Law and revolution

Bruno Cariou on February 11, 2020 by Elements of Racial Education

Those who are skilled in political affairs bear witness to the distinction between

ruling by law and ruling by tyrannical force.

Cyrille Loukaris (1571-1638) - Patriarch of Alexandria (1602 to 1621) under the name of Cyril III.

At the end of the Middle Ages […] in Western Europe, a series of modifications took place which allowed and required both an administrative system that was not yet called bureaucracy, nor even offices: regrouping of the territory and strengthening of royal authority, fixing of the king's residence, establishment of permanent fiscal resources, discovery of printing and other technical progress, among which those of artillery, destroyer of castles, played a significant role. By a curious irony of fate, the great gunner is called Bureau.

Alfred Sauvy, The Bureaucracy

[…] The legislator has surrounded the married woman with effective protection. Isn't the

main purpose of civil laws to protect the incapable?

Jean-Baptiste-Victor Coquille, The jurists: their political and religious influence

In feudal times, society was dominated by an order of warriors whose members were linked to each other in homage and maintained man-to-man relationships. Political power was patrimonial, hereditary, but, due to the existence of hundreds of independent and competing seigneuries, fragmented and, due to the regular redefinition of the borders of these political units according to wars, alliances , marriages and inheritances, unstable. From the 12th century, under the effect of these wars and these alliances, the number of lordships gradually reduced until there was only one left, which could thus constitute itself as a sovereign political authority. , monopolistic.

The "state", as it is called from 1376, has the double monopoly of fiscal resources (the sovereign political authority reserves the privilege of making a compulsory pecuniary levy on the resources of natural or legal persons, this which allows him to pay his faithful and his servants, no longer in land, but in money) and physical constraint (the sovereign political authority reserves the privilege of the use of military force and, to levy the tax , of that, if necessary, of the armed force) (1). The monopoly of physical constraint allows the State to defend what, from the 12th century, is presented, for the defense of particular interests, as "common good", while the fiscal monopoly allows it to finance the means. ensure the conservation and, if possible,the increase of the "common good" (2).

From the military and fiscal monopoly results political centralization (the lords are no longer sovereign in their lands, which, according to the jurists, do not even belong to them, the king being the owner of all the goods of his kingdom) (3), judicial (the lords are gradually deprived of their right of high and low justice, the competence of their justice is more and more obliterated by the charters and the royal ordinances, the codes of laws of the various lordships are standardized, until that Louis IX proclaims his Establishments compulsory for all parts of France and imposes their application in the entire scope of all patrimonial jurisdiction) and administrative (the municipalities are obliged to submit their accounts to the section of the king's court who takes care of finances) who, in turn,gives rise to institutionalization, a process by which power is dissociated from the one who exercises it as a prerogative and incorporated into a state institution, that is to say an entity which "constitutes itself as a structure differentiated from the rest of society (and not reduced to the individuals who animate it at such and such a historical period) ”(4). The distinction which is thus formed between a political sphere and a social sphere and which finds its origin in the separation that the Church has established between the temporal power and the spiritual power is coupled very early with a differentiation of the political sphere in power. regal and in judicial-administrative power, accompanied by a metaphorical dissociation between the physical individuality of the king and the royal function, between the natural body of the king and the political body of the king,between the king and the Crown, of which he is presented as the “vassal” (5). On the one hand, the more, through the law, the royal power is consolidated, the more, paradoxical as it may seem, the king is dispossessed of his power by the administration, which he himself created in his own "family", in his own "house", by introducing there those who are specialized respectively in legal science and those who are specially responsible for administration: the jurists and the ministerial. On the other hand, the preponderance attributed to the political body of the king over his physical body, instead of resulting, because the former is embodied in it, an even greater sacralization of the king, results in the exaltation of the permanence and continuity of the abstract entity in which political power resides,beyond the death of those in whom this entity is momentarily manifested, the time of a reign.

The modern state, to use the definition provided by Max Weber, is "a political enterprise of an institutional character when and in so far as its administrative management successfully claims, in the application of regulations., the monopoly of legitimate physical constraint "" within a determinable geographical territory "(6) (emphasis added). To develop this definition and to come to those who form its cogs, we can say that, “[first] of all, the power of coercion is not exercised arbitrarily but, on the contrary, is found legally. codified. The governors and their agents adopt, according to determined procedures, the legally binding measures; they ensure its implementation and resort to coercion if necessary, while respecting certain rules. All these prerogatives are exercised within the legal framework […] which provides for the distribution of powers between them and prioritizes the applicable legal rules, so as to avoid conflicts of standards ”; then,"These rulers and these agents do not act by virtue of their own will but in the name of an abstract entity of which they are only the representatives" (7); that, to quote Norbert Elias, the “simple performers”: “simple performers of an administrative apparatus with multiple and specialized functions” (8) and which makes them interdependent. "[T] he closer and dense the interdependencies are between individuals, the stronger the awareness they have of their autonomy, the stronger also is their will to differentiate themselves from others" (9) and body. Their internal struggles in no way affect their gregarious cohesion. Most of them from the bourgeoisie, they consider themselves and proclaim themselves equal to the nobility.The king maintains the conflict between the bourgeoisie and the nobility in order to ensure that these two groups do not unite against him and thus maintain the "balance of tensions" (10) necessary to preserve his monopoly (11 ). The modern state is therefore not an appendage or an instrument of a ruling class, but the result of the increased interdependence of various social groups (12).

Between the state, the law and the bureaucracy, there is a “functional reciprocity” (13). “[P] as administration without a State, that is to say without a process of 'institutionalization' transforming the conditions for the exercise of political domination, confirms a professor in public law who at the same time corrects us on the function real administration, which many imagine is to manage public affairs; but neither is it a State without an administration, that is to say without the establishment of an apparatus in charge of framing and regulating social relations ”(14). The administration is therefore the government considered, not in its administrative action, but in its social action. “[The] administration thus appears as the 'state apparatus', that is to say the organ responsible for implementing, managing,instrument the power of the State by projecting it into the social field ”(15). In modern times, the state exercises the "monopoly of legitimate physical violence" through the police, while, through the administration, it exercises a constraint which is at the same time legal, material and psychological; this is all the more effective because it "is not always directly and immediately perceptible: the administration also seeks to limit the use of force by manipulating behavior and it often practices the retention of its prerogatives. , especially in the economic and social field. However, despite appearances, the constraint always remains present in administrative action: the work of ideological disseminationtakes place, when it is taken over by the administration, against a background of latent violence, which gives it a very particular color ”(16) (emphasis added). The effectiveness of the constraint at the same time legal, material and psychological which the administration exerts is all the more formidable as this one advances masked: "by the play of institutionalization, the authority is henceforth stripped of everything. character of personal allegiance; its exercise refers to an abstract order of powers and depends on the observation of pre-established statutory rules ”(17). The administration is not "[the] face of the state" (18), it is the mask.

The pure type of legal domination is bureaucratic administrative direction, the exercise of which is characterized by the imposition of impersonal rules, supposedly objective and just as supposedly rational and, in any case, decided according to specific general principles derived from a abstract law (19). The law must be seen […] not on the side of a legitimacy to be established, but on the side of the subjugation procedures that it implements ”(20).

In fact, it is not only "[t] he legal system [but also] [...] the judicial field [which] are the permanent vehicle of relations of domination, of polymorphous techniques of subjugation" (21). It is quite possible to govern tyrannically - we prefer to say "despotically" - by law and by bureaucracy, either directly (by ordinances in the first case, by administrative texts, in the second case), or indirectly (by "[... ] [of] institutions, [of] procedures, analyzes and reflections, [of] calculations and [of] tactics ”, through all of which“ we can constitute, define, organize and use the strategies that individuals , in their freedom, can have with respect to each other "(22); through the" set "of which" [is] this very specific, much more complex form of power,which has as main target the population, for major form of knowledge, political economy, as essential technical instrument the security devices ”(23).

In this description of the genesis of the modern state as it has been masterfully reconstructed by Max Weber, Norbert Elias and others, the law appears as an important factor, but nevertheless subordinate to the others; legalization of the state, as a consequence of political centralization and institutionalization.

In 1983, the jurist, legal historian and specialist in US Soviet law Harold J. Berman sparked a strong movement of interest in Anglo-Saxon academia for having published a work that questioned the theory, which was unanimously accepted. until then, according to which modern legal systems were born in the 16th century, asserting on the contrary that their origin was to be found in the canon law developed in the 11th century and, what is more, that the Church, by creating "the first system modern Western legal system ”, had given birth to“ the modern Western state, of which the first example, paradoxically, was the Church itself ”(24). Law and Revolution, although it does not do good to touch the dogmas that reign in an environment as conservative as that of the history of law, has not been the subject of unfavorable reviews and even the medievalists who criticized it for having taken some liberty with certain historical details (25) did not dispute the validity of his central thesis (26).

Twenty years later, when Berman had just followed up Law and Revolution: The Formation of the Western Legal Tradition , entitled Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition (Cambridge, MA, Harvard University Press, 2003; [fr. Ed .: Law and Revolution: The impact of Protestant reforms on the Western legal tradition, Fayard, Coll. “The Forty Pillars”, 2012), the Constitutional Commentary newspaper declared that the book had become “the necessary starting point for research in this area” (27). Meanwhile, Law and Revolution: The Formation of the Western Legal Tradition had been translated into German, Chinese, Japanese, Russian, Polish, Portuguese, Spanish, Italian, Lithuanian and French. ( Law and revolution , Bookstore of the University of Aix-en-Provence, 2002). In France, the book went almost unnoticed - the second volume hardly aroused more interest.

The one hundred and seventy-five years that separate the holding of the Council of Reims (1049), where Leo IX had excommunicated the Bishop of Compostela for having assumed the apostolic title, to that of the Fourth Lateran Council (1215) saw the setting implementation of what Church historian Augustin Fliche (1884-1951) apologetically qualified as “Gregorian reform”. Although Gregory VII, pope from 1057 to 1085, was neither the initiator nor the one who brought it to completion, the measures he took and that his legates implemented under his leadership and the prestige that He knew how to give back to the papacy to a large extent justify the application of the Gregorian adjective to this reform movement. His goals were threefold: 1.The affirmation of the power of the pope over the emperor (28) on the basis of canon law (29) and the reaffirmation of the authority of the pope as head of the Church by the establishment of a centralized control structure of the Churches, the establishment of the college of cardinals, in possession of electing the pope, around 1150 and the formation, from the eleventh century, of what Max Weber called the clerical bureaucracy, closely linked to development, favored by the papacy - which recruited there specialists, especially lawyers -, urban schools and universities; 2. The moral and disciplinary reform of the clergy, in particular by the prohibition of simony and the marriage of priests and the fight against Nicolaitanism; and 3. The liberation of the Church from the grip of the laity,by contesting the intervention of the temporal authorities in the appointment of bishops, a contest which triggered the famous quarrel of the investitures (30). The principles of the papal theocracy which the "Gregorian reform" intended to institute were formulated in the bullLibertas ecclesiae , promulgated by Gregory VII in 1079 and in Dictatus papae , a collection of twenty-seven propositions published by himself in 1075 and which constitutes "the true manifesto of the reform", because it "establishes the primacy of the The Roman Church, enumerates the papal privileges, like those of the representatives of the Pope, defines the powers of the Holy Father vis-à-vis clerics and princes, fixes the obligations which flow from these powers and concludes by refusing the name of Catholic to all those who do not want to follow these precepts ”(31). The basis on which the Pope relied to establish himself as the holder of absolute authority both over the Church and over the sovereigns was the jus canonicum(32), the internal law of the Church, which had been established gradually since the 1st century of our era and whose papacy would promote the development as its standoff with the princes would harden (33). For the first time in Europe, law was presented as the ultimate source of power. This is precisely why Berman sees in the "Gregorian reform" the birth certificate of what he calls the "Western legal tradition".

“By 'tradition', explains Berman, I mean the feeling of continuity between the past and the future, the partnership, as Edmund Burke said, of generations […] traditionalism […] is the dead faith of alive, tradition is the living faith of the dead. This is the simple repetition of the past, adherence to the past for itself, historicism, as opposed to what I would call historicity, the adaptation of experience to the solution of new problems, a feeling of historical continuity, of evolution ”

“By 'the West', he explains, I mean the culture of the peoples of Western Europe, who from the late eleventh to the early sixteenth centuries were all subject to the papal Roman Catholic hierarchy. and which, from the 16th century to the 20th century, witnessed a series of revolutions, each of which had repercussions throughout Europe; and I also mean non-European peoples who were ultimately subjected to Western culture through colonization or, as in the case of Russia, through religious, political and cultural affinities and exchanges ”

“By 'legal', he continues, I mean the systems of positive law and legal science which have developed in the West since the 12th century, legal systems which have common historical foundations, common sources, common concepts. . The first legal system of this type was the canon law of the Roman Catholic Church ”. At that time, whether in the Frankish Empire, in Anglo-Saxon England or even elsewhere in Europe, no clear distinction existed between legal norms and procedures on the one hand and religious rules and practices. , moral, economic, political on the other hand. There were certainly laws and sometimes collections of laws published by kings; but there were no professional lawyers or judges, no professional jurists, no law schools,no law books or legal science. Promulgated in part by the papacy and councils and enforced by a hierarchy of ecclesiastical courts, canon law, before the rise of Protestantism, governed all members of Western Christendom, from England to Poland and from Scandinavia to Sicily and provided the model for the systems of royal law, feudal law, urban law and commercial law which arose and gradually developed during the time. For some four hundred years, these secular legal systems coexisted with canon law, in parallel, in all the territories of Europe. With the Protestant national revolutions of the 16th and 17th centuries, the various coexisting jurisdictions were nationalized; However,the existence of jurisdictions and a plurality of legal bodies within each country remained an important feature of Western legal tradition, at least until the latter part of the twentieth century ”(34).

Whether the "Gregorian reform" was a success or not in the religious order, the fact is that, as one can already foresee from reading the passage which has just been quoted, the upheavals which it caused in the moral, social, economic, cultural and political, were so profound, not only in a relatively short time, but also in the long, the very long term, that Berman did not hesitate to rename it "papal revolution" (35) . “Calling this total transformation 'Papal Revolution' does not limit its scope to issues such as the Pope's struggle for control of the Church and for the liberation of the Church, under the rule of the papacy, of secular rule, but, on the contrary, encompasses all the interrelated changes that took place at that time.The new papal concept of the Church, as Joseph R. Strayer said, 'almost required the invention of the concept of the State' ”(36).

The revolutionary idea behind the "Gregorian reform" was that there was a clear distinction between what constituted law and what did not constitute law and - whereas until then it had been a question of " keep everyone their right ”- that the law was an integrated body of rules intrinsically capable of growth. The new legislation was presented as a reinterpretation of the old legislation and its historicity was related to the notion of the rule of law over political power and, therefore, of those who were specialized in the science of law over those who held power. political authority. These were, in the papal camp, specialists in canon law and, in the royal camp, jurists. On the surface, “[a] ndis that the [first] arrived by the doctrine of Saint Thomas,until assimilating secular power to matter necessarily condemned to obedience, and pontifical power to the spirit, the first, intoxicated with the texts of Justinian and the old Roman jurisconsults, represented the emperor as the living law, as incarnate right, like justice made visible in a man, like the king of kings on earth, image of the King of heaven ”(37). Nevertheless, the jurists (38) and the canonists were cut from the same block: many of them received the same training (the jurists were often clerics), studied and taught in the same universities and influenced each other (39 ), to the point of having as a common maxim "natura id est deus" (40) ("Nature, that is to say God), in which one should above all not" smell some pantheism "(41),"We should not discern any trace of pantheism" (42). The popes, who promulgated an important portion of canon law, were for many of them jurists (43) ("these upstarts, arrogant as soon as born") (44), which no doubt explains why civil procedure was largely influenced, especially from the end of the 13th century, by ecclesiastical procedure (45). At the end of the "Middle Ages", most of the bishops, including those of Rome, were, not theologians, but jurists - it is true that the salary of a jurist was five times that of a theologian ( 46).which no doubt explains why civil procedure was largely influenced, especially from the end of the 13th century, by ecclesiastical procedure (45). At the end of the "Middle Ages", most of the bishops, including those of Rome, were, not theologians, but jurists - it is true that the salary of a jurist was five times that of a theologian ( 46).which probably explains why civil procedure was largely influenced, especially from the end of the 13th century, by ecclesiastical procedure (45). At the end of the 'Middle Ages', most of the bishops, including those of Rome, were, not theologians, but jurists - it is true that the salary of a jurist was five times that of a theologian ( 46).

In short, the canonists and jurists served different masters, respectively the papacy and royalty, but, beyond that, their common master was law, on which would be founded, in spite of or because of their quarrels and their struggles, the 'Modern state: the rule of law.

"The Rule of Law is an expression of the Modern State conceived as a legal system" (47). In a state governed by the rule of law, society is subject to a legal rule, the government is required to act in accordance with a Constitution and the acts of the administration are subject to judicial control, all situations which contribute to legalization and legalization of the management of public affairs and the very exercise of political power as well as the anarchic proliferation of administrative jurisdictions and laws (amendments, sub-amendments, procedural motions, etc.).

Despite the overthrow or the substitution of monarchies of divine right by political organizations of human right in European countries from the 19th to the beginning of the 20th century, the theological vision of political power is more informative than ever, rationalized to the point of being unrecognizable. , republican “governance”, “governmentality” - which one could as well call, by a play on words based on the deeply pastoral character of the thing, “government (my) ment -, in the secular ideology of which the famous citizens would immediately recognize the Abrahamic dogmas hidden there, if they were required, like their ancestors, to take catechism courses (the need to recycle the morals and dogmas of Judeo-Christianity was, it is necessary say it clearly,the deep and essential reason for "dechristianization").

The link between the monarchy of divine right and the republic is precisely the rule of law, defined apologetically as "the principle according to which all persons and institutions are subject to a law which is equitably applied and implemented and must render it counts "or as" the authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle that all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes ”(Oxford English Dictionary, 2018); in short, the situation of a company subject to a legal rule and, even shorter, government by law.First enunciated in Europe in the Magna Carta and subsequently recognized both by the supporters of absolutism, be it in the form of the “divine and natural laws” to which all the princes of the earth are subject, and by his enemies , the monarchomaques, this pseudo-principle was crowned under the republic (48).

The rule of law finds its completion in natural law (49), a set of rights or rules supposedly inscribed in the nature of man, in the first rank of which civil liberty and equality and, we add without laughing, “apart from any conventional institution” (50) - without laughing, because we do not seem to realize that, if it is “[recognized] as an ideal right” (51), it cannot be that by a… institution.

The Decretum Gratiani(v. 1140) says (52): “Natural law is contained in the law and the Gospel (“ Jus naturale est quod in lege et evangelio continetur ”); but all that is in law and in the Gospel does not belong to natural law ”(53). To illustrate his point, he paraphrases the Gospel Golden Rule ("Whatever you want men to do for you, do the same for them, for it is the law and the prophets", Matthew 7:12 ) (54). It will be included in the Declaration of the Rights of Man and of the Citizen of 1789 (55). From ecclesiastical law, natural law thus passed into secular law in the form of "human rights". The rule of law is its protector and guarantor, let's understand, less apologetically,that he submits to all kinds of petty and oblique subjugation the rare individuals who are free by nature, while leaving the field open to the masses of slaves in the Aristotelian sense to put into practice the anarchist maxim of Thélème and Augustine d 'Hippo, knowing that, like the woman, if they don't know what they want, they want it furiously and can want anything except overthrow the institution that grants them the aforementioned privilege.

Since the work of Herbert Spencer, Emile Durkheim, Karl Marx and especially Max Weber (56), we know that there is a correlation between the genesis of legal systems and the genesis of the modern State; what is fundamental in Berman's analysis is, as we have shown in the preceding paragraphs, that it fully brings to light the anteriority and the primacy of the process of formation and development of the so-called Western legal systems on that of the modern State and, this is the second fundamental point to remember, brings out with as much clarity the Christian theological roots of these legal systems and of this State; how the “Western legal tradition” should be compared, not only with “governmentality,term by which Michel Foucault designates the “governmentization” of the State which took place in the 16th century as a result of a sort of fusion between the attributes of pastoral power, “the new diplomatic-military technique and, finally, the police "(57) (in the sense of" administration "that this term had at the time) and which, a remark which is not uninteresting either," was all the same the phenomenon which allowed the State of surviving ”(58), but also with the theory of the two bodies of the king that, as Ernst Kantorowicz shows, the Elizabethan jurists of the sixteenth century tied up from massive borrowings from Christology, with the aim of replacing the right to faith as the basis of royalty (59) and to which the theory of modern sovereignty owes a great deal. Like Foucault and Kantorowicz,Berman shows that this secularization is not what the traditionalist current or current sociology would have us believe, namely the progressive elimination or degradation of any religious element, but a translation - almost in the sense it has in the occultism of transporting the soul or soul of a man into another body, often a corpse (60) - Christian values, Christian concepts, Christian institutions outside the Christian institution (61). The doctrinal system of the "papal revolution" was Roman Catholicism, that of the Reformation was Lutheranism; the English revolution was shaped by Calvinist theology, the French revolution by deist and rationalist assumptions, the American revolution by Protestant beliefs, the Bolshevik revolution by fundamental atheism, but,religious or anti-religious, all these revolutions had for fuel messianic hopes in all that they have of materialist, earthly, Old Testament (62).

Very well, it will be said, the roots of modern Western legal institutions and concepts go back to the "Gregorian reform", which enabled the Western Church to establish its political and legal unity and its independence from -vis of kings and feudal lords. From this upheaval have emerged on the one hand integrated legal systems and on the other hand the State, the State, otherwise - the term would be anachronistic - of law, at least based on law, that is to say , in the final analysis, religion, in this case Judaism and Christianity (63). The "Western legal tradition" has been interrupted periodically by great revolutions,each of which attacked the pre-existing legal system in the name of a religious or quasi-religious vision and each of which ended up creating new legal institutions based on this vision; transformed, the “western legal tradition” has nonetheless preserved its essential characteristics, while the State, modeled on the centralized and bureaucratic institutions of the Roman Catholic Church, emerged strengthened from each of the revolutions which officially aimed at 'tear down. "The movement of history, remarks Jacques Ellul following Tocqueville, does not precipitate the fall of the State but on the contrary reinforces it: this is how all revolutions contribute to making the State more totalitarian" ( 64).the "western legal tradition" has nonetheless preserved its essential characteristics, while the State, modeled on the centralized and bureaucratic institutions of the Roman Catholic Church, emerged strengthened from each of the revolutions which officially aimed to destroy it. . "The movement of history, remarks Jacques Ellul following Tocqueville, does not precipitate the fall of the State but on the contrary strengthens it: this is how all revolutions contribute to making the State more totalitarian" ( 64).the "western legal tradition" has nonetheless preserved its essential characteristics, while the State, modeled on the centralized and bureaucratic institutions of the Roman Catholic Church, emerged strengthened from each of the revolutions which officially aimed to destroy it. . "The movement of history, remarks Jacques Ellul following Tocqueville, does not precipitate the fall of the State but on the contrary reinforces it: this is how all revolutions contribute to making the State more totalitarian" ( 64).does not precipitate the fall of the state but on the contrary strengthens it: this is how all revolutions contribute to making the state more totalitarian ”(64).does not precipitate the fall of the state but on the contrary strengthens it: this is how all revolutions contribute to making the state more totalitarian ”(64).

All this is therefore very good, but, it will be objected, does not it remain that, from the point of view of the theory, there is a radical contradiction between the law, foundation of the rules governing the relations of the men in the same society and the revolution, sudden and violent change of political and social institutions? “In law,” Berman explains, “sudden, large-scale change is indeed 'unnatural'. When this happens, something must be done to prevent it from happening again ”) (65); he never even says explicitly that "law is revolutionary". Even from an empirical point of view, is there not more conservative in the worst sense of the word than a jurist or an official, this "automaton of law", "in which we insert, at the top, the fact? and its costs,so that he spits out the verdict and the motives below ”(66); more rigidly attached to conformism than the class to which they belong and in which, welded to each other, they reproduce identically? No doubt because of the conviction that there is an intrinsic incompatibility between law and revolution, few authors have confronted the problem.me. and the few that did, did not solve it convincingly. “What is revolutionary about the legal construction of modern states? », Title of the first chapter of a work which takes as a starting pointLaw and the Revolutionin order to stand out better later (67), leaves the reader unsatisfied (while explaining the differences between cities and pre-modern decentralized states and the modern state and highlighting all that distinguishes the Roman law of ecclesiastical law, which, according to Berman, was moreover built, not on, but against, the first, which is correct on condition of specifying which Roman law is in question in occurrence) (68) and, in any case, only proposes to explore the revolutionary aspect of the revolution. The reflections of the professor of law and social sciences Paul W. Kahn on this question are already deeper, in that he identifies the common point, linking it, between revolution and law, or to put it better, the dynamic tension which exists between the two: the notion of freedom. Freedom,one of the two constitutive characteristics of the subjective personality in Kant's doctrine (69), which will be implemented by the French Revolution in its declaration of human rights, is, at the same time as one of the fundamental principles of (natural), the very spirit of the revolution (70). In the modern imagination, the revolution, carried out in the name of freedom, brings freedom, which the law guarantees and even imposes by laws. Freedom, according to Montesquieu's famous phrase, "is the right to do whatever the laws allow" (71). "The revolution, Kahn can therefore suggest on these bases, is the actualization of a freedom that the law considers as having already been realized and therefore gone,"or potential and therefore only appropriate at a future moment […] law begins and ends in the most unnatural act of all: revolution. The time of law is the time that passes between two revolutions ”(72). In short, to broaden this proposition, one could propose that, just as, according to Clausewitz's aphorism, politics is the continuation of war by other means, (natural) law is the continuation of revolution by other ways. It would be the continuation of the revolution in a moderate form. Any revolution is, paradoxical as it may seem, conservative, as the etymology of the word suggests (according to Clausewitz's aphorism, politics is the continuation of war by other means, (natural) law is the continuation of revolution by other means. It would be the continuation of the revolution in a moderate form. 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To find an author who bluntly asserts that the revolution is revolutionary, we must turn to the writer, nineteenth-century French journalist Jean-Baptiste-Victor Coquille (1820-1891) who was himself a jurisconsult and who, in a work in a pamphleteous tone (74), which, despite the fact that,because of a violent Christian bias which leads him to conceal the central role of the papacy in the legalization of European society and to utter untruths as enormous as that according to which Roman law did not know the principle of property private, he opposes, like Good to Evil, Christian law to Roman law, without making the distinction, which he is not unaware of, between Roman law prior to the Law of the Twelve Tables, of Stoic inspiration and under the pressure of the plebs and the written law which emerged from it under the impetus of the school of jurisconsults, which, philosophically proceeding from the Stoics, founded civil law on reason and established jurisprudence as a moral science (75 ), is crossed by very penetrating views on the historical function of law. First,he recalls that "[i] n all revolutionary movements, the adhesion of law schools is seldom delayed" (76); at the same time he underlines that, at least in Germany and Italy, "it is in law schools that [...] secret societies are nourished" (77) and that, moreover, "[t] he of the law professors of Ingolstadt, Weisshaupt and a few others, who organized Illuminism at the end of the [eighteenth century], and prepared, by their learned organization, a framework and leaders for all future insurrections ”; that the Italian revolutionary Mazzini was a lawyer, like Cromwell, Robespierre, Sokolov, Kerensky, Lenin, etc. (78); in what way it is, if one may say so, legitimate to speak of a "revolutionary class of jurists" (79). Beyond persons, he invokes, to explain the revolutionary nature of law,first of all the simple fact that "[all revolutions, all revolts invoke the law" (80) and then what Berman calls its evolution ("ongoingness") - a term which is perhaps not superfluous to specify that, in medicine, it designates the evolutionary potential of a disease: "Social development takes place on a preexisting background [while,] [the] revolutionary school suppresses peaceful, regular movement, subordinated to the elements of 'order and stability, leaving only an absolute principle of change' (81). “The law, observes the politician Henri-Auguste-Georges du Vergier de La Rochejaquelein (1805-1867) sixteen after Karl Marx had coined the expression in“ The Holy Family ”(1844), is a permanent revolution” (82) .all revolts invoke the law ”(80) and then what Berman calls its“ ongoingness ”- a term of which it is perhaps not superfluous to specify that, in medicine, it designates the evolutionary potential of an disease: "Social development operates on a pre-existing background [while,] [the] revolutionary school suppresses peaceful, regular movement, subordinated to the elements of order and stability, leaving only an absolute principle. change ”(81). 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At the end of the twentieth century, the "Western legal tradition" "is going through a revolutionary crisis greater than any that it has known in its history, which some believe is almost coming to an end" (83). According to Berman, it is due to "our" ignorance "of" our "legal tradition; no, contrary to what the reader might think, “our” does not refer to his legal colleagues, but to the general public, the best proof being that “Le Droit et la Révolution” is intended specifically for the general public and not only or even specifically to his fellow lawyers, of whom Berman may not have noticed that, in “Western” countries, more and more of them are not “Western”.It is not enough to say that “the questioning of the [Western] legal tradition as a whole and not only of some of its particular elements or aspects […] manifests itself above all in the confrontation with non-Western civilizations. and non-Western philosophies ”, it should be added that it would not have been possible without the prior infiltration of the“ Western legal tradition ”by members of“ non-Western civilizations and [therefore] by non-Western philosophies ”, in particular that from which emerged, in the fourth century before our era, legalism (it should be added that it would not have been possible without the prior infiltration of the “Western legal tradition” by members of “non-Western civilizations and [therefore] by non-Western philosophies”, in particular that from which emerged, in the 4th century BC, legalism (it should be added that it would not have been possible without the prior infiltration of the “Western legal tradition” by members of “non-Western civilizations and [therefore] by non-Western philosophies”, notably that from which emerged, in the 4th century BC, legalism (Fa Jià ), a doctrine advocated by senior officials and magistrates aiming at "the primacy of the law in opposition and in contradiction to the old hierarchical rites of the liof the Confucianists ”, to“ make the law the nerve center of social order ”(84). "The West itself has come to doubt the universal validity of its traditional view of law, especially its validity for non-Western cultures," when, for their part, non-Westerners do not doubt a single moment of the universal validity of their traditional view of law. Berman, for his part, has no doubts that the crisis in the “western legal tradition” will find its remedy in its cause. However, twenty years later, he prescribed, with messianic overtones (85), to complete the intensive study of the “Western legal tradition” by “the formation of a world legal tradition” (86).

