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SOMMARIO

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La ragion di Stato nell'Inghilterra del Seicento: linee interpretative e ipotesi di ricerca

«Lawes ayme at Justice, Reason of State ayme at safety..... reason of state goes beyond all particular formes and pacts, and look rather to the being, then well-being of a State, and seek to prevent mischiefe forraign as well as domestick, by emergent Cousels, and unwritten resolutions. Reason of State is something more sublime and imperiall than Law...»[1]. Questo è quanto scrive nel 1643 Henry Parker, pubblicista politico parlamentare, riassumendo gli sviluppi della ragion di Stato nel suo paese e segnalando, nel contempo, l'importanza che essa aveva acquistato nel corso della prima metà del secolo. Del resto, il termine *Reason of State* è una acquisizione relativamente tarda del vocabolario politico inglese e chi desse anche una rapida scorsa alle scritture politiche apparse nell'ultimo decennio del Cinquecento e nel Seicento si renderebbe conto di come il suo uso non sia frequente. Ciò non indica, però, l'assenza di una politica "conservativa", bensì lo sviluppo del tutto peculiare dei suoi percorsi i quali, pur mostrando una certa contiguità con quelli continentali, hanno tuttavia caratteristiche proprie, "locali"[2].

Potrebbe quindi apparire sorprendente come, nonostante la rilevante presenza della *Ratio status* nel panorama politico inglese, i tentativi di analisi siano pochi e variamente distribuiti in un arco di tempo di quasi cinquant'anni. A partire dal 1939, e fino ad oggi, sono meno di una decina le scritture nelle quali è possibile trovare una sostanziale ricostruzione dello sviluppo e della funzione che tali idee hanno avuto nel dibattito politico dell'epoca, per quanto riferimenti anche espliciti si trovino in quasi tutti i grandi lavori di storia politica sui secoli in questione. Questi contributi offrono sicuramente delle imprescindibili linee

1 H.P., *The Contra-replicant, His Complaint to His Majestie*, pp. 31, Londra, 1643, 4°, pp. 18-19.

2 Per quanto concerne l'idea di un "paradigma politico della conservazione" vedi quanto scritto da Gianfranco Borrelli nel suo *Ragion di Stato e Leviatano. Conservazione e scambio alle origini della modernità politica*, Bologna, Il Mulino, 1993.

di ricerca sulla ragion di Stato in generale e sulla sua caratterizzazione inglese e può risultare utile, nella prima parte di questo contributo, offrire un resoconto dei lavori di George L. Mosse, di Francis D. Wormuth, di David S. Berkowitz e di Alan C. Houston[3]. Nel ripercorrere i loro argomenti si vogliono rendere espliciti i caratteri specifici della ragion di Stato inglese per potere successivamente presentare alcune ipotesi critiche. Dalla lettura "costituzionale" della ragion di Stato offerta da Wormuth, attraversando i testi di Mosse sugli sviluppi del machiavellismo inglese e della casuistica cattolica e protestante per giungere alle tesi storiografiche di Berkowitz e alla *Politics of Necessity* di Houston, si cercherà di mostrare come la *Ratio status* inglese acquisti vesti diverse nel corso del Seicento fino a trasformarsi in un sapere complessivo del fare politica e della amministrazione dello Stato.

F. D. Wormuth e la ragion di Stato come "absolute Prerogative".

Il primo importante lavoro dedicato alla *Ratio status* inglese è, significativamente, un saggio dedicato allo sviluppo nel primo cinquantennio del '600 della prerogativa sovrana: esso costituisce un'ampia ricostruzione di alcuni dei maggiori temi politici della prima metà del secolo. I nascenti dibattiti sulla natura dello Stato e sulle origini del governo, la teoria legale della costituzione e quella della *high Prerogative* costituiscono un complesso sistema di idee di cui la ragion di Stato è una parte inscindibile e che Wormuth intende ricostruire a partire dall'analisi del conflitto in atto tra una concezione "giurisprudenziale" della monarchia, fondata sull'idea di legge, e una concezione "naturalistica" che la definisce, invece, come un'istituzione naturale e primaria da cui la legge deriva. In seno a tale conflitto, infatti, si svolge un importante dibattito sulla funzione e

3 F.D. Wormuth, *The Royal Prerogative. 1603-1649*, New York, Cornell University Press, 1939; G.L. Mosse, *The Struggle for Sovereignty in England*, East Lansing, Michigan State College Press, 1950; G.L. Mosse, *The Holy Pretence: a study in Christianity and Reason of State from William Perkins to John Winthrop*, Oxford, Basil Blackwell, 1957; D.S. Berkowitz, *Reason of State in England and the Petition of Right, 1603-1629*, in *Staatsräson*, a cura di R. Schnur, Berlin, Duncker & Humblot, 1975, pp. 165-212; A.C. Houston, *Republicanism and Reason of State*, negli atti del convegno "*Necessitas non habet legem. The politics of necessity and the Language of Reason of State*", Cambridge, 1993.

sulle forme dello Stato che, presentandosi come «a body of discussion of what we woulkd call today political science»[4], si rivela influenzato sia dall'aristotelismo politico delle scuole, sia da Bodin e da quegli aspetti del pensiero francese che da tempo avevano messo al centro del loro studio il problema della forma e della organizzazione dello Stato. E' da tale approccio, i cui fautori sono definiti *Politicks*, che proviene un'idea di sovranità esprimibile attraverso una serie di caratteristiche e poteri del monarca, il più importante dei quali è «the making and annulling of laws»[5]. Prerogativa sovrana, in questo caso, è la capacità di fare e annullare le leggi così come quella di agire in taluni casi al di fuori e al di sopra di esse al fine di garantire la sicurezza dello Stato e del governo. Tale approccio era in contrasto con le dottrine dei *common Lawyers* elaborate sulle *fundamental Laws* intese come quelle leggi, consuetudini e tradizioni proprie di ogni paese che, fondandone il governo, garantivano anche libertà, diritti e doveri dei sudditi. Negli ultimi decenni di governo Tudor, i contrasti latenti tra l'idea di un governo regolato dalle leggi e la *Sovereignty* non ebbero modo di emergere, poiché il conflitto con la Spagna aveva creato una convergenza di interessi tra le diverse parti politiche. Con l'avvento degli Stuart, invece, si sviluppò un radicale conflitto che non ebbe luogo, però, tra il Parlamento in difesa delle *fundamental Laws* e la corona impegnata ad imporre il nuovo assolutismo sovrano. Piuttosto, gli stessi rappresentanti parlamentari furono costretti dagli eventi ad abbandonare la loro fedeltà alla legge e ad utilizzare le argomentazioni "realiste" della ragion di Stato benché essa «consorted ill with their general attitude»[6]. Le tappe di tale percorso, ci dice Wormuth, furono variegate e complesse, e ad un primo parziale accordo sulla esistenza di una *absolute Prerogative* sovrana segue il rifiuto di essa a causa del suo crescente utilizzo anche negli ambiti ordinari del *meum* e *tuum*. In seguito, durante il periodo della guerra civile, il Parlamento sviluppò una peculiare dottrina dei casi di emergenza secondo cui nei momenti di pericolo estremo le due camere erano autorizzate a legiferare per ordinanza anche senza

4 F.D. Wormuth, *op. cit.*, p. 30.

5 Sir Walter Raleigh, *The Prince, or Maxime of State*, in *Somer Tracts*, iii, p. 283, citazione in F.D. Wormuth, *op. cit.*, p. 34.

6 F.D. Wormuth, *op. cit.*, p. 40.

l'approvazione reale. Tale aspetto della analisi di Wormuth segna una importante acquisizione per lo studio della *Ratio status* inglese, smentendo la netta distinzione tra un parlamento legato al rispetto delle leggi e la corona dedita ad una politica assolutistica e straordinaria in favore di una ipotesi interpretativa che vede gli argomenti e le pratiche della ragion di Stato utilizzati e fatti propri anche in ambito parlamentare e repubblicano.

Ciò che però caratterizza questa proposta interpretativa è la tesi secondo cui il dibattito sulla ragion di Stato nasce in Inghilterra a partire da quello sulla *absolute Prerogative* seguendone, in sostanza, le sorti. Wormuth spiega che la prerogativa - definita ancora alla fine del '500 da una serie di diritti di proprietà del sovrano elencati dallo statuto *De Prerogativa Regis* nonché da una serie di diritti politici del monarca stabiliti dalla *common Law* - subisce nei primi anni del '600 un radicale mutamento in relazione al nascente confronto sulla sovranità. Esemplare, benché controversa, diviene la definizione offertane da Chief Baron Fleming durante il *Bate's Case* nel 1606: «The king's power is double, ordinary and absolute, and they have several laws and ends. That ordinary .... is exercised by equity and justice in ordinary courts, and by the civilians is nominated jus privatum, and with us *Common Law*; .... the absolute power of the king .... is only that which is applied to the general benefit, and is *salus populi*; .... and this power .... is most properly named policy and government; and as the constitution of this body varieth with time, so varieth this absolute law, according to the wisedom of the king, for the common good»[7]. Tale dibattito porta ad una lunga serie di tentativi di definizione delle caratteristiche che sono proprie della *political Prerogative* del monarca, tra i quali importante è quello richiamato da Sir Francis Bacon, che nel suo *View of the Differences in Question Betwixt the King's Bench and the Council in the Marches* del 1610 lascia emergere una prerogativa indiscutibile, inseparabile e assoluta di governo, che entra in diretto contrasto con la prospettiva parlamentare di una *Theory of Law*[8]. Tale contrasto era stato già colto da tempo, ed Edward Forsett nel

7 In *A Complete Collection of State Trials*, a cura di T.B. Howell, Londra, 1816, II, p. 389, citazione in F.D. Wormuth, *op. cit.*, p. 54.

8 Francis Bacon, *View of the differences in Question...*, in Spedding, *Bacon's Letters and Life*, iii, p. 371. La concettualizzazione della *absolute Prerogative* avviene in Bacon a partire dalla analisi di quattro diverse tipologie di prerogative. Le *disputable Prerogatives* definiscono quei poteri ordinari del sovrano

suo *A Comparative Discourse of the bodies natural and politique* del 1606 aveva cercato di gettare un ponte tra la sua *Prerogative of extraordinary Rule* e la legge. L'idea che possa esistere una prerogativa non passibile di alcuna definizione è duramente attaccata da John Selden, il quale nei suoi *Table Talk* scrive che la «Prerogative is something that can be told what it is, not something that has no name... the King's prerogative [is] not his will, or what Divines make it, a power to doe what he lists»[9]. Similmente, pur con un intento opposto, alcuni giuristi - fra i quali Sir John Davies, Serjeant Ashley, Sir Robert Heath e Sir Robert Berkeley - tra il 1600 e il 1640 cercheranno di definire in modo più preciso il senso del termine prerogativa delineando una *"Theory of High Prerogative"*, secondo cui il sovrano a partire dai poteri a lui attribuiti dalla *Law of Nations* è in possesso di un potere assoluto e illimitato finalizzato a garantire sul piano internazionale e nazionale la sicurezza dello Stato. La *Ratio status*, dice Wormuth, penetra il dibattito politico inglese attraverso questa discussione sui poteri straordinari del sovrano. In altre parole, è in questo confronto - ed intorno ad una rete di conflitti costituzionali sviluppatisi nel primo quarantennio del '600 - che il termine *Reason of State* viene impiegato sempre più spesso per esprimere quei precetti e quelle pratiche politiche che il sovrano, legittimato dalla *absolute Prerogative*, deve mettere in atto per il bene dello Stato. Ragion di Stato è quindi l'esercizio di pratiche prudenziali e di *policies* al di là e al di fuori della legge in considerazione del fatto che il detentore del potere politico, in quanto "sovrano", è depositario di un potere assoluto e "*indisputable*" di governo. Lo sviluppo della ragion di Stato nell'Inghilterra della prima metà del XVII secolo è allora da intendersi come il costituirsi di un potere discrezionale e di deroga del regnante che ha la sua origine nei processi di formazione delle prerogative assolute di governo dell'autorità sovrana.

che possono essere discussi nelle corti di giustizia, le *indisputable Prerogatives* stabiliscono quei poteri grazie ai quali il sovrano può operare al di fuori del controllo delle corti, le *separable Prerogatives* definiscono i diritti privati del re che - in quanto tali - tali possono essere ceduti o alienati, ed infine le *inseparable Prerogatives* definiscono i poteri pubblici del sovrano che non possono essere in alcun modo ceduti.

9 Edward Forsett, *A Comparative Discourse of the Bodies Natural and Politique*, London, 1606, 4°; John Selden, *Table Talk*, "Prerogative", Londra, 1689, citazione in F.D. Wormuth, *op. cit.*, p. 71

Un bilancio critico delle tesi espresse in questo lavoro è certamente complesso. In definitiva, Wormuth segnala per l'Inghilterra della prima metà del '600 la presenza dei discorsi della ragion di Stato sottolineandone l'appartenenza a dibattiti quali quelli sulla costituzione di un potere sovrano, sui rapporti tra i diversi organi dello Stato, sui rapporti tra i diritti e le libertà dei cittadini e le necessità del governo. Non vi sarebbe una ragion di Stato intesa come proposta politica autonoma, quanto l'uso dei suoi saperi, delle sue pratiche e dei suoi discorsi in diversi contesti teorico-politici creatisi nei primi decenni del secolo intorno alla prerogativa sovrana. Essa è il portato della *absolute Prerogative* nei termini di quel sapere politico prudenziale, discrezionale e del momento di eccezione, che non coinvolgendo ambiti di saggezza civile o di buon governo, viene finalizzato unicamente alla sicurezza della nazione. Un "sapere delle pratiche" da esercitarsi, in sostanza, in un governo ordinato secondo i dettami della sovranità. L'analisi di Wormuth risulta pertanto compressa in un ambito fortemente "costituzionale", cioè relativo ai discorsi in merito alla forma, all'assetto e alla funzione dei diversi momenti di produzione della decisione politica nel nascente Stato inglese moderno. La sovranità costituitasi secondo procedimenti propri, demanderebbe in alcuni momenti particolari l'esercizio del governo alla prudenza politica e alla deroga. Come si cercherà di argomentare in seguito, se è corretto affermare che la ragion di Stato inglese della prima metà del secolo è essenzialmente discrezionale e derogatoria non è, però, possibile non ritenerla autonoma - almeno in parte - nei confronti dei processi di costruzione della *absolute Prerogative* sovrana, pena il suo schiacciamento al solo momento di esercizio di essa. La lettura "costituzionale", che di essa ne offre Wormuth, ad ogni modo, farà scuola poiché in quasi tutti gli altri autori che analizzeremo ritroveremo lo studio della *Ratio status* legato tanto ai momenti della eccezionalità politica quanto alla analisi dell'esercizio della prerogativa sovrana.

Ragion di Stato tra prerogativa sovrana e casuistica religiosa in G.L. Mosse.

Nei due lavori di Mosse sono ripresi e approfonditi i temi della *absolute Prerogative* ed è presentato un nuovo e originale ambito di ricerca: la casuistica religiosa cattolica e protestante. Il primo di essi, *The Struggle for Sovereignty* del

1950, è il tentativo di vagliare l'assimilazione dell'idea di sovranità nel pensiero politico e costituzionale inglese a partire dagli ultimi anni del regno elisabettiano fino al 1628, anno in cui è stilata la *Petition of Right*. L'autore sostiene che il suo emergere nell'Inghilterra del XVII secolo è il risultato di una complessa lotta tra re e parlamento cominciata negli ultimi anni del regno Tudor, ma che entra nel suo momento cruciale durante il regno di Giacomo I e di Carlo I Stuart. In epoca tudoriana la sovranità è attribuita al "re in parlamento", inteso come l'assemblea del monarca e delle due camere riuniti insieme nel momento della deliberazione. Il *King in Parliament* è sovrano nel nome della *Law of Reason* con il compito di garantire il rispetto delle consuetudini e della *common Law*. Quando l'idea di sovranità ebbe soppiantato del tutto il concetto medievale di *Commonwealth,* la lotta per l'esercizio esclusivo dei poteri da essa conferiti divenne inevitabile preparando quindi il terreno allo sviluppo dei discorsi della *Ratio status*. Anche Mosse lega la ragion di Stato inglese alla nascita di un'autorità sovrana che si attua al di sopra delle leggi attraverso la *absolute Prerogative* del monarca, e tale legame getta le sue radici sia nei poteri emergenziali attribuiti dagli statuti medievali al governante, sia nella rilettura inglese della "machiavelliana" ragion di Stato, trovando espressione nel tentativo stuardiano di dare un fondamento divino alla corona. Nei primi anni del Seicento, in sostanza, sarebbe proprio l'idea di un bene pubblico, di cui il sovrano è garante, ad aprire la strada alla semantica di una *Ratio status* che si presenta non solo come l'utilizzo di tecniche prudenziali ma anche come l'uso saggio dei consigli divini che il monarca - in quanto luogotenente di Dio in terra - deve saper ascoltare «above man's wit and policy»[10]. La *Ratio status* è quindi una ragione politica discrezionale e del momento di eccezione che si attua secondo pratiche politiche prudenziali e "machiavelliche". La diversità nei confronti del lavoro di Wormuth, viene proprio dai diretti riferimenti al machiavellismo e all'influenza del pensiero di Botero e di Charron in ambito inglese e dalla analisi della funzione giocata dal concetto di *common Good*[11]. Certamente l'equazione tra machiavellismo e ragion di Stato è una caratteristica di questo lavoro, e ne è, per certi versi, un

10 G.L. Mosse, *The Struggle*, p. 52.

11 E' importante sottolineare che l'opera di Wormuth è espressamente citata da Mosse per la parte riguardante la ragion di Stato.

punto debole, ma importante rimane la notazione per cui, in autori come Giacomo I Stuart e Roger Maynwaring, l'utilizzo delle pratiche prudenziali non avrebbe avuto come unico scopo l'efficace esercizio di un governo assoluto basato sulla forza, bensì la produzione di una più ampia saggezza di governo ispirata al sovrano da Dio stesso al fine di garantire il bene comune[12].

