

Ulrike Müßig

Legal Thinking between Art and Mathematics



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1. Artificio: the Subject Invented by Art and the Specific Renaissance Naturalism¹

1.1 Raphael's «School of Athens» and the Renaissance Iconography of the Aristotelian Ancient Philosophy of Being

«The School of Athens»² is one of the two main paintings decorating the Sala della Segnatura in the Vatican Stanze. In 1509, Raphael (Raffaello Sanzio da Urbino) designed this masterpiece of the Italian High Renaissance, with Plato and Aristotle prominent in the centre. Plato, painted as a handsome old man in a flamboyant red robe, points the index finger of his right hand vertically towards the sky, while Aristotle, dressed in brown with a bright blue surplice, points his outstretched

¹ This manuscript is owed to the invitation to deliver the *Lectio magistralis* at the Scuola Giacomo Leopardi, Macerata, 23 February 2024 on «Artificio, natura, vita: the Subject Invented by Art, the Nature Calculated more geometrico, and Life Legally Explained». The final title «Legal Thinking between Art and Mathematics» refers to the lectio themes, and emphasises the particularity of the effects of Humanism, Renaissance and Reformation in their coincidence on legal thinking. If not indicated otherwise, English translations of non-English source material is by the author and marked with «(paraphr. b. A.)» in the corresponding footnote.

² The name «The School of Athens» was not coined by Raphael, but became common after the artist's death. More than any of the other frescoes in the Stanze, it is said to reflect a «new» spirit of a «new» age. Even if designed for another context, Friedrich Nietzsche's assessment of Plato's dialogues as «jubilation of the new invention of reasonable thought» has a say here (*Nietzsche Online*, Einführung in das Studium der platonischen Dialoge SS 1871/72, WS 1874/75, DeGruyter 2011 / Print 1995, <<https://www.degruyter.com/database/nietzsche/html?lang=de>>, accessed on 5 September 2023); approaching Renaissance art as a legal, not an art historian, relies on the amateur assessment of this art to represent the 'jubilation' of the newly created freedom of thought.



Fig. 1. Raffael, School of Athens, 1509, <https://commons.wikimedia.org/wiki/File:La_scuola_di_Atene.jpg>

right hand flat towards the earth³. Both colour and gesture represent the contrast between Platonic idealism and Aristotelian empiricism. Raphael's composition of the unequal pair of philosophers, accompanied by 56 other personalities⁴ and watched over by Apollo and Pallas Athena, leads *medias in res* into the triad *artificio, natura, vita*.

³ As if to confirm the different gestures, Plato is painted with his book entitled *Timeo* under his left arm, while Aristotle carries his title *Etica*. This first refers to the dialogue in which Plato develops his cosmology (also *Timaïos*), where the *Etica* or *Nicomachean Ethics* by Aristotle sets the ground for a rational moral goodness of human actions, by explaining his observations of the existing world.

⁴ Socrates, Plato's teacher, is standing to the left of Plato, in the middle of a group of listeners. The young man at bottom right, looking directly at the visitor, is thought to be Raphael. The statue of Apollo flanks the vast hall on the left-hand side. Opposite, on the right, is Pallas Athena, the goddess of wisdom, armed with spear and shield.

1.1.1 Basics of the Aristotelian Philosophy of Being

Neither for Plato nor for Aristotle, reasoning was autonomous⁵, but it receives its content from being, hence the heading «philosophy of being». The purpose of each act of knowledge is to know something determined = something distinguished, i.e. something that can be distinguished for its own sake. Distinction (*krínein*) in the Aristotelian sense requires the ability to grasp the object of cognition for itself, purely in its own determination, its being. This lies at the heart of the distinction⁶ between «*kechorisménōs*» (also «*choristón*»; separate, distinct, distinguishable) and «*synkechyménōs*» (confused = mixed, indistinguishable). Consequently, the famous initial propositions of the Aristotelian Physics (184a16-b5) differentiate «abstract» objects of perception («*kathólou*») from the «confused» ones («*synkechyménōs*»).

a. The Pure Potentiality of Primary Matter

As each single being («*monoeidēs on*») is a compound of matter («*ousía*») and form («*eídos*»)⁷, Aristotelian thinking starts from the inner purposefulness of all. This «*telos*» or the «end»⁸ of each primary matter is to be derived from its capacity («*dýnamis*») and performance («*érگون, enérγια*»). It is, therefore, pure potentiality that defines all⁹. In the Meteorologica the

⁵ K. Oehler, *Die Lehre vom noetischen und dianoetischen Denken. Ein Beitrag zur Erforschung der Geschichte des Bewusstseinsproblems in der Antike*, München, Beck, 1984, pp. 250 ff.

⁶ *Politics* 522e-524d (J. Burnet (edited by), *Platonis Opera. Recognovit Brevique Adnotatione Critica Instruxit*, Oxford, Oxford University Press, 1903-1907, vol. III-V). Cf. the Platonic example of the more distant Socrates (*Politeia* 523c), and the example of the distant house in Kant's Anthropology (AA IX: Logic – Physical Geography, Pedagogy V.).

⁷ *Metaphysics* VII, q. 15, n. 4 (Aristoteles, *Metaphysics*, W. D. Ross (transl. by), Book VII, <<https://classics.mit.edu/Aristotle/metaphysics.7.vii.html>>, accessed on 11 March 2024.). This unicity by substantial form and the individuation by matter was the reason for banning Aristotelianism from the *artes liberales* in Oxford and Paris in 1277.

⁸ This is an internal purpose (e.g. for a pair of scissors to cut), not an external purpose (e.g. for the tailor to make a suit); it therefore coincides with the essence of a thing.

⁹ *Politics* 1253a23. On the ergon argument, see also the *Nicomachean Ethics*

«*érgon*»-argument is elaborated: «All things are determined by the function they perform; for only that which can perform its proper task actually has a being of its own, [...]»¹⁰. The Metaphysics is even more precise: «For the work is an end, and the activity actually accomplished is the work. This is why the name '*enérgia*' is derived from '*érgon*' and refers to the perfect being of anything»¹¹. Aristotle concludes that «essence (*ousía*) and its being-what (*eídos*, *species*) are a real activity»¹².

b. *The Aristotelian omnimode determinatum by the Unicity of Substantial Form and the Individuation by Matter*

Each primary matter embodies all the concepts attributable to it, and is an *omnimode determinatum*¹³. It is knowable by itself («*intelligibile per se*»), and contains within itself all superior determinations («*singulare totam entitatem quidditativam superiorum includit*») ¹⁴. Still, the Kantian epistemology in the 18th

(I, 7 1097b22-1098a20; *Nikomachische Ethik*, F. Dirlmeier (transl. by), Berlin, Akad.-Verlag, 1956; or, *Nikomachische Ethik*, U. Wolf (transl. and edited by), Reinbek, Rowohlt, 2006; and the *Eudæan Ethics* (II, 1, 1218b31-1219a39).

¹⁰ *Meteorologica* 390a10-15 (P. Louis (transl. and edited by), *Aristotle's Meteorologica – Aristote Météorologiques*, Paris, Les Belles Lettres, 1982, 2 vols).

¹¹ *Metaphysics* IX, 8, 1051a21-23 (Aristotle, *Metaphysics*, W. D. Ross (transl. by), Book IX, <<https://classics.mit.edu/Aristotle/metaphysics.9.ix.html>>, accessed on 11 March 2024).

¹² *Metaphysics* IX, 8, 1050b2.

¹³ Aristotle, *Treatise on categories*, cited according to R. Thiel, *Aristoteles' Kategorienschrift in ihrer antiken Kommentierung*, Tübingen, Mohr Siebeck, 2004, pp. 1-66.

¹⁴ Scotus, *Ordinatio* II, d.3 p.1 qq.5-6 = on the Sentences, Book II Distinction 3 Part 1, Quaestiones 5-6 (H.-U. Wöhler (transl. and edited by), *Texte zum Universalienstreit*, Berlin, Akad.-Verlag, 1994, vol. II *Hoch- und spätmittelalterliche Scholastik. Lateinische Texte des 13.-15. Jahrhunderts*, pp. 80-95 <<https://www.degruyter.com/document/doi/10.1515/9783055016059.80/html>>, accessed on 27 March 2023, and I. D. Scotus, *Iohannis Duns Scoti Doctoris Subtilis et Mariani opera omnia*, P. C. Balie et al. (edited by), Civitas Vaticana, Typis Polyglottis Vaticanae, 1950, vol. II., p. 486). This follows the tradition referring to Scotus's revised Oxford lectures on Peter Lombard's *Sententiae* as «*Ordinatio*» Cf. also Scotus, *Quaestiones super libros Metaphysicorum Aristotelis* VII, q.15 n.14 (ed. Civitas Vaticana, Vol. IV): «*Intelligibilitas absolute sequitur entitatem [...] Singulare totam entitatem quidditativam superiorum includit, et ultra hoc, gradum ultimae actualitatis et unitatis [...], quae unitas non deminuit, sed addit ad entitatem et unitatem, et ita ad intelligibilitatem*». Cf. also P. King, *Thinking About Things. Singular Thought in the Middle Ages*, in G. Klima (edited by), *Intentionality, Cognition, and Mental Representation*

century refers to an *omnimode determinatum* in the Aristotelian sense (and uses the Aristotelian tripartition of recognition).

1.1.2 *The Albertian and Aquinian Christian Adaption*

The Aristotelian categorisation and systematisation provided its Albertian and Aquinian Christian adaption with an intellectual framework, the rationalisation of which triggered arguments about the existence and nature of God independent from religious revelation¹⁵. It is therefore an essential argument of this contribution to explain the 12th- and 13th-century 'christianised' Aristotelianism as an allowance for self-reflexivity and scepticism. In Aquinas' *Scriptum super Sententiis*, the self-reflexivity of thought finds an explanation¹⁶. And the recognition of the freedom to decide even against God served Anselm of Canterbury to prove the truths of faith to be of reasonable coherence¹⁷. In addition, the specific rationalisation of Western Christianity, due to debating the ancient philosophy of being, even enabled the Socratic dialectic of John of Salisbury¹⁸, whose

in Medieval Philosophy, New York, Fordham University Press, 2005, pp. 104-121.

¹⁵ In Anselm's neoplatonic realism, for example, faith is the foundation of knowledge, and the existence of God as the embodiment of all reality can be proven (M. Kerner, *Johannes von Salisbury*, in T. Stammen, G. Riescher, W. Hofmann (edited by), *Hauptwerke der politischen Theorie*, Stuttgart, Kröner, 1997, pp. 240-244, p. 243). Cf. already C. H. Haskins, *The Renaissance of the Twelfth Century*, Cambridge, Cambridge University Press, 1927.

¹⁶ «Eadem operatione intellego intelligibile et intellego me intelligere». *Scriptum super Sententiis*, liber 1, distinctio 1, quaestio 2, 2a1 ad 2, also in R. Spiazzi, M. R. Cathala (edited by), *S. Thomae Aquinati. In duodecim libros metaphysicorum Aristotelis expositio*, Torino/Roma, Marietti, 1950.

¹⁷ In *Cur deus homo*, book I, chapter 16, Anselm of Canterbury takes up the doctrine inherited from Augustine and also from Gregory the Great, according to which men must replace fallen angels in the celestial city of God (F. S. Schmitt (edited by), *S. Anselmi Cantuariensis Archiepiscopi Opera Omnia*, Stuttgart/Bad Cannstatt, Fromman-Holzboog, reprint 1968, vol. II, p. 74, 12 f.: «Deum constat propuisse, ut de humana natura quam fecit sine peccato, numerum angelorum qui ceciderant restitueret», and in chap. 18 (ivi.) pushes to the absurd the question of whether the number of elected holy men should be greater than or equal to the number of fallen angels: either his angels were not created by God in perfect numbers, or some must necessarily sin, otherwise men could not serve as substitutes for angels (which would in both cases be contrary to the perfection of the Creator).

¹⁸ C. C. J. Webb (edited by), *Ioannis Saresbergiensis episcopi Carnotensis*

contemporary and Henry II's chief justice Ranulph de Glanvill would consequently set the tone in favour of the interrogative dialectic of English judgements (cf. dissenting opinions)¹⁹. Of course, we are centuries away from the Cartesian turn towards a thinking subject. Nevertheless, there seems to be a nucleus of individuality inherent to scholastic Christianity, with its intellectual struggles to make Trinity also an intellectual necessity. Furthermore, the intramundane character of kingdoms, apart from any theocratic caesaropapism of the Eastern *Symphonia*, fostered the juridification of ruling, complementary to the *principes*-abstraction in the scholastic princes' mirrors.

1.1.3 Scotist Thisness and Nominalistic Rationality v. Epistemological Absolutism

Humanism was not the first emancipation from the epistemological absolutism of the Thomasian scholastic. The Scotist thisness (*haecceity*) explained the individual will to be the human soul's basic power and concludes from the willful divine creativity (*volo, ut sis*) univocal predicates to God and creatures, thereby reasoning from effect to cause²⁰. In Dun Scotus' hands, theology became an ordinary logical science, stripped of the aura of having a share in God's eternal knowledge. The human

Policratici. Sive de nugis curialium et vestigiis philosophorum Libri VIII, London/ New York, Oxford University Press, 1909, vol. I, <<https://archive.org/details/ioannissaresberio1johnuoft/page/n5/mode/2up>>, accessed on 25 February 2024. John of Salisbury (1115/1120-1180) was Secretary to Theobald and Thomas Beckett, archbishops of Canterbury, exiled to Reims in 1163-1170, and bishop of Chartres in 1176.

¹⁹ His *Tractatus de legibus et consuetudinibus regni Anglie* (also: *Angliae*), written at the end of the twelfth century, is considered to be the oldest source of common law and has the rank of a book of authority. John's sceptical and relativistic methodology inspired the argumentation widely (cf. for more details U. Seif (=Mübig), *Methodenunterschiede in der europäischen Rechtsgemeinschaft oder Mittlerfunktion der Präjudizien*, in G. Duttge (edited by), *Freiheit und Verantwortung in schwieriger Zeit*, Baden-Baden, Nomos-Verlag-Geschichte, 1998, pp. 133-147).

²⁰ In Scotism, there is a natural congruency of human actions to be meritorious of eternal life due to the divine love in creating man and in predestining him to eternal happiness. Aquinas insists this to be impossible, allows only for analogical predications, and thereby requires constant self-perfection towards heaven under monarchical rule.

intellect is subordinate to the individual will, and reality is an intellectual product, created by naming and labelling according to Aristotelian categories²¹. Consequently, the nominalistic dispute resulted in a further scientification of theology and the emancipation of science from metaphysics²². Last, but not least, Roger Bacon's finding of the perspective's dignity (*perspective dignitatem*)²³ in observant science²⁴ appears to be a plausible result of the eagerness of his *scientia experimentalis* to serve theology.

1.1.4 Raphael's Thinkers as Forerunners of Early Modern (Rational) Thinking of Ruling

Raphael's illustrated foundation of subjectivity and naturalism by ancient philosophers keeps the Aristotelian orientation of thinking about objects. This is emphasised by attributing objects, like the construction panel and planning board, that Bra-

²¹ K. Flasch, *Das philosophische Denken im Mittelalter. Von Augustin zu Machiavelli*, Stuttgart, Reclam, 2013³, pp. 454 f. Duns Scotus attempted to synthesise the traditional Augustinianism of the Franciscan school with Aristotelianism, by reinterpreting the Aristotelian doctrine of matter and form, denying the pure potentiality (*telos*) out of capacity (*dynamis*) and performance (*ergon*) of each primary matter.

²² As general concepts are only names (nominalism), science is concerned with logical relationships between concepts and propositions, and no longer with being itself.

²³ «[...] videmus assecutos fuisse de vite sanctitate ineffabilem dignitatem» (*De tertia parte moralis philosophie*, fol. 215^v). «Et ideo comprehendit in se omnium dignitatem» (ivi, fol. 217^r), cit. according to P. Duhem (edited by), *Un Fragment Inédit de l'Opus Tertium de Roger Bacon, Précédé d'une étude sur ce fragment*, Ad Claras Aquas, Collegium S. Bonaventurae, 1909). Cf. also C. Bérubé, *La connaissance de l'individuel au moyen âge*, Montreal, Presses de l'Univ. de Montréal, 1964, pp. 92-103; On the positions of Roger Bacon see D. G. Denery II, *Seeing and Being Seen in the Later Medieval World. Optics, Theology and Religious Life*, Cambridge, Cambridge University Press 2005, pp. 120-124.

²⁴ «Postquam manifestavi mathematice potestatem, aspiravi ad perspective dignitatem» (*Liber tertius Alpetragii. In quo tractat de perspectiva*, fol. 186^r); «De scientia experimentorum : que dicitur dignior omnibus partibus philosophie naturalis de perspectivis: et ideo notanda est maxime» (ivi, fol. 207^r). «Et quoniam hec scientia potest hec omnia evacuare, et stabilire opus nature et artis, et veritatem defendere, ideo est summe dignitatis» (*De scientia quinte essentie*, fol. 212^r); «Reliquum in quo consistit ejus dignitas mirabilis est in operibus sapientie» cit. according to *Un Fragment Inédit*, *supra* n. 23.

mante (as Archimedes) is bending over to within the group of personages on the inferior right side of the «School of Athens». Furthermore, the architectural framing by Apollo, the god of muses, holding the lyra, and Pallas Athena, the goddess of wisdom, armed with spear and shield, indicate Raphael's genius to contrast the static thought building (= Philosophy of Being) with the suggested movements of the various personages. In addition, Raphael assembles thinkers of different centuries, such as Archimedes, Socrat or Diogenes. The central perspective, converging in Plato and Aristotle, seems to communicate the artistic claim to paint human reasonableness as such. Such an abstraction of being able to paint thinking itself, already points to the forthcoming abstraction of ruling and faith. It is not by chance that the novelty of Early Modernity in the 15th century is perceptible within the figures of Leonardo da Vinci (1452-1519), Michelangelo Buonarroti (1475-1564), or Raffaello Sanzio (1483-1520), and in the text-critical work of Erasmus of Rotterdam (1466-1536)²⁵. Inventing subjectivity in Renaissance art, on the other hand, required specific voluntaristic incentives to be found in constituted urban societies and their strive for economic success beyond the feudal and religious restraints.

1.2 Voluntaristically Constituted Urban Societies, the Aristotelian (Logical) Primacy of the Whole over the Parts, and the Need for a Secularised Ethics of will

1.2.1 Special Legal Zone – Special Area of Peace

According to the Bartolist topos «The city is an emperor unto itself» (*civitas sibi princeps*)²⁶ the citizens' public entity, the

²⁵ Erasm's pathing the way for the Lutheran reformation is kept within the saying: «Ego peperit ouum, Lutherus exclusit» *Letter by Erasm to [his Humanisten-friend] Johannes Caesarius (in Cologne) of 16th december 1524*, in P. S. Allen, H. M. Allen (edited by), *Opus Epistolarum Des. Erasmi Roterodami*, Tom. V (1522-1524), Oxford, Clarendon, 1924, letter no. 1528, pp. 608-610, p. 609.

²⁶ *In secundam Digiesti noui partem*, fol. 141^{vb}: ad D. 48.1.7, no. 14 l. Infamen, D. De publicis iudiciis; *In secundam Digeti noui partem*, fol. 184^{va}: ad D. 41.19.4, no. 4: l. Relegati, D. De poenis.

res publica, fits into the Thomasian abstraction as *princeps*²⁷. Compared to the (simultaneous) juridification by the princes' mirrors²⁸, departing from the Christian monarchical virtues (of the early Carolingians)²⁹, the 'revolutionary' urban juridification takes another route: It is a special legal zone («*Sonderrechtsgemeinschaft*»); it is the civic freedom of entry³⁰, which is the prerequisite of the sworn-in consent (*Einung*, *Conjuratio*, also: *conspiratio*³¹, *Schwureinung*³²), constituting a legal community of equals (parity) through the mutual (reciprocal) oath of promise. This has never meant democratic egalitarianism beyond patrician distinctiveness from craftsmen or ordinary civics (if we think of Florentine wool merchants or de' Medici bankers).

²⁷ The «first» or «prince» is no longer equated with the emperor or any particular royalty.

²⁸ In the mirrors of princes influenced by learned law, the abstract category of the *princeps* no longer refers to the sacrality of the king being the Vicarius Dei, i.e. the representative of the Christ as judge of the world on the last day. According to the Thomasian Mirror On the Reign of the Prince dedicated to the King of Cyprus man needs ruling to reach for moral=religious perfection, and there is a superiority of monarchy (as less risk of tyrannic degeneration than in aristocracies).

²⁹ Hinkmar of Reims: «se regere - bonos dirigere - malos corrigere», quoted in H. H. Anton, *Fürstenspiegel und Herrscherethos in der Karolingerzeit*, Bonn, Ludwig Röhrscheid Verlag, 1968, p. 404.

³⁰ For the proverbial formulation of this freedom in the nineteenth century, see J. Grimm, *Deutsche Rechtsalterthümer*, Darmstadt, Wissenschaftliche Buchgesellschaft, reprint of the 1899 4th Edition, 1974, vol. I, p. 466; cf. also U. Müßig, *Stadtluft macht frei*, in K. Malý, J. Šouša (edited by), *Stadtrechtsgeschichte in Böhmen und Europa. Městské právo ve střední Evropě*, Prague, Karolinum, 2013, pp. 65-82.