In contrast, the white racist patriot can only call for the liquidation of the "Western" legal tradition, because, reading Berman's work, it is difficult not to rank it among the processes. which caused the white communities to fall into the decline into which they continue to be engulfed. The white racist patriot will therefore study it, not, like Berman, to find ways to save it, but to enrich his knowledge of the causes of the generalized chaos which results from this downfall and thus to be able to fight more effectively, at his own modest cost. level, against - against its external manifestations as against what, in it, can possibly give rise to the catagogical suggestions with which the current environment is saturated. He will also find very enlightening insights into bureaucratization,of “neo-liberal” inspiration, of “Western” society as a whole as well as on the central role that law has, a law strongly inspired by Soviet (revolutionary) law (hence the quotation marks of “ neo-liberal ”) (87), in this process, which, because of the necessity, not to say the obligation, to use“ new technologies ”, to accomplish the most trivial acts of daily existence , now affects not only the professional life of those who do not have the status of civil servant, invaded as it is by managerial standards, but also the private life of everyone, civil servant or not (88), dotted with '' it is, often with the fairly enthusiastic consent of those concerned, that they reassure, secure,flattering ("respect for your privacy is our priority"), procedures and formalities.

Contrary to the point of view of sociology, of which we are quoting exceptional representatives here, everything therefore indicates that this process, far from being undergone by the "populas" (the analysis that La Boëtie made at the end of the 16th century century of voluntary servitude is still essentially valid) (89), is willed, willed and imposed from above and willed more or less consciously and in any case accepted by a “populas” so little made for life - not that the members of the pseudo-elite are more so - in what it has immediate, qualitative, transcendent, incandescent, that it supports to experience it only in a " iron cage ”(90). The modern redneck, that is to say the civilized redneck, willingly manages "his" life as if it were a business,all the more so since he is not “his own boss” and is frustrated at not being so, perhaps by a sort of compensation in the psychoanalytic sense.

Where sociology and, with it, academic historiography “believe that history is only made by the men who are in the foreground and determined by the most obvious economic, social and political factors, cannot see and do not seek other explanations ”(91), others, who, aware that history includes a third dimension,“ underground ”, seek, to the chagrin of the forces operating behind the scenes, to the to explore and, because this dimension escapes the positive means of investigation and because, under these conditions, it is easy to indulge in the imagination, do not delay, to the great relief, so to speak, of these forces, either to get lost or, in the best case,to focus on societies of which we are so precisely informed of the ideology and "works" that they are no longer secret except in name, on figures whose part of the machinations have been so widely documented that they are almost become public figures. So we proposed to shine the spotlight on the underground action of two types of people who are "shadow men" in the almost literal sense: jurists (the United States has nearly a million and a half of magistrates, that is to say one for every three hundred inhabitants and, as one would expect, more and more magistrates, as in most of the "western" countries, formerly known as robins and "Administrative officials" (92),some of the "senior" may be part of this "black cabinet" which a leading French politician had mentioned on television in 2017 and to which one of his colleagues has just alluded in a television news. Their complicity, detected and denounced with virulence by Malesherbes (1721-1794) (93) himself a magistrate, has never wavered over the last centuries; neither did their influence, to such an extent that one could say, not without reason, that the administration had taken power (94).has never wavered in recent centuries; neither did their influence, to such an extent that one could say, not without reason, that the administration had taken power (94).has never wavered in recent centuries; neither did their influence, to such an extent that one could say, not without reason, that the administration had taken power (94).

Performers (means those who pull the strings )? Maybe and even without a doubt, but terribly evil performers. To bring down a person perched at the top of a large ladder whose feet are cemented, it is best to saw off the first rung.

The introduction to the first volume of Berman's work, which we publish below, constitutes the first part of an introduction to a presentation of this “governmentality” which has as its “old model” this pastoral power which itself plunges its roots in that oriental despotism which was examined in the third part of "Panic Power"; it will be completed by an examination of the medieval theory of the two king's bodies as a model of the concept of sovereignty as well as by a detailed study on the birth of the “state nobility” - which, with its clientele, currently represents in France, if we are to believe the figures of the "Ministry of the Interior", more or less 8,657,326 adults (95).

This book tells the following story: There was once a civilization called "Western"; it has developed specific “legal” institutions, values ​​and concepts; these Western legal institutions, values ​​and concepts have been consciously passed down from generation to generation and have come to constitute a tradition; the western legal tradition arose out of a "revolution" and, from century to century, has been periodically interrupted and transformed by revolutions; in the twentieth century, the western legal tradition is going through a revolutionary crisis more serious than any that it has known in its history, which some believe is nearing its end.

Not everyone will want to listen to this story. Many will find his plot unacceptable; they will take it for a fiction. Some would say that there has never been a Western legal tradition. Others will say that the Western legal tradition is alive and well at the end of the 20th century.

Even those who will recognize that the story in question is true and that it should be taken seriously will not agree among themselves on the meaning of the terms "western", "legal", "tradition" and of "revolution". Part of telling this story is to discover the meaning of these words in a descriptive context, that is, in their temporal dimension. From this point of view, it would be futile to attempt to define them beforehand. As Friedrich Nietzsche said, nothing that has a history can be defined. Nevertheless, an author of a non-fiction work has an obligation to reveal some of his preconceptions from the start. At the same time, it may be useful to try, in a preliminary way,to dispel some of the misunderstandings that I think may arise among those who might find the story in question unacceptable.

What is called "the West" in this book is a particular historical culture or civilization, which can be characterized in many different ways, depending on the purposes of the characterization. It was once called "the West" and it was considered to include all cultures inherited from Greece and ancient Rome, as opposed to "the East" which consisted mainly of Islam, India and the "Far East". Since the end of World War II, the terms "East" and "West" have often been used to distinguish communist countries from non-communist countries: in "East-West trade", ship goods from Prague in Tokyo, it's shipping them from East to West.

There is another distinction between East and West which is less well known today: the distinction between the eastern and western parts of the Christian Church, which in the early centuries AD covered the distinction between eastern and western parts of the Roman Empire. Although there were differences between the Eastern Church and the Western Church from the start, it was not until 1054 that they separated. Their separation was due to the will of the West to make the Bishop of Rome the sole head of the church, to free the clergy from the control of the emperor and kings and to clearly differentiate the Church by as a political and legal entity of secular entities. This movement, whose culmination was what has been called the Gregorian reform and the quarrel of the investitures (1075-1122) (1),gave rise to the formation of the first modern legal system, the "new canon law" (jus novum ) of the Roman Catholic Church and finally to the constitution of new secular legal systems, such as royal law, urban law and others. In the expression “western legal tradition”, the last term refers to the peoples whose legal traditions derive from these events. In the 11th and 12th centuries, these were the peoples of Western Europe, from England to Hungary and from Denmark to Sicily. Regions such as Russia and Greece, which remained in the Eastern Orthodox Church, as well as much of Spain, which was Muslim, were not part of it at the time. Later, not only Russia and Greece and all of Spain were westernized, but both the Americas and other parts of the world were too.

The West is therefore not found using a compass. Geographical boundaries allow it to be located, but they change from time to time. The West is more of a cultural concept and yet it has a strongly diachronic dimension. But it's not just an idea: it's a community. It has both a historical structure and a structured history. For many centuries he could be identified quite simply with the peoples of Western Christendom. Indeed, from the eleventh to the sixteenth century, the community of these peoples manifested themselves in their common allegiance to a single spiritual authority, the Church of Rome.

As a historical culture, civilization, the West is distinguished not only from the East but also from "pre-Western" cultures to which it "returned" at various periods of "rebirth". These returns and rebirths are characteristic of the West. They should not be confused with the models from which they were inspired. “Israel”, “Greece” and “Rome” became the spiritual ancestors of the West not primarily through a process of survival and succession but primarily through a process of adoption: the West adopted them as ancestors. Moreover, he adopted them selectively - he adopted different parts of them at different times. Cotton Mathers was not Jewish, Erasmus was not Greek. The lawyers at the University of Bologna were not Romans.

Certainly a part of Roman law has survived in Germanic popular law and, more importantly, in ecclesiastical law; part of Greek philosophy also survived in the Church. The Hebrew Bible obviously continued in the Old Testament. But these survivals represent only a small part of their influence on Western law, philosophy and theology. What explains most of their influence are the rediscoveries, re-examinations and receptions of ancient texts. Even to the extent that we can say that knowledge of antiquity has been passed on to us without interruption, it has inevitably been transformed. This point is particularly important for understanding the rediscovery and renaissance of Roman law: to give an example,the legal system of the Free City of Pisa, which in the 12th century adopted many of the rules of Roman law contained in the Byzantine texts which had just been discovered, can in no way be compared to that of the Empire on which reigned Justinian. The formulas were the same, but their meanings were very different.

The West, in this perspective, is not Greece, Rome and Israel, but the peoples of Western Europe in so far as they took inspiration from the Greek, Roman and Hebrew texts and transformed them in a way that would have surprised their authors. Islam is obviously not part of the West either; very strong Arab influences were exerted on Western philosophy and science but not on Western legal institutions (2), especially during the period covered by this study.

Indeed, each of the old elements of Western culture has been transformed by mixing with elements of non-Western origin. What is astonishing is that such antagonistic elements could have been united in a single vision of the world [hence the schizophrenia of those who, by elective affinities, share this vision] [N. d. E]. Hebrew culture did not tolerate Greek philosophy or Roman law, Greek culture did not tolerate Roman law or Jewish theology, Roman culture did not tolerate Hebrew theology and was largely incompatible with Greek philosophy. Yet at the end of the 11th century and the beginning of the 12th century, the West combined the three elements and thus transformed each of them.

Somewhat more controversial is the distinction between the West and the culture of the Germanic peoples and other tribes of Europe before the 11th century. If "West" were a geographic term, this earlier culture would have to be included; in fact, one would have to start, as most studies of European history do, with Caesar's Gallic War, the invasion of the Roman Empire by the Germanic peoples, the development of the Frankish monarchy, Charlemagne and Alfred the Great, before getting to the Gregorian Reformation, the investiture quarrel and what is commonly referred to as the High Middle Ages, or the 12th century renaissance (which actually began in the second half of from the 11th century). To describe the Germanic peoples of Europe as “pre-Western” may seem strange to some.Yet there is a radical solution of continuity between Europe from the period before the years 1050-1150 and Europe from the period after these years.

Finally, it should be said, with regard to the meaning of the term "West", that, at least for the purposes of analyzing and explaining legal institutions, one should not make a sharp distinction between " western ”and“ modern ”; and, moreover, that one should distinguish "modern" from "contemporary", applying the former to the period before the two world wars and the latter to the period after 1945. One of the objectives of this study is to show that in the West, modern times - not only modern legal institutions and legal values, but also the modern state, the modern Church, modern philosophy, the modern university, modern literature and many still other things which are modern - have their origin in the period from 1050 to 1150 and not before.

The term "legal," like that of "the West," has a history. Nowadays, the term "law" is generally defined as "body of rules". The rules, in turn, are generally regarded as derived from the laws ( statutes) and, where judicial power is recognized, court decisions. From this point of view, however, there can be no "Western law", since there is no Western legislature or tribunal. (Likewise, there can be no "American law", only the federal law of the United States and the law of each of the fifty states). Such a definition of law is far too narrow for a study which encompasses the legal systems of all Western countries in all different periods of Western history and is concerned not only with law in books but also law in law. convenient. Law in practice involves legal institutions and procedures, legal values, legal concepts and ways of thinking, and legal rules.This is sometimes called the “legal process” or, in German, theRechtsverwirklichung , the "realization" of the law.

Lon L. Fuller defined the legal system as "the business of subjecting human behavior to rule government" (3). This definition rightly emphasizes the primacy of legal activity over legal rules. But I would go further by including in the objective of this "enterprise", besides the development and application of rules, other modes of government, including voting, the promulgation of ordinances, the appointment of officials and the delivery of judgments. The law has other objectives than governance in the usual sense of the word. It is an enterprise aimed at facilitating voluntary arrangements through the negotiation of transactions, the issuance of documents (credit and property titles) and the execution of other acts of a legal nature.Law in practice is to legislate, rule, administer and exercise other legal activities. It is a living process of attribution of rights and duties and therefore of conflict resolution and creation of channels of cooperation.

Such a broad view of the law is necessary in order to be able to compare, within a single framework, the many different legal systems which have existed in the West for many centuries. It is also necessary to explore the interrelationships of these systems with other political, economic and social institutions, values ​​and concepts.

I have taken the liberty of defining the law in general terms, without reference to the institutions, values ​​and concepts that characterize the Western legal tradition. In doing so, my aim has been to respond to those who, by defining the law too narrowly, namely as a body of rules, obstruct the understanding of the emergence of the Western legal tradition, of the impact of the great revolutions. Western history on her as well as her present situation. The conception of law as a particular type of enterprise, in which the rules enter only in part, takes on its full meaning in the context of the properly historical development of the living law of a given culture.

Speaking of a Western legal "tradition" draws attention to two major historical facts: 1) from the end of the 11th century and during the 12th century, except in certain periods of revolutionary change, Western legal institutions have developed continuously from century to century, with each new generation consciously consolidating the work of the preceding ones, and 2) this conscious process of continuous development is (or once was) seen as a process not only of change but at the same time of organic growth. Even the great national revolutions of the past: the Russian Revolution of 1917, the French Revolution of 1789 and the American Revolution of 1776, the English Revolution of 1640 and the German Reformation of 1517,ended up making peace with the tradition that they or some of their leaders were determined to destroy.

The concept of conscious organic development was applied to institutions of the 11th and 12th centuries. In this context, the term “institutions” means structured mechanisms aimed at the performance of specific social tasks. Universities, for example, are institutions for transmitting higher education and training professionals; government financial and judicial services are institutions responsible for administering taxation and justice, respectively; The legal system is a structured set of mechanisms, one of the main purposes of which is to provide guidance to various government departments as well as to the general population on what is allowed and what is not. In the West in the 11th and 12th centuries,this is how not only the newly created universities, finance ministries and courts and legal systems came to be viewed, but also the Church itself. The same was true of secular structures such as urban and royal governments. These various institutions were conceived as having an evolutionary character. They were supposed to adapt gradually to new situations, reform and develop over long periods. In part, this growth was planned: for example, many cathedrals were to be built over several generations; they had budgets, literally, for a thousand years. On the other hand, growth was less planned than planned:administrators and legislators revised the work of their predecessors, disciples strove to improve the work of their masters, commentators succeeded glossators. For yet another part, growth was less planned and organized than spontaneous: for example, the architects "combined" Romanesque and Norman art and it was from there that the first Gothic was born, which evolved into late Gothic and so on.

As Robert Nisbet noted, no one “sees” a society “growing” or “developing” or “declining” or “dying” (4). These are metaphors. Nonetheless, the belief that people who live at some point in a society have that it is indeed growing, developing or declining and dying is real. In the period of formation of the Western legal tradition, the Augustinian belief that society, the "earthly city," continually declines has been altered by the view that social institutions can arise, grow and reproduce. Furthermore, this process was conceived as a process in which successive generations participated actively and consciously. As Goethe said, a tradition cannot be inherited: it must be earned.

The great English historian. FW Maitland used the biological metaphor of growth to describe the changes that took place in English law relating to forms of civil or criminal procedure starting in the 12th century. He wrote: “Our procedural forms are not mere rubrics and dead categories; they are not the result of a classification process applied to pre-existing materials. They are the Institutes of the Law); they are, we say it without scruple, living things. Each of them lives its own existence, has its own vicissitudes, remains vigorous, useful and popular for a longer or shorter time, then falls into disrepair and ages without friends. Some die at birth, others are sterile, still others live long enough to see their offspring reach high places. The struggle for life is bitter among them and only the strongest survive (5) ”.

Thus, the action for damages for disturbance of enjoyment, which Maitland described as the "fruitful mother of lawsuits", would have "given birth to" or "given rise to" or "secreted", according to the taste of each one in matters of metaphors and according to his conception of organic continuity, action for aggression and battery, action for damage to property, action for unlawful intrusion on another's funds and many others. She was also the "source" of action on the case, although in this case the offspring were noticeably different from their progenitor (6). Scholars have represented the types of action with a tree with its trunk and branches affixed with dates. Is it a simple educational device? Is it perhaps a form of animism ? (emphasis added).

It may be useful to draw an analogy between the development of law thus conceived and that of music. From the eleventh and twelfth centuries, monophonic music, represented mainly by Gregorian chant, was gradually supplanted by polyphonic styles. Music for two, three and finally four voices developed. The contrapuntal style, illustrated by the motet in the 13th century, gave birth in the following century to the harmonic style of the ars nova, illustrated by the ballad. Counterpoint and harmony ended up being combined. The 16th century saw the development of the great German Protestant choirs, which, along with Italian and English madrigals and other musical forms, laid the foundation for opera, which first appeared in Italy at the end of the 16th century and at the beginning of the 17th century.Renaissance music eventually gave way to baroque, baroque to classical and so on. No contemporary musician, no matter how eccentric, can afford to ignore this story. There was a time, not so long ago, when a good lawyer similarly had to know the history of the development of legal institutions.

Of course, not all change should be seen as growth. Some changes can be thought of as the interruption of growth. One cannot say, for example, that the ordeal and the judicial duel gave rise to the trial by jury or that the action for unlawful intrusion on the funds of others arose from the grievance of felony. The ordeal, the judicial duel and the felony grievance had their origin in tribal or feudal law; trespass and jury trial, in royal law. Moreover, these hardly survived the introduction of these, while the concept of organic growth implies that the parent continues to live at the same time as his offspring. It is different from that of causation.It was not ordeal but the abolition of ordeal that gave rise to jury trials in criminal cases.

At the same time, conscious growth does not necessarily mean deliberate movement toward particular ideal goals. It is something less than moral progress but something more than a simple change or a simple accumulation. Law reform has obviously been a recurring feature of the Western legal tradition since the time it was formed. Yet the reform itself is seen as part of what I have called the evolutionary character of the tradition, its conscious continuity over time.

The main features of the Western legal tradition can be summarized preliminarily as follows:

1 - A relatively clear distinction is made between legal institutions (including judicial procedures such as the making of laws and arbitration as well as the legal rules and concepts generated by these procedures) and other types of institutions .

Although the law remains strongly influenced by religion, politics, morals and custom, it is possible to distinguish it from these from an analytical point of view. Custom, for example, in the sense of behavioral habits, is distinguished from customary law in the sense of customary standards of behavior considered to have the force of law. Likewise, politics and morals can determine law, but they do not have the force of law, as in other cultures. In the West, but not only in the West, law is obviously considered to have its own character, a certain relative autonomy.

2 - The clarity of this distinction is linked to the fact that the administration of legal institutions, in the Western legal tradition, is entrusted to a special body of people who practice legal activities as a more or less full-time professional occupation. .

3 - Legal professionals, who are generally called lawyers, as in Anglo-Saxon countries, or jurists, as in most other Western countries, are specially trained in a specific body of higher education which has its own literature own and own schools and other places of vocational training.

4 - This body of legal education which trains jurists has complex dialectical relations with legal institutions, since, on the one hand, education characterizes these institutions and, on the other hand, legal institutions would remain disparate and unorganized. , if they were not conceptualized and systematized and therefore transformed by what is said about them in treatises and scholarly articles and in classrooms. In other words, the law includes not only, among other things, legal institutions, legal instructions, judicial decisions, but also what experts (including, on occasion, legislators, judges and those who , among officials, speak and write in their own way) say about these institutions, instructions and decisions.Law contains in itself a legal science, a meta-law, which allows it to be both analyzed and evaluated.

The first four characteristics of the Western legal tradition are found in the tradition of Roman law as it developed from the second century BCE to the last decades of the Empire and beyond. They are alien to several contemporary non-Western cultures and were alien to the legal order that prevailed among the Germanic peoples of Western Europe before the 11th century. Germanic law was anchored in political and religious life, in customs and morality, as the law is today in many informal communities such as school, district, factory, village. At that time, whether in the Frankish Empire, in Anglo-Saxon England or even elsewhere in Europe,no clear distinction existed between legal norms and procedures on the one hand and religious, moral, economic and political rules and practices on the other. There were certainly laws and sometimes collections of laws, published by kings; but there were no professional lawyers or judges, no professional jurists, no law schools, no law books or legal science. It was also true for the Church: canon law was merged with theology. And, with the exception of a few rare collections of rather rudimentary canons and penitentials, there was nothing that could be called a literature of ecclesiastical law (7).There were certainly laws and sometimes collections of laws, published by kings; but there were no professional lawyers or judges, no professional jurists, no law schools, no law books or legal science. It was also true for the Church: canon law was merged with theology. And, with the exception of a few rare collections of rather rudimentary canons and penitentials, there was nothing that could be called a literature of ecclesiastical law (7).There were certainly laws and sometimes collections of laws, published by kings; but there were no professional lawyers or judges, no professional jurists, no law schools, no law books or legal science. It was also true for the Church: canon law was merged with theology. And, with the exception of a few rare collections of rather rudimentary canons and penitentials, there was nothing that could be called a literature of ecclesiastical law (7).with the exception of a few rare collections of canons organized in a rather rudimentary way and penitentials, there was nothing that one could call a literature of ecclesiastical right (7).with the exception of a few rare collections of canons organized in a rather rudimentary way and penitentials, there was nothing that one could call a literature of ecclesiastical right (7).

5. In the Western legal tradition, the law is conceived as a cohesive whole, an integrated system, a "body" and this body is designed to develop over time, over generations and centuries. One might think that the concept of law as a corpus juris is implicit in any legal tradition in which law is regarded as distinct from morality and custom; and it is often assumed that such a concept was not only implicit but also explicit in the Roman law of Justinian (8).

However, the expression " corpus juris RomaniWas not used by the Romans, it was forged by the European canonists and Romanists of the 11th and 13th centuries, who extrapolated this concept from the work of those who, one or two centuries earlier, had discovered the ancient texts of Justinian and had them studied in European universities. It was the 13th century scholastic technique of reconciling contradictions and drawing general concepts from rules and cases that for the first time made it possible to coordinate and integrate Justinian's Roman law.

6 - The concept of body or legal system could only develop by relying on the belief in the evolving character of law, in its capacity for growth over generations and centuries, a specifically Western belief. The legal body survives only because it contains a built-in mechanism for organic change.

7 - We consider that the growth of law has an internal logic; the changes are not only adaptations from the old to the new but are also part of a pattern of changes. The development process is subject to certain regularities and, at least in retrospect, reflects an internal necessity. Western legal tradition presupposes that changes do not happen at random but that they proceed by reinterpreting the past to meet present and future needs. The law is not only evolving; he has a story. He tells a story.

8 - The historicity of law is linked to the idea of ​​its supremacy over political power. The developing body of law is conceived by some, but not by all and not necessarily by most, as being binding on the state itself, at all times and in the long term. Although it was not until the American Revolution that we heard of "constitutionalism," the fact remains that since the 12th century, in all Western countries, even under absolute monarchies, it has been said many times. times and often recognized that in some important respects the law transcends politics. The monarch, it is said, can make laws but he cannot make them arbitrarily and, as long as he has not legally reformed them, he is bound by them.

9. Perhaps the most distinctive feature of the Western legal tradition is the coexistence and competition, within the same community, of different jurisdictions and different legal systems. It is this plurality of jurisdictions and systems that makes the rule of law both necessary and possible.

Legal pluralism finds its origin in the differentiation between the ecclesiastical entity and the secular entities. The Church proclaimed that she was independent of temporal power and that she had exclusive jurisdiction in some matters and concurrent jurisdiction in others. The laity, although generally governed by secular law, were subject to ecclesiastical law and ecclesiastical courts in matters of marriage and family relations, inheritance, spiritual crimes, contractual relations from vassal to overlord as well as in a certain number of other subjects. Conversely, the clergy, although generally governed by canon law, was subject to secular law and the jurisdiction of secular courts, with regard to certain types of crimes, certain types of disputes, etc.Secular law itself was divided into several competing types, including feudal law, manorial law, urban law, commercial law. The same person could be submitted to the ecclesiastical courts in one type of case, to the king's court in another, to his lord's court in a third, to the manor court in a fourth, to that of the free city in a fifth or that of the merchants in a sixth.to that of the free city in a fifth or to that of the merchants in a sixth.to that of the free city in a fifth or to that of the merchants in a sixth.

The very complexity of a common legal order containing diverse legal systems has contributed to the sophistication of the law. What is the competent jurisdiction? What is the applicable law? How to reconcile legal differences? Behind the technical questions lie important political and economic considerations: the clergy against the crown, the crown against the city, the city against the lord, the lord against the merchant, etc. Law was a means of resolving political and economic conflicts. But the law could also serve to exacerbate them.

The pluralism of Western law, which reflected and reinforced both the pluralism of Western political and economic life, was or has been a factor of development or growth - legal growth as well as political and economic growth. He was or was also a source of freedom. A serf could find protection against his lord at the city court. A vassal could find protection against his overlord at the king's court. A clergyman could find protection against the king at the ecclesiastical tribunal.

10 - There is a tension between ideals and realities, between dynamic qualities and stability, between the transcendence and the immanence of the Western legal tradition. This tension has periodically led to the violent overthrow of legal systems by the revolution. Nevertheless, the legal tradition, which is something greater than all the legal systems that make it up, has survived and even been renewed by these revolutions.

Law and History To

follow the history of the Western legal tradition and to accept it is to confront implicit theories of law and history which are no longer widely accepted, at least in universities. The theories which prevail constitute serious obstacles to the appreciation of this history.

The conventional conception of law as a set of rules derived from laws and court decisions reflecting the theory that the ultimate source of law is the will of the legislator (the state) cannot serve as a basis for a study of a culture in any way. transnational legal. To speak of a Western legal tradition is to postulate that the law is not to be conceived as a set of rules, but a process, a company, in which the rules only have meaning in the context of institutions, of procedures, values ​​and ways of thinking. In this broader perspective, the sources of law include not only the will of the legislator but also the reason and the conscience of the community and its customs and uses. This is not the dominant conception of law.But she is by no means a heretic; it was said, not so long ago, that there are four sources of law: legislation, jurisprudence, equity and custom (9). At the time of the formation of the Western legal tradition, laws and jurisprudence were nowhere near as abundant as they became in subsequent centuries. Most of the law was derived from custom, which was viewed in the light of fairness (defined as reason and conscience). It is necessary to recognize that custom and fairness are as much law as laws and legal decisions, if one is to follow and accept the history of Western legal tradition.At the time of the formation of the Western legal tradition, laws and jurisprudence were nowhere near as abundant as they became in the following centuries. Most of the law was derived from custom, which was viewed in the light of fairness (defined as reason and conscience). It is necessary to recognize that custom and fairness are as much law as laws and legal decisions, if one is to follow and accept the history of Western legal tradition.At the time of the formation of the Western legal tradition, laws and jurisprudence were nowhere near as abundant as they became in the following centuries. Most of the law was derived from custom, which was viewed in the light of fairness (defined as reason and conscience). It is necessary to recognize that custom and fairness are as much law as laws and legal decisions, if one is to follow and accept the history of Western legal tradition.It is necessary to recognize that custom and fairness are as much law as laws and legal decisions, if one is to follow and accept the history of Western legal tradition.It is necessary to recognize that custom and fairness are as much law as laws and legal decisions, if one is to follow and accept the history of Western legal tradition.

