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THE REFORMATION AND NATURAL LAW.*

The world of to-day is filled with the conflict about the modern understanding of the Gospel. The decision in this conflict cannot be reached merely through Biblical studies and the investigation of primitive Christianity; there is need also of a thorough acquaintance with the development of the evangelical Church and of the evangelical spirit, as well as with their influence upon the formation of the modern world. In this respect, however, evangelical theology must be pronounced positively backward. The Protestant scholar, who is at home in Babylonia and Assyria, in primitive Christianity, and in the first three centuries, is in Germany no less than in England and America often without a moderately adequate survey of the general development of his own Church. How fragmentary is the exposition in the general Church histories, how narrow and one-sided in the histories of doctrine. How many fields have still received very little cultivation, for example, non-German Protestantism, the great movement of the "Enlightenment" and of Rationalism, Christian life, Protestantism and culture, and the like. In view of this defect, Ernst Tröltsch deserves gratitude on account of the very fact that he has even undertaken such a work as the comparatively full presentation of "Protestant Christianity and the Modern Church", which he

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offers in the *Kultur der Gegenwart.*[1] His merit becomes greater on account of the fertility of his thought, and especially on account of the real breadth of vision, that has led him not to confine himself one-sidedly to German evangelical Christianity, but rather to attempt also an appreciation especially of Calvin and Calvinism, as well as of the smaller religious parties. Against such merits, it is true, must be set the entirely mistaken fundamental thesis of Tröltsch that Luther and the entire Reformation belong to the Middle Ages. This assertion is rightly contradicted by men of the most various opinions—I name only Böhmer, Loofs, Kattenbusch, Hunzinger.[2]

Little, however, has yet been accomplished towards the refutation of that proposition, which can be regarded only as a catchword, similar to the various clever half-truths that appear in Tröltsch's style. Students of recent history have long been agreed that the close of the seventeenth century, the conclusion of the religious wars, marks the beginning of a new epoch in Church history, the character of which, as Loofs[3] judiciously puts it, "stands in no less sharp contrast with the previous period of the Reformation and Counter-Reformation, than that former period with the Middle Ages, and the Middle Ages with the period of the ancient Church". The peculiarity of the new period is, expressed in one word, what is called, sometimes with pride, sometimes with contempt, "modernism", or "the modern spirit". But if the division is a real one, there arises the question, embarrassing to every evangelical Christian, How is the modern spirit, which, since the seventeenth century, in spite of the check that it received in the nineteenth, has been unfolding itself

[1] Teil I, Abt. iv, 1. Hälfte, 1906, pp. 253-458; *Protestantisches Christentum und Kirche in der Neuzeit.*

[2] Böhmer, *Luther im Lichte der neueren Forschung,* Leipzig, 1906; Loofs, "Luthers Stellung zum Mittelalter und der Neuzeit", *Deutsch-evangelische Blätter,* 1907, Augustheft; Kattenbusch in *Zeitschrift für Theologie und Kirche,* 1907, Heft 1, and *Theologische Rundschau,* 1907, Heft 2; Hunzinger, *Der Glaube Luthers und das religionsgeschichtliche Christentum,* Leipzig, 1907.

[3] *Grundlinien der Kirchengeschichte,* p. 203.

with ever-increasing vigor, related to the Gospel of the Reformation? How could the age of the Reformation with its conflicts of faith be followed so suddenly by an age whose views about historical criticism and natural science, about politics and social life, are in part directly opposed to the Reformation conception of the world? What forces of the Gospel had a part in the development of the new way of thinking? What other, unevangelical, tendencies intruded themselves, and therefore, because they arose, for example, in Catholicism (and hence in false belief), or in an unbelieving and therefore pernicious development of civilization, must be combatted and eliminated? Or perhaps the Gospel of the Reformation is no longer judge over modern progress? Perhaps it is rather the latter that shall decide how much of the former is still tenable and fit for use?

To these questions, which, although they concern the systematic theologian as much as the historian, are primarily historical questions, I desire to make a slight contribution by examining the relation between the Reformation and Natural Law. For there can be no doubt that "natural law"—primarily a school of jurisprudence, usually regarded as beginning with Hugo Grotius and not till the nineteenth century replaced by the historical school—was one of the principal historical factors in the formation of the modern spirit, a factor whose after-effects are still perceptible in the most diverse spheres. For not only have the laws of the evangelical Church itself been influenced thereby, both in the collegial law of the eighteenth century and also, though not so strongly, in the modern presbyterial-synodical constitutions; but especially all the political reversals up to the French Revolution are most intimately connected with the natural-law theories. Rousseau's *Contrat social* is the last great manifest of natural law. This itself is sufficient to show that natural law was more than a mere political and legal system; it became also the starting-point for "natural theology", the broad religious basis of the religion of the "Enlightenment".

How could this natural law spring up on the ground of the Reformation, take such deep root and put forth such wide-spreading branches? Of course, it is far from my intention to include in the investigation the whole complicated phenomenon of natural law,[4] especially on its juristic and purely political side. My endeavor is only to study the beginnings of natural law on Protestant ground (which in many ways were interwoven with theological points of view), and even in this, I am not attempting anything like completeness, but desire merely, by means of certain chief representatives, to show from the origin of the natural law of the "Enlightenment", how far that movement was influenced whether positively or negatively by the ideas and motives of the Reformation.

I

First of all, there can be no doubt that natural law received at one point in the Reformation theology itself, if not a formal treatment, at least an organic insertion into the general body of its dogmatico-ethical system, namely, in Melanchthon. So early as in the first edition of his *Loci,*[5] that echo of the Gospel of Luther, he mentions the most

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[4] How extraordinarily numerous the forms are in which the theories of natural law have developed may be seen from the work of the acute professor of law at Bonn, Karl Bergbohm, *Jurisprudenz und Rechtsphilosophie,* Vol. i, *Das Naturrecht der Gegenwart,* Leipzig, 1892. Bergbohm has undertaken to study the complicated appearances, forms and operations of natural law in past and present, and with the searching broom of criticism to sweep them away from the science of jurisprudence. An example of the most extreme inconstancy in the use of the term, natural law, is afforded by the book of the philosopher, A. Trendelenburg, *Naturrecht auf dem Grunde der Ethik,* Leipzig, 1868, a work which examines by a purely philosophical method the nature of law, that is, the ethical foundation of legal enactment, both according to the principle of law and according to the legal relations derived therefrom. In spite of the fluctuating element in the conception of natural law, it remains, nevertheless, for the historian, a definite historical quantity, and of course this alone is in view in the following discussion.

[5] *Melanthonis Opera,* in *Corpus Reformatorum,* xxi, cc. 116ff.

usual forms (*communissimas formas*) of the *lex naturae* or of the *ius naturale,* as the theologians and jurists were accustomed to set them forth. These he finds in three principal divisions of natural law—concerning the worship of God, concerning the formation of the state and the inviolability of the individual persons guaranteed in the state, and concerning property—and to these he appends a brief notice about the *ius gentium* with its regulations concerning marriage, business, trade and the like. Biblical attestation of the *lex naturae* with its innate moral principles is according to Melanchthon contained in the apostolic dictum, Rom. ii. 15. Nevertheless, he is unwilling at first to concede to natural law any influence upon his system, for, now that human reason has been darkened by the Fall, though the moral faculty of man survives, yet it would be a great mistake to suppose that the material content of the innate moral law can be disengaged from the corruptions that have intruded themselves.[6] So in 1521; but the disposition of the Reformer becomes much more favorable in the editions of the *Loci* subsequent to 1535, after he had turned aside towards synergism. While he recognizes no relation between the *naturalis notitia* and the Gospel, both on account of the character of the Gospel as *mysterium* and on account of the grace that is contained in it, he now sets up the equation: *legem divinam notitias esse nobiscum nascentes sicut aliarum artium principia et demonstrationes.*[7] *Una est lex et natura nota omnibus gentibus et aetatibus.*[8] It is true that emphasis is still placed upon the fact that natural law, especially with regard to the first table, is much obscured, and above all lacks the power for the execution of its commands; yet there is no principial but merely an accidental opposition between the revealed and the natural law. The Decalogue has rather merely the function of elucidating

[6] *Ibid.,* xxi, c. 117: *insita nobis a deo regula iudicandi de moribus.* A little before: *est in universum fallax humani captus iudicium propter cognatam caecitatem, ita ut etiamsi sint in animos nostros insculptae quaedam formae morum, tamen eae deprehendi vix possint.*

[7] *Ibid.,* xiii, c. 7. [8] *Ibid.,* xxi, c. 417.

and expounding the law of nature. Accordingly, a number of natural-law principles are again discussed; for example, in the regulations of the Mosaic law about the forbidden degrees in marriage, an element is discovered which, since it belongs to natural law, is therefore binding upon the whole of humanity. In proof is cited the assertion of Scripture that the Canaanites (though they were not subject to the revealed law) were exterminated on account of their incestuous disregard of the marriage laws[9]—an argument which appears afterwards in Hugo Grotius in almost the same form.

