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# Philosophical Reflections of Leibniz on Law, Politics, and the State; Note

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## NOTES

### PHILOSOPHICAL REFLECTIONS OF LEIBNIZ ON LAW, POLITICS, AND THE STATE

It has been claimed and on high authority that "throughout the numerous fields of Leibniz's activity—from mathematics to metaphysics, from geology to engineering, from politics to theology, from physics and chemistry to economics, from history to linguistics—there runs a persuasive inner unity, which must be grasped for a full understanding of his work."<sup>1</sup> It is a persuasive plea, and an understandable one. There is a natural tendency to proceed on the assumption that a great thinker is a consistent one, and hence to proceed to resolve or explain away the glaring contradictions which virtually every thinker, no matter how remarkable, displays, and some of the most renowned in the most striking degree. But the writer of the cited passage may well object that even though such contradictions are to be admitted and indeed insisted upon, the "persuasive inner unity" is another question, as indeed it to some extent is. For such unity may in fact embrace the very contradictions and thus make them reappear in various fields. That there are some red threads which run through most, if not all, of Leibniz's works, there can be no doubt. Harmony, for example, is a recurrent theme, and so is the reconciliation of opposites—to use the Hegelian phrase. Still, it would seem more appropriate to treat this question as an open one, lest one be seduced into speculative constructions for which no adequate basis can be found in Leibniz's own writings.<sup>2</sup>

Law and politics were central concerns of Leibniz. Trained as a jurist, he retained a lifelong interest in the subject of jurisprudence and legal philosophy. As a practical politician, diplomat and statesman, and as the organizer of numerous scholarly and scientific enterprises, he acquired a feel for the world of power and an understanding of government and the state which are reflected in numerous writings and in his correspondence. Yet it would seem that the extraordinary imaginative originality which characterizes his work as a metaphysician and mathematician is lacking in the field with which we here are concerned. Recurrent claims to the contrary have not succeeded in establishing Leibniz as a thinker of the first rank on law and politics; no basically novel insight can be attributed to him.<sup>3</sup>

<sup>1</sup> GOTTFRIED WILHELM VON LEIBNIZ, *MONADOLGY AND OTHER PHILOSOPHICAL ESSAYS* intro. ix (ed. Paul and Anne Martin Schrecker, 1965).

<sup>2</sup> Leibniz's writings are still to a considerable extent unpublished; the great *Akademieausgabe* is progressing at a snail's pace. In the meantime, the well-known selections and editions by Dutens, Erdmann, Klopp, Gerhardt, *et al.*, remain our primary reference material; cf. the helpful note in the introduction cited in note 1. Cf. also EMILE RAVIER, *BIBLIOGRAPHIE DES OEUVRES DE LEIBNIZ* (1937).

<sup>3</sup> The most carefully documented claim on behalf of Leibniz's originality as a political theorist (*Staatslehre*) was advanced by ERWIN RUCK, *DIE LEIBNIZISCHE STAATSIDEE AUS*

For the political theorist, it is an interesting question what significance Leibniz's activities in the practical realm may have for an interpretation of his political philosophy. Not only his concern for the reunion of the several faiths—an interest he shared with Grotius and many other philosophical spirits of his century—suggests this, but more particularly his secret negotiations with the French which were intended to induce the latter to attack Egypt and thereby to deflect their own aggressiveness, while at the same time forcing the Turks to defend themselves in Egypt and therefore to desist from further attacks upon Austria and the *Reich*.<sup>4</sup> The fact that the scheme failed does not of course mean that it does not reveal Leibniz's way of thinking about politics. For clearly such a scheme involves both reason of state and balance of power reasoning. In his *Raisons touchant la guerre ou l'accomodement avec la France*<sup>5</sup> Leibniz reveals himself even more clearly as a subtle politician, weighing the various interests, and, as his learned editor rightly comments, "in each new formulation Leibniz's argumentation presents more clearly and logically the necessity of an agreement and understanding with the French in order to free the rear for a fight against the Turks."<sup>6</sup> In his satirical comment on French policy entitled *Mars Christianissimus* (1683) Leibniz makes it quite clear that most men have "the habit of regarding their particular interest rather than the public good, and the present rather than the future"<sup>7</sup>—a fairly realistic estimate of man's political behavior, but not exactly original.

