is confirmed not only by the most dependable source, de Thou,<sup>1</sup> but also by the praise he dared to mete out to the great reformers in his *Methodus*,<sup>2</sup> by a letter which the youthful Bodin wrote in 1563 to his friend Jean Bautru des Matras,<sup>3</sup> and by the fact that during the St. Bartholomew's Day Massacre he barely escaped the daggers of the butchers of the Huguenots. But gradually a deviation from the Calvinist position took place. The year 1571 saw Bodin as adviser in the camp of the duke d'Alençon, the leader of the *politiques*. Called to the highest offices and enjoying great favor at court, he experienced the year 1576 as the turning point in his life. As representative of the Third Estate at the assembly of the Estates-General in Blois, he headed those who were against the war with the Huguenots and who opposed the sale by the King of part of the crown domains<sup>4</sup> in order to finance that war. This opposition

grand revival of the science of law in the historical philological sense not only influenced the development of the historical method but also furnished a wealth of valuable source materials for future historical research. Apart from the deepened conception of Roman law and its history, the practical requirements of political life, which rekindled the struggle between on the one hand the Curia and the rising absolutism of national kings and on the other hand between the latter and the estates and parties in France, necessitated the collection and application of historical evidence. Bodin in his famous *Six livres de la République* and the Calvinist jurist François Hotman in his famous attack on hereditary monarchy in his *Franco-Gallia* both employed the most extensive historical source materials in their research. More on this in Bezold, "Zur Entstehungsgeschichte der historischen Methodik," in *Aus Mittelalter und Renaissance*, p. 372 ff.

- 1 Jacques-Auguste de Thou writes in his *L'Histoire universelle*, vol. 7 (1587-1591), bk 94: ". . . Bodin, who earlier had professed the protestant religion and who, after all, had never had much of an aversion to that doctrine . . ."
- 2 Cf. Bezold, "Jean Bodin als Okkultist," p. 307 ff.
- 3 About the content of this letter, see Baudrillart, *Bodin et son temps*, p. 136 ff.
- 4 This resistance was not unrelated to Bodin's public-law conception of the domains of the crown. Bodin gave a full account of the proceedings at the assembly in his *Recueil de tout ce qui s'est négocié en la compagnie du Tiers Estat de France en l'assemblée générale des trois Estats, assignez par le roy en la ville de Blois au 15 novembre 1576*.



put him out of favor with the court. The publication of his famous work *République* followed in 1577, in which he also scientifically defended freedom of conscience, legal security, and justice in the state.

The religious wars between the Huguenots and the followers of the Guises, which shook the very foundations of the French state, gradually led Bodin from the Calvinist party into the arms of the party of the *politiques*. Simultaneously, his mind evolved that peculiar universal theism which seeks rest, beyond all the sectarian divisions, in a universal natural religion. Even his *Methodus* anticipated this gradual development. Despite all the Calvinist sympathies expressed in this work, Bodin wanted to leave the question as to the true religion open to scientific research, although he did add that in such matters one makes more headway by frequent prayer and turning a cleansed mind to God than by any course of study.<sup>1</sup> The same reserve is still found in his *République*. But then, in his lamentable tract *De la démonomanie des sorciers* (written at Laon in 1579), taken in by some obscure superstition, he recommended the most cruel punishments for sorcerers and witches, and in his comparative analysis of various religions which was also found in previous works, he no longer indicated a preference for the Christian religion.<sup>2</sup> Thereafter, this development was intensified in *Heptaplomeres*, written by Bodin in his 63rd year (ca. 1593). This essay is in the form of a discussion modeled on the dialogues of Plato and Cicero. Its setting is Venice, which for so long had been a safe haven for freethinkers and it takes place in the home of a certain Coronaeus (Coroni). The participants are seven people who each represent a specific point of view concerning religion and who discuss most freely the value of various religions and whether one of them contains the absolute truth.

Solomon is the typical representative of the Jews, a learned Talmudist, exclusivistic in his reasoning, fierce critic of Christianity. Like Toralba (see below), Solomon is a person whom Bodin brought out with special preference. He champions strict Jewish monotheism supported by an allegorical exegesis that in many ways could be traced back to the Cabala. Intellectual intercourse with learned Jews who had been driven from Spain was, at that time, much sought after by the humanists. Neoplatonists like Pico della Mirandola and Reuchlin made use of allegorical exegesis and the cabalistic mysticism of numerology in their universal theism; Bodin, with his preference for magic and Cabala, undoubtedly identified closely with this Jewish doctrine, so much so that even during his lifetime he was frequently accused of secretly practicing the Jewish religion.<sup>3</sup>

1 Jean Bodin, *Methodus*, cap. 1, p. 12 and cap. 2, p. 18: "Sed in eo genere historiarum plus oratione frequente et purgatae mentis in Deum conversione quam ullo studio proficiemus".

2 See Bodin, *République* 5.7.

3 See Dilthey, *Weltanschauung und Analyse*, p. 147. Concerning Bodin's supposedly Jewish parentage, see Baudrillart, *Bodin et son temps*, pp. 112 f.



Curtius, the second participant in the discussion, is the well-equipped defender of Reformed Christianity. He champions freedom of inquiry and defends criticism of the abuses of the Roman church on the basis of God's Word as infallible authority.

Fredericus, who represents the Lutherans, shows a lack of critical sense and intellect. It remains an open question whether Dilthey is right in observing that Bodin expressed his contempt for all that is German by his treatment of this character; it is certainly true that this person contributes little to the clarification of the debate.

Nor does Coronaeus, the representative of Catholicism. For him, all questions end with the authority of the church. For all that, he is utterly opposed to a Catholicism that seeks its strength in the persecution of heretics. He is a mild, conciliatory man who emphatically defends *toleration*.

Octavius represents Mohammedanism. Once a Christian, he was converted to the Muslem religion while in Turkish captivity and he now fervently defends Mohammedanism against his former fellow-believers.

A very special place, finally, is given to the characters of Senamus and Toralba. Senamus personifies the semi-skeptical Stoicism which we found above to be the common feature of universal theism. He combines a religious universalism, which takes the gods of all nations to be symbols of the one supreme God, with a tempered skepticism that leaves open the question as to which religion is the best. He "enters the temples of Christians, Ishmaelites, and Jews wherever possible, but also those of Lutherans and Calvinists, so that he will not offend them as an atheist, or create the impression that he is out to disturb the public peace."<sup>1</sup> He opposes supernaturalism and wants to explain all things from natural causes.

Toralba's character towers above all the others mentioned. It is in him that Bodin pours most of his own spirit. In Toralba, the specific universal theism of the Florentine Academy is combined with *critical rationalism* (see below), which also proclaims the sovereignty of natural reason in matters of religion. Unlike Senamus, Toralba is no skeptic. He is a decided monotheist, even a supernaturalist (he defends the possibility of miracles over against Senamus). He chooses for the primacy of the will in God and, in a wholly Scotist and Calvinist way, sees *the law as boundary between God and creature*.

From this position – but now most clearly deviating from Scotism and Calvinism alike – Toralba argues against the Christian doctrine of the Trinity and the two natures of Christ. Christ could not be both God and man at the same time; he was under the law, therefore finite, a creature. On this point, as with his opposition to the doctrine of original sin, Toralba is an avowed naturalist and rationalist.

But then this curious individual also displays Neoplatonism's attitude of universal theism. In a fascinating debate about the criterion of true reli-

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<sup>1</sup> Gottschalk Eduard Guhrauer, ed., *Das Heptaplomeres des Jean Bodins* (Berlin, 1870), p. 157.

gion, Toralba maintains equally against Jews, Christians, and Mohammedans that originally God implanted religion in man at the same time as reason. The oldest religion is the natural religion of Adam, which will also suffice for salvation. This primitive natural religion, without ecclesiastical formulas and special revelation, has not just been handed down externally from generation to generation but is also innate in every moral person as a natural "inner light." The Decalogue is but the formalization of this natural religion that has been corrupted by the official theology of various existing religions. That is why mankind must return, beyond all ecclesiastical formulas and dogmas, to this true natural religion which can be known through reason in the simplicity of the soul.<sup>1</sup>

Dilthey has shown how this whole conception is influenced by the universal monotheism of the Florentine Academy which in Ficino and Pico went back to the original religion of the human race on the basis of a kinship between the various religions.<sup>2</sup> It has already been noted how this universal theism joined hands with theological rationalism in using reason to criticize traditional dogmas.

The theological-philosophical dialogue between all these characters does not lead to the discovery of a criterion of true religion acceptable to all, but it does lead to the conclusion, unanimously accepted (even by Solomon, despite initial reservations) that the religions, which all possess a certain kinship to each other, ought to co-exist peaceably. At the start of the fourth book, *the issue of toleration* is posited as a principle. Senamus here appears as the prime champion of tolerance, supported by Octavius. According to him, tolerance is a requirement of reason, which commends it because the mutually conflicting religions, each imagining itself in exclusive possession of the absolute truth, have no recourse to an infallible authority to decide the issue. Further, reference is made to the value of natural virtue independent of any revealed religion. The argument does not forget to mention the divine bestowal of grace on a doomed Nineveh purely because it showed contrition for its sins.

The initial opponents of toleration are indeed convinced. While singing a hymn, "How good and pleasant is the union, when brothers live in sweet communion" and enfolding each other in loving embrace, they finally go their separate ways and Bodin concludes his work with this observation: "Subsequently, in admirable unison, piety and integrity, they carried on their joint studies in each other's company and no longer argued about religion, although each maintained his religion with supreme holiness in the conduct of his life."<sup>3</sup>

Various attempts have been made to identify Bodin with one of the interlocutors. Solomon in particular has been singled out as representative

1 Bodin, *Heptaplomeres*, pp. 57, 63, 86, 122, 126, 136, 145 ff.

2 Dilthey, *Weltanschauung und Analyse*, p. 149.

3 Bodin, *Heptaplomeres*, p. 159.

of Bodin's deepest convictions. Bodin's relations with the Jewish world of thought, his preference for the Old Testament and the strictly legalistic position of the Talmudists (only seldom does he mention the Gospels and the church fathers) are advanced as grounds for this conjecture. One should not overlook, however, that Solomon, in apparent contrast with Bodin, at first adopts the position of intolerance towards other religions. It is closer to the truth, also in light of Bodin's earlier mentioned works, to assume that Bodin allows each of the participants to give partial expression to his views on religion without identifying himself with any one of them in particular. In view of all that has been said it may be considered established that the universal theism of natural religion, its rationalism in criticizing authoritarian dogma and its skepticism about an absolute criterion for the true religion, constitutes Bodin's final position. In all this, Bodin also serves as a point of transition towards theological rationalism which finally (most consistently in the theism of the Enlightenment) subjects dogmatics, the most solid bulwark of the Christian doctrine of grace, to the sovereignty of reason, and, in so doing, does away with the old contrast between nature and grace by ruling out the latter as a special agency.

#### **Theological rationalism and the critical-historical method**

Theological rationalism in part originated during the humanist "enlightenment" that counted Lorenzo Valla (ca. 1407-1457) among its first exponents.<sup>1</sup> By and large it shared the basic tenor of universalistic theism and Stoicism but it did introduce a new element, that of the rational critique of fundamental Christian dogmas. And so the problem of the relationship between Christianity and ancient culture, which early humanism, especially the Neoplatonists, had barely addressed, was suddenly brought out in the open in an almost frightening new form. To get a clear view of the difference between this rationalism and the universal theism of the Neoplatonists, just compare Marsilio Ficino's *De religione Christiana* with Valla's *De libero arbitrio* or *De Voluptate ac de vero bono*.

There is no criticism of Christian dogmas to be found in Ficino and associates. Nor is there any trace of historically refined insight into the development of ancient philosophy and of Christianity, nor into their curious merger during the Middle Ages, as was indeed already happening by the time of the church fathers. To Ficino, the church's tradition is simply an established fact. According to the Alexandrian tale, Plato becomes Moses' disciple and his Neoplatonic commentators are transformed into dis-

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<sup>1</sup> On Valla see Johannes Vahlen, "Lorenzo Valla: Ein Vortrag," *Almanach der kaiserlichen Akademie der Wissenschaften* 14 (1864): 183 ff., and Mestwerdt, *Die Anfänge des Erasmus*, p. 29 ff.

ciples of John, Paul, Hierotheus, and Dionysius the Areopagite.<sup>1</sup> Ficino does indeed rely on the Hebrew text of the Old Testament and the Greek text of the New Testament and he does attempt a new interpretation of Paul's letter to the Romans on the basis of its inner coherence, but neither he nor Pico della Mirandola attempts to understand Christianity and ancient philosophy in terms of their own essence. The cherished view in the Neoplatonist circles of early humanism was that of the *communis religionis veritas* which is revealed in all men, especially during the flowering of Greek philosophy, of which Christianity is but the highest stage in satisfying the desire for the super-sensory. This naive speculative view does not as yet allow for a clear-cut statement of the problem concerning the relationship of Christianity and culture. It is all airy speculation, without critical-historical foundations, in which the use of frequent references to Cabalism only confuses rather than clarifies.

Not so with Lorenzo Valla. He saw more clearly than most of his humanist contemporaries and predecessors that the question concerning the relationship between Christianity and ancient culture ultimately was about the relationship between two mutually conflicting worldviews. In his *De libero arbitrio* (which defended Christian liberty against Stoic fatalism in a tone which clearly betrayed the influence of the religious humanist ideal of life as discussed above) he does not contrast Stoic philosophy with traditional Christianity but with a *purified and simple Christianity* that must first be redeemed from the corruption of ecclesiastical Scholasticism and dogmatics. And for that rediscovery of the uncontaminated norm, especially in the apostles and church fathers, he used the *critical-historical method*. Here lies the characteristic difference of the humanist approach when compared to medieval sectarianism and spiritualism which also sought to restore *original* Christianity as norm but which did not in the process apply rational historical criticism to Scholastic Christianity but rather uncritically reverted to both the letter and the spirit of the Gospel without properly considering historical development.<sup>2</sup>

In principle this moralistic rationalism is done with authority – not only with the authority of the church but basically with that of every institution other than reason. Natural reason will still acknowledge as a religious norm a certain content of the Christian faith, but then a content which reason itself has determined from the sources in a historical-critical manner,

1 See Ficino, *De religione Christiana*, cap. 22, p. 24 ff. and cap. 26, p. 29 ff.

2 Heinrich Hermelink's conception as found in his *Die theologische Fakultät in Tübingen vor der Reformation, 1477-1534* (Tübingen: Mohr, 1906), namely that the humanist reform movement, at least in Germany and the Low Countries, can be explained largely in terms of a consistent development of the reforming tendencies contained in the realistic Scholasticism of the *via antiqua* in conjunction with the contemporaneous religious upswing in the towns, totally overlooks the specifically modern element of humanistic rational criticism! For a refutation see esp. Mestwerdt, *Die Anfänge des Erasmus*.

has adjusted to the requirements of the intellect, and has interpreted to suit the humanist ideal of life. In principle, therefore, natural reason comes to rule over the Christian truths of grace.

### **Exegesis and the new concept of science**

The science of exegesis using Valla's historical philological method was applied in a manner most advanced for its time in his *De collatione Novi Testamenti libri duo*. This science had adjusted itself in principle to the modern concept of science which does not, like Scholasticism, take scholarship to be a tradition of already established truths, but instead uses free inquiry to determine the truth by reason.<sup>1</sup>

It was of particular consequence that this hermeneutic also came into play when it became the basis for a critical evaluation of the church's theology. For here, too, Valla adopts the humanist notion that there is but *one truth* to which theology too, like all disciplines, must be subordinate. There is no special method for a theological enquiry into truth. Valla engages in unrestrained criticism of the church's hierarchy, the Roman system of ranks, the Vulgate, the church fathers and the Scholastics. The science of history in general is particularly indebted to him for demonstrating beyond any doubt, in his famous work *De falso credita et ementita Constantini donatione declamatio*, that the "Donation of Constantine" on which the popes relied for their claim to secular authority was based on a pure forgery.

### **Ideas of toleration and the development of theological rationalism in Erasmus, Coornhert, and Grotius.**

#### **Relationship to the *Devotio Moderna***

Theological rationalism, making its debut in modern religious views with Valla, took on a different character in Erasmus and his Dutch kindred spirits Coornhert and Grotius, a character that can only be explained by the close relation of Dutch (and to some extent also German) humanism to the so-called *devotio moderna*. In the Low Countries<sup>2</sup> this movement<sup>3</sup> flourished in the "Brethren of the Common Life" (Geert Groote, Floris Radewyns, Wessel Gansfort, Alexander Hegius, and oth-

1 See Mestwerdt, *Die Anfänge des Erasmus*, p. 49. The work of Valla in question was also published in Amsterdam in 1630, in an edition by Jacob Revius.

2 It must be remembered that at that time the boundaries of the Netherlands could hardly be drawn with any precision; cf. Lindeboom, *Het bijbelsch humanisme in Nederland*, p. 1 f.

3 On this see e.g. Lindeboom, *Het bijbelsch humanisme in Nederland*; G. H. M. Delprat, *Verhandeling over de Broederschap van Geert Groote en over den invloed der Fraterhuizen op den wetenschappelijken en godsdienstigen toestand, voornamelijk van de Nederlanden na de veertiende eeuw*, 2<sup>nd</sup> rev. and enl. ed. (Arnhem, 1856); and Mestwerdt, *Die Anfänge des Erasmus*, p. 78 ff. Among more recent literature, a special mention must go to the detailed work of Albert Hyma, *The Christian Renaissance: A History of the Devotio Moderna* (Grand Rapids: The Reformed

ers) and in the congregation of Windesheim. It was embodied in Ruysbroek's mysticism and in the immortal classic of Thomas à Kempis, *The Imitation of Christ*. Formally, this *devotio moderna* adhered totally to the medieval ecclesiastical point of view; on the other hand, because of its radical demand for a renewal of the Christian conviction, in contrast with which the external ordinances of the church were actually regarded as insignificant, it harbored very radical tendencies. No wonder it suffered fierce opposition from the Dominicans and Franciscans and was under suspicion more than once by the Curia itself.

Essentially the *devotio moderna* was a mystical, moralizing ideal of piety, and central to its view was "the imitation of Christ," of Christ as the perfect ethical example, as the wholly wise teacher.<sup>1</sup> Along with it went a certain unfavorable attitude toward dogmatics and theology in general as the intellectualization of divine truths which the soul must humbly contemplate rather than analyze intellectually. Not knowledge nor a systematic view of life, but rather pure conviction and moral conduct determine man's worth with God: "What use splitting hairs over things hidden and obscure that will not be held against us on Judgment Day on account of our ignorance?" and "What does it profit you to hold forth on the Trinity if you lack humility and so displease the Trinity?"<sup>2</sup> In this way the doctrine of reconciliation through Christ, the entire notion of sacrifice, retreated into the background in the face of the humble imitation of Christ as a practical-ethical ideal.

Two further characteristic notions of the *devotio moderna* must be noted since they clearly influenced the moral rationalism of later times. Foremost is the strong emphasis on the *primacy of the will* and the *boundary between God and creature*. The mysticism of Groote and Thomas à Kempis has nothing in common with the pantheistic mysticism of the Italian Neoplatonists. Second is the prominently Stoic feature in the ethical ideal of life which, even when one feels abandoned by God and man, finds

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Press, 1924), which also shows the influences of the *devotio moderna* in France (especially in the Collège de Montaigu) (see chap. 7, "The Christian Renaissance in France," pp. 236-299). However, the link between the Reformation and the *devotio moderna* as suggested by the author is questionable.

- 1 Cf. e.g. Thomas à Kempis, *Imitatio Christi* 1.1: "Summum in studium nostrum sit in vita Jesu Christi meditari" (Let it be our chief study to meditate on the life of Jesus Christ). See also Wessel Gansfort's letter, "De statu animarum et quid sit amare Jesum," in *Wesseli Gansfortii . . . Opera*, ed. Albert Hardenberg (Groningen, 1614), pp. 860-863, in which the selfsame ethical ideal of the imitation of Christ is promoted in an intimately mystical style.
- 2 Thomas à Kempis, *Imitatio Christi* 1.3: "Quid prodest magna cavillatio de occultis et obscuris rebus, de quibus non arguemur in iudicio, quia ignoravimus." and *ibid.* 1.1: "Quid prodest tibi alta de Trinitate disputare, si careas humilitate, unde displiceas Trinitati?"



the power to lead a pious life in the religious personality itself.<sup>1</sup> The external means of grace of the church as an institution of salvation are not rejected, but the pious cannot benefit from them without a pure conviction of the heart; indeed, when one comes right down to it he does not need them. Wessel Gansfort went so far as to raise serious objections to the doctrine of the sacraments and indulgences of the Roman Catholic Church.<sup>2</sup>

The follower of Christ does not need social intercourse with others either. Indeed, he should strive to become independent of all external things and above all, to master his passions. At the same time the awareness that this ideal is not attainable without God's grace also stays alive. A certain egotistical characteristic of this entire ascetic view of life cannot be denied. The *devotio moderna* does preach eagerness to be of service to fellow human beings, and, unlike the monastery, does emphasize social work and the schooling of youth. But ultimately "the neighbor" becomes a mere means for the pious to exercise their virtue, and the basic attitude of the *devotio moderna* is infused with a goodly dose of contempt for men.<sup>3</sup>

Among profane writers, Seneca was the favorite author for the disciples of the new piety. They also had a special preference for Cicero and Plato.

This entire practical ideal of piety, so characteristic of the *devotio moderna*, opened up a broad point of entry for humanist culture, even though the *devotio moderna* as such had nothing to do with humanism. The more that theoretical interest in dogmatics and theology withdrew behind the practical ethical ideal of piety, behind the totally personal, emotional conception of one's own and other's religiosity, the more open-minded one could be about a non-Christian morality that exhibited certain features akin to those of the *devotio moderna*, such as the Platonic and late-Stoic morality. Wessel Gansfort was already a convinced humanist<sup>4</sup> and Hegius, especially in his linguistics, reacted vehemently on humanist grounds against the confusion of grammar and nominalistic logic (with its *modi significandi*) so common in Ockham's theory of terms. Although this

1 Accordingly, Groote writes: "Tunc es punctus merendi, quando Deus relinquit hominem et retrahit manum suam et homo manet vel confidens in Deo vel se ipsum et omnem salutem suam Deo libero offerens . . ."; quoted by L. Schulze, "Zur Geschichte der Brüder vom gemeinsamen Leben: Bisher unbekanntes Schriften von Geert Groote, Johannes Busch und Johannes Veghe," *Zeitschrift für Kirchengeschichte* 11 (1890): 582 ff.

2 Cf. Geeraert Brandt, *Historie der Reformatie en andere kerkelyke geschiedenissen in en omtrent de Nederlanden*, 2<sup>nd</sup> ed. (Amsterdam, 1677), p. 54 ff.

3 Cf. Mestwerdt, *Die Anfänge des Erasmus*, p. 94. See e.g. Thomas à Kempis, *Imitatio Christi*, 1.10.5: "Vellem me pluries tacuisse et inter homines non fuisse" (I often wish I had kept silent and not been among men).

4 On Gansfort see Lindeboom, *Het bijbelsch humanisme in Nederland*, p. 71 ff. and the literature quoted there, and esp. Hyma, "Wessel Gansfort," chap. 6 of *The Christian Renaissance*, pp. 191-235.



was but a *formal* humanism (a pursuit of the humanist disciplines), the *religious spirit* of humanism could easily penetrate the *devotio moderna*.

And so in Desiderius Erasmus (1466-1536) we witness a confluence of humanism and *devotio moderna*, during which the latter's basic attitude of Christian mysticism was lost. Erasmus, who as a youth had lived among the Brethren of the Common Life,<sup>1</sup> in opting for humanism, did reject the form of their *devotio moderna* with some disdain, yet his later life clearly showed the after-effects of the ideals of piety that had been impressed upon him in his youth.<sup>2</sup> The new piety's emphasis on practical ethics rather than mystical contemplation was of lasting significance in his intellectual development, specifically the practical Christian ethics which showed both a markedly *naturalistic* inclination and to a certain extent a clear intrinsic connection with the late-Stoic doctrine of the moral personality.

In its alignment with Valla's critical-historical method, this moral rationalism with its two features – the practical ideal of the *imitatio Christi* and historical-rational criticism – paved the way for *Socinianism* and *Arminianism* and operated from there, through Protestantism, toward *deism*.

Erasmus' "biblical humanism," as Lindeboom calls it, indeed contained all the tendencies which were later to appear in a much clearer, more accentuated fashion in moral rationalism. Yet one should not represent Erasmus as more modern or more enlightened than he in fact was. Erasmus' personality, full of inner contradictions, poses an extremely difficult psychological enigma. From the life and work of this fascinating, colorful and conflicted genius one can reconstruct a psychological picture that would only drive a searcher for systematic consistency to despair. At times he is the sarcastic critic of the *Colloquies* and *Praise of Folly*, at other times, in *Free Will* and the *Hyperaspistes*, he is an almost docile believer in the church's authority. At times Erasmus appears to seriously undermine the church's dogmas, at other times he wears the innocent face of one who has never deviated from the official teachings of the church. Sometimes Erasmus resembles a church reformer, at other times he speaks as the defender of the papacy. Erasmus is the humanist of universal theism, as in his *Antibarbari*, but a little later his *Ciceronianus* taunts secularized humanism for failing to appreciate the absolute character of Christianity.

It is not our task, however, to further unravel this interesting psycholog-

1 Hegius and Synthus were his teachers in Deventer.

2 Robert Fruin in his "Erasmiana," in *Verspreide Geschriften* (The Hague: Nijhoff, 1903), 8:271 ff., first raised major doubts about the value of Erasmus's later evaluation of the *devotio moderna* for the historical knowledge of Erasmus's spiritual development. See also J. Lindeboom, *Erasmus: Onderzoek naar zijne theologie en zijn godsdienstig gemoedsbestaan* (Leiden: Adriani, 1909), p. 188 ff. It should also be remembered that instruction in the Latin School of Deventer, where Hegius was rector, had not yet attained a very high standard.

ical puzzle, which has already tempted so many authors to risky – since one-sided – conclusions.<sup>1</sup> Here it is only necessary to consider Erasmus within the scope of the developmental tendencies that point to the birth of the modern humanist worldview. In particular we need to examine his moral rationalism with reference to the problem of the relation between nature and grace, and then try to determine how this moral rationalism related to the humanist ideas of toleration.

Moral rationalism, as it first took shape in Erasmus, cannot be explained apart from the development, from the early Christian church through the Middle Ages, of the primacy of the will with its clear-cut boundary between God and creature (as traced in chapters 3 and 4 above). In broad strokes, this development ran from Augustinianism, over the sects, Scotism and nominalism, into modern times. It reappeared with the *devotio moderna* in the form of the mystical, ethicizing ideal of piety. In all respects this line of development turned out to spell trouble for the unified ecclesiastical culture. In Erasmus and his disciples it deviated into a humanistic line and became dangerous not only for the unified culture, but especially for the Christian doctrine of grace itself.

That this line does indeed continue in Erasmus can only be denied by those who cling to certain of Erasmus' theoretical pronouncements that seem to indicate his support for the primacy of reason.<sup>2</sup> However, apart from the fact that in general Erasmus was not philosophically and dogmat-

- 1 Dilthey, too, in *Weltanschauung und Analyse*, is guilty of this. He regards Erasmus much too one-sidedly as the universal theist and does not even mention Erasmus' link with the *devotio moderna*. Even a cursory acquaintance with the content of Erasmus's *Ciceronianus*, his *Enchiridion militis Christiani*, his *Ratio seu Methodus*, and numerous of his letters and other works show that Erasmus maintains the absolute character of Christianity.
- 2 Johannes Wilhelm von Walter, in his excellent text edition of Erasmus, *De libero arbitrio diatribe, sive collatio*, vol. 8 in *Quellenschriften zur Geschichte des Protestantismus*, ed. J. Kunze and C. Stange (Leipzig: Deichert, 1910), p. xxv, appeals to the text (2a 9) where Erasmus calls the intellect the source of the will (Erasmus writes: “[Q]uamquam et in hoc arbitror corruptam fuisse rationem, ex qua nascitur voluntas”) and where the understanding is called the source of all good and evil (Erasmus writes: “Ceterum in Eva non solum voluntas corrupta videtur, verum etiam ratio sive intellectus, unde scaten fontes omnium bonorum ac malorum”). From this Walter concludes that Erasmus evidently rejects the Scotist position on the primacy of the will, but this conclusion is based on a common misconception of Duns Scotus's theory of it. As Baeumker, Baumgartner, and Seeberg have clearly shown, Duns Scotus did not teach a psychological but rather an axiological primacy of the will. As to the psychological question whether rational reflection precedes the will's decision, there was no real difference of opinion between Thomas Aquinas and Duns Scotus. Mestwerdt also thinks he can discover a preference for the primacy of the intellect in Erasmus; see his *Die Anfänge des Erasmus*, p. 196. He bases this opinion specifically on Letter no. 476, where Erasmus writes: “Above all I urge you repeatedly: become accustomed, in all your actions, to following your rational judgment, rather than the uncertainty of your sentiment.” This text appears to form a basis for Mestwerdt's opinion that Erasmus here presents a value

ically sufficiently developed to realize the full implications of such pronouncements, his entire practical ethical ideal of piety, averse as it was to speculation and dogmatics, was too much rooted in the primacy of the will to lend much weight to these pronouncements. Besides – and this must be stressed – history shows that a choice for the primacy of the will is quite compatible with a relative rationalism of the kind found in Erasmus. It was a choice for the primacy of the will as taught by the Roman Stoics and Cicero. However, under the influence of nominalism this Roman-Stoic line would soon lean automatically towards the Democritean line of the primacy of the intellect and, already in the philosophy of Giordano Bruno, Hobbes, and Descartes, merge with it.

Erasmus' moral rationalism clearly tended to emphasize a purely practical ethical conception of the Christian doctrine of grace. The deeper truths of grace, that is, the tri-unity of God, the unity of human and divine natures in Jesus, the atoning sacrifice of Christ, original sin, and so on, do not constitute an inherent part of his religious morality;<sup>1</sup> his view of faith and salvation through Jesus Christ is wholly permeated by moral rationalism. For him, to believe is above all to give intellectual assent to the truth, and faith is a practical ethical application of that intellectual conviction.<sup>2</sup> Accordingly his *Ratio seu methodus verae theologiae* summarized the teaching of Christ the “heavenly teacher” as a series of moral precepts, and Christian faith is simply mentioned as one of these ethical commandments.<sup>3</sup> In another place, faith is described as “the God-given disposition

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judgment concerning the relation of intellect and feeling. But feeling is not the same as the will. Just try to understand Erasmus' very practical ideal of piety from the point of view of the essentially metaphysical primacy of the intellect! This is utterly impossible.

- 1 Cf. Erasmus, *De libero arbitrio diatribe*, ed. Walter, Ia 9: “Quaedam voluit nos scrutari sic, ut ipsum in mystico silentio veneremur. Proinde multa sunt loca in divinis voluminibus, in quibus cum multi divinarint, nullus tamen ambiguitatem plane resecurit, velut de distinctione personarum, de conglutinatione naturae divinae et humanae in Christo, de peccato numquam remittendo. Quaedam voluit nobis esse notissima, quod genus sunt bene vivendi praecepta. Videlicet: Hic est sermo Dei, qui neque petendus est e sublimi conscenso caelo neque e longinquo importandus transmissis mari, sed prope adest in ore nostro et in corde nostro. Haec omnibus ediscenda sunt, cetera rectius deo committuntur et religiosius adorantur incognita, quam discutiuntur impervestigabilia.”
- 2 Lindeboom, *Erasmus*, p. 60.
- 3 Erasmus, *Ratio seu Methodus*, vol. 5 in *Opera omnia*, ed. Jean Le Clerc (Leiden, 1704), p. 84 f.: “Quaedam plane praecipit omnibus: quod genus est, de mutua caritate: de condonandis fratrum erratis: de tollenda sua cuique cruce: quod si recuses, non agnoscit Christus discipulum: de mansuetudine, cum ait Matthei capite undecimo: Discite a me, quod mitis sum et humilis corde, et invenietis requiem animabus vestris: de fide, quam ubique requirit: de beneficentia in omnes, aliisque his consimilibus.”

whereby, without hesitation, we accept in faith all that is necessary for eternal salvation.”<sup>1</sup>

Even though Erasmus repeatedly refers to the Pauline texts concerning justification by faith alone, it appears from his paraphrasing that he attributes a mainly ethical content to these texts in the sense that one has to more or less form oneself into a moral personality.<sup>2</sup> Christ is the perfect teacher of virtue, of that virtue which springs from love of God and neighbor.<sup>3</sup> Not the Crucified One, but the living teacher is his Redeemer,<sup>4</sup> who redeems from a life of vice.

However, there is no doubt that Erasmus maintains the absolute character of such an ethically conceived Christianity over against pagan morality. There are also places in Erasmus' writings which show that he was conscious<sup>5</sup> of the deeper soteriological idea, of Christianity's idea of atonement; but in his religious thought such incidental remarks play no significant part. Most remarkable is the manner in which Erasmus takes a position on the basis of his moral rationalism in the age-old problem of Christianity, that of the relation between nature and grace, religion and secular culture. The clearest statement of it is perhaps to be found in his *Antibarbari*, which, although it first appeared in 1520, had been written much earlier.<sup>6</sup>

This work is concerned with a justification of the pursuit of the humanist disciplines, a justification not just of *formal* humanism but of *material* humanism, along with an appreciation of the materially good in the ancient worldview, including its ethics and philosophy. In this dialogue, Erasmus' humanist friend Jacob Battus, for some time secretary of the city of Bergen op Zoom, takes the lead and shows how all of culture, including its science and philosophy, is actually a product of pagan thought and deliberation, and that Christianity, culturally speaking, is the lesser in all respects as compared to ancient civilization.

Indeed, there is no civilization at all that was not “secular” in the sense of the ancients. The pagan sciences were divine. After all, “No truth can be evil as such; the liberal arts are truth, therefore they are good.” Of course, among those heathen ideas there were good ones and bad ones, but

1 Erasmus, *Ecclesiastes*, in *Opera omnia*, 5:924b.

2 Lindeboom, *Erasmus*, p. 61.

3 Cf. among numerous other statements, Erasmus, *Enchiridion militis Christiani*, canon 4 [chapter 12] in *Opera omnia*, 5:25: “Christum vero esse, puta, non vocem inanem, sed nihil aliud, quam caritatem, simplicitatem, patientiam, puritatem, breviter, quidquid ille docuit. Diabolum nihil aliud intelligo, quam quidquid ab illis avocatur. Ad Christum tendit, qui ad solam virtutem fertur.” See also *Ratio seu Methodus*, in *Opera omnia*, 5:84b-d, where Christ is called *coelestis doctor*.

4 See Erasmus, “Supputatio errorum censuris Beddae,” in *Opera omnia*, 9:617c, 618c.

5 See the texts quoted by Lindeboom, *Erasmus*, p. 65.

6 See Mestwerdt, *Die Anfänge des Erasmus*, p. 245.

that is no different with Christians: what was *good* in heathen wisdom was good as such and did not first require legitimation by Christianity. The ethical ideas of the pagan philosophers also share in this appreciation of ancient culture. "I do not wish to engage in those ponderous debates about the heathens which are unworthy even of women: it is not our task to dispute about the damnation of heathens, of those, that is, who lived before our faith. However, if we wished to offer conjectures on that, then I could easily demonstrate that either those men among the pagans or else no one has been saved: we are only concerned about the question whether they have taught well, not whether they have lived well."<sup>1</sup>

Thus far, the old ideas that were already encountered in the universal theism of the Italian humanists are found to recur in Erasmus.

### **The problem of the relation between nature and grace**

Truly novel and original, however, are Erasmus's ideas concerning the mutual relation of nature and grace. Pagan culture and Christian faith constitute, each in their own area, an absolute and sovereign emanation from the one divine truth. But they cannot and may not continue to co-exist without being reconciled. Just as they are both of divine origin, *so together they fit into the harmony of a historical process of development ordained by God*. It is part of God's cosmic plan that pre-Christian times would bring the highest level of culture (*summa eruditio*) while Christianity was to bring the teaching of the highest moral perfection (*summum bonum*). And just as each period poses its own task for Christianity, so the present period demands not an escape from but a forceful pursuit and purification of ancient culture, in order to incorporate it into the Christian world of thought. Christianity may not claim governance and guidance over those extra-Christian values. It needs only to cleanse them from error and accept them with gratitude.

Erasmus knows full well that the Christian revelation is utterly unique, timeless and absolute, and also that there were times when Christians had to live according to God's order in primitive Christian *simplicitas* (simplicity), without a positive task in respect of science or philosophy. "Not without reason had it been arranged that the Christian religion started with unlearned apostles. That was good, so that the honor of such a great fact would not be attributed to human effort, but entirely to the power of God.

<sup>1</sup> Erasmus, *Antibarbari*, in *Opera omnia*, 10:1711d-e: "Non hic ingredior rixosam disceptationem de ethnicis, quae ne mulieribus quidem sit digna, non est nostrum de Ethnicorum damnatione disputare, eorum, inquam, qui fidem nostrum praecesserunt. Tum si conjuncturas sequi velimus, facile convicero aut illos viros ex Ethnicis, aut omnino nullos salvos esse; quam bene praeceperint, non quam recte vixerint laboramus." Mestwerdt, who refers to this text (*Die Anfänge des Erasmus*, p. 269) in his German translation, omits the concluding sentence, which would seem to be rather crucial.

That circumstance befitted those times, but how should that concern us? These times demand a different form of life, different morals.”<sup>1</sup>

Here the idea makes its appearance that Christianity as absolute eternal truth nevertheless had to enter historical development and be elaborated by human activity. This thesis, as appears from the further content of the *Antibarbari*, implicitly entails the idea that, as compared with the eternal and absolute character of original Christianity, all historical forms of development, also in dogmatics, have but a *relative* right, yet a *right* nonetheless. There is not just historical development but also historical progress to be observed in Christianity's manifestation.<sup>2</sup> Even heresies<sup>3</sup> have contributed to that progress. “God hates nothing so much as weak inactivity. He joyfully takes back into grace the prodigal son who wasted his entire fortune on whores, pimps, and soup-kitchens; he severely chastises the slave, who did return his talent whole.”<sup>4</sup> It is this train of thought that explains many apparent contradictory tendencies in Erasmus's world of thought. On the one hand it is permeated by the humanist ideal of life, by an optimistic faith in the future, by a devotion to hard work in the world, even if this moral optimism in other places is interrupted by the awareness of the smallness of human powers. But this ideal of life is also, as with most humanists, an *aristocratic* ideal. Progress in the development of Christianity is ultimately due to but a small number of gifted personalities.<sup>5</sup> The masses must do with a layman's religion, not scientific penetration into the truth.

On the other hand, the eternal absolute truth of Christianity, the knowledge of which is sufficient unto salvation,<sup>6</sup> is the Sermon on the Mount's morality of love. It allows criticism of not only the historically developed

1 Erasmus, *Antibarbari*, 1739e.

2 In this regard Karl Zickendraht correctly makes mention of an evolutionistic rationalism in Erasmus; see his *Der Streit zwischen Erasmus und Luther über die Willensfreiheit* (Leipzig: Hinrichs, 1909).

3 Erasmus, *Antibarbari*, 1724f: “Nolo hic invidiosam suscitare comparationem, plus-ne contulerit nostrae Religioni martyrum sanguis, an eruditorum hominum stylus. Non elevo gloriam, quam ne copiosissima quidem oratione quisquam assequi queat; at quantum ad nostrum attinet commodum, *nonnullis etiam haereticis plus prope debemus, quam quibusdam martyribus.*”

4 Ibid., 1725d: “Adeo nihil aequae aversatur Deus ut ignaviam! Filium perditum, qui universam substantiam in scorta lenonesque et popinas dissipaverat, in gratiam laetus recipit: servum, qui talentum integrum etiam restituit, tam immaniter objurgat.”

5 Ibid., 1724t: “Et martyrum quidem summa fuit copia, Doctores perpauci. Martyres moriendo Christianorum numerum imminuerunt, docti persuadendo adauxerunt. In summa: Frustra illi pro Christi doctrina sanguinem fortiter fudissent, ni hi ab haereticis suis litteris vindicassent.”

6 Erasmus, *De libero arbitrio*, 1a 8: “[H]aec [*scil.* formulam Christianae mentis] inquam, tenere meo iudicio satis erat ad Christianam pietatem nec erat irreligiosa curiositate irrumpendum ad illa retrusa, ne dicam supervacanea, an Deus contingenter praesciat aliquid, utrum nostra voluntas aliquid agat in his ... etc.”



morals, customs, and doctrines of the church but also the other writings of the Bible.

Erasmus made liberal use of this criticism. Trenchantly and mercilessly he lashed out at the double morality of Roman Catholicism. In humanist fashion he defended the equality of every rank of life before God, sang the praise of matrimony, and fought the secular authority of the papacy. He went further, however. He consciously separated the Old and New Testaments, declared that in the New Testament the Gospel of Matthew was more valuable to him than the revelation "attributed to John," and that the Pauline epistles to the Romans and Corinthians were more important than the letter to the Hebrews.<sup>1</sup> In an Arian manner too, more than once, he makes a mechanical separation between the divine and human natures in Christ, showing clearly that he attaches less value to the reconciling and redeeming powers in the divine relation of the Father and the Son and more to the latter's earthly activity (albeit supported by divine authority). He tells the Spanish monks that he considers it fruitless and of little import to discuss the extent to which Christ may be called God: the first three Gospels did not, he says, call him that.<sup>2</sup> The significance of all such utterances should not be underestimated; they typify Erasmus's moral-rationalistic ideal of piety. For although he elsewhere rejects the Arian heresies concerning the doctrine of the Trinity, it is apparent that he does not consider it essential for eternal salvation<sup>3</sup> and that, ultimately, he is skeptical on this point, just as in all such questions he withdraws to the skepticism of the new Roman academy and in the final analysis submits to the authority of the church.<sup>4</sup> The church in her historical manifestation also has authority. Indeed, in view of the plurality of views she must necessarily have more authority than any private views of Scripture. Here emerges the truly humanist ideal of a rational papacy, a rational church authority, as a rationally justified institution for leading the masses. *The humanist natural-law conception of authority*, which we shall discuss extensively later and which differs totally from the Aristotelian-Thomist conception, becomes the brake which Erasmus applies to all laymen's religion of *devotio*

1 Erasmus, *Ratio seu Methodus*, in *Opera omnia*, 5:92c: "Apud me certe plus habet ponderis Esaias, quam Judith aut Hester: plus Evangelium Matthei, quam Apocalipsis inscripta Joanni: plus Epistolae Pauli ad Romanos et Corinthios quam Epistola scripta ad Hebraeos."

2 Erasmus, *Apologia adversus monachos Hispanos*, in *Opera omnia*, 9:1040-1045.

3 See Erasmus, *De libero arbitrio* 1.8a, 1a9.

4 *Ibid.*, 1a 4: "Et adeo non delector assertionibus, ut facile in Scepticorum sententiam pedibus discessurus sim, ubicumque per divinarum scripturarum inviolabilem auctoritatem et ecclesiae decreta liceat, quibus meum sensum ubique libens submittor, sive assequor quod praescribit, sive non assequor."



*moderna*.<sup>1</sup> However, yet another link is needed in this train of thought: the defense of the freedom of the human will.

In the historical process of the development of Christianity, its elaboration and progress are, in the final analysis, due to human effort, even if not without divine aid. The salvage operation of intrinsically good humanist culture, of the *bonae litterae*, requires a free human will to choose the good, which Erasmus defends in the conclusion of *Antibarbari*.<sup>2</sup> And when, later, Erasmus chooses decisively against Luther and Karlstadt precisely on the doctrine of original sin and its inherent moral/religious lack of freedom for the human will, then that, as Luther saw at once, is the *cardo quaestionis*, the fatal moment where Reformation and humanism permanently parted ways.

A word, finally, about Erasmus' relation to humanism's *ideas of toleration*. Erasmus' moral rationalism was naturally *irenic* and *latitudinarian* in kind. Since on the one hand he was largely indifferent to dogmatics and believed in a progressive development of Christianity even at the cost of heresies, he always showed a strong distaste for everything that bordered on compulsion in matters of faith. In a letter written in 1500 he expressed great joy about the escape of a heretic and great horror at the inquisitors concerned.<sup>3</sup>

He repeatedly adopted the same position in his *Colloquies*. Even in one of his last writings, "On the unity of the church," he championed respect for another's opinions, even if one is convinced that they harbor evil.<sup>4</sup> Even against unbelievers, armed conduct is hardly desirable, according to him. That appears most plainly from his position on the holy war against the Turks to which he devoted a separate work.

1 Ibid.

2 That Erasmus hardly penetrates to the religious and philosophical depth of this problem appears from the fact that in his works *De libero arbitrio* and *Hyperaspistes* he sees the freedom of the will only as the common freedom of choice (*liberum arbitrium indifferentiae*), without showing any awareness of the underlying religious and philosophical problems. A corresponding lack of depth colors Erasmus' view concerning the relation between God's omnipotence and human liberty, a relation Erasmus did no better than to describe in the common mechanical image of a father helping a child, who cannot walk very well yet, to reach a desired apple. Erasmus rejects an all-encompassing predestination by God, but he does accept a form of foreknowledge. For more on this, see Christoph Ernst Luthardt, *Die Lehre vom freien Willen und seinem Verhältnis zur Gnade in ihrer geschichtlichen Entwicklung dargestellt* (Leipzig, 1863), p. 76 ff.

3 See Erasmus, Letter no. 60, in *Opera omnia*, 3:54a, quoted by Lindeboom, *Erasmus* p. 161.

4 Erasmus, *De amabili Ecclesiae concordia*, in *Opera omnia*, 5:501-505 passim. It is common knowledge that towards the end of his life Erasmus turned in his tracks on this point, from fear of the Inquisition.

## Chapter 9

### *The Humanist Law-Idea and the Formation of the Naturalistic Worldview*

In its representative figures, Coornhert and Grotius, Dutch humanism followed the line that Erasmus' genius had traced, but between these two thinkers and Erasmus lay the Reformation as a dividing line. Dirck Coornhert (1522-1590) and Hugo Grotius (1583-1645) had passed through Protestantism, which by that time had put down deep roots in the Netherlands. Still, if we do not reduce the Reformation to a negative collective concept but maintain its positive characteristics, that is, the new conception of nature and grace, then the school of Coornhert and Grotius must fall outside of it. Coornhert and Grotius are but representatives of humanistic Christianity, which gladly accepted the liberation of the individual human soul from the formal legal authority of the church thanks to the Reformation but which rejected the Reformation's doctrine of grace in its essentials. Dutch humanism continued to be a biblical humanism in Erasmian and later Arminian fashion, but then freed from the ecclesiastical authority which Erasmus, despite his criticism of it, required to support his worldview.

In Erasmus, moral rationalism along the line of the *devotio moderna* had already taken the form of a practical ideal of piety in which dogmatics and external church community had lost their essential significance. The penetration of humanism by medieval individualistic nominalism, which will be thoroughly examined in the discussion of humanist natural law below, *formally* aligned itself with Luther's battle against the hierarchy in order to remove even the last vestiges of heteronomy from the Christian moral life. In the Netherlands, Hugo Grotius in his masterful *De Jure belli ac pacis* based his system of natural and international law on a natural law independent of God's existence, while Montaigne and Charron in France totally liberated natural morality from positive Christian religion by advocating an autonomous moral law rooted in natural reason, and Herbert of Cherbury in England was already developing an epistemology of this independent morality based on moral and religious concepts innate to human beings. In the measure that moral rationalism in its further development continued to erode the heart of Christianity, turning it into a mere

theory of morality, in the same measure the chain of a naturalistic worldview within humanism was nearing completion. The irrational<sup>1</sup> core of Christianity, the Christian doctrine of grace, was increasingly stifled by the naturalistic idea of immanence which detected all the seeds of divine laws in natural reason independently of God's transcendent existence. And when presently – in part due to nominalist influence – mathematical natural science with its atomistic, analyzing view of nature linked up with the Stoic tenets of humanism and, albeit in terms of method, began to claim the final say also in matters of religion, morality, law and politics, then the birth of the *modern humanist law-idea*, rooted in the sovereignty of reason, was an accomplished fact. This law-idea may be conceived materialistically (Hobbes) or idealistically (Descartes); its religious character may be pantheistic (Giordano Bruno, Spinoza, Shaftesbury), theistic, or deistic. But across the board, the primacy of the will that had dominated the Augustinian and Roman Stoic worldview was pushed aside by the primacy of the contemplative intellect that had originated in Greek philosophy. *Reason, with its principle of continuity in thought as derived from mathematics, became in principle the foundation of this law-idea, instead of the sovereign will of God.* The consequences that flow from this humanist determination of the law-idea for the mutual relation of the various spheres of law will have to be examined below when we analyze the humanist law-idea.

Coornhert and Grotius also shared an Erasmian point of view insofar as they maintained the absolute character of Christianity as a theory of the highest moral perfection and accepted the Bible as the foundation of their ethical ideal of piety. In Coornhert, the unecclesiastical, spiritualistic tendencies of Sebastian Franck's theology aligned itself with moral rationalism so as to give rise to the ideal of an ethical Christianity that transcends divisions of faith. To this extent his theological position was already the clearest expression of the humanist ideal of tolerance. Apart from Erasmus and Franck, his thought was also profoundly influenced by Zwingli and especially the Stoics.

Let us first examine the essence of this Christianity beyond faith divisions from the perspective of the previously mentioned humanist tendencies of universal theism and moral rationalism. Next we shall analyze somewhat more closely the essence of the humanist ideas of tolerance outlined thus far. From that analysis it will appear that *genuine* freedom of conscience was by no means advocated by humanism.