Un contributo diverso è offerto nel saggio *The Holy Pretence* del 1957, nel quale sono poste sotto esame le relazioni che intercorrono tra idee "machiavelliane" e il pensiero della Riforma. Mosse ritiene che la chiave di tale rapporto sia espressa dal tentativo dei teologi cattolici e protestanti di conciliare le esigenze di un mondo politico fatto di lotte e conflitti con una realtà morale in cui le massime prudenziali e la politica della forza non dovrebbero avere spazio. Il nodo delle relazioni tra le idee "machiavelliane" e la Riforma non riposerebbe, quindi, nel pensiero di questo o quel riformatore o nella diretta influenza delle opere del Machiavelli, quanto «in the general tension between religious presupposition and political realities ... »[13]. In tal senso, per gli uomini dei secoli XVI e XVII, l'essenza del nuovo pensiero politico rinascimentale si trovava «... in the 'Machiavellian' concept of reason of state, and in this essay we will attempt to analyze the relationship between Christianity and reason of state which certain Divines managed to construct»[14]. La ragion di Stato è l'espressione di una *Policy* intesa come l'esercizio del governo secondo quelle massime dell'azione politica che suggeriscono al principe cosa fare in modo da preservare e conservare il benessere dello Stato, e come tali, esse orientano il governo verso la realtà della vita politica giudicando il governante in base al suo successo nell'utilizzo del potere politico. Nella lotta per la costruzione del potere sovrano, re e parlamento utilizzarono gli arsenali teorici della *Ratio status* avocandosi il diritto di giudicare e di esercitare un *absolute Power* nei casi di emergenza e in un paese riformato ciò non poteva non avere importanti implicazioni. Infatti, se essa è un necessario portato della autorità e del governo, e se tutte le sue azioni devono essere orientate all'ottenimento del "beneficio" maggiore (*greatest Good*), diviene allora inevitabile l'utilizzo di pratiche politiche astute, prudenziali, talvolta violente o ingiuste[15]. In quanto parte integrante della ragion di Stato esse obbligavano a porsi una domanda che, secondo Mosse, turbava il dibattito politico e morale dell'epoca: «Men might speak about reason of state, but were they ready to face the consequences, to resort to 'policy'?»[16]. Partendo da tale questione l'autore pone in analisi il processo di acquisizione della *Policy* machiavelliana attraverso i testi di autori cattolici quali Sir Walter Raleigh, Sir Philiph Sidney, John Melton, James Bovey, Thomas Fitz-Herbert e Peter Talbot facendo emergere con chiarezza la presenza nel pensiero cattolico inglese del tentativo di conciliarne l'esercizio con i precetti della vita cristiana. Similmente, anche la casuistica riformata nelle vesti di William Ames, William Perkins e John Winthrop, cercava di operare tale conciliazione offrendo una cornice morale entro cui poter esercitare la prudenza politica e la *Ratio status*. Sia Ames che Perkins intendevano gettare un ponte tra la *Policy* e la cristianità ridefinendo la semantica del termine di *Prudence* e nel loro pensiero, così come nella *covenant Theology* di John Winthrop, l'intento era quello di armonizzare la parola di Dio con la pratica della ragion di Stato. Per poter garantire la sopravvivenza e il benessere dello Stato, nonché della società di Dio, il sovrano doveva essere investito dei poteri sufficienti a respingere ogni imminente pericolo e doveva poter disporre di discrezione (*Discretion*). Benché tale parola fosse "*offensive and unsafe*", in particolari circostanze essa era ritenuta una utile guida per gli affari civili poiché i

12 In tal senso non si deve però dimenticare che il testo di F. Meinecke sulla ragion di Stato è tradotto nella edizione inglese come *Machiavellism: the Doctrine of Raison d'État and its Place in Modern History*. Del resto era tesi largamente accettata all'epoca che le radici della ragion di Stato risiedessero nel principe machiavelliano.

13 G.L. Mosse, *The Holy Pretence*, p. 5

14 *Ibidem*. Questo lavoro collega le tesi di due articoli precedenti: *Puritanism and Reason of State in Old and New England*, in *The William and Mary Quaterly*, IX, 1952, pp. 67-80; e *The Assimilation of Machiavelli in English Thought: The Casuistry of William Perkins and William Ames*, in *The Huntington Library Quaterly*, XVII, 1954, pp. 315-326.

15 Fin già dai primi anni del XV secolo il termine *Policy* viene utilizzato col senso spregiativo di *Expedient*. Nel corso del '600, pur mantenendo tale significato, esso comincia ad essere utilizzato anche in senso non spregiativo. Sir Walter Raleigh, ad esempio, definisce la *Policy* «An art of government of a commonwealth... for the public good» (*The Prince or Maxime of State*, Londra, 1642) in D.S. Berkowitz / L. Roux, *A Note on Some Methodological Issues and Problems*, in *Staatsräson*, pp. 601-609, citazione a p. 607.

16 G.L. Mosse, *The Holy Pretence*, p. 15.

princìpi che devono orientare ogni azione del governante sono proprio la *Usefulness* e la *Expediency*. In tale contesto la *Policy* si presenta come *Expediency,* legandosi ad una matrice utilitaristica di azione. Perkins, Ames, e Winthrop stabiliscono, quindi, un percorso teorico e pratico che altri autori come Thomas Wilcox, Peter Sterry, John Downame e John Goodwin seguiranno con differenze marginali. Immagine rappresentativa di questo discorso etico-politico è, secondo Mosse, quella del serpente e della colomba che Francis Quarles nel suo *Enchridion Miscellaneum* spiegava scrivendo che: «the subtlety of the serpent instructs the innocence of the dove, the innocence of the dove corrects the subtlety of the serpent: what God has joined together let no men separate»[17]. L'incontro tra queste due istanze è ciò che Jeremy Taylor nella sua opera *The Serpent and the Dove* definisce *christian Prudence*. Se in Taylor è esplicita l'influenza di Bodin e l'idea di un potere assoluto viene accolta e legata alla necessità di preservare il *common Good,* in tutti questi autori l'autorità deve poter garantire un governo basato sia sull'esercizio delle leggi ordinarie sia sull'efficace utilizzo della deroga nei casi di necessità. Il monarca è il solo giudice della necessità e dell'eccezione ed è il solo, quindi, che può governare «by the law of reason alone»[18]. La legge della ragione è, in realtà, la legge del retto esercizio della prudenza e di applicazione di una *Policy* giustamente orientata : «This law of reason, which is operative by itself only in times of necessity is in reality the law of the reason of state»[19]. Le conclusioni che Mosse trae nel suo lavoro sono chiare. Innanzitutto, per gradi diversi, nel processo di costruzione di un ponte tra la vita cristiana e la pratica politica della *Ratio status* si costituisce un luogo semantico, quello della prudenza, che in termini diversi apre ampi margini all'uso della *Policy*. La religione è considerata in modo esplicito come necessaria ad un governo retto ed efficace e le pratiche politiche, trasformate in mezzi per raggiungere il fine della costruzione di un regno divino in terra, sono considerate strumenti neutri in sé che hanno senso e possono essere valutati sia in base alla loro efficacia, sia in base alla intenzionalità morale del detentore del potere politico. La scoperta della necessità dell'uso della *Policy* e della ragion di Stato avrebbe quindi determinato l'accettazione graduale dei moderni metodi del fare politica e «This acceptance came at the same time that the principle of the centralization of political authority, the idea of sovereignty, was being assimilated into the main stream of European political thought»[20]. I termini di prudenza e *Policy* divennero intercambiabili e la ragion di Stato si trasformò in "ragion di fede".

17 Francis Quarles, *Enchridion Miscellaneum*, Amsterdam, 1677, in *Ivi*, p. 133.
18 *Ivi*, p. 139
19 *Ibidem*

Questo lavoro di Mosse è sicuramente di cruciale importanza sia per le tesi che esprime, sia per l'ambito di ricerca che demarca: quello della casuistica cattolica e riformata. In esso, il problema politico della ragion di Stato diviene il problema morale della ragion di Stato ed il drammatico rapporto tra le esigenze della vita politica e le necessità proprie dell'interiorità dell'uomo pone come questione politica rilevante quella dei soggetti che - di fatto - si confrontano nel quotidiano con la *Ratio status*. Non vi è, quindi, solo la problematica istituzionale e politica delle prerogative e delle competenze sovrane o quella storico-politica dei rapporti tra Machiavelli, Bodin e l'Inghilterra: troviamo anche la questione delle modalità attraverso cui i soggetti vissero il processo di costruzione materiale di una nuova autorità politica sovrana e ne dovettero tenere conto nei diversi livelli del loro vissuto. Più ancora che l'identificazione stabilita da Mosse tra machiavellismo e ragion di Stato nei processi di integrazione tra quotidianità cristiana e pratica politica, è interessante sottolineare l'attenzione posta in questa ricerca alla dimensione morale e di scelta soggettiva degli individui nei confronti della razionalità politica.

La ragion di Stato tra Giacomo I e la Petition of Right secondo D.S. Berkowitz.

Questo breve saggio è dedicato esplicitamente alla categoria politica della ragion di Stato e al suo sviluppo dal 1603, anno in cui sale al trono Carlo I Stuart, al 1629. Come gli altri saggi fin qui analizzati, Berkowitz ritiene che la prerogativa sovrana e il governo discrezionale nei casi di emergenza siano i due pilastri

20 *Ivi*, p. 151.

su cui poggia l'edificio della *Ratio status* inglese il cui luogo di costituzione è nei processi di formazione dell'autorità sovrana. Le sue radici sono in Bodin, la cui definizione di sovranità segnerebbe le caratteristiche della *Ratio status* in questo paese, e in Machiavelli e Botero. Importante fonte diretta è, invece, il pensiero del maggiore *Lawyer* inglese del XV secolo, Sir John Fortescue, il quale, in un testo mai pubblicato, il *Praise of the Laws of England,* afferma la compatibilità tra lo *ordinary common Constitutionalism* e lo *extraordinary natural law Absolutism.* In sostanza, già nella definizione tutta medievale di un *dominium politicum et regale* - di un monarca cioè che governa secondo la sua volontà (*regale*) ma anche secondo le leggi del reame (*politicum*) - è presente la figura di un principe che esercita il suo potere assolutamente (*regaliter*) sia attraverso l'ordinario *Pardoning and dispensing Power*, sia in situazioni d'emergenza nelle quali non è possibile osservare le normali pratiche costituzionali di governo. In questo saggio, così come in Mosse, lo snodo storico fondamentale è costituito dallo scontro tra i sovrani Stuart, che cercano di giustificare l'esistenza di un potere monarchico assoluto a partire da un suo presunto fondamento divino, e il parlamento che si schiera a difesa di una serie di libertà civili messe in discussione dal monarca. Tale contrasto riguarderebbe da un lato la natura del *discretionary Power* nel passaggio da una prerogativa intesa come una serie di specifici diritti esercitati dal sovrano ad un principio generale e astratto derivato da un nuovo modo di intendere la sovranità regale, dall'altro il presunto fondamento divino dell'autorità regale e i modi di esercizio di tale autorità. Le tesi importanti sono, però, altrove. Innanzitutto questo lavoro mostra come lo sviluppo della ragion di Stato nel dibattito politico inglese sia fortemente condizionato da una struttura giuridica particolare - la *common Law* - e dai peculiari rapporti tra sovrano, le due camere e i giudici incaricati di esercitare il diritto: la «Reason of state in the continental sense of royal sovereignty free of the law was a concept not easily naturalized in England» poiché nella tradizione inglese la legge positiva era la "*common law of the realm*", canoni, statuti, consuetudini che identificavano uno spazio di libertà e garanzie dei cittadini che solo in casi estremi poteva essere messo in discussione dal potere politico rappresentato - per altro - dal re in parlamento[21]. Le libertà economiche, il diritto dei sudditi ad essere imprigio-

21 D.S. Berkowitz, *op. cit.*, p. 168.

nati solo per causa mostrata e la proprietà erano la base di un sistema giuridico che rendeva impossibile al monarca inglese l'esercizio di una autorità quale quella del principe machiavelliano o boteriano, dovendo il re fare i conti con una realtà giuridica consuetudinaria affermatasi nel corso dei secoli.

La ricostruzione di Berkowitz del dibattito politico e costituzionale dell'epoca termina con alcune precise tesi storiografiche. Egli ci dice, infatti, che la crisi del 1629 è "risolta" dai giudici i quali, mediando tra le pretese del monarca e le richieste del parlamento, dichiarano legale la prerogativa assoluta sovrana legandola in modo stringente alla *common Law* di cui essi sono interpreti. Quello che Carlo I non era stato in grado di ottenere dal Parlamento negli anni precedenti lo scontro sulla *Petition of Right*, ossia la possibilità di esercizio di poteri ordinari più larghi e l'esercizio discrezionale della prerogativa, lo acquista "segretamente" dai giudici che finiscono per sostenere - di fatto - una peculiare ragion di Stato intesa come un amalgama di discrezionalità giudiziale e di prerogativa reale. Questi sviluppi, che potrebbero sembrare la vittoria della *Ratio status* intesa in senso continentale - e cioè come sovranità reale sciolta dalla legge - dal punto di vista dei giudici non erano altro che il rafforzamento e l'ampliamento di poteri già presenti nell'architettura costituzionale inglese e previsti dal diritto consuetudinario e dalla legge comune. Certamente tale soluzione non poteva soddisfare Carlo I che rimaneva fortemente condizionato dai *Lawyers.* Berkowitz ritiene che l'approfondimento teorico e pratico della *Reason of State* fu possibile proprio grazie a questo legame - pur precario - instauratosi tra i giudici delle corti minori e il monarca. In tal senso, nei sei mesi trascorsi tra la risoluzione del *Five Knight's Case* e il responso - *in camera* - dei giudici al re il 27 maggio del 1628 sulla *Petition of Right*, la ragion di Stato avrebbe raggiunto lo "zenit" del suo impatto sulla legge costituzionale inglese. Carlo, a breve, avrebbe però ripreso la sua *Politics of Necessity* quasi impersonando la visione boteriana di un re che applica la sua coscienza cristiana come base morale per giustificare l'uso *pro bono publico* della ragion di Stato e dell'assolutismo reale. Negli anni successivi alcuni esponenti parlamentari sarebbero stati arrestati "senza causa espressa" e gli argomenti della necessità e della *Ratio status* sarebbero stati usati ancora per giustificare la proclamazione della *Ship-money Taxation* del 1636 senza discussione o approvazione parlamentare. Da questo momento in poi, con la frattura del blocco costituitosi tra re e giudici e col progressivo rafforzarsi dell'opposizione parlamentare, la ragion di Stato inglese si

avviava verso il suo "nadir". Infatti, la pretesa dei sovrani Stuart di assumere un potere assoluto porterà ad una radicalizzazione del conflitto tra monarchia e parlamento, in cui quest'ultimo diviene il reale depositario della sovranità. In tale contesto la ragion di Stato è parte di un conflitto tra gli interessi della corona e dei *Commons* che acquista una veste "costituzionale", svolgendosi nelle corti di giustizia oltre che nelle aule delle camere. Essa emergebbe, quindi, con forza nel primo ventennio del secolo in ambito realista e parlamentare diventando sempre meno rilevante negli anni a venire. Tale rilevanza è valutata a partire dal suo impatto con i meccanismi di costruzione di un ambito giuridico-politico di governo ed infatti, cessato lo scontro con l'affermazione decisa del parlamento nell'esercizio dei poteri sovrani, essa sarebbe destinata a scomparire. Come si cercherà di mostrare più avanti, questa relativa scomparsa è in realtà l'indice di una trasformazione. Il passaggio a questo futuro mutamento è al di fuori dell'arco storico analizzato da Berkowitz che non prende quindi in esame autori e testi che metterebbero in discussione l'assunto secondo cui il momento più alto della presenza della ragion di Stato nella realtà politica inglese sia da valutarsi in riferimento alla incidenza "costituzionale" di tale discorso. Tale assunto, del resto, è in parte la conseguenza della interpretazione della *Ratio status* come *derogatory Power* che informa questo saggio e che - pur con esiti radicalmente diversi - caratterizza anche il lavoro di A.C. Houston.

Politics of Necessity e ragion di Stato repubblicana secondo A.C. Houston.