³¹ Fundamental to the ambiguity between conspiracy and community O. G. Oexle, *Gilde und Kommune. Über die Entstehung von „Einung“ und „Gemeinde“ als Grundformen des Zusammenlebens in Europa*, in P. Blicke (edited by), *Theorien kommunaler Ordnung in Europa*, München, Oldenbourg, 1996, pp. 75-97; Idem, *Die Kaufmannsgilde von Tiel*, in H. Jankuhn, E. Ebel (edited by), *Untersuchungen zu Handel und Verkehr der vor- und frühgeschichtlichen Zeit in Mittel- und Nordeuropa*, Göttingen, Vandenhoeck & Ruprecht, 1989, vol. VI *Organisationsformen der Kaufmannsvereinigungen in der Spätantike und im Frühen Mittelalter*, pp. 173-196.

³² W. Ebel, *Der Bürgereid als Geltungsgrund und Gestaltungsprinzip des deutschen mittelalterlichen Stadtrechts*, Weimar, Böhlau, 1958; Idem, *Über die rechtsschöpferische Leistung des mittelalterlichen deutschen Bürgertums*, in Konstanzer Arbeitskreis für Mittelalterliche Geschichte (edited by), *Untersuchungen zur gesellschaftlichen Struktur der mittelalterlichen Städte in Europa*, Konstanz, Thorbecke, 1966, pp. 241-258.

In the *rei publicae* of the rich city states, like Florence, Milan, Augsburg, or Nuremberg free self-establishment requires participation in social coexistence through the self-organisation of legality. In this sense, Ambrogio Lorenzetti has painted the Sienese citizens in his allegory of a «good [city] government» (1338-40) moving towards the personification of the city of Siena «in a kind of procession»³³, being connected by means of a rope emanating from the *Concordia* (concord)³⁴. This pictorial connectedness expresses civic life in peace through the «rule of the positive law, of willfully created laws»³⁵. This matches perfectly with a republican reading of urban constitutions: The rights that enable freedom are at the same time the limits of freedom³⁶, so that the new inner-worldly autonomy of man, «the Measure of All Things» (Protagoras of Abdera)³⁷, – as artistically realised by da Vinci, Michelangelo, or Raphael – does not lead to the perplexity that the measurer and the measure coincide.

³³ H. Hasso, *Bilder des Friedens oder die vergessene Gerechtigkeit. Drei anschauliche Kapitel der Staatsphilosophie*, München, Carl-Friedrich-von-Siemens-Stiftung, 1997, p. 14. Cf. Q. Skinner, *Macht und Ruhm der Republik in den Fresken Lorenzettis*, in Idem (edited by), *Visionen des Politischen*, Frankfurt, Suhrkamp, 2009, pp. 93-132, and on the state of art in detail Hofmann, pp. 14 ff. Recently, Hofmann's title was translated into Italian: H. Hofmann, *Bilder des Friedens oder die vergessene Gerechtigkeit. Drei anschauliche Kapitel der Staatsphilosophie* (1997); It. tr. Matteo Bozzon (edited by), *Immagini della pace ovvero la giustizia dimenticata*, Milano-Udine, Mimesis Edizioni, 2023.

³⁴ Hofmann, *Bilder des Friedens*, *supra* n. 33, p. 20; *ibid.* pp. 19 ff. on the interpretation.

³⁵ Hofmann, *Bilder des Friedens*, *supra* n. 33, p. 13.

³⁶ U. Mübig, *The Republican Dignity to be Governed, not Mastered as Founding Rational Legitimacy*, «Journal of Constitutional History / Giornale di Storia Costituzionale», 41, 2021, pp. 117-176.

³⁷ Cit. according to H. A. Diels, W. Krantz (edited by), *Fragments of the Pre-Socratic Philosophers*, Philadelphia, University of Pennsylvania Press, 1968, p. 80: «Of all things the measure is Man, of the things that are, that they are, and of the things that are not, that they are not». Cf. Plato, Theaetetus, 161B hears Socrates questioning this position of Protagoras: «If what each man believes to be true through sensation is true for him - and no man can judge of another's experience better than the man himself, and no man is in a better position to consider whether another's opinion is true or false than the man himself, but [...] each man is to have his own opinions for himself alone, and all of them are to be right and true - then how, my friend, was Protagoras so wise that he should consider himself worthy to teach others and for huge fees? And how are we so ignorant that we should go to school to him, if each of us is the measure of his own wisdom?».

The «matter of all citizens» (*res publica*) finds its rational justification on the basis of the normative guiding principle of justice; any transcendental legitimisation of politics was out of reach within the urban special legal zone: By focussing the statutes on what is (practically and logically) needed for a trading hub between Lisbon and Constantinople, for governing the cash and goods' flow from the wool of the Apennine sheep and the loans from the Florentine banks³⁸, the Florentine *res publica* falls within the responsibility of the individual citizen. Therefore, no scholastic, God-given necessity of ruling in order to allow for man's ethical or religious perfection towards heaven could be valid any more, esp. as the wordly business might include sinful pitfalls.

The rising urban special legal zone, voluntaristically constituted by collective sworn-in consent, met the Aristotelian terminology of the (logical) primacy of the whole over the parts, perfectly rephrasing the civil collective responsibility for the commonwealth. Even if 15th- and 16th-century Aristotelianism is still a research desideratum, we can observe well before the 17th-century reason of state-phrasing that Aristotelianism served as a terminology, as a singular point of reference for the interests and the aims of the civic community, be it in Florence, Milan, or Nuremberg/Augsburg³⁹. Thereby thinking collectively constituted entities independent from the scholastic/feudal preponderance of monocratic ruling narratives⁴⁰ also enabled their artistic abstraction. This lies at the heart of the following comparison between Michelangelo's David (1501-04) and Albrecht Dürer's Large Triumphal Carriage (1520-22). Whereas various

³⁸ After all, the wealth of the city on the Arno was due to the wool of the Apennine sheep and the loans of the Florentine banks. In the 13th century, the latter had a monopoly over papal finances in Italy and financed the invasions of Charles of Anjou in exchange for the right to mint coins, levy taxes or supply arms to the Kingdom of Naples.

³⁹ Antony Black (*Political Thought in Europe. 1250-1450*, Cambridge, Cambridge University Press, 1992, p. 10) suggests speaking of an Aristotelian language rather than Aristotelianism: «they were using 'Aristotelism' as a language and not as a doctrine».

⁴⁰ Corresponding to the one God, the one who created the universe, as within Aquinas' reasoning.

virtues accompany the emperor Maximilian and his family, Michelangelo chooses one decisive moment, an emblematic metaphor for the Florentine *res publica*. This abstraction of a *momentum temporis*, representative for the civic matter of all, seems to communicate public power to be dependent on man-made artificial agreement. The precise qualification of the Florentine republicanism to be aristocratised or even monocratised under the de' Medici does not do any harm to this; it is the abstract representability of the public sphere and its emancipation from any ontological necessity of rule by the artistic transformation of the Aristotelian primacy of the whole over the parts, that we turn to.

1.2.2 Florentine Republicanism and its Emblematic Freedom

a. Alleged Florentine Republicanism

Even a superficial sketch of Florentine republicanism reveals aristocratic oligarchic structures: Regardless of the distinction between the «*popolani*» (men of the people)⁴¹ and the «*magnates*» (landowning nobility and consular families)⁴², common in Florence since the 13th century, it was the guild membership that oligarchised the eligibility for office and thus the access to office with the so-called *squittinio*⁴³. The heads of the guilds (*priori*

⁴¹ *Popolo* (lat. *populus*) refers to the merchants and craftsmen who had become wealthy and who, in contrast to the aristocracy, initially only took part in the public life of the city in subordinate positions (newcomers from the perspective of the old consular families).

⁴² The Florentine *Ordinamenti di giustizia* of 1293 (legally binding from 15 January 1293 onwards) intended to bar the magnates, the old noble Florentine families from political influence: any political activity by noblemen was held to be a punishable offence, and insults or disputes between citizens and nobles were draconically punished. This restrictiveness was loosened in favour of the magnates who were allowed to the guilds. The workers in the wool industry, consequently, had no chance of political participation.

⁴³ In addition to freedom from tax debts, membership (Italian: *iscrizione*, enrolment) in at least one of the guilds was required. Even the legal status as a citizen depended on the membership to a guild: «L'iscrizione ad una delle arti, e soprattutto ad una delle arti maggiori, era uno dei requisiti posti dalla legge per godere della piena cittadinanza» (G. Guidi, *Il Governo della città-repubblica di Firenze nel primo Quattrocento*, Firenze, Olschki, 1981, vol. I, p. 83). Membership to the guilds (*arti*) was the prerequisite of political activity; the conflict lines ran between the «major» (*arti maggiori*) and the «medium/minor» guilds (*arti medie, minori*), as six of the

delle arti) could even concentrate the eligibility as councillors or magistrates on themselves⁴⁴; thereby, they dominate the council assembly (*Signoria*)⁴⁵, which formed the municipal government together with the «twelve good men» (*dodici buonomini*) and the «sixteen standard bearers» (*sedici gonfalonieri*). Their legislative proposals had to be approved by the people's council (*consiglio del popolo*; between 136-50) and the municipal council (*consiglio del comune*; 300), both with a two-thirds majority⁴⁶.

From 1434 onwards, the Medici were increasingly able to win influence over the eight-member security committee (*otto di guardia*) and the ten plenipotentiaries for foreign policy (*dieci di balia*)⁴⁷. Only those protected by Lorenzo de' Medici (called «*Il Magnifico*») could profit from a political career⁴⁸. In addition to loyal officials, the Medici also relied on the backing from the *popolo basso*, making it believe in profiting from additional cadastral revisions and tax levies on the old, great Florentine families. To maintain power (*mantenere lo stato* in Machia-

eight priors' seats in the Signoria were reserved for the «major». The *Arti Maggiori* comprised the judges and notaries, merchants, money changers, wool weavers, silk weavers, apothecaries and doctors, fur sellers. The *Arti Medie* assembled the junk dealers, shoemakers, blacksmiths, olive oil producers, and butchers. For the *Arti Minori* there remained the winegrowers, innkeepers, shield makers, tanners, grinders, locksmiths, builders, carpenters, bakers. The council (*Signoria*) was subject to a two-month term of office and a ban on consecutive terms of office. People were only allowed to hold office once every three years, and no one from the same family was allowed to have been a member of the council in the previous year.

⁴⁴ From 1282, the heads of the guilds (*priori delle arti*) had taken part in the city government, which they then took over.

⁴⁵ It was divided into four districts, each of which had two *priori* (members of the *Signoria*). In addition to the eight *priori*, the ninth member was the standard-bearer of justice (*gonfaloniere di giustizia*). He was the chairman of the *Signoria* and therefore enjoyed the highest prestige of all city officials, but had no more power than his colleagues.

⁴⁶ The term of office for both the people's council and the municipal council was four months.

⁴⁷ «The independent mood of the two municipal assemblies was neutralized by making an exceptional procedure the rule: dictatorial powers were now granted for a fixed term that was always renewed» (*Cosimo de' Medici. Ruler of Florence (1389-1464)*, in *Encyclopaedia Britannica*, <<https://www.britannica.com/biography/Cosimo-de-Medici>>, accessed on 27 February 2024).

⁴⁸ Whereas access to official positions was drawn by lots (as previously), only the names of 'reliable' men were to be in the pool of candidates.



Fig. 2. Michelangelo's David, 1501-1504, <https://t.ly/YI4-T>

velli's words)⁴⁹, has been the overall aim of any action, and it might well have also been true for the patronage, both by Cosimo the Elder (*Pater Patriae*, rul. 1434-1464)⁵⁰ and Lorenzo *Il Magnifico* (rul. 1469-92)⁵¹. The Florence of their time was the place-to-be for humanists like Marsilio Ficino, Pico della Mirandola, and Angelo Poliziano⁵²; the then-built Bibliotheca Laurenziana is still the hoard of one of the richest antique collections in today's Italy. The Florentine cathedral's cupola with its 100 metres in height and 45 metres

⁴⁹ The preservation of the state and its power both internally and externally requires no justification; the end determines the means. N. Machiavelli, *Il Principe*, chap. 18 «In che modo e' principi abbino a mantenere la fede»: «A prince only needs to win and assert his rule, and the means of doing so will always be considered honourable and praised by everyone. For the rabble can be bribed by appearances and success, and in the world there is only rabble».

⁵⁰ The son of Giovanni di Bicci (1360–1429), Cosimo was initiated into affairs of high finance and managed to reach an insurmountable wealth, not only in terms of bullion but also in the amount of bank and promissory notes payable to banks all over Europe. After his return to Florence following the Albizzi-revolt the Medici principate began (1434).

⁵¹ The Encyclopaedia Britannica refers to Francesco Guicciardini's assessment of Lorenzo's regime to have been «that of a benevolent tyrant in a constitutional republic» (F. Guicciardini, *Storia d'Italia. Versione nella lingua Italiana di oggi a cura di Claudio Groppetti*, Novara, Interlinea, 2022, p. 291). He contented himself with creating a Council of Seventy that he hoped would be even more manageable than the old Cento (Hundred). This amazed Europe, for he had all the attributes of a true sovereign. New competitors were appearing in Europe, and the branches in London, Brugge, and Lyon became insolvent. The movement of funds between the Medici bank and the treasury of the signoria was the equivalent of that occurring between private and public banks in modern states.

⁵² Cosimo re-created Plato's ancient academy in his villa of Careggi, relying on Marsilio Ficino as rector.

in diameter⁵³ expresses civic self-confidence, experimental spirit, and entrepreneurial courage. Cosimo surrounded himself with sculptors like Ghiberti and Donatello or painters like Fra Angelico. Artists under Lorenzo's protection included Sandro Botticelli, Andrea del Verrocchio, and the latter's pupil Leonardo da Vinci. Michelangelo, a 15-year-old élève at the San Marco school of sculpture, was welcomed in the Medici palace like a son.

What is particular about art in Medici Florence – beyond the incommensurable accumulation of ingenuity – is the displayability of the state as a work of art, at a time when artists were still regarded as craftsmen. The state as a work of man and its representability as man-made took a stand for the Renaissance understanding of power irrespective of any supernatural responsibility. Furtheron, the man-made quality of ruling lies at the heart of the abstract representability of the public sphere, the artistic transformation of the Aristotelian primacy of the whole over the parts, and of art as a focal point of stately *magnificenza*.

b. *The Emblematic Freedom in its Iconographic Difference from the Painted Holy Roman Empire (HRE)*

aa. What is the unseen-of novelty of Michelangelo's naked youth David (1501-1504), with the sling casually thrown over his shoulder? Republican rule itself is communicated as a value, – and this is complementary to the «newly discovered» freedom

⁵³ He adopted a construction principle from northern European Gothic, the ribbed vault. He placed ribs at each corner of the octagon and two additional ribs inside each vault cap, making a total of 24 ribs connected to each other by horizontal crossbeams. A total of 24 ribs created a skeleton system that was filled with two brick shells, one inner and one outer. The brick shells were laid in individual rings from bottom to top; the dome was erected without a falsework. In order to neutralise the horizontal thrust of the vault and only introduce vertical forces into the tambour walls, Brunelleschi «invented a system of so-called stone chains to hold the two vault shells together. They attach to the ribs and are connected by metal clamps so that they can absorb tensile stress. Without them, the ribs would be pushed outwards under the load of the rock» and burst (G. Scaglia, *Der Bau der Florentiner Domkuppel*, «Spektrum der Wissenschaft», 3, 1991, pp. 106-112, here p. 108), (paraphr. b. A.).

of choice (*arbitrium*) of man to create and shape himself as he wants to be⁵⁴.

Representing this freedom of will, Michelangelo has chosen the *momentum temporis* right before the action. David's right hand retaining the stone expresses the concentration and tension right before putting the stone into the sling. If he decided to capitulate to Goliath's size after all, he would lower his left arm and his right arm would hang limply and loosely along his body. Preparatory drawings (e.g. in the Musée du Louvre) show how much Michelangelo focused on the position of the legs and their movement in order to translate body moves into sculpture. So my interpretation is that Michelangelo manages to transform the decisive moment of David's intentional point of no return (to throw the stone instead of running away) into Carrara marble. Commissioned by the Florentine Wool Weavers' Guild (*Arte della Lana*), the David has been set up as an *exemplum salutatis publicae* in front of the Palazzo Vecchio, facing the Piazza della Signoria.

bb. In contrast, the static of Dürer's *Large Triumphal Carriage* (1518)⁵⁵ seems more comparable with late gothic Lorenzetti's Good/Bad Government Allegory in Siena⁵⁶, irrespective of the graphical brilliance of the horses' detailed anatomy. Nevertheless, it should not be exclusively attributed to the glorification of Albrecht Dürer's imperial patron Maximilian⁵⁷; rather,

⁵⁴ G. Pico della Mirandola, *De hominis dignitate – Über die Würde des Menschen*, A. Buck (edited by), N. Baumgarten (transl. by), Hamburg, Felix Meiner Verlag, 1990, p. 10: «[...] postquam hac nati sumus conditione, ut id simus quod esse volumus, [...] / since we were born under the condition that we are what we want to be». On freedom of will Coluccio Salutati: «Sola voluntas, que rationalis creature potentia est, sic obtinuit arbitrii libertatem, quod omnino voluntas non sit, si sibi libertas (quod est tamen impossibile) subtrahatur, [...] / The will alone, which is the possibility of the rational creature, also contains the freedom of decision, otherwise it would not be a will at all [...]». (C. Salutati, *De Fato et Fortuna*, B. Concetta (edited by), Firenze, Olschki, 1985, book 1, ch. 3, «De necessitate ordinis causarum, quo cause suis effectibus coniunguntur», pp. 19 f.).

⁵⁵ Albertina, Vienna, inv. no. DG 1934/577.

⁵⁶ Albrecht Dürer. Meister der Vielseitigkeit und bedeutendster Renaissancekünstler Deutschlands, <<https://www.xn--albrechtdrer-llb.de/renaissance.html>>, accessed on 30 October 2023.

⁵⁷ From 1515 onwards, Dürer was assured of an imperial annuity of 100 guild-

Dürer's contemporaries read it as the humanist woodcut programme of his home town Nuremberg. The leading virtues *Experientia* (experience), *Sol[il]ertia* (mental agility), *Magnanimitas* (magnanimity) and *Audacia* (audacity)⁵⁸ represent the core elements of the «revolutionary»⁵⁹ difference between the mutual relations of civic recognition (*consociatio*)⁶⁰, anchored in economic self-responsability and in freedom via participation⁶¹,

ders, which the Nuremberg city council had to pay annually from the taxes owed to the emperor (C. Metzger (edited by), *Albrecht Dürer. Ausstellungskatalog Albertina*, München/London/New York, Prestel Verlag, 2019, p. 372). In autumn 1520, Dürer made his way to Aachen to attend the coronation of the new Emperor Charles V. He arrived in the city on 20 October, exactly three days before the coronation. There, the new emperor confirmed the privileges already granted to him by his predecessor, which meant that Dürer's actual purpose for travelling had finally been fulfilled.

⁵⁸ According to R. Eisler, *Kardinaltugenden*, in Idem (edited by), *Wörterbuch der philosophischen Begriffe*, Berlin, Mittler, 1904², vol. I: A-N, <<https://www.textlog.de/3782.html>>, accessed on 27 January 2024; also as unchanged reprint Vaduz, 1977, Bernardino Telesio (1509-1558) held the four cardinal virtues to be the following ones: «sapientia», «sollertia», «fortitudo», «benignitas», which slightly reinterpreted the Platonic cardinal virtues of prudence, justice, valour, and moderation (prudentia, iustitia, fortitudo, temperantia, according to Albertus Magnus). It seems *sollertia* has taken the place of *iustitia*. However, as the triumphal procession dates back to 1518, Telesio cannot be the source.

⁵⁹ «revolutionary significance of the formation of communally organised cities in Europe» (G. Dilcher, *Die Rechtsgeschichte der Stadt*, in K. S. Bader, G. Dilcher (edited by), *Deutsche Rechtsgeschichte. Land und Stadt – Bürger und Bauer im Alten Europa*, Berlin/Heidelberg, Springer, 1999, pp. 251-828, chap. D „Die kommunale Stadt des Mittelalters“, pp. 405-682, p. 482).

⁶⁰ O.G. Oexle, *Friede durch Verschwörung*, in J. Fried (edited by), *Träger und Instrumentarien des Friedens im Hohen und Späten Mittelalter*, Sigmaringen, Thorbecke, 1996, pp. 115-168, pp. 136 f.; O. G. Oexle, *Pax und Pactum. Rufinus von Sorrent und sein Traktat über den Frieden*, in H. Keller, W. Paravicini, W. Schieder (edited by), *Italia et Germania. Liber Amicorum Arnold Esch*, Tübingen, Niemeyer, 2001, pp. 539-555. Cf. also A. C. May, *Schwörtage in der Frühen Neuzeit. Ursprünge, Erscheinungsformen und Interpretationen eines Rituals*, Ostfildern, Thorbecke, 2019, p. 24: «This gave rise to a qualitatively new unity that obliged the sworn members to live in a sworn pax within this cooperative legal and protective association. This pax means the state of legal peace. [...] In the 12th century, the city was thus a special area of peace, just as the peace of the land or the peace of God also designated 'areas of peace' at this time. The peace of the city was no longer guaranteed and protected by the city lord alone, but was the subject of a sworn agreement» (paraphr. b. A.).

