

# LORDSHIP AND FREEDOM IN THE POLITICAL THEORY OF THE EARLY 14<sup>th</sup> CENTURY

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**SÍNTESE** – As noções correlatas de senhorio (Herrschaft) e liberdade foram estudadas na Idade Média de forma diferente de hoje. Em inúmeros documentos encontra-se a menção de liberdade da gleba, direito de locomoção, direito de dispor da propriedade. Os acadêmicos de fins do século XIII e do século XIV haverão de voltar-se para este problema devido à disputa entre o papa e a autoridade civil. Sem dúvida, o que mais aprofundou a questão foi Guilherme de Ockham, ao examinar a condição dos fiéis dentro da Igreja.

**ABSTRACT** – Differently than today, the correlated ideas of domination and freedom were studied in the Middle Ages. In several documents, freedom is mentioned in relation to property in land, power to locomotion and disposal of property. In the 13<sup>th</sup> and 14<sup>th</sup> centuries, academicians will return to the problem on account of the quarrels caused by Popes and civil authority. Having in mind the conditions of faithful in the Church, Ockham has deeply dealt with the subject.

The experience of historical change that we could make in Germany and in Europe in the last years has profoundly puzzled our ideas of the power of traditions, thoughts, theories or imagination. Using the terms Lordship and Freedom I have chosen a topic that at a first glance only a contemporary German might understand. Lordship (in German: Herrschaft) is a keyterm of the German tradition of constitutional history, that shall describe and explain a state *in statu nascendi*. In its connotations it is the result of scientific discussions within the field, it cannot literally be found in the sources as a medieval word. Already the search for latin equivalents causes troubles, because there is no keyterm, that at least indicates the content of the term, that would reproduce the major characteristics of the term, which we refer to whenever we talk about Lordship (Herrschaft) today. *Domininium* might be best entitled to be the equivalent, if translated, but also *potestas* and *potencia*, *auctoritas*, *regnum*, *imperium* and *regimen*, *gubernatio* (and more of the same) can crave a hearing, since they all might at least be partially considered. Into the modern European languages the German word Herrschaft is still difficult to translate. I am not a Philologist, therefore I don't want to prove that in detail. As an example I just quote a German-Italian dictionary (from 1972) that

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offers *dominio*, *autorità* and *sovranità*, *signoria*, *dominazione*, *controllo* and *padronanza* for Herrschaft. The uniformity of the German term for lordship appears thus diversified and accentuated in very different ways. This aggravates any analysis of the medieval theoretical texts, because a general theory of power did not exist in those days, neither was it aimed at.

To be sure the case is different with the second term in the title of my talk, the freedom, since there is no doubt about the latin translation *libertas*, that is as valid as its German equivalents. Still, there remain some serious difficulties, which in this case above all concern the precise comprehension of the iridescent diversity of the semantic field, that already in antiquity had developed along different lines and thus left behind a very differentiated and differing tradition to the Middle Ages. But until today we have not been able to develop a clear and generally obliging idea of what freedom is, we should not turn up our noses on the difficulties of medieval theoreticians to handle that term. A diligent and dense research has so far not been able to explain the medieval use of the term freedom in a systematically convincing or genetically conclusive way.

Many questions remain unanswered, the "doubling" of freedom or liberty in singular, and of "liberties" in the plural (belonging to the estates) is only the broadest discussed, not the most irritating problem. In the discussion within the field of (West-) German social history after World War II there was a dispute over freedom and subordination of the non-aristocratic ranks in society, in which Karl Bosl with apparent joy in the paradox used the provoking *formula* at the Meeting of the Historians [Historikertag] in Ulm 1956, that the situation of the lower classes has been "*a free subjugation (one could also talk of 'unfree freedom'), in so far as it bases on bondage and is not suspended through those bondages, if we take the sources seriously*".

This shall not be discussed here in detail. From the overlapping of different traditions of uses Bosl derives the conclusion, only in a *paroxymoron*, a *contradictio in adiecto* could one reproduce the (early medieval) use of the term. Even if one does not deny completely the difficulties with the formation of an abstract term for this time, even if this paradox formula can claim a noble descent from Augustin, an immediate acceptance of such consequences not as an expression of self-appreciation but of the simple description of a social situation, that is to assign to a whole epoch an unthinkable, at least absurdly unprecise term.

At the same Historikertag at which Bosl presented his paradox description of the "free subjugation" of the rural social classes, Herbert Grundmann sought a very different approach, he presented "Freedom as a religious, political and personal postulate". He thus did not understand the term as a description of a social stratification or of hierarchical processes, but as a demand and as an appeal, which in numerous connections can be found, even if this postulate was never in the Middle Ages in the same way generally or for everybody demanded and asserted.

This hint to the claims for freedom and the demands of freedom has been picked up by Wilhelm Berges half a decade later, when during the winter term 1961/62 – that is now almost exactly the span of a whole generation, a time span of

thirty three years ago; it has been just the semester after the wall in Berlin was built – he lectured on *Self-determination in history* [Selbstbestimmung in der Geschichte]. Berges looked for a "genealogy of freedom" and followed the "archetype of liberties" (how he called it himself) "within the old rural societies" [Archetypus der Freiheiten in der älteren Agrargesellschaft]. Berges asked two questions that surpassed Grundmanns hint to the character of freedom as a demand: he asked for the context and the opposite of freedom in its contemporary use and he asked for a determinable minimal essence, for freedom as a basic right so to speak.

"Freedom has originally not been thought of in contrast to the state or to necessity, but in contrast to slavery". This simple remembering of the contra-position in connotations of the term is still to be taken seriously, for it has an illuminating effect. Nature had for a long time been utterly inpreavailable, even if one considers the real achievements of the long term technical revolution in the Middle Ages.