Se gli scritti precedenti interpretavano la ragion di Stato alla luce degli sviluppi della *absolute Prerogative* e del machiavellismo inglese, il lavoro di Houston si propone di utilizzare come categoria analitica quella di *Necessity*. La *Ratio status* è un *derogatory Power* i cui argomenti appartengono al bagaglio argomentativo di autori realisti e parlamentari e la stessa concezione repubblicana sarebbe - in realtà - figlia della ragion di Stato in quanto elaborata sotto la spinta della "necessità politica". Le tesi di Houston presentano un quadro complessivo e articolato di sicuro interesse. La prima parte del saggio è spesa a definire cosa debba intendersi per ragion di Stato e la definizione proposta è netta: «in its basic form, it constituted a mediation on the nature and purpose of discretionary political power»[22]. In termini boteriani essa è la conoscenza dei mezzi atti a fondare, preservare ed estendere un dominio, la *Ratio status* come voce del realismo politico è una sorta di saggezza pratico-politica il cui fondamento risiede nella efficienza del governo. Affinché uno Stato possa sopravvivere e rafforzarsi, l'uomo di governo deve essere prudente soppesando sapientemente mezzi e fini «giving greater attention to conflicts of power than to claims of justice»[23]. La dimensione "a-morale" di tale proposta politica è proprio nella esigenza di vedere garantite con ogni mezzo la sicurezza dello Stato e del vivere civile. La *Necessity* che è alla base del fare politica, assume diverse forme conformemente alle quali le decisioni di uno Stato variano. Houston è convinto che una delle più importanti discussioni sulla *Politics of Necessity* ha luogo nell'Inghilterra del Seicento in relazione agli sviluppi della prerogativa sovrana e del repubblicanesimo. In quest'ultimo punto risiede il nucleo più originale di questo saggio. Se è generalmente ritenuto che le maggiori opposizioni al linguaggio e alla pratica della ragion di Stato siano venute dai repubblicani e da ambienti parlamentari, la realtà sarebbe invece radicalmente diversa. I repubblicani «... were no less attentive to the politics of necessity than were their antagonists... republican conceptions of politics did not so much eliminate political prudence as adapt and transform it to meet England's changing domestic and international needs»[24]. Nei dibattiti sulla necessità politica il motivo di confronto non sarebbe stata la legittimità dell'esistenza di un potere discrezionale, quanto la definizione di un meccanismo a partire dal quale rendere tale potere degno della fiducia dei cittadini e controllabile. La risposta offerta dai repubblicani era che la sovranità popolare doveva potersi configurare come garante dell'applicazione dei poteri discrezionali necessari alla sopravvivenza dello Stato. In tal senso «... the republican 'empire of law', grounded in popular soveraignty and expressed in representative government, was continuous with, and not distinct from, the language of reason of state... Popular sovereignty ... is also a theory of political prudence, a complex set of claims concerning the social distribution of

22 A. C. Houston, *op. cit.*, p. 3.
23 *Ivi*, pp. 1-2
24 *Ivi*, p. 4

discretionary power»[25]. Il processo attraverso cui la *Politics of Necessity* si affermò nell'Inghilterra del '600 è segnato da importanti conflitti costituzionali quali il *Bate's Case* del 1606 e il *Five Knight's Case* del 1627 e dal conflitto tra i sovrani Stuart e il parlamento. Questo saggio, però, copre un arco temporale che arriva fino agli anni immediatamente successivi la restaurazione e peculiare risulta l'attenzione posta nei confronti di Henry Parker e della complessa relazione che i termini ragion di Stato, interesse pubblico e *salus populi* andavano stringendo nel corso del secolo. Parker sostiene che il bene della nazione è l'obiettivo primo di ogni governo e l'unico garante degli interessi dello Stato è il popolo stesso che deve esercitare il suo potere attraverso il meccanismo politico della rappresentanza. Il parlamento è il luogo deputato a giudicare gli interessi della nazione e ad esercitare il potere nei casi di necessità. Di centrale importanza è proprio la semantica degli interessi e l'attenzione verso questa categoria è uno dei temi che caratterizzano il saggio di Houston. Infatti, a partire dalla seconda metà del secolo il linguaggio degli *Interests* diviene parte di una strategia di riforma disegnata sia per liberare il *Politician* dalle malevoli influenze di desideri, passioni e superstizioni, sia per dissolvere vecchie necessità politiche imponendone di nuove. Se l'interesse è uno «strategic tool, employed to resolve a discrete range of social and political problems»[26], sul piano politico gli *Interests of State* si configurano come il garantire la sicurezza interna ed esterna della nazione e l'assicurare il benessere del popolo, l'ordine e l'integrità nazionale. In relazione a questi sviluppi la semantica dell'interesse si intreccerebbe in modo evidente e sempre crescente con quella della ragion di Stato. Già Botero, del resto, aveva scritto che la ragion di Stato non era altro che ragione di interessi e Nedham Marchamont - seguendo Henry duc de Rohan in *De l'Interest des Princes et des Estates* - scrive che se il principe guida il popolo sono però gli interessi a guidare i principi[27]. Il dibattito sugli *Interests of State* è parallelo a quello sulle trasformazioni della società e al nascere della consapevolezza da

25 *Ibidem*

26 *Ivi*, p. 2.

27 Nedham Marchamont, *Interest will not lie. Or a View of England's True Interest*, Tho. Newcomb, Londra, 1959, 4°.

parte di alcuni autori inglesi della necessità di radicali trasformazioni costituzionali per far fronte ai mutamenti della realtà sociale ed economica. Tra essi vi è James Harrington, il quale, secondo Houston, esprime con chiarezza il principio secondo cui «different constitutions, with different rulers, had different reasons of state. Each realized — or threatened — the public good in a different way»[28]. Questo sarebbe, quindi, il momento in cui a partire da un ampio dibattito sulle costituzioni miste si diverrebbe consapevoli della possibilità di costruire «a comparative science of politics, framed around the different reasons of state found in distinct constitutional orders»[29]. Del resto, in un contesto in cui l'editoria, il commercio, la messa a lavoro dei poveri e i benefici per i meno agiati diventano *Matters of State,* il sapere pratico-politico non poteva che essere "scientifico".

Se gran parte di questo saggio è dedicata alla ricostruzione storica e storiografica dei discorsi e degli eventi che costellarono il processo di sviluppo della *Ratio status* inglese nella prima metà del secolo, nella seconda parte di esso Houston spinge la sua analisi fino quasi alla fine del XVII secolo analizzando la trasformazione della *Politics of Necessity* e della ragion di Stato dovuta alla crescente importanza attribuita alla regolazione e al controllo del commercio. Lo sviluppo delle repubbliche commerciali trasformò la bilancia dei poteri in Europa imponendo nuove forme di necessità sulla condotta della politica, e se i repubblicani inizialmente legarono il commercio ad idee quali la libertà, l'autogoverno e la prosperità, non ebbero in un secondo momento alcuna difficoltà a rileggerlo in termini essenzialmente politici e militari. Attraverso il concetto di *Necessity* ed interpretando la ragion di Stato come una ragione di deroga, Houston afferma che alla fine del '600 il radicale mutamento della realtà sociale e l'affermarsi delle repubbliche commerciali avevano trasformato la *Ratio status* in qualcosa di più complesso e articolato di un mero *derogatory Power* e le stesse proposte repubblicane sarebbero il frutto di un tentativo tutto politico di riorganizzare la vita collettiva degli stati così da fare fronte alle nuove necessità sociali e commerciali. In tale passaggio vi sono le opere di Henry Parker che nel raccordo tra i meccanismi della rappresentanza politica da un lato e gli imperati-

28 A.C. Houston, *op. cit.*, p. 17.

29 *Ivi*, p. 18.

vi della ragion di Stato e degli interessi dall'altro, creano i presupposti per un discorso conservativo che esula dal semplice momento discrezionale giungendo a considerare *Matters of State* ambiti quali il commercio e l'amministrazione degli interessi del popolo prima considerati ai margini della sfera del politico.

Pur condividendo la lettura che Houston offre di Henry Parker e gli esiti finali della sua analisi, questo saggio non risulta pienamente convincente perché, ritenendo che esista uno strettissimo legame tra la *Ratio status* e l'idea di necessità, l'autore riduce la ragion di Stato alla mera dottrina politica che cerca di offrire risposte - talvolta prudenziali e discrezionali, talvolta più articolate e complesse quali quelle del repubblicanesimo - alle vicissitudini ed ai mutamenti della realtà politica. Importante resta l'analisi svolta per il panorama inglese della categoria di *Interest* e del riorganizzarsi delle finalità dell'agire politico intorno agli *Interests of State*. L'attenzione posta sui mutamenti economici, sulla nuova semantica degli interessi e per certi versi anche l'idea che le stesse teorie repubblicane siano una sorta di ragion di Stato rimangono delle importanti acquisizioni, ed è innegabile che alcune delle tesi esposte nella successiva sezione di questo contributo, pur poggiando su una strumentazione critica diversa, ne riprendono alcuni motivi.

La ragion di Stato inglese nel XVII secolo.

La presenza del termine *Reason of State* in terra inglese - documentabile solo a partire dagli inizi del secolo - indica che i linguaggi e le pratiche della *Ratio status* cominciano a svilupparsi in prima epoca Stuart[30]. Le radici di questo sviluppo sono molteplici e per tutto il secolo in questione non è possibile parlare di un panorama dottrinale unitario e coeso trovandoci, piuttosto, dinanzi ad una pluralità di discorsi riconducibili ad un terreno comune attraverso la categoria di "conservazione politica". Nessuna delle maggiori ipotesi interpretative fino ad oggi espresse - quelle, cioè, di una ragion di Stato inglese figlia minore del machiavellismo o quella di una *Ratio status* da intendersi come l'esercizio di una prerogativa straordinaria e assoluta - riescono a coglierne la specificità e la varietà di sviluppi. Sicuramente essa affonda parte delle sue radici nella cultura machiavelliana di cui l'epoca elisabettiana fu coltivatrice, così come i suoi più significativi sviluppi nella prima metà del secolo si articolano intorno ai dibattiti costituzionali sulle prerogative sovrane. La seconda metà del Seicento vede, invece, lo strutturarsi di ipotesi politiche conservative organizzate in una "scienza della politica" capace di produrre governo e sicurezza grazie all'utilizzo di *policies* dinamiche, plurali e "governamentali". Scienza della politica che, partendo da una complessiva analisi delle relazioni di potere e delle tecniche del fare politica, giunge alla definizione della *Reason of State* nei termini di ragione e di amministrazione dello Stato.

La prima significativa comparsa del termine nel dibattito politico inglese risale al vocabolario italo-inglese di Giovanni Florio del 1611 in cui esso acquista fin da subito una connotazione politica oltre che giuridica venendo definito come la «law, reason, policy of a state»[31]. Ciò segna lo scarto dalle idee ancora del tutto medievali di *salus populi* e *ratio publicae utilitatis* intese come revival della legge pubblica romana mostrando, nel contempo, come tale prima definizione della ragion di Stato non abbia radici machiavelliane. Tra le opere di chiara ispirazione machiavelliana, il *The Practice of Policy* di Lodowick Lloyd e *The Sixfolde Politcian* di John Melton mostrano come un simile retroterra teorico possa produrre discorsi e pratiche politiche che giungono alla elaborazione di dispositivi più ampiamente "conservativi"[32]. Da questo tipo di testi proviene la concettualizzazione in senso pratico politico del termine *Wisedom* che si compie nei primissimi anni del Seicento. In essi la saggezza è definita come la capacità di

30 A tutt'oggi il termine *Reason of State* sembra essere stato usato per la prima volta in Inghilterra da Ben Johnson quando i "Children of the Chapel" misero in scena a Blackfriars nel 1600 l'opera *Cynthia's Revels*. Importante è anche l'uso che ne fa Francis Bacon nel suo *The Advancement of Learning* (Londra, 1605) nel quale sembra comparire una dimensione conservativa e prudenziale della pratica politica benché moralmente rigettata.

31 Giovanni Florio, *A World of Wordes*, Londra, 1611, citazione in D.S. Berkowitz, *A Note on*, p. 605.

32 Llodowick Loyd, *The Practise of Policy*, pp. 83, S. Stafford, Londra, 1604; John Melton, *A Sixfolde Politician. Together with a six-folde precept of Policy*, pp. 180, E. A[llde] for J. Busby, Londra, 1609, 8°.

strutturare in modo efficace la *"practice of policy":* termine - quest'ultimo - che aveva acquistato il senso neutro nel giudizio di tecnica e procedura politica. Tali tecniche, anche quando spregiudicate, vanno usate sia in ambiti di politica interna che estera essendo l'intento conservativo inevitabilmente legato all'esercizio della prudenza sui piani diversi dell'arte politica e del governo[33]. In modo simile, altri testi cercano di definire un'accurata precettistica del comportamento politico del principe nonché di figure di secondaria importanza nello Stato tra le quali di particolare rilevanza risulta quella del cortigiano. Attraverso la precettistica cortigiana, infatti, vengono segnalate con estrema chiarezza le dinamiche e le relazioni di potere interne alla corte che si sviluppano a partire da una marcata condizione di squilibrio nei poteri tra principe e cortigiano. Le pratiche di disciplina e di disciplinamento che i soggetti operano su se stessi diventano, in tale condizione, strumenti primari di sopravvivenza e di successo politico e se il principale luogo di costruzione di discorsi e pratiche della ragion di Stato inglese sembra trovarsi nei processi di formazione di una autorità sovrana, sicuramente quello dell'esercizio della prudenza politica e della disciplina del sé appare di rilevante importanza[34].

Già a partire dai primi anni di governo Stuart, però, tali scritture diventano marginali non riuscendo a cogliere i nuovi sviluppi della realtà politica inglese che premono verso la definizione del fondamento e del luogo di esercizio della *absolute Prerogative*. A partire da ciò l'esercizio della *Policy* e l'elaborazione di una precisa precettistica prudenziale verranno collocate in un ambito politico particolare, in cui le pratiche del momento di eccezione vengono considerate necessarie in riferimento al fine di garantire la sopravvivenza dello Stato. In questi anni si passa, quindi, dall'analisi del potere soggettivo del principe allo studio delle prerogative del sovrano o degli organi dello Stato in cui la sovranità, che è a fondamento di tali prerogative, risiede. Il confronto politico, tentando di definire la forma di tale potere sovrano, si sposta su ambiti strettamente "costituzionali", di architettura cioè dei poteri dello Stato. Le trasformazioni politiche e sociali svoltesi in epoca Tudor, e il cambiamento dinastico agli Stuart della corona d'Inghilterra segnano il passaggio dall'esercizio di un potere organizzato intorno alla figura del *King in Parliament* alla costruzione di un governo monarchico sovrano e assoluto. Il tentativo stuardiano di fondare questo potere su una dottrina del diritto divino dei re, nonché la crescente importanza e forza del parlamento, sono le guide entro cui si svolgerà il complesso scontro tra i *Commons*, i *Lawyers*, e il re. Con gli Stuart, infatti, la *Prerogative* tende a trasformarsi da una serie di poteri che non potevano mettere in discussione l'ordinamento giuridico consuetudinario e le libertà civili definite dalla *common Law* in un potere di governo sciolto, assoluto e "sovrano". La prerogativa assoluta acquista delle caratteristiche specifiche, quelle della indiscutibilità e indivisibilità, la cui ragione è politica e non giuridica. In tale trasformazione personaggio di rilievo è Giacomo I Stuart la cui *Policy* presenta sia l'esercizio di un governo straordinario della prerogativa assoluta, sia l'esercizio di un governo "ordinario" degli *Acts of State*. Egli è anche l'espressione di un contrasto nato nei primi anni del Seicento, ma che prosegue in forme diverse per tutto il secolo in questione, tra una ragione legale che vuole organizzare la vita politica intorno ad una idea di governo giusto, ed una nuova ragione politica che invece riorganizza lo Stato e il governo intorno alla idea di "efficienza". Il *Bate's Case* del 1606 è il primo importante conflitto costituzionale nel quale sono discussi i poteri della *absolute Prerogative* del monarca di cui Baron Fleming offre sicuramente la definizione più accurata. Essa si configura come un ambito autonomo e indefinito del fare politica legato ad una *Reason of State* pensata come un potere tutto politico e straordinario finalizzato alla conservazione, nei momenti d'eccezione, del *Commonwealth*. Nel 1610 si svolge un'altro importante dibattito costituzionale centrato sul potere di tassazione del sovrano: il *debate on Impositions*. In esso emerge un radicale contrasto, che assumerà una visibilità maggiore nei dibattiti sull'imprigionamento senza causa mostrata (*Five Knight's Case*, 1627) e sulla *Ship-money Taxation* (1636), tra il potere politico assolutistico e le libertà dei sudditi. La prerogativa sovrana assume, cioè, un *extraordinary Power* che non è più solo quello di deroga alla legge ordinaria ma è anche quello di esplicita messa al lato delle fondamentali libertà civili e della proprietà dei sudditi. Attraverso questi dibattiti la *Reason of State* viene presentandosi, in sostanza, legata agli sviluppi della prerogativa sovrana. La ragion di Stato diviene quella ragio-

33 Di particolare rilevanza è l'esplicito riferimento presente nel testo di Melton alla *ordinary conservation*. In tal senso vedi J. Melton, *A Six-folde Politician*, p. 124.

34 Vedi, tra innumerevoli altri, il testo firmato B. A.D., *The Court of the most magnificent james, the first. With divers rules... precepts and selected definitions lively delineated [for an ideal courtier]*, pp. 168, Edw. Griffin, Londra, 4°, 1619.

ne pratico-politica figlia della necessità che la prerogativa assoluta del sovrano mette in opera quando lo Stato è in pericolo.

A partire dal secondo decennio del secolo è possibile osservare altre sostanziali trasformazioni del dibattito intorno alla *Prerogative* sovrana. Innanzitutto dalla messa in questione dell'esistenza e del fondamento di tale potere ci si sposta verso la discussione dei criteri di applicazione di esso e dei soggetti deputati alla interpretazione del caso di necessità. Nel contempo, a partire dal nuovo termine di *Laws of State* - regole e leggi che articolano il "retto" funzionamento dello Stato - sono messi in discussione anche i princìpi che devono ispirare l'intervento straordinario e ordinario del sovrano. Il termine retto, però, acquista un significato diverso da quello che aveva nel corso del Quattro e del Cinquecento, esprimendo il corretto ed efficiente esercizio del governo piuttosto che la giustezza dell'operato dello Stato. Le *Laws of State* sono un principio politico di conservazione, piuttosto che una legge nel senso giuridico del termine, il cui fine è di produrre pace e stabilità e di garantire la sicurezza della nazione senza le quali nessuna giustizia è possibile. L'efficienza nel governo diviene, in sostanza, un criterio di giustizia oltre che di giustezza. Nel contempo, il confronto sul rapporto tra poteri del sovrano e libertà dei cittadini si fa più aspro e la sovranità comincia ad essere assegnata a soggetti diversi dal principe. Ipotesi politiche di monarchia mista e teorie di governo repubblicano si incontrano con gli ambiti di discussione della *Ratio status* e della conservazione politica. Allo stesso modo, i temi della ragion di Stato si legano a dottrine dell'assolutismo sovrano quali quelle di Roger Maynwaring, John Eliot, Sir John Davies, e del sovrano Carlo I Stuart. A partire dai più importanti conflitti costituzionali del secolo diviene evidente come da parte della corona e di esponenti di parte realista si voglia dare l'avvio ad una riorganizzazione del potere statale in senso pienamente assolutista nel quale le velleità filosofiche del primo sovrano Stuart cedono il passo ad una giustificazione del potere assoluto basata su una sempre più pervasiva "necessità politica" grazie alla quale ampliare le prerogative del sovrano e ridefinire il governo del paese intorno al suo comando. Ciò lega esplicitamente la *Policy* di Carlo I Stuart alla ragion di Stato, permettendo in tal modo l'utilizzo dei moduli di un potere di prerogativa anche in quegli ambiti precedentemente ritenuti di "governo ordinario". Questi anni vedono anche diversi tentativi di stabilire una relazione tra l'ambito "straordinario" della prerogativa assoluta sovrana e quello ordinario della *common Law,* oltre che la definizione di *Rules of State*

che, fondati sulla saggezza politica del principe, consistono nella elaborazione di una pluralità di dispositivi prudenziali e di governo ritenuti necessari a garantire la sicurezza, l'efficienza e il benessere dello Stato. Significativa è la vittoria di parte reale nel *Five Knight's Case* nel quale, diversamente dal *Bate's Case* dove solo una minoranza particolare della popolazione era investita dall'allargamento dei poteri straordinari del sovrano, viene messo in discussione un diritto appartenente a tutti i sudditi. In questi anni, comunque, il parlamento non è ancora la principale controparte della corona poiché il sovrano Stuart, più che affrontare le camere, deve far fronte alla opposizione dei *Lawyers* che vedono diminuito il loro potere. Solo successivamente al dibattito sulla *Petition of Right,* tale conflitto verrà temporaneamente ricomposto con un accordo che stabilirà i termini di esercizio di una prerogativa sovrana "moderata" nella quale i *Lawyers* garantiscono della *Necessity* a cui il sovrano deve far fronte conmezzi straordinari. L'equilibrio raggiunto non dura e dopo pochi anni il conflitto riprende con maggiore forza e con la piena partecipazione dei *Commons* che, nel corso del terzo decennio del Seicento, tentano di appropriarsi del potere d'interpretazione del caso d'eccezione.

