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CHRISTIANITY, POLITICS, AND SECULAR RELIGIONS

This special issue began with a workshop organized by the Research Institute for Politics and Government at UPS on 20th November, 2020. The original aim was to explore the historical roots and conceptual problems of secularization, but – as a growing number of scholars from the United States, the United Kingdom, Italy, Germany, Poland, and Hungary joined the conversation – it gradually developed into a more general investigation of modern political ideologies and their relationship to Christianity. The present selection contains contributions on secular and political religions, the concept of human dignity, the role of the Catholic Church in Europe, and the idea of the Empire in a both historical and contemporary setting.

William T. Cavanaugh's *The Splendid Idolatry of Nationalism* poses the question whether we live in a secular, disenchanted world as Max Weber once argued, or quite to the contrary, in a world where new religious forms take the place of Christianity, as Émile Durkheim supposed about nationalism. The question, however, is not to be answered by any superficial reading of the authors, for there is sufficient evidence that even Weber did not speak of the rise of the modern state as a complete break with the sacred.

In a more particular historical context, as Valerio Severino's "*Civil*" and "*Purely Civil*" in *Early Unified Italy* argues, the national festivals of the nascent state in the 19th century always combined secular and religious elements, expressing a secularization of religious symbolism and a sacralization of politics, which also supports the claim that the idea of the nation-state has never been a truly profane one.

The modern dictatorial regimes appeared as the most powerful political religions, which is the topic of Hans Otto Seitschek's *Totalitarianisms as Political Religions in the 20th Century*. It is also here that we witness the sharpest conflict between traditional religions and their modern counterparts, which also supports the paper's conclusion that "political religion" or rather "political messianism" is a more appropriate category to describe such regimes than totalitarianism.

The terms "secular religion", "political religion", "political messianism", and many others nevertheless remain disputed. Tamás Nyirkos's *The Proliferation of Secular Religions* even suggests that any meaningful distinction between these and other, "real" religions is

impossible, and that is why the current ideological struggles of the West can no longer be translated into the traditional dichotomy of the secular and the religious.

The difficulties of separating the secular state from its religious and moral foundations was also a central topic for the great German jurist Ernst-Wolfgang Böckenförde, whose work is analyzed in Ferenc Hörcher's *Natural Law, Human Dignity and Tradition*. The fact that in order to make universal claims legal norms need external anchors like the concept of human dignity and natural law shows the enduring political importance of the theological. As the paper points out, the traditional justifications of natural law remain particularly important for the conservative perspective.

Natural law is also historically important for the understanding of contemporary human rights. However, as Bogdan Szlachta's *The Catholic Church in Liberal Democracy* shows, the ancient and medieval concepts of *ius naturale* and *lex naturalis* changed into something else in modernity with which they only have the name in common: an individualistic interpretation of rights, up to the point when even the Catholic Church has abandoned the traditional primacy of truth over freedom in favor of the rights of the human person.

It therefore remains dubious whether today's dominant religion is that of nationalism, the cult of the individual, or something bigger than both. As Phillip Blond's *Empire, Nationalism and Christianity* puts it, universals (from the notions of ruling gods to those of self-evident rights) are fundamental to political legitimation and social order, so to successfully defend Christianity, order, and conservation, we always need a not less but more universalistic approach than our opponent.

Read together, the studies collected here offer a strong argument in favor of reconsidering a radical secularist thesis, claiming that even today, when the West experiences a radical decline in the number of churchgoers, and public discussion tends to punish references to conventional truths and universal values, it is hard to frame the Western political experience without Christian political theology.

Ferenc Hörcher and Tamás Nyirkos
Guest Editors

William T Cavanaugh

THE SPLENDID IDOLATRY OF NATIONALISM

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This article addresses the question ‘Do we live in a secular, disenchanted world devoid of gods, or do we live in a world populated by new gods?’ Some cite Max Weber in assuming that disenchantment is a fact. Others cite Émile Durkheim who points to ongoing forms of enchantment and the development of new religious forms to take the place of Christianity. In this article I use the case of nationalism to examine this question. I analyse two arguments, one that sides with Weber, the other with Durkheim. I not only side with Durkheim, but argue that Weber sides with Durkheim, too. I then go beyond Durkheim, and argue, from a Christian theological point of view, that nationalism is not only a religion, but an idolatrous one at that.

KEYWORDS:

disenchantment, Émile Durkheim, idolatry, nationalism, religion, secularisation, Max Weber

Do we live in a secular, disenchanted world devoid of gods, or do we live in a world populated by new gods? The decline of Christianity in Europe – and increasingly in the United States – has led many to assume that secularisation is simply a fact in the Western world, as is a kind of disenchantment in which belief in the supernatural has given way to a thoroughgoing naturalism and rationalism. Others have pointed to ongoing forms of enchantment and the development of new religious forms to take the place of Christianity. The debate is often presented in terms of Max Weber versus Émile Durkheim, two of the founding pillars of the new discipline of sociology in the early twentieth century. Weber, so the story goes, documented the rationalisation of modernity and its disenchantment, while Durkheim saw the religious as primordial, protean and fundamental to all societies.

In this article I use the case of nationalism to examine this question. I analyse two arguments, one that sides with Weber, the other with Durkheim. I not only side with Durkheim, but argue that Weber sides with Durkheim, too. I then go beyond Durkheim, and argue, from a Christian theological point of view, that nationalism is not only a religion, but an idolatrous one at that.

1. WEBER AGAINST DURKHEIM

Although Durkheim wrote little on nationalism as such,¹ he makes it clear that the sentiments and rituals that bind the nation together are a modern species of religion. Though there is a strict distinction between the sacred and the profane in Durkheim, there is no simple religious–secular distinction, no separate secular realm of government and business and so on to which worship does not apply. According to Durkheim’s classic *The Elementary Forms of the Religious Life*, ‘Religious force is only the sentiment inspired by the group in its members, but projected outside of the consciousnesses that experience them, and objectified. To be objectified, they are fixed upon some object which thus becomes sacred; but any object might fulfill this function.’² Durkheim is a functionalist, not a substantivist, defining religion not according to the substance of beliefs but rather their function in society. For Durkheim, the ostensible object or substance of religion is a matter of relative indifference; it can be a god or it can be a national flag. Religion is, furthermore, not a private matter, but is generated by a group. Religion can be explained sociologically, thought Durkheim, not as a human response to a transcendent reality or god, but as a dynamic inherent to collectivities. Religion, according to Durkheim, is in fact the self-worship of the group. The idea of nationalism, devotion to one’s own nation, fits easily within Durkheim’s concept of religion. Durkheim asks rhetorically, ‘What essential

¹ Anthony D Smith writes that although ‘Durkheim wrote little directly about nationalism or nationality problems, he became increasingly interested in the subject, and not only with the drift towards world war.’ Anthony D Smith, ‘Nationalism and Classical Social Theory’, *British Journal of Sociology* 34 (1983), 29.

² Émile Durkheim, *The Elementary Forms of Religious Life*, trans. Joseph Ward Swain (New York: Free Press, 1965), 261.

difference is there between an assembly of Christians celebrating the principal dates of the life of Christ, or of Jews remembering the Exodus from Egypt or the promulgation of the Decalogue, and a reunion of citizens commemorating the promulgation of a new moral or legal system or some great event in the national life?³ The implied answer is 'none'. Durkheim was a French patriot, who saw the deification of France as something that responded to basic impulses of human sociality. Robert Bellah called Durkheim 'a theologian of the French civil religion',⁴ though Durkheim attempted to resist mere national chauvinism by identifying French nationalism with a broader civil religion of humanity.⁵

There is a long history of scholarship on nationalism as a religion that can be considered loosely Durkheimian. Carlton Hayes, distinguished professor of history at Columbia University, published his seminal essay 'Nationalism as a Religion' in 1926. Although Hayes was a Catholic critic of civil religion – rather than a booster like Durkheim – Hayes, like Durkheim, recognised an enduring human 'religious sense' that has largely migrated in modernity from the church to the nation. The nation is the modern person's god, on whom they depend for protection and salvation. Hayes details the elaborate myths, feast days and liturgies surrounding the flag, national heroes and foundational events in the nation's history. Nationalism is built especially around theologies of sacrifice: 'Perhaps the surest proof of the religious character of modern nationalism is the zeal with which all manner of its devotees have laid down their lives on battlefields of the last hundred years.'⁶ Since Hayes' first explorations of this theme, Robert Bellah,⁷ Carolyn Marvin and David Ingle,⁸ Atalia Omer and Jason Springs,⁹ Anthony D Smith,¹⁰ and many other scholars have taken an explicitly Durkheimian approach to describe nationalism as a religion.¹¹

³ Ibid. 475.

⁴ Robert N Bellah, 'Introduction', in *Emile Durkheim on Morality and Society*, ed. by Robert N Bellah (Chicago: University of Chicago Press, 1973), xvii.

⁵ Josep Llobera, 'Durkheim and the National Question', in *Debating Durkheim*, ed. by Hermino Martins and William Pickering (London: Taylor and Francis, 1994), 145–158.

⁶ Carlton J H Hayes, 'Nationalism as a Religion', §6. Online: www.panarchy.org/hayes/nationalism.html. This essay can also be found in Carlton J H Hayes, *Essays on Nationalism* (New York: Russell & Russell, 1966), 93–125.

⁷ Robert N Bellah, 'Civil Religion in America', *Daedalus* 96, no 1 (1967), 1–19.

⁸ Carolyn Marvin and David W Ingle, *Blood Sacrifice and the Nation: Totem Rituals and the American Flag* (Cambridge: Cambridge University Press, 1999). 'Nationalism is the most powerful religion in the United States, and perhaps in many other countries'. Carolyn Marvin and David Ingle, 'Blood Sacrifice and the Nation: Revisiting Civil Religion', *Journal of the American Academy of Religion* 64, no 4 (1996), 767.

⁹ Atalia Omer and Jason A Springs, *Religious Nationalism: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2013), 67, 'nationalism functions as a form of religion'.

¹⁰ Anthony D Smith, *Chosen Peoples: Sacred Sources of National Identity* (Oxford: Oxford University Press, 2003). Smith calls nationalism 'a new religion of the people. It is not a religion of the people because it has emerged from the common people, but because the people alone constitute the object of this new religion'. Ibid. 42.

¹¹ For more examples see Josep Llobera, *The God of Modernity: The Development of Nationalism in Western Europe* (Providence, RI: Berg Publishers, 1994); Conor Cruise O'Brien, *God Land: Reflections on Religion and Nationalism* (Cambridge, MA: Harvard University Press, 1998); Talal Asad, 'Religion, Nation-State, Secularism', in *Nation and Religion: Perspectives on Europe and Asia*, ed. by Peter van der Veer and Hartmut Lehmann

There is, nevertheless, resistance to the idea of nationalism as a religion from scholars who advocate for a 'scientific' study of religion. The sharp divide between secular rationality and religious irrationality or non-rationality is crucial for these scholars. Summing up this line of thought, José Santiago, writing in the *Journal for the Scientific Study of Religion*, contends that functionalist definitions of religion are 'controversial' and notes that the choice of either a substantivist or a functionalist definition of religion reflects different conceptualisations of social life. Denial or affirmation of the status of nationalism as a religion depends in part on the conceptualisation of integration and differentiation in modern societies. Santiago divides sociological analyses of this question between Durkheimian and Weberian strands, and takes the side of Weber.

Durkheim thought that the sacred was a fundamental dimension of society. It was not an added transcendent dimension that could be sloughed off to leave a purely immanent remainder. Durkheim thought this not because he believed in a god or some other supernatural force, but because he thought that the sacred was simply a society's self-expression, which allowed it to maintain social cohesion. If the old religion of Christianity was fading, as he clearly thought it was, it must be replaced with another locus of the sacred. Durkheim thought a key moment in this transition was the French Revolution, in which the Jacobins created an overt cult of the nation.¹² The nation state and its rituals were just the adaptation of the primitive totemic clan to modern society.¹³ According to Santiago, Durkheim thought that social integration came about through cultural cohesion, that is, shared standards and values that serve as 'final signifiers that act as the Sacred Center of society'.¹⁴

Santiago, however, questions whether modern differentiated societies actually need cultural integration. Santiago calls on Weber, for whom 'the process of rationalization has created a world where social integration is no longer the result of consensus over religious standards and values. In the modern world, the coordination of social action may be the result of the mechanics of political domination or of the economic constraints of capitalism, neither of which need a cultural or religious framework. Social integration, therefore, does not require a shared 'sacred center'.¹⁵ Functional differentiation in fact

(Princeton: Princeton University Press, 1999), 178–196; Wilbur Zelinsky, *Nation into State: The Shifting Symbolic Foundations of American Nationalism* (Chapel Hill, NC: University of North Carolina Press, 1988).

¹² Durkheim writes: 'This aptitude of society for setting itself up as a god or for creating gods was never more apparent than during the first years of the French Revolution [...]. A religion tended to become established which had its dogmas, symbols, altars, and feasts'. Durkheim, *The Elementary Forms*, 244–245.

¹³ José Santiago, 'From 'Civil Religion' to Nationalism as the Religion of Modern Times: Rethinking a Complex Relationship', *Journal for the Scientific Study of Religion* 48, no 2 (2009), 395–396.

¹⁴ Ibid. 399.

¹⁵ Ibid. Santiago's distinction between political domination and economic constraints on the one hand, and cultural and religious factors on the other, begs the question of how and why we make such distinctions between 'religion' on the one hand and 'politics' or 'economics' on the other. Santiago assumes that we know what 'real' religion is, and other things are only religions metaphorically or analogically. He provides no defence of the substantivist view of religion, which is just as 'controversial' as the functionalist view, nor does he recognise that the religious-secular distinction is a modern Western invention which is itself dependent on how power

necessarily ‘entails the inexorable loss of religion’s integrating function’.¹⁶ Santiago sides with Weber, for whom modernity is characterised by conflicting values, not a unity of values. ‘It is in this sense that we can conclude after all that modern societies are secular societies.’¹⁷ Nationalism is not a religion, because there is no ‘civil religion’ that unites a modern society. Modern societies are integrated by political or economic mechanisms, not religious ones, and nationalism is only called ‘religious’ by using an overly broad and imprecise definition of religion.

Catholic theologian R R Reno – editor of *First Things* and champion of Christian nationalism – accepts this Weber–Durkheim dichotomy, but, unlike Santiago, sides with Durkheim. In his 2019 book *Return of the Strong Gods: Nationalism, Populism, and the Future of the West*, Reno argues that the West rejected strong beliefs and loyalties in the wake of the World Wars, in favour of an ‘open society’. Weber regarded disenchantment as an iron cage, but the postwar consensus embraces it as liberating and redemptive; disenchantment will save us from the return of the strong gods.¹⁸ The postwar consensus is now breaking down, and rightly so, argues Reno, as people return to a sacred centre for the society, what Reno calls ‘strong gods’, powerful loyalties that bind people to their homeland and to one another. The postwar consensus was a failed attempt to do away with what Santiago, following Weber, says we no longer need.

In Reno’s telling, a key figure for the postwar consensus is Karl Popper, whose book *The Open Society and Its Enemies* set a course for the West to move away from the kind of tribalism and deference to authority that produced Nazism and Communism. Against the comforting collectivism that deifies the nation, Popper argued, we need to uphold the freedom of the individual. Against the notion of unchanging metaphysical truths, we need critical thinking and the courage to create our own meanings; as Popper writes, ‘facts as such have no meaning; they gain it only through our decisions’.¹⁹ Truth is limited to value-free facts; values and meaning are the realm of opinion. In the hopes of not exciting violent passions again, what Reno calls ‘strong gods’ like truth, religious faith, patriotism and the marriage covenant are under attack.²⁰ ‘The strong gods are the objects of men’s love and devotion, the sources of the passions and loyalties that unite societies.’²¹ Reno recognises that the strong gods can be beneficent or destructive; truth and patriotism are strong gods,

is exercised. His analysis does nothing more than simply declare that nationalism and capitalism are not religions, despite the similarities. A full genealogy of the religious–secular distinction and its construction by Western forms of power can be found in my book *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford University Press, 2009), chapter 2.

¹⁶ Santiago, ‘From ‘Civil Religion’’, 399. Santiago draws on the work of Niklas Luhmann and Bryan S Turner to make these critiques of Durkheim.

¹⁷ Ibid.

¹⁸ R R Reno, *Return of the Strong Gods: Nationalism, Populism, and the Future of the West* (Washington, D.C.: Regnery Gateway, 2019), 40.

¹⁹ Karl Popper, quoted in *ibid.* 8. Likewise, Popper writes, in italics, ‘*Although history has no meaning, we can give it meaning.*’ Ibid.

²⁰ Reno, *Return of the Strong Gods*, 51.

²¹ Ibid. xii.

but so are fascism and racism. In the attempt to do away with the latter, we have attacked the former with openness, disenchantment, and the ‘gods of weakening’.²² We have bought into the false notion that strong loves lead to oppression and weak loves are necessary for liberty and prosperity. This conviction is not Popper’s alone, but is embraced in one way or another by a host of intellectuals who promote individualism and attack the notion that we have access to transcendent metaphysical truth.

The consequences of this embrace of the weak gods are dire.

[O]ur societies are dissolving. Economic globalization shreds the social contract. Identity politics disintegrates civic bonds. A uniquely Western anti-Western multiculturalism deprives people of their cultural inheritance. Mass migration reshapes the social landscape. Courtship, marriage, and family no longer form our moral imaginations. Borders are porous, even the one that separates men from women. Tens of thousands die of heroin overdoses. Hundreds of thousands are aborted.²³

The antidote to this devastation is the ‘virtue of solidarity—the sense of fraternity and common destiny among all members of a society’, which is based on shared convictions that unite rather than diversify.²⁴ For Reno, then, the ‘fundamental question’ is: ‘What is the role of the nation in the twenty-first century?’²⁵ Devotion to the nation is the main antidote to the dissolution of society. The need for a home is an indelible aspect of human nature, and nationalism is among the most significant expressions of that need. Devotion to the nation, like all shared loves, draws us outside of our individual selves: ‘The strong god of the nation draws us out of our ‘little worlds.’ Our shared loves—love of our land, our history, our founding myths, our warriors and heroes—raise us to a higher vantage point.’²⁶

Two things are notable here: the focus on ‘us’ and ‘ours’, and the transcendence associated with that collective self. As Reno puts it ‘the ‘we’ touches on sacred things’.²⁷ The ‘miracle of the ‘we’” makes group solidarity more precious than our universal humanity, such that we will gladly sacrifice our lives for our fellow citizens. The ‘we’ transcends our biological families and incorporates us into a larger political entity. Because the ‘we’ is not simply biological, it must constantly be reinforced and defended. ‘The ‘we’ is an end in itself that asks us to do what is necessary to sustain and promote our shared loves, all of which harken to the call of strong gods.’²⁸

²² Ibid. xiii.

²³ Ibid. ix.

²⁴ Ibid. 120.

²⁵ Ibid. 144.

²⁶ Ibid. 154–155.

²⁷ Ibid. 148.

²⁸ Ibid. 150.

The first section of the final chapter of Reno's book is a laudatory reading of Durkheim's *Elementary Forms of Religious Life*. The unity of society, says Durkheim, draws upon the power of the sacred, and according to Reno, the Bible agrees. 'In Judeo-Christian tradition, governing powers are not deities, but their dictates are tinctured with divine legitimacy.'²⁹ Though they are not deities, and civic rituals and monuments are 'not religious in the sense in which we now use the term', they nevertheless 'reach for the transcendent'; though modern gods can be false idols, 'the sacralizing impulse in public life is fundamental. Our social consensus always reaches for transcendent legitimacy'.³⁰ Whereas Santiago denies that nationalism is a religion in order to protect secularism, Reno denies nationalism is a religion in order to protect Christian nationalism from the charge of idolatry. But once this caveat is registered, Reno goes on to praise Durkheim's analysis of the essentially religious nature of social unity. 'Durkheim was right. To be human is to seek transcendent warrants and sacred sources for our social existence.'³¹

Reno is especially appreciative of Durkheim's diagnosis of the weakness of the West. He quotes from a famous passage in the conclusion of Durkheim's book³² that laments the passing of the old gods that 'filled our fathers with enthusiasm', while the new gods have yet to be born. Reno agrees with Durkheim that neither Christianity nor Enlightenment devotions can be restored to their former place in the West.

Biblical religion can surely endure and its soulcraft will continue. It may even see a season of revival that enlarges its influence. I certainly hope it does. But it cannot resume its old place in society. The same is true for naïve Enlightenment pieties. "But neither is there any reason," Durkheim continued, "for believing humanity is incapable of inventing new ones." The death of old gods in no way means the death of the sacred. We are social animals, and public life requires the aroma of the sacred.³³

The apparent death of the Christian God, in public anyway, has left us no choice but to create new gods. They can be destructive and evil gods, like fascism and communism, or they can be benevolent gods, like the shared love of the American nation, but we cannot live without strong gods, even if we have to invent them. The only difference between this conviction and Popper's post-metaphysical belief that humans create their own meanings is that for Popper the individual is the main agent for creating meaning, while for Reno it is the 'we'.

²⁹ Ibid. 135.

³⁰ Ibid. 136.

³¹ Ibid. 139.

³² Durkheim, *The Elementary Forms*, 475.

³³ Reno, *Return of the Strong Gods*, 137.

2. WEBER WITH DURKHEIM

I think that, in one important respect, Reno is right and Santiago is wrong: Durkheim is a reliable guide to the continuing presence of the sacred in the kinds of civil religion that bind nations together. At the same time, I think that both Reno and Santiago are mistaken to set Weber against Durkheim in the way they do. I think that Weber himself, despite his occasional language of disenchantment, did not think that modern societies had shrugged off the old gods, and that in fact a 'sacred centre' was still at the heart of modern societies.

The rationalisation of modern society, in Weber's telling, has a long history that begins with ancient attempts to manipulate the gods and other occult forces through the practice of magic and ritual. Salvation religions take this attempt to rationalise the mysterious to a different level by positing an otherworldly sphere in which the irrationality and injustices of this world can be reconciled, by punishing evildoers after death, for example. This opens a gap between this world and the other world; as the great religions become otherworldly, the realms of politics, economics, and so on take on increasing autonomy, eventually pushing religion to the margins. The world of fact is split from the world of value. The process of rationalisation that begins with religion eventually pushes religion to the private sphere of values and leaves an autonomous disenchanted world of fact governed by science, the state and the capitalist market.³⁴

For Weber, the split between fact and meaning or value is both a fact and a serious problem, because we urgently want to know what the meaning of our lives actually is. Weber quotes Tolstoy approvingly: 'Science is meaningless, because it gives no answer to our question, the only question important for us: 'What shall we do and how shall we live?''³⁵ Disenchantment does not mean the complete loss of meaning in the world, but rather its individualisation and interiorisation. As Weber writes: 'The fate of our times is characterized by rationalization and intellectualization and, above all, by the 'disenchantment of the world.' Precisely the ultimate and most sublime values have retreated from public life either into the transcendental realm of mystic life or into the brotherliness of direct and personal human relations.'³⁶ The search for meaning withdraws from the public to the private and interior realm.

Weber characterises the situation of the present day not as atheism or secularism but as 'polytheism'.³⁷ He translates Tolstoy's question: 'What shall we do, and, how shall we arrange our lives?' into: 'Which of the warring gods should we serve? Or should we serve perhaps an entirely different god, and who is he?'³⁸ Polytheism is a direct consequence

³⁴ I am summarising Weber's argument as found in such sources as Max Weber, 'The Social Psychology of the World Religions', in *From Max Weber: Essays in Sociology*, trans. H H Gerth and C Wright Mills (New York: Oxford University Press, 1946), 267–301.

³⁵ Max Weber, 'Science as a Vocation', in *From Max Weber*, 143.

³⁶ *Ibid.* 155.

³⁷ *Ibid.* 147.

³⁸ *Ibid.* 152–153.

of the process of rationalisation. The absolute divorce between fact and value means that ‘the various value spheres of the world stand in irreconcilable conflict with each other’,³⁹ with no factual basis for adjudicating their rival claims. Such conflicts can only be decided by non-rational means. The final product of the long process of disenchantment and rationalisation is not an entirely rationalised world, but a world in which the rational is haunted by the irrational from which it has been sundered.

We live as did the ancients when their world was not yet disencharnted of its gods and demons, only we live in a different sense. As Hellenic man at times sacrificed to Aphrodite and at other times to Apollo, and, above all, as everybody sacrificed to the gods of his city, so do we still nowadays, only the bearing of man has been disencharnted and denuded of its mystical but inwardly genuine plasticity.⁴⁰

Here it is important to note that Weber seems to observe no difference in the empirically observable behaviour of ancient versus modern people. The difference lies in the presence or absence of some ‘mystical but inwardly genuine plasticity’ to which Weber mysteriously claims access.

On the one hand, Santiago is right about Weber: he seems to think that there is a plurality of values, a ‘polytheism’, in modern society, and the individual, not society as a whole, must simply make a sheer, groundless choice. Weber begins from ‘one fundamental fact, that so long as life remains immanent and is interpreted in its own terms, it knows only of an unceasing struggle of these gods with one another. Or speaking directly, the ultimately possible attitudes toward life are irreconcilable, and hence their struggle can never be brought to a final conclusion. Thus it is necessary to make a decisive choice’.⁴¹ On the other hand, the reason that this charismatic moment is precious for Weber is that it stands out against the backdrop of the dreary constraints under which such a choice is made. The gods that can be chosen must struggle not only against each other, but against the gods that are simply *given* to us. Weber writes: ‘Today the routines of everyday life challenge religion. Many old gods ascend from their graves; they are disencharnted and hence take the form of impersonal forces. They strive to gain power over our lives and again they resume their eternal struggle with one another.’⁴²

By Weber’s own account, rationalisation and disenchantment have not eliminated the enchanted elements from the modern polity and economy. Indeed, in some respects, rationalisation has produced a more intense form of irrationality, a new and more powerful sacred centre. Consider, for example, the importance of violence in Weber’s account of rationalisation in the political sphere. The resort to violence has always been essential for the protection of the tribe and polity, Weber explains. It is only with the rise of rationalised

³⁹ Ibid. 147.

⁴⁰ Ibid. 148.

⁴¹ Ibid. 152.

⁴² Ibid. 149.

salvation religions that this necessity has been called into question, for such universalist religions, gathered around the worship of a God of universal love, reject violence as a compromise with the world. Weber contrasts the Sermon on the Mount and its injunction to resist no evil with the nation state's imperative to claim a monopoly on the legitimate use of violence, which is the very essence of the state, and to employ violence to do justice within its borders and protect its borders from outside attack.

According to the inescapable pragmatism of all action, however, force and the threat of force unavoidably breed more force. "Reasons of state" thus follow their own external and internal laws. The very success of force, or of the threat of force, depends ultimately upon power relations and not on ethical "right," even were one to believe it possible to discover objective criteria for such "right."⁴³

Here we see the split between the objective and the subjective, fact and ethics, rational and irrational. The more rationalised religion becomes, the more it is pushed into the irrational sphere of ethics. Politics and religion come into conflict because while, in this case, Christianity tries to cling to its love command from the mouth of God and reject violence, the rationalised nation state must do what everyone but the most otherworldly mystic acknowledges that it needs to do: employ the threat and use of violence on a purely pragmatic and non-ethical basis. Violence here is a mere means to the end of protecting the polity.

The same pragmatic logic dictates, however, that violence will unavoidably breed more violence, according to Weber. Not only this, but violence becomes an end in itself. The modern polity, precisely in and through the logic of violence, will come to resemble the religious community.

As the consummated threat of violence among modern polities, war creates a pathos and a sentiment of community. War thereby makes for an unconditionally devoted and sacrificial community among the combatants and releases an active mass compassion and love for those who are in need. And, as a mass phenomenon, these feelings break down all the naturally given barriers of association. In general, religions can show comparable achievements only in heroic communities professing an ethic of brotherliness.⁴⁴

As this last line makes clear, the nation state at war out-religions religion; the nation state at war offers the sense of unconditional brotherly love that is achieved by religion only in monastic communities. Weber continues on to argue that the nation state does a better job than religion in giving meaning to death. Ordinary death is inscrutable; it is a fate that befalls everyone, but no one can say why it comes to any individual precisely when and why

⁴³ Max Weber, 'Religious Rejections of the World and their Directions', in *From Max Weber*, 334.

⁴⁴ *Ibid.* 335.

and in what manner it does. Death in war offers a meaningful death – the soldier believes he is dying *for* something.

The why and the wherefore of his facing death can, as a rule, be so indubitable to him that the problem of the “meaning” of death does not even occur to him. At least there may be no presuppositions for the emergence of the problem in its universal significance, which is the form in which religions of salvation are impelled to be concerned with the meaning of death. Only those who perish “in their callings” are in the same situation as the soldier who faces death on the battlefield.⁴⁵

Once again, the nation state at war out-religions religion. Salvation religions will see this kind of ‘inner-worldly consecration’ in a negative light, as merely glorifying fratricide. Nevertheless, Weber says: ‘The very extraordinary quality of brotherliness of war, and of death in war, is shared with sacred charisma and the experience of the communion with God, and this fact raises the competition between the brotherliness of religion and of the warrior community to its extreme height.’⁴⁶

Religion and the modern nation state are only in direct competition with one another because of the similarities between them. Both are the products of a long process of rationalisation that, in different ways, issues from the same source: the human search for meaning. And both address that search for meaning, in remarkably similar ways: by gathering people into loving communion, consecrating life in this world to a sacred cause, offering the sacrifice of that life unto death, and solving the problem of the meaning of death. At the same time, Weber’s contrast between an ethic of responsibility and an ethic of ultimate ends guarantees that the state will win this competition. Precisely because ‘the decisive means for politics is violence’, religion must withdraw from politics, to preserve the purity of its devotion to an ethic of universal love from compromise with the world.⁴⁷ What I think this means is that a sacred centre has not been drained out of the modern polity; it has migrated from the church to the nation state. This is Weber’s unthought. Weber’s own discussion of war indicates that disenchantment as a historical process is more of a dislocation than a quantitative diminution. Indeed, sacred violence escalates in modernity on Weber’s account. Of course, there are many qualitative differences; the holy changes when it migrates. But in Weber’s account of political violence, the two terms in each of his antinomies – rational–irrational, disenchanted–enchanted, fact–value,

⁴⁵ Ibid.

⁴⁶ Ibid. 336.

⁴⁷ Weber makes this argument in his ‘Politics as a Vocation’, in *From Max Weber*, 77–128. The quote is from 121. Anthony Carroll situates Weber’s insistence on the proper ‘objectivity’ of politics within the context of German Protestant anti-Catholicism. In politics, objectivity was most threatened by confessional parties, especially the Catholic Center Party. Anthony Carroll, SJ, ‘Disenchantment, Rationality and the Modernity of Max Weber’, *Forum Philosophicum* 16, no 1 (2011), 117–137.

politics–religion, etc. – mirror each other to such an extent that the antinomies themselves threaten to break down.

Modern capitalism provides a similar and related sacred centre. Weber points to the similarity between the depersonalisation of the love ethic in religions of salvation – one loves everyone, regardless of who they are – and the depersonalisation of economic transactions in modern capitalism. Money is not simply impersonal, but ‘the most abstract and ‘impersonal’ element that exists in human life’.⁴⁸ According to Weber, capitalism is impersonal precisely insofar as it is rational. By impersonal, Weber does not just mean cold and lacking compassion, but primarily lacking personnel: ‘For this reason one speaks of the rule of ‘capital’ and not that of capitalists.’⁴⁹ Humans are not in charge, but are being ruled by a god of their own making. As is the case with all forms of bureaucracy, the element of dehumanisation is key for Weber. And this dehumanisation can be read not as a degradation to the subhuman, but as an exaltation to the divine. As Peter Ghosh notes, Weber thought that Christianity in the West has been replaced by capitalism, ‘an order that is ultimately as *irrational* in its foundation as Calvinist religion, because capital like the Calvinist god is an impersonal power ruling over the individual person according to its logic and not theirs’.⁵⁰

In conjunction with his overarching narrative of rationalisation, Weber frequently points to the irrationality of the capitalist economic order. In *The Protestant Ethic*, for example, he describes the way that business has replaced church for the German bourgeoisie, and that their expressed motive of ‘providing for my family’ has in fact been replaced with business as an end in itself. ‘That is in fact the only possible motivation, but it at the same time expresses what is, seen from the view-point of personal happiness, so irrational about this sort of life, where a man exists for the sake of his business, instead of the reverse.’⁵¹ This is what has become of the Protestant notion of ‘calling’ or ‘vocation’. Weber notes that there is no hedonistic or even eudaimonistic motivation here; the businessperson does not make money as a means to enjoy life. ‘Earning more and more money’ is the *summum bonum*.

It is thought of so purely as an end in itself, that from the point of view of the happiness of, or utility to, the single individual, it appears entirely transcendental and absolutely irrational. Man is dominated by the making of money, by acquisition as the ultimate purpose of his life. Economic acquisition is no longer subordinated to man as the means for the satisfaction of his material needs. This reversal of what we should call the natural

⁴⁸ Weber, ‘Religious Rejections’, 331.

⁴⁹ Max Weber, *Die Börse I*, *Max Weber Gesamtausgabe* I/5.148, quoted in Peter Ghosh, *Max Weber and the Protestant Ethic: Twin Histories* (Oxford: Oxford University Press, 2014), 300.

⁵⁰ Ghosh, *Max Weber*, 285, italics in the original.

⁵¹ Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons (New York: Charles Scribner’s Sons, 1958), 70.

relationship, so irrational from a naïve point of view, is evidently as definitely a leading principle of capitalism as it is foreign to all peoples not under capitalistic influence.⁵²

Note the theme of transcendence. Capitalism has not apparently reduced all to the merely immanent and mundane. The fact that the making of money has become an end in itself means that the capitalist is the very opposite of a materialist. The capitalist's focus is not on the material things that he or she can buy with money, but on money itself, which, as Weber has said, is the most immaterial and abstract element in modern life. When Weber says at the end of *The Protestant Ethic* that 'material goods have gained an increasing and finally an inexorable power over the lives of men as at no previous period in history',⁵³ he does not seem to have in mind a Marxist critique of commodity fetishism. Weber's subjects are not focused on material goods themselves, except as a means to the making of money. This end is 'entirely transcendental' both in the sense of its immateriality – the way that it goes beyond merely immanent and mundane reality – and in the sense that it is the object of the capitalist's devotion. Just as the Calvinist God was the end that must be served for God's own sake, so money is the end toward which human activity must be directed. Like the Calvinist before God, humans are 'dominated' by money-making, 'subordinated' to acquisition. Weber makes clear that this is not a conscious ethical choice by individuals; rather: 'The capitalistic economy of the present day is an immense cosmos into which the individual is born, and which presents itself to him, at least as an individual, as an unalterable order of things in which he must live.'⁵⁴ This capitalistic 'cosmos', like the earlier Christian cosmos, constitutes a sacred centre; it transcends the individual and subordinates him or her to its inscrutable providence. As Ghosh comments: 'Transcendence was ever-present in [Weber's] eyes (even if it was by no means an unmixed blessing), and again we see why to describe the historical movement he portrays as secularization, with its implications of radical qualitative change, would be deeply misleading.'⁵⁵

Pace Santiago, Reno and countless others, Weber did not think that societal differentiation was a process of secularisation, and he did not think that a shared sense of the sacred had simply collapsed in modernity. It had rather migrated from the churches to the nation state and the market. In Weber's account, sacrificial violence for the nation state produced a community of shared meaning that traditional religion could only envy. And the capitalist economic order was an overarching cosmos into which one was born and in which one learned to obey money: the most perfect – because the most abstract and ubiquitous – of gods. It is true that Weber did hold out the hope that moderns could assert their freedom

⁵² Ibid. 53. The language here is reminiscent of papal social teaching. See, for example, John Paul II's warning of the 'onesided subordination of man to material goods alone' in his 1979 address to the UN General Assembly. §16. Online: https://w2.vatican.va/content/john-paul-ii/en/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu.html

⁵³ Weber, *Protestant Ethic*, 181.

⁵⁴ Ibid. 54. He continues: 'It forces the individual, in so far as he is involved in the system of market relationships, to conform to capitalistic rules of action.'

⁵⁵ Ghosh, *Max Weber*, 290.

and submit to a god of their own choosing. But any such god would be hemmed in by other gods, most especially the gods of state and market which – from the individual’s point of view – were not chosen but were *given*, whether the individual acknowledged them or not. In this sense, Weber and Durkheim were singing from the same hymnal.

3. SPLENDID IDOLATRY

I have so far argued that even Weber could not avoid the conclusion that Durkheim put forward explicitly: a sacred centre has not disappeared from modernity, and devotion to the nation state is one such sacred centre. If one takes this conclusion seriously, however, then one has two choices: either conclude – as did Durkheim and Weber – that gods are merely projections of human sociality, or, if one believes that there is a true God among the many false ones, analyse nationalism in terms of idolatry. Reno’s language of the ‘strong gods’ is helpful insofar as it raises the issue of idolatry in explicit form. In its most acute form, idolatry is the explicit worship of gods other than YHWH, but it can be used in a broader sense to describe excessive devotion to created things that are not God. It is in the latter sense that the *Catechism of the Catholic Church* warns of the ‘idolatry of the nation’.⁵⁶ As a Christian, Reno recognises the danger of idolatry and would certainly claim that ‘gods’ is merely a metaphor, but, as my analysis of Durkheim and Weber I hope makes clear, what people *claim* to believe is not as important as how they *actually* behave. For both Durkheim and Weber, it matters little whether people actually think that the flag to which they pledge allegiance and for which they sacrifice their lives is an actual, supernatural being. What matters is how it functions to structure their social lives. As we have seen, Reno tries to protect himself from the charge of idolatry by invoking the religious–secular distinction, claiming that civic rituals, though they ‘reach for the transcendent’, are ‘not religious in the sense in which we now use the term’.⁵⁷ Durkheim’s functionalist definition of religion, however, disallows the separation of civic rituals from religious ones. If Reno is going to take Durkheim seriously, he must face the charge of idolatry and explain the relation between the strong gods and God.

For Reno, nationalism is a manifestation of a basic Augustinian theme: people are united by shared loves. We are made for love, and love breaks down the barriers that surround the self. ‘It impels us outside ourselves, breaking the boundaries of me-centered existence. Love seeks to unite with and rest in that which is loved. This outflowing of the self makes love the engine of solidarity. The strong gods of public life are quite simply the objects of our shared loves. They are whatever arouses in us an ardor to wed our destinies to that which we love.’⁵⁸ Reno calls upon Augustine’s definition of the *res publica* as rational

⁵⁶ *Catechism of the Catholic Church*, §57.

⁵⁷ Reno, *Return of the Strong Gods*, 136.

⁵⁸ *Ibid.* 139.

creatures bound together by common agreement on the objects of their love.⁵⁹ According to Reno's Augustine, the Romans' dual love of freedom and honour set the template for the modern West's love of self-government. 'If it is 'nationalist' to cherish self-government, then we should be nationalists. The strong god of self-government and sovereignty, which calls upon us to use our freedom and reason, is ennobling.'⁶⁰

Devotion to the nation undoubtedly calls forth real virtues of love of neighbour, self-sacrifice, and love of something larger than oneself. Philosopher Jean-Luc Marion has remarked in passing on the 'splendid idolatry' of paganism, in which the idol calls forth a kind of worship and self-giving that breaks through the boredom and indifference we associate with the modern self. Such idolatry seems to summon seriousness, dedication – perhaps virtue – which is real, though limited, and not quite yet the summit of revealed virtue. Marion worries that Westerners no longer have 'the means for such a splendid idolatry'.⁶¹ Reno has the same worries, but evades the charge of idolatry by distinguishing, as we have seen, religion from politics, in a way that Durkheim would not. For Durkheim, it matters not if people deny that the nation is a god; what is decisive is whether or not they direct their devotion to it.

According to Durkheim, the group consciousness of the nation – Reno's sense of the 'we' – must be objectified, 'but any object might fulfil this function'.⁶² According to Thomas Aquinas, however, the object of worship is what distinguishes true religion from idolatry.⁶³ Aquinas allows that, in one sense, *latria*, or worship, can be applied univocally to either true or false worship, but in another sense, he says, it is applied equivocally, because those things that share the matter of religion – the reverential rites and sacrifices – but not religion's end, are vices, not virtues.⁶⁴ The vice contrary to the virtue of religion by excess, according to Aquinas, is superstition, 'not that it offers more to the divine worship than true religion, but because it offers divine worship either to whom it ought not, or in a manner it ought not'.⁶⁵ What appears to be a virtue, no matter how splendid, is in fact a vice if it is directed to the wrong end; *latria* is a vice if it is directed toward anything other than the true God. Idolatry, which is giving worship to something created, is a species

⁵⁹ Ibid. 150.

⁶⁰ Ibid. 154.

⁶¹ Jean-Luc Marion, *God without Being: Hors-Texte*, trans. Thomas A Carlson (Chicago: University of Chicago Press, 1991), 15.

⁶² Durkheim, *The Elementary Forms*, 261.

⁶³ The language of 'object' here can be misleading, because Aquinas uses 'object' for the rites of religion, and 'end' for that to which religion is directed, that is, God.

⁶⁴ 'The term *latria* may be taken in two senses. On one sense it may denote a human act pertaining to the worship of God: and then its signification remains the same, to whomsoever it be shown, because, in this sense, the thing to which it is shown is not included in its definition. Taken thus, *latria* is applied univocally, whether to true religion or to idolatry, just as the payment of a tax is univocally the same, whether it is paid to the true or to a false king. On another sense, *latria* denotes the same as religion, and then, since it is a virtue, it is essential thereto that divine worship be given to whom it ought to be given; and in this way *latria* is applied equivocally to the *latria* of true religion, and to idolatry: just as prudence is applied equivocally to the prudence that is a virtue, and to that which is carnal.' St. Thomas Aquinas, *Summa Theologiae*, II-II.94.1ad2.

⁶⁵ Ibid. II-II.92.1.

of the vice of superstition. Devotion to the nation, I have argued, shares the same matter with religion, both in terms of reverence and external rites, but is directed to the wrong end. Aquinas notably includes under idolatry Augustine’s category of ‘civil theology’, the deification of the Roman *civitas*.⁶⁶

Reno borrows theological language from Augustine to describe the longing for what transcends us. ‘Our hearts remain restless. They seek to rest in loyalty to strong gods worthy of love’s devotion and sacrifice.’⁶⁷ But when Augustine famously stated that our hearts are restless, he added ‘until they rest in You’, not ‘us’. Augustine’s statement took the form of a confession and prayer to God, the God of Jesus Christ, not any of the many strong gods on offer. It is hard to see that Reno is any less post-metaphysical than those he critiques. What seems to matter is not the identity of the god or gods to be worshiped, but rather their relative strength or weakness; it is a matter of degree, not kind.⁶⁸ Reno relegates metaphysical claims about which of the many available gods is true to the realm of ‘religious belief’. ‘Let us leave aside religious leadership, which is explicitly ordered to the service of the divine, and focus on political leadership and the sacred sources of the civic ‘we’.’⁶⁹ Reno divides American piety into private religious expressions like Christianity and the public cult of the nation. The God of Jesus Christ, the God whose power is made perfect in weakness (II Cor. 12:9), makes virtually no appearance in the book amongst the strong gods. Reno confesses himself a Catholic, but Christianity appears only as a prop to the social order. ‘I’d like to see a widespread revival of Christianity in the West. Until that happens, unbelievers need to wake up to the perils of a faithless society.’⁷⁰ A healthy political culture depends on the moral discipline that faith communities provide. Religious faith provides a home, resting in God’s arms, that makes believers ‘stable and stalwart citizens’, resistant to ideology. Religious faith prepares people to endure trials. Faith communities have ‘pinioned the nation from above’, equipping people to sacrifice on its behalf. ‘The solidarities of domestic life and religious community are not at odds with the civic ‘we’. On the contrary, the strong gods can reinforce each other, preparing our hearts for love’s many devotions. A man who makes sacrifices for his family or for his faith is likely to be ready to give the full measure of devotion to his country.’⁷¹ Despite Reno’s call

⁶⁶ Ibid. II–II.94.1. Aquinas concludes in II–II.94.3 that idolatry is the gravest of sins, but he distinguishes between objective and subjective senses of gravity. Objectively, idolatry is the gravest of sins, but subjectively, on the part of the sinner, idolatry committed through ignorance is a less grave sin than heresy committed knowingly. In the following article, II–II.94.4, Aquinas considers the causes of idolatry and presents a somewhat sympathetic account of why humans become idolaters. Humans commit idolatry because of inordinate affections, natural pleasure in representations and ignorance of the true God.

⁶⁷ Reno, *Return of the Strong Gods*, 152.

⁶⁸ The fact that Donald Trump, the very embodiment of the post-truth society, appears as something of a hero in Reno’s book – a flawed hero, but a hero nonetheless – only amplifies the Durkheimian message that the divine is whatever gives strength to the ‘we’. Trump’s victory in 2016 for Reno signals the return of nationalism and the rejection of the postwar consensus on weakening. Ibid. xvi, 125, 131–133.

⁶⁹ Ibid. 150.

⁷⁰ Ibid. 160.

⁷¹ Ibid. 160–161.

for adherence to metaphysical Truth, God is reduced to God's usefulness for the social order, and theology is reduced to sociology. Treating the 'we' as 'an end in itself', in Reno's words, is pure Durkheim. In the absence of a theological account of idolatry, and in the absence of anything but a sociological account of 'transcendence' and 'the sacred', Reno's book effectively reduces the divine to the social dynamics that constitute the 'we'. In the absence of any Christian theology or Christian God, the strong gods take over, and become much more than a mere metaphor.