Most striking in Coornhert, first of all, is his great urge to unify all Christians in mutual love and tolerance on the basis of a purely spiritual, undogmatic Christianity. In the process he clearly demonstrated the influ-

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<sup>1</sup> *Editorial note (DS):* Later on Dooyeweerd defined *irrationalism* as an absolutization of the subject-side of reality.

ence of Franck's universalistic religious conceptions, which he often cited with approval.<sup>1</sup>

The external organization of the church and the ceremonies of baptism and the Lord's Supper are only valid for him as expressions of the visible communion of believers, indispensable as such. As soon as dogmatics begin to have its say in this external church organization for condemning dissidents, as soon as the church's instruments of discipline are employed against those who deviate in doctrine from what Coornhert calls human confessions, then he cannot find words strong enough to expose such "pharisaism." Only those who serve sin in their conduct should be disciplined, not those who reject the teachings of Calvin, Luther, Zwingli, or Menno Simons. According to the preface to his "Ruygh Bewerp" he wants to achieve the establishment of "the most impartial of all visible churches, a broad association (by divine grace) of many scattered and impartial devout Christians, for the building and increase of the peaceable Kingdom of our Lord."<sup>2</sup> He writes there that the most secure way is to live as members of the invisible spiritual church of Christ, outside of all church organizations. The church of God has deteriorated and there is no express injunction to reestablish it. Nevertheless, *out of necessity*, to protect the sheep against the numerous predatory wolves, an external church organization might be maintained. But then no external rule or institution must be allowed; rather, all things should proceed in complete liberty, especially with respect to whether or not to baptize or to celebrate the Lord's Supper. As a doctrinal basis of this universal Christian church he wants nothing but the Apostles' Creed with the absolute elimination of all dogmatic intrusions into the Christian teaching of grace.<sup>3</sup> This impartial church has no room for the Calvinist or Zwinglian who maintains the doctrine of predestination which Coornhert misconceives to be a public defamation of God's goodness and simplicity.<sup>4</sup> Coornhert is untiring in his struggle against Calvinism, the teachings of the Heidelberg Catechism, predestination, original sin and the bondage of the will, and against the

1 See among others Dirck Volkertszoon Coornhert, "Verschooningh van de Roomsche afgoderye" (Apologia for Roman idolatry), in *Wercken*, 3 vols. (Amsterdam, 1629-1632), 3: fol. 19, and idem, "Kruythofken" (Little Garden of Herbs), in *Wercken*, 3: fol. 80.

2 See Coornhert, "Ruygh Bewerp eender onpartydiger Kercken onder verbeteringhe" (Rough draft of an impartial church under improvement), in *Wercken*, 3: fol. 1 ff.

3 Ibid., fol. 2: "Q: So you also believe the Apostles' Creed? A: Certainly, but I do so simply. B: How do you mean simply? A: Without searching out how such a thing is. As for example we say: And in Jesus Christ his only begotten Son etc., and I do not try to fathom how and in what manner the Lord is God's Son, but I simply believe that He is God's Son," etc.

4 Ibid., fol. 3: "But if someone holds forth that God created man good in order to condemn him, or that God himself by his decision or decree prevents man from obeying what He himself commands, and wants to maintain this as an honest opin-

Calvinist concept of law and church. In his universalistic Christianity much more so than in Erasmus, the Christian teaching of grace becomes a complete ethical law, certainly not of the letter, but of the spirit of love and tolerance. Christ himself is that law; the redemption which he brings us through God's universal grace is the enlightenment of our intellect whereby we begin to live perfectly according to God's commandments. As Coornhert himself phrases it: "But since we are not speaking here of the law of the letter, written with ink and paper, but of the law of the Spirit, written by God's finger in believing hearts, so be it understood here, first, that whatever was truly said of Christ also applies to the law of the Lord, since that law is itself a living word of the Father and Christ Jesus himself. Thus it is written that the commandment is a lamp, the law a light and a path of life."<sup>1</sup>

Thus, in *devotio moderna* and Erasmus, the doctrine of grace becomes the ideal of the imitation of Christ, the teacher sent by the Father.<sup>2</sup> But how blurred have become the boundaries between nature and grace, which is so typical of the humanist ideal of piety! Coornhert takes special care to point out that the spiritual law of Christ, of love of God and neighbor, is purely natural and he does not shun the most trite examples in order to demonstrate that the law of love is by nature "increated" and "inborn."<sup>3</sup> The law of love is a rational law of nature, which, even without the special illumination by Christ, is fulfilled by heathens "purely by nature."

Are we to find this difficult [to accept] – we who in addition to nature enjoy grace and strength through the blessed instructions of the law and the anointings by the Spirit? ... Is it not evident from this that the law of the Lord, like a faithful mother, protects her little children against all evils, consoles them in all suffering, counsels them in all doubt, and blesses, saves and gladdens them in all its works? Here we see that it is a *wholesome liberation, relief and release from all earthly encumbrances*, secular cares, harmful desires and anxious sorrows of the heart which burden, oppress, plague, torment and condemn us, and daily

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ion, teaching this publicly, such a one should be avoided as fighting against the goodness and simplicity of God.

- 1 Coornhert, "Dat de gheboden ons Heeren Jesu Christi licht zijn" (That the commandments of our Lord Jesus Christ are light), in *Wercken*, 1: fol. 217. See also fol. 222: "The sum of Christ is the Word, the Law and the Mouth of God, revealing to us the secret will of the Heavenly Father, in order that we should know his goodness, love it through knowledge, and gain it through love and use it forever."
- 2 For Coornhert's conception of the imitation of Christ see among others "Ruygh Bewerp," fol. 2.
- 3 See Coornhert, "Natuurlyck," in *Wercken*, 1: fol. 227: "Thus one finds some kind of inborn goodwill between two people from Haarlem who, though complete strangers, run into each other in a different town of Holland, or between two Hollanders who spot each other in Flanders" etc.

cause us while alive to die a thousand painful deaths, to deprive us of our desires and to add to our sorrows.<sup>1</sup>

To be sure, Coornhert distinguishes between the purely rational law of nature and the divine naturalness of love in Christ, but that is nothing but a distinction in the degree of perfection:

Everyone knows that the heathen (ostensibly lacking God's spirit) were unable with their rational understanding to reach that which is divine but only that which is natural, above which they could not rise. . . . [Yet] nothing was more common among the pagans than the teaching of Tobit: "Do that to no man which thou hatest," which agrees with the teaching of Christ: "All things whatsoever ye would that men should do to you, do ye even so to them." This is not hidden from anyone who has ever opened the book of a philosopher, when everyone apparently called this Law the law of Nature; so then it must surely be natural what has always been noted among those whom we say cannot attain to the divine or the supernatural. If it is therefore natural, who can doubt the lightness of what is natural? So it is evident, then, not only that the love of fellow humans is light and not heavy, but that the entire Law and the Prophets are natural and light. If such evidently is the commandment to love the neighbor, the Law and Prophets implicit in this commandment may not be burdensome either. In addition to this rational naturalness, all true Christians experience in their spirit still another, divine naturalness of love.<sup>2</sup>

The absolute character of Christianity is maintained but only in the ethical-Erasmian sense.

Here the influence of the late-Stoic naturalistic conception of immanence is clear. Stoic wisdom had come to Coornhert from the works of Cicero and Seneca, some of which he himself translated into Dutch. The *Wellevenkunste*, his best-known work in prose, links up mainly with those Stoic examples. Beatitude rests on virtue; the ability to live virtuously is innate in man. His will is free. The purpose of moral action is control of the desires and passions.<sup>3</sup>

In a letter which he composed to console his young Roman Catholic friend Hendrik Laurenszoon Spiegel (1549-1612), a humanist like himself who was steeped in Stoic philosophy and an admirer of Montaigne, Coornhert writes in wholly Stoic fashion that it is wisdom to suffer with the least measure of anguish that which cannot be avoided. Man must not lose his heart to anything. Seneca taught likewise, and Coornhert was glad

1 Coornhert, *Wercken*, 1: fol. 229.

2 Ibid., 1: fol. 227. See also fol. 223: Of the love for God: "For all rational souls are forever in accordance with God's image through God's breath of life into the human person. This natural ascent towards our origin, God, causes a desire for good in mankind, that is, an affection or inspiration to obtain the good, and to unite in it."

3 Coornhert, *Zedekunst, dat is Wellevenkunste* (Ethics; that is, the art of living well), *Wercken*, 1: fol. 57.



that Spieghel had acquainted himself with Seneca's works and he hoped from time to time to be able to read them together with Spieghel.<sup>1</sup>

So Stoic moralism also permeated Coornhert's biblical Christianity. The Stoic ideal of the moral dignity of man cannot, in Coornhert as little as in Erasmus, be reconciled with the Christian teaching of salvation through grace alone, without the cooperation of the free will.<sup>2</sup>

In the final analysis, Stoic moralism knows no other way to salvation than that of the immanent *moral law*, even if, in Coornhert, the revelation of Christ's absolute law is considered supernatural and divine. Here is a dilution, indeed an undermining, of grace, which is irrational because it is divine. Coornhert clearly expresses this in poetic form:

Maer die gevrijt zijn, van Christ ontbonden  
Drijft die Wet der redelijcker natueren  
Diese in haer herte dragen 't allen uren,  
Niet uytwendich in houdt of steenen,  
Sij leven vredelijck met haer gebueren,  
Met Godt en haeren naesten zijn sij ghemeen,  
Sij verkiezen gheen menschen van vleesch of been  
En dencken dat een sterffelijck mensch wel sneven kan,  
Met Godt verbinden sij haer herten alleen,  
Metten onghelovigen sij gheen vreemt jock kleven an.  
*Wat behoeft hij bandt die ongebonden leven kan.*

But driven by the law of reason  
Are those unbound by Christ, set free.  
Their natures follow reason's light,  
Borne in their hearts in every season,  
Not outwardly in wood or stone.  
They live at peace with every neighbor,  
At one with God and fellow-men,  
They choose no one of flesh or bone:  
All mortals perish, is their creed  
They bind their hearts to God alone,  
No yoke they grasp with unbelievers,  
*Who live unbound, no bond they need.*<sup>3</sup>

### Ideas of toleration in sixteenth and seventeenth-century Dutch humanism

Coornhert, and Grotius even more so, lived in the midst of the enormous religious controversies that divided the Netherlands during the Eighty Years' War. Calvinism, scarcely introduced to these regions, had taken the lead thanks to the inner strength of its worldview. Although at the outset numerically much smaller than Roman Catholicism,<sup>4</sup> the Reformed Church had soon acquired a dominant position, not due to the

1 Coornhert, *Wercken*, 1: fol. 268 ff.

2 See Coornhert, "Oft ghelooove saligh maeckt sonder wercken," (Whether faith can save without works), in *Wercken*, 3, with a reference to James 2:24.

3 Coornhert, *Wercken*, 1: fol. 57 (emph. added).

4 This must be accepted on the basis of reliable historical data, and it agrees with the picture that the States of Holland presented of the situation in 1587 when in order to pacify their fellow believers they reminded Savaria, professor in theology at Leyden, and twelve Reformed preachers, of what the States had already done for true religion: "instead of destroying religion they had allowed none but the Reformed, even though [nine] tenth of the country's inhabitants were not of that faith." See Brandt, *Historie der Reformatie*, 1:725. Also P. C. Bor, *Nederlantsche oorloghen, beroerten, ende borgerlijke oneenicheyden* (Leyden and Amsterdam, 1621), 2:976. In connection with this see Robert Fruin's remark in *Tien jaren uit den tachtigjarigen oorlog: 1588-1598* (The Hague, 1899), p. 150, who with a view to the above statement concludes: "But at the beginning of our period, in 1587, it



number of her members but, in Fruin's words, "due to firmness of conviction, unshakable confidence in the godliness of her cause, indomitable courage and perseverance." The same author remarks, "On this account she deserved to be called the core of the nation and was worthy to predominate over the other religious persuasions; before long many among the latter crossed over to the Reformed."<sup>1</sup> The Reformed religion soon removed Lutheranism and Anabaptism from the dominant position. At the beginning of the reign of Philip II over the Low Countries [1555], when Protestants sensed the need for unity and concord, it became a necessity "to distinguish themselves from all kinds of erroneous teachings by a confession of faith and to let the government know for what religion the Reformed people were prepared to sacrifice their lives; thus the Belgic Confession was drafted in agreement with the teachings of the French Calvinists."<sup>2</sup> Drawn up by a single pastor [Guido de Bres], it voiced the opinion of the vast majority.

Hundreds of thousands said amen to it. And while this courageously confessed faith was being persecuted in the Netherlands by the duke of Alva with fire and sword, a Dutch synod met in Emden, in exile, and acknowledged the Confession of Faith and the Heidelberg Catechism as the ground rules of the Dutch church. And when, during the following year, following Brill's example, Holland and Zeeland freed themselves from Spanish control, it was the Reformed Church thus constituted that established herself next to the Roman Catholic Church, even though the name which she initially adopted, Evangelical-Reformed, is reminiscent of a less defined religion.

At the first meeting of the States [of Holland] in 1572 at Dordrecht, the civil toleration of all religions practiced both in private and in public was accepted in principle. It was decided that

freedom of religion shall be maintained and everyone shall exercise his religion openly, in church or chapel, as the magistrate may approve, without molestation; furthermore, the clergy shall be free from care about their status.<sup>3</sup>

Nevertheless this resolution, soon after its acceptance, was violated by Count van der Marck, with the apparent support of a large part of the population. And as the Roman Catholics themselves, afraid for their interests, were driven increasingly into the arms of Spain, it seemed that the country's very safety would require the repeal of the decree of toleration. The practice of the Roman Catholic religion was prohibited.

could be stated without evident exaggeration that barely a tenth part of Holland's population belonged to the Reformed church."

1 Fruin, *Tien jaren*, p. 150.

2 Jacobus Triglandt, *Kerckelycke geschiedenissen, begrypende de swaere en bekommerlijcke geschillen, in de Vereenigde Nederlanden voorgevallen* (Leiden, 1650), p. 154, quoted in Fruin, *Tien jaren*, p. 151 f.

3 Fruin, *Tien jaren*, p. 152.

When in 1575 the States transferred supreme authority to Prince William of Orange, they required of His Eminence that he maintain the Reformed religion, resist the practice of Roman Catholicism, without, however, “allowing anyone to be investigated as to his faith or conscience or to suffer trouble, wrong or injury on account of the same.”

In 1581, just before the abjuration of King Philip, the new mandate of government extended by the States of Holland to Prince William renewed the clause in question in the following words: “That he should require and maintain the exercise only of the Reformed religion, without allowing anyone to inquire into someone's faith or conscience or allowing anyone to suffer trouble, wrong or injury on account of the same; and further, concerning the exercise of the aforesaid Religion, that he should establish, in accordance with occasion and conditions, such good order as may be appropriate and found to be conducive to the greatest peace and comfort of the church, without detracting from God's honor; also, where necessary, with the advice of the States.”<sup>1</sup>

Zealand followed the same policy concerning religion when it allied with Holland in the Union of 1576. The subsequent general Union of Utrecht continued this situation in Article 13 and allowed the remaining allied provinces the freedom to either keep the religious peace of Archduke Matthias, which they had embraced and which was based on the reciprocal equality of the old and the new religion, or else to act otherwise, as they thought best, provided there be no coercion of conscience. Thus the regulation of religious matters became a provincial concern.

In the meantime, practically speaking, the regulation in Holland and Zealand was the only one in effect in the Republic. Matthias' peace was based on principles for which the times were not yet ripe. Wherever these principles were applied there were civil wars and public riots. That is why the States General, chiefly from policy, accepted the principle of a state church, while unfortunately the Reformed churches of those days were driving in the same direction from misconceived spiritual considerations. Zwinglians, Lutherans, Anabaptists and other sects remained free from coercion of conscience – as did Roman Catholics – but were denied freedom of public worship. In general, the former enjoyed a more benevolent treatment than Roman Catholics, yet they too were prevented from propagating their “errors.” It was hoped that as a result they would die out and that all Protestants could be gathered together in the one true church.<sup>2</sup>

Tolerance was far greater in practice than in theory. In 1581 the first resolution appeared against papists, in the name of the Prince of Orange, forbidding the printing and sale of all scandalous, offensive, insurgent books, news reports and poems, as well as publication without the magistrate's consent and the publisher's name. In addition, it forbade the “exercise of

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1 Brandt, *Historie der Reformatie*, 1:675 f.

2 Fruin, *Tien jaren*, p. 162.

the Papal Religion, and the holding of open and secret meetings, on penalty of 100 guilders.” However, insofar as it applied to religious books, this resolution was not put into effect in any Dutch city where it was promulgated. Indeed, the magistrates in Leyden emphatically refused to declare it inside their city.<sup>1</sup> As well, the commercial interests of the regents of the large trading centers and the shameful corruptibility of sheriffs and bailiffs soon condoned the clandestine practice of the Roman Catholic religion.<sup>2</sup>

Still more favorable, in practice, was the position of Lutherans, and especially the Anabaptists, who with the permission of the States were soon able to practice their religion in the open.

The policy of the States, meanwhile, aimed at a monopoly for a United Dutch Reformed Church if for no other reason than to unify a Protestant population against the might of Spain. To that end, all kinds of indirect measures were employed to drive Lutherans, Anabaptists, and Baptists into the Reformed Church. The regents of Holland and Utrecht, by and large aristocrats averse to popular influence and permeated by the humanist ideals of an Erasmian type of Christianity, irenic and undogmatic, desired a national Reformed church on a biblical basis with a general Christian confession of faith, so general that it would basically satisfy all the varieties of Protestantism, indeed in the long run even Catholics. That goal required keeping the church as a state institution subject to administration by the States, and being able to command pastors as servants of the state. The inspirational figure for this policy was Johan van Oldenbarneveldt (1547-1619). No doubt this policy was informed by the humanist conception of religion as well as by a good deal of humanist *raison d'état*. The Reformed pastors, who were mainly from the lower classes, exercised enormous influence over the populace and especially in Zeeland were very zealous concerning implementation of the harsh proclamations. This was especially true of the national Synod of Middelburg, against whose wishes the magistrates of Leyden in 1581 directed their remonstrance to the States of Holland.<sup>3</sup> The pastors, certainly not without cause, blamed the regents for showing little zeal for religion; they were keenly aware of the chasm separating the Reformed religion from the “flexible” Christianity of humanism. At the same time it should be borne in mind that under the existing situation of unity of church and state, the most extreme ecclesiastical disciplinary measure, ban and excommunication, would necessarily entail political consequences: exclusion from public office, a publication ban, prohibition against preaching on penalty of, and so forth.

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1 Brandt, *Historie der Reformatie*, p. 677 f.

2 See Lieuwe van Aitzema, *Saken van Staet en Oorlogh, in ende omtrent de Vereenigde Nederlanden*, 6 vols. (The Hague, 1669-1672), 3:509; 4:1009.

3 For the content of this remonstrance and the response of the pastors to it, see Brandt, *Historie der Reformatie*, 1:677 ff.

Furthermore, the regents lacked a bond with the people which the Reformed pastors possessed so strongly. From the point of view of *raison d'état*, therefore, it was of crucial importance for them to keep control of the church as much as possible so that this center of spiritual power would not be able to unleash movements which the government could no longer control. After all, in their struggle for purity of doctrine the ultimate weapon of the Reformed pastors, dreaded by any government, had from the beginning been a *cri au peuple*, an appeal to the national conscience. During the regime of the earl of Leicester, to whom the pastors looked for support against the regents, it became apparent just how great a political influence a *cri au peuple* had in the Netherlands. From the outset, such considerations of *raison d'état*, together with the humanist religious ideal of a national church transcending divisions of faith, pushed the humanist States and town councils towards control over the church. The ecclesiastical laws of 1576, enacted in the name of Prince William, were entirely drawn up in this spirit, and although they were never enforced they showed clearly enough what the States desired if they could have had their way. According to these laws the municipal councils themselves would appoint pastors, elders, and deacons and reserve the instrument of censure for themselves in the last resort; national synods would have been impossible; and there would have been no signing of the Forms of Unity which stipulated the terms for holding ecclesiastical office. "Had these laws ever been implemented," Fruin writes, "each congregation would have become a special municipal institution, delivered up to the whims of a magistrate who is perhaps still Roman Catholic or at least not Reformed; such a series of loosely scattered congregations could hardly be called a church."<sup>1</sup>

On this issue, however, the libertine government of regents ran up against the adamant opposition of the Reformed churches. Since the first Synod in 1571, held in exile, they had insisted on a church order of the Calvinian, presbyterian type. Calvin had taught them that the church was a sovereign institution, not based on the legal authority of government, but rather whose organization was decided only by the law of Christ and his apostles. In France, the Huguenots, with the heroism of faith, had established their synodal church communion during the most severe and bloody persecutions, a communion which the authorities could not destroy with any carnal weapons. At the Synod of Middelburg of 1581, the pastors themselves drew up a church order on a presbyterian basis, one which did not allow the government any say in the election of ministers of the Word except for "a later approval" (ratification after the fact), while the election of elders and deacons was to take place without any involvement of the civil magistrate whatsoever. They decided that pastors, elders, deacons, professors of theology and schoolteachers should subscribe to

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<sup>1</sup> Fruin, *Tien jaren*, p. 168.

the confession of faith of the Dutch churches.<sup>1</sup> In 1586 this church order was reestablished in broad outline by the national synod of The Hague (convened by Leicester without involvement of the States) and given temporary effect on Leicester's authority. Here it was decided to convene a national synod every three years, with no mention of requesting prior permission from the government.<sup>2</sup>

This church law, however, fell with Leicester's authority. The States General did not consider themselves bound by it and every province maintained its sovereignty in these matters. In 1591, at Oldenbarneveldt's instigation, the States of Holland appointed a commission to redesign a church order which would again subject the church to the censure of the state. According to this draft, the magistrate of every town or village would have the final authority in matters of ecclesiastical office and ecclesiastical discipline. No mention was made of national synods. Ordained pastors could not be asked to sign any forms; they needed only to declare that they would preach pure biblical teaching as summarized in the catechism. This draft, too, suffered shipwreck due to the opposition of the churches. The church continued to be unordered, left to the arbitrary rule of the regents or the clergy, depending on who was most influential at the time.

And indeed the arbitrariness of the regents knew no bounds. They intervened directly in doctrinal controversies – a prelude to the Arminian troubles of 1609 to 1618 – which emerged early on within the still youthful Reformed churches. It began with the conflict in Utrecht between the consistory of the regular Reformed church and the St. Jacob's congregation led by the former priest Duifhuis who deviated in the extreme from accepted doctrine and discipline. In 1586 the schism was ended when Reformed doctrine was upheld; but in 1589, following the change in Utrecht's municipal government in the spirit of the anti-Leicester party, and in order to please the St. Jacob's congregation, the magistrate dismissed every pastor of the Consistory, forbidding them to preach “for reasons moving them to do so.” They then sent for pastors from Holland. Extreme displeasure among the Reformed was the result. It was unheard of that a minister of the church was appointed exclusively by the government against the wishes of the congregation. The malcontents then met secretly in homes and elsewhere, in and outside of the city; others traveled to Ysselstein to hear a sermon. However, on 28 May 1590, the States published a proclamation prohibiting all conventicles, wherever, by day or by night, “even if it were in order to sing psalms, hear a sermon, or hear someone read from the Holy Scriptures or other books, on penalty of 25

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1 See Johannes Uytenbogaert, *Kerckelycke historie, vervattende verscheyden gedenckwaerdige saken in de Christenheyd voorgevallen* (Rotterdam, 1647), p. 475.

2 Brandt, *Historie der Reformatie*, 1:714 f.

guilders per person or more, at discretion; leaders as well as insurgents.” Before long the Leyden preacher Coolhaas, a kindred spirit of Coornhert, a defender of universal grace and free will and a fierce opponent of the doctrine of predestination, was to be favored and supported in every way by the government despite being convicted and suspended by the provincial synod. A resolution of the States, dated 16 March 1598, ordered that in Beyerland, where the congregation was experiencing serious dissension, the Lord's Supper would for the time being be suspended!<sup>1</sup>

All this was the result of the humanist policy of toleration, which can be briefly described as a striving towards tolerance *within the church*, maintained by a government dominating the church. That also accounts for Oldenbarneveldt's continued resistance to convening national synods which the regents viewed with horror as symbols of the unity and sovereignty of the churches. Later, during the bitter struggle between Remonstrants and Contra-Remonstrants [Arminians and Gomarists], this policy led to a formal, severe persecution of the orthodox section of the population, a persecution in which, next to Oldenbarneveldt, Grotius was complicit as well because he defended the regents' policy in writing (see his *Verantwoordingh*). In these times, when this great intellectual is once again hailed and celebrated as the father of toleration,<sup>2</sup> it is good to recall these facts. This is certainly not done in order to plead innocence on the part of Contra-Remonstrants. When they gained the upper hand before long with the aid of Prince Maurice, they in turn oppressed dissidents as much as the Arminians had done. The fault was a fault of the times, although that does not take away personal guilt. And yet, the seeds of true political toleration did not lie in humanism with its undogmatic Christianity and its absolutistic theory of authority. Rather, the seeds of toleration lay in the doctrine of sphere-sovereignty which in essence had been part of early Calvinism and which presently, thanks also to influences from the outside such as that of sects and a whole range of political and sociological factors, would come to its full and genuine development. *That the humanist law-idea, grounded in the sovereignty of reason – no matter in what concrete form it may appear – poses a constant threat to the principle of sphere-sovereignty will be demonstrated later, in our philosophical analysis of this law-idea.*

Coornhert and Grotius were the most competent literary defenders of the humanist policy of toleration. Coornhert may be called its precursor. In 1589 the famous Justus Lipsius, professor of history at the Leyden Academy, an adherent of Stoic morality and politically a defender

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1 See N. Chr. Kist in *Kerkhistorisch Archief* 4 (1866): 487.

2 Just recently by B. C. J. Loder in his opening address at the 33rd session of the Institute of International Law at The Hague. We pass over the erroneous sketch of Dilthey concerning the significance of Coornhert and Grotius as bearers of the ideas of toleration: it rests on insufficient acquaintance with Dutch history.



(though in moderate form) of Machiavelli's doctrine of *raison d'état*, published his *Politica* in which he recommended among other things that governments execute heretics who openly attack the church. Coornhert opposed him with his voluminous "The case for executing heretics and constraint of conscience, dedicated to the Burgomasters and councillors of the city of Leyden."<sup>1</sup> If one reads just this and his two subsequent expostulations against Lipsius, one finds a series of perfectly sound and modern ideas about political toleration, as is the case with Hugo Grotius' opposition to the persecution of heretics found in his *De Jure belli ac pacis*.

Coornhert accuses his opponent of confusing two realms, the invisible realm of the souls where Christ alone is king, and the visible secular political realm. The former is governed by spiritual, the latter by secular laws. God did not grant secular government control over souls. If secular government, by worldly domination, does attempt to rule over souls, it encroaches on God's domain.<sup>2</sup> The sword is to protect, not religion, but God-fearing people, or those who err in good faith. True religion is protected by the Word of truth, which inevitably overcomes the lie; persecution and constraint of conscience only cause false teachings to thrive. Besides, rulers are the least suited to protect the truth since "the [political] realm is the school of deceit."<sup>3</sup> Pointedly, Coornhert detects the Machiavellian cast of Lipsius' argument.<sup>4</sup> According to Lipsius, government may allow only one religion and should turn the sword against those who call for the introduction of new morals or new religious ideas, because such modernism gives rise to conspiracy, rebellion, and other movements that are injurious to the state. Coornhert ably turns this proposition against Lipsius himself. For, if applied, all those who resisted Roman Catholic doctrine, including Lipsius, would have to be executed. Indeed, even Christ and his apostles would then have been justly slain by the secular sword.

Furthermore, Coornhert continues, in order for the state to be able to protect religion, it would first have to determine which religion is the true one. Roman Catholic, Lutheran, Reformed, Anabaptist, all of them claim truth for themselves. Where is the impartial judge? Government, after all, cannot follow the pronouncement of the church, for the church then judges her own case. Lipsius is Machiavellian since he advises princes to seek their own benefit and not the truth. He is Machiavellian when he advises princes to slay heretics only when it can be done without occasioning insurrection, and sometimes advises leaving false ideas alone because

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1 See Coornhert, "Proces van 't ketterdoden," in *Wercken*, 2: fol. 64 ff.; this rebuttal is preceded by an extract from Lipsius' work *Politica*.

2 Ibid., fol. 15-20.

3 Ibid., fol. 104.

4 Ibid., fol. 238-244.



nothing is more dangerous in case of sickness than untimely medicine. Repeatedly Coornhert defends the position of the States of Holland, who desired tolerance when enforcing the proclamations, and he defends the position of Leyden's magistracy who, in remonstrating against the Middelburg Synod's decisions, had rejected every form of constraint in matters of religion as well as the prohibition of books and other publications.

So far, excellent ideas were developed. But even in the remonstrance of the Leyden magistracy, later wholly approved by Coornhert in his well-known *Justification*, the flip side of the humanist ideal of toleration comes to the fore. First this remonstrance observes:

The opinion of the States has always been that neither the one nor the other may be done any violence because of his Religion. We find no power to execute punishment against those who are found to conduct themselves honorably with us in their civil behavior and conduct. . . . For the eradication of heresies there is no better means than coolness: for we have often observed, that those whose books were little respected first gained status when they were branded as heretics and persecuted. . . . Compulsion makes no Christians but does produce a world of evil hypocrites that go by the name of Christian. [But then comes the turn against the sovereignty of Reformed churches.] That the government has authorized you to be a synod is not apparent to us. It is said to be national. But many with us do not think so. If it were to be national, it should have been convoked, determined and approved by the head of the nation. The head of the nation that such a synod is to represent if it is to be national is the States General, at whose lawful meetings we do not believe it to have received a writ of convocation. . . . What the provincial States may have done to legitimize this national Synod, everyone will best know in his own province. Of Holland we may say that no such legitimation took place with the legal approval of this province. We as a member of those States have still not granted our approval, etc.<sup>1</sup>

Here already the arrogance of the States in the ecclesiastical domain is clearly expressed. Humanism's absolutistic doctrine of authority, which will be discussed below in connection with natural law, was the legal-philosophical foundation of the humanist ideal of toleration. Coornhert himself, despite all his correct notions relating to the objectionable character of all forms of religious constraint, adopted a position entirely consonant with the policy of the regents as described above. In his *Means for the Reduction of Sects and Factions*, which takes the form of a dialogue between a Roman Catholic, a Reformed, a representative of the sects, and an impartial person, the latter (Coornhert) finally recommends the following policy with respect to the religious controversies:

It should be indicated and demonstrated to government that all human writings, faiths and doctrines contain something of impurity, error or deviation, and it should also be pointed out that Holy Scripture is free of

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<sup>1</sup> Quoted in Brandt, *Historie der Reformatie*, 1:678f.

the same and indubitably paves the way to salvation. Hence one should humbly desire to honor Scripture by imposing (until it has been unanimously decided which doctrine is to be followed) a new Interim forbidding all pastors on the pulpit to preach, read or say to the people anything but the clear text of Holy Scripture, without adding or subtracting one syllable, as they used to do in the Old and New Testaments.

Should that be done again, the mouths of all false teachers and pastors would be closed, the bitter abuse and slander removed, and the nourishment of all factions destroyed and eradicated. Also, at once all the sects of Papalism, Lutheranism, Calvinism, Anabaptism would automatically disappear . . . and no one would be called a Zwinglian, Lutheran, Papist, Anabaptist any longer, but a Christian, because an Evangelical; and in truth all would believe and follow the evangelical doctrine. Furthermore, the people could be commanded on penalty of a fine to bring all their books that deal with Scripture (but are not themselves pure Scripture) into the hands of the government, etc. etc.<sup>1</sup>

This advice by Coornhert showed little political insight, and the States of Holland and Zealand as well as the town councils knew more effective ways to contain the orthodox part of the populace, ways whose political consequences were soon to bring the country to the threshold of civil war. But at bottom the later politics of the regents was quite along the line that Coornhert had prescribed. It was an ideal of toleration which sprouted from dogmatic indifference and the humanist enlightenment of Erasmus' moral rationalism; an ideal of toleration which denied the church's sovereignty over ecclesiastical affairs, subjecting the church to the state in Erastian fashion; an ideal of toleration which, relying upon an absolutistic theory of authority, had of necessity to turn into oppression of dissidents.

The double-edged bite of the humanist ideas of toleration was even more refined in Hugo Grotius than it had been in Coornhert.

Registered as a student at the University of Leyden when just eleven years old and rubbing shoulders with the greatest Dutch humanists of the day, Grotius had early absorbed the ideals of toleration at the home of the famous professor Franciscus Junius (author of *Le paysible Chrestien*).<sup>2</sup> When at age 16 he established himself in The Hague as an attorney, his Christian training was furthered in the home of the Arminian pastor Johannes Uytenbogaert, the eloquent court preacher of Prince Maurice

1 Coornhert, "Middel tot minderingh der secten en partijenschappen," in *Wercken*, 3: fol. 396 f.

2 See Caspar Brandt, *Historie van het leven des Heeren Huig de Groot* (Dordrecht and Amsterdam, 1727), p. 8. On the person and ideas of Junius, consult W. S. M. Knight, *The Life and Works of Hugo Grotius*, The Grotius Society Publications, vol. 4 (London: Sweet and Maxwell, 1925), p. 28 ff.

and the tireless champion of the sovereignty of the States in internal matters of the church.<sup>1</sup>

Grotius was a universal scholar, superior to his contemporaries in practically every field of learning and open to all modern trends in the thought of his times. For example, in 1636, in Paris, during his busiest days, he involved himself in the case of Galileo. He was a great admirer of Galileo, who at the time was being vehemently persecuted by the Jesuits, and he tried to arrange a safe place of refuge for him in Amsterdam.<sup>2</sup> Grotius also achieved a prominent position among his contemporaries in the field of theology. In this field he brilliantly carried through the humanist rationalism found in Valla, Erasmus and Coornhert. He had that same moralistic ideal of piety which places all the emphasis on ethical activity in the world but attaches little value to positive Christian dogmas. Indeed, he attacked them insofar as they appeared to clash in a rational sense with the value of the human personality and moral will. His ideal was a simple Christian faith transcending sectarian divisions. In his *De dogmatis, ritibus et gubernatione Ecclesiae Christianae*<sup>3</sup> he presents as the heart of Christianity the commandments and promises of Christ, which derive great author-

- 1 At the conference held between Gomarus and Arminius before the States of Holland in 1609, Uytenbogaert addressed the States and clearly revealed his Erastian sentiments when he stated, among other things: "Your Excellencies ought not only to have a thorough knowledge of the religion which they support, to know whether in the doctrine taught therein, and the persons who teach it, there be no mistakes which ought to be corrected in accordance with the Word of God; but they ought also to concern themselves more than they do with the calling of the church's ministers, the making of ecclesiastical laws, the exercise of ecclesiastical censure, the convening of ecclesiastical meetings. There your delegates ought not only to look and listen but also to declare their opinion and if need be to vote and judge also." Then he took aim at the Calvinists who defended the sovereignty of the church in ecclesiastical matters and the sovereignty of the government in political matters: "This we think will lead to a complete "collaterality" as of two magistrates in one country, the civil over the civil, the ecclesiastical over the ecclesiastical. This will lead to much evil," etc. See Uytenbogaert, *Kerckelycke historie*, p. 474. See also his *Tractaet van't ampt ende autoriteyt eener hooger christelycker overheydt in kerckelycke saecken* (The Hague, 1610).
- 2 See Adriaan van Cattenburgh, *Vervolg der Historie van het leven des Heeren Huig de Groot* (Dordrecht and Amsterdam, 1727), p. 47 ff. The case was settled in Galileo's favor but he decided, on account of old age and weakness, to remain in Italy. What Grotius thought of Galileo and his system appears plainly from a letter dated 19 February 1637 to his nephew Nicolaas Reigersbergen, in which he writes: "I am very glad that you have become acquainted with the greatest of Philosophers and Mathematicians, Master Galilaeus, in the loss of whose eyes (since he has become blind) humanity has suffered greater loss than can be understood except by the few who can properly evaluate such intellects. The entire system of this universe, the most beautiful of God's works, grieves (if I am not deceived) that it must lose such a great observer and proclaimer of its secrets." Grotius, *Epistolae* (Amsterdam, 1687), no. 912.
- 3 Grotius, *Opera omnia theologica*, 3:752 ff.

ity from the example of the living and dying Christ himself in doing God's will and providing for people's welfare, as well as from Christ's example in being rewarded by the resurrection, ascension, sending of the Holy Spirit, and abiding kingship. Belief in this is sufficient for salvation. In a letter to his brother in 1642, written when composing his polemical pamphlet against Rivetus, Grotius formulates the main points of faith as follows, at the same time bringing out at his tolerant position on ecclesiastical matters: "Meanwhile I will say that peace, for the state as for the church, in part consists of silence. In order to gain salvation there is enough that can be said both safely and usefully about Christ's birth, miracles, resurrection and ascension, and about contrition, faith and the necessity of works."<sup>1</sup> His shallow, historical conception of the Christian faith appears from his *Votum pro pace Ecclesiae* where one reads among other things that faith is that "through which we believe that Christ suffered, died and was raised from the dead, and that it is therefore true what He has wrought for us in God's name, whether by commandment or promise."<sup>2</sup>

It is no coincidence therefore that in his famous *De veritate religionis Christianae* Grotius provides an apology for Christianity without dealing at all with the doctrines of salvation. Compare this apology with that of the famous French Huguenot Philippe du Plessis-Mornay to see the difference clearly.<sup>3</sup> In his demonstration of the eminence of Christianity from the essence of Christian doctrine, Grotius points out that Christianity demands no external worship, but faith, hope and love, precepts which can surely satisfy even the rationalist. He says not a word about redemption. "Apart from miracles, prophecies, ethics and the history of Christianity," Wijnmalen observes, "it would appear that [for Grotius] the New Testament adds nothing essential for confirming the Christian faith."<sup>4</sup>

Since Grotius believed only partially in the divine inspiration of Holy Scripture it comes as no surprise that with his keenly critical mind and universal knowledge he also broke new ground for modern rationalism in the area of biblical criticism. Although he certainly did not, like Faustus Socinus and his adherents, break entirely with Christian tradition, and although he attached great importance in particular to the teaching of the early Christian church, he did have the audacity, prompted by his critical spirit, to view Holy Scripture as but an ordinary work from classical antiquity.<sup>5</sup> The historico-philological method which Valla and Erasmus had applied to exegesis and textual criticism was used with infinitely greater

1 Grotius to Willem de Groot, *Epistolae*, 2<sup>nd</sup> ser., no. 616, p. 491.

2 Grotius, *Opera omnia theologica*, 3:656.

3 See T. C. L. Wijnmalen, *Hugo de Groot als verdediger des Christendoms beschouwd* (Utrecht, 1869), p. 35 ff.

4 *Ibid.*, p. 291.

5 See Knight, *Life and Works of Hugo Grotius*, p. 250.

temerity and sophistication by Grotius than by his predecessors. In his text-critical and historical reflection on the book of Job and the book of Esther, which he, deviating from tradition, viewed as not being strictly historical, and in his notes to the Psalms and the epistles to the Thessalonians, he provided keen grammatical and historical exegesis that seems quite modern. It is typical as well that he, like other theologians of the time, followed the great Jewish exegetes more than the Christian ones. Grotius did not, any more than the Arminians and Socinians, tamper with Christian supernaturalism, yet already in him we encounter the supernaturalism which has taken on that barren historical rationalistic character as found in Socinianism.

All this no doubt sketches only one side of Grotius' theology. There are also more intimate tones to be heard in the religion of this great man. Yet dominant in him, as in Coornhert and Erasmus, is moral rationalism which would soon create an entirely new rationalist dogmatics in the form of Socinianism which simply wiped out the entire Christian tradition.

In light of this theological point of view, Grotius' ideas of toleration present a picture similar to that of Coornhert. However, it is more clearly accentuated in his practical politics and writings. It was Grotius who drafted the well-known resolution of the States of Holland of 1613 about settling the points on which the ecclesiastical peace was to be maintained,<sup>1</sup> and he it was who defended the resolution in a speech before the city council of Amsterdam. In his address or discourse to the States of Zeeland, sent to this body in 1617, he advocated provincial sovereignty in matters of religion and defended the convocation of a general synod, but only for the purpose of revising the confession of faith in such a way that doctrinal differences would be side-stepped and a basis be created for accommodating all Christians in one church communion.<sup>2</sup> At every turn we find him on the side of Oldenbarneveldt, Uytenbogaert and Hoogerbeets, defending a rash provincial policy of toleration which would soon result in his imprisonment and conviction.

On reading Grotius' defense of *political* toleration in the second book of his masterwork, *De Jure belli ac pacis*, one again gets the premature illusion that it was humanism that gave us the liberating word concerning freedom of conscience. Book II points out how Augustine for a long time did not even want Manichean heresies to be resisted by the sword,<sup>3</sup> and it calls it a "sovereign injustice" when Christians persecute and condemn to barbaric punishments persons who acknowledge the law of Christ to be

1 For the content of this resolution, see C. Brandt, *Historie van het leven des Heeren Huig de Groot*, p. 63, and Grotius, *Verantwoordingh um de Wettelijcke Regieringh van Hollandt ende West-Vrieslant*, 2<sup>nd</sup> ed. (Paris, 1623), chap. 6, p. 54 ff.

2 For the content of this address, see C. Brandt, *Historie van het leven des Heeren Huig de Groot*, p. 103.

3 Grotius, *De jure belli ac pacis*, ed. P. C. Molhuysen (Leyden: Sijthoff, 1919), 2.50.3.

true but who doubt or err concerning certain points which that law has not unequivocally settled.<sup>1</sup> Citing the church father Athanasius, Grotius observes that it was the Arians who first called on the secular government to subdue by force, corporal punishment and imprisonment those who would not be convinced by their words, and that this fact proves that the Arian heresy was neither pious nor religious. Those who adopt or assent to such measures should take to heart the words of Plato that the punishment due to one who errs consists of instruction.<sup>2</sup> Only those who intentionally and sacrilegiously slander the God in whose existence they believe ought to be punished by the secular government, as Grotius – true to his Stoic method – proves from the *sensus communis* among all nations.<sup>3</sup>

As observed, the illusion that we get on reading such language is premature. Grotius links *political toleration* inextricably to *ecclesiastical tolerance* as upheld by the government. Should anyone still be in doubt about this, he should read Grotius' *Verantwoordingh van de Wettelycke Regieringh van Hollandt ende West-Frieslandt* (Justification of the lawful government of Holland and West Friesland) which he published in 1622 during his exile in Paris. The second chapter of this work begins with the apodictic statement: "All who write on the matter of government state that one of the most important parts of sovereign power is the regulation of Religion;<sup>4</sup> wherefore, the sovereignty of the respective provinces being proven, it is also at once proven that when provinces regulate Religion it is not part of the general protection."<sup>5</sup>

Continuing in this vein, the entire work is one sustained defense of the regents' policy of suppressing the church's internal freedom, including the employment of local militia. The characteristic nature of the humanist ideal of tolerance clearly comes to the fore in statements like the following:

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- 1 Ibid. 2.50.1: "In eos vero qui Christi legem pro vero habent, sed de quibusdam quae aut extra legem sunt, aut in lege sensum videntur habere ambiguum et ab antiquis Christianis non eundem in modum sunt exposita, debutant aut errant, suppliciiis qui grassantur perinique faciunt."
  - 2 Ibid. 2.50.5: "Sapienter dixit Plato errantis poenam esse doceri."
  - 3 Ibid., 2.51.1: "Justius illi punientur qui in eos quos Deo putant irreverentes atque irreligiosi sunt."
  - 4 All humanist theorists of authority agreed on this point. Hobbes would express this thought as follows in his *Leviathan*: "It belongeth of right to him that hath the sovereignty to be judge, or constitute all judges, of opinions and doctrines, as a thing necessary to peace; and thereby to prevent discord and civil war." Thomas Hobbes, *Leviathan, or, The Matter, Form and Power of a Commonwealth, Ecclesiastical and Civil*, in Sir William Molesworth, ed., *The English Works of Thomas Hobbes*, 5 vols. (London, 1839-1845), 3:182.
  - 5 Grotius, *Verantwoordingh*, p. 14. *Translator's note*: Grotius argues here that the States General of the United Netherlands has no right to intervene in the way religion is regulated by the States of Holland.



So from olden times, as in our own, in almost all countries a great difference between political and ecclesiastical persons has been observed when it comes to theological issues. Theologians are wont to consider all matters of Religion highly important, as if their knowledge and excellence surpasses that of others. Governments on the other hand, mindful of the peace of the Republic, are of the opinion that in many of those issues some rational compromise can be effected without breaking the law of God.

This opposing view is certainly fostered by many politicians who have gained knowledge of the errors through the writings of Erasmus of Rotterdam, a man who was always most inclined towards peace and accommodation. The pastors, by contrast, had mostly studied the books of Calvin and some other writers who were strongly pushing their private opinions. For that reason the word Reformation or Reformed Religion was understood differently by the politicians than by the clerics. Many clerics understood thereby an agreement on all points with their teachers; the politicians, a worship of God purified of gross errors, not being too restrictive on opinions about moot points. To escape this ambiguity the politicians have often preferred to speak of the *Christian* or *Evangelical Religion*, or to clarify the word *Reformed* with the word *Evangelical* ... whereby, and by other Acts, the contrast in the views of the country and those of the clerics has become apparent, the clerics aiming for decision and definition, the magistrates for accommodation and reasonable toleration; the one aiming to restrict admission to the church by fixing many moot points, the other aiming as much as possible to open the church to all Christians of blameless conduct.

And finally:

Concerning the differences about the doctrine of predestination and related matters, the States of Holland and West Friesland, either unanimously or in a large majority, were inclined *towards a toleration not simply political but ecclesiastical*, that is, a toleration in which freedom of opinion would be allowed to both sides on condition of a competent manner of teaching for edification, so that members and pastors of both sentiments would remain in one ecclesiastical communion, *under the common protection and maintenance of the government*.<sup>1</sup>

The essence of the humanist ideal of tolerance could hardly be expressed more plainly than in these statements. And it was both the curse and the judgment of history that precisely this ideal of tolerance would lead to the worst kind of oppression of the church and to religious persecution.

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1 Ibid., pp. 29, 30, 35, 36.



## Chapter 10

### *The Rise of the Modern Theory of Natural Law*

#### **The altered statement of the problem**

Until now we have sketched the humanist process of the secularization of the spheres of life in politics (the rise of the doctrine of *raison d'état*), natural science (the adoption of the modern concept of science), and theology (the development of universal theism and moral rationalism with their specifically humanist idea of toleration). We saw how Renaissance and humanism, as unpredictable life forces full of unbridled zest for beauty and creativity, threw themselves on the collapsing medieval unified culture. The individual became conscious of his worth and broke the shackles that restrained his liberty. Eternal values gradually shifted to nature, to the world, to the here-and-now. In the background of this stirring drama, full of splendid colors and blazing lights, we noted the great shadow of nominalism which played an important role in this whole process of individualization and naturalization.

The Franciscan spirit, representing the tradition of Platonism and Augustinianism over against Thomas Aquinas, had to some degree gone to seed in sectarianism, to another degree went on to influence the Reformation movement and, finally, produced important nutrients for modern humanistic naturalistic culture. Duns Scotus, the *doctor subtilis*, had begun with a definitive separation of faith and knowledge; Ockham's nominalism had widened the gap between religion and science, undermined the Roman Catholic concept of the church, and proclaimed the sovereignty of the state as a contractual creation of individuals. Since Ockham had banned all questions of religion from the realm of science and viewed history, following Augustine's example, in the theological light of the contingent activity of God and the universal conflict between a kingdom of God and a kingdom of this world, history could not be an object of science either. The only thing left for science was nature as a mathematical object of knowledge, completely isolated from other spheres of knowledge. Next to it, there was psychology as the knowledge of individual phenomena of the soul,<sup>1</sup> an object of knowledge that always attracted special attention in Augustinian circles since the soul was the bearer of Christian mysticism

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<sup>1</sup> See Paul Hönigsheim, "Die soziologische Bedeutung der nominalistischen Philosophie," in *Hauptprobleme der Soziologie: Erinnerungsgabe für Max Weber*, 2:186 f.

and at once, epistemologically, the bearer of the certainty of knowledge.<sup>1</sup> We saw how the Renaissance adopted this nominalistic legacy and how modern natural science (Copernicus, Kepler, and Galileo) proclaimed the coming-of-age of human reason. Next, we saw how theology and ethics gradually accommodated themselves to humanism's naturalistic worldview. Finally, we pointed out how *unity* in this worldview (whether *aesthetically* or *rationalistically* colored) could only come after the mathematical concept of science was joined to the Stoic and Epicurean basic tendencies in humanist theology, ethics, and view of law, since this latter trio at first had seemed an impenetrable bulwark resisting the new scientific method which had proceeded, after all, from mechanics, or physical kinematics.

This process of gradual penetration of these fields of knowledge by the new mathematical method will now be illustrated in the case of the humanist theory of natural law and the science of constitutional law based on it, after which our survey of the Renaissance and humanism will be concluded with a brief analysis of the humanist law-idea in which the unity of the humanist worldview must find its foundation.

The humanist theory of natural law, once it is considered in light of the general development of the modern worldview, becomes an exceptionally fascinating problem and loses the stereotypical features impressed upon it in the average textbooks on the history of legal philosophy. In history, isolation from development spells death. Thus we wish to investigate – in the present context it can be no more than a rough sketch – the problem of modern humanist natural law and consider it in its relation to and contrast with Scholastic natural law. We shall then see how the problems of *raison d'état*, the modern conception of science, and the modern view of religion all converge, as it were, on a single issue faced by modern natural law; how nominalism is the hidden force behind this natural law, giving it a character totally different from Thomist natural law; and how the totally altered sociological substructure also gives it completely different tendencies. We shall start with the last point.

### The sociological substructure

The Scholastic natural law of Thomas Aquinas – a masterpiece of profound intellectual ability and logical construction – was an intrinsic element of Thomism's hierarchical worldview. The Thomist law-idea, the *lex aeterna*, permeated by the Aristotelian metaphysics of substantial forms and grounded in the concept of entelechy, bound all the spheres of life and world together in the hierarchical order of the *Corpus Christianum*.

<sup>1</sup> Cf. Augustine, *Soliloquia* 1.2.7: “Deum et animam scire cupio. Nihilne plus? Nihil omnino.” Ibid. 2.1.1: “Tu, qui vis te nosse, scis esse te? Scio. Unde scis? Nescio. Simplicem te sentis ane multiplicem? Nescio. Moveri te scis? Nescio. Cogitare te scis? Scio.” The latter is a statement in which Augustine anticipates Descartes' *Cogito ergo sum*.

Thomist natural law, as the inferior part of natural moral theory and as such an inherent element of the *theologia naturalis* (natural theology), claimed to govern both state and society. Politics, international law, civil law, constitutional law, the economic order – all of them were hierarchically subsumed under natural law as God's eternal moral order of law. As *lex naturalis*, the form-giving principle in the entelechy of human nature and the subjective component of the *lex aeterna* or cosmic plan of God, this natural law according to its primary *principia* as well as its secondary ones (those immediately deducible from the prime principle) was immutable and eternal, grounded in the rational being of God.

The Decalogue was the revealed expression of the secondary *principia*, deducible by natural reason, apart from all revelation, from the ethical ground rule “Do good; desist from evil,” or in Thomas' terms, “Act according to purposive principles of development inherent in your own rational nature.” Ranked above this natural law was *charitas* and the Christian teaching of love by which the church on the basis of natural law would take the latter to a higher level of perfection.

