In this book the author has examined the principal social and theological forces which influenced Aquinas' views and has drawn from the writings a comprehensive picture of his political philosophy.

Concluding with reflections on the importance of the Thomist contribution to the development of Western thought, he suggests principles that bear strongly on our own social and political institutions.

About the author . . .

THOMAS GILBY, O.P., who has been professor of moral theology at Blackfriars, Oxford, is the author of many books, including *Phoenix and Turtle* and *Barbara Celarent* and is the editor of the philosophical and theological texts of Thomas Aquinas.

$5.00

Thomas Aquinas never wrote a formal political treatise, but the main streams of earlier thought converge in his writings to produce an important contribution to political philosophy.

This book is the first complete account of that contribution, in its historical and theological setting. Aquinas wrote no tracts and was not a preacher of "party lines." His arguments can be located and appreciated only by ranging widely through his works, touching on such topics as the psychophysical unity of man or the primacy of intelligence in mystical union with God—topics apparently remote from social issues but which, when viewed collectively, provide insight into the mind of a great social, as well as religious, thinker.

THE POLITICAL THOUGHT OF THOMAS AQUINAS

By

Thomas Gilby

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TO
HARRY WALSTON

Attendendum est quod aliter sumunt politicum vel civile apud Philosophum et aliter apud Juristas.

Commentary, *V Ethics, lect.* 12

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ABBREVIATIONS

AFP. *Archivum Fratrum Ordinis Praedicatorum.* Rome.

AHDL. *Archives d'histoire doctrinale et littéraire du moyen âge.* Paris.

Beiträge. *Beiträge zur Geschichte der Philosophie des Mittelalters.* Münster.

DTC. *Dictionnaire de théologie catholique.* Paris.

LMA. *The Legacy of the Middle Ages*, ed. C. G. Crump and E. F. Jacob. Oxford, 1926.

MS. *Mediaeval Studies.* Toronto.

PL. Migne, *Patrologiae cursus completus. Series latina.*

RPL. *Revue philosophique de Louvain.*

RSPT. *Revue des sciences philosophique et théologiques.* Paris.

RTAM. *Recherches de théologie ancienne et médiévale.* Louvain.

References without ascribed authorship are to St Thomas Aquinas and without title are to his *Summa Theologiae*, commonly known as the *Summa Theologica*. Thus, 2a–2ae. lviii, 8 signifies the second half of the Second Part, Question 58, article 8.

INTRODUCTION

WESTERN EUROPE received the social teaching of classical Greece when, about the middle of the thirteenth century, Aristotle's *Ethics* and *Politics* were translated into Latin by the Oxford scholar, Robert Grosseteste, Bishop of Lincoln, and the Flemish Dominican, William of Moerbeke, later Archbishop of Corinth. The texts were soon followed by commentaries on them by St Albert of Cologne—Albertus Magnus—and St Thomas Aquinas. The *Timaeus* was known and admired, but Plato's political teaching remained undiscovered until the Renaissance except from fragmentary quotations at second-hand. The image of the Aristotelean *Polis*, pictured sometimes as but a stage on the journey to the *Civitas Dei* and sometimes as a settlement which provided for every social need, dominated debate on human government.

The reconstruction, which made little claim to archaeological accuracy, met the historical occasion, for feudalism, an agrarian and warrior economy, was being transformed into mercantile and civilian arrangements; the process was slow and lasted from the twelfth century to the fifteenth. The West lagged behind the East where social organization was based on the cities and the great estates were not economically isolated.[1] But already the manor, self-supporting at least for bare necessities, was looking towards the borough and the rural commune was being taken into the city. The centre of gravity was moving from country to town, and to a condition where the instrument of power was money, not land. At the bottom of the social scale some sort of rural democracy was appearing among the serfs; at the top suzerainty was acquiring the style of sovereignty. A system of land-tenure in which men were held together by personal engagements and services between men at adjacent levels, appropriate to a pioneering period when the tribes were settling down and drawing the national divisions of Europe,

[1] L. M. Hartmann. *The Early Mediæval State: Byzantium, Italy and the West.* Tr. H. Liebeschütz. London, 1949.

was evolving into a more political type of community, economically more complex, administratively more unified, socially more official, and legally more impersonal.

The State, as the modern world knows it, was being born. Soon the reflection followed that politics or statecraft constituted a special discipline with rules of its own. Previous social and political convictions were a mixture, in proportions different according to region, of maxims from Patristic Theology and Stoic Philosophy, together with remnants of Roman Law, worked into the folk-customs of invaders from across the North Sea, the Elbe and the Danube. They were quickened by an evangelical spirit, swept by a fugitive enthusiasm and touched by a not unsophisticated romanticism. Now they were infused by the ideals of enlightened self-interest and civic reasonableness.

Improvements in what may be called social plumbing, chiefly matters of amenity or luxury, had been copied from the Moslems to the south. Their courtly culture was spread through the Angevin lands and beyond: the range of Eleanor of Aquitaine's influence rivalled that of Queen Victoria centuries later, though she set a different tone. It penetrated the brilliant society of Provence and Languedoc, the scene of St Dominic's first preaching mission and of the ruin wrought by his friend, Simon de Montfort—that thirteenth-century Ironside. Salimbene, the Franciscan chronicler, gives us a glimpse of the orientalized mode of life enjoyed by the great merchant houses of Pisa. Algazel, the medieval Islamic philosopher, and Averroes after him had interpreted Plato's *Republic* in the light of Aristotle's *Ethics* and dealt with contemporary conditions.[1] Yet the contribution of the Arabs to the social thought of the West was slender and not to be compared with their influence in the natural and metaphysical sciences. The Koran marked no advance on the Mosaic Law, and the revival of political theory was nourished from other sources, from the Roman Law and the new translations of Aristotle out of Greek.

[1] E. I. J. Rosenthal. 'The Place of Politics in the Philosophy of Ibn Rushd.' *Bulletin of the London School of Oriental and African Studies*, XV, 2, 1953.
For Salimbene's Chronicle see G. G. Coulton, *From St Francis to Dante*, London. 1908.

Nor was the political influence of the Byzantines much stronger. Their administrative genius was scarcely appreciated, and Europe showed little to match their regular civil service, trained military cadres, or the whole disciplined order which the Eastern Empire maintained against Slavs and Saracens for a thousand years. Even in the art of war the Franks looked to them chiefly for siege-apparatus, and learnt the need of close formation less from the precepts of Commenus than from bitter experience of the Turkish light-horse.[1] Greek juristic studies may have underlain the teaching at Bologna, the nursery of the revived Roman Law in Europe, which lay near the borders of what had been the Exarchate of Ravenna, and only two days' march from the lagoons where the sway of the Basileus had last been acknowledged in Italy. Nevertheless no direct connection has been traced between the Greek universities and the early medieval law-schools of Italy and France. The intricate legal and commercial system of the Eastern Empire stood a world apart from the rudimentary structures of the West.[2] How different was its undebased gold *solidus*, so suitable for large-scale commerce, from the silver coins, often clipped, which served the economy of feudalism.

A gold florin was struck at Florence in 1252 and Henry III's beautiful gold penny followed in 1257. The new gold coinages which made their appearance in Europe during the thirteenth century were signs that the West was becoming an important export area. Genoa and Venice controlled the pilgrim traffic and monopolized exchanges with the Levant; both were as western in their social thoughts and habits as the East India Company was British. Men looked to the East for glamour, not for a lesson in civics. When the Latins seized and sacked Constantinople during the Fourth Crusade the Empire was partitioned into seignories and its centralized organization and institutions broken down. 'A new France,' so at first Innocent III acclaimed the effect. Yet not from his heart, for, perhaps prescient of its fatal consequences of schism and animosity

[1] R. C. Smail. *Crusading Warfare* (1097–1193). Cambridge, 1956.

[2] N. H. Baynes and H. St L. Moss. *Byzantium: An Introduction to East Roman Civilization*. Oxford, 1948.
G. Ostrogorsky. *History of the Byzantine State*. Tr. J. M. Hussey. Oxford, 1956.

between Western and Eastern Christendom, he mistrusted the adventure. In fact it was to endure only for an anarchic half-century.

In the West the Emperor Frederick II was never undisputed master of the Reich; on his death (1250) the Great Interregnum began, and with it the collapse of his grandfather Barbarossa's plan for the hegemony of Europe. The defeat of Hohenstaufen imperialism was bloodily sealed when his grandson Conradin was beheaded after the battle of Tagliacozzo (1268), and the victorious Charles of Anjou wrote to Pope Clement IV 'to arise and eat of his son's venison'. Papal plans were less concerned with theory than with practice during the closing years of the struggle, for territorial dispositions in Italy bulked larger than any sweeping claim to jurisdiction on the part of secular rulers. The policy was to avoid the more immediate danger of being squeezed between two combined powers, the *Regnum Italicum* of the Holy Roman Empire in the northern part of the peninsula, and the *Regno*, the Kingdom of Sicily taken by Norman conquest from the Byzantines and inherited by Frederick II from his mother, the Empress Constance, daughter of Roger II; this covered the island itself and the peninsula northward to the Gulf of Gaeta. Frederick was a man of the south, 'the boy from Apulia,' and it was in his own realm already prepared by the administrative genius of Eugenio of Palermo that he created a State as a work of art, as Burckhardt called it, when the *Liber Augustialis*, which became law in 1231 and was immediately translated into Greek, stamped an official style on the racial medley of its inhabitants, and altered feudal devolution into a disposition of direct control from the centre.[1]

A similar process was at work elsewhere in other realms. The energy of Henry II of England and of Philip entitled Augustus extended the close sway of the monarch beyond the Home Counties and the Ile de France. But frequently local interests counted for more than the action of the whole nation brought to bear from the centre; fief-holders might compose governments within the government and over-mighty subjects might

[1] E. Jamison. *Admiral Eugenius of Sicily*. Oxford University Press for the British Academy. 1957.

eclipse the crown. A Clare might rouse the West Country, a Lusignan the County of Anjou; Londoners could act for themselves. The nearest approach to the constitutional State was found in Spain where popular liberties were secured and citizens, protected by charter or *fueros*, participated in the Cortes. A freeman able to keep a horse might be advanced to knighthood in Castille and Leon. Elsewhere in Europe it was becoming a privilege reserved to men of gentle birth. The fleet of Aragon, united with mercantile Catalonia in 1135, commanded the Western Mediterranean. The main Spanish effort, however, was concentrated on the Reconquest; in 1248 Seville was taken by Ferdinand II who, when urged to go campaigning in the Holy Land, replied, 'We are always on Crusade.'

In Germany trade and the free cities grew together; Cologne, a bourgeois community ruled by a Prince-Archbishop, long held out against the Reich which rallied to the magic of the Hohenstaufen name. Even there, as in most of the cities of Northern Italy, independence lay under the shadow of imperial claims which might suddenly and ruthlessly exact acknowledgment. Venice, a conspicuous exception and never feudal-minded, was expanding her rich commercial empire and, wedded to the sea with the ring earned by Doge Ziani for prevailing upon Barbarossa to kiss Alexander III's foot and hold the stirrup of the papal mule, could defy Popes and Emperors, and presented the nearest likeness to the classical autonomous State of the pre-atomic age.

Most advanced politically was the realm of Sicily, ruled from the court of Frederick II, *Stupor Mundi*. The cultures of Phoenicians, Greeks, Carthaginians, Berbers, Romans, Goths, Arabs, Byzantines, Lombards, Normans and Suabians mingled together, and there even now you are told that houses are colour-washed to show the origin of the families that occupy them—blue for the Greek, red for the Saracen, white for the Norman, and yellow for the converted Jew. On its northern mainland frontier above the Liri valley Thomas Aquinas was born, about 1225, less than two centuries after it had been part of the Eastern Empire, from a family high in the royal and imperial service. He was educated at Naples, the only medieval university outside Spain founded by the secular power. During

his lifetime the French marched in with the blessing of the Pope, and Frederick's officials faded away. The Aquino family was caught in a tangle of shifting loyalties between the Houses of Hohenstaufen and Anjou, the policies of the Pope and their own ambitions. He died in 1274, eight years before the Sicilian Vespers massacred the oppressors and avenged the memory of Manfred and Conradin. Henceforth the island, more and more sundered from the mainland, fell under the rule of foreigners, Spanish and Austrian, and, though the independence of the *Regno* was restored under Charles III in the eighteenth century, it never rose again to its old greatness.[1]

Other foundations for the modern State, in France, England, and the Iberian Peninsula, were to prove more lasting, but it was by a man of Sicily that its theory was re-established. Henceforth politics began to be cultivated as a special discipline and *Staatsräson* or 'statism' emerged in its own right. Parts of the Greek City of Reason were dug up from the layers of centuries, imperial, barbarian, and ecclesiastical. What was discovered was the polity of Aristotle and later the republic of Plato, not the Athens of Pericles. An ideal was restored, not a historical plan, and the ideal was coloured to the medieval background.

Elsewhere will be found a sketch of St Thomas's social dialectic together with some account of his conclusions on the conciliation of authority and freedom, of group-discipline and individual expression, of company and privacy, of legalism and lyricism.[2] Our present purpose is to observe the influences at

[1] A. Walz. *San Tommaso d'Aquino. Studi Biografici sul Dottore Angelico.* Rome, 1945. Hastings Rashdall. *The Universities of Europe in the Middle Ages.* (ed. F. M. Powicke and A. B. Emden), ii, pp. 21–6. Oxford, 1936.

H. Acton. *The Bourbons of Naples.* London, 1956.

[2] T. Gilby. *Between Community and Society. A Philosophy and Theology of the State.* London, 1952.

O. Schilling. *Die Staats- und Soziallehre des hl. Thomas von Aquin.* 2nd ed. Munich, 1930.

C. Riedl. *The Social Theory of St Thomas Aquinas.* Philadelphia, 1934.

L. Lachance. *L'humanisme politique de saint Thomas.* Ottawa, 1939.

For general background, see F. C. Copleston, *Aquinas.* London, 1956. E. Gilson, *Le Thomisme.* Paris, 1948. *The Christian Philosophy of St Thomas Aquinas.* tr. L. K. Shook. London. 1957.

M. D. Chenu. *Introduction à l'étude de saint Thomas d'Aquin.* Paris, 1950.

work which formed his thought, and if we look for the rising naturalism as the Aristotelean stream flowed stronger we may plead that our study is not purely historical. Let us be warned, however, not to demand of him a complete and self-contained system, the formation of which can be studied in isolation from the exceptions and incongruities of the epoch. Although his politics were subsidiary to his philosophy and theology, they represented his response to his situation; they cannot be properly exhibited by moving a sort of permanent Thomist platform backwards into history.

No more than Matthew Paris, the chief journalist of the age, did he assess the constitutional changes which were going on before his eyes, yet he brought out some significant ruling principles, four of which may be enumerated. First, that the right of political authority to command derived from social needs inherent to human nature as such, and was not postulated merely because of corrupt proclivities due to original sin. Law was not restricted to the criminal code; power had the positive function of encouraging virtue as well as the negative function of checking vice; civic obedience would have been required even had the Fall not introduced the threat of compulsion. All this was a departure from the patristic doctrine and the consensus of scholastic opinion that political dominion, and private property and slavery as well, were *propter peccatum* and grounded on convention not on the nature of things: the old view was like that of Freud on neurosis, and found the origins of human inequality in our early environment, not our genetical constitution.

Secondly, this authority, at least in the abstract, was distinct from and not of itself beholden to the authority of the Church. Western tradition in the main held to the Gelasian conception of twin authorities for spiritual and temporal power each without visible superior in its own domain.[1] The prince did not claim the divinity of Augustus, nor even the ecclesiastical wardenship of Charlemagne. There was but faint reflection in the West to the caesaro-papism of Byzantium which had taken over the trappings and ceremonial of Persian monarchy —rather the reverse, for the effort of the extreme Papalists to

[1] Pope St Gelasius I. d. 497. *Epistolae*, viii. PL. lix, 42.

absorb all power in the pontifical power tended towards a papo-caesarism. A powerful minority among churchmen, they were fighting a losing battle, though their defeat was not evident until the humiliation at Anagni and the death of Pope Boniface VIII (1303).

Few claimed that all was Church, somewhat as the Monophysites had said that all was divine in Christ; fewer wanted to separate the Church from secular social life, somewhat as the Nestorians had divided Christ into two persons. The terms *Church* and *State* in this context do not bear their later meaning, namely of two quite separate corporations more or less tolerant of one another when they have no quarrel. What men held to was still a condominium of the two *dignitates*, the *sacerdotium* and the *imperium* or *regnum*, within the single body of the Christian commonwealth. Their problem was still the practical one of distinguishing between two social obligations without merging them under the direct control either of the ecclesiastical power or, as the secularists vying with the clericalists were later to advocate, of the civil power.

Two teachings were simultaneously accepted, that secular power was flawed with sin and that submission to it was a Christian duty: they were not felt to be inconsistent. The religious climate had changed since the persecutions of the early Church. Christianity was no longer a minority religion, nervous, separatist and severe. Instead it was at ease with the contemporary culture and social order, both of which were largely of its own making. The contrast between the heavenly and the earthly was less harsh. Everybody recognized the supremacy of the spiritual over the temporal but were not thereby defenders of what nowadays is labelled clericalism. St Thomas, for instance, was a prominent figure at the Papal Court, the forerunner of the present Master of the Sacred Palace. All the same he held aloof from the party cause, promoted by canonists rather than by theologians, which derived all dominion from the Pope. The Papacy had acquired particular overlordship through deeds of grant in certain areas, and throughout Europe was acknowledged as the highest arbiter, but that it possessed the plenitude of earthly power was by no means general teaching. Thus it was held that the

temporal prince's power to rule was part of the order of natural justice, from which grace and ecclesiastical power could not derogate.[1]

There was then no cleavage between the sacred and profane organization of social life, and only a pale foreshadowing of Cavour's formula, 'a free Church in a free State,' adopted by nineteenth-century Liberalism when it would disestablish organized religion but leave it in peace. All the same the theoretic distinction between spiritualities and temporalities was sufficiently clear, and the Dominican, John of Paris (d. 1306), one of the ablest early Thomists, represented common central opinion when he allowed clerical power no direct control over the secular power and required each to respect the other.[2]

From this followed the third principle, that temporal power was immediately concerned only with temporal affairs although its purpose was to promote social virtue and its just commands obliged in conscience. St Thomas was free from the later cynicism of religious men to whom civil laws were like Customs' regulations, to be observed, they held, only because otherwise you will be fined. He was free also from their disillusionment which leaves them to take political decisions in accord with the principle of the lesser evil. The foremost task of government was to establish and maintain those objective conditions, principally matters of justice, which allowed citizens to lead the good life. Its protective rôle concerned crime rather than sin; it was out to prevent disturbances of the public order rather than moral wickedness it was unable to judge. Here Civil Law was like Canon Law, and operated in an *external forum* without prejudging the sentence of God who alone searches the heart and

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[1] 2a–2ae.civ, 6.

[2] Jean Quidort, Joannes Dormiens. *Tractatus de Potestate Regia et Papali*. Ed. J. Leclercq, Paris, 1942.
C. H. McIlwain. *The Growth of Political Thought in the West*, pp. 263–7. New York, 1932.
J. Rivière. *Le problème de l'église et de l'état du temps de Philippe Le Bel*. Louvain, 1926.
A. J. Carlyle. *A History of Medieval Political Theory in the West*, v, pp. 422–37. London, 1928.
J. Lecler. *L'Eglise et la souveraineté de l'Etat*. Paris, 1946. Tr. *The Two Sovereignties*, London, 1952.
A. L. Smith. *Church and State in the Middle Ages*. Oxford, 1913.

the reins. The ordinances of human law should be reduced to a minimum consonant with the needs of the community; too fussy an improving spirit in legislators was deprecated. Let laws be sufficiently stable for subjects to know where they stand, but what was just varied according to changing conditions, and therefore they were not to be flatly applied, but modulated by equity as circumstances required.[1]

For, and this was his fourth principle, government and legislation were more directly functions of art than of ethics. Sound political judgment, which answers to what is practicable, must in some cases decide between alternatives both of which may have good moral reasons in their favour, and reach a resolve by a kind of poetic freedom, not by the determinism proper to the deductive sciences, where conclusions are brought out from principles by logical implication. Not that St Thomas entertained the idea of 'pure politics', in the sense that statecraft could be divorced from morality; he merely proposed that political prudence or statesmanship should have the courage of its own convictions and not strain for abstract reassurance that its judgment was orthodox. The material could not provide it. The issue was one of practice, not theory. The object was particular, not general. The decision was contingent on events, not necessary given the premisses, and therefore could never be entirely evaluated by theological and philosophical reasons.[2]

He finished no formal political treatise, and the four principles we have picked out were advanced in various parts of his philosophical and theological writings composed during the twenty years of his teaching career (1254–74). As his Aristoteleanism grew so the need for State action was more firmly emphasized. Its field, however, was not extended. No steady development is noticeable. When he is called an Aristotelean it is well to remember that his speculation was more pregnant than his scholarship; his effort was to form a living wisdom, not a reconstruction of the past. Then also his reputation as a thinker who advanced in a progression of theorems is modern and undeserved. He himself praised a certain obliqueness in

[1] 1a–2ae, xci, 4. xcvi, 2, 3, 4, 6. xcvii, 1. 2a–2ae, lxxvii, 1, *ad* 1. cxx, 1. *V Ethic. lect.* 16.

[2] 1a–2ae. xcv, 2.

discourse, and his ideas move more like knights than rooks and are no less difficult to corner.[1]

Moreover they are never purely political. Hence his argument can be appreciated only by ranging widely and touching on topics, such as the psycho-physical unity of man or the primacy of intelligence in mystical union with God, apparently remote from social issues. Primarily a theologian, he preached no party line in the institutional conflicts of his time. The balance he struck between political Augustinism and Aristoteleanism was tilted after his death, on the right by the clericals, on the left by the secularists. Both sides could cite him in support: he had clearly defended the universal primacy of the Pope, he had also acknowledged the existence of political rights which needed no prior ecclesiastical ratification.

The difference was discovered in the divergence of the continuators of his two unfinished political works. The first, the treatise *de Regimine Principum*, was completed by Ptolemy of Lucca (d. 1326), his Dominican disciple, a clericalist and a republican, who would have tightened the organization of Christendom under the supreme jurisdiction of the Pope; his work, says W. E. V. Reade, is 'remarkable as a combination of traditional points of view with anticipations of a later type of political theory, and is as modern in spirit as it is medieval in outward form and style'. The second, the *Commentary on the Politics*, was completed by Peter of Auvergne (d. 1304), who seems to have been more at home in the Faculty of Arts than of Theology; the commonwealth he pictured was a regional state smaller than Christendom and unaffected by the Church.[2] As the rifts opened in Western social psychology between religious and civic forms, and between private and public life,

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[1] 2a–2ae. clxxx, 6.
Mortimer Adler. *St Thomas and the Gentiles*, p. 46. Milwaukee, 1938.

[2] See *de Regimine Principum*, iii, 10, 12, 13, iv, 4, 9, 12.
W. E. V. Reade. *Political Theory to c.* 1300. Cambridge Mediaeval History, vi, pp. 629–32. 1929.
E. Hocedez. 'La vie et les oeuvres de Pierre d'Auvergne.' *Gregorianum*, xix, pp. 3–36. Rome 1933.
E. Amann. 'Pierre d'Auvergne.' *DTC.* xii, 2, 1882. Paris, 1935.
G. de Lagarde. *La naissance de l'esprit laique au déclin du moyen âge.* iii, 'Secteur sociale de la scolastique.' Paris, 1942.

the contrary causes St Thomas had stated as abstract values hardened into exclusive concrete situations. Before them his thought may seem well to hesitate, like the Chinese sage who was asked to adjudicate between rival queens of beauty and replied, 'Both are worse.'

The following study is divided into two parts. The first is introductory, a selection of events, institutions, sentiments and ideas which he had to reckon with, arranged under four chapter-headings, on theology, law, social history, and philosophy. What he made of these sometimes conflicting elements is discussed in the four corresponding chapters of the second part, and recapitulated in the concluding summary.

1 Simplification is dangerous, and not least about the ways ideas work out in history, or when personalities are narrowed to a cause. When the label *Political Augustinism* is attached to the religious suspicion of secular power and coupled with the attempt to draw its teeth by subjecting it to the Church, we may reflect that St Augustine was about as much a political Augustinist as St Thomas was a fanatical Thomist. Jerusalem is the heavenly city, Babylon the earthly city, but this does not always stand for the *civitas iniqua* leagued against God, for in the temporal order lay validity and justice. Similarly *saeculum* was not only this wicked world but also a providential if provisional system. A moralism stemming from St Gregory and St Isidore may have been content with a political discipline consisting of exhortations to princely virtue and piety, but another movement among theologians, jurists and statesmen also discerned with St Augustine a proper *scientia regendi populos* and defended the rightfulness within the civil order. It was to be reinforced by St Thomas drawing from the resources of the Aristotelean philosophy and elsewhere, but already at the time of the Lateran Council in 1179 it was expressed by Rufinus. There were really three cities, he said: Jerusalem, the *christianae societatis fraternitas*, Egypt, the *malorum conspiratio*, and, as it were in between, Babylon the *tuta conversatio* of both the good and the bad, that is, of average men, in external justice and humanity. (Y.M.-J. Congar. *Maître Rufin et son* de Bono Pacis. RSPT. xli, pp. 428–44. 1957.)

Part One

THE INFLUENCES AT WORK

THE INFLUENCES AT WORK

FOUR main streams, theological, legal, literary and philosophical, rose from different sources and converged in the thirteenth century. They are here artificially canalized for convenience of treatment and made to flow, as it were, along separate channels. The first was that of Patristic Theology which bore along a neo-Platonic idealism coloured by the speculations of Arab and Jewish philosophers, notably Avicenna (d. 1037). Christianity was essentially a social religion for, as St John the Divine had taught, right standing to God was defined by right standing to the fellowship; hence it is not surprising that political lessons in the Fathers also reflected the ethical teaching of the Roman Stoics on the prominence of public duty. This movement came to a head with the Augustinian Scholastics, among them the pre-Scotist Franciscans, pre-Thomist Dominicans and the objectors to St Thomas's 'naturalism' who effected its temporary condemnation in Paris and Oxford.[1]

Next came the revival of the Roman Law, destined to have a profound effect on contitutional history. Starting at Bologna towards the end of the eleventh century, it produced the codification of Church Law in the twelfth century whence issued the political action of the Canonists in the thirteenth. Their work was later matched by the Civilians in the secular realm. Both made the moulds in which legal and political forms were cast in the countries of Europe outside England where the

[1] E. Gilson, *History of Christian Philosophy in the Middle Ages*. ix. 'The Condemnation of 1277,' pp. 387–427. London, 1955. For general background see:
M. M. Gorce. *L'Essor de la pensée au moyen âge*. Paris, 1933.
D. J. B. Hawkins. *A Sketch of Mediaeval Philosophy*. London, 1946.
R. W. Southern. *The Making of the Middle Ages*. London, 1953.
A. Forest, F. van Steenbergen, M. de Gandillac. *Le mouvement doctrinale du XIe. au XIVe siècle*. Paris, 1950.
H. Daniel-Rops. *Cathedral and Crusade*. Tr. John Warrington. London, 1957.
From Alexander to Constantine: Passages and Documents Illustrating the History of Social and Political Ideas. 336 B.C.–A.D. 337. Translated with Introductions, Notes and Essays by Ernest Barker. Oxford, 1956.
C. N. Cochrane. *Christianity and Classical Culture*. Oxford, 1940.

Common Law, though affected by the Canon Law, was true to its own genius and strong enough to hold its own. From the political philosopher's point of view the lawyer's first task was to define the proper relationship between the powers of the supreme governor and the rights of the people.

Thirdly are to be set factors which make up the character of a group yet cannot be reduced to a set of systematic conclusions or tabulated regulations. The processes of community-life cannot be portrayed as successions of rigid forms, although never more than in the Middle Ages was social theory expressed in clear-cut concepts. Men educated in definite principles were not thin upon the ground, and they were confident they could control social processes. Their logical and legal terminology, however, should not lead us into simplifications which do violence to the movement of history.

The current was flowing from literary and scientific humanism to speculative theology. For all that St Thomas excogitated, whatever his followers have done since, no cloistered scholasticism removed from the jostling interests of the world, but a dialectic racy enough for the *artistae*, the students of the liberal arts and the sciences who mourned his death more than did the divines of Paris University. We must read between the lines of his argument and respond to poetic images descending from the mountains of myth, to the beat of folk-rhythms half-heard, to heroes of romance, to customs rooted in the tribal mass and to causes which inspired troubadours, evangelicals and spiritual tramps when they questioned the conventions of a property-minded community.

Finally, the onset of the new Aristoteleanism. Its desiccated later effects are more easily described than its exciting humanity at the time. It was then neither obscurantist nor did it hug an exclusively *a priori* method, which later invited the contempt of post-Renaissance scientists. The rational investigation into Nature was conducted in a temper that was empirical and not at all servile to accepted authorities. Its political science discovered a City of Reason which could be studied apart from the teaching of the Church, and from which, some contended, priestly interests should be banished.

A scientific social doctrine slowly emerged from the academic

and homiletic literature of the medieval clerks. A political rationalism began to shrug off the theology set forth by Church authority. Seized on by propagandists and ministers of the Nation-States, a secular jurisprudence eventually dissolved Christendom into an uneasy concert of Christian nations and then, after the divisions of the Reformation, into an agreement of ethical moods between Christian individuals. That consequence was long delayed, but already before the Renaissance the idol of the Prince, clad according to the Roman Law and divested of ecclesiastical trappings, was being erected in majesty. And to each State its Caesar. The vision was translated into a method of government, and lay authority was furnished with an instrument for the complete control of public life: the stricter legalism which tightened internal civil discipline was paralleled in the life of the Church. Citizens became subjects. Equity was reduced from a general virtue to a special function of the legal executive. The State might or might not tolerate an authority, whether of personal conscience or of a free association, the judgments of which ran counter to its own.[1]

The premisses were present in the high Middle Ages. Divines, decretalists, post-Glossators, wandering poets, gospellers, minstrels, masters of arts, prelates, politicians, crusaders, land-hungry adventurers—all had different ideas about how men should live together. Like other schoolmen, St Thomas was a plagiarist and a nimble one, for often he improved on the original and on occasion, taking an argument from its context and placing it in his own, changed it almost out of recognition. In his writings can be discerned, sometimes developed and sometimes in germ, many of the leading themes of Western political philosophy.

[1] R. M. MacIver. *The Modern State.* Oxford, 1926.

I

THEOLOGIANS

ST ISIDORE's encyclopedia, the twenty books of *Etymologiae*, was the main quarry for medieval writers who tried to build in continuity with the past. Or rather, it was like a stonemason's junk-yard in which fragments of social doctrine from classical antiquity were heaped rather than arranged, ill-fitting pieces of different stones and styles, waiting to be worked into a coherent edifice of jurisprudence.[1] Hence it came about that details from Plato and Aristotle were used before their political theories were known, and odd bits of the Roman Law before its general shape appeared.

Acquaintance with the Greek Fathers was scrappy, at first through anthologies, *Flores* and *Excerpta*, later through chains of quotations in scriptural commentaries, *Catenae*. Latin translations of St John Chrysostom's *Homilies* on St Matthew's Gospel were in circulation and parts of St John Damascene's *de Fide Orthodoxa* had been brought home like relics from the Crusades by a lawyer of Pisa and were enshrined in Peter Lombard's *Sentences*. St Cyril of Alexandria was quoted, also the Cappadocian Fathers, St Basil, St Gregory of Nyssa and, more frequently, St Gregory Nazianzen, a congenial spirit to the gentler days which were dawning. An interesting line of contact with the Greek Fathers and the religious thought of Byzantium stretched through the Cistercians of Austria and Hungary.[2]

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[1] St Isidore, Bishop of Seville (d. 636). *Opera* PL, lxxxi–lxxxiv.
W. M. Lindsay. *Isidori Hispalensis Etymologiarum seu Originum* libri xx. 2 vols. Oxford, 1911. Quoted about 100 times in the *Summa Theologica*, 90 times in the Second Part which deals with moral and social science. For the difficulty of squaring different texts see 1a–2ae. xcv, 4 and 2a–2ae. lvii, 3.

[2] G. Hofman. 'Johannes Damaskenos, Rom und Byzanz.' *Orientalia Christiana*, xvi, pp. 177–90. Rome, 1950.
See E. M. Buytaert on the influence of Damascene and the versions of Burgundio and Cerbanus. *Franciscan Studies*, x, pp. 434–43; xi, pp. 30–9, 50–3. Franciscan Institute Publications. Text Series 8. St Bonaventure, New York, 1950, 1951, 1955.

Extracts were not always authentic or verified and accurately rendered: thus an early text about the vivifying influence of Christians in the Empire was ascribed to St Gregory Nazianzen and taken to declare that two social principles existed corresponding to man's dual nature, the Church being compared to the soul and the State to the body.[1] Medieval dialectics delighted in such Pythagorean pairing; spiritual power was compared with material power, male to female, light to darkness, the new Adam to the old, the sun to the moon, and usually to the advantage of Church authority. St Thomas's knowledge of Greek was slight; even so he drew more fully than his scholastic predecessors and contemporaries on Greek Christian literature, and was reported to have remarked that he would exchange the whole city of Paris for Chrysostom on Matthew.[2]

Robert Grosseteste, the leading Hellenist of the thirteenth century, possessed Origen's *Homilies*, Basil's *Hexameron* and works by or ascribed to John Chrysostom, John Damascene and the Pseudo-Dionysius, but his main reference was to the four great Latin Fathers, Ambrose, Jerome, Augustine, Gregory, and to Isidore and Bede.[3] It was from them that the medieval writers gleaned what they knew about the institutions of Roman antiquity, though the histories of Julius Caesar and Livy and the social satire of Juvenal were also referred to. The glories of Rome which were their inheritance were gains from the fall of Troy. As Hildebert, Archbishop of Tours (d. 1134) wrote:

sic ex Aenea crescunt Romana trophaea,
sic gens Romulea surgit ab Hectorea.

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[1] 2a–2ae, lx, 6, *ad* 3.

[2] H. F. Dondaine. 'Les scholastiques citent-ils les Pères de première main?' *RSPT*, xxxvi, pp. 231–43. Paris, 1952.
C. Baur. 'L'entrée littéraire de saint Chrysostome dans le monde latin.' *Revue d'histoire ecclésiastique*. viii, pp. 249–65. Louvain, 1907.
A. Wilmart. 'La collection des 38 homilies latines de saint Jean Chrysostome.' *Journal of Theological Studies*. xix. pp. 305 sqq. Oxford, 1918.
G. Greenen. 'Thomas d'Aquin: documentation patristique.' *DTC*. xv. 1. 741. Paris, 1946.

[3] R. W. Hunt. 'The Library of Robert Grosseteste.' *Robert Grosseteste, Bishop and Scholar*. p. 125. Ed. D. A. Callus. Oxford, 1955.

Ciceronian sentiments—Cicero was a favourite author with St Augustine—were echoed which cannot always be found in so many words by consulting the original author: thus St Albert appealed to Cicero for his definition of law—right written down to further what is virtuous and block what is contrary, *dicit Tullius quod lex est jus scriptum, assistens honestum, prohibens contrarium.*[1] St Ambrose's *de Officiis Ministrorum* was modelled on Cicero's *de Officiis*; he taught that the Emperor was within not above the Church, and was less deferential to the temporal power than another revered authority, St Gregory the Great, who said that if the ruler did what was uncanonical then we had to put up with it as well as we might without sin. Paradoxically St Gregory did more than any pope before Hildebrand to give political weight to the spiritual power. St Irenaeus and Tertullian, known during the Carolingian period, were little cited in the thirteenth century, and the ante-Nicene writers, with the exception of Origen, constituted no significant portion of its patriotic documentation.

Far and away the leading authority was St Augustine, the master of the theological movement of which the *Sentences* of Peter Lombard (d. 1160) remain the most famous monument. They provided the favourite text for commentary, but were improved on by the work of the later Augustinian schoolmen, William of Auxerre (d. 1231), William of Auvergne (d. 1249), John of Rochelle (d. 1245), Alexander of Hales his debtor and St Bonaventure (d. 1274).[2] Early writings of St Thomas were in this tradition, yet already they forecast a new response to natural ethics and the dignity of secular law.

Augustinian Scholasticism proposed no distinction between the theology of the Christian Revelation and rational philosophy. Devout reflections from the Scriptures about the vanity of earthly things were combined with vigorous and sustained speculations about them, a tribute to the interest they held. The literature of Neo-Platonism was tapped, as to a lesser extent was that of Arabic Aristoteleanism: Proclus and Avicenna were consulted, and the Pseudo-Dionysius was an esteemed

[1] Commentary *I Politics. cap.* 1

[2] J. de Ghellinck. *Le mouvement théologique du XIIe. siècle.* 2nd ed. Brussels, 1948.
P. M. Perantoni. *Prologemena to the Summa of Alexander of Hales.* Quaracchi. 1948.

and frequently quoted authority. Social philosophy was absent from the searching and synthetic *Summa Philosophiae*, once attributed to Robert Grosseteste, the organizer of philosophical studies at Oxford, but now with more likelihood to Robert Kilwardby (d. 1274), Provincial of the English Dominicans and Archbishop of Canterbury.[1] It showed no advance beyond the political position of St Augustine.

This was best discovered in his writings against the Donatists, for the *de Civitate Dei* was less a treatise on political theory than on Christian apologetics.[2] The old Stoic and Patristic contrast between innocence and convention was sustained. The social application of force was defended because otherwise the community would not hang together. Nevertheless the memory of a Golden Age, when men were fresh from the hand of the Creator and were free and equal, still lurked. Innocence was enmeshed in the bonds if not of sin then of practical needs wrapped round us by the facts of life after human nature's lapse from original righteousness. As Newman said, material force was the *ultima ratio* of political society everywhere. Slavery, private property and coercive authority were all institutions set up with divine approval to make the best of a bad job—sex and marriage were similarly extenuated.

The unanimous conviction that all power came from God was shot through with the suspicion that there was something of the bully in secular authority; it was an imposition, tolerable only because the alternative was worse. Abel lived the simple life, Cain built the first city. Was not the title to ownership merely prescriptive, and dominion not much better than robbery grown respectable? The Apostle had spoken of the rulers of the world of this darkness; Satan was free to roam, and

[1] C. K. McKeon. *A Study of the Summa Philosophiae of the Pseudo-Grosseteste.* New York, 1949.
E. Gilson. *The Unity of Philosophical Experience.* London, 1938.
Reason and Revelation in the Middle Ages. New York, 1939.

[2] J. N. Figgis. *The Political Aspects of St Augustine's City of God.* London, 1924.
G. Combes, *La doctrine politique de saint Augustine.* Paris, 1927.
N. H. Baynes. *The Political Idea of St Augustine's de Civitate Dei.* London, 1936.
R. H. Barrow, *Introduction to St Augustine, The City of God.* London, 1950.
H. Eibl. *Augustinus vom Göttereich zum Gottesstaat.* Freiburg, 1951.
A. Lauras and H. Rondet. 'Le thème des deux cités dans l'oeuvre de saint Augustine.' *Etudes augustiniennes*, pp. 99–160. Paris, 1953.

the spiritual principalities and the powers of nature they governed were not entirely subservient to God's sovereignty.[1] Indeed such political doctrines as can be pieced together from stray references in sermons and scriptural commentaries may be made to look like essays in social pathology. At most they accorded the State only an interim respect.

St Peter and St Paul had impressed the duty of obedience, nevertheless to some early Christians civil authority represented Anti-Christ. They found reasons for refusing to co-operate in the life of the secular community and for anticipating the millenium. Had not the Apocalypse pronounced a doom on Rome for spilling the blood of the prophets and saints? Even the less shaggily devout joined in the dirge, *Alas, alas, that great city!* However otherworldly their aspirations, they lamented that the craftsmen were gone, the trumpeters and pipers heard no more. They too joined in rebuilding the Empire. Europe became Christian, the leaders of the Carolingian Renaissance were clerics, and Charlemagne was the Frankish Justinian and the *Rector Ecclesiae*. All the same, Radbert styled him Pharaoh, the oppressor of his people, and Walafrid Strabo depicted him as a tyrant.[2] The persuasion that political subjection was a curse lingered in theological tradition; indeed it has never died, like the sympathy with primitive anarchism which is evoked by the myths of the West. Traces of it appear even in St Thomas, who was the first to take up a stand against the *propter peccatum* hypothesis of secular power associated with the name of political Augustinism.[3]

The Church on earth had never regarded itself as the society of the godly and elect, and had never so separated itself from sin as to become a clique. Under the guidance of pontiffs like Gregory VII and Innocent III, austere and saintly but prepared to deal with the world as they found it, Church policy and discipline accepted property and sought to possess secular power. The idea, discoverable in St Augustine, that the State might be founded on crime and lack the true justice which

[1] C. B. Caird. *Principalities and Powers: A Study of Pauline Theology*. Oxford, 1956. O. Cullmann. *The State in the New Testament*. London, 1957.
[2] H. Fichtenau. *Das Karolingische Imperium*, pp. 255, 333. Zurich, 1949.
[3] H. X. Arquillière. *L'augustinisme politique*. Paris, 1934.

hinged on righteousness and the Christian religion, was already losing its force. Against it could be set the Church's practice of consecrating rulers after they had taken their Gospel-oath to rule as Christian men. All power, whether to bear arms as a knight or to teach as a doctor, must be blessed before it could be exercised. Nor would the inherent worldliness of secular authority be so evident in an age when Church and State were not separate and the social soil was fertile of such Christian growths as free associations protected by law, parliaments and universities.