Why then, it may be asked, should time be spent on this subject, even on an anniversary date? I believe there are two good and sufficient answers to this question. On the one hand, significant light falls upon some of the more obscure points in his metaphysics, if his political and jurisprudential views are taken into account. And on the other hand, his views, while not entirely novel, are yet highly interesting in themselves because of the central importance of the political dimension in the history of philosophy.<sup>8</sup> Virtually every major philosopher was first and foremost a political philosopher, a mind stirred to its depth by the particular crisis in the political order to which he belonged, and preoccupied with the question how to find a lasting solution to the disorder around him. Plato, Aristotle, Thomas Aquinas, Hobbes, Kant, and Hegel provide especially striking instances of this general phenomenon; the few seeming exceptions, such as Descartes, reveal themselves upon closer inspection to have

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DEN QUELLEN DARGESTELLT (Tübingen, 1909); it is a very helpful study, even though its claims cannot be accepted, because they are based on an inadequate familiarity with other writings and the tradition Leibniz followed. On p. 15, fn. 32, Ruck cites several older German works which advanced comparable arguments in the field of legal theory and philosophy. Recent histories of legal philosophy, such as ALFRED VERDROSS, *ABENDLAENDISCHE RECHTSPHILOSOPHIE* (1958), have not argued that Leibniz's views were highly original. Cf. also my *THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE* 115ff. (Chicago, 2nd ed., 1963).

<sup>4</sup> *CONSILIUM AEGYPTIACUM, AKADEMIEAUSGABE IV, 2*, pp. 215ff.

<sup>5</sup> *Id.* at 503ff.

<sup>6</sup> *Id.* at xxiii.

<sup>7</sup> *Id.* at 471.

<sup>8</sup> Cf. the work just cited at end of note 3 and a forthcoming study on philosophy and politics in the series *ERFAHRUNG UND DENKEN*.

been no less concerned than the rest.<sup>9</sup> It is the crisis in politics which provides the *Mutterboden* for fundamental speculation upon the nature of man and cosmic order.

The crisis of politics around which Leibniz's thought revolves and which it seeks to resolve is the religious breach and the wars of religion consequent upon it. As he grew up in the Germany devastated by the Thirty Years' War—he was born in 1646—he came to see and appreciate the dependency of all human culture and achievement upon the maintenance of political order. His earliest writings testify to it, and it remains a central theme throughout his later works. Like Grotius and others before him, he was deeply convinced of the unity of what mattered to Christians in the message of the Redeemer. Indeed, he went at one time very far in meeting the Catholic position,<sup>10</sup> and his correspondence reverberates with ever-renewed efforts at discovering the common ground between Catholics and Protestants, as did indeed his diplomatic activity extended over many years.<sup>11</sup> To “harmonize” the divergent viewpoints was his great goal.

It is in keeping with this outlook, when Leibniz expounds the vision of an ideal city, the City of God, which is medieval in conception and design. It is a true “theocracy” in which God as benevolent, just, and wise monarch rules over all the spirits—the higher monads who people the world. “All the spirits form together a kind of state under God,” we read at one point, and at another: “*Mundus non tantum est machina maxime admirabilis, sed etiam, quatenus constat ex mentibus, est optima respublica.*”<sup>12</sup> But He does not rule without restraint; not His will, but His reason determines this rule. His reason is oriented in terms of an eternal law of nature which binds God more absolutely than it binds man. Before turning to a more detailed exploration of this law of nature, let us remember that this City of God is essentially the same as that envisioned by the great Spanish neo-Thomists, if not by Thomas Aquinas himself. It is a vision which deeply influenced Grotius, whose close student Leibniz had been. It is medieval rationalism in its unitary radicalism. It is indeed part of the *philosophia perennis* which Leibniz acknowledged as his own.<sup>13</sup>

*The Natural Law.*—Leibniz's natural law doctrine is placed within the general framework of his metaphysics. All ethics, and hence all human society, are seen as expressive of this metaphysically based natural law. The laws of nature and

<sup>9</sup> Raymond Polin, *Descartes et la philosophie politique*, in *MÉLANGES ALEXANDRE KOYRÉ* (1965) vol. 1, *L'AVENTURE DE L'ESPRIT*, pp. 381-399.

<sup>10</sup> Cf. LEIBNIZ, *THEOLOGISCHES SYSTEM*, written presumably in 1683-84, but published only in 1819.