Reno never spells out the relationship of the strong gods to God. Reno would no doubt contend that 'strong gods' is just a metaphor, and he acknowledges that strong gods can be false idols.⁷² He never discusses how to tell the difference between devotion to idolatrous strong gods and devotion to benign strong gods, however, and advocating devotion to gods that are not God is not a very helpful metaphor if one is trying to sort out idolatry from true worship. Given the almost complete absence of the Christian God from his narrative, and given his Durkheimian identification of the divine with social unity, 'strong gods' appears less as a metaphor and more as simply a frank recognition of the idolatry of nationalism. In this sense, Reno is right: devotion to the nation is devotion to a god, a strong one. But this god is not the true God; the strong gods are the wrong gods. Rather than a return to Truth, the strong gods continue to tell what World War I poet Wilfred Owen called: 'The old Lie: *Dulce et decorum est/Pro patria mori.*' That is, it is sweet and fitting – let us say splendid – to die for one's country. As Aquinas makes clear, a virtue directed to the wrong end is a vice. *Religio* directed to a false god is idolatry.

Christian patriots can always rebuff the charge of idolatry by claiming that their own devotion to the nation is tempered by, and secondary to, their belief in the biblical God. Political idolatry in the Bible is a matter of degree. One can be loyal to an earthly king and be loyal to YHWH at the same time as long as the king is subordinate to God and one's loyalty to the king is weaker than, and subordinate to, one's loyalty to God. Loyalty to the king is not idolatrous if it is kept in check by loyalty to God. The problem for Reno is that loyalty to God in this biblical view appears as yet another agent of weakening the bonds of solidarity. He wants to push for strengthening such bonds for strong loyalties. But in the biblical view, the stronger the loyalties to created things that are not God, the more they tend toward idolatry. Reno's language of 'strong gods' captures this dynamic precisely: the stronger the loyalties to group solidarity, the more such loyalties tend to become gods for people, false idols that violate the first commandment to worship only the LORD.

The only way to get around this dilemma is to identify the true God with the nation; worshiping God will not distract from social solidarity if social solidarity is identified with God. Reno knows better than to attempt to provide biblical warrants for such an identification, for there are none. He turns instead to Durkheim for a universal account of how divinity is identified with the strong loyalties that bind groups together. But the

⁷² Ibid. 136. 'We can critique these modern gods—and we should; they are often false idols—but the sacralizing impulse in public life is fundamental.' Elsewhere Reno acknowledges that the strong gods can be destructive; *ibid.* xii, 150.

identification of God with the 'we' is a blatant form of idolatry: it is collective narcissism. Augustine analyses idolatry in terms of individual narcissism, the self-love that can see only its own reflection in created things.⁷³ Devotion to the nation seems to break one out of the confines of the idolatrous self by calling forth a kind of self-giving and neighbour-love, to the point of self-sacrifice for others. It is 'splendid' in the sense that I have been using the term, to indicate the giving of oneself to something larger than oneself. When that something larger is nothing more than the 'we' of the group, however, it is still narcissism, but narcissism writ large, a collective narcissism.⁷⁴ Religion, Durkheim thought, is just the self-worship of the group. For Durkheim, a French patriot and a non-believer in God, this was not a problem; it provided a tidy explanation for why groups of people invented gods who do not actually exist. For someone who believes that there is one true God, however, the self-worship of the group is simply idolatry, a violation of the paramount commandment to have no other gods. It might be splendid idolatry, but it is idolatry nonetheless.

4. CONCLUSION

In this article I have argued that both Durkheim and Weber are helpful in showing that we do not in fact live in a secularised world devoid of gods, but that other gods have arisen to take the place of the God that inspired devotion in formerly Christian countries – for better and for worse – for so many centuries. Reno is just one example of those who believe that a resurgent devotion to the nation is a cure for what ails the modern world, but Reno's work is especially helpful in that it makes clear what the stakes are for those who believe in God. The strong gods who, in Weber's phrase, 'ascend from their graves' compete for devotion with the one God who is King. The solution, however, is not theocracy, a return to some idealised past age when the Christian God was identified with civic power. The scriptures

⁷³ As Richard Miller writes: 'For Augustine, narcissism and idolatry are two sides of the same coin, forged together by the self as the reference point for conceiving of both God and neighbor.' Richard B Miller, 'Evil, Friendship, and Iconic Realism in Augustine's *Confessions*', *Harvard Theological Review* 104, no 4 (2011), 391.

⁷⁴ In a 2020 article entitled 'Nationalism as Collective Narcissism', social psychologists Aleksandra Cichocka and Aleksandra Cislak apply earlier more general work on collective narcissism to the current resurgence of nationalism around the globe. They point out that political ideologies have become less important than ethnic and national identities. The nationalist demand for respect fits the concept of collective narcissism, which they define as 'a grandiose in-group image that is contingent upon external recognition of the in-group's worth'. Like Narcissus, the nationalist falls in love with an image of the nation, that is, not simply the reality of the nation but an idealised image of it, often based on a fictionalised history of the nation. Collective narcissism, like individual narcissism, is driven by perceived shortcomings – a lack of self-esteem, unmet needs and a lack of control. Under such conditions, people derive their sense of self-worth from the respect accorded to the group. The nationalist demand for respect can lead to violence linked to an exaggeration of threats and a propensity for hostile responses to such threats. Nationalism is not just about the 'we', in other words, but needs a 'they' to oppose to the 'we', an out-group to oppose to the in-group. Aleksandra Cichocka and Aleksandra Cislak, 'Nationalism as Collective Narcissism', *Current Opinion in Behavioral Sciences* 34 (2020), 69–74.

present us a better solution in the weak God, Jesus Christ, the one whose very self-emptying (Phil. 2:7) is the universal Truth, the manifestation of his Lordship (Phil. 2:9–11). To worship such a paradoxical God is to cultivate the virtues that make nationalism splendid – the self-sacrificial dedication to something larger than oneself – but direct them toward the service of the true God, the one who absorbed the violence of the world and inaugurated a new type of kingdom, one of reconciliation, justice and peace.

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Valerio S Severino

‘CIVIL’ AND ‘PURELY CIVIL’ IN EARLY UNIFIED ITALY – THE NATIONAL FESTIVAL FROM A JURIDICAL STANDPOINT

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The essay aims to examine the National Festival established in early unified Italy from a juridical standpoint. It intends to take a closer look at this issue by examining three prominent cases, the de-clericalisation of the Savoyard Monarchy’s Constitution Day and the so-called Albertine Statute, the Italian ‘Jubilee of the Fatherland’, and the blessing of the flags according to military discipline. In doing so, I will address the question of the ‘civil’ and ‘purely civil’ religion.

KEYWORDS:

civil religion, civil rites, blessing of the flags, Church and State, Fatherland

1. DE-CLERICALISING THE STATUTE (1861-)

The observance of a National Festival [*Festa Nazionale*] was introduced following the proclamation of the Kingdom of Italy. The ceremony modified the previous Savoyard Monarchy's Constitution Day [*Festa dello Statuto*] that had celebrated, since 1851, the so-called Albertine [Carlo Alberto di Savoia's] Statute which entered into force shortly before the First Italian War of Independence. In doing so, the Albertine holiday was extended over the territories annexed to the new Kingdom 'to celebrate the Unification of Italy and the Statute' (law of 5 May 1861, Art. 1). Article 2 is evidence of the very novelty of the law – intended to abolish the rule that all the municipalities had to celebrate the Statute by 'making appropriate arrangements with the ecclesiastical authorities for the religious function'.¹ By eliminating the obligation to provide the festival with a Catholic rite, the law of 1861 switched to a 'purely civil' character of the ceremony, and asserted the separation of State and Church.

The reasons that led to the de-clericalisation–secularisation of the Statute Day can be found in the speeches presenting the bill to the Senate and the Chamber of Deputies. Marco Minghetti, the Minister of the Interior appointed by the Cavour Government, stated that by the means of that 'merely civil solemnity' [*solennità meramente civile*] (of a 'civil and popular' character) the Government would 'implement' the 'principle of the absolute separation of Church and State' for 'the first time'.² Furthermore, according to another speech, reasons related to 'public order' are cited to justify the decision to 'not make the participation of the ecclesiastical authorities mandatory in the Festival'.³

The law of 1861 followed the instructions addressed to the bishops by the Apostolic Penitentiary in order to avoid support of the new Government in the aftermath of the

¹ Law of the Kingdom of Sardinia n. 1187, 5 May 1851 'Art. 1: The second Sunday of May is designated as the Festival of the Statute [*Festa dello Statuto*]; Art. 2. All the Municipalities of the State will celebrate the aforementioned national holiday, after making the appropriate arrangements with the ecclesiastical authorities for the religious function. The civil and military authorities, the National Guard, all the Army Corps on Land and Sea, the Teaching staff, and the Students will attend. Municipalities will allocate amounts in their budgets to be used for the festival. Our Minister Secretary of State for Interior Affairs is responsible for the execution of this Law [...]. It is to be compared to the law of the Kingdom of Italy no. 7, 5 May 1861 'Art. 1. The first Sunday of June is designated as national holiday to celebrate the unification of Italy and the Statute of the Kingdom. Art. 2. All the Municipalities of the Kingdom will celebrate this day, having made the appropriate agreements with the Government Authorities. Art. 3. The Municipalities will allocate amounts in their budgets to be used for the celebration of the Festival. Art. 4. All other Festivals, set by the law or by the Government at the expense of the Municipalities, cease to be compulsory.'

² 'Progetto di legge presentato il 9 aprile 1861 dal Ministro dell'Interno (Minghetti)' and 'Relazione del Ministro dell'Interno (Minghetti) 24 aprile 1861, con cui si presenta alla Camera il progetto di legge approvato dal Senato nella seduta del 20 stesso mese', in *Atti del Parlamento italiano. Sessione del 1861 (VIII Legislatura). Documenti dal 18 febbraio al 23 luglio* (Torino: Tipografia Eredi Botta, 1861), 218–219.

³ 'Discussione del progetto di legge per l'istituzione di una Festa nazionale', in *Atti del Parlamento Italiano, Sessione 1861* [session: 3 May] (Torino: Tipografia Eredi Botta, 1861), 831: Minghetti's speech. I referred also to 'Istituzione di una nuova festa nazionale. Progetto di legge presentato il 9 aprile 1861 dal ministro dell'interno (Minghetti)', in *Atti. Sessione del 1861 (VIII Legislatura). Documenti dal 18 febbraio al 23 luglio*, 218.

proclamation of the Kingdom.⁴ During the first years of the plebiscites, the clergymen who complied with these civil disobedience instructions were put under arrest in the Kingdom of Sardinia and in the territories annexed during Italian unification. The Sardinian Penal Code, i.e. articles 268 and 269, amended in 1859, was applied, with regard to the penalties for violation of laws of the state by the ‘ministers of religion’ in the performance of their duties. I refer to the cases judged in Italian courts where charges were brought against the clergymen who had refused to perform the *Te Deum* during the Statute Festival.⁵ An amnesty followed the repression, granted in September 1860 in order to foster a ‘spirit of conciliation’ [*Conciliazione*],⁶ of which the above mentioned law of 5 May 1861 was intended to be part. Bettino Ricasoli – Cavour’s successor to the Presidency of the Council of Ministers – supported the argument that by refraining from requiring the *Te Deum* and implementing a ‘purely civil’ [*puramente civile*] national holiday, the freedom of both conscience and worship would be much more respected (letter to Minghetti, February 1861).⁷

The implementation of the law of 5 May 1861 turned out to be more puzzling than the parliamentary project, having different, even opposing purposes and, at any rate, divergent impacts. If we look at the circular of the Ministry of the Interior issued on 6 May, then it seems that a schism, not a separation from the Church, is the goal to be achieved. The fact of the matter is that the mayors and municipal authorities of the kingdom were expected to send a ‘courteous invitation’ [*invito cortese*] to the ecclesiastical authority so that they would celebrate a religious rite and attend the national holiday.⁸ On the one hand, disobedience of

⁴ Sacra Paenitentiarum Apostolici, ‘10 Decembris 1860’, in *Acta Sanctae Sedis* 1 (1865-1866), 558: ‘*Dubia et Responsa*: 1. An liceat hymnum Te Deum canere occasione proclamationis intrusi Gubernii, aut alio simili eventu. R. *Negative*’.

⁵ ‘Processi pei *Te Deum* non cantati e la libertà di coscienza’, *La Civiltà Cattolica* 11, 7 (1860), 257-271.

⁶ Decree 4324, 29 September 1860. I quote from the motivation speech of the decree pronounced by the Minister of Justice and Ecclesiastical Affairs of the Kingdom of Sardinia, Giovanni Battista Cassinis: ‘Spirit of conciliation of which civil society and religion benefit so much’ (*Gazzetta Ufficiale del Regno* 233 [1860], 1).

⁷ Letter, B. Ricasoli to M. Minghetti, Firenze, 22 February 1861, in Sergio Camerani and Gaetano Arfé (eds.), *Carteggi di Bettino Ricasoli*. Vol. 16: 1 gennaio 1861 - 12 giugno 1861 (Roma: Istituto Storico Italiano per l’Età Moderna e Contemporanea, 1963), 146. As far as the National Day of the Statute was concerned, he stated: ‘I would rather we not speak about *Te Deum* or ring of bells at all, and both should be forbidden, because we cannot neither admit any profanation of a temple of God, and any counterfeiting (*simulazione*), [...] nor should we force the ministers of the Roman Catholic church, especially nowadays, to do something against their conscience [...]. It seems to me that it is time to stop mixing the sacristy with our Great Regeneration [*grande rigenerazione*, referring to Italian unification]. Whoever wants to go to church may freely do so, at any time and in any Church he pleases!’

⁸ ‘Circolare del Ministero dell’Interno – Festa nazionale – Esecuzione della Legge relativa, 6 maggio 1861’ signed by Minghetti, in Carlo Borda (ed.), *Manuale dizionario di amministrazione municipale, provinciale e delle opere pie. Guida teorico-pratica dei sindaci*, vol. 1 (Torino: S. Franco e figli editori, 1863), 1289: ‘You [the Mayor] are asked to send courteous invitation to the ecclesiastical authority, so that a religious rite might be performed in order to celebrate the great event that turns all the peoples of Italy into a family [...]. The Government is confident that all the Bishops and Parishes are willing to attend and will give evidence of their citizen charity (*carità cittadina*), on this occasion as well. If so, the religious rite, the Mass and the Ambrosian hymn [i.e. the *Te Deum*], will be celebrated.’ The document asked to ‘ascertain whether there were any churches affiliated to the municipality (*di patronato municipale*) in the district, and any priest willing to celebrate the festival’ and ‘make up for (*supplire*) the defection of the ecclesiastical hierarchical authority’, if need be.

the clergy to the bishops is taken to be justified, and a first step toward a Civil Constitution for the clergy was made. On the other hand, the Savoyard tradition of Church participation in civil ceremonies was resumed because the goal of dismissing it, according to the new law on the National Festival, could hardly be a one-step process and setbacks could not be avoided.

In some respects, the proposed arrangement for a ‘purely civil’ [*purement civil* according to the French rendering and Cavour’s words] national festival was a substitute for a formal agreement. One step in this direction was the proposed arrangement to avoid and/or mitigate the policy of prosecutions against bishops which proved itself to be ineffective. To make his convictions on the matter clear, Cavour declared that the ministerial circular, mentioned above, and the invitation it addressed, was basically a matter of preventing – and/or avoiding to engage in argument with – religious indifference and lack of reverence.⁹

The circular came under criticism in Parliament. It seemed to the Left group [*Sinistra storica*] that it denied the request for a ‘purely and simply civil holiday’, and ‘absolute separation of Church and State’. To steady the turmoil caused by the circular, Minister Minghetti was asked to explain what seemed to be a ‘violation’ of the voted on law, as the circular and the law imposed two requirements that were almost contradictory.¹⁰ However, the explanatory report on the draft legislation had already stated that ‘to those of the clergy who want to sanctify the joy of citizens with religious ceremonies, we give the credit of spontaneity’ [*è lasciato il merito precipuo della spontaneità*].¹¹ On the Catholic side, the bishops stayed on their path, and continued to suspend the priests who attended the Italian Festival *a divinis*.¹²

⁹ Letter, Cavour to Vimercati, Torino, 23 May 1861; original text: French. ‘The reasons which led us to assign a purely civil status to the Festival of the Statute are well known to you. Last year, the bishops who refused to celebrate religious ceremonies forced us to ensure compliance with the law, that is to say, bring them to trial, impose sentences at first, and then grant pardon as an afterthought. The law recently voted on by the Chamber of Deputies, based on our renowned principles of civil and religious freedom, set them free to either celebrate a religious function or not. To prevent, however, that this measure could be considered an example of indifference or contempt for the Ministers of the Church, Minghetti directed a circular letter to the mayors [...] with the purpose of urging the Municipalities to ask the religious authorities to join the celebration: in case of refusal the festival would be purely civil’ (Commissione Reale Editrice [ed.], *La questione romana negli anni 1860-1861: carteggio del Conte di Cavour con D. Pantaleoni, C. Passaglia, O. Vimercati*, vol. II [Bologna: Zanichelli, 1929], 219).

¹⁰ ‘Interpellanza del deputato Petruccelli [Ferdinando Petruccelli della Gattina] sulla circolare del Ministro ai Vescovi relativa alla Festa nazionale e sui fatti di Milano sui fatti di Milano’, in Camera dei Deputati, *Sessione 1861* [session: 24 May 1861] (Roma: Botta, 1861), 1099–1100. Further pieces of evidence on the disagreement concerning the circular are collected by Giuliana d’Amelio, *Stato e Chiesa. La legislazione ecclesiastica fino al 1867* (Milano: Giuffrè, 1961), 282–286.

¹¹ ‘Relazione del Ministro dell’Interno (Minghetti) 24 aprile 1861’, 220.

¹² Maria Lupi, *Il clero a Perugia durante l’episcopato di Gioachino Pecci (1846-1878) tra Stato pontificio e Stato unitario* (Roma: Herder Editrice, 1998), 287; Elio Babbini, *Il Cardinale Corsi di Pisa, Monsignor G. Breschi e il P. Ferdinando Giannini al Tribunale della pubblica opinione: coll’aggiunta di una lettera sulla Festa nazionale e i preti interdetti* (Pistoia: Tip. Rossetti, 1863); Antonio Fappani, *Il clero liberale bresciano negli anni dell’unità d’Italia* (Brescia: Morcelliana, 1968), 206; Silvio Ferrari (ed.), *Legislazione ecclesiastica e prassi giurisprudenziale. Gli abusi dei Ministri di culto tra laicizzazione della normativa e confessionalismo della magistratura* (Padova: Cedam, 1977), 147–148.

The ambiguity of the ministerial instructions lessened much of the novelty of the law, but, at the same time, its vagueness facilitated a quick, albeit imperfect application which succeeded in opening up a range of solutions adapted to the various territories. There was no single regulation. In Lombardy and Piedmont, in many cases, the municipalities, which had been unable to persuade any representative of the Church to attend, took the place of the clergy, no matter how a municipal council with priestly task was legally unsolicited. The representatives of the town government led the civil procession to the main church and then ‘started to sing the *Te Deum* [...]’ along ‘with the councillors and the people’.¹³ It may have referred to a precedent, i.e. a similar ‘religious demonstration, without the intervention of the clergy’ reported during the Parliamentary discussion on the National Day, relating to the way the annexation of South Italy was celebrated in the city of Bra: the mayor and the Municipal council ‘sang the *Te Deum*’ with the people and ‘without the involvement of a minister of religion’, in a Church affiliated to the Municipality [*una cappella di patronato municipale*].¹⁴

The discretionary power given to the municipalities opened the door to variations in practice. However, the custom to invite military chaplains to the National Day prevailed. An understanding of their liturgy and status – open-air mass at a field altar, i.e. in public spaces and outside churches, as they did not belong to any local diocese – makes the municipality’s preference intelligible and consistent. It remained the most common practice until the suspension of the entire chaplains units in the Italian army a few years after the proclamation of the Unity of the Kingdom, already in 1867, according to peacetime rules.¹⁵ Besides, in the Italian press, since 1861, we can find claims on the ‘political holiday/festival without *Te Deum*’, or such as the allegation that the Ministry ‘secularised [*ha secolarizzato*] the National Statute Day’, and on the ‘civil (non-ecclesiastical) ways of celebrating that holiday’.¹⁶

In 1861, disagreements were also expressed concerning the day of the national festival. While the day of the Savoyard ‘Statute Festival’ [*Festa dello Statuto*] was the second Sunday of May (that is the first Sunday available after 8 May, i.e. the day commemorating the opening of the first session of the Parliament of the Kingdom of Sardinia, and the entry into force of the Statute of 1848), the ‘National/Italian Festival of the Statute’ day was switched to the first Sunday in June. Some objections were raised regarding the month because there were no memories worth recalling in June to which all the ‘peoples [*popoli*] of Italy’ could ‘connect

¹³ ‘Sacco nero’, *Gazzetta del Popolo* 155 (6 June 1861), 5: Municipality of Sagliano.

¹⁴ ‘Discussione del progetto di legge per l’istituzione di una Festa nazionale’, in Camera dei Deputati, *Atti della Sessione del 1861, Tornata del 2 maggio* (Torino: Tipografia Eredi Borra, 1861), 827: speech of Desiderato Chiaves, referring to the celebration in Bra.

¹⁵ Ilaria Porciani, ‘Lo Statuto e il Corpus Domini. La festa nazionale dell’Italia liberale’, *Il Risorgimento. Rivista di storia del Risorgimento e di Storia contemporanea* 47, 1-2 (1995), 149-173: with reference to the Decree issued on 6 January 1867.

¹⁶ ‘Una festa senza *Te-Deum*. Predica del solito Padre dell’Ordine dei Meno-Osservanti’, *Gazzetta del Popolo* 14, 104 (14 April 1861), 2; ‘Contro il *Te Deum*. Lettera ad Alessandro Borella di Noberto Rosa’, *Gazzetta del Popolo* 14, 79 (20 March 1861), 4; Alessandro Borella, ‘I Tiri al bersaglio’, *Gazzetta del Popolo* 14, 116 (26 April 1861), 2-3.

a concept' [*annettere un concetto*].¹⁷ The parliamentary debate referred to the lack of a major event of historical/national significance. Even the proclamation of the King *Re d'Italia* (17 March 1861) was made before the territorial unification of the constitutional monarchy was completed, as the process lasted until the Plebiscite of Rome (1870). The suggestion to celebrate the Memorial Day at different times according to the region, and the day when the respective annexations to the Kingdom of Italy took place, was rejected.¹⁸ What is more, the arrangements succeeded in changing the month of the Statute Festival but not the day, while the issue of the feast's being celebrated on a (Christian) Sunday underwent no discussion in Parliament.

The historian Ilaria Porciani remarked on the interference between the Italian constitutional and the Catholic Eucharistic holy days. Being celebrated on the first Sunday of June, the National Festival greatly competed with the liturgical calendar, i.e. the *Corpus Domini*. The two movable feasts, civil/national and religious/Catholic became two 'poles' of an 'oppositional couple' – according to Porciani's words – and informed a conflict of symbols, Festivals and rivalling demands for consensus.¹⁹ A new approach to this issue may point out, however, that the Italian law brought the national and religious holidays closer together, and one conclusion that might be drawn from it is that by aiming to keep a connection, the law of 1861 was a matching experiment, if not a procedure of reconciliation. That is not to say that the couple 'Statute Festival (at the beginning of the Italian state) and *Corpus Domini* (at the end of the Papal States)' did not entail a dual system and even clashing solutions. But, in my view, the challenge to not move in the direction of greater polarisation, and to reduce the risk of division into two sharply unrelated opposites having higher collision potential, is remarkable. It is revealing how the law on the national holiday was also implemented by monitoring formal refusals by municipal officers to attend the *Corpus Domini* procession.²⁰ Both suspensions from the exercise of their office and resignations in protest over this obligation occurred²¹ and both are to be considered.

¹⁷ 'Discussione del progetto di legge per l'istituzione di una Festa nazionale', in Camera dei Deputati, *Sessione del 1861, Tornata del 3 maggio* (Torino: Tipografia Eredi Borra, 1861), 826: Chiaves's speech.

¹⁸ 'Discussione del progetto di legge per l'istituzione di una Festa nazionale', *Tornata del 3 maggio*, 832-833: Alfieri's speech.

¹⁹ Pier Giorgio Camaiani, 'Motivi e riflessi religiosi della questione romana', in [Multiple authors], *Chiesa e religiosità in Italia dopo l'Unità (1861-1878). Relazioni II* (Milano: Vita e Pensiero, 1973), 105-106; Maurilio Guasco, *Storia del clero in Italia dall'Ottocento a oggi* (Roma-Bari: Laterza, 1997), 73-77; Ilaria Porciani, *Lo Statuto e il Corpus Domini*, 151-154; Maurizio Ridolfi, *Le feste nazionali* (Bologna: Il Mulino, 2003), 34-37.

²⁰ 'Questione di logica', *Gazzetta del Popolo* 14, 142 (1861), 3; 'Sacco nero', *Gazzetta del Popolo* 14, 144 (1861), 5: referring to the 'priests' who 'have no nation' and no 'National Festival', opposing the idea of providing them with a 'civil power' which is not provided by the *Corpus Domini* procession. A. B., 'Genova 25 maggio – ci scrivono', *Gazzetta del Popolo* 14, 146 (1861), 4: the municipal committees [Genoa] approved to 'not attend the incoming *Corpus Domini* procession'.

²¹ Two recorded instances of resignations: in Florence (*Gazzetta del Popolo* 14, 169 [1861], 5 [20 June]); and Savona ('Notizie italiane', *Gazzetta del Popolo* 150 (1 June 1861), 5). In many cases, the Italian protests were against the military participation to the *Corpus Domini* procession (e.g. 'Sacco nero', *Gazzetta del Popolo* 149 [1861], 4).

2. THE 'JUBILEE OF THE FATHERLAND' (1911-)

The Italian Kingdom holiday reached a turning point in the management of the festival in 1911, at the grand opening of the *Pater Patriae* memorial in Rome, eventually called the *Vittoriano* monument, and hosting the Altar of the Fatherland [*Altare della Patria*]. From here on, the national narrative seems to comply more with patterns of sacralisation than de-clericalisation of the Statute and/or nationalisation of the clergy, i.e. the processes implemented since 1861. This reading – according to which the monument and the 1911 ceremony are both products of a 'process of education to believe in the holiness of the nation' at the apex of the 'rhetoric of the sacred' and 'patriotic liturgies' performed in the fiftieth anniversary of the Kingdom – is acknowledged by historians of the *Risorgimento* culture, e.g. Alberto Mario Banti.²² The appeal of this rhetoric is noteworthy in 1911: in his speech delivered at the inaugural ceremony of the Jubilee, the Mayor of Rome, Ernesto Nathan, elaborated his views on the 'altar of the fatherland' publicly.²³ But other aspects, related to secularisation, must not be overlooked.

The main National Day ceremony, in 1911, held at the memorial dedicated to King Vittorio Emanuele II, was performed according to the practices of the Festival promoted since 1861. The rite consisted of different elements, which included the handing over of the national flag to military units, followed by the oath of allegiance.²⁴ I will examine the processions of the army flags – intended to be perceived as traditional, and initiate a national memory by recalling the wars of independence – in the next paragraph in more detail.

The novelty of the festival can be found in the procession of the mayors gathered in Rome, which allocated a new form of participation to the clergy. Six thousand Italian mayors went up the stairs of the building of the Altar of the Fatherland, ritually. The ceremony of the 'ascent' of the mayors involved a 'mayor/patriot priest [...] wearing a Roman cassock and the national sash', in the presence of the 'parliamentary Catholic group'; a 'church minister [*sacerdote*] mayor' (I quote from the *Giornale d'Italia*, *La Stampa* and *Il Messaggero* [newspaper] reports).²⁵ The name of that mayor is not released, but news were circulating that he came 'from Sicily' (*La Stampa* and *Corriere della Sera*), or more generically from the 'southern provinces' (*L'Osservatore Romano*) or specifically that he was the 'mayor [...] of Caltagirone' [*Avanti!*].²⁶ Recent studies attempted to demonstrate that Luigi Sturzo, who

²² Alberto Mario Banti, *Sublime madre nostra: la nazione italiana dal Risorgimento al fascismo* (Roma-Bari: Laterza, 2011): the paragraph: *Altari sacrificali*.

²³ Municipio di Roma, *S.P.Q.R.: 27 marzo 1861, 27 marzo 1911* (Roma: Tipografia Editrice Nazionale, 1911), 318.

²⁴ 'Festa nazionale in Firenze', and 'Festa nazionale in Torino', *Gazzetta del Popolo* 123, and 124 (3 June and 4 June 1861), 1-2, 2.

²⁵ 'Il prete sindaco ama il Re e il Papa', *Il Giornale d'Italia*, 8 June 1911, 4; 'Caratteri e significato di una giornata storica', *La Stampa*, 5 June 1911, 2; 'Il sindaco sacerdote', *Il Messaggero*, 6 June 1911, 1.

²⁶ 'I Sovrani d'Italia inaugurano in Roma il monumento al Gran Re', *La Stampa*, 5 June 1911, 1; 'Il monumento al Padre della Patria inaugurato stamane a Roma dai Sovrani', *Corriere della Sera*, 4 June 1911, 7; 'Un sacerdote fuori posto', *L'Osservatore Romano*, 5 June 1911, 3; 'L'inaugurazione del monumento' and 'Un simbolo', *Avanti! Giornale del Partito Socialista*, 5 June 1911, 1.

will found the Italian Christian Democratic Party [*Partito Popolare*], is the ‘mayor priest’ mentioned in the newspapers, by referring to the fact that Sturzo, mayor of Caltagirone, was in Rome at the time of the National Festival in order to attend the Roman congress of the National Association of Italian Municipalities [*Anci*].²⁷ In the days immediately following the ceremony, the priest figure was identified as Giulio Paolucci, mayor of Abruzzo (central-southern Italy),²⁸ which turns out to be misguided information when this data concerning his provenance is compared with the other ones mentioned above. This does not, however, rule out that two (or more) mayor priests had climbed the national monument in June 1911. If any error has been made in referring to Sturzo, the similarity between the two priest mayors is to be acknowledged.

In the aftermath of the Fascist era, Sturzo’s statement concerning the Altar of the Fatherland memorial – described as the symbol of the ‘complete *fiasco*’ of the ‘liberal governments’ – looks quarrelsome, in speaking of the relationship between State and Church in Italy.²⁹ Quite understandably, the political context in 1946 changes the criteria on which he might have based his judgment, compared to the earlier situation, that is the National Festival held in 1911 – whether he had attended or not. In 1911, Sturzo was in the middle of a process whose outcome and premise were far from leading to the sacralisation of a political party and the state, i.e. between the birth of the *Partito Popolare* (founded in 1919), and the Italian Catholic Electoral Union (UECI, established in 1906), following the encyclical of Pope Pius X on the ‘Catholic Action’/‘lay Catholics’ in Italy issued with regard to the ‘duty on all Catholics to prepare themselves prudently and seriously for political life’ (*Il Fermo proposito*, issued in 1905), i.e. actions which were intended to implement a secularisation of the clergy and not a sacralisation of politics. Shortly after the Festival held in 1911, the new Union advanced into a more developed stage, i.e. the secret alliance between Prime Minister Giovanni Giolitti and the UECI, chaired by V. O. Gentiloni, supported in view of the 1913 Italian general election, which marks an experiment of improvement of the Catholic faction in the Liberal party [*Unione Liberale*]. Both the inclusion of priests in the mayors’ procession at the National Festival in 1911 and the ‘Gentiloni Pact’ are two complementary aspects of the same process of secularisation/

²⁷ Giuseppe Spataro, *I democratici cristiani dalla dittatura alla Repubblica* (Milano: Mondadori, 1968), 16; Paolo Emilio Taviani, ‘Filippo Meda e il cinquantenario di *Civitas*’, *Civitas. Rivista mensile di studi politici* 21, 5 (1970), 3–12, 7; Umberto Chiaramonte, *Luigi Sturzo nell’ANCI* (Soveria Mannelli: Rubbettino, 2004), 149, note 328; and 45. To the best of my knowledge, the involvement of a priest in the rites of the Altar of the Fatherland in Rome went unnoticed by the historians of the *Vittoriano* memorial, with few exceptions (Bruno Tobia, *L’Altare della Patria* (Bologna: Il Mulino, 2011 [1st ed. 1998]), 14: who made no attempt to identify him).

²⁸ Giulio Paolucci, mayor of Goriano Sicoli (Aquila): ‘Il monumento a Vittorio Emanuele II e all’Unità italiana’, *Il Messaggero*, 5 June 1911, 1; ‘Il sindaco sacerdote’, 1; ‘Il prete sindaco ama il Re e il Papa’, *Il Giornale d’Italia*, 8 June 1911, 4; ‘Un sacerdote fuori posto’, 3.

²⁹ Luigi Sturzo, *Nazionalismo e internazionalismo* (Bologna: Zanichelli, 1971 [1st ed. 1946]), 66: the memorial revealed itself to be ‘an intruder within the walls of Rome’, instead of ‘marking the beginning of a national greatness’. A clip of the following newspaper article is preserved in Sturzo’s Archives (Fondazione Luigi Sturzo, Rome) ‘L’apoteosi dell’unità d’Italia nella cerimonia inaugurale del monumento a Vittorio Emanuele sul Campidoglio’, *Corriere della Sera*, 5 June 1911.

inclusion of Catholicism in Italian political life at the time. Both are of concern in the so-called 'silent conciliation', twenty years before the Lateran Pacts signed by Mussolini.³⁰

Still another aspect should be considered. In 1911, a few days after the National Festival, several incidents during the *Corpus Domini* processions were reported, notably by the *L'Osservatore Romano*, i.e. alleged aggression by socialist and anticlerical groups. On 15 June, in Fabriano, protesters ran over the bishop holding the Blessed Sacrament; in Fano, an attempt was made 'to tear down the processional canopy under which the Blessed Sacrament stood'.³¹ These do not appear to be isolated incidents, but a long established practice³² varying to a greater or lesser extent, and to a greater or lesser extent exploited by both the Catholic press, by magnifying the occurrences, and the Italian Municipalities, that referred to reasons related to public order to justify the prohibition on procession outside churches. Incursions into churches by demonstrators, and law enforcement by security forces are reported, as well.³³

The range of cases partially examined above is not meant to be exhaustive, but concentrates on some instances that prove most useful in the analysis of the civil versus religious conflict. It is to be noted, however, that there was no religious issue in the Italian ceremonies in the sense that any Italian government was dedicated to the preservation of Catholic holidays in the civil calendar. The *Corpus Domini* ['*S.mo Corpo di Cristo*'] was included in the list ['*Tabella*'] of the holidays ['*giorni festivi*'] entitled to the benefit of the civil effects [*effetti civili*], i.e. the 'Calendar of the holidays' which had been in use since 1853 in the Kingdom of Savoy Piedmont-Sardinia, and then officially introduced in the Kingdom of Italy, too, since 1869 (according to the Royal Decree n. 5342, 17 October). A peculiar aspect of the Italian civil calendar is that the 'civil effects' of the Catholic holidays were never called into question even after the 'purely civil' reform, not even in the course of several parliamentary debates related to the 1869 law and the new regulation

³⁰ Giovanni Spadolini, *Giolitti e i cattolici (1901-1914). La conciliazione silenziosa* (Firenze: Edizioni della Cassa di Risparmio di Firenze, 1990 [1st ed. 1959]); *Processo all'Altare della Patria. Atti del processo al monumento in Roma a Vittorio Emanuele II*, ed. by Vanni Scheiwiller (Roma: Libri Scheiwiller, 1986), 25.

³¹ 'La teppa anticlericale di Fabriano assalta la processione del *Corpus Domini*', *L'Osservatore Romano*, 17 June 1911, 2; 'Gli anticlericali di Fano contro una processione', *L'Osservatore Romano*, 20 June 1911, 3; 'Disordini provocati dagli anticlericali durante la processione del *Corpus domini* a Fabriano', *La Domenica del Corriere*, 25 June 1911.

³² Further examples: [no identified author], *Tumulti in Firenze la sera del 6 giugno 1861: Ottava del Corpus Domini* (Firenze: Tip. della Minerva, 1861); 'La processione del *Corpus Domini* a Siena; insulti alla religione in Lucca', *La Civiltà Cattolica* 14, 7 (1863), 365; Siena and Lucca 1863; Salvatore Randazzini, *Perchè i rivoluzionari vogliono andare a Roma: autorità e testimonianze* (Milano: Tip. e Libr. Arcivescovile G. Agnelli, 1869), 39; Montechiari 1862; Venezia and Verona 1867; Gustavo Frigyesi, *L'Italia nel 1867: storia politica e militare corredata di molti documenti editi ed inediti e di notizie speciali*. Vol. I (Firenze: Tip. di G. Pellas, 1870), 413-414; Verona 1867; 'L'aggressione contro i cattolici di Genova', *La Civiltà Cattolica* 36, 11 (1885), 107-110; Genova 1885. Fortunato Iozzelli, *Roma religiosa all'inizio del Novecento* (Roma: Edizioni di Storia e Letteratura, 1985), 308-309; Rome (Testaccio district 1911, Aurelia street 1912).

³³ Nicola De Crescenzo and Enrico Scialoja (eds.), *Il Foro italiano: raccolta generale di giurisprudenza civile*, vol. 9 (Roma: Foro Italiano, 1884), 18-22 (Palermo 1883); 'Cronaca, cose italiane', *La Civiltà Cattolica* 10 (1879), 247 with reference to the *Corpus Domini*.

entering into force in 1874 (law n. 1968) and 1895 (law n. 401), by adding respectively that New Year's Day and the day of the 20th of September [Italian Capture of Rome] (to be celebrated as a “national festival [*Festa nazionale*]”), in the list of the civil holidays. Only in 1913 a ‘reduction of the civil holidays’ was suggested. On the one hand, such a reduction was intended to conform to the Catholic calendar, i.e. to follow the adjustment made in 1911 by Pius X who reduced the number of Holidays of Obligation (from 36 to 8, *Motu proprio* “*Supremi Disciplinae*” on 2 July 1911). The amendment of the Italian calendar was most readily justified on this basis by the Minister of Justice and Cult, i.e. on the ground that it included holidays which ‘not even ecclesiastically entail a suspension of work, any longer’³⁴ notably the *Corpus Domini*. Very little or no attention to such a reduction was paid in the Parliament, until the reform of the ecclesiastical calendar. On the other hand, the law on the ‘reduction of the civil holidays’ (n. 630 [19 June 1913] and R. Decree 4 August 1913 n. 1027)³⁵ created a new long-standing inconsistency,³⁶ as it affected the Assumption of the Blessed Virgin (15 August) and the feast of Saints Peter and Paul (29 June), which were not excluded by the *Supremi Disciplinae*.

3. THE BLESSING OF THE FLAGS ACCORDING TO MILITARY DISCIPLINE

Since evidence for the analysis of the National Festival in early unified Italy emphasises the role of flags in the rite, in this paragraph I will turn to the tradition of the procession of flags that had developed as a civil symbol exhibition, and established its own Festival [*Festa delle Bandiere*].

In 1913, the monument hosted a flags exhibition of the regiments engaged in the Italo-Turkish campaign. The military flags performance, already included as a part of the National Festival, became the main focus. They were gathered in Rome, carried in a procession climbing the stairs of the Altar of the Fatherland.³⁷ At the 24 May 1916 commemoration,

³⁴ Camillo Finocchiaro Aprile (Ministro di Grazia e Giustizia e dei Culti), ‘Riduzione delle feste civili. Disegno di Legge approvato dal Senato del Regno. Seduta del 4 giugno 1913’, in Camera dei Deputati, *Atti Parlamentari, Documenti. Disegni di Legge e relazioni*, sess. 1909-1913, vol. 32, n. 1439 (Roma: Tipografia della Camera dei Deputati, 1913), 1: ‘La presente determinazione delle feste civili [...] risale a disposizioni emanate dallo Stato Sardo, e comprende tuttora nel novero delle feste civili alcune ricorrenze di carattere religioso le quali, in seguito al motu proprio pontificio del 2 giugno [sic! July] 1911, neanche ecclesiasticamente importano più l’astensione dal lavoro.’ Similar arguments in the newspapers, e.g. ‘La riduzione delle feste civili’, *La Provincia di Pisa* 41, 23 (1913), 1; ‘La riduzioni delle feste civili. Il nuovo disegno di legge’, *Il Messaggero*, 1 June 1913, 2.

³⁵ *Gazzetta Ufficiale* 145 (23 June 1913): ‘Tutte le domeniche; il primo giorno dell’anno; il giorno dell’Epifania; dell’Ascensione; dell’Assunzione; del Venti Settembre; di Ognisanti; di Natale.’

³⁶ Remarks in this regard in ‘Cronaca contemporanea. Cose Italiane’, *La Civiltà Cattolica* 75, 1 (1924), 278 with reference to *L’Osservatore Romano*, 17 January 1924. The discrepancy between the civil and religious calendars increased when the Church resumed the *Corpus Domini* Day in the 1917 Code of Canon Law.

³⁷ ‘I soldati d’Italia ricompensati dal Re sull’altare della Patria tra l’esultanza del popolo. Giornata degna di Roma’, *La Stampa*, 20 January 1913, 1; ‘Il re premia sul Campidoglio le bandiere vittoriose dopo aver passato in rivista le truppe che combattevano in Libia’, *Il Messaggero*, 20 January 1913, 1.

the aesthetics of the 'city with flag' [*città imbandierata*] was applied.³⁸ On 4 November 1920, the second anniversary of the Italian World War I Victory (before the institution of the Unknown Soldier), a 'Festival of Flags' [*Festa delle Bandiere*] was performed which replicated the 1913 program mentioned above, i.e. the gathering of flags in Rome, despite significant variations in ritual practice, including the Catholic mass at the Quirinale (King residence in Rome) celebrated by the court chaplain surrounded by the national flags.³⁹

In the Statute Day/National Festival and the World War I celebrations, flags were constantly in evidence while the ceremonies performed on the Altar of the Fatherland changed. In addition to this obvious feature of the rites of flags revealing continuity, less apparent issues are also important evidence of 'purely civil' deficiencies. Among these, there are inadequacies, such as the agreements on the blessing of the flags by ecclesiastical authorities, to which I will turn in the following pages. This section seeks to highlight the inconsistency between the claim of a separation of Church and State in civil rites and the prevailing use of flags over which public officials are expected to receive instructions from ecclesiastical authorities. To the best of my knowledge, this inconsistency was obscured at the time, deliberately, also in the scholarly debate. It deserves greater consideration than it is currently receiving.

A note issued by the Ministry of War dated 29 May 1862 (n. 82) stated that the blessing of the flags should be performed by military chaplains.⁴⁰ A handbook of Military Discipline for the National Guard from 1863 provides instructions on the Catholic mass and blessing of the troops (how the soldiers get in line in the church and in front of the altar, how the movements of the weapons are to be performed during the Elevation [part three, Art. II]).⁴¹ The regulation of military discipline for the Navy corps, ratified by the Royal Decree on 11 March 1865, provides for the chaplain's blessing of the new recruits who swear their oath using the formula 'in the presence of God' and in front of the flag (Art. 226).⁴²

In 1885, the Minister of War replied to a parliamentary question on the negotiations between the governmental and ecclesiastical authorities for the blessing of the flags of the new regiments of the 'Rome' Brigade [*Brigata Roma*]. The Government found leverage to be in a position to 'modify' (i.e. revoke) the 'old' regulation on the military ceremony

³⁸ 'La commemorazione del XXIV maggio a Roma e in Italia', *Il Messaggero*, 25 May 1916, 3.

³⁹ Alessandro Miniero, *Da Versailles al Milite ignoto: rituali e retoriche della vittoria in Europa (1919-1921)* (Roma: Gangemi, 2008), 114; Maurizio Ridolfi, *Le feste nazionali*, 150-153. 'Le bandiere della Vittoria consacrate al Quirinale', *Il Giornale d'Italia*, 4 November 1920, 2.

⁴⁰ Orazio Viola, *Il tricolore italiano. Saggio bibliografico* (Catania: Libreria Editrice C. Battiato, 1905), IV: 'Ministero della Guerra', Note n. 82 (29 May 1862): 'Ministro della Guerra, Segreteria Generale, Divisione Giustizia e Istituti militari, sez. 2°'; Giovanni Battista Brignardello, *Per la solenne benedizione della bandiera e giuramento della Guardia Nazionale di Teramo: parole lette nella cattedrale della città li 6 aprile 1862* (Chieti: Q. Scalpelli, 1862).

⁴¹ Ferdinando Nocenti (ed.), *Prontuario di disciplina militare per uso della guardia nazionale mobile e sedentaria che servir può anche per l'armata, ossia, doveri generali e speciali dei militi e sott'ufficiali*. Vol. 3: *Alcuni servizi di quartiere e di piazza* (Assisi: Tip. di D. Sensi, 1863), 2-3.