Beyond this, it must be taken into account that the law in the West is made up of integrated legal systems, in each of which the various constituent elements derive in part their meaning from the whole system as a whole. In addition, each system is designed to be in development; therefore, the meaning of each building block is derived not only from what the system was in the past but also from what it will become in the future. Nor are they the conventional truths of the dominant "analytical jurisprudence",which postulates a ruler who promulgates orders in the form of rules and imposes sanctions on those who do not carry them out as "he willed" them to be - what Max Weber called "formal rationality" or "formalism" logic ”of Western law. And this characterization is widely regarded as correct, both by opponents and proponents of formalism. Weber thought she was explaining the usefulness of the right to development of capitalism. Such a conception of law constitutes a formidable obstacle to the understanding of the history of the Western legal tradition, which has its origin in what is generally considered to be the feudal era and arose out of the separation from the Church and of the secular order. The fact that the new system of canon law,created in the late 11th and 12th centuries, constituted the first modern Western legal system is generally overlooked, perhaps simply because it does not correspond to dominant theories about the nature of law.

If analytical jurisprudence, or, as it is more often called today, legal positivism, is an inadequate theoretical basis for understanding the narrative of the development of Western legal institutions, what is the theory or theories that would provide one? better? The main alternatives presented by Western legal philosophy are the theory of "natural law" and that of "historical jurisprudence". In addition, a school called "sociological jurisprudence" has recently emerged. All of these schools obviously have many variations. However, each theory, taken separately, is interested in only one aspect of reality. None of them, taken separately, provides a basis for understanding the history of law in the West.The history of the Western legal tradition is itself in part the history of the emergence of these different schools of legal philosophy and their conflict. They don't explain the story; it is history which explains them, which explains why they appeared and why different schools have prevailed in different places and times.

At the time of the formation of the Western legal tradition, the theory of natural law predominated. It was generally believed that human laws ultimately flowed from and should ultimately be judged by reason and conscience. According to the legal philosophy of the time but also according to the positive law itself, any positive law, put into force or customary, had to conform to the natural law, under penalty of losing its validity as legislation and being ignored. This theory was based on Christian theology as well as Aristotelian philosophy. But it also had a basis in the history of the struggle between ecclesiastical and secular authorities and in political pluralism. We can compare it to the theory that accompanies law in the United States,according to which any positive law must conform to the constitutional requirements of "due process", "equality before the law", "liberty" and "privacy" and others, under penalty of losing its validity . The "respect for legality ("due process of law ”) is actually a 14th-century English expression meaning“ natural law ”. Thus the theory of natural law is enshrined in the positive law of the United States. However, this does not prevent giving a political (positivist) explanation. It is quite easy to show that the state, or the powers that be, or even the ruling class, benefits from the due process clause and “wants” it.

Likewise, historical jurisprudence, the theory according to which the law derives its meaning and its authority from the past history of the people it governs, its customs, the genius of its institutions, its historical values ​​and "precedents", has been integrated into the British legal system since the English revolution of the 17th century; yet English legal philosophy has oscillated between positivism and the doctrine of natural law, and historical jurisprudence has had relatively few adherents, at least in the twentieth century. It was Germany, which, unlike England, created its national law, especially in the nineteenth century, not so much from its own historical legal institutions as from a "foreign" law, to namely Roman law, which was the homeland of historical jurisprudence,in the name of which the greatest German jurists sang the praises of German law as a reflection of the spirit of the Germanic people.

Thus, the legal history of the West has been the breeding ground for various schools of legal philosophy, some of which have predominated in certain times and places, others in other times and in other places, often for paradoxical reasons, as if it were an ideological reaction against existing legal realities. Those who study Western legal history must therefore guard against the limitations of each of these schools. It would be more appropriate and more “Western” to use them all as screens to be placed successively on the historical experience rather than trying to consolidate them by trying to use history as a reinforcement.

If the different schools of law hinder the understanding or the acceptance of the history of the Western legal tradition, much more important obstacles are constituted in this respect by the various theories of history, in particular those of the history of law. . These theories deal with questions such as whether history has meaning or direction, whether periodization of history is justified (and, if so, on what basis), whether one can speak of "Laws of history" or of historical causation (for example, the economic base and ideological superstructure, or the primacy of power), or, to a lesser level of generalization, questions relating to the relationship between the history of every nation and the history of the West as a whole,the role of great revolutions in the history of the West and the meaning of concepts such as "medieval" and "modern", "feudalism" and "capitalism".

Although it is possible to tell the story of the origin and early developments of the Western legal tradition without attempting to resolve these broad historiographical questions, it is necessary to briefly consider some theoretical questions concerning history in general and that of the West in particular, in order to dispel the received ideas about them. Moreover, the story itself throws some remarkable light on some of these theoretical questions.

Questions of the meaning and direction of history and the ancillary questions of periodization inevitably arise from the dramatic circumstances in which the Western legal tradition arose. The actors of this drama had no doubt that they were fulfilling a historic destiny. Their confidence, of course, does not in itself invalidate the position adopted by many today, namely that history is meaningless, that changes are subject to vagaries and that any periodization is arbitrary. However, those who go so far as to deny that the story has meaning, has direction, and can be periodized should have no more objections to the story told here than they would have to. more conventional accounts that simply make the same events and facts less meaningful,less direction and offer a less rigid periodization. If any periodization is arbitrary, an analysis of the emergence of "modern" legal and political institutions at the end of the 11th century is no more arbitrary than the conventional analysis, which asserts that everything that predates the 16th century is "Medieval" and that there was no radical discontinuity in the period from 1050 to 1150 or 1200. Likewise, those who think that there are no models in the historical development of Western institutions should not be more dismayed by a narrative which sees an interplay between revolution and evolution over generations and centuries than they are by accounts which see only evolution or revolution.If any periodization is arbitrary, an analysis of the emergence of "modern" legal and political institutions at the end of the 11th century is no more arbitrary than the conventional analysis, which asserts that everything that predates the 16th century is "Medieval" and that there was no radical discontinuity in the period from 1050 to 1150 or 1200. 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The people for whom the story told here will pose the most problem are those who have never directly addressed the problems of the meaning, direction and periodization of history but uncritically accept the conventional historiography which is generally taught since the 16th century. century. This view simply assumes that Western history is divided into three periods, ancient, medieval, and modern. The ancient history is that of Greece and Rome. The decline of Rome, due to the barbarian invasions, produced a medieval age which lasted roughly from the 5th to the 15th century. Then modern times began, some would say with the Renaissance, others with the Reformation, still others with both. Those who start them off with the Reformation may tell a slightly different story.Israel will be introduced in the table of the ancient world. The Middle Ages will be defined by the period which extends between that of the primitive Church and that of the rupture between Luther and Rome. Protestants, however, will agree with humanists that Western art and thought dates back to Greece, while Western politics and law dates back to Rome. Finally, under the influence of the Enlightenment, all will agree that although Greece and Rome and perhaps ancient Israel constitute the historical background of Western civilization, the story that really matters is that from different nations, especially the United States, England, France and Germany.Protestants, however, will agree with humanists that Western art and thought dates back to Greece, while Western politics and law dates back to Rome. Finally, under the influence of the Enlightenment, all will agree that although Greece and Rome and perhaps ancient Israel constitute the historical background of Western civilization, the story that really matters is that from different nations, especially the United States, England, France and Germany.Protestants, however, will agree with humanists that Western art and thought dates back to Greece, while Western politics and law dates back to Rome. Finally, under the influence of the Enlightenment, all will agree that while Greece and Rome and perhaps ancient Israel form the historical background of Western civilization, the story that really matters is that from different nations, especially the United States, England, France and Germany.Although Greece and Rome and perhaps ancient Israel form the historical background of Western civilization, the story that really matters is that of the different nations, especially the United States, England, France and Germany.although Greece and Rome and perhaps ancient Israel form the historical background of Western civilization, the story that really matters is that of the different nations, especially the United States, England, France and Germany.

This conception of the past is based on the idea that history has a meaning, an orientation and is susceptible of periodization. It is, however, quite at odds with the best historical research of the past five decades. This research pushed back the end of the "dark ages" from the period prior to 1450-1500 to the period prior to 1050-1100. Even the most conservative historians today make a clear distinction between the late Middle Ages and the early Middle Ages. In addition, the continuity of the history of the Germanic peoples of the early Middle Ages with the history of the Roman Empire and with the history of Rome and Greece in general, which had been postulated previously, has been largely dismissed. .The large-scale revival of Hellenic philosophy and Roman law from the end of the 11th to the 13th centuries proved to be part of a watershed in both the history of the Western Church and that of the European nations and be linked to the rise of European cities and other fundamental social and economic changes.

Here, whatever the testimonials, many people will experience doubts and frustration. Perhaps, they will say to themselves, the patterns, the regularities in history may be necessary, although they transcend the facts, for without them there would be no history. But radical discontinuities are unnecessary and even unnatural. 'Nature does not make leaps'. But even though Western history has sometimes leaped forward, as it did with the Russian Revolution, the French Revolution, and the Protestant Reformation, to say that a radical discontinuity occurred in the middle of the Middle Ages seems not only unnatural but also strange. It seems absurd considering what we have been taught about the Age of Faith.Why can't we continue to believe that the differences between European society in 1500 and that in 500 AD were the result of a long series of small, incremental changes, which although they were interspersed with a few periods of great acceleration, have not given rise to any spectacular transformation in the same generation or in the same century? Why not continue to believe that cities were founded (or rebuilt) gradually, over ten, five, or at least three centuries, rather than suddenly, over eighty or ninety years; that the Pope has become the supreme judge and legislator in the Church over ten centuries rather than over three generations;that the emperor and the kings of Europe gradually lost their sacred and thaumaturgical functions as a result not of open political and religious conflicts but of progressive changes of attitude? ".

A study of the origins of the Western legal tradition must silence this ideological bias in favor of gradual change. As the law evolves more slowly than most other political institutions, rapid and dramatic changes in a legal system are generally not expected. However, anyone who analyzes any one of the European legal regimes, first in the period from 1000 to 1050, then in that from 1150 to 1200, sees a tremendous transformation. This is true above all for ecclesiastical law.

To speak of revolutionary change within the Church of Rome is obviously to question the Orthodox point of view (that is to say in accordance with the doctrine considered to be true and officially taught by the Church of Rome) according to which the structure of the Roman Catholic Church results from the gradual elaboration of elements which were present there from the earliest times. This is indeed the official point of view of the Catholic reformers of the end of the 11th century and the beginning of the 12th century: they were, they said, only reverting to an earlier tradition which had been betrayed by their immediate predecessors. The myth of returning to an earlier era is in fact the hallmark of all European revolutions. Luther also advocated a return to early Christianity that the popes would have betrayed.The English Puritans under Cromwell advocated the restoration of "old English freedoms" after 150 years of Tudor despotism. The French Revolution referred to classical antiquity and a so-called state of nature to combat feudalism and the privileges of the aristocracy. The Russian Bolsheviks announced a return to the classless society of the primitive tribes which did not know the property.The Russian Bolsheviks announced a return to the classless society of the primitive tribes which did not know the property.The Russian Bolsheviks announced a return to the classless society of the primitive tribes which did not know the property.

A radical transformation of a legal system is, however, paradoxical, because one of the fundamental objectives of law is to ensure stability and continuity. Furthermore, the law in all societies derives its authority from something external to itself, and if a legal system undergoes rapid change, questions inevitably arise as to the legitimacy of the sources of its authority. In law, sudden and large-scale change is indeed "unnatural". When this happens, something needs to be done to prevent it from happening again. The new law must be firmly established; it must be protected against the danger of a new discontinuity. Subsequent changes should be limited to incremental changes.

Such at least has been the development of Western law following the large-scale revolutionary transformations by which it has periodically been overtaken, starting with that of the end of the 11th century and the beginning of the 12th century. A historical dimension was given to the new legal system established by the revolution. In the first place, the new legal system is considered to be historically rooted in time by the events which produced it. Second, it is considered to change not only in response to new circumstances but also according to a certain historical pattern. Law is seen as a historical phenomenon; it is envisioned as having what one might call historicity. It must not only evolve but also be perceived as such.

Nevertheless, the historicity of Western law has not prevented the periodic outbreak of violent revolutions, which admittedly ended up returning to the historical legal tradition, but which both transformed and sent it in new directions.

The historicity of law in the West should not be confused with historicism in the sense of a subjugation to the "blind power" (to use Nietzsche's expression) of the past. The partisans of the historical school of philosophy of law and, with them, the theorists of positivism and those of natural law as well as the cynics who think that the law is only the will of the strongest (Incidentally, whatever this question is fundamental, many believe that the law is the will of the strongest ”(10), all these are confronted with legal institutions and procedures, with legal values, concepts and legal rules which all have in fact a historical dimension. They derive their significance in part from their history. It is never sufficient, in any Western legal system,to attempt to interpret or explain a rule of law (or a concept, a value, an institution) only by appealing to logic, politics or equity; it must also be interpreted and explained according to the circumstances which gave rise to it and the course of events which have influenced it over time. The dogmatic method, the political method, the method of equity are always supplemented by the method of historical interpretation. The plurality of sources of law thus protects historicity, while helping to avoid blind historicism.it must also be interpreted and explained according to the circumstances which gave rise to it and the course of events which have influenced it over time. The dogmatic method, the political method, the method of equity are always supplemented by the method of historical interpretation. The plurality of sources of law thus protects historicity, while helping to avoid blind historicism.it must also be interpreted and explained according to the circumstances which gave rise to it and the course of events which have influenced it over time. The dogmatic method, the political method, the method of equity are always supplemented by the method of historical interpretation. The plurality of sources of law thus protects historicity, while helping to avoid blind historicism.

Blind historicism is also thwarted by the plurality of overlapping histories that constitute Western civilization. It is not “the past” in the monolithic sense of the term that constitutes the historical dimension of law, but the pasts of the different communities in which each person lives and of the different legal systems that these communities have produced. It is only when the different legal regimes of all these communities - local, regional, national, ethnic, professional, political, intellectual, spiritual and others - are absorbed into the law of the nation-state that "history" becomes tyrannical.

This is in fact the greatest danger inherent in contemporary nationalism (11). The nations of Europe that arose out of their interaction within the context of Western Christendom became increasingly detached from each other in the twentieth century. With the First World War, they violently broke up and destroyed the common bonds that had united them before, however loose they may have been. And, at the end of the 20th century, we are still suffering from the nationalist historiography which emerged in the 19th century and which favored the disintegration of a common Western legal heritage.

The emergence in the nineteenth century of what is called scientific history, that is, the systematic and careful research of facts, intended to show, according to Ranke's famous phrase, wie es eigentlich gewesen ist ( "What really happened"), coincided with the emergence of the most intense nationalism that Europe has ever known. It was just assumed that history was synonymous with national history. History had to be objective, but it had to be the history of the nation. In the twentieth century, there has been some change in this regard. Social and economic historians were among the first to break down the nationalist barrier and write about the West as a whole. After World War I, this approach was extended by some people to political history.Even European legal history has come to be treated from a transnational perspective, although English and American legal history has remained particularly isolated.

It is unfortunate that little attempt has been made to integrate English and American legal history into the panorama of Western legal systems. Such integration has been made extremely difficult by the insularity of English and American legal historians who, moreover, have fragmented the subject of their respective disciplines in such a way as to mystify the stranger who might otherwise attempt to interfere. Even during the period when all the nations of the West, including England, were in the bosom of the Roman Catholic Church and not only were subject to the same ecclesiastical legal system but also maintained the intellectual, cultural and closest policies to each other,English law has always been treated by many legal historians as if it were outside European history. These historians are able to maintain their nationalist orientation by focusing on what is called the "common law ”, that is to say the common law, the law applied in the royal courts of common pleas and in the King's Bench and ignoring the other bodies of laws and other jurisdictions which existed in England at the same time . But even common law , in this narrow sense, resembled in many ways the royal or ducal law of Sicily, France, the German duchies and other countries in Europe.

Edmund Burke once said: “The laws of all the nations of Europe come from the same sources. For him, England was part of Europe. However, by the time the history of law became an object of scientific research, England's historical links with the Continent were severed. This has led to an undue emphasis on the legal institutions, values, concepts and rules that distinguish English law from other Western legal systems. Now that England has joined the European Economic Community, a review of English legal history can take place which will focus on those institutions, procedures, values, concepts and legal rules that English law shares with other western legal systems.

In 1888, at his inaugural Downing Professor lecture at Cambridge University, Maitland raised the question: "Why has the history of English law not been written?" He replied at first: "because of the traditional isolation of the study of English law from any other study"; he then added: "[because] history involves a comparison and the English lawyer who knew nothing about and cared for no system other than his own could hardly form the concept of legal history. . One of the reasons why so little was done for our medieval law, he continued, is, I am convinced, our total traditional ignorance of French and German law. English jurists have, over the past six centuries,exaggerating the uniqueness of our legal history… I know just enough to say with confidence that a large number of medieval laws are very comparable to ours (12). "

Law and revolution

The Western legal tradition has been transformed in the course of its history by six great revolutions. Three of them - the Russian Revolution, the French Revolution, and the American Revolution - have been referred to as “revolutions” by those who participated in them, although the meaning of the word “revolution” is different in each case. A fourth, the English Revolution, was not called "revolution" ("the Glorious Revolution") until it ended in 1688-89; in its initial phase (1640-1660), its enemies called it "the Great Rebellion" and its supporters "the restoration of freedom" (13); the second stage (1660-1685) was called at the time "the Restoration", although some contemporary writers also called it "revolution".(This is the first time that the word "revolution" has been used to denote a major political upheaval, even if, in essence, its meaning was that of a return to a previous system of government). Thus, what most historians today call the English Revolution consisted of three successive "restorations" (14).

The fifth great revolution, to go back even further in the past, is the Protestant Reformation, which in Germany had the character of a national revolution; started with Luther's attack on the papacy in 1517, it ended in 1555 with the victory of the Protestant League over the emperor and the signing of religious peace between the German principalities. The sixth, the papal revolution of 1075-1122, which is the subject of this study, was also called “reform” (“ reformatio ”) at the time; the fact that the term is generally translated in modern languages ​​as "Gregorian reform" further conceals its revolutionary character.

One can object to the German Reformation being called a revolution, when it is often called so by historians of revolutions, many of whom are not Marxists. Still more can be objected to the Gregorian reform being called a revolution (or even, perhaps, a reform). It is therefore appropriate to explain the use of the word "revolution".

The history of the West has been periodically marked by violent upheavals, during which the pre-existing system of relations, institutions, beliefs, values ​​and political, legal, economic, religious, cultural and social objectives has been overthrown and replaced by another. There is no perfect symmetry in these times of great historical change; however, there are certain patterns or regularities. Each marked a fundamental change, a rapid change, a violent change, a lasting change, in the system as a whole. Each has sought its legitimacy in a fundamental law, a distant past, an apocalyptic future. Each took more than a generation to take root. Each eventually produced a new legal system,who embodied some of the main goals of the revolution and who changed the western legal tradition, but who ultimately remained within that tradition.

These upheavals did not constitute coups or rebellions, nor a long series of gradual changes within the framework of the pre-existing system. These were fundamental transformations that were accomplished relatively quickly, with great difficulty and with great passion.

It is appropriate to designate by the word "revolution", despite the misuse which has been made of it (15), these historical periods, given the connotation of violence which is associated with the revolutions of the last two centuries, in particular Russian, French and American. Here, by "violence" is not meant the legal force imposed by the governments in place through the police or the armies, but the illegal force exerted by individuals and groups against the established authority. From the perspective of the history of Western law, it is particularly important to recognize that periodically in Western history,this illegal force was used to overthrow the established order, and those who came to power as a result of this overthrow created new and lasting systems of government and law. The system of government and law of every western nation dates back to this revolution.

The term "revolution" is used to denote not only the initial violent events by which a new system is introduced but also the entire period necessary for that system to take root. As Eugen Rosenstock-Huessy pointed out, it takes more than a generation to make a real revolution (16).

The six great revolutions were "total" revolutions in the sense that they meant not only the creation of new forms of government but also new structures of social and economic relations, new structures of relations between the Church and the Church. State, new legal structures as well as new visions of community, new perspectives on history and new sets of universal values ​​and beliefs (17). “The reform of the world”, the slogan of the papal revolution, has found its almost exact counterpart in each of the other revolutions. It is certain that much of what was old has survived, and that after some time still more of what was old was restored; however, with each revolution,the whole - the paradigm - was new.

Thus, each of the six revolutions produced a new or significantly overhauled legal system, in the context of what was conceived of as total social transformation. Indeed, the extent to which its goal was ultimately translated into a new law marks the success of the revolution.

Each revolution represents the failure of the old legal system that the revolution replaced or radically changed. These systems were failures, if only in the sense that they were replaced or radically changed. One of the first decrees issued by the Bolshevik government in 1917 was to abolish the entire pre-revolutionary legal system. Henceforth, only the decrees of the new government were to be applied, the gaps of which were to be filled by the "revolutionary legal conscience". The French Revolution also initially set aside the system of legislation, administration and arbitration of the old regime. In America, after independence, the Democrats fought against the adoption of English law by federal and state courts.In England, the Long Parliament of 1640-41 abolished the Court of Star Chamber, the Court of the High Commission and the "royal courts of prerogatives" and this legislation was taken over by the Parliament of Charles II in 1660; together with parliamentary sovereignty, aHeavily revised common law became the unwritten constitution of England. Luther burned the books of canon law. Pope Gregory VII denounced the imperial and royal laws that governed the Church, laws which allowed bishops and priests to be appointed to their posts by lay authorities, the sale and purchase of ecclesiastical offices and the marriage of priests.

The old law was also a failure in another sense: it proved unable to respond in time to the changes that were occurring in society. If the Tsarist government had introduced a real constitutional monarchy and had redistributed land; if the Bourbons had separated the Church from the State, abolished the vestiges of feudalism and allowed the creation of democratic institutions; whether King George III had granted American colonists all the rights of his English subjects and further enabled them to introduce democratic institutions; whether the early Stuarts had accepted the sovereignty of Parliament; whether canon law had given way in the 15th century to conciliarism and other pressures for reform;if the emperors and kings of the eleventh century had given up in time their supremacy over the Church (18); if, in short, the inevitable had been anticipated and the necessary fundamental changes made to the pre-existing legal order, revolutions would likely have been avoided. Change over time is the key to the vitality of any legal system that faces overwhelming pressures for change. A revolution in the historical sense of the term is rapid, discontinuous and violent change that shatters the bonds of the legal system.Change over time is the key to the vitality of any legal system that faces overwhelming pressures for change. A revolution in the historical sense of the term is rapid, discontinuous and violent change that shatters the bonds of the legal system.Change over time is the key to the vitality of any legal system that faces overwhelming pressures for change. A revolution in the historical sense of the term is rapid, discontinuous and violent change that shatters the bonds of the legal system.

The inability to anticipate fundamental changes and incorporate them in time may be due to a contradiction inherent in the nature of the Western legal tradition, one of whose goals is to preserve order and another is to maintain order. bringing justice. The order itself is conceived as an intrinsic tension between the need for change and the need for stability. Justice is also seen from the angle of a dialectical movement that involves a tension between the rights of the individual and the well-being of the community. The attainment of justice was proclaimed as the Messianic ideal of law itself, an ideal associated originally (in the Papal Revolution) with the Last Judgment and the Kingdom of God, then (in the German Revolution) with Christian consciousness. ,later (in the English Revolution) with public spirit, fairness and the traditions of the past, still later (in the French and American Revolutions) with public opinion, reason and human rights, and more recently (in the Russian Revolution) with collectivism, the planned economy and social equality. It is above all the messianic ideal of justice that was expressed in the great revolutions. The overthrow of pre-existing law as an order was justified by the reestablishment of a more fundamental right, justice. It is the conviction that the law betrays its ultimate purpose and mission that has given rise to each of the great revolutions.and more recently (in the Russian Revolution) with collectivism, the planned economy and social equality. It is above all the messianic ideal of justice that was expressed in the great revolutions. The overthrow of pre-existing law as an order was justified by the reestablishment of a more fundamental right, justice. It is the conviction that the law betrays its ultimate purpose and mission that has given rise to each of the great revolutions.and more recently (in the Russian Revolution) with collectivism, the planned economy and social equality. It is above all the messianic ideal of justice that was expressed in the great revolutions. The overthrow of pre-existing law as an order was justified by the reestablishment of a more fundamental right, justice. It is the conviction that the law betrays its ultimate purpose and mission that has given rise to each of the great revolutions.It is the conviction that the law betrays its ultimate purpose and mission that has given rise to each of the great revolutions.It is the conviction that the law betrays its ultimate purpose and mission that has given rise to each of the great revolutions.

Thomas Kuhn explained the great scientific revolutions, such as the Copernican, Newtonian and Einsteinian revolutions, as being the result of crises that occur periodically, when phenomena which cannot be explained by the basic postulates of established science and are by even treated as anomalies turn out to require new basic postulates. New basic postulates that are designed to present as "natural" what was previously considered simply "abnormal" are becoming, as Kuhn shows, the heart of a new scientific "paradigm" (19). The interplay of revolution and the development of Western law offers a striking parallel with the interplay of revolution and the development of Western science. In Western law,as in Western science, it is presupposed that changes in "data" - conditions - will occur, that these changes will be assimilated into the existing system or paradigm, that, if not assimilated, they will be recognized as anomalies, but that, if too many of them seem to be unable to be assimilated, well, at some point the system itself will require a drastic change. In science, the old truth may have to give way to a new one. In law, the old justice may have to give way to a new one.but that, if too many of them seem to be incapable of being assimilated, well, at some point the system itself will require a drastic change. In science, the old truth may have to give way to a new one. In law, the old justice may have to give way to a new one.but that, if too many of them seem to be incapable of being assimilated, well, at some point the system itself will require a drastic change. In science, the old truth may have to give way to a new one. In law, the old justice may have to give way to a new one.

Thus, the great revolutions in the political, economic and social history of the West represent explosions that occurred when the legal system proved too rigid to assimilate new conditions. Some writers have treated these historical explosions as a sort of recurring "cancer" in Western society, a "fever" which must run its course (20). But this is only one side of the story and not the most important. They were also a great release of energy, which admittedly destroyed much of the past but also created a new future. In the end, it can be said that each of the great revolutions was not so much a collapse as a transformation. Each had to compromise with the past,but each also succeeded in producing a new type of law that embodied many of the main purposes for which it was made.

Stressing the legal dimension of the great revolutions - their rejection of the pre-existing legal order and their final contribution to a new type of law - does not minimize but, on the contrary, accentuates the importance of their political, economic, religious, cultural and social. Fundamental changes in the law are inevitably linked to fundamental changes in other structural elements of social life. More particularly, in the Papal Revolution of the end of the 11th and the beginning of the 12th century, the reform of the law was intimately linked to a whole "series of transformations, very deep and very general" (in the words of the great historian Marc Bloch) , which "reached in turn almost all the curves of social activity" (21). Moreover, to call this total transformation Papal Revolution,it is not to limit its scope to issues such as the struggle led by the Pope for control of the Church and for the liberation of the Church, under the rule of the papacy, from secular domination, but, on the contrary, it is to encompass all the interrelated changes that took place at that time. The new papal concept of the Church, as Joseph R. Strayer said, "almost required the invention of the concept of the State" (22). The revolution of law was closely related to the revolution in the Church and the revolution of the Church, which in turn were closely related to the revolution of agriculture and commerce, the movement by which cities and kingdoms have become autonomous territorial political entities,the rise of universities and scholastic thought and other major transformations that accompanied the birth of the West as it understood itself and as it was perceived by others over the next eight centuries and later still. The term "Papal Revolution" is not to be taken literally; like the term "Puritan Revolution" applied to English history from 1640 to 1660, it has a meaning that goes beyond it.