With the disquisitions in the *Loci* agrees the frequent mention of natural law in other writings of the Reformer. To select merely one class of instances, I may refer especially to the frequent *Declamationes de dignitate legum.*[10] God, so we hear in these passages, has infused a ray of His eternal wisdom and justice into the nature of men, and however weak that nature has become, God has left even to fallen men so much comprehension of His law that that law rules their outward behavior, indeed in a certain sense their will.[11] This law of nature is best expressed in the Decalogue.[12] Yet all other laws of the nations have issued from these *initia et principia* given by nature, and in spite of their diversity are, in accordance with the character of each nation, good and justifiable, in so far as they *ad illum radium lucis divinae transfusum in mentes hominum congruant, qui vocatur ius naturae, ex quo vult Deus exstrui leges.*[13] Among all the legal systems that have been formed upon the basis of this law of nature, the Roman law deserves the palm; *nusquam extat perfectior et illustrior imago iusticiae quam in his* [*Romanis*] *legibus.*[14] Such expressions, it is

[9] *Ibid.,* xxi, c. 391.

[10] Additional passages in Tröltsch, *Vernunft und Offenbarung,* pp. 167ff.

[11] *Op. Mel.,* xi, c. 909; compare also xi, cc. 360, 639, 919; xii, c. 20.

[12] *Ibid.,* xi, c. 912; xii, cc. 21, 149.

[13] *Ibid.,* xi, c. 922; *cf.* xi, cc. 361, 631, 912, 921.

[14] *Ibid.,* xi, cc. 221, 361ff., 915; xii, c. 22.

true, contain nothing about a primitive contract or the like, yet evidently something more is intended than the mere natural faculty for law-making; for natural law is called in to decide the most important legal questions—not merely, for example, in an academic discussion as to whether or no the assassination of Cæsar was justifiable,[15] but also in the extremely important question of practical politics: *an liceat vi resistere Caesari vim iniustam inferenti.* With regard to this question Melanchthon's finding on the basis of natural law in 1530 still runs: *etiam sententiae iniustae iudicio sit obediendum.*[16] Later, on the other hand, in 1537, he expresses quite the opposite opinion: *Evangelium non tollit magistratum et ius naturae;* hence *licita defensio contra inferentem iniustum bellum.*[17]

An example of the variableness of natural-law conceptions! The estimate placed upon the law of nature receives further light, however, when it is observed that Melanchthon regards the natural moral law in general as the most valuable product of human reason, indeed as the highest achievement of philosophical thought. Nevertheless, in the equation between divine and natural law the point was given, where, in the orthodox system which was being formed, secular science, philosophy, law and the like could come into organic connection with the purely theological principles derived from the Gospel. Accordingly, Lutheran orthodoxy gives to the dogmatics and ethics that are derived from Revelation a substructure of natural sciences and arts, which, it is true, as a lower, secular sphere must allow its truth-content to be controlled and corrected by the higher, spiritual sphere. In this connection, even before Grotius, there appeared in Lutheran territory expositions of natural law by Oldendorp, Hemming, Winkler, which derived their nourishment substantially from the material afforded by Melanchthon's ideas.[18]

[15] *Ibid.*, x, cc. 699f. The reasons for and against are opposed to each other without a final decision; the former are taken from natural law.

[16] *Ibid.*, ii, cc. 20-22. [17] *Ibid.*, iii, c. 631.

[18] *Cf.* Kaltenborn, *Die Vorläufer des Hugo Grotius auf dem Gebiete*

Tröltsch, who in his treatise, *Vernunft und Offenbarung bei Joh. Gerhard und Melanchthon,* first made these relations clear, is unwilling, it is true, to recognize in the whole phenomenon a creative act of genius on the part of Melanchthon, yet he regards it as a necessary "compromise between the autonomous reason that was so to speak incarnate in the productions of antiquity on the one side, and the religious spirit of humanity on the other". It was a compromise such as within our circle of culture "cannot be avoided by any theology", and one cannot refuse a certain admiration to the grandeur of the plain and straightforward sequence of thought.[19] We neither desire nor are we able to dispute this estimate here, but it should at least be said even at this point that the adjustment thus secured between secular and theological science remained entirely unfruitful for the future. When Lutheran orthodoxy fell to pieces, the new scientific impulses, in quite a special manner those for natural law, came from the West, from the science that had been developed in the Calvinistic camp. A Pufendorf and a Thomasius, as is well known, did not start from Melanchthon or the orthodoxy, but from Grotius and his spiritual kinsmen.

But if the natural-law theories could appeal to Melanchthon as their patron, is the same true for the other Reformers as well? For Luther, this is affirmed by the Paris theologian Eugène Ehrhardt, who has published a special investigation under the title, *"La notion du droit naturel chez Luther."*[20] It is a fact that Luther often speaks of natural law or the law of nature,[21] and Ehrhardt, investigating, though not with absolute completeness, the use of the conception in the writings of the Reformer, believes he has

des jus naturae et gentium, 1848; Tröltsch, *Vernunft und Offenbarung,* 1891, p. 169.

[19] *Op. cit.,* pp. 173, 137.

[20] In the *Études de Théologie et d'Histoire publiées par MM. les Professeurs de la faculté de Théol. prot. de Paris en hommage à la faculté de Théologie de Montauban à l'occasion du tricentenaire de sa fondation,* Paris, 1901, pp. 285-320.

[21] "von dem Naturrecht oder dem natürlichen Gesetz."

discovered that the conception in Luther also has had its roots in fundamental principles of his theology.[22] This judgment becomes already precarious, however, when it is observed that the notion of natural law, which, it is true, is at all times variable, threatens in the Reformer to lose itself almost altogether in the most diverse interpretations. At one time, he thinks of it as like a law of reason which "issuing from free reason overleaps all books".[23] At another time it is like "natural equity".[24] At another time it is identified out and out with the law of Christian love,[25] when it is said of the law of nature: "which also the Lord declares in Luke vi. 31 and Mat. vii. 12: 'whatsoever ye would that men should do to you, do ye even so to them'."[26] At another time, however, it is again only the law "which also heathen, Turks and Jews must keep", "kept among all heathen in common", which, although it forbids resistance to lawful authority, still is far from making a man a Christian.[27] In expressing himself about its relation to positive law, Luther now places it in the closest relation to Roman law,[28] now regards it as the source of all written law;[29] at another time he distinguishes the natural law as the general moral demands of conscience from Moses' law as the Jew's *Sachsenspiegel,* and yet says just afterwards that the natural laws are nowhere drawn up in such a fine and orderly manner as in Moses.[30] It is of course easy, in connection with Rom. i. 19ff. and ii. 15, to discover a ruling idea in these more or less divergent utterances, but if this

[22] *Op. cit.*, p. 317.

[23] *Von weltlicher Obrigkeit,* Erlangen edition, 22, p. 105.

[24] *Ermahnung zum Frieden auf die 12 Artikel der Bauern,* Erlangen edition, 24², p. 290.

[25] *Grosser Sermon vom Wucher,* Weimar edition, 6, pp. 52, 60; *Von Kaufhandlung und Wucher,* Erlangen edition, 22, p. 202; *Von weltlicher Obrigkeit,* Erlangen edition, 22, p. 104.

[26] *Grosser Sermon vom Wucher,* Weimar edition, 6, p. 49.

[27] *Ermahnung zum Frieden,* Erlangen edition, 24², pp. 279, 282.

[28] *Tischreden,* herausg. von Förstemann und Bindseil, 3, 320; 4, 486; *Warnung an seine lieben Deutschen,* Erlangen edition, 25², p. 15.

[29] *Auslegung des* 101 *Psalms,* Erlangen edition, 39, p. 284.

[30] *Wider die himmlischen Propheten,* Erlangen edition, 29, pp. 156f.

idea had, as Ehrhardt supposes, exerted a pervasive and fundamental influence over Luther's ethical, social and political views, Luther would probably have taken occasion to express himself more fully and definitely about the meaning and character of natural law.

Luther's conception of the state, its duties and its relation to the Kingdom of God, is plainly two-fold. On the one side, as is well known, he freed the natural arrangements of life in family and state from the ban of ecclesiastical asceticism; the "civil law and sword" is a divine institution that has its office from God.[31] The state's historical and positive laws have their authority according to the will of God, and no natural law may nullify them. [32] By virtue of the universal priesthood, the civil authority has the right of reformation. It has the right to abolish all abuses that have established themselves in the "Christian body",[33] that is, in state and Church, in case the ecclesiastical authority does not itself make the first move. In correspondence with this positive estimate of the functions of the state, the direction of Church affairs under the new conditions came later, in the evangelical territories, with at least the permission of the Reformer, into the hands of the princes and magistrates.

But alongside of the positive view of the state, stands a more negative one,[34] and to this indeed Luther has given more frequent expression in his writings. He starts here from a strict separation of the Kingdom of God and the kingdom of the world. There are "two divisions of Adam's children, of which one is in the Kingdom of God under Christ, the other, in the kingdom of the world under the magistrate".[35] The latter is by nature evil through and

[31] Erlangen edition, 22, pp. 63, 76, etc.; *Gal. Komment,* ii, 41.

[32] So R. Seeberg in his lecture, "Luthers Stellung zu den sittlichen und socialen Nöten seiner Zeit," in *Neue kirchliche Zeitschrift,* 1901, p. 839.

[33] Erlangen edition, 21, p. 285.

[34] Erich Brandenburg in his lecture, "Martin Luther's Anschauung vom Staate und der Gesellschaft", *Schriften des Vereins für Reformationsgeschichte,* H. 70, has placed this negative manner of regarding the state too one-sidedly in the foreground.