<sup>11</sup> KUNO FISCHER, 2 *GESCHICHTE DER NEUEREN PHILOSOPHIE* 10ff.; Paul Ritter, *Leibniz und die deutsche Kultur*, 81 *ZEITSCHRIFT DES HISTORISCHEN VEREINS FÜR NIEDERSACHSEN* 165ff. (1916).

<sup>12</sup> “The world is not only a machine which is admirable above all, but, to the extent it consists of minds, is the best *respublica*.” *PRINCIPES DE LA NATURE ET DE LA GRACE* para. 15; *NOUVEAUX ESSAIS SUR L'ENTENDEMENT HUMAIN* iv, para. 27. Since the monadology has been treated extensively by others, no attempt is made here to elaborate; cf. for a competent review, HERBERT WILSON CARR, *LEIBNIZ* (1929), as well as the classic treatment by ERNST CASSIRER, *LEIBNIZ' SYSTEM IN SEINEN WISSENSCHAFTLICHEN GRUNDLAGEN* (1902).

<sup>13</sup> Cf. the illuminating preface by Gerhard Krueger to his edition of *DIE HAUPTWERKE* (3rd ed., 1949).

natural law merge, as they did in scholastic thought, determining the life and evolution of all the monads. Each monad reflects the entire world with all the other monads, though in different degrees of clarity and succinctness, whereby a universal harmony of all being is "preestablished." The law of nature is a system of eternal norms toward which the cosmos and its component parts, the monads, are striving; the desire for perfection is inbuilt. The preestablished harmony is a consequence of the reason which permeates the entire world and which is in fact the reason of God. Hence Leibniz can say that the law of nature is based upon the eternal idea of justice and can be derived from it both logically and deductively.<sup>14</sup>

There exists a schema in his early writings for this deductive natural law which recurs with slight variations through a number of later works. In *Nova methodus . . . jurisprudentiae* (1668), Leibniz describes the law of nature as operative on three levels, based upon three principles. First, there is *jus strictum*, governing the state of nature, and oriented toward the principle of *neminem laedere*. Second, we find *aequitas* prevailing in the social state and directed by the principle of *sum cuique tribuere*. Third, there is the level of *pietas*, the higher, religiously determined life which is oriented toward the principle of *honeste vivere*. It is evident that this way of structuring the law of nature is in line with a long tradition of Christian natural law; derived from the basic principles of Roman natural law doctrine, as expounded in the *Institutes*, 1.1, it embodies a summary of Stoic teaching, as everyone knows. Unfortunately, Leibniz does not elaborate what are the consequences of this schema for the philosophy of law. What he has to say seems to stay within the confines of the conventional.

To elucidate, let us briefly speak of his criticism of a highly original contemporary. It would seem that Leibniz's well-known comment on Pufendorf that he is *vir parum jurisconsultus, sed minime philosophus* reveals to some extent his own shortcoming. He was so much opposed to Pufendorf's approach that he could not appreciate the latter's striking originality. Perhaps it is going too far to say that he considered Pufendorf "an imaginative man, second rate, who did what Grotius had left, unphilosophical, a mere clever jurist, without originality, an industrious systematizer and collector of historical facts."<sup>15</sup> The effort to synthesize the teachings of Grotius and Hobbes is as characteristic of Leibniz as of Pufendorf; the difference between the two lies in Leibniz's preference for Grotius, as contrasted with Pufendorf's preference for Hobbes. In Leibniz's *Monita quaedam ad Samuelis Pufendorfii Principia* it becomes very clear that the central objection is a metaphysical one.<sup>16</sup> Leibniz retains the scholastic dimension of speculative philosophy which both Hobbes and Pufendorf radically rejected. Thus in his *Discours de Metaphysique* he explicitly acknowledged

<sup>14</sup> "*Doctrina juris ex earum numero est, quae non ab experimentis, sed definitionibus, nec a sensuum, sed rationis demonstrationibus pendent, et sunt ita dicam juris, non facti.*" *AKADEMIEAUSGABE*, VI (1930), p. 460. Cf. also *Causa Dei*, an appendix to the *THEODICÉE*, as given in Schrecker, *op. cit. supra* note 1, at 114ff.

<sup>15</sup> ERIK WOLF, 1 *GROSSE RECHTSDENKER DER DEUTSCHEN GEISTESGESCHICHTE* 289 (2nd ed., 1944).