⁴² 'Regio Decreto col quale è approvato il Regolamento di disciplina militare per i Corpi della R. Marina, n. 1605 marzo 1865', *Leggi e Decreti del Regno d'Italia. Parte supplementare* 5 (1865), 207.

which ‘must’ [*deve*] combine delivery to the regiments and blessing of the new flags.⁴³ The blessing rite should have been performed on the day of the foundation stone ceremony of the ‘Vittorio Emanuele II’ memorial in Rome (*Vittoriano*/Altar of the Fatherland), on 14 March.⁴⁴ Both ceremonies were postponed, the first on 16 March, the latter on 22 March, in order to not overlap. It is a fact neglected in the scholarly debate on the history of the memorial, which illustrates the separation of the blessing of the flags (related to a regiment of Rome) and the memorial ceremony (held without the clergy and referred to by Prime Minister Agostino Depretis as the ‘national religion’ [*Religione nazionale*]).⁴⁵

The military regulation of the Catholic blessing will be implemented, while the representation of the Italian flag ‘of the revolution that ousted the Pope’ [*che ha spodestato il Papa*], belonging to a kind of secular religiosity (the ‘blessing [...] by the people’), remained a vocal minority.⁴⁶ According to Catholic sources, from the capture of Rome to the end of the nineteenth century, the blessing of the flags of the Italian army would have been performed in Rome only three times.⁴⁷

In 1887, the Congregation of Rites of the Roman Curia forbade the clergy to allow flags that were not blessed to be introduced into churches.⁴⁸ This provision particularly affected private associations, e.g. labourer’s associations, and in most cases prohibited funeral processions of their members from entering the church with the flag, while national flags were allowed, such as those of the army, because they were blessed; but, however blessed they might be, they might not be introduced by non-Catholic people or associations. In the following years, the Ministry of Justice raised the question if such misconduct should not be reported as a matter of criminal offence and should not be dealt with under the discipline code related to ‘flag desecration’, or violation of the flag protocol, by investigating on the ‘various forms’ of the ecclesiastical prohibition and evaluating the urgency of a clarification also on the basis of the Italian Penal [Zanardelli] Code in effect since 1890 (Art. 115 and 182).⁴⁹ The flag issue was raised in the Chamber of Deputies several times, e.g. in 1899, with reference to an accident in Rome at the Church of S. Andrea delle Fratte ‘where the national flag was rejected and torn’ [*respinta e stracciata*]. The undersecretary of the Ministry of Justice referred to the Council of State which stated the ‘illegitimacy of the rejection

⁴³ ‘Annunzio e svolgimento di una domanda d’interrogazione del deputato Comin- Ricotti, Ministro della Guerra, intervento’ [session: 16 March 1885], in Camera dei Deputati, *Atti Parlamentari*, Legislatura XV (Roma: Tip. della Camera dei Deputati, 1885), 12914-12915.

⁴⁴ ‘La benedizione delle bandiere’, *La Tribuna*, 15 March 1885, 1; ‘La benedizione delle bandiere’, *La Tribuna*, 17 March 1885, 2; ‘Dispacci particolari del Roma, Roma 16’, *Roma. Giornale politico quotidiano* 24, 75 (1885), 3.

⁴⁵ ‘Cronaca contemporanea. Cose italiane’, *La Civiltà Cattolica* 36, 10 (1885), 109-112, 238-239; ‘Il discorso dell’on. Depretis’, *La Tribuna*, 24 March 1885, 2; ‘Re Vittorio All’Aracoli’, *Il Messaggero*, 23 March 1885, 3; ‘Cronaca cittadina. La funzione di ieri’, *L’Osservatore Romano*, 24 March 1885, 2; ‘Cronache di Roma. Sul Colle capitolino’, *La Tribuna*, 23 March 1885, 2.

⁴⁶ Luigi Mostardi, ‘La benedizione delle bandiere’, *Il Messaggero*, 13 March 1885, 1.

⁴⁷ Salvatore Brandi, ‘Le bandiere in chiesa’, *La Civiltà Cattolica* 49, 1 (1898), 261.

⁴⁸ *Il monitore ecclesiastico. Pubblicazione mensile ad uso del clero* 8 (1893), 263.

⁴⁹ Document from the archives of the Ministry of the Interior, 10 December 1898, available in Silvio Ferrari (ed.), *Legislazione ecclesiastica e prassi giurisprudenziale*, 213.

of national flags', and pointed out a loophole in the law addressing the flag protocol and, as far as the distinction of a private or public national flag is concerned, the technical defect of the laws in mentioning the national flag with regard to the royal banners, Army flags, Military and Merchant Navy flags only.⁵⁰

At the end of the nineteenth century, the *Regulations for territorial service* (vol. V, chap. 2) still provided for the blessing of the military flag inside a church or at an open-air field altar and arranged for it to be unfolded before the priest by the army official and then turned to the soldiers for the oath.⁵¹ In 1907, the Military Discipline Regulation, approved by the R. D. issued on 25 July, provides us with documents on the enduring flag blessing ceremony and on the regiment's oath (appendix, vol. I, Art. 113): 'The captain [...] turns it [the flag] to the priest so that he can bless it'; and the oath formula: 'Religion has now blessed the flag'.⁵²

4. CONCLUSIONS

Further research would be required to provide a better understanding of the diverging practices of the flag blessing ceremonies. But these issues remain unclear: the value of the 'blessing of flags' tradition if the new purely civil project could not survive with it; the benefits of flag performances for this project; the contradictory nature of the two requirements both of concern to the National Festival and its two above mentioned processions: the need for a far greater secularisation of clergymen, and the need for a far greater sacralisation of the flags, as well as the real issues actually addressed in the early unified Italy while governments endorsed hidden church-state cooperation.

⁵⁰ Camera dei Deputati, *Atti Parlamentari*, vol. LXXXVIII (Roma: Tip. della Camera dei Deputati, 1899), 3111-3112: (18 March 1899 session: Massimo Bonardi's speech, *Incidente di una bandiera*): 'Dinanzi a questa lacuna delle nostre leggi parve al Consiglio di Stato che il fare distinzioni fra bandiere nazionali pubbliche e private non fosse conveniente ed opportuno, e ritenne che tutte le bandiere così di corpi costituiti come di associazioni private debbano essere considerate alla stessa guisa di fronte alle pretese della Chiesa, ma dichiarava illegittimo e punibile nell'autorità ecclesiastica soltanto il rifiuto della bandiera nazionale perché tale [...].'

⁵¹ Michele Della Cella, 'Bandiera', *Digesto Italiano*, vol. V (Torino: Utet, 1890), 247; Gregorio Carbone, 'Benedizione della bandiera', in *Dizionario militare compilato e dedicato alla maestà di Vittorio Emanuele II. Re d'Italia*, ed. by Gregorio Carbone (Torino: Tip. V. Vercellino, 1863), 534.

⁵² *Regolamento di disciplina militare per il R. Esercito. Edizione 1907* (Milano: Ditta Tip. Ed. Libreria L. di G. Pirola, 1927; and the 1922 edition including the new regulation of 1909), 195-196, 533, 536.

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Hans Otto Seitschek

TOTALITARIANISMS AS POLITICAL RELIGIONS IN THE 20TH CENTURY

HISTORICAL AND PHILOSOPHICAL REFLECTIONS

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Despite all contents of secularisation, a certain kind of religious element is important in every modern totalitarian system, like Communism or National Socialism. Therefore, totalitarian systems can be regarded as political religions. The following historical and philosophical reflections on the history of ideas of political religions will contain three major parts: First, early uses of the concept 'political religion' by Campanella and Clasen in the 16th and 17th centuries will be considered, then the interpretation of totalitarianism as political religion will be analysed, with regards to Eric Voegelin, Raymond Aron and several ramifications, and finally, the perspective of political messianism in Jacob Leib Talmon's work will be discussed.

KEYWORDS:

ideology, political messianism, political theology, religion and politics, secular religions, secularism, theory of totalitarianism

1. EARLY USES OF THE CONCEPT ‘POLITICAL RELIGION’: CAMPANELLA AND CLASEN

1.1. Tommaso Campanella

Giovanni Domenico – later Tommaso – Campanella (1568–1639) entered the Dominican Order in 1583 and devoted himself to theological studies. In 1591, he was imprisoned several times for heresy. He spent the last years of his life in Paris, in the cloister of Saint-Jacques under the protection of Cardinal Richelieu.

As George Thomson had already done before him in 1606,¹ Campanella attributed a significant role to the relationship of religion and politics. Where both Campanella and Thomson speak of *religio politica*, they stand at the beginning of the formation of the concept of ‘political religion’.

In his comprehensive *Metaphysics* (1638), which is structured into three major parts, Campanella examines religion at the beginning of the sixteenth book. With regard to its relationship to politics, he describes an appropriate rhetoric as the core of political religion as well as public ceremonies:

Beyond a sacrifice, political religion (*religio politica*) also requires a nice-sounding speech, but much more yet, a speech that addresses one’s mind: for the people are occupied with bodily [fleshly] things and neither knows how to philosophise appropriately about God nor how to demand thanks or give thanks, as it [political religion] teaches it, it must announce priests and hear prayers and learn to pray from them: this is also of use to the priests in stimulating both the spirit of others and their own: for otherwise, a nice-sounding speech is worth nothing, if it does not also address the mind.²

For the first mystery, which is common to all nations, as St. Thomas [Aquinas] establishes, also consists in faith and in the question as to why each who believes in God, entrusts his sons and his property to God for this reason: as a result of this a public portrayal of religion in the form of various ceremonies, ablutions, circumcision, and so on became clear in politics, and thus are they [or is one] cleansed of original and present sins.³

¹ George Thomson, *Vindex vertatis adversus Iustum Lipsium libri duo. Prior insanam eius religionem politicam, fatuam nefariamque de Fato, sceleratissimam de fraude doctrinam refellit* (London: Meester, 1606). In his work, Thomson admonishes, among other things, the frequent conversions of Justus Lipsius. See Martin Mulsow, *Moderne aus dem Untergrund* (Hamburg: Meiner, 2002), 163.

² Praeter sacrificium indiget religio politica, etiam oratione vocali, nedum mentali: quoniam Populus corporeis occupatus nesciens Philosophari rite de Deo, neque petere gratias, neque agere, ut docet, indiget audire sacerdotes praedicantes & orantes, & ab eis discere orare: & hoc etiam prodest sacerdotibus ad excitandam aliorum & propriam mentem: alioquin oratio vocalis valet nihil, nisi adsit & mentalis. (Tommaso Campanella, *Universalis Philosophiae seu Metaphysicarum Rerum, iuxta Propria Dogmata* (Paris: D. Langlois, 1638), pars III, book XVI, ch. V, art. 1, 307).

³ Nam & primum mysterium omnibus nationib. commune, ut notat S. Thom. est fidei quo quisquis credit in Deum, & per hoc comendat se & filios & sua Deo: ex quo eluxit in Politica Religionis protestatio sub diversis

Campanella points out the necessity of the public education of the people in religious matters by a priest. The citizens must, therefore, be introduced *officially* into religious thinking and speaking. Hereby is expressed, not uncritically, the occasionally propagandistic character of public religious speech, for Campanella speaks of a 'stimulation of the mind'. Beyond these, public religious ceremonies are presented, in particular confession and expiation, perhaps also initiation; but the personal confession of faith is also clarified.

Campanella expressly names the concept 'political religion' in his *Metaphysics* of 1638, but earlier, in 1623, he had already described a state system founded on political religion, in his utopian writing *Civitas Solis* (State of the Sun).⁴ This work of Campanella is reminiscent of Plato's *Politeia* – not only for the reason of its dialogue form, but also because of the meaning of the sun, which represents the idea of good according to Plato (*Politeia* 509 b). However, Campanella does not use the concept 'political religion' literally in the *Civitas Solis*. The supreme ruler of this utopian state is a priest: he is called a 'metaphysicus' or 'Sol'. Further, he is 'the head of everyone in secular and spiritual things, and all businesses and disputes are ultimately decided by his judgement'.⁵ Only he, who is knowledgeable about religions, morals, customs and manual arts of all peoples attains the dignity of the 'Sol'.⁶ Like in Plato's *Politeia*, civil servants regulate and influence all areas of daily life: education, division of labour, meals, reproduction, raising of children and the conduct of war, to mention only the most important areas. The area of the 'religion of the members of the State of the Sun' is precisely described by Campanella like a political religion.⁷ As the supreme priest, the 'Sol', is responsible for the state cult: 'But then he [the Sol] sacrifices to God and prays; previously, however, he confesses to God the sins of the entire people publicly on the altar of the temple.... [Y]et without calling any one sinner by name. After that, he absolves the people....'⁸

This portrayal of the public cult, closely related in terms of content with the previously cited passage from the *Metaphysics*, already shows the collectivistic character of this religion. It may thoroughly be described as a political religion. In this state cult, even

ceremoniis, lavacris, circumcissione, & c. & sic ab originali, & actuali culpa mundantur. (Ibid. ch. VII, art. 3, 214). A further reference to religious ceremonies in the political sphere can be found in ibid. ch. VII, art. 4, 215: 'ceremonialia politicè'.

⁴ Tommaso Campanella, 'Sonnenstaat', in *Der utopische Staat*, ed. by Klaus J Heinisch (Reinbek b. Hamburg: Rowohlt, 1987), 111–169. Original text: Tommaso Campanella, 'Civitas solis', in *Realis Philosophiae epilogisticae partes IV* (Frankfurt/M.: Gottfried Tambach, 1623). Citations from Campanella's *Civitas Solis* are, in this contribution, according to Heinisch.

⁵ Ibid. 119–120.

⁶ Ibid. 126. The name, 'Sol', refers in my view, to two things: first, he is 'the only one' in Latin, *solus*, who has at his disposal such a treasure of knowledge that he does justice to the position of the 'Sol'. Further, he shines with his knowledge lofty over all like the sun in Latin, *sol*. Eric Voegelin also enters into the sun metaphor in the sphere of state power. See Eric Voegelin, *Die politischen Religionen*, 2nd ed. (München: Fink, 1996), 29–30.

⁷ Campanella, 'Sonnenstaat', 153–162. Thomas More describes a similar conception of religion in his *Utopia*: Thomas More, 'Utopia', in *Der utopische Staat*, 96–106. Francis Bacon, by contrast, prefers Christianity as the religion in his utopian *New Atlantis*: Francis Bacon, 'Neu-Atlantis', in *Der utopische Staat*, 184–186.

⁸ Campanella, 'Sonnenstaat', 153.

human sacrifices are foreseen – albeit voluntary ones.⁹ This, too, points towards a coercive character of Campanella’s utopian state concept, one almost verging on a totalitarian character. Similar to political religions of antiquity, the priests are a long mediating ‘bond between God and the human being’.¹⁰ The human fate of the citizens of the *Civitas Solis* depends upon them alone. Hereby, the priests – under the instruction of the ‘Sol’ – also claim to be authorised to advise about things ‘that they have recently discovered for the well-being of the state and [beyond that] to all peoples of the world.’¹¹ Indeed, this claim thoroughly admits a bold arc to the imperialism of the late 19th and early 20th centuries, one that stands in historical connection with the totalitarianism of the 20th century. The staging of the religion of the State of the Sun also reminds of the pompous parades that were typical of totalitarian systems. In the same way do the occasions, the holidays without genuinely religious backgrounds, as well as celebrations and memorial days of the state, remind of festivals in totalitarian systems. One is almost tempted to believe that one has a Fascist or National Socialist parade or festival before one’s eyes in the following:¹²

New moon and full moon are also both holidays, just as much as the day of founding of the state, certain victory memorial days, and so on. Then music and singing rings out from women; then one hears drums, trumpets and cannons. The poets sing the praise of the great field marshals and their victories.¹³

A concluding, equally apocalyptic and clairvoyant interpretation of the future in Campanella’s dialogue of the early 17th century might serve as a further indication of his critique of his era and its religion: ‘[There] will occur a reformation and renewal of the laws, of the arts and of the sciences. And they [the citizens of the State of the Sun] say that, from now on, Christianity is facing a great upheaval; first, there will be annihilation and eradication, but then there will be building up and planting, and so on.’¹⁴

Campanella’s dialogue *Civitas Solis* points far ahead in this description of the future, too: the description of progress, but also of violent upheavals, accurately describes both the historical reality of the violent revolutions of the 18th and 19th centuries and the reality of the period of the imperialism that ends with the epoch of totalitarian violence in the 20th century.

Campanella’s insights, therefore, represent an important step in the conceptual history of political religion: if he names the concept, ‘political religion’ literally in his *Metaphysics*,

⁹ Ibid.

¹⁰ Ibid. 154.

¹¹ Ibid.

¹² On the theme of ‘festivals and celebrations in National Socialism’, see Wolfgang Kratzer, *Feiern und Feste der Nationalsozialisten. Aneignung und Umgestaltung christlicher Kalender, Riten und Symbole* (München: Ludwig-Maximilians-Universität [Diss. phil.], 1998). See also Yvonne Karow, *Deutsches Opfer. Kultische Selbstausschöpfung auf den Reichsparteitagen der NSDAP* (Berlin: Akademie Verlag, 1997).

¹³ Campanella, ‘Sonnenstaat’, 155.

¹⁴ Ibid.

in his *Civitas Solis* he also describes a religion that manifests clearly recognisable features of the political religions of the 20th century – in its controlling character, for example, one that enlists everything.

1.2. Daniel Clasen

Some years after Campanella, Daniel Clasen (1622–1678) critically analysed the theme of politics and religion in Germany.¹⁵ Dietrich Reinkingk argued in a similar way during that time in his *Biblische Policey* (1653): ‘That right and authority in religious matters accrue to the secular authority.’¹⁶ Also Veit Ludwig von Seckendorff in *Teutscher Fürsten-Stat* (1656) underlined, that ‘the prince of the land gives laws and ordinances in religious matters’.¹⁷ These, too, provided examples of the extension of state power into the sphere of religion in the 17th century. In general, ‘a ‘politicisation’ of philological, religious, scientific and historical research’¹⁸ can also be ascertained during this period in Germany. Clasen’s professor in political philosophy, Hermann Conring, especially shaped his understanding of politics. Clasen, who was a jurist and philologist, was also certainly influenced in his thoughts by his philology professor Christoph Schrader, who had brought back a liberal spirit to Helmstedt from his period of study in Holland. Clasen’s posing of political questions issued from his environment, which was formed by philology and political theory; in particular, the question of political religion also issued from it. Thus did Clasen publish his first larger writing *De religione politica* in 1655,¹⁹ which made him well known and brought him a position as a Professor in Helmstedt in 1661. In his work *De religione politica*, Clasen presents ‘the political dimension and function of religion’.²⁰ Hereby, Clasen is oriented less towards the theoretical standpoint of an ideal-typical relationship of politics and religion than upon the ruling practice of the leading political situation of his time. It was nonetheless necessary to clarify continually, which ruling claim the state has over religion and church; hereby – precisely in Germany during that period – it was always necessary to deliver a balanced judgement as to the relationship between Christianity and *raison d’état*. Thus, Clasen – like Campanella before him – goes especially into the abuse of religion as an instrument by which to legitimise rule. In contrast to Campanella,

¹⁵ On politics and religion in Germany in the 17th century see also the chapter entitled ‘Polizeibegriff in den älteren Regimentstraktaten und in der christlichen Staatslehre des 17. Jahrhunderts’, in Hans Maier, *Die ältere deutsche Staats- und Verwaltungslehre*, 4th ed., in *Gesammelte Werke*, vol. 4 (München: C. H. Beck, 2009), 147–204.

¹⁶ Ibid. 187, from Dietrich Reinkingk, *Biblische Policey*, 5th ed. (Frankfurt/M.: Bencard, 1701), I, axiom VI.

¹⁷ Maier, *Die ältere deutsche Staats- und Verwaltungslehre*, 192, according to Veit Ludwig von Seckendorff, *Teutscher Fürsten-Stat*, ed. by Andreas Simson von Biechling (Frankfurt/M. – Jena: Meyer, 1737), pt. II, ch. I, paras 7–8, 38–41.

¹⁸ Mulsow, *Moderne aus dem Untergrund*, 223.

¹⁹ Daniel Clasen, *De religione politica* (Magdeburg: Johannes Müller, 1655). See Mulsow, *Moderne aus dem Untergrund*, 223.

²⁰ Mulsow, *Moderne aus dem Untergrund*, 216.

however, he first systematises the various politico-religious thematic circles and sources of his time in his work.²¹ Therefore, Clasen was regarded as a proponent of political religion. In theological circles of the time, he was suspected of atheism, because he chose the theses of political religion as the chapter titles of his book and criticised them only in the discussion. In a Machiavellian way, the meaning of religion depends less upon the particular confession than upon the practicability of the religion with respect to the political situation: ‘The supreme ruler should uphold the religion that supports the reason of state, and he should forcefully move his subjects to it if he is not capable of doing so by a gentler path.’²²

Nonetheless, it would be, as Martin Mulsow puts it, ‘certainly mistaken to suspect a radical in Clasen’.²³ His is a liberal mind that is occupied in a provocative yet critical way with a relevant topic of his time. Conversely, it is Clasen’s goal that the readers also make a critical judgement.²⁴ This is why he often abstains, especially in his later, provocative writings,²⁵ from making a decided critique of the position portrayed. Clasen stands with his portrayal of political religion in the conceptual history of the political religions in the 20th century. Hereby, however, there is a significant difference between Campanella and Clasen: it is no longer a traditional religion, but one’s own ideology that represents the content of political religion.

2. THE INTERPRETATION OF TOTALITARIANISMS AS POLITICAL RELIGIONS OR POLITICAL MESSIANISMS: ERIC VOEGELIN, RAYMOND ARON AND JACOB L TALMON

2.1. *Eric Voegelin*

The jurist, political theorist, and philosopher Erich Wilhelm, later Eric,²⁶ Voegelin (born 1901 in Cologne, died 1985 in Palo Alto/Cal., USA), who taught in Vienna in the 1930s, wrote a short treatise in 1938: *Die politischen Religionen* [The Political Religions].²⁷ This work was formative in the concept of political religions in the 20th century. The period of

²¹ Ibid. 216, 221–222.

²² Princeps eam Religionem amplectatur, quae faciat ad Status Rationem, et ad eam subditos commoveat vi, si leniore via non possit. (Clasen, *De religione politica*, ch. X, 222).

²³ Mulsow, *Moderne aus dem Untergrund*, 220.

²⁴ Ibid. 222.

²⁵ Daniel Clasen, *De oraculis gentilium et in specie de Vaticiniis Sibyllinis libri tres* (Helmstedt: Henning Müller, 1673); Daniel Clasen, *Theologia gentilis* (Frankfurt/M. – Leipzig: Friedrich Lüderwald, 1684).

²⁶ Voegelin’s first names are Erich Hermann Wilhelm. Voegelin used the anglicised form of his first name after his immigration to America.

²⁷ Eric Voegelin, *Die politischen Religionen* (Wien: Bermann-Fischer, 1938), 2nd ed. (Stockholm–Berlin: Bermann-Fischer, 1939), new edition by Peter J. Opitz (München: Fink, 1993, 2nd ed. 1996). On the new edition of Opitz, see the extensive review of Ernst Nolte, ‘Von Echnaton zu Hitler’, *Süddeutsche Zeitung*, 07 December 1993.

his life when he wrote this essay was filled with tension: the terror of the National Socialists forced him to immigrate to the United States a short time later in the same year. Although Voegelin himself did not regard *Die politischen Religionen* as central to his later work,²⁸ the text nonetheless offers a first, direct glimpse into Voegelin's perspective on the totalitarian regimes of the 20th century.

The intersecting topics of Voegelin's study provide not only a historical interpretation of the development of totalitarian regimes, but a philosophical analysis of the relationship between religion, politics and the state. Psychological assessments of the development of the mass regime also play a role here. In strokes that are occasionally very broad, Voegelin sketches a universal history of political religions. Beginning with Egyptian antiquity, he traces it through many epochs and thinkers of Western European intellectual history up to Voegelin's own era: to 1938 and the era of the totalitarian despotic regime – specifically, to that of National Socialism. Voegelin had already analysed the concepts of “total” and “authoritarian” two years earlier in 1936 in *Der autoritäre Staat* [The Authoritarian State], a work that focused on the ‘problem of the Austrian state.’²⁹

The foreword to *Die politischen Religionen* clarifies Voegelin's intention. Writing in Cambridge, Massachusetts at Christmas in 1938, Voegelin speaks of the ‘radical’ struggle against National Socialism. He means ‘radical’ in a very literal sense here: ‘I do not wish to say... that the struggle against National Socialism should not also be an ethical struggle. It is simply not carried out radically in my opinion; and it is not carried out radically because it lacks its *radix*, its root in religiosity.’³⁰

What is important for Voegelin in this context is progressive secularisation: ‘The secularisation of life that is borne in the idea of humanity [is] the very same ground... upon which anti-Christian religious movements like National Socialism could flourish in the first place.’³¹ As Voegelin's later work also indicates, he regards secularisation to be a factor far more important than the ‘relapse into barbarism’ that was often lamented in connection with totalitarian regimes. In presenting the ‘problem’, Voegelin's very first sentence strikes at the heart of his seminal interpretation of the political movements of his era: ‘To speak of political religions and to understand the movements of our time not only as political ones, but above all as religious ones is not yet a matter of course at the present time, even though the facts compel the attentive observer to speak this way.’³²

Voegelin holds the very strict conceptual distinction between the spheres of politics and religion to be responsible for the current failure to recognise that religion and politics share their roots in the essence of the human being, in its ‘creatureliness’ (Max Scheler).

²⁸ See Eric Voegelin, *Autobiographische Reflexionen* (München: Fink, 1994), 69–70.

²⁹ Eric Voegelin, *Der autoritäre Staat. Ein Versuch über das österreichische Staatsproblem* (Wien – New York: Springer, 1997), 1st ed. (Wien: Springer, 1936). See especially the first section on the symbols ‘total’ and ‘authoritarian’, 9–55.

³⁰ Voegelin, *Die politischen Religionen*, 6.

³¹ *Ibid.* 7.

³² *Ibid.* 11.

When we speak of religion, we intuitively think above all of the church; when we speak of politics, we first associate it with the state and its institutions. Seeking to draw these divorced spheres closer together, Voegelin broadens the concept of religion to include not only the soteriological religions, but all religious phenomena. On the other side, he extends the concept of the state beyond the purely secular sphere of the organisation of communal being out to the sphere of the religious.³³ Thus is the political 'resacralised', with antiquity providing the model.³⁴ In *The New Science of Politics* (1952) Voegelin assumes that in the perspective of universal history the process of 'de-devinisation' was followed by the process of 're-devinisation'.³⁵

In *Die politischen Religionen*, Voegelin first defines the 'state' in 'scholarly terms' as 'human beings in association, settled on one territory'.³⁶ What becomes problematic then is the concept of power. A genuine power stands above all other things; it is a power of powers that has no power above it and 'powers below it only through its toleration'.³⁷ This is what Voegelin understands by 'original power':³⁸ A power, which has no power above it. It should not be overlooked that the religious sphere enters into the definition of the state via the concept of power. To the extent that the power that was present from the beginning has been decapitated and a secular head set upon it, that power becomes secular, pertaining to the state. That which is in fact transcendent now becomes secular. Thus, the state originates from its self. A natural hierarchy of powers derived from the original, divine power has been lost. Voegelin mentions Georg Wilhelm Friedrich Hegel in this context. With the state existing in and for itself, according to Voegelin, Hegel intended the nation to become the spirit of its own immediate reality and thereby the absolute power on earth.³⁹ Voegelin sees a grave danger in the Hegelian 'spiritualisation' of the nation as the state: the translation of the secular power of human beings into a purely spiritual power ultimately renders it a *realissimum*, a most real thing, of the sort that the world-transcendent God originally had been. Yet this *realissimum* of the Hegelian spirit is already 'in-human' according to Voegelin.⁴⁰ Thus, secular political power becomes 'the core of religious experience', a 'mystical process'.⁴¹

³³ See *ibid.* 15–16, 12–13.

³⁴ See on this, among others, Peter Berghoff, 'Säkularisierung und Resakralisierung politischer Kollektivität', in *Säkularisierung und Resakralisierung in weltlichen Gesellschaften. Ideengeschichtliche und theoretische Perspektiven*, ed. by Mathias Hildebrandt, Manfred Brocker and Hartmut Behr (Wiesbaden: Westdeutscher Verlag, 2001), 57–70.

³⁵ Eric Voegelin, *Die Neue Wissenschaft der Politik* (München: Anton Pustet, 1959), 153–154 (1st ed. Chicago: The University of Chicago Press, 1952).

³⁶ Voegelin, *Die politischen Religionen*, 12.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ According to *ibid.* See Georg Wilhelm Friedrich Hegel, 'Grundlinien der Philosophie des Rechts', in *Werke in 20 Bänden. Theorie-Werkausgabe*, vol. 7, ed. by Eva Moldenhauer and Karl Markus Michel (Frankfurt/M.: Suhrkamp, 1970), § 270, 415–431.

⁴⁰ Voegelin, *Die politischen Religionen*, 14.

⁴¹ *Ibid.*

As for 'religion', Voegelin remarks that human beings experience their existence as creaturely and therefore, as St Augustine also says, it is questionable. Hence, Voegelin incorporates human existential experiences into his reflections. The religious experience tugs at the navel of the soul, at the nexus connecting the human being to the cosmos. In offering his anthropological definition of religion, Voegelin refers to Max Scheler's *Die Stellung des Menschen im Kosmos* [The Position of Man in the Cosmos] (1928).⁴² Besides Scheler,⁴³ Voegelin cites the Jesuit Erich Przywara,⁴⁴ Alois Dempf⁴⁵ and others as his sources. He also speaks in this context of an 'intentio', a 'tension towards God',⁴⁶ in which one should locate one's own human existence and through which one discovers the supreme existence, God: 'Whenever a real thing can be recognised as a sacred thing in the religious experience, it becomes the most real thing of all, the *realissimum*.'⁴⁷

These conceptual definitions set the parameters for Voegelin's intellectual history of the development of political religions. Such religions were not secular at first,⁴⁸ but gradually assumed a secular character that culminated in the totalitarian movements of the 20th century. Following the Egyptologist James H Breasted,⁴⁹ Voegelin states that the first 'political religion' of a 'civilised people' was the 'sun faith of the Egyptians'.⁵⁰ The most highly developed form of the sun cult is said to go back to Akhenaton. Yet even the first kings of Egypt understood themselves as successors of Horus, the sun god, who governed the country in its mythic beginnings.⁵¹ Similar to the Roman emperors, especially after the reign of Caligula in the 1st century A.D., the Egyptian pharaohs were worshipped as gods after their death.

The *ekklesia*, church in a broad sense, represents a hierarchical principle all its own. The concept of *ekklesia* was developed from the Pauline letters – in particular, from the *Letter to the Romans*, the *Letter to the Hebrews* and the *First Letter to the Corinthians*.⁵² Understanding the church as the mystical body of Christ, *corpus Christi mysticum*,⁵³ symbolises all people, who are disciples of Jesus Christ and orientate their lives to Him.

⁴² Max Scheler, *Die Stellung des Menschen im Kosmos*, 14th ed. (Bonn: Bouvier, 1998).

⁴³ Voegelin, *Die politischen Religionen*, 67.

⁴⁴ Erich Przywara, 'Religionsphilosophie Katholischer Religion', in *Handbuch der Philosophie*, section II (München–Berlin: Oldenbourg, 1927).

⁴⁵ Alois Dempf, *Sacrum Imperium. Geschichts- und Staatsphilosophie im Mittelalter und der Renaissance* (München–Berlin: Oldenbourg, 1929).

⁴⁶ Voegelin, *Die politischen Religionen*, 16. The use of the terms 'tension back towards so./sth.' in the context of 'religion' is etymologically problematic: *religio* is derived more from *re-legere*, 'to do (something) carefully' than from *religare*, 'to bind back'; according to Ernst Feil, *Religio*, vol. I (Göttingen: Vandenhoeck und Ruprecht, 1986), 39–49.

⁴⁷ Voegelin, *Die politischen Religionen*, 17.

⁴⁸ Michael Henkel refers in his introductory study particularly to the originally non-secular character of political religion. See Michael Henkel, *Eric Voegelin* (Hamburg: Junius, 1998), 76.

⁴⁹ James H Breasted, *Geschichte Ägyptens*, transl. by Hermann Ranke (Stuttgart: Parkland, s. a.).

⁵⁰ Voegelin, *Die politischen Religionen*, 19.

⁵¹ See Breasted, *Geschichte Ägyptens*, 43, 47–60.

⁵² Rom. 12:3–8; Heb. 5:5–10; 9:11–24; 10:1–25; 1Cor. 12:12–30.

⁵³ 1Cor. 12:27.

The *ekklesia* is a divinely legitimated hierarchy all its own; it has its own substance, one in which the symbolism of the community plays an essential role. Although the *ekklesia* exists alongside the secular hierarchy, it encompasses both secular and divine kingdoms. ‘Modern inner-worldly political units’, of which the totalitarian mass movements of the 19th and 20th centuries are also examples, are ‘determined by reinterpretations of the substance of the *ekklesia*’⁵⁴ – states Voegelin.

With the filling of Christian communities with natural content – in other words, with the view that the ‘*populus Christianus* [was a] nation among the nations’⁵⁵ – the spiritually constituted communities were reorganised and institutionalised as inner-worldly, secular bodies. The development of purely political communities, of states in a modern sense, begins. This is why elements of the *ekklesia* have manifested themselves in the Christian church in part, but also in the state up to the present days, according to Voegelin. This holds even if the state is decidedly opposed to the church, but nonetheless demands freedom, equality and fraternity for its citizens – as was the case with the French Revolution. Here, Jacobinism became a certain kind of ‘civil religion’, which was much more a political religion than the civil religion of Jean-Jacques Rousseau’s tradition. And it was far away from a Christian religion. Some elements of Rousseau’s civil religion have also asserted themselves in the state and social community of the United States. Consequently, individual members of the United States are seen to be bound together by a ‘like-mindedness’,⁵⁶ as Robert Neely Bellah also pointed out. Indeed, the United States provides an example of the establishment of civil religion via the legitimation of the ruling order, as Bellah has demonstrated over the last decades.⁵⁷

Voegelin shows that, although National Socialism strongly distances itself from the Christian church, its basic form is still that of a mystical body and its limbs bound into a unit by the *pneûma*, spirit.⁵⁸ Here, an analogue to the *ekklesia* lives on in the requirement for ‘spiritual conformity’.⁵⁹ In condensed form, this same statement demonstrates Voegelin’s basic thesis, which is by no means uncontentious: the thesis of an immanent community that allows the mystical *pneûma* of the *ekklesia* to live on through the sense of the fated

⁵⁴ Voegelin, *Die politischen Religionen*, 32. More precise observations on the development of the world-immanent communities and mass movements can be found in Voegelin’s essay entitled *The People of God* (1941). Beginning at around the year 1300, the Christian Church could no longer perform the integration of eschatological and Gnostic splinter groups, which was important to the preservation of its authority. Thus a revolutionary movement developed that led, via the Protestant Reformation, to further divisions. The development revealed ultimately its ‘secularized, anti-Christian character’, which peaked in the political mass movements of the 20th century. See Eric Voegelin, *Das Volk Gottes* (München: Fink, 1994), 25–26.

⁵⁵ Ibid. 34.

⁵⁶ Ibid.

⁵⁷ According to Robert N Bellah, ‘Civil Religion in America’, *Daedalus* 96, no 1 (1967), 7–8. Bellah refers in his characterisation of the American civil religion particularly to the entrance speeches of various American presidents: here, ‘God’ is often spoken about without making reference to individual religions. Bellah distinguishes his specifically American conception of the civil religion from Rousseau’s conception (ibid. 5–9).

⁵⁸ Eph. 4:15–16.

⁵⁹ Bellah, ‘Civil Religion in America’, 35.

and missionary character of its own movement. This occurs although, or even because, the movement rejects the Christian church and religion; no totalitarian regime regarded itself as a religion at all! The spiritual regions of the individual human being that had previously been occupied by religion are now occupied by immanent ideologies that virtually make the inhuman demands of their regimes a 'sacral duty'.⁶⁰

A further symbol of the distinction between secular and divine spheres lies in the designation 'spiritual and temporal'. Taken together, these concepts indicate a side of existence that is spiritual and religious on the one hand and on the other hand has a side that is distinct, but not separate, from the former: a temporal-secular side. This distinction reminds us of Mircea Eliade's portrayal of *The Sacred and the Profane* (1957)⁶¹ – a portrayal that retains its significance in a secular horizon of meaning. Here, Voegelin introduces Saint Augustine as an example from intellectual history: in *De civitate Dei* (c. 420), Augustine distinguishes a *civitas Dei*, state of God, and a *civitas terrena*, immanent state, whereby both *civitates*, citizenships, are intermingled on the journey within this world.⁶² The *civitas Dei*, which began as a state of angels, is directed towards an eschatological fulfilment of history at the end of the ages.⁶³ The pure equation of the *civitas Dei* with the church and of the *civitas terrena* with the state is too simplistic, but should still be interpreted, even though such tendencies arise in Augustine's own presentation. Both *civitates* are to be understood in terms of internal disposition rather than in institutional terms: if the citizens of the *civitas Dei* live in accordance with God, then the citizens of the *civitas terrena* are those, who are hostile to God and Christ.⁶⁴ Thus does Augustine's concept of the *civitas Dei* also include those pre-Church and pre-Christian peoples, who are *bonae voluntatis*, of good will. The historical background of Augustine's concept of the two *civitates* was the Visigoths' invasion of Rome in the year 410: Augustine defended Christianity, which had yet to establish itself as the state religion, against the accusation that it had not been capable of preventing the misfortune of the invasion. What counts is solely the steadfast internal attitude of the Christian, which is formed by the discipleship of Christ, no matter how hostile the environment is, in which the believing Christian resides. The concept of the two *civitates* is not entirely clear, however, because a clear, institutional distinction between state and church was lacking, even in Augustine's era. During the early 5th century, it will be recalled, Christianity was still on the path to becoming a strong state-bearing religion.

⁶⁰ On the creation of a 'new human being' in totalitarianisms, see also Barbara Zehnpenning, 'Der 'Neue Mensch' – von der religiösen zur säkularen Verheißung', in *Säkularisierung und Resakralisierung in weltlichen Gesellschaften*, 81–95.

⁶¹ Mircea Eliade, *Das Heilige und das Profane. Vom Wesen des Religiösen* (Frankfurt/M.: Suhrkamp, 1990).

⁶² Augustine, *De Civitate Dei*, in *Migne Patrologia Latina*, vol. 41, I, preface, 13–14.

⁶³ *Ibid.* XI, XII, XXII, 315–376, 751–804.

⁶⁴ See, among others, *ibid.* XIV, c. 28, 436.

The ‘new *ekklesiae* [sic!],⁶⁵ known as the national states, developed in various ways throughout European history. They arose in a process for which parts of the old *ekklesia* gradually detached themselves from the universal kingdom with its pinnacle in God, and sealed themselves off within the immanent world. In the process, they became fonts of the sacral in their relations with another. According to Voegelin, the development of the 20th century political religions is already anticipated at this stage. As his discussion on Emperor Frederick II demonstrates, Voegelin sees political religions arise from a melding of spiritual and temporal spheres on the temporal side of secular rule and power. Hereby, political religions span a spectrum from the ‘kingdom of evil’ that was initially understood to be the opposite of the liberal state up to totalitarian systems. Ultimately, political religions posit whole new counter-kingdoms; such kingdoms must necessarily be destroyed if the purpose of the reigning political religion – which leads the world to what it sees to be good – is to be attained. In the case of National Socialism, the counter-kingdom is world Jewry. The ‘politico-religious symbolism’⁶⁶ remains the same as that of the *ekklesia*, but its content has radically changed to become secular and non-transcendent. ‘Religiosity’ becomes ‘political’, the ‘mission of God’ becomes the ‘mission of history.’⁶⁷ The divine order is suppressed; Friedrich Wilhelm Joseph Schelling’s basic question, asking why there is something and not nothing, sinks into oblivion, despite its resumption by Martin Heidegger. The faith in science gains ground. The dominant image of the world becomes increasingly atheistic in the 19th and 20th centuries: one need to think here only of Auguste Comte’s law of stages,⁶⁸ leading from a theological-fictive stage through a metaphysical-abstract stage to a positive-scientific one, and of the almost total devaluation of religion by Karl Marx⁶⁹ and Sigmund Freud.⁷⁰ The question of human existence is the only question left open to the human being; beyond this, the secular content obscures all divine content.⁷¹ What is more, the elevation of partial world-content to an absolute restricts the value of the human being as a person. Although reference to transcendence is integral to the essence of the human being in Voegelin’s view, such reference is made impossible by the absolutisation of contents of the immanent world.⁷² New apocalyptic visions emerge. This is not a kind of spiritualisation, but a kind of scientification of the world to be immanent:

⁶⁵ Not an admissible plural, even if it reads thus with Voegelin. It would have to be read either the Greek *ekklesiai*, or the Latin *ecclesiae*.

⁶⁶ Voegelin, *Die politischen Religionen*, 49.

⁶⁷ Ibid.

⁶⁸ See Auguste Comte, *Rede über den Geist des Positivismus* (1844), 2nd ed. (Hamburg: Meiner, 1966), 4–41.

⁶⁹ See Karl Marx, ‘Zur Kritik der Hegel’schen Rechts-Philosophie’, in *Deutsch-Französische Jahrbücher* (1844), 71–72, esp. 72 (‘Opium des Volks’).

⁷⁰ See Sigmund Freud, ‘Die Zukunft einer Illusion’ (1927), in *Studienausgabe*, vol. IX (Frankfurt/M.: Suhrkamp, 1974), 135–189, esp. 164–189.

⁷¹ See Eric Voegelin, *Realitätsfinsternis*, transl. by Dora Fischer-Barnicol (Berlin: Matthes und Seitz, 2010).

⁷² Michael Henkel also underlines: ‘For the person, the reference to transcendence [is] constitutive.’ See Henkel, *Eric Voegelin*, 85.

The final kingdom is no longer a supernatural community of the spirit, but a secular condition of perfected humanity. Kant's ideas of a history according to the intention of a citizen of the world present an idea of history in which the rational human person, as a world-immanent one, ascends to ever-higher levels of perfection.⁷³

According to Immanuel Kant, the human being is always a citizen of two worlds: the immanent world and the transcendent world.

'Race theory' is said to be an important component of political religions. In 1933, Voegelin's book *Rasse und Staat* [Race and State] already presented important reflections on this theory.⁷⁴ Human corporality is used as a basis upon which to present ideas of the body that are crucial to forming the body of the state.⁷⁵ One such idea concerning the body is the idea of race. Whereas race theories are underpinned by biologic foundations, the race ideal is based upon spiritual, mythical constructs that constitute a certain kind of *corpus mysticum*.⁷⁶ The ideology of National Socialism contains both components – both mystical and biological ones. In *Die politischen Religionen*, Voegelin demonstrates that race theory exploits transcendent contents for secular purposes: he names the early German idealistic philosopher Johann Gottlieb Fichte, who describes a 'revelation' in which he shows the kingdom of God realised already in this world.⁷⁷

The individual's belief to the collective articulates itself according to Voegelin in a 'faith' of its own. It is a faith for which the *realissimum* is not in God, as with supra-mundane religions, but in itself, in the predestined national community.⁷⁸ 'Ecstasies' of this kind of 'faith' are 'not spiritual, but instinctual' and end in 'the murderous frenzy of the deed'.⁷⁹ Characteristic of these secular faiths are the poems of the *Lieder vom Reich* [Songs of the Reich] by Gerhard Schumann in 1935:

The millions bowed themselves before him in silence.
 Saved. The sky flamed in the morning's pallor.
 The sun rose. And with it rose the Reich.⁸⁰

⁷³ Voegelin, *Die politischen Religionen*, 51.

⁷⁴ Eric Voegelin, *Rasse und Staat* (Tübingen: Mohr Siebeck, 1933). See also Eric Voegelin, *Die Rassenidee in der Geistesgeschichte von Ray bis Carus* (Berlin: Junker & Dünhaupt, 1933). Here can be found, in particular studies, the history of the concept on the idea of race and race theory.

⁷⁵ See Voegelin, *Rasse und Staat*, 5.

⁷⁶ See *ibid.* 14.

⁷⁷ See Johann Gottlieb Fichte, 'Versuch einer Kritik aller Offenbarung' (1792), in *Ausgewählte Werke in sechs Bänden*, ed. by Fritz Medicus, vol. I (Darmstadt: Wissenschaftliche Buchgesellschaft, 1962), 1–128.

⁷⁸ On the element of faith in National Socialism, see Klaus Vondung, 'Gläubigkeit' im Nationalsozialismus, in *'Totalitarianism' and 'Politische Religionen'*, vol. II, ed. by Hans Maier and Michael Schäfer (Paderborn: Schöningh, 1997), 15–28, esp. 16–17.

⁷⁹ Voegelin, *Die politischen Religionen*, 58.

⁸⁰ *Ibid.* 59.

Voegelin's reflections pertain only to Fascism and National Socialism directly. Although Voegelin includes Communism as one of the political religions,⁸¹ his reflections are less applicable to Communism insofar as the Communist faith is characterised by a strongly theorised ideology.