[35] *Von weltlicher Obrigkeit,* Erlangen edition, 22, p. 82.

through. "We are serving here in an inn, where the devil is master, and the world mistress, and all kinds of evil desires are the household; and these all together—master, mistress, and household — are the Gospel's enemies and adversaries. If a man steals thy gold, defames thy honor, remember, in this house, that is the way things go."[36] The civil authority has the commission to check evil in some measure, lest things devour one another.[37] Therefore it is necessary for the bad and the weak; but the Christians, the living members of the body of Christ, have no need of it at bottom. The Gospel "places the outward life altogether in suffering, injustice, a cross, patience and contempt of temporal goods and temporal life"; but where there is "nothing but enduring, no punishment, no law, no sword is needed".[38] "The kingdom of the world is a kingdom of wrath and sternness", "a true forerunner of hell and of eternal death", hence also its "instrument" is a naked sword.[39]

When such a negative view is held of legal institutions, the Scripture cannot of course be the source of their authority. A theologian must teach simply belief in the Lord Christ, and not meddle with secular affairs.[40] "God has subjected and entrusted the civil government to the reason, because that government has to control not the soul's salvation nor eternal goods, but only bodily and temporal possessions."[41] Now Ehrhardt calls up that passage from the treatise, *Von weltlicher Obrigkeit,*[42] in which natural law is identified with the reason, inasmuch as the reason is the "law-fountain"[43] of all written law. From this Ehrhardt draws the conclusion that Luther saw in natural law or the law of reason the particular source of all legal institutions.[44]

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[36] *Auslegung des Johannes-Evangeliums,* Erlangen edition, 50, pp. 349f.

[37] Erlangen edition, 22, p. 68; 50, p. 317.

[38] Erlangen edition, 24^2, p. 291; 22, p. 66.

[39] *Ein Sendbrief vom Büchlein wider die Bauern,* Erlangen edition, 24^2, p. 318.

[40] *Antwort von der Gegenwehr,* Erlangen edition, 64, p. 265.

[41] *Auslegung des 101. Psalms,* Erlangen edition, 39, p. 330.

[42] Erlangen edition, 22, pp. 104f.

[43] "Rechtsbrunnen." [44] Ehrhardt, *op. cit.,* pp. 298f.

Luther had to fight against a double opposition, Ehrhardt continues—against the Catholic theocracy, and against the theocracy of the letter of Scripture, which the fanatics sought to establish. On both sides, he defended the independence of the state—both over against ecclesiastical tutelage, and also in recognition of the fact that state and Gospel belonged to entirely separate spheres of life. But this independence of the state and of society he secured by representing the foundation of their legal order to be natural law, which, in accordance with its origin in the primitive revelation, he could in a certain sense designate also as divine law. So the idea of natural law, Ehrhardt concludes, becomes a necessary middle term in the sequence of Luther's thought.[45]

Nevertheless, Ehrhardt is himself obliged to admit that in his practical instructions for dealing with individual legal and social questions, the Reformer often did not at all abide by his notion of natural law as Ehrhardt has conceived it; not in the attitude of the state with respect to the persecution of heretics, not with regard to property, marriage, interest and usury—that is, not in any of the individual questions that Ehrhardt discusses. Ehrhardt concludes that Luther indeed desired to make of his natural law a principle of social reform, but as soon as he tried to bring this conception into practical use, he had to borrow now from the Old and New Testaments, now from Roman law, from national traditions, indeed even from canon law.[46] It is possible to go still further and to maintain that, aside from isolated utterances, Luther's method of reasoning in the practical concerns of national and social life is based throughout upon the ethical principles of Christianity and the Bible. He desires to deal with the twelve articles of the peasants, in accordance with their proposal, on the basis of "clear, open, undeniable sayings of Scripture",[47] and so in all the disputed questions before him he treats the Christian-ethical principles derived from God's word as the decisive norm. His

[45] *Ibid.*, pp. 290-296, 316ff. [46] *Ibid.*, p. 318.

[47] *Ermahnung zum Frieden*, Erlangen edition, 24^2, p. 272.

only quarrel with the fanatics is that they apply the letter of Scripture to the affairs of the state and of society as a rigid law, without regard for historical development, without recognition of the distinction between the Gospel and legal institutions. Natural law is for him, it is true, a familiar and recognized conception; but everywhere he permits it to play merely a secondary, incidental part. The best proof of this is afforded by the treatise, *Von weltlicher Obrigkeit,* in which Luther delivers himself at great length about the divine right of the civil authority, the limits of its power, the duties of a prince, with interpretation of the Bible texts in point; but takes notice of natural law only at the very end and in an extremely cursory manner.[48]

The above-mentioned antinomy in the thought of Luther about the state is to be judged similarly to the well-known antinomy in his view of the relation between law and Gospel. The *lex moralis* as a wage-agreement between God and man is, according to Luther, abolished for the regenerated man; indeed it is regarded by him as the pernicious, death-dealing, sin-increasing power. On the other hand, as moral obligation it is retained even by Luther, although his expressions are not always perfectly consistent. Indeed faith, Luther says, should procure for the law its true fulfilment.[49] To the former manner of regarding the law is closely related the negative view of the state and of legal institutions as a piece of this world, to which the Christian must with suffering accommodate himself. But accordingly this view is supplemented by the valuation of the state and of social relations as divine institutions; where, however, this positive valuation makes itself felt, there also the life of the state is subjected to judgment according to Christian-ethical standards, which are derived not from natural law but from the Scriptures. In this sense, Luther at any rate always taught the so-called *usus civilis* or *politicus* of the revealed

[48] Erlangen edition, 22, pp. 59-105; with regard to the natural law, only pp. 104f.

[49] Compare the convincing exposition in Loofs' *Dogmengeschichte,* 4. Aufl., pp. 770ff.

law,[50] upon which, as well as upon the New Testament passages about its own divine establishment,[51] the civil power supports its authority for the punishment of evil-doers.[52]

It is true, after all has been said, that the relation between ethics and law, Scripture truth and state institutions, was, in spite of many valuable beginnings, never brought by Luther to a perfectly clear definition; but this lack of clearness should not be exploited for the benefit of natural-law theories. Luther's merit is that he assigned to the state and to law an independent, well-grounded special province. But when it comes to developing that special province, Luther simply uses the ethical principles of the Christian revelation; or else he refers, as, for example, in a fine passage of his *Auslegung des 101. Psalms,*[53] to "God's wonder-workers",[54] whom He raises up now and then and whose mind and heart He endows with the power of separating the "healthy law" from the "diseased law", who either "change the law or so master it, that the whole land thrives and blooms". Luther intimates here that the secular law, so far as it proves itself useful and excellent, is given to the peoples by wise rulers, "heroes of law", who create it by their genius, their endowment from above; accordingly, he would have provided the historical school of jurisprudence of the nineteenth century, long before its appearance, with a convincing justification.

Even less than Luther does Calvin show himself a friend of natural law. He holds too strongly the fundamental Reformation conviction of the universal sinful corruption of the natural man. True, he admits in his *Commentary on Romans*[55] that there is *naturalis quaedam legis intelligentia, quae hoc bonum atque expetibile dictet, illud autem detestandum,* that *quasdam iustitiae ac rectitudinis conceptiones,*

[50] Compare with regard to this Loofs, *op. cit.,* p. 775.

[51] Rom. xiii; I Pet. ii.

[52] So, for example, *Wider die himmlischen Propheten,* Erlangen edition, 29, p. 140.

[53] Erlangen edition, 39, p. 285.

[54] "Wunderleute Gottes."

[55] On Rom. ii. 15.

quas Graeci προλήψεις vocant, hominum animis esse naturaliter ingenitas. These "seeds of righteousness" consist in the fact that all peoples have a religion, punish adultery, theft, murder, also lay stress upon fidelity and trust in trade and intercourse.[56] Likewise Calvin speaks in the introductory chapters of the *Institutio* of the natural knowledge of God implanted in the human spirit, but at the same time he pronounces this knowledge completely corrupted and stifled. *Hinc rursus facile elicitur quantum ab hac confusa Dei notitia differat, quae solis fidelium pectoribus instillatur pietas, ex qua demum religio nascitur.*[57] The natural knowledge of God serves him only as a dark background to set off in all the clearer light the knowledge which faith derives from the revelation of God in Scripture. Therefore Calvin attributes also to the *lex naturae* as moral standard, in spite of that passage in the *Commentary on Romans,* only a subordinate value. Of the three passages where the *Institutio* mentions the *lex naturae,* it is said of it in the first two merely that it affords only a very faint foretaste of what is really well-pleasing to God,[58] and serves only the purpose of preventing man from pleading before the judgment-seat of God the excuse of ignorance.[59] More important is the third place where it is mentioned, in the last chapter of the *Institutio.* Here the question under discussion is, Where does a Christian state secure the ethico-religious standard for its legislation? Even Calvin rejects here the unqualified subordination of the state's law to the law of Moses.[60] He distinguishes in the revealed law between the ethical principles, which are summed up in the commandment of love to God

[56] *Opera Calvini* in *Corpus Reformatorum,* Vol. xlix, cc. 37f.

[57] *Institutio,* I, iv, 4.