The process of political organization towards the structure of a state also processed in shoves, that sometimes were erratic sometimes continuous. To be sure, freedom within the state, freedom from political constraint existed within the political reflection and in the political demands, but it never was a primary interest to the investigation, it was in a way not an immediate application of the term of freedom. Other than that freedom in the "pre-statal" sphere of "society" was of great importance – in as far as we can meaningfully apply those 19<sup>th</sup>-century terms to the Middle Ages.

The opposition of free and unfree was written down in the legal procedures of the estates, the opposition of fully entitled shareholders and thus active participators of the legal procedures on the one side and that of those who were only subjugated to it, those living in bondage, or the strangers, or those spared enemies who had been enslaved. This difference was fundamental for public life for a long time even in modern times.

The constitutions of the estates based on birth clung to that opposition that originated in the small gentile world of the early Middle Ages, even when the growing complexity and increasing complication of the social and juridical differentiation of groups made it very difficult to uphold it. For a long time this scheme was formulated with almost stubborn eagerness. In so far that opposition was present in the minds of the contemporaries in all its shrewdness, perhaps even shrewder than it was appropriate in accordance with the actual social differences. To measure freedom from its most extreme counterpart – the slavery – that was to consider always (in the words of Wilhelm Berges) "which shortage of rights made one into a slave and which minimum of rights somebody had to have... to be able to call himself free, or even still free".

This question for a minimum of an unreductible right of freedom leads to the postulate of a minimal position, i. e. to the core of the demand for freedom, that was the condition for a lasting estatal distinction of free and unfree (i. e. subjugated). Wilhelm Berges saw this minimum described in three demands, in the claim for "the safety of the body, in the freedom of movement, in the independent

disposal for property", or to say it with his own words "to evade the knout, to cast off the constraint to the 'gleba' and become free to move, disencumberment, acquisition of free property – in thousands and thousands of settler documents and town privileges of the Middle Ages we can read of such desires".

We don't have to discuss those demands and the development of the common legal forms in detail, neither do we have to follow the pre-statal roots of the idea of freedom, nor do we have to differentiate between the plain minimal positions of the demand for freedom as we find them at different authors. But it seems to me that we should stick to that question, if we analyse the discussion of the 14<sup>th</sup> century in order to evaluate its contribution to the relation of lordship and freedom. Even if we can't expect an explicit doctrine, we might be able to observe characteristic, or interesting positions of some representative thinkers, that cast some light on contemporary perception and opinion (which is, besides, the main reason why we still engage ourselves in the views of medieval contemporaries).

Before we are able to present several elaborated positions – certainly in strict selection – we can't dispense of another reflection of the general milieu in which the political-theoretical discussion took place, because we should try to understand these positions as part of a larger discussion of the problem and not to consider them as rather casual highlights of a debate that is not interesting in itself. On the base of such a definition of method and place of theoretical reflection on political questions we have a better chance to appreciate the positions of the single authors in an appropriate perspective.

Political theory in the Middle Ages had not yet emancipated itself as an independent field of theoretical work, it was on that way and it moved within a milieu that was designed by other general theoretical ambitions, because political theory had joined the efforts of other disciplines, as their leading science, so to speak.

This can be said in general for the whole period of the Middle Ages, for the early Middle Ages and for the epoch of the high Middle Ages, too. But in a particular way we can observe this phenomenon in that epoch of the Middle Ages, during which all theoretical work found its form, method, its social and institutional frame within the European university. The unity of teaching and theoretical work, where different scholars lived and taught in one place, often competing with each other but still working together, was a common experience since the 12<sup>th</sup> century. This created a "critical mass" (so to speak), from which new efforts for methodical capacity and a new formulation of problems could develop. Already in 13<sup>th</sup> century the four "faculties" were formed that were not only a social subdivision of the universities, but also gave some organizational frame to the scientific disciplines and provided a resort to develop clear traditions. The result was so impressive, that the Italian universities, that had started their organization with different means, transferred this successful "Parisian model" in the second half of the 14<sup>th</sup> century and established in these later days theological and artistic faculties.

Still in the 13<sup>th</sup> century the main texts and methods of the single disciplines within the faculties were developed and displayed in parallelism and competition,

but in close contact and significant similarity to each other. Today we properly speak of the "scholastic sciences of the Middle Ages", since all disciplines appear in a surprising unity that starts with the forms of handling scientific problems in *lectio* and *quaestio*, followed by fundamental a decision of the master in his classroom that led to a canonical pronouncement (*determinatio*), and on the other hand with the selection of the basic texts or text-*corpora* and of the commentaries on them, that summarized the traditions: all of which were to be used in teaching. All that comprehends new aspects of lecturing that evolves from additional *quaestiones* (questions and debates). Finally in effect the Middle Ages developed some forms of social control, i. e. the systems of examination and graduation. At the end of the 13<sup>th</sup> century those forms were completely established and at general disposal. Consequently the epoch of universities founded by princes and townships was about to begin in which the new universities were to a certain degree multiplied according to a complete and ready made model.

This was of great importance to the work of political theory, too. I have already said, that the political theory during the Middle Ages never succeeded in establishing itself institutionally as a of the master in his classroom field of theoretical work for ist own. To inform practical politics, to think about social life, to look for the reasons – and thereby for some means to diminish – social conflicts, in one word to look at politics seriously as a theoretical problem, this was an exercise that was equally performed by all faculties in mutual competition. The scholastic methods provided an indispensable frame and thus a base of discussion to these manifold efforts inside and outside the university. Indeed, I don't know about any theoretical design in the late Middle Ages that concerned political questions, that wouldn't use the then actual scientific methods of analysis with more or less skill, that would not appear heavily disguised with the armament of scholastic erudition and whose author did not have any experience from school or university: in most cases they had spend years or even decades at some university.