The sociological substructure for this Thomist natural law was the unified ecclesiastical culture discussed in chapter 2 above, with a strongly centralized ecclesiastical authority, a weak, fragmented state entity, and closed guilds and associations (*Genossenschäfte*). Everywhere the individual was caught up in closed communities. Professions and trades were based on the principle of *Arbeitsgenossenschaft* (partnership in labor): masters and journeymen worked shoulder to shoulder and shared a common interest in the enterprise. Feudalism's political authority, through which the developing estate system became decentralized into powerlessness, everywhere faced the feudal relationships of authority and the *Genossenschäfte*, the closed communities which practically precluded direct contact with individuals. New law could hardly be created by this political authority.<sup>1</sup> Canon law exercised its universal validity to the full as existing national laws were fragmented. All these factors, together with simple life relationships and the predominance of a natural economy, continued long enough to enable ecclesiastical authority to control all areas of

<sup>1</sup> Cf. Hans Spangenberg, *Vom Lehnstaat zum Ständestaat: Ein Beitrag zur Entstehung der landständischen Verfassung*, Historische Bibliothek, no. 29 (Munich and Berlin: Oldenbourg, 1912), p. 15 note 1: “Typical of medieval laws is that they do not create new law but mostly confirm existing law or give it general validity. . . . Even if by way of exception a seemingly new piece of legislation is presented, upon closer inspection it becomes apparent, as a rule, how little it really concerns new provisions but merely sums up scattered laws which in fact already obtain and are now also formally recognized.” Cf. Julius Ficker, *Vom Reichsfürstenstände: Forschungen zur Geschichte der Reichsverfassung zunächst im XII. und XIII. Jahrhundert*, ed. Paul Puntchart (Innsbruck, 1861), p. 13. Even Charles IV's Golden Bull did not create new law.

life by means of an authentic interpretation of the moral and natural law. In the fourteenth century the well-known Baldus, though strongly inclined toward a ruler's absolute power, still declared, quite in keeping with canon law, that natural law ranked higher than government and that therefore the emperor could not legally permit the charging of interest [on loans].<sup>1</sup>

It is perfectly true that even in Thomas' day the sociological substructure of the unified ecclesiastical culture had already begun to erode, but in building his system Thomas had the unbroken unified culture in mind.

During the Renaissance one sphere of life after another wrested itself away from the clenching grip of ecclesiastical supremacy. The connection between all these spheres of law, philosophically founded in the law-idea, was rudely burst apart by the eruption of new forces of life. The result was a free-for-all of unrestricted individualism!

A remarkable scene! Every sphere of life that escaped from the unified culture attempted to overpower all the others, oblivious to the requirements of morality and law; the individual lived life to the full in complete autonomy within the areas thus liberated.

Accordingly we saw how the sphere of politics escaped from the church's shackles and presently proclaimed as supreme value, in Machiavelli's theory of *raison d'état*, the interest of the rising national absolute state, while religion, law and morality were unscrupulously surrendered to that interest. Here was a revival in full force of Roman individualism of power, of the ruthless ancient *raison d'état* expressed by Tacitus and Polybius.

Another example of unrestricted individualism is provided by the separation of the economic sphere from the bond of the church's unified culture: an individualism which, supported by the practical politics of *raison d'état*, indulged itself undisturbed, disregarding all the requirements of natural law. The banking system that arose in the cities of Northern Italy and Southern France, the textile industry (Florence, Flanders, England, France), mining and especially international commerce (the Hanseatic League, international trading companies) together provided the driving force for early capitalism, which was also stimulated by the money and credit economy that the papal Curia and the temporal authorities alike needed for financing their bellicose policies. An urban proletariat was already beginning to take shape.<sup>2</sup> Due to overpopulation in certain rural areas there was a migration to the cities. The old ties were slowly but surely dissolving; a host of people were torn loose from their former work environment and their normal habitats; they were transplanted to different

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1 Baldo degli Ubaldi, *In usus feudorum commentaria doctissima* 1.1.3.2 and 1.1.11.24 ff.: "Potentius est jus naturale quam principatus."

2 See Werner Sombart, *Das Proletariat: Bilder und Studien*, vol. 1 in *Die Gesellschaft: Sammlung sozialpsychologischer Monographien*, ed. Martin Buber (Frankfurt am Main: Rütten & Loening, 1906).

places and forced to change their place of domicile and profession perhaps several times. Hönigsheim has pointed out<sup>1</sup> that to some extent these were the very people who were not only externally uprooted from their community, but who inwardly had also become skeptical of traditional objective norms and values. Early capitalism flourished in this spiritual climate. The entire world of adventurers, vagabonds, schemers, pirates, explorers, alchemists, and court Jews as depicted by Sombart was at home in the new money economies, but no less so in the spiritual climate of Franciscan nominalist culture. That culture, in its contempt for institutional communities, its exaggerated appreciation of the individual, its glorification of the will, and its admiration of experience and practical research, contrasted sharply with the Thomist worldview.

This process of individualization acquired ever larger dimensions and became more sharply defined during the fifteenth and sixteenth centuries when greatly expanding trade provided capital to the flourishing mining and metal industry for investment in more intensive production. The era of early German capitalists, of the Fuggers and Welsers, was marked by the formation of an unprecedented social class of unpropertied wage-earners who lived off their pay and congregated in the mining and industrial centers as hewers, founders, or construction workers. In the middle of the sixteenth century, one Tyrolean mining enterprise alone employed 7,460 wage-earners.<sup>2</sup> The entire social problem of modern times already reared its head here: unemployment, housing shortage, economic booms and busts, the nomadic type of the workers' proletariat! On the other hand we witness here also the formation of trusts and cartels and trade monopolies (cf. the famous monopolistic ore contracts which saw the large trading partnerships advancing capital to the mine owners in exchange for the right of buying up the entire mine production; compare also the spices and textile contracts).

In the face of this impressive economic development, how was the Scholastic and canonic theory of natural law to respond, given its *just price* and its prohibition of interest, competition, and monopoly? Neither state nor papacy could make do without the new economic practices. The most important monopolies and cartels of the Middle Ages and the early modern period, as studies by Ehrenberg, Strieder and Schmoller<sup>3</sup> have amply demonstrated, were creations of the financial policies of princes

1 Hönigsheim, *Hauptprobleme der Soziologie*, 2:200.

2 See Adolf Zycha, "Zur neuesten Literatur über die Wirtschafts- und Rechtsgeschichte des deutschen Bergbaues," *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 5 (1907): 256; and Jakob Strieder, *Studien zur Geschichte kapitalistischer Organisationsformen: Monopole, Kartelle und Aktiengesellschaften im Mittelalter und zu Beginn der Neuzeit*, 2<sup>nd</sup> enl. ed. (Munich: Duncker & Humblot, 1925), p. 40.

3 Richard Ehrenberg, *Das Zeitalter der Fugger*, 3rd ed. (Jena: Fischer, 1922), 1:398

and popes. In order to acquire unusually large loans from the merchants in times of exceptional financial need, the rulers granted them the exclusive right to engage in the wholesale trade of goods which territorial princes had a certain right to dispose of, alone or with others, on the basis of certain royal prerogatives. This is how major political powers and international capital first became linked. The kings of England, to pursue their imperialistic policy on the Continent, made use of aid from Italian, Hanseatic, and eventually English capitalists.<sup>1</sup> Habsburg international policy from the time of Emperor Maximilian was financed by South-German and Italian merchants. The famous Augsburgian Jakob Fugger in particular provided the Emperor with the means for his Italian exploits. Charles V's connection with the Augsburg money magnates often proved to be his mainstay in the wars during the Reformation. The great stake which German royal and imperial policy had in high finance clearly appears from the zeal with which these rulers protected the merchants whom they had granted monopolies against persecution by the "Imperial regiment." Whereas small lords and estates had fulminated against the monopolies at the Imperial Diets from the beginning of the sixteenth century, and the diet of Trier-Cologne (1512) had passed a motion to severely rebuke monopolists, the German ruler Ferdinand and his imperial brother Charles V secretly bound themselves to defend the monopolists against any intervention by the imperial treasurer in the contracts they concluded with the merchants.<sup>2</sup> This was soon followed by a public blow to the anti-monopoly movement in Charles V's law of March 1525,<sup>3</sup> and a little later by the famous mandate of Toledo (May 1525) which stipulated that any contracts placing wholesale trade in ores in the hands of a few merchants would not count as illegal monopolies. *This mandate represents the first public-legal recognition of the inadequacy of medieval natural law theory for the regulation of economic life.*

On the other hand, for some time the church had adopted a significantly weaker approach to the canonical prohibition of interest and the doctrine of the just price. The church could not just drop the principle of natural

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ff., 2:14; Jakob Strieder, *Studien zur Geschichte kapitalistischer Organisationsformen*, pp. 69-71; Gustav von Schmoller, "Zur Geschichte der national-ökonomischen Ansichten in Deutschland während der Reformationsperiode," *Zeitschrift für die gesamte Staatswissenschaft* 16 (1860): 496 ff.).

- 1 See Kurt Kaser, *Das späte Mittelalter*, vol. 5 in *Weltgeschichte in gemeinverständlicher Darstellung*, ed. Ludo Moritz Hartmann (Gotha: Perthes, 1917), p. 159.
- 2 Strieder, *Geschichte kapitalistischer Organisationsformen*, p. 70; Ehrenberg, *Das Zeitalter der Fugger*, 2:403 ff.; Schmoller, "Zur Geschichte der national-ökonomischen Ansichten," p. 496 ff.; Karl Lamprecht, *Deutsche Geschichte*, 2<sup>nd</sup> rev. ed. (Berlin, 1895), p. 60 ff.
- 3 For the content of this important law see Strieder, *Geschichte kapitalistischer Organisationsformen*, p. 75.



law if only to protect her authority and position of power, but gradually her canon law made all sorts of concessions to economic activities, concessions which materially were altogether at odds with official doctrine.<sup>1</sup> This very anomaly between doctrine and practice in turn occasioned a flood of theoretical attempts to harmonize the two in the distasteful casuistry engaged in by Jesuits and the jurists, who, by subtle distinctions and forced constructions, stretched the rigid canonic doctrine of interest onto the Procrustean bed of their exegetical ingenuity.<sup>2</sup> This casuistry, which really owed its existence to the undeniable truth that the economic sphere has its own sovereign laws, sharply marked the distance between the sociological substructure of medieval natural law and that of the emerging modern natural law.

### **The rise of the modern idea of the state. From medieval constitutionalism to monarchical absolutism**

We must, finally, identify within the sociological substructure of modern natural law the structure of the modern national unitary state. By means of the practical politics of *raison d'état* the unitary state gradually pushed aside the dualistic polity of medieval constitutionalism and found powerful support for the emerging royal absolutism and the modern idea of the state in Roman law, the judicial civil service, and the theoretical advocates of the Roman conception of law, the legists.

Medieval constitutionalism had evolved from the feudal state during the course of the twelfth, thirteenth, and fourteenth centuries. The transition from a feudal state to an estates polity was initially marked by a great concentration of royal power. Germany, for so long the victim of feudal fragmentation and the increasingly untenable regime of orders or estates, provides a clear example. The feudal lords, especially in secular territories where their fiefs became hereditary, having gained a considerable degree of stability and a great measure of independence from their suzerain lord, broke the shackles of the feudal system by means of an administrative court council (*curia regis*) and a civil service entirely dependent on them. The latter resulted in a new useful administrative organization with a loyal corps of officers.<sup>3</sup>

However, this civil service and the early urban middle classes, who at first were dependent *Genossenschaften* bound and obligated to serve the rulers, soon became free corporations. The rulers themselves had contributed to this process in order to reduce the influence of the free and power-

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1 Benedict XIV later summarized these concessions in his famous encyclical *Vix pervenit* of Nov. 1745.

2 On this casuistry, see Wilhelm Endemann, *Studien in der romanisch-kanonischen Wirtschafts- und Rechtslehre bis gegen Ende des siebzehnten Jahrhunderts* (Berlin, 1874), 1:46 ff.

3 Spangenberg, *Vom Lehnstaat zum Ständestaat*, p. 34 ff.

ful feudal lords, the nobles and the high clergy, in the administration of the state. But this tactic turned against them. The officials formed themselves into new orders of knights (*equites, milites*), and towns exploited their privileges to become almost autonomous at the expense of sovereign authority. They acquired their own administrative organs in the form of town councils, their own jurisdiction, and a practically unrestricted right to regulate their own internal administrative affairs.<sup>1</sup> At the same time they constituted cohesive and closed economic communities on the basis of a money economy. Before long, the towns formed the third estate, next to the estates or orders of the clergy and the nobility, over against royal authority.

The transition from a natural to a money economy made the rulers dependent upon the new middle-class sources of capital. The granting of expanded political rights and privileges to the estates, the formation of numerous practically independent *Herrschaften* (circles with autonomy and their own jurisdiction) created that curious political dualism that typified the new estates polity.<sup>2</sup> Not that this dualism was new as such. A political dualism had burdened the German polity from the beginning. Monarchical rights and popular rights here appear as two completely independent and original ordinances over against each other.<sup>3</sup> But medieval constitutionalism was characterized by the fact that on this basis of the Germanic polity, it now forged a political unity among the estates out of numerous seignorial, clerical, and municipal forces which had been an incongruous mass of separate agencies during the feudal system. This unity now confronted kings or princes as a closed corporation. *Rex* and *regnum* now stood opposite each other as two very distinct legal actors. To the modern mind, medieval constitutionalism in its most extreme form appears as a twin state in which rulers and estates each had their special officials, jurisprudence, treasuries, indeed even armies and ambassadors.<sup>4</sup>

More than once the estates closed ranks in order to exact certain rights and freedoms. As a rule, they knew how to buy off the rulers in order to force them to forego the right of taxation. Only in special circumstances (danger to the state, war, etc.) would a tax be levied, but only with the approval of the estates. Frequently the right to armed resistance on the part

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1 See Richard Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, 5<sup>th</sup> rev. ed. (Leipzig: Veit, 1907), p. 650 ff.; Gierke, *Rechtsgeschichte der deutschen Genossenschaft*, vol. 1 of *Das deutsche Genossenschaftsrecht*, p. 276 ff.; and Spangenberg, *Vom Lehnstaat zum Ständestaat*, p. 25.

2 Spangenberg, *Vom Lehnstaat zum Ständestaat*, p. 44 f.

3 See Heinrich Brunner, *Deutsche Rechtsgeschichte* (Leipzig, 1892), 2:137 ff.

4 Georg Jellinek, *Allgemeine Staatslehre*, p. 320; Georg Anton Hugo von Below, *Territorium und Stadt: Aufsätze zur deutschen Verfassungs-, Verwaltungs- und Wirtschaftsgeschichte* (Munich and Leipzig: Oldenbourg, 1900), p. 248 ff.

of the estates was explicitly stipulated in case the sovereign violated their right to approve taxes.<sup>1</sup>

The special circumstances of Germany aside, in general the right, guaranteed in writing, to resist with or without arms the ruler who violated the territorial liberties, rights, and privileges of his subjects, was a characteristic phenomenon that was most peculiar. As a formal legal institution it arose from feudal law, but as a material law-idea it harked all the way back to ancient Germanic law. The privileges, rights, and liberties which the ruler at his inauguration had to swear to uphold were guaranteed in very many, if not all, estate monarchies by a right of resistance on the part of the estates in case of violation. Essentially this constituted a system of legal relationships that largely determined the main features of the rather primitive medieval constitutional arrangements. They were quite normal legal stipulations which show great similarity in all countries where the estates had acquired political significance, whether in South or North Germany, Poland or Brabant, Sweden or Portugal, Hungary or England.<sup>2</sup>

Despite differences in detail, these rights may be summarized in the following points. The most weighty of all secured rights, the lever of power held by the estates, was *the right to approve taxation*. Next in importance are rights that make supervision of the sovereign's administration possible, namely, on the one hand, *the influence granted to the estates on the composition of the royal court council*, and on the other, *the duty of the ruler not to fill public offices with foreigners*. Then follow the guarantees, granted in various forms, of an *impartial jurisdiction*. The fourth typical institution of law in medieval constitutionalism concerned the area of finance and constituted a necessary complement to the right to approve taxation, to wit, the restriction of the sovereign's competence in the area of *minting (guarantees against unilateral depreciation of minted coinage by the ruler)*. Then follow two institutions in the area of foreign policy, which were however also related to the primary right to approve taxation, namely, *the prohibition of alienating or pledging domains of the realm and the prohibition of initiating war without the permission of the estates*.

This entire system of essentially constitutional regulations appeared in

- 1 See Kurt Dietrich Hüllmann, *Geschichte des Ursprungs der Stände in Deutschland*, 2<sup>nd</sup> ed. (Berlin, 1830), p. 655, and Spangenberg, *Vom Lehnstaat zum Ständestaat*, p. 45 ff.
- 2 See Wolzendorff, *Staatsrecht und Naturrecht*, p. 58 ff. The most important of these charters are: the Joyeuse Entrée of Brabant, dated 1354; the Golden Bull of Andreas II of Hungary, dated 1222; the notable clause of the Cortes in Aragon, used at the inauguration of the King since 1461 (“Nos que valemus tanto como vos, y que podemus mas que vos, os hazemos nuestro rey y seZor con tal, que guardeis nuestros fueros. Si no no!”); the famous article “De non praestantia obedientia” in the Polish Constitution of 1607; the Danish Proclamation of 1466; the celebrated Magna Carta of England; the Bavarian liberty letters of 1302, 1311, 1358, 1392 and 1492; and the Swedish regulation of the Estates' right of resistance that still appears in the constitution of 1729.

the conceptions of private law of the time in the form of a *reciprocal contract* between ruler and estates, while the latter in their own right, according to common opinion, championed the interests of all the land's inhabitants.<sup>1</sup>

It is in reaction to this system of medieval constitutionalism, in which ruler and estates approach each other as two independent parties while the *unity of the state* is dualistically torn apart, that royal absolutism eventually arose in the national states after the close of the Middle Ages. It was boosted by the *nominalistic culture* and succeeded in establishing *state unity* by recovering territorial sovereignty from feudal fragmentation, breaking through the independence and authority structures of the lower feudal lords, destroying the dualistic position of the power of the estates, dissolving the autonomous intermediate communities as political concentrations of power, and creating the direct subjection of all citizens to the sovereignty of the royal crown. The corporative estates merged into the entity of the state and became an active organ of the unitary state, as in England; or else their political significance was totally crippled, as in France, Spain, Denmark, and, following the Thirty Years' War, in most of the German territories; or finally they were forced to recognize the sovereignty of the crown, as in Hungary after 1687.

In the West this process first ran its course in France.<sup>2</sup> The Hundred Years' War had greatly speeded up the triumph of the monarchial idea and contributed the most to the realization of France's political and national unity; the kings met with little resistance as they pushed the estates aside even as the war raged. Unlike those of England, France's estates had never found fertile soil for political influence. The establishment of the *États Généraux* was a creation of royalty; they did not, as in England, derive from the will of the people.<sup>3</sup> They owed their origin to the former *curiae solemnes* of the feudal state. The feudal concept of *aide et conseil* (approval of exceptional burdens, and counsel) had served as a basis for the

1 Cf. Wolzendorff, *Staatsrecht und Naturrecht*, p. 87; Paul Laband, "Über die Bedeutung des römischen Rechts für das deutsche Staatsrecht," in *Der Rektoratswechsel an der Kaiser-Wilhelm-Universität Straßburg am 1.5.1880*, p. 51 ff.

2 For reasons of space and format we shall have to make do with a sketch of the rise of the new monarchial idea of the state in France. On the constitutional situation in other countries (England) we shall only comment in passing if needed for understanding natural law. A general, albeit very concise overview of the development of the modern idea of the state in various countries appears in Bezold, "Staat und Gesellschaft des Reformationszeitalters," and Jellinek, *Allgemeine Staatslehre*, p. 323 ff. Here too we shall confine ourselves to the constitutional aspect of the modern idea of the state. We will comment on political absolutism later.

3 See Kaser, *Das späte Mittelalter*, p. 110, and about the entire history of the *États Généraux* see Joseph Declareuil, *Histoire générale du droit français des origines B 1789* (Paris: Librairie de la Société du Recueil Sirey, 1925), pp. 511-531. See also Eduard Fueter, *Geschichte des europäischen Staatensystems von 1492-1559* (Munich and Berlin: Oldenbourg, 1919), p. 56.

first convocation of prelates, barons, and bourgeois of the “good towns” and had finally granted them the capacity both of participating in the royal council and of representing the three estates. As a royal council they depended on the king alone and existed only to the extent and for the duration that he wished. That is why the wish of the estates to have periodic convocation was continually frustrated. The king consulted the estates when he chose to do so, on all kinds of matters concerning the realm, but he never wanted to consider them anything other than the *os apertum* (public voice).<sup>1</sup> In 1567 and 1588 the Estates of Blois tried in vain to gain greater influence on matters of administration and legislation.

The *États Généraux* served as representative of the estates insofar as it concerned the approval of exceptional financial burdens (the feudal concept of *aide*). This *aide* was owed by vassals to their suzerain according to feudal law, but it was limited to particular circumstances and often to a quota determined by feudal obligation or custom; should the demand by the feudal lord exceed these limits, then the approval of the interested parties was required. But even in the thirteenth century the legists, well-versed in Roman law and mostly civil lawyers in the service of the king, had drawn up a doctrine deduced from Roman legal sources. This doctrine proclaimed the king's right to exact taxes from all inhabitants to be an essential element of royal authority. Only gradually did the kings successfully cause this Roman legal doctrine to prevail over the feudal doctrine. This was all the more important for the kings since the estates, through their representatives (bound by an imperative mandate), inferred the right to supervise the spending of funds from the right to approve taxation. In tranquil times taxes were levied, more or less effectively, according to the royal theory, without consulting the estates. Only in times of war could the *États Généraux* not be bypassed. In the meantime, as early as 1439, Charles VII introduced, in conjunction with a standing army, the *taille permanente* or permanent head-tax, whether in consultation with the meeting of the estates of 1439-1440 or by an autocratic decision of the King's Council.<sup>2</sup> From then on the king was also at liberty to levy the *aide*

1 Cf. Bodin, *République* 1.3: “Les estats de tout le peuple, sont assemblés présentant requeste et supplications B leur Prince en toute humilité, sans avoir aucune puissance de rien commander ny décerner, ny voix délibérative, ainsi ce qui plaist au Roy consentir ou dissenter, commander ou défendre est tenu pour loy, pour édict, pour ordonnance.” Cardin Le Bret, *De la souveraineté du roy* 4.11, p. 641: “L'on ne tient les États que par la permission et le commandement de Sa Majesté; l'on n'y délibère et l'on n'y résout rien que sous la forme de requête et de trPs humbles supplications.”

2 See Charles Petit-Dutaillis, *Charles VII, Louis XI et les premières années de Charles VIII (1422-1492)*, vol. 4 of *Histoire de France depuis les origines jusqu'à la Révolution*, ed. Ernest Lavisse (Paris: Hachette, 1902), p. 244; Bodin, *République*, p. 246; Bezold, “Staat und Gesellschaft des Reformationszeitalters,” p. 46. Noteworthy is

(exceptional and, later indirect, tax) and the *gabelle* (salt tax).<sup>1</sup> Thereby the political significance of the estates was reduced to zero. From 1614 to 1789 they were no longer convoked.

The monarchy, in establishing the political unity of the land, leaned heavily on the bourgeoisie, the citizen classes in the towns who had attained wealth and prestige by way of commerce and industry. During the Hundred Years' War they had already given considerable proof of patriotism and sacrifice. To a large extent this explains the secret of the forcefulness with which the French monarchy beat down every hindrance encountered in their drive towards centralization. Here too lay the characteristic difference between the French monarchy and the German empire, where the citizens of the powerful cities focused all their efforts on commerce, industry, and municipal administration but remained unproductive, distrustful and dismissive toward national politics, much to the detriment of the state. In France, towards the close of the Middle Ages, a plutocracy arose on a capitalist foundation, which monopolized the trade in salt and grains, developed the money economy, and acquired ownership of large tracts of land. The famous capitalist Jacques Coeur<sup>2</sup> of Bourges is typical of this bourgeois plutocracy. His fabulous wealth, acquired especially from trade with the Levant and from factory industries, gave him the power to play a significant role in the new transformation of the nature of the state. By providing generous cash advances he had again and again helped the country out of dire straits and acquired a very influential position in Charles VII's royal council, which, alas, due to his corruptibility, he misused in a shameful way. In Jacques Coeur the connection of Crown and Third Estate gained its most vibrant and personal expression. While the nobility had to bow before royal authority, saw its feudal rights, especially in jurisprudence, restricted one after the other, and was pushed back in the royal council and the administration, the third estate gradually took over the leading position in the state. In the council of state (*conseil du roi*) bourgeois elements pushed aside their colleagues from clergy and no-

the royal response to the objections raised by the Assembly of Estates at Nevers, where the nobility predominated. This response was: "Les aydes ont esté mises sur les seigneurs et de leur consentement et quant aux tailles, le roy, quand il a esté au lieu, les a appelez ou fait savoir combien que de son autorité royale, veu les grans affaires de son royaume, si urgent, comme chascun scet et mesmement ses ennemis en occupant une grande partie, et détruisant le surplus, le peut mettre sus, ce qu'autre que lui ne peut faire sans son congé. *Et n'est jB nul besoin d'assembler les trois estats pour mettre sur les dites tailles; car ce n'est que charge et dépenses au pauvre peuple, qui a B payer les frais de ceux qui y viennent: et ont requis plusie[u]rs notables seigneurs dudit pays, qu'on cessât de telles convocations faire, et pour cette cause sont contens qu'on envoie la commission aux esleus selon le bon plaisir du roy.*" Quoted in Declareuil, *Histoire générale du droit français*, p. 525 f., n. 177 (emph. added); cf. also Kaser, *Das späte Mittelalter*, p. 110.

1 See Bodin, *République* 6.2 ff.

2 About him see Kaser, *Das späte Mittelalter*, p. 111 f.



bility and proved themselves advocates of the rights of the crown. The *conseil du roi* stemmed from the old *curia regis* out of which all the organs of the central administration had developed, namely, the high officials of the crown (except for the ministers of state who later were so powerful), the Parlement of Paris (*cour de justice*), the exchequer and a large number of councils with varying tasks and powers.<sup>1</sup> The council of state, as in England, was the birthplace of government by royal cabinet in ever smaller chambers. Since Richelieu, the personal government of the king had become completely overshadowed by the influence of the powerful first ministers, until Louis XIV managed to curtail the influence of these powerful functionaries. In the provinces, with their ill-defined administrative boundaries, local administration remained in the hands of the traditional high dignitaries, bailiffs, seneschals, and their numerous subordinate officials. Yet these officials maintained continuous contact with the royal court and propagated the monarchical idea. Their administration was reviewed and corrected where necessary by *reformateurs*, *gouverneurs*, and *lieutenants du roi* who were periodically dispatched to the provinces.

In the struggle to control the pecuniary rights of sovereignty, the erosion of the estates' rights relative to the approval of taxation constituted the most important stage. The crown claimed the exclusive right of taxation, also in the territories of vassals and clergy – another significant breach of the feudal order. Accordingly the well-known Edict of Moulins (1566) stipulated that the *taille* could not be levied by the subjects' feudal lords.<sup>2</sup> Even though the crown failed to realize this claim in full because of the resistance of the vassals (inequality in the burden of taxation remained one of the worst abuses of the ancien régime right up until the French Revolution), nevertheless state revenues increased to 1,800,000 livres during the final years of Charles VII's reign, while only 50,000 of these came from the crown domains.<sup>3</sup>

The exchequer continued to exist. For control of revenues from the domains and from exceptional taxes it was complemented by a well-organized corps of officials, centrally administered. A break was made, at least in principle, with provincial particularism in financial affairs. Apart from

1 See my dissertation *De Ministerraad in het Nederlandsche staatsrecht* (The Council of Ministers in Dutch constitutional law) (Amsterdam: Van Soest, 1917), p. 75 ff.; and Leopold August Warnkönig, *Französische Staatsgeschichte*, vol. 1 of *Französische Staats- und Rechtsgeschichte*, ed. by L. A. Warnkönig, Th. A. Warnkönig and L. von Stein (Basel, 1846-1848), p. 395-397.

2 Bodin, *République* 1.10: "This is the reason why the Edict of Moulins ordained that the right of tallage claimed by seigneurs over their dependents could no longer be levied."

3 Kaser, *Das späte Mittelalter*, p. 113; see also Bodin's interesting exposé of France's financial situation, *République*, p. 882 ff.

a few practical concessions, henceforth all public monies flowed directly into the king's coffers to be expended as he saw fit.

The financial reforms gave the monarchy the means for an army organization that allowed the bourgeois element to cooperate in the creation of artillery by the brothers Bureau. The military reform, which restored order and peace by removing rapacious and useless elements from the army and denied vassals the right to maintain troops, first created a truly royal army. Both for the suppression of disturbances in France and for the policy of expansion into Italy pursued particularly by Francis I, this royal army constituted an important force, even though for a long time it was still too small to make do without the help of the Swiss, who long were the best soldiers in Europe and who hired themselves out as auxiliary troops to whichever state paid the most.<sup>1</sup>

While France's administration was thus centrally (though not yet completely) organized, the centralization of jurisprudence was even more important. Since the reign of Philip the Fair [1285-1314], the legal practice of feudal times had been terminated bit by bit and the privileges of the towns had been rescinded. Most difficult was the struggle against the ecclesiastical administration of justice which, according to the two canonic distinctions of the *privilegium fori*, *ratione personae* and *ratione materiae*, had assumed a large portion of the civil and criminal cases during the feudal period of fragmentation of the sovereign's rights.<sup>2</sup> In the fifteenth century, however, that matter was also settled in principle.

The highest central law court of the realm, the Parlement of Paris, which, like other central colleges had derived from the old *curia regis* and had fallen into a state of shameful corruption under Charles VI, was subjected to a thoroughgoing reorganization under Charles VII. Since 1467 this illustrious college of jurists of the *noblesse de robe* could not be deposed, and had pushed its independence from the royal court to such lengths that, from its power to incorporate royal ordinances in its registers, it inferred the power to test the sovereign's expressions of will against

1 See Fueter, *Geschichte des europäischen Staatensystems*, sec. 29; Kaser, *Das späte Mittelalter*, p. 114.

2 The canonic doctrine of the competence *ratione materiae* was as follows: *Cum de peccato agitur silet virtus legis civilis*. According to this doctrine, ecclesiastical authority, as supreme judge, should decide in all matters involving sin. On the basis of this claim the church could subject the laity to her jurisdiction in a wide range of matters involving, e.g., perjury, blasphemy, magic, form and validity of matrimony, divorce, separation of bed and board, and for a long time, the law of inheritance and contracts sealed by oath, which had become fashionable for most contracts; cf. Guy de la Pape, *Decisiones Guidonis Papae* (Leyden, 1607), q. 199, no. 3, and Abbas Panormitanus, *Lectura super V libri Decretalium* (Lectures on the Decretals of Gregory IX), cap. 28 X 24, no. 23. In comparison with lay courts, ecclesiastical jurisprudence during the Middle Ages offered the considerable advantage of a developed procedural law in which the independence of the judges, legal security and higher appeal to the pope constituted the most important positive features.

the *lois fondamentales* of the realm for their validity. But the French kings did not wish to tie their bureaucratic absolutism to such a right of review by Parisian judges. More than once they referred important cases to the “grand council” led by the king, or to special committees, in order to restrict the power of Parlement. Louis XIV in particular abused his right to adjudicate in person. After 1673, the *droit de remontrances* (right to remonstrate) had become, for all intents and purposes, a dead letter.<sup>1</sup> Despite protests by the highest court, provincial parlements were instituted to maintain the king's authority and to protect certain provincial rights as well.

Thus the French monarchy, supported by an internal organization that was exemplary for Europe at the time and by a well-organized financial system and a strong core army, gained the kind of prestige which in the sixteenth century inspired Bodin's theory of sovereignty. Its greatest strength consisted in the clever policy, infused by the leaven of *raison d'état*, of tying all levels of the population to the Crown in their own interest. The final grandly conceived organization of feudal independence in Charles the Bold's massive attack on royal power was put down by Louis XI with Machiavellian severity.

Papal supremacy, which had never been able to gain a firm foothold in France, was pushed back definitively by the introduction of practical Erastianism. The Pragmatic Sanction of 1438, which denied the pope the right to fill spiritual offices and restored free canonic elections, did formally liberate the church in France from the papal yoke but materially subjected her to the power of the king and his court.

During the rise of France's absolute monarchy the beginning of *Gallicanism* is also found – the start of a national church which adheres to the universal church in doctrine and rites but does not depend on Rome for her organization and exchanges papal supremacy for that of the secular government.<sup>2</sup>

### **The concept of legitimacy**

During the gradual establishment of absolute monarchy in France, the foundations were laid for a kind of constitution that had always been accepted by the practical jurists (when their eyes were not clouded by the absolutistic ideologies of the late Middle Ages and the seventeenth century) as the legal basis of “absolute” royal authority. This constitution

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1 See Henri-Eugène Sée, *Les idées politiques en France au XVIIe siècle* (Paris: Giard, 1923), p. 28.

2 Kaser, *Das späte Mittelalter*, p. 115; Declareuil, *Histoire générale du droit français*, p. 435 ff.; Sée, *Idées politiques en France*, p. 81; Jean du Tillet, “Mémoire et avis . . . sur les libertés de l'Église gallicane,” in vol. 3 of *Recueil des Roys de France, leurs couronne et maison* (Paris, 1607).

was a set of fundamental regulations which, although not written, were recognized as the unshakable historical foundation of monarchy by the legists, especially by the Parlement of Paris. As early as the fourteenth century the illustrious Baldus counted among these fundamental rights the hereditary nature of the kingship as a legitimate, public legal institution, as well as the exclusion of women from government (*lex salica*) and the inalienability of the king's domains. During the fifteenth and sixteenth centuries this theory of legitimacy was further elaborated in the works of Claude de Seyssel, Charles de Grassaille, Jean Ferrault, Jean du Tillet, Guy Coquille, and others. All of these authors placed this constitution of the monarchy opposite the ordinary laws of the king, and declared the king to be bound by the constitutional law.<sup>1</sup> Gregory of Toulouse even spoke of the *constitutio regni*,<sup>2</sup> and Bodin, whose theory of absolute sovereignty must be examined next, could not, as a practical jurist, deny the existence of such a constitution, no matter how limited its content.<sup>3</sup>

Louis XIV's last will and testament was declared null and void<sup>4</sup> for being at odds with the constitutional law of hereditary succession, no matter how despotically he had ignored this constitution during his lifetime. Louis XV expressly acknowledged the legitimate character of the monarchy in the Declarations of 2 July 1717 and 26 April 1723.

The Roman law doctrine held by legists since the thirteenth century, namely, "Quod principi placuit legis habet vigorem et princeps legibus solutus est" (What pleases the prince is law – what he is pleased to make law must be regarded as law), had at that time been politically extended to give the sovereignty of the French king a legal basis over against the

1 Cf. Joannes de Terra Rubea, *Contra rebelles suorum regum* (Lyons, 1526); Claude de Seyssel, *La grant monarchie de France* (Paris, 1519); Charles de Grassaille, *Regalium Franciae libri duo, jura omnia & dignitates christianissimorum Galliae regum continentes* (Leyden, 1538); Jean Ferrault, *Tractatus jura seu privilegia aliqua regni Franciae continens* (Paris, 1545); Guy Coquille, "Discours sur les Etats de France," in *Oeuvres, contenant plusieurs traitez touchant les libertez de l'Église gallicane, l'histoire de France & le droit français*, 2<sup>nd</sup> rev. ed., 2 vols. (Bordeaux, 1703); and Du Tillet, *Oeuvres*, 3 vols. (Paris, 1607).

2 Petrus Gregorius Tolosanus, *Tractatus de republica* (1556).

3 Bodin, "De la souveraineté," in *République* 1.8. After first explaining that the oath sworn by Philippe, duc d'Orléans, at his inauguration implied no obligation to be subject to the laws "sinon tant que le droit et justice la souffrira," he observed: "Quant aux loix qui concernent l'estat du Royaume, et l'establisement d'iceluy, d'autant qu'elles sont annexees, et unies avec la couronne, le Prince n'y peut déroger, comme est la loy Salique; et quoy qu'il face, tousjours le successeur peut casser ce qui aura esté fait au prejudice des loix Royales et sur lesquelles est appuyé et fondé la majesté souveraine."

4 By the edict of September 1715 and the "Declaration sur la succession de la couronne" of 2 July 1717; in Declareuil, *Histoire générale du droit français*, p. 409 f.

claims of popes and German emperors on the imperium.<sup>1</sup> Even in subsequent centuries, however, it remained confined to ordinary legislation.

The intended *lois fondamentales*, largely ignored in the absolutistic natural law theories of the 17th and 18th centuries, were the following, according to a consensus among jurists<sup>2</sup>:

1. the heredity and legitimacy of the crown as also its supremacy over all feudal internal forces and its sovereignty towards every foreign secular or spiritual power (Le roy n'a point de compagnon en sa Majesté royale [the king has no equal in his royal majesty]);
2. the inalienability of the crown;
3. the inalienability of the crown domains save for two exceptions;
4. the king's duty to profess the catholic religion;
5. the rule that the crown could not alter the constitution of the realm without the approval of the estates.<sup>3</sup>

The Parlement of Paris, as we saw earlier, likewise claimed that its *droit de remontrances* or judicial review of royal decrees was based on the constitution. Most legists, however, rejected that interpretation.

Thus much for the main features of the monarchical constitution. In a comparison with the fundamental rules of medieval constitutionalism as summarized above, the profound difference between the two is apparent.

**The problem of modern humanist natural law. Continuity in the individualistic tendencies of Stoic-Christian natural law. Nominalism**

In its theory of natural law, humanism had to choose a position with respect to the following phenomena: the whole fermenting process of the emerging modern culture with its predominantly subjectivistic, individualistic and naturalistic tendencies; an ever more clearly delineated sociological structure with its gradual erosion of suprapersonal relations and dissolution by individualism in the area of economics; and the rise of modern absolutistic national states.

First of all, subjectivism and individualism had to be protected against its own excesses, against anarchistic consequences, against the immoral tendencies of *raison d'état* and large-scale capitalism. In a naturalistic way, humanism here faced a problem similar to that confronting the early Christian church vis-B-vis the demands of secular culture. Stoic-Christian natural law distinguished between, on the one hand, the absolute natural

1 Cf. among others De Grassaille, *Regalium Franciae*, p. 102 ff., 175 ff. François Hotman, *Antitribonian, ou, Discours d'un grand et renommé jurisconsulte de nostre temps sur l'estude des loix*, 1567.

2 See Declareuil, *Histoire générale du droit français*, p. 394 ff.

3 Guy Coquille, in "Discours sur les Estats de France," remarks concerning this rule that in cases when the crown becomes vacant "the estates have the power not only to advise but also to decide."

law of the sinless state without property, government, and punishment, and, on the other hand, relative natural law after the fall into sin. On the basis of the former, absolute natural law, Stoic-Christian law fostered a strong emphasis on individualism which time and again threatened to dissolve ecclesiastical and political institutions in the shape of sects and Franciscanism.

The unified ecclesiastical culture had managed for some time to render these individualistic tendencies innocuous by isolating them in monastic orders and ranking these at the highest level of perfection within the hierarchical organization of the church. The Aristotelian idea of development had reconciled absolute and relative natural law in the Thomist law-idea by conceiving the two as the natural prelude to and basis of operation for the grace of the church. Yet the individualistic element of Stoic-Christian natural law was never eradicated even within the church community. During the Investiture Controversy, Gregory VII used it against the Hohenstaufen to portray the state as a work of the devil and to demonstrate the necessity of the sanctification of the secular imperium by the church.

Manegold of Lautenbach,<sup>1</sup> a German monk who staunchly defended the papal point of view in the controversy between Henry IV and the pope, was the first to advocate popular sovereignty in matters of secular authority. He conceived, probably in keeping with the feudal concepts of Germanic law, a *pactum subjectionis*, a treaty of subjection between people and ruler.<sup>2</sup> Although this represents but an incidental, purely ecclesiastically inspired, inference of individualistic consequences from Stoic-Christian natural law, the penetration of the Roman law tradition into secular legal theory did have as a result that the individualistic theory of contract became the *standard conception* in the legal circles of glossators and

1 About him see Georg Koch, *Manegold von Lautenbach und die Lehre von der Volkssouveränität unter Heinrich IV* (Berlin: Eberling, 1902); Carl Mirbt, *Die Publizistik im Zeitalter Gregors VII* (Leipzig, 1894), p. 277 ff.; Bezold, "Die Lehre von der Volkssouveränität," p. 322 ff.; Hermann Rehm, *Geschichte der Staatsrechtswissenschaft*, vol. 1 of *Handbuch des öffentlichen Rechts der Gegenwart in Monographien* (Freiburg im Breisgau and Leipzig, 1896), p. 165 ff. and *Sitzungsberichte der Münchener Akademie* 2 (1868): 297 ff.; Otto von Guericke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, 3<sup>rd</sup> ed. (Breslau: Marcus, 1913), p. 77 ff.

2 In his *Ad Gebehardum liber*, ed. Kuno Francke, in *Monumenta Germaniae Historica*, *Libelli de lite imperatorum et pontificum saeculis XI. et XII., conscripti*, no. 1 (Hannover, 1891), p. 308-410, Manegold holds forth that kingship is not based on nature, but is a mere office (*vocabulum officii*). The office of king rests on a pact by which the king promises the people protection against tyranny and the people vouchsafe him fidelity and reverence. The people establish the office of king to be secured against the disadvantages of violent rule. Should the king himself turn tyrant, and he would do that by resisting papal supremacy, then he breaks the treaty on which his authority is founded and hence loses his dignity. One must evict him from office as one would a thieving swineherd!



post-glossators. Roman legal sources yielded the doctrine that the *imperium* of the Roman emperors rested on an original transfer of the supremacy of the *populus* (people) to the *princeps* (ruler). This transfer, according to the Roman jurists, was effected by the so-called *lex regia*.<sup>1</sup> The Italian jurists now applied this theory to the Holy Roman Empire on the assumption that with the fall of the Roman Empire the *imperium* was transferred to Charlemagne while the pope in crowning and anointing him had merely carried out the will of the people.<sup>2</sup> In doing so the Italian jurists followed in the steps of Irnerius, the great promoter of Roman law. In addition to the treaty of subjection, the existence of the state itself was sometimes traced back to a social contract as well.

This contract theory, however, did not become a permanently individualistic and atomizing principle of natural law until it was influenced by *nominalism* which destroyed, conjointly with the Aristotelian-Thomist law-idea, its metaphysical suprapersonal principles of natural law. For this much was certain: *insofar as the construction of a contract did sometimes turn up in Thomist natural law, its individualistic tendencies first had to be largely removed from it.* Initially all that counted here was a continuity of the positive legal state of affairs.<sup>3</sup> When Thomas Aquinas pre-

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- 1 Gaius, *Institutiones* 1.5: “Constitutio principis est, quod imperator . . . constituit, nec unquam dubitatum est quin id legis vicem obtineat, cum ipse imperator *per legem imperium accipiat*. Domitius Ulpianus, quoted in Justinian, *Digesta* 1.4.1: “Quod principi placuit legis habet vigorem, utpote cum *lege regia quae de imperio eius lata est* populus ei et in eum omne suum imperium et potestatem *conferat*.” Already at the time of the jurists mentioned, this construction of the *imperium* hardly fit the legal state of affairs; see Theodor Mommsen, *Abriss des römischen Staatsrechts*, 2<sup>nd</sup> ed. (Leipzig: Duncker & Humblot, 1907), pp. 194-196; Alfred Pernice, “Der Herkunft der Florentina aus Amalfi,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 6 (1885): 298. See also Gierke, *Althusius*, p. 77 n. 3.
  - 2 For this development as a whole see Gierke, *Althusius*, p. 77 ff., and Bezold, “Die Lehre von der Volkssouveränität.”
  - 3 In his *De regimine principum* 1.6, Thomas Aquinas only hypothetically mentions the case (apparently tying in with positive law, not as a principle of natural law) that the people have the right to choose their king, in which case they also have the right, should the king abuse his regime for tyranny, to depose him or curtail his power. Somewhat more in line with contract theory would seem to be *Summa Theologiae* Ia-2ae q. 97 a 3 ad 3: “Si enim sit libera multitudo, quae possit sibi legem facere, plus est consensus totius multitudinis ad aliquid observandum, quem consuetudo manifestat, quam auctoritas principis, qui non habet potestatem condendi legem, *nisi in quantum gerit personam multitudinis*; unde licet singulae personae non possint condere legem, tamen totus populus legem condere potest.” However, here too such popular sovereignty is only conceived hypothetically as one of two possible cases. The Thomist scholar Aegidius Colonna [Giles of Rome] in *De regimine principum* 3.1.6 speaks of the rise of states through the *concordia constituentium civitatem vel regnum*, but for him this *concordia* is but one of three possible causes of their rise.

fers elected monarchy over hereditary monarchy, it has nothing to do with the influence of contract theory, as Gierke seems to think.<sup>1</sup>

The Aristotelian idea of development, patterned after the organic concept of entelechy, hardly allowed for the notion of a natural state of complete individual freedom that usually underlies contract theory.<sup>2</sup> And when during the sixteenth century the Jesuits, who in principle continued in the line of Thomism, again incorporated and further developed the contract theory in their natural-law construction of the state, it was certainly far from them to generate authority from the individual. They did exploit the idea, already found in Thomas and Aegidius Colonna, that the founding of a state is a rational, conscious process,<sup>3</sup> but contrary to Thomas in the sense that the natural communities of families could only establish a state by way of an implicit or explicit social *contract*.<sup>4</sup> On the other hand, however, they by no means took the individual heads of families to be the source of governmental authority; rather, they regarded the state community itself as the source of authority, as its natural accessory.<sup>5</sup> They considered a contract between ruler and people necessary only for the appointment of the *actual ruler*. The terminology in which this was advanced (the contract is concluded between *rex* and *regnum*, that is, the es-

- 1 See Gierke, *Althusius*, p. 77 n. 10. The whole argument of *De regimine principum*, where the heredity of monarchy is considered less desirable only because of the danger of tyranny, militates against this. A powerful argument against Gierke comes from Suarez, *De legibus ac Deo legislatore* 1.1.8.8, who, although himself an exponent of contract theory, nevertheless denies Thomas' supposed homogeneity with that conception.
- 2 It is precisely in the organic development of the state from family and *vicus* (village community) that Aristotle finds the reason why in ancient times kings everywhere were the heads of the state communities. Cf. *Politics* 1.2.1258.
- 3 Thomas speaks of the *ratio constituens civitatem* (cf. *Quaestiones disputatae de potentia*, vol. 21 of *Opera omnia* [Rome, 1882], p. 366). Aegidius [a.k.a. Giles of Rome] expresses the same thought in *De regimine principum* 3.2.32: “[S]ciendum est quod civitas sit aliquo modo *quid naturale*, et quod naturalem habemus impetum ad civitatem constituendam; non tamen efficitur nec perficitur *nisi ex opera et industria hominum*.” The emphasis placed here on the rational character of the state's founding fits perfectly in the Aristotelian-Thomist metaphysics of substantial forms in which every being strives for its perfection according to its “increated” nature. After all, since a state community is a community of rational beings, it is determined also by the law of nature that it comes about rationally.
- 4 Cf. Suarez, *Tractatus de opere sex dierum* 1.5.7 n. 3: “Alius ergo modus multiplicationis familiarum seu domorum est cum distinctione domestica, et aliqua unione politica, quae non fit *sine aliquo pacto expresse vel tacito*, juvandi se invicem, nec sine aliqua subordinatione . . . ad aliquem superiorem” etc.
- 5 Cf. Suarez, *De legibus* 3.3. no. 6, where he writes, wholly in the vein of Thomist metaphysics of substantial forms, that the state's authority issues from the state, already constituted in its essence, as a necessary property (*per modum proprietatis resultantis ex tali corpore mystico jam constituto in tali esse*). So also Gierke, *Althusius*, p. 97, who shows that the same conception is to be found in Vittoria, Soto, and Molina.

tates) clearly indicates, moreover, that here a rule of the law of medieval constitutionalism was generalized into a principle of natural law from *political motives*.<sup>1</sup>

While, therefore, Stoic-Christian natural law could never properly manifest its individualistic tendencies in the Aristotelian-Thomist school, that became totally different in the nominalist current of thought.

The Christian church of the eleventh century had exercised good judgment when she condemned as heretical the conceptions of the early nominalists Roscellinus and Berengar of Tours. Even in this earlier nominalism, individualistic implications threatened to dissolve both dogma and church community, although this earlier nominalism had little in common with the later nominalism of Ockham. If, as nominalism avers, reality belongs only to what is individual while the *universalia* (general concepts) are but names (*termini* in Ockham), what will then finally remain of the reality of the suprapersonal community of the church?

Already in later nominalism, individualism acquired its world-historical significance by its role in the shaping of modern times. The strongly anti-Thomist Durandus of Saint-Pourçain (*doctor resolutissimus*), Ockham's elder contemporary who died in 1332 or 1334, constructed a theory of natural law based on a purely nominalist philosophy<sup>2</sup> which, given its close adherence to absolute natural law, contained tendencies dangerous to both state and church. He had a particular interest in advancing his theory of the natural community of goods. Only God has absolute *dominium* (ownership). Therefore God's child has a greater right to worldly goods than the wicked. When the latter denies his better fellow-man his property in case of need, he is a thief and a murderer unless he needs it himself for his own sustenance.<sup>3</sup> Durandus does capitulate to bitter reality but his theory is no less revolutionary for it.

1 Suarez, *De legibus* 3.4. no. 5: "Principatus ipse est ab hominibus, cuius signum est, quia juxta *pactum* vel conventionem factam inter regem et regnum eius potestas major vel minor existit." See also *De legibus* 3.4. no. 2; and Suarez, *Defensio fidei catholicae et apostolicae adversus Anglicanae sectae errores* 1.3.2. no. 10. This Scholastic doctrine has been resuscitated by Julio Costa-Rosetti, *Philosophia moralis seu institutiones ethicae et juris naturae secundum principia Philosophiae Scholasticae praesertim S. Thomae, Suarez et De Lugo methodo Scholastica elucubratae* (Innsbruck, 1886), p. 577 ff., and by Quilliet, *De potestatis civilis origine theoria catholica*.

2 Cf. e.g. Durandus of Saint-Pourçain, *In Petri Lombardi sententias theologicas commentarium* (hereafter cited as *In sent. comm.*) 2 dist., 3, q. 2, 14-16 (quoted in Carl von Prantl, *Geschichte der Logik im Abendlande* [Leipzig, 1867], 3:295 ff.): "Nihil enim existit in re extra nisi individuum vel singulare." See also *In sent. comm.* 2 dist. 3, q. 7-8: "[F]rivolum est dicere, quod universalitas fiat in rebus, sed solum singularitas"; and *In sent. comm.* 9: "Sed esse universale non est conditio realis, sed rationalis" (quoted in Ueberweg, *Die mittlere oder die patristische und scholastische Zeit*, p. 591).