In the epilogue to *Die politischen Religionen*, Voegelin attains a result that can be summarised in four points. First, the political community has roots that are clearly religious. The political sphere, therefore, is not a strictly profane or secular sphere. Second, the political and legal order is always modelled on the Christian order and its *ekklesia*. Third, each political community is characterised by a religious dynamic and symbolism, even if both are often not recognised by anti-religious interpretations. Fourth, the human being is essentially religious and spiritual. As such, every human community – even and especially the political community – must seek to consider and protect these qualities, as the 'like-mindedness' requires it in the civil religion.⁸² Further: the human being is not permitted to find the transcendental source of good within him/herself in Voegelin's view. The attempt marks a lapse from God, insofar as immanent realities, like the human being, the collective or the state, might never become the *realissimum*; indeed, the secular cannot become the *realissimum*, due to its immanent character. Rather than effectively stemming the totalitarian mass movements, a modern, secular enlightened humanism covertly plays into their hands. Here, Voegelin's thought approaches the *Renouveau catholique* – especially the Neo-Thomism of Jacques Maritain. Like Voegelin, Maritain criticises modern positivist thoughts and politics for their contribution to the general distancing of the person from Christianity and God.⁸³ The disintegration of rationality into pure scientism in modernity, leads to new kinds of Gnostic movements – these later become one of the main topics of Voegelin's book *The New Science of Politics* (1952).⁸⁴ And as he already makes clear in the foreword to *Die politischen Religionen*, the only way to destroy the foundations of political mass movements would be a genuine 'religious renewal' of the human being.⁸⁵

As an overview, political religions begin in antiquity with an indistinct boundary between politics and religion. Here, the supreme ruler alone is the divine mediator between human being and God. In the *ekklesia*, Christian individuals relate to God. The hierarchy, from Greek *hierè archè* (sacred power), that flows from God, has a spiritual and a temporal side. In the model of Thomas Hobbes' *Leviathan* (1651), the state itself becomes the *ekklesia*. A division between temporal and spiritual orders becomes superfluous. In the period that follows (one for which state and church are distinguished) the *ekklesia* gradually detaches itself from the universal kingdom with its pinnacle in God. In a process that unfolds in

⁸¹ See *ibid.* 41.

⁸² According to *ibid.* 63: the connection of the political to the religious also occupies the centre of Voegelin's political-scientific approach later. See Voegelin, *Die Neue Wissenschaft der Politik*.

⁸³ See Jacques Maritain, *Christlicher Humanismus* (Heidelberg: Pfeffer, 1950), 86–91, 176–180.

⁸⁴ See Voegelin, *Die Neue Wissenschaft der Politik*, chs IV–VI, esp. 257–259. On Voegelin's criticism of modern humanism, see also Dietmar Herz, 'Der Begriff der 'politischen Religionen' im Denken Eric Voegelins', in *'Totalitarismus' und 'Politische Religionen'*, vol. I, ed. by Hans Maier (Paderborn: Schöningh, 1996), 196–200.

⁸⁵ Voegelin, *Die politischen Religionen*, 6.

various stages, the national states come to replace the *ekklesia* as immanent communities that become sources of sacrality in their own right. In a further, more radical step, this development leads to the formation of political religions. These religions gain expression in the totalitarian mass movements of the 20th century.

According to Voegelin, the totalitarian regime manifests the severe spiritual crisis of European culture directly after the First World War. Voegelin's interpretation expands the concept of religion beyond the traditional boundaries of that concept – one that primarily comprehends and characterises the high religions. For him, the concept extends into the political sphere. He thereby lays bare the religious roots of political movements: politics and religion have common roots in the depth of the human being, in its creatureliness and its psyche. Voegelin's work *Die politischen Religionen* heads towards the comprehensive conception of human and political order that he later presented in his major five-volume-work *Order and History*.⁸⁶ If – like Leo Strauss or now Heinrich Meier⁸⁷ – one understands political theology in contrast to political philosophy as a political theory for which the highest authority and ultimate foundation is divine revelation, then Voegelin's concept of political religions could also be understood as a kind of secular political theology.⁸⁸ Both Michael Henkel and Jan Assmann⁸⁹ discern a clear relationship of Voegelin's position to Carl Schmitt's concept of *Politische Theologie* [Political Theology] (1922).⁹⁰ Schmitt also sees concepts of political theory to have developed as a secularisation of theological concepts.

Voegelin's concept of religion is so expansive that a religion can still be a religion, even if it has no reference to transcendence. A problem lurks within this concept, however.⁹¹ Although political religions indeed make reference to such world-immanent goals as 'perfected humanity' or one's own race, the transcendent character of this reference is retained: such goals can be attained only at the end of a long historical development. Only thus can Voegelin maintain the description 'political religions'. However, political religions manifest continuously an inner-worldly, secular eschatology.

In his later work Voegelin distances himself from the concept of political religion overall:

The interpretation is not completely false, but I would no longer use the concept of religions, because it is too imprecise and already corrupts the actual problem of experiences from the beginning in that it mixes them with other problems of dogmatic and doctrine.⁹²

⁸⁶ Eric Voegelin, *Order and History*, V vols (Baton Rouge: Louisiana State University Press, 1956–1987).

⁸⁷ According to Heinrich Meier's introductory essay 'Was ist politische Theologie', in Jan Assmann, *Politische Theologie zwischen Ägypten und Israel* (München: Carl Friedrich von Siemens Stiftung, 1992), 16–17.

⁸⁸ Michael Henkel, among others, agrees. See Henkel, *Eric Voegelin*, 91, 127–129, 178.

⁸⁹ See Assmann, *Politische Theologie zwischen Ägypten und Israel*, 30 and Henkel, *Eric Voegelin*, 128.

⁹⁰ See Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*. 2nd ed. (Berlin: Duncker und Humblot, 1934), ch. III, 'Politische Theologie', 41–55, esp. 43.

⁹¹ See on this Mathias Behrens, 'Politische Religion' – eine Religion? in '*Totalitarismus*' und '*Politische Religionen*', vol. II, 249–269.

⁹² Eric Voegelin, *Autobiographische Reflexionen*, ed. by Peter J Opitz (München: Fink, 1994), 70.

Then, beginning with the 1940s, he speaks only of ‘Gnosis’ – which then became the core concept of Voegelin’s theoretical considerations on politics and religion – of ‘Gnostic mass movements’ and even of ‘*Ersatzreligionen*’ (substitute religions).⁹³

One further critical remark would apply primarily to the effectiveness of Voegelin’s concept of political religions. Insofar as the concept is based on his methodology, it can indicate the origins of many totalitarian phenomena, but cannot explain the development of totalitarianism entirely. Totalitarian regimes, therefore, cannot be exhaustively explained in terms of political religions.⁹⁴

Voegelin’s study *Die politischen Religionen* is important for showing that – despite all secularisation – religiosity is an important aspect of modern political systems, especially in modern nation states. Later, in 1962, the Protestant theologian Paul Tillich similarly interpreted secular movements that evince a religious dimension, as it is the case with totalitarian mass movements, as ‘quasi-religions’.⁹⁵ Voegelin’s philosophic-historical depiction also clarifies the origins of religious elements. Also, like the historian Jacob Leib Talmon in the 1950s and 1960s,⁹⁶ Voegelin sees the roots of modern totalitarianism to lie in the close association of religion and politics before the Enlightenment.⁹⁷

2.2. Raymond Aron

At quite the same time as Eric Voegelin, the French sociologist and philosopher Raymond Aron (1905–1983) discovered the origins of totalitarianism – in contrast to Hannah Arendt in her famous book with the same title, *The Origins of Totalitarianism*⁹⁸ – in unfinished Enlightenment. Aron already recognises the presence of religious features in totalitarian regimes as early as 1936. Three years later, in 1939, he speaks explicitly of ‘political religions’ in his review of Élie Halévy’s book *L’ère des tyrannies*. In 1941, he mentions the concept of ‘political religions’ again in characterising the phenomena of totalitarian mass movements. He started to speak of ‘secular religions’ in his two-part essay *L’avenir des religions séculières*

⁹³ According to Henkel, *Eric Voegelin*, 88. On Voegelin’s concept of ‘Gnosis’ and the ‘Gnostic mass movements’, see Eric Voegelin, ‘Wissenschaft, Politik und Gnosis’, in *Der Gottesmord. Zur Genese und Gestalt der modernen politischen Gnosis*, ed. by Peter J Opitz (München: Fink, 1999), esp. 57–63, 83–90 and 91–93 and also Eric Voegelin, ‘Religionsersatz. Die gnostischen Massenbewegungen unserer Zeit’, in *Der Gottesmord*, 107–110.

⁹⁴ According to Herz, ‘Der Begriff der ‘politischen Religionen’ im Denken Eric Voegelins’, 209.

⁹⁵ Paul Tillich, ‘Das Christentum und die Begegnung der Weltreligionen’, *Gesammelte Werke*, ed. by Renate Albrecht, vol. 5, ‘Die Frage nach dem Unbedingten’ (Stuttgart: Evangelisches Verlagswerk, 1964), 51–98. English first edition of this contribution appeared in New York in 1962.

⁹⁶ See Jacob L Talmon’s *History of Totalitarian Democracy*, which is presented as a trilogy: *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1952), *Political Messianism. The Romantic Phase* (London: Secker & Warburg, 1960), and *The Myth of the Nation and the Vision of Revolution* (London: Secker & Warburg, 1980).

⁹⁷ See the contribution by Robert Chr. van Ooyen, ‘Totalitarismustheorie gegen Kelsen und Schmitt: Eric Voegelins ‘politische Religionen’ als Kritik an Rechtspositivismus und politischer Theologie’, *Zeitschrift für Politik* 49, no 1 (2002), 56–82, esp. 58–59.

⁹⁸ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1951, 2nd ed. 1958).

appearing in 1944 in the journal *La France Libre*, in which he reflected on the religious dimension of Marxism and National Socialism in particular. Furthermore, he used the concept of ‘secular religions’ in various contributions even long after the Second World War:

I suggest calling ‘secular religions’ those doctrines which occupy the place of the disappeared faith in the hearts of our contemporaries and which cast the salvation of humanity in the form of a social order that is to be recreated in the distant future of this world.⁹⁹

In Raymond Aron’s point of view, a political or secular religion is characterised by the following four elements: first, by its ideological doctrine. The content of the respective system or ideology is dogmatised and formulated into fixed principles of faith that claim to present the truth. Political or secular religions erect their own scale of values, one attempting to justify certain political actions and often tending to absolutize world-immanent entities. Hereby, the rule of a single party has its pinnacle in an ‘omnipotent’ prophetic leader who embodies these values – values which usually approve of everything that is useful to the party and the leader. As a second element of a political or secular religion – reminiscent of Carl Schmitt – its system constructs an objective enemy that embodies everything opposed to its own good doctrine. This enemy must be annihilated in order to attain the salvation that the political religion has prophesied. Political or secular religions imitate soteriological religions. They suffuse the political sphere with a religious character by replacing the personal religious faith of the individual and prophesying a saved state that is to follow an apocalypse at the end of our present times. This state of salvation, however, can only be attained through a radical reordering. Such reordering must occur through a strict adherence to the program set forth by the doctrines of the political or secular religion. The ties generated by these religions go well beyond ideological ones. Creating a dimension of depth that is even greater than that generated by ideologies; these ties underpin the ruling totalitarian system. Political or secular religions also appeal to the human psyche, exploiting religious forces that are no longer captured by the dissolving traditional religions. A third characteristic of political or secular religions is that they uproot people from such traditional communities as the family and bind them into new communities, like the nation or the state. Hereby, political or secular religions make use of a mass propaganda that they themselves have developed and that has its counterpart in an esoteric teaching for a small circle of people. Such teachings bind the groups for which they are intended in each case with a force that is almost spiritual. Fourth, political or secular religions interpret the entire course of history – that, which was, is and is to come – to their own benefit. Solely the revitalisation of traditional religious values and views can expose

⁹⁹ Je propose d’appeler ‘religions séculières’ les doctrines qui prennent dans les âmes de nos contemporains la place de la foi évanouie et situent ici-bas, dans le lointain de l’avenir, sous la forme d’un ordre social à créer, le salut de l’humanité. (Raymond Aron, *Chroniques de guerre. La France libre, 1940–1945*, ed. by Christian Bachelier [Paris: Gallimard, 1990], 926).

the fleeting character of the values of political or secular religions.¹⁰⁰ Aron's concept tends to be problematic to the extent that Aron never precisely explains how, in terms of the history of religion, political or secular religions are typical of the European nations. To the extent that these nations have undergone a break with the public culture from Christianity, political religions – as Voegelin correctly ascertains – can claim to fill a 'value-vacuum' that has arisen in Europe. Aron does not go far enough in terms of the philosophy or phenomenology of religion either.

Worth emphasising is Voegelin's contribution to overcoming the modern crisis of meaning, as well as his contribution to heightening our critical perception of ideologies and our understanding of the structures of totalitarian regimes. Peter Joachim Opitz underlines: 'According to Voegelin's thesis, crucial needs of large sections of the population were very essentially religious. The thesis that these needs – needs that were satisfied by the ideologies – lay at base of the rise of the ideological mass movements, remains valid today.'¹⁰¹

2.3. Jacob Leib Talmon

'Messianism' or 'messianic movements' emerge predominantly within the Abrahamic religions. As such, they are generally stamped by 'the emergence of personalities' that, 'on the basis of their salvation-historical consciousness of mission, exercise a magnetic attraction upon growing hordes of adherents'.¹⁰² The expectation of an apocalyptic coming of a Messiah prompts the rise of mass movements that are at times marked by intoxicated enthusiasm. Often, the charismatic leader of the Messianic movement is himself identified as a Messiah and honoured in a cult that surrounds his person; this phenomenon can assume the features of an apotheosis. The order that religious messianism pretends to support is a firmly established order with its reference point in the Messianic arrival of God. Political messianism is different: 'The point of reference of modern messianism is reason and the human will. Its goal, happiness on earth, is to be attained through social transformation. Although the reference point is secular, the demands are absolute.'¹⁰³

According to the Israeli historian Jacob Leib Talmon (1916–1980), political, secular messianism develops an almost Schopenhauerian, unrestricted will to transform its own doctrines into reality and thereby to transform the world. If the idea of the perfection of human life still predominates in religious messianism, so does 'secular Messianic

¹⁰⁰ On Aron's 'secular religions' see David Bosshart, *Politische Intellektualität und totalitäre Erfahrung. Hauptströmungen der französischen Totalitarismuskritik* (Berlin: Duncker und Humblot, 1992), esp. 118–123, 126.

¹⁰¹ Afterword by Peter J Opitz on Voegelin, *Die politischen Religionen*, 71.

¹⁰² Peter Beyerhaus, 'Messianische Bewegungen', in *Lexikon für Theologie und Kirche*, ed. by Walter Kasper et al., vol. 7. 3rd ed. (Freiburg/Br.: Herder, 1998), 164–166, 164 (citation).

¹⁰³ Talmon, *The Origins of Totalitarian Democracy*, 10. See also *Political Messianism*, VII.

monism¹⁰⁴ seeking the fulfilment of all plans and projects already in this world. Parallel to religious messianism, these two kinds of messianisms also issue from some kind of ‘leader’, who paves the way to the goal – whether it is in this world or in heaven.

The first volume of Talmon’s trilogy *A History of Totalitarian Democracy*¹⁰⁵ is entitled *The Origins of Totalitarian Democracy* (1952). At the beginning of this book, Talmon already clearly states that his investigation of totalitarianism moves within the history of ideas. He sees the roots of the political situation of the mid-20th century to extend back into an intellectual pre-history that is one hundred and fifty years old. In this pre-history, Messianic, hence religious, elements play a central role on the totalitarian side of the development of democracy, which has to be strictly distinguished from the liberal side.¹⁰⁶ Talmon describes the resulting situation as the contemporary world crisis:

Seen from our standpoint – from a vantage point in the middle of this 20th century – the history of the last hundred and fifty years appears in fact to be a systematic preparation for the abrupt clash between empirical and liberal democracy on the one hand and totalitarian messianic democracy on the other – and that is the world crisis of today.¹⁰⁷

In a style similar to that of Eric Voegelin,¹⁰⁸ Talmon arranges his investigations as a universal history of ideas: unlike Voegelin, however, he does not begin with antiquity, but in the 18th century with Morelly and Mably as well as Rousseau – with his concept of natural order (*ordre naturel*) – and other thinkers of that epoch. If democratic elements can still be found in left totalitarianism, dictatorial elements predominate in right totalitarianism.¹⁰⁹ As it is expressed in the arrangement, ‘Morelly, Mably, Rousseau’, Talmon sees the social element to be an important impulse for the ‘secular religion of totalitarian democracy’.¹¹⁰ Socialist ideas play a similar role in Paul Tillich’s concept of ‘quasi-religions’.¹¹¹ It is the social impulse that distinguishes modern political Messianism from other religious-chiliastic movements; having the character more of sects than of political movements, the latter have religious rather than secular roots. Talmon sees the philosophy of the 18th century – especially in French philosophy – to mark the starting point of a development whose

¹⁰⁴ Talmon, *The Origins of Totalitarian Democracy*, 10.

¹⁰⁵ Talmon, *The Origins of Totalitarian Democracy; Political Messianism. The Romantic Phase; The Myth of the Nation and the Vision of Revolution*.

¹⁰⁶ On this distinction see Klaus Hornung, ‘Politischer Messianismus: Jacob Talmon und die Genesis der totalitären Diktaturen’, *Zeitschrift für Politik* 47, no 2 (2000), 131–172, esp. 134.

¹⁰⁷ Talmon, *The Origins of Totalitarian Democracy*, 1.

¹⁰⁸ In particular: Voegelin, *Die politischen Religionen; Order and History*.

¹⁰⁹ In his volume *Totalitarismustheorien* Wolfgang Wippermann criticises that Talmon argues too little with the sources of ‘right totalitarianism’ and the ideologies of racism and anti-semitism: Wolfgang Wippermann, *Totalitarismustheorien. Die Entwicklungen der Diskussion von den Anfängen bis heute* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1997), 25–26. Klaus Hornung represents an opposite view in ‘Politischer Messianismus: Jacob Talmon und die Genesis der totalitären Diktaturen’, 155.

¹¹⁰ Talmon, *The Origins of Totalitarian Democracy*, 8. See also *Political Messianism*, 35–39, 70–124.

¹¹¹ Tillich, ‘Das Christentum und die Begegnung der Weltreligionen’, 51–98.

out-growths in the 20th century are the totalitarian dictatorships of Russia and Germany, Italy and Spain.¹¹² According to Talmon, the first manifestations of a political messianism can be found within the Jacobine regime during the French Revolution. Michael Burleigh supports this position.¹¹³

Political messianism intends to establish a political program by leading the believer to believe in a utopian goal that includes the realisation of a saved state in the immanent world. A single leader leads on to this goal, one leader, who realises his ideas and images through one party and who is venerated in a cult of personality up to the point of an apotheosis.

3. CONCLUSION

The concept of political religion and, more specialised, the concept of political messianism, are even more appropriate than the concept of totalitarianism in explaining an absolute following, the special kind of belief, and the efficiency of totalitarian ideology, which ‘sticks like pitch’ in human minds, even nowadays. Traditional forms of religion, which have a serious and honest transcendental relation, have in contrast the power to discover the horrible totalitarian ideologies with their terrible places (*Gulags, Konzentrationslager*) and to keep them away from human minds and bodies. In this aspect, religions do really have the power to criticise ideologies in their centres. For the future, this critical potential of true religion is of great importance for the benefit of the society and the success of the political community.

¹¹² See Hornung, ‘Politischer Messianismus: Jacob Talmon und die Genesis der totalitären Diktaturen’, 138–142.

¹¹³ See Michael Burleigh, *Earthly Powers. Religion and Politics in Europe from the Enlightenment to the Great War* (London: Harper Collins, 2005).

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THE PROLIFERATION OF SECULAR RELIGIONS: THEORETICAL AND PRACTICAL ASPECTS

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The term ‘secular religion’ first appeared in the description of modern totalitarian ideologies but soon became a general category applied to other political, socio-economic and cultural phenomena. The first problem with this approach is the inherent contradiction of the term, since ‘secular’ by all modern definitions means ‘non-religious’, making a secular religion something like a ‘non-religious religion’. The second is the wide range of examples from communism to liberalism, from capitalism to ecology, or from transhumanism to social media, which suggests that with some creativity almost anything can be described as secular and religious at the same time. The first part of the paper deals with the terminological difficulties, while the second outlines the history of drawing secular-religious analogies, concluding that the ultimate failure to give a coherent narrative of secular religions is rooted in the impossibility of giving an adequate definition of religion in the first place.

KEYWORDS:

Christianity, definitions of religion, political theology, political religion, secularisation

1. A FEW NOTES ON TERMINOLOGY

According to Emilio Gentile,¹ the term ‘secular religion’ was coined in 1935, when Guy Stanton Ford’s introduction to a collection of essays called *Dictatorship in the Modern World* described the newly emerging dictatorial regimes of Europe as having ‘a secular religion of their own creation’.² The fact that Ford did not find it necessary to define the new term may indicate two things: that it seemed obvious to him what a religion was, and that modern dictatorships – albeit similar to traditional religions – still lacked something that would have made them ‘truly’ religious.

One year later, Adolf Keller’s *Church and State on the European Continent* called Leninism ‘a camouflaged secular religion’, similarly without defining religion and, consequently, without clarifying in what sense this religion was different from other, ‘real’ ones.³ The same holds for Frederik A Voigt’s *Unto Caesar* in 1938, which spoke of both Marxism⁴ and Hitlerism⁵ as secular religions, even adding that the *hybris* of secular religions started with ancient Athens at the time of the Peloponnesian War,⁶ which seems to imply that secular religions existed well before the age of secularisation. A perhaps more famous example is Raymond Aron’s *The Future of Secular Religions* (1944),⁷ which likewise took it for granted that a secular religion was something that resembled, and at the same time, differed, from what was usually called a religion. It is telling that about ten years later, Hans Kelsen already felt it necessary to start writing a book-length critique of all such obtruse analogies in his *Secular Religion*, but, ironically, the critique itself turned out to be so terminologically problematic that it would remain unpublished until 2012.⁸

The term ‘secular religion’, however, was not the first to be used. In 1918, the Italian priest and later Christian democratic politician Luigi Sturzo already called the worship of the state ‘a new lay religion’ (*una nuova religione laica*).⁹ And even earlier, in 1791, the French philosopher Condorcet criticised the worship of the revolutionary constitution as a ‘political religion’:

It has been said that the teaching of the constitution of each country should be part of the nation’s education. This is true, no doubt, if we speak of it as a fact; if we content ourselves with explaining and developing it; if, in teaching it, we confine ourselves to saying: *Such*

¹ Emilio Gentile, *Politics as Religion* (Princeton: Princeton University Press, 2006), 2.

² G Stanton Ford (ed.), *Dictatorship in the Modern World* (Minneapolis: University of Minnesota Press, 1935), 6.

³ Adolf Keller, *Church and State on the European Continent: The Social Service Lecture, 1936* (London: The Epworth Press, 1936), 69.

⁴ Frederik A Voigt, *Unto Caesar* (New York: G. P. Putnam’s Sons, 1938), 3.

⁵ *Ibid.* 57.

⁶ *Ibid.* 239.

⁷ Raymond Aron, ‘The Future of Secular Religions’, in *The Dawn of Universal History: Selected Essays from a Witness to the Twentieth Century* (New York: Basic Books, 2002).

⁸ Hans Kelsen, *Secular Religion: A Polemic Against the Misinterpretation of Modern Social Philosophy, Science, and Politics as “New Religions”* (Wien: Springer Verlag, 2012).

⁹ Luigi Sturzo, *I discorsi politici* (Roma: Istituto Luigi Sturzo, 1951), 388.

is the constitution established in the State to which all citizens must submit. But if we say that it must be taught as a doctrine in line with the principles of universal reason or arouse in its favor a blind enthusiasm which renders citizens incapable of judging it; if we say to them: *This is what you must worship and believe;* then it is a kind of political religion that we want to create. It is a chain that we prepare for the spirits, and we violate freedom in its most sacred rights, under the pretext of learning to cherish it.¹⁰

Secular religion, lay religion and political religion were still not the only possibilities, however. Let us not forget that in 1922, Carl Schmitt also introduced the modern concept of political *theology* which was more limited than political *religion*, for it referred only to conceptual analogies between theology and political theory (or, literally, ‘the modern theory of the state’), without examining the more detailed practical or institutional analogies between religion and politics.¹¹ The line of argument was nevertheless similar, and the set of related terms still keeps growing: since then we have seen quasi-religion, pseudo-religion, surrogate or ersatzreligion, lay spirituality, laicised mysticism, secularised eschatology, inner-worldly religion, immanent faith, secular myth and many others.¹² ‘Secular religion’ is therefore at best an umbrella term, and the only reason one might feel justified to use it is that all similar terms express the same ambiguity of drawing an analogy between the secular and the religious, while maintaining that ultimately, the two remain different.

This is perhaps why so many authors (from Alexis de Tocqueville to Vilfredo Pareto, Carlton Hayes, or more recently Tara Isabella Burton)¹³ simply speak of ‘new’ religions without any further adjectives, which is itself an implicit recognition of how problematic it is to call something ‘secular’, ‘lay’, ‘political’ (either in the sense of ‘secularised’ as in Schmitt, or ‘inner-worldly’ as in Voegelin), ‘immanent’, ‘quasi’, or ‘surrogate’ on the one hand and still ‘religious’, ‘theological’, ‘mythical’, or ‘eschatological’ on the other.¹⁴ As William Cavanaugh remarked about Carl Schmitt’s definition of political theology, the best thing would be to admit that there is nothing ‘secularised’ here, only ‘covert’.¹⁵

¹⁰ Condorcet, *Cinq mémoires sur l’instruction publique* (1791), 42.

¹¹ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge: The MIT Press, 1984), 36.

¹² For a few examples, see Kelsen, *Secular Religion*, 5–9. It must be added that Kelsen himself was experimenting with different options: at first, he entitled the work *Religion without God?*, then changed it to *Theology without God?*, before having the final manuscript called *Secular Religion*. Ibid. xii–xiii.

¹³ See Alexis de Tocqueville, *Democracy in America* (Indianapolis: Liberty Fund, 2010); Vilfredo Pareto, *The Mind and Society* (New York: Harcourt, Brace and Company, 1935); Carlton J H Hayes, *Nationalism: A Religion* (New York: Macmillan, 1960); Tara Isabella Burton, *Strange Rites: New Religions for a Godless World* (New York: Public Affairs, 2020).

¹⁴ Which does not mean that all authors who speak of ‘new’ religions consistently reject the traditional distinction of ‘real’ and ‘not-so-real’ religions. In most cases, they seem to use both terminologies.

¹⁵ William T Cavanaugh, *Migrations of the Holy: God, State, and the Political Meaning of the Church* (Grand Rapids: Eerdmans, 2011), 3.

We may return to the terminological issues later; what nevertheless seems obvious is that the proliferation of terms itself indicates a profound uncertainty about the validity of the whole enterprise, and the proliferation of candidates for the role of secular religions raises further doubts.

2. THE WAVES OF SECULAR-RELIGIOUS COMPARISONS

As I said earlier, the first modern attempt to compare an allegedly secular ideology to a religion was Condorcet's criticism of the worship of the Constitution as proposed by the new project of public education in Revolutionary France. Although this sort of constitutional or legalist 'religion' did not provoke a large wave of comparisons, in 1850, the Spanish conservative author and diplomat Juan Donoso Cortés also described the path from the overtly theocratic idea of kingship to the constitutional state as the 'negation' (but also the 'consequence') of a religious affirmation:

The political affirmations are nothing more than a consequence of the religious affirmations... In the political order, the Progressive Party, analogous to the deist who negates Providence, says, "The king exists, the king reigns, but he does not govern." Thus, progressive constitutional monarchy pertains to the negative civilization in the first degree.¹⁶

It goes without saying how deeply Donoso's idea influenced Carl Schmitt's *Political Theology*:

The idea of the modern constitutional state triumphed together with deism, a theology and metaphysics that banished the miracle from the world. This theology and metaphysics rejected not only the transgression of the laws of nature through an exception brought about by direct intervention, as is found in the idea of a miracle, but also the sovereign's direct intervention in a valid legal order.¹⁷

Schmitt also followed Donoso's historical description of the secularisation process from constitutionalism or legalism to democracy, and, ultimately, to atheism and anarchy. The divinity of Law would therefore only play a transitional role in secular religions' discourse; what would indeed return during the second half of the 20th century was the

¹⁶ Juan Donoso Cortés, 'Discourse on the General Situation of Europe', in *Readings in Political Theory* (Ave Maria: Sapientia Press of Ave Maria University, 2007), 74.

¹⁷ Schmitt, *Political Theology*, 36-37.

eneration of certain metalegal norms, most notably human rights, that Elie Wiesel explicitly called ‘a worldwide secular religion’ in 1999.¹⁸

The second (and, as we can see, largely overlapping) wave of secular–religious comparisons began in the mid-19th century. The most famous example is Tocqueville’s *Democracy in America* (1835), which spoke of the ‘dogma’ of popular sovereignty, the people who rule the political world ‘as God rules the universe’, and the ‘omnipotence’ of the majority,¹⁹ but similar ironical descriptions of democracy were ubiquitous from John Stuart Mill’s ‘false creed’ of American democracy (1861)²⁰ to Herbert Spencer’s ‘political superstition’ of parliamentarism (1886)²¹ and Gaetano Mosca’s ‘religious founders’ of democracy (1896).²²

The grand epoch of ‘democratic religion’ culminated in Vilfredo Pareto’s *The Mind and Society* (1916) which used so many religious phrases that it became more like a parody of both democracy and religion: the ‘divinities’ of the republic and universal suffrage; ‘suffrage worship’; ‘Holy Democracy’; the ‘principle of universal suffrage as a dogma above discussion’; general will and majority rule as ‘the sublimest dogmas of the democratic religion’; or the ‘worship of the god State and the god People’ that has ‘not a single unbeliever left’.²³ In sum, as Pareto said:

We are now witnessing the rise and dominance of the democratic religion, just as the men of the first centuries of our era witnessed the rise of the Christian religion and the beginnings of its dominion. The two phenomena present many profoundly significant analogies.²⁴

Although Carl Schmitt, as we have seen, also mentioned democracy in his *Political Theology*, as well as some American scholars who described it as a religion in the 1940s and 1950s, (not to mention more recent authors like Patrick Deneen or the Romanian historian Lucian Boia),²⁵ it remains true that from the beginning of the 20th century, democracy was gradually

¹⁸ Elie Wiesel, ‘A Tribute to Human Rights’, in *The Universal Declaration of Human Rights: Fifty Years and Beyond*, ed. by Yael Danieli, Elsa Stamatopoulou and Clarence Dias (Amityville: Baywood, 1999), 3. For similar examples see Irwin Cotler, ‘The New Antisemitism’, in *Antisemitism: The Generic Hatred*, ed. by Michael Fineberg, Shimon Samuels and Mark Weitzman (London: Vallentine Mitchell, 2007), 22; Anthony Julius, *Trials of the Diaspora: A History of Anti-Semitism in England* (Oxford: Oxford University Press, 2010), 453; or Henri Féron, ‘Human rights and faith: a world-wide secular religion?’, *Ethics & Global Politics* 7, no 4 (2014).

¹⁹ Tocqueville, *Democracy in America*, 97, 108, 411.

²⁰ John Stuart Mill, ‘Considerations on Representative Government’, in *Collected Works of John Stuart Mill, Volume XIX* (Toronto: University of Toronto Press, 1977), 478.

²¹ Herbert Spencer, *The Man Versus the State* (Caldwell: Caxton, 1960), 174.

²² Gaetano Mosca, *The Ruling Class* (New York: McGraw-Hill, 1939), 170.

²³ Vilfredo Pareto, *The Mind and Society* (New York: Harcourt, Brace and Company, 1935), 558–559, 589, 735, 1048, 1156–1157.

²⁴ *Ibid.* 1294.

²⁵ See Ralph Henry Gabriel, *The Course of American Democratic Thought* (New York: The Ronald Press, 1940), 382; Crane Brinton, *Ideas and Men. The Story of Western Thought* (New York: Prentice-Hall, 1950), 549; Patrick Deneen, *Democratic Faith* (Princeton: Princeton University Press, 2005); Lucian Boia, *Le mythe de la démocratie* (Paris: Les Belles Lettres, 2002). Sporadic references to the religious or theological nature

overshadowed by an even more robust wave of both academic and popular literature that compared communist, fascist and Nazi dictatorships to religions.

As mentioned before, the very term 'secular religion' was born in this context, but there are earlier examples. The Russian philosopher Nikolai Berdyaev wrote of the *Catechism of Marxism* as early as 1905, calling Engels' *Anti-Dühring* 'the sole dogmatic part of Marxist theology'.²⁶ In 1906, he wrote of *Socialism as a Religion* ('a whole creed, a decision about the meaning of life').²⁷ In 1917, *The Religious Foundations of Bolshevism* confirmed that bolshevism was 'a religious substitute, an inverted religion, a pseudo-religion' which was nevertheless 'the manifestation of a religious order' with its likewise overarching, 'own absolute'.²⁸ Or maybe it was not the metaphysical absolute that made socialism, communism or bolshevism (whatever it was called at a given moment) a religion, but a certain historical theology, as the German historian Fritz Gerlich suggested in his *Communism as the Theory of the Thousand Year Empire* in 1920.²⁹ To make things more complicated, Bertrand Russell's *The Practice and Theory of Bolshevism* the same year explicitly stated that bolshevism had more to do with Islam, exactly because of its predominantly secular outlook:

Among religions, Bolshevism is to be reckoned with Mohammedanism (sic!) rather than with Christianity and Buddhism. Christianity and Buddhism are primarily personal religions, with mystical doctrines and a love of contemplation. Mohammedanism and Bolshevism are practical, social, unspiritual, concerned to win the empire of this world.³⁰

It is important to note that from this angle, Islam itself proved to be a secular ('this-worldly') religion, which helped little to eliminate the terminological confusion, but we may return to this issue later. In the literature of secular religions, socialism (or communism, Marxism, Leninism, bolshevism, etc.) would later be joined by Italian fascism, and the 1920s saw an overflow of such comparisons in the writings of Giovanni Amendola, Novello Papafava, Raoul De Nolva, Herbert Schneider, Hermann Heller, Luigi Sturzo and many others, or even in official Catholic documents issued by Pope Pius XI.³¹

From the 1930s, Nazism also began to be interpreted as a religious movement and ideology, but this time usually together with socialism and fascism. As early as 1932, Anton Hilckman called Nazism an 'irreligious religion' which was in this regard a close

of democracy and the metaphysical idea of the 'people' or the 'general will' are also frequently found in French literature, see e.g. Jean-François Lyotard, 'Apostil on Narratives', in *The Postmodern Explained: Correspondence 1982-1985* (Minneapolis: University of Minnesota Press, 1992), 19; or Pierre Rosanvallon, *Democracy Past and Future* (New York: Columbia University Press, 2006), 200, 203, 226.

²⁶ Nikolai Berdyaev, 'Катехизис марксизма', *Вопросы жизни*, 1905/2, 369-379.

²⁷ Nikolai Berdyaev, 'Социализм как религия', *Вопросы философии и психологии*, XVII/85 (1906), 508-545.

²⁸ Nikolai Berdyaev, 'Религиозные основы большевизма', in *Собрание сочинений* (Paris: YMCA Press, 1990), Volume 4, 29-37. Similar writings of Berdyaev were published in English under the title *The Russian Revolution* (London: Sheed and Ward, 1931).

²⁹ Fritz Gerlich, *Der Kommunismus als Lehre vom Tausendjährigen Reich* (München: Bruckmann, 1920).

³⁰ Bertrand Russell, *The Practice and Theory of Bolshevism* (London: Allen and Unwin, 1920), 114.

³¹ Gentile, *Politics as Religion*, 33-34.

relative of bolshevism.³² In 1933, Luigi Sturzo outlined an even more overarching historical scheme from the Jacobin dictatorship during the French Revolution to bolshevism, fascism and Nazism, describing all those as ‘collective idolatries’ and ‘secularised religions’.³³ In 1935, as we have seen, the collection of essays edited by Guy Stanton Ford also spoke of all modern dictatorships as having their own versions of secular religion. In 1936, Karl Polanyi’s *The Essence of Fascism* called Nazism (the ‘full-fledged’, ‘German’ version of fascism), a ‘religion’ in a volume which included similar interpretations of communism, most notably Reinhold Niebuhr’s *Christian Politics and Communist Religion*.³⁴ In 1937, the German anarchist Rudolf Rocker followed the now well-known trajectory from Rousseau and Jacobinism to fascism, Nazism and Soviet communism, describing those as varieties of the cult of the nation state in his *Nationalism and Culture*.³⁵ Also in 1937, the Hungarian Catholic theologian Antal Schütz used the term ‘analogue religion’ in an even broader sense in the second, revised edition of his textbook on *Dogmatics*:

Where religious conduct is not oriented toward a personal God, but still recognizes something transcendent, something beyond experience as the meaning, purpose, and governor of existence, especially of human existence, we may speak of an analogue religion. Such is the religiosity of pantheists; further down the religious scale are all those who regard the laws or interconnections of universe and life, the progress of humanity, the state, the nation, or the race as a supreme being (pseudo-religions); and those who expect a cultural program or cultural phenomenon, e.g. the change in the economic order (socialists), the solution of the Jewish problem, vegetarianism, spiritism, etc. to cure all ills and provide meaning to life (surrogate religions).³⁶

In 1938, the German legal scholar Gerhard Leibholz likewise described the new religions of all totalitarian states (fascist, Nazi, communist) as the ‘metaphysics of politics’.³⁷ I also mentioned Frederik A Voigt’s *Unto Caesar* (1938), which used the term ‘secular religion’ throughout the book, from ancient Greece to Marxism and Hitlerism; and a similar pattern is observable in Eric Voegelin’s famous *Political Religions* (1938) that started the story even earlier, in ancient Egypt, citing examples from early modern absolutism and Italian fascism, while its main concern remained Nazi Germany.³⁸ A unique addition to

³² Anton Hilckman, ‘Il nazionalsocialismo di fronte al cristianesimo e alla Chiesa’, *Vita e Pensiero*, 8 August 1932. Cited in Gentile, *Politics as Religion*, 85.

³³ Gentile, *Politics as Religion*, 99–100.

³⁴ Karl Polanyi, ‘The Essence of Fascism’, in *Christianity and the Social Revolution*, ed. by John Lewis, Karl Polanyi and Donald K Kitchin (New York: Scribner’s, 1936). See also Reinhold Niebuhr, *Christian Politics and Communist Religion* in the same volume.

³⁵ Rudolf Rocker, *Nationalism and Culture* (Los Angeles: Rocker Publications Committee, 1937).

³⁶ Antal Schütz, *Dogmatika: a katolikus hitigazságok rendszere* (Budapest: Szent István Társulat, 1937), 16.

³⁷ Gentile, *Politics as Religion*, 54–55.

³⁸ Eric Voegelin, ‘The Political Religions’, in *The Collected Works of Eric Voegelin, Volume 5: Modernity Without Restraint* (Columbia: University of Missouri Press, 2000).

the anti-totalitarian discourse of secular religions was offered by Erik Ritter von Kuehnelt-Leddihn's *The Menace of the Herd* (1943) which added democracy and its 'dogmas' to the list of such totalitarian ideologies as Nazism and communism.³⁹ The now well-established tradition of socialism, fascism and Nazism as religious ideologies and movements would continue with Raymond Aron's *The Future of Secular Religions*, Reinhold Niebuhr's *Faith and History* (1949), Jacob Talmon's *The Rise of Totalitarian Democracy* (1952), Paul Tillich's *Christianity and the Encounter of the World Religions* (1963) and many others.⁴⁰

This third wave of criticism – just as the first (constitutionalist-legalist) and the second (democratic) waves – would never completely disappear, either. During the 1960s and 1970s, in addition to the traditional topics of Soviet communism, Italian fascism or German Nazism, new members like Maoism or certain African regimes joined the club of secular or political religions.⁴¹ It is also remarkable that the term 'political religion' by then became associated mostly with modern dictatorships, despite occasional hesitations between the terminology of the 'sacralisation of politics', 'politics as religion', and 'political religion'. (See e.g. the different titles of Emilio Gentile's books: while the English translation of *Il culto del littorio: la sacralizzazione della politica nella nell'Italia fascista* only omitted the main title, preserving the rest as *The Sacralization of Politics in Fascist Italy*, his other book, *Le religioni della politica* was transformed into *Politics as Religion*, while also using terms like the 'sacralisation of politics' and 'political religions' interchangeably.)⁴² In Germany, the three-volume *Totalitarismus und politische Religionen* edited by Hans Maier is another example of how closely the concept of 'political religion' became connected to 'totalitarianism', and the same is attested by the title of the academic journal *Totalitarian Movements and Political Religions*, published between 2000 and 2010.⁴³

It should also be added that all of the former (the secular religions of laws, peoples and dictators) had their foundations in the worship of the nation state, which therefore cannot be treated as a separate phenomenon. After all, the worship of the constitution which Condorcet so harshly criticised expressed nothing else than the worship of the state and the nation; and the people in either democratic or dictatorial regimes served only as the

³⁹ Erik Ritter von Kuehnelt-Leddihn [as Francis Stuart Campbell], *The Menace of the Herd* (Milwaukee: The Bruce Publishing Company, 1943).

⁴⁰ Aron, *The Future of Secular Religions*; Reinhold Niebuhr, *Faith and History* (New York: Charles Scribner's Sons, 1949); Jacob L Talmon, *The Rise of Totalitarian Democracy* (London: Secker and Warburg, 1952); Paul Tillich, 'Christianity and the Encounter of the World Religions' (1963), in *Main Works, Volume 5* (Berlin: Walter de Gruyter, 1988).

⁴¹ Gentile, *Politics as Religion*, 119–127.

⁴² Emilio Gentile, *Il culto dell littorio: la sacralizzazione della politica nell'Italia fascista* (Roma: Laterza, 1993); *The Sacralization of Politics in Fascist Italy* (Cambridge: Harvard University Press, 1996); *Le religioni della politica: fra democrazie e totalitarismi* (Roma: Laterza, 2001); *Politics as Religion* (Princeton: Princeton University Press, 2006).

⁴³ Hans Maier (ed.), *Totalitarismus und politische Religionen* (Paderborn: Schöningh, 1996–2003); in English, *Totalitarianism and Political Religions* (New York: Routledge, 2004–2008). The journal *Totalitarian Movements and Political Religions* changed its name to *Politics, Religion, and Ideology* in 2010.

legitimising bases of the modern state that claimed for itself a fullness of power. As Luigi Sturzo said in 1918:

The collapse of Germany has revealed the profound crisis of the absurd practice of the pantheistic conception of the state which subjects everything to its force: the internal and external world, the human being and their reason for existence, the social forces and human relations; all this by the deification of an absolute force and power that replaces the great principles of justice and the great aspirations of the spirit. This pantheistic conception has penetrated, to a greater or lesser extent, all civilized nations on a liberal and democratic basis, and the prevailing philosophy of public law.⁴⁴

That liberal (constitutional), democratic and dictatorial regimes were all grounded in the same religion of the nation state was also suggested by Christopher Dawson in 1934:

I think it is difficult to avoid the conclusion that the movement towards state control in every department of life is a universal one and is not to be confused with the political tenets of a party, whether Communist or Fascist. (The essential principle of the Totalitarian State was, in fact, asserted by Liberalism before Fascism was ever heard of.)⁴⁵

That the movement towards state control started as early as the Middle Ages was later meticulously demonstrated by Ernst Kantorowicz's *The King's Two Bodies* (1957), which likewise stated that the secularisation – or rather, politicisation – of the church was accompanied by a sacralisation of politics.⁴⁶ Therefore, although the German legal scholar Ernst-Wolfgang Böckenförde was to some extent right to say that the rise of the state was a 'process of secularisation' (and, for that matter, the most momentous one),⁴⁷ it is perhaps more adequate to speak of the 'migration of the holy' from the church to the state as John Bossy did in 1985 or William Cavanaugh in 2011.⁴⁸

The last big wave of secular-religious comparisons started in the 1970s, this time leaving the field of politics, strictly speaking. In 1977, Paul C Vitz published his *Psychology as Religion* which identified this religion with the 'cult' of self-worship.⁴⁹ The growing individualism of Western societies was also detected by a number of books on the modern economic system

⁴⁴ Sturzo, *I discorsi politici*, 388.

⁴⁵ Christopher Dawson, 'Religion and the Totalitarian State,' *The Criterion* 14, (1934), 3.

⁴⁶ 'Imperialization of the papacy and sanctification of the secular state ran in parallels.' Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957), 185.

⁴⁷ Ernst-Wolfgang Böckenförde, 'The Rise of the State as a Process of Secularization [1967]', in *Religion, Law, and Society: Selected Writings*, ed. by Mirjam Künkler and Tine Stein (Oxford: Oxford University Press, 2020), 152–167.

⁴⁸ John Bossy, *Christianity in the West 1400–1700* (Oxford: Oxford University Press, 1987), 153–172; Cavanaugh, *Migrations of the Holy*.

⁴⁹ Paul C Vitz, *Psychology as Religion: The Cult of Self-Worship* (Grand Rapids: Eerdmans, 1977).

and its ideology. While economics had occasionally used a mystical language since Adam Smith's often misunderstood 'invisible hand', it only became customary in the 2000s to speak critically of the 'economic religion' (Robert Nelson), the 'theology of money' (Philip Goodchild), the 'altar of Wall Street' (Scott Gustafson), the 'money Gods' (John Rapley) or the 'market as God' (Harvey Cox).⁵⁰ 'Environmental religion', on the other hand, was first discussed as the diametrical opposite of economic religion by Robert Nelson in 2010,⁵¹ and by now it has become a journalistic cliché to speak of 'our climate in Heaven', 'climate heretics', or 'Saint Greta and the climate gospel'.⁵² There is also a certain amount of both academic and popular literature on related topics like ethical vegetarianism and veganism as secular religions.⁵³ Although it is also true that several forms of ecological thought (mainly deep ecology) openly declare themselves to be 'metaphysical' or 'spiritual', it is usually to distinguish themselves from traditional religions, thereby reproducing the 'something like, but not exactly the same as religion' pattern known from the discourse of secular religions. It comes as no surprise that a similar anti-humanistic or supra-humanistic religious pattern was discovered in the case of posthumanism and transhumanism,⁵⁴ up to the point when even atheism (or at least some types of atheism) were described as 'faiths' or 'religions' by Robert Nelson or John Gray.⁵⁵

Politics has not disappeared entirely, either; most recently, we may observe a renewed interest in the 'religions' of multiculturalism, Social Justice Culture or wokeness,⁵⁶ while the non-political examples of secular religions continue to expand to such peculiar fields as sports and entertainment, fandom or even social media.⁵⁷

⁵⁰ Robert H Nelson, *Economics as Religion: From Samuelson to Chicago and Beyond* (University Park: The Pennsylvania State University Press, 2001); Philip Goodchild, *Theology of Money* (Durham: Duke University Press, 2009); Scott W Gustafson, *The Altar of Wall Street. The Rituals, Myths, Theologies, Sacraments, and Mission of the Religion Known as the Modern Global Economy* (Grand Rapids: Eerdmans, 2015); John Rapley, *Twilight of the Money Gods: Economics as a Religion and How It All Went Wrong* (London: Simon and Schuster, 2017); Harvey Cox, *The Market as God* (Cambridge: Harvard University Press, 2016).