⁶¹ «Freedom became the legal status of the bourgeoisie [...] no longer a personal privilege only, but a territorial one, inherent in urban soil» (H. Pirenne, *Economic and Social History of Mediaeval Europe*, New York, Routledge Taylor & Francis, 1937, p. 51).

from the land-bound subjection under hierarchical-monocratic (even God-given) rule outside the city walls⁶². The further virtues accompanying Maximilian and his family in the 12-span carriage, were also apt for a civil society as *societas civilis cum imperio*⁶³, especially as they can be read as shortcuts for humanist educational ideals and prerequisites of a civic entrepreneurial spirit: *Ratio* (reason) directs the tense, and the horses are restrained by *Providentia* (divine providence), *Moderatio* (moderation), *Alacritas* (zeal), *Opportunitas* (the most favourable opportunity), *Velocitas* (agility), *Firmitudo* (steadfastness), *Virilitas* (masculine strength), and *Acrimonia* (energy)⁶⁴. Finally, the four cardinal virtues *Justitia* (Justice), *Fortitudo* (Fortitude), *Prudentia* (Wisdom), and *Temperentia* (Temperance), arranged on the pedestals around the emperor, are common Renaissance attributes to power, both of the imperial authority, and of the superelevation of civic freedom (or artistic individual creatorship) to a republican *status activus*⁶⁵. This ambiguity between an imperial and civic programme was out of purpose, as Albrecht Dürer's outstanding success was due to the fact that «urban culture is always a civic culture»⁶⁶.

Last but not least, Albrecht Dürer was the first artist in art history to consistently protect his works against forgery with his initials. His lawsuits about pirate copies laid against Marcantonio Raimondi a member of Raphael's workshop. Such a context triggered the normative translation of civic dignity to

⁶² The urban peace demanded a strict, continuous commandment of peace and prohibition of violence in the city, which correlated with a claim to a monopoly on violence on the part of the city (see Bader, Dilcher, *supra* n. 59, p. 643). Cf. also the linguistic difference *civitas* – *civiltà* – *cittadino* v. *contadino*.

⁶³ Cf. P. Blicke, *Kommunalismus. Begriffsbildung in heuristischer Absicht*, in Id. (edited by), *Landgemeinde und Stadtgemeinde in Mitteleuropa. Ein struktureller Vergleich*, München, Oldenbourg, 1991, pp. 5-38, p. 10.

⁶⁴ Cf. also the interpretation by Metzger (Ed.), *supra* n. 57, p. 391.

⁶⁵ Cf. also U. Meier, *Mensch und Bürger. Die Stadt im Denken spätmittelalterlicher Theologen, Philosophen und Juristen*, München, Oldenbourg, 1994, p. 150. Critical in regard to the civic humanism as «invention by research on renaissance» W. J. Connell, *The republican idea*, in J. Hankins (edited by), *The Renaissance Civic Humanism. Reappraisals and Reflections*, Cambridge, Cambridge University Press, 2003, pp. 14-29.

⁶⁶ B. Beuys, *Florenz. Stadtwelt – Weltstadt. Urbanes Leben von 1200 bis 1500*, Reinbek, Kowohlt, 1992, p. 11.

be self-governed, not lordly mastered into municipal jurisdiction; due to the early merchant-run commercial jurisdiction, Nuremberg citizens had been all too ready for any humanist 'judicial-constitutional' extension of human natural reasonableness into the 'human disposition of independently delivering justice'⁶⁷. Dürer's copyrights had been public matters: On 3 January 1512, the council of Nuremberg decided that works of art on which «Dürer's hanndzaichen [i.e. the initials with the small D in the capital A] [...] are fraudulently copied» must be cleared of the signature or confiscated as forgeries and handed over to the city council.

c. The Need for a Secularised Ethics of will and its Artistic Expressions

«Antagonistic competition» (*aemulatio*)⁶⁸ was the norm in Machiavelli's torn Italy. Economic rivalries mixed with political differences (between Ghibelines loyal to the emperor and Guelphs friendly to the Curia), family feuds (e.g. Romeo and Juliet) and social conflicts (between nobles, merchants, burghers and the rural population of the *contado*); on top, the never-end-

⁶⁷ G. Manetti, *De dignitate et excellentia hominis*, E. R. Leonard (edited by), Padua, Antenore, 1975, pp. 65 ff. Manetti third book (22); I. Manettus, *Über die Würde und Erhabenheit des Menschen – De dignitate et excellentia hominis*, A. Buck (edited by), H. Leppin (transl. by), Hamburg, Felix Meiner Verlag, 1990, 78 f: There is no «stronger expression of wisdom» than to observe a certain order in one's actions. Already Salutati had linked jurisprudence to reason, rationality and will (C. Salutati, *De nobilitate legum et medicinae*, P. M. Schenkel (edited and transl. by), München, Fink, 1990, 10, p. 77), whereby positive law presents itself to him as an emanation of the divine will (*de nobilitate* 19, p. 161) and is based on the supreme principle of equality (zur aequitas, *De nobilitate* 3, p. 19). Cf. also Third Book (52), p. 95 Padua-edition: In aedibus Antenoreis, edited by Elizabeth R. Leonard: «Unde intelligitur religionis atque iustitiae causa esse hominem figuratam».

⁶⁸ Hofmann (*Bilder des Friedens supra* n. 33, p. 47) substantiates his formulation «antagonistic cooperation/Antagonistische Kooperation» by reference to H. Kliemt, *Antagonistische Kooperation - Elementare spieltheoretische Modelle spontaner Ordnungsentstehung*, Freiburg/München, Verlag Karl Alber, 1986. In V. Reinhardt, *Francesco Guicciardini (1483-1540). Die Entdeckung des Widerspruchs*, Göttingen/Bern, Wallstein/Stämpfli, 2004, p. 18, we find the characterisation of a «city geared towards competition and rivalry in every respect». Randall Lesaffer (R. Lesaffer, *European Legal History. A Cultural and Political Perspective*, Cambridge, Cambridge University Press, 2009) titles his Renaissance chapter *emulatio*; actually *aemulatio*: emulating, competing.

ing military conflicts between the *cinque principati* (Florence, Milan, Venice, Rome and Naples)⁶⁹ became exacerbated by international covetousness for spheres of influence on the «Italian Boot»⁷⁰.

Much could be said about the striving force of early capitalism⁷¹, esp. within the wake of the received learned law, transporting the flexibility of Roman contract law and the arbitration potential of canonical procedural law into urban normativity and jurisdiction. Within the special Florentine case of «Medici Money»⁷², the capitalist need for a secularised Ethics of will found its particular expression in art sponsorship. Art lifts the sponsor up; the more precious the works of Michelangelo Buonarroti (1475-1564) and Raffaello Sanzio (1483-1520) were considered to be, the more the sponsor was lifted; and religious motives, turned to Renaissance naturalism, seemed to lift up their de' Medici-sponsors virtually to the divine, thereby 'compensating' supposedly sinful banking practices. Due to the canon law ban on usury, Early Modern banking had none, but a slippery ground. This might be felt from the peculiarity of the Florentine Exchangers' Guild (*arte di Cambio*), where Giovanni di Bicci de' Medici⁷³ registered his bank: suspicion lay, not to be

⁶⁹ Even without the federal union of the *cinque principati* the Peace of Lodi in 1454 provided the basis for a lasting cultural flourishing (G. Mattingly, *Renaissance Diplomacy*, New York, Dover Publications, 1988, pp. 75 f.).

⁷⁰ In addition to France, this includes Spain, united under the *reyes católicos* Ferdinand of Aragon and Isabella of Castile, the Empire, and the House of Habsburg with Emperor Maximilian I.

⁷¹ K. Bosl, *Europa im Mittelalter. Weltgeschichte eines Jahrtausends*, Bayreuth, Gondrom, 1975, p. 279: «The immobile wealth of the aristocracy was replaced by the liquid financial resources of a larger-scale economy, which intensified European relations in the 15th century».

⁷² T. Parks, *Medici Money, Banking, Metaphysics and Art in Fifteenth-Century Florence*, London, W.W. Norton & Company, 2006. In German the pun «Weltstadt-Stadtwelt» plays on this (Title, Beuys, *supra* n. 66).

⁷³ As great-grandfather of Lorenzo de' Medici (the Magnificent) Giovanni founded the Medici bank in 1397, the success of which truly backboned the family's growing influence in the Florentine *res publica*. Owning two wool workshops in Florence, Giovanni was also member of the influential *Arte della Lana*. In 1402, he sat «on the panel that selected Lorenzo Ghiberti's design for the bronzes on the doors to the Florence Baptistery» And it was him who paid for the construction of the sacristy in San Lorenzo in 1418. «He picked Brunelleschi to be the architect and chose Donatello to create the sculptures». Direct and indirect quotes from the

an honourable trader, and of course, driving competitors into ruin was the backbone of the Medici-wealth, also owed to managing accountability for the papal treasury.

A logical consistency was felt among the contemporaries between the cities' competition, the patrons' competition (Sforza last supper in Milan, de' Medici David in Florence), and the artists' competition (as Ghiberti/Brunelleschi). Instead of scholastic supernatural details such as the order of the angels in a meticulous *sic et non sic*-dualism, the Florentine public of the 14th and 15th centuries was eager to liberate the Ethics of will from moral theology by means of art. Personal individuality, sensitivity and interactions (cf. the Ognissanti Madonna by Giotto di Bondone /. the Cimabue Trinita Madonna) represent the «humanist credo»⁷⁴ of self-«setting»⁷⁵. Freedom is no longer ontologically, essentially predetermined as in Scholasticism, «but conversely freedom determines the [human] being»⁷⁶. Such a creative freedom was spelt out in the mathematical grounding of art and architecture (Masaccio's Trinity for Santa Maria Novella and Brunelleschi's cupola for the Florentine Dome Santa Maria del Fiore). Detailed portraits (Piero della Francesca, Ducal couple of Umbria) and casualty beyond religious sublimity (Madonna with Christ and two angels by Filippo Lippi) were the perfect artistic match with the Renaissance and humanists'

English Wikipedia (*Giovanni di Bicci de' Medici*, <https://en.wikipedia.org/wiki/Giovanni_di_Bicci_de%27_Medici#cite_note-:1-2>, accessed on 5 March 2024).

⁷⁴ T. Kobusch, *Des Menschen Würde – humanistische Tradition eines Verfassungsprinzips*, in R. Gröschner, S. Kirste, O. Lembcke (edited by), *Des Menschen Würde – entdeckt und erfunden im Humanismus der italienischen Renaissance*, Tübingen, Mohr Siebeck, 2008, pp. 235-250, p. 236.

⁷⁵ H. Rombach, *Strukturanthropologie. Der menschliche Mensch*, Freiburg/München, Alber, 1987, p. 104: «“Setzung” is an attempt to get a grip on the constitution of selfhood. An “I” only exists if it emerges from its own “positing” and is not a “given”». Rombach refers decidedly to his «Metaphysics of Nothingness» (H. Rombach, *Sein und Nichts*, Freiburg i. Br., Herder, 1983), because without the «leap [into the unthinkable]» (p. 105) there is no «structural constitution», but only an «established system».

⁷⁶ A. Buck, *Introduction*, in G. Pico della Mirandola, *De hominis dignitate – Über die Würde des Menschen*, A. Buck (edited by), N. Baumgarten (transl. by), Hamburg, Felix Meiner Verlag, 1990, p. VII: «[essential dignity] does not appear as something given by nature, but rather as the realisation of a potentiality of man through his creative powers».



Fig. 4. Lorenzo Ghiberti, Gates of Paradise, photo taken by Ricardo André Frantz, <https://commons.wikimedia.org/wiki/File:Ghiberti-porta.jpg>

strive for creativity, even in everyday business. Human ‘ontological nakedness’ due to the lack of any predetermined nature⁷⁷ became masterly represented by Donatello’s David and Botticelli’s Venus, who were the first (non-theological) act presentations in history.

⁷⁷ «The nature of man is not that which is absolutely given, but that which is shaped by the will». Man creates himself, or in the words of the Jewish philosopher and Kant editor Ernst Cassirer: «He is what he makes himself» (E. Cassirer, *Über die Würde des Menschen von Pico della Mirandola*, «Studia Humanitatis», 12, 1959, pp. 48-61, 49); cf. also Kobusch, *supra* n. 74, p. 237, who still refers to Eugenio Garin (E. Garin, *Der Italienische Humanismus*, Bern, Verlag A. Francke, 1947, p. 126) with his explanation of human dignity in terms of creative power.

Renaissance subjectivity and a secularised Ethics of will, that civic entrepreneurs of the urban trading centres were all too ready to adopt for their economic and societal self-formation, seemed to culminate in Ghiberti's Gate of Paradise and, in particular, in his Abraham and Isaac motif.

What counts here is less the masterly bronze adoption of perspective flexibility by flattening the personages representing a background, but first of all the position of an Old Testament image programme towards the east, facing the cathedral's entrance: For aesthetic reasons exclusively and irrespective of religious standards, Ghiberti's Gate of Paradise found its legitimisation to frame the Florentine Paradise, i.e. the Piazza del Duomo-part substituting a vestibule for those baptised (in the baptistery) before entering the cathedral. Finally, Abraham's individual decision to put his loyalty to God over the natural father-son-bonding superelevates the human freedom of will – even God seems to rely on it⁷⁸.

1.3 The Novelty of the Humanists' Argumentation and its Artistic Transformation

1.3.1 Human Ingenium of Doing Justice to One Another

Curiosity beyond scholastic boundaries was no longer a sin. Rather, it became the virtue of *l'uomo universale*. His naturalness and nakedness⁷⁹ not only characterised the above mentioned new individual expressiveness in art, but also took

⁷⁸ More research needs to be done on the emancipation of the individual, that Western Christendom requires, and its impact on the further development of rights of freedom (the freedom of confession as an initial human right?). The free individual decision prevaluates societal bondings also in the narrative of the call of disciples at the sea of Gallilee with Christ's reminder not to say farewell to the families and loved ones back home, when deciding to follow him, Mark 1:16-20; Matthew 4:18-22; Luke 5:2-11; John 1:40-42.

⁷⁹ Cf. the anatomy from different perspectives and the immediacy of mortality, which, for example, is accessible when looking at the dead Jesus lying on Mary's knees within Michelangelo's Florence Pietà or Bandini Pietà, housed in the Opera del Duomo. It is one of the three Pietàs sculpted by the artist, and seems to particularly express his life experiences and human sufferings. Unlike the other two – his youthful work in the Vatican and the later Rondanini one – the body of Christ is not only

a stand for the innovative humanist mind setting: Man is the creator of himself, the «*plastes et fictor*» in Giovanni Pico della Mirandola's words⁸⁰. This hendiadys is the shortcut for the innovative understanding of freedom determining the human condition, and originates from Pico's opening speech («Oratio») to an ecumenical assembly; in fact, never delivered as banned by the church, this speech had been posthumously published under the title «*De hominis dignitate*» (1496), and its wide dissemination illustrates the Early Modern emancipation of curiosity from the fear of God⁸¹.

It was the Aristotle translator⁸² Giannozzo Manetti (1396-1459)⁸³, who formulated the self-formation by means of *ingenium*⁸⁴ – even before Pico (!) – namely in the reciprocity of doing

supported by Mary, but also by Magdalene and Nicodemus, to whom Michelangelo borrowed his own face.

⁸⁰ Pico della Mirandola, *De hominis dignitate* – *Über die Würde des Menschen*, A. Buck (edited by), N. Baumgarten (transl. by), Hamburg, Felix Meiner Verlag, 1990, p. 6 «Nec te caelestem neque terrenum, [...] fecimus, ut tui ipsius quasi arbitrarius honorariusque plastes et fictor, in quam malueris tute formam effingas». The metaphor of moulding and shaping one's own form may have a precursor in Paul's parable of the potter (Rom 9:24; 2 Tim 2:20), although the debate between human freedom and divine omniscience, which was decisive for the thinkers of Renaissance humanism, did not yet play a role for Paul.

⁸¹ Kobusch, *supra* n. 74, p. 242. Kobusch identifies Pico's borrowings from late antique Christian philosophy. These include references to Origines, Gregory of Nyssa, and to John Chrysostom.

⁸² Manetti translated the Nicomachean and Eudemian Ethics as well as the *Magna Moralia* (P. Botley, *Latin Translation in the Renaissance. The Theory and Practice of Leonardo Bruni, Giannozzo Manetti and Desiderius Erasmus*, Cambridge, Cambridge University Press, 2004, p. 63, p. 73, with references p. 73 fn. 58 to the relevant manuscripts in the Vatican Library: Pal. Lat. 1021/Urb. Lat. 223, *Nova Magnorum Moralium Aristotelis ad Nikomachum patrem traductio, ad Alfonsum clarissimum Aragonum e Siciliae regem* (Pal.lat.1021 | DigiVatLib, no page references recognisable, image 4^o ff., last accessed on 14 April 2022; Urb. lat.223 | DigiVatLib, last accessed on 14 April 2022). Furthermore, Aristotelian manuscripts are stored in the Bibliotheca Nazionale Naples, Neapol. VIII 613, and in the Bibliotheca Nazionale Centrale of Florence, Magl. (Cf. also A. de Petris, *Introduction*, in G. Manetti, *Apologeticus*, A. de Petris (edited by), Roma, Edizioni di Storia & Letteratura, 1981, p. XVII, fn. 37).

⁸³ Born in Florence in 1396, Giannozzo Manetti was the son of a wealthy merchant. Thanks to a comprehensive humanist education and lessons in classical languages from Ambrogio Traversari, Manetti not only mastered Latin and Greek but also Hebrew. From 1429 onwards, he held various political offices, but left Florence for Rome during the reign of the Medici and became secretary to Pope Nicholas V.

⁸⁴ Third book (20), Meiner edition 1990, p. 77 = Padua edition 1975, pp. 77 f.

justice to one another (since, for Manetti, dignity includes the human disposition to independently deliver *iustitia*). His argumentation exemplified the reflexive «[O]rientation [of the Delphic «Know thyself»] [...] towards the other as a vis-à-vis»⁸⁵ by the nostri/nostre anaphora⁸⁶ within his «praise of the dignity and excellence of man» (*De dignitate et excellentia hominis*, 1452). Consequently, Manetti's attributions «Our are» covered all cultural achievements of human coexistence, denominating also fellow human beings: «*Nostri sunt homines*». Thereby, the Florentine *res publica* was confirmed as a cultural achievement. Art became a means of political communication (if not manipulation), even more so, as the invention of the central perspective and the immediate observer back out of the picture 'took the spectator within the scenery' (e.g. the angel in Filippo Lippi's Madonna with a child and two angels, or Raffael himself out of the group on the very right of his School of Athens). It was therefore politically reasonable for the Medici to pay the best artists, the best classical philologists and translators, as well as the best models (Boticelli was allowed to paint his favourite one

German: I. Manettus, *Über die Würde und Erhabenheit des Menschen – De dignitate et excellentia hominis*, A. Buck (edited by), H. Leppin (transl. by), Hamburg, Felix Meiner Verlag, 1990. Latin: G. Manetti, *De dignitate et excellentia hominis*, E. R. Leonard (edited by), Padua, Antenore, 1975, p. 81. «Key concept of the Renaissance» according to Alexander Thumfart, Giannozzo Manetti: «Wir sind für die Gerechtigkeit geboren», Der Entwurf einer politisch-sozialen Würde des Menschen, 81. Thumfart offers as translations the «art of connection», the «art of creating something new through the drawing of relations, the construction and production of contexts». I would suggest innate courage, intellect, mental agility, genius, talent, clever idea, whereby the innate, the natural disposition, and the individual character are decisive. Cf. also H.-B. Gerl, *Einführung in die Philosophie der Renaissance*, Darmstadt, Wissenschaftliche Buchgesellschaft, 1989, pp. 154 ff.

⁸⁵ D. Willoweit, *Gerechtigkeit und Recht. Zur Unterscheidung zweier Grundbegriffe der Jurisprudenz* (SB BayAkademieWiss 2018-1), München, Verlag der BayAkademieWiss, 2018, p. 83. There also on the contrast between law and arbitrariness as immanent to the concept of law. On the relationality even of the Christian Trinitarian theology: L. Schulz, *Das juristische Potential der Menschenwürde im Humanismus*, in R. Gröschner et al. (edited by), (as n. 73), pp. 28 ff., ivi. p. 33: «Thus, the dynamic inherent in the concept of dignity is triggered by the notion of Trinity. Humanitas is the divinised quality that God appropriates in the outward turn through the Son».

⁸⁶ Third book (25, 26, 27), Meiner edition 1990, p. 80 f. = Padua edition 1975, pp. 80 ff. Cf. also Third Book (20), Meiner edition 1990, p. 77 = Padua edition 1975, p. 78.

both as Madonna and as Venus); it proved their (sometimes jealous) fellow citizens the de' Medicis' upward aspiration on behalf of the commonwealth.

It was in this way, that God's goodness and justice – an equivalent according to Valla (*iustitiae et bonitatis causa*) – are compatible with the human *arbitrium*, indeed «necessarily connected with it [...]»⁸⁷. Through the «scientification of learned law» into a «self-supporting system independent of God's will», the idea of justice became rationally graspable and, precisely because of this, compatible with the rational *arbitrium*. Therefore, the artistic glorification of the de' Medici ruler's justice seems suitable to secure them a place in heaven, regardless of how vehement the demonisation of Machiavelli's deciphered power-political dodges would turn out in the anti-Machiavelian writings.

1.3.2 Dürer's Self-Portrait and his Particular Interplay of Lordly, Civic and Artistic Self-Confidence

The Renaissance interest in subjectivity coincided with the artists' endeavour to free art from any craft status. This was especially true for Albrecht Dürer's strive for appreciation within his home city Nuremberg⁸⁸. His self-portrait in a fur coat (1500) on the slide, now accessible in the Munich Old Pinakothek, stands exemplarily for both a new subjectivity and Dürer's claim to elevate art. The way and manner the artist painted himself in

⁸⁷ «Nos porro hoc solum quaerimus, quonam modo Deus bonus est, auferens arbitrii libertatem» / «But we ask only this: How then is God good, if he deprives [us] of the freedom of the will?» L. Valla, *Über den freien Willen/De libero arbitrio. Latin-German edition*, E. Keßler (edited and transl. by), München, Fink, 1987, § 92, p. 126 f. Lines 669-671.

