JURISCONSULTUS PERFECTUS: THE LAWYER AS RENAISSANCE MAN*

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LAWYERS have always had a bad press. Cicero (who should have known) spoke of them as mean and mercenary. Peter the Chanter in the twelfth century denounced their mendacity and treachery.[1] Martin Luther repeated the old proverb, 'Juristen bose Christen'.[2] In the Renaissance the lawyer became a major target of criticism, a stock figure of satire. In the poetry of Guy Coquillart he is Reginald Grab-all (*Regnaud Prens-tout*) or Edward of the well-oiled palm (*Oudard de la main garnie*).[3] In the prose of Rabelais, François Hotman and Noel Du Fail he is a *chicanous*, or *chicanous du merde*.[4] In the polemic of Henry Cornelius Agrippa he is a professional liar and the vainest of all vain pretenders to learning.[5] In an English comedy of the Stuart period he becomes Benjamin Gripe, who changes his name only when he changes his sour and pettifogging ways.[6] 'Ambition, error, ignorance, envy, fraud, and treason'—these were some of the occupational vices that another French poet, Scévole de Saint-Marthe, warned his son against.[7]

Could a lawyer ply his trade without payment, asked a sixteenth-century textbook?[8] Of course not. Could he defend bad causes?[9] Quite possibly; and to many lay observers, such seemed to be his main occupation. In short the lawyer was a sort of Machiavelli of private life, who pandered to, and of course profited from, people's lowest instincts and interests. Reformers, revolutionaries, and reactionaries alike took up the old theme that the world would be far better off without their legal services. As Dick the Butcher suggested to the rebel Jack Cade, 'The first thing we do, let's kill all the lawyers'.[10]

Yet this is obviously not the whole picture. For the Renaissance in particular it represents only one half—the devil's half—of a diptych which reflects the extremes of good and evil. The dignity of lawyers, like that of humanity in general, had a

* This article grew out of lectures given in 1985 at the Folger Shakespeare Library in February and at the Warburg Institute in March, and I dedicate it to the memory of Charles Schmitt.

[1] John Baldwin, 'Critics of the Legal Profession: Peter the Chanter and his Circle', *Proceedings of the Second International Congress of Medieval Canon Law*, Rome 1965, pp. 249–59.

[2] *Table Talk*, tr. T. Tappert, in *Luther's Works*, LIV, Philadelphia 1967; and see R. Stintzing, *Das Sprichwort 'Juristen bose Christen'*, Bonn 1875, and C. Kenny, 'Bonus Jurista, Malus Christa', *Law Quarterly Review*, XIX, 1903, pp. 326ff.

[3] J.-V. Alter, *Les Origines de la satire anti-bourgeoise en France*, Geneva 1966, pp. 166ff.

[4] F. Hotman, *Antitribonian*, Paris 1603, pp. 70, 106; François Rabelais, *Pantagruel*, IV, 12; N. Du Fail, *Contes et discours d'Eutrapel*, in *Œuvres facétieuses*, Paris 1874, p. 263. Cf. R. Marichal, 'Rabelais et la réforme de la justice', *Bibliothèque d'humanisme et renaissance*, XIV, 1952, pp. 176–92, and E. Nardi, *Rabelais e il diritto romano*, Milan 1962.

[5] Agrippa, *De Incertitudine et vanitate scientiarum declamatio invectiva*, ch. 91, n.p. 1531.

[6] *The Honest Lawyer*, by 'S. S.', London 1616; *Short Title Catalogue* 21519.

[7] *Opera latina et gallica*, Paris 1629, p. 112:

> Nostre temps desdaignant telle simplicité,
> Comme estant mieux appris et mieux exercité,
> Au bien d'elles reçoit pour guides de la vie,
> L'ambition, l'erreur, l'ignorance, l'enuie,
> Les fraudes, les trahisons et sur tout donne lieu
> Au damnable mespris de la crainte de Dieu.

[8] Caspar Manzius, *Tractatus Advocatis, Procuratoribus, Defensoribus, Syndicis etc.*, Ingolstadt 1659, p. 20.

[9] R. Delachenal, *Histoire des avocats au Parlement de Paris 1300–1600*, Paris 1885, p. 296.

[10] William Shakespeare, *II Henry VI*, iv, 2.

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glorious as well as a miserable aspect. Francesco Petrarca, law-school drop-out and despiser of the academic study of law, nevertheless placed the ancient jurisconsults among the founding fathers of the humanities.[11] In classical tradition the jurist had been regarded as a 'priest of the laws' (*sacerdos legum*), the very archetype of the wise man; and Renaissance jurists restored this claim along with the study of Roman law.[12] In early modern times the jurists' self-image came to resemble Erasmus's man of faith and erudition or even the heaven-storming chameleon featured in Pico's 'Oration on the Dignity of Man' rather than the low-minded mercenary of popular opinion and literary cliché. The legal profession, too, was exalted. With rhetorical self-indulgence modern jurists began to take up the ancient formula that jurisprudence was *vera philosophia*, true philosophy, and they did not scruple to claim precedence for it over all other disciplines.[13] 'Not content with the glory of being identified with the highest philosophy', wrote Leibniz in 1667, 'jurisprudence is driven to occupy alone the throne of wisdom'.[14]

It so happened that the idealized aspect of the old science of law (*legitima scientia* was the professional formula) was reaching a high point at precisely the time when the new science was emerging as a dominant intellectual force. Leibniz himself was torn between conventional jurisprudence and natural philosophy as the basis for an understanding of man and his world, and his youthful essay on a *New Method of Jurisprudence* offers a way of access into this curious world of pre-scientific thought. For in order to gain a clear view of the Renaissance jurist at his best, we shall have to make him out across the great conceptual divide created by the seventeenth-century revolution of science; and this requires a certain effort of imaginative understanding and reconstruction of a kind of learning which not longer appeals to—since it no longer directly serves—our modern world.

The ruling topos in the idealization of legal science was the 'perfect jurist' (*jurisconsultus perfectus*). Before the 'scientific revolution' the jurist was the very model of the secular intellectual—the 'man of science' who yet held justice above truth, the disinterested observer who was yet committed to the common good, the Platonic philosopher returned to the cave of human conflict. Consider Leibniz's own conception of the 'perfect jurist' (*idea jurisconsulti perfecti* is his phrase).[15] For background Leibniz sketched a brief history of western jurisprudence culminating in the work of the great French scholars the previous century. In particular Leibniz invoked the names of five jurists who had inclined toward the reformed religion as well as the 'reformed jurisprudence': Hotman; his colleagues Hugues Doneau and

[11] M. P. Gilmore, 'The Lawyers and the Church in the Italian Renaissance', *Humanists and Jurists*, Cambridge Mass. 1963.

[12] '... ab aliis sacerdotes ab aliis philosophi sunt appellati, quod philosophiae potentissimam partem ...', in Valla's encyclopedia, *De Expetendis et fugiendis rebus opus*, Venice 1501; but the formula was repeated and discussed in virtually every commentary on Justinian's *Digest*.

[13] Ibid.; and cf. D. R. Kelley, 'Vera Philosophia: the Philosophical Significance of Renaissance Jurisprudence', in *History, Law and the Human Sciences* (hereafter *History etc.)*, London 1984; and cf. William J. Bouwsma, 'Lawyers and Early Modern Culture', *American Historical Review*, LXXVIII, 1973, pp. 303–27.

[14] G. W. Leibniz, *Nova Methodus discendae docendaeque jurisprudentiae*, Frankfurt 1667, p. 233; see also Fritz Sturm, *Das römische Recht in der Sicht von Gottfried Wilhelm Leibniz*, Tübingen 1968, as well as Hans-Peter Schneider, *Justitia Universalis*, Frankfurt 1967.

[15] *Nova Methodus* (as in n. 14), pp. 293, 315.