⁵¹ Robert H Nelson, *The New Holy Wars: Economic Religion vs. Environmental Religion in Contemporary America* (University Park: The Pennsylvania State University Press, 2010).

⁵² 'Klimaschutz als Religion: Klima unser im Himmel', *Die Tageszeitung*, 26 September 2019; Roger Pielke Jr, 'My Unhappy Life as a Climate Heretic', *Wall Street Journal*, 02 December 2016; Gerard Baker, 'St. Greta Spreads the Climate Gospel', *The Wall Street Journal*, 20 September 2019.

⁵³ Andrew Linzey and Clair Linzey, 'Vegetarianism as Ethical Protest', in *Ethical Vegetarianism and Veganism*, ed. by Andrew Linzey and Clair Linzey (London: Routledge, 2019).

⁵⁴ Ray Kurzweil, *The Singularity Is Near: When Humans Transcend Biology* (New York: Viking, 2005). The Biblical reference in the title is to Mark 1:15: 'The Kingdom of God is near.'

⁵⁵ Robert H Nelson, *Faith of the Fatherless: The Psychology of Atheism* (San Francisco: Ignatius Press, 2013); John Gray, *Seven Types of Atheism* (London: Penguin, 2019).

⁵⁶ Mathieu Bock-Côté, *Le Multiculturalisme comme religion politique* (Paris: Cerf, 2016); Tara Isabella Burton, *Strange Rites: New Religions for a Godless World* (New York: Public Affairs, 2020); Tom Slater, 'The Year the Ruling Class Got Woke', *Spiked*, 26 December 2020.

⁵⁷ Albert Piette, *Les religiosités séculières* (Paris: Presses Universitaires de France, 1993); Tara Isabella Burton, *Strange Rites*; Mathias Ephraim Nygaard, 'Selfies as Secular Religion: Transcending the Self', *Journal of Religion and Society* 21 (2019).

3. WHAT IT ALL MEANS

The proliferation of the literature of secular religions despite all definitional problems reinforces the suspicion that with some creativity, everything can be called a religion, which is, however, almost the same as saying that nothing can be called as such. The most powerful argument against the entire discourse of secular religions has always been that it is a false analogy: a generalisation from one or two common features of a given secular and religious phenomenon that tends to obscure the actual differences between the two. Speaking of individual examples, this is certainly true: no one in good faith can say that Marxism belongs to the same category as Catholicism, or taking selfies is in every respect analogous to (for instance) Buddhism. The problem with this argument is that it commits the same fallacy of illegitimate generalisation when it maintains that Marxism and selfies still belong to a category called 'secular' while Catholicism and Buddhism belong to another called 'religious'. The only way out of this fallacy would be a sort of nominalism: to reject all such overarching categories and acknowledge that every single political ideology, scientific or economic theory, social movement and form of entertainment is just as unique as Christianity, Buddhism, Islam or Hinduism is. It is indeed difficult to see why Christianity with its transcendent God and its providential view of a linear history, might stand closer to Theravada Buddhism's atheism and circular concept of time than to Marx's idea of the Proletariat as the saviour of human history, or why Islam's radical monotheism (*tawhid*) might stand closer to ancient Greek polytheism than to any metaphysical idea of a single chosen nation, race or social class.

What is even more difficult to tell is why a mixture of the 'secular' and the 'religious' would solve any of the problems outlined so far. The mainstream discourse of secular religions itself admits that the analogies fall short of defining secular ideologies as truly religious, yet it maintains that they are religious enough to be called religions in some attenuated sense. This is true even of those accounts that speak of 'new religions' or simply 'religions' without an adjective. To return to some former examples: Nikolai Berdyaev, Erik Ritter von Kuehnelt-Leddihn, Carlton Hayes or Tara Isabella Burton have all vacillated between the terminology of 'religion' (even 'real religion') and 'religious substitute', 'ersatzreligion', or 'secular religion'. The most illuminating examples are those which mix mutually exclusive terms as a sign of profound uncertainty about the possibility of any clear classification. One such example is Anton Hilckman's classic study on national socialism which speaks simultaneously of an 'irreligion', an 'irreligious religion', a 'political religion', a 'religion' and a 'replacement or surrogate for religion'.⁵⁸ Obviously, an irreligion is not a religion at all, while an irreligious religion is something that is irreligious and religious at the same time; a political religion is a religion with a political purpose, while a religion without an adjective seems to refer to something more genuine, but in this case it is hard to see how it can be a replacement or surrogate for the same thing. The fact that Hilckman – and

⁵⁸ Hilckman, 'Il nazional-socialismo', 85.

practically everyone else in the secular-religious tradition – also admits words like ‘absolute’, ‘ultimate’, ‘deification’ and ‘sacralisation’ in the description only shows that it is indeed impossible to give any criteria for the separation of so-called secular and so-called religious phenomena. At the very moment when the nation, the race, the people, the human self, the market, money, nature or history become absolute points of reference, expressing an ultimate concern, even to the point of being deified or sacralised, they no longer remain secular in any meaningful sense of the word.

The fact that this obvious fallacy has nevertheless produced and continues to produce an abundance of literature is not difficult to explain, however. With some remarkable exceptions, the large majority of authors have always worked in the Christian tradition, and – explicitly or implicitly – compared modern ideas, practices and institutions to Christian ones. Even when speaking of ‘religion’ in general they seem to take it for granted that religions are more or less the non-Western counterparts of what we call the ‘Christian religion’ since the sixteenth century. It is certainly true that the worship of a constitution, the democratic myth of popular sovereignty, the ideologies of totalitarianism and nationalism, the psychological cult of the self, economic dogmatism, ecological fundamentalism, post- and transhumanism, multiculturalism or the rituals of wokeness, sports and entertainment are all very different from what we call worship, cult, dogma and ritual in the case of Christianity. Viewed from this angle, it is certainly not unjustified to speak of the former as being analogous to, but also distinct from the Christian paradigm. What is more problematic is to assert that for the same reason they are also analogous to, but still distinct, from something called ‘religion’.

How deeply the modern definitions of religion are rooted in the Western tradition has been explored by many authors since Wilfred Cantwell Smith’s groundbreaking *The Meaning and End of Religion* (1962).⁵⁹ Although the most radical conclusion of such works, namely that the word ‘religion’ itself is an empty signifier, something that is completely impossible to apply to non-Christian cultures is hotly debated nowadays, the continuing failure of religious scholarship to come up with any widely accepted definition points to the fact that there is in fact something deeply problematic with the entire separation of the secular and religious. More precisely, it is not only definitions that are debated, but the methods themselves by which a proper definition might be attainable. All handbooks of religious studies start with the question whether religion can (or should) be defined at all, before turning to the different *types* of definition: substantive and functional, monothetic and polythetic (not to mention the subtypes of the former), usually arriving at a sort of ‘cluster

⁵⁹ Wilfred Cantwell Smith, *The Meaning and End of Religion* (New York: Macmillan, 1962). For more recent examples see Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: The Johns Hopkins University Press, 1993); Timothy Fitzgerald, *The Ideology of Religious Studies* (Oxford: Oxford University Press, 2000); Tomoko Matsuzawa, *The Invention of World Religions, or How European Universalism Was Preserved in the Language of Universalism* (Chicago: The University of Chicago Press, 2005); William T Cavanaugh, *The Myth of Religious Violence* (Oxford: Oxford University Press, 2009); Brent Nogbri, *Before Religion: A History of a Modern Concept* (New Haven: Yale University Press, 2013).

definition' at best. Which means that the most one can do is to define a set of properties, of which 'some' (although no one knows exactly how many) are present in one religion, why others are present in another, without all of them necessarily being present in all religions (or, more precisely, in everything we 'commonly' call as such). Which means that there may be religions which do not share a single common feature – a remarkable statement in itself – moreover, it gives no guidance as to how many instances are sufficient to speak of something as 'commonly called a religion'.⁶⁰

From a theoretical aspect, all of this means that the failure of 'secular religionists' to offer a set of criteria that would clearly separate secular (lay, political, quasi, pseudo, surrogate, ersatz, inner-worldly or immanent) religions (or spiritualities, faiths, myths, mysticisms) from real ones is not an accidental mistake but something deeply rooted in the definitional problems of religion. Secular religions are impossible to define not because they are different from each other and different from traditional religions, but because the latter are also different from each other and in turn different from the former. From a more practical point of view, it means that the current culture wars, ideological struggles and anthropological disputes (characteristic mainly of the West but also expanding globally) are not between something 'secular' and something 'religious'. They are also not between competing 'religions', for to call something a religion would suggest that we already know what a religion is. Moreover, if we extend the meaning of religion to cover so many instances, we come to the point where the claim 'everything is a religion' becomes dangerously similar to the claim that 'nothing is'.⁶¹ The most we can do is to realise that all these are different worldviews, systems of values and principles, none of which is more secular or religious, rational or irrational, more or less progressive than the others. The only conclusion to be avoided is that the sphere of human activities can ever be free of such views, values and principles, and a fully neutral stance can be achieved either in individual life or – if the human being is indeed a social and political animal (*animal sociale et politicum*) – in the social and political realm.

⁶⁰ For a typical example see Michael Stausberg and Mark Q Gardiner, 'Definition', in *The Oxford Handbook of the Study of Religion*, ed. by Michael Stausberg and Steven Engler (Oxford: Oxford University Press, 2016).

⁶¹ For the sake of logical completeness, one might also add the possibility that the struggle is between strictly secular worldviews, but I know of no serious attempts (including those of radical atheists) which would suppose that e.g. Christianity is *only* a secular worldview without any religious traits.

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NATURAL LAW, HUMAN DIGNITY AND TRADITION

OF BÖCKENFÖRDE’S CATHOLIC POLITICAL THEOLOGY, FROM A CONSERVATIVE VIEWPOINT

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This paper aims to show the connection between ideas on natural law, human dignity and tradition in the legal-political thought of Ernst-Wolfgang Böckenförde, an influential earlier judge of Germany’s Federal Constitutional Court. It starts out from the Catholic background of the legal theorist, and his close connection to Carl Schmitt, probably the most charismatic legal thinker of the age, who, however, burnt himself by his support of the Nazi regime. Böckenförde was politically closest to the Social Democrats, yet political theology remained crucial for his legal thought. His interpretation of the German Grundgesetz was founded on a very strong, universalist interpretation of the concept of human dignity, which he took as the most important, founding value in the value catalogue of the Basic Law. Although not a conservative, Böckenförde also claimed that in a specific legal sense, tradition also plays a major role in legal interpretation. He took over from the writings of his brother, the theologian Werner, the idea that tradition and reception can serve as checks on the way natural law is interpreted. All in all, as Böckenförde points out, the three concepts (natural law, human dignity and tradition) provide a strong foundation for legal and constitutional interpretation.

KEYWORDS:

Böckenförde, political theology, human dignity, tradition

1. INTRODUCTION

Human dignity plays a crucial role in the rise of the discourse of human rights. It already appears in the first sentence of the Preamble of the *Universal Declaration of Human Rights*, as something that is foundational for freedom, justice and peace. It also appears in the first two clauses of Article 1 of the *Basic Law of the Federal Republic of Germany*: ‘Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.’

If you want to understand the career of the term in the context of the dynamic interactions of the post-war discourses of politics and constitutional and international law, one of the most reliable sources that you can turn to is Ernst-Wolfgang Böckenförde (1930–2019), the legal scholar and influential judge of the Constitutional Court of the Federal Republic, from 1983 to 1996. His respect can be illustrated by the following quotes: ‘One of Europe’s foremost legal scholars and political thinkers’, ‘who has influenced the German debates on legal theory for more than half a century’.¹ This paper offers a narrative of his views of human dignity, in the context of political theology, natural law and tradition.

Böckenförde had an excellent educational background, as is the case with many of the Catholic legal academics in Germany. He defended his doctoral thesis as a legal theorist in Münster in 1956, and had a PhD in history from the University of Munich. His habilitation thesis was again in law, defended in 1964, which led him to a professorship in Public and Constitutional Law, in legal theory and legal history in Heidelberg, and later in Bielefeld and finally in Freiburg. Yet beside his research into legal thought he also took an active part in the political life of Germany. As a member of the SDP, he participated in the legislative work of the Federal Assembly as well, being a member of the Special Parliamentary Commission of Inquiry on Constitutional Reform, from 1971 to 1976.

His legal career was a powerful combination of active involvement and theoretical reflection. His position as judge of the Constitutional Court allowed him to get involved in solving some of the most intricate political and social issues of the day, contributing to their legal resolution. On the other hand, this job also allowed him to reflect on the major issues of public debate in his country and in a European context, exercising an intellectual impact on the direction of these debates.

His intellectual palette had a further important colour: a self-identification as a practising Catholic. Although he heavily criticised the practice and thought of the Church itself, he remained a loyal member of it until his death. He had his opponents within the Church however, for what was regarded as critical attacks against some of its official lines; as a Catholic he also had his opponents from the outside, including non-believers who claimed that his religious convictions made him biased in his decisions or his theoretical views.

¹ Mirjam Künkler and Tine Stein, ‘State, Law, and Constitution. Ernst-Wolfgang Böckenförde’s Political and Legal Thought in Context’, in *Constitutional and Political Theory. Selected Writings by Ernst-Wolfgang Böckenförde*, ed. by Mirjam Künkler and Tine Stein (Oxford: Oxford University Press, 2017), 1–35, 1; Judith Hahn, ‘Ernst-Wolfgang Böckenförde’s Approach to Natural Law as Normative Legal Ethics’, *Oxford Journal of Law and Religion* 7, no 1 (2018), 28–50, 28.

Yet he took his own starting point seriously that Catholics have to accept the fact that they are the citizens of a secular state. This was not difficult for Böckenförde. He thought that the logical connection holds: their religious freedom is indeed dependent on the precondition that everyone else can enjoy religious freedom. In other words, the state is (positively) neutral towards the churches. As he himself phrased the dilemma: ‘Especially as a jurist I could not understand how someone can claim more for himself than he is willing to concede to others.’² Secular freedom is best preserved in a secular state, and vice versa: a secular state has a duty to defend religious freedom, including the religious practice of believers. For these reasons, he fully endorsed the secular concept of the state, which was also declared by the Second Vatican Council, a move within the teaching of the Church which was not only welcomed by Böckenförde, but which he also tried to promote.

Yet there is another side to his view of the secular state as the surest guarantee of religious freedom for Christians. The development of the shift from a Christian to a neutral state was prepared theoretically in the work of Thomas Hobbes, whom he identifies as one of the key thinkers of the new concept of the state.³ Yet as the title of Hobbes’s *opus magnum* shows, the language which enabled him to conceptualise this neutral state, is still the language of religion, the language of Christianity. When Hobbes compares the superpower of the state to that of the *Leviathan*, he takes this example of a monster from the Bible. This way he proves that the language of the Bible formed our frame of references in political thought. Böckenförde has a specific interest in these parallels and overlaps, and due to his cultural background, he is able to show the great debts our political vocabulary owes to that of Christianity.

2. BÖCKENFÖRDE ON POLITICAL THEOLOGY

Political theology can be identified as the overlap of theology and political thought. In particular, political theology reveals the impact of theological concepts and doctrines on political discussion or action, mainly, but not exclusively, in the Western world. If you think of ideas like freedom of thought, sovereignty, charisma or a number of other terms, you will soon realise that the European political reality is largely framed by concepts taken over from theology. But the significance of religious ideas in politics is not only demonstrable on the level of political reflection: there is no doubt that religious ideas can

² ‘Biographical Interview with Ernst-Wolfgang Böckenförde’, in *Religion, Law, and Democracy: Selected Writings*, ed. by Mirjam Künkler and Tine Stein (Oxford: Oxford University Press, 2020), 369–93, 381.

³ Beside Hobbes, Jean Bodin is an important milestone in the intellectual development, preparing the ground for the birth of the modern state. See Lars Vinx, ‘The Political Theology of the Secular State in Hobbes and Böckenförde’, *Oxford Journal of Law and Religion* 7, no 1 (2018) 51–73. Vinx mentions ‘the French “*politiques*”, Jean Bodin, and most importantly Thomas Hobbes’, as the key players in Böckenförde’s reconstruction of the process leading to the construction of the secular state. See Ernst-Wolfgang Böckenförde, ‘Die Entstehung des Staates als Vorgang der S’kularisation’, trans. ‘The Rise of the State as a Process of Secularisation’, in Künkler and Stein, *Religion, Law, and Democracy*.

motivate explicit political actions, including waging (civil) wars, or self-sacrifice for the good of the community.

The modern discourse of political theology is closely associated with the oeuvre of Carl Schmitt, one of the most controversial figures of 20th century legal and constitutional theory. A highly influential scholar and combatant commentator already in the interwar period, Schmitt committed the mistake of his life when he joined the Nazi party, and became one of its ideological spokespersons. Although he lost his academic position and his career was broken after the end of WW2, he managed to remain very influential among the new generation of legal theorists in the Western part of the divided Germany. Böckenförde met Schmitt in the 1950s and established an especially good relationship with him; the two of them discussing and debating the major jurisprudential issues of the post-Totalitarian moment.⁴ One needs to point out two things about this nexus. First, that Böckenförde joined the Social Democrats, so his political views were indeed far away from those of Schmitt. And second, Böckenförde was obviously impressed by the wideness and depth of Schmitt's knowledge of the rich tradition of German *Staatslehre*, which showed his appreciation for the originality of the elderly scholar. As both of them realised that their political views diverged very characteristically, there was no ground for an Oedipus complex, which made it easier for Böckenförde to remain loyal to Schmitt, never denying the impact he made on him, while never endorsing any of the politically unaccepted views of Schmitt.

People often attacked Böckenförde, provoking him to break his relationship with Schmitt. But he never felt like that, as he thought that he can securely distinguish between what is acceptable and what is not acceptable of his teaching and private opinions within the context of a properly working constitutional democracy. In fact, he remained in contact with the elderly scholar until the very end of his life, learning whatever could be learnt from him. He had to keep a very delicate balance in this academic and personal relationship, which was certainly not a master–disciple relationship, but which had many signs that indicated friendship. Yet Böckenförde did not leave any doubts that his views on the issues of democracy and totalitarianism were quite different, in fact the direct opposites to those of Schmitt.

One should also mention another milieu of Böckenförde's intellectual development, to be able to assess his position in the intellectual field of the post-war Federal Germany, and in the context of the rising discourse of political theology. Importantly, Böckenförde was also a member of what came to be called the Münster School or Ritter School: the scholarly circle around Joachim Ritter. While he was still working on his doctoral thesis in law in Münster, he participated in the circle of the Collegium Philosophicum, an initiative of Joachim Ritter, 'one of the most influential German philosophers of the post-war period', famous for his edition of the *Historisches Wörterbuch der Philosophie*, to which

⁴ For a detailed account of their relationship, see Mirjam Künkler and Tine Stein, 'Carl Schmitt in Ernst-Wolfgang Böckenförde's work: Carrying Weimar constitutional theory into the Bonn Republic', *Constellations* 25, no 2 (2018), 225–241.

Böckenförde also contributed.⁵ Beyond its founder, the disciple of Heidegger and Cassirer, the important thing about the Collegium was that it served as one of the powerhouses which had a major influence on the constitutional arrangement of the new Republic. The list of the most famous members of the school contained – beyond Böckenförde – such names as Max Imdahl, Hermann Lübke, Odo Marquard and Robert Spaemann. One can identify a Catholic cultural-theological, as well as a liberal-conservative political orientation within the group. Although Böckenförde's party affiliation linked him to the SDP, many of his views were based on the Catholic tradition, a common source of thought with both other members of the group and with Schmitt as well. Another disciple of Schmitt was Ernst Forsthoff, who as a young man also came close to the Nazi party, but later distanced himself from its ideology and practice. Forsthoff also played a major role in the post-war reawakening of German legal thought, having organised a legendary summer seminar, in Ebrach, in Bavaria. Students and professors participated in it on a regular basis, Schmitt and Böckenförde included. The influence of Schmitt on Böckenförde, therefore, should be seen in the context of the Ritter circle and Forsthoff's summer seminar, a rather important early formation through both intellectual and personal exchange. Members of these circles reflected together on what went wrong and when, and how the new order should be invested in with commonly shared values, explicitly relying on the Catholic tradition.

The main point to be established is this: Böckenförde had an intellectual profile, in which the relevance of interpreting theological ideas in order to make sense of political phenomena always remained crucial. This is even more interesting as in many ways he was a progressive public intellectual, whose liberal credentials were never questioned. His interest in Catholic tradition was also connected with his educational background, characterised by doctoral degrees both in legal theory and in history. As a result of his research, and directly influenced by some of his personal contacts, he soon realised that the workings of a secular democracy require that moral traditions which helped its birth, keep informing it, intellectually and even spiritually. Böckenförde's self-perception was that of a Catholic intellectual, who took part in public debates, and in general, in democratic procedures. He was actively involved in exporting elements of Catholic teaching into contemporary discourse. Beyond that: both as a legal scholar and as a historian of ideas, he was convinced that we cannot fully understand certain complex notions that we use, without being aware both of their theological origins, and also of their meaning in a religious context.

⁵ For this phrase see Künkler and Stein, 'State, Law, and Constitution', 7, n 16. For a detailed account of the relationship of Böckenförde to the Collegium, see Aline-Florence Manent, *The Intellectual Origins of the German Model: Rethinking Democracy in the Bonn Republic*, PhD Dissertation, Dept. of History, Harvard University, 2016, particularly ch. 5.

3. BÖCKENFÖRDE ON NATURAL LAW

Böckenförde was a headstrong and obstinate thinker. He was loyal to the Catholic tradition that he was brought up in, yet he was not uncritical with this very tradition.⁶ He famously gave a tantalising critique of the reproachful role Catholics played in the rise of Hitler's power. He was keen to support the efforts of Vatican II to bring the Church closer to the secular world from which it had excluded itself, and prepared a rather detailed account of the role they could and should play in a well-functioning secular state.

As a Catholic legal scholar and also as a legal practitioner, he had a keen interest in the notion of natural law. He defended the notion of it, yet once again he criticised the dominant view of it, among Catholics, what he regarded as a rigidly scholastic approach to and understanding of it.⁷ His essay *Reflections on a Theology of Modern Secular Law*, gave an account of his nuanced views on this rather vexing problem.

In this essay, Böckenförde quite naturally joins those who took Gustav Radbruch's suggestion of how to deal with the law of totalitarian regimes, like Nazi Germany, seriously. Radbruch's point was that we have to suppose universal standards which allow us to recognise and resist a grossly unjust law. This thesis was expressed in his article, *Statutory Lawlessness and Supra-Statutory Law*, after the end of the war.⁸ Böckenförde claims that natural law can help to correct positive law, when our sense of justice contradicts its ethical content.⁹ Yet he attributes two further functions to it as well: it supports the legitimacy of positive law, and it can also help as a 'compass for reform and improvement of positive law', serving as a kind of benchmark for the legitimacy of new legal norms.¹⁰ According to Judith Hahn, these are the three basic functions of natural law in Böckenförde's legal thought: the legitimising, directive and corrective function.¹¹

His own specific contribution to the discourse around natural law in post-war Germany comes when he criticises the notion of abstract natural law principles. Abstract notions cannot really help us in practical dilemmas. You have to be able to apply natural law in particular contexts, and to do so is also the role and function of a political theology, according to him, which should be presented by publicly engaged Catholics. As we shall see, his own contributions to certain debates in legal theory should be taken as an exemplar of how he conceptualised the role of the Catholic public intellectual in a particular political and constitutional culture.

⁶ His ambiguous relationship to his own religious tradition might bring up the theoretical issue if and how a tradition can be criticised from within that very tradition.

⁷ In my account of Böckenförde's views of natural law, I will heavily rely on Hahn, 'Böckenförde's Approach'.

⁸ Published in English in the *Oxford Journal of Legal Studies* 26, no 1 (2006), 1–11. Original German version: 'Gesetzliches Unrecht und übergesetzliches Recht', *Süddeutsche Juristen-Zeitung* 5, (1946), 105–108.

⁹ Hahn, 'Böckenförde's Approach', 32.

¹⁰ The quote is from Ernst-Wolfgang Böckenförde, *Vom Ethos der Juristen*. 2nd ed. (Berlin: Duncker and Humblot, 2011), 49. Quoted and translated by Hahn, 'Böckenförde's Approach', 31.

¹¹ Hahn, 'Böckenförde's Approach', 32.

4. BÖCKENFÖRDE ON HUMAN DIGNITY

One of his most influential contributions to public debate concerned the interpretation of Article 1 of Section 1 of the German Constitution. Böckenförde published an article in the *Frankfurter Allgemeine Zeitung* in 2003 in which he criticised the new direction the interpretation of this clause took in the commentary of the German Constitution by Matthias Herdegen.¹² Böckenförde's point was made obvious in the title of his intervention: 'Human dignity was inviolable.'¹³ As he argued, the earlier interpretation of the clause by Günter Dürig turned human dignity onto a pillar of natural law for the whole constitution: 'Dürig's commentary understood [...] the guarantee of human dignity as taking into positive constitutional law a fundamental "moral value" that had emerged in the European history of ideas, and which itself relates to a pre-positive foundation as a kind of natural law anchor.'¹⁴ Dürig was one of the founding fathers of the *Grundgesetz*. He was a Catholic, and characterised as a Catholic personalist.¹⁵ His emphasis on human dignity was interpreted as a move away from strict Natural Law. According to Dürig's interpretation, this personalist account of human dignity was 'purporting to leave behind the choice between the individual and the collective'.¹⁶ According to Böckenförde, however, it was rather meant to secure a natural law framework for the *Grundgesetz*, in spite of its obviously secular nature. As I shall try to show, the same is true about Böckenförde's own account of the central concept of human dignity, as the foundation of an ethical standard which can serve as a measure of positive law, including the Basic Law. His interest in dignity did not only aim at the questions raised by bioethics, technological innovations and medical inventions. Neither was his interest a dogmatically 'Catholic' one, in the sense of joining the culture war between secularists and believers. As I mentioned earlier, for Böckenförde, to become a constitutional judge meant that one should keep a distance from his own religious convictions, and judge the cases purely in accordance with the *Grundgesetz*. As I shall try to show, he, too, like Dürig, took human dignity as the foundation of the whole *Grundgesetz*.

In order to prove this, I first look at the reason why Böckenförde thought that Herdegen's new interpretation served to undermine this anchor of the Basic Law. Böckenförde said of Herdegen that his new interpretation was 'not an amendment to and updating of Dürig's commentary to reflect new problems and challenges, but an entirely new

¹² The new interpretation is to be found in Matthias Herdegen, 'Kommentierung von Art. 1. Abs. 1 GG', in Theodor Maunz and Günter Dürig, *Kommentar zum Grundgesetz*, ed. by Matthias Herdegen et al., loose-leaf collection no 42 (München: CH Beck, 2003).

¹³ Ernst-Wolfgang Böckenförde, 'Die Würde des Menschen war unantastbar', *Frankfurter Allgemeine Zeitung* 33/35, 03 September 2003.

¹⁴ From Böckenförde, *Vom Ethos*, trans. by Hahn, 'Böckenförde's Approach', 33.

¹⁵ Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015), 98.

¹⁶ *Ibid.*

commentary – a farewell to Günter Dürig.¹⁷ According to the new interpretation, the clause on human dignity ‘the Basic Law [...] “declaratorily” adopts into positive law an entitlement that supersedes the state and the constitution’,¹⁸ According to Böckenförde, by becoming part of positive law, the concept of human dignity becomes a legal concept, with its own circumscribed territory of interpretation. This way it becomes too flexible, opening the door for juridical deliberation, which will necessarily lead to a relativisation of its value. As Herdegen puts it: ‘In spite of the categorical claim to dignity by all people, the nature and scope of the protection of dignity are certainly open to differentiations that do justice to concrete circumstances.’¹⁹ Böckenförde’s disappointment is explicit and pronounced: ‘A protection of dignity seen in this light leads by its relativization invariably also to the relativization of the absoluteness and inviolability of human dignity itself.’²⁰

It is from this criticism of Herdegen’s effort at reinterpretation that we can trace back Böckenförde’s original intention. As he saw it, the concept of human dignity was not simply a key legal concept of the Basic Law. Rather, it remained an external anchor of the whole interpretation of the Basic Law. Why was it so important to have that external anchor? Certainly, because of the sinful activity or lack of it of the German state and its leaders, indeed the majority of the German elite, including its legal scholars, leading Germany to WW2 and the Holocaust. In Böckenförde’s reconstruction, both the constitutional founders (the members of the Parliamentary Council) and Dürig, as the first interpreter of the starting clause on human dignity, looked for a legal guarantee against the misuse of the constitution, after such an historically disastrous ‘abuse of power and the staggering contempt for human dignity’.²¹ In another piece by him, the legal scholar recalled the formulation of Theodor Heuss, who called human dignity, with an often repeated phrase, a ‘non-interpreted thesis’.²²

According to his interpretation of Dürig, by the first clause on human dignity, a term was co-opted from European intellectual history to positive constitutional law, but not incorporated, to ensure a pre-positive foundation of the latter. Böckenförde’s account of the intellectual genealogy of the concept emphasised two sources: Christian tradition and Immanuel Kant. From the Christian tradition, he referred both to the Bible: ‘So God created man in his own image, in the image of God he created him’, and to Boethius, who

¹⁷ Ernst-Wolfgang Böckenförde, ‘Will Human Dignity Remain Inviolable?’ (2004), published as chapter xv of Böckenförde, Künkler and Stein, *Religion, Law, and Democracy*, 354.

¹⁸ Herdegen in Maunz and Dürig, *Grundgesetz*, Kommentar, Article 1 Section 1, margin note 17.

¹⁹ *Ibid*, margin note 50.

²⁰ Böckenförde, ‘Will Human Dignity’, 357.

²¹ *Ibid*. 354–355.

²² *Der Parlamentarische Rat, 1948–1949. Akten und Protokolle*, vols. 5.1 and 5.2, ed. by Eberhard Pikart and Wolfram Werner (Boppard am Rhein: Harald Boldt Verlag, 1993), vol. 5.1, 72. Quoted in Ernst-Wolfgang Böckenförde, ‘Human Dignity as a Normative Principle’, in Böckenförde, Künkler and Stein, *Religion, Law, and Democracy*, 339–353, 344.

wrote: ‘Persona est natural rationalis individual substantia.’²³ In Kant’s concept of human dignity, the key term for him was that the human being is ‘an end in itself’, which led him to the Constitutional Court’s formulation, that human dignity refers to the ‘existence for its own sake’.²⁴ Both of these sources were external to the constitution, but their application to the concept of human dignity provided a very stable standard, which helped to ensure that an enclosure of its interpretation could never happen. In Böckenförde’s view, the role and function of the term human dignity was to rely on the external standard for the evaluation of the whole edifice of the constitution. He quoted from another founding father: ‘It is, as it were, the general condition for the entire catalogue of fundamental rights. In its systematic importance it is the actual key to the whole.’²⁵

The conclusion of Böckenförde’s defence of the original interpretation of human dignity was that its main function was that of an external, ethical guarantee against backsliding into an ethical relativisation of constitutional values. To see the relevance of the emphasised externality of the ethical standard for the stability of the interpretation of the constitution, we should see Böckenförde’s understanding of human dignity within the context of his views of natural law.

5. ONCE AGAIN ON BÖCKENFÖRDE AND NATURAL LAW

As we saw, Böckenförde claimed that the clause on human dignity is centrally significant as a guarantee of the interpretation of the whole Basic Law. It serves as the foundation of the foundation (‘Fundament des Fundaments’).²⁶ This securing of a foundation for the law, especially of the Basic Law, cannot be achieved from the inside. It is therefore absolutely crucial that the human dignity clause should not be understood as a legal concept, part of positive law. Human dignity should remain a part of what he regards as natural law: ‘Dürig’s interpretation of the norm, as Böckenförde interprets it, served to root the German Constitution itself deeply in natural law.’²⁷

In Böckenförde’s view, no democratic state can survive without substantial support from the ethical realm. This is the point of the famous Böckenförde Dictum, which has played a major role in debates on constitutionalism ever since in the German speaking world. Even a liberal state cannot survive, so the dictum runs, if members of the society

²³ *The Old Testament*, Gen. 1:27; Boethius, *Contra Eutychem et Nestorum*, in Boethius, *The Theological Tractates*, trans. by H F Stewart, E K Rand and S J Tester (Cambridge, MA: Harvard University Press, 1973), 5, quoted in Böckenförde, ‘Human Dignity as’, n 8.

²⁴ *Ibid.* 364.

²⁵ Carlo Schmid, *Der Parlamentarische Rat*, vol. 5.1, 82. Quoted in Ernst-Wolfgang Böckenförde, ‘Human Dignity and the Right to Life at the Beginning and End of Life. Outline of the Problems’. Online: www.conspiration.de/texte/english/2008/boeckenfoerde-e.html, as the translation of the original German, published in *Stimmen der Zeit* 4 (2008), 245–258, 257.

²⁶ Böckenförde, ‘Die Würde des Menschen’, 33.

²⁷ Hahn, ‘Böckenförde’s Approach’, 33.

which it takes care of, do not share a common moral foundation. ‘The liberal, secularized state draws its life from preconditions it cannot itself guarantee [...]. As a liberal state it can only survive if the freedom it grants to its citizens is regulated from within, out of the moral substance of the individual and the homogeneity of society.’²⁸ In other words, members and groups of a society need to contribute to the smooth operations of the state – there is a need for an explicitly ‘civil’ value production, both by religious and non-religious moral agents. The norm of society’s value production leads directly to the notion of natural law. To honour natural law is a prerequisite of the smooth operation of a liberal constitutional state. And natural law is based on Christian thought and Christian belief. This is extremely interesting: that not only the state, but the majority of a society as well, is secular, non-believer or even non-Christian. In spite of this fact, however, constant value production is required even in a non-religious, secular society. European culture, even in its secular phase, is underpinned by a Christian conceptual framework. This is a historical coincidence: the Christian origins of Western culture.²⁹

Although natural law, as an external ethical standard, remained crucial for the sustainability of a liberal system according to Böckenförde, he did not accept that sort of legitimation of it which was provided by neo-scholastic, Catholic natural law. Those who wanted to conquer natural law by transferring it into the text of positive law committed a mistake, the same way, Böckenförde thought, it was a misconception to think that the external ethical standards could themselves be identified as transformable into legal concepts. Both of these approaches to natural law misinterpreted the notion, mixing it up with actual, legislated and valid law, excluding the way that it could serve as an external standard, operating as the foundation upon which the law can be built.

But if we call natural law the result of the value production of society, or either Christian Secular, and usually both, it means that we give up its universal claim, and its ahistorical validity. As Hahn puts it: ‘Natural law is a similarly fragile resource [...] /it/ is based on the moral beliefs and ethical convictions that the members of society share [...] and is therefore as changeable as society’s value foundation.’³⁰ This view, that natural law itself depends on the particular state of a given society’s ethical views and convictions, can lead to its dependence on culture and history.

Yet a historical or cultural dependence can mean different things in connection with natural law. Already at the time of conceiving the Basic Law, the major view even among Catholic lawyers was that ‘Natural law is a cultural construct’. Böckenförde himself looked at it as a historically unfolding structure of norms.³¹ ‘History shows that the doctrines of natural law with regard to its content are not permanent and supertemporal, but bound to

²⁸ Quoted from: Böckenförde, Künkler and Stein, *Religion, Law, and Democracy*, vol. 2, ch. 1.

²⁹ It is worth recalling, how the planned text of the European constitution wanted to dismiss these very same Christian origins.

³⁰ Hahn, ‘Böckenförde’s Approach’, 37.

³¹ For this claim see David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998), 188.

the moral understanding of their time and determined by it.³² In short, the kind of natural law that he defended was ‘natural law in history’.³³ This was a layered statement, however. One of its layers was that natural law was born in time, simply meaning that it manifested itself historically. A second layer of its meaning, connected to the first one, was that its content kept changing with the flow of time.

Now if the substantive norms of natural law keep changing, one needs to know how to identify the actual normative contents of it. As the application of natural law requires interpretation, it was predictable that different interpreters would arrive to different interpretations of it. Here, Böckenförde’s notion of ‘natural law in history’ accepts the Kelsenian criticism, according to which there will be multiple conceptions of the content of natural law. These different conceptions may even contradict each other. Böckenförde here compares the task of giving content to natural law to the concrete interpretation of the notion of human rights. That is again based on a universal idea, but its actual content is culturally determined. The Western understanding of human rights is a particular way of making this universal norm real, in other contexts other results would come out of a procedure of application. In the same way, the same natural law can result in different interpretations, due to the historical context, its interpretation is born.

Böckenförde makes two further points about the historicity of the natural law doctrine. One is that humanity gets through a learning process historically while it tries to apply the idea, this way reaching an ever richer and more complex understanding of it. To comprehend this point, we can compare it to the development of precedent law, of all sorts of customary law, but in particular common law. There too, judicial decisions are built upon each other, this way making the content of the law ever more explicit and dogmatically more and more complex, without relying on the notion of invention or legislation.³⁴ The second point is that humankind is helped to uncover the content of natural law by divine revelation, by God’s disclosure of the depth of natural law.³⁵ In Böckenförde’s own words: ‘It was only by His revelation that God removed the cataract, so to speak, from human thought and cognition, making it possible for truths that had previously been hidden or covered up to be fully recognized and grasped as “natural” truths. There is much to suggest that the recognition of human dignity and its inviolability represents such a case.’³⁶ This is certainly a sensitive point, as living in a secular age, in a secularised continent, in a secular state, it is really difficult to argue in defence of this point of direct divine intervention. Yet this difficulty does not hinder the reception of his general theory. He does not forget, that even

³² Ernst-Wolfgang Böckenförde, ‘Die Historische Rechtsschule und das Problem der Geschichtlichkeit des Rechts’, in *Staat, Gesellschaft, Freiheit. Studien zur Staatstheorie und zum Verfassungsrecht*, ed. by Ernst-Wolfgang Böckenförde (Frankfurt/Main: Suhrkamp, 1976), 9–41, 9, 28.

³³ *Ibid.* 29.

³⁴ For another effort to make sense of natural law as a historical process of uncovering its content, see Ferenc Hörcher, *Prudentia Iuris. Towards a Pragmatic Theory of Natural Law* (Budapest: Akadémiai Kiadó, 2000).

³⁵ Hahn, ‘Böckenförde’s Approach’, 43.

³⁶ Ernst-Wolfgang Böckenförde, ‘Reflections on a Theology of Modern “Secular Law”’, in Böckenförde, Künkler and Stein, *Religion, Law, and Democracy*, vol. 2, ch. 4, 40.

in Catholic theology, the *differentia specifica* of natural law is that it can be recognised by non-believers as well. We can quote with Judith Hahn the theologian Joseph Fuchs, who succinctly points out: ‘natural law exists without the Bible.’³⁷

As for Kelsen’s criticism of the contradictory interpretations of the content of natural law, Böckenförde, as we saw, admitted that there is a plurality of interpretation, but his main point about it is that there is a gradual development in the recognition of its content. His example is the Church’s approach to religious freedom: there is an obvious opposition between the earlier view of the Church, that religious freedom would mean a turning away from truth, for which reason it is not wanted, and the present position of the Church, that religious freedom (of everyone) is a prerequisite of religious belief itself. What happens is not a denial of the basis of the earlier position (i.e. the obligation of the believer to search for the truth), rather a change of perspective, leading from a strict denial of the chance to fail, to the realisation that faith is only possible in an environment of freedom of conscience and religious freedom, while the moral duty to search for the truth still prevails.

Yet even if the argument of a gradual development to recognise natural law is accepted, how should society proceed if there are competing contemporary interpretations of its content? There is a question of legitimacy to be raised here. Who defines what natural law is, if it is not regarded as an integral part of the Church’s doctrine?³⁸ Here, Böckenförde seems to be rather creative, yet it is easy to see that his explanation comes, indeed, from the Church’s teaching.

6. BÖCKENFÖRDE ON TRADITION

Judith Hahn convincingly showed that Ernst-Wolfgang Böckenförde cooperated with his brother, the theologian Werner Böckenförde, in searching to answers for vexing questions like the one above. He knew he had to find a proper answer to the question of how to decide which is the right understanding of natural law in a situation of competing alternatives. The two brothers could tackle together the most delicate issues of Catholic teaching and its relevance for contemporary society. While Ernst-Wolfgang himself was cultivated – beside his legal, historical and philosophical education – in the Catholic social teaching and moral theology as well, his brother, Werner was a proper theologian. The two of them nicely complemented each other.

In connection with the problem of the last subchapter, i.e. how to choose the authority to define natural law, certainly, the Church is more than the authoritative voice of the magisterium. Papal encyclicals, of course, have what Böckenförde calls the ‘presumption of rightness’. Yet, as with legal norms, their validity finally depends on their reception. The judgement of the magisterium has to be reconfirmed by what is called the sense of faith,

³⁷ Josef Fuchs, ‘The Natural Law in the Testimony of the Church’, in *Natural Law and Theology*, ed. by Charles E Curran and Richard A McCormick (New York: Paulist Press, 1991), 5, 10.

³⁸ Bernd Rüthers, *Rechtstheorie*. 2nd ed. (München: CH Beck, 2005), 443.

sensus fidelium, the belief of the faithful, of the members of the community of believers. In other words, to call a norm authoritative, we need both the support of the magisterium, and the acceptance of that decision by the whole religious community. Describing these two sides of the check over the doctrines of the church, and in particular over what should be regarded as the content of natural law, Böckenförde identifies the two sides with two, opposite but complementary theological concepts: with that of tradition and reception.³⁹ It is important to emphasise that these concepts are meant in their theological sense here. The concepts are familiar from another writing by Werner Böckenförde, where he offers them as his alternative, replacing the accepted ones of command and obedience, which he finds hierarchical, and not reflecting truthfully the Catholic teaching of the relationship and responsibility of the religious leadership and the community of the faithful. In connection with the idea of how that teaching of the Church is transmitted, Werner Böckenförde points at a ‘process consisting of tradition and reception’.⁴⁰

These terms were known in Roman law already, but with a much simpler, legal meaning. *Traditio* meant a change of ownership by means of a mere delivery. *Receptio*, on the other hand, meant to receive, with another abstract noun, acceptance. The reason behind the shift in the meaning of them is that here it is not an object that is delivered and received, but an abstract entity, a doctrine or teaching. Also, by connecting the two, as identifying two sides of the same thing, there is a further shift in the meaning: both those who give it over and those who take from others have their own responsibility. The same way in the church: those who lead, and those who follow have their special, but complementary mission or calling, in relation to the future of belief.

For a conservative, however, there is a further crucial aspect. Tradition is a keyword of the conservative agenda as well. As such, it is the product of the debate about modernisation and the ideology of progress in the late 18th century. The movement later identified as the Enlightenment looked at the past as something that needed to be surpassed, but Burkean conservatives and early Romantics repositioned the idea of the past, as a golden age, the inheritance of which needs to be saved. ‘In the later 18th century, the mobilisation of “the past” as an explicit political resource became especially important, and a contrast between “traditional” and “modern”—as opposed to “ancient” and “modern”—was stressed.’⁴¹ The Enlightenment saw the Church as the major impediment of social and cultural progress, initiating what Charles Taylor called the secular age.⁴² Burkean Conservatives and Romantics, on the other hand, were aware of the social mission of the Church: to preserve and transmit the traditions of a culture – a point which is crucial for Böckenförde.

³⁹ Ernst-Wolfgang Böckenförde, ‘On the Authority of Papal Encyclicals: The Example of Pronouncements on Religious Freedom’, in Böckenförde, Künkler and Stein, *Religion, Law, and Democracy*, vol. 2, 301.

⁴⁰ Werner Böckenförde, ‘Statement aus der Sicht eines Kirchenrechtlers auf der Jahrestagung der Arbeitsgemeinschaft Katholischer Dogmatiker und Fundamentaltheologen zum Thema „Der Glaubensinn des Gottesvolkes“’, in *Freiheit und Gerechtigkeit in der Kirche. Gedenkschrift für Werner Böckenförde*, ed. by Norbert Lüdecke and Georg Bier (Würzburg: Echter, 2006), 161, 163.

⁴¹ Andy Hamilton, ‘Conservatism’, *The Stanford Encyclopedia of Philosophy*, Spring 2020, ed. by Edward N. Zalta.