⁸⁸ Until the Renaissance, artists were regarded as craftsmen, and it was part of the cultural emancipation of the Renaissance that the artist emancipated himself from this. For Dürer's collaborators Hans von Kulmbach, Hans Baldung Grien and Hans Schäufelein, see U. Müßig, § 3 *Richtertugenden im Layenspiegel Ulrich Tenglers – Zugleich ein Beitrag zum Rechtsdenken im Renaissance-Humanismus*, in C. Becker, T. Möllers K. Wolf (edited by), *Der Neü Layenspiegel von Ulrich Tengler – Das deutschsprachige Augsburger Rechtsbuch zwischen Mittelalter und Neuzeit Europas*, Köln et al. 2024, under publication.



Fig. 5. Albrecht Dürer, self-portrait in the fur, 1500, Alte Pinakothek Munich, <https://t.ly/gtKSg>

frontal view⁸⁹ was so far only known from religious depictions of Christ⁹⁰. Dürer's finger, through which the marten fur seems to slide, underlines the artist's self-confident claim to be as important as the rich merchants of Nuremberg. In addition, the composition of this first frontal self-portrait known to Western European art without any surrounding furniture or any landscape upstage is quite unusual: the brown background creates the impression of a painted mirror image⁹¹ – vividly in accordance with the Delphic «Know thyself» and the humanist interest in the educational and intellectual self-talentedness.

Further self portraits impress us nowadays: in the Italian Spello, the Church of Santa Maria Maggiore houses the famous Baglioni Chapel. It was entirely frescoed by Pintoricchio = Bernardino di Betto di Biagio in 1500/01, comprising the artist's self-portrait, also painted from the front with a three-quarter (!) face (not complete front view as with Dürer's one). Pintoricchio's portrait's naturalistic fea-

⁸⁹ Other portraits remained in the side view: Dürer painted the portrait of Jakob Fugger in 1518 and the portrait of Maximilian I from the side in 1519. The same applies to the Renaissance portraits of the Duke and Duchess of Umbria by Piero della Francesca. Even the 1526 diptych with the four apostles does not contain a frontal view, cf. fundamentally, W. Wüst, *Caritas Pirkheimer (1467-1532)*, in T. Schaurte (edited by), *Neuer Geist und neuer Glaube. Dürer als Zeitzeuge der Reformation*, Nürnberg, Michael Imhof Verlag, 2017, n. 41, pp. 57 ff. Further contemporary front depictions represent religious figures, as Adam and Eve as by Hans Memling or the apostles by Lukas Cranach.

⁹⁰ Curls and beard had also been traditional pictorial attributes of Christ.

⁹¹ Cf. U. Kuder, D. Luckow (edited by), *Des Menschen Gemüt ist wandelbar. Druckgrafik der Dürerzeit*, Kiel, Kunsthalle zu Kiel, 2004, p. 182.

tures correspond with the embedment of the Marian episodes within an everyday setting (clothes, hairstyles, decorations, floral and vegetable elements), appearing even more realistic due to the masterful combination of the central perspective to anecdotal detail and chromatic nuances.

For Dürer and the north alpine Renaissance, it was the appreciation by the humanist circles that provided Dürer with the ‘nobilitisation’ of his art. Dürer’s quest for recognition as an exceptional artist naturally coincided with the ‘divineness’ of self-formation according to one’s own individual judgement (*arbitrium*) in Renaissance humanism.

1.3.3 *The Central Perspective as Anthropocentric Turn towards the Spectator*

On the way to understand the central perspective as an anthropocentric turn towards the spectator, we look at the famous copperplate engraving «Jerome in the enclosure» (1514) by Albrecht Dürer⁹². For the adaptation of the picture’s background to human perception by the innovative central perspective (contrary to the former hierarchical proportion, as still visible at the Madonna del Prato by Piero della Francesca in Monterchi)⁹³, Dürer has chosen a low point of view through which the spectator does not look down on Jerome, but rather up at him. Thereby, the viewer gets the impression of ascending the staircase leading to Jerome’s enclosure. Such an ascent is full of metaphors: Jerome’s wisdom ‘invites’ the spectator to the humanist ideal of education⁹⁴; it was due to humanist veneration that Jerome has overcome the protestant cut-off of catholic saints⁹⁵,

⁹² The common attributes of lion, crucifix, books and cardinal’s hat are supplemented by the *momento mori*- associations such as skull and hourglass.

⁹³ The first pregnant illustration of Mary in art history, then to be banned as pornographic after the Council of Trent.

⁹⁴ Both Dürer’s friend Willibald Pirckheimer and the international mind Erasmus of Rotterdam idealized Jerome as a Christian scholar.

⁹⁵ As Jerome’s veneration survived the Reformation in the 16th century, the Dutch Protestant Rembrandt (1606-1669) was able to focus intensively on the figure of St Jerome, referring to Dürer’s prints.



Fig. 6. St Jerome in the enclosure, Albrecht Dürer, 1514, <https://t.ly/tC6fU>

and Jerome's scholarship allows for the immediate access to religious truth, even highlighted by until-then unseen effects of incident light – still a symbol of divine enlightenment.

Last but not least, Dürer's scenic arrangement achieves a special insistence on 'the invitation into the picture' by means of the contrast with the architectural moment of complete seclusion within the scholar's mildly sun-drenched room. By fixing the viewer's line of sight on the doorstep of Jerome's study, Dürer's specific adaptation of the central perspective not only translates the humanist heuristic programme of hu-

man self-determination; rather, it makes it possible to 'put various experiences into the picture'. Needless to say, that Dürer's naturalistic attention to details (cf. the fur of the lion as well as the one of the well-known hare 1502) enhances the experience of immediacy even more.

1.4 Summary of the 1st part: *Artificio and the New Accentuation of the Possible*

The new accentuation of the possible in art, be it by Renaissance subjectivity, by individual expressiveness, by less pious everyday casuality, or by 'ontological nakedness' finds its climax in a new iconography towards the divine omnipotence⁹⁶.

⁹⁶ In regard to the shift to a legalised *potentia ordinaria* cf. U. Müsig, *Reason and Fairness. Constituting Justice in Europe, from Medieval Canon Law to ECHR*, Leiden, Brill, 2019, p. 44 on the framing of the expulsion from paradise as *ordo iudiciarius* in Étienne de Tournai. God himself was referred to the legal process of

Michelangelo's painting of the Creator's finger almost touching that of his creature brings the human self-determination into a sacral room, in the Sistine Chapel – as taking the artistically transformed stand to rely on human creative self-effectiveness even in the face of divine providence.

Taking into account the papal humiliations⁹⁷ against Michelangelo, such a painted statement might have caught the contemporaries' hearts to overcome the fear of one's own courage and to trust in «humanism, that innovates». For the first time in art history, God is painted in a horizontal position, not from high above, but almost at the same height as the first man. In the pictorial language of Michelangelo's bold arrangement, neither earthly life nor human action were predetermined by a divine plan of salvation any more. In addition, there seems to be a movement of the creator's hand stretched out towards Adam, expressing the Scotist «I want you to be» (*volo ut sis*)⁹⁸ by means of the difference between God's index finger fully extended and Adam's finger hanging limply. Beyond any exegetic subtleties, these gestures and

granting Adam a right to be heard (after the fall into sin), thereby already claiming a shift from divine *potestas absoluta* to *potentia ordinata*. Cf. also K. Pennington, *Due Process, Community, and the Prince in the Evolution of the Ordo Iudicarius*, «Rivista Internazionale di Diritto Comune», 9, 1998, pp. 9-47, esp. p. 11, pp. 18 ff., p. 26.

⁹⁷ In 1505, Pope Julius II requested a monumental tomb by Michelangelo, which was to be placed above the tomb of St. Peter in Old St. Peter's Basilica. While Michelangelo was procuring the marble in the Carrara Mountains, Pope Julius II commissioned Donato Bramante to completely redesign the basilica. Offended, Michelangelo left Rome on 17 April 1506, the eve of the laying of the foundation stone for the new St Peter's Basilica; important sculptures for the tomb, completed in a simplified form in 1545, can be seen today in the Louvre: the «Bound» and the «Dying Slave». In 1508, commissioned with the frescos of the Sistine Chapel, this world-famous panorama, opened in 1512, met again clerical criticism due to its unveiled corporality. In 1547, Michelangelo became the architect of St Peter's Basilica and was commissioned by Pope Paul III to design the dome, which was completed only in 1593 (under Giacomo de la Porta) after the artist's death in 1564: above the tambour, the dome ring with its 16 rectangular windows, is composed of an inner dome and an outer protective shell. At 42.34 metres in diameter, it is slimmer than the Pantheon, but still unrivalledly dominating the skyline of Rome today.

⁹⁸ H. Arendt, *Vom Leben des Geistes*, München/Zürich, Piper, 1979, vol. II: *Das Wollen*, pp. 129 f. with reference to Scotus (fn. 69).



Fig. 7. The Creation of Adam, Michelangelo, 1510, <https://t.ly/IwIVm>

hand postures vividly explain the Christian creation narrative not to arise from any predetermined necessity, but from «nothingness through a decision of the Creator God»⁹⁹.

This new accentuation of the possible also applies to the following parts 2 *natura* and 3 *vita*. The mathematisation of philosophy inherent in the Aristotelian logic and physics sets off to encompass the emerging natural sciences; and this mathematisation of the observation of nature, to be analysed in the subsequent section, paved the way for the displacement of the Aristotelian philosophy of being (*supra* part 1.1) by the cognitive Cartesian subject (part 2). It is not by chance that the Pisano relief tiles on Giotto's Campanile represent geometry as one of the personifications of the fine arts par excellence¹⁰⁰. What is of more interest for the triad *artificio*, *natura*, *vita*, are the considerable consequences of the mathematisation of philosophy for

⁹⁹ Arendt, *supra* n. 98, p. 129. Cf. also A. Hyman, J. J. Walsh (edited by), *Philosophy in the Middle Ages*, New York/Indianapolis, Hackett, 1967, p. 597; W. Hoeres, *Der Wille als reine Vollkommenheit nach Duns Scotus*, München, Pustet, 1962, p. 121.

¹⁰⁰ Geometry holds a set square and a compass, whereas arithmetic counts on her fingers. The liberal arts, being taught in medieval universities such as the Studio Fiorentino, quite close to the Cathedral, comprised Astronomy, Music, Geometry, Grammar, Rhetoric, Logic and Arithmetic.

legal thinking (part 3): The pure rational legitimisation of statutes and other legislative acts by ‘putting different experiences into law’ corresponds with the revolutionary parting from the scholastic ontological predeterminations by the humanist innovative confidence in man being creator of himself, the «*plastes et fctor*» of his own life and all achievements of his social and political surroundings (part 1). In the long run, the civic and artistic customisation of the humanist anthropocentric turn towards self-setting (part 1) opens up the later 19th- and 20th-century pluralism of liberal legal systems (part 3), and one of the decisive bridges might have been mathematics as the blueprint of nature: What makes part 2 (Natura: Mathematics as the Blueprint of Nature) the linchpin between part 1 (Artificio: the Subject Invented by Art and the Specific Renaissance Naturalism) and part 3 (Vita: Life legally explained) is the ‘equivalent realm of possibilities’, either for mathematical studies and natural research or for realistic portraits, moving subjectivity and central perspective, or for the abstraction of *il stato* as a single point of reference, the Bodeian transition to legislative primacy, the enrichment of legal interpretation within the *mos gallicus*, the focus on the rational validity of local statutes in the *usus modernus*, the book-based rational approaches to moral and religion, and the inter-state rationality by Alberico Gentili.

2. Natura: Mathematics as the Blueprint of Nature

2.1 *Mathematics as the Language of Nature*

The discovery of the New World in 1492 required new cartographic and cosmographic possibilities¹⁰¹, and a new informed public, based on accessible education for everyone¹⁰² due to Johannes Gutenberg's invention of movable letters¹⁰³, seemed ready for the world's 'measurement'¹⁰⁴. Within such a mood of awakening, mathematics offered the tool to explain nature in Manetti's sense of «ours are». It was the mathematical proof

¹⁰¹ Cartography became a scientific means of communication for sovereign claims (cf. the division into the lands of Florence and those of Siena in the map room of the Palazzo Vecchio).

¹⁰² Knowledge formerly hidden in manuscripts could now be disseminated in large editions to the ever-increasing number of literates.

¹⁰³ From 1434 to 1444, Gutenberg stayed in Strasbourg, one of the largest and richest trading cities in the Holy Roman Empire at the time. There, Gutenberg was already working on his idea of mass-producing prints and had built his first press. Around 1450, Gutenberg brought his ideas to market maturity in Mainz: lead letters: upper and lower case letters as well as punctuation marks, with which any text could be set; a hand casting device: a hollow mould, with the help of which the letters could be produced quickly, uniformly, and neatly; a printing press: the printing plates fitted with the letters were clamped, and the pressure of the press thread ensured an even colour tone on the sheet; a viscous, slightly sticky printing ink made from soot, oil, and resins that was particularly suitable for this purpose. From then on, the letters could be moulded into multiple copies, reassembled again and again, and then stored in a space-saving type case. In the early days, for example, much sought-after textbooks for Latin grammar were printed. Gutenberg was supported by Johannes Fust, a merchant who provided a large part of the financing, and the scribe Peter Schöffer. Between 1452 and 1454, the almost 1,300-page, two-volume Gutenberg Bible was produced. Because it is printed in a 42-line layout, it is also known as the B-42 for short.

¹⁰⁴ Thanks to the engraver and publisher *Matthäus Merian*, called the Elder, his main work, the «*Topographia Germaniae*», a unique collection of city and landscape views of Germany and Switzerland, was published between 1642 and 1654.

provided by Euclidean geometry that allowed access to nature complementarily to experimental empiricism. On top, since Pythagoras mathematics had the insurmountable advantage not to interfere with metaphysics¹⁰⁵; rather, numbers and geometric shapes in their axiomatic coherence (as $2 + 2 = 4$) offer genuine trueness that cannot be experienced with the senses. It was this kind of ‘metaphysical dimension’ in mathematics that allowed natural research to liberate itself from theology without the researchers themselves having to oppose Christianity¹⁰⁶.

Also, the coincidence between humanism and the Lutheran Reformation attributed to the awakening spirit: the text-critical work of Erasmus of Rotterdam¹⁰⁷ was spread by Gutenberg’s printing revolution in the same way as the illustrating copperplate engravings (e.g. Cranach, Dürer): such a ‘scientific profanation of sacred texts’ communicated truths of faith immediately to a wide audience, whose view onto the world was already confronted with revolutionary changes, as Copernicus (1473–1543) seemed to have ‘stopped the sun’, – to borrow from his «sol stat, terra movetur».

2.1.1 *Nikołaj Kopernik and his Illustrious Italian Company*

Nikołaj Kopernik, in Latin Nicolaus Copernicus¹⁰⁸, himself was not a mathematician; it might well have been that without the mathematician Georg Joachim Rheticus (from Wittenberg)¹⁰⁹, who managed to have *On the Revolutions of the*

¹⁰⁵ The system of geometric shapes and numbers that Pythagoras once juggled with cannot be experienced with the senses – and yet it is true. For Kant, it opens the door to metaphysics.

¹⁰⁶ Cf. e.g. Newton’s thirty editions of the Bible!

¹⁰⁷ *Supra* n. 25.

¹⁰⁸ Nikołaj Kopernik was born in Thorn (modern Toruń), in the province of Royal Prussia, in 1473. He died in 1543 in Frombork, a nearby town to the northwest at the Vistula Lagoon on the Baltic Sea coast. Cf. also U. Müßig, *Introduction. Kopernik and ReConFort: A Copernican Turn in Comparative Constitutional History? / Introduzione. Copernico e il progetto ReConFort: una svolta copernicana nella storia costituzionale comparata?*, «Journal of Constitutional History / Giornale di Storia Costituzionale», 37, 2019, pp. 5–24, <http://www.storiacostituzionale.it/doc_37/Introduction_Mussig_GSC_37.pdf>, accessed on 30 April 2024).

¹⁰⁹ *Georg Joachim Rheticus*, <<https://www.uni-wittenberg.de/kollegen/rheticus->

Heavenly Spheres (*De revolutionibus orbium coelestium*, 1543) printed in Nuremberg by Johannes Petreius, the world might not have gotten to know anything about Kopernik's heliocentric turn. As painted by Wojciech Gerson 1873, celebrating Kopernik's 400th anniversary¹¹⁰, the canon of Frombork had an illustrious Italian company, and still has today: next to the Spanish Steps in Rome (the *Scalinata di Trinità dei Monti*) a Copernicus' statue greets tourists with the statement that the sun stands, the earth moves¹¹¹. First in 1496, he met the Italian astronomer Domenico Maria Novara in Bologna, to whom he is said to owe the impetus for his Small Commentary (*Commentariolus*, 1514), preceding his main work (*On the Revolutions of the Heavenly Spheres*, 1543)¹¹². During the depicted stay in Rome in 1500¹¹³ Kopernik had the chance to give lectures, either in the Farnese Palace or at La Sapienza. Pope Paul III. himself is assumed to have been present. Among the audience, painted by Gerson, some of the best Italian Renaissance minds are gathered, Leonardo da Vinci and Michelangelo, as well as Perugino (= Raphael's teacher), or Bramante, who has already been men-

georg-joachim/>, accessed on 8 March 2024.

¹¹⁰ The title reads Coperincus lecturing in Rome. The original engraving, exhibited in St Petersburg, has not survived to our days, the sketch is the only picture left. Although Gerson's painting refers to the historical visit of Nicolaus Copernicus to Rome, it is partly a product of the author's imagination. *Copernicus lecturing Astronomy in Rome*, <<https://www.alamy.de/copernicus-lecturing-astronomy-in-rome-1500-redlich-henryk-ca-1840-1884-gerson-wojciech-1831-1901-image471447418.html>>, accessed on 8 March 2024. It also on display within the Film «L'affaire Nicolas Copernic» (Y. Parish, K. Christiansen, D. Duppel, *L'affaire Nicolas Copernic* 1/2(arte), 2023, 33:36, <<https://www.arte.tv/fr/videos/100224-002-A/l-affaire-nicolas-copernic-1-2>>, accessed on 30 April 2024).

¹¹¹ There is a further statue of Copernicus by the sculptor Tomasz Oskar Sosnowski (1810-1886) at the Church of the Resurrected in Via Sebastianello 1, near Piazza Spagna, unveiled in 1873 to mark the four hundredth anniversary of Copernicus' birth. In addition, the Astronomic and Copernicus Museum in Rome hosts the 1st and 2nd edition of the *De revolutionibus orbium coelestium*.

¹¹² E. Rosen, *Copernicus and the Scientific Revolution*, Malabar, FL, Krieger Publishing Company, 1984, p. 171.

¹¹³ About the trip to Rome in 1500 we do not know any exact details: what can be reconstructed is that Copernicus arrived in Rome in the spring of 1500 and stayed here for about ten months. Probably the main reason, if not the only motive, for the trip to the Eternal City was the Jubilee Year 1500, proclaimed and celebrated under the pontificate of Pope Alexander VI. He had the support of the Dean of Warmia, Bernard Sculteti, notary of the Roman Rota, who empowered the painted lecture.



Fig. 8. <https://www.alamy.de/copernicus-lecturing-astronomy-in-rome-1500-redlich-henryk-ca-1840-1884-gerson-wojciech-1831-1901-image471447418.html>

tioned here as representing Archimedes within Raffael's «School of Athens» (*supra* 1.1.4).

Embedded within the work on the Gregorian calendar reform of 1582, Copernicus' observations and studies triggered index proceedings only on account of Galileo's confirmation. On 22 June 1633, Galileo Galilei, facing the inquisition, is reported to have renounced his superior knowledge: His muttered «Eppur si muove!» indicates the forthcoming thorough measurement of nature and the universe *more geometrico*; the church was losing ground to prevent the laws of mathematics from also setting limits to a creator God: the mathematically impossible could not be created if natural phenomena become experimentally verifiable to occur everywhere and for everyone in the same way.

2.1.2 *The Abandonment of Aristotelian Physics*

The boundless curiosity of the Renaissance subject faced the Aristotelian categorisation of knowledge about nature according to discernible matter and form of primary matters and their inherent purposefulness. After the voyages of Columbus and Magellan proved the Earth not to be a disc, the «sterile physics [...] [on] the reign of words and terms [was] over, [...] [and] authority has ceased to carry more weight than reason [...]»¹¹⁴. In 1609, the year of Johannes Kepler's «*Astronomia nova*»¹¹⁵, Galileo pointed his telescope at the moon, and it was his «*Il Saggiatore*» (1623) that explained mathematics to be the (universal) language of natural laws¹¹⁶. Human creativity (*supra* 1.3.1) and knowledge became synonyms: Francis Bacon methodised the empirical-rational observation of nature¹¹⁷. In 1643,

¹¹⁴ B. le Bouyer (le Bovier) De Fontenelle, *Digression sur les Anciens et les Modernes et autres textes philosophiques*, S. Audidière (edited by), Paris, Classiques Garnier, 2015, p. 207. De Fontenelle (1657-1757) was the patriarch of the French early Enlightenment, and is also characterised as a universal scholar recognised among others in physics and geometry.

¹¹⁵ Johannes Kepler refined the foundations of Copernican heliocentric astronomy by shifting his orbital focus to the ellipse.