François Le Douaren; Calvin's former schoolmate François Connan; and Jean Coras, a major legal philosopher, though better known as the judge in the notorious case of Martin Guerre.[16] Leibniz also referred to Valentinus Forster, a younger German alumnus of the French school, whose hagiographical history of civil law down to these contemporary French masters he drew upon.[17]

In his search for a new method Leibniz gave pride of place to universal 'natural law', but he also recognized the value of human 'positive law' as formulated in Roman jurisprudence. This more concrete and conventional legal wisdom he referred to as the *ars hermeneutica*, or hermeneutics.[18] In other words, a generation after Galileo's assertion of the mathematical nature of philosophy and on the verge of making his own contributions to this new natural science, Leibniz was still celebrating human law as a form of wisdom and indeed, in the ancient formula mentioned earlier, as 'true philosophy'. For Leibniz as for medieval jurists civil law was still in a way the embodiment of reason, and indeed was often called 'written reason' (*ratio scripta*) to indicate its superiority to all other legal traditions. This suggests some of the force still retained by jurisprudence after the rise of the 'new science' and the presumed eclipse of scholastic and Renaissance learning.

What was this *jurisconsultus perfectus* celebrated by Leibniz? As the label for a literary genre it was a little less, as a rhetorical topos a little more, than a century old; but as a professional ideal it went back to Roman antiquity, perhaps as far back as Appius Claudius (mid-fifth century B.C.), one of the decemvirs who made a fabled trip to Athens for philosophical counsel, or even further.[19] In the seventeenth century Arthur Duck quoted François Baudouin as 'thanking Providence that Joseph was raised up in Egypt, Daniel in Babylon, Pericles in Athens, and Papinian in Rome to save civil society and the honour of Justice'.[20] Such figures—heroes before Agamemnon—suggested that the toga might sometimes outshine the sword as a social ideal.

In the Renaissance the 'perfect jurist' had to be a 'good Christian' as well as a 'good man'; but the most conspicuous model was classical, and in particular those republican *honoratiores* beginning with Scaevola, who had in effect founded the art of legal interpretation and formed, as Max Weber argued, a kind of ideal type linking the ancient art of law with the modern sciences of society.[21] The intermediary stages were occupied by the law professors created by the Emperor Justinian and their students (known as 'new Justinians'),[22] and later by the medieval glossators and practitioners of 'civil science' (*civilis scientia* being the conventional term for academic jurisprudence).[23] The perfect jurist was thus the product of the medieval university and, more particularly, the descendant of Master Irnerius of Bologna, who (so the story goes) single-handedly raised the study of law from a

[16] See Natalie Z. Davis, *The Return of Martin Guerre*, Cambridge 1983.

[17] *Historia iuris Romani*, Helmstadt 1610; see below, n. 30.

[18] *Nova Methodus* (as in n. 14), p. 338.

[19] The major collection of treatises on the topic is Nicolas Reusner, *ΧΕΙΡΑΓΩΓΙΑ, sive Cynosura iuris*, Speier 1588 (henceforth Reusner); and see below, n. 42.

[20] *De l'usage et de l'autorité du droit civil dans les états des princes chrétiens*, Paris 1689, p. 52.

[21] *Economy and Society*, tr. E. Shils and M. Rheinstein, New York 1968, II, pp. 792–802; and see Paul Koschaker, *Europa und das römische Recht*, Munich 1958.

[22] Justinian, constitution *Omnem*, prefacing *Digest*.

[23] See my three essays on 'Civil Science in the Renaissance', one on Italian and another on French legal and social thought, in *History etc.* (as in n. 13), and a third, subtitled 'The Problem of Interpretation', in Anthony Pagden (ed.), *The Languages of Political Theory in Early Modern Europe*, Cambridge 1987, pp. 57–78.

lowly art to a methodical and professional science which came to be signalled, guaranteed and advertised by an academic degree on the doctor's level. By the thirteenth century, in the words of a contemporary poet,

> Civil law rode richly
> And canon law proudly
> Before all the other arts.[24]

By the sixteenth century some jurists did not hesitate to claim that civil law, not theology (and certainly not medicine), was the true 'queen of sciences'.

What made these 'doctors of law' so pre-eminent? Their rise to academic glory had begun with Justinian's teachers of law. These *antecessores* had been so called, explained Accursius (in one of his many inventive but erroneous etymologies), because they 'anteceded' all others in learning and virtue.[25] Beyond these qualities their medieval successors added a claim to true 'nobility' (*nobilitas ... propter magnam scientiam* is the phrase of Baldus) and indeed, added Pierre Rebuffi, to immortality (*non solum scientia tribuit nobilitatem, sed etiam immortalitatem*).[26] The earliest of the European 'doctors of law', all four of them students of Master Irnerius in the twelfth century, have been (self-)memorialized in another contemporary verse:

> Bulgarus has the golden mouth,
> Martinus in lore ranks high,
> Hugo the very spirit of laws,
> And lastly Jacob, who am I.[27]

(Notice, for future reference, Hugo's epithet, *mens legum*—spirit, mind, or meaning of the laws—a technical term later adapted as the designation for the professional aim and ideal of the 'perfect jurist'.)[28] From these 'four doctors' down to his own day, remarked one sixteenth-century jurist, more law books were produced than in the millennium before Justinian.

After the 'glossators' of the thirteenth century came the more philosophical-minded 'commentators'. These masters of the so-called 'Italian method' found their eponymous hero in the most authoritative of all jurists, Bartolus of Sassoferrato, who became the basis of a still more potent mythology and academic '-ism'. 'Nemo jurista nisi Bartolista' was a proverb in the sixteenth century, and even today it is said that a Spaniard, to boast of his preparation and readiness, might say that he 'has his Bartolus' (*tiene son bartol*).[29] From here the semi-legendary procession of jurists is described in another Latin jingle, this one attributed to Andrea Alciato and adorning the major anthology of treatises devoted to the 'perfect jurisconsult':

[24] Henri d'Andeli, *The Battle of the Seven Arts*, tr. L. Paetow, Berkeley 1914, p. 43:

> La Loi chevaucha richement
> Et Decret orguilleusement
> Sor trestoutes les autres ars.

[25] Accursius, *Digestum vetus*, Paris 1576, *ad titulum.*

[26] Baldus, *Super Digesto veteri*, n.p. 1535, fol. 3^{r}, and Rebuffi, *De Privilegiis scholasticorum Tractatus varii*, Lyons 1581, p. 500. Cf. Andrea Alciato, *Emblemata*, Padua 1626, no. 6, 'Ex literarum studiis immortalitatem acquiri'.

[27] Charles Homer Haskins, *The Renaissance of the Twelfth Century*, Cambridge 1927, p. 201:

> Bulgarus os aureum, Martinus copia legum,
> Mens legum est Ugo, Jacobus id quod ego.

[28] See below, p. 94.

[29] Pierre Legendre, 'La France et Bartole', *Bartolo da Sassoferrato, Studi e documenti per il VI centenario*, Milan 1962, I, p. 135, and Bruno Paradisi in the same volume. Cf. Etienne Pasquier, *Les Recherches de la France*, VIII, xiv, in *Œuvres*, edn Amsterdam 1723, I, p. 787; and Guido Kisch, *Gestalten und Probleme aus Humanismus und Renaissance*, Berlin 1969.

In law first place to Bartolus goes;
Baldus in court pre-eminence shows;
Third Paolo Castro, teacher of note;
Then Alexander's decisions we quote,
Followed by Giason del Maino's light,
And others we cite for books if not right.[30]

This takes us down to the French school of the sixteenth century, founded by this same Alciato, who added the eloquence and erudition of humanism to the professional training of civil science. His students (the *Alciatei*, as one critic called them) have been memorialized in another piece of punning Latin doggerel:

Among the 'François' of law, the leading lights are four:
Of interpreters François Duaren is first in legal lore;
Then François Connan, counsellor whom we esteem;
Third, François Baudouin, Hellenist supreme;
And François Hotman in words the leader of all, some say;
Followed by Baron, Doneau, Dumoulin, Gribaldi, Budé ...[31]

The approach espoused by these masters of the 'French method' was taken up as well by German, Dutch, English and Spanish jurists; and it persisted well into the eighteenth (in a diluted form even into the twentieth) century. The 'perfect jurist' was thus the product and beneficiary of a rich heritage of history, legend and eponymous heroes (or villains), linking classical and modern times and celebrated reverently in Renaissance history, philosophy, literature and, in a large variety of iconographic forms, art.