For other reasons also religious writers might hesitate to condemn the earthly city as wicked Babylon. Prelates exercised great temporal power, and wanted more; the Canonists of the Curia claimed universal lordship for the Pope. Many clerks from a higher spiritual level made a concerted attempt to charge the workings of government with Christian virtue. Power must declare the majesty of God, justice must be done and be shown to be done. Many of the beneficiaries of the devout humanism which was a legacy left by the twelfth century, were men of affairs.[1] In brief a Christian culture was being transformed into a civilization which accepted with confidence the things of this world.

That the effects were manifest in widespread social reforms and a growth of public spirit is not maintained, still less that men were better then than now. It is merely noted that a lightening of political pessimism prepared for St Thomas's entrance. He would not have shared Pascal's censure that true justice was absent from what the State prescribed and guaranteed by its laws, or Newman's pathos that the sight of the world is nothing else than the prophet's scroll, full of lamentations and mournings and woe. Let us look first at the biblical theologians who ventured into civics prompted by Solomon's wisdom, and secondly at the speculative theologians who traced the prolongations of Eternal Law into social psychology.[2]

1. *The Bible as Mundane Guide*

The Sapiential Books—Proverbs, Ecclesiastes, the Song of

[1] G. Paré, A. Brunet, P. Tremblais. *La Renaissance du XIIe siècle. Les écoles et l'enseignement.* Ottawa, 1933.

[2] O. Lottin. *Psychologie et Morale aux XIIe et XIIIe siècles.* i. 'Problèmes de Psychologie.' Louvain, 1942.

Songs, Wisdom, and Ecclesiasticus—make for more profane reading than the other canonical books of the Bible; there is about them something sophisticated and almost epicurean. It was this, not their spiritual sense, which increasingly attracted the interest of the thirteenth century. In St Thomas's unfinished *Commentary on the Politics* five out of the eight scriptural quotations were from the Sapiential Books, in his *de Regimine Principum* twenty-one out of forty-eight, and in the discussion on political authority in his commentary on Romans xiii twenty-three out of seventy. St Albert's *Commentary on the Politics* showed the same leaning, a sign that attention was shifting from the emblematic to the intrinsic interest of worldly things.

Fashions were changing from the days when texts were used as pegs on which to hang moralities and when Solomon was consulted less for his secular advice than for the mystical teaching of his Canticle. Not for centuries, however, did history aim at verisimilitude, not edification. Writers such as Peter the Chanter (d. 1197) and Stephen Langton (d. 1228) were faithful to the method of Alexandrine tropology and the symbolism of St Gregory's *Moralia*; allegories in the Bible explained universal history, and this was the same as Church History. *Veni sponsa mea de Libano*, cried the Song of Songs; it was Christ speaking, commented St Optatus, the spouse was the Church and Lebanon the Roman Empire because of its sacredness and decency.[1] *Assumptus est Moyses de aqua*, they read in Exodus, and back came the echo from the Institutes of Justinian, *eligitur rite magistratus de populo*.[2]

William of St Thierry (d. 1148), the intimate of St Bernard, treated *urbanitas* as charity in the City of God, not as the lubricant for good citizenship.[3] His humanist opponent, William of Conches (d. 1154) wrote a gloss on the *de Consolatione Philosophiae* of Boethius, the statesman who looked to eternity to compensate for the ruin of his career in this world, and also a *Summa Moralium Philosophorum* consisting of precepts mostly from Seneca and Cicero. Boethius was a major philosophical

[1] *de Schismate Donatistarum*, 3. PL xi, 1000.

[2] H. Kantorowicz and B. Smalley. 'An English Theologian's view of Roman Law: Pepo, Irnerius, Ralph Niger.' *Medieval and Renaissance Studies*, i, pp. 237–52. London, 1941.

[3] See 2a–2ae, cxiv.

influence on the School of Chartres which combined an elementary Platonism with a classical culture. It was the Victorines, Hugh of St Victor (d. 1141) and Richard of St Victor (d. 1173) who began to open out the literal sense of the Scriptures. They noticed the threefold division, ethics, economics, politics; thereafter the indications increased that a new science was about to be entertained, the proper study of which was the earthly city.[1]

The earliest political treatise was the *Policraticus* of John of Salisbury (d. 1180), a systematic account of the duties of a Christian prince unmentioned by St Thomas.[2] As a description of the conditions of an organic Christian commonwealth it surpassed the later *de Instructione Principum* of Giraldus Cambrensis (d. 1220).[3] The *Respublica* was the Western world, the *orbis latinus*. The soul of the body politic was the Christian faith and priests guided by the Pope discharged its functions.[4] All the laws were religious and holy since their purpose was right living. John stood without rival among his contemporaries for his knowledge of the ideas and institutions of the ancient world; he followed the footprints of philosophers, yet reached no scientific theory about the nature of the political community. A third of his scriptural quotations were from the Sapiential Books.

The scientific humanism of the period looked to the same sources; thus Alexander Neckham (d. 1217), the foster-brother of Richard Coeur-de-Lion, whose five books *de Natura Rerum* were the earliest to consider such subjects as the use of the magnet in nautical science and *synderesis*, the basis of natural ethics. Biblical exegesis began to blend theological devotion after the manner of the Victorines with the drier philosophical

[1] *Didascalion*, ii, 30. *Practica* divided into (1) *solitaria, ethica, moralis*; (2) *privata, oeconomica, dispensativa*; (3) *publica, politica, civilis*. PL clxxxvi, col. 759.

[2] C. C. J. Webb. *Ioannis Sarisburiensis Episcopi Carnotensis Policratici sive de Nugis Curialium et Vestigiis Philosophorum Libri viii*. Oxford, 1909.
J. Dickinson. *The Statesman's Book of John of Salisbury*. New York, 1927.
H. Liebeschütz. *Medieval Humanism in the life and writings of John of Salisbury*. Warburg Institute, xvii. London, 1950.
P. Delhaye, 'Le bien suprême d'après le Policraticus de Jean de Salisbury,' *RTAM*, xx, pp. 203–21. Louvain, 1953.

[3] See *Policraticus* iv, 3; v, 2; viii, 17.

[4] See *Policraticus* iv, 3; v, 2; viii, 17.

interests of the Parisian Summists. William of Auvergne, a pioneer into Aristotle's natural philosophy, wrote commentaries on Proverbs, Ecclesiastes, and the Song of Songs before 1225. Afterwards Bishop of Paris, he encouraged the friars and was the friend of Roland of Cremona (d. 1253), the first Dominican Master and Regent of Studies at Paris, who wrote a commentary on Job not insensitive to profane values.[1] To his regency succeeded Guerric of St Quentin (1233–42) whose commentaries on the Sapiential Books were perhaps more imbued with the new Aristoleanism than were the parallel works of Hugh of St Cher (d. 1263) who occupied the other Dominican chair at Paris and epitomized the biblical scholarship of the age. Both connected the Natural Law with the inner drives of things towards their full stature, towards *esse sive bonum*; they began to look towards purposes working within physical processes, not only at mental patterns constituted outside them, and to venture a scientific, as opposed to a dramatic reading of the world. Hugh spoke of Ecclesiastes as an instruction in ethics, physics and theology. High in the administration of his Order during St Thomas's early academic career, he was the first Dominican to be created cardinal. A patriotic Frenchman, he alluded proudly to Philip Augustus—Bouvines had been won in 1214—and would not allow the Emperor to be sole successor to Roman power and referee in the game of international politics.[2]

St Bonaventure's commentary on Proverbs, which became a standard work, was written for piety (1257). The focus remained fixed on heaven, not on earth, even in the later Dominican commentaries of William of Tournay (d. 1272), William of Alton—the Regent who succeeded St Thomas at Paris (1259)—and John of Varzy (d. 1278). Their purpose was

[1] F. Filthaut. *Roland von Cremona, O.P. und die Anfänge der Scholastik im Predigerorden*. Vechta, 1936.

[2] A. Dondaine. 'Un commentaire scripturaire de Roland de Cremone: Le livre de Job.' *AFP* xi, pp. 109–37. Rome, 1941.
F. M. Henriquet. 'Les écrits de frere Guèrric de Saint-Quentin.' *RTAM*, vi, pp. 191–2. Louvain, 1934.
O. Lottin. *Psychologie et Morale aux XIIe et XIIIe siècles*. ii, p. 83. Louvain, 1948.
P. Glorieux. *Répertoire des maîtres de theologie de Paris au XIIIe siecle*. Paris, 1933.
B. Smalley. 'Some Thirteenth Century Commentators on the Sapiential Books.' *Dominican Studies*, ii, pp. 318–55. iii, pp. 41–77, 236–74. Oxford, 1949, 1950.

homiletic rather than civic. Proverbs taught us how to live virtuously, Ecclesiastes how to despise worldly vanity, the Canticle how to love God. A *scientia legum* was mentioned but its nature was not explored. The prospect of the City of Reason had not been delineated and for many years men looked to the Bible rather than to the classical authors for their philosophy. St Albert died in 1280; *phoenix doctorum, philosophorum princeps*, declared the epitaph inscribed on his tomb in Cologne, *major Platone, vix inferior Salamone*—greater than Plato, scarcely less than Solomon. It was the epitome of praise, and the epilogue to the age.

The Dominican Vincent of Beauvais (d. 1264) was a typical witness to the state of social theory before the entry of Aristotle's *Ethics* and *Politics*. A familiar of the royal court, he composed his *Speculum Majus*, an omnium gatherum of information, for the education of Louis IX's family. He was no theological, philosophical or legal specialist, but five books of the *Speculum Morale* provide a fair picture of contemporary social science.[1] The first, on *scientia oeconomica*, consists mainly of good advice on household management, including poultry-keeping; the next broaches, but no more, the subject of *scientia politica*, for, after fifteen short chapters about nations and States and eighteen about rulers, 109 chapters deal with laws; the remaining three books treat of legal processes and crimes. The proportion suggests the difference between the 1240s when he wrote and the 1250s when Aristotle was coming into his own, and the 1260s when St Thomas began his expositions of moral and natural philosophy. Vincent meditates on his wide collection of heterogeneous facts, but he is not a synthetic thinker and, despite the theological bearing of his interests, one looks in vain for an ordered body of thought. He died only ten years before St Thomas, yet he belonged to quite a different academic generation.

[1] *Speculum Doctrinale*, vi–x. The whole work, the *Speculum Majus*, also known as the *Bibliotheca Mundai* (Benedictine edition, Douai, 1624) was divided into three parts, the *Speculum Naturale*, the *Speculum Doctrinale*, and the *Speculum Historiale*. The *Speculum Morale* was a fourteenth-century compilation from the writings of St Thomas, Peter of Tarentaise, Stephen of Bourbon and others. A. Steiner. *Vincent de Beauvais: de eruditione filiorum nobilium*. Medieval Society of America. Cambridge (Mass.), 1938.

His preface apologises that only a few small blooms from Aristotle are arranged, *nonnullos Aristotelis flosculos*, and those chiefly on physical and mathematical subjects. He refers to the *Ethica Nova*, the early thirteenth century translation of the first book of the *Nicomachean Ethics*, and repeats Aristotle's division of moral science into the monastic, the economic and the political. He shows none of the familiarity with Aristotle's social and political doctrine evident in St Thomas's early systematic work, the *Commentary on the Sentences* (1253–5). He makes no mention of the *Politics*, but paraphrases—possibly from Michael Scot—a conspectus of *scientia civilis* by Alfarabi, whose commentary on the *Posterior Analytics* and treatise *de Ortu Scientiarum* were accepted authorities on scientific method. He faithfully reproduces the features, historical, moral, and legal, which his contemporaries considered essential in public life. He emphasizes the importance of custom, continuity, and stability; next, he inquires into the virtues which should invest the ruler; third, he measures social conduct by laws enacted, having regard, however, to the legislator's intention.[1]

His approach to politics is not pedantic, for practice is engaged as well as theory; the *tact des choses possibles* should go with agreement on the meaning of words, *rationes nominum*. Words call for definition, otherwise reasoned discussion is out of the question; a city, for instance, is constituted by its inhabitants not its buildings, a people by its citizens not the populace. Government should be accommodated to the ways in which human groups do work in fact, though opportunism is no substitute for a doctrine.[2] Politics and jurisprudence are treated as identical studies. He accepts Azo's datum, that law is sometimes strictly taken to mean the authentic constitutions made by the Roman people, sometimes more widely to include every reasonable statute, and insists the legality should be clear and manifest; nothing so becomes the legislator as plain speaking. On divisions of law his terminology is no more exact than St Isidore's; Civil and Canon Law are both included under human law, and their principles are common. He reminds himself that definition is dangerous in civil law, but

[1] *Speculum Naturale*, i, 10. *Speculum Doctrinale*, iv, 4. vii, 4, 5.
[2] *Speculum Doctrinale*. vii, 6.

that God's Law of Nature is constant under all surface variations.[1]

Vincent of Beauvais almost warms to a properly political dialectic, but he has not shed a moral rhetoric. He narrates and moralises about the practice of *regia virtus*, but does not reach to the origins and nature of political power. Plutarch has finely described the model ruler—*qualis debet esse princeps eleganter descripsit in libello pulcherrimo, qui inscribitur Institutio Trajani*—and this sets his own tone. His inspiration comes from biblical theology, not from philosophy, and his vast florilegium is not a scientific study. About it lingers the glow of the humanism of Chartres already fading from the schools, and his mirror reflects the decoration of the high-medieval French Gothic rather than its structure.[2]

2. *The Theology of Natural Law*

Another advance towards political theory was conducted by the theologians, mainly from their own resources without drawing on the jurists. Until the end of the thirteenth century their inquiries into the origins of political authority remained more searching than those of the philosophers. They went back to the very beginning of law. *Doth not wisdom cry 'I was set up from everlasting, from the beginning, before ever the earth was.'?*[3] They had meditated on St Augustine's exaltation of the Eternal Law which is the *Ratio Divina* behind all law: *by me kings reign, and princes decree justice.*[4] The far peaks seemed to close in as they surveyed the slopes sweeping down to the valleys. *When he appointed the foundations of the earth, then I was sent by him rejoicing in the habitable parts of the earth; and my delights were with the sons of men.*[5] Human beings were invited to receive the divine

[1] Ibid. vii, 34, 35, 36, 43, 54.
With reference to St Isidore's distinction between *fas* and *jus*, vii, 57 may be compared with 2a–2ae, lvii, 1, *ad* 3.

[2] E. Mâle. *Art religieux du XIIIe siècle en France*. Paris, 1931.

[3] *Proverbs*, viii, 23.

[4] Ibid. viii, 16. *Contra Faustum*, xxii, 27, PL xlii, 418. *de Libero arbitrio*, i, 6. PL xxxii, 1229.
A. Schubert. 'Augustinus Lex-aeterna Lehr nach Inhalt und Quellen.' *Beitrage*, xxiv, 2. Münster, 1924.

[5] *Proverbs*, viii, 29–31.

exemplars by embracing them *per modum cognitionis*, not by being subjected to them without choice *per modum actionis et passionis*.[1] The Eternal Law thus brought into human psychology was called the Natural Law. This was no abstraction of Stoic philosophy, but a historical command, heralded by the Jewish Revelation and effectively maintained by the Christian Church. The theologians set themselves to investigate its workings through moral and legal acts.

An immemorial conviction persisted that a right existed more primitive than any instituted by custom or legislative acts, a law in nature which set bounds to human will. In the *Antigone* it held sway over the gods themselves: Aristotle had taken the allusion and contrasted a universal *logos* at work within natural processes with the particular regulations imposed by man. The Roman Law itself, historically a majestic piece of pragmatism composed from governmental edicts, half-consciously seemed to imply an ethical feeling for an underlying decency in things. Its foundations were not altogether arbitrary, and if particular details were determined by empirical observation and methodic positivism, not by religious, mystical or philosophical insight, it represented on the whole a norm of social behaviour which corresponded with common convictions. Its teachers and practitioners, though concerned less with philosophical speculations than with the fulfilment of obligations arising out of existing social conditions, discerned a difference between the 'natural' and the 'artificial', at least to the extent that a juridical 'logic of facts' could be discerned underneath particular rules grounded on political expediency.

Classical jurisprudence, however, was not backed by a dogmatic theology nor was public life watched by a Church which was no department of the State but an independent witness to eternal moral values. The litigiousness of the Greeks bred commercial attornies, but their philosophical bent was not towards legal analysis. Between the traders busied with exchanges and the moralists and statesmen engaged with high questions of the commonweal no dignified class of jurists appeared, as with the Romans, who reflected on the theory and shaped the legal instrument of government. Even the Romans,

[1] See 1a–2ae, xci, 1, 2. xciii, 1, 3, 4, 5, 6. xciv, 1, 2.

despite their use of such terms as *jus naturae* and *lex naturae*, were lawyers first and philosophers afterwards; probably they arrived at the *jus naturale* through their dealings with the *jus gentium*. Concerned with practical solutions, they were tolerant of what did not in fact conflict with the interests of the State, but their habit of mind anticipated no collision between a higher law and administrative needs. Unlike the medievals they never asserted that Natural Law could override concrete and positive ordinances; their appeals to ethical ideals were scarcely more important than rhetorical decorations.[1] The Christianization of the Empire tended to change that, yet the *Institutes* accepted the legal fact of slavery while agreeing it was against natural rights.

The term *Nature* would not ring with the same tone to third-century authors and to the compilers of the *Corpus Juris* under Justinian and, still less, to the thirteenth-century philosophers and theologians of law. From natural instincts, however suspiciously regarded in ascetical literature, followed certain corollaries, among them the notion of primeval justice. Inborn rights were given us by our Creator, and these, with the growth of Christianity as an organized social force, were made politically more telling. They could be, and were, invoked against civil tyranny and backed by the Church. The early Scholastics learnt from St Augustine the lesson that the Natural Law reflected the exemplars of the heavenly city set above this world, and that the codes men devise for themselves are but artificial shifts to deal with shadows, sometimes no more than accommodations to sin. Its nobility was in no sense diminished when writers of a later generation discovered from Aristotle a new respect for physical reality. They left the positivism of the working order to the lawyers, and while scarcely noticing the literary adumbrations of a social *ratio* which had appealed to the Stoics, they were intent on rights apparently not created by

[1] E. Barker. *Introduction to O. Gierke, Natural Law and the Theory of Society*, i, p. xxxvii. Cambridge, 1934.
J. W. Jones. *Historical Introduction to the Theory of Law*, p. 103. Oxford, 1940. *The Law and Legal Theory of the Greeks*. Oxford, 1957.
P. Vinogradoff. *Outlines of Historical Jurisprudence:* Vol. ii.
The Jurisprudence of the Greek City, pp. 11, 12, 82, 173, 250. Odxford, 1922.
G. M. Calhoun. *A Working Bibliography of Greek Law*.Cambrige (Mass.), 1927.

the will of any human legislator, and by digging into them they cleared the ground for political science.

The non-Aristoteleans were worried by the problem, how man was born free and yet everywhere was in chains. If their idea of liberty was richer than Rousseau's their idea of bondage was correspondingly more tragic. The liberty and equality of our original state were etched against the restrictions and exclusions of our present lot. The memory of Eden still lingered underneath accepted conventions. Slavery, private ownership and civil subjection, they thought, had been ordained *propter peccatum* in order to establish some discipline where otherwise anarchy would reign. Was not the strength of such institutions that of positive and coercive law rather than of the gracious plan proper to the state of human innocence? Certainly they commanded respect and obedience, for they had divine warrant and the apostolic injunction was forthright about subjection to the powers that be. All the same the first Christian millenium was not propitious for political idealism. Submission to secular authority could be recommended almost in the mood of making the best of a bad job, and judgment on the best type of political regime be determined by which was likely to do the least harm.

The issue, moreover, was clouded by ambiguity: *natural* might be taken either in contradistinction to *artificial* and signify what was innocent and straight from the hand of God or to *supernatural* and signify what was primitive and unregenerate. The attraction the Augustinists felt for the unspoilt was offset by their hesitations about the uninhibited. Then, also, *natural* could mean animal as opposed to *rational*, and, as in the classification of 'unnatural' sins, this could deepen the division between instinctive adaptations to social environment and reasoned contrivances to civilize it.

Nor was the confusion lessened by St Isidore who transmitted inconsistent texts describing the Natural Law. On one side Gaius (d. 160) represented it as the ordinances pronounced by natural reason and uniformly observed by all peoples; so it could be identified with the *jus gentium*, and set off against the positive law or *jus civile* which was peculiar to the State. On the other side Ulpian (d. 228) described it as what nature teaches all animals; it was natural in that it was not deliberately

enacted, and so could cover unperplexed adjustments to group-living. Obviously it needed to be complemented by set agreements if men were to come to terms with actual social divisions and conflicts. For instance belligerents commonly agreed to respect the persons of ambassadors. Such widespread rational additions to the Natural Law were found in the *jus gentium*; they became part of the *jus civile* when officially adopted by the State. On this view human law could be represented as an accommodation to disorders arising from sin: one had to look for a fault somewhere when captives were allowed to be sold into slavery. That ordinances were burdensome and bound up with penalties was in keeping with Augustinist sentiment, and may partly have accounted for Ulpian's popularity. On the other hand it was embarrassing to agree with him and leave Natural Law on the animal level, not least because of the Stoic teaching that reason in Nature was answered by reason in our mind and that Law was a pronouncement of Reason.

The difficulty, if largely a matter of terminology, was enough to exercise the schoolmen, profoundly respectful of the words of received authorities. It was complicated by the fact that animal, rational and spiritual were treated as so many separate layers not fused together, and it was not eased until the developed Aristoteleanism of St Thomas brought out the family-likeness of things and the analogies running through all creation. Then it was marked how natural appetites aspired from lowest to highest, and some continuity between biology and law was confirmed.

Huguccio (d. 1210), whose *Summa* on the *Decretum* has been called the greatest achievement of twelfth century Decretist scholarship, was content to repeat both formulas without harmonizing them. Slowly the distinction came to be drawn between what is instinctive, *natura ut natura*, and what is deliberate, *natura ut ratio*. Put forward by Philip the Chancellor (d. 1236), it was elaborated by the early Dominican and Franciscan doctors, Roland of Cremona, Guerric of St Quentin, Hugh of St Cher, John of Rochelle, Alexander of Hales, and St Albert.[1] They were exploring the psychological and moral

[1] O. Lottin. *Le droit naturel chez saint Thomas d'Aquin et ses prédécesseurs*, p. 74. Bruges, 1931.

medium in which the Eternal Law was received, and in the process discovered an outline design for social living and principles of law more profound than a pattern imposed as a corrective to sin. An order was inherent in the human community which was antecedent to any method of governing its potentially recalcitrant elements. In that liverty-loving age men sought to make their theory and institutions of a piece. No wonder, then, that St Bonaventure recognized the *jus naturale* properly so called in the Gospels, though he recurred to the time-worn descriptions—in its more proper sense it was common to all nations, and in its most proper sense was impressed on all animals.[1]

Still more questions confused the issue. Was the Natural Law the Divine Law? Was the Mosaic Law the Natural Law? And under what heading should its ceremonial precepts be placed? And where the 'other law in my members' of which St Paul spoke? Was Canon Law the continuation of Gospel Law? Not until St Thomas's *Summa Theologica* defined and divided the field was a common grammar for discussion available. It was then, when the specific element in Original Sin was isolated, that animal appetites were distinguished from sinful *concupiscentia*, and associative impulses were accepted as essential to human nature and able to be infused with grace.[2] Then also Aristotle's *Ethics* and *Politics* made themselves felt.

Social theology had prepared the ground. A blend of meditations on charity and the reign of law, inspired by the *Timaeus* and St Augustine, of homilies on the duties of rulers and of discussions about ecclesiastical and feudal rights, it had also caught a glimpse of the divine reason working through world events. Its history was sacred history, its book the Bible, its theme the acts in time of the eternal Father, the Logos, and the Spirit. Its drama began with the Creation and Fall and would end only with the final restoration of mankind. Its classic was the *de Civitate Dei*.[3]

[1] C. Baur. 'Die Lehre vom Naturrecht bei Bonaventura.' *Festgabe f. C. Bäumker*, pp. 217–39. Münster, 1913.

[2] 1a–2ae, lxxxii, 3.

[3] E. C. Rust. *The Christian Understanding of History*. London, 1947.
J. Daniélou. *Essai sur le mystère de l'histoire*. Paris, 1953.
R. L. P. Milburn. *Early Christian Interpretations of History*. London, 1954.
K. Young. *The Drama of the Medieval Church*. Oxford. 1933.
P. Geyl. *Use and Abuse of History*. Oxford, 1956.

Moreover the divines were in the seats of power. They knew the world, and they knew how to rule it. They had been engaged victoriously in the great contest between spiritual and temporal dignities within the single community; they had formulated the notion of sacramental jurisdiction, and tightened the early medieval penitential discipline of the Church; they were familiar with legal processes, and keenly interested in maintaining prescriptive rights and exemptions.[1] Yet their practice was clearer than their theory, their grip on administration was firmer than their reflections about the corruption within power, and their position was the reverse of that of the British Socialists in the 1920s, who had a doctrine but had yet to learn the arts of government.

They were to discover that blunter claims to earthly rule were to be pushed, and that in order to face the new secular temper more was required than the exposition of the moral law or expertise with the law of the land, more than advice on how to save your soul or maintain your existing rights. The State was being born, a natural group which enacted laws in response to its present needs and without seeking ecclesiastical approval. At Mantes in 1203 Philip Augustus had declared that matters of feudal law which involved no moral issues were not for the Pope to decide; by the end of the century the temporal power of the Church encountered a resistance more consolidated than any that had been shown by the Emperors, and soon to be supplied with a political doctrine. A philosophy of the State was only gradually formed, and as late as 1266 Roger Bacon noted the gap, which detailed investigation into points of law did not fill. 'A part of moral philosophy sets forth the public laws, first about divine worship, and then about the commonwealth, cities, and kingdom: under it is contained the civil law of emperors and kings throughout the world, and many have written much on this. It is to be lamented, however, that this section is not dwelt on by the Latins, except in a legal and positive manner (*nisi laicaliter*) occupied with what in fact has been enacted, not in a philosophical manner, as by Aristotle and Theophrastus.'[2]

[1] A. Luchaire. *Le Concile du Latran et la réforme de l'Eglise*. Paris, 1908.
[2] *Opus Tertium*, xiv. Ed. J. S. Brewer. London, 1859.

II

JURISTS

ROMAN justice was a heritage from classical times and men schooled by Virgil, Cicero and St Augustine admired its ideals. Lawfulness however, stood for more than a temper in the thirteenth century since the Roman Law had come on the scene, a definite code and an expanding instrument of government. Its practitioners were among the gainers. Their prestige was heightened with the improvement of their studies and techniques. Jokes, of course, were made at their expense, then as now. Could you be a lawyer and an honest man? Could archdeacons be saved? The civil lawyers were jealously watched by the ecclesiastical authorities, the canon lawyers were criticized as careerists by religious reformers. Their practices grew and juridical concepts spilled over into theology, for example the distinction between the *clavis ordinis* possessed by all priests and the *clavis jurisdictionis* which had to be conveyed to them by higher authority. Legalism set the style for social life both sacred and profane.[1]

It was the era of the great lawyer-Popes and of travelling Justices upholding the Common Law. No question then arose of government being allowed to override the law or to improvise a code at will; rulers were required to maintain old traditions and to find warrant for their acts in custom or in the *Corpus Juris* as adapted to the needs of a community in transition from feudalism to capitalism. Social decisions turned on points of order, indeed political action and warranted action went together in that legal-minded age.[2]

Nevertheless social psychology exhibited an easy-going

[1] *IV Sentences* XIX, i, 2, *iii*.

[2] F. M. Powicke. 'Reflections on the Medieval State.' *Transactions of the Royal Historical Society*, 4th Series. xix, p. 6.
P. Vinogradoff. *Roman and Canon Law in Medieval Europe*. Oxford, 1929.
T. F. T. Plucknett. *Legislation of Edward I*. Oxford, 1949.

attitude towards the sanctity of law, a certain swagger more easily recognized than defined—it was less a matter of unsubmissive conduct, for that is present and even prominent in the most legalistic communities, than of a mood not awestruck by its own inventions. Our Lord had said that the sabbath was made for man not man for the sabbath, and those who cherished the spiritual law of the Gospel, about which St Augustine had written so eloquently, were not inclined to hold lesser texts in excessive reverence. The forms of human law should be punctilously observed—so much was granted, and to that extent the proprieties were strict—but moral teaching was not cluttered with legal injunctions. The rhythms of social and religious life were not mechanized according to the complex measures of a code. The liturgy re-enacted the mysteries of Christ's life, and was not regarded as a sort of court-ceremonial before the eucharistic throne.[1] Conscience was not yet caught in systems of canonico-moral casuistry—although these must be allowed the credit of having brought home the distinction between the external and the internal forums, between crime before the community and sin before God.

True, the wages of sin was death to the soul; on the other hand, a crime or delict could be taken in your stride, at least with regard to its temporal consequences, if you were prepared to appeal and make use of all the resources of the law, and, if these failed, to take your medicine. Sanctions were severe, for the extreme penalties of death or excommunication were commonly imposed. The human texture was perhaps tougher then than now; the penances accepted, if physically more painful, were psychologically less taxing. Schism was condemned because it broke the fellowship of charity and heresy against faith was a sin held in peculiar horror. Nevertheless men were not obsequious and could criticize a dominant party-line in religion without doubting their own orthodoxy or undermining well-accepted institutions.

The distinction between public office and private person was robustly maintained; the dignity was one thing, the individual worth of its holder was another. The English Dominican, Thomas Wallis, for reasons since confirmed, objected to a pet

[1] L. Bouyer. *Life and Liturgy*. London, 1957.

theological theory of Pope John XXII, an ugly character to offend, and went off to beard him in his own court at Avignon.[1] This was not the procedure of later ages. There was a sturdiness in the life of devotion not easily abashed or haunted by the fear of not playing safe with a code. Obsessionals existed of course, but scrupulosity was not prominent in spiritual literature, and sufferers were not treated with a quasi-legal reflex apparatus to allay them with assurance of security. Not that controversies were conducted delicately, for it was an age of fierce and often coarse invective; a condemnation could be charged with curses which were sometimes the fruits of fertile imaginations working on the allegorical senses of the Old Testament. Perhaps familiarity bred contempt, perhaps some of the spiritual menaces—and inducements—were like a currency which loses its weight with inflation, perhaps, best of all, it was just a sense of proportion. Anyhow a meticulous regard for human authority was no more generally evident then than now if you eavesdrop on canon lawyers talking among themselves.

To the theologians belongs the credit of holding off the threat of a legal system being imposed like the Prussian State as its own purpose and not as an instrument of a higher condition of society. The jurists came in for some rough handling from the conservative divines in the first half of the thirteenth century: at one moment Honorius III checked the teaching of Roman Law in the schools of Paris, though not precisely because of the dangers of the excessive claims pushed for it nor because of the edge it put on morals.[2] In the flush of their success the lawyers were not to be restrained: some of the early Civilians imagined themselves to be philosophers on alleged hints from Boethius about Aristotle's topology and methodology; some canonists equated Canon Law with theology, though in theory the distinction and subordination of the two disciplines seems to have been pretty well preserved outside legal circles. Ridiculous and disagreeable, remarked St Thomas, uncharacteristically tart, about the intrusion of decretalism into

[1] T. Käppeli. *Le procès contre Thomas Waleys. O.P. Etudes et documents.* Paris, 1936.

[2] M. M. Davy. *Les sermons universitaires parisiens de* 1230–31, *pp.* 88–90. Paris, 1931.

theology.[1] He had reason to be sensitive on the subject; the study of law was the main path to advancement, consequently the teaching of the Church might not always be presented in proper perspective by holders of high office. The qualities of a successful administrator were not necessarily those of a divine.

Against the dangers and the abuses of medieval legalism should be set its greater influence for good. It transformed a barbarism—whether that was savage or kindly depended on the extent of the social penetration of Christianity—into a civilization where human exchanges could be settled by rights made manifest by due show of evidence, not by combat or ordeal. Brute force was tamed and verdicts arrived at without appeal to preternatural intervention. The times compare favourably with our own, when barbarism has returned, sometimes crude and sometimes using subtle methods invented by modern science for breaking up the free personality and making it conform to the pattern imposed on the mass.[2] Then torture was used for eliciting evidence; this was not so bad, though bad enough. Roman practice was more ruthless than English practice, and Edward I's men resented the papal recommendation that torture should be used against the Templars; it was contrary to the decency of Common Law. Men should fight for their laws as for their wall, Heraclitus had declared, and in the thirteenth century the law was the acknowledged protector of their freedom. Bracton spoke of lawyers as dedicated to the art of the good and equitable; they were like priests, for they worship justice and minister sacred rights.[3]

Papal policy supported the north Italian communes in their struggle against the Emperor; Alessandria was named in gratitude after Alexander III.[4] Historical circumstances determined the alignment, yet not entirely, for it was decided not only on reasons of security for the States of the Church or to seize an advantage for future aggrandisement; it corresponded

[1] *Contra Retrahentes*, 13. XI *Quodlibets*, 9, *ad* 1. 2a–2ae, lxxxviii, 11.

[2] J. Rollin. *Police Drugs*. London, 1955.

[3] *de Legibus et Consuetudinibus Angliae*. iv, 3. Ed. T. Twiss. London, 1878.

[4] M. Pacaut. *Alexandre III: Etude sur la conception du pouvoir pontifical dans sa pensée et dans son oeuvre*. Paris, 1956.

to the sympathy of the Canonists for representative government. It is no exaggeration to say that on the whole their effect on secular history was on the side of the civil liberty and what now would be called constitutional democracy. They shared in the undying effort to have government carried on according to reason not appetite, and by mandarins not war-lords or palace-eunuchs.

Let us go back to the beginning of 'the ghost story', as it has been described, 'of the second life of the Roman Law after the demise of the body in which it first saw the light.'[1] Under Justinian the jumble of legislation which fell under the *jus vetus* (statutes passed under the Republic and early Empire, the decrees of the senate, and the writings of authoritative jurists) and the *jus novum* (ordinances of the middle and later Empires) was organized into a coherent *Corpus Juris*. This consisted of the *Code* (529) and of the *Digest* or *Pandects* (533) which organized the old and new regulations respectively, of the *Institutes* (533), an elementary outline, and of the *Novels* (565) or fresh constitutions.[2]

Byzantine State-philosophy may have derived from Eusebius who upheld the Emperor's right to rule 'by the grace and in the image of God'. Certainly Justinian's legislation was Christian in feeling. Dante recognized the fact when paying tribute to the vocation of Rome to pacify the world under *justitia* and *pietas*. Concerned with reformation as much as with punishment, its tone was hortatory; unlike the old Roman Law which proffered no sanctions for well-doing, it presumed that good should be done as well as evil avoided. Its judgments manifested a feeling for freedom, *favor libertatis*, and a tenderness which preferred *clementia* to *asperitas*, *benignitas* to *acerbitas*, *aequitas* to *duritia juris*. It was in this form, without the later modifications of the religious *Ecloga* of the Isaurian dynasty, and uninfluenced, so far as is known, by the great law schools of Beyrut and the East, that Justinian's masterpiece was received in the West: this was fitting, for he governed in Latin

[1] P. Vinogradoff. *Roman Law in Medieval Europe*, p. 13.

[2] *Corpus Juris Civilis*. i. *Institutiones*, edited by P. Kruger; *Digesta*, edited by T. Mommsen. Berlin, 1920.
i. *Codex Justinianus*, edited by P. Kruger. Berlin, 1915.
iii. *Novellae*, edited by R. Scholl and W. Kroll. Berlin 1912.

and was a westerner in his thought as he was in his military strategy.[1]

Whereas other Latin forms in Byzantium suffered a noiseless dissolution, the Roman Law prevailed for well nigh a thousand years until the fall of Constantinople to the Turk (1453). Swamped in the West by the tide of tribal invasions, it did not entirely disappear during the Dark Ages. Bits of it were copied and used. Cassiodorus, 'the last Roman Statesman', and a conserver of classical texts, was a faithful Home Secretary to Ostrogoth kings. Private apprenticeship to its forensic practice may have continued when academic instruction in its plan and details ceased. Some maxims were preserved by St Isidore and garbled texts appeared in the laws of the Visigoths and Burgundians who had been Roman allies of the Empire for two centuries before the collapse of imperial authority: service comradeship communicated a common style and, as in the case of the British with Ghurka regiments, left traces of procedure. Countryfolk have long memories, and the invaders were not always heathen or without respect for the institutions of the ancient provinces in which they settled. Hence *leges romanae* survived alongside the *leges barbarorum*, and legal *romanitas* impregnated the Carolingian Renaissance of the eighth century. Lanfranc, a lay-lawyer before he became a monk, is a pointer to the continuity of the juridical tradition in the north of Italy.

Nevertheless when the integral Roman Law was salvaged late in the eleventh century at Bologna only fifty miles from Ravenna, the last outpost of Byzantium in Italy, how technically superior it appeared when compared with the tribal and regional customs of the West. It was as if a pilgrim, marvelling at the marbles and mosaics, the splendour and symmetry of Santa Sophia, looked back to the rugged edifice and rude ornament of his cathedral at home. Ralph Niger, the contemporary of John of Salisbury, moralized the story of Absolom who slew his brother, Ammon, for seducing his sister:

[1] *Paradiso*. vi. *Monarchia*. ii, 5.
N. Lenkeith. *Dante and the Legend of Rome*. Warburg Institute. London, 1952.
R. G. Renard. 'Droit romain et pensée chrétienne.' *RSPT*, xxvii, pp. 57–62. Paris, 1938.
H. St L. Moss. *The Birth of the Middle Ages*. Oxford, 1935.
T. C. Sandars. *The Institutes of Justinian*. Introduction, p. xxx. London, 1898

in like manner, he concluded, the Roman Law killed the evil custom of trial by ordeal.[1] The violence of combat was superseded by the formal display of evidence for both parties in a dispute, the rough and ready justice of tribal courts by exact procedure according to cool reason.

The refining process was matched in theology. The Ransom Theory of the Atonement lingered in Peter Lombard, and Abelard (d. 1142) was in advance of his times—that was one of his troubles—when he rejected the idea that the devil was our jailer, yet slowly the story of a savage price and a double-deal, more appropriate to a saga than to doctrinal exposition, gave way to explanations more credible and devout.[2] The central argument on vicarious satisfaction of St Anselm's (d. 1109) dialogue, *Cur Deus Homo*, combined the *accipitatio* of the Roman Law and Germanic notions of making good.

The Church played the leading role in this legal revival. Ralph Niger went on to describe how the Roman Law dawned again and, under the patronage of the Papal Court, spread to the kingdoms of the West. To some extent the Church had never lost it, for its discipline embodied elements from the classical jurists handed on by such writers as St Isidore. At a time when folk-customs were becoming the laws of the realms founded on the ruins of the Roman provinces it was recognized that clerics and monks formed groups obedient to an older code: *Ecclesia vivit lege romana.*[3] The Papacy, moreover, inherited the Byzantine administration in Central Italy. Not surprisingly, therefore, the Canonists got off to a flying start in adapting the *Corpus* to the Church's own discipline. The Civilians were later in doing the same for the State. There were exceptions, Lanfranc for instance, yet in the main the West lacked an educated class of laymen corresponding to the Byzantine civil lawyers who were able to discuss questions of Church and State on equal terms with the clergy.

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[1] II *Kings*, xiii.
H. Kantorowicz and B. Smalley. 'An English Theologian's View of Roman Law: Pepo, Irnerius, Ralph Niger.' *Medieval and Renaissance Studies*, i, pp. 237–52. London, 1941.
C. Leitmaier, *Die Kirche und die Gottesurteile*. Vienna, 1952.

[2] See 3a, xlviii, 4, 5. xlix, 2. 1a. xxi, 4.

[3] P. Fournier. *L'Eglise et le droit romain au XIIIe siècle*. Paris, 1921.

A century before Accursius (d. 1260) wrote his great Gloss, which was the earliest major systematization of the Civil Law, Gratian composed his *Decretum* between 1149 and 1151. Published privately, it soon came to enjoy in Canon Law a prestige equal to that of Peter Lombard's *Sentences* in theology. Laying under contribution the work of the Bologna doctors, he reduced to some sort of order the Church's existing legislation, already a rough imitation of Roman models.[1] Soon the Canonists were as far ahead of the Civilians in exploiting the *Corpus* as the papal officials were of the king's servants in the business of administration. At first their credit was greater, for a theological aura surrounded their proceedings and they could urge a higher origin and more divine titles for their *Princeps*. When in 1200 Innocent III invoked the *Translatio Imperii* in assuming the authority to provide an emperor during the disputes between Hohenstaufen and Welf he was following common form. That Caesar was Caesar only by will of the Pope was not felt to be a far-fetched claim, nor that civil law should defer to the canons of the Church.

The arts of government which flourished in the papal court were expressed in its chancery style; the *modus dictaminis*, the rhythm, the *forma scripturae*, all were brought to a consummate pitch. Exact to the smallest detail in the seal of a document, the rules of authentication were as fine as those of the Bank of England for detecting forgeries. Its official impersonality anticipated the reforms of Frederick II and Piero della Vigna in Sicily and worked more smoothly to more lasting effect. 'Criticise it as we may', writes Dr. E. F. Jacob, 'and as most contemporaries did, for its delays and venality, in the Roman Curia men moved in a different world to that of a State; a world where subtle distinctions were heard, and delicately shaded opinions expressed, the spiritual home of educated and intelligent humanity.'[2] How sophisticated they must have felt and how they must have dissembled their amusement when they adjudicated between Giraldus Cambrensis, with his Celtic imagina-

[1] J. Kantorowicz. *Studies in the Glossators of the Roman Law*. p. 80. Cambridge, 1938. *Studia Gratiana*. Ed. J. Forchielli and A. M. Stickler, 2 vols. Bologna, 1953–4.