<sup>16</sup> *MONITA QUAEDAM AD S. PUFFENDORFII PRINCIPIA* (1703), in *OPERA OMNIA* (Geneva, 1768), ed. L. Dutens vol. IV, 3, 275ff.

that he was undertaking "to reinstate the old philosophy"; he did it by reintroducing the "substantial forms"—but a discussion of this problem would lead us too far afield. Suffice it to point out that Leibniz with the above-cited harsh judgment probably wished to say something a bit different from what a modern is likely to think, if he reads *philosophus*=philosopher. In the days of Leibniz and Newton a *philosophus* was someone who was deeply concerned with the new natural philosophy and more especially its mathematical dimension—and that Pufendorf was assuredly not. For the rest, Pufendorf was an ardent secularist, whereas Leibniz remained attached to the great tradition of the *philosophia perennis*.

After this brief excursion, we can return to a more detailed examination of Leibniz's discussion of the Roman triad. The *jus strictum* appears to be the law of the strictly private sphere, concerned with maintaining peace among equals. It *nascitur ex principio servandi pacis*, but not the public peace; it is simply a prohibition of war and aggression and leaves its addressees otherwise completely free. It is clear that there is an obvious link here to Hobbes and his notion of the operation of the law of nature in the state of nature. On the next level, that of *aequitas*, we are moving into the social state where not merely peace, but happiness, is the end of the law. That is why it can be correlated with the recognition of the other man's welfare: *cunctis prodesse, quantum cuique convenit aut quantum quisque meretur*. These objectives cannot be achieved without allowance being made for communal interests. It is not merely a matter of prohibiting aggression and thus protecting the individual's sphere of activity, but directing positive steps for the promotion of human welfare. These two levels of *jus strictum* and of *aequitas* are, by Leibniz, said also to be the spheres of *justitia commutativa* and *justitia distributiva*, respectively. It would seem that there is no sufficient reason for such an assignment. The familiar doctrine of Aristotle, somewhat distorted by the Latin translation of *diorthotikon* as "commutative"—the meaning being more nearly "corrective"—is here rather arbitrarily further distorted by restricting each branch of justice to one level of jural problems.<sup>17</sup>

The highest level of law is that in which *pietas* and *probitas* are the focal point. In the full sense, this level is achieved only in the city of God, and only the universal justice of God can be said to satisfy it. For the principle of *honeste vivere* calls for the pious, really the saintly, life. *Pietas* constitutes the perfection of what was aimed at by the strict law and by equity. As one commentator has rather dramatically put it: "individual advantage and utility become identical with the general welfare so that all that is ethical becomes useful, and all that is useful becomes ethical."<sup>18</sup> It is evident that we are no longer dealing with law in any ordinary understanding, but with its transcendent reflection in

<sup>17</sup> RUCK, *op. cit. supra* note 3, at 16-17, gives a somewhat distorted summary, due to his inclination to impute to Leibniz the "anticipation" of favored views of his time. The basic statement of Leibniz is found in NOVA METHODUS DOCENDAE DISCENDAEQUE JURISPRUDENTIAE (1668) II, paras. 72ff. (Dutens ed. IV, 3, 212ff.); later confirmations in many places, notably DE NOTIONIBUS JURIS ET JUSTITIAE (1693), and MONITA QUaedam AD S. PUFFENDORFII PRINCIPIA. Dutens, IV, 3, pp. 275ff.

<sup>18</sup> RUCK, *op. cit. supra* note 3, at 17.

a divine justice. No wonder that Leibniz sees natural law in terms of changeless standards of morals which possess the character of eternal truths, as Ernst Cassirer put it.<sup>19</sup> It follows logically that the natural law is not an expression of will, but of reason, as already pointed out. Its norms are not enforced by an outside agency, but are inherent in the divine being. Divine justice is *bonitas conjuncta cum sapientia*. This is the Thomistic vision of a rational God, and hence "*ces lois, ce juge ne contraignent point: ils sont plus forts, car ils persuadent.*"<sup>20</sup> And he adds that wisdom does nothing but show God the best use of His goodness. In the spirit of scholasticism—as indeed of Suarez and Grotius—Leibniz declares that God cannot do what is contrary to reason: "*... je tiens que Dieu ne saurait agir ... par une volonté indépendante de motifs raisonnables.*"<sup>21</sup> This seems reasonable enough if the city of God is envisioned, as it is by Leibniz, as a universal order in which the supreme monad presides over all those monads who as rational souls seek perfection in obedience to His precepts.