'Bartolism' has often been derided as a particularly virulent form of scholasticism, particularly by rhetoricians like Lorenzo Valla and members of the French school; but from a less partisan standpoint it appears as a central and shaping feature of Renaissance culture, most especially in political terms. For Bartolus and Baldus displayed not only technical legal expertise in 'both laws' but also the values and aspirations of a new *civilità*, a new political culture based on a commitment to the ideals of citizenship and the 'active life'.[32] As Ernst Kantorowicz pointed out, they also expressed a sort of 'craving after worldly fame' which was more often attributed to the Italian humanists. Referring to the Accursian gloss, 'the dead live

[30] Reusner (as in n. 19), appendix:
In iure primos comparatius caeteris
Partes habebit BARTOLUS,
Decisiones obfrequentes, actio
BALDUM forensis sustinet.
Non negligens maxime est tyronibus
CASTRENSIS explanatio
Opinionem tutius symplegadas
Superabis ALEXANDRO duce:
Ordines IASON atque lucis nomine
Videndum est properantibus.
His si qui alios addiderit interpres,
Onerat, quam honorat, verius.

[31] Ibid.:
Franciscos celebrat consultos Gallia Iuris
Quatuor, et sacri lumina magna fori.
Primus in his claris studiis Duaerenus et arte;
Interpres legum maxime herde fuit.
Alter honore potens Connanus, et ubere censu,
Consilio Francus rexit, et ore forum.
Tertius ingenii Balduinum acumine praestans,
Crecropio nutrit pectora plena sale.
Iure medens quartus latrae facundia lingua,
Tu bonus es studiis dux Hotomanne meis.
At non his cedunt Cuiacius ore ... etc.

[32] See *L'Opera di Baldo*, Perugia 1901, especially the contribution of Iulio Tarducci (pp. 409–66), and Peter Riesenberg, 'Civism and Roman Law in Fourteenth-Century Italian Society', *Explorations in Economic History*, VII, 1969–70, pp. 237–54.

through glory', Kantorowicz commented that 'perhaps this path, too, was first trodden by the jurists'.[33] In recent years there has been much talk of 'civic humanism', especially in the wake of the seminal work by Hans Baron, but very little attention to the contributions of Renaissance jurists like Bartolus and Baldus, who in many ways fit this pattern, since they too championed civic responsibility, republican liberty, and even active resistance to tyranny.

The difference is that their ideological outlook, which might be distinguished as 'civil humanism', was largely independent both of the political 'crisis' described by Baron and of the 'Machiavellian moment' defined by John Pocock; but this hardly justifies the neglect of this perhaps broader and no less enduring tradition. In any case this professional cast of mind was another part (as Machiavellism in either of its guises was not) of the legacy of the 'perfect jurist'.[34] There is another and more direct connection between Renaissance culture and the juridical ideal type still recognized by Leibniz. Significantly, it seems to me, Bartolism emerged at the same time and under the same conditions as the social ideal of the *uomo universale*, the Renaissance man. In this period, from the fourteenth to the seventeenth century, historians have identified a variety of idealizations of manhood (only marginally, alas, of womanhood) which, aspiring to virtuosity as well as to universality, seemed to supersede, or at least to overshadow, sainthood and knighthood.[35]

The most prominent role in the Renaissance theatre of life was surely that of the Prince, especially because of Machiavelli's sensationalist caricature, which came to life on the Elizabethan stage (among other places); but there were other striking incarnations, such as the perfect Courtier, the perfect Diplomat or Orator, the Counsellor, the Historian, the Critic, perhaps the Baconian Man of Science, and even the Compleat Angler (likewise a synthesis of contemplation and effective action, or at least good intentions). It was in this cast of characters that the Perfect Jurist first appeared. On the one hand he had to be an encyclopedic scholar, since jurisprudence included (as one sixteenth-century lawyer wrote) 'the history of human acts, a knowledge of physics or medicine, mathematics and other matters treated by the liberal arts'.[36] On the other hand he claimed to be the fulfilment of that ultimate social type, the 'political man' (*homo politicus*, in the phrase used by Baldus and other commentators), the model of 'civic' as well as 'civil humanism'.[37] He represented the last stage of evolution of that 'political animal' classified by Aristotle and invoked by Renaissance jurists (*animal civile* or *sociale*). 'Furthermore', declared a sixteenth-century scholar, 'truth is to be found in our jurisprudence no less than in philosophy'.[38]

[33] E. Kantorowicz, *The King's Two Bodies*, Princeton 1957, p. 277.

[34] In general the centre of discussion has shifted from Hans Baron, *The Crisis of the Early Italian Renaissance*, Princeton 1966, to J. G. A. Pocock, *The Machiavellian Moment*, Princeton 1976, and a variety of commentators and critics; see also *idem*, 'The Machiavellian Moment Revisited', *Journal of Modern History*, LIII, 1981.

[35] For special versions of Jacob Burckhardt's concept see Lester K. Born, introduction to Erasmus, *Education of a Christian Prince*, New York 1936; Allan H. Gilbert, *Machiavelli's Prince and its Forerunners*, Durham N. C. 1938; Garrett Mattingly, *Renaissance Diplomacy*, New York 1955, ch. 1; D. R. Kelley, 'History as a Calling: The Case of La Popelinière', in *Renaissance Studies in Honor of Hans Baron*, ed. A. Molho and J. Tedeschi, Florence 1971, pp. 773–89; and M. E. Prior, 'Bacon's Man of Science', *Journal of the History of Ideas*, XV, 1954, pp. 348–70.

[36] Antoine Favre, *De Jurisprudentiae Papinianae Scientia ad ordinem institutionum imperialium efformata*, Lyons 1607, preface.

[37] See below, n. 55. 'Homo natura civile animal est' is William of Moerbeke's translation of Aristotle's phrase.

[38] Favre (as in n. 36), p. 10.

This common professional view was reinforced by the growing attraction between the study of law and the newly revived philosophy of Plato—not the private, poetic, occultist Platonism of Ficino but the political Platonism of the *Republic*, which, like Roman legal science, taught that philosophy, founded on the search for justice, was the very foundation of public life and the education of the 'political man'. Even in monarchies like France, England and the Empire, however, the ideal was not the 'philosopher-king'; it was rather the 'philosopher-jurist'. It was the culture of Renaissance humanism, in fact, that completed the formation of the original *jurisconsultus perfectus*. Not only did the 'new jurisprudence' of the French school take humanism as its starting point but it also claimed the law itself as a member of the humanities, and most especially as a branch of moral philosophy. This was the view taken by the French jurist Barthélemy de Chasseneux in his *Catalogue of the Glories of the World*, which was a set of fascinating and encyclopedic, if pedantic and legalistic, variations on the theme of hierarchy. Chasseneux rehearsed the old claims that civil law was a full-fledged 'science' because it proceeded through 'causes' and 'reasons', but he also insisted that the study of law deserved a place in the charmed circle of the liberal arts. Among the worldly 'glories' celebrated by Chasseneux in 1529 the most prominent was this master of two cultures, the *doctor legum*, produced by the convergence between the office of the jurist and the Renaissance ideal of manhood, which Chasseneux illustrated with reference to Pico's 'Oration' as well as the usual freight of legal allegations.[39] Set at the very centre of creation, man nonetheless had the ability to scale the heights of learning and virtue. At birth, Chasseneux wrote, the soul was but a *tabula rasa*, and yet he was 'perfectible' (*perfectibilis*) through science, which brought true 'nobility' and placed man not a little below but actually a little above the angels (who were unfortunately innocent of the 'true philosophy' of jurisprudence). In pursuit of human perfection, he concluded, one could do no better than ascend the ladder of learning through the liberal arts to the heights of civil science, certified and exalted by the degree of doctor of laws. And of these doctors of law, Chasseneux continued, who was the fairest of all? Who stood highest on the ladder of legal learning? Modesty forbade his naming names, but in this part of his book, which amounted to a kind of 'mirror for lawyers', he set down several criteria for interested parties to keep in mind. Of all those holding the LL.D. degree, Chasseneux declared, those are to be preferred who, among other things, 'actively teach', 'who have the higher salary', 'who compile or write books', 'who have seniority', 'who are graduated from the larger, more famous and better regarded university', and 'who have the most degrees' as well as other unnamed honours.[40] Here, then, at the head of the academic procession, decked out in hat, gown and insignia, walks the epitome of the life contemplative and active, the ultimate Renaissance person—the *jurisconsultus summa cum laude*.

[39] *Catalogus gloriae mundi*, Paris 1529, x, 2. And cf. x, 9, 'Tamen etiam scientia seu professio iuris dicitur ars liberalis, aut studium liberale', referring to *Digest*, I, i, 1, on 'vera philosophia', and adding, 'Et in toto corpore iuris vera theologia invenitur et docetur'.