[2] 'Innocent III.' *Cambridge Medieval History*, vi, p. 36. 1929.
A. C. Clark. *The Cursus in Medieval and Vulgar Latin*. Oxford, 1910.

tion and sense of grievance, and his rough Norman opponents, with their accusations that the bishop-elect was a horse-thief.

Not until towards the end of the thirteenth century, when Church and State began to separate and solidify into distinct bodies, did Canonists and Civilians come into serious conflict, and even then the issues were ambiguous; there was no uniform taking of sides in the struggle between Papacy and Empire. Of course the ideal of the supreme *Princeps* emancipated from Church control was bound to attract the lay-minded, and Peter Crassus, the Ravenna jurist, in his *Defence of Henry IV*, a treatise which announced 'the entry of Roman Law into medieval political thought', denied the deposing power of the Pope, or 'the monk Hildebrand', as he called Gregory VII.[1] On the other hand, some of the eminent lawyers of Bologna, Orleans and Naples had no cause to support the Emperor, and not all Canonists were by any means Papalists either by temperament or conviction; in fact many, particularly among the cardinals, developed the theory, which was to lead to the Conciliar Movement, that the Pope was the constitutional representative of the *congregatio fidelium* and stood to the College of Cardinals as a bishop to a cathedral chapter.[2] Bishops, too, zealous for their rights as 'ordinaries', and for diocesan and provincial rights and franchises, were prepared to support Regalism in order to maintain themselves against the *Curia*, and this episcopal temper persisted during the Gallican controversies and until the Vatican Council.

1. *Canonists*

Eventually made shapely and consistent, the Canon Law in the early Middle Ages was still unformed and muddled. A patchwork of precepts drawn from Jewish, New Testament, Conciliar, and Pontifical sources was mixed with Roman maxims and rubrics, and diversified according to regional compilations. The change was wrought by the masterpiece of the Camaldolese monk, Master Gratian (d. before 1173), the *Concordia Discord-*

[1] C. N. S. Woolf. *Bartolus of Sassoferrato*, p. 70. Cambridge, 1913.

[2] W. Ullmann. *Origins of the Great Schism*. London, 1948.
B. Tierney. *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*. Cambridge, 1955.

antium Canonum. This was no mere miscellany of tests in chronological order of publication but their systematic distribution according to topics in a running argument according to the *sic et non* method of the schools. Known as the *Decretum Gratiani*, a standard text-book not an authoritative code possessing the weight of law, it was complemented by various compilations, more or less methodical, of synodical canons, notably of the two Lateran Councils of 1179 and 1215, and of the decrees of the lawyer-popes, Alexander III (Roland Bandinelli, d. 1181), Innocent III (d. 1216) and Honorius III (d. 1227). These collections were later replaced by the famous *Decretals* of Gregory IX (d. 1241), into which were later inserted the decrees of Innocent IV (Sinibald Fieschi, d. 1254).[1]

The *Decretals* formed the *novum jus*, which went beyond the academic moderation of Gratian's *vetus jus* and declared the centralizing policy which consolidated and expanded the achievements of Innocent III. Officially promulgated by the Bull *Rex Pacificus* (1234), they were compiled by St Raymund of Pennafort (d. 1275), who was praised by Vincent of Beauvais for pruning—somewhat roughly, some have complained—five volumes to the size of one and twenty-five distinctions to five.[2] A Catalan and already an expert jurist when he joined the Dominicans, afterwards legal adviser to the Pope and for a short period Master-General of his Order, whose primitive constitutions he edited in the form that survived for nearly seven centuries, he was the *doctor decretorum*, a specialist in the *jurisprudentia divina* of Church discipline—the very phrase indicates the mixture of theology and law effected when the

[1] A. L. Richter and E. Friedberg. *Corpus Juris Canonici: 1. Decretum Magistri Gratiani*. Leipzig, 1879. ii. *Decretalium Collectiones*. Leipzig, 1881.
P. Fournier and G. le Bras. *Histoire des Collections canoniques en occident depuis les Fausses Décrétales jusqu'au Décret de Gratien*. 2 vols. Paris, 1931–2.
G. le Bras. *Histoire du Droit et des Institutions de l'Eglise en Occident*. Prologomènes. Paris, 1955.
A. van Hove. *Commentarium Lovaniense ad Codicem Juris Canonici. Prolegemena*. 2nd ed. Malines, 1945.
F. Cimitier. *Les Sources du Droit canonique*. Paris, 1930.
F. Thaner. *Die Summa Magistri Rolandi*. Innsbruck, 1874.

[2] *Speculum Doctrinale*, vii, 49.
F. Balme and C. Paban. *Raymundiana*. Monumenta Ordinis Praedicatorum Historica. Rome, 1898, 1901.

doctrine of sacramental repentance passed into the external forum of penance. Gratian had spoken of the *potestas ligandi et solvendi* in one context to mean the apostolic power of remitting sins, in another to mean the power of jurisdiction over the public order. Raymund's *Summa Juris* and *Summa Casuum* systematized the penitential doctrines and disciplines promoted by the Lateran Decrees, and developed the distinction drawn by Alexander III between two results of sin; the offence to God was amended *per cordis contritionem* and the scandal to the Church *per oris confessionem et operis satisfactionem* according to officially determined scales of satisfactions or indulgences.[1]

A religiously-charged dialectic was at once a political strength and a juridical weakness in the cause of the political Canonists. An academic impurity was a characteristic of its partisans, particularly when they engaged in polemics.[2] For they were promiscuous. Strict argumentation from legal premisses was mingled with biblical allegories and moralities, *a priori* philosophism with political opportunism, divine ordinances with appeals to historical titles, sometimes authentic and sometimes spurious: a case in point was the Donation of Constantine, the exposure of which by Lorenzo Valla inaugurated the critical treatment of sources.[3] They were makers rather than students of history. Theological excurses compose much of Gratian's collection, and two works by St Thomas, which from their titles might be expected to be devoted to legal topics, turn out to be discussions of heresies concerning the Trinity and the

[1] P. Anciaux. *La Théologie du sacrement de pénitence au XIIe siècle*. Louvain, 1949.
J. MacNeill and H. Gamer. *Medieval Handbooks of Penance*. New York, 1938.
G. le Bras. 'Pénitentiels.' *DTC*, xii, 1, col. 1160–79. Paris, 1933.
E. J. Arnould. *Le Manuel des Péchés*. Paris, 1940.
M. van de Kerckhove. *La notion de juridiction dans le doctrine des Décrétistes et des premiers Décrétalistes*. Assisi, 1937.
R. Mortimer. *The Origin of Private Penance in the Western Church*. Oxford, 1939.

[2] J. de Ghellinck. *Le mouvement théologique du XIIe siècle*, ii, 3. 'Melange des matières théologiques et juridiques.'
'Gratien, La théologie dans ses sources et chez les glossateurs de son "Décret".' *DTC*. vi, 2. 1731–51. Paris, 1947.
A. van Hove. *Commentarium Lovaniense*. i, 3. De methodo scientiae canonicae ejusque connexionis cum scientia theologica et cum jure romano.

[3] G. P. Gooch. 'Modern Historiography,' in *Maria Teresa and Other Studies*', p. 219. London, 1951.

Incarnation, with an eye to Abbot Joachim's followers.[1] Roger Bacon would have liked Canon Law purged of the waste of civil law and kept for theology.[2]

Canon Law eventually formed a coherent system of genuine laws many of which were not entirely new. All emanated from an authority whose credentials could not be challenged. The entrance of theological externals into such a system was fair enough. More troublesome was the intrusion of Canon Law into theology. As legalism spread so devotion sometimes tended to be clogged and some distinctions were blurred; thus there was some confusion in theory between sacramental validity and liceity.[3] In practice clerical students who were careerists forsook theology for the *scientia lucrativa*. Gregory in cobwebs, wrote Dante to the Italian cardinals, Ambrose in forgotten corners, Augustine given up, together with Dionysius, Damascene, and Bede, and they hold forth about I know not what manner of laws, Innocent, and Hostiensis—and why not?—the first sought God our noblest ends, from the others come prebends and benefices.[4]

The strict lawyers among the Canonists were well able on occasion to examine and expand a case in the purity of their own technical medium. Crime could be considered in abstraction from sin; it was a public offence which earthly authority could judge so long as it kept to outward deeds and did not refine on motives it could only guess at. Accordingly a verdict was to be arrived at in the light of the evidence brought forward according to the due procedure, and sentence pronounced *secundum allegata* even when privately its justice might be doubted.[5]

Nevertheless the policy of the Papalists was to extend rather than to limit the bounds of Canon Law. Not rash, but relentless

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[1] *Expositio 1ae decretalis ad archidiaconum Tridentinum. Expositio super 2a mdecretalem ad eumdem. Opusc.* xxiii, xxiv.

[2] *Opus Tertium*, xxiv.

[3] L. Saltet. *Les réordinations. Etude sur le sacrement de l'ordre.* pp. 289–96. Paris, 1907.

[4] *Epistolae* xi, 7. Innocent was Sinibald Fieschi, Innocent IV; Hostiensis was Henry of Susa, Cardinal Bishop of Ostia (d. 1277), author of the famous *Summa Hostiensis*. See *Paradiso* xii, 82–5, in praise of St Dominic. ix, 133–6.*a*, *Monarchia* ii, 3.

[5] See 2a–2ae, lxiv, 6 *ad* 3. lxvii, 2.

and persevering, they were banded together to advance their cause. This was the ideal of the spiritual control of the government of Europe, advanced by Hildebrand and enlarged by Innocent III, who at his consecration preached on the text, *I will suddenly speak against a nation and kingdom, to root out and to pull down, and I will suddenly speak of a nation and of a kingdom, to build up and plant it*: his views were not generally regarded as immoderate.[1] Theirs was not merely a system of academic law nor of domestic discipline for the Church; it was an engine to bring the entire social organization under control. They knew that the permanence of institutions lies in religion, not in legal forms, and these they based on Natural Law of which the Church was the guardian.[2] They interpreted history to suit their ends and shaped events in the process. Their uncompromising doctrine of Papal monarchy was the logical outcome of a Christendom still united but which had burst the seams of the Empire. The Pope had rightfully taken the Emperor's place. Past facts were enrolled and broken in to suit present and future needs. The political Canonists possessed the quality which has been admired in the Whigs—but with this difference, they did not succeed.

It was as theocratic statesmen not as jurists, then, that some of them identified their law with the divine law, and that more would have enlarged its sway for the sake of the welfare of a united Europe. As such they should be judged. They cannot be dismissed on the pretence that their position was based only on doubtful texts, mystical historicism and symbolical theology, and maintained with a mixture of naivety and chicanery. Their attempt at a spiritual despotism, not ignoble in its ambitions, was impressive in its results. The Old Empire was long dead, the New Empire was already declining; it had never been so strong as it claimed and passed unmentioned by St Thomas. The Church, on the other hand, was very much alive, and unafraid of power.

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[1] *Jer.* xviii, 7–9.

M. Maccarrone. *Chiesa e Stato nella dottrina di Papa Innocenzio III.* Rome, 1955.

[2] O. Lottin. *Le droit naturel chez saint Thomas d'Aquin et ses prédécesseurs*, ii, 3.

S. Kuttner. *Repertorium der Kanonistik* (1140–1234). *Prodromus Corporis Glossarum*, i. Vatican City, 1937.

The effect was perhaps happier for civilization than for simple devotion. To some extent a sacerdotal hierarchy was transformed into a hierarchy of lawyers, 'and in all ages the lawyers, invaluable as a conservative force, have been as a body greater enemies of reform than the priests'.[1] The change was more perhaps a matter of social psychology than of institutional structure. The confident assumption of responsibility by the clerics and their administrative technique combined to produce a system in which the secular power was humanized and the arts and sciences fostered. In that high culture and law-building civilization organized religion was not a dead weight but a quickening force and grace.[2]

The achievement answered the unanimous conviction that the Church could magisterially judge all causes where sin was involved. Innocent III had formulated the prerogative when, after urging peace with King John of England, he had been snubbed by Philip Augustus for meddling in a matter between lord and vassal. Moreover, Rome was the repository of justice, the *sedes justitiae* to which recourse could be had when justice was denied in civil courts. A far-reaching moral surveillance protected the orphan and defenceless against the avarice and greed of magnates. Canon lawyers possessed the monopoly of matrimonial legislation. They developed Roman principles of law and created new ones which have since been recognized by International Law—for instance, rules concerning safe-conduct of envoys, diplomatic confidence, condemnation of treaty violations, the humane treatment of prisoners, the protection of minorities, sanctions against aggression, the conditions of treaties and peace settlements. They insisted on promulgation as a necessary condition of law, for otherwise law would not be addressed to the reason of its subjects. Their rules for discovering evidence have served as models for judicial procedure. Many key positions in the State were held by clerics, so were lectureships in Civil Law.

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[1] H. Rashdall. *The Universities of Europe in the Middle Ages*, i, p. 139.
W. Ullmann. *The Growth of Papal Government in the Middle Ages. A Study in the Ideological Relation of Clerical to Lay Power*. London, 1955.

[2] G. Schnürer. *Kirche und Kultur im Mittelalter*, ii. Paderborn, 1926.
R. Hull. *Medieval Theories of the Papacy*. London, 1934.

Altogether, when control over the disposal of benefices and the temporalities annexed to ecclesiastical dignities are also taken into account, the Papacy was a formidable social force, indeed the greatest, and its servants the political Canonists were at the peak of their power.[1] They could legislate against such practices as the docking of horses; the zealots among them could compare the gold of the mitre to the lead of the crown, and compute that the sacerdotal power surpassed the regal power 7,644 times, that being the sun's excess of size over the moon.[2] None would have agreed that canons could be enacted only with the consent of the temporal ruler or in agreement with the law of the land. It was natural they should be champions of the power which had created their class.

Humanly speaking the Canonists almost, but not quite, succeeded in committing the Church to a temporal theocracy. The strained interpretation of the text, *here are two swords*, according to which both spiritual and temporal power had been entrusted to the Church, was not generally accepted by the theologians. If both were entrusted to one authority neither would be fittingly used, wrote the Papal Chancellor, Robert Pullen (d. 1146), and a century later theologians of the centre were equally moderate.[3] Official claims were more circumspect

[1] G. B. Pallieri and G. Vismara. *Acta pontificia juris gentium*. Milan, 1946.
S. Z. Ehler and J. B. Morrall, *Church and State through the Centuries*. Illustrative documents, ii, iii, iv. London, 1954.
A. Potthast. *Regesta Pontificium Romanorum ab anno* 1198 *ad annum* 1304. Berlin, 1874–5
A. Fliche. *La réforme Gregorienne et la reconquête chrétienne*. Paris, 1947.
Z. N. Brooke. *The English Church and the Papacy*. Cambridge, 1931.
M. Maccarrone. *Vicarius Christi: Storia del titolo papale*. Rome, 1952.
G. Barraclough. *Papal Provisions: Aspects of Church History, Constitutional, Legal and Administrative, in the Later Middle Ages*. Oxford, 1935.
M. Pacaut. *Alexandre III*. Ch. ix., pp. 335–69. 'Les doctrines politiques des canonistes.'
For a summary of the Church's teaching on International Law see
J. Folliet. *Morale internationale*. Paris, 1935.
D. A. O'Connor. *Catholic Social Doctrine*. Westminster, Md., 1956.

[2] W. Ullmann. *Medieval Papalism. The Political Theories of the Medieval Canonists*. London, 1949.

[3] *Luke*, xx, 38.
F. Courtney. *Cardinal Robert Pullen. An English Theologian of the Twelfth Century*, pp. 259–62. Rome, 1954.
J. Lecler. 'L'argument des deux glaives.' *Recherches de science religieuse*, xxi, pp. 299–339. Paris, 1932.

than those of the publicists of the Canonical vogue. Boniface VIII may personally have agreed with these young Turks, nevertheless his Bulls *Ausculta Fili* and *Unam Sanctam* advanced no novel and explicit claim to direct dominion over the world, and when in 1298 he settled the dispute between England and France he arbitrated in his private capacity as Benedetto Gaetani.[1] Not rarely the Pope was the only potentate who acted as a good European, and strove to reconcile jealousies in face of the common danger from the East. Despite the venality and arrogance of the Curia, it spoke for the commonwealth of undivided Christendom.

Civilian lawyers and politicians who supported the increase of regal power in the Nation-States sought to restrict pretensions to universal jurisdiction. They were anticipated by many churchmen who were chary about pushing ecclesiastical claims if that meant more centralization and tighter control from the Papal Curia. Bishops had no wish to diminish their local rights and shared their countrymen's resentment about being taxed for the benefit of foreigners.[2] Even the friars, influential in the highest circles, for they enjoyed pontifical approbation and popular esteem—there was then a flourish about them like that of the Light Division in Wellington's army—were not committed to the politics of the Canonist Movement. The Franciscans, the leaders of an evangelical movement, were neither hag-ridden by legal forms nor likely to be awed by titles to power, however respectable, which turned on ownership. Roger Bacon disliked the juridical clatter, *strepitus juris*, of Church government, and Jacopone da Todi, the author of the *Stabat Mater*, was an outspoken critic of Boniface VIII.[3]

The Dominicans compared themselves to Jacob and the Franciscans to Esau. They were more clerical in constitution and perhaps more classical in temper—less emotional, Hastings Rashdall judged—yet as a body they tried to resist Popes and

[1] F. M. Powicke. *The Thirteenth Century*, 1216–1307, pp. 650–3. Oxford, 1953.
Christian Life in the Middle Ages, pp. 48–73. Oxford, 1935.
T. S. R. Boase. *Boniface VIII*. London, 1933.

[2] *Opus Tertium*, xxiv.

[3] W. E. Lunt. *Papal Revenues in the Middle Ages*. New York, 1934.

rulers who appointed their men to administrative posts and to back out of the work of the Inquisition which was thrust on them: hints were dropped of their characteristic irony about the man in possession.[1] St. Albert was created Bishop of Ratisbon in 1260; he resigned after one year, and reflected that a prelate was expected to behave more like Sardanapulus than like Christ. They could always be trusted to take an independent line, as the Plantagenets discovered who planted them in Wales and Ireland. The scientific exposition of natural and revealed religion, which was their special calling, lifted them out of the ruck of current prescriptions, and, though doctrinally committed to the supremacy of the Pope, their main bases were in places like Oxford and Paris where the pretensions of the Curialists could be unperplexedly resisted by Church figures as orthodox as Grosseteste and St Louis. Their strength lay in England, France, North Italy, the Rhineland and the Low Countries, regions where nationalist feeling was detached about the claims to empire asserted either by Caesar or by Pontifex. When Nicholas IV sought to depose their Master-General, Munio of Zamora, their representatives at the General Chapter of Palencia (1291) acted like Nelson at Copenhagen.[2] Another Master-General, Hervé de Nédéllec (d. 1323), was a strong supporter of the rights of ordinaries.

It may be assumed that the distinction of the temporal and spiritual spheres as maintained by the *de Potestate Regia et Papali* of John of Paris (d. 1306) represented their common opinion, at least in England and France.[3] Apart from St Raymund of Pennafort who was in a class by himself—though mention may be made of Monaldus (d. before 1285), the author of the *Summa Monaldina*, and Martinus Polonus (d. 1279), a chronicler who drew up an alphabetical guide to the *Decretum*—no prominent Canonist authorities came from the ranks of the

[1] L. de Lacger. 'L'*Albigeois* au siècle de saint Louis.' *Revue d'histoire ecclésiastique.* lii, 1, pp. 26–50. Louvain, 1957.

[2] A. Mortier. *Histoire des maîtres généraux de l'ordre des frères Precheurs*, ii, pp. 260–315. Paris, 1905.

[3] J. Leclercq. *Jean de Paris et l'ecclésiologie du XIIIe siècle.* Paris, 1942.
M. Grabmann. *Studien zu Joannes Quidort von Paris, O.P.* Munich, 1922.
G. Digard. *Phillippe le Bel et le Saint Siège.* Paris, 1936.

friars. They compiled directories which worked law into morals, but rarely took degrees in the schools of law. The legal activity of the English Dominicans John of Bromyard (d. after 1310) and William of Hotham (d. 1299), the favourite minister of Edward I, was exceptional. Nicholas Trivet (d. 1328) and Robert Holcot (d. 1349) were more typical; both were voluminous writers and the sons of judges—the latter indeed was a lawyer at Oxford and Cambridge before he became a preacher —but they left Canon Law and civil law severely alone.[1] It is noteworthy, too, that Positive Law was not overstressed by John of Freiburg (d. 1314), *tuba evangelica*, whose *Summa Confessorum* both carried on the work of St Raymund of Pennafort and ran into the devotional movement of the fourteenth century. It was a capital work of pastoral theology which systematized the multiplicity of decrees and practical rules in canonical and casuistical writings without doing violence to the principles of living morality set forth in the second part of St Thomas's *Summa Theologica*.[2]

The Dominican Ptolemy of Lucca argued that the Pope was the true and proper lord of the Emperor, and two Austin friars, Giles of Rome (d. 1315) and James of Viterbo (d. 1308), combining Aristotelean and Thomist political theory with the Augustinist criticism of secular power as lacking true justice, were the publicists of a theocracy which gathered in all earthly dominium, so much so that princes were subordinate to the Pope even in the secular administration of their own realms.[3] Yet in the main the doctrine of the papal *plenitudo potestatis* came from the political Canonists rather than from the treatises of the theologians; the Dominican and Franciscan masters were curiously uncommitted to the theory when it is remembered how active both Orders were in the business of the Roman See.

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[1] B. Jarrett. *The English Dominicans*. p. 61. London, 1921.

[2] M. D. Chenu. 'Jean de Fribourg,' *DTC*, viii, 1, col. 761–2. Paris, 1924.

[3] Ptolemy of Lucca. *Determinatio Compendiosa de Jurisdictione Imperii*. Ed. M. Krammer. Hanover, 1909.

Aegidius Romanus, de Ecclestica Potestate. Ed. R. Scholz. Weimar, 1929.

H. X. Arquillière. *Le plus ancien traité de l'église, Jacques de Viterbe*, de Regimine Christiano. *Etude des sources et édition critique*. Paris, 1926.

D. Gutiérez. *De Jacobi Viterbiensis vita, operibus et doctrina theologica*. Rome, 1939.

Moreover, stiffish opposition was encountered from the dioceses and ecclesiastical provinces. Devotion to the See of Peter implied no tame acceptance of the fiscal charges and administrative interference which went with centralization. A new pharisaeism, engendered by the increase of positive laws and the multitude of regulations, was resented, and the condemnation came to men's lips, *Woe to you, lawyers, because you load men with burdens grievous to be borne.*[1] A great line of schoolmen-bishops, the products of the movement which brought in the universities and friars, succeeded the monk-bishops of the twelfth century and preceded the civil-servant bishops of the fourteenth and after. There were exceptions, such as Hubert Walter, a commanding figure in the period who reserved his best energies for secular affairs, but men like Langton, Edmund Rich, Grosseteste, Kilwardby, Peckham, Winchelsey, and the Dominican Innocent V looked beyond the mechanism of Church government to the urgency of preaching and instruction. To the high theologians, especially those inspired with the old humanism and the new hellenism, the Canonists were workers in a subordinate department, to be watched lest because of them the Church Militant acquired too large an administrative tail. Roger Bacon's flings at the ecclesiastical commissars and St Thomas's firm drawing of bounds to Positive Law witness how little they intimidated the life of devotion. Shrillness is no sign of strength, and when their claims became exorbitant they were no longer able to enforce them, for by then civil authority had grown in dignity and ability to protect its own.

It must be admitted, however, that the pride of the Canonists was not unfounded. Their organization has been compared to that of Standard Oil in our own day. The association of medieval clerks stretched across the Western World, from the Shannon to the headwaters of the Euphrates, from the Tagus to the Vistula; their establishments were linked together and supervised by the system of visitation; they achieved a legal unity

[1] W. A. Pantin. 'Grosseteste's Relations with Papacy and Crown,' in *Robert Grosseteste, Scholar and Bishop*. Oxford, 1955.
C. R. Cheney. *From Becket to Langton. English Church Government*, 1170–1213. Manchester, 1956.

which transcended frontiers and proposed an equality which contrasted with the class-distinctions outside. Famous professional soldiers of the fourteenth century and great mercantile families of an earlier period might spring from obscurity, but ordinarily it was only through the Church that the way lay open for the character and talent of a boy of humble birth. By making it possible for a peasant's son to get learning and enter on a high career, churchmen helped to break up a system in which a man was tied to the land or to service founded on territorial occupation.

Their active ideas which helped to humanize political institutions and civil law may be considered under three headings. First, the spiritual ability to master or at least to modify the consequences of physical processes; secondly, the importance of contract in public agreements; third, the need of election according to proper procedure in the constitution of authority.

The conviction that justice, a Christian virtue, was spiritually free and could break out of merely material bonds might be expected of the organizers of an eternal salvation scheme. If the canon lawyers were not theologians themselves, at least they were the servants of theology. They were not backward in appealing to the secular arm or squeamish about the use of brute-force. All the same they were not hypocritical when, for instance, they avoided the death-sentence and handed its execution over to the secular arm; let no clerks at all be judges of blood, said a canon of the Council of Westminster in 1102. The fiction deferred to the idea that ministers of the New Law should not be *percussores aut occisores*.[1] They had no prejudice against blood-letting, yet surgery was more severely forbidden to clerics than the practice of medicine; here also symbolic reasons were at work —*Ecclesia abhorret a sanguine*. They were not so spiritual as to escape altogether the tendency common to all medieval systems of lumping the innocent with the guilty, and exacted reparation from the families or corporations of offenders who had injured the rights of the Church. Nevertheless Canon Law maintained the principle of personal responsibility for faults, and the feeling for it prompted the

[1] 2a–2ae. lxiv, 4.

abandonment of collective excommunication by Innocent IV.[1]

The determination that events should not be merely allowed to take their course entered into the arguments of Alexander III on the Lateran decrees and of Grosseteste's letters to William of Raleigh, that such was the force of matrimony that it could legitimize a child born out of wedlock.[2] In seeking to convey the effects of legitimacy the churchmen fell foul of an old custom founded on a tribal and social instinct against 'outsiders'. There were sound reasons for it, yet it is not fanciful to relate its laws to male vanity and conjugal jealousy, and to a closed community which excluded bastards, eunuchs, and foreigners. When they sought to bring the secular law into line with Canon Law at the Council of Merton (1234) the prelates were refused with the famous answer, *Nolumus leges Angliae mutare*. Divine grace, however, knows none of these exclusions, as the Canonists recognized for all their show of 'impediments'. The Church is not a peculiar connection of 'insiders'; even its juridical constitution does not shut it in. It is not a primitive group. A Christian society, faithful to the teaching of St Paul, aware of the mystery of spiritual procreation and of sonship by adoption, and uncommitted to a blood-and-soil fixation or to taboos on intercourse with strangers, will keep open house and resist *Apartheid*. *Neither let the son of a stranger, that hath joined himself to the Lord, speak saying, the Lord hath utterly separated me from his people. Neither let the eunuch say, Behold I am a dry tree.*[3]

A system constructed by human laws will inevitably be more rigid and artificial than one formed by theology. It has been said that an English court may shut its eyes to the facts of life, and, not entertaining illegitimacy, may rule that a child may be *filius nullius*, that is, not a child of lawful parents.[4] To the Church's Law, however, all children, whether illegitimate or

[1] I. T. Eschmann. 'St Thomas and the Decretal of Innocent IV, Romana Ecclesia: A New Argumentation in Innocent IV's Apparatus.' *MS.* viii, p. 1. Toronto, 1946.
G. le Bras. 'Canon Law.' *LMA.*, p. 357. Oxford, 1926.

[2] *Roberti Grossetesti Epistolae.* xxiii, xxiv. Ed. by H. R. Luard, pp. 71–97. Rolls Series. London, 1861.

[3] *Is.* lvi, 3.
1a–2ae. cv, 3, *ad* 2.

[4] Chancery Division. *In Re* T. and T. *The Times*, 13 Oct., 1956.

not, belong by baptism to the household of the Faith and, by dispensation if necessary, may reach the highest office.

A written code will also lack the springiness of custom, for it is more arbitrary, less natural—a tower rather than a tree. The Roman Law was no exception. All the same it was charged with Christian values, both at its origins under Justinian and during its development by the medieval clerics; its effect on the community was not wholly one of mechanization. If to some extent its official modes stiffened supple folk-rhythms, it also prepared for the exercise of a more civil conception of liberty than was allowed by the *leges barbarorum*. Popular lore might credit a love-child with exceptional gifts of mind and body whereas illegitimacy was an impediment to the sacrament of Holy Order according to the canons; on the other hand the clerics were readier than the lay-lawyers to master natural processes, or at least to modify their results or break down the barriers by legal action. Primitive groups, closed in on themselves, may live according to a kind of incest, which prevents free communication and the *multiplicatio amicorum*.[1] The influence of Canon Law tended to make the community wider and more welcoming. The stranger to the tribe, no longer an enemy, became the *advena* of the civil law or *peregrinus* of the canons, and was granted rights accordingly.

The idea of marriage as a purchase, a barter between two families represented by the bridegroom and the father who gave away the bride, was being changed into a more personal relationship. Canonists and theologians emphasized the sacramental union of hearts; that was more important than the property-bargain or actual procreation. Marriage was a partnership of the man and woman concerned, which could be valid by the contract of the two persons, *per verba de praesenti* without witness or presence of a priest. This was little to the liking of the Common Lawyers, who refused dower save in the case of marriage *ad ostium ecclesiae*, and saved the situation, as best they could, by insisting on banns, made obligatory by the Lateran Council of 1215—it was there that Innocent III revoked the existing legislation on the prohibited degrees of

[1] 2a–2ae, cliv, 9.

consanguinity, a humane decision but one that ran counter to ancient sentiment. The rights and wrongs of the dispute may be left aside; the point is the value ascribed to individual personality.

Canonists held that marriage was private contract and not, as the older lawyers had taught, merely a *consortium* the consequences of which were fixed by law; most moralists agreed that marriage was ratified by consent, not copulation.[1] The maxim, *consensus facit nuptias*, ran through the fourth book of Gregory IX's *Decretals*. The theory was that the contracting parties in marriage should be unforced; in fact an heiress was still a pawn in the game of feudal power. The divines affirmed that a wife was not owned by her husband and that the role of children was not entirely submissive. The praise of virginity, weaker perhaps than it had been in the days of St Jerome, recognized a woman's right to be just herself and was a persistent factor in the history of female emancipation.

The person, rather than the head of a family was the centre of responsibility in the political community if he were a male and a property-owner. Civil or political association was preferred to despotic or patriarchal aggregation. These ideas, not entirely foreign to classical Roman teaching, were strengthened by the medieval progression from Status to Contract. The theory and practice of making wills was warrant for the individual's ability to transfer domestic property rights. Legally binding agreements could be entered into with strangers to the family group. Jurisprudence entered into the spirit of the current philosophy and theology of freedom, and personal dignity and independence were seen in a fresh light. The credit for bringing this about belongs jointly to the disciples of Gratian and Peter Lombard.

In this temper, too, the machinery of representation by voting was devised. The weight of quality as well as of quantity had to be allowed for, and the *sanior pars* balanced with the *major pars*; the classical view was that worth should prevail

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[1] See 3a. xxix, 2. 2a–2ae. lvii 4. clii, 2, *ad* 1. *V Ethics*, *lect.* 9.

J. Dauvillier. *Le mariage dans le droit classique de l'Eglise depuis le Décret de Gratien jusqu'à la mort de Clément V.* Paris, 1893.

even when in the numerical minority.[1] Other reasons, apart from ecclesiastical practice in the promotion of cathedral, collegial and monastic dignitaries, conspired to make the canonists favour the transmission of authority through due election, not through birth or the fact of possession. One was their bent towards reasonable debate in the settlement of difference. Another could be found in the circumstances of their opposition to imperial or regal power, which made them dwell on some act of popular consent as an essential condition of legitimate sovereignty.

A working distinction between the office and the person, originating in patristic literature, notably in the exegesis of *Romans xiii*, had been developed by the theological and juristic schoolmen. It was officially defined that sacramental power was not dependent on the private worth of the minister.[2] Office in the Church was constituted by spiritual or pastoral status, and this was apart from personal merit or performance according to gifts of the spirit. All might be ministers of grace in the sense that they were commissioned to teach, give the sacraments and rule in the juridical body instituted by God. The difference has been upheld on appeal to the House of Lords, which decided that a leading Jehovah's Witness had no right to exemption from military service since his denomination did not allow for the co-existence of two elements, a ministering or clerical element and a lay element to which it could act as a regular minister.[3]

The power of order, too, was distinct from ownership on a personal title. The distinction in Church order had its counterpart in social philosophy: official position was neither a matter of individual excellence nor held by the magnetism of the hero. 'It is impermissible and foreign to the spirit of Marxism-Leninism,' said Mr Khrushchev when detailing Stalin's enormities, 'to elevate one person and to transform him into a superman possessing supernatural characteristics akin to those

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[1] F. M. Powicke. *Stephen Langton*, p. 81. Oxford, 1928.

[2] Denzinger, 424, 436, 584. See 3a, lxiv, 5.
D. E. Heintschel. *The Mediaeval Concept of an Ecclesiastical Office*. Washington, 1956.

[3] *Walsh v. Lord Advocate. The Times*, 20 July 1956.

of a god.'[1] When the Summists appealed to the authority of a saint or doctor it was not of his personal originality and excellence they were thinking, but of a quasi-juridical guarantee offered by the text that the doctrine so supported was worthy of credit.[2] So also the identification of an individual with his social authority would have been a deviation from the social doctrine of the Middle Ages. Will may set up power, but only reason can make it right—and the reason in question was a social reason articulated in the terms of a law well-understood, commonly accepted, and binding on all.

Needless to say, political motives also entered into the Curia's attempt to ensure the rule of men most likely to protect natural rights and religion. It intervened decisively against dynastic power on occasion, for instance when Innocent III ruled out Philip of Suabia. Sensitive to the dangers of being threatened by imperial power from its southern flank in Sicily, it took the side of the democratic communes in North Italy. The policy was opportunist; it was also faithful to canonical notions of order, which lay closer to the Greek feeling for the ruler's political virtue than to the German respect for the leader's family and person. The canon lawyers were strong constitutionalists to a man.

The point of right, at least in theory, was decided almost impersonally, certainly without any warm mystique about the blood royal. Moreover, the officials of the Curia themselves belonged to a hierarchic system and were suspicious of a rival *rex et sacerdos*. The ritual annointing of the Emperor's head was replaced after the time of Innocent III by the anointing of the right arm and between the shoulder blades.[3] Power was invested with a quasi-sacramental character, but on condition that the ruler made a contract into which the Church entered. Alexander III roundly told Barbarossa that he held the Empire only as a benefice. Some canonists taught that the transfer of power to the *Princeps* could be revoked by the

[1] *Speech to Congress of Communist Party of Soviet Union. The Times*, 5 June 1956.

[2] M. D. Chenu. 'Authentica' et 'Magistralia'. *Divus Thomas.*, pp. 257–85. Piacenza, 1925.

[3] F. Kern. *Kingship and Law in the Middle Ages*. Tr. S. B. Chrimes., p. 55. Oxford, 1939.

Populus: thus two Papalists, the cardinals Goffredus Tranensis (d.1245) and Hostiensis (d. 1271) held that the Roman people of their day could still make laws, for it had not wholly abdicated its power, which is said to have been translated, that is conceded.[1]

Finally, and not least important when comparing spiritual and temporal power, allowances should be made for the dignity accorded the poor and weak by Christian teaching. The expectation that churchmen would show sympathy with the underdog was not always disappointed. As they waxed in power and pomp, less as ministers of the Gospel than as servants of the State, it may have become less apparent. Yet apart from genuine pity, the cynicism of churchmen about the pretensions of worldly power and their absence of servility towards potentates should be no matter of surprise. The Church had not lost its popular touch with the Parisians at the time of the Catholic League, and later still, perhaps with less respectability, with the *lazzaroni* under the Risorgimento and the Irish immigrants during the palmy days of Tammany.

2. *Civilians*

Canon Law prepared the way for the full reception of the Roman Law in Europe, and helped clear the ground for the building of the Modern State. This was largely the work of civil lawyers. Their ideas also were shaped by canonical conceptions of dominion, rule and jurisdiction. Even in England where the native Common Law, based on Anglo-Saxon customs and feudal techniques and developed more by the practice of the courts than by academic teaching, was vigorous enough to resist the Code, lawyers could not but consult the regulations of an organized religion which entered into so many interests. Bracton referred to the *Decretum* of Gratian, the Lateran Constitution of Alexander III, and the *Decretals* of Gregory IX.[2]

[1] W. Ullmann. *Medieval Papalism*, p. 166.
Godfrey of Trano. *Summa in Titulos Decretalium*. Venice, 1601.
Henry of Susa, Cardinal-Bishop of Ostia. *Summa Aurea super Titulis Decretalium*. Cologne, 1612.

[2] S. Mochi Onory. *Fonti canonistiche dell' idea moderna dello Stato*. Milan, 1951.
F. W. Maitland. *Roman Canon Law in the Church of England*. London, 1898.
Bracton and Azo. Publications of the Selden Society, viii, 1895.

Forms and procedure of civil law were framed after the ecclesiastical model.

The revival of Roman civil law, well under way before Gratian's time, started with Irnerius, the *jurisperitissimus*, who was teaching at Bologna in 1088, and continued through a famous line of masters, 'the four doctors', Bulgarus, Martinus, Jacobus and Hugo, summoned by Barbarossa as imperial counsel to sit in the Diet of Roncaglia (1158). They were followed by Joannes, Roger and Placentinus in the next generation, and by Azo and Hugolinus in the thirteenth century. All based themselves on the law books of Justinian, for when it is said that 'the Bolognese had the Romans for their masters and none but the Romans', what they learnt was not the classical law of the Antonines but its later development.[1] They fashioned a formal discipline according to exact and proper rules, so that the study of the law, no longer merely a training for the conduct of litigation, was emancipated from subservience to grammar and rhetoric.

During the early period of Glossators, the *Corpus Juris* was explained by phrases run into the text and meaningless apart from it. At first these were written between the lines—the interlinear gloss; afterwards they spread to the margin—the marginal gloss. This method culminated in Accursius (1182–1262), the author of the *Glossa Ordinaria* or *Accursiana*, whose authority was such that it became almost axiomatic that a court would not recognize what the Gloss did not, *quidquid non agnoscit glossa nec agnoscit curia*.

A cramped commentary on an old text was no more fitted to the political development of the thirteenth century than was a running commentary on the Bible or on a received authority, such as Dionysius or Peter Lombard, to its theological systematizing. A new scholastic jurisprudence emulated the assimilation and restatement of Aristotelean philosophy by the Summists who were substituting the more systematically developed *quaestio* for the meditative and traditional *lectio* on a text. The gloss writers, themselves practising lawyers as well as teachers,

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[1] H. Kantorowicz. *Studies in the Glossators of the Roman Law*, p. 3.
H. F. Jolowicz. *Roman Foundations of Modern Law*. Oxford, 1957.

soon perceived that features in existing institutions could not be fitted to Roman patterns. During the lifetime of Accursius the schools of Post-Glossators were rising; the glosses were giving way to paraphrases, and then to text-books or *summae*. Azo (d. 1230), the master of Accursius, had composed a *Summa* on the Justinian *Institutes* and *Code*, and the saw, *chi non ha Azzo non vada a Palazzo*, reflected his reputation. The aim was less to discover the past meaning of a text than to fashion an instrument of living law, since rules which united a pagan community might not commend themselves to Christians. The effort was backed by the study of the definitions, principles, and divisions of law. Recital gave place to debate, and it was related of Bartolus (d. 1357) that his habit was to begin with the solution of a problem under discussion and then to call upon his pupils to adduce passages in support.

As in philosophy so in law, the French communicated their own elasticity of mind. They were the *Ultramontani*—in the reverse sense, both in geography and ideology, to that of the nineteenth century. Paris and Orleans laboured less than Montpellier and the Italian schools under the weight of the *Corpus*. Custom and equity was held in greater regard, and men were nursed who, mincing no words, referred to the Gloss as *diabolica*, *fatua* and *obscura*. They were ridiculed in return by the Italians as *ruminatores*. In fact, by seeking to discover the spirit as well as the letter, the French came to a better appreciation of historical meaning and present occasion. In Paris, so ran the saying, scholars seek the arts, in Orleans the authors, in Bologna the codices.[1] Premature specialization was avoided at Orleans, which as a law university ranked above Paris; all the same premature specialization was avoided there, for, until the decay of literary schools in the thirteenth century, law-students were not admitted until they had taken a degree in arts. The professors are said to have been in the habit of lecturing partly in French and partly in Latin. St Thomas was the contemporary of James of Revigny (d. 1296), the luminary of the Orleans

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[1] H. Waddell. *The Wandering Scholars*. 6th ed., p. 134. London, 1932.
See the non-authentic work of St Thomas, *de vitiis et virtutibus deque aliis numero quaternario procedentibus*, 6, Opusc. lxxi, Editio Piana.

school, and, as will appear, the climate for his political theory was that of Northern Europe.[1]

The jurists used the Roman Law as the theologians and philosophers of Paris and Oxford used the Fathers and Aristotle. When the text of the Code was insufficient they looked to the glosses and elsewhere to discover the *jus commune*.[2] They appealed to Church canons, imperial and town laws, feudal and natural precepts, customs and statutes of the realm. The *ratio juris* was not formed from Roman texts alone. The teaching-method included debates, or *quaestiones disputatae*, as well as lectures. The analysis of principles was combined with a sense of fact; the argument, as in contemporary moral theology, was both speculative and practical. As in moral theology, too, teachers and judges more and more appealed to accepted authorities and to the *communis opinio*, sometimes to safeguard themselves from liability; thus they set up a chain-reaction which sometimes subjected equity to the ruling of the majority and substituted a mechanical return for a pondered pronouncement on the truth of the matter.