*The Problem of Freedom.*—At this point, the question can no longer be gain-said: is God, is man free? This question occupies a central place in Leibniz's thought on law and politics. To be sure, Leibniz himself says, at one point in the *Theodicée*, that lawyers and political scientists have little reason to concern themselves with the metaphysical problem of freedom.<sup>22</sup> But actually his views on all three topics of our present inquiry are informed by his metaphysics of freedom, which is itself directly derived from the doctrines of the monad and of pre-established harmony; and indeed these doctrines are presumably at least in part developed by Leibniz, in order to provide for a sphere of freedom in a divinely ordained and predetermined universe. This inner necessity must not be misunderstood as the Stoics and the Mohammedans have misunderstood it, namely as a *Fatum Stoicism* or even as *Fatum Mahumetanum* (*sic!*), but must be seen as a *Fatum Christianum* which Leibniz summarizes thus: "Do your duty and be content with what shall come of it . . . because you have to do with a good master."<sup>23</sup> What Leibniz is putting forward is the distinction between two distinct realms as it was later elaborated by Kant. Already in his *Discours de Metaphysique* he had explored this issue in application to Julius Caesar; the fact that he crossed the Rubicon and destroyed the republic (Leibniz rightly speaks of a "successful revolution") is capable of being interpreted in terms of Caesar's nature; "Caesar's eventual dictatorship has its basis in his being or nature from which it can be shown that he was to do what he did." But this does not prove that the opposite would contain an inherent contradiction. It is a sequence which God has freely

<sup>19</sup> Ernst Cassirer, in his article on Leibniz for the *ENCYCLOPEDIA OF THE SOCIAL SCIENCES* (1933); cf. also his magistral study *op. cit. supra* note 12.

<sup>20</sup> "These laws, this judge do not constrain; they are stronger, for they persuade." *THEODICÉE, Essais sur la Bonté de Dieu, La Liberté de l'homme, et l'origine du mal* bk. II, para. 121.

<sup>21</sup> "I hold that God cannot act . . . by a will independent of reasonable motives." *Id.* at para. 124, and bk. III, para. 283.

<sup>22</sup> Even so, Leibniz demonstrates pretty clearly that he considers the issue relevant, since it turns up in his own strictly legal and political writings, e.g., those given in note 13, *supra*.

<sup>23</sup> *THEODICÉE* preface.

chosen, Leibniz says, because it was the best; and hence "man, though in freedom, will always do that which will turn out to be the best." This kind of truth is accidental, though certain, from which proposition Leibniz concludes that what "leads to rejecting an alternative course of action is not its impossibility, but its imperfection."<sup>24</sup> The only explanation for this kind of human freedom is to be found in what Leibniz calls the spontaneity of rational souls: each monad develops in accordance with this inner spontaneity, this "law of freedom," which propels it toward self-preservation. But how do they achieve coordination with each other and with God? By way of the preestablished harmony which results from the fact that all the monads represent the entire universe, as we said before. There exists within us "a wonderful spontaneity which makes the soul in its resolves independent of the physical influence of all other creatures."<sup>25</sup> Leibniz does not hesitate to see these spontaneous human beings responding to a moral need for perfection, as in a sense God's playthings: "God in a way plays with these little gods whom he has found it good to create." Thus, "Man is there like a little god in his own world, or microcosm, which he governs after his own fashion." Man does wonders, but he also makes big mistakes, because he follows his passions which God has allowed him.<sup>26</sup> These metaphysical speculations are, however, by no means the only thing Leibniz has to say on the subject of freedom. Apart from his preference for a constitutional order of a "government by and with estates" (*Staendestaat*), to which we shall presently return, Leibniz, unlike many of his contemporaries, expressed satisfaction with "German liberty." "Is not the large number of princely courts a wonderful means," he wrote, "by which many people can distinguish themselves who otherwise would have to lie in the dust?" He contrasts this German liberty with the system of absolutism in which "one absolute head" allows but a few to participate in government "by whose grace the rest must live," as he puts it. Nor would he admit that within these German principalities freedom was limited. He feels that it is going too far to say that German liberty affects only a few; for there are many baronial houses, besides the ruling princes, who are only inferior in power, not in freedom. "Where," Leibniz asks, "is the nobility more select or happier than in Germany?" Finally, there are the many free cities, which he feels flourish in trade, credit, good order, and welfare; proudly he cites the opinions of Machiavelli and Boccacini in support of his contention.<sup>27</sup>

*Patriotism.*—These views are part of Leibniz's general approbation of and indeed advocacy of patriotism. It is a curious political extension of his religious feeling and ardor on behalf of the love of God. He begins one of his pamphlets, primarily devoted to urging Germans to use the German language in science and philosophy—a view in which he probably was reinforced by his sojourns in France and England—by these statements: "It is certain that next to the honor of God

<sup>24</sup> DISCOURS DE METAPHYSIQUE para. 13.