[40] Ibid., x, 25.

In order to narrow still further the focus on 'perfect jurisprudence' we must consider another remarkable phenomenon of modern history, a phenomenon which touches on natural as well as civil science. This is the international and interdisciplinary pursuit of a valid 'method' of study.[41] Probably the most famous pre-Baconian and pre-Cartesian discussion of 'method' was that of Peter Ramus (also mentioned by Leibniz, though disapprovingly), which had a particularly important impact on law. Beyond the vast literature of Ramism there was also a flood of treatises on the best way of learning, teaching and practising law (*methodus, modus, ratio* and *institutio* are a few of the key terms). Out of this methodological pandemonium emerged a new protrepic genre which prescribed the education of the perfect jurist, the handbook for lawyers which, in various languages, might be identified as *Speculum jurisconsultorum, Juristenspiegel, Lunette des avocats, Mirror of Lawyers,* and in general guides to the office of a good advocate or judge. In the sixteenth and seventeenth centuries such treatises are almost beyond numbering. Before 1600 well over a hundred were published, most notably from Nicolas Everardi's *Loci argumentorum legales* of 1516 and Claudius Cantiuncula's *Topica Legalia* of 1520 down at least to C. H. Eckhardt's *Hermeneutica juris* of 1770 (and 1802) and including English as well as Italian, German, French, Spanish, and Dutch entries.[42]

The earliest of these treatises were little more than student guides, exhorting would-be lawyers to methodical study. 'Avoid drunkenness' (*caveat a crapula et ebrietate*), advised Giovanni Battista Caccialupi in the 1460s; choose a teacher carefully, obey him, read the proper books, and learn the best methods of allegation and disputation; for this has always been the way to form a 'new Justinian'.[43] Over a century later Alberico Gentili, regius professor of civil law at Oxford, was giving much the same advice—and warning young men against the pedantry of those literary virtuosi he referred to scornfully as 'the new sect of Alciato' and against the methodological eccentricities of the 'larvae' of Peter Ramus. 'What is a good judge?' Cantiuncula had asked—and answered, nothing more than 'a good man, trained in speaking the law and determining equity, and called to this office by public authority'.[44] Even Jean de Coras, though fully abreast of the 'new learning', placed experience after erudition and integrity in the list of qualifications for a good and perfect judge (*Petit discours des parties et office d'un bon et entier iuge*).[45] In Honoratus

[41] See especially Theodor Vieweg, *Topik und Jurisprudenz*, Munich 1974; Cesare Vasoli, 'La Dialettica umanistica e la metodologia giuridica nel secolo XVI', in *La Formazione storica del diritto moderno in Europa*, I, Florence 1977; Aldo Mazzacane, *Scienza, logica e ideologia nella giurisprudenza tedesca del sec. XVI*, Milan 1971; and various articles by Hans Troje, e.g. in *Tijdschrift voor Rechtsgeschiedenis*, XXXVIII, 1970, pp. 519–63, and in *Der Kommentar in der Renaissance*, ed. A. Buck and O. Herding, Godeberg 1975, pp. 47–61, and 'Wissenschaft und System in der Jurisprudenz des 16. Jahrhunderts', in *Philosophie und Rechtswissenschaft*, ed. J. Bluhdorn and J. Ritter, Frankfurt 1969; also Friedrich Ebrard, 'Über Methoden, Systeme, Dogmen in der Geschichte des Privatrechts', *Zeitschrift für schweizerisches Recht*, LXVIII, 1948, pp. 95–136; George Kalinowski, 'La Logique juridique et son histoire', *Archives de la philosophie du droit*, XXVII, 1982, pp. 275–89; and in general C. Vasoli, *La Dialettica e la retorica dell'umanesimo*, Milan 1968, and Neal Ward Gilbert, *Renaissance Concepts of Method*, New York 1960.

[42] See Helmut Coing (ed.), *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, II, Munich 1977, essential for bibliography and commentary, and especially the section on humanism by Troje (as in n. 41), pp. 724–54.

[43] Gazalupis, *Modus studiendi in utroque iure*, in Sebastian Brant, *Titulorum omnium iuris ... expositiones*, Lyons 1578, p. 434.

[44] *De Officio iudicis libri duo*, Basle 1543, II.

[45] J. de Coras, *Petit discours des parties et office d'un bon et entier iuge*, Lyons 1596. Cf. *De Iuris arte*, Lyon 1560, his commentaries on *Digest*, I, 1, and in general A. London

Draco's versification of the basic textbook of civil law (*Institutiones imperiales in carmen contractae*) the 'office of a judge' was, for mnemonic as well as aesthetic purposes, represented in a jingling poetic form, thus joining Themis, goddess of justice, with the muses in a way hardly imagined by legal humanists.[46] The best and certainly most amusing illustration of the conservative image of the professional lawyer was offered by Alberico Gentili in 1582. With the kind of anti-intellectualism that only intellectuals can summon up, Gentili (whose own children were brought up to be trilingual) denied the value of history and philology and completely rejected the programme of Baudouin and Bodin for combining these with the law. Even Baron and Le Douaren he dismissed as 'scholars rather than jurists' (*sapientes potius quam jurisconsulti*). The old medieval 'doctors of law' were more useful than all the modern 'encyclopedists', Gentili insisted. Modern lawyers had neither time nor use for the erudition of a Varro—or a Cujas. After all, he wrote, 'We can't all do everything' (*non omnia possumus omnes—man kann nicht alles*), and he saw nothing at all wrong with skipping certain passages of the *Digest* with the old motto of philistinism, 'It's all Greek to me' (*Graecum est, non potest legere*).[47] Under the influence of humanism, however, the standards of legal education were raised to a higher and sometimes grandiose level. In the classical anthology of treatises on legal method published by Nicolas Reusner in 1588, two essays were devoted specifically to the 'perfect jurisconsult'.[48] One was an anonymous treatise which dealt mainly with what we might call the 'higher criticism' of the legal canon, based on the resources of modern philology. The other one, by Johann Freigius, discussed the idea of the perfect or polished jurist (*idea jurisconsulti perfecti*, the same phrase that Leibniz would use almost a century later). Freigius's work also contains a fold-out diagram, setting forth in the dichotomies of Ramist logic all of the qualities necessary for the perfect jurist, who is here also styled *homo politicus*.[49] Such a person, endowed with both humanist culture and technical expertise, ought to possess fortune as well as learning, will as well as intellect, and a grasp of law as well as the other arts and sciences; and yet Freigius's emphasis, like that of Chasseneux, is always on the second, more universal attainments.

This portrait is in effect that of the philosopher-magistrate, and it would be copied, redrawn, and touched up by many hands over the next century and more, including those of Antoine Favre in 1607 and of Leibniz sixty years after that—both of them, like Freigius and Ramus, advertising a 'new method' which the perfect jurist ought to employ. In this idealization of the jurist—that 'truth is in our jurisprudence no less than in philosophy'—we can detect a certain Platonic influence. In the seventeenth century John Doderidge's *Lawyer's Light*, for example, was aimed at those who, as he put it, 'covet to contemplate with their inward eye the express and perfect Image of an English lawyer ...'[50] Among the necessary qualities,

Fell, *The Origins of Legislative Sovereignty*, Königstein 1983.

[46] *Elementa iuris civilis seu Institutiones imperiales in Carmen contractae*, Lyons 1551.

[47] *De Iuris interpretibus*, London 1582, fol. 44. Cf. G. Astuti, *Mos italicus e mos gallicus nei dialoghi 'de iuris interpretibus' di Alberico Gentili*, Bologna 1937, and Diego Panizza, *Alberico Gentile, giurista ideologo nell'Inghilterra elisabettiana*, Padua 1981.

[48] Reusner (as in n. 19), 'Pars altera', ('De Jurisconsulto perfecto, et de optimo iuris interpretandi'), no. 21; also no. 36, and see the discussion by H. Troje, *Graeca Leguntur*, Cologne 1971.

[49] Favre (as in n. 36), preface 1607, 'De perfecto Iureconsulto', and adding, 'Bonum Iurisconsultum haereticum esse nullomodo posse'.

[50] J. Doderidge, *The English Lawyer*, London 1631; repr. Amsterdam 1973, p. 1.