Of course, this does not mean, that the majority of these texts was written in or for the lecture hall, even if some commentaries on the political writings of the *corpus aristotelicum* are an important contribution of the arts-faculty (and the theologians) to political literature. Politics, even the *Politica* of Aristotle was not a regular subject of teaching, that happened only in exceptional cases: the *Politics* of Aristotle were only read "extraordinarie" in the arts faculty, they were not part of the obligatorial program of a normal obligatorial curriculum. The learned texts, like the *Defensor pacis* of Marsilius of Padua or the *Dialogus* of William of Ockham, the *Summa de ecclesiastica potestate* of Augustinus of Ancona or the impressive compilation *De statu et planctu ecclesiae* of the Portuguese Franciscan Alvarus Pelagius arose outside the universities, as private works so to speak. The spread, the copying, the multiplication of those text was only exceptionally due to the university publishing system. This is shown (for example) in the number of the remaining manuscripts we know today, that for a 14<sup>th</sup> century text on political theory never exceeds over forty exemplars or so, disregarding the volume or our evaluation of the specific tract. We normally have to be concerned with texts, that

were not designed to be textbooks or rose from an immediate connection with the classrooms of the university.

If we look for the public, for which these texts were meant, without any doubt some erudition, some capacity to find one's way in the scholastic world was assumed. Our texts were no pamphlets for an open market nor for the man in the street or less still a man behind the oven. Even the political writings of John Wyclif were not immediately written for the Lollards, and the above mentioned texts were certainly not written for the "common man". They were obviously written for people, who after they had studied at the university now had a role in practical life, who made their way at the courts of princes and prelates, in the city-elite, and in diplomatic transactions. This "elite of education" [*Bildungsaristokratie*], whose vital interests Alois Dempf – keen of hearing – found touched in almost all of these texts already 70 years ago, has to be studied, and has been studied during the last decades. The research is on the way, even if it is still far away from definite results. As far as we can see now, the sources will not allow us to draw a comprehensive panorama. But we have to consider the social context, or, to use a German expression here, the *Sitz im Leben* of these texts, if we want to evaluate this assertions properly and understand them rightly.

I hope that I was able to characterize the point of departure and the milieu of practical-theoretical work in the 14<sup>th</sup> century with these sketchy remarks. If I was not comprehensive I hope I made clear the major lines of development. If so, this has consequences for our inquiry into our topic lordship and freedom in the political treatises of this time. Both subjects, lordship and freedom, taken apart and in their relation to each other, have in this time never been subject of consideration *per se*, as far as I can see. This is not too surprising, if we consider the immediate interest and the focus of the tradition that was passed on to our theoreticians. Lordship and freedom – their interrelation was not subject to reflection in antiquity, so it only indirectly came within the view of our authors. Thus, the answers that we could expect were also indirect. I would like to show that in some examples. (A representative or comprehensive differentiated view is not intended to be provided here).

The topic of lordship, its foundation and description, most of all its legitimation, was certainly a subject of central importance to the reflection within many texts. We may even say that a whole species of literature of tractates on political theory, according to its number and importance even the most relevant in the later Middle Ages, at least in the first half of the 14<sup>th</sup> century, was concerned with *potestas*, the competence to rule and to govern, first with that of the pope, then also with that of other rulers. Since Boniface VIII had tried to transfer the theoretical assessments of a busy theological and juridical science concerning the power of the office of the highest bishop of the church, of the *summus hierarcha* on the top of the ecclesiastical hierarchy, the successor of Peter and the *vicarius Christi*, the representative of god on earth, even the *quasidivus in terris* (only to name a few *epitheta*, that were applied to the pope already in the 13<sup>th</sup>, at the latest in the 14<sup>th</sup> century) completely into political reality in a daring design, since then the task to survey the *potestas* of the pope, his rights to rule within the church,

but also within Christianity even within the world had become a demand of the day.

*De potestate ecclesiastica*, *De potestate papae*, these were the names of this tracts; they moved on very different theoretical levels, from a very scanty collection of Bible quotations and allegations from the ecclesiastical law, especially the decretals (like we have in the *memorandum* of Henry of Cremona), or a book laboriously put together to a formally impressive design, that elegantly matched various traditions and was of a splendid illusionary coherence (as like in the writing of the archbishop of Bourges, Aegidius Romanus, or Giles of Rome, written in the same time as the text of Henricus of Cremona shortly after the turn of the century, around 1302). Both of the just named texts were composed and conceived at the curia of Boniface VIII, they evolved next to each other, so to speak. Thus already at the beginning of the debate it covered a wide spectrum.

The pope himself did not use the word *libertas* in a genuine manner: when he speaks of the *libertas ecclesiae*, he only has to say, that Christ has given among his many other gifts to his bride, the church, the benefit of freedom, "because he wanted that his beloved bride would dominate over its faithful peoples in a free dominion so that she has over all of them like a mother her power and all could honour her with the due reverence of sons as their universal mother and lady [*tanquam universalem matrem et dominam*]"<sup>1</sup>. The sonorous bull *Unam Sanctam* was issued by the pope at the peak of his conflict with the French King Philip the Fair and his court (on 18<sup>th</sup> of November 1302), and apparently meant to be an effective declaration for the French national synode. This text made extensive use of Aegidius's formulations. It is the most complete and most deliberate papal demand for world wide reputation, even for world domination, that a pope ever dared to rise officially, and it is still able to embarrass theologians of today:<sup>2</sup> "We declare say define that it is for all human creature necessary to be dubbed to the Roman pontif by the sake of salvation". "Here no single hint to freedom is given, because perhaps in contrast to salvation, in contrast to a necessity of salvation the problem of freedom did not arise, and as we have to complete, it didn't in opposition to the demand for world wide acceptance of papal orders, put forward by the pope and the curia. So it seems understandable that the pope could identify subjection to the church, and that meant for him: subjection to the pope, with the very essence of freedom.