3 Durandus of Saint-Pourçain, *Tractatus de jurisdictione ecclesiastica et legibus* 13,

With respect to state authority, Durandus affirms the old Christian conception that all authority, in accordance with its moral quality, is of God. This does not, however, prevent him from advocating the natural-law principle of popular sovereignty. Where the transfer of the people's supremacy to the ruler occurs only for utilitarian reasons as *expedientia publica*, the people may, if the emperor does not exercise his office properly, declare him deposed from his dignity.<sup>1</sup>

As we saw in chapter 4, William of Ockham, the leader of later nominalism, denied the reality of substantial forms, a denial which had already progressed to the extent that he negated the immutable moral quality of natural law and attributed the entire Decalogue to the pure whim of God. It is no accident that his nominalist position led him to defend the right of individual states against the universal rule of the Empire by invoking absolute natural law,<sup>2</sup> even though he did not totally reject the *imperium*.

Nominalist culture manifested itself everywhere in the forces opposing the hierarchy and in the culture of smaller autonomous communities – both in affairs of the church and in matters of the state. Just as in ecclesiastical life all communal bonds are dissolved into their elements, both laymen and office bearers, so Ockham and his followers also dissolved the state into what they took to be its elements: free individuals. All lawful authority in its ultimate sense is said to derive from God, but in line with the glossators this ultimate sense was pushed into the background to make way for popular sovereignty as the natural-law principle of authority.<sup>3</sup> According to natural law, all government obtains its authority directly from the sovereign people. Popular sovereignty first of all consists of legislative power.<sup>4</sup> The people, writes Ockham (who invokes the authority of Augustine and the glossators in support of this view), transfers its author-

concl.: “Melior habet jus divisum in rebus. Unde et quodammodo dominus est omnium . . . Pessimus quasi nullius rei est dominus.”

- 1 Ibid. 10, concl.: “[M]agis esset secundum naturam rei, quod totus populus haberet rationem principis,” and 11, concl. (quoted in Bezold, “Die Lehre von der Volkssouveränität,” p. 338).
- 2 Ockham, *Dialogus*, part 3, tract 2, “De juribus Romani Imperii,” bk. 1, cap. 1 and ff. Cf. *ibid.*, cap. 2 (quoted in Goldast, *Monarchia*, 2:874): “Adhuc illud regimen est magis expediens universitati mortalium in statu culpae, quod magis assimilatur regimini, quod fuisset si homines in statu innocentiae permansissent (quia illud quod magis assimilatur meliori, est magis expediens). Sed si homines in statu innocentiae permansissent, unus non fuisset imperator omnium aliorum. Igitur in statu culpae non est expediens, ut unus omnibus aliis dominetur.” Then follows an appeal to the *jus gentium* in *Distinctio* 1: “Jus gentium, quae cessarent, si unus imperator universitati mortalium imperaret.”
- 3 *Ibid.*, cap. 26 (quoted in Goldast, *Monarchia*, 2:899): “Unico verbo respondetur, quia cum dicitur quod potestas Imperialis et universaliter omnis potestas licita et legitima est a Deo, non tamen a solo Deo. Sed quaedam est a Deo per homines, et talis est potestas Imperialis, quae est a Deo, sed per homines.”
- 4 *Ibid.*, cap. 27 (quoted in Goldast, *Monarchia*, 2:899): “Illa opinio tenet, quod Romanum imperium fuit primo institutum a Deo, et tamen per homines scil. per

ity to government, but that transfer extends no further than the authority which the people has itself.<sup>1</sup> Now the *populus*, too, is again dissolved into its elements, free individuals, so that in the final analysis *all authority is derived from a voluntary commitment by the individual* for the sake of the common good (*commune bonum, communis utilitas*), while the *majority principle* alone is posited to offset any anarchistic consequences of this individualism.<sup>2</sup>

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Romanos. Et hoc testari videtur gloss. dist. 17 quae ait: *Habet Romana ecclesia auctoritatem a Deo, sed Imperator a populo*. Utcunque legimus hinc etiam Gloss. dist. 2. *Lex est constitio populi*, ait: *Olim populus constituit leges, sed hodie contulit hanc potestatem in Imperatorem. Ab illo autem est Imperium, qui Imperatori contulit potestatem condendi leges*. Ibid., cap. 27 (quoted in Goldast, *Monarchia*, 2:923): “Amplius si imperator in huiusmodi habet talem plenitudinem potestatis, omnes alii reges et principes, et *alii laici* sibi subjecti essent puri serui ipsius, nam dominus non habet majorem potestatem super servos, quam quod omnia possit praecipere eis, quae non sunt contra jus divinum, nec contra jus naturale: imo forte nec tantam potestatem habet super eos. Si igitur imperator non solum possit ista, quae sunt pro communi utilitate, sed etiam alia quaecunque in secularibus, quae non sunt contra jus divinum, nec contra jus naturale, omnes alii sibi subjecti essent veri serui sui . . . Igitur multo magis imperator in secularibus non habet talem plenitudinem potestatis. Item, imperator non habet majorem potestatem in secularibus, quam habuit populus, cum imperator habeat potestatem suam a populo, ut allegatum est supra, quia populus plus jurisdictionis aut potestatis non potuit transferre in imperatorem, quam habuit.”

- 1 Ibid., cap. 27: “Illa opinio tenet, quod Romanum Imperium fuit primo institutum a Deo, et tamen per homines scil. per Romanos. Et hoc testari videtur Gloss. dist. 17, quae ait: *Habet Romana ecclesia auctoritatem a Deo, sed Imperator a populo*.” Ibid., cap. 28: “Respondetur, quod exercitus non facit Imperatorem nisi auctoritate populi Romani. Hanc enim potestatem propter periculum, quod poterat imminere, ne moriente Imperatore in exercitu, exercitus careret capite et domino, populus Romanus commisit exercitui potestatem eius ad eligendum Imperatorem.” Ibid., cap. 29 (quoted in Goldast, *Monarchia*, 2:901). See also the previous footnote. Ibid., part 3, tract. 2, bk. 2, chap. 26 (quoted in Goldast, *Monarchia*, 2:923): “Praeterea illud, ad quod societas humana se obligat, eadem societas humana obligat se ad obediendum generaliter regibus: et per consequens multo magis imperatori. Ait enim Augustinus libro secundo *Confessionum* ut habetur dist. octav. quae contra: *Generale quippe pactum est societatis humanae, obtemperare regibus suis*.” It needs saying that this argument appears in the Master's exposition of the grounds which argue for the *plenitudo potestatis* (full power) of the emperor in secular affairs, within the limits of divine and natural law. In the counter-arguments that destroy this case again, the construct of a “treaty of subjection” is expressly maintained.
- 2 Ibid., cap. 27 (quoted in Goldast, *Monarchia*, 2:923): “Sed populus nunquam habuit talem potestatis plenitudinem, ut possit praecipere *cuilibet de populo* omne illud, quod non est contra jus divinum aut contra jus naturale: quia non poterat praecipere ista, quae non erant de necessitate facienda, teste Glossa *Extra, De constitutionibus cum omnis*, secundum quam in talibus, quae de necessitate facienda *nihil potest fieri nisi omnes consentiant*.” Ibid., part 3, tract. 2, bk. 1, cap. 27 (quoted in Goldast, *Monarchia*, 2:899): “Respondetur, quod teste Glossa *Extra*,

Nominalism then experienced its apex in the ecclesiastical struggle with the conciliar theory defended at the councils of Constance, Basel and Pisa, where its most powerful exponent, Jean de Gerson, a pupil of Ockham, made the bold statement that the pope is a member of the church *like all other people*, and that, *because of the equality of all under evangelical natural law*, he ought to be punished if he offends the faithful.<sup>1</sup> Individualistic absolute natural law was mobilized by the nominalist movement in opposition to the hierarchical suprapersonal community and authority. This entire spirit continued to influence the world of the church in the previously mentioned Gallican movement in France, also in the Jansenist reform movement (Bossuet, the Abbé de Saint-Cyran, and, in the Low Countries, Zeger Bernard van Espen), and lives on in the Old Catholic Church even today.

Nominalist natural law received an important boost from Averroism, the Arabic philosophy of Ibn-Rushd (Averroës) which, with its separation of faith and knowledge (the double truth) and its cult of natural science and psychology, showed close affinity to the Franciscan tradition. However, by its doctrine of the eternity of the world and its denial of individual immortality it also displayed a pagan naturalistic character which in conjunction with nominalism could seriously jeopardize the Christian charac-

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*De constitutionibus, cum omnes, quoniam aliqui plures unum sunt collegium, quantum ad illa quae sunt ex necessitate facienda, sufficit quod a maiore parte fiant.*" Here Ockham apparently links up with the corporation theory of the glossators and the Catholic canonists; on this theory see Gierke, "Die Korporationslehre der Kanonisten," in *Staats- und Korporationslehre*, pp. 243-351.

- 1 See Gerson's tract, *Quomodo et an liceat in causis fidei a summo pontifice appellare, seu eius iudicium declinare* (quoted in Goldast, *Monarchia*, 2:1515): "Sequeretur, quod Papa, qui est membrum corporis ecclesiae sicut homines alii, si scandalizaret totum corpus, ipse non esset rescindendus, ut totum corpus sanum fieret, contra doctrinam christi evangelicam fundatam in similitudine juris naturalis. Matth. 18 cum Glossis et determinationibus Doctorum in materia de scandalo se fundantium in hac lege divina et naturali." Cf. Ockham's *Dialogus* (quoted in Goldast, *Monarchia*, 2:467 ff.), and his *Octo quaestiones de potestate papae* 1.17 and 3.8, where one already finds this whole theory spelled out. The revolutionary character of this statement lurks in the *argumentation*, not in the positing of the council's competence to depose a heretical pope. Canonist doctrine also accepted this competence but with recognition of the *sovereignty of the pope*: "Cunctos iudicaturus (scil. papa) a nemine iudicandus est, nisi deprehendatur a fide devius." See John of Paris, *De potestate regia et papali*, cap. 6 (quoted in Goldast, *Monarchia*, 2:115). In this case: "Judicatur a tota ecclesia, condemnatur a concilio generali, iudicatur, a subditis, ab inferioribus accusari et condemnari potest." For these statements of the canonists see also Johann Friedrich von Schulte, *Die Stellung der Concilien, Päpste und Bischöfe vom historischen und canonistischen Standpunkte und die päpstliche Constitution vom 18. Juli 1870* (Prague, 1871), pp. 192-194, 253 ff.



ter of that nominalism.<sup>1</sup> As early as the thirteenth century this Averroism controlled the conceptions of natural law held by Pierre Dubois, a pupil of Thomas Aquinas' great opponent Siger of Brabant, and by John of Paris and the anonymous author of the *Quaestio in utramque partem*.

Individualistic concepts of natural law, the idea of popular sovereignty,<sup>2</sup> the positing of the laity and of the rights of bishops in the church community<sup>3</sup> (albeit while recognizing papal supremacy), the purely spiritual conception of the church (in opposition to her interference in secular affairs), and the defense of the rights of the national state over against pope and emperor:<sup>4</sup> all these were the prelude to a *merger of Averroist conceptions and nominalist natural law* that is evident in Marsilius of Padua and John of Jandun, kindred spirits of Ockham.<sup>5</sup>

This merger was complemented by a penetration of Aristotelian ele-

- 1 On the influence of Averroism during the Christian Middle Ages, cf. Ueberweg, *Die mittlere oder die patristische und scholastische Zeit*, p. 538 ff.; Heinrich Denifle and Emile Chatelain, eds., *Chartularium Universitatis parisiensis* (Paris, 1889), 1:487, 556; and Clemens Baeumker, ed., *Die Impossibilia des Siger von Brabant: Eine philosophische Streitschrift aus dem XIII. Jahrhundert* (Munich, 1898).
- 2 Cf. John of Paris, *De potestate regia et papali*, cap. 11 (quoted in Goldast, *Monarchia*, 2:120): "Item prius potestas regia secundum se, et quantum ad executium, quam Papalis: et prius fuerunt reges Francia in Francia, quam Christiani: ergo potestas regia nec secundum se, nec quantum ad executionem, est a Papa; sed est a Deo et a populo regem eligente in persona vel in domo: et sic, sicut ante." Ibid., cap. 16 (quoted in Goldast, *Monarchia*, 2:130): "Amplius non fuit [scil. imperium] factum per solum Papam, sed populo acclamante et faciente, cuius est se subicere cui vult sine alterius praeiudicio." This idea of popular sovereignty does not show the same keenly individualistic tendency in John of Paris as it does in Marsilius of Padua. In cap. 1 (see Goldast, *Monarchia*, 2:110), John of Paris even demonstrates that monarchy is grounded in natural law. Moreover, cap. 16 shows a marked orientation to feudal law. As in the French jurists, we find in John of Paris a more sober juridical sense that keeps him from natural-law speculations that are too abstract.
- 3 Ibid., cap. 11: "Sed potestas praelatorum inferiorum non est a Deo mediante Papa, sed immediate a Deo, et a populo eligente vel consentiente."
- 4 Ibid., cap. 3: (quoted in Goldast, *Monarchia*, 2:112): "Quarto quia omnes fideles conveniunt in una fide catholica, sine qua non est salus: et saepe convenit multas quaestiones oriri de pertinentibus ad salutem seu fidem in diversis regionibus, sicut regnis. Et ideo ne propter diversitatem controversiarum unitas fidei destruat, necesse est (ut dictum est) unum esse superiorem in spiritualibus. Sic autem non est necesse omnes fideles uniri, in aliqua republica communi: sed possunt secundum diversitatem climatum, regionum et conditionum hominum, esse diversi modi vivendi, et diversae Politiae: et quod est virtuosum in una gente, non est virtuosum in alia. . . . Non est ergo sic necesse mundum regi per unum in secularibus, sicut necesse est quod regatur per unum in spiritualibus, nec ita trahitur a jure naturale, vel divino." He follows this up with an appeal to Augustine, *De civitate Dei*, bk. 4.
- 5 In saying this, I do not in the least mean to say that the philosophies of Marsilius of Padua and John of Jandun consciously and consistently adhered to nominalism. I am referring only to their *nominalist natural law* which intentionally adopts the in-

ments into the nominalistic theory of natural law, especially the idea of development in the state and the Aristotelian view of the forms of government. *But that idea of development was entirely robbed of its supra-personal, metaphysical character* and was therefore quite powerless over against the individualistic basic ideas of nominalist natural law, which in the authors cited above led to conclusions that seem to us to anticipate the theories of Hobbes and Rousseau.<sup>1</sup>

Marsilius of Padua and John of Jandun, along the lines of nominalist

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dividualistic, nominalistic ground-motive as a starting point and a constructive method in legal and political theory while rejecting the Aristotelian-Thomist law-idea. Hereafter, therefore, we will refer to "Averroist nominalism" in this restricted sense. A thorough Averroist nominalism is found in Peter Aureolus. As far as John of Jandun is concerned, we can still detect some weak realism in his conception of universals. He firmly rejects the *universalia ante rem* which Thomas, in line with Augustine, grounded in the *lex externa* of divine reason. Jandun keeps to the *universalia in rebus singularibus* and next to them recognizes only the *universalia post rem*. In doing so, however, the metaphysical link between the latter two has been largely severed so that a strongly nominalistic bent predominates. Cf. Prantl, *Geschichte der Logik im Abendlande*, 3:273 ff., and the texts there quoted from Jandun's *Quaestiones in duodecim libros Metaphysicae*. It should also be noted that Jandun takes physics, not metaphysics, as the basis for his philosophical system, and that he puts the emphasis on knowledge of individual things. See Jean-Barthélemy Hauréau, *Histoire de la philosophie scolastique* (Paris, 1872-1880) 2:203 ff.

- 1 This philosophical affinity is clearly overlooked in Leopold Stieglitz's monograph *Die Staatstheorie des Marsilius von Padua*, vol. 19 in *Beiträge zur Kulturgeschichte des Mittelalters und der Renaissance*, ed. Walter Goetz (Leipzig: Teubner, 1914). Stieglitz is misled by the fact that Marsilius of Padua appeals at every step to Aristotle's *Politics*. Thus he continually makes a connection with Thomas Aquinas, while in reality no such connection exists. Hence Stieglitz knows no other explanation for Marsilius' basic constructive principle of popular sovereignty than the democratic political organization of Marsilius' native city, Padua, an unsatisfactory explanation because Marsilius must have had a rather unfavorable impression of that democracy. In fact, he prefers the monarchical idea, which Stieglitz calls an inconsistency in Marsilius (p. 17). In reality however – witness Hobbes – the principle of popular sovereignty has often been nominalism's lever for an absolutistic doctrine of authority which, especially during the rise of royal absolutism, preferred to accept absolute monarchy. In Marsilius we still find a preference for limited monarchy. Marsilius' idea has been better understood, I think, by J. W. Allen, "Marsilio of Padua and Mediaeval Secularism," in *The Social and Political Ideas of Some Great Mediaeval Thinkers*, ed. F. J. C. Hearnshaw (London: Harrap, 1923), p. 167 ff. On Marsilius and John of Jandun see also Richard Scholz, "Marsilius von Padua und die Idee der Demokratie," *Zeitschrift für Politik* 1 (1908): 62 ff.; Sigmund Riezler, *Die litterarischen Widersacher der Päpste zur Zeit Ludwig des Baierns* (Leipzig, 1874), p. 194 ff.; James Sullivan, "The Manuscripts and Date of Marsilio of Padua's *Defensor pacis*," *English Historical Review* 20 (1905): 292 ff.; Moritz Guggenheim, "Marsilius von Padua und die Staatslehre des Aristoteles," *Historische Vierteljahrschrift* 7 (1904): 343 ff.; August Nimis, *Marsilius' von Padua republikanische Staatslehre* (Mannheim, 1897).

natural law, took the individual as the starting point of authority. As to the genesis of states, on the face of it they swallowed wholesale the Aristotelian and Thomist conception of the gradual development of the state from family and village communities.<sup>1</sup> In the meantime – and that must be remembered here – this idea of development was again completely divorced from Aristotelian metaphysics. Nowhere in *Defensor pacis* do we come across the Aristotelian premise that the human person is by nature a “social animal,” a *zoon politikon*,<sup>2</sup> in a *material metaphysical* sense. In Aristotle and Thomas this tracing back of the state community to human nature is wholly based on the theory of substantial forms, on human nature as entelechy, and as such on the metaphysical *lex naturalis* which in Thomas is ultimately embodied in the *lex aeterna*. Hence the idea of development definitely bears a *suprapersonal and ethical stamp* in Aristotelian-Thomist thought. But in the authors of the *Defensor pacis* (especially 1.4) we find an opposite current of thought. Although they appear to agree with Aristotle's teaching that all people have a natural urge for political community, they nevertheless give it an interpretation that turns this Aristotelian notion almost into its opposite. Moral pessimism dominates. Since humans enter the world naked and without aids, continually exposed to all kinds of natural dangers, they are, instinctively so to speak, driven towards each other in groups in order to meet these dangers collectively. In these unordered hordes discord and violence arise, no individual's life is secure *since there is no norm of law* by which to settle disputes. Hence experience and reason taught people to establish states with coercive authority, for the sake of the general welfare. Reason understands that disputes are detrimental to and even destructive of the community.

- 1 See Marsilius of Padua and John of Jandun, *Defensor pacis adversus usurpatam Romani Pontificis jurisdictionem* 1.3 (quoted in Goldast, *Monarchia*, 2:156 f.
- 2 In his study *Die Staatstheorie des Marsilius von Padua*, p. 7, after he quotes *Defensor pacis* 1.2 : “[C]ivitatem esse velut animatam seu animale naturam quandam,” and 1.15: “Quia enim civitas et ipsius partes secundum rationem institutiae analogiam habent animali et suis partibus, perfecte formatis secundum naturam,” Stieglitz concludes that the authors share Aristotle's position on the social nature of man. But these passages warrant no such reading. They contain no more than the anthropomorphic representation of the state which was current in the Middle Ages and which also occurs in elaborate detail in Hobbes' mechanistic-Epicurean conception of the state. Evidently, Stieglitz has not paid sufficient attention to the further interpretation of the idea of development in *Defensor pacis* 1.4. When in 1.13 (quoted in Goldast, *Monarchia*, 2:171) the authors appeal to Aristotle's statement about people's natural urge to form states, they do so with explicit reference to their interpretation of it in cap. 4, as follows: “Omnes homines appetere sufficientiam vitae, et civilem *quarto huius*, praeter eam minime, propter quod Aristoteles primo *Politicae* cap. primo inquit: Natura quidem igitur in omnibus impetus est, ad talem communitatem, civilem scilicet.” For that matter, Stieglitz admits (as does Guggenheim, “Marsilius von Padua und die Staatslehre des Aristoteles,” p. 345) that the thesis that a person is a political animal is not found in Marsilius in so many words.

Therefore the human intellect begins to formulate legal rules to determine what is advantageous and what is harmful for the community. These rules, according to our authors, are the positive formulation of what could be called the *lex naturalis*.<sup>1</sup>

Here natural law has already acquired that purely secular, utilitarian character which would later, in Hobbes, under Epicurean influence, characterize it even more clearly.<sup>2</sup> It also reveals a bold skepticism concerning eternal values which is typical of Averroist nominalism.

The final goal of the state is to foster the happiness (*bene vivere*) of the citizens. This happiness can be conceived in two ways, namely as eternal beatitude or as secular material prosperity. As to the former, it cannot be demonstrated by any philosopher, nor does it belong to the self-evident

1 Marsilius of Padua and John of Jandun, *Defensor pacis* 1.4 (quoted in Goldast, *Monarchia*, 2:158): “De vivere autem et bene vivere, seu bona vita secundum primum modum mundanum scilicet, ac de his quae propter ipsum necessaria sunt comprehenderunt per demonstrationem philosophi gloriosi rem quasi completam. Unde propter ipsum consequendum concluderunt ipsi necessitatem civilis communitatis, sine qua vivere hoc sufficiens obtineri non potest. Quorum etiam eximius Aristoteles I suae *Politicae* cap. I, dixit: *Omnnes homines ferri ad ipsam et secundam naturae impetum propter hoc*. Quod quamvis experientia servata doceat, eius tamen causam quam diximus, inducere volumus distincte magis, dicentes, quod quia homo nascitur compositus ex contrariis elementis propter quorum contrarias actiones et passiones quasi continue corrumpitur aliquid ex sua substantia: Rursumque quoniam nudus nascitur et inermis ab excessu continentis aeris et aliorum elementorum, passibilis et corruptibilis, quammodum dictum est in scientia naturarum, indiguit artibus diversorum generum et specierum ad declinandum nocumenta praedicta: quae quoniam exerceri non possunt nisi a multa hominum pluralitate nec haberi, nisi per ipsorum invicem communicationem, oportuit homines simul congregari ad commodum ex his assequendum, et incommodum fugiendum. *Verum quia inter homines congregatos eveniunt contentiones et rixae, quae per normam justitiae non regulatae causarent pugnas et hominum separationem, et sic demum civitatis corruptionem, oportuit in hac communicatione justorum regulam, et custodem sive factorem*. Et quoniam custos hic habet arcere injuriosos excedentes, et alios tam intrinsecus quam extrinsecus singulos turbantes, aut communitatem opprimere tentantes, oportuit civitatem ad hos habere in se aliquid quo resistat. Rursumque; quoniam indiget communitas aliquibus opportunatibus, reparationibus, et custodiis rerum quarundam et aliis tempore pacis, aliisque tempore belli, necesse fuit in ea esse talium provisores, ut communi necessitati, cum expediverit vel oportuerit, succurri possit.” See also the next footnote.

2 In *ibid.* 1.10 (quoted in Goldast, *Monarchia*, 2:166), natural law is put on a par with the socially useful: “Quarto autem importat hoc nomen *lex*, et famose magis scientiam seu doctrinam sive *judicium universale justorum et conferentium civili-um*, et suorum oppositorum. Et sic accepta *lex* dupliciter considerari potest, uno modo secundum se ut per ipsam solum ostenditur quid justam injustum, conferens aut nocivum et in quantum huius modi juris scientia vel doctrina *lex* dicitur. Alio modo considerari potest secundum quod de ipsius observatione datur praeceptum coactivum per poenam aut praemium in praesenti saeculo distribuenda.”

things.<sup>1</sup> Therefore Marsilius and Jandun keep to the verifiable view that the goal of the state is restricted to the material domain, especially the economic, a conception already found, though in less crass form, in John of Paris.<sup>2</sup>

The state, in promoting the general interest, should provide its citizens with a happy and pleasant life here on earth. All higher ideals are made to serve this material purpose. Accordingly, the church is subordinated to the all-devouring power of the state. Again we notice the fundamental deviation from Aristotle and Thomas who seek the purpose of the state first of all in the advancement of a virtuous life. Here natural law has already become a human creation. The state is robbed of all ethical character and natural law is virtually identified with the utility of positive law.

The task of the state is to promote the *bene vivere* first of all by suppressing the evil anti-social will in people. Hence it is necessary first of all to compel people to live together peacefully. On that basis, the state must organize the cooperation of all those functions that are necessary for the general welfare, such as agriculture, industry, capital (*pars pecuniativa*), the armed forces, the administration of justice. It is noteworthy that the authors, like Dubois, recognize the significance for political life of *commerce* in the widest sense.<sup>3</sup> This indicates how nominalist-naturalist culture knew how to appreciate this individualistic welfare factor. All the functions mentioned here are purely material in nature. In the end, the authors do also mention the necessity of clergy in the state. But this necessity cannot be proven scientifically: it does not belong to the self-evident things. Yet it cannot be denied that all states have had a religion and a

1 Ibid. 1.4 (quoted in Goldast, *Monarchia*, 2:157): “Vivere autem ipsum et bene vivere conveniens hominibus, est in duplici modo, quoddam seculare, sive mundanum, aliud vero aeternum sive coeleste vocari solitum. Quodque istud secundum vivere sempiternum scilicet, non potuit Philosophorum universitas per demonstrationem convincere, nec fuit de rebus manifestis per se; idcirco de traditione ipsorum quae propter ipsum sint, non fuerint solliciti.” This skepticism comes out especially in Jandun throughout the entire field of metaphysical psychology. Jandun is convinced of the form character of the *anima intellectualis*, of the indivisibility and non-extension of this form, of its genesis from nothing by an act of creation, and of its immortality. But for him all these statements are objects of faith, not scientific proofs (see his *Quaestiones super tres libros Aristotelis de anima* 3.1.12 [Venice, 1587], p. 291).

2 Cf. John of Paris, *De potestate regia et papali*, cap. 1 (quoted in Goldast, *Monarchia*, 2:109): “[N]ecessesse est homini, ut in multitudine vivat et tali multitudine quae sibi sufficiat ad vitam. Huiusmodi autem non est communitas domus vel vici, sed civitatis vel regni. Nam in sola domo vel vice non inveniuntur omnia ad victum, vestitum vel defensionem necessaria ad totam vitam, sicut in civitate vel regno.”

3 Marsilius of Padua and John of Jandun, *Defensor pacis* 1.5 (quoted in Goldast, *Monarchia*, 2:159): “Haec enim (scil. pars pecuniativa) pecunias, blada, vina, olea et reliqua necessaria congregat, et custodit, communia conferentia undecunque procurat, et quaerit ad succurrendum futurae necessitati cui etiam subserviunt aliarum quaedam.”

priestly organization. What could be the cause of this? The authors offer a conjecture: there are many wrong actions which the law cannot hunt down or which are not discovered. That is probably why legislators invented a God from whom nothing is hidden and who demands obedience to the law under threat of eternal punishments. Hence the task of the priests would be to complement the repressive task of the state and to support it by inspiring citizens with fear of hell. – The authors are quick to disavow this pagan conception. Christian revelation, which, as the authors admit in line with Averroism, has a concept of truth totally different from reason, teaches us that there is a future life and that the church is necessary as teacher and distributor of the means of grace. Now then, since citizens are not satisfied until they have the greatest possible assurance about their eternal well-being, the state must recognize and maintain the Christian church.<sup>1</sup> In the meantime, the proposition remains intact that the necessity of the church for the task of the state cannot be proven objectively. Indeed, quite nominalistically, the task of the state remains purely materialistic.

In the second part of *Defensor Pacis*, the nominalist undermining of the suprapersonal church institution is totally in line with Ockham, Gerson, Randuff, and d'Ailly. The conception of the church as *universitas fidelium* (congregation of believers) is directed most pointedly against the primacy of the pope. The general council as the lawful representative of all believers is acknowledged to be the highest legislator and judge in spiritual affairs, and absolute evangelical natural law is directed against all of the clergy's worldly claims to property and immunity to legislation and the administration of justice in temporal things. The authority of the state must hold for all ecclesiastical affairs just as it does for secular affairs. The *sacerdotium*, then, is subordinate to the *imperium*, the church to the state.<sup>2</sup> By fixing the number of bishops and priests by law, the state is to prevent the church from becoming too powerful.<sup>3</sup> In this respect Marsilius, as Stieglitz has correctly observed, left all his predecessors behind, even Ockham, John of Paris, Pierre Dubois, Pierre Flote, the anonymous author of *Quaestio in Utramque Partem*, and Dante, who all supported a mere *co-ordination* of spiritual and secular authority. In connection with their spiritual conception of the church, Marsilius and Jandun are also the first medieval advocates of toleration.

In the theory of political authority, too, popular sovereignty, based on the individual (in the sense of the free, male, active citizen) has here become a *constructed principle of natural law*. If anywhere, the fundamen-

1 Ibid. 1.5-6.

2 Ibid. 2.4 ff., 3.2 and 3.15. Also already in *ibid.* 1.5 (quoted in Goldast, *Monarchia*, 2:158): “*Sacerdotium*, propugnativa, et judicialis seu conciliativa *simpliciter sunt partes civitatis.*”

3 Ibid. 2.8, 2.15, 3.2, 3.22.



tal difference between the Aristotelian-Thomist and the nominalist line appears at this point. Fundamental to the view of our authors is the *concept of the law* and how the law comes to be. Here we should note first of all the thoroughly different conception of law in Averroist nominalism and Aristotelian Thomism or Augustinianism. *The lex aeterna has disappeared entirely from the area of the reasonably demonstrable, as has the Mosaic and evangelical law which in Thomas and Augustine fell under the rational law of nature.* In its place the nominalist principle of the will has left nothing of rational natural law except the social principle of utility. Civil law is based on this utilitarian principle.<sup>1</sup>

Civil law is an imperative judgment as to what is necessary and useful to the community, a judgment formulated by reason, proclaimed by lawful authority, and sanctioned by force. Precisely because every citizen is concerned with the law in this sense, only the *populus (universitas civium)* or its *valentior pars (considerata quantitate)* can be the legislator. The general will is manifested in the law, through which every citizen, so to speak, voluntarily binds himself.<sup>2</sup> Legislative power, which Marsilius is the first to clearly distinguish during the Middle Ages from executive power (*pars principans*) is the highest power in the state, the sovereign (*legislator humanus superiore carens*).<sup>3</sup> A detailed theory of parliamentary legislation is developed on this foundation.<sup>4</sup>

- 1 Ibid. 1.10 (quoted in Goldast, *Monarchia*, 2:166): “Tertio vero modo sumitur lex pro regula continente monita humanorum actuum Imperatorum, secundum quod ordinatur ad gloriam vel poenam in seculo venturo, secundum quam significationem *lex Mosaica* dicta est lex, quantum ad aliquam sui partem, sic quoque *Lex Evangelica* secundum se totam lex dicitur.” Ibid. 1.12 (quoted in Goldast, *Monarchia*, 2:169): “His autem habitum est dicere de causa legum effectiva, *quam reddere possumus per demonstrationem*, de illa enim institutione, *quae Dei opere vel oraculo immediate absq; humano arbitrio fieri possibilis est, aut jam extitit, qualem Mosaicae legis institutionem diximus*, etiam quantum ad ea praecepta civilium actuum quae in ea sunt, pro statu praesentis seculi, non intendo hic assignationem facere, sed de legum et principatum institutione tantum modo, quae immediate proveniunt *ex arbitrio humanae mentis*.” See also ibid. 1.10.
- 2 Ibid. 1.12 (quoted in Goldast, *Monarchia*, 2:170): “Secundum propositionem probo, quoniam lex illa melius observatur a quocunque civium, quam *sibi quilibet imposuisse videtur*, talis est lex lata ex auditu et praecepto universae multitudinis civium.”
- 3 See ibid. 2.21-22 (quoted in Goldast, *Monarchia*, 2:261, 265) in matters of the church: “Dicendum, quod generalis concilii aut secundum eius dictamen fidelis legislatoris humani superiore carentis.”
- 4 See ibid. 1.12-13. The drafting of legislation cannot of course be done by the entire people – and yet the people must in the final analysis judge whether the laws agree with its sense of justice and its interests. For the whole represents a greater measure of power and intellect than the part. Therefore the people, whether as a whole or as estates, appoints a number of experts, whose draft legislation can then again be presented for consideration by the people. Every citizen can express his opinion on it in the popular assembly; after the conclusion of deliberation, the draft law (either in

Here already one finds the individualistic, nominalistic construction of the law as the general will that will later be developed most fully by Hobbes and Rousseau. It also points to the theory developed by both Hobbes and Rousseau that no one can complain of injustice on the part of the legislator in a state founded on popular sovereignty, since the law is the general will and since no one can knowingly do himself an injustice.<sup>1</sup>

All forms of government that do not reckon with the *consensus omnium subditorum* (consensus of the subjects) are degenerate.<sup>2</sup> Because the people as legislator are sovereign and superior to the regent (*pars principans*) who is appointed by the people and whose executive power is regulated by the *universitas civium* as legislator, the authors of *Defensor pacis* also draw the final conclusion from this theory of authority, namely, that the people are the only supreme judge of the ruler in case the latter turns tyrant.<sup>3</sup>

In this respect Marsilius and John of Jandun already go further than John of Paris who would first have the estates and the church judge the tyrant and who acknowledges the people as judge only as a last resort.<sup>4</sup> The political ideas of Marsilius of Padua and John of Jandun, which bear the stamp of Averroist nominalism especially in their skepticism towards metaphysics, the correlative rejection of the Aristotelian-Thomist law-

its original form or as amended) may be elevated as law or rejected, by unanimous agreement or majority vote. Rejection can occur in one of two ways: by the popular assembly itself, or by an elected representation which, if need be, may consist of the legislative committee mentioned earlier. Of course the people reserves the right to amend its laws when the need arises, or to interpret them, or to abrogate them. Over against the letter of the law the ruler appears as the complementary element who in any particular case, by way of a mitigating interpretation, can reconcile the antinomy between laws and justice. To that end he employs the principle of equity (*aequitas, epikeia* in Aristotle). Ibid. 1.14.

- 1 Ibid. 1.3 (quoted in Goldast, *Monarchia*, 2:170): "Hoc autem fieri optime per civium universitatem tantum modo, aut eius valentiolem partem, quod pro eodem de caetero supponatur, sic ostendo, quoniam illius veritas certius judicatur, et ipsius communis utilitas diligentius attenditur, ad quod tota intendit civium universitas intellectu et affectu. Advertere enim potest magis defectu circa propositam legi statuenda major pluralitas quacunq; sui parte, cum omne totu corporeum salte majus sit mole atq; virtute qualibet sui parte seorsum. *Adhuc ex universa multitudine magis* atteditur legis communis utilitas, *ex quo nemo sibi nocet scienter.*" Note esp. this statement: "*Hanc [legem] quilibet sibi statuisse videtur ideoque contra illam reclamare non habet.*"
- 2 Ibid. 1.8 (quoted in Goldast, *Monarchia*, 2:173): "Sunt autem principativae partis seu principatum genera duo, unum quidem bene temperatum, reliquum vero vitiatum. Voco autem bene temperatum genus cum Arist. *Politicae*, cap. 5, in quo *dominans principatum* ad commune conferens *secundum voluntatem subditorum.*" (These last words do *not* appear in Aristotle.)
- 3 Ibid. 1.8.
- 4 John of Paris, *De potestate regia et papali*, cap. 18 (quoted in Goldast, *Monarchia*, 2:131). For the opinion of Dubois and Nogaret on the matter, see Scholz, "Marsilius von Padua und die Idee der Demokratie," pp. 330, 369 ff., 413.

idea, and their acceptance of individualism as constructive principle, had enormous influence. The famous *Somnium viridarii* (*Songe du vergier*), a dialogue between a clergyman and a knight (mistakenly attributed by Goldast to Philotes Achillini), is a curious testimony to that.<sup>1</sup> The clergyman defends the emperor's universal rule; the knight, by contrast, strenuously defends the interests of the national states and the laity and draws very radical conclusions from the individualistically conceived principle of popular sovereignty and the theory of contract, which do also clearly betray the influence of the positive law of medieval constitutionalism.<sup>2</sup>

### **Epicurean nominalism and humanism's preparation for applying the mathematical method to natural law**

Latin Averroist nominalism already exhibited the gradual naturalization of the Christian worldview. For the development of the humanist law-idea in the seventeenth century, however, another current in nominalism became of fundamental importance, namely the *Democritean-Epicurean* school. Not until the Democritean-Epicurean ideas entered ethics, theology, and religion was nominalism able to acquire its construction base, even if as yet provisional, for the universal application of the mathematical concept of science which, as one of the lasting achievements of the Renaissance movement, gave the modern humanist worldview its distinctive character. How the Roman Stoics also contributed to the modern humanist theory of natural law will be discussed later.

A moment's thought will clarify at once that from the beginning nominalism left open a broad point of entry for the Democritean and Epicurean ideas, in both natural science and natural law. Do not forget that the Platonic-Augustinian tradition, ever upheld over against Aristotelian Thomism by the Franciscans, had kept to the mathematical concept of science, and that the cult of natural science and psychology had retained a prominent place next to mysticism in these circles. Ockham had delivered a lethal blow to the theory of substantial forms, also for theology, by denying the substantiality of the ideas in God as components of his being and by tracing them back to a pure knowledge that God has of things, that is, of

1 See Goldast, *Monarchia*, 1:58 ff. The author's identity is not known with certainty as far as I know. See Riezler, *Die litterarischen Widersacher der Päpste zur Zeit Ludwig des Baierns*, p. 276. Paulin Paris, *Les manuscrits françois de la bibliothéque du roi* (Paris, 1842), 4:229, mentions as possible authors Phillippe de MéziPres and Raoul de Presles.

2 This appears especially from the author's conclusions that in case regular taxes are not used for the prescribed purpose, or are used incorrectly, the people may proceed to depose the ruler, while it may offer resistance in advance to the imposition of exceptional taxes if there are no urgent grounds to justify them, such as defense of the realm. Bezold, "Die Lehre von der Volkssouveränität," p. 349 f., in mentioning these conclusions, apparently did not recognize their bias in favor of existing positive law.

individual things as the only real existents.<sup>1</sup> This effectively caused the bottom to fall out of the whole of natural theology, together with Platonic and Aristotelian metaphysics. By contrast, denying any real existence to the universals and positing that only individual things were real afforded a very suitable point of connection for Democritean and Epicurean atomism, which accepted only atoms and motion as real, basing all other knowledge on the mathematical theory of motion.

The Middle Ages did not provide the proper climate for a full penetration of these ideas. This could only happen during the “all-destroying” time of the Renaissance with its “revalorization of all values,” and even then only after modern natural science had begun its triumphal march.

Yet, the beginnings of this process were to be found in the Late Middle Ages. Along with Buridan and his followers, the renowned Ockhamist school that flourished during the fourteenth and fifteenth centuries in Paris laid the foundations for modern natural science. The very important thinker Nicolas d'Autrecourt (died between 1350 and 1360) – the David Hume of the Middle Ages – developed a cosmology on the purely Democritean basis of atomism, to the exclusion of all principles of purposiveness as a basis of explanation; in addition he drew the most far-reaching conclusions from Ockham's anti-metaphysical bent by denying the analytical rational nature of the concepts of substance and causality and by casting serious doubt on the reality of the outer world. Thus the road was cleared for pure empiricism.<sup>2</sup>

It is curious (and yet another proof of how careful one must be in qualifying a nominalist as Aristotelian on the single ground that such a person accepted the influence of Aristotle's political ideas) that the same skeptical thinker lectured in Paris on Aristotle's *Politica*, holding it in high esteem.

1 See Ockham, *Scriptum in primum librum Sententiarum ordinatio* dist. 35, q. 5: “Ideae non sunt in deo subjective et realiter, sed tantum sunt in ipso objective, tamquam quaedam cognita ab ipso . . . Ideae sunt primo singularium et non sunt specierum, quia ipsa singularia sola sunt extra producibilia et nulla alia.”

2 Cf. the following statements by Nicolas d'Autrecourt, “Epistola ad Egidium,” in *Epistolae*, par. 17: “Aliquis philosophus, utpote Aristoteles vel quicumque alter, non habuit evidentem noticiam descripta evidentia, quod aliqua substantia esset.” Idem, “Secunda epistola Magistri Nicolai Autricort ad Bernardum,” in *Epistolae*: “Ex eo quod aliqua res est cognita esse, non potest evidenter evidentia reducta in primum principium vel in certitudinem primi principii [i.e., the principle of contradiction] inferri quod alia res sit.” Idem, *Articula condemnati*, prima cedula, no. 30: “Non potest evidenter ostendi, quin omnia, que apparent, sint vera” (quoted in Ueberweg, *Die mittlere oder die patristische und scholastische Zeit*, p. 616 ff.). Cf. also Clemens Baeumker, *Archiv für Geschichte der Philosophie* 10 (1897): 252 ff.

### Concurrent effect of the Platonic concept of science in nominalism

At the same time, the well-nigh universal reception of the Platonic concept of science during the Renaissance, as discussed earlier, was at work preparing the way for the penetration of Epicureanism into humanist natural law. Here too the *nominalist current* remained dominant. Nicholas of Cusa was foremost in applying the Platonic concept of science – brilliantly for his time – by conceiving the individual as a microcosm, an infinitely small point in the cosmos (in which the macrocosmos is fully reflected), and by using his mathematical method of science to employ the infinite as a means to construct knowledge of the phenomena. His theory of natural law clearly betrays traces of the new mathematical epistemology, even though it was clothed in the symbolic metaphysical attire of harmony in the *coincidentia oppositorum* (reconciliation of opposites, unity in multiplicity).

### How does a state organism arise from the multitude of individuals?

The application of the mathematical concept of science – at least insofar as it was seriously attempted – can be traced directly to the *analysis* of concepts that the naive understanding accepts as firm and absolute. The state and governmental authority become the problem on which mathematically trained thought focuses most keenly. What nominalism, in proceeding from the individual, provided on this point entered permanently into the modern world of thought. Nicholas of Cusa's statement of the problem anticipates in a nutshell the form of the problem as it is posed in all modern natural law relative to the justification of the state. How does a state organism arise from the multitude of individuals who each are unique entities that differ widely in inclination, disposition, will, and desire? How does the multiplicity become a unity? How is it to be understood that from so many wills can come the unity of the will of the state, of governmental authority?

Nicholas of Cusa places this issue within the framework of his metaphysical mathematical doctrine of the *concordantia* or *coincidentia oppositorum*: the coinciding of multiplicity's contrasts in a higher unity. Once it is extended toward the Divine being, this doctrine becomes imbued with the mystical organic idea of a cosmic organism of unity (*corpus mysticum*) embracing church and state as its soul and body.

Just as a curved and a straight line ultimately coincide in a point as the arc of a circle and its chord when one allows the size of both to approximate zero, so that both can be constructed from the point,<sup>1</sup> so too the state and governmental authority must not be conceived as *fixed* things, but

1 Cf. Nicholas of Cusa, *De mathematica perfectione*, in *Opera Theologica*, 2: fol. 100.1: "Intentio est ex oppositorum coincidentia mathematicam venari perfectionem. Et quia perfectio illa pleorumque consistit in rectae curvaeque quantitatis

they must be *constructed genetically* from the smallest, ultimate components or elements. The question is then no longer a question of legal history, or a question of positive law, namely: How did state and authority arise historically, and how, according to the current legal order, was the concrete relation between people and governments defined?<sup>1</sup> Rather it is a question of natural law, absolute law: How is *reason* to look at phenomena like state and political authority so that these can be *understood* as law? Nominalism rejects as insufficient ground for justifying the state any *fixed* substantial form of human social nature, supposedly anchored in an eternal cosmic order and to be accepted by reason as a given.<sup>2</sup>

Reason must conceive the state in terms of the individual as the well-spring of its creation. The contrasts and inequalities between individuals are explicitly recognized. Some, by virtue of their higher intellect which enables them to see the norms of the law of nature more perfectly than others, are naturally destined to rule; others, who do not attain that high level, are naturally fit to obey. But in itself this difference in natural disposition provides no legal ground for the compelling authority of the state. That legal ground is first conceived by reason when, setting aside all the differences between individuals, it views them as naturally free and equal creatures who have united their particular wills to form a general will and who, through voluntary submission, place themselves communally under a government.<sup>3</sup>

The individual becomes the mathematical point, so to speak, whose

adaequatione; propono habitudinem duarum rectorum linearum se ut chordam ad suum arcum habentium investigare . . . Sed quomodo est possibile me cuiusquam datae chordae ad arcum habitudinem scire: cum inter illas quantitates adeo contrarias forte non cadat numerabilis habitudo? Necesse erit igitur me recurrere ad visum intellectualem: qui videt *minimum sed non* assignabilem chordam cum minimo arcu coincidere.”

- 1 Cf. Nicholas of Cusa, *De concordantia catholica* 3.2, in *Opera Theologica*, 3: fol. 55: “Sufficit scire quod electio libera a naturali et divino jure dependens, *non habet ortum a positivo iure* . . .”
- 2 This does not prevent Nicholas, who consistently pursues nominalism in the mathematical concept of science, but who relapses repeatedly into realism when it concerns his neoplatonically tinted metaphysics, from accepting the social nature of mankind as grounded in the law of nature. Only, this social nature is no longer recognized as sufficient ground for the order of the state and political authority. The Aristotelian *animal politicum* plays no part in the natural law construction. See *ibid.* 3.1, in *Opera Theologica*, 3: fol. 50, following the exposition of Aristotle's well-known theory: “Videmus enim hominem animal esse politicum et civile: et naturaliter ad civilitatem inclinari.”
- 3 *Ibid.* 2.14, in *Opera Theologica*, 3: fol. 25. “Unde cum ius naturale naturaliter rationi insit tunc connata est omnis lex homini in radice sua. Ideo sapientiores et praestantiores aliis rectores eliguntur et ipsi e sua naturali clara ratione sapientia et causas discutiant ut pax servetur sicut sunt responsa prudentium. *Ex quo evenit quod ratione vigentes sunt naturaliter aliorum domini et rectores: sed non per legem coercivam aut iudicium quod redditur in invitum. Unde cum natura omnes sint liberi tunc omnis principatus, sive consistat in lege scripta, sive viva apud*



constructive movement gives rise to the state. Characteristic here of the intrinsic connection between Nicholas of Cusa's Neoplatonic metaphysics (with which the *Concordantia catholica* is saturated) and his mathematical concept of science, a connection which only gradually becomes plain, is the application of the so important concept of *possest*, which denotes the dynamic *becoming* (*posse fieri*) of all that is finite from its infinitely moving cause.<sup>1</sup> This is no longer the Aristotelian-Thomist concept of development that ultimately leads to the rigid, limited and given substantial forms, but the genetic concept which, in the mathematical construction, bases itself on the sovereign foundation of reason, seeking to bridge God and world in the creative process of thought; just as it does not see God as absolute reality in Aristotelian fashion, but pantheistically as the absolute *Possest*.

That is the sense in which this *genetic* construction is now also applied to state and government while, simultaneously, political authority can be traced to God, as a disclosure of the absolute *Possest*.<sup>2</sup>

Here also reappear the constructs found in Occam and Marsilius of Padua of the people as supreme legislator and the law as the general will to which all have voluntarily subjected themselves so that no one can legitimately protest it since no one can perpetrate injustice against oneself, and also the subordination of the ruler to the laws. These same ideas are applied both to the *imperium* (secular rule) and the *sacerdotium* (spiritual

principem per quem principatum coercentur a malis subditi et eorum regulatur libertas ad bonum metu poenarum, est a sola concordantia et consensu subiectivo. Nam si natura aequae potentes et aequae liberi homines sunt: vera et ordinata potestas unius communis aequae potentis naturaliter non nisi electione et consensu aliorum constitui potest, sicut etiam lex ex consensu constituitur." See also *ibid.* 3.2, in *Opera Theologica*, 3: fol. 55: "Omnis superioritas ordinata ex electiva concordantia spontanae subiectionis exoritur."

- 1 Nicholas of Cusa, *De venatione sapientiae*, in *Opera Theologica*, 1: fol. 218: "Nam non est nisi unum causale principium; quod *Possest* nomino ad quod omne posse fieri terminatur." Also *idem*, *De apice theoriae*, in *Opera Theologica*, 1: fol. 221: "Quamvis in libris Aristotelis non contineatur nisi posse mentis eius; tamen hoc ignorantibus non vident. . . . Sed viva lux intellectualis quae mens dicitur in se contemplatur posse ipsum. *Ibid.*, fol. 220: "Apex theoriae est posse ipsum posse omnis posse, sine quo nihil quisquam potest contemplari, quomodo enim sine posse posset?" *Ibid.*, fol. 221: "Non potest esse aliud substantiale aut quidditativum principium sive formale sive materiale quam posse ipsum." On the concept of "possest" see esp. the *Trialogus de Possest*.
- 2 Nicholas of Cusa, *De concordantia catholica* 2.19, in *Opera Theologica*, 3: fol. 32: "Et pulchra est haec speculatio: quod in populo omnes potestates tam spirituales in potentia latent, quam etiam temporales et corporales. Licet ad hoc quod ipsa praesidentiales potestas in actu constituatur, Nesessario desuper concurrere habeas radius formativus qui hanc constituat in esse quoniam omnis potestas desursum est et loquor de ordinata potestate." *Ibid.* 3, in *Opera Theologica*, 3: fol. 55: "Et quod populo illud divinum seminarium per communem omnium hominum aequalem necessitatem et aequalia naturalia jura inest: ut omnis potestas quae principaliter a deo est, sicut et ipse homo, tunc divina censeatur, quando per concordantiam communem a subiectis exoritur."

power). The entire construction is once again placed in the framework of the *concordantia* or *coincidentia oppositorum*.<sup>1</sup>

In the meantime, no matter how much Nicholas of Cusa's natural law evidences a turn to modern thought, it cannot be denied that he has not yet effected a *systematic* application of the modern concept of science in this area. What we have here is an incidental application to the isolated problem which predominates Nicholas' thinking: How does the multiplicity (in the state: the multitude of individuals) become a unity (the organism of the state with its compelling governmental authority)? Its usefulness for the domain of law could only be demonstrated by the modern concept of science once the entire subject matter of traditional natural law itself, as well as the solution to new constitutional problems which clamored for solution in the face of the rise of absolute monarchies, could be conceived by means of the mathematical method. The new problems of *raison d'etat*, the rise and growth in power of the modern national states, demanded constructing constitutional and natural law by a method other than the one available in scholasticism.