Doderidge listed power of memory, eloquence ('neither outworn nor new-fangled' language, he warned) and knowledge of learned jurisprudence, including the continental methodizers like Freigius and Hotman as well as Aristotle, his categories and his four causes, and humanists like Budé, Alciato and Cujas. Within this Latinate and Platonizing enclosure Doderidge hoped to confine the irregular growth of English land law and to enhance somewhat the uncouth image of the common lawyer. Louis Le Caron, an alumnus of the French school and author of a *Digest of French Law*, also invoked the philosophy of Plato when he identified the task of the jurist with the 'office of the philosopher', since it involved the search for and dispensation of justice in accordance with the Idea of the Good, which Le Caron equated rather simplistically with 'public utility'. The true 'mark of sovereignty' was not legislative power, he argued, but rather *haute justice*, and the delegation of this authority, equivalent to the *merum imperium*, to magistrates Le Caron found philosophically as well as politically sound—'very *politique* and in accordance with the view of our Plato'.[51] This was an essential ingredient of that harmonic justice (*eunomia*) which Plato had also envisioned for his Republic.

French legists have normally been associated with absolutism, and yet some of them were hardly less enthusiastic than English common lawyers for judicial power. Contemporaneously with Edward Coke, for example, Etienne Pasquier and his old colleague Antoine Loisel discussed, almost nostalgically, the authority formerly enjoyed by Roman jurists (the *responsa prudentium* which had the force of law down to the time of Justinian); and Pasquier praised the judiciary (*les cours souverains*) as a major source of French law equal in value to the royal ordinances.[52] Loisel endorsed this view by composing, in dialogue form, a history of the French legists from the 'lawyers of the last Capetians' down to the time of Pasquier—after whom, indeed, he named his book.[53] This was another way of celebrating the role, and the role-models, of the perfect jurist. In many ways, however, vernacular jurists—English common lawyers as well as French 'feudists'—were suspicious of efforts to civilize, that is, to classicize and in effect to Romanize, native legal traditions. Consequently the *jurisconsultus perfectus*, in its classic form, remained largely within the tradition of Latin learning, of what German jurists called the *usus modernus Pandectarum*, and on the last stretches of what Ernst Curtius has romantically called 'the crumbling Roman road from the antique to the modern world'.[54]

In general the idea of the perfect jurist was a modern reincarnation of the ancient jurisconsult, formed by a synthesis of the old civil law Italian style and the newer jurisprudence in the French manner. Both schools were devoted to the ancient legal canon, and both were devoted to a model of the 'political man' (*homo politicus*) that transcended Aristotle's 'political animal'.[55] They were thinking not

[51] *Pandectes ou Digestes du droict françois*, Paris 1587, I, p. 3; and see D. R. Kelley, 'Louis Le Caron Philosophe', in *History etc.* (as in n. 13).

[52] *Interprétation des Institutes de Justinian*, ed. M. le duc Pasquier, Paris 1847; *Les Lettres*, Paris 1619, XIX, letters 8–14; and *Divers opuscules*, Paris 1652, pp. 95ff.

[53] *Pasquier, ou Dialogue des avocats du Parlement de Paris*, ed. A. Dupin, Paris 1844.

[54] *European Literature and the Latin Middle Ages*, tr. W. Trask, New York 1953, p. 19.

[55] J. P. Canning, 'A Fourteenth-Century Contribution to the Theory of Citizenship: Political Man and the Problem of Created Citizenship in the Thought of Baldus de Ubaldo', in *Authority and Power*, ed. B. Tierney and P. Laneham, Cambridge 1980, p. 200, and now *The Political Thought of Baldus de Ubaldis*, Cambridge 1987; also Nicolai Rubinstein, 'The Meaning of the Term "Politicus" in Early Modern Europe', in Pagden (as in n. 23), pp. 41–56.

merely of man as 'by nature political' but of the jurist as the expert 'interpreter of law'. Not only in the Latin of Baldus and others in the fourteenth century, but also in sixteenth-century French and English, the 'politique' or 'politicus' was the civil scientist, the paragon of learning and judgement who was the true overseer, arbiter and critic of society and of what by the sixteenth century was already being called 'political science'. It is interesting and relevant to notice that, in the context of the religious and civil strife of the later sixteenth century, this notion of the 'political man' was acquiring very different overtones. In the wake of the massacres of St Bartholomew in particular, the 'politique', or sometimes 'politician', was identified not with the man of law and justice but with the man of unscrupulous ambition—in a word (which was indeed coined as a synonym at just this time, the 1570s) with the 'Machiavellian' or 'Machiavellist'.[56] In a treatise devoted to the doctrine of 'reason of state' Bogislaus Philipp von Chemnitz included among these 'new and especially Italian politiques' (*noviores politici praecipue Italici*) not only Niccolò Machiavelli but also the civil lawyers of the Empire.[57] These are altogether appropriate reminders of the other side of the lawyers' diptych, the darker and devilish image, now further blackened by the association of the proverbial 'bad Christian' with the newer myth of 'Old Nick', as Machiavelli became in English literature and folklore.

The perfect jurist seldom dirtied his hands with politics, but on one central issue he had to take a stand. This was the age-old, politically charged but never satisfactorily resolved question of interpretation—not only the legal dimension of the 'hermeneutical art' treated by Leibniz (which sounds theoretical and harmless enough) but also the question of judicial discretion, authority and even independence. Though forbidden by Justinian, the privilege of *interpretatio* had been restored by his medieval successors, especially Frederick Barbarossa, and granted to the 'doctor of law', alias the *interpres juris*.[58] From being a punishable crime, then, 'interpretation' became an essential and celebrated rubric of civil law; and for centuries the debate has raged between two schools of thought—literal versus liberal construction, or, in medieval and Renaissance terms, 'restrictive' versus 'extensive' interpretation. In general the 'perfect jurist' was master of *interpretatio extensiva*, which is to say revealer (paraphrasing St Paul) not of the deadening letter but of the life-giving 'spirit' of the laws.[59]

Here again we encounter the crucial term applied honorifically by Jacobus to his colleague Hugo and referring more generally to the final interpretive aim of both ancients and moderns. This notion of *mens legum*, the 'spirit of the laws', or *ratio legum*, the 'reason of laws', was also what Leibniz had in mind in his own 'new method' of jurisprudence; and it was pursued even more 'extensively' (as jurists

[56] D. R. Kelley, *The Beginning of Ideology*, Cambridge 1981, pp. 203ff.; and 'Murd'rous Machiavel in France', in *History etc.* (as in n. 13).

[57] *Dissertationes de Ratione Status in Imperio nostro Romano-Germanico*, n.p. 1640, preface.

[58] Johann Oldendorp, *Interpretatio privilegii duplicis, quod Friderichus primus ... concessit bonarum literarum studiosis*, n.p. 1543.

[59] See Vincenzo Piano Mortari, *Richerce sulla interpretazione del diritto nel secolo XVI*, Milan 1956, and his various essays collected in *Diritto, Logica, Metodo nel secolo XVI*, Naples 1978; also and above all Ennio Cortese, *La Norma giuridica*, Milan 1962–64, esp. II, pp. 295–362.

would say) by legal philosophers like Domat, Vico, Montesquieu and perhaps even Hegel, continuing through the tradition of which Max Weber spoke.[60] How can one call up this 'spirit' of the law? Like other contemporary scholars seeking the holy grail of 'method', the advocates of 'perfect jurisprudence' concentrated their efforts first on the rehabilitation of logic, usually in conjunction with rhetoric. Though often vilified, Aristotelianism continued to be important in legal methodology, especially in establishing the connection between law and politics. The key was Aristotle's famous system of four causes, which had been used in this connection ever since the time of the early commentators. Jean Coras explained this application: 'The efficient cause of law, formerly the people, is now the prince', he wrote. 'The formal cause is the extension of the laws from the individuals to society in general ...; the material cause is the interactions among citizens ...; and the final cause is public utility and tranquillity, as expressed in the law [Coras means the Twelve Tables], that "the good of the people must be the supreme law".'[61] In this way Coras legitimized law in terms of its human sources, its demographic coverage, social context and political goals; and so he gave philosophical status and authority to the accumulated texts of legal tradition. In this way, too, Coras raised to a high conceptual and political eminence the guardians of this legal tradition and of the 'spirit of the laws'.