⁴² Charles Taylor, *A Secular Age* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

If we discuss tradition in the context of social sciences, Weber’s notion of traditional authority is also soon invoked, beside charismatic and rational-legal authority. Certainly the magisterium of the Church relies on traditional authority, fulfilling its function of transmitting the message of Christ. Yet the Böckenförde brothers complete this picture by adding – through stressing religious freedom and human dignity – that authority needs to be recognised by the community of the faithful. For contemporary readers this would signalise a kind of democratic impulse prevailing within the church. Yet in fact that is only an unintended effect of applying a theological pair of concepts used to decide the authoritative interpretation of natural law in a contemporary context of competing interpretations.

If you want to translate this conceptual pair of tradition and reception to the required mechanism prevailing in a secular society, you will find there, too, agents or institutions which have the function to preserve the tradition. On the other hand, you will also find the opponents of this view, who demand the right of intervention in the transition of heritage, and who will actually shape the ‘ideology’ of the state. If we look at this comparison of Church and state, we can ascertain, that Böckenförde succeeds to negotiate a peaceful cooperation of a traditional and a constructive element in society.

Yet his solution of connecting tradition and reception, which sets up a double test to check the correct interpretation of Natural Law, has its parallel in practical judgement, and in particular in judgements of taste, as described both in Hume’s *Of the Standard of Taste* and in Kant’s *Critique of Judgement*. In this Humean–Kantian tradition, the objectivity of a judgement of taste is assured by a somewhat similar double test. First comes the ideal critic, who has got an experience- and tradition-based practical knowledge of judging objects of art correctly. Yet the procedure of the ideal critic includes an act of imagination, which lets her see how an imagined, well-informed other would chose in that situation. This way the critic lets her judgement be tested by the common sense of generalised opinion of all the others. As if the ideal critic would have the right and power to choose, while the others have the right of veto, if the choice made is too far-fetched, and does not harmonise with the understanding of a generalised other.

A final point. Realising the competing interpretations of the content of natural law, Böckenförde returns to the idea of a magisterium, or an institutional control mechanism. On the other hand, in order to avoid the potential criticism to rely on an authoritarian type of rule, he is ready to check abstract natural law by both the judgement of ideal critics, but also by the common sense of the community of the faithful, by the *sensus fidelium*. This way he combines a natural law legitimacy of law, and a traditionalist test of natural law.

7. CONCLUSION – THE ENDURING RELEVANCE OF THE CHRISTIAN TRADITION IN EUROPEAN POLITICAL CULTURE

In what follows, I try to show the logical sequence this paper wanted to uncover in Böckenförde’s thoughts on political theology, natural law, human dignity and tradition.

This is a sequence which is especially relevant for a conservative philosopher, in an age when Europe tries to cut all its links with religion and natural law, while the demand for a human rights discourse is ever louder. The fact that this sequence is part of the thinking of an author, usually regarded as liberal, and loyal to the Social Democratic Party, makes the case all the more interesting. Also, the intellectual authority of the author makes this interpretative work the more urgent.

As a legal scholar and thinker of the theory of state, Böckenförde was and remained convinced that our political and constitutional vocabulary is rooted in Christian, and in its deep structure, mainly Catholic ideas and doctrines. Unlike most European politicians, who got their initiation into politics either directly from 1968, or indirectly through the post-war generation, for which it was evident that if you want to avoid a repetition of the deeds of the Nazi era, you need to strengthen the moral foundations of your society, and Christianity should play a major role in it, he was also aware, that to fulfil that mission, Christianity had to be cleaned from false views and he published some writings in which he exercised a rather strong criticism of Catholicism in the interwar period to support this intention. Yet this was the criticism of the Church by an active and practising believer, who tried to prepare the Church for a public role, in tune with the intention of the Second Vatican Council. An important segment of his oeuvre remained his political theology, the investigations into the effect of Catholic teaching on the secular state, negative or positive, and especially on the democratic and constitutional state.

One central issue for him in this respect was his firm conviction that natural law is an important condition of the proper operation of positive law. Contradicting its name, natural law was not a part of law in the strict sense of the term, but an eternal standard to which it could and should be compared, to legitimate it, to correct it or simply to preserve it. This attribution to natural law of the role to be the external judge over positive law was and remained a strong claim, one to which Böckenförde remained loyal until the very end of his life.

Yet natural law is an unwanted guest in the secular, liberal public discourse. Therefore, there are some who claim that the German Basic Law's strategic decision to lift the notion of human dignity to a central place was meant to replace natural law with human dignity. Yet Böckenförde's rather stubborn defence of the original interpretation of human dignity in the first commentary of the Basic Law shows that he himself does not look at it like that. On the contrary, his point was that the anthropologically grounded concept of human dignity in fact serves as a safeguard for the external control of natural law over the content of positive law. To sum it up, he was less interested in the cultural war that broke out after 1968, which brought hard-case issues of human rights and human dignity, like abortion or euthanasia into the centre of ideological debate. Rather he tried to defend the necessity to refer to the ethical foundations of the Basic Law in any legally binding interpretations of it.

As natural law was so crucial, and the constitutionally defended concept of human dignity was connected to it in its logic, Böckenförde could not avoid addressing the argument of the historical and cultural saturation of natural law, which was proof in the eyes of Kelsen that it was not, and could not have been a universally valid notion. To explain the

historicity of natural law, while insisting on its universal validity, most participants to the debate returned to the application argument of hermeneutics, as we know it, for example, from Gadamer's *Truth and Method*. This is not the path Böckenförde takes. Instead, he offers a double test to check it: first there is a need to judge it alongside the work of the magisterium in the Church, on a ground of authority. Secondly, there is a need for general positive feedback from the whole community. In case both of these requirements are met, we can be fairly sure of the statement's truth. The theological terms introduced to explain this double test with the help of his theologian brother, Werner, *tradition* and *reception*, are important from a conservative perspective, because in conservatism, traditional legitimation is crucial. Tradition, in fact, is one of the major pillars of conservative social epistemology. With this interference between Böckenförde's own view and intellectual conservatism, we can illustrate the claim that in spite of his left-liberal political orientation, through his reliance on political theology, natural law, human dignity and tradition, his oeuvre remains important for Conservatism, too.

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THE CATHOLIC CHURCH IN LIBERAL DEMOCRACY

RIGHTS OF A HUMAN PERSON AND HUMAN RIGHTS

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The concept of human rights, supposedly of universal importance, is usually derived from the tradition referred to as 'Western'. Although the 'classic approaches' – Greek, Roman and Christian, refer to the norms of natural law, making them the basis or limits of the rights of individuals, in modern approaches the relation is reversed, in the manner that rights become primary to norms. Although liberals of the 17th and 18th centuries consider the law of nature as a tool for their protection, starting from the 19th century, the rights (already called human rights) have been increasingly perceived as positive abilities to articulate own, subjective preferences of individuals. This evolution needs to be accounted for in the studies carried out by representatives of various cultures, since the comprehension of an individual (and even a 'human person' as in contemporary Catholic social teaching) as an essentially culturally unconditioned one, is its ineradicable element.

KEYWORDS:

Catholic social teaching, democracy, law of nature, liberalism, natural law, rights

1. GENERAL PROBLEMS

The position of the Roman Catholic Church as a community of believers, with priests serving in its hierarchical structure as guides to salvation, was shaped in late ancient and medieval monarchies and republics. The process was marked not only by dualistic and monistic doctrines, characteristic of the Latin and Greek world respectively, but also by the formula of Pope Gregory the Great who held his office at the turn of the 6th and 7th century. Based on St. Augustine's philosophy, the formula assumed that rulers and their subjects would slowly but surely transform their conscience and eventually come to the path which leads to salvation. In what Augustine called the earthly cities, people's intentions would be increasingly motivated not by the fear of punishment, but the promise of redemption, thus moving them toward the right end established by God's sacrifice for the sake of mankind marked by the original sin. Gregory's formula has not been forgotten today: the Church still hopes for people of different cultures to understand the message of the sacrifice, so beautifully expounded by St. Paul. Less and less, however, is being said about the natural law that is supposed to set the universal normative boundaries for human actions, perhaps established by God Himself and corresponding to the ideal of humanity conceived by Him before the act, or process of creation. The idea of fixed norms to be recognised by human reason, present in St. Thomas Aquinas, but also in John Paul II's 1993 Encyclical *Veritatis Splendor* or even in the International Theological Commission's 2009 document *In Search of a Universal Ethic: A New Look at the Natural Law*, is now being abandoned in favour of human rights founded on the innate dignity of every human person created by God. It is precisely this change, already mentioned by Pope Benedict XVI in his famous 2011 Bundestag speech on the increasingly counter-cultural nature of the Christian science of law, which is going to be the subject of my paper. I will argue that this change is determined by the context of liberal democracy and might be seen as a reaction of the Catholic Church concerned about the condition of Western societies, where liberal justifications are being used to transgress the boundaries once set by the norms of natural law.

I am not going to analyse the institutional shape of liberal democracy which is well-known and does not need an in-depth commentary. Suffice it to say that this shape is determined by several basic principles; most importantly, by the legislative representation of the 'collective sovereign' and the separation of powers among a few branches, based on the idea of checks and balances. The mechanism founded by these principles refers to groups of diverse needs and preferences, made up by individuals who are subjects of human and civil rights granted to them by the constitution. Liberal-democratic constitutions speak little of obligations and if they do, the obligations are either interpersonal duties or duties to the state. Instead, what I am interested in here is the problem I shall call normative: the confrontation of liberal-democratic and Catholic understandings of human and civil rights. I disagree both with Carl Schmitt who argued that modernity is founded on the 'optimistic vision of the man' and with Martin Heidegger's thesis (as quoted in Harry Mulisch's novel *The Discovery of Heaven*) that modernity is 'solipsistic' by nature. I rather

follow the Jesuit Naphta from Thomas Mann's *The Magic Mountain* in arguing that its main problem is the foundation of it as a modern subject solely in relation to society, not to any metaphysically superior being. Consequently, the modern man is grounded only in 'this world' and is losing interest in the supernatural end. The ideal of earthly self-realisation is offered to modern man by liberal democracy which guarantees individuals a set of inviolable rights and liberties. The use of these rights is supposed to make them discover and reveal their unique selves, and their needs and preferences no longer related to the anticipation of salvation but rather to the comfortable coexistence with others. My 'normative problem' does not refer to the democratic moment of liberal democracies; I am not concerned with the disputes on the aggregative, deliberative or agonistic nature of democracy as they all share the individualistic perspective of the common. The problem I am concerned with seems to be deeper: no matter how the 'democratic environment' is conceptualised, we are already used to thinking of rights and liberties of the individual as the only legitimate point of departure since it is the individual who is essentially conceived of as the main actor of this environment.

Two remarks, however, need to be made about today's liberal democracies. First, we shall not forget about the increasing tendency to expose the 'cultural rights' of not only individuals but also groups. These 'cultural groups' are no longer defined solely by religion (although the growing Muslim population in Western countries makes the issue up-to-date) but also by, for example, gender identification. If the rights and liberties are attributed to both individuals and groups, the liberal component of democracies is bound to change dramatically. Consequently, the question will come up who is to be protected by the liberal-democratic state: individuals of the groups they belong to or the groups which will be granted legal autonomy like medieval corporations. Second, the very nature of the liberal component might be problematic. Especially in the agonistic model, liberalism is said to restrict democracy which is the area of an inconclusive struggle to include those who had been excluded and, as such, it cannot respect any permanent, unquestionable points of reference like the catalogue of individual rights and liberties. That said, these problems are of no concern to us as we are moving in another direction: to grab the nature of some more permanent changes, initiated already in the early modern age and ongoing nowadays, with consequences more and more visible to us.

Let us start by saying that the classical approach, inspired mostly by Aristotle and the Stoics, and also used by Roman lawyers, recognised the primacy of the normative order not established by God, but the people. However, the order was not consensually agreed on but rather found in the 'nature of things' or long-term principles. The appeal to nature was at times (*vide* Aristotle) founded on the argument of 'inborn inclinations' common to all representatives of human kind. Once the inclinations to live, procreate, belong and learn the essence of things were found, they had to be protected by what was later on called the 'norms of natural law', not revealed by God but recognised by inborn, human reason. That way the normative context was also established for legislation: no matter who the law-makers were, they were supposed to respect the boundaries set by these norms. As long as their legislation was consistent with the norms of natural law, these boundaries were not

violated and the law-maker was doing the right thing protecting the inborn inclinations of human kind. Human nature was to be realised both by the law-maker and individuals, supposed to follow the norms and thus live in accordance with their own inclinations. All in all, the construction was simple: legal order was good and individual actions were rightful only if and as long as they followed the superior natural law. That also means that legal and moral elements of the construction were identical as they both shared the common foundation of natural human inclinations.

2. AQUINAS'S IDEA OF LAW AND RIGHTS: LAW BEFORE RIGHTS

Things got complicated with the coming of the Christians, whose teachings were based not on Aristotle's theses, but on the theses found in the Old Testament. Consequently, their 'superior law' was not derived from the nature of things and personal inclinations but came from the outside, revealed by the commanding of God. In the late middle ages, Christian philosophers tried to reconcile the teachings of the Bible with classical thought, the project which culminated in St. Thomas Aquinas, whose theses were later adopted by many Aristotelians. As argued by Thomas (with clear references to Stoicism), divine law was not directly revealed to humans but rather naturally 'inscribed' in their 'hearts'. Unlike the pre-Christian conceptions of natural law, however, the late medieval ones had to consider the distinction into legal and moral normative orders introduced by the dualistic doctrines of the early middle ages: while the legal order is compelling by nature, the function of the moral order is to guide humans toward salvation. When Aquinas is discussing man's final end, he starts with the Aristotelian conception of 'happiness' and ends with the Christian doctrine of the beatific vision of God in heaven. When he is discussing virtues, he completes his treatment of them by talking about the 'theological virtues' of faith, hope and charity. But we also know that Aquinas believed in the harmonious relation between all truths, however attained, and he wished to exhibit and illustrate this harmony. First of all, he maintains that in every human act the will is directed towards an end, towards something apprehended as or thought to be good, that is, something which is known or thought to be perfect in some way as the subject who desires and chooses. And in accordance with his finalistic conception of nature, Aquinas goes on to argue that human will is necessarily set towards the final or ultimate good of man as such, and that it is under the impulse of this dynamic and innate will's orientation that we make our particular choices, which are secondary to the main choice very much like all particular ends are secondary to the ultimate or final end. But it must be remembered that Aquinas presupposes the existence of God, who created things with innate tendencies towards the development of their own real potentialities. He presupposes that human nature has been created by a personal God who would have not created it with an unavoidable impulse towards a non-existent good or an unobtainable good and – as a consequence – that all human beings, like all created things, tend towards the actualisation of the potentialities of their natures, even though they may never use terms like 'supreme' or 'final good'. However, they do so not only instinctively

but also by means of intellect and will. Natural intellect alone is capable to see the idea of human good. For Aquinas, grace does not annul but perfects human nature: revelation sheds further light, but it does not cancel the truths attainable by purely philosophical reflection.

Although the differences between Aristotle's and Aquinas's conceptions of man's ultimate good may be great, it is clear that both men developed finalistic or teleological theories of ethics. For both, human acts derive their moral quality from their relation to man's final end. According to Aquinas, every human act has two sides, interior and exterior, 'formal' and 'material'; the absence of any of them, especially of the right intention which belongs to the interior act, is sufficient to prevent our calling it good in an unqualified manner. In order for a human act in the full sense to be morally good, it must be compatible both 'formally' and 'materially' with the attainment of the final end. What is done, as well as the intention with which the act is performed and the way in which it is performed, must be compatible with the attainment of the final end. From this relation the act ultimately derives its moral quality.

In connection with Aquinas's idea of the law, we may say that the natural reason of all men sees that some acts are necessary to obtain man's good; for example, this natural reason sees that it is necessary to take reasonable means to preserve one's life. Law in general, as he says, is a rule or measure of human acts, conceived by reason and promulgated with a view to the common good or an ordinance of reason made for the common good by him who has charge of the community, and promulgated,¹ in virtue of which one is led to perform certain actions and restrained from the performance of others by reason as the first principle of human action, which directs action to its appropriate end. Authority of law is grounded on the will if it is regulated by 'reason when it commands'; this does not mean that for Aquinas the law depends on God's or a lawgiver's arbitrary choice, as it does later, for example, for Scotists.² He speaks of God as an artist who has an idea of the work to

¹ St. Thomas Aquinas, *Summa Theologiae* 1a 2ae, 90.4, ed. by Thomas Gilby (London, 1966).

² The famous members of the Franciscan order, not Dominican as Aquinas, Duns Scotus and William of Ockham, connected *the law of nature or God* with legal rights. For Scotus *ius naturale* was not simply neutral with regard to *dominium*, as was in Aquinas, but it positively ruled it out, since common use was the optimum strategy for men in a state of innocence. For him, common use was the common *dominium*. It was not the case that the human race collectively had the kind of right over the world, rather that each human being was simply able to take what he needed, and had no right to exclude others from what was necessary for them (Richard Tuck, *Natural Rights Theories. Their Origin and Development* [Cambridge: Cambridge University Press, 1979], 21–22). John Duns Scotus took *dominium* to be necessarily private, something which could not only be exchanged, but also defended against the claims of the needy, and quite possibly by violence. Man could have property, which was not purely a feature of a *social* life. In Ockham's case, one may see identification of the right of use and the right of ownership and, as a consequence, identification of individual or subjective powers with rights, rights of God or humankind as well as rights of an individual person. In this conception there is no impersonal common good and public norms that may seem to have objective validity. There are public norms which are conventional constructions of these various subjects and which regulate only external relations between citizens. Hence political thought and action is totally concerned with the conflict, balancing and delegating various but always subjective powers-rights. The right of use (*ius utendi*) was defined by Ockham as a *licit power of using an external object, the unwarranted denial of which can be prosecuted in a court*

be created or done and of the means to its fulfilment. God conceives eternally all creatures according to their different kinds: He conceives their ends and the means to the attainment of these ends. Divine wisdom, considered as moving all things according to their several ends in subordination to the end of the whole created universe, the communication of the divine perfection, is the eternal law. *Hence the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions' of creatures*³ to the attainment of their ends. Man, as a rational and free being, is capable of acting in ways which are incompatible with this law and it is therefore essential that he should know the eternal law so far as it concerns himself. Although man cannot read off the eternal law in God's mind, he can discern the fundamental tendencies and needs of his nature, and by reflecting on them he can come to a knowledge of the natural moral law. Every man

*of law; as to the right of ownership: a principal power of laying claim to a thing in court and of using it in any way not prohibited by natural law; both in: Opus Nonaginta Dierum, ed. by R F Bennett and J G Sikes, ch. 2 (Manchester: Manchester University Press, 1940), 304, 310. See also Arthur Stephen McGrade, 'Ockham and the Birth of Individual Rights', in *Authority and Power. Studies in Medieval Law and Government presented to Walter Ullmann on his Seventieth Birthday*, ed. by Brian Tierney and Patrick Linehan (Cambridge: Cambridge University Press, 1980), 149–151. See also Michel Villey, 'La Genèse du droit subjectif chez Guillaume d'Occam', *Archives de Philosophie du Droit* 9 (1964), 97–127; Heinrich Rommen, *Die ewige Wiederkehr des Naturrechts* (München: J. Kösel, 1947), 60; Frederick Copleston, *A History of Philosophy. Ockham to Suarez* (New York: Doubleday, vol. III, 1953), 51; Arthur Stephen McGrade, *The Political Thought of William of Ockham. Personal and Institutional Principles* (Cambridge: Cambridge University Press, 1974). But see also Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought. 1150–1650* (Cambridge: Cambridge University Press, 1982); John N Figgis, *Studies of Political Thought from Gerson to Grotius. 1414–1625* (Cambridge: Cambridge University Press, 1931); Tuck, *Natural Rights Theories*; Bogdan Szlachta, 'Nowożytny przełom w pojmowaniu prawa naturalnego', in *Kształtowanie postawy obywatelskiej*, ed. by P. Lenartowicz (Kraków: Wydawnictwo WAM, 1997), 35–80. Scotists' nominalism meant a crisis in Scholastic method, a quarrel about 'universals' and an anticipation of the modern theory of powers-rights. The vindication of the will's primacy over the intellect led to the denial that ethical values can have any other foundation but the will of God that imposes them. The notion of God as an unlimited and arbitrary power implied the reduction of all moral laws to inscrutable manifestations of divine omnipotence. The basis of the 'natural system of ethics' was discarded. Natural law ceases to be a bridge between God and man. It affords no indication of the existence of an eternal and immutable order. It no longer constitutes the measure of man's dignity and of his capacity for participation in that order, a standard of good and evil available to all rational creatures, because for nominalists an action was not good thanks to its suitability with the essential nature of man but thanks to God's arbitral will. Validity of the norms was founded not on the standards of God's reason as well as man's reason but only on God's absolute will. Law was not reason but will, pure will without any foundation in reality, without foundation in the essential nature of things. It is as if the notion of sovereignty was applied here to the divine law-giver himself. The notion of sovereignty of God as *legibus solutus* became the pivot of Calvin's ethics and theology and later the foundation of the modern conception of sovereignty as well as the new conception of natural law which was the product of the Age of Reason. But this influence was somehow paradoxical because the revival of natural law which took place at the turn of the 16th and 17th century was essentially a rejection of the nominalist or voluntarist theory of law. Thus Grotius's famous proposition that natural law would retain its validity even if God did not exist, which appears as a turning point in the history of Western thought, was the answer to the challenge not of rational-realistic ethics of Aquinas, but of voluntarist and nominalist ones. It meant the assertion that command is not the essence of law and that natural law is independent of God's will. This meaning goes in the same direction as a convenient summary of Catholic conception which was given at the beginning of the 17th century by Spanish Jesuit Francisco Suárez, who also took the view that natural law does not depend on the will 'of any superior', especially the will of the absolute monarch.*

³ Aquinas, *Summa Theologiae*, 1a 2ae, 93.1.

possesses the natural inclinations to the development of his possibilities and the attainment of the good for man. Every man also possesses the light of reason whereby he can reflect on these fundamental inclinations of his nature and promulgate to himself the natural law, which is the totality of the universal precepts or dictates of right reason concerning the good which is to be followed and the evil which is to be shunned. By the light of his own natural reason, therefore, man can arrive at some knowledge of natural law. Since this law is a participation in or reflection of eternal law and so far as the reflection concerns human beings and their free acts, man is not left in ignorance of eternal law which is the ultimate rule of all conduct.⁴

For Aquinas, therefore, it is human reason which is the proximate or immediate promulgator of natural law. This law is not without a relation to something above itself; for it is, as we have seen, the reflection or participation in eternal law. Inasmuch as it is immediately promulgated by human reason, we can speak of a certain autonomy of practical reason. This does not mean that man can alter the natural law which is founded in his nature. But it means that the human being does not receive the law simply by imposition from above: he recognises or can recognise its inherent rationality and binding force, and he promulgates it to himself.⁵ In Aquinas's conception of natural law as the expression of man's dignity and power, man is the only being created to participate intellectually and actively in the rational order of the universe. Man is called to do so because of his rational nature. It is the *light of natural reason* which enables us to *discern good from evil*. St. Thomas's notion of the light of reason is of great importance. Man is conceived to hold the unique position of being at the same time a subject of God and His co-operator. However, man participates in two worlds. The order of the precepts of natural law corresponds to the order of his natural inclination, includes the qualities which he has in common with all created beings as well as those which are distinctive of his own rational nature. What he has in common with all created things is the desire for self-preservation. Hence the first group of the precepts of natural law comprises all that makes for the preservation of human life. But man also has similarities with animated beings with a further inclination to more specific ends. Consequently, it is right to say that 'what nature has taught all animals' pertains to natural law – such as sexual relationships, the rearing of offspring and the like. Finally, *there is in man a certain inclination to know the truth about God and to live in society*. All those actions pertain to

⁴ *The natural law is nothing else but a participation of the eternal law in a rational creature* (Aquinas, *Summa Theologiae*, 1a 2ae, 91.2).

⁵ *It is clear – says Aquinas – that the whole community of the universe is governed by divine reason, by eternal law; all things are subject to divine Providence and are measured and regulated by this kind of rational law; all participate to some degree in it, in so far as they derive from it certain inclinations to those actions and aims which are proper to them. But, of all others, rational creatures are subject to divine Providence in a very special way; being themselves participators in Providence itself, in that they control their own actions and the actions of others. So they have a certain share in divine reason itself, deriving therefrom a natural inclination to such actions and ends as are fitting. This participation in eternal law by rational creatures is called natural law; natural law which is nothing else than the impression of the divine light in us and participation of eternal law in rational creatures* (Aquinas, *Summa Theologiae*, 1a 2ae, 91.1, 2).

natural law to which man has a natural inclination: and among such it is proper to man to seek to act according to reason, which gives first principles of rightness for everybody and is equally known by every one or the same for all as a norm of right conduct and is equally well known by everyone.⁶

The order of the precepts of natural law follows the order of natural inclinations; and – as a consequence – these precepts as well as these inclinations or tendencies are directing man towards his ultimate good, giving him knowledge of what is necessary for the right ordering of his life and also the conviction that he should live in society with other men. Aquinas thought of man as tending naturally and inevitably towards his perfection, towards the actualisation of his potentialities as man, towards his final end or good. And he thought of man's reason as discerning the acts necessary for the attainment of this end and ordering them while forbidding their contraries. In this sense, obligation or norm is imposed by practical reason, binding the free will to perform the necessary acts to attain the final end or man's good and to abstain from acts which are incompatible with its attainment. But, at the same time, for Aquinas, one may act and one has *iura* only on the foundation of natural law and in the area which presents its objective norms. In his doctrine, we have no modern natural rights theory although we have natural law theory. *Something can be said to be according to the ius naturale in two ways*, said Aquinas when he spoke about man's natural life. *One, if nature inclines us to it: such as not to harm another human being. The other, if nature does not prescribe the opposite: so that we can say a man is naked under the ius naturale, since he received no clothes from nature but invented them himself. In this way 'the common possession of all things, and the equal liberty of all is said to be according to the ius naturale: for distinctions between possessions and slavery were not the products of nature but were made by human reason for the advantage of human life.'*⁷ In the state of nature, men have no rights, because the *ius naturale* is neutral in the areas of personal servitude and private property. In spite of all modern natural rights theory, there are no *prima facie* rights to men; men do not have a *prima facie* natural right to absolute liberty any more than they have a *prima facie* natural right to dominate other men.⁸

Aquinas generally used *ius* and *lex* – right and law – as interchangeable terms, pointing that legalism should follow the grain of reality and that continuity between implanted right and enacted law should be kept. Whereas medieval jurists generally spoke of *ius naturale*

⁶ Ibid. 94.2. Like the ancient Roman lawyer Ulpian, Aquinas pointed out that man has something in common with all created beings, with plants and animals for example; like all medieval Christian lawyers, he also pointed out that man has something in common with a supernatural Being (God) or beings like angels but not only with Him or them. As to the relation between negative borders of freedom of human legislation Aquinas said that *the validity of law depends upon its justice. But in human affairs a thing is said to be just when it accords aright with the rule of reason: and, as we have already seen, the first rule of reason is natural law. Thus all humanly enacted laws are in accord with reason to the extent that they derive from natural law. And if a human law is at variance in any particular with natural law, it is no longer legal, but rather a corruption of law* (Aquinas, *Summa Theologiae*, 1a 2ae, 95.2).

⁷ Ibid. 94.5.

⁸ See Tuck, *Natural Rights Theories*, 20.

and theologians of *lex naturalis*, he was inclined to reverse the usage, preferring *lex* in his judicial treatise and *ius* in his theological treatise on the cardinal virtue of justice. *Lex* was not *ius* precisely, but in some manner it was its rational expression, because *ius* signified an objective quality.⁹ If legislation was a part of the practical wisdom of governing the community, one man could rightfully control another only by showing a reason for his power: even omnipotence cannot break the order of truth, but the true and rational legislator ought to have *prudentia regnativa*, a type of prudence, the intellectual and moral virtue.¹⁰ A legislator's *recta ratio* is not so closely linked with *ius naturale* in Aquinas's doctrine as some contemporary commentators suppose and therefore there is no contrast between *ius naturale* and *lex naturalis*.¹¹

For St. Thomas, *lex* means much more than a positive statement and very much more indeed than written law; he often speaks of *ius positivum* instead of *lex positiva*, of *lex naturalis* instead of *ius naturale*, and – as Brown has supposed – he uses *ius* and *lex* metonymously in respect of all of the following kinds of *ius-lex*: divine, natural, positive and human.¹² He does indeed draw a distinction between these terms, but in both of them he presents the same rational substance. Only those *iura* and *leges* are valid which are rational – however, not as man's rationality but as the rationality of God and His order. On the other hand, the *iura* are only valid if they have a legal foundation. It is an important thesis because the substance of personal rights is connected not with personal power or *dominium* but with rational action which directs man to his ultimate end. We have already seen, however, that for Aquinas, a Christian theologian, man has a supernatural final end or supreme good, the attainment of which transcends his natural power and directs his natural rights through his natural inclinations as well as through the norms of natural law.¹³

⁹ See, first of all, Aquinas, *Summa Theologiae*, 1a 2ae, 105.2 ad. 3, 2a 2ae, 57.1 ad 1, 2.

¹⁰ See Thomas Gilby, *Principality and Polity. Aquinas and the Rise of State Theory in the West* (London: Longmans, Green, 1958), 125–128.

¹¹ See Vernon J Bourke, 'Is Thomas Aquinas a Natural Law Ethicist?', *The Monist* 58. (1974), 62–63.

¹² Oscar J Brown, *Natural Rectitude and Divine Law in Aquinas. An Approach to an Integral Interpretation of the Thomistic Doctrine of Law* (Toronto: Pontifical Institute of Mediaeval Studies, 1981), *Appendix I: 'Ius' and 'Lex' in Aquinas* (p. 174).

¹³ In the *Catechism of the Catholic Church* (n. 36) from 1992 we read: 'The Church, holds and teaches that God, the first principle and last end of all things, can be known with certainty from the created world by the natural light of human reason' (with references not only to Vatican Council I, *Dei Filius* 2, but also to Vatican Council II, *Dei Verbum* 6). *Without this capacity, man would not be able to welcome God's revelation. Man has this capacity because he is created 'in the image of God'* (Gen 1:27). But at the same time, as we read in the next canon (ibid. n. 37), *in the historical conditions in which he finds himself [...] man experiences many difficulties in coming to know God by the light of reason alone: Though human reason is, strictly speaking, truly capable by its own natural power and light of attaining to a true and certain knowledge of the one personal God, who watches over and controls the world by his providence, and of the natural law written in our hearts by the Creator; yet there are many obstacles which prevent reason from the effective and fruitful use of this inborn faculty. For the truths that concern the relations between God and man wholly transcend the visible order of things, and, if they are translated into human action and influence it, they call for self-surrender and abnegation. The human mind, in its turn, is hampered in the attaining of such truths, not only by the impact of the senses and the imagination, but also by disordered appetites which are the consequences of original sin. So it happens that men in such matters*

The identification of man's good with 'happiness' or with self-perfection may easily give the impression that Aquinas's ideal was purely individualistic and even egoistic in an unpleasant sense. Yet he regarded life in society as being prescribed by natural law. That is to say, he recognised a natural tendency of human beings to live in society with his fellows, not only in a smaller group of the immediate family circle but also in those larger groups which (in their developed form) are called states or political communities. Social life is thus founded on human nature itself, and both families and states are natural communities. Reason, reflecting on man's fundamental inclinations, says that these societies ought to be formed inasmuch as they are necessary for the development of man's potentialities. *It is natural for man to be a social and a political animal, living in community; and this is more true of him than of any other animal, a fact which is shown by his natural necessities,*¹⁴ meaning bodily as well as spiritual needs. Society is therefore not a purely artificial construction but a natural institution as a result of man being what he is. And as founded on human nature, it is willed by God, who created man. This does not mean, of course, that the historical divisions into nations and states are dictated by God but that there should be a civil or political society or societies willed by God, as is shown by the fact that He created man who cannot attain his full stature without society.¹⁵

Furthermore, every society requires direction and government. For Aquinas it is a mistake to think, unlike both St. Augustine and Locke, that government exists simply in order to keep peace and punish evildoers. According to him, government would be required even if there were no evildoers and even if no one was inclined to disturb the peace. St. Augustine was inclined to say that the state was a result of man's Fall and political authority existed primarily because fallen human beings needed coercive power to restrain their evil tendencies and to punish crime. Locke spoke of anti-rational passions which incline men to break the law of nature. But these were not at all Aquinas's opinions. *Man is by nature a social animal. Hence in the state of innocence (if there had been no Fall) men would have lived in society. But a common social life of many individuals could not exist unless there were someone in control to attend to the common good.*¹⁶ Government, like society, is natural and willed by God. It exists primarily to care for the common good, because for *the good life of the community three things are required. Firstly, that the community should be established in the unity of peace. Secondly, that the community, united in the bond of peace, should be directed to good action [...]. Thirdly, that through the ruler's diligence there should be a sufficient supply of the necessities for a good life.*¹⁷ The government therefore exists to preserve internal peace and to take care of the community, to promote the moral

easily persuade themselves that what they would not like to be true is false or at least doubtful (with reference to the Encyclical *Humani generis* by the Roman Pope Pius XII).

¹⁴ St. Thomas Aquinas, *On the Government of Rulers. De regimine principum*, transl. by James M Blythe (Philadelphia: University of Pennsylvania Press, 1997), 1,1.

¹⁵ See Frederick Copleston, *Aquinas* (Harmondsworth: Penguin Books, 1955), 227–229.

¹⁶ Aquinas, *Summa Theologiae*, 1a 2ae, 96.4.

¹⁷ Aquinas, *De regimine principum*, 1.15.

well-being of citizens, so far as this can be done by legislation supported by sanctions, and to provide citizens with a sufficient supply of material necessities. In Aquinas's doctrine, there is no place for a contract which constitutes society or government.

3. NEW (MODERN, ABOVE ALL LIBERAL) PROPOSITIONS: RIGHTS BEFORE LAW

Since the function of the state as well as the function of its legislator or legislators is to promote the common good which has no individualistic substance, the criterion of good and bad in legislation is its relation, discerned by reason, to common good and not to the interests of individuals or groups. It does not imply that every precept and prohibition of natural law should be embodied in legislation, as will be thought for example by English Puritans. But the state is not entitled to pass legislation which runs counter to natural law in any case. *Every human law has the nature of law in so far as it is derived from the law of nature. If in any case it is incompatible with the natural law, it will not be law, but a perversion of law.*¹⁸ And, therefore, Aquinas may say also that *the will of the prince has the power of law only when it is rational and directed towards the well-being of the whole community as a perfect whole,*¹⁹ while in *any other sense the will of the prince becomes an evil rather than law.*²⁰

From this view of the relation of human positive law to natural law it naturally follows that just laws are binding while unjust laws are not binding in conscience. A law is unjust, says Aquinas, if it imposes burdens on the citizens not for the common good but to satisfy the cupidity or the ambition of the legislator; if in enacting the law the legislator goes beyond the powers committed to him; or if burdens are imposed in an unfair and disproportionate manner. *Laws of this kind are acts of violence rather than laws [...] they do not bind in conscience unless observance of them is required in order to avoid scandal or public disturbance.* Laws can also be unjust by contravening divine positive law, namely the precepts of the Decalogue, *and laws of this sort ought not to be obeyed.*²¹ The sovereignty of the ruler or legislator does not cancel the notion of legal obligation. Positive law does not exhaust the whole range of legal experience. There may be laws other than the commands of the sovereign, laws with a different structure yet nevertheless binding and formally perfect. Natural law and the laws of the international community (*ius gentium*) are devoid of sanctions but both are properly called laws and are binding even for the sovereign. Like Albericus Gentilis, one of the founders of modern international law, Aquinas may say that

¹⁸ Aquinas, *Summa Theologiae*, 1a 2ae, 95.2.

¹⁹ *Ibid.* 90.2, concl.

²⁰ *Ibid.* 90. ad 3.

²¹ *Ibid.* 96.4.

the ‘absolute’ prince is a prince who is *above* positive law but *under* natural law and *under* the law of nations.²²

After St. Thomas, the compelling law was being increasingly associated with state legislation and moral law with religious teachings. As a consequence, we find early modern Christianity marked by two alternative understandings of the superior divine law: either the law of juridical importance (in Puritanism, Presbyterianism and some other Calvinist denominations) or moral law (in Catholicism). The tensions in 16th century Europe, greatly inspired by nominalism and voluntarism, involved the essential reformulation of the functions of law, usually ascribed to Hugo Grotius. According to his new formula, so perceptively diagnosed by the Jesuit Naphta, universal human reason continued to be the source of fixed natural norms but the horizon of their application was no longer supernatural; instead of salvation, the law should rather be concerned with the conditions of social peace. Further on, the French ‘politicians’ went on to conceptualise the legislators solely focused on peaceful, interpersonal coexistence, just like in Augustine’s ‘earthly cities’. Finally, Jean Bodin emphasised the role of the commanding monarch whose power was to determine the conditions of peace and enforce their observance.²³

However, although commonly labelled as a founder of absolutism, Bodin (following the ‘politicians’) did not justify the unconditional primacy of the law-maker. Instead, the choice of religion and ‘family property’ were those elements which had to be respected by all law-makers, thus setting boundaries to their legislation. To impose the monarch’s own religion on others and put arbitrary restrictions on their properties was no longer allowed. That way, let us remark, the limits of legislation were again defined with reference to earthly communities only. At the same time, freedom of religion allowed for alternative visions of salvation: while some Christians favoured the pathway marked by the law of revelation, others respected the limits set by natural law. Even more importantly, there was no agreement on the relation of natural individual rights to divine law: some derived them from the law-making act of God, others preferred to deduce them from universal human nature. Except for early modern republicanism, the split within Western Christianity brought about not only the dispute of Protestants with the Catholic schools of Salamanca and Coimbra but also the philosophy of Thomas Hobbes, equally critical of Catholics, Puritans, *common law* and the ‘divine right of kings’ theory. Hobbes rejected the contexts of religion and property, and advocated the theory of the state of nature with individuals led by a self-preservation instinct and holding inborn rights; not to the pursuit of salvation or social peace but to all self-preserving actions. Hobbes’s project was revolutionary in postulating the existence of natural egoistic rights whose only aim was to preserve a living body, with no normative boundaries preventing the individual from

²² Albericus Gentilis, *Regales Disputationes Tres*, 1605 (Disp. I, *De Potestate Regia Absoluta*, 17). For further information see Alessandro Passerin d’Entrèves, *Natural Law. An Introduction to Legal Philosophy* (London: Hutchinson University Library, 1957), 67–68.

²³ See above all Arthur P Monahan, *From Personal Duties towards Personal Rights. Late Medieval and Early Modern Political Thought, 1300–1600* (Montreal-Kingston: McGill-Queen’s University Press, 1994).

hurting others. No ‘superior law’ was to be respected either by the individual or legislator (‘state’ or ‘Leviathan’) whose function was to establish fundamental norms of the law of nature, thereby restricting rights of individuals in exchange for protecting their bodies and peaceful coexistence.

What is interesting here, however, is not so much the limitation of rights by the ‘state’ but the absence of moral duties. By negating ‘positive political theology’ and God’s interference in the world of politics, Hobbes both disregarded any supreme law in formulating norms of the law of nature and made all moral issues secondary to legal resolutions. Consequently, no morality, either divine or natural, could any longer justify the disobedience to the legislator called ‘state’. Even individuals were only allowed to execute their inborn rights if they did not violate the norms established to keep peaceful coexistence; in other words, individuals might not seek peace but had to respect its conditions. When Hobbes denied the autonomy of the Church and identified state sovereignty with supreme moral jurisdiction, he was not far away from Erastianism with its recognition of ‘state’ as the only source of the Church’s legislative, judicial and sacramental rights. Hobbes made the political order self-centred, focused solely on making and keeping peace between individuals, on public safety and order. The problem he faced was how to personally represent the impersonal state which is similar to ‘person’:²⁴ when its assumed unity proved elusive and many actors (also religious) claimed the right to representation, and vicious power struggles began. The thing is that neither their participants, nor Hobbes’s followers respected any ‘supreme law’. Admittedly, to restrict legislative freedom, John Locke went on to present a catalogue of inviolable inborn rights to be protected by the norm of the law of nature not derived from the ‘state’ but from human reason. But even this project emphasised agreement as the only conception of civil society with its principles and, as such, it disregarded the role of universal religious morality. Equally critical of atheists and ‘papists’, Locke basically echoed Hobbes in his concern with the conditions of peace between individuals and nothing more. Unlike classical projects or even the project of the Salamanca School, his norm of the law of nature was to protect inborn rights, not inclinations. It was these rights, further on transformed into human rights, which were supposed to allow individuals the unrestrained articulation of their needs and preferences. They defined the ‘juridical boundaries’ of a subject’s freedom which could be violated by no law-maker – the institutions of civil society included.

The modern theory of the law of nature is, properly speaking, first of all a theory of rights which are restricted or guaranteed by norms or a norm named the law of nature. A momentous change has taken place under the cover of the same verbal expressions.

²⁴ *The Hobbesian commonwealth*, said David Runciman, is an association of individuals who have all agreed to abide by certain rules. It is an association which has no substantive end of its own, beyond the end which its members share as individuals and which conditions the terms of their original agreement – ‘namely, the Peace of the Subjects within themselves, and their Defence against a common Enemy’ (Thomas Hobbes, *Leviathan* [London: Dent, 1931], 150). ‘Peace is secured through the rule of law [...] Hobbes’s civil association is a person’ (David Runciman, *Pluralism and the Personality of the State* [Cambridge: Cambridge University Press, 1997], 15–16).

The *ius naturale* of the modern political philosopher is no longer either *lex naturalis* of the medieval moralist or *ius naturale* of the Roman lawyer. These different conceptions have only the name in common. This significant fact was pointed out by Hobbes: *though they speak of this subject use to confound ius and lex, right and law: yet they ought to be distinguished; because right consisteth in liberty to do, or to forbear: whereas law determineth, and bindeth to one of them: so that law and right differ as much, as obligation and liberty.*²⁵ Following this distinction, he argued that civil war is caused by each individual claiming the right to judge the law in accordance with their subjective standard of conscience or ‘private judgement’.²⁶

The different meanings of the word *ius* were for a long time known to the lawyers who had been brought up in the study of Roman law. They carefully distinguished between ‘objective’ and ‘subjective right’, between the *norma agendi* (the rule of action) and the *facultas agendi* (the right to act) which can both be indicated by the same name of *ius*. But they never overlooked the fact, which Hobbes seems either to ignore or to implicitly deny, that the two meanings of *ius* are not antithetical but correlative. In the language of the law schools and as we have seen with St. Thomas, *ius* could be used in an ‘objective’ as well as in a ‘subjective’ sense: but the latter always presupposes the former. There is a *facultas agendi* inasmuch as there is a *norma agendi*. There is a ‘right’ inasmuch as there is a law. But for the great majority of modern law nature writers, Hobbes’s anarchical conception of *natural right* as opposed to *natural law* was crucial.²⁷ Even Locke in the *Two Treatises of Government* argued that in a system of popular sovereignty, members would withdraw their consent and revolt whenever a law would conflict with their private interest, claiming that it would contravene the public good. Although he said that the freedom of an Englishman consists in his *liberty to dispose of his actions and possessions* according to the laws of England, his emphasis was shifting more and more from the objective to the subjective meaning of *ius*. For him individual human freedom was connected not with the ultimate end or good of man, nor with the norms of natural law which obliges all men, but with the right of the individual who has the power quite similar to that which nominalists and voluntarists had given to God alone. In his doctrine on individuals, very similar to the Byzantine prince,

²⁵ Hobbes, *Leviathan*, I.14.

²⁶ Ibid. II.29. Leo Strauss said in his famous lectures: *We can overcome this danger only by considering the fact that for every conscientious scholar the problem of natural right is not a partisan affair. At a superficial glance, the issue of natural right presents itself today as a matter of party allegiance. Looking around us we see two hostile camps, heavily fortified and strictly guarded. One is occupied by the liberals of various descriptions – to use this somewhat loose term; the other by the Catholic and non-Catholic disciples of Thomas Aquinas. But both armies, and in addition those who prefer to sit on the fence or to hide their heads in the sand, are, if I may heap metaphor on metaphor, in the same boat. They are all modern men. No matter how neutral we may be, we are all in the grip of the same dilemma* (Leo Strauss, *Six lectures 1949*, 7). See also Ernst Levy, ‘Natural Law in Roman Thought’, *Studia et Documenta Historiae et Iuris* 15, (1949), 7; John Walter Jones, *Historical Introduction to the Theory of Law* (Oxford: Clarendon Press, 1940), 100–108.

²⁷ See positions by d’Entrèves, *Natural Law*, 59–60 (for the majority of these writers ‘natural law was the necessary presupposition of natural right’, 60) and the opposite view by Leo Strauss, *The Political Philosophy of Hobbes* (New York: The University of Chicago Press, 1936), 156.

were the living embodiments of law (*lex animata*) and their will and law became correlative notions. In his natural right theories, one may see once again the old idea of Roman and glossators' texts of a supreme and ultimate human power from which all laws proceed; the idea which undermines all possibility of serious natural law thinking because natural law is not a proper law if sovereignty is the essential condition of legal experience, as it is not possible to conceive of a law of nature when command is the essence of law.²⁸

If a rule may be laid down as a command, we cannot distinguish the 'compelling' and the 'directing' aspects of law (*vis coactiva* vs *vis directiva*). Hence, while for Aquinas the 'directing' aspect of law was crucial because it was the element of justice, for Locke both aspects are identified. He said not only that *political power is a right of making laws*,²⁹ but also that *the state of nature, the pre-political state, has a law of nature to govern it, which obliges every one*, supposing the law of nature as a norm or set of norms has no political character if only political power is a right of making this norm or these norms. Locke said at the same time that *reason, which is that law (of nature), reaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions*.³⁰

In this context we must ask a question about the primary rights as a capacity of the individual who realises his personal ability or power over law as a set of norms which rules the actions of individuals. And a second question: what is a substantial relationship between norm of the law of nature and such individual ability or power? Locke writes, on the one hand, *that all men may be restrained from invading others' rights, and from doing hurt to one another*³¹ because rights of every man create *a property in his own person*.³² And, on the other hand, *that the law of nature willeth the peace and preservation of all mankind*.³³ In these words he creates a very important doctrine for all liberal tradition and modern natural law thinkers on the priority of rights before law. Now, law as the set of norms, identified with human reason, has no objective context and is only a guarantor of individual rights and as such does not determine individual ability or power; it occupies the second position whilst the first is taken up by personal rights or property.