¹¹⁶ Galileo's formulation in the *Saggiatore* (1623) is well-known: «La filosofia è scritta in questo grandissimo libro che continuamente ci sta aperto innanzi a gli occhi (io dico l'universo), ma non si può intendere se prima non s'impara a intender la lingua, e conoscer i caratteri, ne' quali è scritto. Egli è scritto in lingua matematica, e i caratteri son triangoli, cerchi, ed altre figure geometriche, senza i quali mezzi è impossibile a intenderne umanamente parola; senza questi è un aggirarsi vanamente per un oscuro laberinto. / Philosophy is written in this great book, the universe that is constantly open to our gaze. But the book cannot be understood if you have not first learned the language and familiarized yourself with the letters in which it is written. It is written in the language of mathematics, and its letters are circles, triangles and other geometrical figures, without which it is impossible for man to understand a single word of it; without these, one wanders in a dark labyrinth». (*Le Opere di Galileo Galilei*, Firenze, 1933, vol. VI, p. 232, cited from <<https://bibdigi.museogalileo.it/Teca/Viewer?an=354802>>, accessed on 30 April 2024).

¹¹⁷ Bacon's *Novum organon scientiarum* 1620: real knowledge is the real representation of nature, without falsifying ideas by virtue of the unconscious (*Idola Specus*), traditional theorems (*Idola Theatri*), the use of language (*Idola Fori*), or the limitations of human perspective (*Idola Tribus*). His *De dignitate et augmentis scientiarum* (published in 1623) can be seen as the first universal encyclopaedia. Cf. also Bacon, *Novum Organum*, in J. Spedding (edited by), *The Works of Francis Bacon*, Stuttgart-Bad Cannstatt, Frommann, 1963, vol. XIV: *The letters and the life*, p. 31, with regard to the synonymy of power and knowledge.

Evangelista Torricelli succeeded in proving the existence of the *vacuum*, until then unthinkable within Aristotelian Physics¹¹⁸. Thereby, the subjugation of God's omnipotence to the laws of nature seemed to be proven; Galileo, Descartes, Kepler, Leibniz, and finally Newton had increasingly switched to the language of mathematics to describe and investigate inanimate nature¹¹⁹. After all, in 1687 Newton had succeeded in explaining these mathematically precisely formulated laws of nature in his «Mathematical Principles of Natural Philosophy»¹²⁰.

2.2 Mathematisation of Philosophy

The success of the mathematised natural sciences, especially the works of Galileo and Newton¹²¹, excited the extension of

¹¹⁸ For Aristotle, there was no such thing as a vacuum because, due to his lack of knowledge of gravity, he claimed that the thinner the material, the faster a body would fall. In absolute emptiness, this would result in an infinitely great speed, an impossibility. God's omnipotence (potentia) should not be limited by any natural law; within the subsequent mathematisation of philosophy the discussions about the All and the Nothing continued, however. 4. Buch der Physik, 6. Kapitel, Ausgabe Leipzig: Aristoteles. *Physik*, C. H. Weiße (transl. by), Leipzig, Johann Ambrosius Barth, 1829, 4. Buch der Physik, 6. Kapitel, pp. 89-91, <<http://www.zeno.org/nid/20009148957>>, accessed on 17 January 2024: «In the same way it is to be assumed that the natural scientist must also make observations about the vacuum, whether it is or not, and how it is and what it is, as well as about space. In a very similar way, one can also doubt or believe in this, in consequence of what is assumed about it. For those who assume the vacuum, they regard it as a space and a vessel. But something is considered to be full if it contains the mass that it is able to hold; but if it is without this, it is considered to be empty; as if the same thing were empty and full and space, and only the way of being were different for them» (paraphr. b. A.).

¹¹⁹ By the time of Kant, Leibniz and Newton had developed the «infinitesimal calculus». With this method, it had become possible to mathematically record the acceleration and deceleration of bodies mathematically. Not only the uniform circular movements of celestial bodies could now be described with mathematical precision, but also the movements of bodies on earth, which had previously been considered chaotic.

¹²⁰ Newton supposedly recognised the law of gravity through an apple falling from a tree. Kant has discovered the dependency of theoretical physics on forms of perception (*Formen der Anschauung*) and that it cannot thematise itself.

¹²¹ I. Kant, *Kritik der reinen Vernunft*, G. Mohr, M. Willaschek (edited by), Berlin, De Gruyter Verlag, 2024; cf. Also the review by M. Hampe, *Land in Sicht!*, «Zeit Online», 2 March 2024, <<https://www.zeit.de/zeit-geschichte/2024/01/>

mathematics to metaphysics and philosophy: Is the immortality of the soul as a priori axiomatic as the existence of prime numbers? May God's existence be provable as the sum of interior angles in a triangle? Blaise Pascal, the deeply religious contemporary of Cartesian scepticism¹²², would call his famous wager on mathematical probabilities that God exists «infini rien»¹²³. While Pascal's investigation of the conic sections and the repeat of the Torricelli experiment stand for a certain, correct methodology (and the turning away from the Aristotelian world view), law and justice are uncertain according to his observations¹²⁴.

The mathematisation of philosophy is about the emancipation of ethics from religious precepts, it aims at a conceptually deduced ethics of duty¹²⁵. The full trust in the capacity of reason to discover and comprehend the rationality of circumstances justifies the derivation of an axiomatic individual duty of perfection from the reasonableness of nature, of society and then also (in Wolff's sense of the 'mercantilist welfare and police state') of the state¹²⁶. The transferability of the mathematically accessible reasonableness of nature to the reasonableness of society, the state, and law results from the primacy of divine reason over divine will (in the scholastic tradition of the Christianised Aristotle, Thomas Aquinas, Melanchton, Grotius, and

philosophie-immanuel-kant-kritik-vernunft>, accessed on 30 April 2024, which lies at the basis of my arguments in this section (paraphr. b. A.).

¹²² *Supra* n. 121.

¹²³ For details, esp. on his legal thinking, U. Müßig, «*L'homme est visiblement fait pour penser: c'est toute sa dignité, et tout son mérite*» (Pascal, *Pensées* IX), in P. Bonin, J.-L. Halpérin (edited by), *Histoire du droit*, Paris, Classiques Garnier, 2024, to be published.

¹²⁴ Müßig, *supra* n. 123.

¹²⁵ Literally in C. Wolff, *Christian Wolff's eigene Lebensbeschreibungen*, H. Wuttke (edited by), Leipzig, Weidmann, 1841, <<https://www.digitale-sammlungen.de/de/view/bsb10068055?page=,1>>, accessed on 30 April 2024, pp. 120 f., also pp. 127 f.: «that mathematics had proved its case to be so certain that everyone must recognise it as true, so I was eager to learn mathematics *methodi gratia* in order to enable myself to bring theology to irrefutable certainty» (paraphr. b. A.). Cf. also W. Röd, *Geometrischer Geist und Naturrecht*, München, Verlag der BayAkademieWiss, 1970, pp. 117 f.

¹²⁶ E. Bloch, *Naturrecht und menschliche Würde*, Frankfurt am Main, Suhrkamp Taschenbuch, 1977, pp. 65 f. Cf. also H. Hofmann, *Einleitung*, in C. Wolff, *Deutsche Politik*, H. Hofmann (edited by), München, C.H. Beck, 2004, pp. 9-46, p. 20.

Leibniz)¹²⁷. Wolff's «Reasonable Thoughts on God, the World and the Soul of Man, the so-called German Metaphysics» (*Vernünfftige Gedancken von Gott, der Welt und der Seele des Menschen, auch allen Dingen überhaupt, die sog. deutsche Metaphysik* 1720)¹²⁸ set the tone for the scientification and rationalisation of the metaphysics¹²⁹. *More geometrico* «with clear concepts [...] and always deducing one from the other [...] and the proof [...] also out of the concepts of things»¹³⁰, he explains political coexistence as a «pre-stabilised harmony» (due to the primacy of divine reason) and, without being secular himself, declares atheism to be «rational deism». Kant's critiques demolished this Wolffian confidence in reason (banned as «dogmatism»), «how the reliable course of science can be taken through the systematic establishment of principles, the clear definition of concepts, the attempted rigour of proof and the prevention of bold leaps in conclusions»¹³¹. The Wolffian rationalisation of ethical rightness is neither Aristotelian nor reasonable in the sense of Early Modern individualism. Natural rights are only conceivable as the flip side of primary duties, as «residual rights», «insofar as the civic order leaves room for liberties»¹³². For this mathematisation of ethics, Wilhelm Dilthey coined the apt paradox of «Prussian natural law»¹³³, the effectiveness of

¹²⁷ This contrasts with the voluntarism (primacy of the divine will) explained here in connection with Scotism *supra* n. 18 ff., and n. 98. In addition to Duns Scotus, the voluntaristic position is also represented by Augustin, Wilhelm von Ockham, Luther, but also by Pufendorf and Thomasius.

¹²⁸ C. Wolff, *Vernünfftigen Gedancken von Gott, der Welt und der Seele des Menschen, auch allen Dingen überhaupt, die sog. deutsche Metaphysik* 1720, 11. Edition Halle/Frankfurt 1751, Reprint Hildesheim, Olm, 1981.

¹²⁹ It was not his metaphysics, but the so-called Chinese Speech of 1721 that made him a 'martyr' of the German Enlightenment, after a royal decree has forced him to flee to Marburg.

¹³⁰ *Supra* n. 122, cf. also Hofmann, *Einleitung*, *supra* n. 129, p. 11.

¹³¹ I. Kant, *Von der Form der Sinnen- und Verstandeswelt und ihren Gründen*, in W. Weischedel (edited by), *Werke in sechs Bänden*, Darmstadt, Wissenschaftliche Buchgesellschaft, 1983⁵, vol. III, pp. 36 f. cf. also Hofmann, *Einleitung*, *supra* n. 126, p. 18.

¹³² U. Scheuner, *Die rechtliche Tragweite der Grundrechte in der deutschen Verfassungsentwicklung des 19. Jahrhunderts*, in Idem (edited by), *Staatstheorie im Staatsrecht*, Berlin, Duncker & Humblot, 1978, pp. 633 ff, p. 640. cf. also Hofmann, *Einleitung*, *supra* n. 129, p. 20.

¹³³ W. Dilthey, *Das Allgemeine Landrecht*, in *Gesammelte Schriften*, Leipzig/

which is commonly attributed to Wolff's impact «as a great German language builder after Luther»¹³⁴.

The notion of consciousness appears in Wolff's œuvre as a designation of a form of representation = clear and distinct representations. Again, in an entirely Aristotelian manner¹³⁵, Christian Wolff formulated the conditions of knowledge of an object as dependent on the effort to distinguish. He reformulated the Aristotelian categories 'synkechyménōs' (confused = mixed, indistinguishable) and 'kechorisménōs' (distinguished, separable, distinct) around the categories 'unconscious' and 'conscious'. This reformulation is more than a change of name; it represents the assimilation of thought to representation in the (absolutist) German Enlightenment¹³⁶.

However, there is a fundamental epistemological difference between mathematics and metaphysics/philosophy, the realisation of which will lead to the Cartesian cognitive subject whose thoughts as a thinking substance are representations (*infra* 2.4). Mathematics does not deal with any supernatural objects that are comparable to the soul or God. Numbers, triangles, and circles are not abstract objects in the Platonic heaven of ideas beyond human senses. The certainty of mathematics does not rely on transcendental objects; rather, mathematical knowledge can be accumulated with enough effort. Since Pythagoras, there seems to be a continuous progress of mathematical understanding, even more so from the Renaissance interest in until-then unknown antique mathematical ideas¹³⁷. In metaphysics, though,

Berlin, Vandenhoeck & Ruprecht, 1973⁴, vol. XII, pp. 152 ff, cf. also Hofmann, *Einleitung*, *supra* n. 129, p. 19.

¹³⁴ Hofmann, *Einleitung*, *supra* n. 126, p. 18.

¹³⁵ «Reasonable Thoughts on God, the World and the Soul of Man, the so-called German Matphysics» Wolff, *Vernünfftigen Gedancken*, § 729, § 730.

¹³⁶ In further details, U. Müßig, *Aristotélisme et pensée juridique, Codification et Constitution comme mise en œuvre juridique de la Théorie de la Connaissance Éclairée – Dans quelles Dimensions la Raison des Lumières est-elle Aristotélicienne?*, Lectio at the Sorbonne 5 October 2023 for the colloque «Aristotélisme et pensée juridique», accepted for publication in P. Bonin, J.-L. Halpérin (edited by), *Histoire du droit*, Paris, Classiques Garnier, 2025.

¹³⁷ E.g. The interpretation of Archimedes' quadrature of the parabola by the mathematicians and humanists Federico Commandino (1509-1575) und Guidobaldo dal Monte (1545-1607), in M. Frank, *Mathematik der Renaissance*.

disputes seem to be as ‘eternal’, as the contents: Is there an omnipotent God or no God? Is there body and soul or no soul? Why can metaphysics not settle these disputes and also embark on a quiet path of progress?

The realisation that the certainty of mathematics does not apply to transcendental objects will allow for the Cartesian turn away from the Aristotelian Philosophy of Being towards the thinking subject. Another mundane aspect will illustrate the difference between numbers and eternal contents by bridging the gap by means of the bankers’ ‘art of exchange’.

2.3 *Mathematical ‘Art of Exchange’*

The Medici banking practices managed to exchange Florins (the Florentine currency of the day) into foreign currencies (bill of exchanges) and to convert silver coins (*picciolis*) into Florins, thereby circumventing the canon law ban on usury (= lending money for interest). For this, they used three innovations: First, the letter of credit; second, the spin-off of bank branches across Milan, Venice, Rome, London, Geneva, Lyon, Avignon, Barcelona, and Bruges, all under the central holding company in Florence; and third, the double-entry bookkeeping.

A letter of credit is an agreement between the buyer’s bank and the seller’s bank to pay a guaranteed sum of money (e.g. 40 pence to each florin) after a fixed time period, e.g. the travel time in the de’ Medicis’ days from Florence to London, from one seat of a Medici bank to another. Therefore, the booming merchant class of the time was all too ready to deposit Florins in a Medici bank for a letter of credit, as travelling with large amounts of money seemed too risky. The profits generated by currency volatility (e.g. the London branch of the bank finds another merchant leaving London for Florence, who accepts purchasing Florins in Florence at a lower pence rate) were not held to be sinful usury, but proper business. Clean of sins was

also an inner-Florentine exchange business, as converting the silver coins (*picciolis*), circulating among the *populo basso*, into Florins, the currency of the mercantile class, trading throughout Europe, the Mediterranean, and on the Silk Road with silk, cloth, and spices.

The invention of double-entry bookkeeping cannot be traced to Giovanni de Medici opening his first bank in 1397. Nevertheless, it was the Medici approach to minimising errors in the banking books in the face of the influx of wealth generated by traders during these times and especially during their responsibility for the papal books. The underlying equation that ‘Assets = Liabilities + Net Equity’ allowed the more adequate recording of debits in relation to credits, thereby providing bankers and merchants with a more realistic risk assessment. ‘Exchanging the storage of liabilities’ into banking fees again was outside the scope of sinful usury. Rather, it helped the de’ Medicis to build on their famous reputation for reliability.

Two further methods of exchange reach into the out-of-bank lives of ordinary contemporaries and seem to be all the more important for skipping the ‘moat’ between numbers and eternity: The patronage of the arts, literature, and science manages to ‘exchange’ money into art, literature, and science, thereby elevating intramundane business into ‘heavenly disciplines’. And the patronised art itself allowed for an exchange: Frescoed crowds, battles or natural forces seem manageable, even beautiful, and less frightening.

2.4 *Summary of the 2nd part: Natura and the Omens of the Later Cartesian Turn away from the Aristotelian Philosophy of Objects towards a Thinking Subject*

The certainty of mathematics does not rely on transcendental objects. Rather, it stems from the fact that we do not refer to objects at all but to ourselves, namely to the most fundamental instrument: our cognitive apparatus¹³⁸. *Cogitatio* in the

¹³⁸ Aristotle did not have this capacity for autonomous knowledge; it was through the interaction of matter (*ousia*) and its inherent formative legality (*morphe*)

Cartesian sense, is not something autonomous but an activity, a capacity for something that is not itself a *cogitatio*. What is decisive for the Cartesian *cogitationes* is that we are immediately aware of them, which leads Descartes to the conclusion that he is a *res cogitans*; this is the Archimedian point («*sum igitur prae-cise tantum res cogitans*»¹³⁹) Descartes has been looking for¹⁴⁰ as unshakeable certainty (*certum et inconcussum*)¹⁴¹. Contrary to the common assumption, «*Je pense, donc je suis*» is not comprised within the Discours de la méthode (1637), IV. Partie. Only the Latin version «*Ego cogito, ergo sum*» can be traced within the Specimina philosophiae: seu Dissertatio de Methodo, Amsterdam 1644¹⁴².

The Archimedian point of certainty does not already lie within the sentence ‘ego existo’¹⁴³. The ‘ego existo’ states the existence of an object ‘ego’, and it cannot be doubted. The truth of this statement is not absolute; rather, it is only immediately apparent if I try to doubt it («*Imo certe ego eram, si quid mihi persuasi*»¹⁴⁴; «*quandiu me aliquid esse cogitabo*»¹⁴⁵). The certainty of being myself is therefore always a present one. I am only as long as I am wrong¹⁴⁶, or am deceived¹⁴⁷, or think I am

that man could recognise the formative law and use it to his advantage (*supra* part A I). Not only Kant’s Critiques, but already the work of Descartes, have been understood as a Copernican turning point, moving away from the Aristotelian orientation of thinking about objects towards a thinking subject.

¹³⁹ AT VII 27,13: R. Descartes, *Meditationes de prima philosophia*, in A. Charles, P. Tannéry (edited by), *Œuvres de Descartes*, Paris, J. Vrin, 1897-1911, vol. VII, <<https://archive.org/details/oeuvresdescartes/page/n5/mode/2up?q=Oeuvres+descartes>>, accessed on 12 March 2024. The common citation style refers to AT, volume, page, line. (paraphr. b. A. with help from the Latin/German translation by A. Buchenau: R. Descartes, *Philosophische Schriften in einem Band*, A. Buchenau (transl. by), H.G. Zekl and L. Gäbe (revised by), Hamburg, Meiner, 1996).

¹⁴⁰ *Meditationes*, AT VII 24,8, *supra* n. 139.

¹⁴¹ *Meditationes*, AT VII 24,12, *supra* n. 139.

¹⁴² Repr. Lecce 1998: «*Ego cogito, ergo sum sive existo, adeo certam esse atque evidentem, [...], credidi me tuto illam posse, ut primum ejus, quam quaerebam, Philosophiae fundamentum admittere*».

¹⁴³ *Meditationes*, AT VII 25,12, *supra* n. 139.

¹⁴⁴ *Meditationes*, AT VII 25,5, *supra* n. 139.

¹⁴⁵ *Meditationes*, AT VII 25,9, *supra* n. 139.

¹⁴⁶ *Meditationes*, AT VII 25,5, *supra* n. 139.

¹⁴⁷ *Meditationes*, AT VII 25,7, *supra* n. 139.

something¹⁴⁸. Therefore, the sentence «ego sum, ego existo» is true as soon as I assert or think it («quoties a me profertur, vel mente concipitur»¹⁴⁹). The ego is not a thing with recognisable characteristics. Although the existence of the ego is formally indisputable, it is not yet recognised as the existence of a concrete thing: «Nondum verò satis intelligo, quisnam sim ego ille, qui jam necessariosum; deincepsque cavendum est ne forte quid aliud imprudenter assumam inlocum mei, sicque aberrem etiam in eà cognitione, quam omnium certissimam evidentissimamque esse contendo»¹⁵⁰. Descartes must be careful not to think that the ego is something specific that it may not be. To doubt means to accept one's own imperfection. From the assumption that I am confronted with something that I can doubt, it follows that I am a finite part of a larger whole. From this, in turn, follows for Descartes the existence of God.

Descartes' conclusion from «I am thinking» to «I am a thinking substance»¹⁵¹ is echoed by Leibniz: «Princeps Cartesius admonuit quid simus, mentem scilicet seu Ens cogitans seu conscium sui»¹⁵². Thoughts are representations. So my mind is a faculty of representation¹⁵³. This will be repeated by the philosophical self-awareness in German idealism: consciousness/self-awareness are forms of mental representation. This can be read in the central passage of the Critique of Pure Reason: «Genus is representation in general (*repraesentatio*)»¹⁵⁴, whereas

¹⁴⁸ *Meditationes*, AT VII 25,9, *supra* n. 139.

¹⁴⁹ *Meditationes*, AT VII 25,12, *supra* n. 139.

¹⁵⁰ *Meditationes*, AT VII 25,14-17, *supra* n. 139.

¹⁵¹ For later phenomenology, the *res cogitans* is not a phenomenon (Husserl). Husserl therefore rejects the conclusion from «I am thinking» to «I am a thinking substance», and his criticism is as follows: it is not self-evident that the ego's property of having cogitations also implies a substance that possesses this property. Substance is not a phenomenon; we do not recognise it, let alone recognise it clearly and distinctly.

¹⁵² Leibniz, *De usu et necessitate demonstrationem immortalitatis animae*, § 6 Acad. II 1, 11, in Deutsche Akademie der Wissenschaften (edited by), *Sämtliche Schriften und Briefe*, Darmstadt/Leipzig/Berlin, Akademie-Verlag, 2006, Series II, vol. I, § 6, pp. 34 f.

¹⁵³ A. G. Baumgarten, *Metaphysical/Metaphysik, Historisch-Kritische Ausgabe. Latin-German*, G. Gawlik, L. Kreimendahl (edited and trans. by), Stuttgart, Frommann-Holzboog, 2010, § 505 (paraphr. b. A.).

