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978-0-521-08808-4 - Religion, Law, and the Growth of Constitutional Thought,
1150-1650

Brian Tierney

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THE WILES LECTURES GIVEN AT
THE QUEEN'S UNIVERSITY OF BELFAST

Religion, law, and the growth of
constitutional thought

1150-1650

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Frontmatter

[More information](#)

Contents

Preface	<i>page</i> vii
I Introduction	I
II Juridical foundations: society, church, and law, 1150-1250	8
Aspects of medieval society	8
The canonists: ruler and community	13
Corporation law: macrocosm and microcosm	19
Varieties of corporation structure	26
III Origins of jurisdiction: hierarchy and consent, 1250-1350	29
The meaning of jurisdiction	30
Origins of jurisdiction	34
Consent: practice and theory	39
Hierarchy: Nature and God	42
Four fourteenth-century theorists	44
IV Popular sovereignty, federalism, and fundamental law: Azo to Althusius	54
Populism: ruler and community	56
Pluralism: pope and bishops	60
Nicholas of Cues	66
Althusius	71
V Corporate rulership and mixed constitution	80
Corporations: simple and complex	82
Corporate headship	84
Mixed constitution	87
Gerson and the Great Schism	92
George Lawson and the Civil War	97
VI Conclusion	103
Select bibliography	109

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Frontmatter

[More information](#)

For

John, Chris, Helen, Ann Jane

With Love

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Frontmatter

[More information](#)

Preface

Every historian who gives the Wiles Lectures at The Queen's University of Belfast incurs many debts of gratitude. It is a pleasure to acknowledge some of mine. I would like to thank the Vice-Chancellor and Mrs Froggatt for their exceptionally kind hospitality. Professor W. L. Warren and the staff of the History Department helped in many ways to make my visit to Belfast a very pleasant experience. I am grateful to the National Endowment for the Humanities for a fellowship grant. Above all I must thank Mrs Janet Boyd, whose generosity has made the Wiles Lectures series possible, and the trustees of the Wiles endowment for their invitation to deliver the lectures in 1979.

The trustees also invite historians from other universities to attend the lectures. After each afternoon's talk the visitors join with interested local scholars to form a kind of seminar where the day's performance is criticized and discussed. To a medievalist it all seems very fitting. After the *lectura* comes the *disputatio* - often lively, sometimes strenuous, always joyous. I am grateful to my colleagues for all the friendly criticism that I received on these occasions.

One purpose of the Wiles Lectures is 'to encourage the extension of historical thinking into the realm of general ideas'. The occasion tempts a historian to emerge from his specialist studies to address some broader theme. As will be evident, I succumbed to temptation. At our evening 'seminars' the questions that arose again and again concerned the methodological problems inherent in any such enterprise, the difficulties involved in an attempt to pursue the history of constitutional ideas over long periods of time. Two sets of questions kept recurring. Is it a legitimate undertaking for a historian to trace remote origins of modern ideas? Can he do this without falling into naïve anachronisms? And again: How should a historian evaluate the interplay between ideas and events? Does the study of ideas have any relevance for understanding the actual development of institutions? Since such questions arose so often it may be helpful if I indicate at the outset my attitude toward them. In doing this I am prescinding from a considerable body of recent very abstract work on the philosophy of history. Metahistory is a fascinating subject in its

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1150-1650

Brian Tierney

Frontmatter

[More information](#)

viii

Preface

own right, considered as a branch of epistemology or linguistics, but it has little to do with the activity of a simple working historian.

A more appropriate starting point is provided by some observations of Herbert Butterfield, the first Wiles lecturer. Butterfield long ago called attention to the follies of a ‘whig’ approach to the history of constitutional thought. The whig historian, he noted, reads present-day ideas into the past. He imagines that he has discovered ‘a “root” or an “anticipation” of the twentieth century, when in reality he is in a world of different connotations altogether’. He discerns ‘an obvious principle of progress’ at work in history. At his most naive he imagines that his heroes of the past were ‘fighting to bring about our modern world’. As against all this, the true historian studies the past for the sake of the past. He tries to see life with the eyes of another century. In considering Reformation history, for instance, he will ‘adopt the outlook of the sixteenth century upon itself’.¹

All this is salutary advice. It would indeed be foolish to see modern constitutionalism as the endproduct of some ineluctable ‘principle of progress’. Yet in one way I may seem to have transgressed Butterfield’s canons. He insisted that a historian should emphasize the ‘unlikenesses’ between the ideas of different historical epochs. I have often called attention to similarities. In doing this I have been concerned not so much to trace ‘influences’ from generation to generation as to call attention to certain recurring patterns of constitutional thought and the problems a historian encounters in considering their origins and development.