However reflected and diplomatic Boniface advanced in some of his political activities, however strictly he followed his own sense in other cases, we can't

<sup>1</sup> *Inefabilis amoris* (Bulle of pope Boniface VIII from Sept. 21, 1296, against the 'embargo', laid upon export of money and gold from France by the French court, Digard, #1653): "Inefabilis amoris dulcedine sponso suo, qui Christus est, sancta mater ecclesia copulata dotes et gratias ab ipso suscepit amplissimas, ubertate fecundas et specialiter inter eas beneficium libertatis. Voluit enim peramabilem sponsam eius libere fidelibus populis preesse dominio, ut velut in filios haberet more matris in singulis potestatem, ac etiam cuncti cum filiali reverentia tanquam universalem matrem, et dominam honorarent [...]"

<sup>2</sup> *Unam sanctam* [Bulle of pope Boniface VIII from November 18, 1302, Digard, #5382]: "[...] Porro subesse Romano pontifici omni humane creature declaramus, dicimus, diffinimus omnino esse de necessitate salutis".

expect considerations of these questions on his side. Neither Aegidius Romanus (Giles of Rome) nor other authors who lend their pen to the papal demands were open to these questions, no matter how their constructions of papal dominion looked like. Giles of Rome for instance identified in his treatise *De ecclesiastica potestate* (of about 1302) – in the very same vein as Boniface VIII himself – the "freedom" of the worldly rulers and princes with their very subjection to the church. Giles could describe the relationship of each faithful member of the church, including therefore the prince, at one point of his text expressively as *libertas*, and at another place of the same treatise expressively as *servitus*, he therefore was able to identify this "serfdom" as one of the most despected form of slavery in the Roman law, with the position of a *servus empticius*.<sup>3</sup> For him and his contemporary readers this must have been identified as a very despected bondsman and therefore we may suspect that this was said by our author with purpose. Only the corporative tradition and the fear of a pope, who as a heretic (*a fide devius*) couldn't be the head of the church of all faithful Christians and pursue their claim for salvation anymore, that was apparent in Gratians *Decretum* [D. 40 c. 6], could mark a certain boderline of his power. But this didn't even come close to the theoretical question for the limits of power for the Pope or the freedom of believe in the case of the papal *subditi*.

The defenders of royal independence were able to go beyond that in their strive to secure the autonomy of the sovereign position from spiritual influence and papal demands for primacy. If authors like John Quidort, or the anonymous memoranda from the Parisian university – written by a whole group of scholars (like the so called *Quaestio in utramque partem*, or the *Question Rex pacificus*) were not so much concerned with the freedom of action of a single person, but with the freedom to act of a ruler. But they gave customarily the warning to confuse the traditional dualistic views of the twofold origins of the spiritual and wordly power in god himself. Therefore these positions could not only react against their opposite, but were also able to construct the inner structure of each of the spheres (even if this did not happen thoroughly and not with the same means, too different were the constitutions of church and world). John Quidort, the dominican theologian and pupil of Thomas Aquinas in Paris, presented around 1302 the most original and important text, his treatise on the royal and papal power [*De regia potestate et papali*] – a design with the longest and farest reaching influence. Quidort constructed the sphere of the church, the hierarchy of offices (in concordance to his teacher Thomas Aquinas and following the tradition of his Dominican order) strictly according to the *mendicant ecclesiology*, that had provided Boniface VIII with many a key word for his attacks on the worldly sphere. But Quidort never went beyond an application of this model to the church, he did

<sup>3</sup> Aegidius Romanus, *De ecclesiastica potestate* (ca. 1302), cf. I. 8 (where the sujection of the princes to the spiritual power is called expressively not a "servitus", but "libertas", because Christ's yoke is pleasant and his burden light) with ibidem, II. 10, where there is said of all faithful Christians (including therefore the princes): "[...] ut homines fideles [...] sint tributarii, et sicut tributarii et sicut servi empticii ecclesie recognoscendo se esse servos ecclesie, ut pro se ipsis et pro omnibus que habent offerant aliquod ecclesie in recognitionem proprie servitutis".

not transfer this principles of organization into the sphere of profane power, e. g. the sphere of the king of France. For the world, his teacher Thomas Aquinas provided him with the theoretical allowance (which he accepted in his very textual presentation of his treatise, as he cited long passages from the Thomasian *De regno* verbally, but without saying it to his readers; so it has escaped the notice of the treatise's latest editor!): it was the structure of human society, which he constructed with theoretical means from Aquinas's *De regno ad regem Cypri* (later on called *De regimine principum*, that means the Mirror of Princes of Aquinas) which itself had followed closely the lines of Aristotle's texts, and which was now adopted by Quidort and developed by him (through supplement of some additional postulates) into a theory of great vigour and clearness, which it did not have with Thomas.

Freedom of the person was not seen by Quidort as an opposite to lordship, but simply as a basic fundament of stately order, for he understood society as a society of proprietors, who were directed towards the common good by royal power and lordship. In this game there was no room for the church and her demands as long as this order worked. Only if this order failed, the pope had the possibility to direct the king. Similarly it was up to the king – and this was obviously more important and interesting to Quidort and to the court of King Philip the Fair – to reprove a pope who misused his spiritual sword by use of the material sword:<sup>4,5</sup> the assault of Agnagni (of september 7, 1303) appears thus to be approved and justified in advance through the text of this French Dominican. In a good Aristotelian manner the treatise promises to keep a *via media* between extreme lines of argument, a label which today is commonly used to characterize the political tendencies of John Quidort, as I mean obviously falsely. For the French Dominican had not only failed to prevent the radical (you may even say: wicked) practice that was introduced by Pierre Flotte and completed by Guillaume Nogaret in the assault of Anagni, but even had induced it, provided it with a quiet consciousness, stimulated and justified it. The so called tempered theory of the *via media* was concomitant to a very radical and ruthless political practise!