The primary goal of the perfect jurist was always 'interpretation of laws', and such indeed was the subtitle of Vincent Placcius's treatise of 1662, *De Jurisconsulto Perfecto*.[62] Like the classical (though not the Byzantine) jurisconsults, European civilians had to render 'responses' and 'decisions', and on this elementary level their judgements were incontrovertible. Just as an error could never be alleged in the law (as Baldus had repeated), so it was a rule of law that judicial decisions were to be identified with truth itself (*res judicatae sunt veritas*).[63] On the basis of the rubric *res judicatae* ('the first and perhaps only part of law') Pierre Ayrault, another alumnus of the French school, built a novel sort of empirical Digest—a 'Pandects' of legal positivism—which elevated individual judgements, and implicitly the judge, to a law-making as well as a law-finding function. 'For what is a constitution but something taken from many judgements and opinions ...?' he asked, reinforcing in a practical way the Platonic position of Le Caron.[64] 'Experience is the true master' (*usus ille docendi magister*, a formula derived from classical rhetoric), he added, urging that 'in those things which pertain to a particular art, one should have recourse to the experts' (*recurri ad peritos in iis quae ad artem eorum pertinent*).[65]

Modern jurists were faced with the task of organizing their post- and extra-Roman experience, and this produced a flood of treatises on proper scientific, which in general was to say pedagogical, 'method'. Valentinus Forster's handbook on the 'Interpreter', for example, was actually a treatise on the art of interpretation, which summarized the four major kinds of construction—common, extensive,

[60] D. R. Kelley, 'The Prehistory of Sociology: Montesquieu, Vico and the Legal Tradition', in *History etc.* (as in n. 13).

[61] *In titulum Pandectarum de Iustitia et Iure*, Lyons 1568, p. 247.

[62] *De Iurisconsulto perfecto, sive Interpretatione legum in genere*, Hamburg 1693.

[63] *Digest*, L, 17, p. 207, cited, e. g., by R. J. Pothier, *Pandectes de Justinien mises dans un nouvel ordre*, Paris 1823, p. 480.

[64] *Rerum ab omni antiquitate iudicarum Pandectae*, Geneva 1616.

[65] Ibid., p. 84. Cf. Quintilian, *Institutio oratoriae*, I, 1; Pliny, *Historia naturalis*, XXVI, 6; Horace, *Ars poetica*, 71.

restrictive and declarative—as well as the formal 'rules of law'.[66] Forster also discussed the question of equity, 'ethico-political law' and, in opposition to Gentili, the value of history in the interpretation and application of laws. The problem confronted by Forster and many other jurists in this age of methodizing was this: in order to reach perfection jurists had to grasp in a logical way the structure as well as the substance of the law. By analogy with Aristotle's 'natural' categories jurists devised 'legal' ones (*transcendentia legalia, topica legalia*, as they were termed) and produced handbooks of specifically 'legal' dialectic and rhetoric.[67] Jurists of course had their own 'rules' (the *regulae antiqui juris* of the Digest) and their own standards of and ways of arriving at judgement— including 'prejudice' (precedent), 'analogy', and (in a special sense) 'etymology'.[68] In the next century this distinction would lend itself to a veritable war of two methods (if not two cultures), but before the revolution of natural science the civil scientist had already defined his proper sphere as something possibly including, but certainly going beyond, the categories of the natural world. In the sixteenth century a new methodology emerged which held out the prospect of a reform of various branches of knowledge, including the tangled and overgrown old legal tradition.

This was the so-called 'new logic' devised by Rudolph Agricola, Philip Melanchthon, and especially Peter Ramus, as a way of giving concreteness, utility and humanity to the study of dialectic. From the 1540s Ramist method had an extraordinary impact on the study of law. Students were attracted not only by the elaborate, often pretentious schema of Ramus but also by its anti-Aristotelian thrust and, at least implicitly, by its associations with Protestant doctrine.[69] What Ramism offered was a way of ordering material that was not abstractly logical but rather concretely rhetorical—'topical' in a literary and utilitarian sense. It was accommodated to memory rather than reason, to persuasion rather than disputation, and to convention rather than nature. Because of its authoritarian and in a sense anthropological character, Ramism seemed especially well suited to jurisprudence, and above all to the task of modernizing civil law, bringing it into line with humanist learning, and conscripting it into the service of various national states.

A number of later sixteenth-century jurists, including Freigius and Johann Althusius, flirted with this new doctrine and thereby stirred the fires of debate over scientific 'method'. Like many other avant-garde, or at least trendy, intellectual movements before and since, Ramism provoked hostile reactions, especially from professional philosophers and jurists. The height of Parisian fashion, Ramus was, for the later sixteenth century, the successor of Abelard, the ultimate corrupter of youth. One English critic, Abraham Fraunce, sounded the alarm against this upstart theorist and his 'harebrayne' disciples who 'prate of Method that never knew order'.[70] Away with Ramus's bifurcations and back to Aristotle's four causes, Fraunce advised in his *Lawiers Logike* of 1588; forget all those invented 'topics' and get down to the facts, down to cases—which is to say, down to the substance of English law. Fraunce illustrated this substance, amusingly enough, with reference not only to

[66] *Interpres seu de interpretatione juris*, Wittenberg 1613.

[67] Matteo Gribaldi, *De Methodo ac ratione studiendi libri tres*, Lyons 1541, p. 165.

[68] Cantiuncula, *Topica legalia*, Basle 1545; and cf. Guido Kisch, *Claudius Cantiuncula*, Basle 1970.

[69] Classic discussion in R. Stintzing, *Geschichte der deutschen Rechtswissenschaft*, I, Munich 1880, but see n. 41.

[70] A. Fraunce, *The Lawiers Logike*, London 1588, dedication to the lawyers of Gray's Inn.

Plowden's Reports but also to the *Shepherd's Calendar.* In both of these sources—in Collyn's love-sick 'weale and woe' as well as in recorded law suits—one could study the concrete 'causes' of human behaviour. Intellectually and institutionally, English lawyers had more restricted horizons than their continental colleagues and had managed for the most part to avoid contamination from the civil law (except in such subsidiary jurisdictions as chancery and the prerogative courts). For most common lawyers it was enough to have a practical grasp of the texts and trade secrets of their professional guild. William Noy's book *The Compleat Lawyer,* for example, was little more than a catechism of the law of tenures and estates—which, he taught, represented the very beginning of civilization.[71]

Humanists were contemptuous of this insularity and what Henry Spelman deplored as the 'barbarous dialectic' and 'uncouth method' preserved in the Inns of Court.[72] Common lawyers like Fraunce, however, rose to the defence of their nativist and vernacularist cause, arguing that English law, even in the form of that hodge-podge called law-French, was 'sufficiently elegant because it is fully significant'. In these terms it was possible for the English to offer their own portrait of the ideal jurist. One such likeness was drawn by Edward Hake at the end of the sixteenth century. Referring to the English notion of 'equity', Hake remarked that if the king had 'two bodies', the judge had two knowledges, one private and the other judicial; and the latter was the true source of his pre-eminence. Invoking the authority of Melanchthon, Hake went on to identify 'equity' (*epieikeia*) with that same 'spirit of the law' celebrated by the ancient lawyers in contrast to the 'quercks and quiddityes strained from the trewe sense of the law' by later commentators.[73]

For the English, of course, this 'spirit' was to be taken 'owt of the grounds and fountaines' of common law. In the end the English were able to lay claim to perfect jurisprudence by a stratagem, as neat as it was narrow-minded, which simply identified common law with natural law in the sense of the instinctual wisdom of the English people as expressed in its customs. Such was the position taken by Edward Coke and William Dugdale in their efforts to defend their professional monopoly. When Dugdale declared that English law was 'no other than pure and tried reason', he was referring not to the universal reason of Cicero or Bartolus but rather to the empirically tested validity of common law, which had been formed ultimately not by legislation or logic (except perhaps in retrospect) but rather by the intuitions and interpretations of English jurists drawn from a legacy of 'immemorial custom'.[74] In his assertion of judicial authority, of the ability of judges literally to read the 'mind' of the people (who made custom) and the kings (who made statute), Coke went so far as to appropriate a claim formerly reserved for the crown. Not the king's will but the king's judges represented the 'voice of the law'—not *rex* but *judex* was *lex loquens.* Coke did not have to search for the 'perfect jurist', in other words; he had already found this ideal, and it was—himself.