The modern state had emancipated itself from ecclesiastical domination. The medieval idea of the *Corpus Christianum* had been flouted for all to see by the alliance which the French king Francis I had concluded with the Turkish sultan against the German emperor. The humanist jurists had to defend the sovereignty of the national monarchy on two fronts: on the one hand, against the claims of the popes to dominion over all secular rulers and regimes, and on the other, against the claims of the German emperor to universal rule. Thus in terms of constitutional law, the first problem to emerge was the *problem of sovereignty*, which automatically led to a wide-ranging historical and legal study of national and foreign law. Here it was that humanism erected its first milestone in the form of Jean Bodin's theory of sovereignty.

Although Bodin had precursors in Lupold von Bebenburg<sup>2</sup> and Aeneas Silvius Piccolomini (see the Note below) and even earlier in the Romanist

1 Ibid. 2.1, in *Opera Theologica*, 3: fol. 50: "Legis autem latio per eos omnes qui per ea stringi debent, aut majorem partem aliorum electione fieri debet, quoniam ad commune conferre debet et quod omnes tangit ab omnibus approbari debet: et communis definitio ex omni consensu aut maioris partis solum elicitur nec potest excusatio de obedientia legum sibi tunc locum vindicare, quando quisque sibi ipsi legem condidit. Ibid. 2.15, in *Opera Theologica*, 3: fol. 26: "Jam ex praehabitis constat omnium constitutionum legandi vigorem consistere in concordia et consensu tacito vel expresso."

2 On Lupold von Bebenburg (1297-1363), see Felix Joël, *Lupold III von Bebenburg, Bischof von Bamberg*, vol. 1: *Sein Leben* (Halle an der Saale, 1891); Riezler, *Die litterarischen Wiedersacher der Päpste zur Zeit Ludwig des Baiers*, p. 180 ff. (not wholly dependable); Rehm, *Geschichte der Staatsrechtswissenschaft*, p. 182 ff.; Bezold, "Die Lehre von der Volkssouveränität," p. 348; Gierke, *Althusius*, passim. Bebenburg's magnum opus *Tractatus de jure regni et imperii* is published in Schard's collection *De jurisdictione, autoritate, et praeeminentia imperiali ac*

school of jurists, and although Machiavelli's theory of *raison d'état* had politically broken ground for the absolutistic conception of authority, it remains the great merit of Bodin to have provided the first *systematic* treatment of the problem of sovereignty in his famous *Six livres de la république* (which he translated, not without alterations, into Latin for the general spread of his ideas).

*Note on Aeneas Silvius Piccolomini:*

In his short tract *De ortu et auctoritate Imperii Romani*, published in Goldast, *Monarchia Sancti Romani Imperii*, 2:1558 ff., Aeneas Silvius (1405-1464) expressed very modern ideas concerning sovereignty that make him a direct precursor of Bodin. His view of sovereignty is limited to the authority of the *imperium* (imperial universal rule). He holds the old view of the Roman jurists that sovereignty originally resided with the people who transferred it to the ruler with the well-known *lex regia*.<sup>1</sup> In chapter 15 the emperor is accorded the right to revoke privileges once granted, on grounds of his sovereignty. The legal ground of *raison d'état*, elaborated most clearly in the 18<sup>th</sup> chapter<sup>2</sup> is already formulated here.<sup>3</sup> Chapter 16 argues that the emperor as highest agency needs to give account to no one for his actions.<sup>4</sup> In chapter 19, the right to establish and abrogate laws is exclusively the king's, who himself is above the law,<sup>5</sup> even if this right is inferred in turn from the *translatio potestatis* by the people. In chapter 20 we further find the argument that the

*potestate ecclesiastica de que juribus regni et imperii variorum auctorum qui ante haec tempora vixerunt scripta* (Basel, 1566).

- 1 Aeneas Silvius Piccolomini, *De ortu*, 28 (quoted in Goldast, *Monarchia*, 2:1561: "Et quamvis aliquando summa potestas penes populum fuit; constituto tamen (ut dicimus) principe, lege antiqua, quae *Regia* nuncupatur, populus ei, et in eum omne suum Imperium ac potestatem consulit." The author [who became the Renaissance pope Pius II], takes the characteristic feature of imperial authority (*majestas imperialis, potestas imperii*) to be the *summum imperium, summa* or *suprema potestas*.
- 2 "Respublicam ab omnibus esse privatae rei utilitatisque praeponendam."
- 3 Quoted in Goldast, *Monarchia*, 2:1563: "Privilegium meretur amittere, qui concessa sibi abutitur potestate. Cassantur, cum male mereri incipiunt, qui eadem bene merendo obtinuerunt. Irritentur, si damnosa Reipublicae repierentur: quae cum data fuerunt, erant utilia, vel si bonis moribus contrariantur: aut si magnam Imperio jacturam servata faciunt, quae sublata grandem praeberent utilitatem. Quoniam sicut majus bonum minori praepositur, ita communis utilitas speciali praefertur utilitati."
- 4 Quoted in Goldast, *Monarchia*, 2:1563: "Verum cum in omnibus quae geruntur a Principe, causa praesumatur et ratio facti, si quando vel abrogare privilegia, vel ipsis derogare Principem contingat injuste; quamvis liceat eum per viam supplicationis informare, humiliterque petere restitutionem, non tamen reclamare licet, vituperare vel impugnare, si perseverat, cum nemo sit, qui de suis factis temporalibus possit cognoscere."
- 5 Quoted in Goldast, *Monarchia*, 2:1564: "*Leges sacratissimas, quae constringunt hominum vitas, universique mundi cervicibus imponuntur, solius Imperatoris est condere, cui quicquid placuerit legis habet vigorem.*"

emperor cannot be bound by the laws in a jural sense even though it behooves him, if he would maintain the law.<sup>1</sup> In chapter 22 it is deduced from the sovereignty of the emperor that no higher appeal is possible concerning his decisions.<sup>2</sup> The final chapter (24) closes with an epilogue addressed to Emperor Frederick III, in which once more his sovereignty is described, with an enumeration of all his inherent rights, after which he is urged not to misuse his supreme power but always to consider his responsibility before God.

In order to see Bodin's political theory as a link in humanism's overall intellectual tenor, as a contribution to the gradual construction of humanism's law-idea, we must first examine the new method which he introduced to political theory.

It has become altogether too much the custom to see the novelty of this method exclusively in the historical-philological element which had been introduced into the science of law by the French humanist school of law (Alciat, Budé, Cujas, and Donneau, among others), as a result of which the discipline was reborn, as it were, with remarkable new sophistication.<sup>3</sup> Undoubtedly the historical-philological spirit was a most important element in Bodin's method, but a too one-sided emphasis on it loses sight entirely of the *specifically natural-law character* of his political theory, and above all, forgets that the historical spirit of humanism itself was influenced to a great degree by natural law and made to serve preconceived political purposes. The study of history for its own sake was still largely foreign to the Renaissance.<sup>4</sup>

What is characteristic of Bodin's method in his political theory can only be understood when we briefly look at the "storm and stress" period of humanist thought that heralded the birth of modern philosophy. We recall from chapter 6 how the Renaissance launched a well-nigh universal attack on the Aristotelian-Scholastic concept of science. But it did not immediately have a basis for a new epistemology and a new concept of science to replace it. For the time being it was a case of stumbling and fumbling; an often superficial eclecticism or skepticism was ranged against Scholasticism with much pomp of classicist verbiage. A Kepler and a Galileo had not yet emerged. The new ideal of life, the autonomy of the human per-

1 Which is "inventio quaedam et domum Dei, oculus ex multis oculis, et intellectus sine affectu" if possible (Goldast, *Monarchia*, 2:1564).

2 After all, the emperor, "nullum habet in temporalis causa superiorem" (quoted in Goldast, *Monarchia*, 2:1565).

3 Robert H. Murray, in *The Political Consequences of the Reformation: Studies in Sixteenth-Century Political Thought* (London: Benn, 1926), p. 141, points out how the Renaissance generally conceived of history as "a school for statesmen." "It is a point of view as old as Commines, the father of modern history, and Macchiavelli and Guicciardini, who all conceived that the main task of history was the teaching of the attainment of political success." See also Fritz Renz, *Jean Bodin: Ein Beitrag zur Geschichte der historischen Methode im 16. Jahrhundert*, no. 3 pt. 1 of *Geschichtliche Untersuchungen* (Gotha: Perthes, 1905).

4 Nicholas of Cusa, *De concordantia catholica* 3.2, in *Opera Theologica*, 3: fol. 51.

sonality, was the sole battle-cry for mobilizing the most diverse spirits against the hosts of Scholasticism! In this movement of revolutionary ferment, however, new tendencies and guidelines soon began to appear. The Platonic concept of science enthralled the most eminent minds of the Renaissance. Mathematics, as the only science offering certainty, gradually became the palladium grasped in hope by all who wished to travel new avenues for human thought. The certainty of truth must be found in the mind itself, in thinking consciousness, and not outside it; such was the common conviction of a host of humanists. A single spirit was at work in Valla's philological critique of Scholastic forms of language, in the bitter attack by Juan Luis Vives (1492-1540) on Aristotelian dialectics with its mixture of metaphysics and experiential science, in the new theory of method developed with immense self-confidence by the Calvinist Peter Ramus (1515-1572) who was heavily influenced by Vives.

### **The Ramist method in the science of law.**

#### **The problem of sovereignty**

While Vives had finally pried the special sciences loose from metaphysics which inquires after the non-intelligible essence of things, and had abandoned the ideal of a general epistemology in order to better emphasize the need for the experiential sciences, Peter Ramus sought new foundations for both epistemology and logic. The new Ramist method, which gained enormous influence historically and which modern literature relegates too quickly to the status of insignificance, in fact planted numerous seeds for the growth of an object-oriented pursuit of science.

Both the humanist Bodin and his great Calvinist antipode Johannes Althusius were influenced by Ramus' method; the latter in fact, in his famous *Dicaeologica*, was the first to construct a complete system of law on the basis of this method. The history of law has a whole school of jurists that can be called Ramist! It is of no slight importance, therefore, to take stock of Ramus' train of thought for a moment.

In Ramus' philosophical work, Calvinist and humanist influences are unmistakably interlaced. The idea that all the sciences are interconnected and that they are rooted in the sovereignty of God is clearly of Calvinist origin. On the other hand, emerging as well is the Platonic spirit of humanism in its unbridled zest for life so typical of the Renaissance. Ramus himself tells us how a more profound understanding of Plato's dialogues first convinced him of the barrenness of the Scholastic method. As a foundation of all science he worked out a logic (which, like Plato, he called dialectic) of which the first part is the theory of concept and definition, and the second that of judgment, syllogism, and method. In a Platonic vein, mathematics served as model for the elaboration of this dialectic.

In this way Ramus wanted to replace the old logic, which receives its orientation and material from grammar in Aristotelian fashion, by a new theory of thought that orients itself to geometry. The source of theory's

truth must be found, not in Aristotelian syllogisms, but in the definitions and postulates that theory itself lays down as foundations. Dialectic must find its material in the empirical sciences themselves; it must be carried through in all these disciplines.

Now then, this method also left its imprint on Bodin's political theory. Despite the enormous amount of existing legal and historical material that he mustered in his work on the state, it cannot be said that his theory of sovereignty was in the least determined by the study of this material. Rather, definitions are here laid down as foundations which, in their absolute natural-law character, claim validity for all times and places. The intractable constitutional material which does not adapt to fit these molds is often arbitrarily altered to suit the system.

Thought is no longer the passive reflector of reality but it seeks the truth within itself and reshapes the material of experience according to the norms which it establishes to suit its own subjective, immanent concept of truth. Simultaneously the discipline of constitutional law is emancipated from theology and metaphysics. It now makes its entry as a secular science with its own independent domain.

In a second respect too, Bodin's theory of sovereignty represents a turning point in the nominalist conception of authority. While, till now, individualism was made to serve the natural-law construction of popular sovereignty as legislative sovereignty which binds a particular government to both the law of nature and positive law, Bodin may be called the father of the humanist theory of authority which, in systematic consistency, declares sovereignty to be identical with plenitude of power and takes freedom from positive laws, within the bounds of eternal natural law, to be a defining feature of sovereignty. From now on the contrast between sovereign and subjects has become absolute. All legal norms, all legal institutions are systematically conceived as the personal will of the sovereign: the entire order of positive law is, as it were, centralized in this sovereign will. What was unheard of in the entire medieval Germanic conception of law was now posited by Bodin with relentless consistency: even customary law is made to depend absolutely on the personal will of the sovereign. In other words, instead of *primus inter pares* (first among equals) the sovereign now becomes an absolute monocrat, bound only by the inviolate norms of natural law: the old concept of merely quantitative superiority (relative ascendancy of the ruler), as Nicholas of Cusa still formulated it in the ancient adage *singulorum et unius et simul plurium major, multitudinis minor*<sup>1</sup> (more than the few, both the individual and several individuals, but less than the people) has been replaced by the sovereign's absolute *plenitudo potestatis* (plenitude of power).

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<sup>1</sup> Nicholas of Cusa, *De concordantia catholica* 3.2, in *Opera Theologica*, 3: fol. 51.



But before we proceed to analyze Bodin's theory of sovereignty more closely in light of his method of natural law, we owe it to our readers to first support the foregoing summary of this method from the sources, lest it appear as though we are forcing an interpretation for the sake of establishing a preconceived link. This is all the more necessary since Bodin's political theory has never before been looked at, as far as I am aware, in light of the larger philosophical context that heralded the gradual development of the humanistic rationalistic idea of law oriented to the mathematical concept of science in the sovereignty of reason.

Bodin's work begins with a definition of the state, a definition which, as a free hypothesis of reason, is postulated without any further derivation: "The state is a right of a number of households and of what they have in common, to govern with sovereign power."<sup>1</sup> The entire constitutional section of the work is a systematic analysis of the concepts which this definition lumps together into a unity.

Bodin describes his method as follows: "We state this definition first because one should always begin by establishing the main goal and afterwards the means to achieve it. Now then, the definition is nothing but the goal of the case at hand; and if it lacks a proper foundation everything built upon it will soon collapse."<sup>2</sup>

Following this definition, the analysis of its separate concepts first of all deals with the concept of *droit gouvernement* or "right to govern" (in the Latin edition: *ratione moderata res publica*). This concept, which contains a purely political element, is considered necessary to the definition in order to distinguish states from gangs of thieves and robbers. As such this distinction lies wholly within the area of constitutional law, but upon further analysis it soon becomes evident that in fact Bodin has in mind the purely political question as to the purpose of the state and the politically correct organization of the state. As appears from the preface of the work, the intention above all is to counter the unscrupulous, amoral theory of Machiavelli concerning *raison d'état*.

Next, the other concepts that flow from the definition are systematically analyzed and for each of them another definition is introduced as their foundation. These definitions in turn are broken down into concepts which are again grounded in definitions and so the method moves in the direction of an ever more minute analysis of concepts, altogether on the pattern prescribed by Peter Ramus in his dialectic.

That Bodin was fully aware of the novelty of his method appears from the fact that in the Latin edition he chides all his predecessors for not hav-

1 "République est un droit gouvernement de plusieurs mesnages, et de ce qui leur est commun, avec puissance souveraine."

2 "Nous mettons ceste definition en premier lieu, par ce qu'il faut chercher en toutes choses la fin principale: et puis apres les moyens d'y paruenir. Or la definition n'est autre chose que la fin du subject qui se presente: et si elle n'est bien fondee, tout ce qui sera basti sur icelle se ruinera bien tost apres."

ing started with definitions: "The definition, which is omitted by those who write about the state, we posit as our starting point."<sup>1</sup> This method certainly differs greatly from the Aristotelian-Thomist one which, incidentally, is often sharply criticized by Bodin. Bodin in principle abandons the organic conception of the state which the Aristotelian-Thomist theory had grounded metaphysically in the social nature of man as substantial form. This has been contested because of Bodin's theory of the family as the state's foundation, as is evident from his very definition of the state. But this argument loses cogency when we consider that Bodin's view of families is purely individualistic, even atomistic; it is the individualistic sphere of power of the *paterfamilias* in the sense of Roman law. This appears most plainly from Bodin's numerical speculations in determining the difference between a state and a family. Three families of five persons each are sufficient to make up a state, on condition that one of the heads of families gains sovereignty.

There is no trace here of an organic development from man's social nature. On the contrary, Bodin appears not to see the human person as a social being at all. In many places he expresses his pessimistic opinion of original human nature, inclined as it is to discord, strife, and thievery. He does not believe in "the golden age" of Stoic moral philosophy. Rather, an Epicurean strain runs through his view of history. Unlike Machiavelli, he pictures conceptions of morality and law as undergoing steady progress. Since the state of nature, humanity has advanced so far in this area that, could the golden age be recalled once more and compared with our own century, we would much more likely call it an "iron age."<sup>2</sup> So he also observes about the state in *République* 1.6 that reason and natural light lead us to believe that power and force have occasioned the rise of states. The same idea is repeated in *République* 4.1, following an exposition which makes it plain that an organic idea of development is not at all intended. Here Bodin distinguishes between the societal (sociological, we would say) and the juridical cause of the rise of states (a distinction traditionally part of natural law).

As to the former, Bodin sees three possibilities: every republic arises from the family, multiplying little by little; or it suddenly arises from a collected multitude; or from a colony drawn from another Republic.<sup>3</sup> The gradual development from the self-multiplying families, then, is but one sociological possibility for the rise of the state, and from the sequel it appears that Bodin does not take it to be the most frequent one. In addition there are the sudden formations from a collected multitude, and colonization.

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1 "Definitionem, ab iis qui de Republica scripserunt praetermissam, principio posuimus."

2 Bodin, *Methodus* 7.

3 "Toute République prend origine de la famille, multipliant peu B peu: ou bien tout B coup s'établit d'une multitude ramassée, oï d'une colonie tirée d'autre République."

The juridical (!) grounds for the rise of states are *la violence des plus forts* (the violence of the strongest) and the “consent of individuals, who subject their perfect and complete liberty voluntarily to others in order that the latter may dispose of it with sovereign authority, either without any law, or according to certain laws and conditions.”<sup>1</sup>

Bodin's entire train of thought is indeed permeated by the metaphysics of the Roman idea of power. In his view of marital power, as in his view of the father's authority and the power of the master over his slaves, this Stoic element of will-power often comes to the fore in the crudest form. Thus he claims the natural right for the husband to put away his wife without giving any reason, and for the father he claims the natural right to dispose of the life and death of his children. Everywhere he sees the relationships of life subject to the category of absolute rule and absolute subjection. The powerful aristocratic personality of Renaissance consciousness finds within itself the well-spring of sovereignty, not limited by any positive law. In the state of nature, every head of family is his own sovereign, aside from God subject to none except his own *bon plaisir* (good pleasure), disposing in full liberty over the life and death of wife and children.

For earlier, when there was no state, nor citizens, nor any form of state among men, every head of family was sovereign in his own house, invested with power over life and death of his wife and children. And since power, violence, lust for honor, avarice and revenge armed the one against the other, the outcome of wars and struggles then gave victory to some, enslavement to others; and the one among the victors who had been chosen to be head and captain, and under whose leadership the others had gained the victory, was established in power to command them as faithful and loyal subjects and the vanquished as slaves. Then the perfect and complete liberty which each man possessed to live according to his own will, without being commanded by anyone, was transformed into pure slavery . . . and he who would relinquish nothing of his liberty in order to live under the laws and the command of another, lost it entirely.<sup>2</sup>

The Roman-Stoic spirit exuded by such ideas is not just incidental. Bodin's entire natural law theory is permeated by the Stoic law-idea, the materialistic idea of a natural coherence in the universe which expresses itself in a necessary chain of causes and effects. His theory of climates especially, upon which Montesquieu was to expand later, was based on this law-idea.<sup>3</sup> The wise person, who grasps this essential connection, is

1 “[Le] consentement des uns, qui assubietissent volontairement aux autres leur pleine et entière liberté, pour en estre par eux disposé par puissance souveraine sans loy, ou bien B certaines loix et conditions.”

2 *Editorial Note (DS)*: paraphrased from Bodin, *République* 1.6.

3 On this see also Ernst Oberföhrer, “Jean Bodin und seine Schule: Untersuchungen über die Frühzeit der Universalökonomie” (diss., Kiel Univ., 1914), p. 3 ff., where

the measure of justice and truth.<sup>1</sup> On this point the nominalism and individualism of the Stoics tie in remarkably well with the nominalist spirit of Renaissance times, just as Hobbes and Spinoza were steeped in this Stoic spirit.

Bodin's theory of sovereignty must be placed in this context in order to understand its deeper philosophical foundation. Viewed sociologically, it was of course strongly influenced by the contemporary political circumstances of France, which we examined in chapter 8. We now wish to analyze this theory more closely for its methodological significance.

*République* 1.8 again begins with the definition that reads: "Sovereignty is the absolute and permanent power over a state."<sup>2</sup> Bodin immediately provides this definition with a comment as to its necessity, a definition which he says had never before been provided by jurists or political philosophers even though the issue of sovereignty concerns the cornerstone of the entire state. Formally speaking, this comment is certainly mistaken, since long before Bodin, jurists and medieval authors did attribute to pope or emperor the characteristic of *legibus solutus esse* (being absolved from obedience to positive laws) as the highest power on earth. That was done on the basis of Roman law. Indeed, the legists, as we saw above, had even applied this theory from Roman law to the national monarchies.

However, Bodin's remark gains another, indeed correct, meaning when we consider the methodological significance that his theory of sovereignty ascribes to a definition. For here the definition becomes the constructive instrument for the free creation of a constitutional system from sovereign reason. From his definition of sovereignty he inexorably forges an entire chain of deductions which, quite apart from the positive law of various countries, is presented as a system of natural law that is absolutely valid.

First, he concludes from its absoluteness that sovereignty cannot be limited, be it in power, duty, or time. We find three elements united here, the first of which implies the absolute independence of the sovereign internally and externally; the second involves the possession of sovereignty as an inherent (not conferred) right; the third is the requirement that the supreme power be possessed for life. If there is a restriction of power in any one of these points, the bearer of authority is not a sovereign but a mere mandatary. Even the German emperor, strongly limited in governmental power by the well-known *Wahlkapitulationen*, is accordingly – to the dismay of German jurists – denied the title of sovereign! "Likewise the sovereignty given to a prince subject to duties and conditions is not prop-

the relationship between Stoic fatalism and astrology, which as we know was avidly practiced by Bodin, is also pointed out.

1 "[L]'homme sage est la mesure de justice et de verite" (Bodin, *République* 1.1.

2 The Latin reads: "Majestas est summa in cives ac subditos legibusque soluta potestas."

erly sovereignty, nor absolute power: for there are no conditions apposite in the creation of a prince except those of the law of God or of nature.”

The second element of sovereignty, actually following directly from the former, is the non-binding character of positive laws for the sovereign. This feature is intended both negatively and positively. Negatively, it states that the sovereign has no legislator or judge above him except God and nature; positively, that every law or ordinance, every privilege or customary law proceeds from his will without requiring the consent of any of the subjects.<sup>1</sup>

At the same time we should now point to three kinds of restrictions that cannot be overlooked without misunderstanding Bodin or doing him an injustice.

First of all – and here Bodin carries forward a train of thought that had already been pursued most keenly by Baldus and Bartholus – the adage *Princeps legibus solutus est* is valid only for sovereign acts *as such*. It is, accordingly, relevant for public law only. In matters of private law the sovereign is on a par with his subjects.<sup>2</sup> Secondly – and this follows automatically from the essentially private-law content of Stoic natural law – there is the restriction that the sovereign is also bound by his own laws insofar as they contain provisions of *natural law*.<sup>3</sup> Finally there is the limitation (noted above in chapter 8) that the sovereign is bound to the laws of the realm insofar as these are necessarily inherent in the possession of the crown, like the Salic Law.<sup>4</sup>

Then again, all these limitations do lose much of their force inasmuch as there is no judge, while the sovereign lives, who can judge him against his will. After all, as we shall see, according to Bodin all jurisdiction in the realm rests on the will of the sovereign himself. And so Besold simply draws the consequence of Bodin's theory of sovereignty when he concludes that Bodin's sovereign is the highest judge in his own case.<sup>5</sup>

Bodin frames political authority in a personalistic and absolutistic manner; it is centered in the will of a man or a collection of men. That is the

1 See e.g. Bodin, *République* 1.8: “Par ainsi on void que le poinct principal de la maiesté souveraine et puissance absolue, gist principalement B donner loy aux subjects en general *sans leur consentement*.”

2 Ibid. 1.8: “Il ne faut donc pas confondre la loy et le contract: car la loy depend de celuy qui a la souveraineté, qui peut obliger tous ses subjects, et ne s'y peut obliger soy mesme: et la convention est mutuelle entre le Prince et les subjects, qui oblige les deux parties reciproquement et ne peut l'une des parties y contrevenir au prejudice, et sans le consentement de l'autre et le Prince en ce cas n'a rien par dessus le subject.”

3 As to *jus gentium* the sovereign is free only in the application and elaboration of national law.

4 Ibid. 1.8.

5 Christoph Besold, *Dissertatio politico-juridica de majestate in genere eiusque juri-bus specialibus* (Strassburg, 1625), 3.5.10: “Ibidem in propria causa judicare potest.”

enormous revolution which humanism effected in the doctrine of authority of the Middle Ages. The Stoic-humanistic spirit animating this doctrine of sovereignty is best characterized by the saying of Seneca which Bodin quotes with approval: “*Caesari cum omnia licent, propter hoc minus licet*” (Precisely because Caesar is allowed all things, therefore he is allowed less).<sup>1</sup>

In other words, the sovereign has the moral task to bring his will into line with the laws of God and of nature, but nevertheless his personal will is the source of all positive authority and objective legal ordering in the state.

According to Bodin's own testimony, the rule *Princeps legibus solutus est* is nothing other than the juridical formulation of the modern principle of *raison d'état*<sup>2</sup> which here is bound only to the unbreakable rules of ethics, natural law, and divine law. The sovereign who tramples underfoot natural and divine right shows himself a tyrant in so doing.<sup>3</sup>

To determine the obligation of the sovereign toward the commandments of God and the law of nature, Bodin repeatedly uses expressions that bear a strongly Calvinistic imprint. Thus Bodin, like Calvin, calls the sovereign God's lieutenant (*lieutenant de Dieu*) while the sovereign who violates the divine laws is guilty of *crimen laesae majestatis* (the crime of lese majesty).

However, a greater distance than that between Bodin's humanist doctrine of sovereignty and Calvin's conception of authority is hardly conceivable. Just consider this statement by Bodin: “If therefore the sovereign ruler is not subject to the laws of his predecessors, even less can he be bound by the laws and ordinances which he himself has promulgated: for one can receive someone else's law but it is by nature not possible to give oneself the law, or to command oneself anything that depends on one's will, as the law says: No contract can exist which depends on the will of him who promises something.” Or again: “Nevertheless, the laws of the sovereign ruler, provided they are based on good and clear grounds, depend only on his mere and free will.” Now place these statements next to Calvin's observations on the authority of the office of government as found in his comments on the Book of Samuel – where he qualifies the adage *Princeps legibus solutus est*, also in the sense of positive law, as the “hallmark of tyrannical government” – and the vast difference with Bodin is unmistakable.

1 Cf. Seneca, *De consolatione ad Polybium* 7.2.: “Caesari quoque ipsi, cui omnia licent, propter hoc ipsum multa non licent.”

2 See the Latin edition, Bodin, *De republica libri sex*, 1.8.61: “Neque modo aequum est, sed etiam necessarium leges in principis arbitrio perinde esse, ut in potestate gubernatoris ipsa gubernacula, quae essent inutilia, nisi ad omnem coeli faciem et opportunitatem moveri ac converti possent.”

3 Bodin, *République* 2.3: “Or la plus noble difference du Roy et du Tyran est, que le Roy se conforme aux loix de nature: et le tyran les foule aux pieds.”



**The conflict between natural law and *raison d'état* and the attempted compromise**

Meanwhile Bodin runs into an obvious antinomy as he attempts to reconcile the unbreakable character of natural and divine law with the absolutist theory of sovereignty, which in essence is but a rationalistic construct of the modern theory of power and will. He began by declaring the sovereign bound by contracts and promises entered into with others, and he cannot ignore the law of medieval constitutionalism still in force in many countries and largely based on a reciprocal contract between ruler and estates. If then the sovereign, as he teaches, is not bound by the laws, ordinances, customary law, or privileges (since these, instead, depend entirely on his *bon plaisir*), how is one to reconcile this with the compelling force of law of medieval constitutionalism? After all, as he himself says, the ruler is bound by it by virtue of a contract with the estates.

To escape this obvious antinomy Bodin ventures upon a series of distinctions and interpretations of existing oaths of office which manifestly demonstrate the conflict between humanist natural law and modern *raison d'état*.

He himself expresses the antinomy in these words: Is the ruler, who is not bound by the laws of the land by virtue of his sovereignty, nevertheless bound by those laws which he has sworn to maintain? Bodin answers: One must distinguish. When the sovereign swears to himself that he will uphold the law, he is not bound by his law nor by his oath. When the sovereign promises another ruler that he will uphold the laws which he himself or his predecessors have made, then even without an oath he is obliged to observe them if the ruler to whom he made the promise has an interest in that. However, in the absence of such interest the sovereign who made the promise is not bound by it, not even if there had been an oath.

Bodin then attempts to apply the same distinction to promises or oaths made by the sovereign prior to or subsequent to his official installation. To all appearances, both the inviolability of natural law as well as Bodin's basic principle that the sovereign is not bound by the laws of the land are maintained in one imperious turn of a sentence:

Not that the sovereign is bound by his laws or those of his predecessors, but he is bound by his just agreements and promises, regardless whether or not they were affirmed on oath, just as a private person would be; and for the same reasons that a private person may be absolved from an unjust or unreasonable promise, or a promise that burdens him unduly or which he made through deceit or fraud on the part of the other party, or through error, force, fear or *laesio enormis*, so the ruler may be absolved from such obligations as lessen his majesty.<sup>1</sup>

<sup>1</sup> Editorial Note (DS): paraphrased from Bodin, *République* 1.8.

Evidently the sovereign is placed on a par with his subjects where it concerns the binding force of oaths or promises.

Without any transition, however, as though it were a conclusion following from this supposed equalization of ruler and subjects before the binding force of natural law, we read:

And so our principle remains valid, that the ruler is not bound by his laws, nor by the laws of his predecessors, but only by just and reasonable agreements, the observance of which will be in the interest of the subjects taken generally or in particular.<sup>1</sup>

The significance of this reservation becomes apparent in the sequel. First, Bodin again declares with Stoic pride: “The word of the ruler must be like an oracle.” But then we get the twist which reveals the scarcely hidden principle of *raison d'état*:

And yet the legal maxim remains in force that the sovereign ruler may derogate from the laws which he has sworn to uphold if the legal ground of these laws ceases, and that without the consent of the subjects, albeit a general repeal clause is not sufficient in such cases, a special derogation being required.<sup>2</sup>

In other words, even if the sovereign has sworn to observe the laws, privileges, or customary law of the land, he may, in the state's interest, deviate from them at any time at his discretion. A little further on, Bodin accordingly admits that the sovereign and the private person are by no means equal in this matter<sup>3</sup> and he cannot even resist the thesis, which in its universality he had not himself accepted before, that a true sovereign will never swear to maintain the laws of his predecessors, or else he is not a sovereign.<sup>4</sup>

We have, then, ascertained that there is indeed an unresolved conflict between humanist natural law and the modern principle of *raison d'état*.<sup>5</sup> First it is posited, as natural law, that the sovereign can never be bound by

1 Ibid. 2.3: “Et par ainsi nostre maxime demeure, que le Prince n'est point subject B ses loix, ny aux loix de ses predecesseurs mais bien B ses conventions justes et raisonnables, et en l'observation desquelles les subjects en general ou en particulier ont interest.”

2 Ibid. 2.3: “[E]t neanmoins la maxime de droit demeure en sa force, que le Prince souverain peut déroger aux loix qu'il a promis et juré garder, si la justice d'icelle cesse, sans le consentement des subjects: vray est que la derogation generale en ce cas ne suffit pas, s'il n'y a derogation speciale.”

3 Ibid. 2.3: “[L]e prince en ce cas [i.e., when he has promised or sworn to maintain the laws] n'a rien par dessus le subject: sinon que cessant la justice, de la loy qu'il a juré garder, il n'est plus tenu de sa promesse, comme nous avons dit: ce que ne peuvent les subjects entr'eux, s'ils ne sont relevés du Prince.”

4 Ibid. 2.3: “Aussi les Princes souverains bien entendus, ne font jamais serment de garder les loix de leurs predecesseurs, ou bien ils ne sont pas souverains.”

5 Ernst Hancke in his thorough study, *Bodin: Eine Studie über den Begriff der Souveränität* (Breslau, 1894), p. 33, like several other authors on Bodin's theory of sover-

the laws (the principle of *raison d'état* lurks here); then the adage is posited as inviolable natural law that *pacta sunt servanda*: treaties must be kept.

As we shall see in more detail, what we have here is indeed a curious impasse, one in which the whole of modern natural law finds itself. Here is an antinomy which, like so many antinomies, flows directly from the humanist law-idea as an inescapable consequence.

### **The methodological significance of the adage *Princeps legibus solutus est* in Bodin's humanist political theory**

We have already pointed to the special methodological significance accorded to definitions in Bodin's doctrine of sovereignty. Just as all the theorems of mathematics are deduced from fundamental axioms and definitions that are not open to further proof, so in Bodin's political theory the definition of state and sovereignty becomes the methodological principle from which, in a chain of causes and effects, the entire constitutional system must be rationally deduced.<sup>1</sup>

Thus it immediately becomes clear that the main thrust of Bodin's defi-

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eignty, has apparently not noticed this conflict and uncritically accepts Bodin's construction of the *cessio justae causae* by analogy with private law. Yet it is clear that this analogy is but a convenient construct apparently bringing two fundamentally different elements of law down to the same level. By the 'cessation' of the legal ground of sworn laws, privileges, and so on, Bodin, as appears from the whole context of his exposition, understands the conflict between law and *raison d'état*. The sovereign remains wholly free in assessing the question of exactly when the interest of the state demands that sworn laws must be set aside. In other words, practically speaking the rule of natural law that oaths, promises, and contracts must be kept has no meaning at all in terms of public law. The reservation which Bodin adds, that the ruler may not deviate from the sworn laws without *justa causa*, is of course meaningless in this connection since Bodin makes it plain throughout that the principle *Princeps legibus solutus est* means only that the sovereign over the laws of the land can deviate from them only in the interest of the state. Any arbitrary deviation from the laws of the land is condemned more than once by Bodin. See e.g. Bodin, *République* 1.8: "[M]ais si la loy est proffitable, et qui ne face point de bresche B la justice naturelle, le Prince n'y est point subject, ains il la peut changer, ou casser, si bon luy semble, pourveu que la derogation de la loy apportant proffit aux uns, ne face dommage aux autres sans juste cause: car le Prince peut bien casser et annuler une bonne ordonnance, pour faire place B une autre moins bonne, ou meilleure: attendu que le proffit, l'honneur, la justice, ont leurs degré de plus et moins. Si donques il est licite au Prince entre des loix utiles, faire chois des plus utiles: Aussi sera il entre les loix justes et honnestes, choisir les plus equitables et plus honnestes: ores que les uns y ayent proffit, les autres dommage, pourveu que le proffit soit public, et le dommage particulier." What else could this signify but the classic *Salus publica suprema lex esto*?

<sup>1</sup> The technical term for this methodological deduction, carried out with apodictic certainty, is *demonstratio*, a term we meet repeatedly throughout humanist literature on natural law. Cf. Bodin, *République* 1.10: "Or tout ainsi que ce grand Dieu souverain ne peut faire un Dieu pareil B luy, attendu, qu'il est infini, et qu'il ne se

dition of sovereignty lies in the element of derogation from the positive laws. Positively, this principle means simply that the will of the sovereign is the highest and final source of validity for all positive legislation, except for the reservation expressed in terms of divine and natural law.

First of all, and quite in harmony with modern absolute monarchy's attempt at centralization, customary law is unreservedly subordinated to the will of the sovereign, whereas Germanic law had always taken it to constitute an inviolable limit to governmental authority. To be brief, Bodin observes that custom has no legal force except by permission or grace of the sovereign, who can give it force of law. And so the whole force of civil laws and customs depends on the power of the sovereign.<sup>1</sup>

In this sense, as Bodin himself remarks, the foremost and supreme hallmark of *sovereignty* resides in the competence, conceived in an absolutistic sense, to subject all citizens to the law, jointly and each in particular, without requiring anyone's consent.<sup>2</sup>

From this a whole chain of deductions is forged by which the entire subject matter of constitutional law must be comprehended in a strictly logical system. As Bodin himself puts it: "In that same power, to establish and to abrogate law, all other rights and marks of sovereignty are contained, so one could actually argue that this is the sole mark of sovereignty in view of the fact that all other rights of sovereignty are contained in it."<sup>3</sup> And indeed, the other marks of sovereignty can then be deduced next: decisions of war and peace; the function of supreme judge of verdicts and adminis-

peut faire qu'il y ayt deux choses infinies, par demonstration nécessaire: aussi pouvons nous dire, que le Prince que nous avons posé comme l'image de Dieu, ne peut faire un subject egal B luy, que sa puissance ne soit aneantie."

- 1 Ibid.: "[L]e respons que la constume prend sa force peu a peu, et par longues années d'un commun consentement de tous, ou de la plus part: mais la loy sort en un moment, et prend sa vigueur de celui qui a puissance de commander B tous: la coustume se coule doucement, et sans force: la loy est commedee et publiee par puissance, et bien souvent contre le gré des subiects . . . davantage la loy peut casser les coustumes, et la coustume ne peut deroger B la loy. . . la loy emporte toujours loyer, ou peine, si ce n'est une loy permissive, qui leve les defenses d'une autre loy: et, pour le faire court, la coustume n'a force que, par la souffrance, et tant qu'il plaist au Prince souverain, qui peut faire une loy, y adioustant son homologation. Et par ainsi toute la force des loix civiles et coustumes gist au pouvoir du Prince souverain."
- 2 Ibid.: "Et par ainsi nous conclurons que la premiere marque du Prince souverain, c'est la puissance de donner loy B tous en general, et B chacun en particulier: mais ce n'est pas assez, car il faut adjouster, sans le consentement de plus grand, ny de pareil, ny de moindre que soy: car si le Prince est obligé, de ne faire loy sans le consentement d'un plus grand que soy, il est vray subject: si d'un pareil, il aura compaignon: si des subjects, soit du Senat, ou du peuple, il n'est pas souverain."
- 3 Ibid.: "Sous ceste mesme puissance de donner et casser la loy sont compris tous autres droits et marques de souveraineté: de sorte, qu'B parler proprement on peut dire qu'il n'y a que ceste seule marque de souveraineté, attendu que tous les autres droits sont compris en cestuy IB.

trative decisions of magistrates; the appointment and dismissal of the highest officials; the levying of taxes from the subjects, or exemption therefrom; the granting of pardon or dispensation against strict law; the right to mint coin and fix its value; and the right to administer the oath to subjects and vassals that they shall unreservedly be loyal to him.

Clearly, from a systematic point of view this deduction of the rights of sovereignty can hardly lay claim to mathematical rigor. The criterion used in deducing these rights, as Bodin himself observes, is whether or not a government's sovereignty is abrogated when sovereignty rights are in the possession of a subject as his personal rights. From this vantage point, however, only the sovereign right to legislate can be strictly deduced from Bodin's definition of sovereignty.

We are less interested, however, in asking whether Bodin was entirely successful in applying his method than in noting the fact that he was the first to apply this method to the entire subject matter of constitutional law.

The theses which he deduced from natural law repeatedly clashed with the legal practice of medieval constitutionalism still prevalent in many countries. One need only recall the *privilegia de non evocando* by which various German princes were entitled to pass judgment in their territory in their own name. One recalls *the right of non-sovereigns to mint coins*, which according to common opinion could be acquired not only through delegation by the sovereign but also by superannuation; *the right of taxation*, which feudal lords and towns exercised in their own name next to the sovereign's right to tax. Also with respect to the constitutional status of the estates (for example, the English Parliament) Bodin's theory of sovereignty obviously appears not to have been in agreement with the positive constitutional law of various countries.

Bodin does not ignore these contradictions. Where possible he attempts to present constitutional practice so as to be in line with his theory. Where that possibility is out of the question he acknowledges straight out that the practice constitutes an infringement of the inviolable right of the sovereign and must be altered by the sovereign to accord with his plenitude of power, the sooner the better.

On one important matter Bodin tries to adapt his mathematical method to practice without abandoning his preconceived definitions. That is on the very important matter of the *theory of forms of government*. In its strict consistency, this theory offers an instructive illustration of Bodin's method.

The theory of forms of government was a shambles. As a result of uncritical readings of Aristotle's political, ethical, and rhetorical works,<sup>1</sup> theories had been constructed that no longer met the criterion of juridical cor-

<sup>1</sup> In his *Geschichte der Staatsrechtswissenschaft*, p. 110, Rehm deserves praise for having critically analyzed Aristotle's very complicated and not very clear theory of forms of government and for separating the purely constitutional elements from the politico-philosophical, political, and sociological elements. He comes to the con-

rectness. Forms of government were classified according to a variety of features that had nothing to do with their essence (for example, whether the rich or the poor, the virtuous or the wicked were called to govern), while monarchical and republican forms of government were complemented by a series of mixed forms in which sovereignty was divided between king and people, or king and the smallest part of the people.<sup>1</sup>

This confused theory, already undermined by Machiavelli's bipartite classification of all states into monarchies or republics, clashed head-on with Bodin's personalistic theory of sovereignty. Sovereignty as the hallmark of the state in the sense of Bodin's conception will not allow of any division of sovereignty rights that would be inherent in a truly mixed form of government.

There are only three possibilities: monarchy, democracy, and aristocracy, in which sovereignty belongs respectively to a single ruler, to the entire people, or to the smallest part of the people. For, says Bodin,

. . . if, as we have demonstrated, sovereignty is indivisible, how then could it belong at one and the same time to the ruler, the regent and the people? The first mark of sovereignty is the right to lay down the law to the subjects. Who would be the subjects that must obey, if they too have the right of legislation?<sup>2</sup>

It is also absurd to distinguish forms of government according to the quality of the bearers (rich, poor, nobility, wise, etc.) as earlier theories have done.

After all, it is certain that, in order to draw up correct definitions in all things and to draw correct conclusions from them, one must not dwell on accidentals but only on essential and formal differences, otherwise one will wind up in an endless labyrinth that leads to no true knowledge at all.<sup>3</sup>

Yet each of the three possible *forms of government* can in turn be distinguished according to *forms of administration*. For example, a monarchy can be governed democratically when the sovereign ruler distributes offices and honors without considering rank or wealth; it can be governed

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clusion that Aristotle already, at least in his *Politics*, clearly distinguished between forms of government and forms of administration and that his supposed theory of mixed forms of government does not deal with forms of government but with forms of administration. For that matter, Bodin too argues with Aristotle whom he accuses of the greatest possible confusion.

1 In the thetical part of our series we will address the question whether the distinction between monarchies and republics concerns forms of government or forms of administration. [*Editor's Note (DS)*: This "thetical" part is not extant.]

2 Bodin, *République* 2.1

3 Ibid.



aristocratically when he gives these to the rich and the nobility only.<sup>1</sup> The form of administration, however, does not affect the essential nature of the form of government. It is but a rule of state policy.

This is how Bodin tries in some measure to adapt theory to varied practice, without of course resolving the conflicts resulting from the application of his method of natural law to essential points of constitutional law.

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<sup>1</sup> Ibid. 2.2.

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<sup>1</sup> Ibid. 2.2.

## Chapter 11

### *The Mathematical Model Applied to Natural Law*

We have looked at the natural law construction of Bodin's constitutional system. We saw by what method this great jurist elaborated his system, and how his construction was based on the humanist law-idea in its not yet entirely lucid and still somewhat rudimentary form. We also noticed the influence exerted by medieval nominalism's individualistic tendencies, which were only accentuated by the Roman-Stoic theory of the will and power. Finally we observed the presence of a latent conflict between natural law and *raison d'état* in the clash between the doctrine which places the ruler above the laws (the definitive break with medieval constitutionalism and the Germanic conception of law) and the natural-law principle of the inviolability of contracts.

Now we look ahead to the great systems of modern humanist natural law, systems elaborated in a time when the humanist law-idea had already received its first clear formulation in the philosophies of Descartes, Hobbes, and Spinoza.

For the time being, Democritus and Epicurus had gained the upper hand in philosophical thought. The ideal of a purely mechanical, mathematical explanation of nature – the modern ideal of science – became the first constitutive element of the humanist law-idea. This element embodied the sovereignty of reason which breaks down the whole of sensory nature in order to build it up again as a strictly rational system according to laws that are dictated by reason itself. Reason captured one stronghold after another in its victorious advance. After mechanics, kinematics, and the physics built on it, organic nature came next. In this area the Aristotelian concept of science had ensconced itself behind its apparently impregnable bulwark, organic teleology, presumably quite inaccessible to rationalistic causal explanation.

But lo and behold, Harvey discovered the mechanical system of the circulation of the blood, and immediately the supposedly unassailable bulwark of Aristotelian philosophy proved to be a deceptive illusion.

The great Descartes resolutely cleared away the barriers separating mechanics and biology, mechanical and organic nature. All of biology, including the organism of the human body, fell prey to the sovereignty of

reason. "It is an error to believe that the soul imparts motion and heat to the body," he wrote, striking at the heart of the Aristotelian theory of substantial forms according to which the soul, as the body's form, imparts life and movement to the body. The theory of perception (dioptrics) was similarly placed on a footing of purely mathematical mechanics. The continuity of reason, no longer arrested by sovereign limits of law, flowed calmly on like a stream of crystal-clear water, until it ran into the breakwaters of that other constitutive element of the humanist worldview, the sovereignty of the human personality.

The problem of the soul as the bearer of the personality could not, so it seemed, be resolved by the mechanistic method if humanism were not to paralyze the driving force of modern times: the new ideal of life, the enthusiastic faith in the autonomy of the human personality. Descartes capitulated in the face of this requirement of the humanist ideal of life. Soul and matter, thinking and extension, remained for him two absolute substances separated by an unbridgeable chasm. An inner dualism and basic antinomy thus showed itself to be at the heart of the new humanist law-idea and would remain the abiding crux of philosophical thought.

If the Democritean-Epicurean ideal of knowledge were ever to gain the upper hand, then the soul and the normative areas of law, ethics, and religion would likewise be subjected to the absolutism of the mathematical-mechanical outlook on the world. All would then be reduced to matter and motion as the only realities in creation. That trend would give rise to the materialistic systems of Hobbes and the later Enlightenment. But then, this extreme materialism would, from the deepest well-springs of humanism, evoke the sharpest antithetical reaction and give birth to the rationalistic idealist systems of Leibniz and Wolff. These thinkers would deny the sensory material world all real existence, dissolve the entire cosmos into immaterial soul-filled force centers (monads), and recognize for all domains of science, both in mathematical nature and in the domains of morality and law, only the validity of creative reason. In the process it would eliminate sensory observation (the search for the *mathesis universalis*) in the idealist sense in which it has been revived of late by the logicistic trends of Neokantianism – the Marburg School. Between these poles moved a variety of systems that acquiesced in the unresolved antinomy.

Yet this apparently unresolvable antithesis between materialism and idealism in the humanist law-idea was but the polar tension within the field of one and the same worldview. Imperceptibly, idealism and materialism could be transformed, the one into the other, because equally foundational to humanistic materialism was the latent principle of the sovereignty of the human personality in reason, while the idealist systems just as zealously sought to hold fast to the modern ideal of science. The sparks were flying continually from positive to negative pole, releases of energy which in the end would have a leveling effect.

It was the antinomy inherent in the very foundation of the humanist worldview, the tension between the mechanical, mathematical ideal of knowledge and the humanist ideal of life, that continually evoked extreme one-sidedness in every fresh conception of humanism's law-idea. At bottom, materialism and idealism were one in their starting point.

The Copernican revolution accomplished by Kant unmistakably illustrated that deeper unity in the various systems of the humanist worldview. The great Königsberg philosopher managed to establish a kind of balance between the ideal of knowledge and the ideal of personality and to establish within the humanist worldview the limits of both one-sided materialism and one-sided idealism. In the primacy of practical reason, with its categorical imperative, the fundamental law of moral freedom, the humanist ideal of life was once for all acknowledged as the deepest well-spring of the humanist law-idea, while the indissoluble coherence with the mathematical ideal of knowledge was preserved in the theory of pure ideas. Henceforth all humanist schools would base themselves on Kant's critique of knowledge.

The process, briefly telescoped here, had properly begun in the seventeenth century, when the great humanist systems of natural law were being generated. It was the time when idealism and materialism were engaged in a most intense struggle. Descartes on the one hand and Hobbes on the other squared off as the apparently irreconcilable champions of the two schools, armed to the teeth to do battle. At one in their ideal of knowledge, in the Democritean-Platonic concept of science, and in their faith in the sovereignty of human reason, they argued about the limits to the mathematical mechanical worldview over against the humanist ideal of personality.

In the area of natural law this pseudo-war was reflected in the contrast between the schools ushered in by Hobbes and Grotius respectively.

Grotius was, in the true sense of the word, a transitional figure. He was permeated by humanist ideas, an avid pupil of Erasmus and Coornhert, living in the nominalist-Stoic environment of the Dutch school of humanists where the Renaissance's practical ideal of life predominated. He was also an enthusiastic proponent of the mathematical ideal of science. His mind was also still entwined by Scholastic vines, the more objectionable to the modern observer since the vines had been cut loose from the nourishing roots of the Thomist law-idea and now exhibited dry rot. Insufficient knowledge of both the history of Scholasticism and the inner continuity between Scholastic nominalism and the modern nominalism of the Renaissance has given rise to two kinds of fundamental misunderstanding concerning Grotius.

On the one hand, traditional theory likes to see him as the creator of a brand new modern natural law in that he is said to have liberated natural

law from its bondage to theology; on the other, the crown of glory has been unmercifully plucked from his head and he has been called a mere epigone of the Scholastic proponents of natural law.<sup>1</sup> Superficial verdicts, both of them!

Modern natural law will never be seen in its proper relation to Scholasticism unless we engage in the arduous task of examining the humanist law-idea as to its foundations. And it may be taken as proof of the backwardness of much present-day legal philosophy that the foundation of any worldview is simply unaccounted for, while even the *term* law-idea is no longer understood.

Grotius' system of natural law is indeed, following Bodin's natural-law political theory, to be understood as a further phase in the elaboration of the humanist law-idea. It is inspired by both the ideal of personality and the ideal of science.