¹⁵⁴ *Critique of Pure Reason* B 377, A 320. Next, Kant differentiates whether

space and time are the conditions «in» us that enable «us to recognise concrete objects». When we turn to space and time, we are dealing with something that is not itself concrete and individual, not here and now, and yet at the same time cannot be other than it is. This has been Kant's 'Copernican Revolution' in his Critique of Pure Reason: The objects of our cognition are oriented towards us, towards our cognitive faculty. As we can only process spatiotemporal input due to the nature of our cognitive apparatus, everything in the world seems to us to be structured spatiotemporally. However, because mathematics deals with space and time as such, it can be applied to everything that we recognise as individual objects. Everything that we recognise, we recognise somewhere in a spatial and temporal order¹⁵⁵, with the exception of these orders themselves¹⁵⁶. This train of thought by Kant himself undoubtedly represented fundamental knowledge. However, he was not dealing with numbers or

representation is a «modification» of the mind, i.e. a mere passive impression (*sensatio*, *Empfindung*), or whether it is actively carried out with consciousness (*perceptio*). Conscious perceptions relate either directly to the object (=vision of the object, «intuitus»), or indirectly to it, i.e. to a characteristic that the object may also have in common with others (=conceptus). This concept is either a pure concept (originating only in the understanding, «notio»), or an empirical concept. All knowledge according to Kant: «that is, all representations relating to an object with consciousness, are either views or concepts. – The view is an individual representation (repraesentat. singularis), the concept a general representation (repraesentat. per notas communes) or reflexive (repraesentat. Discursiva)» (Kant, Logic Jäsche, Elementary Doctrine A139f.).

¹⁵⁵ The more recent physical ideas of Albert Einstein and Werner Heisenberg are not considered here due to the legal historical context of the lectio. The theory of gravity today no longer operates with Euclidean geometry like Newton, but with a curved space-time.

¹⁵⁶ For Kant, who was interested in the conditions of the possibility of cognition God, the world or the soul are therefore not concepts to be recognized at all, but mere words. They cannot be given any content in experience. That is why there can be no science of God, the world as a whole or the soul, like there is prime number research or marine biology. With these words, we are at best dealing with ideas that may have an edifying character in our feelings and thoughts, but cannot be the starting point for the search for knowledge. With expressions such as «God», «the essence of world», or «soul» The interplay between «perception» and «concept», as Kant calls it, stops. The conceptual definitions are missing. Anyone who can form the concept of a unicorn or an air spirit, but cannot say how unicorns and air spirits can be recognised and distinguished from horses and wind breaths, also lacks knowledge, because: Views without concepts are blind, and concepts without views are empty.

geometric entities, nor with individual things in space and time. He discovered that space and time are forms of knowledge of the world – and that they are investigated by mathematics.

This *tour d'horizon* is far from being comprehensive, it was merely meant to illustrate how sustainable the mathematisation of philosophy has been, even influencing the later Kantian enlightenment. «The anthropological renewal that places full trust in the individual as sovereign over society and nature [Paolo Grossi, as if he were summarising part 1 and part 2 here] is based on the mathematisation of philosophy and founds rational natural law, the unconditional justification of the validity of the law by virtue of its rationality»¹⁵⁷.

The turning of thought in itself from the Aristotelian categories and inner targetedness to the Cartesian conclusion of the thinking subject was embarked within the mechanisation and de-teleologisation of nature on the basis of exclusive mathematical access. For 16th-century legal thinking, both innovations – the Renaissance discovery of subjectivity and the humanist focus on individual self-setting, as well as the mathematical measurement of nature and the transformation of mathematics into the rational language of metaphysics – had an enormous impact, which will be examined in the subsequent and final part of this text. If the following arguments may be convincing, legal history will have to revise its dominant focus on the systematisation and rationalisation by 17th-century natural law theories within the explanations of 18th-century ‘legal absoluteness’ of the codification. The presumed relevance of 16th-century legal thinking for the later comprehensive approach of enlightened (absolutist) codifiers is sought to be expressed by the heading «Life legally explained», comprising various fields of contemporary experiences: the state as constituted societal community, the tangibility of sovereignty and local statutes, the accessibility

¹⁵⁷ P. Grossi, *L'Europa del diritto*, Bari-Roma, Editori Laterza, 2024¹¹, p. 84 (paraphr. b. A.).

of legal knowledge as well as of moral and religious convictions, and – especially longed for by the survivors of the confessional clashes – the rational controllability of inter-state relationships and thus of legitimate causes of war.

3. Vita: Life Legally Explained

3.1 *The Autonomous Legitimation of the State (il stato) as a Public Exercise of Power without Transcendence*

The autonomous legitimisation of the state (*il stato*) as a public exercise of power without transcendence (*Il principe* 1513)¹⁵⁸ appears as the counterpart of human self-determination, of human self-setting through the optionality of one's own experience. Art works communicated the Renaissance attribute of the new intramundane legitimisation of the state to be of men's work, and not an ontological given. Even experimental thinking about politics became available, as the simultaneous publication of More's *Utopia* 1516¹⁵⁹ demonstrated. The Machiavellian use of virtue (*virtù*)¹⁶⁰ as political energy in the unpredictable game of

¹⁵⁸ N. Machiavelli, *Il Principe/Der Fürst. Italian-German Reclam Edition*, P. Rippel (edited by), Ditzingen, Reclam, 1986. The Pope's son Cesare Borgia is considered one of Machiavelli's prime examples of a Renaissance prince. Cf. H. Münkler, *Einleitung*, in N. Machiavelli, *Politische Schriften*, H. Münkler (edited by), J. Ziegler/F. N. Baur (transl. by), Frankfurt am Main, Fischer Taschenbuch Verlag, 1990.

¹⁵⁹ T. Morus, *De optimo Reipublicae Statu deque nova insula Utopia Libellus vere aureus, nec minus salutaris quam festivus (Of the best state constitution and of the new island of Utopia, a truly golden booklet, as pleasant as it is cheerful)*, K. J. Heinisch (edited by), Reinbek, 1993. The fictional dialogue between the first-person narrator Morus (not necessarily identical with the historical Morus!), his friend Peter Gilles from Antwerp and the foreign world traveller Raphael Hythlodæus (=babblers) revolves around winning over the latter as a prince's advisor. The latter however not only rejects the counselling, but also the differentiation between the scholarly «*philosophia scholastica*» and the «*philosophia civilior*», attributed to be «more modest». The name of the ideal island republic «No-where» (= Greek: «*ou*» and «*topos*») establishes a literary genre in the history of political theorising.

¹⁶⁰ «*virtù*» (the original spelling of the *Principe* and the *Discorsi*), is often disseminated as *virtù*, and understood as a deliberate break with Christian ideas (P. Schröder, *Niccolo Machiavelli. Glossary*, Frankfurt, Campus Verlag, 2004, p. 160).

the *fortuna* (in the Machiavellian diction a realm out of human control)¹⁶¹ freed (power) politics from any moral scruples¹⁶². Political action served to maintain power (*mantenere lo stato*), regardless of any transcendental responsibility; rule itself thus became a value: «A prince only needs to win and assert his rule, and the means of doing so will always be considered honourable and praised by everyone»¹⁶³.

Furthermore, the state (*il stato*) amounted to a generic term for various constitutional forms: Such an abstraction¹⁶⁴ from the concrete constitution – whether «*repubblica*» or «*principato*» – corresponded complementarily with man's «newly discovered» freedom of choice (*arbitrium*) to create and shape himself as he wants to be. At the same time, the secular abstraction of the state to be a paintable, sculpturable and literarily transformable product of human creativity resulted from the broken unity of the scholastical ontologically founded normativity and the scientific mathematical empiristic approach towards the universe (*supra* part 2). Ever since William Ockham's razor, a rift had been running through the ontological derivation of normativity from God's eternal laws and the empiristic scepticism of

¹⁶¹ «I would like to compare Fortuna's power to a raging torrent that, when it swells furiously, floods the fields, tears down trees and houses, washes away earth here to wash it away there: everyone flees from it, everything is subject to its impact without being able to offer any resistance» (Niccolò Machiavelli, *Il Principe /Der Fürst*, *supra* n. 161, 25th chapter, pp. 134 f.). Cf. also G. Procacci, *Studi sulla fortuna del Machiavelli*, Roma, Istituto Storico Italiano, 1965, pp. 107 ff: Parte Seconda (la fortuna del Machiavelli nel pensiero politico francese e inglese dei secoli XVI e XVII).

¹⁶² However, the phrases «honourable frauds (*frodi onorevoli*)» and «glorious trickery (*scelleratezze gloriose*)» are not by Machiavelli himself; rather, they seem but seem to have been coined by the commentary literature (P. Villari, *Niccolò Machiavelli e i suoi tempi illustrati con nuovi documenti*, Milano, Ulrico Hoepli, 1913³, vol II., Gutenberg e-book-Machiavelli, <<https://www.gutenberg.org/files/61705/61705-h/61705-h.htm>>, accessed on 30 April 2024).

¹⁶³ N. Machiavelli, *Il Principe /Der Fürst*, *supra* n. 161, 18th chapter, p. 106.

¹⁶⁴ Two strands of meaning seemed to have merged: on the one hand «*status*» in the sense of constitutional form («*forma*» or «*species politiae, reipublicae, regiminis*») and mode of rule, and on the other hand as «*status*» of the king («*status regalis*»), of the prince and other rulers. At the same time, in the Italian communes and signories (as well as under the French and Spanish crowns), the «*respublica*» demoninated a polity (cf. also Müßig, «Journal of Constitutional History / Giornale di Storia Costituzionale», 41, 2021, 118).

the voluntaristic minds within the Universalism controversy; complementary to Renaissance humanism ‘inventing’ the subject (*supra* part 1), politics were sought to be perceivable as a ‘natural event’. By observing the psychology of rulers and analysing historical examples, politics appeared to be empirically accessible, and ‘its true nature’ could be ‘translated’ into ‘generalisable’ instructions for action. Such a scientific interest in the ‘realistic true nature’ of politics motivated on the one hand the metaphorical representability of public targets (such as the Florentine freedom expressed by Michelangelo’s David); on the other hand, it clashed uneasily with the counter-reformation’s zeal to ideologically charge the ecclesiastic concept of original sin¹⁶⁵. In the last third of the 16th century, it became common practice to vilify political opponents as «Machiavellians» and to label every piece of rogue power politics as «Machiavellian». Nevertheless, since the Machiavellian *Principe*, the autonomous legitimisation of the state (*il stato*) fostered the spread of Neo-Aristotelianism, promoted by both the Reformation and the Counter-Reformation. It is still a challenge for legal history to explain Neo-Aristotelianism. Building on the explanations of Aristotelian epistemology (*supra* part 1.1) and understanding of nature (*supra* part 2.2, 2.4) presented here, the subsequent remarks will attempt to close this desideratum.

3.2 Neo-Aristotelian Empirical Interest in Public Affairs

3.2.1 The *raison d’État*-Terminology

The fundamental Aristotelian unity of form and matter manages to place the state at the centre of empirical curiosity about public affairs. Epistemologically grasped, the *raison d’État* (*ragione di Stato*, *razón de Estado*, *raison d’E(s)tat*, *ratio status*)¹⁶⁶ acted as a «rule of priority, [...] [according to which]

¹⁶⁵ Officially indexed by the church in 1559.

¹⁶⁶ In English constitutional history, the terminology ‘reason of state’ is unknown: due to the second legal zero of the taking of possession of lands in 1066 by the monarchy (the only legal owner in real property law), there is no property of the nobility.

the interests (real or supposed) of the state prevail over all other [conflicting] interests [...]»¹⁶⁷. This was less the Machiavellian emancipation from transcendence¹⁶⁸ than an extra-legal (practical philosophical) interest in politics: should the treatment of heretics be measured against the yardstick of religion and morality? This makes clear that the *raison d'État*-terminology, that emerged in the 16th century, has not yet been a question of the rationality of the state *per se* (as it would be the case in the later 17th and 18th century). Just as nature explains itself to any empirically interested and mathematically trained mind, the state becomes 'observable' and perceptible as a unity beyond the lines of denominational conflicts, as with the French Huguenots, the German Lutherans, the Swiss Calvinists, or the English Puritans. From my point of view, the Neo-Aristotelianism occurring since the 16th century is primarily a linguistic expression for the (scientifically) 'discovered' unity of State power instead of the former numerous medieval seigniorial rights: The Aristotelian inner targetedness of primary matters and the logical primacy of the whole over the parts (*supra* part 1.1) have merged into the Early Modern 'curiosity' to think of the state as a singular point of reference¹⁶⁹. Previously, the estates (*états*) and the state had always coincided: it had been the estates that represented the unity of the territory, most prominently the imperial princes¹⁷⁰ guarding

¹⁶⁷ M. Stolleis, *Staatsräson*, in A. Erler, E. Kaufmann (edited by), *Handwörterbuch zur deutschen Rechtsgeschichte*, Berlin, Erich Schmidt Verlag, 1990, vol. IV, col. 1826-32, col. 1828 with quotation from H. Quaritsch, *Staatsraison in Bodins 'Republique'*, in R. Schnur (edited by), *Staatsraison. Studien zur Geschichte eines politischen Begriffs*, Berlin, Duncker & Humblot, 1975, pp. 43-65, p. 53. Stolleis, *ivi*, col. 1827: «But at the same time, it is here that we must look for the beginnings of an empirically founded political science analysis of state interests».

¹⁶⁸ See also Stolleis, Art. *Staatsräson*, *supra* n. 167, col. 1828.

¹⁶⁹ Examining Italian authors about the reason of state and German commentators on Tacitus in regard to their distinction between good and bad = devilish reason of state up to Innocent Gentillet's *Antimachiavellus* (1580) should be reserved for a separate publication. More extensively, L. Firpo, *Le origini dell'anti-machiavellismo. Scritti sul pensiero politico del Rinascimento e della Controriforma*, Torino, UTET libreria, 2005, pp. 24-56.

¹⁷⁰ On princely exclusivity as bearers of imperial rights: for the imperial chancellery, *principes* were rulers endowed with legal fiefdoms who gained an exclusive rank compared to ascending knights. In the 12th and 13th centuries, this applied not only to dukes, marquises, lands and counts palatine, but also to prominent

the *honor imperii*¹⁷¹. As early as the 13th century, Reinmar von Zweter declared the empire to be entrusted to the emperor in a relationship objectified by duties and rights through the empire as *communitas*, formed by the group of princes: «*daz rîche dast des keisers niht, er ist sîn phleger unt sîn vogt*»¹⁷². Interestingly, the term *Staten Generaal* for the joint assembly of the Dutch provincial states still serves as the modern denomination of the Dutch Parliament in the Hague.

The explanation of Early Modern Aristotelianism to be a logical and linguistic tool to ‘measure’ the references of public affairs is backed by the innovative Bodinian interest in explaining sovereignty as supreme legislation. Bodin’s antimonarchical stand might have fostered the coincidence of his «*Six livres de la République*» (1576) with the new terminology of the state’s reason. A novel consequence of the royal monopoly of power (*souveraineté, maiestas*), formulated in the «*Six Books on the Republic*» (2nd French Reprint 1583, Latin edition 1586, German edition 1592) is the potential for the development of modern statehood: Political rule is no longer the sum of particular rights («*Gerechtsame*»), but a product of the inherent nature of the state: «*la souveraineté est chose indivisible*»¹⁷³.

counts (cf. in this regard D. Willoweit, S. Schlinker, *Deutsche Verfassungsgeschichte. Vom Frankenreich bis zur Wiedervereinigung Deutschlands*, München, C.H. Beck, 2019⁸, § 9 II 3, pp. 68 f.). As the entirety of the imperial princes was thought to be responsible for the honour of the realm (*honor imperii*), all princes are bearers of the rights of the realm.

¹⁷¹ Which was to survive the interregnum (1250-1273): Both Conrad IV (r. 1250-4) and Conradin, son and grandson of Frederick II, failed to establish the succession to the Hohenstaufen dynasty; the Pope promptly claimed his suzerainty over Sicily, which then fell to the French Angevins. This further increased the dependence of the popes on the French crown. The sacredness of the empire conferred inviolability and obliged the princes of the empire to unite in it and for the honour of the empire.

¹⁷² Cit. according to G. Roethe (edited by), *Die Gedichte Reinmars von Zweter*, Leipzig 1887, reprint Amsterdam, Rodopi, 1966, Sprüche No. 146, p. 484.

¹⁷³ If shared, the ruler is not sovereign: J. Bodin, *Les six livres de la république. Facsimile-Print of the edition from Paris 1583*, Aalen, Scientia-Verlag 1977², vol. I, chap. 1, p. 254; also I, 10 (p. 215): «*les droits Royaux sont incessibles;inalienables [...] et s’il advient au Prince souverain de les communiquer au subiect, il fera de son serviteur Bon compaignon: en quoy faisant il ne sera plus souverain: car souverain (c’est à dire, celuy qui est par dessus tous les subiects) ne pourra convenir à celuy qui a fait de son subiect son compaignon*».

Bodin's consistent dominion, called «*République*», marked the claim to an all-comprehensive area-wide political ruling that excludes or absorbs any other competing rights on the territory. Non-monarchical particular rights of rule, be they by feudal, estatal, or ecclesiastical law, cannot continue to exist within the monarchical territory; they have no share in the indivisibly absolute sovereignty¹⁷⁴. Within the comparatively large range of a territorial state determined by common rule, all questions of political coexistence should be decided from a single central point. Like the terminological understanding of the reason of state-topos advocated here, it seems helpful to approach the novelty of Bodin's thinking on sovereignty by understanding his use of the noun «sovereignty» as a topos of argumentation.

3.2.2 Innovations in Bodin's Sovereignty Terminology

Already for the French *politiques*¹⁷⁵, the subjects' obedience was the pragmatic request of the day, regardless of the individual's denomination. Nor should it matter for the support of royal authority whether Henry of Navarre as Henri IV was a Huguenot or a Catholic; the decisive factor was that only the legitimate king had the sole supreme power in the state. The princes' mirrors by the Renaissance theorists Jean Ferrault¹⁷⁶ and Guillaume Budé¹⁷⁷ had already described an unrestricted «*Majesté royale*»,

¹⁷⁴ «*tous les estats demeurent en pleine subiection du Roy, qui n' est aucunement tenu de suyvre leurs advis, ny accorder leurs requestes*». Cf. 1, 8 (p. 130); similar *ivi.*, p. 137.

¹⁷⁵ Deppisch counts Bodin among the *politiques* (A. Deppisch, *Die Religion in den Werken von Jean Bodin und Michel de Montaigne. Ein Vergleich*, Diss. Phil./Thèse, Würzburg, 2015, <<https://opus.bibliothek.uni-wuerzburg.de>>, accessed on 27 April 2023). For Montaigne's critique on Bodin's methodological considerations *Methodus ad facilem historiarum cognitionem*, Paris 1566 cf. H. P. Balmer, *Neuzeitliche Sokratik. Michel de Montaignes essayistisches Philosophieren*, MV-Verlag Wissenschaft, München, 2016, <<https://doi.org/10.5282/ubm/epub.28228>>, accessed on 30 April 2024, p. 65.

¹⁷⁶ J. Poujol, *Jean Ferrault on the King's Privileges. A Study of the Medieval Sources of Renaissance Political Theory in France*, «*Studies in the Renaissance*» 5, 1958, pp. 15-26, <<https://doi.org/10.2307/2856971>>, accessed on 30 April 2024.

¹⁷⁷ Guillaume Budé (lat. Guglielmus Budaeus, (1468-1540) was a Parisian lawyer and French Greek scholar whose Latin translation of Plutarch (*Plutarchi de*

but the actual theoretical foundation was only laid by Jean Bodin in his aforementioned «Six Books» (1576); interestingly, research has still not clarified Bodin's denomination – and it plays no role in the justification of a denominationally neutral polity in continuation of the ideas of the *politiques*: «*République est un droit gouvernement de plusieurs mesnages et de ce qui leurs est commun, avec puissance souveraine*» (I, 1)¹⁷⁸.

Neither Bodin's idea of law as a legal command nor his concept of sovereignty were new to the 16th century. The learned *ius commune* was familiar with the legal concept of the *constitutio*¹⁷⁹, just as the French legal language was familiar with the adjectival use of «*souverain*»¹⁸⁰. What was new was their combi-

placitis philosophorum, 1505) is significant. In addition to his contacts with Erasmus of Rotterdam and Thomas More, he is influential due to his French-language mirror of a prince, *Institution d'un prince*, written for the young Francis I, as well as for his suggestion to found the Collège de France, ultimately as royal librarian (E. Budé, *Vie de Guillaume Budé. Fondateur du Collège de France (1467-1540)*, Reprints Genève, Slatkine, 1969, pp. 25 ff., pp. 120 ff.).

¹⁷⁸ J. Bodin, *Les six livres de la république. Facsimile-Print of the edition from Paris 1583*, Aalen, Scientia-Verlag 1977², vol. I, chap. VIII, p. 1.

¹⁷⁹ As early as the 16th century, statutory law had come into fore and with it came the idea that statute was a *constitutio* that commands, authorises and prohibits, because *hominum causa omne ius constitutum est* (D. 1,5,2 *hominum causa omne ius constitutum*). All law was created for the sake of man (Hermogenian 1 iur. epit.); more precise: *lex est constitutio scripta* (Dist. 1, cap. 3, *Decretum Gratiani* after Isidore, *Etymologiae*, lib. V, cap.3), be it as [natural law] [...], be it by order of a princeps (D. Willoweit, *Recht*, in A. Erler, E. Kaufmann, A. Cordes (edited by), *Handwörterbuch zur deutschen Rechtsgeschichte*, Berlin, Erich Schmidt, 2022², vol. XXIX, col. 1097-1084, 1081).