Se la prima metà del secolo vede l'articolarsi di una *Ratio status* intesa come l'esercizio della prerogativa assoluta del sovrano, la seconda metà del Seicento, soprattutto grazie all'opera di Henry Parker, assiste al suo allargamento attraverso una "sovranità parlamentare" in cui riposa una ragion di Stato pensata sia come *absolute Prerogative*, sia come *Politics of Necessity*. In Parker la "necessità" si presenta come una dimensione costitutiva dell'operare politico il cui fondamento è la *salus populi* e il cui risultato è il meccanismo della rappresentanza politica[35]. Il corpo della nazione, infatti, esprime dei precisi interessi che devono essere da guida dell'operato del potere sovrano, tra essi i più importanti sono certamente la sicurezza e il benessere dello Stato. La rappresentanza è lo strumento capace di dare voce ai suoi bisogni e di offrire loro una veste politica, e per tale motivo il Parlamento - diretta espressione popolare - è il luogo entro il quale vanno dibattuti ed interpretati gli interessi della nazione ed i momenti di crisi. A partire da que-

35 I testi maggiormente rilevanti ai fini della nostra ricerca sono: *The Case of Shipmony Briefly Discussed*, pp. 49, [Londra], 1640, 4°; *Some Observations upon His Majestie late Answers and Expresses*, pp. 47, [Londra, 1642], 4°; *Jus Populi*, pp. 68, Londra, 1644, 4°; *Jus regum*, pp. 38, R. Bostock, Londra, 1645, 4°; *Of a Free Trade*; pp. 34, Printed by Fr. Neile for Robert Bostock, 1648, 4°.

ste considerazioni Parker organizza il governo sia sui poteri ordinari stabiliti dalla *common Law*, sia su quelli straordinari della *salus populi,* aprendo così ad una pratica di governo che tiene conto di una pluralità di aspetti - quali quelli della regolamentazione del commercio, della produzione e distribuzione delle ricchezze e della presenza nell'amministrazione di corporazioni economiche e mercantili - che sono parte delle nuove necessità cui lo Stato deve far fronte e di cui il meccanismo della rappresentanza politica garantisce la efficiente espressione. In sostanza, la pratiche politiche ordinarie e straordinarie sono investite dalle nuove *Necessities* e da diversi ambiti di governo in cui, più di prima, è l'efficienza politica ed amministrativa a garantire il successo ed il benessere della nazione. Se in Parker troviamo una ragion di Stato intesa come potere di deroga finalizzato alla garanzia della *salus populi*, nel suo pensiero prendono corpo prospettive di più ampio respiro, che partendo da un articolato discorso sulla necessità politica giungono a definire gli "interessi" e la rappresentanza come i due nuovi motivi portanti del fare politica. In tale contesto la ragion di Stato si avvia a diventare una ragion di governo "complessivo" e non più il puro esercizio di un potere straordinario e di deroga.

Tale sviluppo risulta ancora più evidente in George Savile e in James Harrington, le cui proposte teoriche definiscono un sapere e una scienza della politica che si propongono come base su cui stabilire un percorso di conservazione politica. George Savile, definito da Felix Raab come un machiavellico della post-restaurazione, è un *Trimmer* che vuole elaborare un sapere della politica grazie al quale operare accortamente e "opportunisticamente", così da garantire un equilibrio tra le diverse parti che compongono lo Stato[36]. A fronte di una categorizzazione della ragion di Stato come potere di deroga alle leggi, Savile propone un insieme di procedure di governo e di azione politica che non si limitano alla gestione dei momenti di eccezione ma che sono una continua opera di costruzione di equilibri e di adattamenti. Il principe, le commissioni, i segretari e i ministri, e non ultimi il popolo e il parlamento, sono dei poteri tangibili le cui competenze e funzioni sono sì diverse, ma anche concorrenti alla costruzioni dello Stato. Operare "opportunisticamente" significa garantire la conservazione di un assetto statale stabile, facendo in modo che esso non sia messo in crisi dalla rottura degli equilibri tra i diversi soggetti politici. Savile struttura nelle sue opere un sapere politico complessivo che si esplica in modalità differenti a seconda dei differenti contesti d'esercizio e i cui termini fondamentali sono quelli della conservazione e dell'equilibrio. Procedure di governo straordinarie, pratiche ordinarie, dispositivi prudenziali e attenzione alle dinamiche psicologiche e antropologiche definiscono una *Knowledge of Politics* in cui la ragion di Stato è parte se intesa come ragione di deroga e ne viene a costituire il tutto se intesa come la razionalità che è alla base delle pratiche di governo. Savile è l'indice di un processo in atto nella seconda metà del secolo di ridefinizione della pratica politica da un sapere e un potere soggettivo, prudenziale e di prerogativa organizzato intorno alla legge e alla necessità in una pratica di governo complessivo, che deve ordinariamente tenere conto delle necessità della nazione e degli interessi dello Stato. Non è più possibile quindi stabilire unicamente le competenze "politiche" del sovrano garantendogli lo spazio di esercizio di un potere straordinario, ma si devono ridefinire e allargare gli ambiti di un governo "politico" e non giuridico delle ordinarie necessità dello Stato. L'efficienza come criterio guida del fare politico e del governo non vale unicamente nella scelta dei mezzi più adatti, a breve termine, a garantire la salvezza dello Stato, quanto nell'amministrare dinamiche ed interessi dello Stato in modo da garantire il più possibile la conservazione del potere a lungo termine.

Il rapporto tra politica ed economia diviene, quindi, cruciale e l'opera di James Harrington si mostra quasi come l'approfondimento dell'analisi che Parker aveva solo abbozzato tra l'organizzazione del potere politico e la struttura economica della nazione[37]. Harrington ritraduce la ragion di Stato in una pra-

36 Scrive Raab: «Trimming was the Machiavellism of the post-Restoration, the individual contribution of that age to the general theory of political mechanism», in F. Raab, *The English Face of Machiavelli, a Changing Interpretation, 1500-1700*, Londra-Toronto: Routledge & Kegan, University of Toronto Press, 1964. I testi di Savile sono in *The Works of George Savile Marquis of Halifax*, 3 voll., a cura di Mark N. Brown, Oxford, Clarendon Press, 1989. La traduzione italiana delle opere più conosciute è George Savile, *Opere Complete*, a cura di G. Iamartino, Milano, Giuffrè, 1988.

37 Per le opere politiche di James Harrington, vedi James Harrington, *The Political Works of James Harrington*, a cura di J.G.A. Pocock, Cambridge, C.U.P., 1977. Tra esse quella di maggiore interesse è sicuramente il *System of Politics*, testo rimasto inedito, sul quale è centrata questa proposta interpretativa. In esso Harrington scrive che «Reason of State which is forein consists in balancing foreign princes and state in such a manner as you may gain upon them...» e più oltre «Reason of state which is domestic is the administration of a government (being not usurped) according to the foundations and superstructures if they be good...» in *Political Works*, p. 852.

tica di amministrazione degli interessi dello Stato a partire da un equilibrio che di volta in volta deve essere stabilito tra struttura economica e sovrastruttura politica. Fondamento di una data organizzazione statuale sono la natura e la distribuzione della ricchezza che ne determinano i ceti (*Interests*) vincenti e la forma del governo. Ragion di Stato, in Harrington, è l'amministrazione di questi *interests* e del conveniente rapporto tra struttura economica e sovrastruttura politica. Ogni organizzazione statuale, da questo punto di vista, esercita una sua specifica ragion di Stato, così come ogni diverso "interesse" componente lo Stato esercita il suo potere a partire da una propria *Reason of State*. La conservazione dello Stato in Harrington, è il frutto di una scienza della politica organizzata intorno ai rapporti tra il governo e la distribuzione della ricchezza in uno Stato. Il sapere amministrare gli *Interests of State* significa saper adattare l'uno all'altro i termini di economia e politica conservando l'equilibrio tra essi. Pratiche prudenziali e *salus populi* sono certamente aspetti importanti di tale operato, ma più importanti sono quelle tecniche di costruzione di un rapporto tra l'organizzazione del potere politico e la distribuzione delle ricchezze. In tal senso, la politica in Harrington, acquista una centralità ancora maggiore di quella definita dalla *absolute Prerogative* sovrana, la quale solo in un luogo, quello della necessità politica, si fa carico della società nel suo complesso. Nel *System of Politics*, infatti, la politica nella quotidianità del suo operato si configura come il luogo in cui l'economia e la società, quando correttamente rappresentate, disciplinate e governate, possono garantire la conservazione di un dato assetto politico e di una data distribuzione dei poteri. Con l'opera di Harrington, avviene il definitivo passaggio da una ragion di Stato intesa come potere di deroga alla legge, soggettivamente esercitato dal sovrano, ad un potere di governo e di amministrazione dello Stato che trova la sua giustificazione in una "oggettiva" scienza della politica.

Per un progetto di repertorio bibliografico sul pensiero politico inglese del Seicento (1598-1699).

Pur esistendo, a tutt'oggi, ampi e accurati cataloghi delle scritture inglesi che vanno dalla seconda metà del XV alla fine del XVII secolo, non esiste alcun repertorio bibliografico espressamente dedicato alle opere politiche. Gli importanti lavori di Pollard/ Redgrave e di Wing, preziosi nella loro precisione e accuratezza, raccolgono testi stampati in Inghilterra, Scozia, Irlanda, Galles, *British America,* oltre che testi in inglese altrove pubblicati[1]. Si è ritenuto utile, quindi, stilare un progetto di ricerca bibliografica - sulla scia di quelli già presentati in precedenza in questo bollettino - per la costituzione di un repertorio delle scritture politiche del Seicento inglese. I confini cronologici vanno dal 1598, data della prima edizione del *True Law of Free Monarchies* di James I Stuart, all'anno 1699, comprendendo scritture in prosa ed in versi di autori inglesi pubblicati principalmente - ma non esclusivamente - in Inghilterra. Pur non intendendo riportare scritti ufficiali, manoscritti o proclami - cosa che richiederebbe una lavoro ben più consistente - ne sono stati inclusi alcuni ritenuti particolarmente rilevanti per lo studio della *Ratio status.* Per lo stesso motivo sono riportate opere di carattere teologico, etico-morale, giuridico, letterario la cui influenza nei dibattiti politici dell'epoca è risultata diretta e rilevante. Similmente sono state incluse opere che, trattando di aspetti quali il commercio, i costumi, la "legislazione sociale", l'amministrazione, rivelano una nuova e più moderna idea del governo. La gran parte della ricerca è basata sui cataloghi della *British Library*, della *Cambridge University Library* e della *Library of the Congress* statunitense, nonché sui cataloghi stilati da Wing e da Pollard/Redgrave: per questi repertori è anche stata svolta una prima serie di confronti incrociati.

1 Due sono i repertori bibliografici di imprescindibile riferimento delle scritture inglesi del Seicento: A.W. Pollard / G.R. Redgrave, *A Short-title Catalogue of books printed in England, Scotland, and Ireland and of english books printed abroad, 1475-1640*, II ed., 2 voll., a cura di W.A. Jackson, F.S. Ferguson e Katharine F. Pantzer, Londra, 1976; e Donald Goddard Wing, *Short Title Catalogue of books printed in England, Scotland, Ireland, Wales, and British America and of english books printed in other countries, 1641-1700,* II edizione rivista e ampliata da J. Morrison e Carolyn W. Nelson, 3 voll., New York, Modern Language Association of America, 1994.

Ulteriori conferme sono state cercate prendendo visione degli indici della *Harleian Miscellany*, dei *Somer's Tracts*, dei *Thomason Tracts*, degli *Stuart Tracts* a cura di Firth e tenendo presente la *Bibliography of British History, Stuart period* a cura di Davies / Keeler[2].

2 *Harleian Miscellany: or, a collection of Scarce, Curious and Entertaining Tracts*, 10 voll., a cura di T. Parks, Londra, 1808-13; *Somer's Tracts, A collection of Scarce and Valuable Tracts*, 13 voll., a cura di Walter Scott, Londra, 1809-15; *William Thomason, Thomason Tracts. Catalogue of the pamphlets, books, newspapers, and manuscripts relating to the civil war, the commonwealth, and restoration, collected by George Thomason, 1640-1661*, Londra, William Clowes & Son, 1908; *An English Garner, Stuart Tracts 1603-1693*, a cura di C.H. Firth, T. e A. Constable, Edimburgo, 1903; *Bibliography of British History, Stuart Period 1603-1714*, a cura di G. Davies e M. F. Keeler, Oxford, Clarendon Press, 1970.

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3 Vedi la ".. *Second edition, ... enlarged by the Author*", E. Strafford, London, 1608, 8°, BL G.512

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Paolo Cosenza

Plutarco e la Ragion di Stato. Osservazioni su alcuni particolari dei *Praecepta gerendae reipublicae* e del *Non posse suaviter vivi secundum Epicurum* di Plutarco.

I *Praecepta gerendae reipublicae* di Plutarco sono una sorta di lettera aperta rivolta agli uomini politici greci del suo tempo. Il senso del messaggio è che la classe dirigente greca non deve lasciarsi sfuggire la possibilità di gestire, nei modi e nelle occasioni più favorevoli, quel tanto di libertà politica concessa da Roma sul piano dell'amministrazione locale alle singole *poleis*, ma senza mai fomentare atti di ribellione contro il domino romano, che Plutarco ritiene incontrastabile[1].

Per quanto concerne la gestione del potere, uno dei concetti principali del messaggio è che, poiché la classe dirigente locale ha bisogno del consenso popolare per poter governare, chi raccoglierà i consigli contenuti nel testo dell'operetta non deve trascurare la grazia e la potenza della parola oratoria, in quanto strumento utile per il conseguimento del favore popolare. Ora il popolo (δῆμος) a cui l'uomo politico dovrà indirizzare la sua azione oratoria è concepito come un soggetto collettivo totalmente incapace di autogoverno, turbolento e sospettoso. L'eloquenza politica di cui l'uomo politico dovrà avvalersi nella sua opera di governo può perciò richiedere, secondo Plutarco, in ragione del mediocre livello della massa popolare, particolari accorgimenti strumentali che siano atti in determinati casi a conseguire, anche indipendentemente dall'intrinseca giustezza dei progetti proposti, quegli speciali effetti persuasivi che le circostanze richiedano[2].

Tra i suggerimenti consigliati v'è un certo stratagemma oratorio da seguire nel caso che il popolo sospetti che qualche provvedimento importante e salutare sia

1 Cfr. Th. Renoirte, *Les «Conseils politiques» de Plutarque. Une lettre ouverte aux Grecs a l' époque de Trajan*, Louvain, 1951, pp. 65-88.

2 Cfr. P. Cosenza, *L'eloquenza politica e l'arma del ridicolo secondo i* Praecepta gerendae reipublicae *di Plutarco*, Istituto Universitario Orientale - Dipartimento di filosofia e politica, «Studi filosofici» XX, 1997, pp. 7-30.

proposto invece per favorire qualche privato interesse di gruppo[3]. Premesso che per Plutarco l'attività politica deve avere come principio direttivo la superiorità di tutto ciò che è comune e pubblico (*τὰ κοινὰ καὶ δημόσια*)[4] su tutto ciò che attiene all'interesse privato, conviene brevemente esporre quanto previsto in questo stratagemma, perché c'è in esso qualche particolare che può aiutare a correggere un'inesatta interpretazione che della funzione dell'eloquenza politica nei *Praecepta gerendae reipublicae* potrebbe essere suggerita dall'accentuato moralismo che contraddistingue la concezione politica plutarchea. Quando ricorra il caso sopra indicato, coloro che vogliono fare adottare in assemblea il provvedimento dovranno concertare i loro interventi in modo che inizialmente non tutti prendano a perorarne l'approvazione, affinché non sembri che essi si siano precedentemente messi d'accordo. Dovranno piuttosto gli amici distribuirsi i compiti in modo che due o tre di essi, prima, esprimano un parere contrario e, poi, come se venissero convinti dalle argomentazioni degli altri, recedano dallo loro opposizione. Il fatto che lo stratagemma preveda che alcuni politici fingano di essere contrari alla proposta durante una certa fase del dibattimento sta a mostrare come, nella concezione politica plutarchea, l'interesse del bene pubblico può ben giustificare che in determinate circostanze sia dato anche spazio a quanto, essendo in se stesso un disvalore, non meriterebbe di essere ammesso a far parte della condotta di un buon uomo di stato, ove non fosse finalizzato al superiore interesse generale[5].

Questo dello stratagemma assembleare non è l'unico caso che nella produzione plutarchea sia riconducibile sotto la categoria di ciò che oggi comunemente si intende per «Ragion di Stato».

3 Cfr. *Praecepta gerendae reipublicae* (ed. A. Caiazza, Corpus Plutarchi Moralium, Napoli), 16, 813 B. Cfr. inoltre al riguardo J.Cl. Carrière, in Plutarque, *Oeuvres morales* , XI, Deux. partie, Paris 1984, Notice, pp. 47-48.

4 Cfr. *Praecepta gerendae reipublicae* (ed. cit.), 13, 807 B.

5 Platone, in *Respublica* (ed. I. Burnet, Oxford) III 389 b-c, aveva sostenuto che nello stato ideale, mentre ai privati non è mai consentito dire il falso, d'altra parte , in vista dell'interesse della città (*ἐπ' ὠφελίᾳ τῆς πόλεως*) , ai governanti conviene mentire a causa dei cittadini (*τοῖς ἄρχουσιν...τῆσ πόλεωσ... προσήκει ψεύδεσθαι...πολιτῶν ἕνεκα*) . Come è ovvio, ciò è ammesso da Platone solo per quei casi in cui la menzogna sia strettamente necessaria al bene della città . Cfr. inoltre *Respublica* (ed. cit.) II 382 c; III 414 b-415 d.