[58] *Ibid.,* II, viii, 1: *Homo per legem naturalem vix tenuiter degustat quis Deo acceptus sit cultus; certe, a recta eius ratione longissimo intervallo distat.*

[59] *Ibid.,* II, ii, 22: *Finis legis naturalis est, ut reddatur homo inexcusabilis.*

[60] *Ibid.,* IV, xx, 14: *Sunt qui recte compositam esse rempublicam negent, quae neglectis Mose politicis, communibus gentium legibus regitur. Quae sententia . . . falsa ac stolida est.*

and one's neighbor, and which for all peoples and all ages represent the eternal rule of righteousness, and the judicial, purely political regulations in the law of Moses (*iudiciorum forma, iudiciariae constitutiones*), which have merely the temporary importance for Israel of confirming love, the eternal law of God, as the foundation of legal enactments and procedure in the Jewish people. From the second element of the revealed law, Calvin says the other peoples are free, but not from the former. For although laws may be very differently constituted in detail (*legis constitutio*) according to different conditions and circumstances, yet in their ethical tendency they must all exhibit a natural equity (*naturalis aequitas*), as it is demanded by the conscience of man. But since the revealed divine moral law is nothing else than *naturalis legis testimonium*, the best expression of that natural *aequitas*, it contains standard, goal, and limits for the legislation of the peoples and nations.[61] So the nations may indeed make their laws, Calvin says, without reference to Moses, as they think advantageous; only these laws must conform to the eternal fundamental law of love in God's commandment, so that though the form varies, the tendency shall remain the same.[62]

In this sequence of thought the incidental mention of natural law serves merely the purpose of strengthening the Calvinistic principle, that for the state and for law as well as for other things, despite all accidental differences, still the eternal norm is to found in the rightly understood revelation of the divine will in Scripture. This is in harmony also with the method of the Geneva thinker; natural law plays no part in his judgment of legal and social conditions. It is true that in the collection of his *Consilia*[63] we meet at

[61] *Ibid.*, IV, xx, 16: *Dei lex, quam moralem vocamus . . . sola ipsa legum omnium et scopus et regula et terminus sit oportet.*

[62] *Ibid.*, IV, xx, 15: *Libertas certe singulis gentibus relicta est condendi quas sibi conducere providerint, leges: quae tamen ad perpetuam illam caritatis regulam* [*divinorum praeceptorum*] *exigantur, ut forma quidem varient, rationem habeant eandem.*

[63] *Opera*, xa.

one point a remark about the *équité naturelle,* at another point, one about the *ius naturale,* which are identified both times with the rule of Christ, "Whatsoever ye would that men should do to you, do ye even so to them".[64] Indeed, in a difficulty, in order to strengthen his view that marriage with a brother's widow is opposed to the Mosaic law and therefore forbidden for Christians too, Calvin has recourse also to the *commune ius gentium* (whereby, however, he means nothing more than the *naturae honestas*), which declares that even *ipse naturae sensus* rejects such marriages as *foeditas.*[65] Similarly he places the law of Moses and the *commune ius gentium* side by side in still another difficulty about the marriage laws.[66] Further utterances of that kind, however, have not come to my notice in my search in the writings of Calvin for the point now under discussion. Everywhere else—in the treatment of usury,[67] of the right of the civil authority,[68] or of the duty of obedience even to tyrannical rulers,[69] and the like—natural law is passed over without a word. Most convincing, however, is the above-mentioned closing chapter of the *Institutio.* Here the Reformer, in his discussion about the civil authority and the constitution of the state, about legislation and the position of the subjects, offers in his way a "Politics". But in so doing, he never deserts the method that he employs throughout the whole of the *Institutio*—a method which is based upon Scripture and the *analogia fidei,* or in this case also upon the revealed moral law confirmed by the *naturalis aequitas.* This method he does not sacrifice at a single point for the benefit of a general ethical ratiocination, certainly not for natural-law theories of any description.

[64] *Ibid.,* xa, cc. 248, 264, in both cases in a discussion of the question of taking interest, which Calvin, in distinction from Luther, within the limits of that same natural equity or of Christian brotherly love, pronounces entirely permissible.

[65] *Ibid.,* xa, cc. 236f. [66] *Ibid.,* xa, c. 242.

[67] In the *Sermon on Deut.* xxiii, 18-20, *Opera,* xxviii, cc. 115-124.

[68] *Sermon on Tit.* ii. 15-iii. 2, *Opera,* liv, cc. 554-559.

[69] *Commentary on I Pet., Opera,* lv, cc. 244f.

We may conclude as follows. All the Reformers recognized of course a natural moral faculty on the ground of Rom. ii. 15. But there are also indications that even they, at that early time, held as a matter of learned tradition some kind of conception of a specific natural law. But in distinction from Melanchthon, Luther attributed to it only a subordinate importance, Calvin almost no importance at all. Finally, the views about the relation of politics, law and equity to the word of God and to Christian ethics were as yet little elucidated, though Calvin was the most positive in hoping to find the foundations for an evangelical Christian conception of the state in the ethical principles of the Bible—which principles, however, are not to be identified off-hand with the Mosaic law.

II

Under such circumstances, how did it happen that it was precisely decided Calvinists who, first among the men of evangelical faith, and so early as the sixteenth century, not merely developed natural law theoretically, but at the same time, as political publicists, made it a weapon in the conflicts of the time? Before we seek the explanation, however, we must briefly recall the fact itself. It is a question here primarily of the so-called "Monarchomachist" writers and jurists—not all of the Reformed faith, but some also Jesuit-Catholic (of the latter we shall speak further on)—who in the religious wars of the sixteenth century drew from the principle of the sovereignty of the people the revolutionary conclusion of a right of active resistance towards contract-breaking rulers. Among the Calvinists, besides the Reformer John Knox[70] should be mentioned particularly the Scotchman George Buchanan, the Frenchmen Hubert Languet (author, under the pseudonym Junius Brutus, of *Vindiciae contra tyrannos*), François Hotman (Francogallia),

[70] *Cf. Works,* iv, pp. 496f., 539f. The position of John Knox with regard to the question of natural law would require further investigation. *Cf.* Charles Martin, "De la genèse des doctrines politiques de J. K." in the *Bull. de la soc. de l'hist. du prot. franc.,* 1907, pp. 193ff.

and Lambert Daneau, and the German Johannes Althusius. The last-named—born in 1557 in the territory of Wittgenstein, from 1586 to 1604 teacher of law in the Reformed University at Herborn, from 1604 till he died syndic of the city of Emden—gave to the tendencies of the Monarchomachi, in his *Politics,* appearing in 1603, the methodically scholastic, and at the same time completest and most thorough-going expression. Otto Gierke, in his book, *Joh. Althusius und die Entwicklung der naturrechtlichen Staatstheorien* (Breslau, 1880), has the merit both of rescuing the teachings of Althusius himself from the dust of oblivion and of assigning them their place in the general historical development of law from the Middle Ages to the close of the eighteenth century. The significance of the questions there under discussion becomes sufficiently evident from the single remark of Gierke[71] to the effect that a remarkable agreement just in a number of fundamental and distinctive ideas renders it probable that the *Politics* of Althusius was read and made use of by Rousseau for his *Contrat social.*

The following is a very rough sketch of the doctrine of the Monarchomachi concerning the state. We shall disregard their more or less serious differences from each other, and depend substantially upon the best-defined and most completely developed doctrines of Althusius. In the hands of the Monarchomachi the state loses more and more of its theocratic character. True, government is regarded as having its power from God; but it has it indirectly, not directly. Between it and God there stands a legal transaction of natural law. For natural law postulates an original natural condition when there was no state, when men lived in complete freedom and equality, indeed with community of goods. The state did not take its rise until a double contract had been freely concluded—the social contract and the governmental contract. By the social contract—the model of Rousseau's *Contrat social*—the community of men becomes for the first time a legal body; as such it then, by the second

[71] *Op. cit.,* p. 9.

contract, delegates the government to the rulers. The terms of the governmental contract could, it is true, be interpreted in two ways. It might be said, in the first place, as was done for example by Bodinus, the famous French absolutistic teacher of law, of the end of the sixteenth century, that by this contract the sovereignty was once for all fully and unconditionally transferred to the ruler. On the other hand, the original right of the people might be granted a permanent precedence over against the holder of the state power. In adopting the latter interpretation the Monarchomachi are a unit. For them the ruler is merely the highest officer of the people, holding his office by contract. His right to exert the power of the state is independent, it is true, but at the same time conditional and revocable. He has only a munus *sub conditione et stipulatione;* he is merely *mandatarius*.[72] Althusius supported the limitation of the power of the ruler in his logical radicalism with the proposition that the sovereignty, the majesty, is by its definition an indivisible unity, which can belong only to one of the two powers, the people or the ruler. But since the prerogatives of sovereignty are as necessary to the nature and existence of the social organism, *populus universus in corpus unum symbioticum ex pluribus minoribus consociationibus consociatus,* as life is an inalienable possession of every man,[73] therefore in the governmental contract those prerogatives must have remained in possession of the people. But beside them there can be no full, unlimited monarchical sovereignty, but in the last analysis only a chief business-manager. To this is added still a further deduction, which again appears in an especially incisive form in Althusius. As in the governmental contract, so also before that in the social contract, the individual surrendered only so many rights as were necessary for the accomplishment of the governmental ends. Therefore there remain to the individual under every form of government certain inalienable rights of man, which from the time of the Monarchomachi on

[72] Gierke, *op. cit.*, pp. 144f. [73] *Ibid.*, pp. 19, 29.

played an ever more important part in various schools of natural law, until in the French Revolution they became, as everyone knows, the battle-cry that moved the peoples. But in order to make the rights of the people effective, there was recognized, even at the beginning and by the Monarchomachi themselves, the need of representatives, estates, or, as Althusius calls them after an expression used incidentally by Calvin,[74] ephors, who represent the people, assist the ruler especially in legislation, and restrain him when he exceeds his authority, if necessary by force.