The period of the Papal Revolution is not limited to the few years in which it was, so to speak, at its peak, under the pontificate of Pope Gregory VII, any more than the period of the Russian Revolution is limited to the few years in which Lenin led. the Bolsheviks in power and fought their enemies. The Papal Revolution took place from 1075, when Gregory proclaimed the supremacy of the Pope over the whole Church and ecclesiastical independence from secular power, in 1122, when a final compromise was found between the pope and imperial authority. However, the repercussions have not ceased; the forces that were set in motion by these events continued to produce their effects for centuries.

Many historians reject explanations that cover such long periods. They prefer to attribute given conditions to causes which are contemporaneous or immediately preceding those conditions. Yet, to get to the bottom of it, it's hard to deny that the conditions of a given era are often determined to a large extent by events that occurred even centuries earlier. For example, if we want to try to explain the race relations crisis in the United States of America in the second half of the twentieth century, we cannot ignore the Declaration of Independence of 1776, the resolution the question of slavery in the Constitution of the United States of 1789 and the Civil War of 1861-1864.The American Revolution certainly set in motion forces that resulted in the emancipation of slaves and, ultimately, the struggle for civil rights.

The Western character of national revolutions

Like the Protestant Reformation in Germany, the English Revolution, the American Revolution, the French Revolution, and the Russian Revolution were obviously national revolutions. In contrast, the Papal Revolution was a transnational revolution, a revolution across Europe in the name of the clergy, under the authority of the Pope, against imperial, royal and feudal domination. If obviously the Papal Revolution can be characterized as Western or European, is it correct to characterize national revolutions in the same way? Two remarks should be made on this question, which directly concern the understanding of the Papal Revolution.

First, all national revolutions from the 16th century onwards, with the exception of the American Revolution, were directed in part against the Roman Catholic Church (or, in Russia, the Orthodox Church) and all transferred a large portion of canon law from the Church to the national state and thus secularized it. Therefore, when studying the legal systems, both ecclesiastical and secular, which were created in the late 11th and 12th and 13th centuries under the impact of the Papal Revolution, it should be borne in mind that a many elements of these systems were eventually integrated into the secular law of all European nations, under the impact of national revolutions. In this respect, national revolutions have had an international character.

Second, all the great national revolutions of the West have also been, in their very nature, Western revolutions. Each of them has been prepared in several countries. The Protestant Reformation was prepared by Wyclif in England and Hus in Bohemia as well as by active reform movements in all European countries, before it broke out in Germany. The Puritan movement in England was not only based on the teaching of the Franco-Swiss reformer Jean Calvin, but it had close links with other Calvinist movements in Holland and elsewhere on the continent. The 18th century Enlightenment movement was an entirely Western phenomenon,which formed the ideological foundation not only of the American and French Revolutions but also of the struggle for radical change in England and elsewhere. The Russian revolution was born within the international communist movement founded by two Germans; its roots can be found in the Paris Commune of 1870.

Likewise, the national revolutions had huge repercussions throughout the West following their outbreak. As soon as they were triggered, they invariably provoked a reaction of fear and hostility - fear of the spread of the revolutionary virus, hostility towards the nation that carried it - in other countries. After twenty or thirty years later the revolution lost its intensity in its home country, other countries have come to accept a moderate version of it. Thus, after the Lutheran Revolution fell in Germany, absolute monarchies with a strong civil service appeared in England, France and other countries; after the Puritan Revolution fell in England,constitutional and quasi-parliamentary monarchies emerged on the European continent in the late 1600s and early 1700s; after the French and American Revolutions fell, the English extended the electorate to the middle classes in 1832; and, after the end of the Russian revolution, "socialist" or "new deal ”appeared in the 1930s in Western Europe and the United States.

More importantly, the legal institutions of the various nations of Europe, although they became more distinctly national and less European from the 16th century on, have nonetheless retained their Western character. This has been so despite the fact that secular courts and secular law have increasingly reduced the jurisdiction of ecclesiastical courts and canon law, and furthermore even the Roman Catholic Church has been increasingly nationalized. .

Nevertheless, there were many common links between the different national legal systems. All of these systems share some fundamental modes of categorization. For example, they all strike a balance between legislation and arbitration and, in arbitration, between codified law and jurisprudence. They make a clear distinction between criminal law and civil law. Overall, crimes are analyzed (as they were first analyzed by Abelard in the early 12th century) from the point of view of act, intent or neglect, causation, of homework and other concepts. Overall, civil obligations are divided, expressly or implicitly, into contract, tort (tort) and unjust enrichment (quasi-contract).Behind these categories of analysis and many other common categories lie common policies and common values. For example, in National Socialist Germany in the 1930s, when a law criminalized any act which "deserves to be punished according to popular common sense (gesundes Volksgefühl ) ”, it was considered a violation of the traditional Western concept of legality and the Permanent Court of International Justice overturned a similar law which had been passed in the Free City of Danzig as being contrary to the rule of law ( Rechsstaat ).

The Pursuit of the Millennium (23)

An important part of each of the great revolutions in Western history was its apocalyptic view of the future. Each of them was more than a political program, more than a passionate struggle to reform the world. Each also represented a belief and commitment to eschatology, the messianic dream of an end times, a conviction that the final outcome of the story was near. In the case of the Catholic, Lutheran and Puritan Revolutions, eschatology was expressed in biblical terms. Christian revolutionaries predicted "a new heaven and a new earth." They envisioned the fulfillment of the prophecy of a thousand years of peace on earth between the Second and the Last Coming Judgment. “I saw the holy city, the new Jerusalem, coming down from heaven from God,beautiful as a bride who adorned herself for her husband…. Because what was once is definitely gone. Then the one who sits on the throne declared: - Behold: I renew all things. He added: - Write that these words are true and entirely trustworthy. "(Apoc . 21:15). In the case of the American, French and Russian revolutions, eschatology was secular: a new and final age of freedom and equality, the end of man's long past of oppression, the dawn of a just society. .

In his book The Pursuit of the MillenniumNorman Cohn wrote about a different kind of "revolutionary millennialism" as he calls it. He drew attention to the many chiliastic movements that arose among the "rootless poor" in Western Europe from the eleventh to the sixteenth centuries. These include the Popular Crusades, flagellant movements, the heresy of the Free Spirit, some peasant revolts and the Taborites. Almost all of them were loosely organized, spontaneous, either anarchists or communists, or both. “It is characteristic of this kind of movement, writes Cohn, that its objectives and its premises are limitless. A social struggle is not seen [by the participants] as a struggle for specific and limited goals, but as… a cataclysm from which the world must emerge totally transformed and redeemed ”(24).

The difference between what Cohn described and the apocalypse of great revolutions - great successful revolutions - in Western history is that the purposes and premises of these were both unlimited and finite; their goals were not only universal and unlimited, but also specific and limited. They were millennial but also well organized and politically sophisticated. Cohn's vivid and insightful portrayal of millennial movements of a particular type has led him and others to compare them with modern revolutionary movements on the left and on the right (25). However, the historical roots of at least some of the modern movements and in particular of the communist "millennialism" of the 19th and 20th centuries are found,not in the savage movements Cohn describes, but in the successful revolutions on the fringes of which they appeared.

Successful revolutions were also based on Christian eschatology, which in turn relied on the Judaic view of history as moving towards a final denouement, a climax. Unlike the Indo-European peoples, including the Greeks, who believed that time was cyclical, the Hebrew people conceived of time as continuous, irreversible, historic, and ultimately leading to ultimate redemption. But they also believed that time is divided into periods. It is not cyclical but can be interrupted or accelerated. It develops. The Old Testament is the story not only of change but also of development, growth, movement towards the Messianic age - a very uneven movement, to be sure, with a lot of backtracking but nonetheless movement forward.Christianity, however, added an important element to the Jewish concept of time: that of the transformation of the old into the new. The Hebrew Bible has become the Old Testament, its meaning has been transformed by its fulfillment in the New Testament. In the story of the Resurrection, death has been transformed into a new beginning. Time has not only been sped up but also regenerated. This gave a new structure to history, in which there has been a fundamental transformation from one era to another. This transformation, it was believed, could only happen once: the life, death and resurrection of Christ were seen as the only major interruption in the course of linear time from the creation of the world to its end. complete.

Thus, the Christian concept of renewal is based on the belief in the end of the world. It is also based on the belief that this end is imminent; it is "at hand". “The Christian sense of history,” writes Norman O. Brown, “is the meaning of life in the last days. Little children, it is the last hour. The whole Christian era is in the last days ”. “Christian prayer is a prayer for the end of the world: for it to come quickly. The goal is to end this world; the only question is how. A mistake in this area could prove to be very costly ”(26).

Rosenstock-Huessy showed how the belief in an end of time, the end of the world, influenced the great revolutions in Western history. Each of these revolutions translated the experience of death and regeneration into a different conception of the nation and of the Church (27). When eschatology was pushed aside by the Enlightenment and liberal theology in the 18th and 19th centuries, secular eschatology took its place. “No people,” writes Rosenstock-Huessy, “can live without faith in the ultimate victory of something. Thus, while theology was dormant, the laity turned to other sources of the "Last Things": to the eschatology of Karl Marx on the one hand and to Friedrich Nietzsche on the other (28).

Before the great reform movement of the eleventh century, the Church, both in the East and in the West, had taught that the end of time is not in this world, the material world, but in the spiritual world - not in the historical time but in eternity. This is one of the main points of the contrast that St. Augustine establishes between the earthly city and the city of God. The earthly city is in perpetual decline. Those who live in the end of time are no longer of this world. For Augustine, the same word, saeculum , meant "the world" and "the time". The saeculumwas without hope of redemption: it only remained to abandon it for the realm of the spirit. Saint Augustine and the Church in general in the first ten centuries were against millennial revolutionary movements of the type described by Cohn which attempted to transform the social, political and economic realities of this world into a realm of the spirit. The rebirth of the Christian believer as well as the regeneration of humanity refers only to the eternal soul, which has known this rebirth or regeneration only "by dying to this world" - above all through monastic life.

Likewise, when Christianity was introduced among the Germanic peoples of Western Europe, it was presented there as an otherworldly faith, concerned with the sacred and holiness and having relatively little to say to the power structure. military, political and economic existing, if not to devalue it. At the end of the 11th and the beginning of the 12th centuries, regeneration was first seen as applicable to secular society as well. The reformers placed themselves at the beginning and at the end of a new secular era: they projected themselves into the past in order to project themselves into the future. They saw each other at a turning point in history, at the start of a new era, which they believed to be the final age before the Last Judgment. It was a new interruption in the Christian era;it combined the Greek idea of ​​cyclical return, the Hebrew idea of ​​linear movement to a predestined end, and the earlier Christian idea of ​​spiritual birth or rebirth.

Each of the great revolutions, beginning with the Papal Revolution of 1075, established a clear division between what had preceded it, "the old" and what had accompanied and followed it, "the new". From a story point of view, each of them also placed the old and the new as part of an original creation, or state of nature and an ultimate end, an ultimate victory. Without the belief that this world, these times, the secular institutions of human society, could be regenerated and that this regeneration would lead to the fulfillment of man's ultimate destiny, the great revolutions of Western history would not have could not take place.

Specifically, the belief in man's ability to regenerate the world and the need for him to do so in order to achieve his ultimate destiny laid the groundwork for both a conscious attack on the existing order and the conscious establishment of a new order. The sacred was the criterion of the secular order. This is how the 11th century reformers began to judge emperors, kings and lords according to the principles derived from divine and natural law. The papal party denounced the emperor for having betrayed the office of head of the Church and even accused him of not having the title. Daniel had brought the same challenge to Nebuchadnezzar: "Mene, mene, tekel, upharsin" - "tekel: you were weighed in the scales and you were found light" (Dan. 5:25, 27). "The freedom of the Church", slogan of the Papal Revolution,was justified as being the will of God. Thus, in all of the subsequent great revolutionary periods of the West, transcendent norms were invoked against the existing power structure. When Karl Marx (quoting Proudhon) said, "Property is theft," he was speaking in the Western millennial tradition: the entire economic and political system was weighed in the balance of the end of times - the eschaton - and found light.the whole economic and political system was weighed in the balance of the end of times - the eschaton - and found light.the whole economic and political system was weighed in the balance of the end of times - the eschaton - and found light.

Revolutionary law

The revolutionary belief in the end of time, the last millennium, helps to explain not only the overthrow of the old law but also the incarnation of the revolution in a new system of law. It couldn't happen right away. None of the great revolutions succeeded in abolishing the pre-revolutionary system on the first day and establishing a new permanent system of revolutionary law on the second day. For example, in 1917, the Bolsheviks declared that the inheritance was abolished, but at the same time they issued a decree stipulating that estates with a value of up to 10,000 gold rubles would continue to pass to heirs according to the old rules until a system for administering smaller estates is developed.However, it proved impossible to devise a system whereby the state would effectively inherit a cow, furniture, works of art or even money. The next remedy was a very large inheritance tax; but this measure proved incompatible with efforts to promote family stability and was easily evaded by donations in anticipation of death.

Each of the great revolutions experienced an intervening period in which new laws, new decrees, new regulations were passed, and ordinances were issued at regular intervals and were just as quickly amended, repealed or replaced. Eventually, each of the great revolutions ended up making peace with pre-revolutionary law and restored many of its elements by including them in a new system that reflected the main goals, values ​​and beliefs in whose name the revolution was waged. Thus, the new legal systems established by the great revolutions have transformed the legal tradition while remaining within it.

The Lutheran Reformation and the revolution of the German principalities which embodied it broke the Roman Catholic dualism of ecclesiastical and secular law by delegating the Church. Where Lutheranism succeeded, the church has come to be conceived of as invisible, apolitical, legal; and the only sovereignty, the only right (in the political sense) were those of the secular kingdom or the secular principality. It was just before this time that Machiavelli had used the word “state” in the new sense of a purely secular social order. The Lutheran reformers were in a sense Machiavellian: they were skeptical of the power of man to create a human law that would reflect eternal law and explicitly denied that it was the church's duty to make the law of men. .This Lutheran skepticism allowed the emergence of a theory of law - juridical positivism - which treats the law of the State as a neutral moral right, a means and not an end, a device making it possible to manifest the policy of the sovereign and to ensure obedience to it. But the secularization of law and the emergence of a positivist theory of law is only one facet of the history of the contribution of the Lutheran Reformation to the Western legal tradition. The other facet is just as important: by freeing law from theological doctrine and from the direct influence of the Church, the Reformation allowed it to experience a new and brilliant development. In the words of the great German jurist and historian Rudolf Sohm, “Luther's Reformation was a renewal not only of faith but also of the world:of the world of spiritual life at the same time as of the world of law ”(29).

The key to the renewal of law in the West from the 16th century on was the Lutheran concept of the power of the individual to change, by the grace of God, nature and to create new social relationships through the exercise of his will. The Lutheran conception of the individual will be fundamental to the development of modern property and contract law. Admittedly, there had existed for some centuries, both in the Church and in the mercantile community, a property law and a law of contracts which were elaborate and sophisticated, but, in Lutheranism, its orientation changed. The old rules have been recast in a new set. Nature has become property. Economic relations have become contractual. Consciousness has become will and intention. The last will, which,in the earlier Catholic tradition, had been above all a means of saving souls through charitable donations, became above alla means of controlling social and economic relations (emphasis added). By the simple expression of their will, of their intention, the testators could dispose of their property after their death and the entrepreneurs could organize their business relations by contract. The property and contract rights thus created were considered sacred and inviolable, as long as they were not contrary to conscience. It is the conscience which gave them their sacred character. Thus, the secularization of the State, in the restricted sense of the suppression of ecclesiastical controls, has been accompanied by a spiritualization and even a sanctification of property and of the contract.

It is therefore wrong to say that Lutheranism imposed no limits on the political power of the absolute monarchs who ruled Europe in the 16th century. The development of positive law was designed to rest ultimately on the prince alone, but it was presupposed that, in the exercise of his will, he would respect the individual consciences of his subjects, which meant also respecting their property and their contractual rights. This presupposition rested - in a precarious way, it is true - on four centuries of history during which the Church had succeeded in Christianizing the law to a remarkable extent, given the level of cultural life of the Germanic peoples. Thus, Lutheran positivism separates law from morality,denies the legislative role of the Church and believes that the ultimate sanction of law is the policy of coercion, while assuming the existence of a Christian conscience among the people and a state ruled by Christian rulers.

A somewhat later form of Protestantism, Calvinism, also had profound effects on the development of Western law, particularly in England and America. The Puritans advanced the Lutheran concept of the sanctity of individual conscience and also, in law, that of the sanctity of individual will as reflected in property rights and contractual rights. But they emphasized two elements that were subordinate in Lutheranism: first, the belief in the duty of Christians in general and not just Christian leaders to reform the world (30); and second, the belief that the local congregation, under the aegis of its elected minister and elders, is the seat of truth,a “community of active believers” higher than any political authority (31). The active Puritan congregations, determined to reform the world, were ready to challenge the highest authorities of Church and State in the affirmation of their faith and they did so for reasons of individual conscience, while appealing to divine law, to the Mosaic law of the Old Testament and to the concepts of natural law enshrined in medieval legal tradition. Just as the early Christian martyrs founded the church through their disobedience to Roman law, so the 17th-century Puritans, including men like John Hampden, John Lilburne, Walter Udall and William Penn, through their open disobedience to English law,laid the foundations for Anglo-American civil rights and civil liberties law as expressed in the respective constitutions of the two countries: freedom of speech and of the press, free exercise of religion, privilege against self-incrimination, the independence of the jury, the right not to be imprisoned without cause and many other such rights and freedoms (32). Calvinist congregationalism also laid the religious foundations for modern concepts of social contract and government by consent of the governed (33).the right not to be imprisoned without cause and many other rights and freedoms of this type (32). Calvinist congregationalism also laid the religious foundations for modern concepts of social contract and government by consent of the governed (33).the right not to be imprisoned without cause and many other rights and freedoms of this type (32). Calvinist congregationalism also laid the religious foundations for modern concepts of social contract and government by consent of the governed (33).

Puritanism in England and America and Pietism, its counterpart on the European continent, were the last major movements within the institutional church to influence the development of Western law in a fundamental sense. In the 18th and 19th centuries, both the Roman Catholic Church and various Lutheran denominations evidently continued to exert pressure on the law in various directions. There is no doubt that prophetic Christianity continued to play an extremely important role in law reform - for example, in the abolition of slavery, in the protection of labor and in the promotion of social legislation in general. . And, on the other hand, organized religion has undoubtedly continued to support the status quo, whatever it may be.But the significant factor in this regard in the 19th century and even more so in the 20th century was the fact that religion very gradually became a personal and private matter, without public influence on legal development, while other belief systems - the new secular religions (ideologies, "isms") were elevated to the rank of passionate beliefs for which people were collectively ready not only to die but also to live new lives.“Isms”) were elevated to passionate beliefs for which people were collectively prepared not only to die but also to live new lives.“Isms”) were elevated to passionate beliefs for which people were collectively prepared not only to die but also to live new lives.

It was the American and French Revolutions that paved the way for the new secular religions, spreading religious psychology and many religious ideas that had previously been expressed in various forms of Catholicism and Protestantism throughout secular political and social movements. In the beginning, a kind of religious orthodoxy was preserved through a deistic philosophy which, however, was hardly marked by that psychology which is at the heart of religious faith. What was religious in the great revolutionary minds of the late eighteenth and nineteenth centuries like Rousseau or Jefferson was not their belief in God but in Man, individual man, his nature, his Reason, his Rights.The political and social philosophies that emerged from the Age of Enlightenment were religions because they attributed ultimate meaning and sanctity to the individual mind and also, it must be added immediately, to the nation. The age of individualism and rationalism was also the era of nationalism: the individual was a citizen and public opinion turned out to be not the opinion of humanity but the opinion of the French. , the opinion of the Germans, the opinion of the Americans.the opinion of the Germans, the opinion of the Americans.the opinion of the Germans, the opinion of the Americans.

Individualism, rationalism, nationalism, the Trinity of Democracy has found legal expression in the exaltation of the role of legislative power and the consequent reduction (except in the United States) of the law-making role of the judiciary; in freeing individual actions from public controls, especially in the economic sphere; in the request for codification of criminal and civil law; in the effort to make the legal consequences of individual actions predictable, again especially in the economic field. These “legal postulates” (as Roscoe Pound would have called them) (34) were considered to be not only useful but also just and not only just but also part of the natural order of the universe.Life itself was believed to derive its meaning and purpose from these and related principles of legal rationality, the historical sources of which are evidently the theological doctrines of natural law and human reason.

Liberal democracy was the first major secular religion in Western history (emphasis added); the first ideology which separated from traditional Christianity and which, at the same time, took over from traditional Christianity both its sense of the sacred and some of its major values. But, in becoming a secular religion, liberal democracy was very quickly confronted with a rival: revolutionary socialism. And when, after a century of revolutionary activity throughout Europe, communism finally seized power in Russia in 1917, its doctrines had acquired the sanctity of a compelling revelation and its leadership the charisma of the high priests. In addition, the Communist Party had both the secret character and the austerity of a monastic order.(emphasis added). It is no coincidence that, during the post-war purges, loyal Communists in Europe said, “There is no salvation outside the Party. "

The legal postulates of socialism, although they differ in many respects from those of liberal democracy, like them derive from Christianity. For example, the Soviet Moral Code of the Builder of Communism, which Soviet schoolchildren must learn by heart and which serves as the basis for the development of Soviet legislation, contains principles such as: "conscientious work for the good of society "; "He who does not work should not have to eat either"; “Everyone's concern to preserve and increase wealth”; “Collectivism and mutual aid, one for all and all for one”; "Honesty and sincerity, moral purity, modesty and simplicity in social and private life"; "Intransigence towards injustice, parasitism, dishonesty,careerism and the lure of profit ”(35); “Intransigence towards the enemies of communism”; "Fraternal solidarity with the workers of all countries and with all peoples" (36).Soviet law vividly recalls the Puritan code of the Massachusetts Bay colony, the Freedom Corps of 1641(emphasis added), in his punishment for ideological deviation, idleness and personal immorality (37). In addition, the Soviet system places a very strong emphasis on the educational role of law and popular participation in judicial proceedings and law enforcement through comrade courts and popular patrols and through placement people in the custody of the factory or neighborhood collective. This is also done in the name of an eschatology which foresees the definitive disappearance of coercion and of the right itself, because a communist society is created in which each person will treat others again - according to the terms of the Moral Code of the builder of the communism - as "a comrade, a friend and a brother".It is in no way incompatible with this utopian vision that strong measures of coercion and formal law be taken to achieve it.

The Crisis of the Western Legal Tradition

That the Western legal tradition, like Western civilization as a whole, is undergoing in the twentieth century a crisis more serious than any it has ever experienced is not something that can be scientifically proven. .

This is something that we know, in the end, intuitively. I can only testify, so to speak, that I feel that we are in the midst of an unprecedented crisis in legal values ​​and thought, in which our entire legal tradition is being called into question - not only the so-called liberal concepts of recent centuries, but the very structure of Western legality, which dates from the 11th and 12th centuries.

The crisis is generated both from within and outside of Western experience. From within, social, economic and political transformations of unprecedented magnitude have strained traditional legal institutions, legal values ​​and legal concepts in virtually every country in the West. Yet in the past there have been periods of revolutionary upheaval which also threatened to destroy fundamental elements of the Western legal tradition and this tradition nonetheless survived. What is new today is the questioning of the legal tradition as a whole and not just of some of its particular elements or aspects;and this manifests itself above all in the confrontation with non-Western civilizations and non-Western philosophies. In the past, Western man confidently carried his law around the world. However, the world today is wary - more than ever - of Western "legalism". Men from the East and the South offer other alternatives. The West itself has come to doubt the universal validity of its traditional view of law, especially its validity for non-Western cultures. Law that once seemed "natural" now seems to be only "Western". And many say it is obsolete, even for the West.the world today is wary - more than ever - of Western "legalism". Men from the East and the South offer other alternatives. The West itself has come to doubt the universal validity of its traditional view of law, especially its validity for non-Western cultures. Law that once seemed "natural" now seems to be only "Western". And many say it is obsolete, even for the West.the world today is wary - more than ever - of Western "legalism". Men from the East and the South offer other alternatives. The West itself has come to doubt the universal validity of its traditional view of law, especially its validity for non-Western cultures. Law that once seemed "natural" now seems to be only "Western". And many say it is obsolete, even for the West.

The crisis is sometimes seen in a slightly less apocalyptic light as a challenge not to the principles of legality as they have been understood in the West for nine centuries, but rather to the application of these principles to the new circumstances of the twentieth century, or at most as a questioning of some of the "liberal" or "bourgeois" variants of legality which have prevailed since the 18th century or perhaps since the 17th or even the 16th century. It is said that, in all the countries of the West, the law is moving away from the individualistic presuppositions which accompanied the passage from a "medieval" political, economic and social order to a "modern" political, economic and social order. brings closer to one or the other type of collectivism. From this point of view,the legal crisis in the twentieth century is of a magnitude comparable to previous crises in Western legal tradition, such as that which took place after the French Revolution of 1789 or after the English Revolution of 1640 or even after the German Revolution of 1517. Just as these revolutions, it is said, ushered in a new era in which bourgeois or "capitalist" law replaced "feudal" law, so the revolution of 1917 inaugurated a new era in which "socialist" law replaced bourgeois or capitalist law.inaugurated a new era in which bourgeois or "capitalist" law replaced "feudal" law, thus the revolution of 1917 inaugurated a new era in which "socialist" law replaced bourgeois or capitalist law.inaugurated a new era in which bourgeois or “capitalist” law replaced “feudal” law, thus the revolution of 1917 ushered in a new era in which “socialist” law replaced bourgeois or capitalist law.

It is certainly true that in the twentieth century virtually all western nations introduced widespread government controls over most aspects of economic life. Many countries have nationalized industrial production and implemented integrated state economic planning. Other countries have adopted a form of state capitalism in which the immediate responsibility for production, distribution and investment rests with large corporations, however subject to direct and indirect controls by government agencies. 'State. Lenin's 1921 statement on the Soviet economy is increasingly applicable to other economies: “with us, what pertains to economics is a matter of public law, not private law. " In the USA,for example, areas of administrative law such as taxation, worker-employer relations, securities regulation, public housing, social security, environmental protection and a dozen others, which hardly existed before the Great Depression of the early 1930s, are now prevalent.

Moreover, what was previously conceived as private law was also transformed in the 20th century by the radical centralization and bureaucratization of economic life, including socialism, in one form or another (including that of state capitalism). , is an aspect or a consequence. For example, contract law, which has traditionally been considered in all Western legal systems as a set of rules making it possible to make voluntary agreements enforceable according to the intention of the parties, within the limits set by major public policies,has struggled to adapt in the 20th century to a whole new economic situation in which the detailed conditions of the main types of contracts are specifically required by law or presented as non-negotiable in standardized forms by large commercial organizations. Likewise, in matters of property law,government agencies and big business interests have stepped in to take away from most private owners a very large part of their rights of possession, use and disposal (emphasis added), that is say what would have been considered in the past as their property rights, while imposing on them obligations which can be explained more by administrative law than by civil law. Across the West, the ownership of businesses, businesses and industries, including housing, is increasingly subject to administrative regulation, while the individual owner can hardly plant a tree or have any extension work done. his cooking without government permission.

Similarly, the law of civil liability ( tort law), which has traditionally been conceived primarily as a set of rules to compensate for damages caused by willful misconduct or negligence, has been transformed by the rapid expansion of liability insurance for damages caused by acts of good faith related to various forms of economic activity - the so-called absolute liability, the foundations of which and therefore the limits remain largely unclear. According to some, the "general contract law", that is to say the set of fundamental concepts and doctrines which was formulated in the 19th century as "contract law", applicable to all types of contractual transactions,is now dead and that the principles of liability for breach of contracts are increasingly found in civil liability law (38) but, according to others, general civil liability law, which has also been formulated in the 19th century, more or less simultaneously with general contract law, is also dead. The division of the whole of law into public law and private law as well as their subdivision into autonomous fields such as civil law, criminal law, administrative law and others, is the fruit of the legal thought of the Enlightenment. from the 18th century and was established by the French Revolution. It spread throughout Europe and eventually reached the United States. She could not survive the development of socialism in the twentieth century,whether it is the large-scale planned socialist economy of communist countries or less comprehensive, simply "socialist" forms of government control in the non-communist countries of the West.