¹⁸⁰ The *Dictionnaire François-Latin*, published in Paris in 1549, contained no entry for the noun *souveraineté*; the adjective «souverain» is explained with regard to the final decision of a *cour de parlement* (for more details and explanation, see U. Müßig, *Höchstgerichte im frühneuzeitlichen Frankreich und England - Höchstgerichtsbarkeit als Motor des frühneuzeitlichen Staatsbildungsprozesses*, in R. Lieberwirth, H. Lück (edited by), *Akten des 36. Deutscher Rechtshistorikertag in Halle an der Saale 2006*, Baden-Baden, Nomos, 2008, pp. 544-577, p. 544). Quaritsch argues on the basis of the *Coutumes de Beauvaisis* 1283 with their adjectival attribution of plural sovereign rights (H. Quaritsch, *Staat und Souveränität*, Ludwigsfelde, Ludwigsfelder Verlagshaus, 2019², vol. I: *Die Grundlagen*, p. 250; cf. also Idem, *Souveränität. Entstehung und Entwicklung des Begriffs in Frankreich und Deutschland vom 13. Jh. bis 1806*, Berlin/München, Duncker & Humblot, 1986).

nation into a legally indivisible entity (entirely in the sense of the Aristotelian primacy of the whole over the parts) as well as the circumstances of the Wars of Religion: within the confessional clashes, both the denominational unity and the medieval-traditional ideas of rightness, that still underpinned the princes' mirrors by Ferrault or Budé, had also been shattered: «The old law and the old constitution, built on [...] consensual co-operation [between the crown and the estates], could no longer keep order in the country»¹⁸¹. Ultimately, it was 'old wine in new bottles' that fuelled the success of Bodin's terminology of sovereignty¹⁸².

At the heart of Bodin's new use of sovereignty lies its conceptual equation with the power to legislate and give orders (*donner-loi*), the perpetual (*perpetuelle*)¹⁸³, absolutely indivisible attribution as the sovereign monarch's own power¹⁸⁴ and the derivation of the statehood called «*République*» from sovereignty: «*La souveraineté est la puissance absolue et perpétuelle d'une République que les Latins appellent majestatem*» (I, 8)¹⁸⁵. For Bodin's (humanist-historical) legal definition of the state (= «*République*»)¹⁸⁶ as «the sovereign power of government, orientat-

¹⁸¹ Quaritsch, *Staat und Souveränität*, *supra* n. 180, p. 342. Compromises of equals had become insufficient to restore peace in the French kingdom, especially as the Thirty Years' War still lay ahead of the continent.

¹⁸² Quaritsch, *Staat und Souveränität*, *supra* n. 180, p. 249; Müßig, *Höchstgerichtsbarkeit*, *supra* n. 180, p. 544.

¹⁸³ I, 8: «J'ay dit que ceste puissance est perpetuelle» (Bodin, *Les six Livres de la République*, p. 122). Bodin's concept of sovereignty overcomes the limitations of state rule expressed in the previous French and Latin terminology; the *puissance publique* of the sovereign is *absolue, infinie, et par dessus les loix, les Magistrats et les particuliers*. All following Bodin quotations are based on this Scientia edition of the second reprint Paris 1583: the first number refers to the book, the second to the chapter and the third to the Scientia page number.

¹⁸⁴ I, 8, *supra* n. 183, p. 127: «Si la puissance absolue luy est donnée purement et simplement, sans qualité de magistrat, ny de commissaire, ny forme de precaire, il est bien certain que cestuy-là est, et se peut dire monarch souverain».

¹⁸⁵ I, 8, *supra* n. 183, p. 122. Cf. also I 1, *ivi*, p. 4: «la souveraineté, & ce qui est commun en une Republique».

¹⁸⁶ Although Bodin understands *l'estat populaire, aristocratique, et royal* side by side as *républiques légitimes* in which *puissance souveraine* is exercised (*ivi*, VI, 4 (p. 937)), his concept of sovereignty refers primarily to the sovereign princely state. Thus, in general contexts, there is often talk of the *Prince souverain*, who is even referred to as *l'image de Dieu* (*ivi* I, 10 (p. 215); also *ivi* I, 8 (p. 156); cf. *ibid.* I, 10 (p. 211).) or also I, 10, pp. 233 f.: «En souveraineté, toutefois c'est abuser du mot, qui n'appartient qu'au Prince souverain»; U. Müßig, *Republicanism and its*

ed towards law, over a multitude of households and that which is common to them»¹⁸⁷, neither the community of subjects nor their confessional unity matter any more. Neither universal ecclesiastical claims nor particular confessional interests can be addressed to the French royal monarchy¹⁸⁸. In this respect, Bodin's innovative use of the terminology of sovereignty in the wake of the French Wars of Religion is motivated by the desire to rebuild peace and order by formulating the legal foundations for a strong kingship¹⁸⁹. Even if religion (more precisely: any religion)¹⁹⁰ continues to serve as the main foundation of monarchical power («*c'est le principal fondement de la puissance des Monarques*»)¹⁹¹, (religious) tolerance or intolerance becomes a matter of state. If inner peace is removed from denominational truths, it becomes irrelevant which denomination prescribes the subjects' duties. The ethics of duty as such remains denominational, but its exercise *in concreto* is decided as a question of inner peace: the mundane '*cura religionis*' thus amounts to a police's challenge of public order. This enables the understanding of the state as a man-made product; and its derivation (also in

'gentle wings' (*Ode to Joy*). *The Republican Dignity to be Governed, not Mastered as Founding Rational Legitimacy*, «Giornale di Storia Costituzionale/Journal of Constitutional History», 41, 2021, pp. 117-176, esp. 118. For Bodin, the power can be monarchical, aristocratic or democratic, only a mixed constitution is excluded because of the required uniformity. Furthermore, the monarchy is preferable due to its analogy to God's exclusive omnipotence (I, 10, ivi, p. 212). In IV, 7, p. 652 he speaks explicitly of «*Republiques populaires & Aristocratiques*».

¹⁸⁷ I, 1, *supra* n. 183, p. 1: «*République est un droit gouvernement de plusieurs mesnages, et de ce qui eur est commun, avec puissance souveraine*». This introductory sentence is followed by humanist historical justifications of the statal interest in domestic peace.

¹⁸⁸ Quaritsch, *Staat und Souveränität*, *supra* n. 180, pp. 284 ff., p. 304; only on this basis, the following statement is possible: «*L'Estat et la Religion n'ont rien de commun*» [Anonymous], *De la vraye et legitime constitution de l'Estat* (sine loco 1591), cit. according to G. Weill, *Les théories sur le pouvoir royal en France pendant les guerres de religion*, Diss./Thèse, Paris, Hachette, 1891, p. 297; cf. also J. Lecler, *Histoire de la tolérance au siècle de la Réforme*, Paris, Aubier, 1955, vol. II, pp. 110 f.

¹⁸⁹ Cf. the heading of the First chapter by «*bien ordonnée*»; «*bien fondée*». Moreover, in view of the civil war turmoil in France, Bodin's work aims at the establishment of a strong king: «*la puissance Royale est la meilleure*» (ibid. VI, 4, *supra* n. 183, p. 937).

¹⁹⁰ For Bodin's state, there is no longer any 'true' religion.

¹⁹¹ IV 7 *supra* n. 183, p. 653. The same applies to 'the prince's likeness to God' («*le Prince est Image de Dieu*»), I 8, *supra* n. 183, p. 161.

the mathematical (!) sense) from the definition of sovereignty is a harbinger for the «mathematisation of philosophy, specifically metaphysics, due to the anthropological renewal that places complete trust in the individual as the sovereign over society and nature» (Paolo Grossi)¹⁹².

The transition from jurisdictional to legislative primacy faces a practice test in the statutes/city laws, as it was their purely internal reason for validity to 'put the diversity of citizens and their various interests into law'. The practice-oriented *usus modernus* was interested in the local world of experiences.

3.3 *Legal Humanism, mos gallicus jura docendi, and Law as the Logically Possible*

In the strive for philological authenticity and curiosity for the *significatio verborum*¹⁹³, humanism paved the way for revising the scholastic-canonized, Latin-standardized university based *mos italicus*¹⁹⁴, as exemplified by Lorenzo Valla and Cosma Raimóndi. Various legal methodological reform approaches coincide with the humanist historical interest in law. The overall denomination of *mos gallicus* is by no means limited to French lawyers; rather, legal humanism emerged throughout Europe. The eponymous French preponderance only names the peculiarity that legal humanism developed in France only due to Italian

¹⁹² P. Grossi, *L'Europa del diritto*, p. 84 = German edition: P. Grossi, *Das Recht in der europäischen Geschichte*, München, Beck, 2010, p. 86.

¹⁹³ And thus the precise understanding of the legal sentences handed down in their historical context. Cf. E. Keßler, *De significatione verborum. Spätscholastische Sprachtheorie und humanistische Grammatik*, «Studi umanistici Piceni», 4, 1981, pp. 285-313. It was no longer a question of «the possibility of interpretation without contradiction in a conceptual system, but of the secure realisation of the historical experience on which it was based and which it meant» (E. Keßler, *Introduction*, in L. Valla, *Über den freien Willen/De libero arbitrio. Latin-German edition*, E. Keßler (edited and transl. by), München, Fink, 1987, § 82, p. 25).

¹⁹⁴ And its Bartolist short cut: If not approved by the gloss, it does not hold in front of court.

contacts and emerged from the subsequent circulation¹⁹⁵ of humanist contents without their Italian contexts¹⁹⁶. Surpassing any ‘sacrality’ of legal knowledge and the consequent professional supremacy of lawyers¹⁹⁷, so-called laymen’s mirrors (*Laienspiegel*) offer contemporaries the first systematising outlines of legal thought¹⁹⁸. Such an erosion of legal authority-boundedness met the Renaissance sympathy for individual self-formation (*supra* part 1) and the current enrichment of scientific interpretation through the mobilisation of all knowledge (*supra* part 2). Accordingly, legal humanist *mos gallicus jura docendi* was not only dedicated to the ‘encyclopaedic levelling’ of legal scholarship¹⁹⁹, but also related to the ‘nationalisation’ of legal doctrine²⁰⁰, including local vernacular teaching of domestic law²⁰¹. In such a

¹⁹⁵ At this time, the situation in France was quite different, because here humanism was only just beginning to emerge in the second half of the 15th century, particularly through the exchange between France and Italy. Philippe de Lajarte writes: «During this period, there was hardly any humanist who did not travel to Italy to meet the great figures of transalpine humanism and sometimes to be taught by them» (P. de Lajarte, *L’humanisme en France au XVI^e siècle*, Paris, Honoré Champion, 2009, p. 52).

¹⁹⁶ «Les textes circulent sans leur contexte» P. Bourdieu, *Les conditions sociales de la circulation internationale des idées*, «Actes de la recherche en sciences sociales», 145, 2002, pp. 3-8, p. 4.

¹⁹⁷ P. Gilli, *Humanisme Juridique et Science du Droit au XV^e Siècle. Tensions compétitives au sein des élites lettrées et réorganisation du champ politique*, «Revue de Synthèse», 130 (4), 2009, pp. 571-593, p. 583: «cette désacralisation de la scientia legalis, réduite aux yeux de ses détracteurs à un savoir-faire farineux, constitue le premier défi des humanistes à la science juridique» / this desacralisation of legal science to a mealy know-how in the eyes of its detractors, constitutes the humanists’ first challenge to legal science.

¹⁹⁸ Lately, Müßig, *Richtertugenden*, under publication.

¹⁹⁹ G. Cazals, *Une Renaissance. Doctrine, littérature et pensée juridique du XVI^e siècle en France*, «Clio@Themis», 14, 2018, <<https://journals.openedition.org/cliiothemis/742>>, accessed on 30 April 2024, § 42: The decisive contribution of humanist jurists is the enrichment of legal interpretation through the mobilisation of all knowledge, in line with the Renaissance approach of connecting everything.

²⁰⁰ Prévost, *Mos gallicus jura docendi. La réforme humaniste de la formation des juristes*, «Revue historique de droit français et étranger», 89, 2011, pp. 491-513; G. Minnucci, *Alberico Gentili tra mos italicus e mos gallicus, L’inedito commentario ad legem Juliam de adulteriis*, Bologna, Monduzzi Editore, 2002; D. R. Kelley, *Civil science in the Renaissance. Jurisprudence in the French Manner*, «History of European Ideas», 2, 1981, pp. 261-276; Idem, *Civil science in the Renaissance. Jurisprudence Italian Style*, «Historical Journal», 22, 1979, pp. 777-794.

²⁰¹ On the French, J.-L. Thireau, *L’alliance des lois romaines avec le droit français*, in J. Krynén (edited by), *Droit romain, jus civile, droit français*, Toulouse,

«legal nationalism»²⁰², the humanist antiquaries and the legal minds of the *mos gallicus* happened to be allies of the monarchy²⁰³, which increasingly discovered legislative sovereignty as an instrument of securing the monarchical rule. The governmental order out of the sovereign's legislative and commanding authority demanded obedience, regardless of any confessional 'orthodoxy'; rather, the inner peace (within the monarchy) – by virtue of the legislatively established order – bound everyone, indiscriminately of the conformity with the personal faith.

This immediacy of the law's application to everyone corresponded with the immediacy of access to nature (*supra* part 2) and the subjectivity developed in Renaissance humanism (*supra* part 1). It is related to the no longer transcendental legitimisation of politics as a «matter for all citizens» (*res publica*), rationally justified on the basis of a normative guiding principle of justice. This means that in legal proceedings, immutable evidences, ultimate truths or even *auctoritates*²⁰⁴ are no longer valid grounds for justice. Rather, law and statutes became explainable through voluntary justification (*volenti non fit iniuria*, Dig.47,10,1 § 5 a.E.)²⁰⁵; just as man himself can comprehend the world, justify his knowledge with plausible (and thus necessarily only provisional) evidence and expand it into technical inventions (cf. Leonardo da Vinci's flying machines)²⁰⁶, law is oriented towards the logically possible due to the legislator's will. The scientific valorisation of experience and the esteem for empirical imprints

Presse de l'Université Toulouse Capitale, 1999, pp. 347-374, reprinted in J.-L. Thireau, *Jus et consuetudo, Recueil d'articles réunis en hommages de Jean-Louis Thireau*, in A. Dobigny-Reverso, X. Prévost, N. Warembourg (edited by), Paris, Classique Garnier, 2020, pp. 307-340.

²⁰² Grossi, *supra* n. 192, German edition, p. 97.

²⁰³ Grossi, *supra* n. 192, German edition, p. 97.

²⁰⁴ Accordingly, in Ulrich Tengler's Layenspiegel allegations such as those on Durantis' no longer have any constitutive evidential/probative force, but are used in a mere affirmative manner to support the author's own argumentation (Müßig, *Richtertugenden*, *supra* n. 198, [V]).

²⁰⁵ Paraphr. b. A.: No injustice is done to the willing. If you were able to participate in the creation of the laws, you cannot complain about the disadvantages.

²⁰⁶ V. Delieuvin (organised by), *#ExpoLéonard*. Leonardo da Vinci exhibition at the Louvre, Paris from 24 October 2019 - 24 February 2020; *Galleria Leonardo da Vinci* at Museo nazionale della scienza e della tecnologia Leonardo da Vinci, Milano.

found their 'legal match' in the 16th-century humanist approach to law.

Within the 16th century, there was a massive rationalisation of (the previous Thomasian) natural law under Protestant Aristotelianism (= philosophical reflection on political domination) and the coinciding impulses of the Lutheran Reformation. As core element of his protestant theology, Luther emphasised the God-given nature of authority per se (*usus politicus legis*); only the form of political government in general and its legitimization in particular were no longer to be determined in a biblical or christocratic-scholastic manner, but only by reason. Due to the growing awareness of man's rational capacity of self-determination – in the Lutheran point of view still not secularised, but as God's image – any rule of man over man became questionable (as not ontologically given). Such a reasoning also necessarily subjected the inherited (married or conquered) princely rule over lands and subjects to the need of a rational justification (henceforth the subtitle part 3: «explained») and tied it to the acceptance and co-determination of the ruled. Only later natural law theories of the 17th century would specify this line of argumentation in their major contractual theories. For the moment, we are interested in something like the public side of the *usus modernus*: the deconfessionalised, systematic and mathematical grounding of legal commitments between public entities and power players. It was Melancthon's «*Commentarii in aliquot politicos libros Aristotelis*» in 1530/31, that moulded the classical works on ethics and politics by the Latin Aristotle into the Early Modern canon for the critical examination of the aims and regulations of the *res publica*, the forms of state, the exercise, limitation and safeguarding of sovereign power, its legitimacy, and the right of resistance against it; exemplary of this is the argumentation on the inherited power of the princes versus the elective office of the Roman emperor (within the HRE) as two different types of authority, and the conclusion that the princes are «less the subjects» of the emperor, but only bound to him by «obligations»²⁰⁷. The same applies to the

²⁰⁷ R. R. Benert, *Lutheran Resistance Theory and the imperial Constitution*,

proposal that, according to its constitution, the Holy Roman Empire was a federation of sovereign princes, and the emperor was elected by them. Absolute power, therefore, could not lie with the emperor but with the princes, and their relation was to be of contractual nature²⁰⁸. This shows how ‘Protestant Aristotelianism’ emphasised the autonomy of law from religion and canon law²⁰⁹, when it states that in the Holy Roman Empire, as a confessionally mixed community, secular law had to secure coexistence through «secular guarantees of peace and freedom and renounce[s] the enforcement of confessional unity». In this respect, the «claim to absoluteness of the great religions of revelation» was rejected; there was a «primacy of the secular peace order over canon law and church confession»²¹⁰. In addition, encroachments by church authority on the «divinely instituted and protected secular authority» are to be fended off²¹¹.

It was the Reformation’s complementarity with the (northern Alpine) Renaissance and Early Modern Aristotelianism that had a massive impact on constitutional history. Renaissance and Reformation, as two sides of the same intellectual and moral awakening, revived humanism, scientific curiosity, and established a spirit of independence, political as well as spiritual; their combined desire to find a more rational basis for human society than the arbitrary theocratic one substituted clerical for civil authority and explained a society of territorial states to rest on law

«Il Pensiero Politico», 6, 1973, pp. 17-36, p. 19; cf. there also fn. 5: «cancellable contractual relationship» (s. E. W. Zeeden, *Die Einwirkung der Reformation auf die Verfassung des Heiligen Römischen Reiches Deutscher Nation*, «Trierer Theologische Zeitschrift», 59, 1950, pp. 207-215); in fn. 4 also reference to M. Luther, *D. Martin Luthers Werke. Critical Complete Edition (Weimar Edition)*, Graz, Akademische Druck- und Verlagsanstalt, Reprint 1967, Abt. II: *Tischreden*, vol. II., p. 405, Z. 14 f: «Ita nos quoque caesari subiecti certis legibus, sicut ipse contra nobis certis legibus est constrictus;» English translation on the basis of M. Heckel, *Martin Luther’s Reformation und das Recht. Die Entwicklung der Theologie Luthers und ihre Auswirkung auf das Recht unter den Rahmenbedingungen der Reichsreform und der Territorialstaatsbildung im Kampf mit Rom und den „Schwärmern“*, Tübingen, Mohr Siebeck, 2016.

²⁰⁸ Benert, *Lutheran Resistance*, *supra* n. 207, p. 20 (cf. there for the various constructions up to p. 21, para. 1). Cf. also p. 24f. on the corporate self-image.

²⁰⁹ Heckel, *Martin Luther’s Reformation*, *supra* n. 207, p. 11.

²¹⁰ All citations Heckel, *Martin Luther’s Reformation*, *supra* n. 207, p. 11.

²¹¹ Heckel, *Martin Luther’s Reformation*, *supra* n. 207, p. 11 a.E.

and juridical sanction, thereby opposing any theocratic confederation subject to canon law. Orienting law towards the logically possible paves the way towards the later natural law systems, whereby only then a radically conceived individualism in the natural = original state will replace the humanistic idealism of self-formation; the natural law = rational law of the 17th century is not concerned with the individual and his self-optimisation by virtue of self-creative power, but with man in himself, scientifically dissected from any social association. The state of nature (*Naturzustand*) will become the original state (*Urzustand*), a primordial realm of freedom – both in the Hobbesian Leviathan and in Locke's natural law of justice²¹².

3.4 *The New Rationality of Morals and the Immediate Accessibility of the Lutheran Bible*

The coincidence between this Early Modern Aristotelianism and reformatory piety is striking²¹³. For Aristotle, the morality of any action is nothing else than the citizen's conformity with the *nómos* and *éthos* of the polis. The notorious *zōon politikón* (related to the polis' *nómoi*) takes part in this reasoning. It is not out of fear of damnation in hell or any expected reward in heaven that man behaves well; rather, acting in a good manner makes man good, as the Nicomachean Ethics explains: «In the same way, we also become just through just action»²¹⁴.

Rereading legal history also as media history, the immediate accessibility of the Lutheran bible²¹⁵ and its reciprocal media

²¹² Comparison and terminology according to U. Müßig, *Recht und Justizhoheit*, Berlin, Duncker & Humblot, 2009², pp. 208 ff.

²¹³ Instead of many M. Piennisch, *Luthers Verhältnis zu Aristoteles. Vom logischen Dualismus zum biblisch-semitischen Verstehensansatz*, «Stuttgarter Theologische Themen», 7, 2017, pp. 79-128, <https://www.sttonline.org/wp-content/uploads/files/STT12_2017_MPiennisch_Luthers-Verhaeltnis-zu-Aristoteles.pdf>, accessed on 19 May 2023. The Aristotelian justification of monarchy as an ideal constitutional form (Pol V.10, 1313 a5-10) relies on the fact that the king surpasses all other citizens in virtue corresponded just as much to Calvinist piety.