Particolarmente significativo è anche quanto Plutarco dice, nel *Non posse suaviter vivi secundum Epicurum*, circa le ragioni per cui è socialmente utile la presenza della superstizione (*δεισιδαιμονία*) in una certa categoria di uomini.

Il proposito principale che Plutarco persegue in questa operetta è dimostrare che non può essere affatto felice la vita di chi segua i dettami dell'edonismo epicureo. Ai piaceri ammessi dall'epicureismo Plutarco contrappone nella sezione finale (20, 1100 E -31,1107 C) la gioia dell'esperienza religiosa, a cui gli epicurei, per la particolare concezione della natura degli dèi propugnata da Epicuro, non possono mai accedere. Al fine di mostrare che la fede nella potenza degli dèi e del loro ruolo nell'ordinamento cosmico si accompagna effettivamente a sentimenti di altissima contentezza, Plutarco svolge alcune considerazioni con cui tende a mostrare che la religione correttamente intesa e praticata è cosa totalmente diversa dalla superstizione. La divinità, che non può fare né patire nulla di male, è incline soltanto a far del bene e non compie mai illeciti favori. Poiché è su questo altissimo concetto della divinità che va fondato il sentimento e il culto religioso, la superstizione, in quanto è una paura degli dèi che promana da un diverso ed errato concetto della natura del divino, è un male e perciò il filosofo la deve sempre respingere da sé con orrore[6]. Ciò però non comporta che, senza alcuna distinzione, si debbano tenere tutti gli uomini lontani da un siffatto male. L'umanità si divide in tre categorie: quella degli ingiusti e malvagi (*τὸ τῶν ἀδίκων καὶ πονηρῶν*), quella degli ignoranti e quella dei buoni e intelligenti. In quest'ultima categoria non vi potrà essere mai della superstizione; può invece essa di fatto albergare nella categoria degli ingiusti e malvagi e in quella degli ignoranti. Ora Plutarco sostiene che negli ingiusti e malvagi si deve inspirare almeno un poco di superstizione (*προσεμφορητέον...τῆσ δεισιδαιμονίας*), affinché all'idea delle punizioni dell'Ade essi se ne stiano più buoni e quieti (*ἐπιεικέστερον...καὶ πραότερον*)[7]. Ciò significa che, se già non c'era della superstizione, bisogna, limitatamente a questa delle tre categorie etico-sociali in cui Plutarco suddivide l'intera umanità, favorirne

6 Cfr. Plutarco, *Non posse suaviter vivi secundum Epicurum* (ed. B. Einarson-Ph.H. Lacy, Cambridge, Mass.), 21, 1101 C-1102 A. Cfr. inoltre id., *De superstitione* .

7 Cfr. Plutarco, *Non posse suaviter vivi secundum Epicurum* (ed. cit.), 25, 1104 A - B.

almeno una qualche presenza. E' chiaro dunque che in questa operetta plutarchea la superstizione è vista come un possibile strumento di dominio[8], finalizzato al mantenimento dell'ordine sociale[9].

8 Plutarco, che in *Vitae parallelae, Numa* (ed. R. Flacelière, Paris) capp. 4, 8 mostra di dubitare che Numa avesse sposato la ninfa Egeria ed avesse avuto con lei degli incontri segreti, fa rilevare, in questa stessa *Vita* (cfr. id., 8) che Numa, annunziando strane apparizioni demoniache e voci minacciose, cercava di soggiogare e umiliare con il timore della divinità l'animo (*ἐδούλου καὶ ταπεινὴν ἐποίει τὴν διάνοιαν...ὑπὸ δεισιδαιμονίας*) altero e feroce degli abitanti della Roma antica.

9 Per quanto concerne la religione popolare, un'analoga valutazione si trova, già prima di Plutarco, presso Crizia (Diels-Kranz, 88, fr. 25). Cfr. inoltre Polibio, XVI 12.

Robert v. Friedeburg

Reformed Monarchomachism and the genre of the "Politica" in the Empire: The "Politica" of Johannes Althusius and the meaning of hierarchy in its constitutional and conceptual context[1].

Recently, J.H.M. Salmon stressed the ambivalent nature of both Bodin's work and of that of a number of his German readers. Many attempted to combine his terminology of sovereignty with allowances for the privileges of the imperial estates[2]. E.g., Christoph Besold, an alleged source for Presbyterian theorist George Lawson, distinguished maiestas personalis, owned by the emperor, and maiestas realis, resting in the empire, but took his distinction between *civitas* and *respublica* from such a clearcut advocate of absolutism as Henning Arnisaeus[3]. Arnisaeus himself distinguished between the location of sovereignty and the administration of power, effectivly spoiling Bodin's argu-

1 This article grew out of debates at the conference on Early Modern Thought at Potsdam University in December 1996, at the Institute for Reformation Studies, University of St. Andrews, where I pursued research as a Cameron Fellow on the reception of Althusius in Scotland during February to June 1997 and at the second EFS-meeting on Republicanism at Perugia in May 1997. I do thank all participants for their stimulating advice, but particulary Horst Dreitzel, Wolfgang Mager and Andrew Pettegrew.

2 J.H.M. Salmon, The Legacy of Jean Bodin: *Absolutism, Populism or Constitutionalism?,* in: *History of Political Thought,* 17(1996), pp. 500-21; on Bodin's qualified absolutism Julian H. Franklin, 'Sovereignty and the mixed constitution: Bodin and his critics', in: J. H. Burns (ed.), *The Cambridge History of Political Thought,1450-1700,* Cambridge 1991, pp. 298-328, p. 308-9; in particular on his differentation between monarchy and tyranny Wolfgang Mager, 'Republique', Archives de Philosophie du Droit, Tome 35, Sirey 1990, pp. 257-273, p. 267; in particular on Bodin's treatment of harmony Simone Goyard-Fabre, *Jean Bodin et le droit de la république,* Paris 1989, pp. 255-78, on the problems of the application of Bodin in the Empire Michael Stolleis, *Geschichte des öffentlichen Rechts,* vol.1, München 1988, pp. 180-3. "Imperial estates" denote estates of the empire, i.e. those families and corporations summoned to the imperial diet. "Imperial privileges" denote privileges given by the Emperor. "Politica" refers to Althusius' main work, while " 'politica' " refer to any work of the genre of that name.

3 Christoph Besold (1577-1638), Politicorum libri duo, Tübingen 1618; Franklin, "mixed constitution", pp. 323-28; Stolleis, *Öffentliches Recht,* pp. 120-22, 180-1.

ment on the indivisibility of supreme power[4]. On the other hand, the notion of sovereignty of his outspoken opponent, the other alleged source of Lawson[5] and "populist reversal of Bodinian absolutism" Johannes Althusius[6], was received by one of the few German adherents of Hobbes, who even tried to synthesize the work of both[7]. Indeed, intellectual transfers and political recipes of many major works made in the context of the Empire make clearcut divisions along received lines such as populism, absolutism or constitutionalism hard to draw.

To be sure, this terminology, as long as qualified in a way to prevent anachronistic misunderstandings, helps to measure past texts against later distinctions. But since the late 1960s, when historical hermeneutics reconquered the history of political thought[8], the meaning of past arguments has been reevaluated and some alleged high roads to modern thought[9] have been discovered to be much less straightforward then once thought. It has become questionable to assume a

4 Horst Dreitzel, *Protestantischer Aristotelismus und absoluter Staat. Die "Politica" des Henning Arnisaeus (ca.* 1575-1636), Wiesbaden 1970, pp. 332-34; Stolleis, *Öffentliches Recht,* p. 180.

5 George Lawson, *Politica Sacra et Civilis* (1657-60), ed. by Conal Condren, Cambridge 1992, p.75 mentioning Althusius, pp. 45-6 and at other places mentioning Besold.

6 Michael Mendle, "Parliamentary sovereignty: a very English absolutism", in: Nicholas Phillipson, Quentin Skinner (ed.), *Political discourse in Early Modern Britain,* Cambridge 1993, pp. 97-119, p. 110 with respect to his single sovereignty-conception; Johannes Althusius (1557/63-1638), Politica Methodice Digesta, Herborn 1603, 1610, 1614. The 1614 edition has been made accessible, although with omissions, by Carl Joachim Friedrich (ed.), Politica Methodice Digesta of Johannes Althusius (Harvard Political Classics vol. II, Cambridge (Mass.) 1932; the abridged English, translation by Frederick S. Carney (ed.), The politics of Althusius, London 1964, is useful as a first glance at the text. But both the translation itself and the omissions - primarily the text printed in little print in the original and providing illustrations, quotations and examples on core statements, make the translation almost useless for any more serious approach; on the Politica see recently Karl Wilhelm Dahm et al. (eds.), *Politische Theorie des Johannes Althusius*, Berlin 1988; Giuseppe Duso (ed.), Herrschaft und Gemeinwesen im Umkreis von Althusius, Wolfenbüttel 2000.

7 On J. C. Becmann see Dreitzel, *Arnisaeus,* p. 412; Wolfgang Weber, Prudentia gubernatoria. Studien zur Herrschaftslehre in der deutschen politischen Wissenschaft des 17. Jahrhunderts, Tübingen 1992, pp. 103, 145-50.

8 James Tully (ed.), *Meaning and Context: Quentin Skinner and his Critics,* Cambridge 1988; Otto Brunner, Werner Conze, Reinhart Koselleck (eds.), Lexikon der Geschichtlichen Grundbegriffe, 7 vols., Stuttgart 1972-1992

9 Specifically on Althusius, Otto v. Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien,* Breslau 1902[2]; G. P. Gooch, *English Democratic Ideas in the Seventeenth Century,* 1898, 2nd ed. with supplementary notes and appendices by H. J. Laski, Cambridge 1927, who suggests p. 48 that «in the concatenation of political ideas, the aristocratic superstructure is easily lost sight of and the democratic substratum easily borrowed». Of course, both statements are steps of a shared Anglo-German liberal-protestant pride in allegedly protestant achievements in civilisation (e.g. James Anthony Froude, "Condition and Prospects of Protestantism", in: idem, *Short Studies on Great Subjects,* London 1898, pp. 146-79, in particular pp. 158-9 on the "spiritual affinity" of the "teutonic races") to a re-evaluation of a German tradition of obedience beginning around 1900 by Ernst Troeltsch and Max Weber, reenforced by the rise of Nazi-Germany, pitting Lutheranism against Calvinism (see Hans Baron, "Calvinist Republicanism and its historical roots", *Church History* 8 (1939), pp. 30-42). In this vain see Frederick Smith Carney, *The Associational Theory of Johannes Althusius. A Study in Calvinist Constitutionalism,* PhD submitted to the University of Chicago, Chicago 1960. Today, the alleged early modern opposition of estate assemblies to the emerging territorial state is evaluated with a view to modernity very cautiously by Thomas A. Brady jun., "Some Peculiarities of German History in the Early Modern Era", in: Andrew C. Fix, Susan C. Karent-Nunn (eds.), *Germanica Illustrata*, Kirksville 1992, pp. 197-217, p. 211 on the "parliamentary governance" in Southwest Germany; much stronger claims, although put in metaphor from grammar, in Peter Blickle, "Kommunalismus, Parlamentarismus, Republikanismus", in: *Historische Zeitschrift,* 242 (1986) pp. 529-56, p. 546 claiming parliamentarism and republicanism to be the "comparative" and "superlative" to "communalism".

specific affinity between reformed thought and modern ideas of revolution or to take the location of power with the estates, the rooting of maiestas in the populus and the concept of associations in Althusius' Politica as tokens leading the way to parliamentary governance in any clearcut sense[10]. True, contemporary adversaries defamed his championing of the rights of estates as a doctrine dangerously subverting government and placed him side by side Milton's republicanism[11]. But neither contemporary labelling by hostile adversaries nor alleged paths of reception are unambiguous devices to establish the meaning and usage of the Politica[12]. For one, what figured during the seventeenth century in the

10 E.g. Quentin Skinner, "The Origins of the Calvinist Theory of Revolution", in: Barbara C. Malament (ed.), *After the Reformation,* Philadelphia 1980, pp 309-30; Hasso Hofmann, *Repräsentation. Studien zur Wort und Begriffsgeschichte von der Antike bis ins 19. Jahrhundert,* Berlin 1974.

11 See e.g. Henning Arnisaeus, De autoritate principum in Populum semper inviolabili ... Straßburg 1635, c I, pp. 2-9; on Henning Arnisaeus' (1575?-1632) attacks see Dreitzel, *Aristotelismus,* pp. 145-47; Gerhard Menk, "Johannes Althusius und die Reichstaatslehre", in: Dahm, *Althusius,* pp. 255-300, pp. 261-72 on Hermann Conring's attack on both Milton and Althusius and on Mathies Pasor, shortly lecturing in Oxford in the 1620s and later in Gröningen, who intervened in a debate between Claudius Salmasius (Leiden) and John Milton over the execution of Charles I, with reference to Althusius.

12 Current evidence on his reception is restricted to scattered remarks, mainly in unpublished dispu-

Empire as a struggle between the power and the rights of the Emperor and imperial estates[13] did not easily translate, into a concern for the rights of territorial estates, let alone subjects. The multilayered process of the streamlining of administration and the establishment of government in the empire - executive bodies in the Empire, imperial estates building up their territories, territorial estates in Böhmen, Mecklenburg, Silesia and elsewhere consolidating jurisdictions[14] - explains ambivalences in the meaning of Althusius' Politica only to some degree. Indeed, both the imperial constitutional context and the meaning of concepts indicated by such terms as "representare" and "concordia"[15] have been highlighted by recent debate on the reception of Althusius in the "politica" of English presbyterian George Lawson. Julian Franklin's point of departure is the fundamental difference between the multilayered structure of government and rights of sovereignty in the Empire and the singlelayered one in England[16]. Any transferal of such ideas to England, lacking this structure, had to do serious damage to the whole argument by producing a conceptual leakage with regard to the practical exercise of popular sovereignty[17]. While Franklin exploits this lea-

tations at German law faculties (Menk, 'Althusius', pp. 255-300), in two English pamphlets concerning the execution of Charles I (Gooch, *Democratic Ideas,* p.48) and in the diary of a Scottish co-drafter of the National Covenant (Archibald Johnston of Wariston, *Diary*.... ed. G.M. Paul, Edinburgh 1911, p. 348). Despite this scatchy evidence, see for farreaching claims: Karl-Wilhelm Dahm ("Johannes Althusius ein Herborner Rechtsgetehrter als Vordenker der Demokratie" in: idem, Althusius, p. 21-41, 22 on Althusius being a "father of the American constitution", no evidence cited (but quoted approvingly by Peter Blickle, "Über den Umgang mit dem wissenschaftlichen Ordnungsbegriff Kommunalismus", in: *Zeitschrift für historische Forschung, 22* (1995), pp. 246-53, p. 251 note 18); Hugh Dunthorpe, "Resisting monarchy: The Netherlands as Britain's school of Revolution in the late sixteenth and seventeenth centuries", in: Robert Oresko et al. (eds.), *Royal and Republican Sovereignty in Early Modern Europe,* Cambridge 1997, pp. 125-48, quotes Wariston's pamphlets (p.139, note 59, but with reference to the diary that only states interested reading) and Edward J. Cowan (in: John Morrill (ed.), *The Scottish National Covenant in its British Context 1638-1651*, Edinburgh, 1991, pp 68-89, p. 78 on the Politica as a "blueprint for the Scottish Revolution" again based only on the Wariston reference), Samuel Rutherford's *Lex Rex*, London 1644, as the "most Althusian of all Covenanter's tracts" (again, *Lex Rex* does quote the Politica, but only occacionally, see on Rutherford John D. Ford, "Lex Rex iusta posita: Samuel Rutherford and the origins of government", in: Roger A. Mason (ed.), *Scots and Britains. Scottish Political Thought and the Union of 1603,* Cambridge 1994, pp. 262-92) and Alexander Henderson, Instruction for Defensive Arms (1639), in: Andrew Stevenson, History of the Church of Scotland From the Accession of Charles I to the Restoration of Charles II, 4 vols., vol II, Edinburgh 1753, pp. 686-95, again, no clearcut borrowings from Althusius can be discerned); see likewise Edward J. Cowan, "The political ideas of a covenanting leader: Archibald Campbell, Marquis of Argyll", in: Mason, *Scots and Britons,* pp. 241-61, alleging that the Earl of Argyll's insistence on the necessity for a good education of magistrates one of the most, widespread topics in contemporary thought was evidence for his reading of Althusius; moreover, Althusius still figures as a name used to confer legitimacy for whatever master-narrative is meant to be supported, see Thomas O. Hüglin, *Sozietaler Föderalismus. Die politische Theorie des Johannes Althusius,* Berlin 1991 (Althusius as father of federalism); on the other hand, Carl Joachim Friedrich, *Johannes Althusius und seine Wirkung im Rahmen der Entwicklung der Politik*, Berlin 1972, alleges pp 108-9 that the Politica supported the position of James I, with respect of the oath of allegiance, and indeed James possessed a copy of the edition of 1610, now in the possession of the British Library, see E.C. Simoni (ed), Catalogue of Books from the Low Countries 1601-1621 in the British Library, London 1990, p.12. On new evidence on his reception Robert v. Friedeburg, From collective representation to the right of individual defence: James Steuart's *Ius Populi Vindicatum* and the use of Johannes Althusius' *Politica* in Restoration Scotland, in: *History of European Ideas* 24 (1998), S. 19-42.

13 On the development of political theory with respect to imperial public law and the imperial diet see Dietmar Willoweit, *Deutsche Verfassungsgeschichte,* München 1990, pp. 105-50; Friedrich Hermann Schubert, *Die deutschen Reichstage, in der Staatslehre der frühen Neuzeit,* Göttingen 1966, pp. 337-417, on Althusius pp. 425-500; Notker Hammerstein, Comment, in: idem (ed.), *Staatslehre der frühen Neuzeit,* Frankfurt 1995, pp. 1011-1210, pp. 1074-7; on the framework of practical politics Christine Rolle, *Das zweite Reichsregiment,* Köln 1996; Albrecht Luttenberger, *Kurfürsten, Kaiser und Reich. Politische Führung und Friedenssicherung unter Ferdinand I und Maximilian* II, Mainz 1994; on Althusius' reception during the struggle between the Bohemian estates and the House of Austria see Pavel Stranski, De Republica Bohemiensis, 1634; Menk, "Althusius", pp. 290-294.