Continental jurists of the seventeenth century took a much less complacent attitude towards legal reason and perfection. One of the most striking things about

[71] W. Noy, *The Compleat Lawyer,* London 1670.

[72] Spelman to his mother (1598), cited in Wilfred R. Prest, *The Inns of Court,* Totowa N. J. 1973, p. 142; cf. Fraunce (as in n. 70), preface.

[73] E. Hake, *Epieikeia,* ed. D. C. Yale, New Haven 1953, p. 34.

[74] W. Dugdale, *Origines Judiciales,* London 1671, III.

civil science in this age was the impulse, going beyond Aristotle and Ramus, towards a philosophical and political system. This was actually an extension of the old professional search for the 'spirit of the laws'. In a sense this modern *esprit de système* was also inherent in the classical tradition, which from at least the time of Cicero had tried to order the social world according to a fundamental trichotomy, consisting of the categories of 'person', 'thing' and 'action'—that is, first and centrally, the free (normally male, adult) *persona*; second, and peripherally to *personalitas*, the 'real' world (*realitas* in the sense not only of *res*, physical things, but also of property and 'real estate'); and finally *actio*, that is, both the interactions of persons competing for possession and the 'actions at law' required to keep, recover or transmit such possessions.

One example of such a system based on the old civilian trichotomy was the encyclopedic work of Grégoire de Toulouse, author of another of the 'methods of law' as well as of an ideal 'Republic'.[75] In his *Syntagma juris universi* Grégoire changed the order, and indeed laid claim to a 'new method' based on nature, by taking up (as God Himself had done) 'things' before 'persons', and by completing his triadic recapitulation of the universe with human actions. Grégoire's 'republic' was not only man- and law-centred; it was in the most fundamental—and consciously anti-Machiavellian and anti-Bodinian—way lawyer-centred. (It might be noted that this secular trinity also corresponds, in a general way, to the still more fundamental anthropocentric categories of Indo-European languages—namely, subject, object, verb; but I refrain here from pursuing further the fascinating subject of what I think of as the metaphysical foundations of social and legal thought, except to suggest one of the ways in which 'perfect jurisprudence' claimed, in modern terms, to constitute wisdom and 'true philosophy'.)[76]

From this brief suggestion of the meta-legal basis of civil science (and the philosophical basis of perfect jurisprudence) it should be apparent that the legal tradition was in many ways at odds with new fashions in natural science. In the long struggle between nature and culture, in other words, the 'perfect jurist' inclined very conspicuously toward the latter—like Charles Lamb perhaps, preferring the man-made hubbub of the city to the tedium and threats of nature. As Hotman wrote in his *Jurisconsult* of 1559, civil law belonged not to 'natural' but to 'moral' (or, as we should say 'social') philosophy.[77] Or as Antoine Favre put it a half-century later in his own portrait of the 'perfect jurist', jurisprudence was the product not fundamentally of physical and quantitative considerations (*non ex sensu solo, ut mathematicis et physicis*, are his words) but rather of a kind of reasoning that is proper only to mankind (*sed ex ratiocinatione: quae cum solius hominis propria sit*).[78] Professional interpreters of the law could hardly expect to remain on the level of pure reason,

[75] Grégoire de Toulouse, *Syntagma iuris universi*, Frankfurt 1591, and *De Republica*, Lyons 1609; cf *De Iuris arte*, Lyons 1580; also Claude Collot, *L'École doctrinale de droit public de Pont-à-Mousson*, Paris 1965, and Luigi Gambino, *Il De Republica di Pierre Grégoire*, Milan 1975.

[76] D. R. Kelley, 'Gaius Noster: Substructures of Western Social Thought', in *History etc.* (as in n. 13).

[77] F. Hotman, *Jurisconsultus, sive de optimo genere iuris interpretandi*, Basle 1559, xi; also in Reusner (as in n. 19).

[78] A. Favre (as in n. 36), *De Jurisprudentia*, 'Lectori meo'.

called upon as they were to make practical judgements about concrete cases. 'For generalities', as Coke remarked, 'never bring anything to a conclusion'.[79] For good or ill, law was at bottom a form of prudence or practical reason (*phronesis*, the Greeks named it), bound irremediably to what Clifford Geertz has called 'local knowledge'; and the 'perfect jurist' could never forget this fact of professional life.

What about the connection between jurisprudence and more purely empirical science? Ostensibly, the procedure of the jurist seems analogous to inductive reasoning, and indeed *interpretatio inductiva* was a recognized form of legal judgement.[80] And of course Bacon himself, trained in the law and a master of rhetoric, celebrated the positive value of English customs above abstract formulas. 'Law originates in fact' (*lex ex facto oritur*) was a civilian maxim often quoted by the English, and so was the acknowledgement that law arose most directly out of particular judicial decisions ('things judged', *res judicatae* in the civilian terms discussed earlier).[81] The analogy between law and empirical science should not be pushed too far. In fact legal 'induction', so-called, was much closer to Aristotelian rhetoric than to Baconian method. Like the Baconian Man of Science, the Perfect Jurist appealed to practical 'experience', but it was to historical experience, or to a legacy of 'precedents', very different from scientific data as commonly understood. Although Bacon's procedure may owe something to his legal training and was tied to 'history' and 'memory', 'legal empiricism' should really be associated not with pure reason, it seems to me, but with the 'logic of probability', which (as Ian Hacking has recently argued) arose just at this time, the mid-seventeenth century.[82] By that time, however, there had long been a connection between judicial logic and probability (which formed, indeed, one of the *topoi* of sixteenth-century legal method).[83]

The best example is once again the work of Leibniz, for whom 'the whole of judicial procedure is just a kind of logic applied to questions of law'. And of this kind of logic, we should again notice, the master was none other than the Perfect Jurist. Yet, inspired by enthusiasm for the new science, many jurists began to claim a more rational and in this sense 'natural' status for their legal tradition. Joining the contemporary 'quest for certainty', they reached out beyond—or tried fundamentally to transform—their own tradition; and increasingly they turned from authority to logical, geometrical and even mathematical models of interpretation. From Coras to Leibniz, emphasizing the analogy between law and geometry was a common way of bringing civil law into line with the values, or rather value-free claims, of natural science. They looked with new eyes on those ancient legal 'rules' which had been glossed conventionally for centuries ('Liberty is a thing beyond price' is one of these *regulae antiqui juris*; 'slavery is death') and indeed proceeded to promote them from their original level of Roman common sense to that of universal

[79] *Les Reports de Edward Coke*, London 1600–15, VII, preface.

[80] Alberico de Rosate, *Tractatus de statutis*, Frankfurt 1608, VIII.

[81] Cortese (as in n. 59), II, p. 150; Luigi Prosdocimi, '"Ius vetus" accursiano e "Ius novum" postaccursiano', *Atti del Convegno internazionale di studi accursiani*, Milan 1968, III, p. 950; and D. R. Kelley, 'Clio and the Lawyers', n. 61, in *History etc.* (as in n. 13).

[82] *The Emergence of Probability*, Cambridge 1975, p. 86; and cf. A. Giuliani, 'The Influence of Rhetoric on the Law of Pleading', *The Juridical Review*, LXII, 1969, pp. 216–51.