Without overmuch regard for archeological correctness, the Roman Law was flexibly adapted to current needs, like the grammar of the Church. The medieval lawyers did to it what Coke was later to do with their own precedents. To take an example: a vassal holding of a lord could not be credited with full ownership, 'but by describing his remedy as an *actio utilis* of the sort granted to the Roman *superficiarius*, a step was taken towards ascribing to him a *dominum utile* as opposed to the *dominum directum* of a lord'.[3] The ruler of a Nation-State was credited with the powers of Caesar in the maxim, *princeps est imperator in regno suo*. It was felt that lawyers were not merely technicians spelling out the meaning of words, too much for

[1] P. Fournier. *Histoire de la science de droit en France* iii, Les universités françaises et l'enseignement du droit en France au moyen âge. Paris, 1892.
H. Rashdall. *The Universities of Europe in the Middle Ages*. ii, pp. 139–51.

[2] W. Ullmann. 'The Legal and Political Ideas of the Post-Glossators' in *Lucas de Penna and the Medieval Idea of Law*, p. 45. Introduction by H. D. Hazeltine. London, 1946.

[3] J. W. Jones. *Historical Introduction to the Theory of Law*, p. 14.
E. Maynial. 'Notes sur la formation de la théorie du domaine divisé.' *Mélanges Fitting*, ii, p. 419. Montpellier, 1908.
For application to the morality of ownership see 2a–2ae, lxvi, 1–2.

law and too little for justice; law remained just only by responding to the actual conditions of an ever-changing social life.[1]

Two related principles of contemporary juridico-political doctrine may here be mentioned for they will appear later. First, that the administration of written laws should be tempered by the spirit of equity; secondly, that some sort of popular consent entered into the nomination of the supreme legislator.

The influence of Martinus who led the 'Equity Wing' against the strict legalism of Bulgarus and most of the Bologna masters may be traced through Placentinus (d. 1196) to the French law schools, in the country where Celtic Gauls and Norman Vikings had prepared the soil of freedom. It was recognized that the texts of the Law, or for that matter of any code or gloss, could not be stretched to fit every situation which arose. The fact was enlarged on by the Aristotelean moral philosophers when they taught that social justice called for a certain flexibility, since the common good which was its purpose consisted of a multitude of human persons, not a *bloc*. Law itself was a matter of social justice; it was made for the benefit of a commonwealth of human beings each apart and all together. Hence a legalistic justice which merely attended to the strict working of regulations and applied them without sense of situation fell short of the full idea of law and justice. For justice, like truth or beauty and the Eternal Law itself, is an analogical value which cannot be reduced to the set details of unvarying precepts: in every sense of the term, it means fair play.

It would not have occurred even to those jurists who were sticklers for the letter of the law that Positive Laws, that is, laws whose force depended on their enactment by human authority, could form a closed system imposed and expanded without reference to religion and natural rights. Nevertheless, with the growth of the Roman Law at the expense of customary law and of deference to its superior elegance and efficiency, a world was created, of rulers, officials and subjects, in which the legal machine began to work on its own almost to the exclusion

[1] A. Denning. *The Road to Justice*. London, 1955.

of other interests. This may be expected to happen when any specialist technique is elaborated and exploited apart from a controlling wisdom: analogies can be found with mathematics in the seventeenth century, the critique of knowledge in the eighteenth, physics in the nineteenth, and linguistic logic for a period in the twentieth.

One political result of this legal development was to elevate the ruler about the checks of popular custom and constitutional law. For John of Salisbury in the twelfth century the test of difference between a prince and a tyrant was whether he kept the bounds of his office; to Bracton in the following century the king was under the law.[1] But as the Romanizers gained ground so also did the notion of the *princeps solutus a lege*, the absolute sovereign who is the master, not the servant, of law, together with the corollary that government might act by decree without consulting the community at large. The conclusion was arrived at less by an appeal to examples from antiquity than by the interior dynamism of the Roman Law, and it was favoured by the decline of religion as an organized social force.

It is true that the early Civilians spoke of law rising from the people, from the *universitas, id est populus*. Placentinus, who left Bologna in disapproval of its stringent spirit and founded the school of Montpellier, referred to the Emperor as the people's vicar.[2] But to expect political Liberalism in the Middle Ages would be premature; the theory of popular representation was qualified by the famous *lex regia*—what pleases the prince has the force of law, since by regal law issued concerning his sway, the people have conferred on him and lodged in him all their rule and power.[3] Henceforth he was the legislative sovereign. The maxim, frequently truncated to the first clause, that the prince's pleasure has the force of law—and, as such, rejected by St

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[1] F. Schulz. 'Bracton on Kingship.' *English Historical Review*, lx, p. 237. London, 1945.

[2] A. J. Carlyle. 'The Theory of Political Sovereignty in the Medieval Civilians to the time of Accursius.'
Mélanges Fitting, i, pp. 183–93. Montpellier, 1907.

[3] *Institutes* 1, 2, 6. *Digest* II, 1, 4.

Thomas at the very beginning of his treatise—was at first restricted to the Holy Roman Emperor, the inheritor of the prerogatives of the classical *Princeps*, but was later extended to the rulers of kingdoms and city-states.[1]

Furthermore, most Civilians, including Placentinus, held that this act of alienation could not be taken back. On the other hand Bulgarus and Azo were among the important minority which stressed the inherent right to act by custom, and can be cited to testify that the transfer was not irrevocable—the names show that the equity and legalistic wings among the jurists did not correspond respectively to the theories of representation as delegation or of representation as personification, nor to constitutionalist and absolutist policies.[2] Many of the Canonists taught that the people could withdraw their mandate from the prince; some that the people's right to legislate still remained.[3] These views may have been determined by Guelf policies, but they were also suggested by moral ideals of moderation, agreement, and shared responsibility, ideals which were thrown into relief by the excesses of tyrants like Ezzelino.

Notwithstanding the force of custom, the trend was towards centering legislative power in a single princely organ of sovereignty. It began to be less spread out over the body politic. Its possession and exercise began to be set up as a fact which sought no justification—apart from success—and which was not derived from religious or moral considerations or even from popular consent. The practice was linked with the theory that politics was an autonomous discipline, yet it was from the Roman Law, not from Aristotle, that the lineaments of the absolute monarch were drawn. It was reproduced as Europe split into independent states and the ruler of each claimed to be sole and supreme within his own domain.[4]

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[1] 1a–2ae, xc, 1, *ad* 3.

C. N. S. Woolf. *Bartolus of Sassoferrato*, p. 35.

[2] F. Kern. *Kingship and Law in the Middle Ages*, p. 117.
A. J. Carlyle. *A History of Medieval Political Theory in the West*, v, p. 48, vi, p. 13.

[3] W. Ullmann. *Lucas de Penna and the Medieval Idea of Law.*, p. 48.

[4] W. Ullmann. 'The Development of the Medieval Idea of Sovereignty.' *English Historical Review*, lxiv, pp. 1–33. London, 1949.

III

LANDED MEN AND WANDERERS

MEDIEVAL thought has been scouted for being over-academic. There was not enough experimentation, it has been said, nor attempt to control the processes which exploit human environment; the effort on peering into hollow objects of speculation would have been more profitably spent on the applied sciences. Let that pass, together with murmurs about scholastic cobwebs and dancing angels on a needlepoint, and, granting that technological progress lagged behind logic, turn the inquiry and ask to what extent the theorists were subject to the pressures set up by their living conditions.

How you think is affected by how you feel, and how you feel by the culture and material standards of your time. The presuppositions of a social theologian are formed by his history as well as by the relatively timeless factors of his religious creed and philosophy: to understand him we must receive an impression of his surroundings as well as make an abstraction of his ideas. St Thomas was no exception. Detached he may appear—certainly the tang of his times is better caught from some of his colleagues, for instance from Humbert of Romans or Albertus Magnus or Ptolemy of Lucca. All the same he is imperfectly appreciated from dwelling only on the debates of the schools. Theory, like art, is the result of collaboration. At the risk of being perfunctory let us adopt the ascending dialectic from material to formal which he himself would have approved, and glance at some of the customs and moods of the world in which he moved.

1. *The Social Scene*

Feudalism, variously evolved according to region and period but basically an order of land-tenure, was taking on a more

political and urban complexion. The effect was of greater versatility for the community and greater instability for the individual. It made for easier means of escape from the bondage of food-production, for a peasant's son could go to the town and rise by craft or trade; he could turn soldier. Merchandise was more powerful than the sword. Even in the eastern Latin principalities, achievements of the piety and land-hunger of the Franks and of their colonizing capacity and administrative energy, policy was sometimes decided by the interests and rivalries more of commercial agents than of the nobles and knights of Outremer. The power of Pisa was in decay, but Venice and Genoa were gathering the fruits of a medieval capitalism rooted in the commercial revival of the twelfth century; their factories were to outlast the crusaders' castles.[1]

Planned economies were still the rule, for Free Trade came in after the French Revolution and disappeared during the First World War. All the same, personal initiative was breaking the forms of privilege and protection. Credit was turning enterprise into gold and local dealing opening out into freer exchanges. Traders and travellers went farther afield—Marco Polo set off from Venice in 1268—and producers, breaking away from a tied system and neighbourhood-markets, bargained for greater independence. To take one geographical condition of prosperity: it was less important to be a strong place under the protection of a lord or a pilgrimage-centre in the shadow of a church than to be a market at a harbour, river-crossing or mountain pass on a route which might stretch from the Atlantic coast to the Baltic, the Black Sea or the Levant. Opportunities for trade rather than advantages for defence were the factors in the urban development of such places as Southampton where there was a double tide or Innsbruck on the road to the Brenner.[2]

Correspondingly the sentiments of social psychology were

[1] H. Pirenne. *Medieval Cities; their Origins and the Revival of Trade.* Princeton, 1925. *Economic and Social History of Medieval Europe.* Tr. J. E. Clegg. London, 1936. W. Heyd. *Histoire du commerce du Levant au moyen âge.* Tr. F. Reynard. Paris, 1923. S. Runciman. *The Crusades.* 3 vols. Cambridge, 1951–4. *Cambridge Economic History of Europe,* ii, 1952.

[2] J. W. F. Hill. *Medieval Lincoln.* Cambridge, 1948. An excellent history of the growth of a city.

changing. Family and tribal loyalties were being lifted into a wider political obedience and service. Dominion belonged to the ruler less as the head of the kindred, *caput progeniei*, than as the sovereign of the State. Power, once inherited from father to son, as under the Capets, was now being decided by the conditions of contract, and the change was encouraged by the Church. Knight-service no longer governed the holding of property. The Military Orders, which had introduced a formal discipline into the institutions of chivalry, were developing almost into chartered companies. When power and fashion were focussed on the court so much the more store was set on manners and breeding. Stylishness was cultivated, luxury displayed, and conduct turned on punctilio. The feelings of some marcher lord for the courtier were not unlike those of Wellington's or Wavell's fighting-man for the Belem Rangers or the Gaderene Swine.

The moralists for their part now laid more stress on justice than on honour and loyalty. The average man of the *Summa Theologica* was a citizen, not a lord or vassal or serf, and the social virtues there recommended were those of partnership in a polity, not of gentility and courtliness. Panache and fame, a handsome manner and fastidious taste did not pass unadmired so long as they were contained in the reasonable virtues of fortitude and temperance.[1] There was a shift of scene, and rights and duties were now set against a civilian background of temporal tranquillity; in some respects their assignment foreshadowed the social ideals of Locke. Whereas in the early *chansons de geste* noble behaviour belonged to men of gentle birth, by 1250 it was extended to the middle-class; a *vilain* was not necessarily base, a noble could be guilty of *vilenie*.[2] Yet if St Thomas reflected the contractual liberalism of the age his influence on its later evolution was fainter—and when we speak of liberalism in his regard we mean, not the dominating political force of the nineteenth century, but the virtue of social liberality pointing to the *esprit large* and away from the *idée fixe*.[3]

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[1] 2a–2ae, cxxix, cxxxiv, cxliv, cxlv, clxi, clxii, clxix.
[2] J. Crosland. *Medieval French Literature*. Oxford, 1956.
[3] 2a–2ae, cxvii. A. R. Vidler. *Essays in Liberality*. London, 1957.

The Germans were pushing into the Eastern Marches and colonizing the Baltic lands. Less massively the English were occupying Wales and Ireland and extending continental institutions to the West. More land was being brought under the plough. Despite mechanical advances in the early Middle Ages, notably with regard to animal-harness and the use of water-power for mills, agricultural methods scarcely improved from the eleventh to the fourteenth centuries, and a smiling countryside was not the result of the progressive expulsion of the Moors by the Christians from Spain.[1] Until the Black Death the increase of population pressed on the means of subsistence. Under the strain of new conditions a patriarchal economy was proving unequal, and its gradual break-up was at once the cause and effect of changes in social thinking. The scene was more urban, less manorial; obligations were more standardised, less individual; dues were beginning to be collected more as taxation than as rent, and knightly service might be commuted for a money payment.[1] The landed estates, less self-sufficient, were being subordinated to the centre, a rural economy to the gold-standard.

Other symptoms marked the transition. Lay lawyers displaced clerics in the administration, and royal officials the feudal barons. The nobility of France were eventually tamed to the condition of courtiers. Artistic patronage moved from the monastery to the prince's palace, and there the great figures, the seneschal, the constable, the butler, the chamberlain, were being promoted from servants of the household into ministers of the Crown and State. The changes were paralleled in the art of war. Early in the century the great rectangular barracks of Frederick II, such as still may be seen at Legnano, replaced rambling residential castles, and by its close Edward I's adoption of the long-bow after the Welsh Wars proved that the infantry was the decisive arm, not the cavalry of knight and men-at-arms. It was cheaper too, what with the rising cost of armour and horses. Feudal levies proved no match for professional soldiers, and nobles were discomfited by burghers and

[1] See A. L. Poole. *Obligations of Society in the Twelfth and Thirteenth Centuries*. Oxford, 1946.
R. Latouche. *Les origines de l'économie occidentale*. Paris, 1957.

seamen. Chivalry was becoming an upper-class mannerism.

Merchantmen assembled in a crisis served instead of a permanent navy; they were used to transport armies overseas, and attack on the enemy's trade and fleet was secondary to the effort on land. Sea-power, decisive in the Carthaginian Wars, was scarcely appreciated outside England, Aragon, Genoa, and Venice; it was of limited effect until the rise of the Ottoman Turks and the oceanic discoveries, except for the maintenance of the Crusades which since the death of Barbarossa (1190) avoided land routes.

Officialism increased in academic life. Salaried occupants of university chairs and holders of lectureships succeeded itinerant scholars, teachers in monastic and cathedral schools, and masters who had set up on their own. Their following was becoming less personal, for education was becoming a means to finding a job, and a diploma counted for more than having been a disciple of some renowned scholar. The University of Naples, founded in 1224, was not a free association of masters or students, as originally at Paris or Bologna, but a training-school for civil servants.

The use of ancestral tokens and distinguishing emblems in a mêlée was stylized by the exact science of heraldry with rules as official as those now governing patents and trademarks. Its formal occasion was the tournament, a fashionable spectacle, like Wimbledon or Ascot, not the rough-and-ready occasion of ruder times. Altogether the community was moving from the condition of a domestic group loosely centred on the king's household to that of a civil order controlled by the royal court. The transition was from paternal precepts and *scientia oeconomica* to formal law and *scientia politica*.

The Christian West possessed within itself the resources to produce a genial polity from its high culture, and the twelfth century promised what the thirteenth century brought to such brief maturity. But a certain legal formalism set in and spread to both Church and State. Officialism in social life was increased by the reproduction of Roman models and encouraged by the study of the Roman Law, while at the apex of new power stood the *persona publica*, the public figure of the sole ruler who personified the power of the community.

Soon there was a suggestion that his official actions might be exempt from the rules of private morality, for the idea of the Common Good began to be coloured by the idea of the Public Good and the interests of the State. The terms have different implications, since the good of all is the good of each whereas the public life of the State can appear as a thing apart. *Persona* recovered its original histrionic sense and came to mean the outward face, the 'personage', overlying the intimate substance of a human being. A legal tone dulled its philosophical echoes ringing from the debates of the early Councils on the mysteries of the Trinity and Incarnation.[1]

Simultaneously a new method of making law was being introduced. Hitherto it had been a declaration of the customs of the people. Now more and more if became an administrative act expressing a will which exercised irresistible force and was answerable to nobody. It was the decree of a sovereign who differed from a first magistrate as much as a full owner did from an usufructuary or a trustee.

Previously a masterful king might have treated his realm as his own property, perhaps exploiting it without much regard to abstract justice or the well-being of the whole and issuing his decrees according to his own advantage, perhaps seeking to diminish sectional interests and unify the country. The assertion of imperial and regal power against feudal rights went back many years and was the theme of King John's difficulties with the English barons. Nevertheless any approach to tyrannical practice or absolutist theory encountered the resistance of immemorial convictions formulated by the feudal jurists. They acted in no doctrinaire spirit but merely sought practical ways of maintaining existing rights. The magnates considered themselves to be the repositories of these rights—which shows they were not speaking as liberal democrats—and invoked custom in their fight against the King. Law was upheld as a standard to rally the forces of tradition.

The customs of the people, their common heritage, were declared under the proper circumstances after consulting ancient usage; law was a restatement, not an innovation or a creation of the prince's will. Such was the sentiment of the

[1] See 1a, xxvii, 1. 3a, ii. 2. Below pp. 236–49.

Canonists and, at first, of the Civilians. It was uttered in many places, in the *Roman de la Rose*, in the aristocratic reaction to the Angevin kings, in the *Liber Feudorum* or *Consuetudines Feudorum*. This, published by the Consuls of Milan and annexed to the *Corpus Juris Civilis* by Hugolinus, revived the Emperor Constantine's declaration that ancient usage and custom could not be disregarded unless they ran counter to *lex*.[1]

The Lombard Law, more resistant to the Code than other tribal laws, was still ranked equal with the Roman Law in Sicily, if not indeed as its superior, until the early thirteenth century. By the fourteenth century, however, Lucas de Penna put custom below statutory enactment, though the prevailing view even then was that written and unwritten law were of equal weight.[2] Legislation required some co-operation between the prince and the people; in declaring a law he spoke for the whole community after taking counsel with the elders. The popular consent implied was the acknowledgment that a provision corresponded with custom, not an act of subsequent ratification; it was rather like the procedure by inquest which survives in the English trial by jury.

When Baldwin was crowned first Latin Emperor in Santa Sophia in 1204 he found himself little more than the chairman of a house of peers.[3] A prince was not free to dictate policy without seeking the accord of the landed magnates. As for his immunity from law, thirteenth-century sentiment would not have allowed that he was beyond its reach or that there was no effective authority who could control him, though its judicial organ might not be designated. The acceptance of duties qualified the enjoyment of power, and mutual obligations, sealed by oath and carrying with them limitations of rights were held to exist between a ruler and his people. Rulers were

[1] J. E. A. Joliffe. *Angevin Kingship*. London, 1955.
G. H. Sabine. *A History of Political Theory*. xi. 'The Folk and its Law.' London, 1937.
A. J. Carlyle. *A History of Medieval Political Theory in the West*. ii, 1. iii, 1.
C. H. McIlwain. *The Growth of Political Thought in the West*, p. 171. New York, 1932.

[2] M. Schipa. *Italy and Sicily under Frederick II*. Cambridge Medieval History, vi, p. 148. 1929.
W. Ullmann. *Lucas de Penna and the Medieval Idea of Law*, iv.

[3] S. Runciman. *A History of the Crusades*, iii, p. 125. Cambridge, 1954.

answerable in conscience for their actions and could not shelter behind the anonymity and impersonality of office: this was perhaps the most salutary political principle bequeathed by Christian feudalism to later generations.

Caballus, the pack-horse, became the war-horse, the beast of burden the chevalier's mount. The fortune-hunters who followed William the Conqueror were not unlike the men who opened up the Rand. Early chivalry cast no charm, it was an affair of service based on land-tenure. Later taking colour from the Moors and Saracens, it flowered into the decoration of a culture and served no essential function in the social organization. Its ideals, reflected only in brief parentheses of the *Summa Theologica*, were not unlike those of the horsey Victorian soldier who, when asked what was the use of cavalry in modern warfare, replied, Well, I suppose to give tone to what otherwise would be a mere vulgar brawl. The knight-errant was an absentee landlord, neither at home administering his domain nor doing his service. The chevalier was the gallant, detached from the humdrum round, the devotee of a courtly habit; he might be an adventurer, perhaps a fop, grumbled at by the territorial barons and sometimes a fallen favourite, the victim of their rough resentment.

He was matched by the new type of cleric, unbeneficed and wandering at large, looked at askance by incumbents and attacked by the Masters of Paris. Where did *he* fit into the social scheme? The question was not easy to answer, for the question of *status* was of primary importance to critics whose minds had been formed by the Roman Law; it was not as if they were Aristotelean philosophers to whom *situs* was one of the minor categories. The friars seemed no part of the structure of the Church; they held no property keyed to the discharge of an official function, they made no vow of stability in a monastery. All the same their opponents had to admit ruefully that they were official tramps blessed with pontifical approval, quite unlike the *vagantes* condemned by the canons of the Church Councils. Theirs was more the repute of the fifth-century Sophists, those travelling professional educators. Their demeanour was not picaresque. Among them were men of weight in the schools and in the counsels of Church and nation. Some

were papal legates and cardinals, or occupants of the most venerable sees in Christendom; before the century was out a Dominican, Innocent V, and a Franciscan, Nicholas IV, were elected to the Chair of Peter itself. Under St Bonaventure's government the Franciscans assumed responsibilities seemingly far removed from a carefree life of poverty; John Peckham is better remembered as a successful estate-manager for his archbishopric than as a poet or theologian.[1]

The social movement which produced the friars also revealed other symptoms. Detachment about personal possessions changed to anxieties about obligations rooted in this world and about fair-dealing which hinged ponderously on material things, anxieties which the increasing subtilization of law was ineffective to satisfy. There were doubts concerning vested interests in spiritualities and temporalities, concerning the whole business of providing for yourself and your family in the ordinary way, and even concerning the precepts of institutional religion itself. A respect for the poor because they were poor was an authentic part of the Christian tradition. Not until after the Reformation was poverty considered a vice and prosperity a badge of godliness.[2]

A special contempt for what may be called the virtues of the good business-man showed itself in the thirteenth century. Although the Church for its part had settled the principle of its right to own property, ecclesiastical preoccupation with the affairs of this world was being increasingly challenged, and on devotional grounds; the rebels, thrown up by a religious culture, seem to have taken an extravagantly spiritual view of religion.[3] Landed property inevitably came to bulk larger than sacramental dignity in the concept of *estate*, and in the discharge of its functions. As the Church's possessions grew, so tender consciences mused how difficult it was to serve God and Mammon. Of course laicizers were ready to propose the ideal of a purely spiritual Church, without property or temporal power; they were not disinterested parties, but from the days of Arnold of Brescia (d. 1155) could sometimes count on the support of

[1] D. L. Douie. *John Pecham*. Oxford, 1952.
[2] W. Shewring. *Rich and Poor in Christian Tradition*. London, 1947.
[3] Denzinger, 494–6, 596, 619.

religious fanaticism, and in the early fourteenth century were to strike an uneasy alliance with the zealots for poverty.

Eccentrics and enthusiasts repudiated other responsibilities besides wealth. Marriage itself, so closely related to property, was discredited when Courtly Love turned sentimental and temptation to sin was lauded as ennobling romance. The possessive emphasis in the secondary precepts of the Decalogue did not pass unnoticed: thou shalt not covet thy neighbour's wife—nor his ass. Theologians themselves recognized that the Old Law was limited, material, and negative, and, unlike the post-Reformation manualists, preferred to construct their moral theology on the higher plan of the Christian virtues.[1]

Many forces, economic and literary, worldly and religious, mad and sober, delicate and coarse, cool and feverish, from the courts, the religious houses and the underworld, were undermining the old foundations. The settlements of weavers were centres of unrest, and the roads were thronged with merchants from foreign parts, vagrant scholars, *clerici ribaldi de familia Goliae*, gospellers, Manichees, singers of romantic love, men going on crusade, children led by pied pipers, pedlars of relics, pilgrims doing penance and much else on the way, itinerant officers of Church and State. All after their fashion combined to shake the stability of social convictions which grew from the roots of feudalism.

Nor could the unrest be wholly set down to aberrations of conduct or a wild spirit of protest and fun, which far from spreading to the clerics seems to have started with them. The discipline of a dozen Church Councils, from Germany across France to Spain, was applied to those who diced, wined, sang, took part in theatricals, did comic turns, and flaunted themselves in green and yellow garments.[2] The cause lay deeper than a passion for sport and spiced meats and wine. Their culture was charged with too many memories of spells from outside the classical world for men to accommodate themselves dutifully to an order formed from Greek philosophy and Roman

[1] 1a–2ae. c, 10, 11. cvii, 1. 2a–2ae. Prologue.

[2] J. D. Mansi. *Sacrorum Conciliorum Amplissima Collectio.* xxiii, 33, 215, 237, 512, 882, 935, 992, 997, 1055–7, 1086. xxiv, 140–1.

law. The anonymous thirteenth-century pastoral from the *Carmina Burana* was a parable of their condition:

Exiit diluculo
Rustica puella
Cum grege, cum baculo,
Cum lana novella.

Conspexit in caespite
Scolarem sedere:
'Quid tu facis, domine?
Veni mecum ludere.'

They might receive the pattern, and be obedient to the code of the *Princeps* and to the ecclesiastical order, but there was much else on the fringe. Their Scriptures witnessed to the strange and prophetic strains of the Jewish dispensation, their worship echoed the tones of Syrian music, their speculation could not forget the adventures of John Scot Eriugena. The vagabonds trod the routes of Celtic monks. The sagas were not spent; the Northmen were carrying their mediterranean conquests as far as Antioch, and it was not until the Varangian Guard broke that Constantinople fell to the Latins. The eastern frontier was open to Germans, Slavs, Hungarians, Bulgarians, Tartars. From the south were imported dainties and refinements from the Arabs. At the University of Naples the young Thomas Aquinas was instructed in literature and logic by Martin of Denmark, in natural philosophy by Peter the Irishman; both belonged to Michael Scot's Greco-Arabian circle round Frederick II, at whose court the first sonnet was composed. In the monastic guest-house might be found a Copt or an Armenian, a Venetian who had lived in Muscovy or Persia, a Flemish cloth-merchant who had dabbled in the secrets of the Bulgars. St Louis presented Henry III of England with an elephant in 1254. Experience was too rich, and the myths too varied to be epitomized in the contemporary *summae* of the scholastic theologians and lawyers: their scent lingers in the potpourri of the *Decameron*.[1]

[1] F. Lot. *La Fin du monde antique et les début du moyen âge*. Paris, 1927.
R. Flower. *Ireland and Medieval Europe*. Proceedings of the British Academy. London, 1927.
W. O. Ker. *The Dark Ages*. Edinburgh, 1956.
J. J. Jusserand. *English Wayfaring Life*. London, 1921.

Baroque hagiographers, like the heralds of the period who dwelt uncritically on legends of antique magnificence and honours, sought to flatter noble patrons who had a saint in the family tree. The Aquino family was granted a pedigree and panoply equal to any in Europe, whereas in fact St Thomas's immediate relatives were of more standing as officers of state than as landed lords. His father was Justiciar in the marches between the Kingdom of Sicily and the Patrimony of Peter, and his uncle and namesake, Thomas of Aquino, Count of Acerra, was posted as imperial regent to the Kingdom of Jerusalem (1226).[1] The ambitions of his parents that he should end up as Abbot of Monte Cassino and Archbishop of Naples were disappointed. He left behind the feudalism of the Castle of Rocca Secca where he was born, the patriarchalism of the Abbey of Monte Cassino where he was first educated, and the ecclesiastical career for which the University of Naples prepared him, in order to throw in his lot with the Dominicans (1243–4): characters who would have become monks in the grand Benedictine centuries were now joining the friars. The Dominicans had to rescue him from the energetic displeasure of his family who kidnapped him and held him in durance for months. He was sent across the Alps, probably to Cologne to study under St Albert, finally to teach in Paris (1252) at the *Studium* of St. Jacques on the left-bank of the Seine: thence the Dominicans came to be known as the Jacobins.

2. *The Order of Preachers*

The Dominicans, or Preachers, had been founded forty-six years before by St Dominic, a far-seeing and self-effacing Castilian who had exchanged the quiet life of a regular canon at Osma for the hurly-burly of preaching the Christian evidences to the Albigenses in Languedoc.[2] The first episcopal patron of his community was the ex-troubadour and Cistercian,

[1] F. Scandone. 'La vita, la famiglia e la patria di S. Tommaso.' *S. Tommaso d'Aquino, O.P. Miscellanea storicoartistica*, i, 3. Rome, 1924.

[2] H.M. Vicaire. *Saint Dominique de Caleruega d'après les documents du XIIIe siècle*. Paris, 1955.
H. C. Scheeben. *Der hl. Dominikus*. Freiburg, 1927.
B. Jarrett. *Life of St Dominic*. London, 1924.

Fulk of Toulouse; his followers came to England (1221) in the train of Peter des Roches, Bishop of Winchester, no friend of the baronage, and were befriended by Stephen Langton. A legal corporation of clerics confirmed by Honorius III (1216), they were coming to the height of their influence in the Western world; devoted to study by their profession—*contemplata aliis tradere* later became their motto—they still relied on their own wits rather than on the dignities they were acquiring, and were not yet side-tracked into administration.

Caught up in the mendicant and penitential movement, they were spared the tragic dissensions which later afflicted the Franciscans, partly because from the beginning they were self-governing according to a democratic constitution—in his own life St Dominic equably suffered himself to be overruled by a majority-vote in favour of a businesslike control of temporalities—partly because they were never profoundly committed to the ideal of corporate poverty, partly because of their bias towards a rational and classical order. Committed by their origins to canonical and liturgical observances, theirs was always a *canonica religio*. Their founder's shrine was at Bologna—stately and scholastic, grave and courteous—and there and at Paris alternately their earliest General Chapters were held, not at Rome. All superiors were elected and, except at first in the case of their Master General, held office for a temporary period, after which they returned to the ranks. They believed in representative institutions, and their practice in conjunction with other influences promoted the rise of parliamentary government.[1]

Unlike the monks they made no profession of local stability. They were affiliated to national provinces—of which England, founded in 1221, is now the ninth in order of seniority—but their work took them across territorial frontiers, and much of their life was spent tramping from one centre of learning to another. Benedict loved the mountains, ran the saying, Bernard

[1] G. R. Galbraith. *The Constitution of the Dominican Order*, 1218–1360. Manchester, 1925.
E. Barker. *The Dominican Order and Convocation*. Oxford, 1913.
M. Gaynes Post. '*Plena Potestas* and Consent in Medieval Assemblies. A Study in Romano-Canonical Procedure and the Rise of Representation, 1150–1325.' *Tradition*, i, p. 369. New York, 1943.

the valleys, Francis the towns, Dominic the universities—and these, more secular than the monastic and cathedral schools they superseded, were not retreats for academic meditation and research but battlegrounds for ideas which shaped events. The Dominicans adopted monastic ordinances, but theirs was no monkish world. Their houses were built in the towns not in the countryside, and nearer to the market than to the castle or cathedral; their churches were not massive and dim, but open spaces of light supported on slender piers. On arriving in England, they tarried briefly in Canterbury, then moved on to Oxford. Every priory was also a school which was open to all. By 1248 they had established five *Studia Generalia* for higher studies, Paris, Bologna, Oxford, Cologne, and Montpellier. The songs they heard were not merely the Gregorian chants of their own choirs, but also the strains of romantic poetry and courtly epic which succeeded the *chansons de geste*. All helped to form the culture they shared.[1]

Temps s'en va
Et rien n'ai fait.
Temps s'en vient
Et ne fais rien.

The words rose up from the street to Guerric of Auxerre as he sat at his window, and so moved his heart that he entered the Dominicans, to become their first prior of Metz.[2] And on the road they caught pieces in lighter vein, love-songs, spring-songs, begging-songs, from restless clerks, poor scholars, and jongleurs. In brief, the contemplatives, the Hellenic leisured-class, were no longer enclosed or at home but abroad and at large.

In Spain the friars appointed special convents for oriental studies where they discoursed with rabbis and mullahs; at one Dominican house the chair of Hebrew was held by a Jew. Raymon Martinez was reputed to have been the first Christian

[1] C. Dawson. *Religion and the Rise of Western Culture*, viii.
G. Paré. *Le Roman de la Rose et la Scholastique courtèoise*. Paris–Ottawa, 1941.
C. S. Lewis. *The Allegory of Love: A Study in Medieval Tradition*. London, 1936.
W. P. Ker. *Epic and Romance*. London, 1896.

[2] H. Waddell. *The Wandering Scholars*, p. 145.

with a greater command of Hebrew than St Jerome's. Another Dominican, Pablo Cristiani, himself a Jew, engaged in public and temperate disputation with the great rabbi Nachman before King Jaime I and Raymund of Pennafort at Barcelona.[1] In general the Franciscans seem to have been more cordial than the Dominicans in their relations with the Jews.

The friars debated with Greeks in the Levant and fraternized with Armenians. Hakluyt wrote of 'the sending of certaine Friers Praedicants and Minorites to the Tartars'. Speak of Prester John or the Great Cham of Tartary, and they were ready to explore his dominions and enter his court. Andrew of Longjumeau and William of Rubruck were St Louis' ambassadors to the Mongols; others had preceded Marco Polo to China. The posts of the Dominican *Fratres Peregrinantes pro Christo* later stretched from the Crimea to Persia.[2] Since the Second Crusade a new respect for the Moslems had been discovered; the Dominican explorer, Ricoldo de Monte Croce (d. 1320) spoke warmly of the virtue and piety of Arab camel-drivers and held them up as examples to Christians.[3]

Nearer home, in southern France and northern Italy they rubbed shoulders with scepticism, pessimism, cynicism, anarchism, romanticism, and, after St Albert and St Thomas, with naturalism too. They showed little enthusiasm for the canonization by Innocent IV of Peter of Verona a year after he had been martyred for his zeal by heretics on the road from Como to Milan (1252) They first settled at Oxford in the Jewry, where they defended their neighbours against persecution. One of them, Lawrence of Reading, a well-known preacher, joined the

[1] O. S. Rankin. *Jewish Religious Polemic*. Edinburgh, 1956.

[2] R. Loernertz. *La Société des Frères Peregrinants*. Etude sur l'orient Dominicain. Rome, 1937.
W. A. Hinnebusch. *The Early English Friars Preachers*. Rome, 1951.
B. Jarrett. *The English Dominicans*, p. 99. London, 1921.
Richard Hakluyt. *The Voyages, Traffiques and Discoveries of Foreign Voyagers*, i. London, 1928.
William of Rubruck. *Itinerarium* (tr. Rockhall). Hakluyt Society, ii, 4. London, 1900.
C. Dawson ed. *The Mongol Mission: Narratives and Letters of the Franciscan Missionaries in Mongolia and China in the thirteenth and fourteenth centuries*. London, 1955.

[3] G. Grupp. *Kulturgeschichte des Mittelalters*, iv, pp. 251–2. Paderborn, 1924.

Jewish religion under the name of Haggai. They sailed from Barcelona in 1250 to found an Arabic University at Tunis, then the liveliest intellectual centre in Africa: 'I would freely pass the rest of my life in prison chains,' said St Louis, 'if as a result the King of Tunis and his people were converted to the Christian religion.'[1] Jean de Meung was their neighbour in Paris; though he had sided with the secular masters against the religious orders he asked to be buried among the Dominicans. Even the satire of Chaucer—who translated the *Roman de la Rose* as well as the *Golden Legend* of the Dominican James of Voragine—hints at the sympathy between the friars and the men of science and letters, and their shared raciness of expression.

Raynier Sacconi, formerly a leading Cathar in Lombardy and later head of the Inquisition at Milan, was with St Thomas at the Papal Court at Viterbo (1262). 'Once a heresiarch,' he described himself in his exposition of the teachings of the Cathars and Poor Men of Lyons, the *Summa de Catharis et Pauperibus de Lugduno*, 'now by God's grace a priest in the Order of Preachers though unworthy.' One item of doctrine noted is that secular authority does grave wrong by using force against criminals and heretics. The Cathar *Liber de Duobus Principiis* descanted on the dualism between a good and an evil God, and in two sections, *ad instructionem rudium* and *de persecutionibus* explained how the power which afflicts Christ and his followers is wielded by the evil God.[2] Not a few friars were like Raynier, who had felt the attraction of the complete renunciation of early possessions and power, for thereby a load of evil would be shed and the devil's thrall escaped. They anticipated Acton's sentiment, that all power corrupts. The persuasions of the Poor Men of Lyons, the Vaudois, and other groups, so sharply at variance with the habits and religious culture of feudalism, flowed into the Manichee rejection of the forces of the physical world. That the combination did not produce a widespread antinomianism was the work of St Dominic and

[1] A. Berthier. 'Un Maître Orientaliste du XIIIe siècle, Raymond Martin.' *AFP* vi, pp. 267–311. Rome, 1936.

[2] A. Dondaine. *Un Traité néo-manichéen du XIIIe siècle. Le Liber de Duobus Principiis, suivi d'un fragment de Rituel Cathare*. Paris, 1939.
S. Runciman. *The Medieval Manichee*, vi. Cambridge, 1947.

St Francis. The Franciscan dedication to absolute poverty was imitated more hesitantly by the Dominicans than by their founder; their adoption of corporate poverty lasted only for some decades, and even with respect to individual poverty they made an exception for books.

Extremists among the religious revivalists broke the bounds of law, and doctrines reappeared which St Augustine had known from the Montanists. The Spirituals merged with the followers of the Abbot Joachim of Fiore (1145–1202), who had prophesied a reign of love which would dispense with the adoption of physical force or a juridical Church. The Dominicans, cooler and perhaps more quizzical, were constitutionally less shaken than the Franciscans by these movements. They formed a confident corps, well-trained in philosophy and theology, united in discipline, not typically represented by John of Vicenza, a political thaumaturge finally discredited, but not before he had been entrusted with dictatorial powers by his native city. When they stood up to the imperial authorities or fell foul of the beneficial clergy they could feel confident of papal backing.[1] They on their side were the Pope's men and often employed in his service, although their conviction about his spiritual primacy did not commit them to the political cause of the Canonists and their sympathies were not settled in the early stages of the debate about his supremacy with regard to a General Council. John Torquemada, however, was the foremost defender of the Papal position after the Council of Basle, and a generation later Cajetan, the greatest theologian of the age, moved the whole question from Canon Law into theology.[2]

A self-assured caste seems to produce good eccentrics, and the outcrop of Dominican originals can be compared to that of other stable social strata—to the mannerisms of the Grand Whiggery, the bohemianism of the early nineteenth-century upper middle-classes, the singularities of old-fashioned dons, country parsons and naval officers. Inevitably they were

[1] D. L. Douie. *The Conflict between the Seculars and the Mendicants at the University of Paris in the Thirteenth Century*. London, 1954.
C. Sutter. *Johann von Vicenza*. Freiburg, 1891.

[2] H. Jedin. *A History of the Council of Trent*. Tr. E. Graf, i, pp. 27–31, 114. London, 1957.

accused of arrogance and a humble Dominican was said to be as rare a bird as a monk out of pocket. St Albert, Master Eckhart, St Catherine of Siena, Cajetan, Melchior Cano Bucer, Giordano Bruno, Campanella, de las Casas, Thomas Gage, Labat, Lacordaire, Gonzales, McNabb, and many more, a few to the point of heterodoxy, most to the Church's benefit, have not quite echoed the note of the men in office. Yet they have kept to the severity of St Thomas's principles, and their classical theology has been on the side of reason and law; perhaps they were steadied by their rivalry with the Franciscans.

The later alliance of *fraticelli*, Ockamites, Regalists and Louis of Bavaria shows what different types could combine to attack the established order. The century which saw the rise of the friars was certainly no period of dull and dutiful security. As property bulked larger so its very grounds were undermined. As the official forms of power were made more solemn so its consecration was attacked. As legality extended so anarchy had greater appeal. As sacramental discipline was tightened so sentimentality became looser and more libertine. The promise of the thirteenth century was not sustained; what may be called the disciplined liberalism of St Thomas's political thought was succeeded by a style which simultaneously allowed for private competitiveness and insisted on more corporative rigidity. Nevertheless, while it lasted it was an eager and promising age for the Church and civilization, full of life and spirited reasons. The picture is less of a Norman church decorated by Fragonard and Blake and Dali than of a Gothic cathedral which may look asymmetrical and askew and be traceried irregularly and riot with detail, some of it ribald, but which rises from deep foundations according to an efficiently engineered disposition of pillars, arches and buttresses.