To explain this approach further, we need to go a little beyond the points raised by Butterfield’s critique. After all, the categories of subjective bias (studying the past for sake of the present) and simple objectivity (adopting the outlook of the past upon itself) do not define exhaustively the modes in which historical discussion is normally conducted. A historian must, of course, seek to understand the past for its own sake, on its own terms. A scholar who presumes to write about medieval canon lawyers ought to be confident that, if he were transported back to the twelfth century, he could enter into discourse with them, could have something to contribute to their debates from within their own world of thought. This is the beginning of historical wisdom. But it is only a beginning. Living in the past is an antiquary’s game; a historian’s task is to explain.

Evidently he will not achieve any meaningful explanation if he anachronistically attributes twentieth-century ideas to seventeenth-century thinkers or seventeenth-century ideas to people of the twelfth century. To interpret a whole tradition of thought, a scholar needs to understand sympathetically the various stages of its development ‘from the inside’, as it were, from within the thought world of a particular time and place;

¹ H. Butterfield, *The Whig Interpretation of History* (London, 1931), pp. 12, 27, 16, 28.

Cambridge University Press

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1150-1650

Brian Tierney

Frontmatter

[More information](#)*Preface*

ix

but he also needs to stand outside the tradition, perceiving connections and adaptations over long periods of time that the makers of the tradition themselves could not be aware of. A twelfth-century canonist naturally did not know that some of his ideas constituted an ‘anticipation’ of fifteenth-century conciliar theory; the conciliarists did not know that their ideas would be appropriated by political theorists of the seventeenth century; and the seventeenth-century writers had no conception of how their ideas would be adapted in twentieth-century constitutional thought. But a modern historian knows all these things. I am not suggesting that it is impossible for a scholar to ‘bracket out’ such knowledge in approaching the writers of any given historical epoch - only that to do so all the time would impoverish historical discourse.

Herbert Butterfield, needless to say, was not unaware of such considerations. He wrote discerningly on the complexities of historical causation and on what he called ‘mutations of ideas’. The biological imagery is suggestive. Other writers have carried it further; ideas in a society have been compared to genes in an organism. In this view ideas are seen as shaping, controlling elements; but if we were to press the analogy in detail we should have to appeal to a theory of evolution like Lamarck’s or, more precisely, like Piaget’s² rather than to the pure natural selection of a Darwinian. Not only are useless ideas weeded out by natural selection (sometimes); also valuable ones are modified by the changing behavior of the societies in which they exist.

The characteristic problem in studying the history of ideas is that patterns of words (encoding patterns of ideas) often remain the same for centuries; but, as they are applied in different social and political contexts, they take on new meanings.³ In this sphere one is often inclined to write, ‘Plus c’est la même chose, plus ça change.’ And yet the word-patterns do not entirely lose their original connotations. (So too a highly evolved animal retains vestigial traces of its remote ancestors.) A historian of ideas therefore has to deal not only with origins but with survivals and adaptations. Whether he chooses to emphasize similarities or differences will depend mainly on the theme he is pursuing. To take a simple instance: A twelfth-century lawyer (Alanus), arguing for the supremacy of pope over emperor, wrote, ‘The church is one body and so it shall have only one head or it will be a monster.’ A seventeenth-century political philosopher (Pufendorf), arguing that a civil ruler should be empowered to control church doctrine, wrote that, otherwise, ‘the state would become a monster with two heads’. If one were writing, say, a history of the secularization of Western culture, the difference would be all-important. Language that was first used in connection with the church

² J. Piaget, *Behavior and Evolution* (New York, 1978).

³ This is true, for instance, of word-patterns such as ‘What touches all is to be approved by all’ or ‘The ruler is greater than individuals but less than the whole people.’ Some adaptations of these phrases are discussed in the following chapters.

Cambridge University Press

978-0-521-08808-4 - Religion, Law, and the Growth of Constitutional Thought,
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Brian Tierney

Frontmatter

[More information](#)

x

Preface

was later applied to the state. If one is concerned with patterns of constitutional thought the similarity may seem equally interesting. Each author was trying to articulate a concept of unitary sovereignty and each, as it happens, used the same imagery to express it. Naturally, the patterns of words and of ideas associated with them grow more complex as one moves from simple affirmations of sovereignty to intricate theories of limited government.