[83] Cantiuncula (as in n. 68), VII.

propositions, natural principles and quasi-geometrical 'axioms'.[84] In his effort to arrange 'civil laws in their natural order', Jean Domat placed 'rules of law' at the very beginning of his treatise and virtually identified them with the 'clear and distinct ideas' of Descartes.[85] Domat's colleague Louis Boullenois was even more unabashedly Cartesian in his method. 'I have put aside all that I have read in our [legal] authors', he wrote, 'and I have delivered myself over to meditation'—though, like Descartes and Domat, he then went on to smuggle into his modern social philosophy a large measure of ancient legal convention.[86]

Thomas Hobbes even tried to bring rationality to English law. In his *Dialogue between a Philosopher and a Student of the Common Laws*, Hobbes assailed the 'artificial' and 'dogmatic' reason practised by Coke and affected to reduce it to a 'natural' or 'mathematical' reason that alone promised certitude.[87] For an ordinary pleader 'mere Rhetorick' might suffice, but the office of the perfect jurist demanded a more philosophical view. In this connection Hobbes borrowed the old legal maxim rejecting what he called 'the Grammatical construction of the Letter' in favour of the 'Intention' of the legislator, by which of course he meant its 'reason' in a modern philosophical sense. It hardly needs saying that this 'reason' was to be determined by the sovereign; for Hobbes's naturalism, or jusnaturalism, was placed ultimately in the service of the national state—the 'leviathan'. This was the juridical climate of opinion in which Leibniz created his portrait of the *jurisconsultus perfectus*. Returning to the old Bartolist insistence on law as a hard science, Leibniz gave it a modern twist by associating it with the new philosophy, invoking the names of Galileo, Hobbes, and the 'incomparable' Lord Verulam.[88] Yet his main purpose was still pedagogical. In effect he was still trying to simplify learning along the lines set by Valla, Ramus, and (in the law) Freigius and Althusius. He praised those 'restorers of jurisprudence', Le Douaren, Cujas, Hotman and Doneau, for cutting various 'Gordian knots' of jurisprudence, and contributed to the enterprise himself by rejecting the conventional three-fold division of legal categories, arguing that 'actions' could be classified simply under 'persons' or 'things'. For Leibniz the office of the jurist was threefold: 'historical' (but in the Baconian, in effect unhistorical, sense of learning the substance of the law), 'exegetical' (interpreting the 'real' as well as the 'textual' significance of the law), and 'polemical' (applying the law to particular cases).[89] In carrying out this charge the 'perfect jurist' should avoid all 'philological curiosities and equivocations', all historical, etymological, or philosophical questions, all uncertain or obsolete laws, which might cause confusion

[84] See Peter Stein, *Regulae Juris, From Juristic Rules to Legal Maxims*, Edinburgh 1966.

[85] J. Domat, *Les Lois civiles dans leur ordre naturel*, Luxemburg 1702, I, p. 6. And see Franco Todescan, 'Domat et les sources du droit', *Archives de philosophie du droit*, XXVII, 1980, pp. 55–66, and Giovanni Tarello, 'Sistemazione e ideologia nelle "loix civiles" di Jean Domat', *Materiali per una storia della cultura giuridica*, II, Bologna 1972, pp. 125–65.

[86] L. Boullenois, *Dissertations sur des questions qui naissent de la contrarieté des loix et des coutumes*, Paris 1732, p. xiv.

[87] Ed. J. Cropsey, Chicago 1971, p. 57 etc.

[88] *Nova Methodus* (as in n. 14), p. 329.

[89] Ibid., p. 293: '... *Historicam*, originem, autores, mutationes, abrogationesque Legum enarrantem; *Exegeticam*, ipsos Libros Authenticos [of Justinian] interpretantem; ... *Polemicam* seu controversiariam, casus in Legibus indecisos ex ratione et similitudine definientem'.

and detract from the ideals of ease and simplicity.[90] Instead he should concentrate on reducing the law to logical 'elements', that is, definitions and precepts.

Galileo had made a famous remark about the 'great book of nature', that it could be read only in geometrical and mathematical terms, and for Leibniz this was no less true of human judgement. By analogy with the 'natural theology' of Raimond de Sebonde, Leibniz distinguished a 'natural jurisprudence' likewise free of revelation and authority.[91] Only by reducing all things human and cultural to the common denominator of *Natura* could jurisprudence reach its goal of becoming 'true philosophy'; only by renouncing the role of 'historians' or 'memory-experts' (Galileo's contemptuous epithets) and by turning to the new philosophy could a student of the laws fulfil the ideal of the *jurisconsultus perfectus.* Leibniz hoped to put an end to the classical aim of 'reducing law to an art' and assert its status as a true, and a new, 'science'. In his *New Method of Jurisprudence,* in other words, he had really come not to praise but rather to bury the old values and purposes of humanist learning; and it is hardly going too far to say that the 'perfect jurist' was done in by natural law as Leibniz understood it. The demise of the old ideal was hastened by the political assumptions of the Enlightenment, which prized naturalistic social theory, administrative action and neo-Byzantine 'codification' above judicial 'interpretation', legal remedies and and 'local knowledge'.[92]

Except in the work of a few anti-Cartesian eccentrics like Vico, who rejected the fashionable sort of 'natural law' in social as well as philosophical terms, the Renaissance model of the perfect jurist seemed obsolescent and superseded, or at least overshadowed, by an imperious 'science of legislation', which found expression in an international codification movement, in a variety of revolutionary laws culminating in the Napoleonic Code. Not perfect jurisprudence but perfect legislation was the ideal of Bonapartism, as it had been of Jacobinism; the Emperor would himself be the last Renaissance man. For Napoleon, as for Justinian, the worst fate would be for lawyers and professors to begin the process of 'interpreting' his legislative masterpiece. So indeed, and inevitably, it happened; and Napoleon's Code went through very much the same schools of interpretation—from literal-minded exegesis, to legal 'extension', to philosophical reform—as Justinian's collection had done after its twelfth-century revival.

During the Restoration, and in the company of what has been called the 'conquering Bourgeoisie', the legal profession made a stunning professional revival.[93] What is significant here is that so, in a sense, did the neo-classical image of the ideal jurist. The 'legends' of the great Renaissance scholars, especially Cujas and Dumoulin, were restored; and French law students were told by their teachers that they, too, were 'priests of the law', and that their discipline was the ultimate 'science' of society. But such professional chauvinism sounded rather hollow in an age of

[90] Ibid., pp. 307–8: 'Ommitantur vero curiositates Philologicae, Synonymiae ... Ommitantur denique, quae non tam sunt Quaestiones Juridicae, quam vel Historicae ...; vel Philologicae ...; vel Philosophicae ... Omissis igitur his omnibus nempe (1.) incertis, (2.) abrogatis, (3.) Manifestis, (4.) alienis, mira erit hujus Elementorum Libelli brevitas facilitasque'.

[91] Ibid., p. 294; and see *Dialogue concerning the Two Chief World Systems,* tr. S. Drake, Berkeley 1953, p. 113.

[92] G. Tarello, *Storia della cultura giuridica moderna,* I, Bologna 1976. Cf. D. R. Kelley, 'Vico's Road: From Philology to Jurisprudence and Back', in *History etc.* (as in n. 13); and see now B. A. Haddock, *Vico's Political Thought,* Swansea 1986.

[93] D. R. Kelley, *Historians and the Law in Post-revolutionary France,* Princeton 1984.

industrial expansion, class conflict and threatening, if not continuous, Revolution. Never again, it seems to me, were the lawyers able to assert their former intellectual, moral, social and especially political and constitutional pretensions. Never again could they make a serious claim to a monopoly over human science in a general sense. Never again could civil law ride 'richly ... before all the other arts', or jurisprudence 'occupy alone the throne of wisdom'. The 'true philosophy' of law sustained by Renaissance humanism was eclipsed by naturalistic, or scientistic, models of social science underlying nineteenth-century doctrines of Positivism, Marxism, and the new disciplines of economics and sociology, which were founded on materialist premises, quantitative methods, and universalist aspirations and which did not need licensed custodians of outmoded lore to further their aims. Nor has this attitude toward history changed markedly in much of contemporary jurisprudence or, for that matter, social science.

It may be a bit melodramatic to describe this, as Harold Berman has recently done, as 'the breakdown of the Western legal tradition'.[94] Virtually every age sees itself, and most professions see themselves, in a state of 'crisis', and the law has certainly had its ups and downs. There never was a 'perfect jurisconsult', of course, but then there never was a 'Renaissance man' either (nor even, if we believe certain older historians, a Renaissance). What there was, and what is significant to recall, was a noble dream of human wisdom, which drew its inspiration from a broad view—an anthropo-, nomo-, and logo-centric view—of culture and the human condition and which sought to establish a science of humanity in its own terms. In the longest perspective these reflections on the 'perfect jurist' represent not only an aspect of Renaissance culture and a chapter in the early history of social thought but also an introduction to the story of what Ernest Becker has called 'the lost science of man'—which has seen methods of studying human behaviour as narrow and technical as that professionalized study of law lamented by Renaissance humanists.[95] Historically, the old tradition of jurisprudence, understood in its broadest and most human terms, is as good a place as any to begin looking for this lost science. Like the Renaissance itself it represents a heritage worth examining and points, I like to think, to a road which may be worth exploring—even if it does not lead to 'perfection'.

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[94] H. Berman, *Law and Revolution*, Cambridge Mass. 1983.

[95] E. Becker, *The Lost Science of Man*, New York 1971.