One needs only to recall these propositions in order to become conscious of their revolutionary character, but at the same time of the fruitful element in them that could enable them gradually to produce the modern constitutional forms of the state. But the motive which forced the Monarchomachi to these theories is quite plain. Their teaching is confined throughout to the political or legal sphere. Their postulation of the rights of man, their reduction of all social and national life to the individuals as the constitutive factors, involves no contradiction of dogma or revelation. But forced as they were into the fearful battle with the Counter-Reformation, the Reformed Monarchomachi sought merely an adequate justification of the right of resistance against the tyrannical government. Over against a state-power which without hesitation exhausted all means to suppress the Gospel, they too had recourse to the last resort, to civil war. But could that be justified? Now it is true that Calvin in a brief remark at the very end of his *Institutio*[75] had expressed himself to the effect that where there are popular magistrates, estates, who like the ephors in Sparta, or the tribunes of the people in Rome, are intended to champion the rights of the people, these lower officials are justified in offering resistance to the tyranny of the supreme head of the state. But this remark, however gladly it was exploited, seemed far from being sufficient; for Calvin had placed at the head of his "Politics" as highest prin-

[74] *Institutio,* IV, xx, 31. [75] IV, xx, 31.

ciple the duty of passive obedience, and had with all energy declared this principle to be the clear intention of Scripture. Therefore, the ground remained uncertain. Although a way could be found to transcend the mere passive resistance, simply by the abundant use of the Old Testament, yet that was continually hindered by the great authority of the Biblical scholar of Geneva. Therefore, in order to arrive at a plain and firm position, recourse was taken to natural law. Here was found what was needed; only on this foundation could the Old Testament examples of resistance against tyrannical power develop their full strength; it was deemed certain that in connection with the natural-law doctrine of the sovereignty of the people the law of the Decalogue was at the same time finding its first perfect application to politics.

Yet almost at the same time at which the Monarchomachi, in order to attain a firm legal foundation for resistance against the anti-Reformation governments, sanctioned natural law, natural law forced itself forward also out of interconfessional conflicts into Reformed Protestantism—I mean, through the book of the Anglican divine, Richard Hooker, *Of the Laws of Ecclesiastical Polity Eight Books.*[76] This work appeared in a number of parts consecutively—the first four books in 1594, the very copious fifth book in 1597, the last three books not till many years after the early death of the author (1600), under the restoration of Charles II. The genuineness of the last three books has been questioned, but without sufficient reason, since the same style and the same peculiar type of thinking prevail throughout. Hooker's work has been subjected to a sympathetic estimation by Leopold von Ranke in an essay entitled, *Zur Geschichte der politischen Theorien,*[77] principally from the point of view that it was written in defence of the ecclesiastical supremacy of the English king over against Rome. But this judgment gives an entirely incorrect picture of the origin and

[76] In *The Works of Rich. Hooker,* 2 vols., Oxford, 1841.

[77] *Sämmtliche Werke,* Vol. 24, pp. 238ff.

purpose of the *Ecclesiastical Laws.* The book did not grow out of the conflict with Rome, but out of the spiritual unrest into which the Anglican world under Elizabeth was thrown by the rising Puritanism. Hooker, a man of the second generation (born 1553), the pupil of Bishop Jewel of Salisbury, who was the first defender of the Anglican form of the Church as a happy mean between Catholicism and (Reformed) Protestantism, set himself the task, as he repeatedly reminds us and as the whole content of his book undeniably testifies, of justifying Anglicanism against the criticism of the Puritans and Presbyterians. In this defense it was a question chiefly of the Anglican ceremonies and the Anglican constitution. Accordingly, Hooker deals with the former in books iv and v, and with the latter in books vi-viii (concerning the presbyterial-episcopal constitution and the question of the supremacy); the discussions of the separate points are preceded by a philosophical substructure in the first three books: concerning the nature of laws, the authority of Scripture, and the idea of the Church.

The chief lever of the Puritan criticism was the radical Reformed doctrine of Scripture to the effect that absolutely everything must be based upon God's word, that the Scripture alone must decide about doctrine and life, about Church and state. Hooker seeks to oppose these claims first of all by limiting the authority of Scripture. It is true, he approves the rejection of tradition, and also approves the doctrine of the sufficiency of Scripture;[78] but he holds that human aids, the studies of learned men, also councils, are indispensable for the purpose of determining what Scripture teaches.[79] The Scripture is indeed the foundation of all things, but the authority of man is the key that unlocks its meaning. Nor did the opposing party, Hooker claims, have any better right to say that their teaching was the pure truth of God; they too depended in their interpretation of Scripture upon human opinion. Further, Hooker calls attention to the differing character of the contents of Scrip-

[78] *Works,* 1841, i, p. 210. [79] *Ibid.,* i, pp. 260ff.

ture. Of course, everything that is necessary to salvation is revealed in it, but it does not by any means afford a clear precept of the divine will for every trifle of daily life.[80] Indeed, Hooker even ventures the assertion that there are matters which in themselves are indifferent from the ethico-religious point of view.[81] At any rate, not everything in Scripture is eternally obligatory; a great deal in the Bible depends upon the temporary circumstances and was prescribed for those circumstances alone. The Gospel is eternal, but not the rites and ceremonies.[82]

However reasonable many of these propositions may appear to us, Hooker was nevertheless fully conscious that, despite all such means, he could scarcely make it credible, under the dogmatic view of Scripture that then prevailed, that the Anglican ceremonies and a form of government with leanings towards Catholicism could stand before the forum of the Bible as well as could the claims of the Presbyterians. Therefore, he too had recourse to an additional aid, namely, to the law of reason and nature. Even in matters of revelation, we cannot do without the reason; only rational reflection can make us certain what God's word is. The *testimonium spiritus sancti internum* is not sufficient to insure the authority of the Word; for the operations of the Spirit are by their nature obscure and must be tested by the reason before their genuineness can be settled. For a legislation such as is demanded by the situation of the English people, the mere precepts of the Bible are insufficient; we obtain something useful only from Scripture and reason together.[83] Man has within himself a law of reason, which in every individual case points out what is good, and that, too, with compelling force, so that it must be done.[84] This law of reason corresponds to the operations of nature, it is the law of nature.[85] In it the moral faculty of man finds expression, and it is therefore universally valid; to it the positive laws, which owe their origin to definite legislative

[80] *Ibid.*, i, pp. 270ff. [81] *Ibid.*, i, p. 238. [82] *Ibid.*, i, pp. 217f.
[83] *Ibid.*, i, pp. 308-314. [84] *Ibid.*, i, p. 178. [85] *Ibid.*, i, p. 178.

acts, whether of a human state or of God, stand related as regulations that cannot be obligatory for ever.[86] Among the latter Hooker includes certain "supernatural duties".[87] The law of nature as the natural light of reason does not, it is true, embrace all necessary laws; above all, it cannot be kept without the continual help and coöperation of God;[88] but still it can be recognized without the assistance of Revelation. Standing upon this theologico-philosophical foundation, Hooker accordingly derives the origin of states purely by natural law from a primitive social contract, from which, it is true, he does not clearly distinguish the governmental contract.[89] With regard to the terms of the latter, however, he maintains, like the Monarchomachi, that the individual did not completely surrender his native right of self-government and that the legislative power still remains in substance in the hands of the community. A king who does not base his laws upon the general consent is a tyrant; the people, moreover, declares its consent through its representatives, the parliaments.[90] But since in Hooker's opinion the Church is included among the political associations to which laws are given in this way,[91] he finally ventures the conclusion: king and parliament have the full right to issue such legal regulations for the Anglican Church as seem to them suitable, and if these regulations turn out to be different from those of other churches and peoples, this is to be explained by the requirements of the time and of the nation.

So Hooker found in natural law the most valuable ally for the defense of Anglicanism against the assaults of the Puritans. On the other hand, the consequences of this point of view could not fail to appear. True, the Anglican is willing to subtract nothing from the absolute necessity of the supernatural-mystical way of redemption through the Son of God, and maintains further that the knowledge of this way is to be obtained only in a supernatural manner.[92] But if reason and nature alone make it possible to distin-

[86] *Ibid.*, i, p. 189. [87] *Ibid.*, i, p. 217. [88] *Ibid.*, i, pp. 178-181.
[89] *Ibid.*, i, pp. 186ff. [90] *Ibid.*, i, pp. 191ff.
[91] *Ibid.*, i, p. 194. [92] *Ibid.*, i, pp. 215f.

guish between the eternally valid elements in Revelation and the perishable admixtures that were added to it in correspondence to temporary needs, it can readily be seen how precarious the position has thereby become. This uncertain attitude even diminished Hooker's Protestant firmness against Rome; the Papal Church also is for him a church of Christ, although with many errors, which we pray God to take from her.[93] So there we have in Hooker, leaving out of account his opposition to monarchical absolutism, all the elements which later, in the English Revolution, brought Anglicanism to disaster,—the tendency towards Catholicism, the beginnings of the latitudinarianism of a Laud and of other high-church representatives of the system of the Stuarts. But we must not forget that all this grew not without an inward necessity out of the conflict with Puritanism; for the latter was unable in its rigid Biblicism to adapt itself to the needs of the ever more consciously active religious spirit of the English people. The uncompromising *jus divinum* called the *jus naturae* with a certain necessity into the arena.