Fundamental changes have taken place throughout the West, not only in what has traditionally been called public and private law but also in what one might call social law, particularly family law as well. than the laws relating to the relations between races, classes, sexes and generations. Marriage and divorce have increasingly become a consensus issue, while the power of parents over children has been dramatically reduced. With the family increasingly on its own, social relations of race, class and gender have increasingly come under legal restrictions in order to prevent exploitation. These changes were also associated in part with the socialist movement,although they are only indirectly linked to government control of the economy. In any case, they too constitute legal developments which are difficult to reconcile with traditional legal categories.

Criminal law has also undergone radical changes in almost all western countries due to the integration and collectivization of the economy, urbanization, mass production, industrialization and related phenomena. . New types of crime have emerged: the large-scale theft of business assets, whether owned by the state or large corporations; 'white collar' crime, including tax evasion, embezzlement and competition breaches, drug trafficking and related urban crime and, at the other end of the spectrum, crime political and ideological, which have come to predominate over the “traditional” crimes of murder, rape, burglary, theft, arson.Critical changes in the nature and incidence of crime have been accompanied by changes of comparable magnitude in theories of crime and law enforcement and in law enforcement practices.

These and other changes in the legal systems of Western countries can be called revolutionary not only in the sense that they are fundamental changes that have occurred relatively quickly, but also in the sense that they are a response. to a revolutionary political, economic and social upheaval. In Russia and some other countries this upheaval has taken the form of a classic-type revolution, in which one type of politico-economic and social order and belief system has been violently replaced by another. In other countries, changes have taken the more moderate form of integration of national life through technology and communications, growing organization into larger units, and strengthening of government controls.Everywhere, however, this has been more than just a technological revolution; it was also a political and ideological revolution.

The history of Western law stands at a turning point as clear and crucial as that which was marked by the French Revolution of 1789, the English Revolution of 1640 and the German Revolution of 1517. The two generations which have succeeded each other since the beginning of the Russian revolution witnessed, not only in the Soviet Union, but throughout the West, a substantial break with the individualism of traditional law, a break with its attachment to private property and freedom of contract, with its restrictions on liability for damages caused by entrepreneurial activity, with its strong judgmental attitude towards crime and with many of its core principles. Conversely, they saw the law take the turn of collectivism,the state and social property become more and more important, contractual freedom to be regulated in the interest of society, liability for damages caused by entrepreneurial activity to be extended, a utilitarian attitude to replace a moral attitude to crime and many other new basic assumptions appear. These radical changes constitute a serious challenge to traditional Western legal institutions, procedures, values, concepts, rules and ways of thinking. They threaten the objectivity of the law, because they make the state - the same state that made the laws and appointed the court - an invisible party in most legal proceedings between natural or legal persons.This invisible pressure is increased in communist countries due to strong central controls, not only over economic life, but also over political, cultural and ideological life; and in non-communist countries too, these central controls in the non-economic sphere have increased, although they have generally been exercised more by large bureaucratic organizations than by the state as such. To the extent that the current system of information management is no more efficient than that of the state as such is comparable to the revolutionary crises that have plagued Western legal tradition in the past, the resources of all this tradition can be mobilized to overcome it, as these resources have been mobilized to overcome previous revolutionary crises.However, the current crisis is deeper. This is a crisis not only of individualism as it has developed since the eighteenth century or of liberalism as it has developed since the seventeenth century, or of secularism such as it has developed since the 16th century; it is also a crisis of all tradition as it has existed since the end of the eleventh century. Only four - the first four - of the ten fundamental characteristics of the Western legal tradition remain fundamental characteristics of the law in the West.or secularism as it has developed since the 16th century; it is also a crisis of all tradition as it has existed since the end of the eleventh century. Only four - the first four - of the ten fundamental characteristics of the Western legal tradition remain fundamental characteristics of the law in the West.or secularism as it has developed since the 16th century; it is also a crisis of all tradition as it has existed since the end of the eleventh century. Only four - the first four - of the ten fundamental characteristics of the Western legal tradition remain fundamental characteristics of the law in the West.

1. The law is still relatively autonomous, in that it remains distinct from politics and religion as well as other types of social institutions and other scientific disciplines.

2. It is always entrusted to the knowledge of legal experts, legislators, judges, lawyers and professional jurists.

3. Legal education centers continue to flourish where legal institutions are conceptualized and, to some extent, systematized.

4. This learning of the law constitutes yet another meta-law by which institutions and legal rules are evaluated and explained.

It is important to underline the survival of these four characteristics of the law, because in Russia, during the first years of the Revolution and again in the beginning of the 1930s, strong criticisms were made, as had been the case in the great previous revolutions, against the autonomy of law, its professional character and its character of scholarly discipline and science. In other Western countries as well, it was proposed from time to time in the 1920s and 1930s, partly under the influence of Marxism-Leninism, that the law and lawyers be eliminated or at least heavily marginalized because unnecessary and harmful to society. In the 1960s and early 1970s, the Chinese revolution took up this proposition very seriously:all law schools have been closed and almost all lawyers have disappeared. It is only since the late 1930s in the Soviet Union and the late 1970s in the People's Republic of China that “legal nihilism” has been denounced.

The other six characteristics attributed to the Western legal tradition were all severely weakened in the latter part of the 20th century, particularly in the United States.

5. The law in the twentieth century, both in theory and in practice, has been treated less and less as a coherent whole, a body, a corpus juris and more and more as a mishmash, a fragmented mass of decisions. ad hoc and contradictory rules, kept together only by common "techniques".

The old meta-right has broken down and been replaced by a kind of cynicism. Nineteenth-century categorizations by areas of law are increasingly seen as obsolete. Even older structural elements of law such as, in England and the United States, the forms of action by which the common law was once integrated and which Maitland declared in 1906 to "still rule us from the grave" are almost entirely forgotten. The division of the whole of law into public and private law in the sixteenth century had to give way to what Roscoe Pound called in the mid-1930s "the new feudalism".Yet it is a feudalism devoid of the essential concept of hierarchy of sources of law by which a plurality of jurisdictions can be reconciled and conflicting legal rules can be harmonized. In the absence of new theories that would order and weld the legal structure, crude pragmatism is invoked to justify individual rules and decisions.

6. Belief in the growth of law, in its evolving character over generations and centuries, has also largely weakened. Many believe that the apparent development of the law - its growth through reinterpretation of the past, whether that past is represented by jurisprudence or by codification - is only ideological. The law is presented as having no history of its own, and the history it claims to present is treated, at best, as a chronology, and at worst, as a mere illusion.

7. The changes which have taken place in the law in the past as well as the changes which are taking place in it at present are not considered as responses to the internal logic of legal growth nor as resolutions of the tensions between the law. legal science and legal practice, but rather as responses to pressures from outside forces.

8. The idea that law transcends politics - the idea that at all times, or at least in its historical development, law is distinct from the state - seems to have given way more and more to idea that law is at all times essentially an instrument of the state, that is, a means of carrying out the will of those who exercise political authority.

9. The source of the rule of law in the plurality of legal bodies and legal systems within a single legal order is threatened in the twentieth century by the tendency in each country to dissolve all jurisdictions and systems in a single central legislative program of legislation and administrative regulation. Churches have long ceased to constitute a real counterweight to secular authorities. The custom of communities or commercial professions and other autonomous communities in the economic and social order has been supplanted by legislative and administrative controls. International law has broadened its theoretical pretensions to replacing national law but, in practice, national law has either expressly incorporated international law,or rendered it ineffective as a remedy for individual citizens. In federal systems such as that of the United States, the ability to switch from one court to another has decreased significantly.

The idea, expressed by Blackstone two centuries ago, that we live under a considerable number of legal systems has little equivalent in contemporary legal thought.

10. The belief that the Western legal tradition transcends revolution, that it precedes and survives the great global upheavals which have periodically engulfed the nations of the West, is challenged by the opposing belief that the law is entirely subordinate to the revolution. The overthrow of a set of political institutions and its replacement by another leads to an entirely new law. Even if the old forms are retained, they are said to be loaded with new content, serve new purposes, and should not be identified with the past.

The crisis of the Western legal tradition is not only a crisis of legal philosophy but also a crisis of the law itself. Philosophers of law have always debated and arguably always will debate whether the law is based on reason and morality or whether it is only the will of the political leader. It is not necessary to settle this debate to conclude that, from a historical point of view, the legal systems of all the nations heir to the Western legal tradition are anchored in certain beliefs or certain postulates: that is, say that the legal systems themselves have presupposed the validity of these beliefs. Today, these beliefs or postulates - such as the structural integrity of the law, its evolutionary character, its religious roots,its transcendent qualities - are rapidly disappearing, not only from the minds of philosophers, not only from the minds of legislators, judges, lawyers, professors of law and other members of the legal profession, but from the consciousness of the great majority of citizens, of the people as a whole; and, what is more, they disappear from the law itself. The law is fragmenting and becoming more and more subjectivized, is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.not only of the minds of legislators, judges, lawyers, law professors and other members of the legal profession, but of the conscience of the vast majority of citizens, of the people as a whole; and, what is more, they disappear from the law itself. The law is fragmenting and becoming more and more subjectivized, is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.not only of the minds of legislators, judges, lawyers, law professors and other members of the legal profession, but of the conscience of the vast majority of citizens, of the people as a whole; and, what is more, they disappear from the law itself. The law is fragmenting and becoming more and more subjectivized, is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.but of the conscience of the great majority of citizens, of the people as a whole; and, what is more, they disappear from the law itself. The law is fragmenting and becoming more and more subjectivized, is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.but of the conscience of the great majority of citizens, of the people as a whole; and, what is more, they disappear from the law itself. The law is fragmenting and becoming more and more subjectivized, is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.is focused more and more on opportunism and less and less on morality and is more concerned with the immediate consequences and less with coherence or continuity (39). Thus, in the twentieth century, the historical ground of the Western legal tradition is being washed away and the tradition itself is threatened with collapse.

The collapse of the Western legal tradition only partly stems from the socialist revolutions which were unleashed in Russia in October 1917 and which gradually spread to the whole of the West (and to other parts of the world as well. ), although often in relatively mild forms. It comes only in part from the massive intervention of the massive state in the economy of the nation (the welfare state) and only in part from the massive bureaucratization of social and economic life through 'huge centralized corporate entities (the state-enterprise). It stems much more from the crisis in Western civilization itself, which began in 1914 with the outbreak of the First World War. It was more than an economic and technological revolution, more than a political revolution.If it had not taken place, Western society could have adapted its legal institutions to meet the new demands placed on them, as it did in the revolutionary situations of the past. Western society would be able to integrate socialism - of any kind - within the framework of its legal tradition. But the disintegration of the very foundations of this tradition is not susceptible to accommodation; and the greatest challenge for these foundations is the enormous loss of confidence in the West itself as a civilization, community and in the legal tradition which for nine centuries has helped to maintain it.as it did in the revolutionary situations of the past. Western society would be able to integrate socialism - of any kind - within the framework of its legal tradition. But the disintegration of the very foundations of this tradition is not susceptible to accommodation; and the greatest challenge for these foundations is the enormous loss of confidence in the West itself as a civilization, community and in the legal tradition which for nine centuries has helped to maintain it.as it did in the revolutionary situations of the past. Western society would be able to integrate socialism - of any kind - within the framework of its legal tradition. But the disintegration of the very foundations of this tradition is not susceptible to accommodation; and the greatest challenge for these foundations is the enormous loss of confidence in the West itself as a civilization, community and in the legal tradition which for nine centuries has helped to maintain it.and the greatest challenge for these foundations is the enormous loss of confidence in the West itself as a civilization, community and in the legal tradition which for nine centuries has helped to maintain it.and the greatest challenge for these foundations is the enormous loss of confidence in the West itself as a civilization, community and in the legal tradition which for nine centuries has helped to maintain it.

Almost all Western nations today are threatened by a cynicism with regard to the law, which leads to a contempt for the law in all classes of the population [would there not be the cynicism and the rentier contempt of jurists. not for something? [ND E].) Cities have become more and more dangerous. The welfare system is almost broken down due to unenforceable regulations. There is a blatant violation of tax laws by the rich and the poor and those in between. There is hardly a profession that is not entangled in the circumvention of government regulations. And the government itself, from the bottom up, is mired in illegal activities. But that is not the point.The bottom line is that the only people who seem to have a clear conscience on this issue are the few whose crimes have been exposed.

Contempt for the law and cynicism about the law have been fueled by the contemporary revolt against what is sometimes called legal formalism, which emphasizes the uniform application of general rules as a central element of reasoning legal and the idea of ​​justice. According to Roberto M. Unger, with the development of the welfare state on the one hand and the enterprise state on the other, formalism is giving way to public policy, both in legal reasoning and in idea of ​​justice (40). Politically inspired legal reasoning, writes Unger, is characterized by the importance it places on general standards of fairness and social responsibility. Unger links this shift in “post-liberal” Western legal thought to a shift in beliefs about language."We no longer attribute to language the fixity of categories and the transparent representation of the world which would make formalism plausible in legal reasoning or in ideas about justice," he wrote (41). So described, the revolt against legal formalism seems both inevitable and harmless. Yet what is to prevent discretionary justice from being an instrument of repression and even a pretext for barbarism and brutality, as it became in Nazi Germany (this assertion only engages its author [N. d. E.])? Unger argues that what prevents this is the development of a strong sense of community within the various groups that make up a society. Unfortunately,the development of such group pluralism is itself thwarted by some of the same considerations that underlie the attack on legal formalism. Most human-sized communities can hardly survive for long, let alone interact with one another, without elaborate rule systems, whether customary or enforced. To say this is not to deny that at the end of the 19th and the beginning of the 20th centuries, in many Western countries, there was an excessive concern for the logical coherence of the law, which still exists in some circles; the reaction against it loses its justification, however, when it becomes an attack against the rules as such and against the Western tradition of legality which establishes a balance between the rule, the jurisprudence,politics and fairness - the four.

The attack on any one of these four factors tends to demean the others. In the name of anti-formalism, “public order” has come dangerously close to the will of those who are currently in charge: “social justice” and “substantive rationality” (42) are now identified with pragmatism. ; “fairness” has lost its historical and philosophical roots and is swept away by all the winds of fashionable doctrine. Legal language is seen not only as necessarily complex, ambiguous and rhetorical (which it is), but also totally contingent, contemporary and arbitrary (which it is not). These are harbingers not only of a “post-liberal” era but also of a “post-Western” era.

No more than anarchy will cynicism with regard to the law be overcome by adhering to a so-called realism which denies the autonomy, integrity and evolutionary character of our legal tradition. In the words of Edmund Burke, those who do not look to their ancestors will not look to their posterity.

This certainly does not mean that studying the past will save society. Society inevitably moves towards the future. But she does it by walking backwards so to speak, her eyes turned to the past. Oliver Cromwell said: “Man never reaches such a high standard as when he does not know where he is going. He understood the revolutionary significance of respecting tradition in times of crisis.

Towards a Social Theory of Law

Two words which have shaped modern man's thinking on the past make it difficult to grasp the meaning of the Western legal tradition.

The first word is that of "medieval" (or "Middle Ages"). It came into use in the 16th century to characterize on the one hand the period between the beginning of Christianity and the Protestant Reformation and on the other hand the period between classical antiquity and the “new humanism” (the “Renaissance”, term forged by Michelet three hundred years later). The word "medieval" also appealed to proponents of the Catholic Counter-Reformation, as it implied not only that Protestantism was an innovation but also that Roman Catholicism exhibited uninterrupted continuity from at least the time of Constantine. Eventually, the word proved convenient also for 19th-century nationalist historiography, as it seemed to define the period between the decline of the Roman Empire and the rise of sovereign national states.

It is therefore surprising to find that virtually all modern Western legal systems emerged in the mid-Middle Ages!

The second word is that of "feudalism", which we ended up identifying with the socio-economic formation of the Middle Ages. The medieval era of feudalism has been contrasted with the modern era of capitalism. Capitalism has been associated with individualism and Protestantism, just as feudalism has been associated with traditionalism and Catholicism.

The concept of feudalism is almost as laden with hidden ideological assumptions as the concept of the Middle Ages. The adjective "feudal", derived from the concrete substantive "fief" ( feod), took on technical, political, economic and legal meanings from the 11th century; but the abstract substantive "feudalism", which refers to the entire socio-economic system, was not invented until the 18th century (43). The French Revolution aimed to abolish feudalism and feudal society. A decree of August 11, 1789 proclaimed: “The National Assembly completely abolishes the feudal regime. "As Marc Bloch said," [H] ow now to question the reality of a social system whose ruin had cost so much pain? "(44). Bloch's irony is justified by the later statement of the great English Marxist historian Christopher Hill. Opposed to the idea that feudalism ended with the abolition of serfdom in the sixteenth century, Hill remarked: “If feudalism has been abolished with serfdom,then the France of 1788 was not a feudal state and there never was a bourgeois revolution, that is to say an overthrow of the feudal state ”(45). In other words, feudalism could not have ended two hundred years before 1789; if this had been the case, the French Revolution had been carried out in vain and, more seriously, the Marxist theory was wrong.

Thus, all nineteenth-century ideologies, including Marxism, conspired to minimize, deny or ignore the deep roots of modern Western institutions and values ​​in the pre-Protestant, prehumanist, pre-individualist and pre-capitalist era and all conspired to hide the break that occurred at the end of the 11th and 12th centuries in Western history. This false periodization of Western history has not only led conventional historians to be completely wrong in their appreciation of the passage from the Middle Ages to the modern era, but has also foiled the efforts of social theorists to trace lines of demarcation between a modern society and a "new" society (socialist, post-liberal, postmodern).

The belief that Western society has moved from an era of feudalism to an era of capitalism implies that the basic structure of a social order is economic and that the law is part of an "ideological superstructure" used by those who have. economic power as a means of carrying out their policy. However, the Western legal tradition cannot be understood simply as an instrument of domination, be it economic or political; it must also be seen as an important part of the strategy of the basic structure of Western society. It is both the reflection and the determinant of economic and political development. Without constitutional law, company law, contract law,property law and other areas of law that developed in Western Europe from the 12th to the 15th century, the economic and political changes from the 17th to the 19th century, which contemporary social theorists identified with capitalism, could not have take place.

Additionally, the word “feudalism” can be used to mask the fact that Western legal institutions and values ​​in their formative period often called into question the prevailing political and economic system. There were ceaseless struggles between law and the oppression of the feudal class, between law and power the urban magnates, between law and ecclesiastical interests, between law and royal domination. The serfs who fled in the cities claimed their freedom, under the urban law, after a year and a day. Citizens rebelled against their urban rulers in the name of constitutional principles declared in city charters. The barons demanded ancient rights and privileges from kings. Princes and popes clashed,each affirming that the socio-economic power of the other was exercised in violation of divine law and natural legal rights, against the spirit of the laws and even against their letter. In these and other struggles, the right was invoked against the facts and material conditions which prevailed; he turned against the social structure that had, so to speak, mothered him.

Likewise, in Western history, the law has been invoked periodically against the dominant political and moral values ​​of society, the very values ​​which can be said to have given birth to it and which it is supposed to share. The law is invoked to protect the dissenter, the heretic, although political authorities and public opinion itself condemn dissent or heresy. The law can protect the community against dominant individualism, or the individual against dominant collectivism. This fidelity of the law to its own values ​​is difficult to explain by an instrumental theory which considers legal institutions as a simple tool of the ruling class or the political elite.

Law - at least in Western history - also cannot be entirely reduced to the material conditions of the society which produces it or to the system of ideas and values; it must also be considered, that is to say in part, as an independent factor, one of the causes and not only one of the results of social, economic, political, intellectual, moral and religious developments.

The first task of a social theory of law today, almost a century and a half after Karl Marx and almost a century after Max Weber, is to escape very simplistic concepts of causation and law. Whatever the philosophers' point of view on idealism and materialism, from a historical point of view, the fact that Hegel was wrong in assuming that consciousness determines being does not mean that Marx was right. to say that being determines consciousness. In history, in real life, neither of the two “determines” the other; they usually go hand in hand; otherwise, it is sometimes one and sometimes the other which is of decisive importance. A social theory of law must emphasize the interplay of mind and matter, ideas and experience, in its definition and analysis of law.It must bring together the three traditional schools of jurisprudence: the political school (positivism), the moral school (theory of natural law) and the historical school (historical jurisprudence) in an integrative jurisprudence.

The second task of a social theory of law today is to adopt a historiography appropriate to history, rather than a historiography derived primarily from economic history, the history of philosophy, or other types. of history. A social theory of law must take into account the fact that legal systems began to build in the West at the end of the 11th and 12th centuries and that some of the fundamental characteristics of these legal systems survived the great national revolutions of the 16th to the 20th century. century.Another fact to take into consideration is that the first modern Western legal system was the canon law of the Roman Catholic Church, and this legal system shared many characteristics with what present-day social theorists call secular legal systems, rational, materialistic, individualistic of liberal capitalist society. The dualism of ecclesiastical and secular jurisdictions is a specific, if not unique, characteristic of Western culture. A social theory of law must certainly provide an explanation. Such an explanation must also take into account the Western conception of the pluralism of social groups within secular jurisdiction,each having its own right and that of the relationship of this pluralism with the dualism of the layman and the ecclesiastical. It is a historiographical problem and not only a sociological one, because it is an interpretation of the great revolutions of Western history, by which the national states have absorbed a large part of the jurisdiction of the Church and ultimately a much of the jurisdiction of different social groups within the secular order as well.by which the national states have absorbed a large part of the jurisdiction of the Church and ultimately a large part of the jurisdiction of the different social groups within the lay order as well.by which the national states have absorbed a large part of the jurisdiction of the Church and ultimately a large part of the jurisdiction of the different social groups within the lay order as well.

Such a historiography would lead to a general social theory which sees the history of the West not primarily as a series of transitions from feudalism to capitalism and socialism, but rather as a series of transitions of plural social groups within a global ecclesiastical unity towards national states within a global but invisible religious and cultural unity, then towards national states without global unity in search of new forms of unity on a global scale.

From this historical perspective, a social theory of law would be interested in the extent to which the Western legal tradition has always depended, even at the height of the national state, on the belief in the existence of a legal corpus. superior to the law of the highest political authority, a legal corpus formerly called divine law, then natural law and recently human rights; and the extent to which this belief itself has always been dependent on the vitality of the autonomous legal systems of communities within the nation (cities, regions, unions) as well as transnational communities (international business and banking associations, international agencies , churches).

A further task of a social theory of law is to study the fate of law in times of revolutionary change, not so much to examine the rapid substitution of new laws for old ones but rather to examine how, after the revolution has fallen, the foundations of a future stable and fair legal system are or are not being laid.

Finally, a social theory of law must go beyond the study of Western legal systems and the Western legal tradition, to be interested in non-Western legal systems and traditions, at the meeting of Western law and non-Western law and at the development of a legal language common to humanity. Because it is only in this way that the western legal tradition will be able to emerge from the crisis it is going through at the end of the 20th century.

Harold J. Berman, The Law and the Revolution: The Formation of the Western Legal Tradition , Introduction, translated from the American by BK (\*)

(\*) The introduction is translated from the first edition (1983). The summary that Berman himself made of the analysis he proposes in "Le Droit et la Révolution" of the two Protestant revolutions, the Lutheran and the Calvinist, of the so-called "French" Revolution, of the American Revolution and of the Bolshevik Revolution, from a legal standpoint, will be published later below.

Foreword Notes

(1) Norbert Elias, in the back and forth that he makes between the analysis of the formation of the absolutist state and the examination of the modification of sensibilities, establishes a parallel which seems indisputable between the monopolization of legitimate violence by the State and the training of man to restraint and, even beyond, a relationship of cause and effect between the subjugation of man to the control of his impulses, his instincts and the will domestication of natural forces, which was accentuated precisely in the 17th century: "Control of nature, social control and individual control," he indicates (La Société des individuals, Fayard, 1997p. 91), form a kind of sequence in a circle; they constitute a functional trilogy, the vision of which can serve as a fundamental outline for the observation of human problems;no element can develop without the others; the measure and shape of one depending on the measure and shape of the others; and if one of the three collapses, the others sooner or later follow him in his fall. "

(2) The Christian notion of "common good" can have points of contact with the Ciceronian notion of "utilitas publica" or "utilitas communis" (De officiis, III, 47), it does not coincide with it. In the discourse of the jurists of the "middle ages", "utilitas publica" and "utilitas communis" generally refer respectively to the profit and by extension to the happiness of the whole body politic and to the profit and by extension also to the happiness of each of its members (Peter von Moos, Between history and literature: communication and culture in the Middle Ages, Sismel - Edizioni del Galluzzo, Florence, 2005, p. 476; Henri Bresc, Georges Dagher and Christiane Veauvy (eds.), Politics and religion in the Mediterranean, Middle Ages and contemporary times, Editions Bouchène, 2008). The first to make it a synonym of "happiness" or "well-being",in particular material, is Bodin ("all the people enjoy the public good, sharing with each the common goods"). Serving commerce and serving the common good are now one and the same. On the other hand, the "common good" implies, in the texts of theologians and jurists, that "the subjects all obey the laws without fail, exercise well the offices that have been given them, practice well the professions to which they are devoted, respect the established order to the extent, at least, that this order is in conformity with the laws that God has imposed on nature and on men. That is to say that the public good is essentially obedience to the law, to the law of the sovereign over this land or to the law of the absolute sovereign ”(Michel Foucault, Sécurité, territoire, population: cours at the Collège de France, 1977-1978, Gallimard, 2004, p. 102).From Cicero who undoubtedly borrows the notion of “utilitas” from the Stoic from Panétios de Rhodes (J. Gaudemet, Utilitas publica. In Revue historique du droit français et foreign, n ° 29, 1951 [p. 465-99]), no idea of ​​prosperity or happiness or even obedience is attached to the "utilitas publica" or the "utilitas communis and, what is more, the interests of the fatherland are in no way confused with the interests of the country. individual citizens.the interests of the fatherland are in no way confused with the individual interests of the citizens.the interests of the fatherland are in no way confused with the individual interests of the citizens.

Once the notion of "common good" is established, all that remains is to mobilize the organic metaphor to justify, among other things, the tax (ideally permanent). “[…] [F] or the service of the public good, declares the archdeacon of Tournai Henri de Gand (c. 1217 - 1293), the prince could, if necessary, use the goods of the subjects who are a part [ of public affairs], and this is why each of the subjects must contribute to the public service ”(quoted in Lydwine Scordia, Images de la servitude fiscal à la fin du Moyen Age. In Mélanges de l'École française de Rome. Moyen- age, t. 112, n ° 2, 2000 [p. 609-631], p. 614). But isn't it that "[it] that affects everyone must be approved by all"? Certainly, except that, here, the definition of "all" is restrictive:"[T] he taxation for the common good and the usefulness of all subjects is only lawful de consensu et scitu principaliorum et discretiorum de communitate, that is to say of the consent and knowledge of the principal and the most wise men of the community ”, the“ valentior pars ”(cited in ibid., p. 616), who, to go quickly, will become, under the Republic, the famous“ representatives of the Nation ”. "The link between taxation and citizenship results from the revolutionary principle of the vote of tax laws by the representatives of the Nation", recalls, if necessary, a professor of the Universities; and to quote Jean-Jacques Rousseau on this subject: "taxes can only be legitimately established with the consent of the peoplethat is to say, with the consent and knowledge of the principal and wisest members of the community ”, the“ valentior pars ”(cited in ibid., p. 616), which, to go quickly, will become, under the Republic , the famous “representatives of the Nation”. "The link between taxation and citizenship results from the revolutionary principle of the vote of tax laws by the representatives of the Nation", recalls, if necessary, a professor of the Universities; and to quote Jean-Jacques Rousseau on this subject: "taxes can only be legitimately established with the consent of the peoplethat is to say of the consent and knowledge of the principal and wisest of the community ”, the“ valentior pars ”(cited in ibid., p. 616), which, to go quickly, will become, under the Republic , the famous “representatives of the Nation”. "The link between taxation and citizenship results from the revolutionary principle of the vote of tax laws by the representatives of the Nation", recalls, if necessary, a professor of the Universities; and to quote Jean-Jacques Rousseau on this subject: “taxes can only be legitimately established with the consent of the people"The link between taxation and citizenship results from the revolutionary principle of the vote of tax laws by the representatives of the Nation", recalls, if necessary, a professor of the Universities; and to quote Jean-Jacques Rousseau on this subject: "taxes can only be legitimately established with the consent of the people"The link between taxation and citizenship results from the revolutionary principle of the vote of tax laws by the representatives of the Nation", recalls, if necessary, a professor of the Universities; and to quote Jean-Jacques Rousseau on this subject: “taxes can only be legitimately established with the consent of the peopleor its representatives ”(Discourse on Political Economy, 1755) (emphasis added). “Consent to tax is a principle according to which the tax cannot be legally validly levied if the person liable for it has not expressed its agreement. The history of its establishment is directly at the heart of the establishment of parliamentarism and the modern constitutional state. What was in the Middle Ages only a theory of resistance to the power of the prince was legally consecrated by the revolutionary texts of the 17th and 18th centuries still applied ”(emphasis added) (Fabrice Bin, Consentement à l ' tax (history of), 2010, <https://www.academia.edu/28908993/Consentement_%C3%A0_l_imp%C3%B4t_histoire_du_>). And, unintentionally tasty adds the wikipedia entry on "Consent to Tax", as "voters never brought to power a majority of representatives hostile to tax, therefore this consent has always been validated ”.