In referring to the changing behaviors of societies, I have already touched on the second main topic raised at the outset of this discussion, the relationship between ideas and institutions. Here we can be brief. Institutions and ideas are not like chickens and eggs; it makes even less sense to ask which came first. At any point where a historian cuts into the tissue of the past he finds theories and facts inextricably interwoven. To be sure, political man does not live by ideas alone. Ambitious persons seek power; greedy persons seek wealth; social classes develop divergent interests. And institutions are shaped by all the conflicts and compromises that ensue. But then again, as Otto Hintze observed, 'Man does not live by bread alone; he wants to have a good conscience when he pursues his vital interests.' Moreover, a statesman will find it useful to persuade others of his good conscience too; power can rarely be wielded effectively over long periods of time unless it is perceived by the community in which it is exercised as a form of legitimate authority, not as mere coercive force. In studying the history of constitutional ideas we explore the various ways in which power can be legitimized and so ordered as to maintain its legitimacy. There is always a limited number of options. The stock of ideas available helps to determine the kinds of institutional structure that can find acceptance in any community. Moreover, such ideas do not always grow imperceptibly out of existing social realities; sometimes they have exotic origins. If the legitimating principle in a society is a very simple one - it is usually some form of divine right - and if a polity remains unchanged over long periods of time, historical analysis may be irrelevant. But, by the seventeenth century, very complex structures of constitutional ideas had grown into existence in the Western world after centuries of significant change. These ideas did not pre-exist eternally as Platonic abstractions; they were not engendered suddenly out of nowhere in the crises of the seventeenth century; they have a history. Studying the history of ideas will not explain the whole story of Western constitutional development; but we shall never begin to understand the story if we wholly ignore such study.

The Wiles Lectures are printed here substantially as they were delivered. The first one is partly a reformulation of ideas that I have considered elsewhere; it seemed useful to include this material as a basis for the subsequent argument. Here and there I have expanded the discussion

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Brian Tierney

Frontmatter

[More information](#)*Preface*

xi

and, in doing so, have borrowed some sentences from previous papers.⁴ But the material presented retains something of the informality of the spoken word and it displays the characteristic limitation of the lecture form, extreme selectivity in the topics and authors considered. (Obviously one could just as easily write a history of absolutism as a history of constitutionalism from the kinds of source material that are used.) I have tried only to suggest an approach to the subject and to investigate a few typical lines of thought. There is no attempt to present a generalized theory, purporting to explain how all constitutional systems ‘must’ evolve. In particular, the role attributed to ecclesiastical institutions is something specific to the medieval West. It is conceivable that other societies might eventually produce systems of thought and practice analogous to Western constitutionalism; but in that case I would expect them to develop differently, if only because the Western pattern already exists and is likely to influence future syntheses.

When speaking at Belfast I added to the general title of the lecture series a subtitle, ‘From Gratian to Grotius’. It was intended to remind my listeners of the pioneering study by John Neville Figgis in which he discussed the period ‘From Gerson to Grotius’, and so to acknowledge my debt to this perceptive work. However, although the twelfth-century canonist Gratian provides an obvious starting point for my argument, in the seventeenth century Althusius and the thinkers of the English Civil War, more than Grotius, provide the most adequate syntheses of the ideas discussed. (Though in this field it is hard to know where to make an end at all. One authority on American colonial history suggested to me that what we really need is a book that could be called ‘From Gratian to Madison’.) Although it seemed inappropriate to keep the original subtitle, I have retained an appreciation of Figgis’s work as an introduction to the lectures.

B.T.

May 1981

⁴ These are ‘Medieval Canon Law and Western Constitutionalism’, *Catholic Historical Review*, 52 (1966); ‘“Divided Sovereignty” at Constance’, *Annuaire d’histoire conciliaire*, 7 (1975); ‘Aristotle, Aquinas, and the Ideal State’, *Proceedings of the Patristic, Medieval, and Renaissance Conference*, 1979 (Villanova Univ.); ‘Religion and Western Constitutional Thought’, Hanley Lecture for 1980 (Department of Religion, University of Manitoba). I am grateful for permission to include this material in the present work.