To be sure, if we are able to identify a seizeable ideological relation between a text of political theory and contemporary interests in this case, that doesn't mean, that the text could thus be fully described, otherwise it wouldn't have found such a broad echoe on the conciles of Constance and Basel over a century later. In this treatise, so to speak, a sum was drawn, that even if it did not construct the relation between ecclesiastical demands and profan lordship entirely clear, it still was explicit enough about the limits between the two spheres. The reference to Aquinas' Aristotelic construction of profane power, that managed to overcome some vaguenesses of Thomas, might have contributed to the attractivity of the text in the 15<sup>th</sup> century, but doesn't diminish the really astonishing accomplishments of

<sup>4</sup> Jean Quidort, *De regia potestate et papali* [ca. 1302/1303], c. 20: "Est enim licitum principi abusus gladii spiritualis repellere eo modo quo potest, etiam per gladium materialem, precipue ubi abusus gladii spiritualis vergit in malum rei publice, cuius cura regi incumbit".

<sup>5</sup> *ibidem*, c. 22: "Princeps etiam violentiam gladii pape posset repellere per gladium suum cum moderamine, nec ageret contra papam, ut papa est, sed contra hostem suum et hostem rei publice".

the French Dominican. The future development of political theory in the 14<sup>th</sup> century should follow the way that he had chosen: it should attempt to construct social relations in both spheres in the church and in the world, according to the same Aristotelic principles, that is on the same theoretical base in both spheres. The problem of freedom therewith gained new importance, because it remained the last barrier, that still allowed to repulse mutual claims for intervention, and which thus promitted counter and to oppose ecclesiastical or statal demands in the name of freedom.

Before William of Ockham was able to justify this position in detail, Marsilius of Padua had to prove in his *Defensor pacis* that unlike John Quidort the division between ecclesiastical and profane sphere did not require a continuous separation and distinction between the principles of their organization, but that the Aristotelian *Politics* really were sufficient to justify the social structures of both realms, the state and the church adequately, even that this application of Aristotelian theory brought about a final decision in the conflict between ecclesiastical claims and political jurisdiction or sovereign authority, that led to a definitive defense of peace in the 14<sup>th</sup> century.

It is not possible to provide even a sketch of the whole conception of the political theory of Marsilius, especially since his great treatise was meant to be a defence of peace, of *pax et tranquillitas*, and not a defence of freedom.<sup>6</sup> However strictly Marsilius conceded the *universitas civium*, respectively her *maior sive valencior pars* ("the totality of citizens and their majority or their 'weightier' part" – to follow up here the translation of Alan G. Gewirth) the definitive decision in all vital questions of the community<sup>7, 8</sup> he never formally attempted a defense of freedom: Richard Scholz was able to enlist those situations where Marsilius talks about *libertas civium* with two short references in the register of his edition. But, as I want to show, without a fundamental postulat for freedom even the highly formalized Aristotelic construction of legislative competence didn't get along, that Marsilius had provided.

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6 Marsilius of Padua, *Defensor pacis* [1324], III. 3: "Vocabitur autem tractatus iste *Defensor pacis*", quoniam in ipso tractantur et explicantur precipue cause, quibus conservatur et extat civilis pax sive tranquillitas, et hec eciam, propter quas opposita lis oritur, prohibetur et tollitur".

7 DP I. 12. 3: "Nos autem dicamus secundum veritatem atque consilium [!] Aristotelis 3<sup>a</sup> Politice cap. 6<sup>o</sup> [1281a39sq.] legislatorem seu causam legis effectivam primam et propriam esse populum seu civium universitatem aut eius valentorem partem".

8 DP I. 12. 5: "[...] ad propositam intencionem redeamus, demonstrare scilicet legumlacionis auctoritatem humanam ad solam [!] civium universitatem aut eius valentorem partem pertinere [...], quoniam illius tantummodo [!] est legum humanarum lacionis seu institutionis auctoritas humana prima simpliciter, a quo solum optime leges possunt provenire. Hoc autem est civium universitas aut eius pars valencior, que totam universitatem representat; quoniam non est facile aut non possibile omnes personas in unum convenire sententiam, propter quorundam esse naturam oblatam malicia vel ignorancia singulari discordantem a communi sententia, propter eorum irrationabilem reclamacionem seu contradiccionem non debent communia conferencia impediri vel omitti. Pertinet igitur ad universitatem civium aut eius valentorem partem tantummodo [!] legislacionis seu institutionis auctoritas".

One of the two passages, marked by Scholz, makes it quite clear:<sup>9</sup> freedom of all in legislation was the logical condition for the pacifying imposition of law, since even a substantially bad law, that was agreed on by all, was in this respect unmistakably clear, even if not explicitly said, that the identification of a competent legislator, who was equipped with the *potestas coactiva* and therefore allowed to establish the ruler of common life, (a definition which was not already given by Aristotle!) came from the consideration, that only through this assertion an unbearable *despotism* of whatever part over all the others could be excluded. The *potestas coactiva* of the totality (or of the *pars principans* that was authorized by the totality, that means even of the emperor, a king or lower authorities) could only be irresistible, because in the political order of the society the totality did only force itself by its own *potestas coactiva*. It also lies within the perspective of this consideration that at the other spot of his treatise, where freedom has to play a certain role, Marsilius does not forego the opportunity to use the traditional aversion against tyrants consciously for his own purpose, even if he doesn't play out the pathos of freedom all too often. According to his – Aristotle trained – opinion *tyrannis* was always found whenever a ruler thought he could abandon the voluntary obedience, that meant that tyranny was more intense, the less the ruler sought the consensus of the ruled.<sup>10</sup>