(3) See, regarding the despot as supreme owner, <https://elementsdeducationraciale.wordpress.com/2019/10/28/le-pouvoir-panique-3/> .

(4) Jean-Yves Dormagen and Daniel Mouchard, Introduction to political sociology, 5th ed. updated and augmented, De Boeck Supérieur, 2019, p. 32.

(5) Memoirs for the clergy of France, 1785, p. 292. “The Crown of Priests' Hair is as old as Christianity. The Crown [coronas] of hair was so peculiar to the Priests and Bishops of the first centuries, that the sole term Crown was used to designate their condition ”(Jacques Martin, Explications de several difficult texts de l'Ecriture, 1730, p. 383). As for the object itself, the predecessor of which is the diadem, it was worn by the kings of Persia and it was Alexander the Great who reported its use in Europe (Arthur Charles Fox-Davies, A Complete Guide To Heraldry, 1923). According to Hesiod, the first crowned head was Pandora. According to Pliny, Harpocration and other ancient authors, Bacchus is the first to have introduced the use of the crown (of laurel), which had helped him in his expedition to India; the solemn days dedicated to this god are called "great crown" (Antoine Eugene Genoude, Les pères de l'Eglise, translated into French, vol. 6, Paris, 1841; Lise Wajeman, La Parole d'Adam, le corps d ' Eve, Original Sin in the Sixteenth Century, 2007, Droz, Geneva, p. 34, note 35). The Egyptians attribute the invention to Isis. According to Maimonides, the Jews have three crowns, which, according to other authors (see, for example, Victor Ancessi [Abbot], Egypt and Moses. Part one. The clothing of the high priest and the Levites, Ernest Leroux , Paris, 1875), would have been inspired by the memories they had of the crown of the Egyptian high priest:the crown of the Law, the priestly crown, which was given to Aaron (which, at least originally, was apparently a simple headband) and the royal crown, to David (Victor Hennequin, Historical Introduction to the Study of French legislation, t. 2: Les Juifs, Joubert, Paris, 1842, p. 204). Concerning the ornaments of the “priest of the new law” (the Christian priest), Tertullian says that the crown is the character of his royal priesthood (J. –P Migne, Integral and universal collection of sacred orators of the first order, t. 17, at the publisher, 1845, p. 618). Most ancient writers agree that the crown was originally an ornament of the priesthood. Finally, from the point of view of etymology, many are of the opinion “that the word crown comes from horn,because […] the ancient crowns were made of horn-shaped points, and the horns were marks of power, dignity, strength, authority and empire; and that in Scripture the horns are often taken for signs of royal dignity ”. “In Hebrew, the word Keren means indiscriminately horn and crown” (Claude Drigon [Marquis de Magny], Des crowns, des crowns heraldiques, 3rd ed., Frères Bocca Editeurs, Florence, 1878, p. 4-5).1878, p. 4-5).1878, p. 4-5).

(6) Max Weber, Economy and Society, vol. 3: Sociologie du droit, Pocket Edition, Coll. "Agora", 2003, p. 96, p 100.

(7) Philippe Braud, Penser State. Political science, Editions du Seuil, 2004 [1st ed. : 1997].

(8) Norbert Elias, The dynamics of the West, Calmann-Lévy, Paris, 1975 [1st ed. : 1939], p. 30-1, cited in Yves Déloye, Sociologie historique du politique, 3rd ed., Edition La Découverte, Coll. "Repères", 2017, p. 33.

(9) Jean Duma, Norbert Elias and The Society of Individuals, p. 17-3, in Histoires de nobles et de bourgeois. Individuals, groups, networks in France. XVI-XVIII centuries, Jean Duma (ed.), Presses universitaire de Paris Nanterre, 2011.

(10) Norbert Elias, La société de cour, Flammarion, 1985, p. xviii.

(11) See, for a summary of the sociogenesis of the State, of which we give an overview here, Bernard Francq and Philippe Scieur, in collaboration with Grégoire Lits, Damien Vanneste and Martin Wagener, Being curious in sociology, Presses Universitaires de Louvain , 2014, p. 250 and sqq.

(12) Roger Chartier, Norbert Elias interpreter of Western history? In Le Débat, October 1980, n ° 5, p. 138-143.

(13) Max Weber, Sociologie du droit, Presses Universitaires de France, Paris, 1986, p. 44.

(14) Jacques Chevallier and Danièle Lochak, La Science administrative, Presses Universitaires de France, Paris, 1987 [1st ed. : 1980].

(15) Ibid.

(16) Ibid. “Because it has a monopoly on coercion, the administration cannot be compared to any other social organization; and administrative science cannot therefore be reduced to a simple science of organizations […] Instead of being thought of as external and subordinate to politics, administration becomes not only one of its essential components, but also its founding principle, its nodal point, the instrument of impulse and regulation essential to its balance and survival; it is indeed around the hard core, original, of the State apparatus that the political system was constituted by way of successive stratifications ”(ibid.).

(17) Ibid.

(18) Ibid.

(19) Michel Coutu, Max Weber and the rationalities of law, chap. 4: Legal rationality and legitimacy of law, LGDJ and the Presses of Laval University, Paris, 1995.

(20) Michel Foucault, We must defend society, Cours au Collège de France 1976, Gallimard / Seuil, Coll. “Hautes Etudes”, Paris, 1997, p. 24.

(21) Ibid.

(22) Id., The ethics of care for the self as a practice of freedom, in Dits et Ecrits, t. 4, Gallimard, Paris, 1994, p. 728.

(23) Id., Security, territory, population: courses at the Collège de France, 1977-1978, Gallimard and Éditions du Seuil, 2004, p. 406.

(24) Harold J. Berman, Law and Revolution, Harvard University Press, 1983, p. 2, p. 113.

(25) "Nonetheless, even Berman's fiercest critics admit that the big picture he presents of facts and figures is correct" (Andreas Thier, Harold Berman's Law and Revolution ': A Necessary Challenge for Legal History Research. In Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte, n ° 21, 2013 [p. 173-5], p. 174).

(26) Thomas Duve, Law and Revolution - revisited. In Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte, n ° 21, 2013 (156–9).

(27) Douglas Martin, Harold J. Berman, 89, Who Altered Beliefs About Origins of Western Law, Dies, November 18, 2007, <https://www.nytimes.com/2007/11/18/us/18berman.html> .

(28) See Jean-Edme-Auguste Gosselin, Power of the Pope over Sovereigns in the Middle Ages or Historical Research, Catholic Bookstore of Perisse Frères, Paris and Lyon, 1839.

(29) See, on the subject of the constitution of canon law, Jacqueline Rambaud-Buhot, La critique des fakes dans ancien droit canon. In Library of the school of charters, 1968, t. 126, issue 1 [p. 5-62]. “In the middle of the ninth century, a veritable workshop for forgers functioned in Gaul [in the region of Reims and perhaps also in Saint-Denis]. Using [either] authentic texts, of various origins including many from Roman law, [or texts fabricated by themselves] the forgers attributed them to Carolingian emperors (the False Capitulars) or to various popes of the first centuries ( the False Decretals), to give them more authority ”(Brigitte Basdevant-Gaudemet and Jean Gaudemet, Introduction historique au droit: XIIIe-XXe centuries, LGDJ, 2000, p.100) and in order to destroy the metropolitan power for the benefit of that of the bishops, to place the entire Church under the jurisdiction of the see of Rome and to remove the clergy from the power of the princes and to place the papacy above the secular powers ( see Antonin Bourel, Study on false decretals, Montauban, 1844; Ch. De Smedt (Father) False decretals. The Frankish episcopate and the court of Rome from the 9th to the 11th century. In Historical and literary religious studies, 15th year, 4th series, t. 6, 1870 [p. 70-169])The Frankish episcopate and the court of Rome from the 9th to the 11th century. In Historical and literary religious studies, 15th year, 4th series, t. 6, 1870 [p. 70-169])The Frankish episcopate and the court of Rome from the 9th to the 11th century. In Historical and literary religious studies, 15th year, 4th series, t. 6, 1870 [p. 70-169])

(30) The main inspirers of the “Gregorian reform” are generally considered to have been the monks of Cluny as well as the bishop Yves de Chartres (c. 1040 - 1115) who, in 1097, launched the idea that he was lawful for a bishop to receive the investiture of secular goods from the hand of a king, an idea immediately rejected by Urban III, but which set fire to the powder between the papacy and the European sovereigns (Augustin Fliche, The Gregorian reform and the Christian reconquest [1057-1123], t. 8, Bloud and Gay, p. 332-4). According to Fliche, “[…] the contribution of Cluny in the formation of Gregorian ideas comes down to the following two points: 1) The Cluniac congregation put the question of moral reform on the agenda and killed, at the inside the regular Church, simonic and Nicolaitan practices;2) its strong organization was a curious example of centralization from which Gregory VII could draw inspiration when he sought to strengthen the links which unite the secular Church to the Apostolic See. To this and only that is reduced the part of Cluny in the elaboration of the great religious reform of the eleventh century ”(SJ De Moreau and EA Fliehe. The Gregorian reform. TI La formation des idees gégoriennes, t. 2: Grégoire VII Louvain, “Spicilegium sacrum Lovaniense.” In Revue belge de philologie et d'histoire, t. 5, fasc. 2-3, 1926 [p. 615-624], p. 617.To this and only that is reduced the part of Cluny in the elaboration of the great religious reform of the eleventh century ”(SJ De Moreau and EA Fliehe. The Gregorian reform. TI La formation des idees gégoriennes, t. 2: Grégoire VII Louvain, “Spicilegium sacrum Lovaniense.” In Revue belge de philologie et d'histoire, t. 5, fasc. 2-3, 1926 [p. 615-624], p. 617.To that and to that alone is reduced the part of Cluny in the elaboration of the great religious reform of the eleventh century ”(SJ De Moreau and EA Fliehe. The Gregorian reform. TI The formation of Gregorian ideas, t. 2: Grégoire VII Louvain, “Spicilegium sacrum Lovaniense.” In Revue belge de philologie et d'histoire, t. 5, fasc. 2-3, 1926 [p. 615-624], p. 617.

(31) Jacqueline Rambaud-Buhot, op. cit., p. 36. With regard to the diktats of the Pope, those who have carefully read <https://elementsdeducationraciale.wordpress.com/2019/10/28/le-pouvoir-panique-3/> will recognize many aspects of Eastern despotism in them. These dictates are as follows:

“1. The Roman Church was founded by the Lord alone.

2. Only the Roman pontiff is rightly said to be universal.

3. Alone, he can depose and absolve bishops.

4. His legate in a council is above all the bishops, even if he is inferior to them by ordination, and he can pronounce against them a sentence of deposition.

5. The Pope can drop off those who are absent.

6. With regard to those who have been excommunicated by him, one cannot, among other things, live under the same roof.

7. Alone, he can, according to the opportunity, establish new laws, unite new peoples, transform a collegiate church into an abbey, divide a rich bishopric and unite poor bishoprics.

8. Alone, he can use the imperial insignia.

9. The Pope is the only man whose feet all the princes kiss.

10. He is the only one whose name is spoken in all the churches.

11. His name is unique in the world.

12. He is allowed to depose the emperors.

13. He is permitted to transfer bishops from one see to another, as necessary.

14. He has the right to ordain a cleric of any church he wants.

15. He who has been ordained by him can give orders to another's church, but not make war; he should not receive a higher rank from another bishop.

16. No general synod can be convened without its order.

17. No text and no book can take on a canonical value outside its authority.

18. His sentence should not be reformed by anyone and only he can reform everyone's sentence.

19. He should not be judged by anyone.

20. No one can condemn someone who appeals to the apostolic see.

21. The causæ majores of all churches are to be brought before him.

22. The Roman Church never erred; and according to the testimony of Scripture, she will never wander.

23. The canonically ordained Roman Pontiff is undoubtedly made holy by the merits of Blessed Peter […].

24. On the order and with the consent of the Pope, subjects are permitted to bring charges.

25. He can, apart from a synodal assembly, depose and absolve the bishops.

26. Anyone who is not with the Roman Church is not considered Catholic.

27. The Pope can release subjects from the oath of fidelity made to the unjust. »(Michel Scouarnec, Two thousand years of the Church through texts, Les Editions de l'Atelier / Editions Ouvrières, 1999, p. 168-9)

(32) Joseph Canning, History of medieval political thought (300-1450), translation by Jacques Bernard, Editions Universitaires de Friborg and Editions du Cerf, Friborg and Paris, 2003, p. 128-9.

(33) See Jean Gaudemet, Formation of Canon Law and Government of the Church from Antiquity to the Classical Age: Collection of Articles, Presses Universitaires de Strasbourg, 2019, p. 182; Ennio Cortese, Theology, Canon Law and Roman Law. At the origins of learned law (11th-12th centuries). In Minutes of the meetings of the Académie des Inscriptions et Belles-Lettres, 146ᵉ year, n ° 1, 2002 [p. 57-74].

(34) Harold J. Berman, The Western Legal Tradition in a Millennial Perspective: Past and Future, 60 La. L. Rev. (2000), <https://digitalcommons.law.lsu.edu/lalrev/vol60/iss3/3> , p. 739-40.

(35) “The term 'revolution', as it applies to the great revolutions in European history, has four main characteristic elements which, taken together, distinguish them from reform or evolution on the one hand. and simple rebellions, coups d'etat, counter-revolutions and dictatorships on the other hand. It is the totality, that is to say its character of total transformation in which political, religious, economic, legal, cultural, linguistic, artistic, philosophical and other basic categories of social change are interwoven into each other. others; its rapidity, that is, the speed or suddenness with which drastic changes occur from day to day, from year to year, from decade to decade as the revolution takes its course; its violence,which takes the form not only of class struggle and civil war, but also wars of expansion abroad; and its duration over two or three generations, during which the underlying principles of the revolution are reaffirmed and restored in the face of the necessary compromises with its initial utopianism, until the grandchildren of the founding fathers themselves recognize their dedication to the cause of their grandparents. Evolution can then take place at its own pace, without fearing either the counter-revolution of the right or the radicalism of a new left ".during which the underlying principles of the revolution are reaffirmed and restored in the face of the necessary compromises with its initial utopianism, until the grandchildren of the founding fathers themselves recognize their dedication to the cause of their grandparents . Evolution can then take place at its own pace, without fearing either the counter-revolution of the right or the radicalism of a new left ".during which the underlying principles of the revolution are reaffirmed and restored in the face of the necessary compromises with its initial utopianism, until the grandchildren of the founding fathers themselves recognize their dedication to the cause of their grandparents . Evolution can then take place at its own pace, without fearing either the counter-revolution of the right or the radicalism of a new left ".

(36) Harold J. Berman, Law…, p. 23.

(37) Adolphe Franck, Reformers and publicists of Europe, Michel Lévy Frères, Paris, 1864, p. 105.

(38) Even if this distinction is not very important, because it was not long in fading, there existed in the 13th century several types of jurists: the jurists who sat on the royal council, in which others advisers occupied a privileged position who were not forensic experts, but whose number diminished over time; judges and jurisconsults, who did not sit on the royal council and were mostly people of Parliament; the legal experts of the administration (Jean Favier, The legal experts and the government of Philippe le Bel. In Journal des savants, 1969, n ° 2 [p. 92-108] p. 97-9).

(39) Pierre Mayer, Droit international privé, Editions Montchrestien, Paris, 1983, p. 50; Riccardo Saccenti, Debating Medieval Natural Law: A Survey, University of Notre Dame Press, 2016.

(40) Brian Tierney, Natura Id Est Deus: A Case of Juristic Pantheism? In Journal of the History of Ideas, vol. 24, n ° 3, 1963.

(41) Yves Congar, Church and papacy: historical views, Les Editions du Cerf, 1994.

(42) Bulletin signétique: Sciences Humans, Philosophie, vol. 18, n ° 1-2, Center de documentation du CNRS, 1964, p. 1042.

(43) Agénor Bardoux, The influence of legists in the middle ages, Auguste Durand, Paris, 1859, p. 9.

(44) Ibid., P. 1.

(45) G. d '. Espinay, On the influence of canon law on French legislation, Toulouse, 1856, p. 217.

(46) Robert I. Burns, SJ (ed.), Las Siete Partidas, vol. 1: The Medieval Church: The World of Clerics, translated by SP Scott, University of Pennsylvania Press, Philadelphia, 2001, p. xvi.

(47) Didier Boutet, Vers L'État de Droit: The theory of the state and the law, Editions L'Harmattan, Paris, 1991, p. 17.

(48) Norbert Rouland, The French State and Pluralism: Political History of Political Institutions from 476 to 1792, Editions Odile Jacob, 1995, p. 334.

(49) Didier Boutet, op. cit.

(50) See, for example, Christian Pian, The social thought of the Church told to those who know nothing about it, Les Editions de l'Atelier / Editions Ouvrières, Paris, 2013.

(51) Gérard Cornu, Legal vocabulary, Association Capitant, 8th ed., 2007, Presse Universitaire de France, coll. “Quadriga”, 2007.

(52) The Decree of Gratien (1140) identifies “jus naturale” with the divine will and defines it as a right which belongs to all peoples and to all human beings; d'Aquin will highlight the “intrinsic” nature of natural law (see Antoine Barlier, Thomas d'Aquin and the theological-political analogy of the common good. In Transversalités, vol. 3 n ° 138, Institut Catholique de Paris, 2016 [p. 13-31).

(53) Michael Bertram Crowe, The Changing Profile of the Natural Law, Martinus Nijhoff, The Hague, 1977, p. 82.

(54) Jean Gaudemet, op. cit., p. 115; see also Odon Lottin, The natural right in Saint Thomas Aquinas and his predecessors, C. Beyaert, 1931; Michel Villey, Sources and scope of natural law at Gratien. In Revue de droit Canonique, 1954 [p. 50-65]; Jean-Pierre Schouppe, The divine law of canonists and the natural law of jurists: stabilizing factors in asymmetry, in Philippe Gérard, François Ost and Michel Van de Kerchove (eds.), L'Acceleration du temps juridique, Presses de l ' Saint-Louis University, Brussels, 2009, p. 213-53.

(55) Jacques Godechot (ed.), The Constitutions of France since 1789, Garnier-Flammarion, Paris, 1970; Article 6 of the Constitution of June 24, 1793 reads: “Liberty is the power which belongs to man to do anything that does not harm the rights of others: it is based on nature; for rule justice; to safeguard the law; its moral limit is in this maxim: Do not do to another what you do not want it done to yourself ”(see also Florence Gauthier, Brian Tierney, The Idea of ​​Natural Rights. Studies on Natural Rights, Natural Law and Church Law, 1150-1625, Michigan / Cambridge UK, Eerdmans, 1997, 380 p., Médiévales, [Online], n ° 57, autumn 2009, available at the following address: [http://journals.openedition.org](http://journals.openedition.org/) / medieval / 5818, accessed February 17, 2020; Thomas Fleiner-Gerster, General State Theory, chap. 3: The State and Human Rights, Graduate Institute Publications, Geneva, 2014, p. 87-143; Michel Bastit, Natural law and natural law in the decline of the Middle Ages. In Revue d'histoire des faculties de droit [p. 49-62], p. 50; Alain Boureau, Natural law and judicial abstraction. Hypotheses on the nature of medieval law. In Annales. History, Social Sciences, 57th year, n ° 6, 2002 [p. 1463-88].

(56) Michel Coutu and Guy Rocher (eds.), The legitimacy of the State and the law around Max Weber, Les Presses de l'Université Laval, 2005, p. 3 and sqq. ; Claude Didry. Durkheim et le droit, openings and limits of a sociological discovery, 2006, available at the following address: ffhalshs00178043f, consulted on February 20, 2020.

(57) Michel Foucault, Security, territory, population: courses at the Collège de France, 1977-1978, Gallimard, 2004, p. 112. The term “administration” to qualify public officials and services did not gain ground until the last years of the 18th century. “Before that date, the word police approximately fulfilled this office, designating the regulatory activity deployed by the public authorities, with a view to the tranquility and happiness of the peoples” (François Burdeau, Histoire de l'assurance française: from the 18th to the 20th century, Montchrestien, 1994).

(58) Ibid.

(59) See Sid Ray, Mother Queens and Princely Sons: Rogue Madonnas in the Age of Shakespeare, Palgrave MacMillan, 2012, p. 8; Ernst Kantorowicz (The King's Two Bodies, 1957, p. 31) adds that, "conversely, in the first centuries of the Christian era, the Church had adapted imperial political terminology and imperial ceremonial to its needs"; "To a certain extent", he should have specified, because, to take just one example, no emperor, not even Semites or Africans, was presented, as were the English sovereigns by the English jurists of the end of the “Middle Ages” and of the “Renaissance”, as “united […] to his kingdom as a 'mystical servant' […]. »

(60) Pierre A. Riffard, Dictionary of esotericism, Payot, Coll. "Scientific library", Paris, 1983.

(61) See, regarding the concept of secularization, Jean-Claude Monod, La querelle de la secularisation de Hegel à Blumenberg, J. Vrin, 2002, p. 128, 136; id., Sécularisation et laïcité, Presses Universitaires de France, 2007.

(62) See, regarding earthly and material messianism in the Old Testament, [https://elementsdeducationraciale.wordpress.com/2017/08/31/la- Jewish-question-in-antiquity-2 /](https://elementsdeducationraciale.wordpress.com/2017/08/31/la-%20Jewish-question-in-antiquity-2%20/) .

(63) See Harold J. Berman, The Interaction of Law and Religion, Abingdon Press, 1974, <http://www.socialtheology.com/docs/berman-law-and-religion-000074.pdf>; “The magistrate [“ the prince ”, or even“ the ruler ”,“ authority ”] is a servant of God for your good. But if you do wrong, fear; for it is not in vain that he bears the sword, being a servant of God to exercise vengeance and to punish him who does evil ”(Romans, 13: 4).

(64) Jacques Ellul, Autopsy of the revolution, Calmann-Lévy, 1969.

(65) Harold J. Berman, Law…, p. 16.

(66) Quoted in Hubert Treiber, Etat moderne et bureaucratie moderne chez Max Weber, Trivium [Online], n ° 7, 2010, available at the following address: <http://journals.openedition.org/trivium/> 3831 , accessed February 8, 2020.

(67) Jean-Louis Halpérin, Five Legal Revolutions Since the 17th Century, Springer, 2014.

(68) Luca Parisoli, A voluntarist approach to natural law and contradiction. One way to build the notion of hierarchy in medieval Latin thought. In Revus. Journal for Constitutional Theory and Philosophy of Law, No. 21, 2013; see also Michel Villey, The Formation of Modern Legal Thought, Montchrestien, Paris, 1968.

(69) “Kant's doctrine can be considered as the highest expression and as the last term of this great movement which in modern times is accomplished by the increasingly complete recognition of the principle of subjective personality. in its constitutive characters, reason and freedom. Freedom becomes for Kant the proper goal of law, and reason falls on the task of determining its law, formulated as' the set of conditions under which, in the sensible world, the will of each person can exist with the will of all according to the general law of liberty. Reason, to establish this law, does not scrutinize the real and historical relationships of things and institutions, nor the principles which are manifested there, but questions itself and establishes only a few subjective maxims and formulas.The law therefore does not embrace the real objective order of things and their relations, the prior knowledge of which is however the necessary condition for good legislation; it is clothed with a subjective, formal, abstract character, and takes no account of the real relationships, in which man lives and develops in the social order and in history. Kant's doctrine, pushed to its final consequences by Fichte in subjective idealism, ends up erecting man through his reason and his freedom as a legislator of the moral order, substitutes him in a way for God, and places him in outside the conditions of historical development. The same tendency had manifested itself some time before in France in an even more forceful manner in Rousseau's theory,which gave the impetus and the first direction to the French revolution ”(Heinrich Ahrens, Cours de droit naturel ou de philosophie du droit, 6th ed., t. 1, PA Brockhaus, Leipzig, 1868, p. 21-2). It is precisely these doctrines that will be implemented by the French Revolution.

(70) See J. Milsand, The Revolution and the Spirit of Liberty. In Revue des Deux Mondes, 2nd period, t. 38, 1862 (pp. 943-66).

(71) Complete works of Montesquieu, t. 4: On the spirit of laws, books XI-XXI, Garnier Frères, Paris, 1877, p. 4. In the same vein, Cicero (Speech for A. Cluentius) said: “We are slaves of the laws in order to be free. "

(72) Paul W. Kahn, The Reign of Law: Marbury V. Madison and the Construction of America, Yale University Press, 1997, p. 70.

(73) François Châtelet, La Révolution sans model, Mouton, 1974. In this regard, the title of the book published during his electoral campaign by the Rothschild pug currently on vacation at the Elysee with his colorful gang of crazy cocaine 'basically necessitated a few remarks, because it is the first time that the "State nobility" called, through one of its own, to the "Revolution", that is to say to the demonstration of what, in principle, constitutes the most serious threat to its mode of existence as a parasite and to its reproduction. It is understood that this was a call of the foot to those who, possessed by the demon of change mediated for two decades as much as their ancestors were by the myth of progress,are waiting so feverishly for a deep and sudden transformation of the social and economic order that they have not noticed that, from reform to reform, from 49-3 to 49-3, this profound transformation has been underway for several decades and that their herald, bearer of what conservatism has more rigid, more possessive, more dusty, more fundamentalist, more putrid, proceeds to “the global transformation of the country” by the legislative power of “ordinances” (Arnaud- Aaron Upinsk, Macron: Le Président Ventriloque The figure of the King and Political Magic, 2nd ed. Les Editions du BIEF, p. 189). Nevertheless, the word has been said, written: “Revolution. "(Title of the book that this Rothschild pug published a few months before his" election ") Would the" state nobility "feel so impregnable,invincible that she does not hesitate to commit such a provocation, worthy of a supper? On the contrary, did she play her last card by electing a "revolutionary" as President of the Republic? Leaving to decide those who, especially in French nationalist circles, have specialized in online political predictions that never come true, we will content ourselves with emphasizing that the fact that the field "we will content ourselves with emphasizing that the fact that the domain "we will content ourselves with emphasizing that the fact that the domain "giletsjaunes.com ”was filed just after the investiture of the pug in question (<https://www.whois.com/whois/giletsjaunes> ) strongly tends to demonstrate what was already clear to any lucid observer, namely that, in the purest tradition of Machiavellianism, at least as presented by Leo Strauss (Thoughts on Macchiavelli, The University of Chicago Press, Chicago, 1958, p. 220, 258), whose theories have had a profound influence on the "policy" of the "neo-cons" (see Ron Paul, Foreign Policy of Freedom, the Foundation for Rational Economics and Education, Inc., 2007, chap. 14), this social movement is one, no doubt unbeknownst to the vast majority of its members, of the internal enemies it has made to further consolidate its positions.

(74) Jean-Baptiste-Victor Coquille, The jurists: their political and religious influence, Durand, 1863.

(75) Louis-Firmin-Julien Laferrière, On the influence of stoicism on the doctrine of Roman jurisconsults, Paris, 1860.

(76) Jean-Baptiste-Victor Coquille, op. cit., p. 177.

(77) Ibid.