Until now humanism had not attempted the methodological construction of an entire system of concrete rules of natural law, deriving its validity from natural reason alone, independent of all positive legal ordering. Grotius' achievement had no precedent in Scholasticism. Thomist natural law theory was never intended to provide a rigidly closed system of natural law in this sense. Rooted in the mighty conception of the Thomist law-idea which interrelated all spheres of law by the principle of entelechy, it provided only general ethical and legal *principia* derived from a natural knowledge of God by rational nature, having as its supreme principle, "Do good, avoid evil," while the application of these *principia* to the concrete political circumstances was left to the rational insight of the individual legislator. In this way positive law became nothing but a closer, specific elaboration, according to the need of time and place, of that which was grounded organically as natural law in the eternal order of the universe. Hence also the elasticity of Thomas' natural law, which could continue to be the foundation, by and large, right down to our own time, of the neo-Thomist legal and political theory. By contrast, Grotius'

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<sup>1</sup> Already the Court Councillor of Göttingen, Johann Jacob Schmauss, in his *Neues System des Rechts der Natur* (Göttingen, 1754) observed that "whatever Grotius advances of natural law is nothing but the old Scholastic doctrine." So also Ferdinand Tönnies in his otherwise excellent *Thomas Hobbes: Der Mann und der Denker*, 2nd enl. ed. (Osterwieck/Harz: Zickfeldt, 1912), p. 161. So, basically, also Ernst Troeltsch in his "Das stoisch-christliche Naturrecht und das moderne profane Naturrecht," in *Aufsätze zur Geistesgeschichte und Religionssoziologie*, ed. Hans Baron, vol. 4 of *Gesammelte Schriften* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1925), p. 166 ff. At 189f. Troeltsch writes: "Grotius, in conscious union with Stoic and Scholastic examples, enlarged the range of absolute and purely rational natural law and again placed the Christian moral law opposite it in the position of special, not rationally necessary counsels and considerations, similarly to Catholicism." Troeltsch, who cannot easily be accused of superficiality, nevertheless has definitely not succeeded in properly evaluating Grotius' significance as a humanist theorist of natural law.



theory of natural law is seen, even in present-day humanist views of law, as hopelessly outdated.

Grotius' effort was novel in that it tried to construct a rigid and closed system of natural law on the analogy of the deduction of mathematical theorems from a complex of axioms and postulates. Scholasticism's own nominalistic theory of natural law, as we saw, had no such pretension.

Bodin had constructed only a natural theory of the state, but wherever the validity of the application of principles of general natural law (*jus naturale*) appeared to be at stake, he had confined himself to referring to well-known Stoic *abstract* formulas (*aequitas, suum cuique tribuere, honeste vivere, alterum non laedere*, etc.). It is precisely this abstract natural law that Grotius was now to elaborate according to the mathematical method [*more geometrico*] into a complete code of concrete natural-law rules. In his magnum opus *De jure belli ac pacis* [*On the Law of War and Peace*], the first edition of which appeared sixteen years after his no less famous *Mare liberum* [*Freedom of the Seas*] (1609), one finds not only a detailed exposition of the international rules that are based on natural law or on the implicit agreement (*pacta, consensus tacitus*) of civilized peoples, nor just a natural-law theory of sovereignty, but also a complete code of purely natural-law private law, business law, family law, law of succession, and law of contract, all of them highly detailed and casuistically elaborated (for example, an entire law of succession at death with very precise ranking of the heirs; and a host of very casuistic rules concerning the construction of cases, tracing of law, property acquisition and property loss, superannuation; and so on and so forth).

### Basic principles of Grotius' natural law

Let us look at the basic principles, method, and structure of this system of natural law in somewhat greater detail. This will enable us to determine more clearly Grotius' place in the unfolding of modern natural law as well as his relation to Scholasticism.

First, then, what are the basic principles of Grotius' natural law?

In the Prolegomena to his *magnum opus* our author provides a detailed account of these principles. He proceeds from man's social nature (*appetitus socialis*) as one of the natural attributes which elevate man above brute creatures and which through the instrument of language clearly demonstrates the rational nature of man. By social nature he means a certain inclination of man towards living with his equals, not just in any which way, but peaceably and in a community organized according to the measure of his intellect.<sup>1</sup> In this social nature, this inclination to live in community in a manner that is consonant with natural reason, Grotius sees

1 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 6: "Inter haec autem quae homini sunt propria, est appetitus societatis, id est communitates, non qualiscunque, sed tranquillae, et pro sui intellectus modo ordinatae eum his sui sunt generis: quam οἰκειωσιν Stoici appellabant."

the deepest source of natural law proper which he believes he can sum up in four main principles:

- (a) That one must take care not to misappropriate the property of others, and that one must return whatever one holds in custody, or render compensation for the advantage gained therefrom;
- (b) That one is obliged to keep one's promises and contracts;
- (c) That damage to others through one's fault must be compensated; and
- (d) That every violation of these rules deserves to be punished among men.<sup>1</sup>

*De jure belli ac pacis* 1.1.10 gives us a definition of natural law. It consists of a dictate of right reason which says that a moral necessity [goodness] or a moral baseness [evil] is properly part of an act depending on its agreement, or lack of agreement, with the rational and social nature.<sup>2</sup> Thus it is not a blind natural drive but the *rational* social nature that must be elevated as the source of natural law. All human beings, according to Grotius, are bearers of this unwritten law that is engraved in their rational nature. Superficially, the above would seem to suggest a surprising similarity with Aristotle's view of natural law as well as with that of Augustine and Thomist Scholasticism. That similarity, however, as we shall show below, is but extrinsic.

To be sure, the conception of man as a rational being who is by nature inclined towards community is common to Platonism, Aristotelianism, Stoicism, as well as to the Christian theory of natural law from Augustine to Thomas. But in each of the systems mentioned, as we have seen repeatedly, this principle of natural law was grounded in a universal *organic* (not mechanistic) law-idea of one kind or another. The principle was not isolated but continually received its nutriment from the cosmic coherence of all spheres of law conjunctively, as part of the overall divine scheme of things.

Grotius, by contrast, abstracts and isolates this fundamental principle so as to form an individualistic principle, and in so doing follows the course of the humanist-nominalist ideal of science, with a particular end in view, namely to construct a framework for science from as few principles as possible and quite apart from any speculative metaphysics.

1 Ibid., Prolegomena, sec. 8: "Haec vero quam rudi modo jam expressimus, societatis custodia, humano intellectui conveniens, fons est eius iuris, quod proprie tali nomine appellatur: quo pertinent alieni abstinentia, et si quid alieni habeamus, aut lucri inde fecerimus restitutio, promissorum implendorum obligatio, damni culpa dati reparatio, et poenae inter homines meritum."

2 Ibid., 1.1.10.1: "Jus naturale est dictatum rectae rationis indicans, actui, alicui, ex eius convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem, turpitudinem aut necessitatem moralem, ac consequenter ab auctore naturae Deo talem actum aut vetari aut praecipere."

This individualistic, nominalistic character of Grotius' theory of natural law, quite different from that of the Aristotelian-Thomist school, comes to immediate expression in the first basic determination of the relation between natural and positive law. For Thomas, as we saw, positive law was nothing but the elaboration of principles of natural law, whether by way of deduction or by way of closer determination in connection with the particular circumstances of time and place.<sup>1</sup> In the process, natural law in its primary and secondary (inferred) principles was seen as an organic *unity* and in turn placed within the organic coherence of the entire natural world-order. Grotius, by contrast, bases positive law on a contract. What remains as a natural-law basis for the validity of this positive law is the isolated principle that *contracts must be kept*.<sup>2</sup> This principle, in Grotius, acquires that formalistic and abstract character *because he no longer even considers the legal ground of "just cause"* to be a necessary condition.<sup>3</sup> This construction of contract, so familiar to us from the nominalist view of law and based so clearly on a conception of the original liberty and equality of all individuals (we ascertained its presence also in Bodin), has far-reaching consequences once it is elaborated upon.

First of all it should be observed – and we shall have to elaborate this idea more fully in the thetical part of our inquiry<sup>4</sup> – that the principle of the inviolability of contracts does not, in and of itself, guarantee justice. It is nothing but a primary principle of the ordering character of law, undoubtedly established by God, that acquires its sense as justice only when the positive order of law determines it in concrete legal regulations in accordance with the entire organic coherence of God's ordinances for social justice. If, however, one isolates and abstracts this principle from that divine coherence of principles of law, it becomes nothing but the sanctioning of

1 Thomas Aquinas, *Summa Theol.*, Ia-IIae q. 91a 3 co.: “. . . sicut in ratione speculativa ex principiis indemonstrabilibus naturaliter cognitis producuntur conclusiones diversarum scientiarum, . . . ita etiam ex praeceptis legis naturalis, quasi ex quibusdam principiis communibus, et indemonstrabilibus, necesse est quod ratio humana procedat ad aliqua magis particulariter disponenda. . . . Et istae particulares dispositiones adinventae secundum rationem humanam dicuntur leges humanae, observatis aliis conditionibus, quae pertinent ad rationem legis. . . .”

2 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 15: “Deinde vero cum juris naturae sit stare pactis, (necessarius enim erat inter homines aliquis se obligandi modus, neque vero alius modus naturalis fingi potest) ab hoc ipso fonte jura civilia fluxerunt.” Ibid., Prolegomena, sec. 16: “[C]ivilis vero juris mater ipsa ex consensu obligatio, quae cum ex naturali jure vim suam habeat, potest natura huius quoque juris quasi proavia dici.”

3 Ibid. 1.9.9: “Quaeri hic solet an promissio facta ob causam naturaliter vitiosam ipsa natura valeat, ut si quid promittatur homicidii perpetrandi causa. Hic ipsam promissionem vitiosam esse salis apparet; in hoc enim adhibetur, ut alter impellatur ad malum facinus. *Sed non quicquid vitiose fit effectu juris caret*, quod in prodiga donatione apparet. Hoc interest, quod donatione facta jam cessat vitiositas.” Ibid. 1.9.10: “. . . *nam et sine ulla causa promissum naturaliter debetur.*”

4 *Editorial note (DS)*: This thetical part is not extant.

the free play of socio-economic forces in which the most brutal injustice can be legitimated by the slogan of the inviolability of contracts. This consequence, which would consign Grotius' entire codex of natural law to the rubbish heap, was of course not acceptable to him. To be sure, according to Grotius the code of natural-law rules, worked out in such great detail, applies first of all to persons who are not subject to the authority of positive law.<sup>1</sup> Nevertheless, "civil law can prescribe nothing that is prohibited by natural law, nor prohibit what is prescribed by natural law." It can only "circumscribe natural freedom and veto what was permitted by nature."<sup>2</sup>

That explains why human laws have binding force only when they take into account human strength, and not if they impose a burden altogether too heavy and quite at odds with both reason and nature.<sup>3</sup>

It is beyond dispute, according to the judgment of all good men, that the injunctions of government are not to be obeyed when they run counter to natural law or divine precepts.<sup>4</sup>

On closer examination it appears that Grotius intentionally makes *pacta sunt servanda* the sole foundation of positive law, by reason of its *neutral* character when measured against the criterion of justice, in order to allow the greatest possible scope for positive law within the limits of natural and divine law. The ancient adage here receives new meaning: it must serve to strengthen the authority of the state over the individual, quite in accordance with an absolutistic idea of the state. It leads here to extreme positivism.

The theory of contract soon appears to be nothing but an extreme theory of the will in the sense of Roman law. Contract theory, as we saw, was already known in the earlier nominalist, individualist conception of the Middle Ages in the form of a social contract by which individuals united to form a community, and a supplementary contract of subjection between ruler and people by which the people transferred the exercise of their original sovereignty, in whole or with reservations, to the chosen ruler. All along, the view persisted that the people retained their sovereignty, embodied in their competence to make laws.

1 Ibid. 2.12.12.2: "Hi vero qui legibus civilibus subjecti non sunt, id sequi debent quod aequum esse ipsis ratio recta dicit: imo et illi qui legibus subjecti sunt, quoties de eo quod fas piusque est agitur, si modo leges non jus dant aut tollunt, sed juri duntaxat ob certas causas auxilium suum donegant."

2 Ibid. 2.2.5: "Lex enim civilis quanquam nihil potest praecipere quod jus naturae prohibet, aut prohibere quod praecipit, potest tamen libertatem naturalem circumscribere, et vetare quod naturaliter licebat."

3 Ibid. 3.23.5.3: "[N]am leges humanae, ut alibi diximus, vim obligandi tum demum habent, si latae sint ad humanum modum, non si onus injungant, quod a ratione et natura plane abhorreat."

4 Ibid. 1.4.1.3: "Illus quidem apud omnes bonos extra controversiam est; si quid imperent naturali jure aut divinus praeceptio contrarium, non esse faciendum quod jubent."

At the start of his *magnum opus* Grotius does formally link up with the theory of contract, but he soon gives it an absolutistic twist. He writes in the Prolegomena:

Since it is a law of nature to observe contracts (*after all, among men some mode was required by which to oblige themselves to one another, and a different mode than that of contract is really not conceivable*), civil law sprang forth from this very source. For those who united to form a community, or subjected themselves to one or more persons, had promised in so many words (*or from the nature of the case such a promise must be tacitly assumed*) that they would submit to whatever was decided by the majority of the community or by those upon whom authority had been conferred. . . . The mother of civil law therefore is a contractual obligation; and since this obligation derives its force from natural law, natural law may be called the ancestor of this law.<sup>1</sup>

In the same vein, positive international law (*jus gentium*) is defined as a law that arose between all or most states from an explicit or tacit agreement.<sup>2</sup>

But then this train of thought turns in a direction radically opposed to the old Germanic conception of law that had largely inspired the medieval theory of contract. Just as from the very beginning the contractual obligation covered persons who had not participated in concluding the contract (for example, those not yet of age), so it involuntarily passed on to all later generations. The contract of authority at the inauguration of sovereignty could have been phrased so as to mean that authority would henceforth depend in no way on the people anymore. Later, the people could also renounce a right they had reserved for themselves at the start. Indeed, a nation could so submit to one or more persons that it retained none of its original liberty (for example, in case of surrender to an enemy). This conception already implied the transition to the modern absolutistic theory of the will.

Grotius, like Bodin, grounds positive law directly in the *will* of the ruler and he also consistently defends the view that the ruler is not subject to the laws, which depend entirely on his will.

One could call all of this the consequence of a theory of contract which views natural and divine law only as a limit, a boundary, for the legislator, while at the same time conceiving of positive law as a purely neutral power of the will.

The gap between this nominalist theory and that of Aristotle and Thomas is certainly evident when one notes that Grotius' concept of positive law omits precisely that essential feature which was an inherent part

1 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 15 and 16.

2 Ibid., Prolegomena, sec. 17: "Sed sicut cuiusque civitatis jura utilitatem seae civitatis respiciunt, ita inter civitates aut omnes aut plerasque ex consensu jura quaedam nasci potuerunt, et nata apparet, quae utilitatem respicerent non coetuum singulorum, sed magnae illius universitatis."

of it for Thomas. Thomas defined the law as an ordinance of reason promulgated *for the common good* by him who is entrusted with the care of the community.<sup>1</sup> To him, therefore, the welfare of the subjects was a necessary criterion of positive law.

In Grotius, by contrast, we find the theory of the will to have penetrated his conception of authority so fully that he no longer considers this age-old criterion necessary. Using the master-slave relation as illustrative support, he argues that nothing precludes the lawful existence of civil governments that have been established for the exclusive benefit of the sovereign, as, for instance, those realms which a ruler acquires by right of conquest. Such governments may not be called tyrannical since tyranny presupposes some injustice.<sup>2</sup>

That is why Grotius must also reject the medieval natural-law theory of popular sovereignty which implied the political idea of the general welfare or public good. He defines sovereignty as the power whose actions of will are independent of any other power so that they can be nullified by no other human will. Only the sovereign himself is free at all times to change his will.<sup>3</sup>

Grotius appears to pick up again on the original idea of popular sovereignty in natural law when he recognizes two kinds of subjects of this sovereignty: the *general* and the *particular* subject (*subjectum commune* and *subjectum proprium*). The general subject of sovereignty is the state as a complete association of free men who have united for the peaceful enjoyment of their rights and for their common interest.<sup>4</sup> The particular subject, however, is the personal ruler (be it one or more persons) who from this point on, without further ado, he refers to as “the sovereign.”

At the same time, as Grotius continues his discourse, this sovereignty of the state or of the people (the two are still identical for him), with its criterion of the general welfare, disappears entirely behind the personal sovereignty of the ruler. Only if the people have reserved certain rights for

1 Thomas Aquinas, *Summa Theol.*, Ia-IIae q. 90 a. 4 co.: “. . . legis nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo, qui curam communitatis habet, promulgata.”

2 Grotius, *De jure belli ac pacis* 1.3.8.14: “Sed nec illud universaliter verum est, omne regimen eius qui regitur causa esse comparatum; nam quaedam regimina per se sunt regentis causa, ut dominicum: nam servi utilitas ibi extrinseca est et adventitia . . .”

3 Ibid. 1.3.7.1: “Summa autem [*scil.* potestas civilis] illa dicitur, cuius actus alterius juri non subsunt, ita ut alterius voluntatis humanae arbitrio irriti possint reddi. Alterius cum dico, ipsum excludo, qui summa potestate utitur, cui voluntatem mutare licet. . . .”

4 Ibid. 1.3.7.3: “Subjectum ergo commune summae potestatis esto civitas, ita ut jam diximus intellecta. Subjectum proprium est persona una pluresque, pro cuiusque, gentis legibus ac moribus.” Ibid. 1.1.14.1: “Potestas civilis est quae civitati praest. Est autem civitas coetus perfectus liberorum hominum, juris fruendi et *communis utilitatis causa sociatus.*”



themselves when they concluded their contract of subjection can they insist on these rights against the sovereign, if need be by way of active resistance.

When the office of government becomes vacant the people can of course reactivate their original sovereignty if no rule of succession is in place. Initially then, positive law was traced to a contract, and in a few places positive laws are even referred to as a kind of common agreement of a people; but in general, positive law is defined without further ado as the law that flows from the will of the ruler.<sup>1</sup> This sovereignty, as we have seen, absorbs the free spheres of life to such an extent that the public regulation of religion is also subject to it.<sup>2</sup> In this way the humanist natural-law principle of the inviolability of contracts leads directly to an extreme positivism of the will. The construct of the contract in its neutral sense will even serve to sanction the acquisition of sovereignty by brute force. The tacit consent of the subjects legitimates violence.<sup>3</sup> Over against this positivistic line of thought, however, Grotius simultaneously constructs his codex of natural law, deduced from practical reason *more geometrico*.

### **Grotius' method in constructing his system of natural law**

Let us examine this method more closely in order to ascertain, here as well, to what extent the modern humanist law-idea is embodied in Grotius' system and on which points he merely stays within the Christian, Scholastic, and Stoic tradition.

It is an established but historically mistaken opinion that Grotius was the first to sever the connection between natural law and the will of God, between science and religion in the field of law. To maintain this opinion, one must be fixated on a single passage in the Prolegomena of Grotius' major work, which reads:

All that we have observed here [about the source and the four main principles of natural law] would in a certain sense be valid even if it should be admitted (which cannot be admitted without sinning heinously) that there is no God, or that the affairs of men are of no concern to Him.<sup>4</sup>

1 On the one hand, see *ibid.* 2.11.1: “[L]eges, quae quasi pactum commune sunt populi, atque hoc nomine vocantur ab Aristotele et Demosthene,” and *ibid.* 1.4.7.2: “Haec autem lex de qua agimus pendere videtur a voluntate eorum, qui se primum in societatem, civilem consociant, a quibus jus porro ad imperantes manet.” On the other hand, see *ibid.* 1.1.14.1: “Civile [jus] est quod a potestate civili profiscitur.” Cf. *ibid.* 1.3.7.1, quoted above.

2 Cf. e.g. the appeal to the state of the Hebrews in *ibid.* 1.4.7.3.

3 *Ibid.* 2.4.14.1: “Nam et quae *vi parata* primum sunt imperia possunt *ex voluntate tacita jus firmum accipere*, et voluntas aut ex initio constituti imperii, aut ex post facto esse potest talis, ut jus det quod in posterum a voluntate non pendeat.”

4 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 11: “Et haec quidem quae jam diximus, locum aliquem haberent etiamsi, quod sine summo scelere dari nequit,

Usually the statement which follows directly on this one is omitted, namely, that reason itself teaches us that there is a God. It is further forgotten that in a Scholastic vein Grotius repeatedly calls God the author of our rational nature and of natural law, and even refers to *jus divinum voluntarium* (the law which, in distinction from the immutable law of nature, depends solely and exclusively on *God's will*) as a law which reason itself commands us to obey.<sup>1</sup>

Above all, however, it is forgotten that taken by itself Grotius is only expressing a thought which had been formulated in so many words during the Middle Ages. The tenet that natural law, being founded in rational nature, could not be changed by God notwithstanding his omnipotence was commonplace in Thomist philosophy. Thomas Aquinas traced only the binding force of this natural law to God's will. Duns Scotus, who also, at least in part, made the content of natural law depend on God's will, furthermore stated openly that the rules of mathematics would hold even if there were no God. Finally, Gierke<sup>2</sup> and Stahl (in his *Geschichte der Rechtsphilosophie*) have shown that Grotius' statement was known already to Scholasticism in more or less the same formulation.

Viewed by itself, then, Grotius' statement, clothed as it is in all kinds of reservations, contains nothing new. It derives meaning only in light of his entire work, which bears the stamp of the new ideals of science and personality. Writes he: "The laws of nature, being always the same, can easily be reduced to scientific rules, but those which derive their origin from some human institution or other, since they are often changed and differ from place to place, are not amenable to scientific treatment."<sup>3</sup>

In deducing the rules of natural law, Grotius says he follows two kinds of method. The first he calls the *a priori method*, by which is demonstrated that a matter, whether of necessity or not, agrees with the rational and social nature. It is the more subtle and abstract method. The other method, favored in popular reflection, is the *a posteriori method*, by which one decides, if not with mathematical certainty then at least with a great degree of probability, that natural law is that which all (or at least all civilized) peoples regard as having the character of natural law. For a general effect requires a general cause. The cause of such an established conviction among all peoples can hardly be anything else than mankind's

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non esse Deum, aut non curari ab es negotia humana; cuius contrarium cum nobis partim ratio, partim traditio perpetua, inseverint."

1 Ibid., Prolegomena, sec. 12).

2 Gierke, *Althusius*, p. 74 n. 45, points to statements by Gabriel Biel (d. ca. 1495) in his *Collectorium circa quattuor libros Sententiarum* 2, dist. 35, q. 1 a. 1 and to statements by Gregory of Rimini, Jacobus Almain and Anton de Córdoba, quoted and opposed by Suárez, *De legibus* 2.6.3.

3 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 30: "Nam naturalia, cum semper eadem sint, facile possum in artem colligi: illa autem quae ex constitutio veniunt, cum et mutentur saepe, et alibi alia sint, extra artem posita sunt, ut aliae rerum singularium perceptiones."

common understanding. When applying this second method, however, one should go back again to the first (a priori) method. For that which different peoples in different places and different times have considered law can either be an application of natural-law principles, or be nothing but a tacit agreement, which generates only *jus gentium voluntarium*, not *jus naturale*.<sup>1</sup>

At the start of *De jure belli ac pacis* 1.2, the a priori method is further explained by reference to the Stoic differentiation of natural principles into (1) natural instinct common to all living beings, and (2) knowledge of a matter's agreement or lack of agreement with natural reason (the *honestum*). The first principle teaches us that every creature is inclined to self-preservation and obliged to seek every means that can contribute to its survival and to avoid and repel everything that could lead to its destruction. The second principle is the test of the rational nature according to *the nature of the matter* to which the test is applied.<sup>2</sup> These two principles then justify first of all the waging of war as a natural right.

All these expositions hark back to the eclectic approach to law of Cicero and Seneca<sup>3</sup> and we ask ourselves how it is possible to deduce by such a method an entire system of concrete, *unchangeable* rules of law, some-

- 1 Ibid. 1.1.12 and Prolegomena, sec. 40. See also 1.10.19.1: "Esse autem aliquid juris naturalis probari solet tum ab eo quod prius est, tum ab eo quod posterius, quarum probandi rationum illa subtilior est, haec popularior. A priori, si ostendatur rei alicuius convenientia aut disconvenientia necessaria cum natura rationali ac sociali: a posteriori vero, si non certissima fide, certe probabiliter admodum, juris naturalis esse colligitur id quod apud omnes gentes, aut moratiores omnes tale esse creditur. Nam universalis effectus universalem requirit causam: talis autem existimationis causa vix ulla videtur esse posse praeter sensum ipsum communis qui dicitur." Prolegomena, sec. 40: "Sed quod ubi multi diversis temporibus ac locis idem pro certo affirmant, id ad causam universalem referri debeat: quae in nostris quaestionibus alia esse non potest, quam aut recta illatio ex naturae principiis procedens, aut communis aliquis consensus. Illa jus naturae indicat, hic jus gentium, quorum discrimen non quidem ex ipsis testimoniis (passim enim scriptores voces juris naturae et gentium permiscent) sed ex materiae qualitate intellegendum est. *Quod enim ex certis principiis certa argumentatione deduci non potest, et tamen ubique observatum apparet, sequitur ut ex voluntate libera artum habeat.*"
- 2 Ibid. 1.2.1: "[P]rimumque esse officium ut se quis conservet in naturae statu, deinceps ut ea teneat quae secundum naturam sint, pellatque contraria." Ibid. 1.2.2: "At post haec cognita sequi notionem convenientiae rerum cum ipsa ratione quae corpore est potior; atque eam convenientiam in qua honestum sit propositum pluris faciendam quam ad quae sola primum animi appetitio ferebatur; quia prima naturae commendat nos quidem rectae rationi, sed ipsa recta ratio carior nobis esse debeat quam illa sint a quibus ad hanc venerimus."
- 3 Cf. Seneca, *Epistolae morales*, Letter 124.11: "Post haec cognita sequi notionem convenientiae rerum cum ipsa ratione, quemadmodum omnis natura bonum suum nisi consummata non profert, ita hominis bonum non est in homine, nisi cum in illi ratio perfecta est." And ibid., Letter 76.8: "Id in quoque optimum est cui nascitur, quo censetur, in homine optimum quid est? Ratio." See also Cicero, *De finibus bonorum et malorum* 3.5.17.

thing the Roman-Stoic approach to law certainly never attempted, or considered possible, or even proper.

This question presses all the more when one considers that Grotius indeed set out to mathematically deduce his entire system from a single, isolated premise, that of the rational social nature.

Grotius' definition of natural law as a mathematical axiom, introduced to support his entire system, in no way points to a material criterion for distinguishing what is in agreement with the social nature and therefore just. The definition lacks content – is an empty formula. It is noteworthy that later Grotius does try to take up in the definition a more definite criterion of justice and injustice. It reads: “By right we understand nothing other than what is just, and that more in a negative than a positive sense, so that right is what is not unjust. *Injustice, however, is what is at odds with the nature of a community of rational beings.*”<sup>1</sup>

We cannot help but be reminded here of a comparison, first made by Dr. Gysin,<sup>2</sup> with Stammler's very modern natural law. On the critical basis of Neokantianism, Stammler intentionally tried to deduce from human reason a purely formal, empty criterion (law-idea) for the justice or injustice of positive law. That law-idea is defined by Stammler as a community of people exercising their free will.

The Neokantian proponents of natural law, taught by experience, no longer try to deduce an entire system of concrete rules of law from this criterion, as did Grotius and his school. They do not simply follow the method of mathematics, but rather the method of mathematical natural science in the sense of Kant's critique of knowledge, which leaves full scope to experience alongside mathematical thought. This natural law consists of purely formal guidelines that become concrete only in their application to the material of experience.

Still, the mathematical ideal of knowledge in its deepest tendencies does unite Grotius and Stammler in the deeper unity of the humanist law-idea. The surprising similarity between the two definitions of natural law exhibits only one clear distinction: Stammler mixes an ethical element into it (that of the free will, the will directed to the basic ethical law) and for that reason alone is able to deduce some material (though Stammler of course must call them “formal”) criteria of justice and injustice; Grotius, by contrast, draws a sharp distinction between natural law and ethics, banning all purely ethical elements from his principles of law. Thus we noted how Grotius does not consider slavery to be in conflict with natural law, although he certainly condemns it from the point of view

1 Grotius, *De jure belli ac pacis* 1.1.3.1: “Nam jus hic nihil aliud quam quod justum est significat: adque negante magis sensu, quam niente, ut jus sit quod injustum non est. Est autem injustum, quod naturae societatis ratione utentium repugnat.”

2 Arnold Gysin, *Die Lehre vom Naturrecht bei Leonard Nelson und das Naturrecht der Aufklärung* (Berlin-Grunewald: Rothschild, 1924).

of ethics. Similarly, like Bodin, he also acknowledges a father's right, by nature, to sell his children when life's exigencies require it.<sup>1</sup>

Above we observed that Grotius includes the element of legal coercion among the four principles of natural law proper. In the Prolegomena he tells us further that the essence of justice consists in abstaining from things that do not belong to us (the domain of the strictly "mine" and "thine").<sup>2</sup> The element of *outward* obligation sharply demarcates law from ethics in Grotius.<sup>3</sup> Ethics is based on other principles of practical reason (such as generosity, gratitude, compassion, and charity), from which citizens cannot derive any legal claims on each other.<sup>4</sup> "Law compels, even if only the conscience."<sup>5</sup> Indeed, also the area of *justitia distributiva* in the Aristotelian-Thomist sense – that is, the justice which the state must practice towards its citizens in the distribution of offices and honors, and which Grotius expands to include the concept of the proper measure in compassion, charity, etc. – cannot be considered part of law, strictly conceived. For this strict law according to Grotius consists only of this: a person must not violate his fellow citizens in that which already belongs to them, and must discharge the contractual obligations towards them, the compliance with which may be demanded by them according to strict law.

Similarly *jus permissivum*, that is, that which is legally permitted and not strictly commanded, is not, in his opinion, part of natural law proper except insofar as it obliges others to refrain from infractions against subjective rights.<sup>6</sup> Only the strict law in this very narrow sense, according to Grotius,<sup>7</sup> follows with mathematical necessity from his definition of natural law.

Besides this strict conception of law, however, there is the much more encompassing one, the conception of *justitia legalis* or legal justice in the widest sense, which rests on the law as norm of moral actions, a norm which *obligates* a person to do what is just and which is not restricted to

1 Grotius, *De jure belli ac pacis* 2.5.5.

2 Ibid., Prolegomena, sec. 44: "[C]um tamen injustitia non aliam naturam habeat quam alieni usurpationem, nec referat, ex avaritia illa, an ex libidine, an ex ira, an ex imprudente misericordia proveniat; an ex cupiditate excellendi, unde maximae injuriae nasci solent. Nam qualiacunque incitamenta contemnere hac tantum de causa, ne societas humana violetur, hoc vero justitiae proprium est."

3 See also *De jure belli ac pacis* 2.4.3 and 2.6.1.1.

4 Ibid. 2.22.16.

5 Grotius, *De jure belli ac pacis*, Prolegomena, sec. 20.

6 Ibid. 1.1.9: "Est et tertia juris significatio quae idem valet quod Lex, quoties vox legis largissime sumitur, ut si Regula actuum moralium obligans ad id quod rectum est. *Obligationem requirimus: nam consilia et si qua sunt alla praescripta, honesta quidem sed non obligantia*, legis aut juris nomine non veniunt. *Permissio autem proprie non actio est legis, sed actionis negatio, nisi quatenus alium ab eo cui permittitur obligat ne impedimentum ponat.*"

7 All this goes to show sufficiently that Meinecke is mistaken when he says in his *Idee der Staatsräson*, p. 261, that Grotius "again and again mixes law and morality".

*legal duties* in the narrow sense but also embraces those duties that are the object of other virtues (the *honestum* in the broader sense). To be sure, legal justice comprises those duties only to the extent that they have been elevated to constitute *legal duties* as a result of the force of law. This legal justice Grotius considers to be part of *natural law in the broad sense*.

Between the two concepts of strict law and legal justice there is the Aristotelian *justitia distributiva*.

In all this we find again, by and large, the Aristotelian and Thomist classification of law, just as Grotius also appears to be wholly sold on the Scholastic conception of grades of moral perfection, the distinction between evangelical counsels and natural-law injunctions, and so on.<sup>1</sup> Yet, on balance, a fundamental change has taken place in Grotius compared with Scholasticism. These changes in his conception of the essence of natural law are so fundamental that his theory clearly betrays the influence of the humanist law-idea. Gone is the Aristotelian conception of virtue as the mean between two extreme affections, a theory indissolubly intertwined with Aristotelian anthropology. Gone too is the Aristotelian-Thomist concept of justice in the narrow sense as an equilibrium between performance and counter-performance. Gone in Grotius – and this is the most basic difference – is the organic implantation of the three kinds of natural law into the Aristotelian-Thomist law-idea. The principles of law are not deduced from the *lex aeterna* as organic, objective, eternal intertwinement of cosmic order and moral order, but from the isolated subjective principle of the social nature of the human personality. The humanist ideal of personality is the irrational motive force behind modern natural law theory.

Stimulated by that ideal, Grotius seeks a system of eternal, immutable rules of natural law, a system in which the sovereignty of reason must manifest itself by deducing the rules of natural law with uninterrupted continuity from their final axiom according to the abstract method of mathematics. This is how Grotius himself describes the ideal of his method:

In this entire work I have envisioned achieving the following three purposes: To give the clearest possible account of *that which I wanted to define* [cf. the *logon didonai* in Plato and in the humanist ideal of science]; to set forth in a definite order the matters to be dealt with; and to distinguish clearly between things that seem the same yet are different. . . . One would do me wrong to think that I had in mind any points of conflict that have arisen or can be predicted in my treatment. *For I can declare in good faith that, just as mathematicians abstract geometrical figures from sensory observable bodies, so also I, in the treatment of law, have abstracted from every particular circumstance.*<sup>2</sup>

1 See once again Grotius, *De jure belli ac pacis* 1.1.4.1.

2 Ibid., Prolegomena, sec. 56: “In toto opere tria maxime mihi proposui, ut definiendi rationes redderem quam maxime evidentes, et ut quae erant tractanda, ordine certo disponerem, et ut quae eadem inter se videri poterant nec erant, perspicue disting-



Such is the nature of Grotius' scientific program. What aspect of the law did he really wish to treat? On reading and rereading both his fundamental principles and their elaboration, we can arrive at no other conclusion than that Grotius indeed was not out to deduce a rational system of law that meets the requirements of justice in the ideal sense, in other words a kind of ideal order of law, albeit with direct obligatory force. Rather, it is becoming clearer all the time that with his system of natural law Grotius wished to provide no more than *the permanent natural-law structure of all law (as the nature of law)* quite apart from any higher criteria of equity and justice. In comparison with Stammler's theory of law, one can also express it in this way: Grotius did not want to present a system deduced from the idea of law (a criterion of justice or injustice for existing positive law) but a system deduced from the *concept of law* (the permanent structure of positive law itself).

This interpretation of Grotius' theory of natural law must now be substantiated more fully from the sources.<sup>1</sup>

The key to our interpretation is provided by Grotius' exposition of natural law in the strict sense.<sup>2</sup> He first provides his peculiar negative definition of natural law in section 3 of *De jure belli ac pacis*, already cited above: law or right is all that is not "at odds with the nature of a community of rational beings." Then the very next section states: "Distinct from this meaning of law is another that does derive its origin from the former

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uerem." Ibid., Prolegomena, sec. 58: "Injuriam mihi faciet si quis me ad ulla nostri saeculi controversias, aut natas aut quae nascituae praevideri possunt, aespexisse arbitrat. Vere enim profiteor, sicut mathematici figuras a corporibus semotas considerant, ita me in jure tractando ab omni singulari facto abduxisse animum."

- 1 Friedrich Julius Stahl in his *Geschichte der Rechtsphilosophie* has noticed this character of Grotius' natural law as opposed to a merely ideal law. By contrast, Arnold Gysin, in his otherwise perceptive *Die Lehre vom Naturrecht bei Leonard Nelson und das Naturrecht der Aufklärung*, p. 65 ff, repeats the traditional mistake of imputing a motive to Grotius which the latter clearly did not entertain. The same mistake is made by Rudolf Stammler, *Rechts- und Staatstheorien der Neuzeit: Leitsätze zu Vorlesungen* (Leipzig: Veit, 1917), p. 18, and also by Siegfried Marck, *Substanz- und Funktionsbegriff in der Rechtsphilosophie* (Tübingen: Mohr, 1925), p. 28, who sees the expression of the absolute, sovereign law-idea in the category of the original contract.
- 2 Grotius, *De jure belli ac pacis* 1.1.4: "Ab hac juris significatione diversa est altera, sed ab hac ipsa veniens, quae ad personam refertur: quo sensu jus est, qualitas moralis personae, competens ad aliquid juste habendum vel agendum. Personae competit hoc jus, etiamsi rem interdum sequatur, ut servitutes praediorum quae jura realia dicuntur comparatione facta ad alia mere personalia: non quia non ipsa quoque personae competant, sed quia non alii competunt quam qui rem certam habeat. Qualitas autem moralis perfecto, facultas nobis dicitur; minus perfecta, aptitudo; quibus respondent in naturalibus, illi quidem actus, huic autem potentia." Ibid. 1.1.5: "Facultatem Jurisconsulti nomine sui appellant; nos posthac jus proprie aut stricte dictum appellabimus; sub quo continentur *Potestas*, tum in se, quae libertas dicitur, tum in alios ut patria, dominica: *Dominium*, plenum sive minus pleno, ut ususfructus, jus pignoris: et *creditum*, cui ex adverso respondet debitum."

and directly concerns persons; taken in this sense, law is a moral quality of the person on the strength of which one is entitled to own or to do something by right." Next, natural law in this sense is further distinguished in perfect and imperfect law. Perfect law is natural law in the strict sense and is nothing other than what we today mean by "subjective law." According to Grotius it encompasses: (a) the power over oneself and over others (the former is natural-law *liberty*, the latter paternal authority, the authority of master over slave, husband over wife, and so on); (b) property (in the general sense of right to a good, thus also including usufruct, lien, and so forth); and (c) the competence to claim what is legally due.

The entire further structure of Grotius' system of natural law is based on this classification. Even though the systematic line is nowhere strictly adhered to, Grotius is essentially concerned with tracing the institutional character of law and the rules of law that he believed he could deduce from it for all times and places. The only thing of lasting value that he has given us is an application of the method that had been employed so brilliantly even by the Roman jurists in the classical period of Roman law: to infer firm rules of law from the teleological character of key private-legal institutions such as family, property, contract, and so on ("the nature of the matter"), which he applied to life relationships with a truly juridical intuition. Only, the Roman lawyers, unlike Grotius, knew full well that rules of natural law thus derived by no means bore the rigid character of mathematical, timeless and immutable maxims.

That Grotius did indeed notice the institutional character of law is also apparent from his conception of property and jurisprudence.<sup>1</sup> In line with his theory of the will, he does trace the origin of these institutions to the free will of those who first introduced them by contract, but after their introduction they are no longer *jus voluntarium* (arbitrary positive law) but natural law, that is, inviolable to later expressions of a legislator's will. They belong to the area of so-called hypothetical natural law which presupposes the state and derives its natural character via human beings, respectively, through the natural-law principle of mine and thine or, as the

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<sup>1</sup> In this regard Stahl too misunderstood Grotius when he thought he could reduce Grotius' entire theory of natural law to *pacta sunt servanda* (Stahl, *Geschichte der Rechtsphilosophie*). In doing so he wrongly appealed to the contractual nature which Grotius ascribed to property. If Stahl were correct, Grotius would have been forced to deny any distinction between positive and natural law. After all, all of positive law, according to him, rested on the inviolability of contracts. Stahl apparently forgot that, for Grotius, property is but a specific form (dependent on the existence of the community of the state) of the fundamental natural law principle of mine and thine. The institutional character of Grotius' natural law evidently escaped Stahl's attention.

case may be, the natural-law principle that a transgression of natural law is deserving of punishment.<sup>1</sup>

But now it is most remarkable that Grotius introduces a distinction within the framework of strict natural law itself which refers him beyond the institutional character of law to a criterion for the formation of positive law.

But that competence of strict law is again twofold: to wit, private law, which exists for the sake of the private interest; and public law, which stands above private law as the law [the right] which the whole body exercises in the public interest over its members and their property. Thus royal authority is above that of a father over his children and of a master over his slaves; thus the supreme title which the king has to the property of the citizens for the public interest is greater than that of private owners; thus the claims of the state in relation to public burdens take precedence over the claims of private creditors.<sup>2</sup>

What is coming through here is the conception in Roman law that the difference between public and private law is based on the distinction between public and private interest. It is the ancient criterion of the public interest which in Grotius, as we shall see more fully below, is fraught with the modern idea of *raison d'état* so that it is no longer consonant with the old Scholastic and Germanic conception that the state must serve the welfare of all citizens individually as well as collectively (cf. Thomas Aquinas).

We may summarize what we have discovered about Grotius' method of natural law and its significance within the framework of the humanist law-idea as follows: Grotius was indeed the first scholar who, inspired by the two basic principles of the humanist law-idea (namely, the ideal of the sovereign personality and the ideal of mathematical knowledge), wanted to construct a consistent system of eternal, unchangeable rules of natural law from a single isolated basic principle, in abstraction from all factual circumstances, in abstraction from all extra-legal (meta-juridical) fields of law. In carrying out this program, he did not try to discover a so-called

1 Grotius, *De jure belli ac pacis* 1.1.10.4: "Sciendum praetere, jus naturale non de iis tantum agere quae citra voluntatem humanam existunt, sed de multis etiam quae voluntatis humanae actum consequuntur. Sic dominium, quale nunc in usu est, voluntas humana introduxit: at eo introducto nefas mihi esse id arripere te invito quod tui est dominii ipsum indicat jus naturale." Ibid. 1.1.10.7: "Sunt et quaedam juris naturalis fuit, quamdiu dominia intrororum statu: sic communis rerum usus naturalis fuit, quamdiu dominia introducta non erant; et jus suum per vim consequendi ante positas leges.

2 Ibid. 1.1.6: "Sed haec facultas rursum duplex est: Vulgaris scilicet quae usus particularis causa comparata est, et Eminens, quae superior est jure vulgari, utpote communitati cometens in partes et res partium *boni communis causa*. Sic regia potestas sub se habet et patriam et dominicam potestatem: sic in res singulorum maius est dominium regis ad bonum commune, quam dominorum singularium: sic reipublicae quisque ad usus publicos magis obligatus quam creditori."

ethical law nor to seek higher ideal criteria for the formation of law, but he restricted himself, at least in principle, to the discovery of those rules of law which according to him flow with iron necessity from the institutional character of all law. As he did so, his method was not at all mathematical, as he had announced it would be, but basically similar to that used by the great Roman jurists. What he provided over and above their method amounted to no more than the sanctioning of his subjective view of affairs by the weighty authority of the fundamental axiom of all natural law. In all this he showed himself time and again to be still dependent on Scholasticism, but then as an epigone who no longer understood the deep foundations of the Thomist worldview.

### **The increasing conflict between natural law and *raison d'état***

Characteristic of the humanist theory of natural law since Grotius is that, on the one hand, it took the element of the will in positive law and carried it through to the strictest consequences imaginable, while on the other hand it juxtaposed a rigid mathematically deduced system of natural law as an unbreakable code of immutable rules. Natural law was there to serve as the brake on the arbitrariness of absolutistic political authority. *Pacta sunt servanda*, the inviolability of contracts initially proclaimed as the natural-law basis for the binding character of positive law, had turned out to lead directly to sanctioning royal absolutism. Over this royal absolutism, as we saw earlier, fell the dark shadow of *raison d'état*. In any consistent elaboration of these two unresolved and basically antithetical principles, the inherent antinomy between humanist natural law and humanist *raison d'état* could only be felt with increasing severity.

This conflict is doubly tragic in Grotius, since his entire work was intended as a passionate protest against the doctrine that utility or interest is the only criterion of law. His entire construction of a system of unbreakable, eternal natural law and of a system of unbreakable rules of international law, based on natural law and the tacit agreement of civilized peoples, was to oppose that doctrine. Yet he reinstated the very principle of utility for positive law. "Utility has occasioned the making of positive law; for the social contract or the communal subjection to some authority, of which we spoke just now, took place originally for the sake of a certain advantage."<sup>1</sup>

Given all that we have shown thus far, we need not elaborate why this is not the Aristotelian-Thomist doctrine that every creature by nature seeks its own good, its perfection. How can a rigid system of natural law as set forth by Grotius peaceably coexist with such a utilitarian conception of

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<sup>1</sup> Ibid., Prolegomena, sec. 16: "[J]uri autem civili occasionem dedit utilitas: nam illa quam diximus consociatio aut subiectio utilitatis alicuius causa coepit institui."

positive law without these two essentially antithetical principles totally undermining each other?

Even though Grotius, as we noted, looked at natural law in its institutional character, yet he totally failed to place positive law itself on the firm footing of legal institutions. Positive law and natural law have no other point of contact in Grotius than in the principle of the inviolability of contracts, a principle that is constantly undermined by the principle of the will. For the rest, Grotius is content to view natural law as an external limit, not as an intrinsic principle of positive law. The inner antinomies of the entire humanist system, not surprisingly, soon come to light.

The first concession which for the sake of the *raison d'état* of positive law restricts the area of natural law is that natural-law liberty is unreservedly sacrificed to the principle of the will. Positive law can forbid whatever is permitted by natural law or allow it only under certain circumstances. Only what natural law strictly *enjoins or prohibits* constitutes a boundary, a limit for the arbitrariness of the lawgiver.

More dangerous is the second concession Grotius must make to *raison d'état*. He writes that even if positive law does not violate the imperative rules of natural law, it can nullify them by suspending the conditions under which alone natural law holds. As an example of such a suspension of natural law by positive law he refers to the act of the creditor who forgives a debt, thus relieving the debtor of his natural-law duty to honor his contract. Such a waiver may have been provided for by some prior "arbitrary" rule of positive law.<sup>1</sup> Grotius adamantly rejects the charge that in this way he delivers up natural law to the arbitrariness of positive law.

But, we may ask, when we draw out the consequences of his train of thought does it not lead directly to putting all natural law on hold, owing to the principle of the will in his contract theory? Of course one can hardly object to the case of the creditor who waives a debt; a noble ethical motive may well be the reason for such a remission. But when the naked, brute principle of the will, removed by Grotius from every ground of morality or equity, may even be mobilized, by analogy, against strict natural law, then the whole code of natural-law rules can indeed be reduced to scrap paper.

Do consider that Grotius takes *pacta sunt servanda* in such a formal sense that even a promise immorally motivated (for instance, the promise

1 Ibid. 1.1.10.6: "Fit tamen interdum ut in his actibus de quibus jus naturae aliquid constituit, imago quaedam mutationis fallat incautos, cum revera non jus naturae mutetur quod immutabile est, sed res de qua jus naturae constituit, quaeque mutationem recipit. Exempli gratia: si creditor quod ei debeo acceptum ferat, jam solvere non teneor, non quia jus naturae desierit praecipere solvendum quod debes, sed quia quod debebam deberi desiit."

of a reward to a hired killer) must be kept once the crime has been committed, and also, in general, that a promise does not require a cause.<sup>1</sup>

In his treatment of the natural-law rules of the law of war, Grotius himself provides us with a sample of the elasticity of the principle of the will even within the area of strict natural law. According to natural law, a state that engages in warfare without being able to point to a legal ground for its declaration of war commits an unjust act deserving of punishment. International law, however, denies a party the right to punish its opponent for acts of war. That does not justify such acts of war, but the nations have mutually decided, and are obligated by a tacit agreement of wills, to cede the rights they would otherwise have had on grounds of the unjust character of those acts.<sup>2</sup>

When we recall how Grotius started out by declaring that punishment for actions committed in violation of strict natural law was itself a rule of strict natural law, then this example is enough to show how in this train of thought the principle of the will undermines strict natural law.

Finally, Grotius makes a third concession to the doctrine of *raison d'état*, and here the modern meaning of the concept of the “public good” in humanist legal theory is unmistakably evident. In treating of the legal force of a sovereign's promises, contracts, and oaths, Grotius introduces his famous distinction between actions *which the king does as king* and actions *which he does as a private individual*. What the king does *as king* must be considered actions of state. Since the laws of the state do not hold for such actions because the state cannot bind itself to its own laws, the same goes for the laws which the king has decreed. For example, with regard to contracts, promises, and oaths entered into by the king as king, *restitutio in integrum* is not possible since that is a privilege of a private individual based exclusively on positive law. In line with Grotius' entire train of thought, the above is of course true only of the absolute sovereign, not of the ruler whose sovereignty is restricted by laws.

Whatever the king does as a *private individual* must be viewed, not as an act of state, but as an act by one of the private citizens, and hence done with the intention to adhere to the normal rule of law. The king himself may determine whether he wishes his action to be viewed as an act of state or as a private act. The determination of his intention must take the circumstances into account. If the act was intended *as an act of state*, then he enjoys dispensation *ipso jure* from positive law and the validity of the

1 See *ibid.* 2.11.9 and 2.11.21.

2 *Ibid.* 3.4.3: “Hoc ergo modo laedere hosti hostem licet, et in persona et in rebus: id est non ei tantum qui ex justa causa bellum gerit, quique laedit intra eum modum quem naturaliter concessum initio huius libri diximus, sed ex utraque parte et indistincte: ita ut eam ob causam nec puniri possit in alio forte territorio deprehensus tanquam homicidia, aut fur; nec bellum ipsi ab alio talis facti nomine inferri. Hoc sensu apud Sallustium legimus: *cui omnia in victoria lege belli licerunt.*” Read also the preceding two sections.



contract must simply be judged according to the rules of strict natural law. In that case, too, the creditor has a claim against the king, but only to declare his right, not to bring an action in a court of law, since a subject cannot compel his sovereign.<sup>1</sup>

All this seems to strictly favor the natural-law rule of the inviolability of contracts, and accordingly Grotius engaged in polemics with Bodin, whose conception he considered to be too elastic in this regard. But even this principle of natural law, which Grotius otherwise insists upon quite apart from all higher considerations of justice and equity, in the end suffers shipwreck on the rocks of the merciless logic of *raison d'état*.<sup>2</sup> Immediately following the above expositions, Grotius gives us this telling warning:

One must of course consider that even when the subjects have acquired a right, the king can deprive them of it in one of two ways, either as a penalty or by virtue of his supreme ownership (*dominium eminens*), on condition of course that he make use of this latter right only when the interest of the state demands it, and that, if possible, the subject who suffers loss in consequence be indemnified from the public treasury.

And if this is the case for other matters, then it must also be considered valid for “rights which the subject acquires by way of contract or promise.” For good measure Grotius adds that it makes no sense to distinguish between rights obtained by virtue of natural law and those acquired exclusively on grounds of positive law. “For the power of the sovereign extends equally over both kinds of rights, and the latter can no more be denied without cause than the former.”<sup>3</sup>

And then follows a much more limited formulation of the natural-law rule of mine and thine than that presented in the Prolegomena. For natural law itself, Grotius observes, requires that one not be deprived of one's property, or any other right lawfully acquired, without cause. In other words, even *pacta sunt servanda* is a rule whose validity for the state in the end depends entirely on *raison d'état*.