²¹⁴ Aristoteles, *Nikomachische Ethik*, E. Rolfes (transl. by), Leipzig, Meiner, 1911², p. 24.

²¹⁵ More than one million copies was unique on the 16th-century book market.

success in 1522 (rendering Gutenberg's innovations profitable and vice versa nation-wide dissemination) were the apt *stimuli* for such a rational philosophical reflection on morally good behaviour: The few (humanist) editions of the classics or liturgical textbooks would have never rendered the new capital-intensive reproduction method profitable²¹⁶, with its reliance on scribes and needs for paper- and metalworking infrastructure²¹⁷; it was the Lutheran 'dismantling of clerical salvation' pamphlets, the print run of which triggered the cash flow into the printing houses²¹⁸.

In addition, a reformatory public sphere emerged²¹⁹, which simultaneously discussed religious novelties as political virtues. Beyond the Lutheran scriptural principle (*sola scriptura*) and its doctrine of faith and grace (*sola fide, sola gratia*), it was the

²¹⁶ P. Moraw, *Von offener Verfassung zu gestalteter Verdichtung. Das Reich im späten Mittelalter 1250 bis 1490*, Frankfurt am Main/Berlin, Propyläen Verlag, 1985, p. 398.

²¹⁷ J. Burkhardt, *Deutsche Geschichte in der Frühen Neuzeit*, München, C.H. Beck Wissen, 2009, p. 22: «Along the Rhine and Main rivers, the new reproduction process quickly spread to the German urban centres; in the next generation around 1500, half of all printing locations were in the Empire». Ivi further: «German art was quickly adopted in the capital and university cities of Italy, France and England and thus became a national contribution to European information culture». Gutenberg's investor was Johannes Fust. Gutenberg's partner and master scribe was Peter Schöffer.

²¹⁸ In the printing city of Augsburg, the number of titles printed annually jumped to 300 in the years of the Reformation, between 1517/1525 reaching the highest level in the 16th century.

²¹⁹ R. Wohlfeil, *Reformatrische Öffentlichkeit, Literatur und Laienbildung im Spätmittelalter und in der Reformationszeit*, in L. Grenzmann, K. Stackmann (edited by), *Literatur und Laienbildung im Spätmittelalter und in der Reformation*, Stuttgart, Metzler, 1984, pp. 41-53, p. 41. Against these arguments J. Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, reprint of the 1962 edition, Frankfurt am Main, Suhrkamp, 1990, p. 60, pp. 61 f., pp. 70 ff., p. 86, who recognises a «social public sphere» only with the Enlightenment. Habermas still sees the time of the Reformation in the context of the «representation of rule» (pp. 60, 72). Balzer and Schutte, both cited by Wohlfeil, already apply the «bourgeois public sphere», that Habermas attributes only to the Enlightenment, to the early Reformation (B. Balzer, *Bürgerliche Reformationspropaganda. Die Flugschriften des Hans Sachs in den Jahren 1523-1525*, Stuttgart, Metzler, 1973, pp. 11 f.; the «bourgeois public sphere» is the «sphere of the private individuals assembled as an audience» (J. Schutte, „Schympff red“, *Frühformen bürgerlicher Agitation in Thomas Murners „Großem Lutherischen Narren“* (1522), Stuttgart, Metzler, 1973, p. 8).

linguistic power of Luther's translation²²⁰, the prelude to High German linguistic unity, that contributed to this²²¹. If 'the truth of the Gospel' was directly accessible to many princes and large sections of the people, this had an effect on the justification structures of constitution-building processes such as the «protestation» of the Lutheran princes against the old-church majority at the Imperial Diet of Speyer in 1529: if God himself is directly accessible in the «Book of Books» without any clerical mediation, there can be no interpretation of the imperial peace dictated by the imperial church bailiwick. The educational and linguistic impact of humanism became significant for legal thinking precisely in conjunction with the Reformation and the confessionally divided interpretation of the Religious Imperial Peaces of 1552, 1555²²². The paradox of confessional parity on the imperial level with confessional unity on the territorial level not only deepened the perceived loss of authority of the traditional institutions. Rather, it accelerated the contemporaries' self-responsibility to inform themselves about justice and the common good²²³; the prominence of natural law-arguments in the Protestant diction of resistance did the rest: 'true humanity' was not only acquired in schools and universities through education in classics, but also through the universality²²⁴ «of law [...] commanded [...] to live honestly [...] and with good manners»²²⁵. Likewise the other commandment of the Lay-

²²⁰ The translation of the Old Testament from the original Hebrew language was not presented until 1532.

²²¹ In Jacob Grimm's preface to his German grammar, the Meissen-Saxon dialect of Luther's translation of the Bible was still regarded as the «model for Modern High German».

²²² M. Heckel (edited by), *Gesammelte Schriften*, Tübingen, Mohr, 2022, vol. VII, p. 79: «The double confessionalisation in the empire led to the double confessional law of the empire. In this sense, the Religious Peace of Augsburg of 1555 consistently organised an imperial canon law on a parity basis».

²²³ *Layenspiegel, erster Teil* (= First part), page VIIr, Heidelberg Digitalisat <<https://digi.ub.uni-heidelberg.de/diglit/tengler1511/0015>>, accessed on 30 April 2024: «das ist natürlich oder göttlich recht sollt yedermann gemain sein/darumb das man es allenthalben aus natürlicher würkung und keiner andern satzung hat».

²²⁴ *Layenspiegel, zweiter Teil* (= Ander Teil, 2nd Part), page XXXVIIr, Heidelberg Digitalisat <<https://digi.ub.uni-heidelberg.de/diglit/tengler1511/0093>>, accessed on 30 April 2024.

²²⁵ *Layenspiegel, zweiter Teil* (= Ander Teil, 2nd Part), page XXXVIIr, Heidel;

enspiegel: «*Alterum non l[a]edere list nyemans beleydigen wann was einer nicht will i[h]m geschehe soll[l] er auch andern nicht zufügen*»²²⁶, that addressed everybody's inner independence by explaining the binding nature of law due to a reason plausible in the neo-Aristotelian Ethics of duty.

Last but not least, it was precisely the encounter between humanism and Reformation that placed the human being at the centre of reflection; the Delphic «Know thyself!» within the Renaissance interest in antiquity²²⁷ amounted to an 'anthropological' adjustment of philosophy as well as of theology²²⁸. 200 years later, this critical readjustment of one's own thinking²²⁹, stimulated by the coincidence of the humanist ideal of education and the reformatory *sola scriptura*, would have led to the *sapere aude* of Kantian idealism, with the four essential questions: «What can I know? What should I do? What can I hope for? What is man?»²³⁰ This paper claims that the enlightened focus on the human being, reading the Kantian questions as his shortcut for his comprehensive anthropology, would not have been possible without the special interaction between humanism and Reformation. This is not about inappropriate continuity lines between humanism and the Enlightenment; rather, it takes a stand that the typically European anthropological adjustment of constitutional thinking owes a great deal to the 16th-century encounter between humanism and Reformation: the Renaissance humanist ideals of subjectivity and autonomous self-design fa-

berger Digitalisat <<https://digi.ub.uni-heidelberg.de/diglit/tengler1511/0093>>, accessed on 30 April 2024.

²²⁶ *Ibidem*.

²²⁷ An example of this is Pico della Mirandola's Renaissance reworking of Origines' anthropology of freedom. On this, see A. Fürst, *Autonomie und Menschenwürde. Die origeneische Tradition*, in A. Fürst, C. Hengstermann (edited by), *Autonomie und Menschenwürde. Origines in der Philosophie der Neuzeit*, Münster, Aschendorff, 2012, pp. 9-46, especially the explanations of Pico's *plastes et fictor*-metaphor, pp. 53 ff.

²²⁸ Fürst, *supra* n. 227, p. 44. The 'anthropological' adjustment means that man's certainty of being no longer rests in authorities outside himself.

²²⁹ About yourself, about your own relationship to other people, to authorities and to God.

²³⁰ I. Kant, *Logik. Einleitung*, in W. Weischedel (edited by), *Werke in sechs Bänden*, Darmstadt, Wissenschaftliche Buchgesellschaft, 1983, vol. III, p. 448 (A 25).

voured the socially disciplining instrumentalisation of the universal ontology in reformed Christianity for the optimisation of subjects, – no longer addressed to collectives such as merchant guilds and crafts communities, but to the individual in his distinctiveness. It is not by chance that contemporary art is interested in the proportion studies by Leonardo da Vinci (Vitruvian Man ca. 1492) or the exact physiognomy of the praying hands (1508) by Albrecht Dürer.

Another observation follows from this: The (new) reformatory public, to which Dürer's copperplate and wood engravings also attributed, gave the impression of representing the common man's voice²³¹. Such a generality of a common public, even if initially only supposedly, was an unmistakable sign for the contemporaries, how far the old authorities have lost their interpretive sovereignty over the truth. Of course, the 16th century was still far away from any thorough secularisation and individual legal autonomy. However, humanism in its combination with the Reformation seems to have laid the ground for later emancipatory developments, esp. due to the universally understandable legal mirrors (*Rechtsspiegel*) and explanations of the commonwealth's legal foundations (hence the title part 3 «life legally explained»). This is joined by further reflections on Dürer's copperplate engravings of Erasmus and Melanchton.

3.5 Dürer's Figurative Representation of the New Reformatory Publicity on an Equal Footing with Humanist and Reformatory Protagonists

The iconographical concept of Dürer's copperplate engravings of Erasmus and Melanchton is held in especially high regard in art historical explanations. The majority of interpreters explain Dürer's paradigm shift by highlighting the subjectivity of the portrayed scholars with sensual features and by the expressed special longing of the artist to be on equal footing with the prominent humanist masterminds of the time. Com-

²³¹ Even though humanism was actually an elite movement, it had a broad impact, especially in connection with the pamphlets of the Reformation.



Fig. 9. Erasm of Rotterdam, 1526,
<https://t.ly/6dFVlk>

pared to the imperial portraits 1512/1519²³², the portraits of Erasmus²³³ and of Melanchthon²³⁴ (both 1526) illustrate Dürer's masterful expression of the subjectivity of the characters.

The Erasmus portrait is framed by a book still life, with a view of the humanist's workplace, depicted writing a Greek letter. As Erasmus' gaze is directed towards the writing desk, the viewer remains at a distance, but can realise «the senses, all feelings, finally the whole soul of man, which it reveals itself from the formation of the body, [...]»²³⁵. With regard to Melanchthon's portrait, art history highlights the friendliness of the eye expression and the facial features as a «clever, friendly and quirky lateral thinker»²³⁶; Thomas Mann used it as a model for the narra-

²³² In 1512, already a member of the Great Council himself, Dürer produced the monumental portraits of Charlemagne and Emperor Siegmund on behalf of the Nuremberg City Council, 1519 von Kaiser Maximilian, Öl auf Lindenholz, Kunsthistorisches Museum Wien, Gemäldegalerie, Inv. GG 825 (C. Metzger (edited by), Albrecht Dürer. Ausstellungskatalog Albertina, München/London/New York, Prestel Verlag, 2019), pp. 382 f.).

²³³ Copperplate, Kunstsammlungen der Stadt Nürnberg, Inv.-Nr.Gr.A 12884.

²³⁴ Copperplate engraving, Art Collections of the City of Nuremberg, inv. no. Gr.A 12883. Melanchthon, who was in Nuremberg in 1525 and 1526 at the invitation of the city council to carry out a school reform in the spirit of humanism, then founded a grammar school on behalf of the council in 1526. In 1526, Dürer met Melanchthon at the home of his friend Willibald Pirckheimer, and might have made there the model for the copperplate engraving.

²³⁵ Erasmus, *Dialogue between lion and bear about the right speech*, Basel, 1528, cit. according to C. Metzger (edited by), Albrecht Dürer. Ausstellungskatalog Albertina, *supra* n. 235, p. 37, note 2.

²³⁶ T. Schaurte, *Neuer Geist und neuer Glaube. Dürer als Zeitzeuge der Reformation. Mit einem Beitrag von Wolfgang Wüst*, Petersberg, Michael Imhof Verlag, 2017, p. 157.

tor's father in Doctor Faustus, particularly tracing Melanchthon's physiognomy as characterised by Dürer. Erasmus' half-closed eyes, fixed on the letter in front of him on the writing desk, are also praised for their gentleness.

Both portraits express the humanist reformatory publicity's claim to immediate access to antiquity and all available knowledge as well as to the Holy Scripture by means of special dedication inscriptions, through which Dürer's AD monogram is set into a special relationship to the portrayed. On the back wall of

Erasmus' study, a carefully 'calculated' understatement could be read: «The better [of him] is shown by the writings [of Erasmus]». As good as this portrait may be, the publications and letters by Erasmus with his Europe-wide standing were to be regarded as incomparably more important. Pointing towards a similar metaphorical twist, Dürer's inscription under Melanchthon's portrait in the linguistic form of a Latin distich praises Melanchthon's spirit as so outstanding that not even the exceptional Nuremberg artist Dürer was able to capture it pictorially: «Dürer may have been able to paint Philip's appearance during his lifetime, but not the skillful hand his spirit»²³⁷. On the one hand, both modesty addresses are meant to allow Dürer «to actively participate in the international phenomenon of humanism»²³⁸. On the other hand, there is an implicit claim of the artist to be at eye level with the portrayed great scholars, even more so, as their immeasurable intellectual greatness is not paintable



Fig. 10. Philipp Melanchthon, Albrecht Dürer, 1526, <https://t.ly/kTqpP>

²³⁷ Direct and paraphrased quotations in Schauerte, *supra* n. 236, pp. 154 ff.

²³⁸ Schauerte, *supra* n. 236, p. 155.

(according to the inscription of Melanchton's copperplate engraving), except for Dürer himself.

3.6 *Qualifying International Law as Natural Law*

The Protestant Italian Alberici Gentili, who emigrated to England, is recognised by new research as the 'real inventor' of international law's qualification as natural law²³⁹. The equating of *ius gentium et natura* is the main feature of Gentili's three commentaries on martial law («*De Jure Belli Commentationes Tres*», 1589)²⁴⁰. A similar equation is stated by Grotius, who explains «natural law to which international law also belongs» in his «Three Books on the Law of War and Peace» (1625)²⁴¹, and the state-of-the-arts holds their congruency in the concept of natural law²⁴². However, Grotius focuses on the distinction between divine law/natural law and human international law²⁴³.

²³⁹ L. Lacchè, V. Lavenia (edited by), *Alberico Gentili e il diritto del mare. Atti del convegno della XIX Giornata Gentiliana*, Macerata, eum, 2022. The role model function relates esp. to the first and third book of the 1589 commentaries (cf. also T. E. Holland, *An Inaugural Lecture on Albericus Gentilis. Delivered at All Souls College November 7, 1874*, London, 1874, <<https://babel.hathitrust.org/cgi/pt?id=mdp.39015062380897&cseq=7>>, accessed on 1 September 2023, p. 2, p. 35); H. Grotius, *De jure belli ac pacis libri tres. Drei Bücher vom Recht des Krieges und des Friedens*, Reprint Aalen, Scientia, 1993, pp. 19 f. (Grotius criticises Gentili regardless of his model function); furthermore: P. Haggmüller, *Grotius and Gentili. A Reassessment of Thomas E. Holland's Inaugural Lecture*, in H. Bull, B. Kingsbury, A. Roberts (edited by), *Hugo Grotius and International Relations*, Oxford, Oxford University Press, 1992, pp 133-176, p. 133, pp. 155 f.; M. Schmoeckel, *Die Reformation als Grundlage des modernen Völkerrechts*, in M. Germann, W. Decock (edited by), *Das Gewissen in den Rechtslehren der protestantischen und katholischen Reformationen*, Leipzig, Evangelische Verlagsanstalt, 2017, pp 226-270, p. 226, pp. 230 ff., p. 257.

²⁴⁰ *Alberici Gentilis De Iure Belli*, T. E. Holland (edited by), Oxford, Oxford University Press, 1877, vol. III, p. 199, p. 247, p. 317.

²⁴¹ Grotius, *De Jure Belli ac Pacis*, *supra* n. 239, Lib. I, Cap. II § IV, p. 54.

²⁴² *Supra* n. 239.

²⁴³ Grotius, *De Jure Belli ac Pacis*, *supra* n. 239, Lib. I, Cap. II; cf. also C. Stumpf, *Vom Recht des Krieges und des Friedens im klassischen Völkerrecht. Alberico Gentili und Hugo Grotius*, in I.-J. Werkner, K. Ebeling (edited by), *Handbuch Friedensethik*, Wiesbaden, Springer Fachmedien, 2017, pp 291-300, p. 290 (pp. 295 f.).

Gentili's *ius gentium* is the law of the society of states (*Societas gentium*), referring explicitly to international relations, i.e. the science of rights and obligations that exist between the nations. For him, the states are interdependent as well as independent; the basic axiom of human solidarity (*ubi societas, ibi ius*)²⁴⁴ is the positive basis of the *usus gentium*; it is also valid due to the exigence of natural reason, whereby natural law in Gentili's reading is «interpreted in the sense of humanity, justice and the best common sense of mankind»²⁴⁵. Gentili's approach to natural law differentiates strictly between the realm of the theologians and of the jurists, and thereby includes the infidel and heretics into constituted communities, also due to him having conceived a *societas gentium* on a civil basis. Therefore, heresy was no longer a reason for war (Gentili, *De iure belli* I chap. xxv), and the more interesting point for further research – beyond the perennial issue of Gentili godfathering the Grotian natural law – would be their disagreement about the admissibility of the English intervention in favour of the Dutch rebels. Is there a «just cause» for the Dutch rebels against the «legitimate» Spanish sovereign²⁴⁶, given the sacral-like old Batavian liberties according to the Joyeuse Entrée (1356)?

In any case, the juridification of natural law under Gentili's aegis, for whom society (*societas*) is the essence of natural law, acted as a pioneering work alongside the 16th-century move towards the rise of the modern state.

3.7 Summary of the 3rd part: Life Legally Explained and the Rational Justification of its Comprehensive Regulation

The unique coincidence of Renaissance, humanism, and Reformation has fostered the adoption of the admired Galilei's mathematical method within the legal realm. Accompanied by

²⁴⁴ C. Phillipson, *Introduction*, A. Gentili, *Three Books on the Law of War (De Iure Belli Libri Tres)*, John C. Rolfe (transl. by), Oxford/London, Clarendon Press, 1933, vol. II: English translation of 1612 edition., p. 23a.

²⁴⁵ Phillipson, *Introduction*, *supra*. n. 244, p. 24a.

²⁴⁶ Gentili, *De Iure Belli libri tres*, *supra*. n. 240.

the abstraction of *il stato* as a single point of reference, the innovative Bodinian transition to legislative primacy, the enrichment of legal interpretation by all accessible knowledge within the *mos gallicus*, and the focus on the rational validity of local statutes in the *usus modernus*, the book-based rational approaches to moral and religion made mathematics an epistemological key to the rational justification as natural plausible. According to Alberico Gentili, such a natural plausibility of rational justification opens up the natural law legitimization of the inter-state rationality.

In this way, intellectual abstractions could overcome corporate organisational structures and class boundaries well before they became questioned in reality. Such emancipatory thinking also appealed to Albrecht Dürer in his quest for outstanding recognition: it was the welcome within the Nuremberg humanist circles that gave him, as a non-Latin, access to the city's elite.

Finally, this text has set out Paolo Grossi's far-sighted observation, that the «[...] anthropological renewal that places complete trust in the individual as the sovereign over society and nature»²⁴⁷ is based on a mathematisation of philosophy. It was this mathematisation of philosophy in the intellectual crossings of Renaissance, humanism, and Reformation in the 16th century – additionally fulfilled by art – that laid the foundations for the codificatory 'legal absolutism' of the 18th and 19th centuries; this paper thereby takes a stand, that Renaissance humanism is an essential precursor of the later codifications, and the commonly exclusive focus on the systematisation and rationalisation by 17th century natural law theories needs revision in legal historical textbooks.

In addition to this finding, the Giacomo Leopardi *lectio Magistralis* 2024 might have clarified the contribution of Aristotelianism to European legal thought. This closes the circle of the investigation «*artificio-natura-vita*» and yet leaves the permanent challenge of self-setting within the infinite realm of possibilities to Leopardi's poetry. Listening to his famous poem

²⁴⁷ Grossi, *L'Europa del diritto*, p. 84.

«Infinity» (1819), related to the nearby Recanati, contains a further invitation to get to know «thysself» by means of the interrelations of art, nature, and life.

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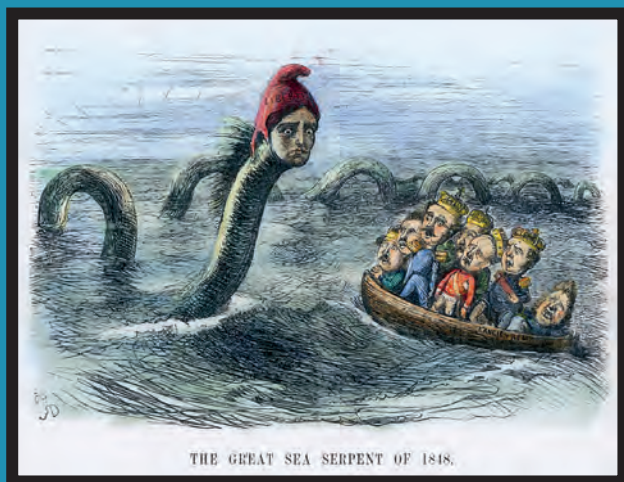
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