(78) Hervé Leuwers, Lawyers defending the Enlightenment and freedom? Problems of analysis around factums, in Olivier Chaline (ed.), Parliaments and the Enlightenment, Pessac, Maison des sciences de l'homme d'Aquitaine, 2012, p. 213-224. Among the jurists who took action, so to speak, we must also count the clerks of prosecutors of the Parliament of Paris and certain provincial towns, the Basochians, of whom we have already spoken at https: // elementsdeducationraciale.wordpress.com/2015/07/14/theatrocratie-2/. To explain the procrastination of Louis XVI following the slinging of the Parliament of Brittany in 1765, “[s] no doubt we should take the measure of the weight in the State of the sovereign courts, of their relations within the king's councils themselves with ministers and councilors of state, often from the same families, marked by the same legal training and the same traditions. It is undoubtedly necessary to remember the influence of the magistrates with the enlightened opinion and their aptitude to agitate by this relay the urban populations. It was not only a question of the Parliament of Paris, but thirteen regional parliaments and four higher councils installed in the peripheral provinces, four courts of aid, twelve chambers of accounts and, behind these magistrates, hundreds basochians and avocados,many of which were to play an essential role in revolutionary events ”(Pierre Deyon, L'Europe du XVIIIe siècle, 2e éd., Hachette Supérieur, 2007). In fact, the Basochians are among the precursors of the Terror (Jean-Bernard, Histoire anecdotique de la Révolution française, Paris, 1790, p. 153 et seq.); See also, on the subject of "solid analogies between the poetico-artistic theories of the Renaissance and the technical doctrines of medieval jurists", the scouring study of Ernst Kantorowicz on The Sovereignty of the Artist. Notes on some legal maxims and theories of art in the Renaissance, translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].L'Europe du XVIIIe siècle, 2nd ed., Hachette Supérieur, 2007). In fact, the Basochians are among the precursors of the Terror (Jean-Bernard, Histoire anecdotique de la Révolution française, Paris, 1790, p. 153 et seq.); See also, on the subject of "solid analogies between the poetico-artistic theories of the Renaissance and the technical doctrines of medieval jurists", the scouring study of Ernst Kantorowicz on The Sovereignty of the Artist. Notes on some legal maxims and theories of art in the Renaissance, translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].L'Europe du XVIIIe siècle, 2nd ed., Hachette Supérieur, 2007). In fact, the Basochians are among the precursors of the Terror (Jean-Bernard, Histoire anecdotique de la Révolution française, Paris, 1790, p. 153 et seq.); See also, on the subject of "solid analogies between the poetico-artistic theories of the Renaissance and the technical doctrines of medieval jurists", the scouring study of Ernst Kantorowicz on The Sovereignty of the Artist. Notes on some legal maxims and theories of art in the Renaissance, translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].Paris, 1790, p. 153 et seq.); See also, on the subject of "solid analogies between the poetico-artistic theories of the Renaissance and the technical doctrines of medieval jurists", the scouring study of Ernst Kantorowicz on The Sovereignty of the Artist. Notes on some legal maxims and theories of art in the Renaissance, translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].Paris, 1790, p. 153 et seq.); See also, on the subject of "solid analogies between the poetico-artistic theories of the Renaissance and the technical doctrines of medieval jurists", the scouring study of Ernst Kantorowicz on The Sovereignty of the Artist. Notes on some legal maxims and theories of art in the Renaissance, translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].translated by Jean-François Courtine and Sylvie Courtine-Denamy. In Mourir pour la patrie and other texts, PUF, Paris, 1984 [p. 31-57].po-et-sie.fr/wp-content/uploads/2018/08/18\_1981\_p3\_21.pdf .

(79) Jean-Baptiste-Victor Coquille, op. cit., p. 236.

(80) Ibid., P. 7.

(81) Ibid., P. 525.

(82) Henri-Auguste-Georges du Vergier de La Rochejaquelein (Marquis de), National policy and the law of nations, E. Denru, Paris, 1860. More exactly, he says: “the new right [c ' that is to say, the law resulting from the Revolution of 1789] is a permanent revolution ”; and again he uses the expression "new law" as an antiphrase, as shown by the passage in which he speaks of "this so-called new law" (p. 32; "this so-called new law that is applied to everything that there is more condemnable and more opposed to the principles accepted in civilized societies ”).

(83) Harold J. Berman, Law…, p. 1.

(84) B. Melkevik, A Look at Chinese Legal Culture: The School of Lawyers, Confucianism, and the Philosophy of Law. Les Cahiers de droit, vol. 37, n ° 3, 1996 [603–27], p. 609, available at: <https://doi.org/10.7202/043400ar> , accessed February 20, 2020.

(85) Harold J. Berman, The Western Legal Tradition in a Millennial Perspective: Past and Future, 60 La . L. Rev. (2000), <https://digitalcommons.law.lsu.edu/lalrev/vol60/iss3/3> , p. 763.

(86) Ibid., P. 757.

(87) “Soviet law was strictly speaking neither law in the current sense nor the mere screen of an arbitrary power, but rather a law 'of a new type', characterized by a structural tension between the withering of law and of socialist law. Its function was to make compatible the integral control of social life by the party and the need for legal regulation of the economy and society ”(Philippe de Lara, Taking Soviet Law Seriously. In Revue internationale de comparative law, vol. 65, n ° 4, 2013 [p. 879-903], which, in the appendix, discusses Law and Revolution (emphasis added).

(88) See Béatrice Hibou, La bureaucratisation du monde à l'ère néolibérale, Editions La Découverte, 2012; see also Henry Jacoby, Die Bürokratisierung der Welt, Campus Verlag, 1984.

(89) To speak today of “big populas”, as La Boëtie did in his time, would be anachronistic, because, in the meantime, the “populas” has been sided.

(90) The “iron cage is a sociological concept coined by Max Weber which refers to the increased rationalization inherent in social life, especially in Western capitalist societies. The "iron cage" traps individuals in systems based solely on teleological efficiency, rational calculation and control. The original German term is "stahlhartes Gehäuse"; rendered as "iron cage" in the first English translation (1958) of "Die Protestantische Ethik und der Geist des Kapitalismus", some sociologists believe that this expression would be better translated as "shell as hard as iron".

(91) Julius Evola, Gli Uomini e le Rovine: e Orientamenti, 5th ed. review, Edizioni Mediterranee, 2001, p. 185.

(92) Seehttps://elementsdeducationraciale.wordpress.com/2019/10/28/le-pouvoir-panique-3/ , in particular note 163.

(93) Ibid.

(94) Without repeating the history of the administration, it is interesting to recall its main stages: the first is indicated by the introduction into everyday language of the term “bureaumanie”, coined around 1760 by the economist. Vincent de Gournay to designate a form of government in its own right, alongside the monarchy, aristocracy and democracy (Georges Weulersse, Le Mouvement Préphysiocratique en France (1748-1755)

Journal of Economic and Social History, vol. 19, n ° 3, 1931 [p. 244-272]), a form of government, one of the first concrete manifestations of which dates back to the creation of ministerial offices by a regulation of 1589 (Yves Thomas, Histoire de administration, Editions La Découverte, Paris, 1995; Adhémar Esmein, Elementary course in the history of French law: for the use of first-year students, Librairie du Recueil général des lois et des decrees, 1892, p. 442), while, however, “we govern [e] [always] with men more than with institutions ”(Michel Antoine et al., Origines et histoire des Cabinets des ministers en France, Droz, Geneva, 1975, p. 17); the second is constituted by the recruitment, under the Convention, of tens of thousands of employees by the Committee of Public Safety, with the aim of monitoring the ministries,in which he does not trust (see Yves Thomas, op. cit.); the third stage consists of the creation by Nabulione Buonaparte of a Council of State and a network of prefects; the fourth stage is constituted by the advent of the parliamentary system, which reinforces the power of the administration in proportion to what it undermines the authority of the Head of State: "Fortunately, the philosopher and politician Jules Simon ( 1814-1896) in 1890, that, while bickering at the Palais-Bourbon, five hundred heads of offices and five hundred expeditionaries governed France as best they could ”(quoted in François Burdeau, History of the French administration: from the 18th to the 20th century, Montchrestien, 1994). The essayist Daniel Halévy (1872-1962), with even more insolent obscenity, congratulates himself in these terms:“Behind the movements of the crowd and of opinion, and of these parliamentary votes which are still movements of the crowd and of opinion, the administration, the civil servant appear […] Republican France has, in reality, two constitutions: one, that of 1875, official, visible, and which occupies the press: it is parliamentary; the other, secret, silent, that of the year VIII, Napoleonic constitution which handed over to the administrative bodies the direction of the country ”(quoted in Frédéric Rouvillois, Olivier Dard and Christophe Boutin [ed.], The dictionary of conservatism, Editions du Cerf, 2017). At the same time as the political power of the administration increases, its jurisdictional competences extend, the autonomy of the administrative justice, at the top of which sits the Council of State,Republican equivalent of what the King's Council was, increases, while the revolving door begins (Charle Christophe. The revolving door in France (circa 1880-circa 1980). In: Annales. Economies, societies, civilizations. 42ᵉ year, N. 5, 1987 [p. 1115-37]) and that young graduates of "grandes écoles" (Terry Shinn, Scientific knowledge and social power. The Polytechnic School 1794-1914, Presses of the National Foundation for Political Science, Paris, 1980), the number of which rose from a large half-dozen at the end of the Ancien Régime to around thirty at the end of the Empire. Polytechnicians and therefore Saint-Simonians in the lead (GW Hoart, Religion Saint-Simonienne: l'Ecole polytechnique et les Saint-Simoniens, 1832), are more and more likely to enter the private sector directly, some in private companies. ,others in banks with private capital, some still in the social economy (mutual societies, cooperatives and associations), others still in non-governmental organizations (then called “charity”). The First World War further consolidates the ubiquitous power and influence of the administration, while leading to a considerable increase in the number of civil servants as well as an accentuation of "rationalization", diversification, specialization and increasing their tasks ("While there were only 28 directors in the ministries in 1870, a century later there were 337: 61 had appeared under the Third Republic; 25 under Vichy; 84 under the Fourth; 139 since 1958 ”, François Burdeau, op. Cit.) And, collateral damage,a rise in so-called social services (canteens, stores, clinics, dispensaries and, as we do not deny ourselves anything among these people, vacation camps for the use of civil servants). Indeed, “[it] is now up to the administration to fix prices, distribute goods, requisition products or regulate labor […,] stimulate industrial production” (Joseph Schmauch, Reintegrating the annexed departments The government and services of Alsace Lorraine [1914-1919], Doctoral thesis, 2016, p. 38). This will inspire this comment to the jurist Michel Augé-Laribé (1876-1954): "the administration spreads over the country like a flood" (quoted in François Burdeau, op. Cit.).summer camps for civil servants). Indeed, “[it] is now up to the administration to fix prices, distribute goods, requisition products or regulate labor […,] stimulate industrial production” (Joseph Schmauch, Reintegrating the annexed departments The government and services of Alsace Lorraine [1914-1919], Doctoral thesis, 2016, p. 38). This will inspire this comment to the jurist Michel Augé-Laribé (1876-1954): "the administration spreads over the country like a flood" (quoted in François Burdeau, op. Cit.).summer camps for civil servants). Indeed, “[it] is now up to the administration to fix prices, distribute goods, requisition products or regulate labor […,] stimulate industrial production” (Joseph Schmauch, Reintegrating the annexed departments The government and services of Alsace Lorraine [1914-1919], Doctoral thesis, 2016, p. 38). This will inspire this comment to the jurist Michel Augé-Laribé (1876-1954): "the administration spreads over the country like a flood" (quoted in François Burdeau, op. Cit.).The government and services of Alsace Lorraine [1914-1919], Doctoral thesis, 2016, p. 38). This will inspire this comment to the jurist Michel Augé-Laribé (1876-1954): "the administration spreads over the country like a flood" (quoted in François Burdeau, op. Cit.).The government and services of Alsace Lorraine [1914-1919], Doctoral thesis, 2016, p. 38). This will inspire this comment to the jurist Michel Augé-Laribé (1876-1954): "the administration spreads over the country like a flood" (quoted in François Burdeau, op. Cit.).

It is therefore only those who had not studied the question who were surprised to hear a president of the departmental council declare in 2017: "The central administrations have seized power in France [...] They have, under cover laws which all refer to an implementing decree (including when it is not necessary), of authentic normative power, not to say an almost exclusive power ”( <https://www.lopinion.fr/> edition / politics / proliferation-standards-has-killed-democracy-administrations-reign-time-117338). Not just any departmental council president: one who had been appointed three years earlier "mediator of standards" following the announcement by the "President of the Republic" at the time of a "shock of simplification", "Shock of simplification" which, unsurprisingly, led to "a flood of measures and circulars supposed to simplify things" (the rest of the interview is available at <http://autoblog.aruba.gentilsvirus.org/chouard.org_blog_comments> /? page107 ). "Administrations, he concludes, reign, as in the days of monarchies"; no, they govern and by techniques far more effective than those available to civil servants under the old regime: management.

The culmination of Saint-Simon's industrialist technocratism (Pierre Musso, Le temps de Etat-Entreprise: Berlusconi, Trump, Macron, Fayard, Paris, 2019, chap. 4: 'Le Lointain': La vision du monde. Religion, politique , industrial religion, Patrick Gilormini, Saint-Simon's contributions to a conception of the company as a passion for the general interest 5th Afep Congress ”The political economy of the company: new challenges, new perspectives” , French Association for Political Economy, Higher School for Economic and Social Development-Catholic University of Lyon, Sciences Po Lyon, July 2015, Lyon, France. 19 p., Available at the following address: ffhalshs-01178421f, consulted on February 23, 2020; see also Henri Jorda, From paternalism to managerialism: companies in search of social responsibility,In Innovations, n ° 29, 2009/1 [p. 149-68]; we would rather say: “From maternalism to managerialism”), the utilitarianism of Jeremy Bentham (1748-1832) as well as “new views of society” and experiments in business management (“His most famous experience was the silent monitor system. Above each machinist's workstation was a wooden cube, each side of which was painted a different color. Plant managers assessed the quality of production every day. of each worker and turned the cube so that the color corresponding to their work was visible to all ”Tim Hindle, Guide to Management Ideas and Gurus, The Economist Newspaper Ltd, 2008, pp. 284 et seq .;the utilitarianism of Jeremy Bentham (1748-1832) as well as "new societal views" and experiments in business management ("His most famous experiment was the silent monitor system. Each machinist's workstation there was a wooden cube, each side of which was painted a different color. Plant managers daily assessed the quality of each worker's output and rotated the cube so that the color corresponding to their work is visible to all ”Tim Hindle, Guide to Management Ideas and Gurus, The Economist Newspaper Ltd, 2008, pp. 284 et seq .;the utilitarianism of Jeremy Bentham (1748-1832) as well as "new societal views" and experiments in business management ("His most famous experiment was the silent monitor system. Each machinist's workstation there was a wooden cube, each side of which was painted a different color. Plant managers daily assessed the quality of each worker's output and rotated the cube so that the color corresponding to their work is visible to all ”Tim Hindle, Guide to Management Ideas and Gurus, The Economist Newspaper Ltd, 2008, pp. 284 et seq .;Plant managers assessed the quality of each worker's output every day and rotated the cube so that the color corresponding to their work was visible to all ”Tim Hindle, Guide to Management Ideas and Gurus, The Economist Newspaper Ltd , 2008, p. 284 and sqq. ;Plant managers assessed the quality of each worker's output every day and rotated the cube so that the color corresponding to their work was visible to all ”Tim Hindle, Guide to Management Ideas and Gurus, The Economist Newspaper Ltd , 2008, p. 284 and sqq. ;<https://www.peoplescollection.wales/items/10456>) of the philanthropist, entrepreneur and theorist of socialism and Welsh Robert Owen (1771-1858) (Manuel Santos Redondo, (2000). Robert Owen, pionero del management. Universidad Complutense de Madrid, Facultad de Ciencias Económicas y Empresariales, Documentos de trabajo de the Facultad de Ciencias Económicas y Empresariales, 2000), the founding text of “management science”, published five years before the Industrial and General Administration Treaty (1916) by the civil engineer of mines, economist and entrepreneur Henri Fayol (1845-1921) who laid the foundations for what he called the “administrative function” (Annie Bartoli and Hervé Chomienne, The development of management in public services: evolution or revolution? In Social information, n ° 167, 2011 / 5 (p. 24-35]),is generally considered to be Principles and Methods of Scientific Management (1911) by FW Taylor (1856-1915) (Pierre Musso, La barbarie managériale. Les Cahiers européenne de l 'imaginaire, 2009 [p .126-134], available at: ffhal-00479603f, accessed 22 February 2020), which asserts that the scientific design of work environments, including compensation systems and incentives, can radically increase an individual's productivity and reduce costs.accessed February 22, 2020), which argues that the scientific design of work environments, including compensation systems and incentives, can dramatically increase an individual's productivity and reduce costs.accessed February 22, 2020), which argues that the scientific design of work environments, including compensation systems and incentives, can dramatically increase an individual's productivity and reduce costs.

Robert Owen can be regarded as the precursor of scientific management and therefore of social engineering because he “combined the [descartian] idea that humans were machines with Locke's empiricism. He said that workers were 'vital machines' that needed as much care and attention as the' inanimate machines' in a factory and that 'children are, without exception, passive and wonderfully designed compounds, which, by adequate preparation and careful attention, based on a correct knowledge of the subject, can be formed collectively to present any human character ”(Owen, 1813). Therefore, a new utopian society 'can be organized, on the basis of an appropriate combination of the previously stated principles,so as to remove from the world not only vice, poverty and, to a large extent, misery, but also to place each individual in circumstances where he will enjoy a more permanent happiness than that which can be given to any individual by virtue of the principles which have hitherto governed society '(Owen, 1813). His idea was to make New Lanark [the village in Scotland where he had established his factories] a community of engineers rather than just a factory. He opened a school [..], a museum, a music hall and a ballroom (the first meeting place at the turn of the century; see Pride and Prejudice by Jane Austen). For Owen, a caring employer cared about the happiness of his workers, not just their productivity. However,he expected happy workers that they 'could be easily trained and directed to provide [their employer] with a large increase in pecuniary earnings' (R. Owen, 1813) ”(Thomas Hardy Leahey, A History of Psychology: From Antiquity to Modernity, p. 180-1).

Like most nineteenth-century social reformers ( [https://elementsdeducationraciale.wordpress.com/2019/01/31/le-pouvoir-panique/(see](https://elementsdeducationraciale.wordpress.com/2019/01/31/le-pouvoir-panique/%28see) also Julian Strube, Socialist Religion and the Emergence of Occultism: A Genealogical Approach to Socialism and Secularization in 19th-Century France. In Religion, vol. 46, n ° 3, March 2016 [p. 1-30]), Owen bathed in an “occult solution”: agnostic until he was 83, he was converted to spiritualism in 1854 by the American medium Maria B. Hayden, the first person to hold spiritualism sessions (remember that we also speak sittings of the Assembly, sittings of the House, sittings of Parliament, sittings of the Council of State, sittings of the City Council, sittings of a tribunal) in Great Britain and whose salon was frequented by the cream of the British nobility (SB Brittan, Brittan's Journal of Spiritual Science, Literature, Art and Inspiration, vol. 1, no. 1, New York, 1873, p. 265).Owen made public confession of his new faith in The Rational Quarterly Review, one of his four journals, and in The Future of the Human Race; or great glorious and future revolution to be effected through the agency of departed spirits of good and superior men and women, manifesto that he published in 1853 (Lewis Spence, Encyclopedia of Occultism and Parapsychology, Kessinger Publishing Company, 2003, p. 679) . Owen claimed to have had mediumistic contacts with the minds of Benjamin Franklin, Thomas Jefferson and others (see, regarding the spiritualistic experiences of the most famous Anglo-Saxon scientists of the nineteenth century,or great glorious and future revolution to be effected through the agency of departed spirits of good and superior men and women, manifesto that he published in 1853 (Lewis Spence, Encyclopedia of Occultism and Parapsychology, Kessinger Publishing Company, 2003, p. 679) . Owen claimed to have had mediumistic contacts with the minds of Benjamin Franklin, Thomas Jefferson and others (see, regarding the spiritualistic experiences of the most famous Anglo-Saxon scientists of the nineteenth century,or great glorious and future revolution to be effected through the agency of departed spirits of good and superior men and women, manifesto he published in 1853 (Lewis Spence, Encyclopedia of Occultism and Parapsychology, Kessinger Publishing Company, 2003, p. 679) . Owen claimed to have had mediumistic contacts with the minds of Benjamin Franklin, Thomas Jefferson and others (see, regarding the spiritualistic experiences of the most famous Anglo-Saxon scientists of the nineteenth century,about the spiritualistic experiences of the most famous Anglo-Saxon scientists of the 19th century,about the spiritualistic experiences of the most famous Anglo-Saxon scientists of the 19th century,https://elementsdeducationraciale.wordpress.com/2019/04/25/marshall-mcluhan/). He explained that the purpose of these communications was "to prepare the world [plunged into disunity, falsehood and misery] for universal peace and to instill in all the spirit of charity, tolerance and love" ( Frank Podmore Robert Owen: A Biography, vol. 2, D. Appleton and Company, New York, 1907, pp. 604–5, as early as 1816 he said he expected the advent of the “reign of universal love”; the following year he preached his own “New Religion”, based on the “ideal of charity”, Gregory Claeys, A Tale of Two Cities: Robert Owen and the Search for Utopia, 1815–17, in JC Davis and Miguel Avilés, (under al ed.), Utopian Moments: Reading Utopian Texts, p. 102). According to the Spiritualists' National Union, a British spiritualist association founded in 1901, The Seven Principles of Spiritism, its reference text, was dictated by Owen in 1871,that is, thirteen years after her death, to the medium Emma Hardinge Britten (Raymond Buckland, The Spirit Book: The Encyclopedia of Clairvoyance, Channeling, and Spirit Communication, Visible Ink Press, Detroit, 2005, p. 390).

Coming in a way from beyond the grave, "[t] he ideas of Owen anticipated the movement of human relations in commerce and industry." See the presentation on the Origin and Foundations of the School of Human Relations (Thomas Hardy Leahey, A History of Psychology: From Antiquity to Modernity, p. 181; <https://webcache.googleusercontent.com/search?q=> cache: Lf3SWIgAYSIJ: https: //d1n7iqsz6ob2ad.cloudfront.net/document/pdf/537f09447dd52.pdf+&cd=1&hl=fr&ct=clnk&gl=fr). The “human relations movement” arose out of the corporate experiences of Australian psychologist and sociologist Elton Mayo (1880–1949) in the 1920s and itself gave birth to “personnel management”, recently renamed “management. human resources ". From these experiences he deduced the importance of the psychological climate which reigns in a company on the behavior of the workers. Supposedly in reaction to the excesses of Taylorism, the "human relations movement" thus came to advocate that managers should pay more attention to the human needs of employees.Workplaces contained “natural groups,” and workplace performance was based as much on satisfaction with membership in these groups as on the rewards and penalties provided by the formal organization. The preferred management techniques from this perspective were in particular more uniform structures, greater cooperation and greater employee involvement. At the end of the 20th century, managementism combined scientific management with the study of the behavior of people at work (“human relations approach”), with an emphasis on the aspects of management linked to obtaining the best performance. through the use of the least resources and efficiency as well as on "soft skills" such as negotiation, communication,networking and stress management. There we were, when an asshole by the name of William Deming (1900–1993), a statistician and management consultant whose work was said to have had a great impact on Japanese manufacturing industry, unless it was the Japanese manufacturing industry, which had a profound influence on this diseased brain, took the "TQM" out of its hat: "Total quality management (TQM) is the continuous process of detecting and reducing or eliminating manufacturing errors, streamline supply chain management, improve the customer experience and ensure employees are on top of training.Total quality management aims to hold all parts that are an integral part of the production process accountable for the overall quality of the end product or service. "The GQT echoes certain whims of the school of human relations," by seeking to make all workers aware ("internalize") that they are responsible for quality control through teamwork and that it is not something that must be imposed by control and inspection ”(Martin Painter, Managerialism and Model s of Management, in Tom Christensen and Per Lægreid [eds], The Ashgate Research Companion to New Public Management , Routledge, 2011). To top it off, The Doctrine of New Public Management (NPM) incubated in the 1980s. The NMP has seven points (Florence Gangloff,New public management and professional bureaucracy. The place of the European dimension in Accounting Control Audit, May 2009, Strasbourg): “the breakdown of the public sector into strategic units organized by product, 'manageable'; the introduction of competition between public organizations but also between public and private organizations; greater use of managerial techniques from the private sector; a more disciplined and parsimonious use of resources and an active search for alternative means of production at lower cost; a movement towards control of public organizations by visible managers exercising discretionary power; a movement towards the adoption of more explicit and measurable (or more controllable) performance standards,the emphasis on measuring results (particularly in terms of performance compensation). Among the most important changes that have taken place in public organizations, new provisions concerning accounting and measurement of efficiency, 'marketing' with in particular the systematic use of calls for tenders are emerging. Thus, certain hospital activities such as catering are carried out by private companies providing services. The use of subcontracting is becoming a quasi-compulsory mode of operation ”. The NPM has thus succeeded in imposing, in the name (of research) of ever more extreme rationality and efficiency, the application of business management practices to the so-called "public" administration,from where they spread to all spheres of social life (associations, political parties, unions, educational establishments, health, sports, etc., not to mention agencies, institutes, observatories, independent administrative authorities, national companies, autonomous establishments, so-called informal unqualified entities and without forgetting the institutions specializing in the work of evaluation, rating, control, which already existed in an embryonic state under the Ancien Régime.the unqualified so-called informal entities and without forgetting the institutions specializing in the work of evaluation, rating, control, which already existed in an embryonic state under the Ancien Régime.the unqualified so-called informal entities and without forgetting the institutions specializing in the work of evaluation, rating, control, which already existed in an embryonic state under the Ancien Régime.

The neo-managerialist virus spread in France from the 1980s; today, as in other economically developed countries, there is a pandemic (Marie-Laure Djelic. The arrival of management in France: a historical review of the links between managerialism and the State. In Politiques et management public, vol. 22 , n ° 2, 2004. A generation of reforms in public management: and after? Proceedings of the thirteenth international conference - Strasbourg, Thursday 24 and Friday 25 November 2003, t.1 [p. 1-17]; see also Christophe Nosbonne , The managerial turn in the European public sector: what consequences for public action? The new work review [Online], 2, 2013, available at the following address: [http://journals.openedition.org/nrt /](http://journals.openedition.org/nrt%20/) 962 , accessed February 10, 2020).

Applied Psychology, Asian Psychology, Behavioral Genetics, Biological Psychology, Clinical Neuropsychology, Cognitive Psychology, Criminal Psychology, Cultural Psychology, Developmental Psychology, Differential Psychology, Experimental Psychology,, Group Psychology, Mathematical Psychology, Medical Psychology, Personality Psychology, positive psychology, psychopharmacology, quantitative psychology, social psychology, transpersonal psychology, it is not difficult to recognize the mark of all these sciences and others still in the "fabric of fictions" that is the managerial discourse and in " construction in the service of fictitious individuals ”that is the managerial practice (The managerial discourse: a construction in the service of fictitious individuals, 08/10/2018,https://cybernetique.hypotheses.org/date/2018/10 ). Managerialism finds its roots in the occult sciences through them, whose source is neither more nor less than metapsychia.