These hints shall not try to turn the *Defensor pacis* into a song of songs for freedom, whereas the treatise declares peace, security and order to be the highest aim of politics. In the end of his conclusions finally Marsilius has put freedom at the same stage as peace and tranquillity,<sup>11</sup> but the argumentation of his text is not busy with defence of liberty or freedom. It seems however clear to me, that we would not be able to understand the generality of acceptation of the law, even less the otherwise obscure identification of the totality with the competent legislator in Marsilius, without these explicit indications towards the postulate of freedom. The minorities' right to object remains completely undisputed, that is true; there is no discussion in the text about a right to resist to the will of the totality or of its more important or "weightier" part in the name of freedom, that is clear. For this case, if

<sup>9</sup> DP I. 12. 6: "[...] quia civitas est communitas liberorum, ut scribitur 3<sup>o</sup> Politice cap. 4<sup>o</sup> [1279 a 21], quilibet civis liber esse debet nec alterius ferre despociam, i. e. servile dominium. Hoc autem non contingeret, si unus aliquis aut pauciores civium legem ferrent auctoritate propria supra civium universitatem; sic enim leges ferentes aliorum despotes essent. Et ideo reliqui civium, pars amplior scilicet, talem legem quantumcumque bonam moleste ferrent aut nullo modo [...]. Latam vero ex auditu seu consensu omnis multitudinis [scil. legem], eciam minus utilem, quilibet civium faciliter observaret et ferret, eo quod hanc quilibet sibi statuisset videtur, ideoque contra illam reclamare non habet, sed equo animo tollerare".

<sup>10</sup> DP I. 5. 5: "Participat autem quilibet dictorum modorum [i. e. of the different "modi" of the "principatus regalis"] tanto amplius de vero regali, quanto magis est ad subditos voluntarios et secundum legem latam ad commune conferens subditorum, tanto vero amplius tyrannidem sapiens, quanto magis exit ab hiis, consensu videlicet subditorum et lege ad ipsorum commune conferens instituta. [...] Hec igitur duo principatum temperatum et viciosum separant, [...] simpliciter autem, aut magis subditorum consensus".

<sup>11</sup> DP III. 3: "[...] per ipsum [i. e. Defensorem Pacis] comprehendere potest tam principans quam subiectum, que sunt elementa prima civilitatis cuiuslibet, quid observare oporteat propter conservacionem pacis et proprie libertatis."

he even thought about it, Marsilius had no solutions to offer. He could not suspend the fundamental problem of every theory that came somehow closer to the later sovereignty of the people, even if it was only in such preambular form.

It is in the political theory of the English Franciscan William of Ockham that we first find in the context of our debate a conception in which the idea and demand for individual freedom is not only taken seriously as a condition in the track of a long tradition, but which developed out of the pathos for freedom, so to speak. I cannot unfold Ockham's notion of freedom here, I will confine myself to some probably all too cryptic allusions.

Already the point of departure of Ockham's political reflections is closely related to a claim for freedom because our author had started his career as a political writer not as theorist without interests, but as a pamphletist he had joined up with massive party interests: he had become a partisan in a conflict that was taken up by his monastic order, the Franciscans, or to be more precise, by the minister general of the Franciscans Michael of Cesena, who was assisted and pushed forward in this task by a small group of intellectuals within the order. Pope John XXII had tried to demolish the specific Franciscan way of life that was highly loaded with ideological elements and he had tried to transform it and enshrine it into the normal form of ecclesiastical juridic tradition. From this point of departure some peculiarities of Ockham's theory, that were to evolve still later, can be explained. For example the fact that he does not begin his theory by construing lordship of human beings over human beings, but by thinking about the disposal of human beings over things, that he is starting with a theory of *dominium* in the sense of property. Already John Quidort did partially the same, starting from the different tradition of the Dominican perception of poverty, but in the case of Ockham and because of the piercing consequence of his questions, the conclusions are new.

An early analogy is to be found in the anthropology that Ockham had developed earlier during his academic career in Oxford, when he looked at man as a free being that could choose spontaneously and realise possibilities.<sup>12</sup> Ockham's social philosophy remains with this fundamental perception. God wanted man to be a free creature, he granted him a chance for free development: transferring upon him different *potestates* he conceded him a possibility of action. Even the fall of man and his expulsion from paradise did not change this situation fundamentally. Different from the other philosophers of his time, who follow Aristotle, the English theologian uses the reflection upon man's living in paradise as a way to describe the human relation to the world systematically in its genesis and structure, hereby following the patristic traditions. Ockham's conception of the early history of humankind, of creation, fall and expulsion from paradise, is confirmation of the origins and measure for the critical analysis of society today at the same time,

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<sup>12</sup> William of Ockham, IV Sent. [ca. 1317/19], qu. 3-5 (OTh VII, 51): "[...] in operibus nature videmus frequenter quod deus dat alicui principium operationis, et tamen non dat actualiter omnia necessaria ad illam operationem. Exemplum: deus creando hominem dat sibi principium respectu actus sciendi et volendi – quia intellectum et voluntatem – et tamen non oportet quod det sibi habitus, per quos potest faciliter in talia opera, sed sufficit quod det sibi potestatem acquirendi tales habitus."

especially since Ockham follows the tradition of patristic identification of life in the primitive church with the life in paradise. Imitation and succession in resignation of property performed by the *ecclesia primitiva* is realized again by the Franciscan *paupertas altissima*. And this Franciscan poverty was so immediately content of the Franciscan self-estimation, that Ockham never concealed this point of departure, even if an analysis of this kind was more frequent in the beginning of his career as a polemical author than in his writings during the last years of his career, the forties. From his later writings it was especially the short but systematic *Breviloquium* where he wrote on this subject explicitly and fully.

