Polgári Szemle, 20. évf. 1–3. szám, 2024, 112–117., DOI: 10.24307/psz.2024.0810

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The Influence of Calvinism on European Legal Thought and Jurisprudence

Summary

According to Theodor Heuss, the spiritual and cultural unity of Europe is built on three hills, the Acropolis, the Capitol and Golgotha. The Capitolium is one of the foundations of European culture, and one of the pillars of Europe's entity that represents law. The Capitolium, as interpreted by Theodor Heuss, is Roman law. For centuries, the concept of law was understood to mean Roman law, codified and compiled in the Justinian Corpus Iuris in the 6th century AD. The fundamental tenets of Roman law are inseparable from European civilisation. The Calvinist Reformation is inextricably linked to Lutheranism. It should be emphasised that the work of John Calvin, compared with the Lutheran oeuvre, has a greater legal dimension. For Luther is essentially a theologian who considers all legal phenomena as negative. John Calvin, unlike Martin Luther, is a lawyer (iurisperitus, iurisconsultus).

Keywords: Lutheran conception of law and state, Protestantism, John Calvin, jurisprudence

The Impact of Calvinism

The view that the modern law (legal system, ordo iuris) and the modern state (res publica) are very closely related to the Lutheran conception of law, and state can be considered as an undisputed communis opinio. It was Martin Luther who, during the Reformation, in the first half of the 16th century, launched a comprehensive, 'modern' or 'ideological' (The term 'ideology', terminus technicus, comes from Antoine Destutt de Tracy (1754-1836).) struggle

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against centuries-old traditional concepts and views of both law and state. It is worth noting that Luther was the author of the accusations against lawyers in relation to lawyers.

Luther's phrase 'Juristen, böse Christen' (Luther, 1983) is a very specific one, which, even in the 16th century, can be described as 'grossly exaggerated'. In our view, it would of course require a thorough analysis, based on the collaboration of researchers from a number of nations, to determine the current and prior underlying meanings behind this phrase.

The question is whether Martin Luther intended this particular turn of phrase to be an unusually, even unprecedentedly strong criticism of the right to the rule of law, the so-called "Buchstabenrecht" or Literal Law, or perhaps - to use a modern term - the absence of the rule of law ("Rechtsstaatlichkeit" or "Rechtsstaat").

There is no need to emphasise its great relevance for legal history (Roman law) and political science research (it should be stressed that this is not just a matter of the history of science) of the very diverse political (state) institutions of the Republican and Imperial Rome or Roman Empire (Imperium Romanum).[1] In this context, the much-debated institution of the dictatorship, with its extensive and varied sedes materiae and source material, plays a special role.

John Calvin gives a good analysis of the main features of the institution of dictatorship, or more precisely of its institutional system, as it was known in the Roman state (res publica). We can get an idea of the importance of this much debated (and rightly so) Roman public institution in Roman history.

Calvin's ideas are used by the eminent French historian Claude Nicolet, who rightly stresses that the Roman state "does not end with the Romans". In making this statement, he is also keeping the Rousseauian concept in mind. However, he also points out that a large number of Jean-Jacques Rousseau's contemporaries, such as Constantin-François Chasseboeuf de la Giraudais, Comte de Volney, were advocates of a complete and radical departure from the ancient tradition, or even of a complete break from it. This view, this idea, completely rejects the possibility of continuity.

Nicolet stresses that it is primarily the role of the model that makes some of the institutions of classical (Greco-Roman) antiquity interesting and relevant for the modern-day, 21st century researcher. It is in this context that the much-debated institution of dictatorship comes into play. There is, of course, a sharp distinction between classical antiquity and the modern age with regard to dictatorship, as well as libertas, for example. The French historian, following Calvin, (also) points out that the concept of dictatorship in the Roman sense is subject to certain constitutional conditions.

According to the Nobel Prize-winning (1902) Roman jurist Theodor Mommsen, dictatorship in this sense has strong similarities with a kind of "state of exception" ("Ausnahmezustand") in European history after Cromwell's intervention.

It is also important to emphasize, in the context of John Calvin's thought, that from the 18th century onwards (especially after the victory of the French Civil Revolution) dictatorship increasingly became synonymous with despotic, authoritarian rule. Referring to Jean Maurin, the previously cited and mentioned Nicolet stresses the sacral nature of the ancient dictatorship, closely tied to religion, and its role in calming and moderating tensions that threatened to break the state framework (sedandae seditionis causa).

In a brief review of the 'afterlife' of a dictatorship, Claude Nicolet refers to Auguste Comte's theory of political structure, the core element of which is the rejection of a hard copy of British parliamentarism. In his view, the triumvirate, acting as depositary of the executive power (vis or potestas executiva), could exercise power in an essentially dictatorial manner, but without the slightest restriction on freedom of thought. In fact, dictatorship in this sense is more clearly understood in terms of the exercise of power or, in other words, governance.[2]

It is also important to emphasize the importance, and even the topicality, of Roman law in the context of a review of John Calvin's life. Clearly, the possibility of creating legal unity in Europe lies in the application of Roman law, in a 'kind of' 'updating' of it. To mention only a few authors, Sir Paul Gavrilovitch Vinogradoff in the early 20th century, Paul Koschaker in the 1930s and Peter Stein in the 1980s have dealt with this issue in depth.