14 Schubert, *Reichstage,* 65-84; Weber, *Prudentia gubernatoria, passim.* It is important to note that the consolidation of jurisdictions involved similiar processes for the territories of the imperial estates and the manors of some of the territorial estates, see the essays on Bohemia and Silesia in Michael Stolleis (ed.), *Policey im Europa der Frühen Neuzeit,* Frankfurt 1996.

15 See for instance Althusius, Politica c I 36 on "concordia", c XIX 18 on representatio, or c XIX 23 on "symmetria".

16 This difference was, of course, by no means apparent already to fifteen and indeed many early sixteen century contemporaries, who described both England and the Empire in similiar terms, see J.H. Burns, *Lordship, Kingship and Empire. The idea of monarchy, 1400-1525*, Oxford 1992, pp. 40-95.

17 George Lawsons' Politica applies the model of double sovereignty on English theory of parliamentary sovereignty. Julian Franklin, *John Locke and the Theory of Sovereignty,* Cambridge, 1978, mentions Besold as important source of this model but stressed Lawson to be "avowedly indebted to Althusius" (p. 69). Conal Condren, "Resistance and Sovereignty in Lawson's Politica", *Historical Journal* 24 (1981), pp. 673-81 and idem, *George Lawson's Politica and the English Revolution,* Cambridge 1989, pp. 51-53 questioned that claim and stressed Besold and a number of other authors, but talks of «Lawson's Althusian-besoldian terminology» (p. 54). Althusius was actually a propagator of single sovereignty, resting with the populus, see Politica c IX 23, insisting that double sovereignty leads to conflicts between the two sources of sovereignty; Schubert, *Reichstage,* 506-8; Franklin, "Mixed Constitution", pp. 312-3; to Lawson, *Politica,* while maiestas realis rests in the people, maiestas personalis is allocated to the magistratus summus to Lawson Parliament, made up simultaneously of king, lords and commons. That con-

kage by arguing that Lawson's argument provided Locke with a notion of true popular sovereignty, not mitigated by the representation of estates[18], Condren rather looks at Lawson's struggle with received concepts of the universitas and its representation[19]. Of course, both approaches have to complement each other when evaluating the "Politica". This article seeks to consider in turn recent research on Althusius' "Politica" in the context of its genre (I), and on the meaning of the concepts of representation (II) and "concordia" with regard to the establishment and meaning of government (III).

I

Accounts from law faculties throughout the Empire were meant to train later civil servants for work at imperial law courts, territorial administrations, knightly corporations and imperial circles alike. Thus, they had to remain much more cautious about the actual location of soveraignty than their English or French counterparts. The structure of the Empire made allowances for shared power and multiple rights advisable. Only after 1791 and the dissolution of the Empire the idea of rights of sovereignty being variously spread among the Emperor and the Imperial estates began to be superseded for good. Under the influence of Gentz' dualism of traditional corporate and modern representative constitutions monarchical and popular sovereignty began to be pitted against each other. Subsequent historiographical debate began to reorganize the political thinking of the past in terms of this alleged dichotomy and found past thinkers more or less wanting, depending on their contribution to the emergence of what was then thought to be true idea of sovereignty. Therefore, the politics prior to 1800 were increasingly understood in terms of an alleged dualism of estates and princes. Liberal thinkers tried to defend their claims for political participation in the monarchical state with reference to models of constitutional control allegedly rooted in the German past and therefore

struction necessarily begged the question who was going to act in behalf of the people. See on this issue of productive misconception by intellectual transferal Robert v. Friedeburg, Widerstandsrecht und Konfessionskonflikt: Notwehr und Gemeiner Mann im deutsch-britischen Vergleich, Berlin 1999.

18 Franklin, Locke; Franklin, "Mixed constitution", with a slightly different emphasis.

19 Condren, *George Lawson,* pp. 49-61, 71-4, 87-93.

uncompromised by the French Revolution[20]. Against this background, Gierke rediscovered Althusius as his champion of "Genossenschaftsrecht"-as he thought a kind of participation in government and antedote to absolutist lawmaking rooted in the German medieval past[21]. Current research on Althusius has abandoned this forced interpretation and has relocated emphasis on the evaluation of his "Politica" as part of the genre of the same name[22].

From the 1580s to the 1620s a wave of treatises saw publication that were subsequently identified as core texts of this genre as it was about to emerge[23]. Some of the authors were Reformed (Althusius, Keckermann), some Catholic (Contzen), but most were, Lutheran. These works reflected a number of diverse developments at universities all over the Empire, in particular the scholarly reception of current legal and political thought and reactions to contemporary confessional strife. The Lutheran reformation had already given the occupation with Aristotle's politics a new emphasis, beginning with Melanchthon's refusal to find evidence for the organisation of the body politic in scripture and his 1530/31 "Commentarii in aliquot politicos libros Aristotelis". From 1535 editions of Aristoteles, politics mushroo-

20 Stolleis, *Öffentliches Recht,* pp. 106-108, Dieter Grimm, *Deutsche Verfassungsgeschichte 1776-1866,* Frankfurt 1988, pp. 60-231, Hofmann, *Repräsentation,* pp. 390-460; see on this issue most recently the articles in Luise Schorn Schütte (ed.), Strukturen politischen Denkens in der frühen Neuzeut, München 2000.

21 Otto von Gierke, *Deutsches Genossenschaftsrecht, 4* vols, Berlin 1868-1913: While vol. 2, Breslau 1873, primarily distinguishes "older German law" (I st chpt.), Vol, 3, Berlin 1881, bears brunt of the argument. It describes a medieval theory of popular sovereignty, based on a contrattual relation of the sovereign people and highest magistrate to be found in the works of Leopold von Babenberg, Marsilius von Padua and Nicolaus von Cues, influencing conciliarism and preparing for the "representative constitutional state" (pp.577-95). That is going to be superseded by the legislation of territorial absolutism (pp. 765-790), replacing e.g. German medieval corporate town management by the establishment of "Obrigkeit" (p.791).

22 Recent evaluations of research: Michael Stolleis, Review Friedrich, *Zeitschrift für historische Forschung,* 4 (1977), pp 364-6; idem; *Öffentliches Recht,* pp. 106-8; Horst Dreitzel, "Neues über Althusius", *Ius Commune* 16 (1989), pp. 276-302; idem, Review Hüglin, *Zeitschrift für historische Forschung,* 22 (1995), pp. 567-70.

23 To 1620 in nearly every major German university at least one Politica did appear, see Dreitzel, *Aristotelismus,* pp. 411-4; idem, "Die Staatsräson und die Krise des politischen Aristotelismus: Zur Entwicklung der politischen Philosophie in Deutschland im 17. Jahrhundert", A. Enzo Baldini (ed.), *Aristotelismo Politico e Ragion di Stato,* Florence 1995, pp. 129-56; Stolleis, *Öffentliches Recht,* p. 111; Weber, *Prudentia,* pp. 9-89, e.g. Arnold Clapmarius (1574-1604), Altdorf, De arcanis rerum publicarum libri sex, 1605; Henning Arnisaeus (1575?-1632), Helmstedt, Doctrina politica in genuinam methodum, quae est aristotelis, 1606; Adam Contzen, Mainz, Politicorum libri decem, 1620; Dietrich Reinkingk,

med[24]. The Lutheran distinction between revelation and law allowed Lutheran civilians to build up a sphere of inquiry into the nature of politics not directly dependant on the interpretation of scripture. Neo-Aristotelianism did not so much provide a guideline determining the argument - apart from general assumptions on the ethics and aims of government[25] - but rather a set of questions, problems and organisational procedures to integrate a number of varying concers as they came to be considered.

These concers had been added in the course of the growing body of constitutional thought on the Empire and the increasing streamlining of government in town and countryside[26]. Moreover, from the 1570s the strain on practical politics due to confessional tensions brought home to scholars the need for conscious repair and consolidation of the body politic[27]. Theoretical and practical knowledge on the origins and legitimacy of society and government, updated information on current legal procedure and sophisticated advise on specific means to uphold order needed to be moulded into a new discipline for both teaching and learned inquiry. From the 1580s the reception of Bodin gave this alleged need further focus[28]. Moreover, confessional strife kept stimulating debate on these issues[29]. Subsequently, topics

Tractatus de regimine saeculari et ecclesiastica, 1619; Johannes Limnaeus, Juris publici Imperii Romano-Germanici, 1619-34; Bartholomaeus Keckermann, Systema politica, 1607; Lambertus Danaeus, Politices Christianae Libri Septem, 1596; Hermann Kirchner, Res publica, Marburg 1608.

24 Of his Politica 20 Greek and nine Latin editions appeared; see Stolleis, *Öffentliches Recht,* pp. 82-5; Martin Mulsow, "Die wahre peripatetische Philosophie in Deutschland", Helwig Schmidt-Glinzer (ed.), *Fördern und Bewahren,* Wiesbaden 1996, pp 49-78; Martin Brecht, "Die reformatorische Kirche in Melanchthons ekklesiologischen Reden"; *Humanismus und Wittenberger Reformation,* ed, Michael Beyer et. al., Leipzig 1997, pp. 297-311; Dreitzel, *Arnisaeus,* pp 96-7; on England see John Case, Sphaera Civitatis, Oxford 1586.

25 Even this cautious attempt at definition holds not true for Arnisaeus' Politica - despite its subtitle stressing Aristotelian methodology - see Dreitzel, *Arnisaeus,* pp. 174-5.

26 Hammerstein, "Comment", pp. 1011-1078.

27 E.g. the forced recatholisation of Würzburg, the fruitless efforts to defend protestantism in areas surrounded by Catholic imperial estates (1575-76) and the struggle for the protestant administration of Magdeburg, to name but a few, see recently Dietrich Kratsch, *Justiz - Religion - Politik*, Tübingen 1990; Eike Wolgast, Hochstift und Reformation, Stuttgart 1995.

28 Jean Bodin, *Six livres de la république*, 1576, latin edition 1586, see Salmon, "Legacy", pp. 506-14; Hans Ulrich Scupin, "Gemeinsamkeiten und Unterschiede der Theorien von Staat und Gesellschaft des Johannes Althusius und des Jean Bodin", in: Dahm, *Althusius*, pp. 301-11.

29 E.g., the conception of maiestas realis and personalis was first conceived bu Hermann Kirchner (1562-1620), Res Publica, Marburg 1608; see Thoas Klein, "Conservatio Reipublicae per bonam educationem -

such as the philosophy of politics, guides to the developing imperial public law and advice on the upkeep of order were merged to a new independant subject in the spectre of the artes liberales. Its object was politics and the standard kind of publication highlighting its birth was the "politica", summoning political philosophy, legal training and practical advice[30].

Within this genre, various strands of thought are commonly distinguished. Lutheran works on the *Monarchia Christiana* emphatized the independance of the church and the responsibility of lay authorities to the upkeep of a pious order, frequently making use of Lutheran three estate theory (Reinkingk)[31]. Neo-Aristotelians (Arnisaeus) are alleged to have been particularly engaged in the methodical exploitation of the Aristotelian renaissance[32]. Some accounts remained more indebted to Lipsius and the rethoric of Tacitism[33]. Althusius eschews easy allocation to any sub-category not least due to his terminology[34].

Leben und Werk Hermann Kirchners (1562-1620)", Walter Heinemeyer et al. (eds.), Academia Marburgensis, Marburg 1977, pp. 181-230, pp. 212-18 on the impact of the contemporary struggle between the imperial estates of Reformed Hesse-Cassel - for whome Marburg university based Kirchner wrote - and Lutheran Hesse-Darmstad over the Upperian-Hessian inheritage. hesse-Cassel sis expelt more favourable treatment of its case before the Imperial chamber court then the Imperial aulic court, sholars from Marburg university insisted on the shared sovereignty - maiestas realis and maiestas personalis - that would justify the responsability of the Imperial Chamber Court jurisdiction for the case in question.

30 Topics included matters such as dealing with religious minorities, the printing press, schools, taxes, coinage, the economy and so on, see Weber, *Prudentia*. Note that none of these issues can be directly related to what has been called the rise of modern monarchy with regard to England or France. Only the middling and small jurisdictions of the imperial estates provided the economy of scale to actually engage in the kind of detailed regulation of economy and society so typical for the advice of the politica.

31 Luise Schorn Schütte (ed.), *Strukturen des politischen Denkens in der frühen Neuzeit*, München 2000 (forthcoming).

32 Since most contemporaries were influenced by some aspect of the Aristotelian renaissance yet all combined a number of other issues as well useful for classification, the denominator "Neo-Aristotelianism" shifts from embracing a whole lot to very few tracts. Thus Dreitzel, "Krise des Aristotelismus", deals with many of the "politicas" quoted above as being inflicted by the crisis of Althusius' Politica (Scupin, "Bodin und Althusius", disagrees with that denomination), "Political Aristotelians" such as Arnisaeus, "Thomist-Aristotelian" tracts by Catholics like Contzen, tracts orientated towards the Lutheran doctrine of three estates like Reinkingk and authors interested simply in the development of imperial public law. To Stolleis, *Öffentliches Recht*, p. 221-4, Limnaeus is such an author.

33 E.g. Arnold Clapmarius, De Arcanis rerumpublicarum liberi sex, 1605; Stolleis, *Öffentliches Recht*, pp. 98-101.

34 Horst Dreitzel, *Absolutismus und ständische Verfassung*, Mainz 1992, pp. 23-35 offers as a com-

Despite significant differences among these writers, all reflected the constitutional experience of the Empire and a common concern for order. Political practise in the Empire was reenforced and enshrined in the treatise of Augsburg 1555 and Osnabrück 1648. It remained based on the achievement of imperial "Landfrieden" and its medieval basis, the emergence of territorial sub-sovereignty (Landeshoheit) exercised by the imperial estates[35]. Within that framework, the "politica" was meant to provide an *ars conservandi* in time perceived to be troubled. The body politic was defined as a structure of some giving orders and therefore ruling and others obeying those orders. Therefore, to transform any loose number of men into a body politic government had to be introduced. The champion of monarchical absolutism Henning Arnisaeus was quoted for promoting this view[36] just as his opponent Althusius[37]. Thus government was meant to be a technical prerequisite of good life, not a matter of rational choice. The question how many were meant to rule -one, some, or many - was therefore just as well a matter of technical debate as to what form of government did suit specific circumstances. The plurality of forms of government in the Empire did prevent

promise six roots or overlapping sets of influences characterising the Politica; a debate among reformed monarchomachists after the Bartolomew day's massacre in 1572; b., the Dutch debate justifying the rebellion against Spain; c, Spanish legal philosophy concerning both Roman Law concepts of the corporation and its representation and the further development of the notion of natural law; d., aspects of presbyterian ecclesiology; e., Bodin's notion of sovereignty; f., practical advise on achieving stability borrowed from Lipsius.

35 Heinz Angermeier, *Königtum und Landfriede im deutchen Spätmittelalter*, München 1966; idem *Die Reichsreform* 1410-1555, München 1984; on the interaction of imperial and constitutional law and confessionalisation see Gerard Müller, "Bündnis und Bekenntnis. Zum Verhältnis von Glaube und Politik im deutschen Luthertum des 16. Jahrhunderts". Martin Brecht, Reinhard Schwarz (ed.), *Bekenntnis und Einheit der Kirche. Studien zum Konkordienbuch*, pp. 23-43; and summarizing the constitutionell and religious development Heinz Shilling, Die Konfessionalisierung im Reich, *Historische Zeitschrift* 246 (1988), pp. 1-45; idem., *Aufbruch und Krise*, Berlin 1988.

36 Henning Arnisaeus, De Republica seu relactionis politicae libri duo, Frankfurt 1615, cap. I, s. 1 n. 14: «Perfecta igitur definitio reipublicae est, quod sit ordo civitatis, tum aliorum imperium, tum paecipue summae potestatis, a quo profluit regimen per medios magistratus in universos subditos», see Dreitzel, Arnisaeus, pp. 171-4, on his break with the received tradition by failing to mention the moral mission of state.

37 Christian Liebenthal, Collegium Politicum, Amsterdam 1652, VI, 185, quoted Althusius for «res publica constat ex imperantibus & obedientibus», probably Althusius, Politica, C1, 36: «...ita conventus & societas in Rep. imperantium & obedientium se habet...», an interesting place because Althusius rather uses in terms "consociatia publica particolaris" (for civitas) and civitas or regnum or consociatia publica universalis (for res publica).

any outright condemnation of any of those forms anyway, at least for teaching purposes. Most authors, including Althusius, prefered monarchy for any body politic larger than a town and identified democracy with turmoil and technical problems of government as a consequence of the nature of men[38]. Thus, magistrates in command over obedient subjects were conceived to be a functional necessity no matter what form of government was at issue. More specifically, a main issue of these works was how to avoid, forestall or suppress internal conflict for the sake of the common good, for unity and the preservance of internal harmony was seen as a key problem. The "politica" as a genre - from the pen of Althusius[39] just as from Arnisaeus - was therefore not least a body of work dedicated to the control of subjects and to the avoidance of turmoil. It was an execise in the sophistication of the upkeep of order. It meant to forestall disorder, not to support rebellion[40].

While historians of political thought agree on this general evaluation, they have mainly followed one of two paths to fit the genre into the general development of political thought. Termed an "armament of state power" and a "philosophy of the uprising territorial absolutism"[41], one strain of research has measured the "politica" against its performance as a stepping-stone towards modern public law and state building. Its very core, the combination of ethical arguments and practical politics, the argument goes, subsequently shipwrecked at the rocks of confessional conflict, sharpened in the empire after the armistice of the House of Austria with the Ottoman Empire[42]. Then events exploded the unity of normative and empirical observations in the politica. Aristotelian notion of body politic had to be abandoned. An empirical and

38 Althusius chapter on democracy (XXXIX) is part of his appendix of special subject treated in the last chapters. He stated his view on popular partecipation much earlier. To him, any kind of election by the common men is riddled with danger for the unity of the body politic and will trigger rebellion and sedition: Althusius, XVIII, 56: «Esset enim difficilinum.... suffragia omnium civium, & eorum, qui alicujus Reip. partes sunt, a singulis exigere, idcirco convenit, plebis multitudinem per ejus optimates negotia publica ita expedire, ut absque tumultibus & seditionibus tuto a Repub. negotia illius peragantur».