In his masterpiece, the uncompleted *Dialogus* Ockham only rarely speaks about primitive history, the "heavenly" existence in paradise before the fall and the guilt of sin. In the later treatises of this work, in the disputations of the *Tertia pars* of his *Dialogus*, he included an abundance of new material into his discussion, a mirror of princes in the form of a short mirror for an emperor, canonical materials, the Aristotelian *Politics* (to which he devotes an explicit passage to explain its key terms to a considerable extent), even the *Defensor pacis* of Marsilius of Padua (which he quotes literally and against which he carries on a controversy in neuralgic points). Ockham never left aside the principle that the social structure of the church and the world had to be understood with the same theoretical means. The exegesis of Aristotle, which also includes the formal commentaries of the Parisian arts-faculty into the discussion (especially the commentary of Peter of Auvergne and of Thomas Aquinas), has its place within an analysis of the ecclesiastical constitution on occasion of a monarchical constitution under one pope: the text is prone to tolerate several popes at the same time – Ockham thus theoretically anticipated the state of a christianity divided in obediences long before the Great Schism and he apparently consented to it.

In so far he has proved an almost prophetic clear-sight, even if one may doubt, whether his contemporaries or the intellectuals at the time of the Great Schism had all too much opportunity to consider his ideas in detail. This passage belongs to the first treatise of the *Tertia pars* which is (with only three manuscripts) the worst documented part of Ockham's *chef d'oeuvre*. Therefore this part of his masterpiece remained unknown to Pierre d'Ailly, when he wrote as a young student and theologian an *Abbreviatio* of the *Dialogus* in or about 1375. Later on the same happened to Jean Courtecuisse or to John of Segovia (to name only those best known): despite of their great interest in Ockham's *Dialogus* they apparently had no knowledge of this special treatise. (But the treatise was not totally unknown in the late 14<sup>th</sup> century, as is clear by seeing the anonymous french compilation *Le songe du vergier*, put together at the court of king Charles VI, in the year 1378, is using some chapters of the fourth book of this first treatise of the *Tertia pars* – but, indeed, not very extensively).

However we might this evaluate in detail, again and again Ockham could generally and unbiased take the church, its social constitution and shape as a paradigm for social institutions on the whole and use it as a field of observation. For him this had the advantage that he could remain close to his issue, the papal attack on the Franciscan order; it also offered him the opportunity to utilize

argumentatively and without prejudice the ramified and even in Munich then accessible preparation of theologians and canonist lawyers, that means from the *Glossae ordinariae* to the Bible and the *Corpus Iuris Canonici*.

For us today, it is therefore impossible to gather a secular political theory of the author, since there remain many questions, even important questions of the stately order about which Ockham barely expressed himself or not at all. Because he grew bitter about the papal centralism of the occidental church, that had found for him its utmost expression in the formula of the *plenitudo potestatis* of the pope, Ockham has fought with almost obsessive stubbornness against this concept of an absolute plenitude of power exercised by the head of the church. Among the numerous arguments that Ockham gathered indefatigably to prove this extreme papalistic interpretation to be an error, even a dangerous heresy, a thesis dangerous to christian salvation, we several times find the hint in his text, that the *nova lex Christi* was according to the testimonies of the New Testament a *lex libertatis* (Iac. 2, 12) even a *lex perfecte libertatis* (cf. Iac. 1, 25). According to his conviction this could only be understood in the way that the *nova lex Christi* could not place Christians under a more oppressive servitude, than the mosaic law had imposed upon the jews. With Paulinian pathos this conception was carried out and elaborated by him. Any exegesis, that only emphasized precisely on the freedom from mosaic law or moralizing on the freedom from sin, was rejected as too harmless, the biblical promise of an increase of freedom had to remain unrestricted: the *lex Christi* does not release the christians from all chains, but their freedom increases in comparison to mosaic law, and this is true in the most literary sense.<sup>13</sup> The extremely papalistic interpretation of the *plenitudo potestatis papae* would expose man to a more oppressive servitude than the mosaic law had ever done. Thus, the Bible could not have intended such a pretension; the papistic assertion lacks any valid scientific fundament.

For the church this had the consequence that Ockham rejected the tendency towards a growing hierarchy within the medieval ecclesiastical administration, he even condemned it as a reversal of the original sense of the institution. Certainly, the ecclesiastical constitution is sanctioned by God because introduced by Christ himself; there are official positions and services established by God. But still the constitution of the church is to be measured in principle according to its functionality, to its efficiency in performing its task. In this respect there is no difference to the statal order. Also within the church the emergency is the prove for

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<sup>13</sup> III *Dialogus* I i 7: "Si enim Christiani quacumque servitute quo ad opera exteriora tanta vel maiori quanta fuit servitus veteris legis per legem evangelicam tenerentur, non posset lex evangelica magis dici lex libertatis quam lex Mosaica, quantumcumque liberati essent a servitute Mosaice legis. Qui enim liberatur ab uno vinculo corporali et alio equali vel fortiori constringitur, non est solutus sed magis ligatus. Cum vero lex evangelica secundum veritatem scripture divine sit lex magis libertatis quam vetus lex, per legem evangelicam Christiani neque servituti exteriori maiori vel tante quanta fuit servitus veteris legis subduntur [...]. *Ibidem*: "Merito debet dici lex perfecte libertatis, presertim respectu legis Mosaice que quampluribus sacramentis et cerimoniis vix portabilibus subjectis involvit, non tamen dicitur lex perfectissime libertatis; in perfectione enim sunt gradus: quare non omne perfectum est perfectissimum reputandum; perfectissima autem libertas in hac mortali vita nequaquam habebitur".

the functionality of the order. If the ecclesiastical official fails, other christians take over his duty: Ockham makes this clear in a self-willed application to the metaphor of organism, surpassing by far the contemporary practice:<sup>14</sup> "A complete identification of the links of the human body with the organs of the ecclesiastical body is by no means possible, even if a comparison would be valid in many aspects. For the particular functions of the human links derive from nature, in such a manner that one organ cannot replace the deficit of another in a case of emergency. But the links of the church can replace each others in many functions, even in their particular ones in a case of emergency. In the same manner laics can supply the defective and negligent and even the wicked clerics; for whereas whenever the corporation of the church is ordered perfectly – in so far as this is possible in the earthly life – different offices should be given to different persons, but when the corporation of the church has to suffer from various deficiencies by different members, then it is not inconvenient, but it is necessary, that different offices are committed to one person and that one alone has to fulfill the office of an other member" (and for that reason laics are admitted to the papal election whenever the clerics fail).