“Metapsychie or métapsychique is the French version of what is commonly called today parapsychology. The term was proposed in 1905 by physiologist Charles Richet to designate: 'The science which has as its object phenomena, mechanical or psychological, due to forces which seem intelligent or to unknown powers latent in human intelligence'. As the historian Régine Plas has shown, these so-called 'psychic' phenomena are among the first objects of psychology. Like many of his colleagues, [Henry] Piéron carried out research on 'telepathic phenomena' at the start of his career, in this case remote communications experiences with Nicolas Vaschide, explained by an 'intellectual parallelism' .From 1905 onwards, he held a section entitled 'Metapsychie' in L'Année psychologique, exercising his critical mind to reject - and sometimes to encourage - this research. In the background of this section arises the question of the place of metapsychia in the field of psychology, which Piéron then helps to institutionalize and professionalize. The widening gap implies, on the part of psychologists, to clearly delimit the border between the two, a role that Piéron will play in particular. In 1922, he participated in commissions analyzing, in his laboratory at the Sorbonne, the physical phenomena produced by mediums. Piéron shows openness to what presents itself as new examples of physiological objectification of psychic activity,but he will not find anything convincing and will suspect fraud. His interventions participated in the emancipation / evacuation of the psychology, which in return benefited from the increased recognition of the scientificity of psychology ”(The contribution of Henri Piéron to the edification of scientific psychology and orientation professional International conference in homage to Henri Piéron (1881-1964) on the occasion of the fiftieth anniversary of his death,International conference in homage to Henri Piéron (1881-1964) on the occasion of the fiftieth anniversary of his death,International conference in tribute to Henri Piéron (1881-1964) on the occasion of the fiftieth anniversary of his death,http://inetop.cnam.fr/medias/fichier/brochure-colloque-pieron\_1412015228812-pdf; Nicolas Marmin, Metapsychic and psychology in France (1880-1940). In Revue d'Histoire des Sciences Humaines, n ° 4, 2001/1 [p. 14-71]). Psychology, in France, does not yet deny its origins: for example, the doctor and psychiatrist Edgar Berillon (1859-1948), a pioneer of hypnotism before the Second World War, contributed to the Revue de hypnotisme et de la physiological psychology (1888-1910) (see Juliette Courmont, The smell of the enemy [1914-1918], Armand Colin, Paris, 2010; in 1937, L'Année Psychologique dedicates in its volume 38 (1837), pays homage to Eugène Osty (1874-1938), director of the Institut des sciences métapsychiques (Jacqueline Carroy, Annick Ohayon and Régine Plas, Histoire de la psychologie en France, Editions La Découverte, 2006, which relates the presence, in the corridors of the Paris metro in the 1930s,advertisements like this: “You are a living dead if […] you are not likely to feel and understand that the psychic dominates intellectual life and a fortiori physical life. ")

In the United States, “[at] the end of the 19th century, psychologists such as Frederic and Arthur Myers, Edmund Gurney, Julian Ochorowicz, Charles Richet, Max Dessoir, Albert von Schrenck-Notzing, Richard Hodgson and Henry and Eleanor Sidgwick were actively involved in the creation of psychological science. Psychological researchers initiated and organized the international congresses of physiological / experimental psychology and they were at the origin of methodological innovations such as randomized study designs.They contributed to important empirical discoveries by conducting the first experiments on the psychology of eyewitness testimony and by performing illuminating empirical and conceptual studies on the mechanisms of dissociation and hypnotism and large-scale experiments and investigations that showed that dissociation and hallucinations were not inherently pathological phenomena ”(Hugo Münsterberg, William James and Eusapia Palladin, Psychical research and the origins of American psychology, History of the Human Sciences, vol. 25, n ° 2, 2012 [ pp. 23–44]); the very founder of academic psychology in the United States, William James (1842-1910), considered himself a researcher in psychic sciences and sought to integrate the scientific study of mediumship,of telepathy and other controversial subjects in the nascent discipline ”(it is true that he was the son of the theologian Henry James Sr., a disciple of Swedenborg (Gérard Deledalle, The American Philosophy, p. 43; Joseph Hart, Modern Eclectic Therapy: A Functional Orientation to Counseling and Psychotherapy, Plenum Press, New York and London, 2012, p. 29 et seq.) “Although they were intended to verify the controversial claims of telepathy, clairvoyance and post-mortal survival, these contributions enriched the first psychological knowledge, independently of the debate, always passionate, on 'supernatural' phenomena ”(Hugo Münsterberg, op. cit .; see also M. Hale, Human science and social order: Hugo Münsterberg and the origins of applied psychology, Temple University Press, Philadelphia, PA,1980). Anyway, “Parapsychological researchers have contributed to our knowledge of automatisms. Likewise, the early work of Charles Richet and other researchers on extra-sensory perception contributed to the development of statistical techniques and randomization procedures in psychology […] much of modern psychological studies of extracorporeal experiences have been carried out by researchers working in the context of parapsychology and published in parapsychology journals ”(CS Alvarado, Historical writings on parapsychology and its contribution to psychology. Parapsychology Foundation, NY Lyceum, 2003:the early work of Charles Richet and other researchers on extracorporeal perception contributed to the development of statistical techniques and randomization procedures in psychology […] much of modern psychological studies of extracorporeal experiences have been carried out by researchers working in the context of parapsychology and published in parapsychology journals ”(CS Alvarado, Historical writings on parapsychology and its contribution to psychology. Parapsychology Foundation, NY Lyceum, 2003:the early work of Charles Richet and other researchers on extracorporeal perception contributed to the development of statistical techniques and randomization procedures in psychology […] much of modern psychological studies of extracorporeal experiences have been carried out by researchers working in the context of parapsychology and published in parapsychology journals ”(CS Alvarado, Historical writings on parapsychology and its contribution to psychology. Parapsychology Foundation, NY Lyceum, 2003:http://www.pflyceum.org/85.html). In The Discovery of the Unconscious (1970), Henri F. Ellenberger demonstrates the link of continuity between exorcists, magnetizers, hypnotists, conceptions, all more or less early days of esotericism and occultism (see, regarding the interest of the first psychoanalysts in occultism and esotericism, Roderick Main: Psychology and the Occult: Dialectics of Disenchantment and Re-Enchantment in the Modern Self, in Christopher Partridge [ed.], The Occult World, Routledge, New York, 2015, pp. 732-43) by Janet, Freud, Adler and Jung on the structures of conscious and unconscious psychic life,conceptions which were themselves decisive in the development of propaganda techniques in the sense of "brainwashing" or "factory of consent" during the nineteenth century (David Colon, Propaganda. Mass manipulation in the world contemporary, Belin Editeur / Humensis, 2019). Their applications are not only military (MK-Ultra project), commercial and advertising, but also managerial (Georges Masclet, The Psychological Dimension of Management: Methodologies for the Study of Organizations, Presses Universitaires du Septentrion, 2000): LaVey exposed them better than anyone in "The Satanic Witch" (2003).commercial and advertising, but also managerial (Georges Masclet, The Psychological Dimension of Management: Methodologies for the Study of Organizations, Presses Universitaires du Septentrion, 2000): LaVey has exposed them better than anyone else in “The Satanic Witch” (2003).commercial and advertising, but also managerial (Georges Masclet, The Psychological Dimension of Management: Methodologies for the Study of Organizations, Presses Universitaires du Septentrion, 2000): LaVey has exposed them better than anyone in “The Satanic Witch” (2003).

(95) We do not claim that they are the only parasites, nor do we deny that some of them may not be; we are simply asserting that, as, among others, those who take the competitive examination for state administrative assistant should know that if they want to have any chance of entering the "state nobility", many, who seem to have "made themselves" and provide for their own needs, in reality live - handsomely - on state subsidies.

Notes to the introduction

(1) This movement is generally referred to as "Gregorian reform" rather than "reform"; however, the word “reform” is a translation of the original Latin term reformatio, which in other contexts is almost invariably translated as “reform”.

(2) See, for a discussion of this reckless assertion, Lisa Watanabe, The Possible Contribution of Islamic Legal Insitutions to the Emergence of a Rule of Law and the Modern State in Europe, in Nayef RF Al-Rodhan, The Role of the Arab -Islamic World in the Rise of the West: Implications for Contemporary Trans-Cultural Relations, Palgrave MacMillan, New York, 2012, which traces, for example, the jury trial, instituted under Henry II (1133-1189) to lafif ( "The lafif is the second category of evidence by ordinary witnesses", Revue du Maghreb, 3e année, n ° 9, 1939, p. 6, <http://bnm.bnrm.ma:86/ClientBin/images/book853663/doc> .pdf) and the “nouvelle desaisine” (“novel disseisin”) procedure (possessory action that any owner “can bring to recover a piece of land… which has been taken by another”, Bruno de Loynes de Fumichon, Introduction to comparative law, Comparative Law Journal of the pacific / Journal de Droit Comparé du Pacifique, Coll. “Ex Professo”, vol. 3, 2013, p. 144), established around 1160 (Peri J. Bearman, Wolfhart Heinrichs and Bernard G. Weiss, The Law Applied: Contextualizing the Islamic Shari'a, IB Tauris, 2008) in istihqaq, rather than canon law or Roman law (Richard Potz, Islam and Islamic Law in European Legal History, November 21, 2011http://ieg-ego.eu/en/threads/models-and-stereotypes/from-the-turkish-menace-to-orientalism/richard-potz-islam-and-islamic-law-in-european-legal- history # IslamasanExternalFactorinEuropeanLegalHistory ; Marcel A. Boisard, On the Probable Influence of Islam on Western Public and International Law, International Journal of Middle East Studies, vol. 11, n ° 4, July, 1980 [p. 429-50]).

Likewise, it is very imprudent to assert that, in all cases, "[t] he formulas [in 'the Middle Ages] were the same [as those which prevailed in antiquity], but [that] their meanings were very different ”.

These imprudent exaggerations are explained by the need in which the author finds himself to concretize his thesis, which is, we repeat, that the “Western legal tradition” was born in the “Middle Ages” and not before; that it is totally and purely indigenous [N. d. E.]

(3) Lon L. Fuller, The Morality of Law, 2nd ed., New Haven, Conn., 1964, p. 106.

(4) Robert A. Nisbet, Social Change and History, New York, 1969, p. 1. In this work, Nisbet attacks the application of these metaphors to social change; however, it does not deal with their application to the consciousness or ideology of a society in which social change is seen by those who experience it as having a character of growth or development. In a later work, he accepts these metaphors insofar as they are not used in the strong sense (see his History of the Idea of ​​Progress, New York, 1980).

(5) Sir Frederick Pollock and Frederic William Maitland, The History of English Law, 2nd ed., 1898 (reprint: Cambridge, 1968), vol. 2, p. 561.

(6) The “action for damages for disturbance of enjoyment” was a remedy for the harm caused “directly” by the defendant's tort; The later “case action” was a remedy for damage caused “indirectly”, including damage caused by negligence and negligent performance of an agreement (see, in general, Albert K. Kiralfy, The Action on the Case, London, 1951).

(7) “The idea of ​​an ecclesiastical body of law, the content of which could be identified and the authority was binding, was already contemplated by the apostle Paul in his letters to the Romans and the Galatians” (Wilfried Hartmann and Kenneth Pennington [eds.], The History of Byzantine and Eastern Canon Law to 1500, The Catholic University of America Press, Washington, DC, 2012, p. 2) [N. d. E.]

(8) At the beginning of the 20th century, the historian and sociologist of German law Max Weber confirmed that the West developed a method of legal thought that is not found in any other civilization (see Max Rheinstein [ed.] , Max Weber on Law in Economy and Society, Cambridge, Mass., 1966, pp. 304-5). However, he only identified this method by one of its qualities, which he called “formal rationality”. This was essentially the method of nineteenth-century jurists, especially in Germany (but not, according to Weber, in England), who were concerned with constructing a logically coherent structure of abstract legal rules, according to which the essential facts of a a given legal case or issue would be identified and the case or issue resolved.The method was called by its nineteenth-century opponents "conceptualism" (Begriffsjurisprudenz).

Max Rheinstein suggests that Weber set out in his Sociology of Law to determine whether the legal reasoning thus conceived was a cause or an effect of the rise of capitalism. Rheinstein himself said the method was characteristic of European civil law, as opposed to common law.English "as it was developed from the 12th century in the universities of Italy, then France, Holland and Germany" (Max Weber, op. cit., p. 11). Yet it is enough to read the legal literature of the 12th and 13th centuries, whether it is Roman law (civil law) and canon law or royal law, feudal law or urban law, whether in Italy. or in France, England or Sicily or elsewhere in Western Europe, to know that conceptualism in the sense of the nineteenth century played only a relatively minor role in the legal reasoning of the twelfth and thirteenth centuries. In all the legal systems of the time, the emphasis was also on developing rules and concepts from cases,which is rightly regarded by Rheinstein and others as an essential method of reasoning in the tradition ofCommon lawEnglish. Papal decrees, for example, which were a major source of canon law in the 12th century and beyond, were essentially rulings made by the papal court. In addition, various dialectical methods have been developed to reconcile seemingly contradictory authorities, including highlighting the ambiguities of authors and assessing the prestige of those authors. Above all, the integration of legal systems was accomplished by the idea, apparently invented by Gratien, of a hierarchy of sources of law: in the very first lines of his Concordance des canons discordants, written around 1140, Gratien says that , in the event of conflict, custom must give way to promulgation, promulgation must give way to natural law and natural law must give way to divine law.This meant that customs, which were by far the most prevalent form of law at the time, had to be evaluated from the point of view of reason and, if they were found to be unreasonable, they had to be rejected. It was hardly a question of "formal rationality" or "logical formalism" in the Weberian sense of the term. Yet it served as the basis for the integration of different legal systems into developing “bodies” of laws - which were not only rules but also principles and standards as well as procedures and decisions. More generally, Weber's classification of all legal systems into three main types - Rational, Traditional and Charismatic - is suggestive from a philosophical point of view, but misleading from a historical and sociological point of view,since Western legal systems and the Western legal tradition as a whole combine all three types. Such a combination may be necessary for an effective integration of the law into an organic unit - a legal “body” designed to have the capacity to continuously grow. These questions are explored in more detail in the final chapter of this book.

(9) See CK Allen, Law in the Making, 7th ed., Clarendon Press, Oxford, 1964, p. 65-6.

(10) Berman maintains that it is "the cynics who think that the law is only the will of the fittest" (cynicism aside, this is also the point of view of Thrasymachus in Book I of The Republic [ I, 338e1-6)]). Much more correct is the view that "the law is the protection of the weak ( <https://www.youtube.com/watch?v=c5Scb2zF6-Q> , 48:54), except that it does not It is hardly coherent to congratulate oneself, as this French financier, entrepreneur and essayist does, that it be so, while vilifying, as he does, this time, rightly, not only the welfare state and parasitism resulting social (<https://institutdeslibertes.org/charles-gave-letat-vous-met-en-esclavage-par-tv-libertes/>), but also the social parasites themselves (especially members of the political class and civil servants, for whom he usually reserves his wrath, while their pockets, however large they are, are not deep enough to engulf them. tens of billions of Euros of social assistance which, as part of the purchase of social peace, is unduly collected every year in this country according to figures which, being official, are by definition false - needless to say that the administrative authorities and the government [my] ment have every interest in minimizing them, both so as not to offend and frustrate those who are not among the “lucky ones” and not to draw attention to their complicity, in particular in cases such as that of the two million, again according to official figures,false social security numbers assigned to people born abroad). To be consistent in this regard, it is first necessary to recognize that the parasites at the top and the parasites at the bottom are interdependent, and then to question the nature of the relationships between them.

There is a reason to be made: the protection of the weak is to the detriment of the strong: “the famous 'Struggle for Life' unfortunately ends in a way contrary to that which Darwin's school would like […]: I mean to the detriment of the strong, the privileged, the happy exceptions. Species do not grow in perfection: the weak always end up mastering the strong - it is because they have the great number, they are also more cunning… Darwin forgot the mind […] ”(Friedrich Nietzsche, Le Crépuscule des idoles, Le Cas Wagner, Nietzsche contre Wagner, L'Antéchrist, Œuvres completes de Frédéric Nietzsche, vol. 12, translated by Henri Albert, Mercure de France, Paris, 1908, p. 184). "Natural selection is accomplished to the detriment of the strong,because it favors the quantity of power against the quality of power ”, quite rightly glosses Alfred Weber and Denis Huisman (History of European philosophy: Table of contemporary philosophy, from 1850 to the present day, Editions Fischbacher, 1967, p . 228). Who can protect the weak? The forts? Certainly not, because not only is such a tendency not in the nature of the strong, but they know that the protection of the weak inevitably means their own weakening and, in the more or less long term, disappearance.not only is such a tendency not in the nature of the strong, but they know that protecting the weak inevitably means their own weakening and, more or less long term, disappearance.not only is such a tendency not in the nature of the strong, but they know that protecting the weak inevitably means their own weakening and, more or less long term, disappearance.

Who, then, has all the interests and is predisposed to protect the weak?

The weak themselves.

It follows that the (natural) law, "protection of the weak", is made and can only be done by the weak. (Natural) law, to come back to Berman, is not "the will of the strongest", but, on the contrary, the will of the weak. Those who made the (modern) state are jurists, paper scrapers - not warriors. [D. d. E.]

(11) The author, who is in favor of the constitution of an “international legal tradition”, could not do unless he was fiercely opposed to nationalism and, to begin with, being blind to the existence of two antithetical nationalisms, that which constitutes "a phenomenon of degeneration, because it expresses a regression of the individual in the collective (the 'nation'), of intellectuality in vitalism (the pathos and the 'soul' of the race). ) ”And that which constitutes“ a positive phenomenon, because on the contrary it expresses a reaction against even broader forms of collectivization such as, for example, those presented by the proletarian internationals or the utilitarian standardization of economic and social inspiration (America ).The first (demagogic nationalism) aims to destroy the specific and specific qualities of individuals in favor of 'national' qualities. In the second (aristocratic nationalism), it is a question of drawing individuals from the inferior state to which they have fallen and where they are equal to each other: it is a matter of differentiating them at least until the feeling of being of a particular race or nation expresses a value and dignity superior to the feeling of equality (egalitarianism and fraternalism, 'humanity' in the communist sense) ”(Julius Evola, Universalità imperiale e particolarismo nazionalistico, La Vita Italiana, April 1931) [N. d. E.]it is about pulling individuals from the lower state where they have fallen and where they are equal to each other: it is about differentiating them at least until the feeling of being of a race or of a determined nation expresses a value and a dignity superior to the feeling of equality (egalitarianism and fraternalism, 'humanity' in the communist sense) ”(Julius Evola, Universalità imperiale e particolarismo nazionalistico, La Vita Italiana, April 1931) [N . d. E.]it is about pulling individuals from the lower state where they have fallen and where they are equal to each other: it is about differentiating them at least until the feeling of being of a race or of a determined nation expresses a value and a dignity superior to the feeling of equality (egalitarianism and fraternalism, 'humanity' in the communist sense) ”(Julius Evola, Universalità imperiale e particolarismo nazionalistico, La Vita Italiana, April 1931) [N . d. E.]

(12) FW Maitland, Why the History of English Law is Not Written, in HAL Fisher (ed.), Collected Legal Papers of Frederic William Maitland, Cambridge, 1911, vol. 1, p. 488.

(13) When, on January 30, 1649, England became a republic, the House of Commons, under the name of Parliament, had a great seal engraved, with this legend: "The first year of restored freedom [ by the blessing of God] ”and subsequent seals were identified as having been issued in the first, two, three, etc. year of“ restored freedom ”(see A. and B. Wyon, The Great Seals, London , 1887), p. 36 and, for a discussion, Eugen Rosenstock-Huessy, Out of Revolution: The Autobiography of Western Man, New York, 1938, p. 300, 761.

(14) That the name of Glorious Revolution had the connotation of a return to a previous state emerges from the immense efforts that have been made to preserve the continuity with the parliamentary measures that had been taken since 1640. Because the parliament does not was not in session in November 1688, when William of Orange and his wife Mary were brought to England to replace James II, it was deemed necessary to call into session all those who had served in the last parliament. In addition, people loudly demanded the replacement of the great seal that Jacques had taken with him and thrown angrily into the Thames during his flight. Everything had to be as before again, otherwise it was not a "revolution".

(15) President John F. Kennedy, in his book Strategy of Peace, listed seven peaceful "revolutions" that "shake our nation and our world." These are the demographic revolution, the agricultural revolution, the technological and energy revolution, the revolution in living standards, the armaments revolution, in underdeveloped nations and nationalism. In 1964, the ad hoc committee on the Triple Revolution presented President Johnson with a statement on the Cyber ​​Revolution, the Arms Revolution, and the Human Rights Revolution. Many other "revolutions" are cited in AT van Leeuwen, Development through Revolution, New York, 1970, chap. 2. According to van According (p. 32), the lack of clarity in the use of the expression "is a characteristic phenomenon in itself.Its transfer from the political sphere began in 1884 with the creation by an English historian of the term "industrial revolution" on the model of that of "French Revolution": it was necessary to invent an event parallel to the French Revolution of 1789 in history. British (see Arnold Toynbee, Lectures on the Industrial Revolution of the Eighteenth Century in England, London, 1884). It may be that the application of the terms "revolution" and "revolutionary" to all kinds of things since the end of World War II, including the most ordinary consumer items ("revolution in hosiery", " revolution in deodorants ”), or also a linguistic reaction to the communist revolutions of the 20th century.

(16) This is one of the main themes of his book Out of Revolution, New York, 1938.

(17) Rosenstock-Huessy mentions a seventh revolution, the Italian revolution of the thirteenth century, which consisted in the formation of the city-state system in northern Italy. See Out of Revolution (p. 562). I considered the rise of the free cities as a phenomenon relating to this secular aspect of the papal revolution which was not just Italian, but European in scope. Norman Cantor only counts four “world revolutions”: The Papal Revolution, the Protestant Reformation, the French Revolution and the Russian Revolution. It does not explain why it does not take into account the English Revolution and the American Revolution. Apparently,the latter two do not correspond to his definition of a world revolution as "the emergence of a new ideology which rejects the results of several centuries of development organized in the dominant system and calls for a new just world order" (Norman F Cantor, Medieval History: The Life and Death of a Medieval Civilization, New York, 1968, p. 300). His account of the history of the papal revolution supports our account of it.

(18) On the one hand, if these European rulers had done what Berman suggests they should have done to prevent the revolution that ultimately won them, that would have made them… revolutionaries. On the other hand, they had dropped ballast, at least - we cannot comment on the other countries - in Russia and France. “Before Alexander II, the Russian social system was more or less medieval. The land belonged mainly to the great noble families and to the great landowners, on which the rural populace, who lived off the land, were entirely dependent. Alexander II 'emancipated' this rural element, that is to say, he tore it from the land and reduced it to the rank of a mass of nomadic outcasts. A large part of the land was made available to rural communes (the mirs) managed collectively:these lands belonged to no one, the workforce was assigned to such and such a task and, basically, it was exploited and less well paid than under the previous regime. Under this regime the peasant was at least attached to a land, that of his lord, he knew that he was working for someone and he was often proud of it. Having become "free" he was more or less transformed into a proletarian, into a simple automatic instrument of work. This was, under Alexander II, the true result of "noble and generous liberal ideas" and, in fact, the reform of this sovereign was greeted by the frenzied applause of the European democratic press of the time "(Under this regime the peasant was at least attached to a land, that of his lord, he knew that he was working for someone and he was often proud of it. Having become "free" he was more or less transformed into a proletarian, into a simple automatic instrument of work. This was, under Alexander II, the true result of "noble and generous liberal ideas" and, in fact, the reform of this sovereign was greeted by the frenzied applause of the European democratic press of the time "(Under this regime the peasant was at least attached to a land, that of his lord, he knew that he was working for someone and he was often proud of it. Having become "free" he was more or less transformed into a proletarian, into a simple automatic instrument of work. This was, under Alexander II, the true result of "noble and generous liberal ideas" and, in fact, the reform of this sovereign was greeted by the frenzied applause of the European democratic press of the time "(in fact, the reform of this sovereign was greeted by the frenzied applause of the European democratic press of the time ”(in fact, the reform of this sovereign was greeted by the frenzied applause of the European democratic press of the time ”(<https://evolaasheis.wordpress.com/2016/04/14/une-victime-disrael/> ); in France, feudalism was emptied of its substance when the revolutionaries abolished it; when they abolished it, “the peasant went, came, bought, sold, treated, worked as he pleased. The last vestiges of serfdom could only be seen in one or two eastern provinces, conquered provinces; everywhere else, it had completely disappeared, and even its abolition dated back to a time so distant that the date was forgotten ”(Alexis de Tocqueville, L'Ancien Régime et la Révolution, Michel Lévy Frères, Paris, 1856, p. 35; see also Jean-Jacques Clere, L'abolition des droits feudal en France. In Cahiers d'histoire. Revue d'histoire critique [Online], 94-95, 2005, available at the following address:https://journals.openedition.org/chrhc/1227 , accessed February 18, 2020. [N. d. E.]

(19) Thomas S. Kuhn, The Structure of Scientific Revolutions, 2nd ed., Chicago, 1970.

(20) See Crane Brinton, The Anatomy of Revolution, ed. rev., New York, 1965, p. 16: “We will regard revolutions as a kind of fever… When all the symptoms are revealed… the fever of revolution has started. It is transformed, not regularly but by advances and setbacks, into a crisis, often accompanied by delirium ... the Reign of Terror. After the crisis comes a period of convalescence, usually marked by one or two relapses. Finally, the fever has passed and the patient is himself again, perhaps even in some ways strengthened by the experience… but certainly not entirely transformed into a new man. Brinton applies this "conceptual scheme," as he calls it, to the English, American, French and Russian Revolutions.

(21) Marc Bloch, La société feudal, Editions Albin Michel, Paris, 1982 [1st ed. 1939], p. 66.

(22) Joseph R. Strayer, On the Medieval Origins of the Modern State, Princeton, NJ, 1970, p. 22.

(23) See, regarding the genesis of the theory of progress and its millennial Judeo-Christian roots, <https://elementsdeducationraciale.wordpress.com/2019/01/31/le-pouvoir-panique/> [N. d. E.]

(24) Norman Cohn, The Pursuit of the Millennium, 2nd ed., New York, 1972, p. 281.

(25) Ibid., P. 10, 11, 285, 286.

(26) Norman O. Brown, Love's Body, New York, 1968, p. 219, 220.

(27) Eugen Rosenstock-Huessy, op. cit.

(28) Id., The Christian Future, New York, 1946, p. 70.

(29) Rudolph Sohm, Weltliches und geistliches Recht, Munich and Leipzig, 1914, p. 69.

(30) See Gerrard Winstanley, Platform of the Law of Freedom (cited in Eugen Rosenstock-Huessy, op. Cit., P. 291): “All creation revolved around reforming the world.” See also Thomas Case, sermon delivered to the House of Commons in 1641: “The Reformation must be universal. Reform all places, all people and all professions; reform the courts, the small magistrates… Reform the universities, reform the cities, reform the country, reform the small learning schools, reform the Sabbath, reform the ordinances, the worship of God. Every plant that my Heavenly Father has not planted must be uprooted ”(quoted in Michael Walzer, The Revolution of the Saints: A Study in the Origins of Radical Politics, Cambridge, Mass., 1965, pp. 10, 11).The reform of the 16th century was conceived as a reform of the Church; a century later, the Puritans sought, according to Milton, "to reform the reform itself", which involved, as Walzer shows (p. 12), radical political activity, i.e. the political progress as a religious goal.

(31) See AD Lindsay, The Modern Democratic State, New York, 1962, p. 117, ¬ 118; David Little, Religion, Order, and Law: A Study in PreRevolutionary England, New York, 1969, p. 230.

(32) Each of these four men has been charged with civil disobedience. Each has defended itself by invoking a higher right of conscience as well as fundamental legal principles derived from medieval English law (eg, the Magna Carta). The Penn and Hampden trials are recorded in State Trials, 951 (1670) and State Trial, 1 (1627) (the Five Knights Affair). An excerpt from Udall's trial can be found, along with background information, in Daniel Neal, The History of the Puritans, Newburyport, Mass., 1816, p. 492, 501. The Lilburne trial is reviewed in Joseph Frank, The Levellers: A History of the Writings of Three Seventeenth Century Social Democrats: John Lilburne, Richard Overton, and William Walwyn, Cambridge, 1965, p. 16.

(33) The social contract theory is generally attributed to seventeenth-century philosophers such as John Locke and Thomas Hobbes. But, a century earlier, Calvin had asked the entire population of Geneva to accept the profession of faith and to take an oath of obedience to the Ten Commandments as well as to swear loyalty to the city. People were called in groups by the police to take part in the Covenant. See JT McNeill, The History and Character of Calvinism, New York, 1957, p. 142. See also Chapters 2 and 12 of this study, where the theory of the social contract relates to the Papal Revolution and the formation of cities as sworn townships.

(34) See Roscoe Pound, Jurisprudence, St. Paul, Minn., 1959, vol. 3, p. 8, ¬ 15.

(35) Suffice to say that Soviet schoolchildren were called upon to show “intransigence” towards the Nomenklatura [N. d. E.]

(36) The Moral Code of the Builder of Communism is part of the program of the Communist Party of the Soviet Union adopted by the Twenty-Second Party Congress in 1961. It can be found in Dan N. Jacobs, The New Communist Manifesto and Related Documents, 3rd ed. rev., New York, 1965, p. 35.

(37) See The Laws and Liberties of Massachusetts, Cambridge, Mass., 1929.

(38) Grant Gilmore, The Death of Contract, Columbus, Ohio, 1974, p. 87, ¬ 94.

(39) since the law is founded on morality, it is exposed to the innumerable deviations that the author identifies and deplores. Morality and opportunism are not, moreover, contradictory; opportunism was even what characterized, according to Blaise Pascal, the morality of the Jesuits (Blaise Pascal, Lettres written to a provincial, Garnier frères, 1885, p. cxx [N. d. E.]

(40) Roberto M. Unger , Law in Modern Society, New York, 1976, p. 194.

(41) Ibid., P. 196.

(42) The concept of “substantive rationality” is used to describe certain aspects of human decision-making processes that may be related to personal life, community life, economic prosperity, personal or societal efficiency. [Ed.]

(43) Marc Bloch, op. cit., p. 7.

(44) Ibid. .

(45) Christopher Hill, A Comment, in Rodney Hilton (ed.), The Transition from Feudalism to Capitalism, London, 1976, p. xvii.