1 Ibid. 2.14.6: “Neque tamen eo minus ex utrovis actu nascitur actio nempe ut declaratur jus creditoris, sed coactio sequi non poterit, ob statum eorum quibuscum negotium est: nam subditis cogere eum cui sunt subditi non licet, sed aequalibus in aequales id jus est a natura, superioribus in subditos etiam ex lege.”

2 Meinecke failed to notice all this, apparently. In his *Idee der Staatsräson*, Meinecke sees no trace of the idea of *raison d'état* in Grotius' natural law theory.

3 Grotius, *De jure belli ac pacis* 2.14.7: “Sed hoc quoque sciendum est, posse subditis jus etiam quaesitum auferri per regem duplici modo, aut in poenam, aut ex vi supereminentis domini sed ut id fiat ex vi supereminentis domini, primum requiritur utilitas publica, deinde, ut, si fieri potest, compensatio fiat ei qui suum amisit, ex communi. Hoc ergo sicut in rebus aliis locum habet, ita et in jure quod ex promisso aut contractu quaeritur.” Ibid. 2.14.8: “Neque ullo modo hic admittenda est distinctio quam adferunt nonnulli, juris quaesiti ex vi juris naturalis, et eius quod venit ex lege civili. Nam in utrumvis par jus est regis, nec hoc magis quam illud sine causa tolli potest.”

Predictably, within the framework of the humanist doctrine of absolute authority it is the sovereign alone who decides what is required by *raison d'état* in any given case. Yet again Grotius impresses upon his readers that against one's sovereign, even though he act in obvious conflict with natural law in applying *raison d'état*, one can never make any instrument of law stick. The sovereign judges each of his subjects but he himself is judged by no one.<sup>1</sup> When one considers, moreover, that Grotius is far from identifying the interest of the state with the welfare of the subjects (witness his view of patrimonial states), then the tragic result of the inner antinomy in his humanist system of natural law appears to be that natural law, developed in such detail, stands powerless before the principle of *raison d'état* which respects no restrictions by natural law.

This antinomy is inescapable and irresolvable, since on the one hand humanist natural law as an isolated individualistic principle was cut loose from the coherence of all law-spheres in the Christian law-idea, while on the other hand the humanistically conceived *raison d'état* is not steeped in natural law but instead inundates the whole of life, washing over and sweeping away all sovereign limits of law.

Only the truly Calvinist principle of sphere-sovereignty is able to ground "*raison d'état*," in its only rightful sense, in natural law itself, as well as to restrict the absolutism of the "public good" in keeping with the divine boundaries of the other sovereign spheres of law.

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<sup>1</sup> Cf. *Ibid.* 2.14.6.

## Chapter 12

### *Galileo and Hobbes*

The humanist law-idea, with its two basic principles of the ideal of personality and the ideal of mathematical knowledge, has gone on to introduce an intensive impoverishment and uncertainty into the worldview. The modern concept of science, denatured so as to constitute a metaphysical principle, became the stronghold of the sovereignty of human reason which, unhindered by any sovereign limits of law, had to create both the laws of nature and those of morality and law in continuity with their mathematical structure. For as we already saw in Grotius, even where the ideal of personality put the brakes on the full application of the mechanical-mathematical, natural-scientific approach in natural law, the mathematical method of abstraction was proclaimed unreservedly as the ideal of a scientific deduction of natural law.

The continuity between laws of nature and natural law then at least resided in the *method* of sovereign reason, even if the substances of mechanical-mathematical nature and those of the spirit remained fundamentally distinct, in accordance with the Cartesian standpoint. Even on this so-called idealist standpoint, however, the field of research was robbed of its essential character, quite at odds with the true nature of science.

Again and again – also in our day this is still being proclaimed as an article of faith by certain schools of humanist thought – mathematical natural science is made to serve as a model for all the other sciences insofar as its method abstracts from all non-essentials and converts all its research data into mathematically definable concepts.

It is a pity that humanist thought never penetrated a bit more deeply into the true sense of the concept of mathematical science.

Mechanics has as its object of inquiry one of the least complicated spheres of law in the coherence of nature. Only pure mathematics, which – contrary to the view of an entire school in modern philosophy – is not at all based on the laws of logical thought alone, has a simpler structure than mechanics. But mechanics, which inquires only into nature's laws of motion (in a wider sense, physics in its modern form of *Energetik*), does not at all abstract from the law-sphere of mathematics which precedes it. Rather, it maintains the coherence with this law-sphere in its mathemati-

cal analogies.<sup>1</sup> Indeed, without the aid of mathematics it cannot take a single step in the direction of its epistemic ideal.

Just so, those disciplines that have the more complex law-spheres as their object of inquiry (like law and ethics) must follow the lead of mathematical science at least in this sense that each of them must, in the course of its inquiry, take into account the full coherence with all law-spheres preceding its own.<sup>2</sup> If the organic coherence between the sovereign law-spheres is maintained in this way, one can avoid two extreme and equally mistaken views found in the humanist theory of natural law. On the one hand, law will never be made a mere extension of nature, as in materialistic humanism; on the other, law will not be cut loose, as a completely isolated abstract principle of reason, from its coherence with the other law-spheres (including those of nature), as is done in idealistic humanism for the purpose of trying mathematically to deduce an entire system of norms from it. The latter, incidentally, can be done only by reading into the abstract starting point ideas which are not entailed in it at all.

Both schools destroy the sovereignty of law in its divine character. The materialistic school does so deliberately, by taking law as just a part of causal nature. The idealistic school does so unintentionally,<sup>3</sup> by eroding the sphere of law so as to leave only an empty shell, an empty formula, thus irretrievably surrendering the content of law to naturalism and positivism.

Both schools also hold to the postulate of the humanist idea of science: the continuity of thought that must guarantee the rational coherence of the world-order. The materialistic school does so by incorporating law simply as a part of natural causality. The idealistic school does so by rescuing the continuity between mathematics and the science of law in at least a continuity of formalistic *method*, so as to create both from sovereign reason.

In Grotius the polar tension and irresolvable inner antinomy between the science and personality ideals in the humanist law-idea came to stark expression. The personality ideal was emphatically proclaimed in the principle of autonomous morality and autonomous natural law and in the very clean-cut separation of the rational social nature of man and physical nature. On the other hand, the science ideal, which relentlessly pushed the principle of the inviolability of contracts, ultimately had to

1 For my theory of analogies and anticipations in the Calvinistic law-idea see *De Be-teekenis der Wetsidee*, p. 64 ff. I hope to elaborate this theory in its significance for epistemology and philosophy shortly.

2 *General Editor's note*: This programmatic statement, as illustrated in his *Encyclopedia of the Science of Law*, lies at the basis of Professor Dooyeweerd's university career. He consistently emphasized that the meaning of an aspect can only reveal itself in its coherence with all the other law-spheres.

3 Unintentionally, because by means of isolation and abstraction it seeks to maintain the independence of the sphere of law.

lead to the sacrifice of the sovereignty of personality, even sanctioning the surrender of all human dignity in slavery.

Both the ideal of personality and the ideal of science demanded a mathematically closed system of unbreakable natural-law norms founded on sovereign reason and the inner self-sufficiency of the rational personality. But the ideal of science, which tore a few legal principles as abstract axioms from their organic coherence with the entire moral order and world-order, ultimately had to result in the undermining of this proud construction of rationalism. The humanist doctrine of the will was lurking within the abstract principle of the inviolability of contracts, and its absolutism finally and irretrievably abandoned the whole of natural law to *raison d'état*. Even the harsh consequences of *raison d'état* in the end found their rationalistic sanctioning in natural law's rule of *pacta sunt servanda*. Was not the state founded on a contract, and should not all that the interest of state required be viewed, therefore, as a means to the end which the originally free citizens had intended when they established the political community?

The patent antinomy in Grotius' system of natural law could not but fail to satisfy the more consistent minds among the humanists. And rightly so. The humanist ideal of science, elevated to the throne like some despotic ruler because of ever new triumphs of modern natural science, surely had to be capable of mastering the antinomies and of resolving them? Was there any scientific warrant for the separation between the spiritual and the physical, between soul and matter? If soul and matter could be reduced to a single scientific denominator, to the scientific concept of mechanical motion, then the continuity in creative thought would be achieved so perfectly that surely all antinomies would have to disappear. It was the Democritean-Epicurean school in humanism which now seriously occupied itself with that program, and the first great humanist thinker to construct a mathematically closed system of natural law on that basis was Thomas Hobbes.

In Hobbes' worldview, one of the most noteworthy and astute systems produced by seventeenth-century humanism, we see the determined breakthrough of the Democritean-Epicurean school of nominalist thought, the beginnings of which we already noted in the nominalistic Scholasticism of the late Middle Ages. It broke through all the barriers that Descartes had erected to keep soul and matter distinctly separate.

In the field of ethics, early humanists like Valla and Telesio had already elaborated materialistic Epicureanism into a system, even if it was designed to accommodate church dogma as much as possible and even if it did partly incorporate Stoic and Aristotelian elements. Hobbes' contemporary and friend, Pierre Gassendi, a seasoned opponent of the Aristotelian concept of science, had openly chosen sides for Epicurus's ethics, and in his posthumously published *Syntagma philosophiae* (1658) had pre-

sented his own system of philosophy on Epicurean foundations. Indeed, as we have seen, the entire humanist ideal of personality, despite all its Stoic characteristics, exhibited a strongly Epicurean bent. The Epicurean school of morals and natural law was certainly not an intrinsically isolated phenomenon in the humanist universe of discourse.<sup>1</sup>

We have already indicated the significance of the Epicurean doctrine of law and ethics. Its rise and spread date from an age which, though it differed from the period of transition to the modern age – a difference that may not unjustly be described as a contrast between decadence and the dawn of new vital forces – nevertheless in many ways constituted Antiquity's prototype, in a negative sense, of the individualistic age of the Renaissance. When Greek society reached the apex of its development, the state and its institutions constituted the objective rational power against which all private morals were tested. For Plato, as for Aristotle, the state as such was a moral institution based in the organic law of nature, the source of all natural law.

With the decay of ancient culture, however, individuals were cut loose from the Greek city. Kinship, family community, and the old communal forms increasingly lost their acknowledged moral value. In the military and bureaucratic despotisms, the old norms for religious, social, and political life deteriorated into an attitude to life marked by dissoluteness, violence and corruption. Consciousness of an eternal, objective, moral world-order was disturbed by a nominalistic individualism. An indifferent skeptical spirit, always an unmistakable harbinger of cultural decadence, raised its specter and shook men's faith in ideal values, in divine providence, in objective truth. The individual began to regard himself as an isolated being.

From this spiritual chaos and numerous skeptical systems there arose two great subjectivistic schools of Greek philosophy, namely Stoicism and Epicureanism. Stoicism, however nominalistic and subjectivistic in character, nevertheless held fast to an organically coherent, though materialistically conceived, world-order in which eternal principles of *natural law* were also anchored. It expanded the individual's consciousness of self far beyond the limits of the state to a consciousness of humanity in which the individual felt himself to be a member of the worldwide community of mankind. The Epicurean school, by contrast, stayed with the isolated individual, denied the organic ideal conception of a providential moral world-order, and consciously applied the mechanistic law-idea of Leucippus and Democritus to its view of moral and social relationships.

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<sup>1</sup> About the revival of Epicurean ethics and political theory in the modern period, see esp. the diss. of Albert Haas, *Über den Einfluß der epicureischen Staats- und Rechtsphilosophie auf die Philosophie des 16. und 17. Jahrhunderts* (Berlin, 1896), p. 34 ff.



Consequently, the entire life of the spirit with its moral and juridical aspects was seen as a reflection of the mechanical course of nature in which forces of pressure and pull from eternity impart motion to atoms by their chance concurrence and repulsion.

Basic to the Epicurean moral, legal, and political philosophy was the mechanical, atomistic principle of the isolated individual whose motions of soul necessarily drove him to strive for the greatest quantity of pleasure and the least amount of pain. In this way the individual, with his desire for pleasure, with his private interest, became the highest criterion of both law and morality. Intrinsically, this destroyed all moral and legal criteria, a process that could only result in the denial of all natural law. The state could now only be founded on a contract concluded by individuals with each other in order to escape the disadvantages of legal insecurity and the ceaseless struggle for life.

What Epicurus still calls natural law (*to koinon dikaion*, as distinct from *idion dikaion*)<sup>1</sup> nevertheless arose from considerations of utility; it is based on the needs and desires of human nature that are present everywhere, in contrast with the *idion dikaion* which is based on special circumstances that differ according to time and place. The binding force of law, therefore, is ultimately traceable to a natural inclination of man towards a happy, pleasure-filled life, an inclination, by the way, which must be reinforced by fear of punishment in most people, since they do not know the true character of pleasure. (The inconsistency of this position is striking.)

In his *De rerum natura* Lucretius elucidated this entire Epicurean view of law and state, which as such abstracts completely from historical development. This Roman poet did so from the perspective of a natural development of mankind from a crude animal stage, in which men, naked and alone, wandered through the forests, living in caves and occupied in an ongoing and unequal struggle with wild animals and with each other. Expressing their feelings of desire and fear in unarticulated sounds, they presumably elevated themselves step by step to a more civilized level as they developed language from these animal-like expressions of feeling. In the course of centuries the animal nature of primitive men softened. To secure general safety against the violence of daily struggle, they supposedly concluded a contract with each other, laying down certain norms of justice and morality. It was then that the state was established, first as the crude tyranny of despotic rulers, with now and then a reign of terror by the masses, until finally, having learned from bitter experience, humans voluntarily submitted to law and right and introduced punishments to bridle violence and crime.

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<sup>1</sup> Epicurus *Kuriai doxai*, 32 ff., in Diogenes Laertius, *Lives of Eminent Philosophers* 10.150.

**The legal and political theory of Thomas Hobbes in the light of the humanist law-idea**

This whole view, so reminiscent in many respects of Marsilius of Padua's naturalistic idea of development, was made to serve a new and relentless application of the ideal of mathematical natural-scientific knowledge in Hobbes' philosophy of state and law.

It should be remembered that within the framework of the humanist law-idea the mechanistic view gained an essentially modern character not at all implied in the systems of Antiquity. Both the ideal of personality and the ideal of science are essentially modern ideas which, though permeated by ancient ideas, no longer fit the framework of a mere revival of Greco-Roman civilization. The Faustian inclination of modern man to focus his powers of mastery on both nature and politics by means of analysis and the application of the mathematical method of construction, his rejection of traditional authorities and, conscious of the sovereignty of reason, his quest to unravel on his own all the mysteries of the world and of life, defeats any comparison to the decadent scepticism of the Epicurean worldview. Even a thinker like Thomas Hobbes, for all his debt to naturalistic Democritean-Epicurean notions and his passionate veneration of Galileo's new science, was inspired just as much by the modern ideal of personality, by humanism's new view of life.

Indeed, although Hobbes' pattern of thought is naturalistic, an important idealist influence is evident in his epistemology, so that the polar tensions of the humanist law-idea are revealed again and again in his philosophy as well.

Thomas Hobbes (1588-1679) was born in Malmesbury, Wiltshire, the second son of a plain Puritan preacher. After attending the University of Oxford at a very young age, he soon entered into close relations with the earls of Devonshire when he was assigned as a study and traveling companion to [William Cavendish] the Earl of nearly the same age.<sup>1</sup>

While still a youth Thomas made the acquaintance of two of the most famous of his compatriots, Francis Bacon, a passionate opponent of Aristotle's concept of science, an as yet immature thinker of the Renaissance type, and Edward, first baron Herbert of Cherbury, whose epoch-making *De veritate* (1642) with its bold ideas concerning natural religion found much favor with Hobbes, as appears from many remarks that have come down to us.

During the second period of his life, which the eminent Hobbes scholar, Tönnies, puts between 1628 and 1660, Hobbes' grand tours to France and Italy took place. He soon became a respected figure in the famous circle of

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<sup>1</sup> The biography of Hobbes that follows is derived mainly from Tönnies, *Thomas Hobbes*, p. 7 ff.

Mersenne, Descartes, and Gassendi (bonds of friendship with Mersenne and Gassendi were to last to the end of his life), while later, in Italy, he was in almost daily contact with the great Galileo.

Hobbes did not embark directly upon his study of mathematics and natural science. Instead, his study of the Greek historian Thucydides, whose work he translated during the first period of his life, led him to the problems of politics and morality. Reading the literature of moralists and politicians, Hobbes noticed how much they contradicted each other and themselves, and concluded that they spoke from affectation, not reason. His ambition focused on the goal of establishing the principles of law in an unassailable manner, that is, of deducing them by strict reason from the essence of man. So he hit upon the problem of observation, which in turn took him to mathematics, and thence more fully into the whole domain of the natural sciences. During that time he acquired the notion that when bodies and their parts are all at rest, or are always in identical motion, then all distinction between things, including observation, is suspended; therefore the cause of all things must be looked for in the variety of motions. This became the first basic principle of his entire philosophy, a principle he was to apply boldly in his legal and political theory as well. The study of Galileo's *Dialogues* then deepened his conviction that there is only one reality in the world, namely that of *motion*, and that in the internal parts of bodies. Even as early as 1637 Hobbes drew up a plan for a system of philosophy that was to contain three parts: *De Corpore*, *De Homine*, and *De Cive*. He worked at all three simultaneously. The carrying out of these plans, however, came to a halt temporarily, due to the political events in England at the time.

England's political development, in contrast with that of France, saw a brief victory for the absolute monarchy, followed by a revolution in which Parliament was able to regain its ancient rights, laying a still shaky foundation for the later parliamentary form of government.

The Tudors, whose reign had come to a glorious end under the Protestant queen Elizabeth I, were succeeded by the Scottish dynasty of the Stuarts. The first Stuarts, James I (1603-1625) and Charles I (1625-1649), despotic and untrustworthy in character, steeped in the idea of kingship by the grace of God in that crude, absolutistic sense defended in the writings of Robert Filmer, continually interfered with Parliament's rights, especially by levying taxes without its consent. In their foreign policy, by which at first they aimed to drive England into the arms of her archenemy, Spain, they offended national sentiment. By their excessive patronage of the Episcopal Church they offended the Puritans whom they declared to be enemies of the state. Tragedy struck the house of Stuart under Charles I whose absolutistic delusion drove the ecclesiastical and political opposition between king and nation to catastrophic proportions both in England and in Scotland. Induced by his favorite, Buckingham, who in 1628 fell

victim to popular rage, Charles outraged the constitutional sense of his people by levying taxes that had not been approved, by arbitrary arrests, and by governing without Parliament for eleven years (1629-1640).

His attempt to foist an Anglican church order on the Scots raised the religious zeal of the Presbyterians against him. A revolt broke out which forced the king to call a humiliating end to his absolutistic experiments in England since, to obtain funds, he had to convoke Parliament again. The Long Parliament, so called because it sat for more than twelve years (1640-1653), dictated its will to the king who depended on them as a result of the Scottish rebellion. The king's perfidious advisors, the Earl of Strafford and the Anglican Archbishop Laud, fell at the hands of the executioner. Parliament succeeded in having its demands accepted, namely that it be called into session every three years, that it be dissolved only with the consent of both houses (the House of Lords and the House of Commons), and that political offices be granted by the king to men who enjoyed the confidence of Parliament. The power of the Anglican bishops in the upper house was broken by their exclusion from this body. The King's attempt on the life of the leaders of the parliamentary opposition threw the country into the turmoil of civil war. The later Protector, Oliver Cromwell, with his invincible Puritan army, decisively defeated the King's Cavaliers at Marston Moor, Naseby, and Preston. On 30 January 1649, the King's head rolled on the scaffold and the English Republic was proclaimed that would soon invest Cromwell with dictatorial powers.

Thomas Hobbes followed the tragic course of events with keen interest. Earlier, in France, he had come to know and admire the consciously centralizing politics of Richelieu who, in a relentless application of the principle of *raison d'état*, spared no force in smashing all opposition that stood in his way. At this time Hobbes was a convinced supporter of the King. This is plain from the *Elements of Law Natural and Politic*, published in 1640 at the behest of his protector and friend, the earl of Newcastle. This work earned him the hostility of the Long Parliament for its naturalistic (as opposed to theocratic) defense of royal absolutism. Concerned for his life, Hobbes fled to Paris, where he was in continual contact with Mersenne and Gassendi and continued to work at his philosophical system.

During the first years of his stay in the French capital (1640-1651), Mersenne involved him in a polemic with Descartes concerning his theory of perception. Conflict with the proud philosopher was exacerbated by his criticism of Descartes' *Meditations* in which he strongly combated Descartes' basic separation of soul and body by means of universal mechanistic arguments.

In 1642, *De Cive*, which was to have been the last part of his system, was published well in advance of the two other parts. By that time, Hobbes, politically astute, knew that the case for absolute kingship in England was a hopeless one. All the signs pointed to a continuation, for the time being, of the republican form of government. Hobbes, who

lacked the desire to crusade for a lost cause, started to think about returning to England. But that would require a change of political views. In the preface to the second edition of his *De Cive* (1646), launched into the world from Holland, he already defended himself against the suggestion that his theory required less obedience to an aristocratic state than to a monarchical one. Though he personally preferred monarchy, he had repeatedly and expressly stated that the sovereign power must be acknowledged under all forms of government.

His comprehensive *Leviathan*, written in English in 1651 (an abbreviated and revised version appeared in Latin in 1668), incorporates the earlier *Elements of Law* while altering it in important respects. Here Hobbes made his political turnabout, signifying his definitive break with the royalist cause by emphatically condemning rebellion against the Republic that had now been established. The work now made him the adversary of the party of defeated royalists who had rallied round the young son of Charles I. Hobbes returned to England in 1652 where, hospitably received by Cromwell, he offered his submission to the new government. Now followed a time of peaceful study (1652-1660) during which Hobbes published the first and second parts of his great system, *De Corpore* and *De Homine*. In his old age Hobbes had to witness the fall of the Republic and the restoration of the monarchy under Charles II. Engaged in vehement polemics with the clergy much of the time, he continued to defend his fundamental tenets against every attack, until he died in Hardwicke in 1679 at the age of ninety-one.

Hobbes was a thinker whose intellect combined all the tendencies of the humanist worldview with great intensity. He was enthralled by the humanist ideal of science and its two tendencies, the sovereignty of creative reason and the continuity of thought: an ideal of science demanding the elimination and eradication of all hidden qualities, of all irrational limits of law, in order to logically construct the entire cosmos in all its domains of law in one continuous intellectual sweep. At the same time he was the living representative of the humanist personality ideal with its Stoic and Epicurean stamp, a forerunner of the Enlightenment, a man who declared war on what he called the kingdom of darkness: dogmatic faith, upheld by ecclesiastical authority; obstructions to the free development of the human personality; miracles and superstitions; the clergy, Presbyterian and Catholic alike, who sought to bind the free spirit to spiritual laws and precepts; and every prejudice in the realm of learning.

Tönnies depicts Hobbes as the perfect model of the humanist "man of the world" who, in addition to studying mathematics and natural science, had an equal love for the classical authors, was inclined to aristocratic manners and knightly sports, not averse to sensual pleasures, commanding a keen intellect, inclined to incisive mockery of all who trusted anything but reason – in short, the prototype of the great Enlightenment personality Voltaire. Hobbes' entire life represented a struggle for enlighten-

ment through science, a continuous, almost passionate, propaganda for ending the dependence of universities on ecclesiastical powers and Scholasticism, on the entire Scholastic welter of words which he himself had to digest as a student at Oxford. How clearly this humanist grasped the connection between Aristotle's philosophy and Catholic dogmatics! How bitterly he flogged "this vain philosophy" of the Stagirite and his Scholastic epigones! "To conclude," he wrote in *Leviathan*, "there is nothing so absurd that the old *philosophers* (as Cicero said, who was one of them) have not some of them maintained. And I believe that scarce anything can be more absurdly said in natural *philosophy* than what is now called Aristotle's *Metaphysics*, nor more repugnant to government than much of what he said in his *Politics*, nor more ignorantly than a great part of his *Ethics*."<sup>1</sup>

Indeed, this spirit embodied the humanist worldview, and we cannot suppress our burning curiosity to watch the erection of his system in the pure atmosphere of the humanist law-idea which received one of its first lucid formulations in Hobbes.

How such a system begins to come alive when one views it in the light of the law-idea and does not confine oneself, as do so many handbooks on the history of legal philosophy, to a barren recital of a few barely understood excerpts!

When we compare the systems of Bodin and Grotius with the natural law system of Hobbes, we are immediately impressed by the methodological superiority of the Englishman to these two humanist predecessors. Hobbes already had an advantage over them in the sense that he, a philosopher by profession and trained so to speak in the workshop of modern natural science, was more clearly conscious of the foundations of the humanist law-idea and much more keenly aware of the methodological significance of Galileo's concept of science. An unreliable source has it that it was Galileo, at his villa Bellosguardo, who first inspired Hobbes to elevate the theory of morality and natural law to mathematical certainty by treating it according to the geometrical method [*more geometrico*].

That was the same password given out by Bodin and Grotius for political theory and the theory of natural law. And yet, what methodological confusion still burdened their work! The axioms posited as starting points for their theory were purely dogmatic, without sufficient account of their correctness or usefulness. We have already seen how poorly both managed to construct their system according to a method that was intended to be mathematical. They had merely posited the program of the modern ideal of science for the areas of constitutional and natural law without having the methodological means to carry out that program.

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<sup>1</sup> Hobbes, *Leviathan, or the Matter, Form and Power of a Commonwealth, Ecclesiastical and Civil* 4.46. [Translator's note: Some spelling, punctuation and word order in direct quotations from the *Leviathan* have been adjusted for ease of reading.]



By contrast, right from the first principle which he lays as a scientific hypothesis at the foundation of his system, Hobbes aims to give a logical account of it in such a way that it will no longer dangle in mid-air as an unproven axiom, but will be anchored in the certainty of mathematical thought itself. When he posits as the first and fundamental rule of natural law or “law of nature,” underlying all other rules of natural law, “*that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps and advantages of war,*”<sup>1</sup> then this first principle is not, like Bodin's definition of sovereignty or Grotius' axiom of the *appetitus socialis*, posited *apart from its connection with continuity in thought*. On the contrary, Hobbes accounts for it logically by first grounding the principle in the entire mechanical structure of the psychical life of man and by reducing this structure itself to the simplest principle of natural science: *motion*.

Where motion itself (as a mathematically definable principle of the whole of mechanistic nature) is in turn grounded in sovereign thought, Hobbes has indeed, in his own way, fulfilled the program of the humanist ideal of science: namely, not to accept or use as a basis in any domain of science a single principle which sovereign thought has not itself created logically in the continuity of its creative process.

To that extent, Hobbes does not, from the point of view of the meta-physical humanist ideal of science, wrong his predecessors when he writes in his *De Corpore* :

Why has moral philosophy not been studied, if not because until now no one has treated it according to a clear and correct method? . . . What the moral philosophers lack most of all is *an established rule of conduct* by which one can test whether one's aims are just or unjust. When *a rule of justice*, a firm criterion, has not been established as just, and no one has done so till now, it is useless to order that one ought always to do what is just.<sup>2</sup>

### **The application of Galileo's concept of science in Hobbes' method of natural law. Continuity with the nominalist tradition**

We now turn to a more detailed consideration of Hobbes' method in its constructive function, as an application of the modern mathematical concept of science in the definitive sense in which Galileo had conceived it for the whole of modern natural science. To that end it is necessary first of all that we look at the foundations and coherence of Hobbes' entire philosophical system. That will give us at the same time a clearer understanding of the humanist law-idea in its first lucid *pseudo-materialistic formulation*. We shall begin with a brief consider-

1 Ibid. 1:14.

2 Thomas Hobbes, *De Corpore*, in *Opera philosophica quae latine scripsit omnia*, ed. William Molesworth (London, 1839), 1:1.7.

ation of Hobbes' concept of science and the basic elements of his entire philosophy in which his psychology, anthropology, legal theory, political theory, and ethics are grounded.

First of all we would point to the continuity with the nominalist tradition which, despite all difference of mentality and elaboration, unites humanism with nominalistic Scholasticism. Hobbes is an extreme nominalist who openly expresses the nominalism that we noted in Bodin and Grotius as a more or less conscious undercurrent in their thought.<sup>1</sup> Directly connected with this nominalism is Hobbes' concept of *truth* which, after the fashion of humanist thought, is no longer transcendent, conceived as agreement of our concept with the essence of things outside the mind (Aristotle, Thomas), but *immanent*, conceived as internal agreement of the concepts with each other.<sup>2</sup>

Accordingly, Hobbes presents scientific judgment in the form of a "reckoning" or computation in which the concepts (in nominalistic fashion he calls them *names*) are entered as counters. All thought is computation; all arguments can be seen as addition and subtraction.<sup>3</sup> The meaning accorded to concepts is wholly arbitrary on condition that names always be used in the same sense. Therefore in geometry (the only science God has so far been pleased to give to mankind), people start by determining the meaning of their words, which determination of meaning they call *definitions*, which they put at the beginning of their computation.

Therefore the first requirement of all science is that it proceed from clear definitions, that is to say, from determinate meanings and names that we give to representations.

True *scientia* according to Hobbes is the knowledge of causes and effects or of the origin of an event which one deduces by pure reasoning (in distinction from all knowledge of facts, which he calls *cognitia*).

Science proper, that is, knowledge demonstrable a priori, is therefore only possible of those things whose genesis depends on the human will. The cause of things must be present in the definition, for what is not already provided with a foundation in thought cannot be deduced from it by reasoning either. Thus geometry is a science in the true sense, for the cause of the properties which the special figures have lies in this: we ourselves construct those figures, thus their existence depends on us. In the same way politics and ethics, that is, the science of what is just and unjust, equitable and inequitable, are demonstrable a priori because we ourselves have made the causes of justice, namely laws and contracts, by which it is first known what is right and equitable and what is their opposite. For before contracts and laws were made, there was neither just nor unjust, and

1 Hobbes, *Leviathan* 1.4: ". . . there being nothing in the world universal but names; for the things named are every one of them individual and singular."

2 Ibid.: "For *true* and *false* are attributes of speech, not of things. And where speech is not, there is neither *truth* nor *falsehood*."

3 Ibid. 1.5.

humans, no more than animals, knew how to distinguish good from evil. Physics and astronomy are only *sciences in the true sense of the word insofar as they base themselves on mathematics and thereby provide themselves with the possibility of demonstration a priori*.

If, in considering such curious statements about the nature of science, we are not fixated by Hobbes' rather clumsy terminology (otherwise we would be inclined to think that Hobbes sees all science as arbitrary action), but penetrate the meaning of his words, then it becomes plain how he has grasped the modern ideal of science most clearly indeed. Hobbes wants to say that true science is possible only of those things that have been constructed by thought itself, just as a geometrical line has been constructed from a point by continuous motion; that scientific thought, in other words, cannot do anything at all with absolute qualities or sensory things which remain foreign to it, but that it has to creatively produce, in a closed, strictly rational line of argument, its own *Gegenstand* or object of analysis, thus demonstrating the sovereignty of thought. In this way Hobbes' conception of causality also reveals its modern meaning, so different from that of Scholasticism. Causality, instead of being a concept of substance inaccessible to knowledge, is now a *mathematical concept of function*, a basic concept of scientific construction, of the creative productivity of thought.<sup>1</sup> Here we see the pronounced idealist imprint in Hobbes' thought, and in this regard he is perfectly homogeneous with the "idealist" philosopher Descartes.

This basic idealist feature is a hallmark of all of humanist thought even in its extremely materialist systems and everywhere testifies to the truth that the sovereignty of reason is one of the pillars of the humanist worldview. It appears even more starkly in the mental experiment that Hobbes carries out when he first lays the foundations of his philosophy (*philosophia prima*).

The beginning of the philosophy of nature we can best take (as demonstrated above) from a negation, viz., from the fiction that we think away the universe.

Thus our humanist thinker mentally breaks down the real world as we know it in our daily consciousness, in order to build it up again bit by bit as a strictly logical system. Hobbes compares this mental experiment with God's act of creation. The logical labor of the philosopher must be creative, just like the artist, or like God himself who orders the chaos. It is in logic that philosophy first ignites the light of reason. Now the world becomes constructed as a logical coherence in the "first philosophy," which develops the most general fundamental relations of reality in clear concepts, then in geometry which analyzes the extension of bodies in space; thereafter follow mechanics, astronomy, and physics, then the science of man (anthropology), and finally that of the state.<sup>2</sup>

1 See e.g. *De Corpore* 2.9.

2 Hobbes, *De Corpore*, Preface.

Hobbes is also aware, and clearly says so repeatedly, that the entire reality of the external world is only given to us in the representations of our consciousness. When we mentally break down the entire sensory world, what finally remains is the representation of space, which is therefore but a subjective function of our consciousness, just as time is.<sup>1</sup> Then gradually, from our memory of previous perceptions, we fill the empty space again with bodies that occupy their place in space.

Thought, however, must distinguish objective reality from purely subjective elements in these representations. That the sensory qualities of color, aroma, smell, and taste are not properties of real things in the external world is a proposition which Hobbes, like Descartes and Galileo, proclaims as an incontrovertible axiom of modern natural science. But how can thought determine objective reality other than by examining how it was scientifically constructed? As the means for this construction we must make do with space, time, number and motion which are abstracted from the moving body as it appears in our representation. Space and time, however, have already been acknowledged in their ideality. Space is but the subjective “phantasm” of the “body” existing *outside* our representation, that is, to the extent that we only look at this body's existence in the *external world*, while abstracting all its other attributes. Time is equally a subjective phantasm of motion insofar as through it we become aware of the passage of “earlier” and “later.”<sup>2</sup> Consequently the only reality of the external world that remains is the material body, as quantitative mass, and its motions.

With that, we have made a transition from Hobbes' view of science to his materialistic metaphysics, which subsumes the soul and all its attributes under the category of a moving body. In the final analysis, our perceptions, too, are the result of motions proceeding from material bodies in the external world and acting upon our sensory organs. Ultimately thinking itself can be reduced to motion in this way: all thought is based on sensory experience caused by the motion between material bodies and sensory organs, a line of thought which again completes the transition from the idealist to the materialist pole.

We cannot pause here to consider the major logical objections, the inherent antinomy, that Hobbes ran up against by this return to the materialist starting point. Here we wish only to put on record that Hobbes' mechanistic “materialism,” just as much as Descartes' “idealism,” is ultimately grounded in the metaphysical humanist ideal of science in which, consciously or not, the humanist ideal of personality asserts itself as an irrational factor.

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1 Ibid. 6.

2 Ibid. 2.7.2.

Hobbes' bias in favour of mechanistic materialism had to serve him as a methodological postulate in order to maintain continuity in sovereign thought, to subsume all phenomena under one intelligible denominator, in the same way that modern energeticism as a worldview tries to reduce all phenomena in nature and spirit to differences of energy.

To this extent, then, I cannot agree with Dilthey when he suggests that the suspension of reality from which Hobbes proceeds is but an artifice of method implying no idealist tendencies (in the epistemological sense). This interpretation neglects the truth that Kant's Copernican deed in epistemology was but the resultant of all the idealist motives which were implicit from the start in the humanist ideal of science. It was the upshot of the basic tendency, also of materialist humanism, to maintain the creative character of sovereign reason: in that tendency, humanist idealism is already, albeit latently, present, as it would subsequently become manifest in Kant, in a much more consistent rationalistic sense in Fichte and Hegel, and lately in the Neokantians of the Marburg School.

All science, as knowledge of the nexus of causes and effects in things, presupposes that things change. All change is motion; all motion proceeds from material bodies. Motions can be factored into the computation of scientific reasoning, since as continuous extensions of a tendency of motion (*conatus*) they allow for a "more" and a "less" so as to fit into the computations of addition and subtraction. It was Galileo's analytical and synthetic method, enthroned as the metaphysical ideal of science, that served Hobbes in erasing all irrational law boundaries between the various fields of knowledge and in maintaining the continuity of creative thought.

Hence Hobbes' untiring and highly curious attempts to classify all sciences on the basis of this rationalist continuity – an encyclopedia of the sciences on a mechanistic basis.

After logic and metaphysics come mechanics and physics. He finds the transition to a mechanistic theory of human psychology in physics, and only on that basis can ethical, legal and political theory be developed. As Hobbes himself puts it: Ethics builds on physics and treats of psychical motions such as desire, aversion, love, kindness, hope, fear, anger, envy, hatred, and so on. It investigates their causes and the effects they have. The reason why they must be dealt with after physics lies in the fact that their causes reside in the senses and representations, which are subject to physical consideration.<sup>1</sup>

As the psychological basis for his ethics and his legal and political theory Hobbes develops a theory of affections and passions, which in turn are traced to two original directions of motion of the soul: desire (*appetitus*) and aversion (*fuga*), corresponding to the sensation of plea-

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<sup>1</sup> Ibid. 6.6.

sure and pain respectively. That to which the desire is attracted is called good; that from which one turns in aversion is called evil.<sup>1</sup>

These motions of the soul are caused by sensory representations and perceptions, and perceptions are caused by the objects of these representations and perceptions. The objects in the external world directly or indirectly penetrate the sensory organ concerned. By way of the body's nerves and membranes this penetration produces continuous motion to the brain and the heart. This motion in turn gives rise to resistance, a countervailing pressure or tendency (*conatus*, endeavor) of the heart to free itself from the pressure by an outwardly directed motion which therefore seems to us to exist in the external world.

And this appearance or illusion we call sensory perception. Memory, which is based on such a past perception, and expectation or hope, which creates an image of the future on the basis of what was perceived in the past, are traced to sensory perception concerned with the present. Typical here of the concern for continuity in the humanist ideal of science is that Hobbes' mechanistic explanation of imagination and memory takes for its starting point Galileo's law of the continuation of motion in the absence of retarding factors (the law of inertia).<sup>2</sup>

Specific affections or passions, therefore, are caused by specific representations or thoughts, and these relate to the present as perception, to the past as memory, and to the future as expectation, while these representations themselves are in turn caused in the soul by the objects to which they relate.<sup>3</sup>

In this mechanical way Hobbes now attempts to explain every one of the soul's affections, such as joy and grief, hope and despair, fear, anger, lust for revenge, remorse, love and hate, pride, shame, courage, vanity, zeal and envy, laughing and crying, compassion and harshness, mistrust and trust, wonder and curiosity, cruelty and mercy. We are not about to argue that Hobbes did not notice the phenomenal distinctiveness of the psychological domain as compared with the biotic and physical domains. But we must oppose Hönigswald's opinion that Hobbes' intention was to establish the *autonomy* of the psychological with respect to the physical field of in-

1 Hobbes, *De homine* 2.4: "Omnibus rebus, quae appetuntur, quatenus appetuntur, nomen commune est bonum; et rebus omnibus, quas fugimus, malum."

2 Hobbes, *Leviathan* 1.2. "That when a thing lies still it will lie still forever unless something else stir it, is a truth that no man doubts of. But that when a thing is in motion it will eternally be in motion unless somewhat else stay it, though the reason be the same (namely, that nothing can change itself), is not so easily assented to."

3 Ibid. 1.3: "As prudence is a presumption of the future, contracted from the experience of time past, so there is a presumption of things past taken from other things, (not future but) past also." Ibid. 1.6: "That sense is motion in the organs and interior parts of man's body, caused by the action of the things we see, hear, etc. . . ."



quiry.<sup>1</sup> Where Hönigswald thinks he has discovered that Hobbes bases the autonomy of the psychical domain in the special fundamental function which the concept of *memory* plays in his psychology, there we must counter by pointing out that in Hobbes' memory, like imagination, is really nothing but a *lessening of the senses*.<sup>2</sup> Neither can Hönigswald's interpretation be easily reconciled with Hobbes' undoubtedly materialistic ontology. In Hobbes' train of thought, mechanistic explanation was indeed the only possible way in which to carry through the continuity of logical analytical thought.

This mechanistic explanation of psychical life, in which Hobbes follows the pattern set by *association psychology*, is now complemented by his nominalistic, relativistic theory of the desired good. Nowhere else are the fatal consequences of Hobbes' nominalism revealed more starkly than in this theory. And nowhere else, perhaps, does the gulf between medieval Thomism (substantial forms) and modern humanistic nominalism yawn wider than in this hyper-relativistic theory of good and evil.

In Hobbes' *De Homine* 2.4 we read that the good is nothing but a common name for all that is desired and pursued, while evil is but a common name for all that we turn away from in aversion. It seems most ironic to see Hobbes commending Aristotle on this point for having defined the good as that which all men seek to attain, since in almost every respect Aristotle was the chief target of his scathing criticism. Ironic indeed, for who is not aware that Aristotle's definition of the good was grounded in an eternal, immutable world-order, a law-idea in which the good too was sure of its unchangeable essence? Who does not recall that for Aristotle the good was grounded in the idea of entelechy, the purpose ingrained from eternity in all creatures and corresponding to the distinctive nature of each creature, a purpose that every creature in its own way, according to its own nature, strives to achieve as its perfection?

For Aristotle, the good is that which corresponds objectively to the substantial form of each nature. For Hobbes the nominalist, the good is but a name for what each person subjectively considers to be his advantage, interest, and increase in power. The good is entirely relative with respect to personal evaluation, time, and place. People do speak of a general good, common to all, such as health, for example, but even this good, according to Hobbes, is still relative. One cannot speak of an absolute good, for what one calls good is good only for certain persons and in a certain respect. What one considers good, another will consider evil.

Hobbes does distinguish between types of good as *true* or *apparent*. But by this he by no means intends to reintroduce an absolute good. He intends to say only that most matters that men will pursue for their relative

1 See Richard Hönigswald, *Hobbes und die Staatsphilosophie* (Munich: Reinhardt, 1924), p. 113 ff.

2 Hobbes, *Leviathan* 1-2.

good also involve a quantum of evil, and that this evil may even outweigh the good. An apparent good, then, is that whose possession works more evil than good. Inexperienced people usually do not know how to weigh this relative good and evil properly, and then pursue things that bring initial satisfaction but in the long run inflict bitter hurt.

Entirely in harmony with this value relativism is Hobbes' consideration of the problem of the highest good. There can be no experience of the highest good in life. For if there were an ultimate goal, a supreme good, there would be nothing to desire and pursue beyond it. All experience is relative to desire or aversion. Desire or aversion signifies an infinite motion of the soul and therefore cannot be limited by a final goal or highest good; the end of striving, of motion, spells death. For life is eternal motion!<sup>1</sup>

It is the boundless restlessness, the spiritual hunt for the novel and the unknown, the desire towards infinity of the Renaissance man that reaches its zenith in this view. It is the restless wandering, not cloaked in the romantic twilight of late historicism but draped in the sober, clear daylight of Anglo-Saxon rationalism, that is here proclaimed the watchword of modern times!

This entire perspective is then joined by Hobbes' one-sided view of power in which he nevertheless proves himself to be an excellent analyst of the baser inclinations of the human heart.

A person's power, according to Hobbes, consists in general in the means at one's immediate disposal by which to acquire any future probable good. Accordingly, the state is viewed as the greatest concentration of power. But charm, public honor, beauty, and the arts and sciences are also looked at from the perspective of power. A person's worth or value, like all other things, is his price, that is, what one would be willing to give for the use of his power. Honor, too, is measured by power, not by the justice or lack thereof in the means by which one attained it.<sup>2</sup> The Greeks did not think they dishonored their gods when they praised Zeus for nothing so much as the adultery and fornication in which he engaged, and the greatest praise Homer gave to the god Mercury is that, having been born at sunrise, he had invented music by the afternoon and before nightfall had stolen Apollo's cattle. In all men there is a constant insatiable desire to achieve power, and its cause is not always that one hopes to acquire more by the increase in power, but that one cannot secure one's present existence with-

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1 Hobbes, *De homine* 2.15: "Summum bonum, sive ut vocatur, felicitas et finis ultimus, in praesente vita reperiri non potest. Nam si finis sit ultimus, nihil desideratur, nihil appetitur: unde sequitur non modo nihil ab eo tempore ipsi esse bonum, sed ne sentire quidem hominem. Omnis enim sensio cum aliquo appetitu vel fuga conjuncta est, et non sentire est non vivere."

2 Hobbes, *Leviathan* 1.10: "Nor does it alter the case of honour whether an action (be it great and difficult and consequently a sign of much power) is just or unjust: for honour consists only in the opinion of power."

out continually amassing more power.<sup>1</sup> The keystone of Hobbes's mechanistic psychology, or, if you will, its cornerstone, is the deterministic theory of the bondage of the will which our author has developed most fully in his debate with Bishop Bramhall, a polemic which he published later under the title *The Questions concerning Liberty, Necessity and Chance*.<sup>2</sup>

Tönnies, Hobbes' biographer, does not exhibit a very profound insight into the Christian doctrine of predestination when he sees Hobbes' mechanistic determinism as just one particular elaboration of this old doctrine.<sup>3</sup> A greater gulf than that which exists between these two doctrines is scarcely conceivable. The Augustinian-Calvinian doctrine of predestination is based on the primal Christian idea of the absolute sovereignty of the will of God, an idea which posits the law as ordinance of that sovereign will, as an insurmountable line of demarcation between God and creature and which, especially in Calvinism, leads to the confession of sphere-sovereignty. Contrast this with Hobbes' mathematical determinism, grounded in the humanist starting point of the sovereignty of reason, which destroys all sphere-sovereignty between the laws of mechanical natural movement, of psychical life, and of law and morality in one relentless drive to establish continuity! The gulf between the two can hardly be bridged. Hobbes sees the will only as the final element in the process of mechanically proceeding psychical motions. When desire and aversion, fear and hope concerning the same matter alternately arise in our soul, and we are continuously reminded of the good and the bad consequences of action and non-action, so that we are attracted and then again repulsed, hope and then again fear, then this whole series of inclinations, which lasts until the matter is done or rejected, is called *deliberation*. In deliberation, then, the final inclination or rejection directly connected with the act on which the deliberation is focused is called the will.<sup>4</sup>

The actions of men are caused by their will, but the will by their fears or hopes.<sup>5</sup> And it is impossible not to choose the lesser of two evils.

1 Ibid. 1.11: "So that in the first place I put for a general inclination of all mankind a perpetual and restless desire of power after power, which ceases only in death. And the cause of this is not always that a man hopes for a more intensive delight than he has already attained to, or that he cannot be content with a moderate power; but because he cannot assure the power and means to live well, which he has present, without the acquisition of more."

2 Vol. 5 in *The English Works of Thomas Hobbes*, Molesworth ed.

3 Tönnies, *Thomas Hobbes*, p. 128.

4 Hobbes, *Leviathan* 1.6: "In deliberation, the last appetite, or aversion, immediately adhering to an action or the omission thereof, is what we call the will, the act (not the faculty) of willing."

5 Hobbes, *De Cive*, in *Opera philosophica*, 2:5.1. "Manifestum est per se, actiones hominum a voluntate, voluntatem a spe et metu proficisci; adeo ut quoties bonum majus, vel malum minus videtur a violatione legum sibi proventurum, quam ab observatione, volentes violant."

The freedom to will and not to will, then, is not greater in human beings than in other creatures. For desire is preceded by a cause of this desire, and it is therefore out of the question that desire should not follow from that cause; that is to say, the consequence of desire is inevitable. A liberty that is freedom from *necessity* does not belong to the will of men, nor to that of animals.<sup>1</sup>

After this brief analysis of Hobbes' psychology, we now hold the threads that take us to his ethical natural-law system based on mathematics. At first blush that transition looks implausible, as Hobbes' theory of moral good led us into a labyrinth of subjectivism and relativism! Yet that very theory is to provide entry to Hobbes' natural law. After all, the first good that every man has necessarily to pursue is self-preservation; and foremost among all evil things is death, self-destruction (although in exceptional circumstances even this may appear to us to be a good).

The insatiable urge for power, which all men deem essential for their survival, leads perpetually to bitter struggle and violence.

In nominalistic fashion, Hobbes again takes his point of departure in the abstract individual in the state of nature. It is a fictional starting point, not at all intended historically but logically, as the methodological way to analyze the problem of the state. Nature created all individuals equal, both physically and mentally. This equality of power and intellect also gives rise to equal expectations with respect to acquiring any desired good. But the same equality occasions mistrust and natural enmity, as men do not feel safe from one another. There is a *bellum omnium contra omnes*, a war of all against all. Three main causes of this natural struggle can be pointed out in human nature: the first is that two or more individuals seek to acquire the same good; the second is mutual distrust; the third is ambition which urges men to seek power over each other.<sup>2</sup>

Now in this state of nature there is no place for the concepts of justice and injustice. After all, where there is no authority there is no law either, and where there is no law there is no injustice. All conflict proceeds from men's desires and passions, and these are not in themselves evil. In the state of nature, force and fraud are the two main virtues on which everything rests. Justice and injustice are properties of neither the body nor the spirit. If they were, they would also exist in an individual who was all alone in the world, just as such a solitary individual displays passions and desires. But it is not so. Justice and injustice are only meaningful in a community of people.<sup>3</sup>

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1 Hobbes, *De Corpore* 25.13.

2 Hobbes, *Leviathan* 1.13. "So that in the nature of man, we find three principal causes of quarrel. First, competition; secondly diffidence; thirdly, glory."

3 Ibid. 1.13: "The notions of right and wrong, of justice and injustice have no place there. Where there is no common power there is no law; where no law no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are facul-

Through it all one sees the drive for continuity of the humanist law-idea in its rationalistic materialistic type. What drives this perspective is not a divine objective world-order in which justice and morality encompass their own appointed sphere of ordinances, but a mathematical construction built up from the simplest elements. Ethics has been swallowed up in right; the right in the state of nature is the right of all to all. In the state of nature there is no law, no authority, no property, no mine and thine. Everyone has a right to everything; in other words, there is no right at all, nor a moral commandment. This is the wretched state of nature; engraved over it is the terrifying motto *homo homini lupus est*: man is a wolf to his fellow-man.

As already observed, it is a general misconception, which until now has been rebutted only with respect to Kant and Rousseau, that the humanist theory of natural law took the state of nature as a *historical* starting point. Rather, Hobbes states explicitly that he is not speaking about a historical state of nature but a logically necessary one. In other words, according to the laws of natural science it is a state of *nature* that would necessarily arise if there were no civil community.<sup>1</sup>

Nevertheless, Hobbes himself does point to the relation among states which, according to him, is indeed a state of nature. And Tönnies is right in pointing out that the backdrop of Hobbes' theory of the state of nature is the economic and political conditions of the modern age, with its unbridled competition, wage disputes, and political party struggles:

The dissolution of all communal relationships and communities into individuals who confront each other with their abilities and assets, hence their interests, as powers capable of concluding contracts and fighting battles, is a process which even today, especially in its consequences for the female sex, has not yet run its course, although Hobbes judged it to be already completed . . . Among the later theorists of natural law, notably in the often mediievally oriented economies of the Holy Roman Empire, it was rare for anyone to anticipate how *homo* becomes *homini lupus* in a capitalist society.<sup>2</sup>

Now then, people themselves are moved towards peace by certain affections such as the fear of death, the desire for the things that are necessary for a quiet and comfortable life, and the hope to acquire those things by industrious effort. The manner in which people may arrive at a

ties neither of the body nor the mind. If they were, they might be in a man that were alone in the world, as well as his senses and passions. They are qualities that relate to men in society, not in solitude. It is consequent also to the same condition, that there be no propriety, no dominion, no distinct 'mine' and 'thine' . . ."