In another place Ockham becomes even more distinct,<sup>15</sup> "it would be completely foolish, – he declares – if the object of believe would regard the laics in no respect. Such is a declaration of arrogant clerics who love power, and who try to exclude the laics from the church of God to become masters of the laics within the church after having excluded the laics". Unequivocally he writes this down into the books of ecclesiastical pretentions.

We would prefer to know in more detail, how this flaming rhetoric would look like in the case of a state. But here Ockham remains almost absolutely quiet.

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<sup>14</sup> *III Dialogus* [ca. 1338/1348] *II iii 4*: "[...] respondetur dupliciter: uno modo quod sicut membra diversa in corpore humano habent quedam officia propria et quedam communia: motum enim sentire possunt omnia membra humana, percutere et portare et plura alia potest homo diversis membris mediantibus; alia autem sunt membrorum officia propria, sicut videre, audire et huiusmodi. Sic in corpore ecclesie sunt quedam officia communia clericis et laicis, et quedam propria clericis, quedam propria laicis. Eligere autem prelatum [...] ad utrosque (quia eius officium est commune clericis et laicis) spectat [...]. Aliter dicitur quod non est omnino simile de membris in corpore humano et de membris in corpore ecclesie, licet enim simile sit quantum ad multa. Officia enim propria membrorum in corpore humano ex natura sibi competunt, ita ut unum membrum defectum alterius ex necessitate quacumque complere non possit; sed membra in corpore ecclesie quantum ad multa officia, et quodammodo propria, possunt mutuo defectus suos supplere: potest enim clericus supplere vicem et defectum secularium, etiam quoad illa, que sunt quodammodo secularibus propria [...]. Sic etiam laici possunt in multis supplere defectum et negligenciam ac etiam maliciam clericorum. Licet igitur quantumcumque corpus ecclesie esset optime dispositum – quantum permittit status vite presentis – diversa officia diversis committi debeant, quando tamen corpus ecclesie diversos defectus in diversis membris patitur, non est inconveniens, immo necessarium, quod uni diversa committantur officia et quod unum membrum alterius fungatur officio".

<sup>15</sup> *I Dialogus* [ca. 1332/1334] *VI. 100*: "Dicere causam fidei vel dei nullo modo spectare ad iudicem secularium vel laicos, omnino esset insanum; et est verbum clericorum avarorum et superbiorum, qui ideo ab ecclesia dei laicos conantur excludere, ut – ipsis laicis exclusis – possent ab ecclesia laicorum domini reputari [...]. Causa igitur fidei et dei secundum istos spectat ad laicos. Et sicut deus est deus clericorum, ita est deus laicorum. Sic causa fidei, que spectat ad clericos, etiam spectat ad laicos".

Nevertheless he denies a mythically superelevated position to the emperor as a ruler of the world, he denies to his tutor, the Roman emperor Louis the Bavarian, a position, that does not impose clear limits on the immediate authority of command through a commitment to the common best.<sup>16</sup> "The dignity of mankind would suffer from the fact that all be slaves of the emperor and in the same manner it would suffer, if the emperor could treat all free man like slaves". What else injures the dignity of man is not said, neither here nor elsewhere in the *Dialogus*. Ockham doesn't develop a theory of constitution, and even less a theory of constitutional rights, but it seems to me that at least he lesses open the possibility of transforming and translating the demand for freedom from the ecclesiastical sphere to the profane one.

I stop here. Ockham was no preacher of civic liberties in the feudal epoch, he did not anachronistically omit centuries, but perhaps more intensively than other medieval theoreticians he has clearly thought about lordship and freedom, although as such this was not on the *agenda* of political theory of his times. The grasp of papacy to universal claims not only in ecclesiastical but also in profane affairs turned the topic for some time into a surprisingly actual issue. From the onsets of tradition the English Franciscan at the court of Lewis the Bavarian had developed a theoretical design, that to us seems to be surprisingly modern, which at least treats problems in a way, that became dominant only a long time later. If Ockham did thus not become a prophet in the desert (and a prophet without a congregation), but rather measured the inner possibilities of his topic, he proves in the comparison with the interests and the questions of his contemporaries what a theoretical political reflection could achieve and can achieve. At the same time, of course, it turns out, that reflections over politics do not immediately change politics itself. But to talk about the effects of the concept of freedom in society would be the topic of – at least – another lecture.

**Names** (in the sequence they are mentioned in the lecture)

Karl Bosl	Jean Quidort of Paris
Herbert Grundmann	Thomas Aquinas
Wilhelm Berges	Aristotle
Marsilius of Padua	Pierre Flotte
William of Ockham	William of Nogaret
Augustinus of Ancona	Marsilius of Padua
Alvarus Pelagius	Richard Scholz
John Wyclif	William of Ockham
Alois Dempf	Michael of Cesena
Boniface VIII, pope	John XXII, pope
Henry of Cremona	Pierre d'Ailly
Aegidius Romanus	Jean Courtecuisee
Philip (IV) "the Fair"	Juan de Segovia
Magister Gratianus	Lewis (IV) "the Bavarian"

<sup>16</sup> *III Dialogus II ii 20*: "Dignitati enim humani generis derogaret, si omnes essent servi imperatoris. Et ideo derogaretur eidem, si imperator in omnibus posset tractare liberos sicut servos".