IV

PHILOSOPHERS

If strict rationalism be separated from theological typology then most of the philosophical topics which engaged the schoolmen before they discovered the Aristotelean corpus can be represented as extensions of material logic or inquiries into the attribution of abstract meaning to particular experience. That, of course, is to make a distinction not entertained in the twelfth century and to read history backwards. The main debate of the period concerned the bearing of general ideas, or 'universals' as they were called. Were they merely names, as the nominalists contended, or were the Platonists right who held they were more real than the individual shadows they cast? Or was the intermediate position of Gilbert de la Porrée (d. 1154) well-founded? If we may speak of pure speculation and leave out of account the humanist warmth of Chartres, the interest in the natural sciences elsewhere and the devotion to ancient wisdom nourished by *lectio* and *meditatio*, it may be said that philosophy, austerely pursuing conceptual analysis and lacking the Ionian sympathy with material nature to be learnt from Aristotle, almost seemed to consist in putting things into categories. It was anatomical rather than biological.

Despite the monism which appeared at the beginning of the thirteenth century, with Amaury of Bène who said we should laugh, not mourn, because of the divinity at play within the world, and with David of Dinant (or Dinan) who identified the divinity with matter itself, the metaphysical feel for dynamic processes was slight, and so was the appreciation that physical things were real in themselves and manifested a teleology through their inner workings.[1] Philosophers did not apply

[1] Ia. iii, 8. *IV Sentences II*, xvii, 1.
Vincent of Beauvais. *Speculum Historiale*, xxx, 107.
G. Théry. 'Essai sur David de Dinant d'après Albert le Grand et saint Thomas.' *Melanges Thomistes*, p. 402. Paris, 1923.
F. Copleston. *A History of Philosophy*, ii, pp. 136–85. London, 1950.
M. D. Chenu. 'L'Homme et la Nature. Perspectives sur la Renaissance du XIIe siècle.' *AHDL*, xix, pp. 39–66. Paris, 1952.

Aristotle's principle, that natures could be known from their proper ends. Instead the world was a drama in which things were presented as allegories of something else, a shadow-play conducted by ritual and interpreted by myth. As for purely rational criticism, then the human environment was read in schematic terms and its items were marked with a fixed and almost legal status. A pattern of meanings was read into rather than drawn from the world. A hierarchy of values was disclosed, not a biological flow. Men had a strong sense of material reality, but not a strong philosophy in its favour. It was as though the mind were a spiritual pilgrim through this life, not an active sharer with material forces. Aristotle's psychological teaching had not yet affected the schools, and the consequences drawn from it by St Thomas, that the mind is the only living substantial principle within the body and therefore belongs to the physical world, were to come as a shock.

The metaphysical mood, however, was pluralist. The followers of Avicenna and Averroes may have accentuated the contrasts between the realm of necessity contemplated by an aloof and possibly unique intellect and the series of contingent events touched by manifold sensations, but they left intact the Western conviction that human individuals were real, responsible and important.

The philosophy of human conduct reflected the ethics of the Stoics, simultaneously full of public zeal and cool before the natural warmth of huddling together and living in community. Detachment from passion, preached by the admired moralists, was strengthened by a strain of neo-Platonism. Plotinus described the virtue of the purged soul which, escaping from the mesh of relationships in the visible world, achieved a lonely poise.[1] He had soldiered in the East under the Emperor Gordian, but only to learn Persian and Indian ways of thought, and he seemed to have been destitute of social feeling. Traces of the teachings of the Cynics appear in the religious homilists—indeed their attitude towards secular power was touched by a certain cynicism in the modern sense of the word, also by an ascetical fastidiousness not uninfluenced by the Epicureans.

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[1] 1a–2ae. lxi, 5.

The jurists, of course, were not given to meditations on an otherworldly mystery nor did they seek to escape out of the conditions of this world. Yet in those days, when the stream of thought did not run shallow, theological and philosophical questions were matters of public and even legal and political interest. The classical Roman authors themselves, though distrustful of definition and deduction after the Greek fashion, had not been merely legal practitioners pursuing an exclusively empirical method. *Nature*, a foil to convention in social thought, in some contexts could be referred to animal instinct, as by Ulpian, in others it could be identified with reason, as by Gaius; in both cases it stood for what was not, in the legal sense, civilized. The contrast was repeated in theology where nature was taken either as primitive and unregenerate or as original and innocent; there again it stood for what was overlaid by the economy of grace.

Consequently civilization could appear as a formal dignity and conventional politeness, a creation of the juridical order, an artificial achievement which concealed or crowned, according to the view taken of Nature, the underworld of rude or at least uninhibited forces. No literary cult of the noble savage was practiced, yet medieval Augustinism anticipated the feeling of the Enlightenment that civilization levied a heavy price. That the secular power of coercion was resented does not appear: the fact was accepted. Divines might sombrely discuss its origins, yet they saw no practical alternative if potentially criminal appetites were to be tamed. Religion itself was coming to be expressed more and more in juridical and institutional terms and invoking heavier sanctions. Except from partisans of Abelard and from evangelical movements which claimed greater freedom and familiarity with God than seemed allowed by the formularies of worship, few grievances were aired against the principle and practice of Church authority. The mien of orthodoxy became more ceremonious, but the inner life of devotion coursed as impetuously as ever.

1. *The New Naturalism*

The symbolic interpretation of this world was changed when Aristotle was discovered. Already writers were beginning

to show a curiosity about nature, and in England especially empiricism had struck root. Frederick II's scientific coterie studied physical processes for their own sake, and he himself was a field-naturalist who was not content with old wives' tales but sought by first-hand observation and experiment to discover whether vultures had a sense of smell and what went on during human digestion.[1] His falconer was Rinaldo d'Aquino, brother to St Thomas and his kidnapper in a vain attempt to keep him away from the Dominicans. Naturalism was in the air. Learned men began to contemplate the parts of reality as all of one piece, continuous from top to bottom, and in effect opened the way for the scientific study of institutions both sacred and profane.

They perceived that a political community was fastened together less by a mesh of positive laws than by natural kinship, sympathy and sense of friendliness.[2] The pity was that the later Aristoteleans, insensitive to literature and unresponsive to *ens sensibile et mobile* which is the object of natural science, lost the pioneering spirit and found themselves left in logomachies. Not until the Renaissance were the absurdities of an excessive and exclusive *a priori* method derided and inductive pursuits intensified in the schools of serious research. Aristoteleanism, however, was still young and experimental in the thirteenth century.[3] Then it was that political science reappeared as the study of the fundamental laws of human association, and men came to see that the civilized group rose from the biological mass and might contribute to the spiritual expansion of personality. The State was neither artificial nor imposed, and its inherent power to command possessed a dignity greater than that of keeping original sin well battened down.

If Plato's problem-raising temper was not apparent in the dogmatic spirituality of the Neo-Platonists, his general philos-

[1] *de Arte venandi cum avibus. The Art of Falconry.* Ed. C. A. Wood and F. M. Fyfe. London, 1956.

[2] M. Hamburger. *Morals and Law: The Growth of Aristotle's Legal Theory.* New Haven, 1951.

[3] J. H. Randall. 'The Development of Scientific Method in the School of Padua'. *Journal of the History of Ideas*, i, p. 177. 1940.
A. C. Crombie. *Robert Grosseteste and the Origins of Experimental Science.* Oxford, 1953.
C. H. Haskins. *Studies in the History of Medieval Science.* Cambridge (Mass.), 1927.

ophy, transmitted through Themistius, Philoponus, Simplicius, Proclus, Plotinus and Boethius, and known to St Augustine, profoundly affected medieval ideas. When the theologians discoursed about there being no lasting city here below they were in general accord with Plato's school without knowing the cut of his political thought. No medieval translations of the *Republic* and *Laws* were in circulation. The *Timaeus* was received as Plato's political testament, the *Republic* was supposed to be its second part and vaguely mentioned as representing what Socrates thought about the civil order and its laws.[1] Until the Renaissance most of the references to Plato were taken from Aristotle. The texts of the Pseudo-Dionysius translated by John Scotus Eriugena (c.860) and his own speculations displayed a hierarchic universe in which the visible things were theophanies, symbols of a spiritual world, not profoundly real in themselves. The early schoolmen disavowed the pantheism, but not the sentiment.

To this tradition Aristotle, with his strong sense of present reality and unapologetic worldliness, threw down a challenge. Addressing themselves scientifically to the inner natures and purposes of material things in a fresh and bracing climate of naturalism, men discovered rational and therefore divinely given values in the ethics and politics of pre-Christian antiquity.[2] Its social ideas were rather different from their own, for no organized religion stood over the self-sufficiency of Aegean communities to question policy in the name of a higher law.[3] Few conceived of a natural order untroubled by the supernatural, but a civic cirtue was admired which was not beholden to the life of grace, and later a self-reliant rationalism was released which professed to be able to manage without the control of faith.

Its ideal was not that of the *Societas Christiana*, but of a self-sufficing civil community having the resources within itself to satisfy all reasonable social needs; it was developed by men

[1] St Albert. Commentary *I Politics, cap.* i, *e.*

[2] E. Gilson. 'Le moyen âge et le naturalisme antique.' *AHDL* vii, Paris, 1932. M. T. d'Alverny. 'Le cosmos symbolique du XIIe siècle.' *AHDL*, xx, pp. 31–81. Paris, 1953.

[3] A. H. M. Jones. *The Greek City*. Oxford, 1940.

themselves from their own needs and its constitution was not given to them from above. The habit of reasoning about it combined with the dialectical expansion of the Roman Law, notably with respect to the power of the *Princeps* apart from the Roman Pontiff, to produce the secularism of later centuries. Both the *Polis* of Greece and the *Imperium* of Rome were thought to be models when the Nation-States were taking shape. The early Aristoteleans, however, were moved by no such cause; their immediate concern was merely to disengage a social and political discipline from the previous mixture of morals and law. Before Aristotle's *Ethics* and *Politics* were discovered, attention had been mainly directed to what had been done, as revealed in charters, capitularies, synodal acts, chronicles, homilies and controversial tracts, in order to keep continuity with the past and inculcate Christian social conduct. It was not until after commentaries on Aristotle were followed by formal and systematic expositions which drew from the sources of Greek social thought and Roman jurisprudence that political science freed itself and devoted itself to the study of *raison d'état*.

2. *Aristotle from the Arabic and Greek*

The drama of an orientalized Aristotle bursting in is now shelved. His entrance into the West was more gradual. His influence, first felt in logic, passed progressively into physics, astronomy, and biology, and then into metaphysics, psychology, ethics and politics. He was the central figure of controversies which mounted during St Thomas's teaching career and for a few years after his death and then sank down. The Dominicans' vindication of their master was sufficiently successful. A hundred years later and the Scholastics were using Aristotle's name as a substitute for first-hand inquiry.

To begin with logic. Lost Latin translations by Boethius had been recovered and embroidered by other hands. At the beginning of the twelfth century the 'Old Logic' of the *Categories* and *Perihermeneias* together with Porphyry's *Isagoge* were known, and by its end the Organon was completed by the 'New Logic' of the *Prior Analytics* and *Posterior Analytics*, the *Topics*, and the *de Sophisticis Elenchis*. So far Aristotle was no cause of contention,

but the admired master for dialectics. On the west front of Chartres he sits meditating together with Cicero and Donatus, an orator and a grammarian; the early Scholastics did not look to him for the substance of their philosophy.

A change set in when his other works were put into circulation. The indoctrination spread first from Toledo on the Christian frontier with Islam. Mingled with the teachings of the schools of Baghdad and Cordova, the Latin texts of Aristotle were taken from the Arabic. Gerard of Cremona (d. 1187) translated the *de Coelo et Mundo*, *de Generatione et Corruptione*, and the first three books of the *Meteorologica*. The centre then shifted to the court of Frederick II, some of whose savants were no less alien to the European tradition than his bodyguard of Saracen archers. By the time of Michael Scot (d. before 1236), who personified this passage from Spain to Italy, most of the cosmological, psychological, and metaphysical treatises were being studied.[1] Yet so far scholars had reached only the edge of Greek science and philosophy.

The texts were ill-translated. They were presented together with interpolations from the great Arab philosophers, Avicenna (d. 1037) and Averroes (d. 1198)—the first an earlier and more persuasive influence though not in political thought, the second more pointed and controversial[2]—and ventilated opinions unwelcome to Christian belief and sentiment. The result was that a provincial council at Sens (1210), which also condemned the pantheism of David of Dinan and his contemporary Amaury of Bène (d. 1207), forbade public and private lectures at Paris on the natural philosophy of Aristotle and his commentators. Five years later the legate, Robert Curzon, renewed the ban: the *Organon* and the *Ethics* were expected. It was not withdrawn after the panic had died down, but became a dead letter; the 'English Nation' at Paris University officially organized public

[1] F. Ueberweg and B. Geyer. *Die Patristische und Scholastiche Philosophie*, pp. 342–5, 359–62, 368–71. Berlin, 1928.
S. D. Wingate. *The Medieval Latin Versions of the Aristotelean Latin Corpus*. London, 1931.
E. Gilson. *Christian Philosophy in the Middle Ages*. v, pp. 181–234. 'Arabian and Jewish Philosophy.'

[2] K. Foster. 'Avicenna and Western Thought in the Thirteenth Century.' *Avicenna, Scientist and Philosopher*. Ed. G. M. Wickens. London, 1952.

lectures on the whole Aristotelean corpus (1225),[1] and Gregory IX admitted the provisory character of the prohibition and called for corrected editions of Aristotle (1231).

The sack of Constantinople (1204) during the fourth Crusade furnished more manuscripts and opportunities for learning. From about the middle of the century the two most notable translators from the Greek were Robert Grosseteste and William of Moerbeke—an Englishman and a Fleming. Manfred in Naples followed the example of his father, Frederick II, and commissioned Bartholomew of Messina to translate the *Magna Moralia*; the *Economics* followed shortly afterwards. By then Oxford and the Papal Court had become the chief centres of an Aristoteleanism less perturbed than in Naples by civil war and in Paris by controversies about whether the reason could go its own way without reference to the truths of religion. In England a habit of studying this world in a soberly scientific and humanist spirit went back more than a hundred years through Alfred of Sareschel—Alfredus Anglicus—and his friend, Alexander Neckham, to Adelard of Bath. Rome kept its equanimity, for St Thomas's address secured the patronage of Urban IV (1261–4) and Clement IV (1265–8), both of them French.

Semi-authoritative hostility remained, nevertheless, and the tolerance show to Aristoteleanism by the Franciscan John of Rochelle (d. 1245) was not countenanced by his Order. The situation was complicated by those who mistook Averroes for Aristotle. Their teaching on human responsibility, personal immortality and God's particular Providence could not be reconciled with the truths of religion, and they seemed to be laying the foundations of a purely secular culture in defiance of the Christian social tradition.[2]

The threat offered by these Latin Averroists, as they came to

[1] M. de Wulf. *Histoire de la philosophie médiévale*, i, p.p 235–6. Louvain, 1924.

[2] F. Copleston. *A History of Philosophy*, ii, pp. 435–41, 'Latin Averroism'. London, 1950.
E. Gilson. *History of Christian Philosophy in the Middle Ages*. pp. 387–402. London, 1955.
D. H. Salman. 'Saint Thomas et les traductions latines des Métaphysiques d'Aristote,' and 'Jean de Rochelle et l'averroisme latin.' *AHDL*, viii and xvi. Paris, 1932, 1947.

be called, was one of the reasons why St Thomas was posted in 1269 by his Master General from the Papal Court to Paris. The distinction he drew, together with St Albert, between the proper reading of Aristotle, which of course he thought was his own, and that of Siger of Brabant, usually regarded as the leading Parisian Averroist, eventually came to be accepted, but not before he had been condemned in council in 1277 by Stephen Tempier, Bishop of Paris, Kilwardby and Peckham, Archbishops of Canterbury, followed the same tenor in dealing with Thomist teaching at Oxford, though less solemnly. Peckham noted that even among the Dominicans Thomas's position was pungently debated, *etiam a fratribus propriis arguebatur argute*; the Franciscans at their General Chapter held at Strassburg in 1284 forbade the circulation of the *Summa Theologica* except among lecturers who were *notabiliter intelligentes*, and with the proviso they must be provided with William de la Mare's *Correctorium Fratris Thomae*, which amended him on 117 counts.

The dispute was less about Averroes himself, who was held in general respect and referred to by St Thomas as the Commentator, than about the Latin Averroists. The questions round which it revolved, the eternity of the world, the individuation of human minds, and the relationship of reason and faith, were not of immediate political interest. The complete *Ethics* and *Politics* of Aristotle slipped in under cover of the smoke, and it was not until towards the close of the thirteenth century that the special problems they raised were made manifest or were used by the Averroists to disconcert orthodoxy. Before then the *Ethics* had taken its place in the curriculum of Dominican schools and university faculties. The *Politics* was not often mentioned.

The *Ethica Vetus* (*Ethics*, *ii* and *iii*) was available before the end of the twelfth century, the *Ethica Nova* (*Ethics*, *i*) by 1210. Fragments from elsewhere (particularly from *Ethics*, *vi*) were incorporated by Robert Grosseteste in the first complete Latin version made probably between 1245 and 1247. St Albert's lectures on the *Nicomachean Ethics* delivered at Cologne in 1249 and taken down by his student St Thomas were based on this *translatio Lincolniensis*. Touched up by the Dominican William

of Moerbeke, afterwards chaplain to Pope Clement IV and Archbishop of Corinth, it served as the text for the earliest commentaries.[1]

The first Latin translation of the complete *Politics* seems to have been that made by William of Moerbeke about 1260[2]: he may have been the author of two extant manuscripts of an earlier translation of the first two books.[3] Unlike his other translations, it was not a revision of a text already in circulation, but was freshly done from Aristotle. From the promise in the *Ethics* of a programme on the State its existence had already been surmised.[4] To him belongs the credit of introducing it to the West.

The stage had long been set for this special discipline. The statesman Boethius (c. 524) wrote the much-studied *de Consolatione philosophiae*, which was not a political guide, for it looked away from the mishaps of earth to the serene order of eternity notwithstanding passages of Aristoteleanism and Stoicism.[5] Cassiodorus (d. c. 570) spoke of *civilis philosophia* ministering to the benefit of the whole city, and the text is duly noted by St Isidore and repeated by Hugh of St Victor.[6] The following century remembered the Victorines, but forgot the old Senator —only his *Exposition in Psalterium* was cited by St Thomas, a

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[1] S. H. Thomson. *The Writings of Robert Grosseteste, Bishop of Lincoln.* Cambridge, 1940.
F. M. Powicke. *Robert Grosseteste and the Nicomachean Ethics.* Proceedings of the British Academy, xvi. London, 1930.
D. A. Callus. 'The date of Grosseteste's translation and Commentaries on the Pseudo-Dionysius and the Nicomachean Ethics.' *RTAM*, xiv, pp. 186–204. Louvain, 1947.
A. Pelzer. 'Le cours inédit d'Albert le Grand sur la Morale à Nicomaque recueilli et rédigé par saint Thomas d'Aquin. *Revue néo-scholastique de philosophie*, xxiv, pp. 333–61, 479–520. Louvain, 1922.
A. Mansion. 'Quelques travaux récents sur les versions latines des Ethiques et d'autres ouvrages d'Aristote.' *Revue néo-scholastique*, xxxix, p. 86. Louvain, 1936.
E. Franceschini. 'La revisione Moerbekiana della.' *Translatio Lincolniensis* della Ethica Nicomachea, *Rivista Neo-Scolastica*, xxx, p. 159. Milan 1938.

[2] So dated from the first clear reference to it, *III Contra Gentes* 22.

[3] G. Lacombe. *Aristoteles Latinus*, i, pp. 74–5. Rome, 1939.

[4] 1135 a 12. 1181 b 12–33.

[5] Ed. A. Fortescue and G. D. Smith. London, 1925.

[6] PL clxxvi, 759.
R. A. B. Mynors. *Cassiodori Senatoris Institutiones.* Oxford, 1937.

sign of the decline of letters. Abelard discussed the *communis utilitas*.[1] Dominic Gundissalinus picked up from Alfarabi the mention of a *scientia politica sive civilis racio* and also a reference that Aristotle had written a work on politics.[2]

Among the Arabic philosophers of the East, Alfarabi did not discuss its contents, and Avicenna, though he devoted two summary chapters to political science at the end of his *Metaphysics*, made no mention of it. Among the Arabic philosophers of the West, Averroes had an active career as judge and physician; the *Politics* was not available to him, but his paraphrase of Plato's *Republic* showed the influence of the *Nicomachean Ethics*. His work was not translated into Latin until 1539, but a medieval Hebrew translation, by Solomon ben Yehuda of Marseilles, is evidence that a political terminology had yet to be coined.[3] The famous *Secretum Secretorum* by a pseudo-Aristotle, also entitled *Liber Moralium de Regimine Dominorum* or *de Regimine Principum Aristotelis*, supposedly addressed to Alexander the Great, was translated by Philip of Tripoli, quoted by Michael Scot, and commented on by Roger Bacon.[4]

The texts reached Europe at several removes, having first gone into Asia and Africa. The early translations neither conveyed the political preoccupations of Athens, for that would have required an effort of historical perceptiveness beyond the power of the medievals, nor rendered at first-hand the original phrases, for the Latin was based on the Arabic, which was based on the Chaldaic, and thus on the Greek. Cicero was the only author on social philosophy included in a reading list for Paris University which dates from between 1230 and 1240. It referred to economic ethics as *ypotica—ab ypos, quod est sub, quod est scientia de subditis*.[5] One could not go very far on such scraps. A decade or so later, St Albert's first lecture-course on the *Ethics* made no mention of the *Politics* although by then he was

[1] *Dialogus inter philosophum judaeum et christianum*. PL clxxviii, col. 1653.
J. G. Sikes. *Peter Abailard*. Cambridge, 1932.

[2] *de Divisione Philosophiae*. Ed. L. Baur. *Beiträge*, iv. Munster, 1903.

[3] E. I. J. Rosenthal. *Averroes's Commentary on Plato's Republic*. Cambridge, 1956.

[4] G. Lacombe. *Aristoteles Latinus*, i, p. 93.
R. Steele. *Opera hactenus inedita Rogeri Bacon*. Oxford, 1920.

[5] F. van Steenbergen. *Aristotle in the West*. Pp. 95–7. Louvain, 1955.

basing himself on a translation straight from the Greek. Robert Kilwardby, his contemporary, was equally silent; the *de Ortu Scientiarum* enumerated three interests of practical science, namely, *philosophia ethica*, *philosophia mechanica*, and *sermocinales*—the art of speech.[1]

From about 1260 onwards the situation changed. Aristotle opened a field of natural and theological philosophy which could be worked without recourse to Christian theology. The distinction, not accepted by the Franciscan and early Dominican doctors though employed as a valid abstraction by the later Dominicans, was pressed to extremes by the upholders of the 'Double-Truth' theory—that the truths of faith and of reason could contradict one another and both could still be sincerely professed. The abstraction was made concrete, and a distinction of complementary discipline became a separation of frames of mind. The fracture extended into social thought. A 'Double City' theory was proposed, and the lurking problem of divided allegiance was brought into the open, this time by the philosophers, not the theologians.

Before the reign of Constantine the Christian Church had stood apart from the State. After the breakdown of the Roman Empire it did not enter at first into the organic life of the new nations, and for various reasons. The pagan religion of the tribes was closely linked with kingship; they were migratory until the sixth century, and when they settled down their territorial boundaries did not always correspond to the ecclesiastical provinces which went back to the days of the undivided Empire; above all their government was frequently Arian. The situation changed with the ascendancy of the Catholic Franks and the conversion of the Goths. Matters civil and ecclesiastical then intermingled, and national churches were ruled by the king: Charlemagne conceived it his duty to rule the Church no less than the State.[2] There was a second dissolution during the 'Second Dark Age' when the Vikings from the north, the Magyars from the east, and Moslems from the south threatened the remains of the Carolingian Empire.[2] Again the barbarians were converted, and the reform of religious discipline was

[1] E. M. F. Sommer-Seckendorff. *Studies in the Life of Robert Kilwardby*. Rome, 1937.
[2] C. Dawson. *Religion and the Rise of Western Culture*, pp. 97–115.

consolidated when the great Hildebrand (d. 1085) freed episcopal appointments from feudal control and maintained against the German Emperor the supremacy of the spiritual over the temporal power. The *sacerdotium* contained the *regnum* within the single *Respublica Christiana*.

The ambiguous victory, however, was hard won, and when Aristotle appeared on the scene his prestige was joined to the growing majesty of the Roman Civil Law in order to set up secular power in its own right. Aristotle's impact was all the greater because it was disinterested; unlike many legists he had, as it were, no axe to grind in the protracted disputes between spiritual and temporal power. Men had thought of the *societas christiana* descending from above, unified by the sacramental act of baptism, but now they were shown a social instinct working through an ascending process from the natural conjunction of male and female and the household and the neighbourhood-group to a self-sufficing *communitas humana*.

The political community in ancient Greece had not depended on supernatural religion—why then should the revival of its purely reasonable system look to Church authority? The justice described in the seventh book of the *Ethics* was a dynamic virtue going beyond obedience to the Tables of the Law or conformity to a code. The *humana civilitas* was no artificially contrived institution but sprang from man's social nature; it was no mere instrument but the end and purpose of virtue, no mere remedy for sin but a noble object. The vision of a united Christendom remained for centuries, but already it was accepted that the authority of the State derived neither from nor through the ceremonial, juridical, and official ordinances of the Church.

How far St Thomas went in this direction the following pages may show. He reverenced Aristotle as his leader in ethical and political philosophy. Many of his contemporaries saw little difference between him and Siger of Brabant, and the condemnations of 1277 lumped both together. Nevertheless the creation of a purely secular enclave in a wider scene, a City of Reason in which human nature as it actually existed could be at home, was no part of his thought. He considered that the rational animal was a true type and a proper study, that

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natural justice was a necessary foundation of all morals, and that reason had its rights. Nevertheless good sense and good will were only part of the story. Men needed Divine Revelation and supernatural help, and their social organization should be open to and integrated in the kingdom of grace. The complete order should be considered in one sweep, and men taken as *wholes*, not as two things, one the body and the other the soul, one the material man and the other the spiritual man, one the subject of the State and the other a member of the Church. A theology which failed to see that could be but a sectarian discipline.

Church and State were not separate institutions before the fourteenth century; the conflicts between Popes and Emperors were between different dignitaries within a single united Christendom. If the early Parisian Averroists were an anxiety to the ecclesiastical authorities for doctrinal reasons, there is nothing to show that they were lacking in public respect for religion, or that they were disposed to set up a rival magisterium in the later manner of Marsiglio of Padua and his friend, John of Jandun. They claimed little more than the academic liberty of reasoning how they liked. The logic of the Double-Truth theory allowed a man to profess wholeheartedly, though scarcely single-mindedly, the truths of faith. After all a saint had said, *Credo quia impossibile*, and snubbing the reason was a fashion for holy men. Yet if the contradiction may serve very well as an interim attitude, its long-term effects on the psychological health of individuals and society are less happy.

A formal rejection of the Church's right to be in politics and the assertion that religion was a private affair would have sounded equally strange during the thirteenth century. All the same a secular political spirit was coming to grudge the claims of clerical power. Papal decrees tried to withdraw the clergy from secular employment and a new class of lay-lawyers was taking their place not only in the courts but also in the councils of State. They were the chief instruments of the change. It is difficult to assess the part played by the early Neo-Aristoleans. The Arab transmitters of Aristotle to the West were not politically minded. The evidence is scanty for the social views of the

early Latin Averroists, yet it is a safe conjecture that they influenced the juridical and political thought of the period since they were prominent in the Faculties of Arts.

There is no record of any practical consequences of their idea of a world ruled by a determinism which might have been expected to disallow our free responses to a freely-working Providence. There are indications they extolled a model of the good life in which Christian humility was not prominent. The wilder spirits scoffed at poverty and chastity—'a folly to the Greek'—but then so did the orthodox in unbuttoned moments. Siger of Brabant and Boethius of Dacia—Boethius of Sweden, said to have been a Dominican—left ethical pieces which favoured practical self-sufficiency and a contented rationalism. Siger adjudicated on problems arising from the *Politics*: for instance, was the city better ruled by good laws than by good men?[1] But that the doctrine of a single Cosmic Mind led him and his followers to favour a State Monism or be indifferent to individual rights is not borne out by what is known about them. It would have been to their advantage to preach liberty. Tolerance, however, was not a value actively respected by the medievals, despite the teaching of some theologians that conscience should be respected and infidels not be forced to the wedding-feast, and even they substituted the *compelle remanere* for the *compelle intrare* and did not reprobate the death-penalty for heresy.[2] Humanitarians were few in those days.

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[1] A. P. D'Entrèves. *Dante as a Political Thinker*. Oxford, 1952.
E. Gilson. *Christian Philosophy in the Middle Ages*, pp. 399, 725. 'Boèce de Dacie et la double verité, *AHDL*, xxii, 1955.
For the *Summa de Bono*, see M. Grabmann, *AHDL*, vi, p. 187. Paris, 1932.
F. van Steenbergen. *Siger de Brabant d'après les oeuvres inédits*, pp. 115, 299, 321, 534. 2 vols. Louvain, 1931, 1942.
G. de Lagarde. *Naissance de l'esprit laique au déclin du moyen âge*, iii, 2, 'Les facultes des arts et l'averroisme.'
R. M. Giguère. *Jean de Sécheville, de principiis naturae*. Montreal, 1956.

[2] 2a–2ae. x, 8, 9, 11. *IV Sentences*, XIII, ii, 3.
J. Lecler. *Histoire de la toldrance au siècle de la Réforme*, pp. 65–123. Paris, 1955.

Part Two

THE DEVELOPMENT IN ST THOMAS

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THE *Politics* was already out of date as a practical plan during Aristotle's lifetime, for, when he wrote, the Greek City-States which provided his models had been subjugated by Philip of Macedon and by his own pupil, Alexander the Great, the mightiest empire-builder in history. Caesar succeeded to Alexander, Pope and Holy Roman Emperor to Caesar. The generalization is fair enough that from the days of Aristotle to those of St Thomas there was a movement from *Polis* to *Imperium*, though historically many types of social organization co-existed and a similar expansion was not found in all of them.[1]

After the barbarian invasions and the break-up of the Western Empire the fact of dominion was more important than any theory about it. The time was not ripe for any claim to universal sovereignty. Nevertheless the imperial attributes were never quite forgotten, and they were revived from the time of Charlemagne, the founder of what came to be known as the Holy Roman Empire. There was an Emperor but scarcely an Empire, for the *Imperium* was a symbolic function rather than an organized territorial power. The designation *Roman* first appeared in 1034, not to re-assert the world-wide pretensions of ancient Rome but for opportunist reasons of diplomacy, and *Holy* was adopted by Barbarossa in 1157 in order to compete on an equal footing with the Pope and *Sancta Ecclesia Romana*.[2] Both titles were thin, though real enough for Dante.

It was but a shadow of Rome, and lacked the communications, administrators, army, language and for many years the Law which were the strength of the old Empire whose preroga-

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[1] M. Hammond. *City-State and World-State in Greek and Roman Political Theory until Augustus*. Cambridge, Mass., 1951.

[2] G. Barraclough. *The Medieval Empire: Idea and Reality*. London, 1950.
R. Folz. *L'idée de l'Empire en occident du Ve. au XIVe. siècle*. Paris, 1953.
A. Dempf. *Sacrum Imperium. Geschichts und Staatsphilosophie des Mittelalters und die politischen Renaissance*. Darmstadt, 1954.

tives it claimed. All the same there was no alternative in Europe to the Emperor as supreme ruler of temporalities until the nations achieved full political independence, except for premonitions, which grew stronger after Hildebrand, of the hieratic thesis that the Pope, *sacerdos regalis* and *caput* of the whole *corpus* of Christians, held the keys of the law, *claves juris*, as well as the keys of the kingdom of heaven, *claves regni caelorum*.

Local feeling was strong under feudalism, but national patriotism was not so focussed to the distance that a sharp image of the State still less of the Empire was held. A man would follow his lord and fight against the heathen even on the far frontiers of Christendom, yet small sense of official duty or service towards the *respublica* coloured his immediate allegiance and crusading devotion. In some respects he might be compared with an Irishman nowadays, proud of his country even if detached about its political constitution, who is ready to work in Great Britain, pay its taxes and enlist for its defence, who is loyal to his ship, regiment or squadron, without being committed to the national political cause.

All this began to change after the rise of the Italian Republics and of the proud and independent realms which occupied the territories of the old Roman provinces. A new type of political community emerged, claiming its own appropriate mode of service. The compact City-States and centralized Nation-States fulfilled the conditions of the perfect political community described in the *Politics*, and their completeness was capped when their rulers claimed the attributes of the *Princeps* of Roman Law: they were not of course like 'the godly prince' of the Reformation State who governed both temporalities and spiritualities. When it is said that Christendom was changed into a collection of self-contained national communities reflecting the ideas of Aristotle it is not suggested that Greek political institutions were restored. Greek influences were weaker than those of the Roman Law and of the economic forces that were changing the social order; even the Renaissance State was a modification of the medieval not a restoration of the antique.

Nevertheless Aristotle provided the theory to match the occasion when a thousand-year-old process was reversed and moved back from *Imperium* to *Polis*. There were many causes

for the change. The lapse of imperial practice, national pride and mistrust for Italian Rome, lay dissatisfaction with the clerical theocracy, fiscal grievances and the increasing influence of civil lawyers and the mercantile classes were among the contributory factors. Feudalism was disintegrating, and with it the prestige of the warrior-class. Social virtue became more bourgeois, for the new *civility* used soldiers only for its own defence; *militaris* was but an adjunct to *regnativa* and *politica*.[1] The knightly classes protested that although they defended the city they could take no part in the public life of Dante's Florence, which was run by business-men, unless they demeaned themselves through being 'ennobled' in a guild. The cities of the Empire also underwent rapid constitutional and economic changes during the first half of the thirteenth century, and Cologne, St Thomas's first Dominican *studium*, was a formidable centre of opposition to the Hohenstaufen cause.

The reception and development of political ideas in his writings will be taken according to the order of the four chapter headings of the first part of this study. His indebtedness to his predecessors will be considered first in theology, next in jurisprudence, thirdly with respect to a friar's distinctive conception of group-life, finally in Aristotelean philosophy.

The method is convenient, yet not without the danger of pulling out the strands from a close-knit texture of analogies from every human interest. One of the most abstract of thinkers, paradoxically his body of thought is peculiarly liable to be misrepresented when subjected to specialist treatment. The separation of a purely rational philosophy from the *sacra doctrina* of the Christian Revelation can be forced enough without the further separation of a system of formal political categories from the product.[2] Inseparables may be made into distinct ideas, but never into things apart. As he remarks, realities which cannot be divided in actual fact may be separately considered by the reason.[3] It is allowable, indeed necessary, for scientific method to treat one class of values without attend-

[1] 2a–2ae. l, 1, 2, 4.

[2] T. Gilby. *St Thomas Aquinas: Philosophical Texts*, pp. xviii–xxi. *Theological Texts*, pp. xi–xiii.

[3] 1a. lxxxv, 1, *ad* 1. *de Hebdomadibus*, 4.

ing to another, and within that class systematically to go through one part after another without losing sense of the background. And so it should be possible to abstract the theological, juristic, cultural and philosophical elements in his social thought without tearing the whole.

The treatise on Law in the *Summa Theologica* contained his only set piece on political theory: it should be supplemented by sections from the treatises on Prudence and Justice.[1] The commentary on the *Politics* was merely the start of a paraphrase of Aristotle's text, the *de Regimine Principum* was a homiletic instruction to the King of Cyprus left unfinished, and the *de Regimine Judaeorum* was an answer to inquiries from the Duchess of Brabant about discriminatory taxation at the expense of a minority.[2] The absence of formal reflections on feudalism was less surprising from him than from John of Salisbury a century earlier. Oddly, since he lived in the midst of them at the Papal Court for the middle period of his teaching life (1259–68), his writings give no inkling of the political ambitions of the Canonists. He did not contend that all dominion descends from God through the Pope, nor did he dwell on juristic ecclesiology.

Of the three types of theology enumerated by Varro, poetical theology *ad theatrum*, civil theology *ad urbem* and natural theology *ad orbem*, the last prevailed in his thought.[3] His social morality was systematically built into a philosophical and theological structure, with few open references to the established order of his day and fewer to its myths; he carried on the work of rational analysis and systematization begun by Abelard. The *Summa Theologica* was unattached to the massive growth of political Papalism, deep-rooted in history and bearing the regalia and effective symbols of authority both sacred and

[1] Law, 1a–2ae. xc–cviii. Prudence, 2a–2ae. xlvii–lvi. Justice, 2a–2ae. lvii–cxii.

[2] 1a–2ae. xc–cviii. (c. 1270) *In viii libros politicorum Expositio* (c. 1269). Authentic to iii, 6 inclusively (1280–7); the rest was by Peter of Auvergne. *de Regimine Principum ad regem Cypri*, also entitled *de Regno* (c. 1266). Probably authentic to ii, 4 inclusively: the rest by Ptolemy of Lucca. (cf. J. A. Endres. *De Regimine Principum des hl. Thomas von Aquin.* Munster, 1913). *de Regimine Judaeorum ad ducissam Brabantiae*, also addressed *ad comitissam Flandriae* (1261–72). The authentic section of the *de Regimine Principum* is translated by A. P. D'Entrèves and J. G. Dawson, *Aquinas, Selected Political Writings*. Oxford, 1948.

[3] See *de Civitate Dei*, iv, 27.

profane, which overspread the thirteenth century. Rome appeared to be set on the summit of the Western World and to possess the substance of monocratic power; in fact the political centre of gravity was moving north-west. St Thomas was in no doubt about the religious primacy of the successor of St Peter,[1] but the Dominicans generally were not ranged with such writers as Augustinus Triumphus of Ancona, the uncompromising spokesman for direct papal jurisdiction in secular matters.[2] His formative years and the final period of his mature thought were spent in the different political atmosphere of Paris and the *domaine royale*. There the soaring architecture reflected the new social scholasticism, and men translated their national pride into resistance to the idea of a single overlord in Christendom whether he were called Pope or Emperor.[3]

The political theory which can be composed from his writings is like his discourse on other topics—the dialectic doubles back, the advance is not straight and steady. Yet an advance can be detected: as his knowledge of Aristotle deepened so his account of political prudence and the reasonable ideal of citizenship became more technically assured. While he did not rule out what may be called the romantic and perhaps the wilder strains in human behaviour, his respect for political authority grew, and the face he turned to rebellion was bleaker at the end than at the beginning of his career. At the same time—heir to Abelard who had felt the hostility of legalism to the Gospel spirit—he brought out the pre-eminence of equity playing above the letter of the codes and the dignity of man's vocation to live beyond the measures of legal justice and political virtue. His pace and emphasis vary as he sought to resolve the tensions set up when persons live together; apparent inconsistencies can be corrected by fuller explication, not by rejection of one side or the other.

He taught for about twenty years, from 1252 when he received the degree of Bachelor of Theology at Paris, until his death in 1274 on his way from Naples to attend the Oecumenical Council of Lyons. His writing career falls into three

[1] 2a–2ae. 1, 10. xi, 2, *ad* 3. Disputations, X *de Potentia*, 4, *ad* 13.
[2] *Summa de Potestate Ecclesiastica ad Ioannem XXII.*
[3] L. Réau. *L'art gothique en France*, p. 11. Paris, 1945.

periods. First, seven years at Paris (1252–9) when, of the works which interest us, he composed his *Commentary on the Sentences* of Peter Lombard, the tract *Contra Impugnantes Dei Cultum*, against the opponents of the new religious Orders, and the Commentary on St Matthew's Gospel; he also began the *Contra Gentes*. Second, nine years in Italy at the Papal Court which travelled between Viterbo, Orvieto, and Anagni (1259–68); there he met William of Moerbeke and started his series of commentaries on Aristotle with the treatise on natural and metaphysical philosophy. The unfinished treatise de *Regimine Principum* was started and the first part of the *Summa Theologica* completed; he declined the Archbishopric of Naples. Third, the final six years of his life, when, to counter the threat of Latin Averroism, he was recalled to teach in Paris (1268–72), and then afterwards was charged with the organization of Dominican studies at Naples (1272–3). Here in the same community was a familiar friend, Ptolemy of Lucca, ten years younger than himself, who was to finish the *de Regime Principum*, and die at the age of 90 having witnessed the new lay concepts of political power being put into practice. The second part of the *Summa Theologica* on moral science (1269–72), the commentaries on the *Ethics*, the beginning of the *Politics* (1269–73), and the Epistle to the Romans (1272–3) belong to this final period.[1]

From his student days he was acquainted with the *Ethics* and drew on it for his first systematic work, the commentary on the *Sentences*. He came to know the *Politics* from about 1260. He began commentaries on both towards the end of his life when he was writing the second part of the *Summa Theologica*. Although their social teaching, notably their insistence on the naturalness of political authority and the virtues of political association, differed from Augustinism no dramatic caesura fell in the run of his argument, and he continued to quote St Augustine for support.[2] The impression is left that he was an Aristotelean

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[1] Chronology according to A. Walz. 'Thomas d'Aquin : Ecrits.' *DTC*, xv, 1, 635–41. Paris, 1946.
B. Schmeidler. *Die Annalen des Tholomeus v. Lucca*. Monumenta Germaniae Historica: Scriptores Rerum Germanicarum. Nova Series, viii. Berlin, 1930.

[2] E. Gilson. 'Pourquoi saint Thomas a critiqué saint Augustin.' *AHDL*. i, pp. 5–127. Paris, 1926–7.

before he came to study the texts, and then found himself so much at ease with what he read that he could fill out the meaning; on occasion his intellectual sympathy could supply for the deficiencies of his scholarship or of the faulty translation in front of him.