The English latitudinarianism had on the Continent its more original and more vigorous parallel in Arminianism. But if in England latitudinarianism and natural-law ideas form a union, so, as everyone knows, the Remonstrant Hugo Grotius becomes the scientific founder of the modern school of natural law. Nothing more natural than this coincidence! Arminianism was dogmatic criticism, criticism of the one central dogma of Calvinism; and that not on the ground of a strong new religious motive, but on the ground of the humanistic-scientific subjectivity of highly refined culture. This criticism could not stop with one dogma; it had to tone down the entire orthodox-Reformed view of life. To that end, Grotius could scarcely have chosen anything apparently less dangerous and at the same time in its almost unlimited possibilities more effective than his natural law. And yet, however disintegrating the effect of Grotius' *Three*

[93] *Ibid.*, i, p. 283.

Books concerning the Law of War and Peace upon the early Reformed view of the world and of life, it cannot be emphasized strongly enough that he too followed not only a noble purpose, but also an actual compulsion of circumstances. When in 1625 he published his work in Paris, Germany was bleeding in the Thirty Years' War, the Netherlands also had no certain peace with Spain, and in general frightful wars, both civil and foreign, had torn almost all countries of Europe for fifty years. At that time, in the midst of conflicts, this man raised his voice for law; his expressed purpose was to guide the fighters towards humanity by teaching them that even in war there are legal conditions which must be respected, and that war exists merely to prepare for peace. This purpose, however, appeared impossible of attainment merely by an appeal to the *ius divinum,* the divine commands of justice and peacefulness. For the wars of that time were waged just on account of Revelation and the differing interpretations of it; this method of urging peace would have meant simply becoming a partisan to the conflict. Only what belonged to all of humanity in common, only what existed before all parties and was recognized by all, in a word, only natural law seemed adapted to the need. Accordingly Grotius proposed for his book the second task of bringing the principles of natural law, in clear distinction from positive law, into scientific form.[94] The title of his book, it is true, called to mind primarily only the *ius gentium,* which had formerly been regarded rather as an appendix to natural law proper.[95] But by skilful arrangement, in accordance with which the first book is devoted to the legal admissibility of war, the second to its causes, and the third to the manner of conducting it and to the conclusion of peace, Grotius was able to weave into his exposition almost the entire private and internal law of the state.

The influence of the work is thus explained. For two

[94] *De iure belli et pacis,* Prolegomena, § 30.
[95] *Cf.* Bergbohm, *op. cit.,* p. 156; Gierke, *op. cit.,* p. 235.

hundred years after the appearance of the *De iure belli et pacis* of Grotius, almost the whole of jurisprudence was controlled by the natural-law theories. And yet the mighty influence of the book is, on the other hand, a riddle, for even to the eye of a juristic layman the scientific weaknesses of this classical work of jurisprudence become immediately apparent. In it the theological element is still predominant to an astonishing degree; the boundaries between law and ethics are scarcely determined at all. But especially, what a variable thing it is after all, this natural law! First of all, the doctrine of popular sovereignty and in general the revolutionary tendencies of the natural law of the Monarchomachi are considerably weakened, not without arbitrariness and contradiction. The people, so Grotius maintains, can in the governmental contract very well have surrendered the government to its ruler definitely and finally, just as every man can enter the state of private slavery.[96] Still more does a king who has conquered a people through force hold the right of government as his unconditional and even alienable property.[97] Against a state-power that comes into conflict with natural or divine law, nothing more than passive resistance is in any case justifiable;[98] even the *inferiores magistratus,* the ephors of Althusius, have no higher competence.[99] Here, however, Grotius immediately makes an exception; if the tyranny of the ruler endangers the existence of the state, which was established through the primitive contract, then forcible resistance is permitted as a right of necessity.[100] Especially full of contradiction is the relation of Grotius' natural law to the divine commands. On the one side, he emphasizes the fact that natural law itself, though proceeding from the inward principles of man, is from God;[101] indeed, he even ventures the assertion, "Natural law is so unchangeable that even God cannot change it".[102] In another passage, however, he seems to suggest that, as

[96] *Op. cit.*, Lib. I, cap. iii, dist. 8. I use the *Editio nova* of 1632.
[97] *Ibid.*, I, iii, 12. [98] *Ibid.*, I, iv, 2. [99] *Ibid.*, I, iv, 6. [100] *Ibid.*, I, iv, 7.
[101] *Ibid.*, Prolegomena, § 12. [102] *Ibid.*, I, i, 10.

applied to certain materials, natural law has relaxed its strictness and adapted itself to the customs of the time.[103] Or take another example. Grotius declares as a matter of principle that "God has made the principles [of natural law] clearer through express laws";[104] so the revealed law would be the interpretation of the law of nature. But then again the divine law as something positive and arbitrary stands in contrast with the natural law;[105] indeed, it is repeatedly asserted that natural law and the Gospel (he means the ethical regulations of the Gospel) are by no means identical: it is possible for a thing to be strictly forbidden in the Gospel which is permitted by natural law—for example, polygamy.[106] Something similar is true of slavery, which the natural law of Grotius permits without scruple.[107]

These examples are sufficient to illustrate the attenuation of the moral judgment, which, already bound up with the casuistic method of Grotius, becomes glaring through the contrast between natural law and Revelation. Already there is beginning to appear that way of thinking to which reason and nature are everything, Scripture truth nothing but an unimportant historical expression of them. Yet, however much fault may be found with the undertaking of the learned Remonstrant, that undertaking is primarily to be understood as arising from the necessity of constructing for the religious parties that were lacerating one another some sort of common basis of law and of peace.

After the book of Grotius, natural law began its triumphant course; it penetrated into almost all Protestant movements. A Hobbes employed it in order to deduce with still greater incisiveness than Bodin the absolute right of absolutism; the Independents, Roger Williams and the poet Milton, by means of it supported their demands for civil and religious liberty. We have no further interest in following up all the various forms assumed by the natural-law theory; only one classical representative of that theory, the philo-

[103] *Ibid.*, II, i, 13. [104] *Ibid.*, Prolegomena, § 13. [105] *Ibid.*, I, i, 13.
[106] *Ibid.*, I, ii, 6; compare also II, i, 10. [107] *Ibid.*, II, v, 27.

sopher John Locke, may finally be mentioned in passing. First, however, we may offer some general remarks in explanation of his doctrine, with regard to which the recent book of a French writer, Bastide, affords valuable information.[108] In spite of Williams, Milton and other Independents, the great English Revolution stands by no means under the standard of natural law. On the contrary, Weingarten (however antiquated his book on the English churches of the revolution[109] may be in other respects) is correct in his fundamental thesis, when he sees in the Revolution the last mighty attempt to establish the theocratic principle, and at the same time the crisis of the theocracy. The Puritan army of the saints fought against the absolutistic, catholicizing and latitudinarian tendencies for divine truth and divine regulation of the Church and state, under the conviction that it was thereby guaranteeing to the conscience the free worship of God. But when the victory had been won, it became evident in the so-called Barebones Parliament of 1653 that the enthusiasts, in spite of all their faith in the Bible, lacked clear and positive ends and were incapable of establishing the new order of things. Hence, after Cromwell too had passed away without having established a permanent reorganization, the restoration of the Stuarts became a necessity. All the achievements of the great conflict would have been lost if the follies of Charles II and James II, and the threatening phantom of the reintroduction of Catholicism, had not for a moment extinguished the internal disputes between Whigs and Tories, and made possible the glorious Revolution of 1688 with the accession of William of Orange. Now, through the Bill of Rights, the aristocratic-constitutional form of government in England was definitely established, and at the same time the religious conditions most happily settled in such a way, that, while Anglicanism continued to be the state Church, the dissenting religious parties

[108] Ch. Bastide, *J. Locke, ses théories politiques et leur influence en Angleterre,* Paris, 1906.

[109] *Die Revolutionskirchen Englands,* Leipzig, 1868.

were granted a tolerance that was at first limited but later became increasingly extensive.