- 1 Ibid. 1.13: "It may peradventure be thought there was never such a time nor condition of war as this; and I believe it was never generally so all over the world; but there are many places where they live so now."
- 2 Tönnies, *Thomas Hobbes*, p. 167. Here too is the misconception that Hobbes viewed the state of nature historically.

decent peace is shown by *reason*, which deduces the *laws of nature* that are the necessary preconditions for a lasting state of peace.

In Hobbes, therefore, natural law is the anarchistic negation of all law, it is liberty, freedom from any law whatsoever; for its first foundation is the principle that “everyone must secure one's life according to his ability” and “everyone is allowed to have all and to do all.”<sup>1</sup>

It is the law of nature that first points to the manner in which a state of law and order may indeed be attained. As long as men remain in the circumstance of natural law, there will be security for no one, not even the strongest; and in the long run there will be no prospect of self-preservation or survival.

The law of nature (*lex naturalis*), then, is an injunction or a general rule, deduced by reason, which prohibits a person doing things which lead to self-destruction or which could remove the means of his self-preservation, and which at the same time enjoins those things that are necessary for self-preservation.<sup>2</sup>

It is a general rule of reason that everyone must strive for peace as long as there is hope of attaining it and, if it is unattainable, everyone may seek the means of war and use them. The first part of this rule contains the fundamental law of nature: *Seek peace, and pursue it*. The second part contains the substance of natural law, according to which we must use all means for protecting ourselves. From this law of nature, then, whose continuity with the mechanical mathematical laws has been guaranteed by means of Hobbes' mechanistic construction of psychical life, our author now deduces all other natural laws of right. His second law of nature reads that one must be willing, if he sees that others are also willing, to relinquish, as much as is necessary for their mutual peace and self-preservation, the right which in the state of nature one has to all things, and to be satisfied with as much liberty towards another as one would allow another to have towards oneself.

Hobbes regards this rule as simply embodying the old maxim *Do unto others as you would have them do unto you*. Giving up this right to everything must here be understood in the sense of transferring this right to someone else. From such a voluntary transfer, according to Hobbes, follows the obligation and duty not to hinder in the exercise of such a right the one to whom it has been handed over. Hobbes compares this duty to the logical principle of non-contradiction: “For as it is there called an ab-

1 Hobbes, *De Cive* 1.7: “Itaque juris naturalis fundamentum primum est, ut quisque vitam et membra sua quantum potest tueatur.” Ibid. 1.10: “Sequitur, omnia habere et facere in statu naturae omnibus licere.”

2 Hobbes, *Leviathan* 1.14: “The right of nature, which writers commonly call *jus naturale*, is the liberty each man has to use his own power, as he himself wills, for the preservation of his own nature, that is to say, of his own life; and consequently, of doing anything which in his own judgment and reason he shall conceive to be the aptest means thereunto.”



surdity to contradict what one maintained in the beginning, so in the world it is called injustice and injury voluntarily to undo that which from the beginning he had voluntarily done.”<sup>1</sup>

Meanwhile Hobbes consistently keeps to his naturalistic line when he states in so many words that this duty and obligation have no validity in themselves but are “bonds that have their strength, not from their own nature (for nothing is more easily broken than a man's word), but from fear of some evil consequence upon the rupture.”<sup>2</sup>

The transfer of everyone's natural right to everything, according to Hobbes, can never go so far that someone becomes completely stripped of all rights whatsoever. After all, the ceding is a voluntary act by which one intends one's own good. Consequently there are some rights that we can never relinquish, as for example the right to resist whoever seeks to take our life or whoever tries to injure, shackle or imprison us, since we gain no advantage from patient endurance of such actions.

To achieve the transfer of rights enjoined by the law of nature, contracts are necessary. So the third law of nature, likewise deduced from the fundamental law of nature, is that people must keep the contracts they have made. Hobbes calls this the law of justice: “And in this law of nature consists the fountain and origin of justice. For where no covenant has preceded there no right has been transferred, and every man has right to every thing; and consequently no action can be unjust. But when a covenant is made, then to break it is unjust; and the definition of injustice is none other than *the non-performance of covenant*.”<sup>3</sup> After all, without respect for this law of nature, the war of destruction of all against all would immediately resume.

In this way the content of justice indeed becomes identical with the keeping of contracts. A quick comparison with Grotius' natural law shows how much more deeply nominalism has penetrated Hobbes' thinking.

In the meantime, as already observed, the validity of contracts, obligations, and duties is not intrinsic to their nature, but is based on the natural motions of the soul, which cause irresistible fear of the disadvantages that would result from breaches of promise; that is why there can be no question of justice or injustice in the state of nature. There must be a power, therefore, which is able, through fear of punishment, to compel all people equally to keep their agreements. And this power is the state. With the establishment of a coercive political authority, agreements and property also acquire force of law. At that point property becomes a legal institu-

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1 Ibid.

2 Ibid.

3 Ibid. 1.15.

tion resting upon mutual contracts and drawing the line between mine and thine.<sup>1</sup>

Thus justice as the law of keeping faith with contracts becomes a rule of reason by which we are prohibited from doing anything that could lead to self-destruction. Whoever violates this rule once again evokes the state of nature's *bellum omnium contra omnes* and so again unleashes the war of destruction against his own existence which, in the long run, does not guarantee any security of life at all.

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<sup>1</sup> Ibid., 15: "Therefore before the names of just and unjust can have place there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire in recompense of the universal right they abandon. And there was no such power before the erection of a commonwealth. . . . And therefore where there is no *own*, that is no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no commonwealth, there is no propriety."

## Chapter 13

### *The Self-Destruction of Humanist Natural Law*

A more thorough analysis of the penetration of the humanist law-idea in Hobbes' natural law is so enticing and rewarding because there is probably no other system of humanist natural law that has been conceived so logically and that illustrates so plainly the tendency of continuity in the humanist ideal of science. Also, there is no other system except Machiavelli's theory of *raison d'état* which so clearly reflects the political and economic state of affairs in early modern times.

In previous chapters we presented a bird's-eye view of new economic and political problems confronting modern humanist natural law. We noticed how, with the disintegration of the medieval ecclesiastically unified culture, the economic and political spheres of life, as they shook off control of the church, began to sever all connections with morality and justice. We also saw how almost all spheres of life collided with each other and how each declared its own absolute sovereignty. We also noted that the law-idea had not been found which could place the newly discovered spheres of law, together with the known ones, back into a coherence of unity, ascribing to each its own boundaries.

Humanism, as a worldview, now had to erect on its own irrational foundations the structure of a law-idea if it did not want to lose its grip and influence on the modern age. Modern humanist natural law also had to erect a dyke against the terrible flood of *raison d'état* and unscrupulous early capitalism in an attempt once again to indicate objective boundaries where the unbounded subjectivism of Renaissance man, conscious of man's sovereign creative powers, had erased all boundaries.

We noticed how the lines along which this humanist law-idea would have to unfold became more and more pronounced. In Hobbes, any reservation, any ambiguity, any residual urge for synthesis is gone. His naturalistic logic draws its conclusions with an iron hand. The humanist ideal of personality, as a hidden driving force, stimulates the mathematical and naturalistic ideal of science which seeks to demonstrate in the logical coherence, in the logical continuity of all spheres of law, the fixed character of their principles and at the same time their unity in the natural reason of the human being.

Thus arose a modern humanist natural law which was no longer grounded in an organic law-idea of a divine cosmic order but which, as a mathematical chain of deductions from a completely isolated, individualistic basic principle, would have to demonstrate the sovereignty of modern mathematical thought.

We saw how *pacta sunt servanda*, the abstract principle of honoring contracts, appeared in nominalism as the basis of positive law. We saw how this principle, eclipsed by the nominalist and Stoic principle of the will, in the end was used to sanction modern state absolutism. We also saw how this natural law became ensnared in an inner antinomy, since it had to capitulate in the end to the very *raison d'état* it had been designed to hem in. Now it will become apparent in Hobbes' natural law how the principle of justice in its humanist conception also failed to provide a check against the excessive expansion of economic life, against the absolutization of the economic principle of value at the expense of law and morality, and against the immoral tendencies of early capitalism, and how instead it largely sanctioned all of this and so revealed a new antinomy intrinsic to it.

The economic law-sphere according to the Calvinist conception is "sovereign in its own sphere"; that is to say, its laws possess sovereign divine validity next to those of law and morality. The saying "business is business" is beyond reproach if it is indeed understood in the limited sense of its validity, namely in *economic valuation*. As soon as this principle is applied beyond the sovereign sphere of the economic, in other words as soon as it is *absolutized* to become the one and all, inevitable conflicts with the nomic spheres of law and morality will result. For then it begins to override the principles of justice and morality and thus violate sphere-sovereignty.

The Aristotelian-Thomist theory of natural law had distinguished commutative from distributive justice. Commutative justice consisted of an equality of performance and counter-performance in private legal relations. It formed the basis of the Scholastic theory of *justum pretium*, just price. It also seemed to offer support for the Scholastic theory of prohibition of interest, otherwise supposedly based on Gospel texts. Now listen to Hobbes as he considers the entire conception of justice. His tone is almost cynical:

Justice of actions is divided by writers into *commutative* and *distributive* justice, and they say the former consists in arithmetical proportion, the latter in geometrical proportion. Commutative justice, therefore, they place in the equality of value of the things contracted for, and distributive justice in the distribution of equal benefit to men of equal merit. As if it were injustice to sell dearer than we buy, or to give more to a man than he merits! The value of all things contracted for is measured by the appetite of the contractors, and therefore the just value is that which they be contented to give. And merit (besides that which is by covenant,

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where the performance of one party merits the performance of the other party and falls under commutative, not distributive justice) is not due by justice, but is rewarded of grace only. And therefore this distinction, in the sense wherein it used to be expounded, is not right. *To speak properly, commutative justice is the justice of a contractor, that is, a performance of covenant in buying, and selling, hiring and letting to hire, lending and borrowing, exchanging, bartering, and other acts of contract.*<sup>1</sup>

In this entire view, modern economic life has cast off the old trammels of an organic natural law. The free play of socio-economic forces has been sanctioned! Where Grotius abandoned the prohibition of interest with great hesitancy, Hobbes has left such a hedging position miles behind. The content, the substantial essence, the heart of the Aristotelian-Thomist theory of justice has been thrown to the wind. *Pacta sunt servanda* has become the only brake that humanist natural law can apply to economic competition and struggle.

The will, the inclination of people, determines the value of economic goods. The problem of the just price is gone. Natural law does nothing other than sanction the will to pay a price. But the *bellum omnium contra omnes*, the war of all against all, has not been arrested in the least by this theory of natural law. On the contrary, in economic life that warfare has now been sanctioned and in the process has become even more intense, more cut-throat. Hobbes himself admits this to some extent when in *De Homine* he argues that, together with vanity and mutual distrust among people, continual competition will ever again call forth struggle and violence. This admission is not changed by the fact that Hobbes personally was ill-disposed toward the great merchants and in places fulminates against rising capitalism. He draws no practical conclusions from this insight. *His abstract, individualistic natural law must allow pacta sunt servanda without any restrictions. The least restriction of this principle would cause his entire political theory, built on its unlimited validity, to collapse.*

And so this abstract, mathematical natural law reveals a new antinomy intrinsic to it: in the whole field of economics it sanctions the state of nature, which it had set out to stop. It was to replace the maxim of the state of nature (*homo homini lupus est*) with the slogan of justice. But that slogan of justice appears to be nothing other than the wolfish slogan of the state of nature in the hallowed formula of the language of justice!

The goddess Themis herself now feeds the wolf that lurks in every human soul!

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<sup>1</sup> Hobbes, *Leviathan* 1.15, emph. added.

**The methodological road to the self-destruction of humanist natural law**

Powerless against the immoral tendencies in modern economic life, Hobbes' natural law, in the very methodological point of departure of this great thinker, was given a meaning that could not but lead to its total logical self-destruction.

Again it is the Roman Stoic principle of the will, whose disintegrative consequences have already been seen in Marsilius of Padua, Bodin, and Grotius, which in Hobbes' theory leads to the inner destruction of his natural law constructions.

*Volenti non fit injuria*, that is, "to a willing person, no injury is done," here becomes a logical consequence, drawn unhesitatingly from the methodological starting point. The reasoning runs as follows: When a person who harms another has not given up his original natural right to do what he pleases by way of some prior contract, such a person cannot have committed an injustice, for there is no contract and so it could not have been breached.

If such a contract does exist, the obligation lapses together with the will of the person who binds himself; the contract is simply nullified by mutual consent.

And in this law of nature consists the fountain and origin of justice. For where no covenant has preceded there no right has been transferred, and every man has right to every thing; and consequently no action can be unjust. But when a covenant is made, then to break it is unjust; and the definition of injustice is none other than *the non-performance of covenant*. And whatsoever is not unjust is just.<sup>1</sup>

The consequence of this way of reasoning is that where the state is to be understood as the product of a social contract in which everyone has relinquished every one of his natural rights (except that of self-preservation) so that state authority embodies the general will of the subjects, there the state can do no one an injustice. Whatever the state decrees is right, as the outcome of the general sovereign will. In other words, natural law as *lex naturalis* in Hobbes signifies no less than the sanctioning of all that the sovereign is pleased to enact into positive law. Not entirely without reason, therefore, it has been said that Hobbes' natural law represents the destruction of natural law itself and that Hobbes may be called the father of modern positivistic legal theory.

**The other principles of Hobbes' natural law**

Certainly this consequence was not at all part of Hobbes' intention. Instead, using strict logic he deduces no fewer than nineteen rules of natural law from the fundamental law of nature, rules that are to apply both

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1 Ibid.



to intercourse among citizens and to the sovereign. In this manner, gratitude, complaisance and forgiveness are proclaimed as duties of the law of nature. It is also inferred from the fundamental law of nature that in the exercise of retribution, the greatness of the evil committed is not important, but the greatness of the good that will follow; that one must refrain from offending, hating or despising one's neighbor; that where all men are by nature equal, no one ought to take pride in himself above his fellow citizens; that one should allow everyone those rights which one would like to reserve for oneself; that equity must be practiced in legal judgment in the sense that one should not be a respecter of persons but treat everyone equally; that the things that cannot be divided must be used communally and that all share in their use equally; that things which can neither be divided nor enjoyed in common be distributed by lot, and in turn; that when so doing, a prior rank be accorded to the first possessor or the first-born; that in international relations, safe-conducts must be provided for those who come to negotiate peace; that those who have a legal dispute submit their case to the decision of an arbitrator; that no man should be an arbitrator in his own cause; that partisans may not act as judges; that in case of disagreement about facts, judges should rely on the testimony of witnesses.

All these laws of nature can be reduced to one simple principle, according to Hobbes, namely: *Do not that to another which thou wouldest not have done to thyself.*<sup>1</sup>

### **The conflict between the ethical and the jural law-sphere**

Here we have two lines of reasoning, derived from the selfsame basic principle of method, which mutually cancel and destroy each other. All positive law as general will binds every citizen insofar as his or her inalienable right to self-preservation does not resist it. No pretense can absolve the citizen from this duty of obedience. It follows from the fundamental law of nature that everyone must seek peace as long as there is hope of attaining it.

On the other hand, a whole series of eternal principles are deduced from the same fundamental law of nature, principles which also bind the law-giver, the sovereign himself. The former line of reasoning leads to the destruction of natural law, the latter to the destruction of the absolute validity of positive law.

A new antinomy is here discovered as intrinsic to humanist natural law, one that feeds on the fundamental antinomy between the humanist ideal of science and that of personality.

For what is the case? Hobbes' methodological point of departure, the starting point of the ideal of science, required that law and morality be subsumed under one rational denominator. Accordingly, a moral problem

<sup>1</sup> Ibid.

could only become a scientific problem from the vantage point of logical analysis, of mathematical dissection. Applied to individual persons, this methodological principle leads to the state of nature, straight into a situation devoid of right and law. Morality, however, requires an eternal and fixed norm of conduct. Now then, the logical condition for moral law is that a political community with compelling authority be established. In other words, no morality without a state. Morality as a law-sphere must be comprised within the jural law-sphere. The state is a body, an artificial body, to which logical mathematical analysis may be applied. Only within the horizon of the idea of state can the question of morality crop up in Hobbes.

This appears most plainly from what Hobbes writes about the binding force of natural laws. According to him they bind a person *in foro interno* (we would say: in the conscience; but Hobbes, in line with his mechanistic psychology, must translate this expression as “bind to a [man's] desire that they [the natural laws] should take place”). But *in foro externo*, that is, in terms of the realization of that desire, they do not always bind. For if someone would behave accordingly and keep all promises at the time and place agreed upon, while no one else would do so, such a person would fall prey to others and occasion his own destruction, which conflicts with the foundation of all natural laws which intend nothing but the preservation of people.<sup>1</sup>

In light of what Hobbes has said earlier about the state of nature, the conclusion must be that the law of nature has no binding force in the ethical sense outside the community of the state. It could only continue to exist as a reasonable desire, latently, without any effect, but it would not be a norm for action nor binding as a law of ethics. Only the power of the arm of the state makes moral principles into binding laws. In other words, there are only legal obligations, no moral obligations. Morality must first be transformed into compelling positive law before it has the force of binding law.

Here we must give full credit to the considerable logical power of thought that Hobbes displays. This last conclusion does indeed follow with iron necessity from the naturalistic law-idea that underlies his entire theory of natural law. Within the framework of this law-idea, obligations in the true sense of the word cannot be admitted, since the concept of norm makes no sense here. In Hobbes the laws of nature can be nothing but logical conditions for the attainment of a state of peace, discovered by analyzing the mechanical process of psychical motions.

1 Ibid.: “The laws of nature oblige *in foro interno*; that is to say, they bind to a desire that they should take place; but not always *in foro externo*; that is, to the putting them in act. For he that would be modest and tractable and perform all he promises, in such time and place where no one else would do so, would only make himself a prey to others and procure his own certain ruin, contrary to the ground of all laws of nature, which tend to nature's preservation.”

And yet, inasmuch as Hobbes characterizes the state of peace, the *status civilis*, as a good that has *ethical* value for everyone, his system reveals an inner antinomy in the very concept of natural moral law. After all, the ethical concept of value is a completely foreign element in a mathematical mechanical system and must be destroyed as soon as it is viewed from the logical denominators of body and motion. There is no logical way to arrive at an absolute ethical value from the extreme relativism of Hobbes' theory of the good. That Hobbes nevertheless retains the concept of value and erects an objective concept of duty upon it, in other words that he unexpectedly and surreptitiously provides ethical meaning in support of his laws of nature, proves only that he is not ready to stand by the ideal of science at the cost of annihilating the ideal of personality.

The extent to which this ideal of personality, as an irrational factor, is at work behind the ideal of science may appear from statements like the following:

Almost all that human life turns to its advantage, from the contemplation of the stars, from geography, chronology, distant ocean travel, all that is beautiful in buildings, strong in forts, admirable in machines, in short, all that distinguishes the present day from former barbarity or the state of savages in America, we may thank geometry for.<sup>1</sup>

Thus Hobbes also looks to science for the further elevation of culture, especially the science of natural law which he founded. Thus he vents his anger against every attempt of the state, or the church, to overrule reason, which Hobbes takes to be the bastion of personality.

However, the ideal of personality as it continually reappears must at some time necessarily come into conflict with the ideal of science. For that matter, this conflict had already showed itself in the antinomy between Hobbes' phenomenistic point of departure and his materialistic metaphysics. In the inner antinomy of Hobbes' natural moral laws, the legal principle of the inviolability of contracts (in its abstract form leading to extreme positivism) came into open conflict with the ethical principles that Hobbes thought to have inferred from the same fundamental law of nature. This highlights the contradiction between the ideals of science and personality, the two pillars of the humanist law-idea. After all, the natural-law principle of justice as conceived by Hobbes must result in the qualification of all acts of the sovereign as unconditionally lawful rights. Even the so-called inalienable right of self-preservation, which entitles every rebel or criminal to resist execution by all the means of power at his disposal, is not a right in the true sense but merely a residue of the state of

<sup>1</sup> Hobbes, Dedicatory Epistle of *De Cive*: "Quicquid enim humanae vitae auxilii contingit a siderum observatione, a terrarum descriptione, a temporum notatione a longinquis navigationibus; quicquid in edificiis pulchrum, in propugnaculis validum, in machinis mirabile est; quicquid denique hodiernum tempus a prisca barbarie distinguit, totum fere beneficium est geometriae."

nature in which we find only the “law of the fist”; the other citizens are duty-bound to resist, not abet, any such rebel or criminal.

There is no appeal by citizens to the laws of morality in order to refuse obedience to the state's laws. Moral demands nevertheless bind the citizens *in foro interno*, even when positive law is at odds with them. But they have no binding force in the face of positive law. In *De Cive*, Hobbes writes that it is not for private citizens to presume to decide on good and evil, since this runs counter to the interest of the state.<sup>1</sup> In other words, the moral laws of nature are binding and non-binding at one and the same time. An insoluble antinomy, this! Hobbes' naturalistic law-idea offers no way out.

In vain does Hobbes take pains to solve this antinomy. In the twenty-sixth chapter of his *Leviathan* he relates the law of nature to positive civil law in such a way as to make them equivalent and each other's implicates.

For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues that depend on these in the condition of mere nature . . . are not properly laws, but qualities that dispose men to peace and obedience. When once a commonwealth is settled, then they are actually laws, and not before; as being then the commands of the commonwealth and therefore also civil laws: for it is the sovereign power that obliges men to obey them. . . . The law of nature therefore is a part of the civil law in all commonwealths of the world. Reciprocally also, the civil law is a part of the dictates of nature. For justice, that is to say performance of covenant and giving to every man his own, is a dictate of the law of nature. . . . Civil and natural law are not different kinds, but different parts of law; whereof one part, being written, is called civil, the other, unwritten, is called natural.<sup>2</sup>

But who does not notice the logical impossibility of this construction? The mistake consists in this: Hobbes bases the state, and thereby all of positive law, only and exclusively on a single abstract principle of his law of nature and concludes from it that whatever the sovereign commands is right by virtue of the law of nature itself, whereas in the construction just mentioned he makes it appear as though all rules of the law of nature are comprehended in the civil law. So Hobbes repeatedly makes bold to call unjust those laws or judicial verdicts that are passed on the authority of the sovereign yet are in conflict with the requirements of equity. If the law of nature in all its prescriptions were indeed comprised in the civil law, Hobbes would not be allowed to ascribe the character of positive binding law to such unjust laws. Nevertheless, he does so explicitly, on the basis of the radical principle of his theory of the will: *Volenti non fit injuria*. Without mincing words Hobbes states

1 Ibid. 12.1: “Privati autem homines dum cognitionem boni et mali ad se trahunt, cupiunt esse reges; quod salva civitate fieri non potest.”

2 Hobbes, *Leviathan* 2.26.4.

that in every particular dispute involving the law of nature, the judicial verdict shall decide.<sup>1</sup> *It is positive law that first determines the binding sense of the law of nature.* Indeed, according to Hobbes' naturalistic starting point, the laws of nature cannot bind the subjects in the civil state except insofar they have been sanctioned explicitly by civil law. After all, prior to such sanctioning they are not properly laws and can, therefore, not really bind anyone.

This antinomy, for that matter, penetrates even further. It also destroys the supposed ideal foundation of the state itself. The state, after all, is based on a contract of all the people with each other. But this contract, logically speaking (Hobbes, as noted, does not speak of a historical foundation) can only be conceived as a contract concluded in the state of nature, precisely where *pacta sunt servanda* has no validity. There is no way that the principle of the inviolability of contracts, which becomes law only through state sanction, can be the basis for the state itself. Hobbes' natural law appears alternately to destroy itself and to destroy positive law.

**The completion of the mathematical nominalistic construction of the state in humanist natural law**

The title page of Molesworth's well-known edition of *Leviathan* depicts a wondrous symbolic representation: an enormous figure raises itself over the countryside. On its head it wears the crown of authority. The left hand holds a scepter. The right hand holds a menacing sword. When one looks at this figure more closely, one notices with astonishment that it is composed of an infinite number of little people. Such is the symbol of Hobbes' Leviathan, the great monster of state, bearing the text from Job 41: "*Upon earth there is not his like.*"

Simultaneously this symbolic figure confronts us with the problem of Hobbes' construction of the state, namely as the unity of an innumerable multitude of individuals. That was the problem which, as we saw, had faced nominalist political theory since the Middle Ages. But Hobbes' masterly stroke has provided a solution which, from a mathematical constructive viewpoint, is practically perfect.

For Hobbes, the state is a body in a methodological sense, that is, it is open to mathematical analysis and can be constructed mechanically from motions. The bridge to the mathematical construction of the state as a unity, for Hobbes, is the juridical concept of personality. In *De Cive* the state is defined as a person whose will, since it derives from the contracts of a multitude of people, must be taken as the will of all these individual people.

<sup>1</sup> Ibid. 2.26.8: "If therefore a man have a question of injury, depending on the law of nature, that is to say, on common equity, the sentence of the judge, who by commission has authority to take cognizance of such causes, is a sufficient verification of the law of nature in that individual case."

And the closing chapter of Part One of *Leviathan*, which deals with “persons, authors, and things personified,” serves as the basis of the entire theory of the state or commonwealth which is then elaborated in Part Two. That closing chapter begins with the following definition of a person: “A person is he whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction.”<sup>1</sup> Thus only when a person represents himself or herself is he or she a natural person. In all other cases they are fictitious or artificial persons.

Fictitious persons act in the name of those they represent. This representation can occur with or without full authorization. In the former instance the representative has authority; such a person has a mandate and can bind the authorizing person, though only within the limits of the mandate.

It follows that when a representative concludes a contract on the authority of the person who authorized him, that representative thereby binds the authorizing person (Hobbes calls this person the “author”) as though the latter had concluded the contract in person. Therefore all that Hobbes has said before about natural contracts between people (namely, that it binds the will of the contracting parties according to the law of nature) must also hold for contracts concluded for the “author” by any of his representatives, within the limits of their mandate.

This whole line of reasoning is now applied to a multitude of individuals. A great number or multitude of humans becomes a person when they are represented by a “person or human being,” on condition that such representation take place with the consent of each particular individual in this multitude. For it is the unity of the representative, and not the unity of the matter represented, that makes the person one.

Each one of the multitude which thus becomes a person is then the author of the actions performed by the representative within the limits of that person's mandate. Then follows the natural-law foundation of the majority principle. The voice of the majority must be taken as the voice of all. Unless the majority principle is accepted, after all, a person who is composed of any number of individuals, and who wills to act and must act as a

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1 Ibid. 1.16. The fact that Hobbes must resort to the fiction theory to bring the so-called natural personality and the legal person under one juridical denominator proves how little his *mathematical* view of the problem manages to penetrate to the meaning of the problem of legal personality. Even the individual legal subject, the so-called *natural* person, displays the mathematical analogy of unity in multiplicity, an analogy that does not reveal its sovereign juridical meaning except under the guidance of the juridical idea of *retribution*. So considered, it is not the composite legal person but rather the “natural” legal person that becomes a problem in the jural sphere. After all, the composite legal person exhibits the mathematical analogy at first glance. In the natural person, by contrast, it must be found through analyzing the idea of retribution.



person, would not be able to act. The majority principle is also completely natural. After all, when an equal number of votes, pro and con, nullify each other, then the rest remain unopposed: this remainder then constitutes the predominant, hence the real, voice and will of the fictitious person.

This line of reasoning allows for a logical construction of the rise of the state. The mere knowledge of the laws of nature, that is, of the logical conditions necessary for attaining a state of peace, is not yet sufficient for attaining that state. Rather, people violate the laws of nature as often as they think that this will bring them advantage. Therefore a power above them is required which, through fear of punishment, can compel individuals to keep their agreements.

The only way to erect such a common power . . . is for all individuals to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, to a single will: which is as much as to say, to appoint one man, or assembly of men, to bear their person; and everyone to own and acknowledge himself to be author of whatsoever he that so bears their person shall act, or cause to be acted, in those things which concern the common peace and safety.<sup>1</sup>

In this way Hobbes sets up a contract between all the individuals of a popular multitude more or less in this form: I give up my right to govern myself to this person or to the assembly of these persons, and I authorize that person (or these persons) to exercise my right, on condition that you will likewise transfer your right to this person or assembly of persons and will authorize that person (or these persons) in all its (their) actions in the same way.

The person (or assembly of persons) to whom all the power is transferred by the individuals in this manner is the sovereign. This person (or assembly) possesses sovereign power, and all others in the state are its subjects.

*Such is the novel construction of the nominalist approach to authority.* All earlier theories resulted in a contract of subjection between the people as sovereign and the ruler to whom the people transferred their sovereignty. In Hobbes, the sovereign ruler stands in no contractual relation whatsoever to the individuals who have transferred their power to him. The individuals have merely contracted with each other and owe it to each other to obey the sovereign.

The sovereign in person represents the person of the state. Without the sovereign, the person of the state falls apart again into a disconnected atomistic mass. Understandably, the people are not able to revoke their mandate or change the form of government.

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<sup>1</sup> Ibid. 2.17.

The people as such does not possess personality and has no will. Its will and personality reside entirely in the person of the sovereign. In this way the abstract principle of contract is employed as a kind of *algebraic computation*, in order to get from multiplicity to a new unity. The *mathematical analogy*, undoubtedly intrinsic to the juridical concept of personality, is unexpectedly transformed into its mathematical *substrate*. The concept of the person is denatured to the form of an algebraic computation and so the sovereign meaning of law as principle of a *retributive community* is radically eliminated in favor of the mathematical method of *creation*!

In Hobbes, as a result, much more strikingly than in his predecessors Bodin and Grotius, the nominalist construct of authority serves to provide a foundation for the absolute authority of the ruler, just as it would be used later by Rousseau, in an equally radical way, to support the inalienable sovereignty of the people.

The sovereign can do no one an injustice, for each and every citizen, by virtue of the original contract, is the author of the sovereign's actions. And this holds not only for the compatriots who assented to the transfer of sovereignty to the ruler in question, but also for those who voted against it. After all, the majority binds the minority according to natural law, and the authorization given to the sovereign is unlimited. No one can by right register a protest against the form of state decided upon by the majority. If any dissenter voluntarily joined the constitutional assembly of the people, he sufficiently declared his will and tacitly committed himself to be bound by the decisions of the majority; if he refuses to do so or protests some decision or other of the assembly, he acts in conflict with his promise, hence without right.

And even if he had not attended the constitutional assembly, he must still comply with the decision of the majority, or else be left in the natural state of war in which he lived before and in which anyone would have the right to destroy him.<sup>1</sup>

One limit only is set to the power of the all-devouring Leviathan. The subjects retain their liberty in all things for which they could not cede their natural right by contract. Contracts to cede the right to self-defense are void as such. After all, preservation of life and limb was the original mo-

1 Ibid. 2.18: "Thirdly, because the major part has by consenting voices declared a sovereign, he that dissented must now consent with the rest; that is, be content to avow all the actions he [the sovereign] shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will (and therefore tacitly covenanted) to stand to what the major part should ordain; and therefore if he refuse to stand thereto, or make protestation against any of their decrees, he acts contrary to his covenant, and therefore unjustly. And whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees, or be left in the condition of war that he was in before, wherein he might without injustice be destroyed by any man whatsoever." See also Hobbes, *Elements of Law* 20.3.

tive for the citizens to cede their natural right to everything according to the law of nature. Hence the right to disobedience if the state should command citizens to kill themselves, or not to defend themselves against attacks, or to refrain from using food, air, medicines, or some other necessity of life. Similarly, a citizen is not unconditionally bound to obey if the government should give him a dangerous or dishonorable assignment; he must obey only if a refusal would defeat the purpose for which the sovereign power was instituted.

Therefore, without committing injustice, one may refuse to do military service, for example, if one provides a good substitute, or if one is naturally faint-hearted.

From the natural law that self-preservation is the first and inalienable good that holds for all individuals there follows the weighty conclusion concerning the right of revolution, obviously focusing on the political state of affairs in the England of the day. The obligation of the subjects towards the sovereign lasts only as long as the sovereign commands the power necessary to protect them, and no longer.

For the rest, within the limits of this inalienable natural right to self-preservation, the liberty of the citizens consists only in what the laws of the state have left unregulated. Hobbes is by no means of the opinion that the state must regulate by law whatever it can so regulate. On the contrary, he judges that the sovereign must exercise wise moderation in this regard, so that the subjects do not get trapped in laws and social life become bogged down for lack of freedom of movement.

Nowhere, however, does Hobbes set any principled limits to the state, except for the so-called natural right of self-preservation. And even this right is not a limit as such, for all citizens are duty-bound to support the state when it wants to put someone to death.

**The humanist ideal of science in its political tendencies.  
The continuity of the ideal of science contrasted with the  
Calvinist principle of sphere-sovereignty**

The reader who has followed us thus far on the thorny road of inquiry into the rise of the humanist law-idea, and who has understood the universal and foundational significance of the law-idea for every worldview, *is now in a position to make a discovery of considerable import.*

During our inquiry we repeatedly hit upon the humanist ideal of science as one of the fundamental elements in the basic structure of the humanist law-idea.

Also, just as frequently, we found the tendency of logical continuity to be characteristic of this ideal of science. The goal of this tendency is to have the creative intellect reconstruct the universe with all its spheres of existence and validity in a *logically unbroken, continuous coherence*. The sovereignty of reason, the bulwark of the humanist ideal of science, can-

not accept any absolute boundaries for thought. All law-like boundaries become relative. It is logical thought that guarantees the logical coherence, the logical continuity, between all law-spheres.

We also saw in Bodin and Grotius, but most brazenly in Hobbes, how this ideal of science, as soon as it gets hold of the law-sphere of the juridical and the state, cannot but result in the destruction of all sphere-sovereignty. Whereupon the dangerous political tendencies of the ideal of science, grounded in the fundamental structure of the humanist law-idea, are realized, with state absolutism as the dreary outcome.

The most effective antipode to this ideal of continuity is our Calvinist worldview with its law-idea, grounded in the pregnant and universal confession of the divine sovereignty of the Creator and his will. The multiplicity of domains of life, the sphere-sovereignty of the divine law-spheres, can only be maintained by a Christian worldview which, infused by the Christian religion, sees the law in every domain as the absolute boundary between divine and human reason and between divine and human will. For then the law, as ordinance of divine sovereignty, is sovereign in each sphere. Then the plurality of law-spheres becomes the sacred wisdom of God's providential plan for the universe.

*All this brings out at the same time the indissoluble connection between political theory and view of science in the all-encompassing law-idea of one's worldview.* The humanist ideal of science is a theoretical ideal of knowledge but grounded in an irrational and practice-oriented ideal of personality. Its watchword is logical continuity in the creation of all elements of knowledge. Applied to a conception of state and law, this theoretical ideal of knowledge turns into an absolutist theory against which the humanist ideal of personality would subsequently try to erect the barrier of moral freedom, but in vain.

The Calvinist principle of sphere-sovereignty in its deepest and most universal purport, is not a political principle but an element of our law-idea that pervades the whole of our worldview. Yet, since no area can escape the force of the law-idea, sphere-sovereignty becomes the fundamental principle both of our conception of science and of our political theory. Accordingly, once the structure of a law-idea that underlies a system has been discovered, one can, already in someone's epistemology or in his view of the limits of a special science, make out the character that his political theory and view of law will display as his position unfolds. Truly this is an extremely valuable discovery which should inspire us to redouble our efforts as we plumb the depths of this rich theory of the law-idea.

### **The universal application of nominalist contract theory**

No natural relationship, no divine creation ordinance can be left intact by the humanist ideal of science. Mathematical analysis, employed far beyond its proper boundaries, could not but result in replacing divine

ordinances by logical constructions in every area. Neither Marsilius of Padua nor Hugo Grotius had extended the nominalist principle of contract as far as Hobbes did. Whatever Hobbes' mathematical method finds in its path in the juridical sphere, is subjected, as a "body," to analysis, and soon breaks up into what Hobbes regards as its elements, namely the individuals.

It may be appreciated that Hobbes at least makes a final break with an earlier naive naturalism that simply equated natural and legal relationships. Hobbes keeps the *natural mode of genesis* and *legal ground* properly separate.

Accordingly, he sees the natural mode of the genesis of authority in *generation* and *conquest*. The right of authority by genesis is that which a father has over his children and is therefore called *paternal authority*. Yet he sharply distinguishes this natural mode of the genesis of authority from the *legal ground* of paternal authority. However, the justified distinction led to a reprehensible *separation*, to a dissolution of the divine cosmic coherence of all law-spheres. From the very beginning the legal ground, in Hobbes, became a nominalistic construction, born of the arrogant prejudice that insists on the continuity of the method of science.

The construction of contract, to which Hobbes traces the state logically, now also serves to establish the legal ground of paternal authority. He thinks it a gross "misreckoning" to base paternal authority on the special qualities of intellect and strength in the male race. Hobbes points out that such a distinction of strength and intellect between man and woman is not always there, allowing parental rights to be established without conflict. Normally, the civil state vests parental authority in the father, because most states are instituted by fathers, not mothers. In the state of nature, however, where there are no matrimonial laws, the parents must decide by contract who is to exercise parental authority, as happened, for example, among the Amazons. If there is no contract, authority remains with the mother. In the state of nature, after all, no one can know who the father is unless the mother divulges that knowledge. Again, since the child is first in the power of the mother she may abandon it or nurture it, at her choice. If she nurtures it the child owes its life to its mother and must therefore obey her more than any others, thus establishing the mother's authority over the child. Naturally so, since the reason for someone's submission to another is the preservation of life.<sup>1</sup> Of course this entire view of parental authority in the state of nature, casuistically expanded even more, constitutes an undeniable antinomy in view of Hobbes' basic thesis that in the state of nature everyone has a right to all things; that is to say, that there is no law at all.

For Hobbes, the true legal ground of paternal authority lies in the construction of a contract between father and child. As he himself puts it: pa-

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<sup>1</sup> Ibid.2.20.

ternal authority “is not derived from generation, as if the parent had dominion over his child because he begat him; but from the child's consent, either express or declared by other sufficient arguments.”<sup>1</sup> Once again we see the pervasive influence of the nominalist theory of the will and, with it, the dissolution of the eternal foundations of natural law.

The same line of reasoning leads Hobbes, like Grotius before him, to dismiss conquest in itself as the legal ground for dominion over the conquered. This right, rather, rests on a contract in which the defeated, in order to escape death or slavery, subject themselves to the victor of their own free will and with their consent.

And so contracts become the universal legal ground for legal authority. Logical consistency in applying the nominalist principle of contract is more and more noticeable in Hobbes. In his earlier works the natural relationships of authority were still accorded an independent place next to the so-called artificial ones. But in *De Cive* and even more in *Leviathan* all reservations in this regard have vanished.

### **The destruction of subjective right. Positivism in Hobbes and Kelsen**

Hobbes' destruction of natural law by natural law itself appears most markedly in his denial of *subjective* right as independent law over against objective right as stipulated in positive law. The right which everyone in the state of nature has to all things is, as we have seen, nothing but the negation of all rights outside the state. The same is true of the so-called right of self-preservation which everyone, even in the civil state, has retained as a remnant of the state of nature. Property and other rights to goods, according to Hobbes, are purely the creation of positive law. They rest entirely on the will of the sovereign. The liberty of the citizens consists only in what the laws have left unregulated.

It is instructive to see how these ideas have all found their way into modern humanist legal theory. Just read what Kelsen writes in his *Allgemeine Staatslehre*<sup>2</sup> about subjective right. This representative of Neokantian “critical positivism” regards the doctrine of independent subjective rights as the strongest bulwark of natural law, which he opposes vehemently. In the sharpest form possible he proclaims the omnipotence of positive law. One can hardly miss the presence of continuity in the humanist theory of law. Kelsen, too, has adopted the standpoint of the humanist ideal of science which has inscribed on its banner the motto of the continuity of logical thought in the sense of the Marburg School. Only the form of this ideal of science has been altered, not its essence.

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1 Ibid.

2 Hans Kelsen, *Allgemeine Staatslehre* (Berlin: Springer, 1925).



**State, family, and church, and the principle of continuity in the humanist science ideal**

The principle of continuity inherent in the humanist ideal of science admits neither sovereign law-spheres nor absolute boundaries between the domains of validity of the different law-spheres. All boundaries are smoothed out by the leveling principle of continuity. Proclaiming the sovereignty of creative thought requires this. Thus the barriers that family and church put up against the absolute state, since as legal institutions they have their own legal basis and are on principle beyond the power of the state in their ethical, economical, sociological, and religious aspects, must give way as well. For the humanist ideal of science, the family is a body which, upon mathematical analysis, at once breaks up into its component elements, the individuals. Well then, a family's freedom is none other than the freedom of each individual separately. It covers only such matters as have been left unregulated by the laws of the state. The family comes under the rubric of lawful and regular bodies whose characteristic it is that they are established and composed not by special authorization of the sovereign but by the general authorization of the law.<sup>1</sup> The family is united in a representative person who regulates and administers the entire household and who can exercise authority over children and servants as far as the law allows. Where the laws are silent, the children and servants must obey their fathers and masters as their absolute sovereign. For in the state of nature the latter were absolutely sovereigns in their household, and in the civil state they cannot have lost more of their authority than what the law of the state has taken from them. In other words, if the state were to take all authority away from parents, the authoritative relationship between father and children would come to an end and fathers could then not complain of an injustice since, according to Hobbes' construction, they themselves are the authors of all the sovereign is pleased to do. Hobbes tries, again in vain, to uphold as a consequence of the law of nature the duty of children to show gratitude and honor toward the parents who have raised them. Parents retain the right to these things, he says, since the ceding of this right was not necessary for the institution of the civil state and

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1 Hobbes, *Leviathan* 2.22: "Private bodies regular and lawful are those that are constituted without letters or other written authority, save the laws common to all other subjects. And because they are united in one person representative, they are held for regular; such as are all families, in which the father or master orders the whole family. For he obliges his children and servants as far as the law permits, though no further, because none of them are bound to obedience in those actions which the law has forbidden to be done. In all other actions, during the time they are under domestic government, they are subject to their fathers and masters as to their immediate sovereigns."

since there is no reason why parents should any longer make sacrifices for the nurture and upkeep of their children if afterwards they could not enjoy greater benefit from them than from other persons.<sup>1</sup>

Hobbes' first argument breaks down at once before the logic of his own thesis that the evaluation of what is required by the state's interest is out of the citizens' hands and left to the prudence of the law-giver. Furthermore, this argument becomes untenable if one recalls that the sole reservation that can be had when ceding all one's rights to the sovereign is the natural right to self-preservation. And finally, in Hobbes' line of argument the natural law of gratitude can have the force of law only if it is sanctioned by the authority of the state.

The second argument, with its crude calculation of benefits, must apparently serve as the naturalistic basis for a child's obligation to honor its parents and show gratitude towards them. After all, according to this argument it is to a child's own advantage to honor its parents, for if it did not do so the parents might just leave it to its fate.

The fact that Hobbes felt that in addition to the natural-law argument he needed this naturalistic argument (which is indeed better suited to his line of reasoning) demonstrates to what extent he himself was convinced of the weakness of his first argument. But the second argument also breaks down in the face of immanent criticism. After all, other people – if need be, the state – might be found to take the children's nurture and upkeep upon themselves if the parents no longer chose to do so. The Russian Revolution even put this idea into practice.

Moreover, as observed already, obligations outside of those sanctioned by the state's authority do not fit Hobbes' line of thinking. The very logic of his principle of continuity entails that the moral law-sphere is swallowed up by the juridical sphere, or, rather, by positive law. Beyond the laws of the state only rules of prudence, not binding norms, can have force of law according to Hobbes' system. A family has various spheres, a juridical sphere as well as an ethical and an economical one. In Hobbes these are all leveled to a common denominator.

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1 Ibid. 2.30: "And because the first instruction of children depends on the care of their parents, it is necessary that they should be obedient to them whilst they are under their tuition [tutelage], and not only so, but that also afterwards (as gratitude requires) they acknowledge the benefit of their education by external signs of honour. To which end they are to be taught that originally the father of every man was also his sovereign lord, with power over him of life and death; and that the fathers of families, when by instituting a commonwealth they resigned that absolute power, yet never intended that they should lose the honour due unto them for their education. For to relinquish such right was not necessary to the institution of sovereign power; not would there be any reason why any man should desire to have children or take the care to nourish and instruct them, if they were afterwards to have no other benefit from them than from other men."

As far as the juridical sphere of the family is concerned, it is again crystal clear that Hobbes' natural law spells death for natural law and winds up in an unchecked positivistic state absolutism. For the rest, in Hobbes we notice the same Roman Stoic root of the idea of power that was also found in Bodin's and Grotius' view of paternal authority.

The ideal of continuity presses onward relentlessly. The barriers between church and state must also be removed. Indeed, to conquer this final bastion of Christian politics that still resists the all-devouring Leviathan, Hobbes marshals the best forces of his dialectical intellect. The destruction of the church's sovereignty as a divine institution distinct from the state is the overall political tendency of *Leviathan*. The extensive Part Three of this work, entitled "Of a Christian Commonwealth," subjects the relation of church and state to a minute analysis.

The final chapter of Part Two of *Leviathan* had already begun to inquire into the relation of state and religion according to the principles of natural reason. Religion was not there taken as the Christian religion which rests on special revelation, but as the religion to which natural reason urges men. Hobbes' conclusion was that since the state or government is but one person, a state can tolerate but one public religion. All citizens ought to obey the laws in the matter of religion. The Scriptural statement "It is better to serve God than man" is not valid in the civil state.<sup>1</sup>

But in Part Three of *Leviathan*, which deals with the Christian state, the conclusion cannot be any different. Our author, according to his own declaration, followed the empirical scientific method of research in Part Two. There he built his line of reasoning on an analysis of human nature as known to us from experience, while applying the logical mathematical method. But now, as he comes to discuss the relation between the state and the Christian religion, which he admits rests on supernatural revelation, he still does not wish to abandon the sovereignty of logical thought. "Nevertheless," he writes, "we are not to renounce our senses, and experience; nor that which is the undoubted word of God, our natural reason."<sup>2</sup> After all, not even supernatural revelation can ever come into conflict with natural reason.

God has given us reason to make the most of it, not to hide it in "a napkin of implicit faith." To be sure, there are some mysteries in the Scriptures that do not fall under the rules of natural science but, as Hobbes ironically puts it, they are to be taken like pills and swallowed whole, without chewing them first. That is not to say that we must hold our intellect captive, only that we must bring our will to obedience where obedience is

1 Ibid. 2.31: "But seeing a commonwealth is but one person, it ought also to exhibit to God but one worship. . . . And that which is said in the Scripture, 'One ought to obey God rather than men,' has a place in the kingdom of God by pact, and not by nature."

2 Ibid. 3.32.

due. Let us see how Hobbes uses natural reason in his inquiry into the relation of church and state.

The church as person, according to Hobbes, is simply “a company of men who profess the Christian religion and are united in the person of a sovereign, at whose command they ought to assemble and without whose authority they ought not to assemble.” And since, in all states, assemblies without a warrant from the civil sovereign are unlawful, so also the church which is assembled in any state is an unlawful assembly if it acts on its own authority, as an independent person. Just as in natural science it is not permissible that two bodies take up the same space at the same time, so too church and state cannot be in the same place as two independent bodies. The only possible conception of the church that avoids an otherwise inevitable conflict with the state is this: the church, as an institution with power to command and to judge, to acquit and to condemn, coincides with the state. The state is the church insofar as the subjects are Christians, or, in other words, the church is identical with what Hobbes calls a Christian state.<sup>1</sup> That is why no doctrine that is forbidden by the civil sovereign may be proclaimed in a state. He is the supreme pastor of the church, and Hobbes tries to buttress his thesis by numerous proofs from the Old Testament which are, of course, derived from Israelite theocracy. The sovereign has the right to all pastoral functions, such as the administration of baptism and the Lord's Supper, the calling and appointing of preachers and teachers, and the consecration of churches.<sup>2</sup>

But what if the sovereign authority should prohibit the confessing of Christ? See how Hobbes, the humanist, solves this problem for the Christian conscience.

Inner faith is a gift of God which a government can neither give nor take away by its strong arm. If it is merely a question of an outward or oral profession or denial of a confession, indeed, then the Christian too must obey the orders of this sovereign; the entire outward service, after all, is a state affair and Hobbes very devoutly refers to the example of Naaman the Syrian who was allowed by the prophet Elisha, after his conversion, to prostrate himself before Rimmon, the false god, when accompanying his king. However, as Hobbes himself counters, what shall we answer to the word of our Savior: “He who denies Me before men I shall deny before my Father who is in heaven?” Well, our author rejoins, when a Christian is compelled by his government to deny Christ publicly, then that is not an act of

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1 Ibid. 3.39: “And therefore a church, such a one as is capable to command, to judge, absolve, condemn, or do any other act, is the same thing with a civil commonwealth, consisting of Christian men; and is called a ‘civil state,’ for that the subjects of it are ‘men,’ and a ‘Church’ for that the subjects thereof are ‘Christians.’ ”

2 Ibid. 3.42: “But if every Christian sovereign be the supreme pastor of his own subjects, it seems that he also has the authority not only to preach (which perhaps no man will deny) but also to baptize and administer the sacrament of the Lord's Supper, and to consecrate both temples and pastors to God's service . . . ”

that Christian but it is an act of the sovereign, and of the law of the land which requires it.<sup>1</sup> In other words, Christians may comfort themselves with the thought that they can shift the entire moral responsibility for their deeds to the state – in fact deeper yet, they can disclaim all religious responsibility before God. Antiquity's idea of the state has here been revived in full glory! Hypocrisy is perfectly legitimate when the state's command runs counter to the demand of Christ to confess him before men. Nothing illustrates the heinous consequences of the humanist principle of continuity, as radically applied by Hobbes, more clearly than such a view of things.

The positivistically denatured juridical law-sphere has swallowed up religion and morality. The sovereignty of the human will in this world has expanded to cover even religion – indeed, the humanist ideal of science has run its full course. Ultimately it also spells the end of law. For since the juridical law-sphere is organically fitted to all the other law-spheres and is borne and supported by them, just as in turn the juridical sphere supports and bears the others, so the destruction of those other law-spheres must also destroy law itself. That is the unfathomable wisdom of God, the wisdom of his cosmic plan that has united all spheres of law in an organic coherence.

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1 Ibid.





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