He opened easily enough in his *Commentary on the Sentences* (1254–6) by mingling Apostolic counsels and Stoic sentiments in the style of his theological predecessors: the kingdoms of the earth pass away, yet rulers and magistrates were owed a duty of respect and obedience. All the same a difference was already betraying itself: this world was not so shadowy and shifty that our minds and wills cannot find a firm purchase there. It contained truths and fundamental rights. It was a proper scene for scientific certitude and for virtuous conduct. Hence he recognized a moral power within secular authority, which can bind *non tantum temporaliter sed etiam spiritualiter ut Apostolus dicit ad Romanos xiii*;[1] he produced a rudimentary sketch of political prudence—the trained ability of governing the community—which was to be redrawn in the *Summa Theologica*; he quoted freely from the *Ethics*.[2] Despite this the work as a whole belonged to the old theological tradition. Aims and objects were presented as descending from above the visible world, and the true community was the Church in which human persons commune with God, the angels and the saints.

Presently the difference grew more pronounced as his sense of the earthly community increased. The echoes of Neo-Platonism fell fainter, the notes of Aristoteleanism rang clearer. The far exemplars seemed to close in and become present ends. Men acted not only for a distant duty but for well-being here and now. The result was to accentuate the opposition between this world and the next. Thus, the *Contra Gentes* praised human nobility surpassing community-service, and then in the next chapter acquiesced without protest to slavery as an inevitable consequence of group-life.[3]

Similarly, the *Summa Theologica* extolled the virtues that spurn all earthly and political considerations, and then went on

[1] *II Sentences*, XLIV, ii, 2.
[2] *III Sentences*, XXXIII, iii, 1, 4a. XXXVI, i, 1. 2a–2ae. 1, 1. 2.
[3] III *Contra Gentes*, 80, 81. See 2a–2ae. civ, 6, *ad* 1.

to put the good life under the sway of civic and legal justice.[1] In one place he wrote of the heroism of the solitary life, in another of its monstrousness.[2] These points give some indication of the stresses to which his social and political dialectic was subject. This much may be ventured by way of simplification, that he began by bringing out the traditional dignity of persons against the threat of tyranny and ended by presenting an Aristoteleanism so mature and charged with Christianity that the power of the political community could be concentrated without danger of regimenting people like units in a mass.

He was fighting on two fronts: on one he took the offensive against a new rationalism, on the other he held a defensive position against an old obscurantism—the term is not altogether fair. He attacked the Latin Averroists and was attacked by the Augustinian theologians who granted no free field to reason and, occupied with noble essences, were spiritually fastidious about plunging the mind in matter. No doubt some of these were heresy-hunters, but others were no prescribers of scholarship; men like Robert Kilwardby and John Peckham were no less speculative than he was, and rather better versed in the natural sciences.

How common cause could have been joined from these opposite camps may be suggested by the reflection that a believer who allows that strictly rational conclusions can be elaborated contrary to faith may well find himself in partial agreement with the believer who has no use for pure philosophy and occupies himself solely with a religious philosophy based on faith and experience of the Christian fact: in their different ways both suppose that split between faith and rational science which St Thomas deprecated. Somewhat after the same fashion, a statesman who followed Machiavelli might easily adopt Traditionalism as a practical stand: thus some of the nineteenth-century publicists for Throne and Altar dismissed Rationalism together with the French Revolution and sought the foundations of social stability in a religion to which they did not subscribe.

[1] 1a–2ae. lxi, 5. 2a–2ae. lviii, 5. (1a–2ae. xxi, 4, *ad* 3 may also be contrasted with 2a–2ae. lxv, 1).

[2] 2a–2ae. clxxxviii, 8. *I Politics, lect.* 1.

The opposition of the conservative theologians to St Thomas did not come to a head until after his death. They esteemed his character but objected to his views as earthbound. Did he not reject the idealism of divine illumination for an empiricism derived from the senses, the soul as spirit for the soul as substantial form of body, the dominance of faith for the autonomy of reason? These are psychologico-theological questions, and their social and political implications were not yet drawn out and debated. Other signs of his innovating spirit also appeared. For instance, was he not sacrificing the sturdy temper of freedom by tightening the discipline of the political community?

The *Summa Theologica* was less prepared to resist trespass by the ruler than the *Commentary on the Sentences* was, and much less than John of Salisbury who put a tyrant under the ban of the law. There was a paradox here, for St Thomas had learnt from Aristotle the distinction between the *jus politicum* observed by equals among themselves and the *jus dominativum* and *paternum* exercised over dependents and that the first was more excellent, being justice pure and simple.[1] One might have expected a ruler to have been more subject to restraint in the polity of the thirteenth century than in the paternalism of the twelfth. This, however, is to leave out of account the diminishing force of custom due to the growing acceptance of the principle that the monarch is more than the people's vicar but a personified power who *motu proprio* can make laws. He did not favour these tendencies, rather the reverse, nevertheless they were in the logic of part of his thought, and as his Aristoteleanism developed so he favoured a closer political integration and the ruler's elevation above popular whim. The *bonum commune* was godlike and far transcended the *communitas domestica*. Men while still on earth were citizens of no mean city. The State was an institution more august than any mere combination against crime. The enhancement of its authority inevitably followed from such convictions.

We were not made to live as solitaries, he remarked, and only a strange grace made us such; by nature, that is by God, we are social and political animals. *Quod quidem naturalis necessitas declarat.*[2] St Albert, characteristically blunter, declared that the

[1] *Politics*, v, 10. 1134 b 8. St Thomas, *lect.* 11. [2] *de Regimine Principum*, i, i.

good life was for a man who lived by himself, the better for a man who lived in his family, the best for a man who lived in his city or political community. A lonely man, Moerbeke remarked, was the *affectator belli* denounced by Homer—'clanless and lawless and hearthless is he'.[1] St Thomas, however, remained sensitive to those supernatural virtues which did not directly and manifestly advance social welfare; they enhanced man in the individual, not man in the mass. Whereas St Albert took Diogenes the Cynic as his example of the recluse, he preferred St John the Baptist and St Anthony the Hermit. Despite his insistence on the claims of the community and the texts alleged by supporters of the Corporative State between the World Wars to prove him no liberal, he was concerned to emancipate persons from subjection to any human group or scheme, and his general social argument mounted to the teaching of the last two tracts in defence of the friars, *de Perfectione vitae spiritualis* (1269) and *contra Retrahentes a religione* (1270), that the contemplative life was superior to any career of administrative or productive usefulness.

He recognized, more so than his predecessors, the value and soundness of created things, God-given and inherent. The world might go on for ever—our reason could not tell us to the contrary. Human nature was not completely corrupted by sin—*id quod est naturale totaliter perdi non potest.* Moral activity revolved round certain enduring types and could be classified apart from the circumstances and personal motives which provided their special but passing individual interest.[2] His metaphysical theology extended and deepened the dependence of creatures on God; the first and creative cause was not just one factor which originated a process but was the sustaining ground and mover of the whole reality produced. Everything shivers on the brink of extinction but for divine power and mercy, yet God cherishes all the things he has made and by him they are real in themselves.[1] St Thomas wrote like a man quite at home in

[1] *Politics*, i, 2. *Ethics*, x, 10. 1180a 28. *Odyssey* ix, 114 was also quoted by Plato, *Laws*, iii, 680 B. St Thomas *I Politics, Lect.* 1, 2. See *X Ethics, Lect.* 10, 15 St Albert, *I Politics*, cap. i.

[2] 1a. xlvi, 1, 2. *Opusc.* xxv. *de Aeternitate Mundi contra murmurantes* (1270). 1a–2ae. lxxxv, 1, 2. 2a–2ae. lxxvi, 1. 1a–2ae. xviii, 1, 2.
T. Deman. *Aux origines de la théologie morale.* Montreal, 1951.

his surroundings as he found them; in accepting them we could not be too natural or in explaining them too rational. He was no ethical formalist who divorced right from good, or ought from can, or even, one may say, duty from pleasure. *Deus impossibilia non jubet*, said St Augustine.[2] And St Thomas would have spoken more strictly of potentiality rather than possibility, for, at a level more profound than that of miraculous intervention in a local scheme of reference, he never thought of omnipotence doing violence to the things it creates.

Of two typical Christian approaches to social problems, one takes the order of natural justice perceived in this world and trusts to good sense, since sin has not radically corrupted the human faculty of legislating; the other is more apocalyptic and certain of the vanity of everything apart from the revelation and grace of God. The difference between the Latin Catholic and the German Protestant outlooks which appears at oecumenical congresses is deep-rooted in theology; its historical consequences, which allow of no simple contrast, have been unexpected, for if, in fact, Protestant regions have offered more for the economist to admire, Catholic regions have offered less for the medical psychologist to deplore—success may be variously judged, and the test of making a living is not that of leading a happy life. It is clear that St Thomas must be ranged among those who start from this world and never arrive at the need for vilifying it.

His effect on the mentality of his own Order was perhaps deeper than that of its founder. Aristotle was not reckoned a Christian author, and the early Dominican authorities were guarded about welcoming him and legislated to keep profane knowledge within bounds; that was to be changed. Whereas St Albert grumbled at the obstructions to the study of natural philosophy put up by his brethren, St Thomas passed them by, and wrote in the manner of one taking it for granted that any topic of human interest should be studied, and that without detriment to theology. His was the confidence of a contemplative mind seeing truth everywhere, of an aristocratic temper not easily put out. It was not unjustified by his surroundings.

[1] 1a. xlv. 1, 2, 3. xlvi. 3, *ad* 2.
[2] *de Natura et Gratia*, 43. PL xliv, 271.

Individual life might be brief and bloody, his family from the border between Pope and Hohenstaufen was rent between divided loyalties and his own kin were killed when Charles of Anjou was establishing himself in Naples; all the same there were reasons to be sanguine. The joy of the world was sung by an Easter Sequence of the time—

merula, monedula, cuncta volucria,
saecula futura canunt aurea.

Manichaeism had been mastered, and the evangelical movement canalized in the friars; the Crusades were not yet a hopeless cause; Orthodox and Romans, despite the shock of the sack of Constantinople, were at least in communication; papal schisms and the Black Death had not brought decay. In England, soon to be ruled by Edward I, the Common Law was being formed; in France the king and fount of courtesy was St Louis who dispensed justice under an oak-tree and helped his subjects to heaven while striving to give them a good life now; in Germany the choir of Cologne and the west front of Strassburg testified to St Albert's versatile genius. Cathedrals, monasteries, parish churches were being rebuilt; universities were being founded; political institutions were being constructed. Stone was carved in more living shapes, glass glowed more brightly, painting found less hieratic forms and music sweeter modes.

The season was late spring and the shape of things, not yet covered by foliage, could still be seen. The light was gay not leaden, the climate clear despite the passing overcast of apocalyptic rumour—according to Joachimite prophecy the Eternal Gospel was expected to dawn in 1260. The Spirituals had not yet gone queer nor were they dubiously allied with secularists and positivists; the Children's Crusade was a memory and the mass-hysteria of wandering flagellants still in the future. More than a hundred years separated the religious revivalism of two Dominicans, Blessed Jordan of Saxony, second Master-General, and St Vincent Ferrer. How different they were—the first attracted young men *potius humanitate quam severitate*, conducted an inhibited correspondence with Blessed Diana d'Andalo and after his death in shipwreck off Acre appeared to his friends as a cheerful apparition; the second was the Angel of the Judgment

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who excited his hearers to God's love *terrore concussos atque a terrenis affectibus evulsos.*[1] By then the autumn had come and the religious devotion to sadness and death. We must be careful of simplification however; St Vincent, for instance, was a master of logical theory and his fame now grows in quarters unmoved by hell-fire sermons.

The times were unlike those of St Augustine when civilization was going down in ruins. Although the Turks were destroying the Latin principalities in the Levant and had occupied the hearthland of the Byzantine Army, the Cuman Tartars had been repelled and the frontiers of Western Christianity were being extended to the north-east and south-west. Cistercians and friars accompanied the soldiers. The land was reclaimed, great churches were built, schools were opened in the towns. Iconography shows St Thomas calm and sedate, a book on his lap, his fingers expository; he is not proclaiming, denouncing or wringing his hands. He was singularly free from the homilists' complaint of living in bad times. Perhaps he lacked the tragic sense. Both the glory that is to come and the present mystery of grace were grounded on physical things; the lowlier they were the better they shadowed divine light.[2] He really did hold that matter was real.

Pagan rulers possessed valid authority to govern Christians because the divine law, which is from revelation, did not abolish the human law, which is from natural reason; both mutually sustained one another according to the principle that grace perfected nature[3] He wrote nothing to support those chaplains who advised their lords on crusade that there was no duty of keeping faith with infidels. The divine exemplars were not only ideal types, high in the heavenly places, separate and remote from the world; they were present ends which entered into and shaped human activity. We were surrounded by real objects, to be respected and served for themselves and not merely as occasions for reaching out to something else; in

[1] M. Aron. *St Dominic's Successor.* London, 1955.
B. Altaner. *Jordans von Sachsen, Die Briefe.* Leipzig, 1925.
2nd Nocturn Lessons. *Dominican Breviary,* 15 February and 5 April.
[2] 1a. 1, 9, *ad* 3.
[3] 2a–2ae. x, 10.
1a. i, 8, *ad* 2. ii, 2, *ad* 1.-lxii, 7. 1a–2ae. x, 4. *de Trinitate,* ii, 3.

particular the political community was endowed with true rights which depended on no supernatural intervention and deserved virtuous service apart from ecclesiastical command.

This acceptance of present reality countered a *contemptus mundi*, peevish or merely trite. His sympathy for living purposes coursing through physical processes and his insistence on the presence of sensibility in natural science and of individual appreciation in moral conclusions forbade a rigid grid being set on the social group. No Aristotelean philosopher could then be committed to an artificial scheme, an academic version of a medievalised Roman system, however august its genesis or successful its vogue. The Dominican Church at Bologna, where St Dominic lay buried, served as the headquarters of the jurists; there St Thomas attended a General Chapter of his Order, but his spirit was easier than theirs, and his jurisprudence closer to the humanism of Placentinus—'the only poet among the Glossators', remarks Kantorowicz[1]—who had emigrated to France weary of the unbending orthodoxy of the Italians.

He did not resent present earthiness, economic considerations or enlightened self-interest in morality, nor did he condemn the profit-motive. He made no apology for taking men as he found them. Private property meant the dignity of personal responsibility in administration, therefore to be advocated; exclusive enjoyment was an abuse, and therefore to be censured, for all should share in the fruits of the earth. Like Aristotle he was suspicious of short-cuts to Utopia, and agreed with the criticism that Communism was a specious benevolence, doctrinaire and indifferent to actual experience.[2] Repeatedly he insisted that a lively prudence should point and particularize the judgments of moral science, since these by their very generalization were too sweeping to fit unique individual cases. Social stability demanded that laws should be constant and not too easily repealed; on the other hand justice should not lay down a flat and unvarying *ought*.

A cleric gentle and generous about lay values, he was a man of Paris, not of Bologna.[3] The artists mourned his death, and

[1] *Glossators*, p. 203.
[2] *Politics*, ii, 5. 1263b, 1264a. St Thomas, *lect.* 4, 5.
[3] For a comparison of the two universities, see Rashdall, *Medieval Universities*, i, pp. 136–7, 262–4.

Siger of Brabant offered no mere conventional gesture of condolence to the Dominicans—possibly controversy had brought the two men closer together. Dante placed them together in the *Paradiso*. Both attempted to open up a field where reason could operate without interference from outside or servility to superior orders. What St Thomas strenuously opposed was the Double-Truth theory, that faith and reason could contradict one another without either being the worse; instead he pressed for a greater effort of penetration into the processes of each and of elaboration of their common analogies.

An ethical doctrine which issued from the study of Aristotle could be studied in abstraction from the supernatural. The difference lay in the nature of the abstraction. The system of the Latin Averroists could be represented as none of the Christian theologian's business: it could be alleged to respond to a concrete historical situation, namely the self-sufficient, self-governing civil community, and therefore might be developed apart from the rules of the Christian revelation. To the Thomists, however, the City was but one formal interest to be developed in harmony with many others. Their line of thought, the middle way between the extremes of political Averroism and political Augustinism, stretched through Godfrey of Fontaines, Giles of Rome, Ptolemy of Lucca, John of Paris, and Remigio di Girolami. It influenced writers such as Nicholas Trivet and Walter Burley, but not the men who shaped affairs.[1] Simplifications usually score the political success, and in the event the Averroists won, for the Augustinists were driven from one position after another until they played no more part in policy than Liberals in the age of Communism and Fascism. The Canonists had been their *corps d'élite* and when they were relegated to household duties within the Church secularism ceased to be disputed on the field of State.

The political theory of the early Latin Averroists, as already observed, can only be guessed at from the few texts which

[1] G. de Lagarde. 'La Philosophie sociale d'Henri de Gand et Godefroid de Fontaines.' *AHDL.* XIV, pp. 73–142. Paris, 1943–5.
Conor Martin. *The Commentaries on the Politics of Aristotle in the late thirteenth and early fourteenth centuries, with reference to the thought and political life of the time.* Bodleian MS. D.Phil. c. 211. Oxford, 1949.

remain to us.[1] It is possible to read back into them the idea of a City of Reason apart from Christendom, a *humana civilitas* not amenable to revealed religion, less preoccupied with rewards hereafter than with the proper conduct of affairs here and now. Yet no evidence is forthcoming that the supporters of the doctrine of the single *intellectus agens* in fact advocated an overmastering State, or would lose the individual in the network of universal ideas. The play of ideas is less simple and consistent in history than in logical debate. In any case there seems to have been an ironical quality about the character of Siger and his friends, and about the *invidiosi veri* they argued, almost as though they were *frondeurs* with no stomach for a centralizing absolutism.[2]

The ecclesiastical prohibitions against philosophers dabbling in divinity probably widened the gap between reason and faith. The Faculties of Arts, now in possession of rich new material from Aristotle, could claim immunity so long as they made no theological pronouncements—perhaps the Double-Truth theory was more tactical than doctrinal, an attempt to seize an advantage, so that henceforward moral and political philosophy could be studied in isolation from the customary precepts of Christianity and the teachings of the theological moralists and canonists.[3]

The civil lawyers hastened the process. Indeed, lay control of the State was the work less of philosophers basing themselves on Aristotle's *Politics* than of legal scholastics developing the Roman Law. Both combined to establish the condition of a State which acknowledged no authority but its own, and where policies and laws could proceed without reference to ecclesiastical authority. Even in Venice, that *città apostolica e santa*, the Inquisition was admitted but reluctantly, and then on condition that it was supervised by three citizens of the Republic. In

[1] F. Stegmüller has edited a text which refers to the common good. 'Consequenter quaeritur utrum aliquis possit magis amare alium quam seipsum.' *RTAM*, iii, pp. 158–82. Louvain, 1931.
R. A. Gaulthier. 'Trois commentaires avérroistes sur l'Ethique à Nicomaque. *AHDL*, xvi. Paris, 1947–8.

[2] Dante. *Paradiso*, x, 133–8.

[3] G. de Lagarde. *Naissance de l'esprit laïque au déclin du moyen âge*. iii, p. 46.

practice the silencing of the Church meant the silencing of religion. A purely secular social morality proved unable to stand on its own and Natural Law sentiments were to persist, and so were those of Christianity. All the same, when Machiavelli separated diplomacy and the mechanics of government from morals he split apart what had been cracked already two centuries before, and so prepared for the positivism of modern times. Before long the State was conceived as the organization of human wills for social ends about which revealed religion and personal morals could have no say. The vein of State policy was worked apart from other values, and *Staatsräson* came to exist for its own sake as a sufficient guide for action.[1] Similarly human law sought no outside justification, and was presented as what in fact had been enacted and what in fact will be enforced.

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[1] F. Meinecke. *Machiavellism: The Doctrine of Raison d'Etat and its Place in Modern History.* Tr. D. Scott. London, 1957.

V

THE ADVANCE FROM THE THEOLOGIANS

To the extent that they determine the complexion and features of a community, political science is the study of the agreements and institutions of men living together, and of their laws, natural, customary and enacted.[1] This was especially true in the Middle Ages. In order to discover the social teaching of the theologians we must turn to their treatises on law. It will not surprise us if, by comparison with the jurists, we find them concerned less with the processes of legislation and more with the nature and underlying principles of law itself.

The Greeks cast forward to the purpose of political authority without dwelling on its legal titles; they required that it should serve the good life, and applied this test to the successive types of government under which they lived. The Romans, however, looked back to the origins of authority; they conceived the common good juridically as the public good. The questions arose, Where did power reside? and, By what right was it claimed? The philosophically-minded spoke of a pact entered into by the people on the grounds of ordered security, the legists translated that into a transference of power from the people to the prince. The academic cast of mind in the Middle Ages was more Roman than Greek, hence the theologians conducted their examination in terms rather of legal and religious rights than of biological design.

Influenced partly by the concepts of a juridical philosophy to which no *res publica* was possible without legal bonds, and which defined the people as the coming together of a considerable number of men who were united by a common agreement about rights and duties as well as the desire to participate in mutual advantages, and partly by the concepts of a religious philosophy which saw the whole universe ruled by the divine order revealed in the Scriptures, the medieval theologians were convinced that no just secular power existed which had not

[1] W. S. Holdsworth. *A History of English Law*, iv, p. 233. London, 1924.

been constituted by law, and that there is no law except from God.[1] Law is null, said John of Salisbury, when it does not bear the image of divine law.[2]

To their way of thinking law was much wider in scope than the civil law of the State, and by *law* they meant not just a claim on our emotions or our 'moral sense' but a rational command inducing a real obligation. This fact should be remembered; at the same time we must allow for an ambiguity of usage. Whereas legists sought for an historic pronouncement, moralists thought of a law present and operative before political institutions were devised and civil laws enacted. Both could claim obedience only in virtue of their emanation from or dependence on anterior divine precepts. The theologians described the moral conditions of just authority, and much farther than this they did not go. If some of them looked for a divine deed of grant and expected to discover the title to political power among Church documents either from the Scriptures or from Christian tradition, most of them did not inquire into the supposed historico-legal act which constituted sovereignty.

Here there was little advance in doctrine during St Thomas's lifetime. He underlined the moral requirements for the acquisition and exercise of power without which the ruler is an usurper who cannot command the obedience of Christian men; he set the State—and for that matter the Church as a juridical institution—under the Eternal and Natural Law; he encouraged no theory of a power able to maintain itself legally apart from the moral order. Yet, as will be seen in the next chapter, he would not thereby have all laws and political decisions drawn by logical inference from the precepts of social ethics.

The Natural Law in those days did not carry its eighteenth-century sense, namely the rational order consonant to man in a state of pure nature without the accretions of convention and superstition; nor was it a kind of super-system set above the

[1] *Populus est coetus multitudinis juris consensu et utilitatis communione sociatus.* Cicero, *de Re Publica*, i, 25. Trans. G. H. Sabine and S. B. Smith. *On the Commonwealth: Marcus Tullius Cicero.* Columbus, 1929.

Quoted 1a–2ae. lv, 2 from *de Civitate* Dei ii, 21. *De Re Publica* was not named as a source.

[2] *Policraticus*, iv, 6.

provincial bodies of civil law. By the thirteenth century men had learnt from Aristotle and contrasted the *naturale*, a thing's movement from within called the *voluntarium* in the case of activity aware of its goal, with the *violentum* or the *artificiale*, a movement imposed from without in which the subject did not co-operate. The contrast was developed when Natural Law, divinely implanted in us, was compared with Positive Law—whether civilian or canonical—which we ourselves constructed.

Now thoughtful theologians never had thought of the Gospel Law as an artificial code. Its rhythms were developed from the impulses of our deepest being. It was Natural Law taken to the heights. Yet not until the *Summa Theologica* was written were the harmonies found. For if we picture horizontal levels or strata when we adopt the term *supernatural*, then of course the laws of grace move in a region higher than those of nature. Whereas if we take a vertical system of reference for the ascending motion of men from their lowliest beginnings to their highest perfection and apply *supernatural* to the laws of grace, then we run the risk of making them preternatural, non-natural, and, by a fallacious slip, unnatural. Hagiography and the literature of conversion dramatically heighten the theme of the violence offered to nature by grace. They belong to individual psychology but may well be extended into social psychology by a system of external regulations, penitential and otherwise. Grace may then be made to appear against the grain; religion may be delivered bound up with protocol. The effect may be heroic or merely mannered, yet on a point of theology the effect of force, strain and violent invasion, the idea that God has to break before he can make, should be subordinated to the classical teaching that grace, although beyond our ability and merit to acquire, is connatural to us in its mode of activity.

Corresponding to these horizontal and vertical lines in our illustration, *nature* was also taken in two senses. One was Latin, and signified a thing's due position, stage, or status in an ordered scheme; the other was Greek, and signified rather the immanent purpose springing from within a thing and reaching out to its highest proper goal. When the two were confused then what was supernatural with respect to the first tended to be taken as unnatural with respect to the second. Similarly,

when the civilized was contrasted with our primitive condition the suggestion followed that a certain artificiality was a condition of good society. This could cloak a subtle and complicated sort of violence, as though true civilization did not make for simplicity and ease of manner.

St Thomas was ahead of contemporary theologians when he perceived that it was the business of rulers and lawyers, not directly of moralists, to enact positive laws and to determine their significance.[1] He voiced the change taking place in the legislative functions of the State, for as the administration grew more constructive so it was found that the new laws which had to be made could no longer be described merely as restatements of old customs. They were decided more by future political advantage than by past habits—at least that was the drift, and eventually, as we read in Burke, long established natural rights discovered empirically in a continuous social tradition were to be upset by a theory of doctrinaire politics, and the French Revolution turned its back on dead Frenchmen.[2] Already an act of princely will was being substituted for consultation with the people and their consent. Afterwards as law grew more technical so the study of it concentrated more on the details without reference to wider values.

Such is the logic of specialism. Aristotle had noted the saying of Gorgias of Leontini that citizenship in Larissa depended on the act of the magistrates or citizen-makers; this, commented St Thomas, was merely a statement of fact which provided no explanation.[3] A subaltern science can furnish no reason for its premisses. These it can accept only from a higher science. Legal science is no exception. Left to itself it cannot go much farther than defining crime merely as what will in fact be punished, and punishment merely as what will in fact be imposed for crime.

There was no sudden break with the past in this trend towards legal positivism in both Church and State. For that in effect was going on. Once it was recognized that Positive Law

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[1] O. Lottin. *La morale naturelle et la loi positive d'après saint Thomas*. Louvain, 1920.

[2] C. Parkin. *The Moral Basis of Burke's Political Thought*. Cambridge, 1957.

[3] *Politics*, iii, 1. 1275 b 27. St Thomas, *lect.* 1.

could not be wholly evaluated by moral premisses it was bound to keep pace with an artificial technique for creating laws which slowly displaced the method of adapting old customs to meet new situations. Nevertheless all through the Middle Ages, and beyond, to the Spanish Scholasticism of the early Baroque and to the high Whig period, edicts which hampered men's moral and religious duties were not reputed to be laws at all. In other words, they were checked by standards outside the province of specialist lawyers.

1. *Law in Nature*

Lawfulness, then, represented an idea more far-reaching in medieval than in modern times; it stretched back to a primeval rightness in things and forward to justification through grace. Like the human mind itself as pictured by psychologists of the Unconscious, it could be compared to an iceberg most of which is underwater and out of sight. The political and legal shapes of conduct appearing above the surface of consciousness and deliberation were configured to a theological understructure; beneath lay a mystery apprehended only in the darkness of religious faith. The Roman Law itself, the classical monument of Empire and the rational instrument of public order, had its origins in the hearth and home; below the property preoccupations were the rites, sacred and nocturnal, which were to the lucid forms of its later structure what falling in love was to the conventionalized concept of Roman *amicitia*.[1]

Ends as well as origins determined the organization, which contained its own purposes even less completely than it articulated all its material. Beyond this world rose another, and this, to which we were bidden by the moral precepts, was not contained within the visible structure of legality but overspread it from above. Cardinal Manning observed that all controversies were ultimately theological—even the denial that religion has anything to say was at bottom a theological statement. Our views on politics should be resolved by what we think men are and what they are for. And so political theories are largely our answers to questions about the nature and limits of

[1] See C. W. Westrup. *Introduction to Early Roman Law. Comparative Sociological Studies: The Patriarchal Joint Family*. 5 vols. Copenhagen–London, 1934–54.

the laws binding us together. Unless we grasp this our actual policies will be fumbling, for opportunism no more supplies for lack of principle than appeasement for not being provided with defensive and offensive plans together with the means of carrying them out.

Theoretic doctrine is implicit in most acts of State, and perhaps nowhere more forcibly than in Great Britain, where some principles of domestic and foreign policy and some social convictions are so firmly embedded in the instinctive layers of community-life and so taken for granted that they are scarcely talked about. It is difficult to overestimate the importance of extra-political factors: without them Alfred could not have restored Wessex, nor this country fought back after Dunkirk. They are necessary not only for national survival but also for the smooth running of the State. The acceptance of a law presupposes a sense of social obligation. A government's chief need is to be trusted. Even a contractual theory of the State fails if it forgets that contracts are binding only by virtue of the moral duty of keeping promises, which duty does not itself derive from contract. Public efficiency relies on motives of emotional, moral or religious colour. Cicero's saying, *fundamentum justitiae est fides*, faithfulness is the basis of justice, which anticipated Locke's notion of trust, was quoted with approval by Vincent of Beauvais.[1] In short, political and legal action alone cannot create the social impulses which are the conditions of its success.

St Thomas manifestly respected legality and on occasion showed himself well versed in a juridical medium. His interest, however, lay in the living social principles behind law, not in technical expertise; his thought was not built into the architecture of the Roman Law, but dwelt outside and looked to it merely for a convenient reference. He noted some points at which theology touched it, and occasionally developed a legal notion particularly on questions of Church order. For the rest, however, the *Summa Theologica* could have been composed had Accursius or Gratian never written, even perhaps had the Glossators and Canonists never made much stir. At a time when St Raymond of Pennafort's *Summa Casuum* and the

[1] *Speculum Doctrinale*, iv, 30.

alphabetical repertory of Monaldus were setting the fashion of drawing theology into canon law, he preferred to settle an issue by the inherent evidence and not by an appeal to an official or semi-official ruling. He was a contemporary of Accursius and Hostiensis, yet it is surprising how sparing was the use of formal law in his argumentation. There was no hint at all that the lawyers were going to dominate the following generations at the expense of philosophers and theologians.

Legalism and rationalism are similar for liking their concepts sharp, tidy and dispassionate. He shared the taste, yet kept the continuity between the impulses rising from the racial and cultural group which are at work in the making of law and the intellectual content of its formulation. This closeness of the *material* and the *formal* ran through his whole philosophy, particularly in his psychology of man as one single substance composed of body and spirit. His theory of knowledge saw no deep gulf between the physical and the mental; material existence was given the authentic kick of reality.[1] The same conviction came out in his social doctrine which recognized that physical power might be invested with moral right; in other words, that virtue might use force, as in war and capital punishment. *Naturalis ratio* was set in the flow of events as well as in intellectual patterns. The antithesis of *Bios* and *Logos* was not laboured. The Stoics had identified *natura* with *ratio*, but for St Thomas this *ratio* or meaning was an actor not a spectator, a shaping purpose not just a logical essence.[2] Consequently he was more generous in extending the term *natural* to all manifestations from within. It included unconscious and animal drives as well as deliberate choices. An authentic Aristotelean, he held that the existence and nature of a thing can be known only by an act of judgment charged with sense-perception. All living things in this world, men not excluded, reach to their final ends though physical movement and passion. Accordingly he did not dichotomize what is instinctive and what is construed, what is uninhibited and what is conventional, what is found and what is enacted.

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[1] T. Gilby. *Phoenix and Turtle: The Unity of Being and Knowing*. London, 1950.

[2] G. M. Manser. *Das Naturrecht in thomistischer Beleuchtung*. Freiburg, 1944.

It is as though his epistemology led him to reject the *propter peccatum* position of his predecessors, for the pressures proper to the earthly level of existence, the *contrapassum* or give-and-take of physical forces, the eat and be eaten, the inward organic changes, the burdens borne because we belonged to this world, were not in themselves punishments, though sin of course greatly aggravated the suffering.[1] Mechanics could be taken into morals—the terms were not profoundly opposed—might into right, this world into the Kingdom of God. He accepted the fact that power-politics has the last word but one. If the wicked are allowed they will do as they like; it is the job of the virtuous to stop them. Hence just laws must command superior force. About this he was not at all apologetic. Grace was not content with denunciation of abuses or with passive resistance to the powers of this world or with non-cooperation and pacificism. Physical force was not the ultimate form of persuasion, yet its exercise could be an inescapable duty. Material might by itself was admittedly brutal, but it could be ennobled by right, and then was not, as Augustinists held, merely excused.

The civilized community was not an arbitrary enclosure within a wilderness inhabited by forms and ideas, a select residential area, as it were, away from the slums of matter and the mob of facts. Surprisingly little pessimism came from St Thomas or talk about 'this wicked world', but instead a note of benign worldliness hitherto unsounded in theology. Of course the times were congenial to this liberal temperament. The tension had relaxed since St Augustine had defended Christianity when the 'evidences' of religion were still pagan: he yet had the vision to rise above his circumstances, and apprehended that the things above were better than the things below, but that both together were better than the things above by themselves.[2] Now, however, the general social assumptions were Christian, orthodox or not, and accepted to some extent by Moslems and Jews. The Church had assimilated the world, and theologians in consequence were not so edgy about it. St Thomas seems genuinely to have liked physical nature. It was the only basis on which he could think. He

[1] See 2a–2a. lxi, 4. *Ethics*, v, 5. 1132 b 21. St Thomas, *lect.* 8.
[2] *de Civitate Dei*, xxii, 24.

accepted its conditions, among them that men should mix together in order to live the good life and observe the conditions of their material environment.[1]

Furthermore he held that all departments of knowledge should respond to experience and to one another. If such contact be demanded of the theoretic sciences, such as dogmatic theology and metaphysics, then still more must those which deal with practical answers to problems of conduct keep close to the here and now. The moral, political and legal sciences are false to themselves if, like a die-hard dreaming of the good old days, they make imaginary constructions without reference to current history, psychology, and economics.[2] Statesmen and lawyers enjoy liberty within the limits of their business, nevertheless they should be sensitive to the infra-legal and supra-legal demands of social organisms. The State they serve should not be sealed off from a more universal human community and society. The Natural Law was neither the relic of a past Golden Age nor a bare external measure pronounced in a few simple statements, but a driving reason, supple and manifold, a *participatio legis aeternae* communicated to human beings which should run like the ground-bass through all political and legal activity. Hence political and legal science should consult theology, as theology should consult psychology, and psychology biology and physiology, and all should consult history and one another.

Imprinted on all natural beings, the Eternal Law charged all their activity with meaning and purpose, and this *impressio activi principii* was like the promulgation of a country's law to the subjects who are to obey it. The whole *universitas rerum* was a commonwealth in which non-rational creatures were gathered into God's reason, as our bodily members into ours, though there was no question of choice in the matter.[3] As hands can

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[1] 2a–2ae. clxxxviii, 8. *III Politics, lect.* 5.

[2] E. Welty. *Vom Sinn und Wert der menschlichen Arbeit, aus der Gedankenwelt des hl. Thomas Aquina.* Heidelburg, 1946.
A. F. Utz. 'Aushöhlung oder Dynamik des Eigentumsbegriffes?' *Divus Thomas,* xxv, pp. 243–54. Fribourg, 1947. *Gemeinschaft und Einzelmensch, Eine sozialmetaphysische Untersuchung, bearbeitet nach den Grundsatzen des hl. Thomas von Aquin.* Salzburg, 1935.

[3] 1a–2ae. xciii, 5, *ad* 1, 2.

be thoughtful so physical things can be lawful. There in the Eternal Law, said Bernard Sylvestris, is found whatever the reason of angels and men can comprehend; there whatever heaven holds under its wide arches.[1] Thus spoke the Nature-welcoming humanism of Chartres when in the words of the contemporary lyric,

hiemale tempus vale!
aestas reddit cum laeticia.

For St Thomas the worlds of mind and of matter were never far apart. By securing the first link in the chain of law to the material world he was spared the embarrassment of those divines who could never theoretically reconcile the application of force and the sway of love.

Their antithesis of Nature and Convention magnified the results of the Fall. Man's original ease and freedom had gone and henceforward the law which ruled him was profoundly penal in effect. They were there to curb his sinful nature, and though they were imposed by divine decree or by human will with divine permission, they came to terms with evil in order to limit its effects. They were concessions to the reign of force and the rights so created were artificial, pragmatic and remedial rather than native, noble and valuable in themselves. Slavery, governmental power of coercion and the exclusions from ownership implicit in a system of private property were institutions which prevented anarchy and guaranteed some stability in social life. All three were grouped together. Dig into their foundations and you would see that they were built on past acts of forcible acquisition.

It is true that they had been afterwards validated by prescriptive rights, nevertheless the flaw of sin stretched underneath. The authority of the State was affected, since Christian righteousness had not gone into its making. *Remota justitia quid regna nisi magna latrocinia?* What was the realm but robbery writ large?[2] Taken out of its context the phrase over-simplifies St Augustine's thought and misses his Roman pride. To those, however, who made a slogan of it, the core of political power was in a sense unsound. True, Christians owed the duty of

[1] *de Mundi Universitate*, i, 2. Edited C. S. Barach. Innsbruck, 1876.
[2] *de Civitate Dei*, iv, 4.

obedience and, since the conversion of the West, temporal power was vested and consecrated with a blessing; all the same an Augustinian could never quite pay it the reverence possible from a theologian of the Aristotelean School.

The relations of natural and positive rights were further complicated by the prestige of Ulpian, called simply the Jurist, *Jurisconsultus*, whose writings composed a third of Justinian's *Digest*. One of his most-quoted texts treated Natural Law as common to all animals. It ruled instinctive adaptation to environment, thus the mating of male and female, whereas human law was a business of deliberate and civilized adjustments.[1] This zoological reading was offset by the Stoic doctrine that law was reason, *lex est summa ratio insita in natura*, and by the authority of St Isidore who adapted Gaius and defined natural law by the test of universal human acceptance, *commune omni nationi*, not *commune omnibus animalibus*. All the same there were grounds here for an exaggeration of the difference between primitive nature and cultivated reason, between the wild and the domesticated, especially if the etymology of nature from *nascitura* were emphasised.[2]

Then also a theological undercurrent of suspicion ran against *nature*, whether accepted in a primitively animal or in a sophisticatedly rational sense. The distinction between the natural and supernatural worlds in which men live had not been refined before religious writers discovered Aristotle. The conflict between flesh and spirit was equated with the conflict between nature and grace; the conflict between worldly and heavenly wisdom was the conflict between reason and faith. The corruption of the body could be vividly dramatized, that of the soul was less sensible. The allurements of sin appeared in secular guise. The dogma of bodily resurrection told the theologians that flesh could be taken into spirit without being etherealized; they were less convinced, however, that reason could be taken into faith and remain reasonable. The Franciscan and early Dominican masters refused to entertain, even if they considered, philosophy apart from theology. An exception might be made for logic, and men like Grosseteste and

[1] 2a–2ae. lvii, 3.

[2] 1a–2ae. xciv, 4, *sed contra*. 3a. ii, 1. *Etymologies*, v, 4. PL lxxxii, 199.

Kilwardby, advancing beyond the findings of the Greeks and Arabs, ranged over the fields of pure mathematics, natural philosophy (with particular attention to the nature of light), scientific method and technology.[1]

Despite the influence of the schools of literary humanism and affective theology nourished by devout meditation on the Scriptures, religious thought was already tending to stiffen into a sabbatarianism which the growth of law inevitably aggravated. For a brief period the revival of Aristoteleanism halted the process and invigorated theology. A divine meaning and purpose running in and through natural processes was caught sight of, and law itself was then treated as part of the ascent of man to God. If Aristotelean Scholasticism presently hardened into its own sort of formalism, it bequeathed the lesson, never quite forgotten in theology, that nature should be confidently accepted and experimentally investigated.

It also averted the danger that the Christian precepts, because they inculcated conduct surpassing commonsense, should thereby flout the ordinary decencies—a sort of Léon Bloy heroism at its best, and, in decay, a system of magical thinking. They could have been made to appear like so many articles of positive law, august yet arbitrary, laid on from outside and above without respect for human nature. From *supra-national* to *extra-natural* is an easy transition, and thence to *artificial*. The descent into *sub-natural* is not unknown. The morals without religion of a secularist culture can be weighed against the religion without morals elsewhere. It is a matter of taste whether you find yourself more at home in Stockholm or in Dublin, and a matter of debate which is the less admirable.

St Thomas can scarcely be called a Pelagian—indeed during the controversies on efficacious grace which circled round the *Congregatio de Auxiliis* (1607) his followers were sometimes accused of being Jansenists—yet he brought nature in no attenuated sense into theology. He was certainly no Barthian either, for, pursuing the implications of Chalcedon, he taught that as in Christ two real and distinct natures were united in one person, so for our salvation a divine life was communicated

[1] A. C. Crombie. *Robert Grosseteste and the Origins of Experimental Science.*

through and to human nature.[1] Grace was not like a garment. It was not only imputed for righteousness. It did not obliterate its natural subject, and its activity, no naked escape from the conditions of life but a committal to the Christian fellowship, was a man's very own.