It is clear Europe is a cultural and spiritual entity. Theodor Heuss rightly claimed that this unity derives from three hills, the Acropolis, the Capitoline and Golgotha. The Capitolium is one of the foundations of European culture, one of the pillars of Europe's entity, representing the law. The Capitolium, as interpreted by Theodor Heuss, is Roman law (ius Romanum or ius civium Romanorum). For centuries, the term law was understood to mean Roman law, codified, or more precisely compiled, in the Justinian Corpus Iuris Civilis in the 6th century AD. The fundamental and immutable principles of Roman law were, and still are, closely and even organically linked to European civilisation in the second decade of the 21st century.

The Calvinist Reformation is inextricably linked to Lutheranism - essentially similar, though not on the same ideological basis. With regard to the work of John Calvin, it must be emphasised that, compared with Luther's indubitably very rich and varied oeuvre, it has a greater legal relevance. For Luther is essentially a theologian who regards all legal phenomena as repugnant, even downright negative.

John Calvin, unlike Martin Luther, is a lawyer (iurisperitus or iurisconsultus) who lacks an authentic theological education. It should be stressed that Martin Luther rejects law to the same extent as he rejects Aristotle's doctrines and metaphysics. His critique of the Church (Ecclesia) is a critique of the institutional Church, the Church built on a legal foundation.

In essence, Calvin revises the Lutheran concept on points that hinder the practical establishment, organization and maintenance of social order. In this sense, Calvinism is not a rejection of Lutheranism. Rather, it is that John Calvin establishes the legal foundations of Lutheranism, of Lutheran doctrine, or rather gives it legal foundation. In analysing the personality of Martin Luther, the founder of the agnostic creed, it is important to note that he thinks and acts in a way that is in keeping with the requirements of his time, both political and social. Luther's reflection is decisively directed against the corruption of the institutionalised Church.

In many respects, Martin Luther bears the typical marks of his German ethnicity. There is no doubt that Luther's ideas 'lived on' in some form, influenced National Socialist Germany. They were 'appropriated' by National Socialist ideology, as Alvarez Gutierrez, among others, refers to in the literature.

It is an attribute, a characteristic feature of Luther's personality that he has no intention of leading a social movement. This is diametrically opposed to the personality of Calvin, who, by virtue of his mere origin and upbringing, was predestined to take a different view from Luther on the Reformation.

The formation of Calvin's views, while he was studying law at the University of Orleans, was significantly influenced by Andreas Alciatus (1492-1550), who was known to be a proponent of Stoic doctrines.[3] Calvin's first work is a commentary on Seneca's De clementia, which in itself shows the great reformer's interest in the works of classical authors. It is no coincidence that the beginnings of a comprehensive reform of a formal nature in the Christian world go back to a lawyer and jurist.

Calvin always insisted on the idea and the requirement of separation of church and state (separatio), and as such did not wish to have any power of a political nature. The main difference between Luther and Calvin is that Calvin's life's work is the organisation of the Church, while Luther considers this a secondary and marginal issue.

Fundamentally, we can distinguish two phases in the history of the Reformation, in its long process of unfolding and development. Evidently, the first phase is the liturgical reform. The second phase is a very complex stage of social transformation. In examining the question of sola Scriptura as a kind of ontology of the Reformation, we must stress that the acceptance of this principle is practically clear with a strong background of the Church's authority.

In fact, the acceptance of the principle of "sola Scriptura" is the common denominator among the various Protestant churches. In a sense, Calvin puts Martin Luther's theology on a legal stance. John Calvin emphasises that the family and the state are God's instruments for preserving and maintaining social order. Unlike the communis opinio, which goes back to Voltaire, who also studied law, Calvin did not intend to establish a theocratic state in Geneva. Indeed, Calvin always respected the so called 'civil' authorities and organisations, irrespective of their particular political orientation. Calvin sees the state as a 'providential instrument' of God.

Ultimately, it is on the basis of this concept that the thesis of Carl Gustav Adolf von Harnack (1851-1930), who gave a series of influential lectures on the essence of Christianity at the University of Berlin in 1899-1900, is based, according to which the concepts of God and history, religion and civilization, faith and reason, and divine truth and human order are essentially identical. The very far-reaching, very serious consequences of this thinking are well known.

Drawing largely on the research of Michel Villey (La formation de la pensée juridique moderne, Paris, 1968), we can conclude that Lutheran political thought planted the seeds of legal positivism in the German *zeitgeist*. Legal positivism is based on religious faith, which leads to the cult of authority. However, our view differs from Villey's in that it would be unfair to place the full responsibility for the consequences of this thinking on the Germans.