39 E.g. on the need for harmony Althusius, *Politica*, C1, 36.

40 See Weber, *Prudentia*, pp. 321-57.

41 Weber, *Prudentia*, pp. 333; Stolleis, *Öffentliches Recht*, p. 84.

42 Schubert, *Reichstage*, pp. 305-22; Kratsch, *Justiz*, pp. 212-6.

non-normative discipline of imperial public law had to emerge, in its wake clearly distinguishing the demesne of the law from the demesne of moral inquiry, cameralism and power politics. From Limnaeus onwards, Michael Stolleis scrutinized the path of that desintegration of the "politica" via Conring and culminating in Pufendorf[43].

The main alternative account values the achievement of the "politica" higher. It contributes its demise to the rise of the modern language of natural rights[44]. But it argues that the genre helped to develop the regulatory concern for matters of everyday life that grew from concerns of town governments into territorial administration[45]. Moreover, to Horst Dreitzel, men like Arnisaeus already conceptualized the problem of unsocial sociability and insisted on the neutrality of the state in matters of religion[46]. However, there is agreement that in none of these works any notion of modern contract can be discerned, for neither Althusius' politeuma not Arnisaeus' res publica are founded by voluntary contract nor are their notions of law wholly subject to volatile decision-making[47]. Moreover, they did not envisage a *societas inter aequales*, as Hobbes, Pufendorf and Locke did[48]. Against this back ground two emphases of current research on Althusius will be evaluated more closely. Both have direct impact on our understanding of the relation of men and government in his politica. These concern the issue of representation and of harmony.

43 Stolleis, *Öffentliches Recht,* pp. 154-210, and in particular his verdict on the result of 1648, p. 227: «Alle auf Modernisierung drängenden Kräfte verlagerten sich deshalb künftig in die größeren Territorialstaaten».

44 Dreitzel, "Krise", pp. 149-50.

45 Horst Dreitzel, "Das deutsche Staatsdenken in der frühen Neuzeit", *Neue Politische Literatur*, 16 (1971), pp. 17-42.

46 Dreitzel, *Arnisaeus*, pp. 427-8.

47 Of course, both allow for kinds of law being subject to such lawmaking, but expect other parts of the law, such as fundamental law or natural law to be non-volatile, see on this crucial distinction to later writers such as Hobbes and Locke already Ernst Troeltch, *Die Soziallehren der christlichen Kirchen*, Tübingen 1923[3] , p. 691 on the Aristotelian basis of society not being volutarily made by contract; thus, the treatment of Althusius by Howell A. Lloyd, "Constitutionalism", J.H. Burns (ed.); *The Cambridge History of Political Thought 1450-1700*, Cambridge 1991, pp. 254-292, is altogether fitting; on the crucial issue of the lack of innate ideas and the subsequent problem of a lack of a moral basis for the state see Ian Harris, The mind of John Locke, Cambridge 1994.

48 Dreitzel, "Krise", p. 150.

II

To Arnisaeus civil society is the demesne of the private and the pre-political rights of subjects against the state. But it does constitute a corporation capable of any legal action in its own right[49]. Closely following the influential translation of Aristotle by Petrus Victorius that effectivly deprived the notion of civitas from being a body with political power, he wrote "res publica est ordo totius civitatis consistens in regimine summae potestatis per medior magistratus"[50]. The monarch carries title by virtue of the *Lex Regia*, the *Jus Belli* or the right of succession[51]. At the same time, he represents the res publica as supreme magistrate like an officier his corporation in legal affairs. This concept supported the image of caput and corpus to depict the relation of magistrate and universitas. In *De republica* (1615), the supreme magistrate, in particular in the case of the accession of a new king, is even allowed to break positive law because he is by definition acting in behalf of civil society[52]. As early as 1625, Chistoph Besold protested that this did not make sense, for the head was to be thought as only the head of the body, but not as the whole body itself[53]. Further development of this line of argument led to the use of contract theory in the hand of absolutism by developing the argument from representation by mandate[54].

49 Dreitzel, *Arnisaeus*, pp. 336-57: The civitas provides the populus with at sphere of private property rights, but these rights do not carry public power. The restrictions imposed on the monarch within that system, natural law and fundamental law, are primarily left to protect these private rights, see Dreitzel, *Arnisaeus*, pp. 202-26.

50 Commentarii in VIII libro Aristotelis de optimo statu civitatis; Florence 1576, p. 209 defines «Est autem res publica ordo civitatis, ceterorumque magistratuum, et maxime illius, qui summam protestatem habet», see Dreitzel, *Arnisaeus*, p. 344; Wolfgang Mager, "Res Publica und Bürger" *Res Publica. Bürgerschaft in Stadt und Staat*, Berlin 1988, pp. 67-94, p. 78; on the underlying notion of the civitas being the *materia*, being given form by the res publica see Dreitzel, p. 119; Wolfgang Mager, "Republik", *Historisches Wörterbuch der Philosophie*, ed Joachim Ritter, Karlfried Gründer, vol. 8, 1984, pp.858-78, p. 867.

51 Dreitzel, *Arnisaeus*, p. 230, he remains exempt from jurisdiction, p. 226.

52 Dreitzel, *Arnisaeus*, p. 236, 353.

53 Hofmann, *Repräesentation*, p. 381, on Chistoph Besold, Dissertatio Politico-Iuridica, 1625, Sectio I Cap I § IV, p. 5f. : «Numquam sane censendum est, totam et universam Rempublicam per principem representari. Caput est, non totum corpus».

54 Hofmann, *Repräesentation*, pp. 211, 357-375, 392 on Chistoph Becmann, De Majestate, in: Meditationes Politicae XXIV dissertationibus academis expositae, 1672, 89: «Quia nam princeps univesos seu rempublicam representat (the formulation indicating representatio identitatis) eadem non minor

The reputation of Althusius' Politica of being subversive to monarchical government stems not least from his insisting first on locating sovereignty in the populus, second on having this populus form a corporation prior of an indipendant from the establishment of government proper and third allocating a law, the ius symbioticum, to this corporation, transforming it into the *politeuma*[55]. Among the roots of this concept was the legal reasoning of conciliarists and prince electors in their case against papacy. The body politic, this argument goes, has to be understood as an universitas resembling a corporation. Prior to and indepandant from the inauguration of magistrates that corporation has it own laws and regulations that must not be violated. Given specific requirements were met it could be assumed that the corporation was present and it could be conceived of acting on its own behalf and, for example, choose its officers[56]. E.g., in 1338 the prince electors backing Ludwig the Bavarian against the pope claimed that their election of the new German King carried legitimacy despite the lack of papal support for a number of reasons, one of them that they had acted by virtue of being universitas of the empire[57]. Legal philosophy, in particular at Salamanca, contributed a refined notion of Thomist natural law, a *ius gentium secundarium*, and struggled to think relations within the *societas* in terms of legal

erit (against the traditional assumption of conciliarist thought that the universitas assembled is superior to the caput), sed ipsi aequalis: Veluti imago quam speculum repreasentat, prorsus aequalis est faciei extra speculum repraesentare». He argued that by contract a transfer of the power and authority from the populus to the monarch had been established, effecting the representation of the universitatas by that monarch not only as the chief legal officer, but by being the universitas (p. 375; idem "Althusius", p. 544. Christian Wolff started to talk about a representation "mandatem quasi more geometrico", see Hofmann, *Repräesentation*, pp. 164-5.

55 Althusius, *Politica*, c V 5: «Politeuma in genere, es ius & potetas communicandi & participandi utilia & necessaria, quae ad corporis constituti vitam a membris consociatis conferentur. Vocari potest jus symbioticum publicum». Althusius' politeuma resembles in that respect the res publica of Arnisaeus, see Dreitzel, Arnisaeus, p. 341.

56 Francis Oakley, *Natural Law, Conciliarism and Consent in the Middle Ages*, London, 1984; idem, "Nederman, Gerson, Conciliar Theory and Constitutionalism: *Sed Contra, History of Political Thought* 16 (1995), pp. 1-19; Brian Tierney, *Religion, law, and the growth of constitutional thought 1150-1650*, Cambridge 1982, pp. 50-78 on Althusius' debt to these developments.

57 Hasso Hofmann, «Der spätmittelalterliche Rechtsbegriff der Repräsentation in Reich und Kirche», *Der Staat* 27 (1988), pp. 523-45.

contract[58]. These claims had been specifed for practical politics during the debate among protestants reacting to events such as the Schmalcaldic War 1547 and Bartolomew day's Massacre in 1572[59]. While the adaptation of legal reasoning developed for private corporations such a merchant companies to society at large had made it possible to link the creation of a magistrate to legal arrangements with the populus that were subject to conditions, it carried further implication as well. Since for the populus to act as a corporation, certain conditions had to be met[60]. It is here that the issue of representation comes in.

Hasso Hofmann has distinguished various models of representation at stake with reference to Johannes of Segovia's analysis of 1441: representation by similarity, representation by nature - in the case of father and son -, and *representatio potestatis* - i.e. by legal mandate, for instance in the case of the minority of a person or in the case of the legal officer of a corporation pursuing its business. In each case, the legal identity of two legal persons is assumed, albeit for different reasons. For example, the formulation *personam alicuius representare* indicated the action of an officer of a corporation to pursue its legal business by virtue of this office. While the *representatio potestatis* could be brought into line with the image of head and body, the *representatio identitatis*, Segovia's final notion, worked from the pars pro toto argument mentioned above. Formulations like *populum representat* indicated the fact that a number of persons had assembled and made their decisions in a way that they could be assumed to be the corporation in question no matter how many more members it consisted of[61]. Althusius

58 Hofmann, *Repräsentation*, pp. 132-136; Dreitzel, *Aristotelismus*, pp. 188-93, 188-189; Anthony Black, The Juristic Origins of Social Contract Theory, *History Of Political Thought* 14 (1993), pp. 57-76.

59 Stephanus Junius Brutus, *Vindiciae, Contra Tyrannos*, ed. George Garnett, Cambridge 1994, Introduction, p. XIX; G. Zimmermann, "Konziliarische Ideen in einer Calvinistichen Streitschrift: Huber Languets 'Vindiciae Contra Tyrannos'", Zeitschrift der Savigny-Stiftung für Rechtsgeschischte, CV, kan. Abt., 74 (1988), pp. 412-35: suffice to say that Althusius and Arnisaeus alike accepted the existance of private individuals having private property interests, see below, part III on Althusius; Dreitzel, *Arnisaeus*, pp. 202-26, 336-57.

60 Mager, "Republik", pp. 862-3; Hofmann,"Althusius", pp. 530-32.

61 Hofmann, *Repräsentation*, pp. 211. The "ambivalent understanding of representation" that Condren detects in Lawson's treatment or real majesty (Lawson, Politica, p. 221) hinges on this distinction. To Lawson real majesty is on the one hand hand "the whole community" (ibid. p. 221) as opposed to «personal majesty.... fixed in some persons who are trusted with the exercise of it» (ibid. p. 49), and

used the *representatio potestatis* to think about the relation of the supreme magistrate to the *regnum* or the town mayors to their towns - they represent the respective body politic by virtue of being legal officiers of a corporation. But he did not want to see the *regnum* being represented in only this way. Rather, he used the *representatio identitatis* for the ephors that as a group stood above the supreme magistrate. Moreover, both notions of representation appear whenever he turned from the *consociationes privatae* ant the *politeuma* as a corporate body to the *regnum* as the state owning imperium. That imperium had to be handled by representative bodies acting in behalf of the populus[62].

The issue of representation is thus crucial in two respect. First, it allows the representing body, from ephors via provincial assemblies to town senates, to absorb the will of the people. Second, it distinguishes Althusius sytematic description of the various groups the *universitas* consists of from his legal account of the *regnum*[63]. With regard to the former, various *consociationes*[64] *privatae* are summed up, from families to guilds. They make up *consociationes publicae particulares* - towns and provinces[65]. *Consociationes publicae particulares* are capable of acting on behalf of the private associations as *persona representata*. Imperium, however, rests only with the *consociatia publica universalis* or *regnum*. Only the supreme magistrate of the regnum can bestow legal privile-

on the other «the people [making use] of such an assembly as a parliament, to alter the former government....» (ibid. p. 48). Lawson, being deprived of a clearcut distinction between parliament representing the people and thus owning maiestas realis or being the supreme magistrate and thus owning maiestas realis shifts between representatio potentatis and representatio identitatis.

62 Hofmann, *Repräsentation*, pp. 357-373, Althusius, *Politica*, c XIX 98 (representatio potetatis): «Gerunt vero & representat hi summi Magistratus personam totius regni, omnium subditorum & Dei, a quo omnis potestas» XVIII, 11 (representatio identitatis): «Ideo ejusmodi administratores & curatores totum populum representant.... & ministri constituti instar tutoris, gerentes & representantes personam totium populi"; c V 54-55, "Senatus, est virorum collegium .... collegium repraesentat totum populum & totam civitatem».

63 Hofmann, "Althusius", pp. 516-18.

64 The term stems avowedly from Cicero, see Althusius, Politica, c I; 7: «Unde Cicero dixit, populum esse coetum juris consensu & utilitatis communione consociatum».

65 Hofmann, "Althusius", pp. 516-18; descriptions such as IX,5: «Membra regni, seu symbioticae universalis consociationis hujus voco, non singulos homines, neque familias .... sed civitates, provincias & regiones...» carry no legal significance of power allocated.

ges to other corporations, for instance to those towns that Althusius by that token denotes as *civitates*. The Imperial privileges turning a town into an imperial city are clearly the model for this account[66]. While the universitas is made up from smaller units[67], the *regnum* is a unitary monarchy[68] with the exercise of the rights of sovereignty located in those representing that *regnum* as a whole by virtue of *representatio identitatis* or *potestatis*, the ephors or the supreme magistrate[69]. The Emperor is thus superior to any other magistrate, save the group of ephors acting together, because in that case they *are*, by virtue of *representatio identitatis*, the empire[70]. To describe the establishment of these superior magistrates Althusius depicts the Roman law equivalents of estates[71]. Again, under current

66 Althusius, Politica, c V, 32-42 on various form of settlements, 42 on the transfer of ius imperium to the city: «Ex sola magistratum summi voluntate civitatis jus constituitur.»

67 Althusius, Politica, V 10: «Membra universitatis sunt privatae diversaeque consociationes conjugum, familiarum & collegiorum, non singuli cujusque consociationis privatae ... sed cives ejusdem universitatis sunt a coeundo, ideo, quod ex privata symbiotica transeuntes, coeunt in unum corpus universitatis» See below on the meaning of "transitio"; for a critique of interpretations seing Federalism at work in Althusius see Dreitzel, Rev. Hüglin.

68 The description of democracy is handled only marginally and with distrust in its working, see Hofmann, "Althusius", pp. 520-22; c XXXIX De speciebus summi magistratus, 11, 32: «Polyarchicus magistratus summus est, qui subditis, cum aliis sociis pari vel eodem imperio summo instructus, imperat, & jura majestatis administrat: hoc est, vicissitudo administrationis inter plures communicata», and stresses (33) that in this case just as in the case of monarchy, even «plures administratores hic non habent diversas potestas & imperia ... sed omnes conjunctim simul unam supremam potstatem habent», quoting Bodin; in crisis, even the democracy has to give power to a single person to deal with the crisis: (40) «Plane in magnis periculis, manisque calamitatibus Resp. polyarchica nulla ratione melius servari potest, quam si ex communi imperiantium consensu, imperii administratio uni vel alteri commendetur» (alluding to Rome and the establishment of dictators in tempore necessitatis. Moreover, popular elections suffer from the private interests of the subjects (50): «Populo indistincte electionem dare, periculosum videtur, utpote qui privatis suis affectibus ducitur...», quoting again Bodin. Democracy therefore suffers from the vices of the plebes, (64) «Populare est, mutabiles & temporales esse magistratus, ut evidetur invidia...».

69 Althusius, c IX, 23-24: «Rex enim populum, non contra populus regem repraesentat»; c XIX 98: «Gerunt vero & repraesentant hi summi Magistratus personam totius regni, omnium subditorum & Dei, a quo omnis potestas. Gerunt quasi typum divinae potentiae, majestatis, gloriae, imperiae, gloriae, imperii, clementiae, providentiae, curae, protectionis & gubernationis. Ideo in suis titulis, Nos gratia Dei».

70 Althusius, c XVIII, 49-66, 84-88. (70): «Rex vero, seu summus magistratus, generalem in singulos etiam optimates habet potestatem, majestam & praeeminentiam, a cujus potestate & administratione omnia pendent ... (73) Dehinde hi ephori universi quidem magistratu summo sunt superiores».

71 Elections are mentioned as one of a number of possibilities of establishing magistrates, but for well known reasons one to abstain of if possible, see Althusius, *Politica*, XVIII, 56: «Esset enim difficilinum

constitutional practice in the Empire, the imperial estates indeed *were* the Empire[72]. Likewise, only the territorial estates make up the legal representation within each province[73]. Hasso Hofmann has traced this dual structure of Althusius' argument, his description of the *universitas* and his account of the *regnum*, to the «self perpetuating logic of the often used exempla profana ... (and) the examples of imperial constitutional problems [They were, R.v.F.] coloured by the specific privileges of the imperial estates»[74] which were difficult to reconcile with his «sociological theory of the communal construction of the polity»[75].

The Politica provides an account of Bodinian unitary sovereignty to be applied on any large monarchy such as Spain, Germany or France. He placed soveraignty in the populus and placed power with the leading estates. Given the fact that primarily estates comprising the high nobilty of the respective country were able to mount resistance against modern monarchy in the seventeenth century, it does not come as a surprise that contemporaries supporting monarchy disliked these arguments. At the same time, the Politica led the way to an understanding of the citizenry of the Empire being simply the imperial estates[76]. Furthermore, his negligence of detail as to how the ephores might be instituted and his willingnesse to accept the existance of any body of ephors already doing the job by precedent hints to his lack of an understanding for the need to negotiate substantial conflicts by juridic devices[77]. Althusius' background, the political situation of the reformed Wetterau counts in Western Hesse, led him to allow for the constitutional role even of imperial estates below the imperial princes. Subjects, however, had to obey.

suffragia omnium civium, & eorum, qui alicujus Reip. partes sunt, a singulis exigere, idcirco convenit, plebis multitudinem per ejus optimates negotia publica ita expedire, ut absque tumultibus & seditionibus tuto a Repub. negotia illius peragantur». The detail allotted to the description of procedure in elections in the account of a true republican such as James Harrington, Political Works, ed. J.G.A. Pocock, Cambridge, 1977, p. 361-368: "The Manner and Use of the Ballor", stands in marked contrast to Althusius account.