Indeed he was not given to forced contrasts, either between body and soul, or between nature and grace, or between the laws of animal life and those of reason. He did not regard the material world as if it were a volcano whose rumbling threatened the architecture of reason and religion erected on the crust of past eruptions. It was the good earth for God's grace. There was a *continuatio* of the spiritual into the material and a *communicatio* between them, an evolutionary surge from the first to the last day of creation.[2] Man's *ratio* shared in the *ratio* of the universe; both derived from the *ratio divina*. One single substance operated through all the manifestations of a human person; all motions from within the organism could be taken up mind and will, all meanings and volitions fused with sensibility and feeling. His teaching fits in very well with modern *Gestalt* Psychology, which stresses the unity of human responses to environment and is not misled by laboratory techniques of separating them into their components: the spiritual soul is entire throughout the body, and intelligence should be as much in the heart as affection should be in the head.[3] This applies also to the corporate personality of the political community.

Law is essentially a condition of communication, and the forms of expression and methods of signalling—the strokings of ants' antennae, the movement of a squirrel's tail, the jay's warning cry in the wood—which fall short of conceptual signification through speech should be observed with sympathy by the social moralist. The laws of animal life enter into and are transcended by the laws of rational life. The rudimentary and barbaric are developed into the civilized.[4] All in their turn are taken up into laws of grace. The organs of reproduction

[1] Y. M. J. Congar. *Christ, Our Lady and the Church.* Tr. H. St John. London, 1956.
[2] *III de Anima*, lect. 8. II *Contra Gentes*, 56, 57. *II Sentences, XII*, i, 2.
[3] 1a. lxxvi, 8. Disputations, *de Spiritualibus Creaturis*, 4: *de Anima*, 10.
[4] *II Politics, lect.* 12.

and excretion, so close to one another, call for privacy and delicacy but not for shame, and medical psychologists know what harm is done by over-fastidious censorship. Hence laws should not seek to suppress natural instincts or to straitlace their functions. Even arbitrary conventions, of secondary importance to the essential adaptations of men and women, are primarily means to the enlarging, not the cramping, of human activity. In processes where there was a mingling of art and nature, said St Thomas, art operated in the same manner and through the same means as nature did.[1] The artificial became the congenial, the 'artistic' or 'artful' treatment of a subject, the 'natural stroke' praised by eighteenth-century writers: *modus artificialis dicitur cui competit materiae.*[2]

To such a habit of mind civilization was less imposed from without than developed from within; conversion to grace was less a submission than an elevation. St Thomas brought out how connatural was the inner springiness of grace. It is out sharing in God's likeness by a rebirth, a new creation which destroys only sin and in the end will restore all things in Christ. For this reason he parted company with Peter Lombard, who had taught that divine charity was the indwelling Holy Ghost. On the contrary, its dignity as friendship demanded that it should be a love which we ourselves elicited.[3]

His usage was not always consistent in pairing terms. *Spiritual* was generally contrasted with *material*, and, in questions of social authority, with *temporal* (which elsewhere was contrasted with *eternal*). Other contrasts were *clerical* and *lay*, *ecclesiastical* and *civil*, *sacerdotal* and *regal*, *sacred* and *profane*, *soul* and *body*, *contemplative* and *active*, *theoretic* and *practical*, *internal* and *external*, *private* and *public*, *religious* and *secular*. There is some overlapping, but care should be taken in shifting from one pair to another. *Religion* might mean the ordering of our whole lives towards God, or the special virtue, a part of justice, which governs divine worship, or the dedicated state of life.[4] Switch the categories and his discourse is misreported. Thus, if

[1] Disputations, XI *de Veritate*, 1.
[2] *I Sentences*, Prologue, i, 5, *ad* 1.
[3] 1a–2ae. cx, 1, 4. 2a–2ae. xxiii, 2.
[4] 2a–2ae. lxxxi, 4, 8. clxxxvi, 1.

you identify *spiritual* with *religious*, and then with *private*. Or *material* with *civil*, and then with *natural*. Or *natural* with *temporal*, and then with *bodily*, *profane*, *public*. For the due response to State authority, he held, was from supernatural virtue, while on the other hand, the Church possessed natural and temporal claims which you met in the spirit of paying the rates: the Blessed Thomas of Canterbury demanded the restitution of Church property even to the scandal of the King.[1] He did not draw the comparison used by Papalists, that the spiritual power was to the civil power what the sun was to the moon, or the soul to the body.[2] The human community was not divided into two spheres, its body ruled by the human law rising from the people, its soul by pontifical law descending from God: such a dualism was not even applied to the individual, for a man was one thing, not two.

He generally used *jus* and *lex* as interchangeable terms, a hint that legalism should follow the grain of reality and that continuity between implanted right and enacted law should be kept. Whereas the jurists generally spoke of *jus naturae* and the theologians of *lex naturalis* he was inclined to reverse the usage, preferring *lex* in his judicial treatise and *jus* in his theological treatise on the cardinal virtue of justice.[3] The point, otherwise of no great moment, indicated a refusal to separate nature and art, that is, the fundamental rights we did not ourselves create and the regulations we framed in order to protect them. He adopted the two recognized etymologies of lex, *a ligando* to show that it constrained, *a legendo* to show that it was rationally apprehended.[4] *Lex* was not *jus* precisely, but in some manner its rational expression. *Jus* also was brought into our mental activity: originally it signified an objective quality and then by derivation the art which recognized it.[5]

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[1] 2a–2ae. xliii, 8, *sed contra*.

[2] W. Ullmann. *Medieval Papalism*, vi. 'Pope and Emperor'.

[3] On law, 1a–2ae. xc–cxiii. On justice, 2a–2ae. lvii–cxxii.

[4] 1a–2ae. cv, 2, *ad* 3.

[5] 2a–2ae. lvii, 1, *ad* 1, 2.

St Isidore (*Etymologies*, v, 2, 3, 4), better at repeating phrases than relating them, was not helpful in the matter of terminology. Though he said that *jus* was human *lex*, he seemed to treat *jus* as a generic term, of which *lex* was a written enactment. *Mos*, or custom approved by antiquity, was unwritten law. Human law was based on custom, divine law on nature. Divine law was called *fas*.

He identified the Glossator's *jus* with Aristotle's *justum* or *dikaion*. At the same time he noted a contrast, *contrarietas*, for whereas the jurists put *jus civile* under positive law (which was set against *jus naturale*) and so heightened the contrast between the civil or political on one side and the natural on the other, the philosophers, with whom he sided, took the *justum politicum* or *civile* to be partly *justum naturale* and partly *justum legale*, and so combined the natural and the legal within the same political order. There was here a difference of approach, one positivist, the other teleological. As the theologians looked askance at the canonists so, lower down in the scale, philosophers were pleased to put the civil lawyers in their place—a belated come-back after the closing of the Athenian Schools by Justinian in 529. The jurists treated laws and institutions as existing social artefacts, he observed, for they have to keep to facts, and define the political or civil in terms of the constitution actually in force. The philosophers, on the other hand, looked rather to the whole purpose of the organized community in the light of its natural origins and purposes. They judged how these were served by social institutions, and so considered the reasons of law rather than legal terms. They defined the political or civil by what was beneficial to the citizens, not by what was officially commended or permitted.

The theory that Natural Law underlaid political association was strongly in evidence. Political justice was part natural and part legal; *utuntur enim cives et justo eo quod natura menti humanae indidit et eo quod est positum lege.*[1] In this context the *legal* was contrasted with the *natural*; elsewhere it could bear two other senses. It was applied to justice, and legal justice then meant that general justice which, like law itself, served the common good and was distinct from the particular justice of one individual towards another.[2] It could also mean the legalism or code-justice which stuck to the letter of the law and was thereby contrasted with equity.[3]

Similarly, justice itself, the specific human virtue corresponding to *jus* and *lex*, had varying meanings treated precisely in

[1] *V Ethics, lect.* 12 (*Ethics* v, 7. 1134 b 19).
[2] 2a–2ae. lviii, 5. See below, Chapter VII, 3.
[3] 2a–2ae. cxx, 2. See below, Chapter VIII, 5.

the appropriate settings of the *Summa Theologica*.[1] On occasion St Thomas adopted its generic meaning of *righteousness*, used by the Scriptures and the Fathers, thus when treating of *justitia originalis*, the right state in which human nature was created, and of the justification of the sinner.[2] He also admitted the related sense it had for Plato, Cicero and Macrobius, namely, that poise and adjustment in social comportment on every occasion which was a general condition of all virtue.[3] So by analogy he spoke of God's justice.[4] Normally, however, he kept to its narrow sense, which signified the moral virtue, specifically distinct from the others, which paid what was owing and established the right balance in external affairs.

The spirit of fairness and plain dealing discovered in the *Ethics*, was linked with Ulpian's celebrated definition, that justice is the lasting and unwavering will of rendering each man his due, *perpetua et constans voluntas jus suum unicuique tribuendi*.[5] Characteristically he combined the Latin and Greek concepts, for *jus* was given its Roman meaning of objective right set forth by law, and *voluntas* was interpreted according to Aristotle's psychologico-moral teaching on the virtues. Virtue was a settled quality which made the possessor good in himself and in what he did. There was nothing stilted about it, for good here meant more than the state of being acceptable to the legislator or of being on the safe side of the law. It was not merely imputed righteousness, but signified real completeness and worth.[6]

Whether he was referring back to the biological origins of law or considering the psychological poise produced by virtue, the fact that justice squared a man with the world about him, or explaining the rational content of law or the moral value and godliness of virtue, St Thomas wrote as one studying a single evolutionary process ever ascending by divine causality but not, as it were, jerked up or interrupted by factors which invade it from without. Law, virtue, justice—they were rooted

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[1] 2a–2ae. lxi, lxxix, lxxx.
[2] 1a–2ae. lxxxii, 3. cxiii, 1.
[3] 2a–2ae. lviii, 1, *ad* 3, 5, 6. 12. lix, 1. lxxix, 1. *III Sentences* xxxiii, 1, 1, *iii*, *ad* 3.
[4] 1a–2ae. lxi, 5. 1a. xxi, 1, 2, 4.
[5] 2a–2ae. lviii, 1.
[6] 1a–2ae. xlix-liv.

like plants not stuck in the ground like lamp-posts, and they grew because they were alive.

2. *The Concept of Law*

An empirical and historical method which records merely what in fact has been laid down or enforced as law leaves unsettled what communicates to a command its specifically legal character. The upshot is the sort of definition travestied by Bentham, 'a rule of conduct for those who are to observe it, prescribed by those who prescribe it, commanding what it commands and forbidding what it forbids'—not that when he recognized the need for a science about the assumptions of law he was out to defend the existence of Natural Law. Reflections on the nature of law, set off when Roman jurists and statesmen encountered the customs of non-Roman people which seemed to derive from a natural order of things, led to conclusions about the *jus gentium* which were framed in semi-philosophical terms.

The medieval thinkers were more speculative. Influenced partly by scientific theology and partly by a renewed Greek philosophy, they attempted to expose the fundamental principles behind all the laws with which they had some acquaintance—the Roman Law both civil and canonical, Lombard Law, national traditions, the miscellaneous statutes of kingdoms and cities, the accumulations of custom and Divine Law itself. Thereby they opened up questions which belonged to political science. 'The philosophic analysis and definition of law,' wrote Pollock and Maitland, 'belong to the theoretic part of politics.'[1] They did not stop short at certifying what had been historically enacted or at describing what would work for the benefit of the community. They looked for a general idea, not limited to one culture or civilizaiton or set of positive laws, which would serve as the essential criterion for juridical obligation.

Peter Lombard did not broach the subject but merely discussed the relationship of the Decalogue to the two Gospel precepts of charity.[2] Of the surviving 252 questions of Stephen Langton one only relates to natural law and another to the *potentia gubernandi*. The early and middle thirteenth-century

[1] *History of English Law, before the Time of Edward I*, Introduction, p. xxiii. Cambridge, 1898.

[2] *III Sentences*, XXXVII.

summists advanced little farther. William of Auxerre, who was familiar with the *Ethica Vetus* and quoted from the *de Anima*, the *Physics* and the *Metaphysics*, proposed some of the rudiments for a coherent theory: his *Summa Aurea* may have influenced Alexander of Hales and St Albert. The earliest systematic exposition seems to have been attempted in the Franciscan treatise, *de legibus et praeceptis*, composed probably by John of Rochelle and used as a source by St Thomas.[1] Vincent of Beauvais in the *Speculum Naturale* did not linger over the impression of the Eternal Law on man's mind and will; he was more leisurely in the *Speculum Doctrinale* where after citing various descriptions of law from classical authors known at his time he offered his own definition, *recta ratio imperandi et prohibendi*, the rightful reason for commanding and forbidding.[2] The important element of reasonableness was there, but the definition remained incomplete, since it applied to the just precepts of any private authority, of an abbot or baron, for instance, and these were not laws. The concluding section of St Albert's *Summa de Bono* was devoted to justice; there he attempted to clear the notions of *jus* and *lex*, but found himself tangled with the four laws enumerated in the *Glossa Ordinaria* once attributed to Walafrid Strabo—the Natural Law, the Mosaic Law, the Law of Grace, and the Pauline Law in our members. Another treatise on law, attributed more surely now than heretofore to Peter of Tarentaise, a colleague of St Thomas and afterwards Pope Innocent V, written about this time, fared no better.[3]

St Thomas seems to have been the first to put forward *ex professo* a full definition of law by its fundamental properties followed by a balanced division of its types. After sketching several parts of law in his early works, the *Commentary on the Sentences* and the *Summa Contra Gentes*,[4] he arrived at his con-

[1] O. Lottin. *Psychologie et Morale au XIIe et XIIIe siècles*, ii, pp. 20, 64.

[2] xxix, 72. iv, 61.

[3] P. Glorieux. *La littérature quodlibetique*. ii, p. 90. Paris, 1935.

[4] *III Sentences*, XXXVII, 1, on the decalogue and the advantages of a written code. IV Sentences XXXIII, i and ii, on monogamy and divorce. III *Contra Gentes*, 113, 114, on the reasonableness of Law. The doctrine of *Lex Aeterna* pervaded his writing at this period, though the term does not often occur, see V *de Veritate*, 1, *ad* 1. III *Contra Gentes*, 54–113, on Providence. III *Contra Gentes*, 114–130, on Divine Law. Before he wrote the *Prima Secundae* he described sin as *contra legem Dei*, not as *contra legem aeternam*.

sidered definition towards the end of his life and devoted a whole question of the *Summa Theologica* to its explanation.[1] Law was an ordinance of reason, directed to the common good, issued by the authority in charge of the political community, and promulgated to its subjects: *quaedam rationis ordinatio ad bonum commune et ab eo qui curam communitatis habet promulgata.*[2] Each of the four elements of the definition was discussed in a separate article; the divisions of law were treated in the questions that followed.

The formula was reached less by analysis of the notion of law conducted within the medium of strictly legal science than by a synthesis of the findings of moral science, itself a part of the philosophical reading of our environment. A particular science assumes its own premisses without demonstrating them; jurisprudence is no exception. To what extent the science of law derives from the science of politics, and the science of politics from other historical and philosophical sciences will be touched on later. Law was obviously a versatile notion, but no deep separation, still less antagonism, between morality and legality was supposed; the definition was intended to cover both Natural Law and Positive Law. The authorities cited—Aristotle, St Paul, Cicero, Justinian's *Digest*, Isidore, Gratian, and Peter Lombard—offer a cross-section of the construction from Greek, Jewish, Roman and Germanic elements. Yet when the whole treatise was finished, its end being protracted with a lengthy examination of the Mosaic legislation, the measures of legality were seen for what they were worth, worthy of obedience but not of utter devotion. The system of reason was thrown open to the Gospel law of love. Regulations were all very well up to a point and conformity to social patterns was a duty, but the spirit bloweth where it listeth.[3]

Let us consider in turn the four clauses of the definition. The first declared that law was an ordinance of reason, *ordinatio rationis*. Commanding and forbidding were its evident function, for law does more than persuade; it is ready to enforce. Where

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[1] 1a–2ae. xc.

[2] 1a–2ae. xc, 4.
G. Granieris. *Contributi tomistici alla filosofia del diritto*. Turin, 1949.

[3] 1a–2ae. xcviii–cv, on the Old Law. cvi–cviii, on the New Law.

St Thomas differed from scholastics of the 'voluntarist' school was in teaching that law was elicited by mind, not by will, that is by the practical reason, *intellectus practicus*. This was not a faculty separate from the theoretical reason, *intellectus speculativus*, since where truly human outgoing activity was concerned thought and action were not specifically distinct.[1] Action was contemplation turned to doing and making. *Virtus intellectiva de se est ordinativa et regitiva*—the emphasis on the ruling power of mind accorded with his general dynamic psychology.[2] The moment of final happiness was constituted in the intellect, for vision, not delight, was the *formale in beatitudine*; and beforehand, in the development of a typical human act, the *imperium*, or final effort leading immediately to its attempted performance, belonged more directly to cognition than to appetition.[3] His analysis of free-will, *liberum arbitrum*, fastened on the play of reason and deliberation, not on executive spontaneity.[4]

He held that law should make sense, and the principle *lex plus laudatur quando ratione probatur* was honoured throughout his social theory. The domination of power was not accepted unless charged with evidence for assent and blind or capricious force was granted no authority as such. It was admitted that we live in a world of compulsions, nevertheless one man can rightfully control another only by showing reason for his power: even omnipotence cannot break the order of truth.[5] It was not surprising, then, that he required an ordinance to manifest intelligible goodness, the honesty of virtue and the integrity of decorum; this was the first condition of lawfulness.[6] Reason went before the ability to enforce. Not that a logic of necessity had to be disclosed in every case, since human laws worked in a world of contingent events, but that appropriateness to the situation had to be sufficiently evident. Legislation was a part of the practical wisdom of governing the community,

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[1] 1a. lxxix, 11. III *de Veritate*, 3. *III de Anima, lect.* 15.
For a comparison with the teaching of Scotus, see G. Budzik. *de Conceptu Legis ad mentem Joannis Duns Scoti*. Burlington, Wis., 1954.
[2] III *Contra Gentes*, 78.
[3] 1a–2ae. iii, 4. xvii, 1.
[4] 1a. lxxxiii 3, 4. IV *de Malo*, 1. XXIV *de Veritate*, 4, 5, 6.
[5] 1a. XXV, 3, 4, 5. I *de Potentia*, 4–7.
[6] 2a–2ae. cxlv, 1, 2.

prudentia regnativa, a species of prudence, the intellectual and moral virtue of which the principal act was to command, *praecipere*.[1]

The jurists were more concerned than the theologians with the fact of law and less with its reason, still less with its exemplar in the mind of God.[2] It is true they had welcomed the *Corpus Juris* because of its rational elegance and superiority to tribal laws, not out of deference to existing authority—for the Emperor of the West governed by custom and consecration by the Church while as for the Emperor of the East, who governed by the Roman Law, he was a remote figure. Nevertheless many of them soon began to look to the sovereign will of the ruler as the source of law. A scrap from Justinian's *Lex Regia* was alleged in support, that the pleasure of the prince has the force of law, *quod principi placuit legis habet vigorem*.

The phrase, part of a text dealing with the act of alienation in the people's contract of subjection to the Emperor, was rejected by St Thomas because it would make for wickedness, *magis esset iniquitas quam lex*.[3] Bracton declared that there was no king where the will and not the law had dominion; if the king be without a bridle, they ought to put a bridle upon him. Both spoke for the same theological tradition. Deriving from the Stoic teaching of reason immanent in nature, which had been supplemented by St Augustine's theology of the Eternal Law in the mind of God imparting what justice there was in temporal laws, it was confirmed when men learnt from Plato and Aristotle that mind ruled will and directed all arrangements of heterogeneous parts. Seneca and St Augustine had been haunted by the sway of forces exempt from the control of reason, the *mors lex*, *tributum*, *officium mortalium*, the compulsions of concupiscence and corruption. St Paul, too, *found another law warring against the law* of my mind.[4] St Thomas was easier with this *impetus sensualitatis* than St Augustine had been; it was not necessarily sinful and penal, a kind of caricature of law, for its

[1] 2a–2ae. xlvii, 8. l. 1.
For a study of the 'intellectualism' of St Thomas compared with the 'voluntarism' of Henry of Ghent, see T. E. Davitt, *The Nature of Law*. St Louis, 1951.
[2] 1a–2ae. lxxi, 2, *ad* 4. xciii, 3, 4. 1a. xv, 2, 3. xxxiv, 3.
[3] 1a–2ae. xc, *ad* 3. *Digest*, i, 4. *Institutes*, 1, 2, 6.
[4] Romans, vii, 23.

essential propensity, *inclinatic propria*, was to the common good and could be controlled by intelligence.

The second clause of the definition committed law to the service of the Common Good.[2] Government for the sake of the governor had never been defended, nor had decrees designed for his private convenience to the detriment of the body politic: what was new was that henceforth law was reserved to general rulings affecting the community as a whole. Enjoining or forbidding kinds or types of social action was not directly concerned with particular occasions, hence law was more sweeping than a precept, *praeceptum*, which might be issued by any superior or parent about an individual act or course of conduct.[3] Laws also were wider than privileges, *privilegia*, which were like private laws, or than *sententialia* which were judicial decisions on determinate cases which might bind in law.[4] An ordinance serving a sectional interest was not a law in the full technical sense, though it might rightly claim obedience. Not every precept was law, therefore, though every law was precept—the difference was like that between a law passed by Parliament and an order made by a Government department on the authority of a regulation allowed under an Act of Parliament.[5]

To discuss the *bonum universale*, the full and final social good as St Thomas conceived it, would take us far afield from political theory, yet since it gave both moral dignity and character to the partial and penultimate general welfare which was the immediate purpose of law and political action, it must be at least saluted in passing.[6] It was not a collective-value, the greatest good of the greatest number, the welfare of the whole considered as a mass-effect, but the personal good of each and all which ultimately implied the vision of God and the lasting companionship of friends. It was held in an act of mind—for St Thomas's intellectualism descended from high theology to social philosophy—yet it was no abstraction. The *bonum com-*

[1] 1a–2ae. xci, 6. *ad* 3.
[2] 1a–2ae. xc, 2.
[3] 1a–2ae. xc, 2, *ad* 2.
[4] 1a–2ae. xcvi, 1, *ad* 1.
[5] See *Falmouth Boat Construction v. Howell*. Court of Appeal. *The Times*, 10 February 1950.
[6] T. Gilby. *Between Community and Society*, pp. 194–6, 211–3. See below pp. 236–49.

mune was not *bonum in communi* or goodness in general, it was *the* Good Thing embracing all that was good and real. The possession of God, who is the Whole who creates the universe, was more than the answer to a question; it was the end of desire.

Theology outspread social philosophy and obviously the Common Good so conceived went far beyond the public benefit or *res publica* of Roman jurisprudence; similarly the laws of the City of God transcended the legal and political categories of the earthly city. The Beatitudes, or the lessons of the Sermon on the Mount were promises of happiness, but their merit and reward were not achieved in the practices of good citizenship, which did not require us to be humble of heart or to mourn or to endure persecution. For the common good of the political community was a humbler affair altogether. It was sufficient if the social decencies were observed. As we shall see later, when discussing the limits of legalism and the relations between citizenship and eccentricity, St Thomas would not have our rulers take too much on themselves. They were guardians of the peace, not spiritual directors. The body politic may be compared to the individual body: the physician may regret a moral disorder yet be content to prescribe only for psychological and physiological health. So also the State, while it should impede no human decency, lacks the ability to promote every virtue. Its duty is restricted to that outward justice without which social life would be impossible. At least let it regulate the economic provisions for physical and mental health, and inculcate fair-dealing; for the rest it will serve moral health best by protecting freedom.

Nevertheless subjects are immortal persons who are not good unless they are being prepared for a life beyond that in the State. Let the ruler listen to the Sermon on the Mount for the Beatitudes already begin in this life.[1] Sovereign rights in the complete hierarchy of means and ends are subordinate to the ultimate purpose of human life. This is the *primum principium* in everything we do, and especially in the making of laws which are meant to be guides and conveyances to heaven.[2] St Thomas quoted Aristotle, that those laws are just that tend to produce

[1] 1a–2ae. lxix, 2.
[2] 1a–2ae. xc. 2.

and preserve happiness and its components.[1] He recognized that tensions are likely to be set up between the claims of personal friendship, which is the long-term purpose of law, and of normal observance, which is its immediate object.[2] Whereas St Augustine left the virtue in political power at least cloudy, for our true city lay beyond this world, and Aristotle scarcely envisaged any human nobility that was not of service to the community, St Thomas characteristically reversed their roles, and summoned St Augustine to support reverence for civil authority and Aristotle to support extra-political virtue.

The idea of the Common Good was a Greek preoccupation. The public interest was not clearly defined by the Romans from the legal point of view; to them origins were clearer than ends. They were concerned with the source of law, with the *Populus* and *Princeps*. The third clause of the definition, that law should be pronounced by authority, raised the question, Who was the legislative sovereign?[3]

The question was not sharply defined, for in medieval days the notion of sovereignty was at once vaguer and less ambitious than it became afterwards. Except for some canonists, nobody thought of a visible authority which claimed complete *imperium*, or which stood supreme, without partner, peer or competitor, free from limitations of prescription: not even the Pope was generally regarded as omnipotent by himself within the Church.

Power implied responsibility in a moral setting, and since law was for the welfare of the whole people, it followed that the power of making law belonged to the power able to promote the common good. This power, under God, resided in the people themselves or in their guardian, since no alternative organ had been appointed, or detailed political instrument revealed. The argument was brief; such questions of the legal authority of God in the Mosaic community, or the supreme authority within the Church, or the ineradicable right of the paterfamilias (who issued precepts, not laws) lay outside its scope. It did not decide where this underlying authority should

[1] *Ethics*, v, 1. 1129 b 17. *IX Ethics, lect.* 9. *de Regimine Principum*, i, 14. 1a–2ae. xciv, 1.

[2] See 1a–2ae. xcvi, 1, 6.

[3] 1a–2ae. xc, 3. For *dominium* see 2a–2ae. lxvi, 1, 2.

in practice be located, or adjudicate between monarchic, aristocratic, and democratic regimes. Though the argument held that supreme power should in some manner be representative, the constitutional character of the ruler was left unsettled—a theologian, unlike a jurist, is more concerned with the exercise and purpose of civil authority than with its titles, hence the Church is usually prepared to work with any government which does not violate the decencies, however illegitimate its origins.

As the Common Good in the philosophical and theological senses of the term was wider than the *res publica*, since it comprised relationships beyond the reach of legal guarantees, so the supreme authority in the commonwealth was not so exactly defined as the *persona publica* of the jurists. The social theologians did not investigate the hypothesis of the historical legal act which might be presumed to have determined the seat of sovereignty; the related question whether the prince's position depended on the continued consent of his subjects came up only in passing. That St Thomas's own sympathies lay with the old doctrine, that the ruler spoke with the agreement of the whole people and observed an unwritten constitution, and not with the new theory of the lawyers, that he enjoyed absolute power which nobody could impugn, can be argued from references elsewhere in the *Summa Theologica*. Thus he advocated a widespread political prudence through popular participation in the business of legislation and government, and taught that obedience was owing to a superior only within warranted limits. Nevertheless as he grew older he seemed to harden against the deposing power of the people. The classical expositors of his social thought in the changed conditions of the sixteenth century did not consider that the people's viceregent was no more than the channel of their power; he was a representative with initiative and responsibility of his own, not merely a delegate previously committed to a detailed policy and responsive to every mood and whim of his supporters.[1]

[1] See Thomas de Vio Cajetan (d. 1534). *de Auctoritate Papae et Concilii Commentaria in Summam Theologiae S. Thomae* (*in* 2am–2ae, i, 10).
Francis de Vitoria (d. 1546). *Relectiones de Potestate Ecclesiae prior et posterior, de Potestate Civili, de Potestate Papae et Concilii.*
Dominic de Soto (d. 1560). *de Justitia et Jure.*
Francis Suarez (d. 1617). *de Legibus.*

Cicero's contention that liberty implied some share in the conduct of State affairs accorded with the antique tradition that the people were the source of power; indeed the legal scores of the Roman Empire were a palimpsest underneath which could be discerned the principles of Roman republicanism. It was confirmed in the thirteenth century when men read in Aristotle that the deliberative power was sovereign, and ratified what was initiated by the magistrates.[1] Moreover, the policies of the Church did not favour the separation of princely power from popular approval. A favourite quotation from St Isidore, used by St Thomas and Gratian before him, was that law was an ordinance of the people whereby something is sanctioned by the elders together with the commonalty.[2]

St Thomas preferred the customs of free people to the prince's initiative as the origin of legislation: better, he thought, when men can prompt laws for themselves instead of having to be looked after with laws made for them. In a free community, *libera multitudo*, the people's consent was more important than the prince's authority, for he could make laws only as 'impersonating' them. Only in the case of a nation under tutelage was he the source of law, and, even so, popular customs had the force of law as long as they were tolerated or tacitly approved.[3] These principles were used alike by the Spanish Thomists in their not unsuccessful attempt to mitigate the exploitation of the American Indians and by the League of Nations in dealing with mandated territories.

The *populus* in this context meant the whole group of citizens, *universitas civium*. A *civis* was a male adult who practised political prudence and took part in public affairs. Women, children, and perhaps resident foreigners were not included; serfs and dependents tied to the land were more like the *perioikoi* than the *douloi* in Aristotle's *polis*. St Thomas never referred to the Emperor as a force to be reckoned with, nor identified him with the *Princeps* of the law-books. He cherished no mysticism about the origins of the Western Empire. Nor was he haunted by the shadowy *Populus Romanus* of medieval Roman juris-

[1] E. Barker. *The Politics of Aristotle*. 'Notes on the Vocabulary,' p. xvii. Oxford, 1948.
[2] 1a–2ae. xc, 3 *sed contra*. *Etymologies*, v, 10. PL lxxxii, p. 200 *Decretum* I, i, 1.
[3] 1a–2ae. xcvii, 3, *ad* 3.

prudence, to which Frederick II appealed when he crossed the Alps to assume the imperial dignity—the democratic sincerity may be doubted but not the advantage of appealing over the heads of the Pope and German princes. 'Theoretically the name might denote anything from the whole assemblage of peoples within the unity of *Latinitas* to the degenerate inhabitants of Rome, who occasionally amused themselves with reviving the Senate and other republican dreams. In effect it meant nothing at all, or nothing that had any genuine connection with Rome. If the Roman Emperor was a fiction, the *populus Romanus* was a myth.'[1]

The fourth and final clause of the definition, that law needs to be promulgated, was introduced by the Canonists. It was a commonplace that laws should be brought to the minds of subjects. A *summula* of Bulgarus started off, Inasmuch as laws should be known and understood by all, *Quia leges ab omnibus sciri debent et intelligi*. Gratian, however, seems to have been the first to bring out the importance of promulgation: laws are instituted when they are promulgated, *leges instituuntur cum promulgantur*.[2] St Thomas acknowledged his source and confirmed the meaning from one of St Isidore's etymologies, *lex a legendo vocata est*.[3]

The gist of the argument was that law had to be reasonably received as well as reasonably enunciated. It should be proposed without undue technicality in a manner clear and intelligible to persons of ordinary understanding. That it was beneficial had to be commended, for who will obey unmeaning regulations? This was of a piece with the rule that it was not enough for justice to be done, but that justice should be seen to be done. Unlike Natural Law, which, in theory at least, was a body of commands and prohibitions discoverable by unaided reason, the Positive Law was not bound to be what it was from the

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[1] W. H. V. Reade. 'Political Theory to c. 1300.' *Cambridge Mediaeval History* vi, p. 620.

[2] Printed by H. Kantorowicz. *Glossators*, p. 244.

[3] 1a–2ae, xc, 4. *Etymologies*, xi, 10. PL lxxxii, 130. *Decretum* I. 4. 3. S. Kuttner. *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX*. xii, pp. 153–75. Vatican City, 1935.

necessity of things; it could be otherwise. Consequently the fact of its institution had to be published and brought to the minds of men whom it proposed to rule. Natural right was not created by the written code which contains it; its force came from nature, not from human legislation. Positive right, *jus positivum*, on the other hand, was both contained and created by the code which gave it the *robur auctoritatis*.[1]

The leading principle was that nobody is bound to what he does not know about, *nullus ligatus nisi mediante scientia*.[2] Ignorance which was not wilful, either by choice or from negligence, always excused. The distinction between ignorance of the law, *ignorantia juris*, and ignorance that an action here and now was covered by the law, *ignorantia facti*, appeared in the writings of canonists such as Roland Bandinelli and Stephen of Tournay (d. 1203) and of theologians such as Roland of Cremona and Hugh of St Cher. St Thomas made it equivalent to Aristotle's distinction between *ignorantia universalis*, lack of moral science, and *ignorantia particularis*, a mistaken judgment about a contingent case.[3]

To summarize this section on the four elements in St Thomas's conception of law. First, it was a rational ordinance, for though the legislator should be backed by the ability to enforce his ordinance the initial condition for its acceptance was that it placed a meaning in our social conduct. We were obedient to it in a manner different from our submission to the force of fire and water or to any mere might we could not resist. Secondly, its meaning lay in its reference to purpose. Why should we obey? Because of the Common Good. Again an object which required intelligence to perceive. Thirdly, this purpose could be envisaged only by the commonalty in theory and by its representative in practice. Fourthly, it must be brought to the rational acceptance of its subjects. Law could not bind unless promulgated, and on this head the moralists

[1] 2a–2ae. lx, 5.

[2] XVII *de Veritate* 3.

[3] J. F. von Schulte. *Die Summa des Stephanus Tornacensis*. Giessen, 1891. 1a–2ae, vi, 8. 1 *Quodlibets*, 19. *III Ethics, lect.* 3. 11. 1110 b 18, 1113 b 30.
O. Lottin. 'Le problème de l'*ignorantia juris* de Gratien à saint Thomas d'Aquin.' *RTAM*, v, p. 345. Louvain, 1937.

debated how far subjects were excused from its observance by the accidents of ignorance.

3. *Types of Law*

Proceeding from definition to division and drawing on the treatise *de Legibus et Praeceptis*, probably by John of Rochelle, the *Summa Theologica* sorted out the various sets of laws.[1] They had been muddled by theologians suspicious of physical motions, by exegetes treating the substance of the Decalogue as divine revelation, by writers on jurisprudence uneasily combining opposed texts from Gaius and Ulpian and by canonists prepared to claim that theirs was the law of the Gospel.[2] Eight types of law were currently received—the Eternal Law, the Natural Law, the Divine Law, Positive Law, the Mosaic Old Law, the New Law of the Gospel, the *Jus Gentium*, and the *Lex Fomitis*. It will be apparent at once that the term *law* was flexible or, as the Scholastics would say, analogical. Our main interest is the distinction between Natural Law and Positive Law, also the character of the *Jus Gentium* which shared in the characteristics of both. However it will be useful to glance at the others, if only to appreciate the surroundings of St Thomas's social science.

The Eternal Law in the mind of God was the first exemplar of all law and government.[3] Transcending all legal categories, it descended into created minds and was there partially expressed in two ways, directly through the biddings of natural and gracious reason towards such and such types of action, indirectly through an act of human will which determined certain supplementary regulations. The first was Natural Law, the second Positive Law.[4] A similar distinction appeared in higher primitive cultures between the laws 'written in the hearts of men' and those 'decreed by the chieftains', and was implied in Antigone's defiance of King Creon, 'as if you, a mortal, could overrule the sure unwritten laws of the Gods'.

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[1] 1a–2ae. xci.

[2] 1a–2ae. xciv, 4 *ad* 1.
W. Ullmann. *Medieval Papalism*, pp. 42–6.

[3] 1a–2ae. xciii, 3.

[4] A. Rohner. 'Naturrecht und positives Recht.' *Divus Thomas*, xii, pp. 59–83. Fribourg, 1934.

Natural Law was present from the beginning of human activity, for the mind was set towards right by an inborn habit, called *synderesis*.[1] It was apprehended almost instinctively; indeed, Ulpian described it as basically animal. Nevertheless human activity, properly speaking, was reasoned, and so was the human response to law. At this level certain common standards were recognized, and the fact gave rise to Gaius's conception of Natural Law, namely that its precepts were universally respected by all peoples.

Variations were admitted and though no systematic code of the Natural Law was written down, parts of it from the time of Roland of Cremona were ranked into primary and secondary precepts according to their closeness to the first principles of morality: some followed swiftly as conclusions, others called for a longer process of reasoning before they could be admitted. Telling the truth, for instance, was a primary imperative, despite the embarrassments of application to certain cases, as, for instance when a 'white lie' was convenient; monogamy was secondary, certainly desirable but less fundamental. Some truths were universal—fire burns the same in Greece and in Persia, remarked Aristotle—and the first principles, *communia principia*, of natural morality were everywhere known. Yet its implications, *propriae conclusiones*, were unequally drawn. Accordingly Natural Law was not evenly developed or observed in every region or period. At one stage its development might stop short, thus Julius Caesar noticed that robbery was not condemned by the Germans though in fact it was against the order of natural justice.[2]

Moreover, moral practice dealt with contingent matters in which a deal of latitude had to be allowed for. Difference of physical condition affected judgments especially with regard to social morality. The sugar-intake of the medievals through their ordinary diet was less than ours; their drinking, and therefore their drunkenness, had a different quality about it. Their psychology of sex, to judge from the moralists, seems to have been more directly genital and less influenced by romantic

[1] 1a. lxxix, 12. 1a–2ae. xciv, 1, *ad* 2.

[2] *V Ethics, lect.* 12. 1134 b–35 a. 1a. 2ae. xciv, 4. 2a–2ae. lvii, 2, *ad* 1.

literature. Their response to physical suffering and death was hardier.[1] There were other variations, too, which should prevent our too flatly transferring judgments from one culture to another.

The Gospel Law, which marked an evolution from within the Old Testament dispensation, brought in because of transgression, to a freer life of personal conscience, was a spirit not a code, a promise not a coercive dictate, an invitation to love God above all and our neighbour as ourself.[2] The Sermon on the Mount was the proclamation of a moral ideal, not the promulgation of a moral system. The New Law imparted life, and was not a bondage—such was the argument of the Epistle to the Galatians. It was concerned not only that we should do virtuous deeds but that we should do them virtuously, and act not as slaves but as the children and friends of God. It followed from the constitution of human nature in a condition of grace: that this was entirely of God's bounty and beyond our deserts did not mean that the appropriate operations were forced or arbitrary. On the contrary, as we have already noticed, they proceeded from us naturally and congenially and were directed to ends which met our abilities raised to the highest power. We shall come back to this Law of Liberty, but in the meantime let us pause on the concept of Positive Law.

Institution by an act of will which could have settled the matter otherwise was the essential feature of Positive Law. What it commanded was right because commanded, what it forbade was wrong because forbidden, unlike Natural Law where deeds were right and therefore commanded, or wrong and therefore forbidden. Its decree—for instance, the forbidding of murder—might coincide with an ordinance of Natural Law, and a sin thereby be turned into a crime as well, but its scope was restricted to the temporal well-being of the community. Some things it should leave well alone; some virtues were not matters of civil or ecclesiastical duty and some vices were not matters

[1] See 2a–2ae. cl, cliii, clvi, clix.
L. Brandl. *Die Sexualethik des hl. Albertus Magnus*. Regensberg, 1955.

[2] 1a–2ae, cvi, 1.
T. Gilby. *Between Community and Society*, pp. 165–70, 176–83, 194–200, 329–32.
C. Spicq. 'La Conscience dans le Nouveau Testament.' *Revue Biblique*, 1938, pp. 50–80. Paris.

for prosecution.[1] Then again, Positive Law could be repealed, Natural Law never.

In practice Positive Law could be equated with human law—we shall presently touch on the concept of Positive Divine Law. The two types of human law were the Civil Law of the State (which included what is now called Criminal Law) and the Canon Law of the Church. In between lay an area ruled by a kind of condominium of the spiritual and temporal powers through ecclesiastical laws which affected, for example, the ownership and management of religious foundations, or the civil obligations of clerics.

Finally it remains to notice the *Lex Fomitis* and the Positive Divine Law, notably as expressed in the Old Law, *Lex Vetus*, in order to fill in the background, psycho-biological and historical, to medieval political theory.

Opposed to the law of liberty St Paul wrote of 'another law in my members warring against the law of my mind, and bringing me into captivity to the law of sin which is in my members.'[2] This agony within human nature redeemed but not yet restored, described in the literature of conversion, rose partly from those animal drives which according to Ulpian entered into Natural Law. But human nature was fallen, and these were corrupted by Original Sin. The Stoics had preached a passionless virtue, and the Christian moralists deprecated any disturbance of reason. The Augustinians lamented lust or concupiscence springing from the loins of sin. There was a depravity about any emotional impulse, *secundum impetum sensualitatis*; it lit the kindling of sin, the *fomes peccati*, or *inclinatio sensualis appetitus in id quod est contra rationem*.[3] This sort of compulsion within our unregenerate nature was named by Peter Lombard the *lex fomitis*—that *lex* should be used in such a context shows how ambiguous the term was.

St Thomas agreed that any lapse from the order of reason into the sway of irrational forces was a penalty of Original Sin; so too was the physical subjection implied in mass-compulsions,

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[1] 1a–2ae. xciv, 3. xcvi, 2, 3.

[2] Romans, vii, 23. 1a–2ae. xc, 1, *ad* 1. xci, 5.

[3] See 1a–2ae. lxxiv, 3, 4. lxxxii, 3. lxxxiii, 1. 1a–2ae. xci, 6. 3a. xv, 2.

obsessive sexuality, disease and death. Nevertheless, human motions which issue from sub-rational depths were not obscene in themselves but healthy: even jungle-law was adjusted to the balance of nature and to the preservation of species and individuals.[1] Sensuality, or the *voluntas sensualitatis*, was accepted without protest—indeed it was present in Christ.[2] In the *Summa Theologica* the term *concupiscentia* sometimes kept its conventional sense and signified wrongful lust, but it also recovered a cleaner sense, and stood for the response of the *appetitus concupiscibilis*—according to the pain-pleasure principle —or for innocent straightforward desire working even in the highest virtue, and notably in the theological virtue of hope.[3] The *lex fomitis*, which held no important place in St Thomas's divisions of law, was treated more cursorily in the *Summa Theologica* than in the *Commentary on the Sentences*.