Analysing the Calvinist conception of the state, it can be seen that, in diametrical contrast to the Lutheran conception, it is far from a kind of 'deification' of the state. John Calvin, certainly following the doctrines of Augustine and St Augustine, does not identify the state with the 'good' or the 'common good' (bonum or bonum commune). The Calvinist reflections on the Roman legal (public law) foundations of law and the state deserve serious attention. Calvin relates the ius resistendi (right of resistance) to the functioning of the tribunus plebis, on a historical basis.

In our view, the Protestant origins of certain democratic ideas and ideals require additional and in-depth research. Democracy and democratic thinking are clearly most evident in the organisation of the Protestant churches. An analysis of the organisational system of Protestantism is inextricably linked to this theme.

John Calvin saw clearly that, to paraphrase Aristotle, perhaps the most effective means of avoiding the evil forms of power is to create a close relationship, a "symbiosis" between power (and the law that regulates or, more precisely, limits it) and morality. Only in this way can citizens in the future be more than mere subjects (subditi) in any state.

The state without any checks and balances, the so-called 'voracious state' "The "Leviathan" of Thomas Hobbes (1588-1679), who did not live to see the victory of the Glorious Revolution (1689), can only be radically changed in this way and become a state that "only" assumes equality with citizens, an institution based on a social consensus (omonia), with broad legitimacy, in a relationship of partnership and equality with the citizens (*cives*), with a structure and a set of values that are easy to adhere by, and not some mysterious, unknowable, 'secret system' (occultus ordo).

Analysing the very long process of secularisation of Calvinism, we can conclude that it was mainly in 17th century England that a kind of "schism" of thought can be observed, in the sense that the secular and the ecclesiastical are separated. In Richard Hooker's work (The Laws of Ecclesiastical Policy), published at the end of the 16th century, he even identifies the state with the Church. However, there are already signs in this work that the *Church* is dogmatic and the *State* tolerant.

It naturally follows that it is only a matter of time before the two institutions become independent, as they differ in their attributes. An analysis of the fate of Protestantism in England leads to the conclusion that Puritanism can in fact be regarded as an English (Anglican) form of Calvinism in its essence.

Looking at the different manifestations of Protestantism in the various European countries, we can see that even a movement with the same theological basis manifests itself in different ways, and above all with different, often diametrically different political content.

It is therefore advisable, if not desirable, to refrain from making hasty generalisations. Obviously, in European terms, the Dutch development presents a different picture, and the English development a different one. We must also take into account the specific historical development of the Central and Eastern European area (region), in particular Hungary, the Czech Republic (not least Slovakia) and Poland.

In summary, John Locke can be considered the developer of a comprehensive, consistent, coherent theory of state and law, based on the foundations laid by Protestantism, in both state (political) and legal context. John Locke is the thinker who attributes to Protestantism, especially Calvinism, a prominent, even decisive legitimating role in relation to state and law, thus laying the foundations of the modern European state and law (ius) based on religion and faith.

Notes

[1] For a comprehensive overview of the state institutions of ancient Rome and their specificities, see History and Institutions of Roman Law. 27th revised and enlarged edition, Budapest, 2023. pp. 18-26, 32-37 and 46-51.

[2] We find very valuable Johannes Irmscher's reflections on the etymology of the term dictatorship terminus technicus. According to Irmscher, the term dictator ("dictator...ab eo appellatur quia dicitur" - Cicero De rep. 1.63) is based on an autochthonous Roman institution, not on a Greek model. Johannes Irmscher points out that, according to David Cohen, dictatorship is most probably originally a religious office. He criticises George W.F. Hallgarten's view that the Hellenic tyrant and the Roman dictator are substantively identical categories. In fact, Hallgarten takes only external features into account in this comparison and ignores the functional difference. Irmscher also points out that, according to Livy (2.18.4), the introduction of dictatorship dates back to the beginnings of the republic, based on a lex de dictatore creando. However, the existence of this lex de dictatore creando is highly doubtful. Drawing on the research of the eminent Salzburg Roman jurist Wolfgang Waldstein, Irmscher points out that dictatura is most probably rooted in the institution of the magister populi, who is also subordinate to the magister equitum and is an extraordinary magistrate in the event of a serious internal or external threat to the existence of the state. See G. Hamza, Cicero's De re publicá and the ancient philosophy of the state. In: Cicero: The State. (Third, improved impression)

[3] Here we would like to point out that Andreas Alciatus is rightly considered the founder of Humanistic Jurisprudence. His work 'Paradoxa iuris civilis', published in 1518, in which he analysed legal texts using a predominantly philological method, made Andreas Alciatus known throughout Europe. See H. E. Troje, Humanistische Jurisprudenz. Goldbach, 1993. pp. 215-231 and J. Otto: Andreas Alciatus und die klassische Ehe. Diss. See also G. Hamza: Comparative Law and Antiquity within the Framework of Legal Humanism and Natural Law. Budapest, 1998. pp. 27-31.