For the reorganization of England, however, natural law offered the more or less clearly recognized theoretical basis. Natural law appeared as though of its own accord, where the saints of the Barebones Parliament had waited in vain for illumination through the Spirit and through Revelation. The Bill of Rights was in fact such a governmental contract between ruler and subjects as natural law referred to primitive times, and John Locke, the son of a Puritan father as well as the adherent and friend of the latitudinarian, not to say skeptical elder Shaftesbury, justified the Revolution of 1688 with opinions which, although by no means already the common property of the English people, were destined in many respects to become such. Of Locke's writings, there come in question in the first place *The Fundamental Constitutions of Carolina,* and then the *Letter concerning Toleration* and *Two Treatises of Government,* which appeared in 1689 but were in part composed earlier.[110] Like all adherents of natural law, Locke here derives the origin of the state from the social and the governmental contracts. But in so doing he emphasizes, like the Monarchomachi before him, the innate rights of man, "liberty and property"; the primitive men in forming a union surrendered only so much of their rights as is necessary for the protection of life and property. The state is in essence only a legally constituted organization, whose compulsion does not extend further than is required by the above-mentioned tasks, or, as Locke also expresses it, by the common good. Within the state, Locke regards the churches as purely corporations, similar to the guilds or to the learned societies; to them, even including Catholics and Socinians or other free-religious societies, is due complete liberty to constitute their worship, form of government and dogmas as they think best. Only the atheists, whose unbelief endangers the trustworthiness of oaths, as well as all religious movements, which, by tran-

[110] Bastide, *op. cit.,* pp. 42ff., 108.

scending the spiritual sphere, threaten the stability and peace of the state, must be suppressed by force. And the trouble-makers, Locke thinks, are only the fanatically intolerant, domineering preachers and priests. Thus entered into the modern liberalism at its beginning the hatred of priests and theologians that is still in part characteristic of it.

But, in general, Locke's adjustment between state and Church certainly cannot give complete satisfaction; the purpose of the state as it is restricted by Locke is too narrow and is contradicted by all history. But still less can the churches attain a full development on the basis of the mere right of association—perhaps the Independents might do so, but certainly not the Calvinists and least of all the Catholics. In Locke's notion of the Church, too little place is given to the institutional element, to the recognition that the Church is primarily a public institution with divine authority and a divine function. A closer examination reveals the deeper cause of these defects in Locke's philosophico-religious position. As is well known, he is a moderate deist; that is, there are for him two sources for the apprehension of truth, the reason and Revelation. By examining both (in the *Essay concerning Human Understanding* and *The Reasonableness of Christianity*), he thinks he has discovered that many things in life prevent us from attaining certitude; we must therefore often be satisfied with mere probability.[111] Our highest duty is therefore humility and love. In this way the demand for tolerance is based upon human weakness. Therein, however, is revealed the Achilles heel of the entire system. The doctrine of universal reason, into which in the age of Deism and of the "Enlightenment" the natural-law theories developed more and more, did not fill its adherents with absolute, impregnable certainty; therefore that doctrine necessarily dissipated and destroyed more than it built up. Even in a Locke, a keen eye can detect the seeds of those destructive tendencies which later in France and the French Revolution exhibited their fearful explosive power. But

[111] *Cf.* Bastide, *op. cit.*, pp. 252f.

that ought never to cause us to forget that the natural-law theories were for the England of the seventeenth century again to a certain extent a necessity. As circumstances stood, those theories alone were able to conserve the tolerance which was the result of the great Revolution; they have therefore contributed their full share towards the happy reorganization of the civil and ecclesiastical constitution of England.

III

We pause here. We have seen how natural law, despite the rather unfavorable attitude of Calvin, pours itself like an irresistible stream into Reformed Protestantism, attains a decisive importance in its vital problems, becomes fundamental in the political constitutions produced by it, and in general enters as one of the most important factors into the spirit of the "Enlightenment" and of the entire modern period. We are now, I think, in a position to form a final judgment concerning natural law in its relation to the Reformation.

The first thing that I have to notice is that natural law is for the Reformation a part of tradition, more particularly an inheritance from the Catholicism of the Middle Ages. The former fact can be at once surmised, so soon as one observes how much as a matter of course, indeed how naïvely, Luther refers to natural law, and lets it appear in varying colors, without, however, conceding to it any fundamental importance. When Melanchthon assumed an attitude so much more favorable, and permitted the circle of ideas that is connected with natural law and the law of nature to become influential for his entire system, it is certain that his classical leanings contributed largely to that end; but they were not the only motive and not even the proximate occasion. It would be highly incorrect, we believe, to suppose that the ideas of natural law are a humanistic inheritance from the ancient world, which was half received by Melanchthon and then gradually emancipated

itself. It is true, the original source of natural law lies, as we all know, in antiquity. Socrates, Plato and Aristotle already cherished the notion of a natural law in distinction from the arbitrary laws of men. The form of these views which was most influential for the future was contained in the Stoic doctrine of the world-reason and the pantheizing law of nature: after Cicero, under Platonic influence, had so modified this doctrine that the natural laws inherent in human nature received at the same time a theonomic, divinely obligating character.[112] But aside from the fact that such teachings never remained uncontradicted in antiquity, Melanchthon himself at his first mention of the natural laws in the *Loci* of 1521[113] takes his start from the *Theologi* and *Iurisconsulti,* that is, from the schoolmen and jurists of his time, and introduces only by comparison with these the utterances of Plato and Cicero. However, no matter how Melanchthon's position be conceived, it is impossible that a theory of ancient philosophy should merely on Melanchthon's authority, while the other Reformers were at least indifferent, have revived just after the Reformation with such vigor and exerted such an enduring influence, if it had been dormant during the entire Middle Ages.

Just the opposite is in reality the case. From the height of the Middle Ages, natural law was a recognized, though, it is true, also an extremely multiform doctrine of ecclesiastical and civil law, as well as of scholastic theology. So early as the *Decretum Gratiani,* we read: *Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur, ut viri et feminae conjunctio, liberorum successio et educatio, communis omnium possessio et omnium una libertas, acquisitio eorum, quae coelo, terra marique capiuntur.*[114] Natural law is in

[112] Bergbohm, *op. cit.,* pp. 151ff.; Tröltsch, *Vernunft und Offenbarung,* p. 165.

[113] *Op. Mel.,* xxi, c. 116.

[114] Dist. I, c. vii; *cf.* dist. I, c. i; dist. IX, c. xi; dist. V and VI. Bergbohm, *op. cit.,* pp. 157ff; Gierke, *Das deutsche Genossenschaftsrecht,* iii: *Die Staats- und Korporationslehre des Altertums und des Mittelalters,* Berlin, 1881, pp. 610ff.

the *Decretum* at one time identified with the revealed law (*quod in lege et evangelio continetur*), more particularly, with the saying of Christ, "Whatsoever ye would that men should do to you, do ye even so to them"; at another time it is assigned an independent place between the divine and the human law. With increased weight, though also in equally uncertain terms,[115] natural-law theories are set forth by Thomas Aquinas. In that part of his *Summa Theologiae* which is devoted to the law, he treats successively the *lex aeterna, lex naturalis* and *lex humana*.[116] The law of nature is *participatio legis aeternae in rationali creatura*;[117] hence it is contained *primo in lege aeterna, secundario in naturali judicatorio rationis humanae*.[118] So it oscillates between God's command and the law of reason. From the Gospel or the *lex nova*, the *lex indita naturalis* differs again through its lack of the *donum superadditum gratiae*.[119] Nevertheless, it is the foundation of all human laws, so that if a law differs from the law of nature, it is no longer law but corruption of the law.[120]

Accordingly, Thomas in the treatise, *De regimine principum* refers also the origin of the state to the *ius naturale*. A certain independence is thereby conceded to the state, in that it is regarded no longer as a product of sin (which was still the view of Bonaventura), but as the product of a reasonable impulse in human nature; but at the same time in that way it is delivered over to the control of Church and Papacy as constituting the higher sphere of grace and faith. But under the influence of Thomas, the theories of natural law become more and more the common property of mediæval thought. So early as the year 1300, they were seized upon by the popular political writers, both parties using them as a weapon in the great conflict between Church and state—a fact for which Richard Scholz, in his instructive investigations concerning *Die Publizistik zur Zeit Philipps*

[115] *Cf.* Bergbohm, *op. cit.*, p. 260, Anm. 37.
[116] *Summa Theologiae*, Prima secundae, qu. 90, 91, 93, 94, 95ff.
[117] *Ibid.*, qu. 91, art. 2. [118] *Ibid.*, qu. 71, art. 6.
[119] *Ibid.*, qu. 106, art. 1. [120] *Ibid.*, qu. 95, art. 2.

des Schönen, has produced ample proofs.[121] But, in general, a glance into Gierke's *Althusius* or into the third volume of his *Deutsches Genossenschaftsrecht* is sufficient to show how in the second half of the Middle Ages almost all schools of jurisprudence were permeated by these views. All the individual doctrines that have their roots in natural law—the doctrines of the primitive contract and of the sovereignty of the people, and the principle of representation—existed long before the Reformation in more or less thoroughly-developed forms. The strict curialistic school, as well as the teachings of Marsilius of Padua, which contended for popular freedom and the national state; the adherents of the conciliar idea, as well as pre-Reformers like Wiclif; above all, finally, the humanistic school of jurisprudence, which flourished in Italy and then, in the century of the Reformation, in France, and which was cultivated by teachers and friends of Calvin like Alciati and François de Connan—all these had accustomed themselves to erect their conception of the state upon a natural-law foundation.