Locke calls property or *dominium* the right of every man in the state of nature to dispose of himself and his possessions as he thinks fit; for him every man has a property in his own person, by which he means that a man has a natural right, limited only by God's purposes and by the obligation to respect the same right of others, to do as he pleases. He may not destroy himself because he is God's creature. His property in himself is not independent of God's will but is not connected with God's reason – as in Aquinas's doctrine. There is no eternal law whose norms are implemented to all created beings in the form of natural

²⁸ D'Entrèves, *Natural Law*, 66.

²⁹ John Locke, *Two Treatises of Civil Government* (London: George Routledge and Sons, 1884), II.i.3.

³⁰ *Ibid.* II.ii.6.

³¹ *Ibid.*

³² *Ibid.* II.v.27.

³³ *Ibid.* II.ii.7.

inclinations, with which all rational natural law norms are compatible. Rather, there is only one inclination, which directs the individual not to his supernatural and ultimate end but reduces him to the natural or material reality and is a foundation of his rights but not law. As a consequence, God alone guarantees not the essence of law as a set of norms, but the essence of rights as a personal ability/power. The state of nature is not a state of war, but not because every individual has a natural inclination to live in a political community, but because this state is quite different from the state of civil society. It is not a state of war because reason governs in it, pure reason, free from every passion and every pre-rational, even biological inclination, which knows the natural rights of every individual. The substance of it is very simple since reason or the law of nature knows only one norm: *you may not invade the rights of others*; if there are no rights, the law of reason will be quite empty.

But here Locke has an important problem: in the state of nature men had the law of nature to guide them but they, from time to time, must have differed about the law or about its application to particular cases. They must therefore have felt a need for *an established, settled known law, received and allowed by common consent to be the standard of right and wrong*, and also for *a known and indifferent judge, with authority to determinate all differences according to the established law*, and lastly for *a power to back and support the sentence when right, and to give it due execution*.³⁴ By putting themselves under government, men do not give up *all* their rights, but only those which must be surrendered for the common good, which is only the preservation of freedom or property or a set of personal, passive rights. They give up only two active rights or powers: to interpret the norm of the law of nature and to punish. Government, which is like a society and not like a natural institution, has no absolute authority, but only as much as it needs for the common good which is defined now as a sum of individual interests and in no sense as the good of a whole community. The law of nature, this only one norm, *stands* – says Locke – *an eternal rule to all men, legislators as well as others*.³⁵

The *Two Treatises* is the most radical answer that has been given yet to the main moral-jurisprudential 17th century question of who has and who has not the ‘right’ to political power. For Locke, each individual does have and should have the political power in the juridical form of personal rights. Therefore, first, prior to and independent of the establishment of institutionalised forms of government, people are able to govern themselves; and, second, the power of institutionalised forms of government is derived from the original powers of the individual members of the political society. But, third, and most importantly, which in some sense connects Locke with Aquinas but makes him

³⁴ Ibid. II.ix.124.

³⁵ Ibid. II.xi.134. On the other hand, for Locke *the same law of nature that does by this means give us property, does also bound that property too. ‘God has given us all things richly’ (I Tim. vi.17), is the voice of reason confirmed by inspiration. But how far has he given it us? To enjoy. As much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in. Whatever is beyond this, is more than his share, and belong to others (Ibid. II.v.31).*

quite different from the majority of modern natural freedom theorists, individuals have not only the right to defend themselves and their possessions from attack, even to kill the attacker if necessary, and not only this right of defence, but also political power, having it individually and not as a corporate body. By arguing in the *Two Treatises* that the state of nature has a law of nature enforced by the passive system Locke showed that natural freedom is not the Hobbesian ‘absence of restraint’ (or ‘negative liberty’) but – like in the doctrine of Aquinas – the juridical form of freedom as action within the boundaries of law and is subject to it.³⁶ It stems from the constitutive role of the law of nature or law of reason that individuals who transgress it, in civil or natural society, by using ‘Force without Right’ or manifesting a ‘declared design’ to do so, place themselves outside moral human society, and thereby in a ‘state of war’.³⁷

Locke’s innovation here – one may say³⁸ – is to argue that the fundamental natural law (or law of nature) is not self-preservation but the ‘preservation of mankind’. However, we must remember about the foundations of his law of nature which are quite different from Aquinas as a consequence of his individualistic and not communitarian premises, as well as his appeal to natural rights and not to natural inclinations on which the norms of natural law are grounded. If we do not remember Locke’s individualistic premises, we may not understand his radical breaking with the Aristotelian–Thomistic tradition and make the same error as Tully, who has written that *natural property rights are (in Locke’s doctrine) use-rights within a larger framework of rights and duties to preserve the community (mankind) and regulated by everyone through the accusatory system*.³⁹ We may not be able to see that for this classic of *reason* in early liberalism, which is natural law, *teaches all mankind who will but consult it, that [...] no one ought to harm another in his life, health, liberty, or possessions*, namely in his personal and subjective rights, but only if his own self-preservation is secured. We may also not be able to see the anti-naturalistic consequences of Locke’s contractual conceptions of society and state, as well as his identifications of right or *ius* with power or *dominium*, ‘objective’ and ‘subjective right’ and the *norma agendi* and the *facultas agendi*, which are crucial for modern political philosophy, especially the liberal one.

4. NATURAL LAW VS LAW OF NATURE

As we have already observed, there is a clear tension between natural law and the law of nature: advocates of the former put emphasis on the realisation of inborn inclinations, view

³⁶ Ibid. II.iv.22; II.vi.57. See James Tully, ‘Locke on Liberty’, in *Conceptions of Liberty in Political Philosophy*, ed. by Zbigniew Pelczynski and John Gray (New York: St Martin’s Press, 1984).

³⁷ Locke, *Two Treatises*, II.iii.16, 19.

³⁸ See, for example, James Tully, ‘Locke’, in *The Cambridge History of Political Thought 1450–1700*, John H Burns (Cambridge: Cambridge University Press, 1991), 627.

³⁹ Ibid. 628.

rights as manifestations of this realisation and natural law as a set of norms protecting the inclinations and indicating the limits of rightful actions. Advocates of the latter emphasise inborn rights of the subject whose execution may not be restrained either by other individuals, the state or Church. For proponents of natural law, state legislation is supposed to protect inclinations and respect the 'supreme law' they have been secured by in the first place. For proponents of the law of nature, state legislation is only supposed to interpret the inviolable status of the rights; the 'supreme law' can still be found there but only as a guarantor of the rights to live, stay healthy, move places and dispose of properties, not as a pathway to salvation. Individuals are then protected against the normative claims of both the state, Church and groups they belong to: at any time the individuals can separate from these 'entities' for the sake of their rights. Last but not least, while for the advocates of natural law family is a 'natural' group or even a sacramental union established to raise offspring, for advocates of the law of nature it is merely a dissoluble civil union based on mutual agreement.

As long as there were widespread mass parties that were supposed to reflect the interests of nations or 'social classes', so, let us say, until the 1950s, there was a tendency to picture individuals as parts of some bigger whole ('class', nation or even Church) and identify their particular natures with group particularities. Actually, it is only the slogans of the 'end of history' and global individualistic project of the 1990s that finally dissolved national and religious particularities. From that time on, individuality has clearly been prioritised and simplified liberal arguments have been used to picture all groups (apart from 'cultural groups') as critical points of reference and foundations for so-called populisms. The struggle of this simplified liberalism with populist projects can easily be called the sign of our times. Among the 'populisms', there is also the Catholic-based project with natural law as a critical counterpoint to the liberal understanding of inborn human rights.

Attempts by the Church to stay independent of political powers and exert influence on the political sphere only by means of citizens were contested in the 17th and 18th century first by regalism and then by democratic tendencies where the king was replaced by the people (or 'political nation'). Thanks to the doctrine of sovereignty, it is the people who then held exclusive rights to legislate and determine the limits of individual liberties, thus deciding on the content of law with no intermediate bodies like communities of believers. Erastian tendencies got involved in the theory of democracy with Jean-Jacques Rousseau who made the expression of 'general will' by the sovereign people into the only source of legal order and thereby sublated the Christian conflicts over loyalty either to God or to the emperor by the general will of free and equal individuals: free to legislate and equal in their legislative voice. Consequently, the sovereign people got more powerful than the Roman emperor. Rousseau's democratic doctrine justified – at least theoretically – both the dominance of state over Church and other communities subject to the 'general will', and the dominance of this will over 'private wills' of believers. All intermediate bodies, including the Church, threatened the identification of particular wills with the 'general will' and, as such, they could be abolished as an obstacle on the way to freedom. This freedom was also potentially threatened by family, which was contested by the followers of Rousseau

as the institution mainly focused on particular interests of its members. Both parents and children were believed to realise their freedom only if and as long as they belonged to the people and served it, which made it justified for the people to legally impose methods of raising and educating a child. If we add to this that the family was only supposed to care for the productivity of bodies, not for future salvation, the path to biopolitics focused on the discipline of bodies was left wide open.

It is not this tendency, however, which has recently been given primacy, but the individualistic one. Unlike early modern individualism, it is not so much focused on defining the limits of state activity and establishing the untouchable private sphere but on guaranteeing individuals the execution of their rights – freed from the outdated restrictions of legal and moral nature. As a result, Churches have been made into associations of individuals professing the same religion. The so-called liberal separatism is increasingly calling for state neutrality with moral norms treated as particular normative propositions not binding for all the citizens. Admittedly, it is already philosophers of the Enlightenment who deprived the state of its religious functions and confined them solely to peacekeeping, but the peace could then be preserved by the Voltairian ‘enlightened monarch’. Now the main actors are individuals whose choices determine the foundation of universally binding norms – usually based on the arithmetic majority principle. This tendency has also been understood by the Catholic Church which – beginning with the pontificate of Pope John XXIII – has abandoned the traditional primacy of truth over freedom in favour of the rights of a human person.

5. CONTEMPORARY CATHOLIC POSITION

We know that from the Christian (and among others also from Catholic) perspective, God (not only as Creator but also as Lord) transcends all creatures. Man, as His creation, is *by nature and vocation a religious being. Coming from God, going toward God, man lives a fully human life only if he freely lives by his bond with God.*⁴⁰ Thanks to Him man knows the moral law, the work of divine Wisdom, which *prescribes for man the ways, the rules of conduct that lead to the promised beatitude; it proscribes the ways of evil which turn him away from God and his love. It is at once firm in its precepts and, in its promises, worthy of love.*⁴¹ It is moral law, not created in the ‘political processes’; such *moral law presupposes the rational order, established among creatures for their good and to serve their final end, by the power, wisdom, and goodness of the Creator. All law finds its first and ultimate truth in the eternal law. Law is declared and established by reason as a participation in the providence of the living God, Creator and Redeemer of all.*⁴² It is also natural law, and not personal rights as natural rights, which participates in His providence; such moral *natural law* – as a set

⁴⁰ *Catechism of the Catholic Church*, n. 44.

⁴¹ *Ibid.* n. 1950.

⁴² *Ibid.* n. 1951.

of norms and not rights – *expresses the original moral sense which enables man to discern by reason the good and the evil; they are written and engraved in the soul of each and every man, because it is human reason ordaining him to do good and forbidding him to sin. But this command of human reason – as said at the end of the 19th century by the Roman Pope Leo XIII, often presented as a founder of the Catholic social teaching – would not have the force of law if it were not the voice and interpreter of a higher reason to which our spirit and our freedom must be submitted.*⁴³ These natural law norms are not only immutable and permanent, and hence independent of the variations of history and the various cultures, ideologies and religions, but also *universal in [their] precepts and [their] authority extends to all men*, not only to Christians but also to non-Christians, to atheists or agnostics as well as to the believers of other monotheistic religions. Natural law *expresses the dignity of the person and determines the basis for his fundamental rights and duties.*⁴⁴ But if it expresses the dignity of the person and determines the basis for his fundamental rights and duties, at the same time it shows the negative borders for human actions, also for actions of every legislator. We must also know that natural law – once again: as a set of norms which every man and every member of the legislative bodies knows, should or could know – *provides the indispensable moral foundation for building the human community.*⁴⁵

We know that the natural right theory in the Aristotelian or Aristotelian–Thomistic position, which is so important even for John Paul II in *Veritatis Splendor*, is connected with a *teleological view of the universe: all natural beings – as Strauss put it – have a natural end, a natural destiny, which determines what kind of operation is good for them. In the case of man, reason is required for discerning these operations. Reason determines what is by nature right, with ultimate regard to man's natural end, and – we have to say – to man's natural inclinations which direct him to this end (as we saw in Aquinas's investigations). But this teleological view of the universe, of which the teleological view of man forms a part, has been destroyed for all practical purposes by modern natural science, also by liberals like Hobbes and Locke, whose mechanical conceptions situated every man only in relation to other individuals. From the point of view of Aristotle [...] the issue between the mechanical and teleological conception of the universe is decided by the manner in which the problem of the heavens and the heavenly bodies and their motion is settled. Now in this respect, which from Aristotle's own point of view was the decisive one, the issue seems to have been decided finally in favour of the mechanical conception of the universe. Here is the crucial point: the mechanical, or at any rate non-teleological conception of the universe, had to be accompanied by a non-teleological conception of human life. This 'naturalistic solution' proves to be impossible. It is impossible to banish ends from the social sciences, or what amounts to the same thing, to conceive of ends as derivative from desires or impulses. Therefore the alternative has prevailed: which means that we have had to accept a typically modern dualism of a non-teleological natural science and a teleological science of man. This is the position which the*

⁴³ Ibid. n. 1954.

⁴⁴ Ibid. n. 1956.

⁴⁵ Ibid. n. 1959.

modern followers of Thomas Aquinas, among others, are forced to take, a position which implies a radical break with the thought of Aristotle, as well as that of Thomas Aquinas himself. The fundamental dilemma in whose grip we are, is the one caused by the success of modern natural science, a success which is presupposed rather than made doubtful by the so-called crisis in physics. An adequate solution to the problem of natural right cannot be found before this basic problem has been solved.⁴⁶ But we should remember that Christian reflections are still connected with God; human dignity is universal because every man has God's provenience; his dignity is grounded on his nature which has a source in God and thanks to His will every man – as His creation – is a human person like Him. Still, from this perspective, every human person acts rightly when he goes to the end connected with God, to salvation. Such a right act has a moral value and ought to be secured by legal norms. Here we still have a teleological position and moral dimension of acts. In modern conceptions, first of all in liberal ones, the teleological perspective is beyond rational knowledge. Rights which were grounded in the Thomistic view have no foundation in rational, mechanical knowledge; or, in other words, *natural rights are rejected* first of all in the name of History, which (through anthropology) *teaches us that no such right exists* because instead of the supposed uniformity, we find an indefinite variety of notions of right or justice. But History is critical not only of the naturalistic essence of Thomistic rights, but also of the liberal, especially Lockean, set of universal rights. If we are still thinking of rights in terms of individual freedom or a sphere of privacy, if we are still thinking of rights as a negative area which is at the disposal of a specific individual only, we see them as to create subjective decisions by subjective conscience. Such conscience is not directed towards any supernatural end but only towards other individuals or a mechanically conceived society. When the existence of universal principles had to be denied, rights or law were radically separated from morality (the idea or the ideal of justice which sees natural rights directed to supernatural end) and substituted by natural rights of mechanical space.

In the *Pastoral Constitution on the Church in the modern world "Gaudium et spes"* of the Vatican Council II (1965), we still have a thesis that all political authority must be realised within the borders of the moral order⁴⁷ and what is to be realised there is above all *the inalienable right to life of every innocent human individual which is a constitutive element of a civil society and its legislation*.⁴⁸ This right is the human right and – at the same time – the right of every human person which is the foundation of human dignity and all other human rights. But all human persons as well as all human legislators ought to respect the moral order (connected – as we saw – with natural law) and make the right

⁴⁶ Strauss, *Six lectures*, 7–9.

⁴⁷ *Gaudium et spes*, n. 74.

⁴⁸ 'The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being's right to life and physical integrity from the moment of conception until death' (*Catechism of the Catholic Church*, n. 2273).

of life of every (innocent) human individual compatible with it. For all human beings, interpersonal relationships are vital but for Christians they are constitutive, especially for the Christian vision of the human person as a being in relationship with God, with himself, with others and with nature: 'Being a person in the image and likeness of God [...] involves existing in a relationship, in relation to the other 'I' because God himself, one and triune, is the communion of the Father, of the Son and of the Holy Spirit', as we are reading in the *Compendium of the Social Doctrine of the Church*,⁴⁹ and *everything is related, everything is connected*, as we are reading several times in Pope Francis's Encyclical *Laudato Si'*. The fact that every human person is a being in relationship not only with God and with himself, but also with others and with nature – which is also crucial for him and for these relationships – directs him towards his supernatural end and creates the fundamental moral context also for his legislation. As stated by the Vatican Council II, the correctness, justness and even legitimacy of the evanescent or temporal legal order depends on the realisation of the moral order⁵⁰ and – as Pope John Paul II declared – the social organisation exists for supporting the rights of humans.⁵¹ From this perspective, the social organisation and its legal order exists not only for creating interpersonal peace but also for securing the fundamental rights of humans which are realised inside the natural law borders, being borders of the moral order prior to human will. As a consequence, the Catholic Church still presents this perspective on the rights of humans and natural law; still respects universal human inclinations as a foundation of natural law and – at the same time – human rights. Neither situationism, nor consequentialism and pure pragmatism could justify any attempt to negate the rules of natural law and – through it – the right of the human person. The Church now and again needs to show this position and the crucial point of the true foundation of the liberal-democratic societies also in in 21st century; as Ernst-Wolfgang Böckenförde said in 2010: *To conceive of such a state the liberal order needs a unifying ethos, a "sense of community" among those who live in this state. The question then becomes: what is creating this ethos, which can neither be enforced by the state nor compelled by a sovereign? One can say: first the common culture. But what are the elements and factors of that culture? Then indeed we are dealing with its sources such as Christianity, Enlightenment and humanism. But not automatically any religion.*⁵²

⁴⁹ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, n. 34.

⁵⁰ *Gaudium et spes*, n. 41, 59, 36. "The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel. Refusing obedience to civil authorities, when their demands are contrary to those of an upright conscience, finds its justification in the distinction between serving God and serving the political community. "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's." "We must obey God rather than men" (*Catechism of the Catholic Church*, n. 2242).

⁵¹ John Paul II, 'Speech on Philippines', *L'Osservatore Romano* (Polish ed.) no 3 (1981).

⁵² "Freiheit ist ansteckend" Archived 2010.11.04 at the [Wayback Machine](#), *Frankfurter Rundschau*, 1. November 2010 online, 2. November 2010, S. 32f. See also a very interesting discussion on this problem in German (positions e.g. Helmut Klages, Ronald Inglehart, Gerhard Himmelman, Jürgen Habermas, Elisabeth Noelle-Neumann, Michael Haus and Axel Montenbruck).

As we read in the *Declaration on Religious Freedom* “*Dignitatis Humanae*” on the right of the person and of communities to social and civil freedom in matters religious (1965): *A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty. The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations. This demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society. This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare them to be greatly in accord with truth and justice* (n. 1). The Second Vatican Council and the latest popes still emphasised some *inviolable rights of humans* to life and to religious freedom as a ground for the constitutional order of society which has a foundation in the very dignity of humans; dignity which is known also by reason itself and not only by the revelation of God.⁵³

It is state institutions which have been made responsible for keeping this ‘new deal’. Churches are allowed to teach and thanks to the freedom of religion individuals are allowed to follow the teachings in their lives but, as the state is supposed to be neutral, no Church teachings (no matter if based on revelation or reason) can any longer be given legal value. Although the Catholic Church keeps insisting on its exceptional teaching authority which should guide both citizens and rulers, it has now been recognised as merely one of multiple intermediate structures which shall be confined to the private, non-political sphere.

⁵³ But a critical point for non-Catholics is rooted in a moral obligation to seek the truth by every man, who has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience, under use of all suitable means (*Dignitatis humanae*, nos 2 and 3). We must remember that another crucial problem is connected with the theories of rights. As Raymond Plant wrote: *It might be thought paradoxical to argue that theories of rights could help to fill the legitimation deficit of liberal societies, since a theory of rights surely has to have some kind of moral foundation, and yet precisely the problem with liberalism, according to its critics, is that we cannot have a cognitive moral theory (morality is seen as a matter of subjective preference) and we do not have a non-instrumental view of reason (reason cannot establish moral truths). Yet, frequently, theories of rights have been introduced as attempts to provide a basic moral framework to regulate the relationships between members of liberal societies who differ profoundly about morality. This strategy involves ‘putting the right before the good’, in Rawls’ felicitous phrase. We disagree about the good, and we cannot accept that an authoritative view of the good can be established. Nevertheless, it is argued, it may be possible to reason about the right, that is to say about the framework of rights, which is appropriate and legitimate to regulate the relationships of those who differ fundamentally about the good. This, for example, is the position taken by the American philosopher Alan Gewirth, and is certainly one of the most subtle justifications of rights that recognises the fact of moral diversity and pluralism. At the same time, the whole rights-based strategy has been criticised by Alasdair MacIntyre, who [...] is a major inspiration to narrative theology and very important for contemporary Catholics (Raymond Plant, *Politics, Theology and History* [Cambridge: Cambridge University Press, 2001], 225–226).*

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EMPIRE, NATIONALISM AND CHRISTIANITY

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This paper studies in parallel the history of empire and the development of universals. It uses as its preliminary orientation the work of Eric Voegelin who argued that universals develop in history alongside and through universalising empires. We find this basic contention highly credible as it is empires that force us to develop cognitive approaches that encompass both colonised and coloniser in any subsequent social structure. So conceived, the paper then argues that empires are synonymous with human history as such and that even those entities (such as Greek city states) which are eulogised for escaping this logic are on examination no less imperial than the empires they oppose. The paper then argues that the development of universals is not a byproduct of empire but rather that it drives imperial expansion in the first place. It seeks to argue that ideation is the casual factor in human history, social structures and behaviour. It argues contra thinkers like Francis Fukuyama, there is no biological foundation for the qualitative distinctions of civilisation, rather the paper contends that the origin of civilisation lies in human conceptuality not human biology, locality or indeed any other material force impinging on life. So configured, the paper then concludes that the primary political question lies in bringing together the question of the good with empire – a process most advanced in human history by Christianity.

KEYWORDS:

Christianity, empire, nationalism, Fukuyama, Greek city states, universals, Voegelin

Empire is now a much-vilified term. In terms of modern history, it stands in the contemporary mind as a synonym for all manner of evil, the erasure and destruction of difference, illegitimate rule, imperialism, colonialism, etc. In current debate, empire is all too often counterposed to the nation state, which in its turn is understood as the upholder of cultural and national distinction, the only locale of legitimate governance and the site of resistance to imperial incursion.

Paradoxically and incoherently, the defence of nation states contra empires is conducted all too often in a universalist frame, e.g. notions of self-determination that themselves derive from doctrines of rights that are applicable across cultures, time and borders. Those states that inveigh against empires or the EU or any external force that challenges its sovereign autonomy, themselves deploy universalist arguments in doing so. This suggests that after all, there is a conceptuality that overlies, governs and protects their own particularity whilst not deriving from it.

So configured, I argue that there is no defence for particularity or difference or indeed national distinction outside of a universalist argument or idiom. I suggest thereby that for human beings ‘universals’ are unavoidable, and that all conflict (philosophically at least) is not between universals and particulars but between different notions of a universal, a situation often unbeknownst to the parties involved. I do not mean to suggest a common form of content for such universals in the contests between human beings across all the ages, after all wars are more commonly fought about the nature of the universals in question (and the interests involved thereby) rather than whether there are any such notions. As I will argue that ‘universals’, from the notions of ruling Gods to that of self-evident rights, are inherent in human symbolisation and self-understanding, I will also contend that they are fundamental to human authority, political legitimation and social order. Their natural social corollary is hierarchical, and either closed and defensive or open and extensive, with a necessary logical tendency to the latter and a sociological tendency to the former. The very idea of justice, for example, is at once universalist but also open and extensive, it implies justice for all and asserts or implies the good. By so doing, the just makes a wider distribution of its own logic (which foregrounds the good) more possible. To oppose ‘bad’ empires then in the name of justice is simply and rightly to oppose one variant or offshoot of empire to another, not to oppose empire as such.

If one thinks as all ancient people did, that the gods (or more commonly your divinities) control life on earth; that perforce must include commerce with, or power over foreigners. Ancient peoples were aware that others beside themselves existed, and they were equally cognizant that they also had gods who had powers, etc. So conceived it seems inevitable that your governing universal must over time govern (be it negatively or positively) them also. Even if foreigners or the stranger are figured as a threat to be violently countered, it is ideation that is in play not some *a priori* fixed principle of human interaction. What I am arguing here, is that ideation in large part governs human interaction and that this conceptual generation has inherent within it concepts that apply to more than those that conceive them. I am not of course denying that structures and systems are in play in human history that impacts on the ideation of those born into that history. But I am arguing pace

Fustel de Coulanges that these self-same material structures are themselves the products of primordial ideational ideas founded exclusively around religion and the Gods.¹ In short, I am arguing that the so-called material or realist pressures surrounding state formation and group identity are themselves not material but ideal in origin and nature.

In parallel, I also want to suggest that Empire is no late-stage contingent formation of the human species but that its history (for good and for ill) is continuous with human history and in large part the formation and drive of Empire is what has formed and driven human development over time. It appears that both history and archaeology support this latter contention for when looking at the history and evolution of state structure, there appears no real intermediate or wholly autonomous city state stage – we go largely from tribes or chieftainates to ‘petty states’ that rule by suzerain–vassal relations to empires, and it is the often perpetual competition for dominance between these smaller states that produce empires. It is also the contest between empires and those smaller entities on the edge of empires that often generates empire formation in response. What there does not seem to be, apart from perhaps very geographically isolated tribes, is any stable historical formation around any single self-enclosed identity. Take for example the Greek city states – contrary to the oft perceived sense of their stability, autonomy and continuity – these entities were in a state of almost permanent war as their environment far from being stable was one of persistent anarchy with no international order or binding agreements other than the volatility of self-interest and ever shifting perceptions of military opportunity. The responses of these states to this situation can only really be understood as imperial – since they all sought the elimination and subjugation of their enemies and all sought to dominate and control territory beyond their domain for the sake of the expansion and security of that domain. An anarchic state system can persist for a very long time as the Greek situation readily attests. But the idea that they can be so easily separated from the logics of empire that dictated their near abroad is conceptually fanciful. After all, in this fierce multipolar system certain city states did threaten and then achieve dominance only to lose it again for lack of scale and mass (not will) to enforce their rule. Sparta had its Peloponnesian League in the 6th century, this was challenged by Athens and its empire in the 5th century, a conflict that ultimately ended in Spartan victory, but they were unable to enforce their will over the Greek world and the 4th century ushered in yet more violent internecine warfare that was if anything worse than what had gone before.

As Arthur Eckstein points out in his magisterial study of this period, imperial activity between the Greek polities was often motivated by fear rather than greed – fear of what the ever-shifting tides of alliances may bring to bear against the weak prompted imperial

¹ See Numa Denis Fustel de Coulanges, *The Ancient City: A Study on the Religion, Laws and Institutions of Greece and Rome* (Baltimore–London: The John Hopkins University Press, 1980). The reader will know how powerful and compelling Fustel de Coulanges’s work still is in regard to showing the religious origin of all ancient practices, codes, laws and behaviours. Despite this book being first published in 1864, the most recent scholarship only conforms his original thesis.

behaviour by both the weak and the strong.² But fear is as equally ideational as avarice, and both are governed by concepts and perceptions of the human mind.

All human societies that emerge from tribal structures do so into state-like formations, and these seem to engage in and form entities that either mimic quasi-federal, and hence empire-like structures, in defiance of larger entities and/or they themselves also form imperialistic missions, colonies and outposts.

So the idea of an ancient city state that exists without (attempted) annexation of its neighbours or colonies, that exists apart from any imperial dimensions seems a historical misnomer. Nation states, as scholarship has long shown, are a late modern development often generated out of the collapse of empires and they themselves often aspire beyond themselves to create empires once more, (Germany being a particularly invidious example).

By running these two ideas together, the philosophical or conceptual problem of universals and history of empires as we currently know it, I hope to open up some questions as to the relative merits of empire and the philosophical thought or conceptualisation that it gives rise to. I will draw on the thinking of the great meta-theorists of human civilisation in general and Eric Voegelin in particular. In part because I think his reflections expose the conceptual and historical poverty of nationalism as we currently conceive of it, and of the 'imperial' nature of truth itself and what I take to be its most universal incarnation – Christianity. Why a focus or concluding set of remarks around the latter? Because if both universalism and empire are unavoidable for cognizant human beings, the task is to render that necessity congruent with justice, ethics and truth. And that ultimately is, I would argue, the political project of Christianity.

So, if nationalism is but a phenomenon and outgrowth of empire and a universal frustrated by its containment by notions of race or place, then indeed what on earth to make of Christianity? Introducing Christianity to the opposition between nation state and empire complicates matters. On the one hand, Christianity's traditional indifference in its earlier form, to current rulers (rendering unto Caesar that which is Caesar's) allowed it to spread through the conversion of elite families and various rulers. It did not proclaim subversion in its call for conversion; on the other hand, Christianity is clearly universalist. It upholds a law that judges all lawmakers and a cosmology that holds that it is the truth of everything and so demands that it rules and (ultimately) legislates over everything and everywhere. In point of fact, if Christianity is congruent with any current political formulation (which it is not as Christendom imagines something quite different as its political end), it is far more drawn to empire than it is to a mere localisation, or worse an identification with one ethnic identity, language or place.

Part of this argument is to dismiss the very idea of a Christian nationalism: as if the message of Christ could be reduced to one people defined by a border or a purported race. But really, I argue that Christianity perfects the notion of Empire through the

² Arthur M Eckstein, *Mediterranean Anarchy, Interstate War and the Rise of Rome* (California: University of California Press, 2006), 48–57.

notion of justice. A Christian Empire would on this account maintain rather than erase difference and national distinction. To say this is to say that cosmopolitanism in the form of globalised economic and social liberalism usually wins because it rightly uses the language and practices of the universal to mimic truth and justice but manifestly fails to deliver either. To prevail against such, it is imperative not to retreat to particularism but rather to properly embrace the language of the universal and not to cede the language and logic of the universally applicable to an ultimately nihilistic and a wholly destructive liberal logic. I am writing this paper for a Hungarian publication in the heart of a middle European polity, a number of members of which (most notably Poland and Hungary) have re-inscribed Christianity in their political offer and who at the same time are attacked for not being liberals by a universalist liberalism. So, it is understandable that they embrace nationalism and particularism as an alternative but as I hope to demonstrate this is a false comfort, to be truly Christian and to truly protect the differences and distinctions which make up a just plurality and a good society, it is necessary to be both Christian and recover or reclaim the universalist position from liberalism. To argue for a re-configured Christian notion of empire would be for a modern nation state, an assertion of a necessary hierarchy (of good over evil for instance) together with an extensive distribution of the rewards thereby attained and an ethical and equitable distribution of all the goods that such a society can engender.

This broadly put is the argument I would like to make. Time and space mean its elucidation in this form must be circumspect, but I hope it will be illuminating, nonetheless.

To return to the argument, if indeed particulars require universals to defend themselves (as I believe they clearly do), then it begs the question as to where universals come from and what type of political organisations can they legitimate and sustain? It also begs the question as to what I mean by universals and to that end one might argue it is an account that applies everywhere regardless of time or space; a concept or speculation that is true regardless of relativity, circumstance or denial; though of course context, situation and history shapes the nature of this discernment and its manifestation and ultimately what we can know. There are clear difficulties projecting this terminology back into history, let alone to the time before Judaism, Socrates or Plato. Yet it is from this very milieu that such thinking first arose, so it cannot be entirely foreign to it.

If then the current empire/nation state debate is a conflict about universals that is itself a debate between or within universals; then it requires us to ask, can we, in our discussion of political legitimacy, ever escape universals? And if not, can we decide between them or better, can we decide between their respective content and claim? This question takes us, as indicated earlier, to the debate as to the nature and history of human civilisation. The discussion of meta-history has a long and influential lineage from Spengler to Toynbee to Karl Jaspers to Christopher Dawson. Eric Voegelin, who is rightly understood within this lineage, believed that all existent cultures on earth come or came with a corresponding cosmology, a belief that all political action and organisation has its roots in a mytho/religious account of meaning and that that meaning (or universal) is what directs self-understanding, political action and organisation. For Voegelin, human action and

structure emerges from this all-embracing metaphysics cum cosmology and can only be understood in the light of whatever those cultures believed or held to be true.

Configured thus, this suggests that no human culture has ever been without its metaphysics, its cosmology and its ultimate legitimating principles. Reflexively, this in turn moots that the mark of the human was/is to think in terms of 'mythical wholes', suffused with gods and the rules and demands that such a structure places on humans that live under this aegis. Since people, from their first emergence, undoubtedly thought the gods were both real and true, it is not unsurprising to suggest that they lived by divine dictates. Which term we use to characterise this structure, *vis à vis* the modern/medieval notion of universals from which they undoubtedly emerge, is a difficult task. Voegelin used the terms cosmological and ecumenical to contrast the mythical world views that were relatively closed, such as the world and gods of Athens and that which was open or contained within it other cultures, e.g. the Empire of Persia.

These 'universals' varied in extension and application; they might be just applied to one people or to one place, (we could call this in modern terms a constrained universalism) or they might be extended to all peoples and all places (an unconstrained application of universals such that they apply everywhere), as with the eruption of monotheism, for example.

Coincidentally, we have never discovered any human settlement that was not also marked by the symbolic. It used to be the case that human and Neanderthal campfires were distinguished by archaeologists through the presence of red ochre, which we know the earliest humans used for painting. But in February 2018 in *Science* magazine, researchers published an account of cave art in Spain that predates the entry of *Homo sapiens* into Europe by 20,000 years.³ The only conclusion that fits with available evidence is that given the age of these paintings, over 64,000 years old, they are of Neanderthal origin. All of which strengthens Voegelin's metaphysical assumption (for unfortunately he never explicated quite why this would be the case – he merely 'asserted' it was, albeit through multiple examinations of different ancient political and religious texts), for it suggests that symbolisation is perhaps as fundamental to the human creature and its immediate ancestors as breathing or eating. Now symbolisation is not necessarily universalisation (as I will go on to explain) but all universalisation is symbolic and the symbolisations we have from the primordial human past do suggest Voegelin's account of mythic wholes. For what is painted and depicted represents as far as one can judge, exactly this.

So, if being human and thinking and acting politically and socially in a 'universal' manner is equi-primordial or at least implied by the very fact of being human, then empire as a political form looks much more natural and far less contingent than its erstwhile progressive critics would argue. For its very logic impels those who operate under such auspices to extend themselves. It would be wrong however, to argue that all such mythic

³ D L Hoffmann et al., 'U-Th dating of carbonate crusts reveals Neanderthal origin of Iberian cave art', *Science* 359, no 6378 (2018), 912-915.

wholes correspond to what we term a universal and its social realisation in the form of empire, since there are or rather were, many tribal groups (if one is to judge by their art and symbolisation) that are encompassed by such but entertain no imperial ambitions. It is the transition beyond tribe that seems to engender the universal and the drive to realise it. Apart from Voegelin, I struggle to think of anyone who has aligned (correctly in my view) the often bloody logic of empire with the rise of a universal that ultimately pacifies and domesticates violence. Perhaps the two are so inextricably linked because theoretically one cannot really think the universal unless one is already in commerce with it, e.g. encountering others in a trans or inter-tribal situation. We might better refine our conceptuality by talking about the transition from meaning saturated manifolds that clearly enveloped all human beings to what I call universals. What precise combination of anthropology, social structure and cognitive development first engendered this move remains to be seen. It might well be the intellectual equivalent of the great farming question – why did humans ever leave the nomadic tribal mode of life for the much harder and more brutal regime of settlement and agriculture?

With the above caveats in mind, I do align universalism with empire which I believe is exactly what Voegelin was also arguing. I accept the symbolic beginning that he describes in the *New Science of Politics*. He wrote that the beginnings of human society were ‘a whole little world, a cosmion, illuminated with meaning from within by the human beings who continuously create and bear it as the mode and condition of their self-realisation.’⁴ In its post-axial form this internal monism of the tribe or the people with their own gods is ruptured by a recognition that the gods might also favour others, that our behaviour might fall short of what the gods intended such that their favour accrues elsewhere, or that if our gods are to rule over others as well, how can they continue to be our divinities alone? The opening up to the idea of a transcendent truth in respect of which we might fall short, and the realisation of an empire seem (as Voegelin recognised) to occur together. Insofar as political representation must represent the ‘all’, then it cannot be the sole possession of one people. This suggests that the cognitive world of the tribe encounters the universal when it moves beyond itself, in perhaps encountering others or a deity that demands something of them in respect of those others. Whatever the cause or inception, political legitimacy in rule over others requires that those others must also be represented in the self-image of that society and therefore in the thinking of the Gods.

For Voegelin, this self-illumination of human society through symbols gives man his sense of place and purpose. ‘The symbols express the experience that man if fully man by virtue of his participation in a whole which transcends his particular existence, by virtue of his participation in the *xynon*, the common.’⁵ The nature or understanding of the whole (participation in which is what he shares in common with his fellow creatures) is what varies, not the human symbolic claim to the whole. And humans have always seemed to

⁴ Eric Voegelin, *The New Science of Politics* (University of Chicago Press, 1952), 27.

⁵ *Ibid.* 27–28.

understand that in order to grasp a part, one must ascertain the whole. What this means is an epistemic, anthropological and ontological thesis, that human symbolic knowledge requires a claim to a whole in order to explain anything at all. To think symbolically is therefore for Voegelin to necessarily progress by degree or epochal shift, to thinking in a universalist idiom. If thinking precedes action and if action repeats and thereby deepens symbolic thinking, then the symbolic order becomes reflected in the ensuing political order. Since for human beings all stable rule must be legitimate, we should not be surprised that a society's order reflects its symbolic ordering and that the political form it takes is the form that ideation and self-understanding suggests.

To argue this is, in contemporary parlance, to suggest something like the following: that prior to a Kantian-like distinction between concept and intuition, the formative experience of ancient or rather pre-modern peoples was of a world undivided by contemporary philosophical or conceptual categories. All human beings really did seem to believe they were in a wholly divinised world where the transcendent powers (the gods) might favour them if they behaved according to their universal dictates and values.

Least one think that Eric Voegelin was a peculiar though learned academic outlier, this approach is vindicated by the latest scholarship of the ancient and classical period. Take for instance Greg Anderson's remarkable book published in 2018, *The Realness of Things Past*. In this work he makes many of the points first raised by Voegelin, not least that modern conceptuality and standards of historiography blinds us to the life world inhabited by pre-modern societies. Athenians, Anderson argues, saw their world 'as a single unitary system of life, a divinely ordered ecology, through which a pantheon of gods sustained a community of humans who pleased them'.⁶

This was more than a tutelary concern, the gods in Athens and indeed arguably at and in every other existent human society of that period, shaped and determined all the principles of material and physical existence. Scholarship suggests there were over 200 deities in Attica in the classical period controlling and licensing all manner of human activity and production. These gods and *Athena Polias* most eminently, guarded over the health and wellbeing of the polis and secured and made possible all its goods. These gods were, as Anderson puts it, 'the ultimate "governors" of the polis'.⁷

Ritual, which was both ubiquitous and continuous in Athens, was the liaison with the transcendent and inculcation of the gods into daily life. This daily re-enactment allied the interests of humans with those of the immortals and dictated and shaped how humans both ordered themselves internally and externally.

We should not be surprised then that a symbolic world that was so complete as to give ultimate meaning and direction to all life under its aegis would seek to extend itself to regions where it was not known. To uphold a universal so completely in one's own realm means that is unlikely that you would accept its diminution or relegation when confronted

⁶ Greg Anderson, *The Realness of Things Past: Ancient Greece and Ontological History* (Oxford University Press, 2018), 138.

⁷ Ibid. 152.

by another universal form in the shape of another city or empire. And in terms of drawing parallels, there appears to be so little between the formation of city states and the formation of empires that one might question (to return to earlier remarks) whether the concepts of an autarkic city state might apply at all. After all, Sparta enslaved another Greek people in the Helots, a people at first thought to be the non-Dorian element in Laconian society and whose population was added to Sparta when Messenia was finally conquered after some twenty years of warfare in 724 B.C.⁸ Plus of course Athens, also engendered an empire towards the 5th century, exercised imperialistic control over the Delian league and was suzerain of 170 other Greek poleis around the Aegean basin during the latter half of the 5th century. It might be ventured that the vaunted self-sufficiency of ancient city states rests on, or reaches to, foundations that are also ineluctably imperial.

By this I do not mean to ignite a historical debate as to the veracity of the concept of a city state but rather to indicate that from the beginning, human beings were aware of the presence of other humans and intellect was forced as a result to fashion concepts that could accommodate other minds and other cultures. As such, the universal is implicated in any cognition of the other even if such cognition denies that universals apply to barbarians, the cognate must be thought for the other culture to fall short, made war upon or be legitimately enslaved. As Thucydides famously said, the 'men are the polis' (*andres polis*) as such the origin of social structure and ideation is to be found in the minds of men, not in their locale or geographic situation.

And this is perhaps Voegelin's main point. John Milbank has noted in a yet unpublished essay, that Voegelin, like Carl Schmitt, operates in contra-distinction to a medieval mind set where the problem of political representation is that it sits between an order here on earth and an order above in the cosmos.⁹ The medieval task being to align the former with the latter, which Voegelin manifestly fails to do, as he venerates too highly an individuated prophetic or mystical encounter with the transcendent order, and was too pessimistic about a shared social capture of the revelation. Nonetheless, Voegelin understood that it was no accident that the universal itself is generated through universalising empires or even in resistance to and a correction of such empires (as in the case of Israel). What is remarkable about both the traditions of Greece and Israel, contra the reading given by Voegelin is that they each imagine a transcendent good – the weaving of a peace between all nations.

Oddly, Voegelin seems unable to fully grasp the shared nature of universal revelation – it is as if he thinks the experience of the universal is a singular individuated phenomenon that is necessarily betrayed by its transmission and institutionalisation. But nothing about the history of the universal suggests this. Rather, the unfolding of the universal is what leads to law and the extension of its protection and privileges to those who were previously denied such recognition. This expansion of the universal is something that the universal appears to demand, merely by the act of thinking it. We find such in Plato's *Laws* where he imagines

⁸ See L J Piper, 'Spartan Helots in the Hellenistic Age', *Ancient Society* 15–17 (1984–1986), 75–88.

⁹ John Milbank, *Truth and the Ambivalence of Empire: On the Theoretical Work of Eric Voegelin*. Unpublished paper.

law transcending the members of one city state and shaping a code that binds all cities and finally brings peace to the warring Greek polities. Similarly, in Genesis, where Judaism says to itself that its task is to be a light to all nations, such that its practice becomes how the rest of the world learns of God. Strangely concomitant with Voegelin's denial that the middle could ever authentically engage with the beginning and the end, is his denial of Platonic, Jewish and Christian mediation, all of which maintain that the uncreated order can filiate with the created order without Gnosticism being the result. As Milbank points out, one can detect in this acutely Protestant valorisation of the revelatory event both the existentialism of the 1950s and bad German biblical criticism. Voegelin fails to understand the deeper Catholic account that revelation reveals relation not rupture, and the communication of such to all other events in time and space.

The essence of the prophetic events that Voegelin eulogises is precisely their communication to and connection with other events. Israel with her union of priest and king and Greece with her Platonic philosopher kings were the key unifying aspects of the Western promise for a just social order on earth and it is exactly this aspect which Christianity aims to deliver in the Church. Which after all is an organisation specifically designed to redeem the earth through bringing it into alignment with heaven. And this legacy in history is so unusual because it was born of this fusion of religion (in its specifically monotheistic Jewish and Christian form) and later Greek philosophy. And both were unprecedented in the way that they understood the cosmos or rather its author as being intimately involved with everyday life and concerned with its fruition and well-being. Both as a result presented a universal that was meant to be inculcated here on earth, which meant it had to be communicated to all on earth.

The origin and character of the universal and its impact on human history is often most acutely addressed in meta-history. It is here that one finds the best accounts of the Roman Empire, Christianity and world history. But there are also more contemporary accounts of the universal that find its origin not in ideas or culture but in some version of materialism. It is geography that gives us universals, it is genes, it is sociology, it is anthropology, etc. In the more sophisticated, it is biology admixed with history and anthropology. Perhaps the finest recent example of such occurs in Francis Fukuyama's 2011 classic *The Origins of Political Order*, when he notes that it is religion that gives us the very idea of a law independent of lawmakers.