Similarly the special concept of the Positive Divine Law calls for but brief delay. The terms *lex divina* or *jus divinum* were used loosely sometimes for the ultimate backing of all laws, particularly the precepts of morality and religion. More particularly they referred to God's entrance into history as a legislator; the consequent prescriptions were to be found in the Scriptures and the documents of the Christian Church. Some, like the Ten Commandments, were articles of natural morality, theoretically within human competence to discover and keep, which, by analogy with the truths of natural religion, had been divinely revealed and promulgated, since Providence does not expect the plain man to bear the burden of his nature unaided.[4] Others were supernatural; the Old Testament was prophetic and directed men to ends beyond reason, and the call of grace rose clearer in the New Testament.[5] The *Summa Theologica* devoted a lengthy and detailed study to the Mosaic Law, which comprised moral, ceremonial, and judicial ordinances for the Jewish politico-religious community; its

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[1] 1a–2ae. xci, 6. c *& ad* 3.

[2] 3a. xviii, 2.

[3] 2a–2ae. xvii, 8.

[4] 1a–2ae. xci, 4. c, 1. 2a–2ae. ii, 4. I *Contra Gentes*, 4.

[5] 1a–2ae. xci, 4, 5.

theme was Messianic, and it was accordingly treated as a historical prelude to the Gospel.[1]

The special juridico-theological importance of Positive Divine Law was bound up with the divine constitution of the Church; thus the prerogatives of the Apostolic See and the Episcopate were *ex divina institutione* and *ex jure divino*.[2] So also was the sacramental economy. No wonder medieval authors extended the Positive Divine Law to details of Church discipline. If some took the Natural Law into the Divine Law, others, one might say, merged the Divine Law with the Canon Law. Huguccio, the canon lawyer who may have provided Innocent III with his juristic equipment, identified the Law of the Old and New Testaments with the law of nature, because the *summa natura, id est Deus* has delivered it to us through prophets and evangelists; playing on the scriptural word *canon*, he concluded that Divine Law could also be called the Canon Law. To show the danger of simplification which might lead us to believe he was a political Canonist, it was Huguccio also who formulated the dictum that he who was chosen by the Electoral Princes is the true Emperor even before he was confirmed by the Pope; this reflected the process of historical development and the claims of the prince to rule by right of conquest and sanction of civil law.

There is no evidence that St Thomas ever thought of a régime of which God was legal sovereign or regarded the Christian Church as the legatee of the political prerogatives of the Jewish Church. The *Summa Decretalium* (1210–15) of Damasus clearly distinguished Natural Law and Positive Law, which last included Canon Law: *est autem jus positivum sive expositum ab homine, ut sunt leges saeculares et constitutiones ecclesiasticae*.[3] If the opinion that Canon Law was a kind of human law was only rarely expressed by the Church authors of the time, it should be remembered that when early decretalists, such as Rufinus, Faventinus and Stephen of Tournay, wrote of the Canon Law as *jus divinum* they were merely contrasting

[1] 1a–2ae. xcviii–cv.
D. Daube. *Studies in Biblical Law*. Cambridge, 1947.
[2] 2a–2ae. lvii, 2, *ad* 3.
[3] See W. Ullmann. *Medieval Papalism*, pp. 40, 43, 72.

it with *jus civile* and *jus humanum*, which they took to be synonymous. The term *jus divinum* went out of fashion, and so did *jus sacrum*, to be succeeded by *jus pontificium* (in contrast to *jus caesareum*, *jus imperiale*, *jus regium*) and *jus ecclesiasticum*. The final approved technical term was *jus canonicum*.[1]

St Thomas thought that purely ecclesiastical institutions and domestic legislation belonged to human law, and therefore, unlike the divine and Natural Law, were under the dispensing power of the Pope.[2] Canonical legislation was rooted in historical custom and past enactments, yet possessed a peculiar character and status; the modern *Codex Juris Canonici*, promulgated by Benedict XV, regards its own specific ordinances as distinct from any others as well as from custom.[3] Certainly it was well both for the clarity of law and for religious devotion that Canon Law was never officially identified with the Gospel Law.

4. *The* Jus Gentium

To medieval jurisprudence the *Jus Gentium* might signify anything between the developed Natural Law and a kind of universally recognized Positive Law.[4] The ambiguity was reflected in the *Summa Theologica*. Whereas the *Prima Secundae*, while allowing that the precepts of the *Jus Gentium* were inferred like conclusions not very remote from the principles of the Natural Law, was inclined to treat them as belonging to Positive Law, *humanitus posita*, the *Secunda Secundae*, while emphasizing that they expressed a more deliberate judgment than the instinctive adaptations of the Natural Law as described by Ulpian, ranged them under the Natural Law as described by Gaius and reflected that they needed no legislative enactment since nature has instituted them.[5]

Historically the *Jus Gentium* was originally that part of the Roman system which had grown partly from the edicts of magistrates charged with jurisdiction over strangers and partly from the studies of jurists who sought to accommodate the

[1] G. Michiels. *Normae Generales Juris Canonici*, i, pp. 7–14. Lublin, 1929.
[2] IV *Quodlibets*, viii, 13. 2a–2ae. cxlvii, 3.
[3] See can. 27, 100, 107, 196, 219, 329, 727, 1016, 1060, 1068, 1110, 1139, 1405, 1495, 1509, 1513, 1539, 2198.
[4] G. Lombardi. *Ricerche in tema di Jus Gentium*. Milan, 1946.
[5] 1a–2ae. xcv, 2, 4, *c* & *ad* 1. 2a–2ae. lvii, 3, *c* & *ad* 3.

relations of persons of different nationality. It derived both from the *Jus Civile* and from tribal usage, but was figured in form and spirit according to Roman ideas of justice. All subjects of the Empire fell under the *Jus Gentium* as well as the *Jus Civile* when the largess of Caracalla extended citizenship to peregrins in 212. Since much of it owed more to custom than to positive legislation and showed what could be produced beyond the pale of Roman civilization, it engaged the interest and approbation of the philosophically-minded jurists. Here was a law more universal than the *jus proprium Romanorum*. Here, thought Ulpian, was a law more rational than the demands of animal life.[1]

The medievals lacked the learning to appreciate its history; in any case their habit was to read the past from the present. To them it was a category of juridico-moral science to be inserted somewhere between the general law of nature and any given system of human law. From the twelfth century onwards the jurists, and especially the decretalists, concentrated more and more on the rational character of Natural Law. Ulpian's inclusion of animal motions was felt to be embarrassing. Rufinus, who died after 1180, and Faventinus—John of Faenza—who died about 1220, preferred to describe it in more specific terms, *de eo juxta quod humano generi ascribitur*.[2]

The theologians agreed. St Albert equated it with rational law, the *Contra Gentes* developed its character as a personal participation in divine law and the sketch of law in St Thomas's *Commentary on the Sentences* was filled in about fourteen years later by the *Prima Secundae* (1269) with the same emphasis. Law properly so called was an affair of reason, *aliquid rationis*.[3] The teaching of his friend, Peter of Tarentaise, that *lex naturalis* was a *habitus* was criticized.[4] As might be expected, the authority of

[1] F. Senn. *De la justice et du droit*. Explication de la definition traditionelle de la justice, suivi d'une étude sur la distinction du *jus naturale* et du *jus gentium*. Paris, 1927.

[2] *Summa Rufini, ad Dist.* I. *Glossa Ordinaria* (Faventini), *ad Dist.* 2. *cap.* 7.
H. Singer. *Die Summa Decretorum des Magister Rufinus*. Paderborn, 1902.
J. Juncker. *Summen und Glossen*. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Kanonistische, xxv, pp. 462–71. Berlin, 1925.

[3] III *Contra Gentes*, 111–8. *III Sentences* XXXVII, 2, 3, 4. *IV Sentences* XXXIII, i, 1. 1a–2ae. xci, 2, *ad* 3.

[4] 1a–2ae. xciv, 1.

Gaius was prominent throughout this treatment he incidentally did not speak of Natural Law but of *ratio naturalis*.[1] Cicero, also, was appealed to. Hence the *Jus Gentium* came to be regarded as retaining much of the vigour of the principles of Natural Law, principles from which it developed some conclusions. Articulated in universal custom and recognized by the test of general acceptance, they provided guides to right conduct discoverable by the reason without the intervention of positive legislation.

The greater prestige of Aristotle then began to exert its influence. St Thomas's commentary on the *Ethics* dated from about the same time as the *Prima Secundae*; there he mentioned jurists who took Natural Law as a postulate of animal nature, whereas he himself preferred to follow Aristotle to whom it was a human and reasonable standard.[2] But the *logos* or reason Aristotle stressed was not quite the same as that of the Roman Stoics and jurists; it was more a meaning embodied in a process, a teleological striving, than a *ratio* fixed in a scheme conceived almost as a set piece composed by art. The *Prima Secundae* observed how law rationalized what had started at the lowest levels, and built up from the blind appetites for self-preservation and from animal instincts—Ulpian was here echoed without acknowledgment—to the specifically human demands of social life.[3] The stages might be distinguished, but they were not exclusive: *communicant in una radice*.[4] Primitive and civilized functions were rooted in the same thing, one single human substance manifesting itself in different ways; there was no abrupt break between the *impetus* of nature and the *industria* of civilization, the natural expression of feeling and speech.[5]

That may help to explain why, less than a year later when he came to treat *jus* and *justitia* in the *Secunda Secundae* (1270) he left Gaius and reverted to the lesser legal authority of Ulpian,

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[1] *Institutes*, i, 1. *Digest*, i, 1, 9.
F. de Zulueta. *The Institutes of Gaius*, i. Text with Critical Notes and Translation. Oxford, 1946.
[2] *V Ethics, lect.* 12.
[3] 1a–2ae. xciv, 2. xcv. 4, *ad* 1.
[4] *Ibid. ad* 2.
[5] 1a. lxxxvi, 3, 4, 6, 8. lxxvii, 1–6. *I Politics, lect.* 1.

and to the fragment of his teaching that Natural Law was common to men and animals—Ulpian himself had not restricted natural law to the quasi-instinctive adaptations of sex and parenthood.[1] This was awkward from a legal point of view. The theologians had found it manageable only when they were contrasting primitive rights and civilized adjustments, so, although St Thomas dismissed the difference between the two jurisconsults as mainly a matter of words, it was strange that he should hark back to Ulpian. His name and doctrine may have been running through his head that week when writing, for the next article was to treat of the non-political and non-reasoned quality of patriarchal, slave-owning and domestic rule (*justum paternum, justum dominativum, justum oeconomicum*), and the next question was to analyse and expand Ulpian's celebrated definition of justice—*perpetua et constans voluntas jus suum unicuique tribuendi*.[2] Perhaps it was a clue to how close he would keep legality to human biology. It was certainly in keeping with the movement of his ideas, which were taking on a more Ionian complexion as he accepted more profoundly the reality of material objects and the naturalness of the human community in the fullest physical sense of the word.

Whether natural rights were taken in their animal rudiments or in their reasonable codification, or whether or not the *Jus Gentium* were reckoned to belong to that, all agreed that a body of law preceded the making of positive law. Human legislation had to work on that datum. For the protection of its citizens the State's function was twofold: first, to set forth and enforce, according to circumstances, those of the principles and conclusions of the natural moral law which were necessary for organized social life; secondly, to go farther and add detailed provisions, *dispositiones particulares*, not of themselves implied in the moral law, but imposed in order to ensure uniformity and public convenience.[3] These were the ordinances purely of Positive Law, which all subjects were bound in conscience to obey.[4] In themselves they could be otherwise: they derived

[1] *Digest*, i, 1, 3, 4. 2a–2ae. lvii, 3.
[2] 2a–2ae. lvii, 4. lviii, 1–4, 8–11.
[3] 1a–2ae. xcv, 2.
[4] 1a–2ae. xcvi, 4, 5.

their force not from their inner morality, but from the fact of their enactment by lawful authority—like traffic regulations, which are reasonable, not because there is no alternative, but because all must keep the same rule of the road.

This capital distinction between the rational evolution of Natural Law and these artificial supplements of the Civil Law prescribed by the State will be discussed in the next chapter. Both classes entered into the civilized community. Part of political justice, Aristotle noted, was natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when laid down is so no longer.[1] Civil laws alone, and no others, were generated by the State. Even there some ordinances proceeded from the agreement of citizens among themselves and from their consent to custom; they were not initiated by the Prince.[2] Customary laws, said Aristotle, have more weight and relate to more important matters than written laws; a man may be a safer ruler than a code, but not safer than custom.[3] The stability of the State depended on custom rather than on the art of the legislator.[4] The two however were related, and our next step must be to consider the status of the legal sovereign with respect to the natural needs of the political community.

5. *Dominion a Natural Condition*

A. J. Carlyle wondered how the curiously unhistoric reading that political authority was founded on sin could have replaced Aristotle's sane and searching analysis.[5] We may wonder, too, how it became too firmly fixed in the theological tradition for the weight of St Thomas's authority to shake it. Not that he was a mundane moralist disposed to exalt the earthly city. The *bonum commune sensibile et terrentum* was below the *bonum intelligibile et coeleste*. It was like the Old Jerusalem, not like Babylon, in relation to the New Jerusalem.[6] Political life and institutions

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[3] *Politics*, iii, 16. 1287 b 5–7.
[4] 1a–2ae. xcvii, 2, *ad* 1.
[5] *History of Medieval Political Theory*, v, p. 6.
[6] 1a–2ae. xci, 5.

rose from natural rightful needs, and public authority was therefore the object and not merely the occasion of rational and Christian virtue.

He was the first of the great Latin divines whose outward deference to the powers that be was not more or less tacitly accompanied with reserve, and even cynicism. They moved in this world somewhat like Cardinal Consalvi at the Congress of Vienna, courteous to the diplomats, loyal to engagements, concerned mainly to preserve the freedom of organized religion by reaching practical accommodations to existing forces, but unimpressed by the improving and solemn rhetoric with which politicians clothe their actions. A concordat might be hoped for, and if struck would be observed, but such prelates were not seriously convinced that the secular power possessed the intrinsic power to promote virtue, let alone the inclination. When religion was socially powerful the State could be harnessed and prelates could curb potentates, but when secular policies became ends in themselves and the means to implement them lay handy, religion became a private association; its activity retreated more and more into the domestic enclosure of the Church and the inner fastnesses of the soul.

The apostolic injunction, *submit yourselves to every ordinance of man for the Lord's sake*[1] which had always been preached and obeyed except by visionaries for whom Rome was Anti-Christ, could appear grudging when Europe was Christendom and political power was consecrated. No persecution of religion as such was likely to arise, despite conflicts between ecclesiastical and civil magnates. Still the old theory persisted, that men were divided between two opposed cities, the earthly and the heavenly, and that the earthly city, while necessary to ensure public security, was not charged with justice in the fullest sense of the word. It offered a tarnished sort of good, but good enough to go on with. St Augustine had not expected righteousness and the true worship of God from civil government as such, and Vincent of Beauvais, an older contemporary of St Thomas, echoed the dualism. Political power, he said, was different in Christians and in infidels for without the righteousness of grace there was no true *res publica*. He allowed that pagan rule could

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compose a *concordia* which was a social benefit in the *civitas terrena* and worthy of respect; laws not conflicting with religion were common to both pagan and Christian realms, yet there were no full legal rights apart from Christian titles to them.[1]

The Sicilian law book, the *Liber Augustialis*, foreshadowed the change that was to be brought about from the reception of Aristotle's political teaching; there Frederick II cleared his title to rule away from any dependence on ecclesiastical ratification or argument that sin must be remedied. He claimed a stainless power which issued from the necessity of things and was as needful as marriage for the continuance of the race. St Thomas, born in his realm and from a family distinguished in his service, extended this claim to political authority as such. It was more than an attempt to remedy a failure in the past, it was a corollary of social human nature; it was not merely an interim arrangement to mitigate the effects of sin or a police-threat to potential criminals. The political order was beautiful and worthy for its own sake. It was the opportunity, not the trial, to Christian virtue, a means of grace as well as a civilized convention. Its power was educational and health-giving, like that of a teacher or doctor, and though it should be modest about its ability to improve human character and should consequently restrict itself to outward social justice, few Aristoteleans would have agreed with John Stuart Mill that religion was outside its sphere. Integration in the political community was a condition of full virtue.[2] At the root of this difference from many of his contemporaries lay St Thomas's doctrine of Original Sin; he did not think that actual or 'wounded' human nature was profoundly unlike 'pure' human nature—had it ever existed.[3]

His early writings showed traces of the Augustinist persuasion that secular authority was a substitute for lost innocence; his later writings were, as might be expected, more definitely Aristotelean. Let us compare some texts, from the *Commentary on*

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[1] *Speculum Doctrinale*, vii, 3, 7.

[2] 1a–2ae. lxxii, 4. xcii, 1.

[3] J. B. Kors. *La justice primitive et le peché originel d'après saint Thomas*. Paris, 1930. R. M. Martin. *La controverse sur le peché originel au début du XIVe siècle*. Louvain, 1930.

the Sentences (1253–5) and on *St Matthew's Gospel* (1256–9) of his early period, and from the *Summa Theologica* (1266–73) and the *Commentary on the Epistle to the Romans* (1272–3) of his maturity.

His exegesis of the text, *Render unto Caesar the things that are Caesar's and to God the things that are God's* started with the literal sense.[1] A coin was produced: *Whose image and superscription is this?* asked our Lord, as though to say that what you are and what you use are God's and Caesar's, for natural riches, such as bread and wine, are from God and to be offered to Him, while artificial wealth, such as money, is from Caesar who must be given his due. He then turned to the allegorical sense. Our soul is made to God's image and must be rendered to him, yet the world puts its stamp on us, and we must accept it peaceably. Even holy men lifted above mundane cares, he added, have to mix with their fellows and *pray for the life of Nabuchodonosor the king of Babylon and for the life of Balthasar his son, that their days may be upon earth as the days of heaven.*[2]

The *Commentary on the Sentences* cited the same text to support civil obediance to properly constituted authority and adduced another.[3] *What thinkest thou, Simon? of whom do the kings of the earth take tribute? of their own children or of strangers? Peter saith to him, Of strangers. Jesus saith unto him, Then are the children free.*[4] Was this a suggestion of the existence of two classes of men, the ordinary run of Christians tributary by birth to the secular power and an élite exempt by reason of their apostolic life, who were neither slaves subject to service nor owners with possessions liable to taxation? *Notwithstanding*, the passage continues, *lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou hast opened his mouth, thou shalt find a piece of money: that take, and give unto them for me and thee.*[5] The irony was not lost on the Augustinist theologians. Civil power was artificial like money, reflected St Thomas, and notwithstanding the fact that some compromises were unavoidable, men were freed from its exactions to the extent that they embraced the life of perfection.

[1] Matt. xxii, 21. *In Evangelium Lectura*, xxii (b).
[2] Baruch, i, 11.
[3] *II Sent.* XLIV, ii, 2, *ad* 1.
[4] Matt. xvii, 25–6.
[5] Matt, xvii, 27.

Dare any of you, wrote St Paul, *having a matter against another, go to law before the unjust, and not before the saints?*[1] More had been read into the text than the simple advice to avoid civil litigation. Did it not question the foundations of earthly power? St Thomas for his part was content with the pragmatic reasons which prompted it. If the faithful submitted their secular concerns to infidel authority unsanctified by the sacraments of the faith, then Christian authority and the dignity of Christian men would be impugned, religion itself brought into disrepute, and occasion offered for calumny and persecution. Noting St Peter's injunction to the faithful *to submit themselves to every ordinance of man for the Lord's sake*,[2] he concluded that St Paul was not disapproving of obedience when summoned to appear before a secular non-Christian court, but of voluntary recourse and submission to it.

Nevertheless the treatment of civil obedience in the *Commentary on the Sentences*, included in the section significantly entitled *de potentia peccandi* by Peter Lombard, freed its essential character from involvement with sin. Would lordship have existed in a state of innocence? The answer drew a distinction between two modes of rule, one well disciplined, *praelationis modus ad regimen ordinatus*, the other domineering, *ad dominandum*.[3] Rule for the profit of the ruler was well enough when exercised over animals—incidentally it was held that the Fall has weakened our mastery there—but thoroughly evil when men were concerned. A political tyrant was like a slave-owner.[4] Rule for the profit of the ruled was justifiable, however, and for three reasons; firstly, *ad dirigendum subditos in his quae agenda sunt*, in order that people might live together in well-ordered and disciplined agreement; second, *ad supplendum defectus*, that they might be defended by the prince; third, *ad corrigendum mores*, that wrongdoers might be forced to behave decently. The second and third reasons supposed the fact of sin, but the first, based on congenital inequality, carried on Plato's and Aristotle's thought, that wisdom should be the ruling force and that

[1] I Cor., vi, 1.
[2] I Peter, ii, 13.
[3] *II Sentences*. XLIV, i, 3.
[4] *Ethics*, viii, 10. 1160 b 30. St Thomas, *lect.* 10.

its possession brought the responsibility of governing others not so well endowed, *secundum quod unus alio munere sapientiae et majori lumini intellectus praeditus fuisset.*

Soon he was to begin the *Summa contra Gentes* (1259), of which the second book pictured a hierarchic universe composed of things diversified in kind and degree, beautiful *modo, specie et ordine.*[1] Men also were born unequal; their inequality was not caused solely by environmental factors originating from sin. It was not as the Augustinists thought, so in a sense foreshadowing in social theory the biology of Lysenko, that conditioning is what chiefly matters; on the contrary, human beings were not all entirely composed of the same homogeneous stuff which could be fashioned to this style or that—or victimized in this way or that—by outward circumstances which sufficed to explain their differences. Their social aptitudes were innately various. Qualities of leadership were uneven, and here temperament counted for much. Political subordination, therefore, was not based only on historico-theological accidents, but also on the social nature of dissimilar human beings; hence the moral right to rule could be ascribed to secular power as such and, at least in the abstract, be examined without reference either to the Christian theology of the Fall or to the existing system of Western Christendom in which could be found only the rudiments of State authority as we know it.

The changing situation brought the matter to a head. Christian men were faced with what for them were new problems. Abroad they were falling under non-Christian sway, and it was asked, Were they religiously bound to obey? At home Church and State were slowly becoming more separate, and it was asked, To what extent did the secular ruler enjoy rights which were properly his own?

Eastern territories long Christian had been taken by Moslems, and their rule was sometimes tolerant and—more so in the case of the Arabs than of the Turks—enlightened. Did their subjects owe them allegiance? It was a practical issue. Hostiensis took the line that since the coming of Christ all principality and jurisdiction had in principle been taken from infidels and

[1] *On the Truth of the Catholic Faith.* Book II: 'Creation.' Tr. J. F. Anderson. New York, 1956.

handed to the faithful; he admitted, that in practice it might be prudent to let sleeping dogs lie. Giles of Rome contended that infidels had no legitimate title to their possessions. For clerics to hold that you were not bound to keep faith with Saracens was current form. Yet the inhabitants on the spot could not afford such detachment, and the Latin States in Palestine, despite chronic war and frequent treachery, and the Eastern Empire itself were often on courteous terms with their neighbours. Christians did not hold aloof from them: as the *Acta* for his canonization bear witness, St Dominic was very much at ease with Moors and Jews in all human relationships. The missionary friars, penetrating through the belt of Islam, acknowledged the rights of rulers among the Mongol and other peoples they hoped to convert or turn into allies. This deference was less noticeable in Spain and the Baltic lands where Christendom was expanding, the scenes of wars of religion where the rights of Christian conquest were taken for granted and without the scruples which theologians expressed two or three centuries later during the colonization of Central and South America.

Nearer home within Christendom itself the secular power was emerging complete with its own proper claims. When asked from whom he held the Empire if not from the Pope, Barbarossa replied, 'From God alone.' He was not to make good his claim during his own lifetime, but before the end of the conflict between Pope and Emperor, the clerical arguments that all authority was subject to ecclesiastical control were counter-attacked by the argument that the secular order possessed its own inalienable power, responsible to God's judgment and its own laws, but not to priests. The movement was successful even in those countries where the Papacy had acquired special rights by agreement, as indeed in two of the most politically advanced realms in Christendom, namely Sicily where the king acknowledged the Pope as his suzerain and was his *legatus natus*, and England which John had surrendered in 1213 and then received back from the Roman Church as a feudal dependent. These transactions had been clothed in religious terms but were not generally treated as belonging to divine law.

The claims of the political Canonists grew more extravagant as their effective power waned outside the Church; they were defeated by events as much as by a rival philosophy. Once the Nation States had succeeded the Holy Roman Empire and the Holy See was felt to be Italian in its personnel and policies, the tide of events flowed against them. Then, too, although they may have claimed that their utterances were semi-inspired by the Pontifical Court, they lacked the solid support of the theologians of the centre who were not inclined to grant unlimited earthly dominion to the Pope. Christ himself who was the king of everything and possessed the *universalis judiciaria potestas* had not subjected all human affairs to it *quantum ad executionem*.[1]

Innocent IV, a moderate when he argued for the supremacy of the spiritual power, had disavowed any intention of disturbing existing rights fairly established though without recourse to Church ratification. St Thomas clearly laid down that grace offered no violence to the order of nature; consequently true human rights constituted apart from official religion were to be respected, though the Church should not allow infidels to acquire dominion over Christian men, and possessed the power of releasing slaves on their conversion to the Christian faith.[2] When he spoke in passing of kings being the *vassalli Ecclesiae* he either had in mind certain special cases or used the word in an untechnical sense in contrast to the days of persecution *quando astiterunt reges adversus Christum*.[3] The *enfant terrible* of the Dominicans, Durand of St Pourcain (d. 1332), usually so critical of him was his ally here, and agreed that legitimate power could be vested in non-Christian rulers and should be accordingly maintained.

That political authority was grounded on the social nature of man appeared more emphatically in his later writings. There also the dignity of power was enhanced. The *Summa Theologica* repeated the question, put forward in the *Commentary on the Sentences*, Whether in a state of innocence man would have been

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[1] 3a. lix, 4, *ad* 2.

[2] 2a–2ae. x, 10.

[3] *XII Quodlibets*, xiii, 19, *ad* 2.

subject to human power?[1] The same distinction was drawn between the government of slaves for the benefit of the governor and the government of freeman for the benefit of the governed. It was developed in the *de Regimine Principum*.[2] For a man to cede his freedom and the disposing of what is his own was grievous, *contristabile*; that could only be penal and the result of sin. But that he should be politically subordinate, for his own sake and that of the common good, was no derogation from his dignity. At first sight this may seem rather tame, an obedience to an enlightened and benevolent prince far removed from a critical and sturdy radicalism. From a closer reading of the texts, however, it is clear that the subordination to the common good did not spell subservience to a group but personal and responsible sharing in social purposes and decisions.

These transcended private interests, which would still have had to be controlled even were there no disorder due to sin. Neither self-interest nor the profit motive was inherently vicious. It was in the nature of things that private advantage might be a public danger that could be accepted with equanimity and then controlled. The reverse was also true, according to the motto on the common seal of the Stockton and Darlington Railway, *periculum privatum utilitas publica*. Stresses were inevitable in any community composed of heterogeneous parts. One man was endowed with knowledge and public zeal superior to that of his fellows and it would be awkward, St Thomas remarked, if he did not use his abilities for the benefit of others. He quoted St Peter's advice, that we should be *good stewards of the manifold grace of God, ministering the same one to another*; then, characteristically pillaging the Egyptians, he took St Augustine's saying, Not lust of power moves the great man, but the office of counsel, thus has nature's order prescribed, and man by God was thus established.[3]

Such was the argument of the *Prima Pars*. Two years later when the *Secunda Secundae* turned to domestic life and private property it recognized that physical compulsions inflicted and

[1] 1a, xcvi, 4.
[2] ii, 9. iii, 19.
[3] I Peter, iv, 10. *de Civitate Dei*, xix, 15.

endured were penalties of the Fall. That the man must sweat at the unfruitful soil, the woman labour to deliver a child and put up with the moods of the husband, all these were curses and the consequences of sin. Nevertheless at a deeper level human nature as such was essentially committed to and engaged with the powers of the material world: sick pain was one thing, physical effort another. Man's dignity as a maker demanded that he should be a worker—this was his title to be a property-owner. Similarly it was a woman's dignity to be a mother and obedient to her husband. Child-bearing, St Thomas guessed, would have been painless and domestic intercourse 'polite' in a state of innocence, but he did not share Alcuin's opinion that no thorns would have grown then, but thought there would have been wild flowers but no weeds, that is, plants where they were not wanted.[1]

The same distinction, between an essential condition and a particular mode of it due to sin, entered his inquiry on private property. As political power had acquired a coercive character so private property had acquired a certain exclusiveness; social institutions had come to terms with selfishness. Moreover, positive laws have rightly determined detailed arrangements for the transmission and retention of property, leaving intact the principle that the root of human ownership lay deeper and grew from man's need and duty to assume responsibility. Man was an artist made to God's image, and, though he cannot create in the strict sense of the word, he was called to make things grow through his own initiative. Some kind of right to property resided in the individual not granted by the organized group, and here some anticipation may be detected of Locke's teaching of the pre-social and inalienable right of freeholders. Its extent, here more here less, was to be settled by social authority.

Less academically communist than those divines who saw behind the present city the image of a classless community where everything was shared in common, St Thomas's prescriptions were neither so deep nor so far ranging as were

[1] 2a–2ae. clxiv, 2. *c* & *ad* 1.

For the *subjectio civilis* of woman to man, the *caput* and *gubernator* see 1a. xcii, 1, *ad* 2. xciii, 4, *ad* 1. 2a–2ae. lxxvii, 2.

For women's exclusion from civil and political office, see *IV Sentences* XXV, ii, 1. 1a–2ae. cv, 3, *ad* 1.

those of some of the Franciscans. Vowed poverty was a counsel of religious perfection and communism was a good system for specially dedicated groups to choose. The value of personal administration, *potestas procurandi et dispensandi* was insisted on, yet the enjoyment of the fruits of the earth should be for all. He shocked some of his contemporaries by maintaining that a man in dire necessity did not steal who helped himself from another's goods.[1]

The same paradox appeared when slavery was the topic. With Aristotle he calmly accepted the fact that men were born socially unequal in their abilities, opportunities, and vocation. That followed because psychological qualities were so closely bound up with organic conditions.[2] One might there expect him to have been rather more tolerant than an Augustinist about slavery: after all did not its origins lie in the nature of things and was not sin responsible only for its cruelty and incidental abuses? On the contrary, he was less inclined than the Fathers to excuse its continuance.[3] Some things are best tackled when you enter into their strength and not let them pass. Social theology is like politics, it needs men who will wrestle with the here and now and not escape into the hereafter. One weakness of 'other worldly' schools of theology is to discourage the spirit of social reform by assenting too easily to bad social conditions on the grounds that the city of this world is anyhow a compromise with evil, and that there is little to be done about it except to keep oneself uncontaminated. Passive non-approval easily turns to condonation.

St Thomas inherited the temper of the early Middle Ages. Disobedience was the right answer to the precepts of wicked power. Towards the end of his life he seemed to grow more guarded against the least hint favourable to rebellion, without however approaching Cranmer's position, that if the prince be wrong then it is for God alone to punish him. The Lutheran

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[1] 2a–2ae. lxvi, 2, *c* & *ad* 1. 7. xxxii, 5, *ad* 2. lvii, 3. *II Politics, lect.* 2, 4.
A. Horvath. *Eigentumsrecht nach den hl. Thomas von Aquin.* Graz, 1929.
C. Spicq. 'La notion analogique de dominium et le droit de propriété.' *RSPT*, 1931, pp. 52–76.

[2] 1a. lxxxv, 7.

[3] 1a. xcvi, 4. 1a–2ae. xciv. 5, *ad* 3. 2a–2ae. x, 10. lvii, 3, *ad* 2. civ, 5. clxiv, 2. *II Sentences*, XLIV, i, 3. For slavery and marriage, *IV Sentences* XXXVI, i, 1–3.

doctrines of submission to the powers that be and the denial of the Church's power to judge the actions of the earthly sovereign would have appeared to him strange. Usurped authority or unjust decrees deserved no obedience, except *per accidens*, in order to avoid scandal or the danger of worse happening.[1] For it was wrong to bring the principle of civil authority into disrepute, and wrong also, though not technically the sin of sedition, to overthrow a tyrant if the people were likely to suffer more from the consequent disturbance than from his misrule.[2]

His last passage on civil dominion appears in the exposition of the *Epistle to the Romans* written towards the end of his life. *Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.*[3] Some early Christians, he commented, urged that they were not subject to earthly power because of the liberty Christ had brought them. They were mistaken, however, for this liberty was of the spirit, a freedom from the law of sin and death. Our flesh was still in subjection; we can but await a freedom both of spirit and body, *when Christ shall have delivered all the kingdoms to God the Father, when he shall have brought to nought all principality and power.*[4] Until then, so long as we are clothed with corruptible flesh we must submit to bodily masters: *servants, be obedient to them that are your lords according to the flesh.*[5] The 'higher powers' of the text were men constituted in power to whom we should be subject according to the order of justice. St Paul spoke without qualification—the term higher should be taken unrestrictedly, and he meant that we were their subjects because of their high office, even if they were evil. Hence St Peter said, *Servants, be subject to your masters, not only to the good and gentle, but also to the forward.*[6] For all power was from God, even as our Lord reminded Pilate, *Thou couldest have no power against me, unless it were given thee from above.*[7]

The words of the prophet, *They have reigned but not by me; they have been princes and I knew not*,[8] were no rebuttal of this teaching, he went on to say. For there were three ingredients in the

[1] 2a–2ae. civ, 6, *ad* 3.
[2] 2a–2ae. xlii, 2.
[3] Romans, xiii, 1–2.
[4] I Cor., xc, 24.
[5] Ephesians, vi, 5.
[6] I Peter, ii, 18.
[7] John, xix, 11.
[8] Hosea, viii, 4.

power of a prince, or of any dignitary: the power itself, which was from God; the mode of acquiring it, which was from God when it was obtained in due form, but not otherwise; its exercise, which was from God when the precepts of divine justice were observed, but not otherwise. The subordination of lower to higher was permeated with divine purpose. Hence to resist proper authority was against virtue, and obedience and submission were necessary both for decency and for salvation.[1]

Little room for civil disobedience was allowed by such doctrine. Two theories on the origin of sovereignty which have been held by followers of St Thomas help to illustrate the shift of emphasis between his early and his late writings. According to the sixteenth-century 'Translation Theory', expounded by Cajetan, Vitoria and Dominic Soto, the right to govern was transmitted to and vested in a ruler by the explicit choice or tacit consent of the people, who must then obey so long as his power was not forfeited by breach of contract and violation of the constitutional laws. Suarez, too, was of this opinion, though his studies served as a bridge to the nineteenth-century 'Designation Theory' put forward by Thomists of the revival inaugurated by Leo XIII. To such writers as Liberatore, Zigliara, Cathrein, Schwalm and Billot the people's choice did not of itself constitute that form of government called democracy, which, therefore, was no essential part of Natural Law. The government originally established by a kind of election might take other forms, and was henceforth to be obeyed even though it might not be representative according to formal suffrage or even when it appeared unpopular.[2]

Both sides have appealed to St Thomas for support, the first probably on better grounds. His convictions have to be construed, for he was confronted with the doctrine neither of the Divine Right of Kings nor of the Sovereign People. The sentiments they have evoked are not easily run into his political scheme of things.[3]

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[1] *Expositio in Romanos*, xiii, *lect.* 1.

[2] G. Bowe. *The Origin of Political Authority*. Dublin, 1955.

[3] 1a–2ae. xc, 3. xcvii, 3, *ad* 3. *de Regimine Principum*, i, 6. Y. R. Simon. 'The Doctrinal Issue between the Church and Democracy.' *The Catholic Church in World Affairs*. Ed. W. Gurian. Notre Dame, 1954.

VI

A DRAFT FOR THE JURISTS

LEGAL or positive right was based on natural right. Cicero was quoted to this effect by the thirteenth-century writers.[1] All belonged to the 'Natural Law School', not that they necessarily held that the Natural Law was an organic system of legislation to which Positive Law could be compared as inferior to superior, as tactical plan to strategical design. But they required human legislation to respect lawful values which it did not itself create. These were the social premisses of the good life, emanating from God's Eternal Law, discovered in nature and confirmed and heightened by Revelation. The Natural Law taken alone scarcely composed an effective corpus of precepts. Do to others as you would be done to yourself—the maxim did not take you very far. Its negative variant, do not do to others what you would not have done to yourself, adopted in King Alfred's code, was sharper and more effective.

General moral principles and goodwill were too shapeless to give bone for the moral life either of the individual or of the group. Definite conclusions and decisions had to be come to about theft, for instance, or sexuality outside marriage. These constituted a set of derivative precepts of which the human reason had no original intuition and to which the human will had no instinctive bent. They were reached only by deliberation and effort not by *inclinatio naturalis*, and held only by instructed good-sense. Such were the judicious ordinances which held a community together, the social contrivances or *utilia ad bene vivendum*.[2]

Furthermore, merely as statements even these remained academic so long as they were not carried into practice. Thereupon they, like the rules of statesmanship, were involved with contingency and contrariness. Enlightened doctrines may produce conflicting policies, as happened to the British between the two World Wars when they supported self-determination

[1] See *V Ethics, let.* 12. 1a–2ae. xci, 3. xciv, 2.

[2] 1a–2ae. xciv, 3.

for the Arabs and a national home for the Jews and ended by losing control of the Suez Canal. The application of social morality varied according to circumstances. Alternative ways of implementing its purposes could also present themselves. Granted that men should be responsible owners and masters of their life, several methods lay open for regulating the acquisition and exploitation of property; in order to ensure conformity in the group, legislation was necessary which enacted the form, or forms, to be accepted by all.

At this stage entered a special act of legislative and political will. Its precept was not drawn from the resources of the Natural Law but superimposed on them. From the point of view of moral science it was not a conclusion but an addition. It was like a work of art, justified more by its success than by the evidence of ethical principles. Of course as a practical measure it was expected not to thwart ultimate moral purposes, for what is the use of anything that does not conduct us to happiness? To this extent moral science and religious belief should exercise a negative control over law-making and politics. Yet neither could provide the immediate and pragmatic tests, neither was so on the spot that it could tell us what laws should be enacted and what policies pursued in order that the population should be at once secure and mettlesome, contented and honourable, neither over-disciplined nor lacking in public spirit.

Customs and fundamental laws were woven into the social fabric. They had to be preserved were the community to keep its traditional identity and inherited way of life. But they did not serve to meet every new circumstance. Adaptations, alterations and additions were called for, and it was in the deliberate framing of these by statute and in the execution of the improvisations necessary for the needs of the State that our governors needed a special technique, *ars*, and practical wisdom, *prudentia*. Here their decisions are their own, and they must have the courage of them.

Talk is not enough, nor high-minded protestations, nor gestures expressing the national spirit. Only the functions of *making* and *doing*, as opposed to *demonstrating* what is right and patriotic, take us into the proper field of human law

and politics. St Thomas seems to have been the first Christian moralist who appreciated the fact. Let us consider then his grant of limited autonomy to juridical and political action, and first with respect to the positive lawyers.[1]

The threat of too much law, of which he was well aware, arose in his day less perhaps from the Civilians than from the Canonico-Moralists who, like modern Welfare-State officials, already disclosed their addiction to nagging. The entrance of more and more legal forms into theology, particularly into moral theology, served many good purposes, but when too many came crowding in theology itself scarcely had room to breathe. His dislike for the intrusion of Decretalism into theology has already been noted,[2] also his detachment from the ambitions of the political Canonists, though he was high in the counsels of the *Curia*. The two Popes he served and with whom he was familiar, Urban IV and Clement IV, were both French administrators of great experience who had made their reputations outside the Court of Rome; Clement had been a civil lawyer, adviser to St Louis of France and a married man before embracing the clerical state.

From the nature of his writings he had more frequent occasion to appeal to the Canon Law than to the Civil Law, but it was usually on minor points. The *Summa Theologica* and *Contra Gentes* between them contain 193 references to Gratian's *Decretum* and sixty-one to Justinian's *Institutes*, seventeen to the *Digest*, thirteen to the *Codex*, and none to the *Novellae*. His entire works include but 155 references to the *Corpus Juris Civilis*. While he maintained the dignity of the Roman juridical order, he used its Law mainly as a practical system of reference. Some of its notions were worked into his synthesis, for instance, *servitus*, *status*, *legimatio*, and *adoptio*.[3] But so also he borrowed from the Lombard Law. The influence on him of the Roman Law was not to be compared with that of Aristotle.

Without descending to details we may observe the general bearing on social morality of the Roman Law taken in both its

[1] F. Olgiati. *Il concetto di giuridicità in San Tommaso d'Aquino*. Milan, 1944.
L. Lachance. *Le concept de droit selon Aristote et saint Thomas d'Aquin*. Ottawa, 1948.
P. M. van Overbeke. *De relatione inter ordinem juridicum et moralem*. Louvain, 1934.
[2] *Contra Retrahentes*, 13. 2a–2ae. lxxxviii, 11. XI *Quodlibets*, 9, *ad* 1.
[3] J. M. Aubert. *Le droit romain dans l'oeuvre de saint Thomas*. Paris, 1955.