But such a unanimity of the jurists, theologians and humanists is by no means accidental, for it is a well-known fact that the entire mediæval Catholic system of faith and life is characterized by the separation between the natural and the supernatural—the two spheres are built up one on top of the other like two stories of a house. The natural is the lower sphere of the secular, the transitory; it too proceeds from the Creator's hand and is therefore not altogether sinful, but it must be held in check by a higher power. The supernatural, on the other hand, is the eternal, holy, divine, it is that which rules the lower sphere and thereby gives it an organic part in the Kingdom of God. For an example we do not need to go further than the doctrine of the primitive state of man. The *dona naturae* are supplemented by the *dona supernaturalia.* Similarly, the natural light of reason, with its natural knowledge of God, is the

[121] *Kirchenrechtliche Abhandlungen von Stutz,* 6-8 Heft, Stuttgart, 1903, pp. 68ff., 101, 113f., 134f., 142ff., 222f., 311, 323ff., 362, 370.

lower sphere in comparison with the supernatural revelation. Saving faith in the latter can be attained only through the sacramental-magic inpouring of the *illuminatio spiritus*. In the same way, over against the *lex naturae,* which is merely explained and elucidated by the *lex Mosis,* stands the *lex Christi* or the *lex gratiae;* in connection with justification, over against the *praeparatio ad gratiam* afforded by work-righteousness, the *infusio gratiae;* in ethics, over against the *praecepta* destined for all, the *consilia* of monasticism. The relation of Church and state is exactly similar. The Church is the divine establishment, the institute of salvation clothed with supernatural authority. The state is a mere product of man's natural social requirement, it proceeded from a primitive contract by virtue of natural law. It must therefore necessarily subordinate itself to the Church if the ends of the one *civitas Dei* are to be attained. Indeed, the Church, being the guardian and interpreter of the natural as well as of the divine law, can depose those rulers who in her opinion are infringing the primitive contract, and can summon the subjects to revolution. Such was the practice of the Curia, at least when the political situation promised success in making good the claim; such was the more or less decided teaching of the theorists.

Natural law with all its political consequences must accordingly, so far as one may speak here at all of religious and ecclesiastical determination, be regarded, despite its beginnings in antiquity, as a thoroughly Catholic product. The proof of this view is made still stronger by the fact that simultaneously with the Reformed Monarchomachi, Catholic Monarchomachi appeared, among whom the Jesuits like the Spaniard Juan Mariana[122] did not shrink even from directly instigating the assassination of tyrants. But since, on the other hand, the theories of natural law must be regarded as a central doctrine of the "Enlightenment", which has exerted an extensive influence upon the entire spirit of modern times in the political, ethico-religious and intel-

[122] *Cf.* his book, *De rege et regis institutione,* Tolet., 1599.

lectual spheres, a prospect is opened up which is diametrically opposed to the historical construction of Tröltsch. Not the Reformation, which in its chief representatives met natural law, if not with out-and-out rejection, at least with cool indifference, is mediæval and Catholic; rather has modern liberalism been influenced in its development by a group of ideas which was an integral part of the mediæval-Catholic view of the world. At the same time we see by this example how little value is to be attributed to such general schemes and catch-words as the one proposed by Tröltsch; for the most part they merely help partisans to establish one-sided judgments.

Yet if natural law has its roots in mediæval Catholicism, that only brings us to the chief question, How could doctrines that were Catholic in spirit be appropriated in Reformation territory at such an early time and with so little hesitation? This might be understood in the case of Hooker, for his opposition to Puritanism brought him still nearer to Rome than the genius of his Church would in itself suggest, so that he cites Thomas Aquinas quite expressly as a witness for his theory.[123] But how is it to be comprehended in the other Protestants, particularly the most anti-Catholic of all, the decided Calvinists? For Melanchthon, no doubt academic tradition and the demands of education exercised the determining influence. He saw how the doctrines of natural law were set forth in all schools, even by those who were neutral in the conflict between the confessions, namely, by the humanists; he found those doctrines taught in the works of ancient writers, like Cicero whom he prized so highly; he heard also how Luther spoke of natural law without opposing it, and even on occasion made use of it in his way—all this no doubt combined to remove Melanchthon's objections, which later on, after he had become a synergist, did not weigh very heavily with him anyhow. The men of the Reformed faith may well have been influenced by certain

[123] *Works*, i, p. 315. Here he calls Thomas "the greatest amongst the school divines", and cites *Sum. Theol.* i, 2, qu. 91, art. 3.

other things. Perhaps even the variability of the ideas in question, and their remoteness from the central truths of religion which made them appear almost like a mere scientific hypothesis, may have helped to commend them. Furthermore, the theories of natural law could be regarded as a principle of individualism, which would naturally be congenial to the Calvinists. But this was for them certainly not the principal reason, for their individualism had such firm root in their particular type of religion, that it needed no further support. The point of view which was finally decisive for the men of the Reformed confession was rather, we believe, the one which was indicated in our investigation, when we spoke of the inward necessity, the compulsion of circumstances, under which the entrance of natural law in all four of the phases discussed in our second section took place. This inward necessity can be made clear by some such general survey as the following.

The Reformation at its very beginning found itself in the presence of problems and exigencies of indefinite range, first of all, conflicts of purely religious and theological character—doctrinal, liturgical, and constitutional conflicts. What an amount of spiritual strength was consumed even by these conflicts! How much there was which went wrong! What unrest, what losses these conflicts produced! And yet the problems which then appeared could be settled by reference to the fundamental religious principle of Protestantism, and on the whole were in fact settled in a truly Protestant way. Much more difficult and dangerous, however, was a second adjustment, which lay more on the periphery of religious truth and yet was no less necessary—namely the adjustment to the general ethical, political and social problems, to science and art. This adjustment, I say, was unavoidable, for if Protestantism, over against the mediæval-Catholic world, involves a new world-view, then there must necessarily be a Protestant science of politics, a Protestant philosophy and science, a Protestant art. This conclusion cannot be avoided through the assertion that the Reformation achieved just

the liberation of the secular activities of the spirit from the control of the mediæval church and their restoration to their own immanent principles; for then that freedom would still have to be grounded more in detail, the boundary-lines would have to be drawn to show where the ethico-religious claims of the Gospel end and the rights of the free spiritual principle begin.

For such an adjustment, however, in the very nature of things, time is required; it cannot be accomplished by one man or by one generation. It was, indeed, a thankworthy undertaking, when Calvin in his *Institutio* did not entirely ignore politics, but the results were of such a kind that they did not give satisfaction even negatively, on the question of the obedience of subjects and the right of resistance, much less positively. But now the tasks and problems of culture came upon the young evangelical Church in a storm. Not so much upon the Lutherans. In their small states, where there was little cultural movement, they were able to settle down and persevere for two centuries on the basis of the theocratic idea as purified by the Reformation, and in analogy to the traditional forms of Church and state, as though all those questions of adjustment were really already settled by Melanchthon's organization of the universities and of the sciences. The Reformed, on the contrary, were obliged to fight the hardest battles for existence; then, after the final victory, they had new states to found both at home and in the wilderness; above all, they had to settle the question of tolerance between the different parties that had arisen in their own camp. But the tasks were met by the will to accomplish them. Calvin had inspired in his disciples that energy of piety, which abhors all half-way measures, which boldly endeavors to make all the affairs of life subject to Christ, the Head and Lord. In this congregation of the elect, the individualism of the Reformation reached its climax, and despite all subjection under God's command, there was developed a thirst for liberty, which tolerated nothing that came in its way except after free and earnest investi-

gation. The chief merit of Calvinism is that it brought men's powers into the liveliest activity, undertook the most diversified tasks with vigorous confidence, and so with impatient energy carried humanity forward on its way. But the impulse to freedom can work itself out to the good of humanity only when it remains conscious of its limitations. But what was needed to keep it within bounds, the firm principles about the relation of the Reformation to the forces of culture—to the state, science and art—was lacking, and how could it be attained all at once in the midst of all the unrest of the time? Regarded in this way, we believe, the appearance of natural law becomes comprehensible. A doctrine of the state constructed on evangelical principles was not in existence. But such a doctrine was imperatively demanded by the need of the time. Men needed to have clearness about the relation of the ruler to the subjects, about the problem of Church and state, about the relation between different churches in the same country. No wonder that in the lack of a conception of the state revised in the light of fundamental evangelical ideas, men had recourse to the political theory taught in the traditional jurisprudence, without heeding the fact that that theory had an origin foreign to the Reformation and involved tendencies and consequences which would lead away from the Reformation. These tendencies, of course, became apparent later in slowly-developing after-effects, and then, especially after the spiritual enervation sustained in the protracted religious wars, they could not fail gradually to dissipate and destroy the Reformation's basis of faith.

Unless all indications are deceptive, the progress of events was similar in the case of other cultural questions. The desire for knowledge, the desire for activity, which was experienced by the individual after he had been liberated through the Reformation, plunged itself into all problems of the spiritual life of man, became absorbed in the traditional manner of their treatment, and was all too quickly satisfied with solutions which were not in agreement with

the fundamental ethico-religious factors of the practical religious life of the Reformation. The reaction did not remain absent. The evangelical life of faith became shallower, instead of deepening itself and developing in all directions. Here, however, the opposition between the modern spirit and the Reformation would seem to receive an explanation which grows out of an organic understanding of the historical development. It is not true that the Gospel of the Reformation has been outstripped; but spiritual culture in general has infinitely advanced, while its permeation with ethico-religious principles in the spirit of the Reformation has not kept pace. If it is true that the religious spirit of the Reformation in passing through Deism, the "Enlightenment" and Rationalism, was moving on a downward path, the reason for its deterioration was that the adjustment between the Reformation and culture was neither brought to a satisfactory conclusion nor even earnestly enough attempted. Nevertheless, we hope that such an adjustment may yet be accomplished; the better it succeeds, so much the more completely will the difficulties of our present religious situation disappear.

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