Indeed, this text magnifies the issue at hand. Fukuyama has an ascending order of three ideal historical formations which can and do occur separately but when they do so together, they evince for him the ideal political order and they are, respectively: 1. the state; 2. the rule of law; and 3. accountable government.¹⁰ He then offers a complex multivalent explanation for the different combinations and origins of the above.

¹⁰ Francis Fukuyama, *The Origins of Political Order. From Prehuman Times to the French Revolution* (London: Profile Books, 2011), 16.

But serious minds are not content with a multivalent description, however accurate it might be, and some account of why what is selected or historically adopted is required. In this regard, Fukuyama presents us with what I will suggest are two conflicting accounts of the origin of civilisation, or more precisely, two conflicting accounts of what civilisation is. He seems unable to decide if civilisation is just order or a certain type or quality of order. The first is susceptible to an evolutionary explanation the second is not.

Initially at least, the meta-account that explains all others that Fukuyama adopts is conventional, (which does not mean it is wrong) that is, he upholds a weak form of biological causation. For example, Fukuyama argues that humans have four evolved or natural dispositions: we cooperate with kin, we are nepotistic, we are norm followers and we have evolved to be religious. The propelling and unifying force within this framework is the desire for status and recognition that he also suggests is strongly biologically determined.

He writes:

“The primates from which the human species evolved practiced an attenuated form of politics. To understand this, then, we need to go back to the state of nature and to human biology, which in some sense sets the framework for the whole of human politics.”¹¹ For Fukuyama ‘biology presents a certain degree of solid ground’, and the above is what it is constituted of.¹²

But then he appears to posit another theory of order:

The huge variance in political forms that we see both at the present time and over the course of history is in the first instance the produce of variance in the physical environments that human beings come to inhabit. As societies ramify and fill different environmental niches across the globe, they develop distinctive norms and ideas in a process known as specific evolution. Groups of humans also interact with each other, and this interaction is as much a driver of change as is the physical environment.¹³

In short, he moves from a biological material theory where human differences are not explained by ideation but by location, to one where interaction with others and their ideas are as determinative as the physical environment is on life. He yet still concludes that ‘widely separated human societies have come up with strikingly similar solutions to the problem of political order’.¹⁴ The range of societies that moved from kinship to monarchy to the

¹¹ Ibid. 25.

¹² Ibid.

¹³ Ibid. 45.

¹⁴ Ibid.

impersonal administration of a centralised state, is for Fukuyama a ‘fact of convergence’ that suggests ‘an underlying biological similarity’.¹⁵

There is a question here: Is civilisation form or content? Is the question of political order settled by seeming similarities in structure or opened up by the vast variations in cultural content, behaviour, values and outcomes? Fukuyama seems to equivocate, he accepts that state survival requires legitimacy¹⁶ and that that is clearly a cultural or ideational issue. In which case the superstructure (if you can forgive the terminology) is determinative of the base. A point he seems to also accept when he stresses that his work focuses on the ‘*political* dimension of development’,¹⁷ and that the values or content of a civilisation can be historically determinative. He accepts for example, that religion can shift society one way or another, he cites India and the rise of Brahmanic religion 2500 years ago as an event that diverted the entire course of a subcontinent.¹⁸

If the argument is only about order rather than chaos, we might agree that biology favours order and structure over anarchy (since it clearly does) but if the arguments are about the nature and character of that order then it is not so clear that biology or evolutionary theory can explain variation or the differentiation of content in human civilisations. Indeed, the idea that we differ initially and primarily because we live in different places seems odd – especially given the widespread variation in culture and practice that can exist within very small territories that enjoy a similar landscape. And of course, if the theorist wants to say anything in respect of real content, it is the differentiation between and within civilisations that he or she would wish investigated. This seems (rightfully) to be Fukuyama’s real intent as he outlines an introductory section where for him the issue is ‘Getting to Denmark’. A society that he argues, has pulled off the three aspects of governance that he most values and that he contends secures the type of outcome that we want. But if biology favours order rather than content, which it arguably does, it makes no preference for what type of order it prefers. Whereas human society and human beings are markedly different from the rest of creation as alone amongst the animals they can (as Aristotle noted), change their own nature according to their culture.

Fukuyama in this text at least seems beset by equivocation, at first there is biology then there is not, and the concern is with the origin of order then it is with the type of order originated. Moreover, the four dispensations he says that we have evolved have meta-explanatory power, but do they themselves require more foundational explanation or they are empty? Take for example ‘we have evolved to be norm followers’ well what norm? And given that even a cursory examination of human history will show wide and varied practice in anything from marriage codes and structures to what constitutes honour, what does such a claim add? It is surely an empty proposition; societies want order, but what order remains undetermined. It is no more an explanation as to the type of political order

¹⁵ Ibid. 46.

¹⁶ Ibid. 17.

¹⁷ Ibid. 19.

¹⁸ Ibid. 21.

we have, than the mildly empirical reflection that power tends to centralise. The claim that we have evolved to be religious is another empty proposition, since religions (like the type of political order) vary as wildly and as widely as any human variation on earth. One might as well say we have evolved to think and take that as a solution to the problem of what to think and when. Fukuyama is certainly on stronger ground when talking about nepotism and kin co-operation, but again this just tells us about our tendency to order, rather than what we order and its nature and value. *The Origins of Political Order* tells us some very valuable things about the origin of order but much less about the origins of *political* order. Why this society had this structure, why it believed in this type of legitimation and not that? Why it upheld these gods and these practices and not those gods and those practices? So as a history of political ideation and difference, or why we have the political order we do, the book is rather empty description rather than an explanative exercise.

How then might we better explain the variety of political order or better the variance of political legitimation that different societies have? Rather than starting with a material explanation of cultural outcomes, we might be better advised to start with an ideational explanation of different ideological outcomes. If culture emerges with practice which emerges with belief, how are we to explain and expound upon change? Rather than practice leading and ideas following, I suspect that the motive power in human history lies not with sociological accounts of change followed by reflection. Rather, the human mind has the curious and seemingly unique power to negate what lies in front of it (recall Adorno's power of the negative) and recast it according to the imagination. Obviously genuine change is a mixture of all factors, each compounding and complicating the other, but the sheer potency of the symbolic mind coupled with the ability of human collective agency to realise such visions leads me to think (and here I agree with Voegelin) that historical causality or direction has more of a mental than a material basis.

Though you will gather from the preceding that I am arguing that cultures with universals develop a sense of mission and some variant of empire, some do so more extravagantly than others. And given that I wish to argue that empires make a mass, decent society possible, one that cuts across all the divisions that normally plunge human beings into murderous and brutal conflict, I want to examine now where I think that possibility has been most explored and fulfilled. This takes us to Europe and the West, where distinct historical circumstances produced the most open society known in the ancient and classical world – The Roman Empire.

But as Plato had long noted, we human beings are mimetic creatures; we learn by recalling and repeating, and much of Rome was a repetition of Greece in general and Alexander the Great in particular. As Krishan Kumar points out in his text *Visions of Empire*, it is to Alexander that 'we owe the earliest, most widespread and longest-lasting creation of the idea of empire and of its mission'.¹⁹ His empire stretching from the Danube to the

¹⁹ Krishan Kumar, *Visions of Empire: How Five Imperial Regimes Shaped the World* (Princeton University Press, 2017), 45.

Indus was founded not upon ideas of exploitation but rather a higher ideation: universality. What we have as historical reportage from his advocates, admirers and chroniclers, all point as Kumar notes, to Alexander's idea of uniting East and West across his lands and producing for the first time a world culture. Not for nothing did he attempt through multiple marriages and many alliances of both himself, his kin and his generals to knit entirely foreign cultures together through the idea of a universalising empire. He asked his Macedonian satraps to adopt local culture of dress and customs and to learn the language of the people they ruled over and to become one with them. That it all broke down after his death is no repudiation of the idea but is a mark of how far the man had advanced ahead of the cultures he tried to unite. The approach and politics of fusion were to be repeated and recapitulated by most sustainable empires henceforth. A fusion that comes, and let us state the obvious, from no material cause that we can determine. Alexander founded his world from his ideas and his ideation, repudiating his teacher Aristotle for whom the non-Greek was nothing but a barbarian.

And the best reading of the origin of these novel ideas of Alexander lies in the scholarship of the British Hellenist William Tarn. First presented in 1933 at the British Academy, Tarn spoke of the extension of *Homonoia* or 'being of one mind together' by Alexander to all the subjects in his realm – whether Greek or Persian. In his later reflections on this idea, Tarn said Alexander's empire had three distinguishable facets: firstly that 'God is the common father of mankind', secondly 'the unity of mankind', and thirdly that 'the various peoples of his Empire might be partners in his realm rather than subjects'.²⁰ As Tarn notes, in Egypt Alexander is reported by Plutarch to have replied to a philosopher who said in homage to Homer that God is the king of all men, Alexander replied God is the father of men not just the king.²¹ This conceptualisation leads inescapably to the second and third facets of *Homonoia* that Tarn mentions. Alexander did not reach these conclusions after he had conquered. These conclusions are *why* he conquered.

This universalising mission had enormous symbolic and historical power, not least to the Romans, who regularly attempted a recapitulation and fulfilment of Alexander's symbolic legacy. Aelius Aristides's famous *Oration to Rome*, presented to the imperial court, concludes with a eulogy to Rome exceeding the Greek legacy in its moral and political character. It is a paean to among other things, Roman order, justice, tranquillity and equality. Rome fulfils Alexander's legacy by creating a 'civil community of the world'. Yes, there is Roman rank and order and hierarchy, (and also slaves) but no free citizen is barred from membership of the highest rank by race, class, religion or location. Even to the level of the Emperor, Hadrian after all was from an Italian family that settled in Spain but despite being from, or rather despite being located in the periphery, he maintained close links with Rome and was elected Emperor by the Senate on Trajan's purported nomination. Interestingly, he was perhaps the most Pan-Hellenic of the Emperors enraptured as he was

²⁰ W W Tarn, *Alexander the Great. Volume II. Sources and Studies* (Cambridge University Press, 1948), 400.

²¹ *Ibid.* 435–436.

by Alexander and the Greek ideal. He, like other Caesars, also sought to forge a common unity amongst disparate peoples. So, when Aristides spoke of the Empire engendering a common nationality where ‘all paths are open to all [...] and a civil community of the world has been established’, he was not speaking into a vacuum. This was the governing ideology of the ruling Roman class, even if it was a deeply unequal and stratified culture and society. The benefits of civilisation were felt by all – regardless of their station. Hence, the Roman mission of civilisation or *humanitas*, which was felt and experienced to be real both by those who lived in Roman lands and were thus guaranteed peace, and those who wished they did, (often the very barbarians who attacked Roman borders). Rome was the most open society in the ancient and arguably the medieval world, it did not define membership of its polity by race, geography, class or creed. You were not necessarily born into it or on it (unlike the Greeks whose fatal limitation was that they thought only those born in Hellas could sustain civilisation), it was something you could join. Through affiliation to its values, those without membership of the Roman polity could through absorbing and repeating its culture and pledging allegiance be awarded citizenship after due consideration. You could also proceed by degrees – those approaching ‘civilised’ standards could acquire additional rights and privileges up to and including citizenship. The *ius Latii* was the pathway to acquire such by increments and degree, offering, as Kumar points out, ‘a model for the incorporation of other foreigners and even the most distant barbarians’.²²

It is beyond remarkable in the ancient and the modern world that conquered peoples were so quickly allowed to participate in the hierarchy of the victorious state. Emperor Caracalla’s proclamation in 212 AD that all free subjects would now enjoy full Roman citizenship induced perhaps that most important element of equality in a state: formal full and equal membership. This is most important because once it is formally granted, the reality of enduring inequality loses legitimacy, and rights progressively accrue and distribute. Indeed, much work recently has been done in the contemporary world on the value of being a member of one of the more prosperous and developed states. Its value far exceeds what the average person could conceivably earn – even in those advanced states. One must surmise that something like this would also have pertained within the *orbis Romanus*.

When the distinction between the conquered and conquering people vanished as it did with the Caracallan proclamation, the Empire moved on again, to use Voegelin’s terms, from a relatively closed to an even more open and ecumenical domain. Some have broached that this made Rome a nation state (one people within borders) rather than an Empire, but this claim is misplaced. A nation state has no grand mission other than preserving itself or perhaps in that peculiar blend of nationalism and imperialism – extending itself. But Rome as the holder of and purveyor of universal citizenship would have no theoretical or philosophical impediment from extending the benefits of civilisation even further, to incorporate yet more people and cultures under its auspices and to accept that it is changed

²² Kumar, *Visions of Empire*, 58–59.

by this experience such that its expansion does not mean another's subjugation. Once Rome placed universalisation and mission at the core of European self-understanding (which I would suggest is its ultimate legacy), then it made Roman Europe different from almost everywhere else. Which is perhaps why Christianity first took institutional root there.

As argued at the outset, all cultures are saturated with their own meaning. The human mind, in commerce with reality (both mundane and transcendent), fashions the forms that will then shape the social world that people inhabit. At some point this governing, symbolic cosmology encounters something beyond itself, perhaps it is other humans governed by different gods, perhaps it is in that stage and negotiation between human settlement, fortification and warfare? Either way, there appears a dialectical relationship between ideation and empire, between the emergence of universals and imperial expansion and conflict. This relation, one that perhaps only Voegelin has fully confronted, is a difficult one to discern and unpack. One must remember that the imperial surge is not across a field of innocent, wandering subjects in an idyllic state of nature. The reality is, the imperium is often a response to the ongoing series of small but equally lethal local and often fratricidal conflicts within and between closely related tribes and groups. Nor is the universal or the ideation of empire some after-the-fact legitimization of a deeper instinctual drive; this would be to posit a philosophically and historically unsustainable account of human nature as driven to violence. If so, why not violence always, and if so, why the clear preference for peace that humans express time and time again when such peace is secured? The universal tends to the ecumenical, though of course the reality of human expansion and history is also a story of constrained universals or nationalist imperialisms (to use modern terminology), but that notwithstanding it is worth reflecting on Karl Jasper's axial age thesis. Here one could argue that the emergence of religion in the context of empire and expansion is in part an attempt to constrain slaughter by conferring on others a status or taboo that prevents extreme violence. Recall Augustine's arguments in the *City of God* that so many were spared the sword in the sack of Rome in 410 by Alaric, precisely because Christian practices of sanctuary and mercy were observed by barbarians who had adopted the faith of those they conquered.

And as commentators note, Augustine finds much to admire in Rome, so much so that he takes the benefits of Roman law as self-evident and declares that the establishment of the empire was guided by providence to suppress the violence and discord of nations. The 'virtues' of Rome in *The City of God* are named via the authority of Sallust, who is quoted in what can only be approval. Sallust names that first Roman 'virtue' as liberty (*libertas*) or love of country or better yet, a love of the shared life and vision that is Rome. When Romans discover this love, they want it to dominate and rule so they embrace glory as their highest goal. This pursuit of glory (the extension of their love of Rome) leads to conquest (*dominatio*) and empire. How can we think about this relation between *libertas* and *dominatio* for they seem in explicit contradiction. But are they? In a way Rome uncovered what concerned us at the beginning of this essay – a universal that logic and emotion both demanded. The notion of dominance implies that this 'libertas' is indeed good and should rule – and it is better that the good rules than evil. The Roman love of

glory was the Roman love of their (open) city and for this, they suppressed all other vices. However, if it would be too strong to call glory a Christian virtue; it was clearly a pagan one as it suppressed manifold varieties of private vice. Glory for the sake of praise of others, shows that public honour and being ruled by public honour rather than private vice was indeed possible.

I am not attempting an exegesis of Augustine here – I am merely pointing out that even the most profound Christian thinker of the entire classical period discerned what Rome bequeathed to the Christianity that came after. At the outset of the paper, I argued that if universalism is unavoidable for cognizant human beings, so it appears historically in its externalisation: empire. The political task is not to attempt to deny that the ruling history of the world, e.g. that social structure which has governed most human beings for most of civilised history is empire, but rather to render that necessity congruent with justice, ethics and truth.

This presupposes that such a thing as good is a real existent entity. Yet few in the ancient Greek world (apart from the Sophists) denied the presence of a real good in the world, the Academies just differed about its nature and origin. Plato named the existence of good, and further stated that good is beyond all beings, but yet governs, shapes or directs those beings.²³ As so often with Aristotle, you find that his thinking extends rather than contests Plato. For Aristotle the aim of ethics was to fulfil the ‘moral’ form that you had been given, the injunction being to become the *is* that lies like a nascent promise within you. This is, after all, the aim of Aristotelian virtue ethics: to allow one to flourish through becoming what one ought to be. So configured, the Greeks could think henology and plurality, they knew there was a one and a many, but the difficulty for them was the communication and relationship between the two. Why would the absolute care for the creatures it brought into being? Why would it allow its divine nature to be participated in by things that were not divine? Or as Plotinus put it – why was the one not satisfied with itself such that it produced this plenitude of beings? If we are to bring the many into accord with the one, how can we be assured as and when this relationship would be attained? One might say (though this would be unfair to Plato) that the Greeks discovered moral reality (or the necessity of ontological hierarchy) but had no real idea how to distribute it to the many who desperately needed it. Perhaps this is the true source of the Greek’s restriction of humanity to themselves? Whereas Rome is really the foundation of the city of the many. Rome from its foundation gradually expanded to the many such that all could enjoy the benefits of civilisation.

So how can these two vectors be together, the pole of the one (Greece) and the pole of the many (Rome)? This is where the Jewish–Christian legacy interpolates and creates the dramatic new fusion or possibility that I spoke of: an empire that is good. The Jews, like Plato, upheld a source of cosmological order and law in the universe – what was so revolutionary about Israel is that this was held to overturn the rule of kings and subject

²³ See Plato’s *Republic*, 509B.

royal to divine authority. Such that all had to obey or live in accordance with God's law. This means there is no site of temporal authority that is separate from or free of the need to abide by divine authority. In which case, one could say 'well that is much the same with polytheistic systems'; but polytheism tends to just be a Feuerbachian projection of existing mundane power narratives, and since these gods are arbitrary and often go to war against each other, they demand little of their subjects except abasement and worship. Jewish and Christian monotheism by contrast makes a requirement that often runs counter to the world and the demands it places on human populations. It limits and changes existent and dominant social practices, it transforms rather than reflects the world in which it originates.

What is the Christian breakthrough in the light of my argument so far? It is, I think, the union of the Greek and Roman poles so that the political issue is both hierarchical and distributive. By this I mean Christianity achieved a settlement that theoretically at least was, and is, for the many and the few. How does Christianity do this? Approaching the philosophy and theology first – Christianity describes the godhead not as substantial and therefore always apart from us but as relational, which is what Trinitarian thinking accomplishes. By describing God as a relational absolute, the creature does not threaten the divinity of the Creator in that relationship. Moreover, by describing the nature of God as love rather than law (and law comes from love), Christianity explains what the Greeks could not, which is why the universal would disclose all of itself in the particular, (though the particular does not exhaust the universal in its exemplification of it). What this means is that we have a Christian realism exemplified of course in the incarnation, whereby every form and every being is divinised and revealed to share in divine self-understanding and existence. So conceived, we are able to philosophically hold together unity and plurality, since the one is already relational and wishes to extend itself as the good that it is.

Now just as Alexander's politics of inclusion and integration follows logically upon his theology, so it is with Christianity. The incarnation divinised all humanity and led directly to St Paul's injunction in Galatians 3:28: 'There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.' It was and is Christian ontology and theology that established the sheer universality of its universal. It is the most extensive claim and universal mandate – its writ runs across all of creation.

It is the promise of a full participation in the divine life and recovery and renewal of the earth. God creates a unique society in the Church that is beholden to none and chaffs at the very idea of being governed by some other. Something always rules and if it is not the Church which has the ultimate good as its teleology then it is something which is not good governing the good. But good is never disclosed in one entity or one thing. As the medievals would later note, many things represent God better than just one thing. Moreover, since God is fecund and creative, there is no end to the differentiation and plurality that He gives and that also expresses His nature. So paradoxically, the relation between the one and the many is inverted, and it becomes an issue not of direct rule but of discernment – what is in the pattern of the divine and what is not?

In a way then we already see the shape of a Christian Empire – it has no limit – it accepts no exclusion, it promotes radical equality and equity, for all should flourish. It eschews the distinctions of class, race and place. Yet it is in commerce with a genuine reality that produces an order, a place and a scale that is not unrelated to that of music. Theoretically at least, we can see the shape of an empire that could be good, that is committed to the ethical reality vouchsafed by revelation, just as it is committed to the radical distribution of good to all life. Now time and space prevent me from a longer study of Christian Empire in its historical actuality – but the *Pax Christiana* was a real force. One can readily recall for example the *Pax Dei* movement that arose in the late 10th century in France against the tide of rising carnage and disorder. It readily reimposed sanctions on warlords or castellans who through the strongholds of castles were able to defy regional authority and lay waste to their neighbourhoods. This movement of lay congregations and priests was able to limit the number of days for warfare, they also reinscribed taboos against killing women and children and even farm animals. It became part of the institutional framework of the Church and helped to reimpose order in Europe in the 11th century.

Part of what I wanted to argue is that all politics is about universals, and human conflict is both between and within them. Those concerned (often rightly) with defending national distinction usually fail as they restrict the universal to a national and often ethnic basis. What those of us who are opposed to both economic and social liberalism often forget is that liberals do not own the universal. Liberal hegemony has only taken place because we have ceded the universal to them. If liberalism is contested only on the basis of particular self-interest, then post-liberals will always lose. For the counter argument will always draw upon the self-interests of others and the necessity of a liberal state to manage that conflict. Yet the very things most post-liberals want to defend such as Christianity, order and conservation, has in human history only been defended by a more universalist account of what is at stake. We now know that liberal universalism itself only serves a narrow, empowered and self-interested group. Better I think to recover the defence of national difference through the notion of Christian empire that I discussed earlier – here distinction can be defended not as self-interest but as being in the general interest. Paradoxically, it is empire that can best defend and maintain nations, for if nations do not buy into something bigger than themselves, they will just be erased by bigger nations. This after all, is the deep lesson of history. Only Empires preserve difference.

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Zsuzsanna Fejes^{OR}

BOOK REVIEW: CHRISTIANITY AND HUMAN RIGHTS. PERSPECTIVES FROM HUNGARY EDITED BY ANDRÁS KOLTAY¹

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Christianity has played a crucial role in building and maintaining civilisation and cultures in Europe until this very day. People living on the continent share the legacy of antiquity and Christianity in balance, while respecting the values of religion and still maintaining neutrality in their constitutional systems. This causes the question to stand, whether Christianity still is a part of European culture, and if so, in what religious, political or cultural ways.

All these questions are examined in the volume, which incorporates 16 studies of various authors. Essays show clearly that not only the merge of different cultures, disputes of interests, the connection between law and religion, but also and mainly the ideas of Christianity are all special legal theories and questions waiting to be examined.

Even though the various academics contributing to this volume have their own individual concepts and different views, most of the studies concentrate on problems and questions of basic freedoms, such as human dignity, freedom of speech and religious freedom. As it is stated by the Editor in the foreword, all 16 studies are written in English by academics from different research institutes all over Hungary, also easily accessible internationally, inviting researchers to contribute to this international scientific debate.

KEYWORDS:

Christianity, human rights, human dignity, conscience, secularisation, religion, freedom of religion, tradition, culture, natural law and right, free will

¹ András Koltay (ed.), *Christianity and Human Rights. Perspectives from Hungary* (Budapest: Ludovika University Press, 2021).

Christianity has played a crucial role in building and maintaining civilisation and cultures in Europe until this very day. People living on the continent share the legacy of antiquity and Christianity in balance, while respecting the values of religion and still maintaining neutrality in their constitutional systems. This causes the question to stand, whether Christianity still is a part of the European culture, and if so, in what religious, political or cultural ways. What results are coming from our common cultural, moral and legal Christian traditions? How is Europe to keep its century old virtues? Where does the idea of Christian freedom come from and how far can it reach, how does this phenomenon relate to the idea of human rights? How can, and do basic freedoms and public interests adhere; do they cause disputes of interest at all? All these questions are looking to be answered in the reviewed volume with the title: *Christianity and Human Rights. Perspectives from Hungary*, published by the Ludovika University Press in 2021. The editor of the study booklet, András Koltay, Rector of the University of Public Service, incorporates 16 studies of various authors in this volume. The main topic of the feature studies is the connection of Christianity and basic human rights.

Essays show clearly that not only the merge of different cultures, disputes of interests, connection between law and religion, but also and mainly the ideas of Christianity are all special legal theories and questions waiting to be examined and solved. Even though the various academics contributing to this volume have their own individual concepts and different views, most of the studies concentrate on problems and questions of basic freedoms, such as human dignity, freedom of speech and religious freedom. The common idea seems to be that understanding the freedom of religion, human consciousness and basic human rights is not only the key to understanding the past, but it could also play a part in making decisions for the future – it does not matter for which European country or at the continental integrational level. As stated by the Editor in the foreword, all 16 studies are written in English by academics from different research institutes all over Hungary, also easily accessible internationally, inviting researchers to contribute to this international scientific debate.

The volume itself can be divided into three constructional units. The first one is concentrating on the question of Christian freedom, the second one is focusing on the problematics of human conscience, while the last unit is trying to bring light to the values of Christianity.

The first essay, written by András Láncki, is looking for answers in the cooperation between the commands of law and human freedom. To be able to do that, the author begins by comparing the old and modern definitions of freedom. While the antique definition was based on the ability of people to adapt to natural laws, Christian freedom is built on the free will of men, and also claims to fight sin. The modern definition for freedom is based on the political rights of the individual, which is secured by international contracts and treaties signed by states. The author claims that both antique and Christian definitions take human rationality as a finite concept, making law an absolute power. The modern definition, however, is cleansing the idea first of the concept of God and after, the concept of

nature.² Freedom, taken without both ideas, is a politically negotiable subject, put between clear lines of law, nature and private and public areas of life.³

The author closes his study with the thoughts of constant questioning and consideration being the only way for Europeans, of which the most important cultural and existential concept shall be, obviously, Christian freedom. Modern ideas of the protection of freedom are only legitimate and eligible, as long as they do not confront the individual rights and the classical understanding of the upper hand of the law – which does not suggest or recommend, only commands.⁴

The second essay, written by Ádám Rixer, is researching Christian freedom from an interdisciplinary point of view. His bilateral approach is built on legal and theological grounds. The author states in the beginning of his essay that there is and probably will not be an all-scientific definition of Christian freedom, including all scientific finds of all research areas. Still, these different research fields all contribute to it in some way. They help to form definitions, including common and original ones which help to understand the affected disciplines that are put into catalogue right at the beginning of the study. This includes not only the legal and theological ideas, but also the notions of political sciences, social psychology and the affected areas of religious sciences.⁵ The whole study is built on basic research that drew from not only the Bible itself, but also from relevant legal and further scientific sources. Its novelty is showing through its research approach, which is building on not only traditional static research ways, but also dynamic and lifelike processes. While pursuing a legal examination, the author based his work on his own legal and sociological analyses of legal acts, rather than only interpreting written legal rules. While doing so, the author was able to surpass the assaying of the normative and individual legal acts and come to clear and accurate definitions of legal life and practices. The theological part of his research caused him to present freedom as a dynamic process, where freedom is constantly evolving parallel with human characteristic evolution.⁶

The study of Balázs Schanda is first examining some of the ideas about the freedom of religion of none other than the Catholic Church, and then in the second part of his research he is concentrating on the relations of Christian culture and Christian beliefs. The author believes that the interpretation of religious freedom grew a lot more colourful in the passing years, with only two main concepts remaining the same. First, the religious individual is a threat to the sovereignty of the state, his loyalty being severed by his faith. The image of man painted in the Bible determines the human image of the Western world if it comes to dignity – God made man after his own image, and a free willed creature

² See John Stuart Mill, *Three Essays on Religion: Nature, the Utility of Religion, and Theism* (London: Longmans, Green, Reader and Dyer, 1874).

³ András Láncki, 'Freedom and Law', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 15–36.

⁴ Ibid. 36.

⁵ Ádám Rixer, 'A vallás fogalmáról', *Jogelméleti Szemle* no 4 (2011), 1–8.

⁶ Ádám Rixer, 'The Legal and Theological Concepts of Christian Liberty', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 39–66.

made not only by, but based on Him, can only bear this special gift of dignity. Other than that, a man with faith could also enrich his community – the believers create communal culture, which is the basis of an entire society. Spoken from a traditional aspect, the state is made to secure commonwealth, and human rights and the freedom of religion do belong to that.

The author comes to the conclusion that communities with belief systems could serve the entirety of society. A healthy pluralism is causing multi-religious dwellings and makes it possible to experience religion authentically which eventually leads to more understanding and patient communities. However, a state must build on its society's cultural preferences and historical traditions. The author claims that freedom of religion has a central place in Hungary's public law traditions. This caused Hungary to have different denominations living peacefully next to each other and gave the country a precious historical experience of a cohesive community which stays together in case of outside dangers. The constitutional act about the defence of the Christian cultural values of Hungary also brings attention to keep this part of our cultural history, which falls more on those who understand its roots.⁷

The study of Zsolt Péter Balogh keeps on examining the question of Christianity and human rights from the human dignities point of view. The author argues that human rights are inseparable and inalienable from humanity, because they come from a God-given freedom of people. Understanding that dignity is laying somewhere deep in every act and given law, and coming before any society was built – they are mandatory, too. Human rights and the idea of basic human dignity connect very close to each other, if someone wishes to examine them it is best to start with the further one. Based on this way of thinking, people of faith cannot be excluded from the legal system, on the contrary, those two need to be researched closely together. The study also deals with the protection of the personality and private sphere and the problematics of equality. He also comes to the conclusion that Christian-spirited research should also include social rights.⁸

Lóránt Csink conducted a study working on the connection between Christian and constitutional freedom, which both spark controversy on their own. He examines Christian freedom based on the teachings of the Bible, while concentrating on the constitutional one from a liberal point of view. While comparing his findings of biblical and liberal freedom, the author concluded that liberal freedom is inherent, and because of this, people have kept their ability to live free. While biblical freedom also might have been inherent at some point, man was made to be free, and this was then taken from humanity because of sin – meaning, people lost their capability to live freely. He points out that the biblical image of freedom is from a different point of view than that of liberalism, which is an important branch of constitutional rights. It does not mean the rightness of wrongness

⁷ Balázs Schanda, 'Freedom of Religion, Public Good, Christian Culture', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 69–82.

⁸ Zsolt Péter Balogh, 'Christianity and Human Rights', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 85–97; see also Zsolt Balogh, 'Az emberi méltóság: jogi absztrakció vagy alanyi jog?', *Iustum Aequum Salutare* 6, no 4 (2010), 35–45.

of liberalism, or that the biblical stand would be better or worse. This only means that the Bible is no source to back up any trend, nor should it be used for political reasons.⁹

The second, larger unit of the whole volume concentrates on the constitutionality of conscience. Gergely Deli is examining the cases of Christians in litigation. It is also a basic right for people with beliefs to legally protect their own interests; it is also constitutionally assured for every person with citizenship, however, the author still questions whether it would be best for them not to live with it. He is stating a difference between ‘rational’ and ‘emotional’ constitutionalism. Rational constitutionalism is based on human dignity, it is individual, consequence-oriented, and it manifests in human rights. The emotional one is built on salvation, it is too personal, intention-oriented and is based on sins.

The work of the author proves the need to pursue the same deep, scientific research traditionally used with dogmatic research with conscience-based topics also, only with different definitions, virtues and limits. The conscience-based research could even prove to have a benefit against classical analysis: the debate between sin and virtue is widely understandable, its problematics is also widely spread so it is basically becoming a public matter. The conscience exams run this way do not only help researchers to publish opinion concerning an important legal or social dispute, but they could also become well-working processes for the legal concept of *honeste vivere*, the order to live a decent life.¹⁰

The next study is by Zoltán Balázs, who built his work on the political strength of the human rights doctrines, as thought processes with Western intellectual, philosophical and theological deeply-rooted constructs. The study follows the changes of human rights political doctrines from the classical authors until today. The author takes freedom of conscience as naturally given; however, he proposes that these have caused human rottenness and insecurity, which then eventually led to the need of legal constructs. These rights were then formalised by in-church institutions, universities and legal processes. While the Western world became democratised, people took the place of these institutes. This is proven by many political and legal terms we use today to define individuals, such as sovereign, self-determination or self-government.

Human rights were unusually formed in political disputes. This process took hundreds of years, and are still far from being closed. The human rights and advocacy movements and organisations of political power still come from their ideologies and/or political ties and commitments. Despite the moral and philosophical efforts to build and maintain human rights, these rights still remain within their political roots and are rather political doctrines.¹¹

⁹ Lóránt Csink, ‘What is Freedom?’, in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 99–107.

¹⁰ Gergely Deli, ‘The Constitutionality of Conscience’, in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 109–124.

¹¹ Zoltán Balázs, ‘Human Rights as a Political Doctrine’, in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 127–146.

A further question of basic human rights is examined by Tamás Nyirkos, whose study focuses on human rights as subjects of ‘faith’, ‘religion’ or ‘secular religion’. He is not researching the origins of human rights, but the very definition of it, including its theoretical background, arguments and similarities to anything ‘religious’. He is looking for an answer to the question, whether human rights, with their specific origins, could also be of some kind of religious background. To be able to provide an answer, the author examined the vocabulary of the United Nations Universal Declaration of Human Rights to pinpoint the definitions of religion used in different international documents and further UN declarations.¹² Finally, the author concludes, the perception of human rights of the UN is quite similar to Christian ways of thinking, with some obvious differences. However, Christians shall not forget that no novel idea could take the place of God.¹³

Ferenc Hörcher is presenting the proposal of French Catholic philosopher Pierre Manent to renew the rights of nature. His studies were published in 2017, with the title *La loi naturelle et les droits de l’homme*.¹⁴ This work can be perceived as a sharp critique of natural human rights, and also contains the examination of Christianity’s ties to human rights. Manent’s work is based on the earlier studies from World War II era Jacques Maritain,¹⁵ the French researcher of international Catholic philosophies, and the German Jewish work of Leo Strauss¹⁶ from the post-war periods in North America, parallel with the birth of the UN universal doctrine. Manent built a bridge between the two researcher’s outputs, he also takes from the critiques of human rights and draws from the supporters of it. The author believes that the dispute around human rights is controversial as it is, purely based on the difference of ideas and interpretations in and outside of Europe. He reconstructs the historical route of the discussion of human rights from Machiavelli to Hobbes, while presenting the downfall of natural rights parallel with the ascension of human rights.

Manent believes politics to be built on order and obedience, still with people as actors in the centre. He sorts political regimes into three categories based solely on motivation: there is the pleasant one (l’agréable), the useful kind (l’utile), and a righteous way (l’honnête). This shallow conception is somewhat questionable; his beliefs to bring people back into legal disputes with arguments about practical wisdom and commonwealth rather than political use is quite welcomed on the contrary.

The study of Attila K Molnár concentrates on the dilemma of the duty of disobedience. This use of words may be interesting, but for him disobedience is not morally problematic,

¹² Tamás Nyirkos, ‘The Religion of Human Rights’, in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 149–161; see also Malcom D Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997).

¹³ Nyirkos, ‘The Religion of Human Rights’, 161.

¹⁴ Pierre Manent, *La loi naturelle et les droits de l’homme* (Paris: Presses Universitaires de France, 2017); Pierre Manent, *Natural Law and Human Rights: Toward a Recovery of Practical Reason*, transl. by Ralph C Hancock (Notre Dame, IN: University of Notre Dame Press, 2020).

¹⁵ Jacques Maritain, *Les droits de l’homme et la loi naturelle* (New York: Maison Française, 1942).

¹⁶ Leo Strauss, *Natural Right and History (Based on the 1949 Walgreen lectures)* (Chicago: University of Chicago Press, 1953). Reprinted with a new preface in 1971.

but rather a moral duty. After the Second World War, disobedience became a central part of political thinking; it was also embodied in the denial of command in case it would call for immoral or illegal actions. Politics also had to deal with controlling the idea of a rebellion, which would endanger the entire political community. The Christian way of thinking seemed to be the solution, which eventually created the idea of disobedience out of the concept of conscience.

The conflict between Thomas Aquinas and St. Bonaventura was based on the idea of mistaken conscience, which is often discussed in scholastic circles. While St. Thomas stood for the conscience to be followed in any case, even if it were to come across or against an authority, St. Bonaventura always argued for the primacy of authority. In his thinking, conscience can be wrong, so if it comes to a dispute with an authority, conscience is the one that has to be put to the side. However, the idea of the duty of disobedience comes from this very theory of Thomas Aquinas.¹⁷

For us Hungarians, the concept of *ius resistendi* was a historically important constitutional tradition granted in the Golden Bull.¹⁸ There was the problem waiting for salvation, if a good Christian could do anything against an emperor, who was becoming despotic. This did not only bring the question whether the capable actor could resist it, rather if they should do so. Resistance and disobedience has always been present throughout our whole written history, however, for early modern Europe and in its modern culture it became a moral duty – first, to avoid damnation, then in the new age, without any sort of reasoning needed at all.¹⁹

Nobert Kis examines in his study how pre-Christian people could have been introduced to the Christian religion. He analyses all the reasoning behind the downfall of the religion also. While looking at religion in general, Christianity specifically was a central forming power in the era of the Enlightenment: the first secularising acts already began to influence it, and it still has an effect on Western cultures.

The author believes that this area of science has come to a standstill, because it no longer has answers to the goal of human existence or the origins of life in general. The secularised idea of freedom or the political ideologies have all failed to serve as community building and community keeping powers. This means that religious traditions clearly cannot be replaced in their community making role. The author is questioning, whether humanity has again reached a point where it would come to God for answers.

After about two hundred years, the thesis of secularisation stands against that of Christianity again. The reason for whole societies to turn to religion instead of secular powers is partially the survival instinct on a communal level, and also some kind of

¹⁷ Thomas Aquinas, *Summa Theologiae*.

¹⁸ „Golden Bull of 1222, charter granted by King Andrew II of Hungary, which stated the basic rights and privileges of the Hungarian nobility and clergymen and the limits of the monarch's powers.” Read more: www.britannica.com/event/Golden-Bull-of-1222, 31.08.2021

¹⁹ Attila Károly Molnár, ‘The Duty of Disobedience’, in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 179–198.

self-defence throughout Europe and the USA against other religious movements, such as Islam. The author concludes that even though the different states are still reacting in their own ways to these new challenges, in the future they might become quite similar, if not unified. Small, local communities seem to have successfully built on national and Christian ideas throughout the USA, Poland, Russia and also in Hungary. A new modern Christian society is being formed; this is what Eliot dreamed of seven decades ago.²⁰ The modern Western human's existential crisis is to be solved by conservative politics, national policies – specifically a national religious policy. As a community we can find each other again in Christianity and God.²¹

Gyula Bándi has also built his work on human rights; he concentrates on the lack of the right to the environment in them, as it has still not been officially named as one. In his opinion, human rights and the environment are ideas already linked together in Christian teachings, specifically since the creation of the world. Because of this, the importance of human rights was earlier emphasised in religious revelations. The protection of the environment and nature was already an integrated part of the Book of Creation, so it is part of the teachings of the whole Catholic Church. Having researched all these teachings, the author stated that the right to the environment in the Catholic Church stems from the protection of Creation. In Christian thinking, it is not only part of the commonwealth and human dignity, but also an essential condition for human life, and as such, it is to be protected based on personal and humanitarian responsibility.²²

János Frivaldszky is researching the dilemmas of legal personalities and entities, and the rights to life and dignity on the basis of contemporary natural law in his study.²³ He states that human rights were an accomplishment of a historical-moral awareness process of humanity. The legally binding nature of human rights today proves, for once, that natural law has had to be gradually recognised by its time, and also that humanity perceives itself as a social, cultural creation, and human life is of cultural existence.

The rights to life and human dignity can only be rightfully protected, if we look at people as natural, theoretically identified conscious beings – this is what proves for everyone to have the same unconditional and absolute dignity, which stands throughout one's life, from conception until death. This concept is also truly to be found in Christian values and thinking.

The right way of jurisprudence concentrates on the philosophical, anthropological ways of human beings. This theory finds that human intellect is far more than brain matter, it is the meaning of life, conscience, which cannot be detected by matters of natural science or positivist means. This is the main reason why legal attributes also need morality, natural

²⁰ Thomas S Eliot, *The Idea of a Christian Society and Other Writings* (London: Faber and Faber, 1982).

²¹ Norbert Kis, 'Searching for the Paradise Lost', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 201–225.

²² Gyula Bándi, 'The Protection of Creation and Human Rights', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 229–249.

²³ See János Frivaldszky, *Természetjog* (Budapest: Szent István Társulat, 2001), 56–146.

law and jurisprudence to succeed. The author believes, that only through this kind of definition of human beings can life and death be legally regulated.²⁴

The last structural unit of the volume focuses on Christian values. András Varga Zs is reviewing the main international human rights documents concerning the topics of marriage and family. He examines if and how these two ideas are part of European culture. He draws a picture of the meanings of marriage in the Jewish Old Testament, ancient Rome's legal system, and the regulation of the Catholic Church and general modern view built on the first two. The Christian idea of marriage and family, which draws from Roman societal ideas, which were built on the Old Testament Jewish religious beliefs and social system, is part of what we call European culture today. This tight connection and correlation is proven in the modern legal acts of the last half of the century, such as in the UN Universal Declaration of Human Rights document, which then eventually became somewhat reformed from its original root ideas in the last couple of decades. Taking all of this into consideration, the author concludes that European culture and its social system was built from the very beginning on the lasting – but sometimes still terminable – relations of men and women. The rejection of this relation is impossible, causing the deviation of culture as we know it.²⁵

The study of Kálmán Pócza is focusing on the cross, or crucifix case – one of the biggest crises of the German Federal Constitutional Court (*Bundesverfassungsgericht*). He is identifying all of the components leading to one of the most extreme disasters of the German Federation's history. The *Bundesverfassungsgericht* is one of the most respected institutes in Germany, and in most of Europe. Its decisions, as the court itself, is widely supported and promoted among German citizens. However, in 1995, the decision of the court in this very case was openly and sharply opposed by Bavarian politicians and turned them against the institution as well. Their objection went so far that they not only organised mass demonstrations, but also called for everyday citizens not to obey this legal act. The study also shows an overview of the causes leading to another, larger crisis of the constitutional court since after World War II: why and how the question of the freedom of religion and the cases of crosses in schools could destabilise the situation of German constitutional courts. It took a couple of years for the public to regain trust in the institution again, the social support reached its original high state, so the crisis was averted and citizens once again trusted the court. This case has proven to be useful for researchers to try and identify the underlying causes of the crisis in the beginning; to gain information of constitutional court processes and of juridical behaviour in general.²⁶

²⁴ János Frivaldszky, 'Legal Personality and the Right to Life and Dignity in Contemporary Catholic Natural Law Philosophy', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 251–297.

²⁵ András Zs. Varga, 'Marriage and Family as Christian and European Values', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 303–319.

²⁶ Kálmán Pócza, 'The Bavarian Crucifix Case', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 323–350.

The volume of study is closed with the essay of the editor, András Koltay himself, where he analyses the questions of freedom of religion and speech. In his opinion, the freedom to the revelation of one's religious beliefs is protected by both; freedom of religion, of course, but also by freedom of speech. Part of the latter is the right to remain silent – it means that at the same time no one can be pressured to state his or her or another's opinion. Recently, baking a cake became a central part of cases in the United Kingdom and the USA, questioning, whether creative baking classifies as a form of expression. If it does, a service provider would have the right to refuse baking a specific cake out of religious reasons.²⁷ It is difficult to take a hard stand in this case, and even the courts refused to do so. Being able to make a decision would require to overview many cases of basic human rights, so it proved to be not only easier but also better to find earlier acts of similar situations – if there is such a coherent action at all. The problematics of these cases are so complex, it touches not only on the freedom of religion and speech, but also on equal treatment and the protection of human dignity. This is outlining a far deeper problematic legal case, where the freedom of speech is interpreted so broadly, that it becomes dangerous for itself. If the right not to be discriminated against becomes limited or restricted, human dignity is losing its independent legal state. Throughout this study, the author showcases some interesting cases and decisions, while he examines them based on the freedom of speech, the prohibition of discrimination, the protection of human dignity and the freedom of religion.²⁸

To sum up, this volume presents papers of a specific area of law, which is not only special but open for further research opportunities. The basis of these is obviously the Bible itself and all its interpretations, but the regulative ideas are synthesised by lawyers. The research on Christian freedom includes not only European culture, but also common values, traditions of law and Christian beliefs. The presented studies clearly show that Christianity in Europe has played a role in not only the development of the legal definition of freedom, but also in the recognition of human rights, dignity and equality in general. All with faith believe that we are children of God; this pervades us all with unquestionable and untouchable dignity. This also means that the idea of an individuum also has roots in Christian beliefs.

However, individuals live within social and legal borders created by states. For the citizens to be able to be free in their personal beliefs and familiar traditions, they need a state that is neutral in these value systems, which respects all religions and choices in a society. It is also important to note, that only secular reasoning would never be enough in itself, and Christianity cannot be fully demolished from a state. Leaving the religious values out of sight would leave the individuum diminished in its own values, choices and possibilities.

²⁷ See *Masterpiece Cakeshop, Ltd. and Others v. Colorado Civil Rights Commission* 138 S Ct 1719 (2018) [or: 584 US ___ (2018)].

²⁸ András Koltay, 'Confectionery Excellence in the Flow of Religion and Politics', in *Christianity and Human Rights. Perspectives from Hungary*, ed. by András Koltay (Budapest: Ludovika University Press, 2021), 357–375.

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