72 Althusius, *Politica*, XVIII, 59: «Eliguntur autem & constituuntur ejusmodi Ephori consensu populi, tributim, centuriutim, curiatim...»; see Shubert, Reichstage, 410-12 on the model of the imperial estates being the Empire; Hofmann, "Althusius", pp. 517-18.

73 Althusius, *Politica*, V, 52-55; Hofmann, "Althusius", p. 527.

74 Hofmann, "Althusius", p. 530: «*vom Hoheitsrecht geprägte Charakter der staatsrechtlichen Beispiele*».

75 «*... der sozialwissenschaftlichen Theorie des genossenchattlichen Aufbaus des Gemeinwesens*», see Hofmann, "Althusius", p. 533.

76 Hofmann, "Althusius".

77 Stolleis, *Öffentliches Recht*, p. 108; his lack of interest in juridic devices is stressed by new evi-

III

Rather than providing for juridic tools to solve sustained internal turmoil, Althusius insists on the establishment of harmony[78]. Despite the tools of representation and dual structure of argument discussed above, the Politica has to pay a prize for its allocation of sovereignty to the populous and its allowance for the *politeuma*. It has to account for the working of this politeuma ant its ius symbioticum. Michael Behnen pointed out that rights and obligations of the symbiotici are to be undestood with regard to the establishment and upholding of social interaction described in the Politica in terms such as "symmetria", "concordia", "symphonia" and "harmonia", for only then the aim of politics was, to Althusius' mind, accessible[79]. Further, Behnen argues that Althusius depended on Cicero's notion of "juris consensu" for his understanding of the moltitude turning into a body politic[80]. Consent is at core of that body politic[81]. That consent is measured against the

dence found in an hitherto unpublished disputation by Althusius of 1602, immedeatly before the first edition of the Politica, discovered in Wolffenbüttel, see Michel Stolleis, "De Regno Recte Instituendo et Administrando", Giuseppe Duso et. al., *Su una sconosciuta 'Disputatio' di Althusius* (*Quaderni Fiorentini* 25, 1996), pp. 19-46, p. 20.

78 Indeed, this is a similarity to Bodin hitherto rarely recognized, see Goyard-Fabre, *Bodin*, pp. 259-66.

79 Althusius, *Politica*, c I 30: «Finis politicae, es usus vitae commodae, utilis & felicis, atque salutis communis».

80 Michael Behnen, "Herrscherbild und Herrschaftstechnik in der Politica des Johannes Althusius", *Zeitschrift für historische Forschung* 11 (1984), pp. 417-72, quotes p. 422 Althusius, *Politica* V, 4 (Hommines congregati sine jure symbiotico, sunt turba, coetus, multitudo, congregatio, populus, gens) and hints towards Cicero, De re publica, Liber primus, 25, and his definition of «coetus multiduninis juris consensu et utilitate communione sociatus». It is important, however, to remember that Cicero has Africanus to define: «Est igitur, res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multiduninis...», i.e., that this is Ciceros definition of the res publica, while Althusius transfers it to a definition of the consociatio and the ius symbioticum.

81 See Richard Tuck, *Philosophy and Government 1572-1651*, Cambridge 1993, p. 158 accordingly criticising Gierke's interpretation.

Decalogue, but frequently described in aesthetic categories like musical harmony. To actually make men to achieve and keep this harmony, Behnen further argues that Althusius provided frequent advise for magistrates to direct, discipline and manipulate the behaviour of subjects[82]. In particular, he argues, the middle parts of the Politica were concerned, like other pieces of the genre, with the practical problems confronting governments in controlling the men and his vices. Behnen has submitted these middle sections of the Politica to closely scrutiny. While chapters I to XX deal with the construction of the consociationes and the establishment of public order and chapters XXXII-XXXIX deal with topics such as "de natura et affectione populi" (XXIII), "de censura" (XXX) or "de studio concordiae conservandae" (XXXI). It is in these chapters that Behnen detects notions of Tacitist dictatorship in the politica, strongly influenced by the accounts of Botero and Clapmarius[83].

Behnen's case has been criticised as too far a swing of the pendulum[84]. Althusius' reliance on the Decalogue allows to characterize his account rather as a blueprint for the pious German police state, if coloured by the specific situation of imperial estates less mighty then the imperial princes, than a basis for a secular Tacitist dictatorship[85]. But the question remains how the Politica reconciliats the importance of harmony with the negative psychology of men. Althusius' account of social life gives some insight into his ideas on the mechanics of it. As has been argued above, subjection into the order of the body politic is not portrayed as a voluntary act in need of critical scrutiny but as the necessary outcome of the distribution of labour, itself being a natural outcome[86] of God distributing his gifts among men in an unequal fashion. Althusius then qualifies these differences among men in their capacity as private members of the *consociationes privatae* in a rather negative fashion. For example, he reminds the reader of the danger of ambition, quoting Ghibellines and Guelfs in Italian cities[87] and despises luxury among

82 Behnen, "Herrscherbild", p. 423.

83 Ibid., 426; Giovanni Botero, Della Ragion di Stato, Venice 1589; Clapmarius, De arcanis.

84 Behnen, "Herrscherbild", p. 425; Stolleis, *Öffentliches Recht*, p. 108.

85 On the actual practise of pious ecclesiastical discipline and the enforcement of social order in German towns and small territories see Monika Hagemeier, *Predigt und Policey. Der gesellschaftspolitische Diskurs zwischen Kirche un Obrigkeit in Ulm 1614-1639*, Baden-Baden 1989; Heinz Shilling (ed.), *Kirhenzucht und Sozialdisziplinierung im frühneuzeitlichen Europa*, Berlin 1994.

86 "Natural" in the sense of contemporary scholastic teaching of natural law.

87 Althusius, *Politica*, c 31, 8.

men[88]. The existing variety of men and wealth, while accepted as a fact of life, are anathema to the harmony that is to be achieved. Therefore, the ocean he finally advises the prospective magistrate to sail the ship of the commonwealth through[89] is a stormy sea of human tempers and habits[90].

At one point, Althusius seems to go for a momentous transformation in social character, turning the members of the *consociationes privatae* and their evil selfishness into citizens[91]. However, even in one of the first passages dealing with this issue, Althusius turns this argument around by equating the difference between magistrates and subjects into a part of the inequality in social life with regard to different professions, incomes and so on. Divergence among men is thereby turned into a prerequisite of society with the holding of office included[92]. Lack of government, i.e. lack of some ruling and others obeying, would mean «ut ipsa aequalitas esset summa inaequalitas».

88 Althusius, *Politica*, XXXI, 16. A positive evaluation of the wealth in cities such as Robert Burton's The Anathomy of Melancholy, (1621), ed Thomas C. Faulkner et al., Oxford 1989, p. 344-55 is anathema to this concept; see Ruth A. Fox, The tangled chain, Berkley 1976; Conal Condren, *The Language of Politics in Seventeenth Century England*, New York 1994, pp. 95-99 on the implications of talking about cities.

89 Althusius, *Politica* c XXXI, 63.

90 See on this Althusius, *Politica*, c XXXII as well.

91 «Membra universitas sunt privatae diversaeque consociationes conjugum, familiarum & collegiorum, non singuli cujusque consociationis privatae, qui hic non conjuges, cognaci, collegaeve, sed cives ejusde universitatis sunt a coendo, ideo, quod ex privata symbiotica transeuntes, coeunt in unum corpus universitatis», see Althusius, *Politica*, V, De consociatione universitatis, p. 10.

92 Althusius, *Politica*, C1, 36: «Deinde conservatio & duratio omnium rerum consistit in illa ordinationis, & subjectionis concordia. Nam sicut ex diversi toni fidibus, ad symmetriam intensis, sonus dulcissimus oritur & melodia suavis, gravibus, mediis & acutis conjunctis: ita conventus & societas in Rep. imperiantium & obedientium se habet, & ex divitum, pauperum, artificum, sedentatiorum & id genus diversorum graduum personarum statu, quam suavissima oritur & conveniens harmonia; & si ad concentum reducantur, efficitur concordia laudabilis, felix & pene divina, & durabilior. Quod si vero omnes aequales, singulique pro arbitrio vellent alios regere, & alii recusarent regi, hinc facilis esset discordia, & discordia dissolutio societatis; Nullus esset gradus virtutis, nullus meritum, & sequeretur, ut ipsa aequalitas esset summa inacqualitas... Hinc inter signa irae divinae refertur, quando haec imperiantium & obtemperatium symmetria, cjusque ministri, & duces non sunt». The problem of order in a society not only characterized by human vices. Rather, both inequality among men and the distribution of labour with its concomitant problems is reflected when concluding that lack of government and harmony makes «ut ipsa aequalitas esset summa inaequalitas».

In a later passage, his ideas on constitutional issues and their relation to his thinking on social life in general are interwined in a way that puts even more light on this issue. Again, Althusius need not to specify nor engage in debates on contract and the state of nature, for neither submission to government nor lawmaking is meant to be voluntary. A close examination of his argument in chapter XIX[93] will suffice to illustrate his mixture of concepts of representation, notions of the distribution of labour giving legitimacy to government and human psychology. He dwells first on examples for constitution of the supreme magistrate by the contract between the magistrate, the ephors and the people being represented[94]. He examplifies his point by reference to Sparta, the Roman Emperors and the senate (sic!) and among contemporary examples the French, Danish, English, Swedish, Aragons[95]. His stress is on existing relations between estates and monarchs. Accordingly, he stresses that what manners in terms of how the magistrate is instituted is suitability that has to fit each specific situation. The supreme magistrate is then described with a vocabulary conveying the sense of utter urgency that Althusius attributes to the hierarchy of order and subjection, indicating that lack of the magistrate means immediate decay. To press home this point, Althusius uses metaphors such as the one of the ship and the navigator or the body and the soul. He concludes with a metaphor from musical harmony as is to be desired. Likewise, poor and rich, order and subjection are prerequisites for the working of the body politic[96]. Moreover, these specificaions follow immediatly

93 Althusius, *Politica*, c XIX: «De regni, sive universalis imperii, commissione ....».

94 Althusius, *Politica,* c XIX, p. 18 «De constitutione summi magistratus, & de ejusmodi pacto & contractu inter magistratum summum, ephoros, populum totum corporum consociatorum repraesentantes».

95 Althusius, *Politica*, c XIX, p. 22.

96 Althusius, *Politica*, XIX, p. 23: «Rationes evidentes hujus constitutionis summi magistratus plurimae sunt. Nam hanc magistratus summi constitutionem sua sit utilitas & necessitas Reip. summa. Nam teste Cic. lib. 3 de legib. nihil tam aptum es ab jus conditionemque naturae, quam imperium, sine quo nec domus ulla, nec civitas, neque gens, nec hominum universum genus stare, nec rerum natura omnis, nec ipse mundus potest. In apibus (he uses here even the apex, used as well for the tiara of the asiatic princes stressing superiour power. R.v.F.) princeps & rex unus est, quo presente totum agmen tenetur quo amisso dilabitur (the most telling methaphor lacking him means immedeate decay), migratque ad alios, & sine rege esse non potest Si navis sine nauclero, bellum sine duce, corpus sine anima regi non potest ... Symmetria etiam in civili hac societate necessaria, quae non nisi ex diversitate imperantium & obtemperantium Nam ut ait Pet. Greg. quemadmodum ex diversi tonifidibus ad symmetriam intensis, somus dulcissimus oritur & melodia suavis,

on his mentioning of a pact to form the body politic, not in a later chapter elsewhere[97]. Bothe features, the lack of distinction between the distribution of labour and the allocation of power to govern and his use identity representation, avoid those problems that the language of rights and the development of modern contract theory were meant to solve.

IV

Recent research has emphatized the imperial and conceptual context of the Politica[98]. On the one hand, Althusius supported the Dutch rising and organized Emden's struggle against its counts while suppressing large parts of the unwilling citizenry along the way. His Politica is perhaps the most learned and elaborate account of the concept of pars pro toto representation, combining the framework of sovereingty allocated to the populus with constitutional practise within the Empire. The established practise of the shared administration of government by Emperor and imperial estates were transformed by Althusius into a programme that reflected the aggressive stance of some of the reformed imperial estates. On the one hand, there is ample evidence on the dislike of the antimonarchical reaction for ideas od this kind[99]. They could be used to distinguish

gravibus mediis conjunctis, ita. in Rep. ex imperantium & obedientíum, divitum, pauperum, artificium, sedentariorum & diversum graduum, personarum, consensu & concordia ... & bona harmonia nasci non potest ex chordis unius toni, sic nec Resp. consistere posset, si omnes essent aequales, qui mutuo contenderent sibi obsequi, aut inservire, aut singuli pro arbitio vellent alios regere, & alii recusarent regi: undo discordia, ex qua dissolutio societatis.... Porro constitutio seu pactum, quo corporum consociatorum consensu ab ephoris magistratus summus constituitur, duo habet membra. Prius est de commissione regni administrationis Reip. seu universalis consociationis. Alterum de obsequiorum & obedientiae promissione... 24 Commissione regni est, qua ab ephoris nomine populi seu corporis consociati, regni administratio».

97 Althusius, *Politica*, c XIX, 31, «Populus igitur hic stipulatur, seu interrogat vel administrandi & imperandi mandatum dat per ephorum....».

98 Jürgen Dennert, "Einleitung", idem (ed.), *Beza, Brutus, Hotman,* Wiesbaden 1968, pp. IX-X on Gierke subsuming Althusius under Barclay's term; Scupin, "Althusius und Bodin", p. 301 denying the usefulness of this denomination; Dreitzel, *Absolutismus*, pp. 23-25 cautiously defends it.

99 Burns, *Lordship,* p. 153; Francis Oakley, "On the road from Constanze to 1688: The political thought of John Major and George Buchanan" in: *Natural Law*, quoting contemporary critique of John of Paris and others; J. H. Burns, *The true Law of Kingship. Concepts of Monarchy in Early Modern Scotland;* Oxford 1996, pp 222-53 on the influence of Barclay.

a king from a tyrant that might be resisted[100], both by way of appealing to law as beyond the reach of the supreme magistrate and by any body of men claiming to represent the universitas. On the other hand, his threefold distinction of legitimate violence against higher orders as resistance, self defence and the defence of one's fatherland had become, by 1620, standard repertoire among Reformed and Lutheran authors in Germany alike. Prior to the execution of Charles I, in 1649, Althusius' Politica was a standard account[101].

It is thus crucial to recognize that only from 1649 Althusius became what he was going to become to influential historians like Hans Baron by 1939 - a German opponent to monarchical rule[102]. Althusius was quoted in the aftermath of the Bohemian rebellion, but he was not a radical promoting the fight against "black magistrates" as pious duty like Pierre Viret had done in France. In the Empire, from the 1660s Conring' and Pufendorf's legal empiricism and the reception of Grotius could dispense with Althusius' constitutionalism. Thus, of the later standard text books, only some kept mentioning Althusius[103]. The actual

100 See Dreitzel, Arnisaeus, p. 220 and Mager "Res Publica", p. 267 on Bodin's and Arnisaeus' notions of tyranny.

101 See Robert v. Friedeburg, Welche Wegscheide in die Neuzeit? Widerstandsrecht, "Gemeiner Mann" und konfessioneller Landespatriotismus zwischen "Münster" und "Magdeburg", in Historische Zeitschrift 275 (1999), p. 1-56.

102 Constitutionalism informed by Aristotelianism and monarchy were by no means opposing concepts, e.g. Henry VIII on his relation to parliament (John Guy, *Tudor England*, Oxford 1988, p. 12); on the ambivalence of Richard Hooker's claims (The Works of Richard Hooker, ed. John Keble, New York 1887[7] 1970 repr.) see R.A. Houk, "Introduction", in: idem (ed.), *Hooker's Ecclesiastical Polity Book VIII*, New York 1931, p. 98 claiming that his sixth and eighth Book of Ecclesiastical Polity were only printed in 1648 rather than immedeatly following the first four books, because William Cecil, Baron Burghley, «may have found Hooker too much of a republican for his liking»; J.P. Sommerville, "Richard Hooker, Hadrian Saravia and the advent of the Divine Rights of Kings, *History of Political Thought* 4 (1983), pp. 229-245: Tuck, *Philosophy and Government*, pp. 146-153 on similarities the English Aristotelian John Case. On the process of mutual labelling see Burns, *Lordship*, 153; Peter Lake, "Retrospective: Wentworth's political world in revisionist and post-revisionist perspective", J.F. Merritt (ed.) *The Political World of Thomas Wentworth, Earl of Strafford, 1621-1641*, Cambridge 1996, p. 252-283.

103 See Weber, *Prudentia*. It is, however, dubious whether subjects in rebellion in midcentury middle-Europe did fail to make us of Althusius for this reason. The Politica was probably too learned and voluminous anyway to be of help to them, see. e.g. Herman Rebel, *Peasant Classes. The Bureaucratization of Property and Family Relations under Early Habsurg Absolutism, 1511-1636*, Princeton 1983; not even the most conspiracious rebellion at midcentury, the Swiss Peasant War, did not make use of him.

nature of both his assumpions on representation and on government and their specific reenforcement in the imperial context prove therefore vital to an understanding of the Politica. It included claims that could have been radicalized by later recipients, provided it was dropped - the possibility of a "Franklin-leakage" of intellectual transferal. Therefore, the actual relation between the issue of representation that was going to become increasingly important during the seventeenth century and the legal construction of the body politic, the issue of harmony and the exploitation of a "Franklin-leakage", given substantial evidence was brought forward, remain to this writer fascinating prospects of further research[104]. Even in the event of such a case discovered, however, two equally fascinating questions would have to be faced. Why the Politica should have been used in the first place, and to what extent its concern had to be distorted to mould it into a usable argument. Distortion, however, is at least as good a tool to undestand political thought than any other use of text - provided it is recognizsd as such.

104 See Robert v Friedeburg, From collective representation to the right of individual defence: James Steuart's *Ius Populi Vindicatum* and the use of Johannes Althusius' *Politica* in Restoration Scotland, in: History of European Ideas 24 (1998), S. 19-42. On the importance of Platon and Pythagoras for Bodin's concept of harmony see Goyard-Fabre, *Bodin*, pp. 259-66; on other issues see for different emphases Stolleis, *Öffentliches Recht*, p. 106; Horst Dreitzel, "Neues über Althusius", in: Ius Commune, XVI (1989), pp. 275-302, 276, 287.

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