<sup>25</sup> THEODICÉE bk. I, para. 59. It seems unnecessary to explore further this rather familiar aspect of Leibniz's work.

<sup>26</sup> THEODICÉE bk II, para. 147.

<sup>27</sup> *Ermahnung an die Deutschen*, in LEIBNIZ, 1 DEUTSCHE SCHRIFTEN 7 (ed. Walter Schmied-Kowarzik, 1916). The introduction by the editor is a good specimen of nationalist distortion of Leibniz's thought, stimulated, no doubt, by the emotionalism of World War I.



every virtuous man will mind most the well-being and the glory of his fatherland. . . . The bond of language, customs, yes even that of a common name unites men in a very strong, even though invisible fashion and makes them relatives in a way. . . ." "Hence," Leibniz argues, "the love of one's fatherland is not founded upon the prejudices of simple-minded folk, but on true wisdom, reinforced by the obligation which God and men impose upon us. . . ." <sup>28</sup>

Leibniz was greatly and recurrently concerned with Germany's helplessness in the face of foreign aggression. Thus we read that in his opinion "daily experience" proves that Germany, i.e., the Roman Empire, is by no means as secure and prosperous as it could be and ought to be. After reciting various other sources of weakness, economic, cultural, and moral, all of which he considers serious, but not fatal, he says: "What may destroy our Republic quite suddenly, is a war, either internal or external; for against this we are quite blind, sleepy, wide-open, divided, unarmed, and hence necessarily either the prey of the enemy, or, since we are no match for him by ourselves, the prey of our protector." <sup>29</sup> This could be written today.

It would be a great mistake, though, to understand these sentiments of Leibniz in the sense of a narrow nationalism, as has unfortunately been the case in Germany. <sup>30</sup> For Leibniz, the ardent pluralist, readily combines such love of home and fatherland with a firm belief in the unity of mankind. Indeed, unlike most writers of his time, Leibniz retains a conviction in the viability and utility of the empire. In view of his belief in a City of God this can hardly surprise us. He put this belief perhaps most strongly in the pamphlet dealing with the problem of diplomatic representation of the German princes, *Caesarini Fuerstenerii Tractatus* (1669), where he says flatly that all of Christianity composes one single Republic, and argues that this is by no means paradoxical, but a sound proposition. This single republic has two heads, the pope in spiritual matters, and the German emperor in secular matters; both are vicars of Christ on earth. Leibniz is, however, of the opinion that there should also exist a "permanent council" or at least a senate which the council elects for the periods when it is not sitting. <sup>31</sup> Indeed he goes so far as to express the belief that the decisions of these vicars are enforceable. It is noteworthy, that he should have retained the doctrine of the two swords, as modified by the conciliarist position, in the face of the practical destruction of even the remnants of this system by the Treaty of Westphalia (1648). It was a dream that was slow in dying; only toward the very end of his life did Leibniz completely abandon this notion of a universal order under

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *SECURITAS PUBLICA* (1670), *AKADEMIEAUSGABE*, IV, 1 pp. 133-4.

<sup>30</sup> Cf. the introduction cited *supra* note 27, where much is said about Leibniz's "voelkische Gesinnung." He is even claimed to be the "*Vater deutscher Weltanschauung und Bildung*," although he surely was a representative as much of *Weltbuergerium* as of *Nationalstaat*, to employ the categories made familiar by Friedrich Meinecke's celebrated study. How simple and indeed primitive Leibniz's patriotic sentiment often manifested itself can be seen from a poem with which Leibniz welcomed a collection of contemporary German poetry and which culminated in the touching lines: "*Was lobt man viel die Griechen? Sie sollen sich verkriechen, Wenn sich die deutsche Muse regt . . .*" (*op. cit. supra* note 27, at 73).

<sup>31</sup> *CAESARINI FUERSTENERII TRACTATUS DE JURE SUPREMATUS* ch. XXXI and XXXII, in *DIE WERKE VON LEIBNIZ* (Hanover, 1864-84), ed. O. Klopp, vol. IV, pp. 132ff.

emperor and pope. Instead, the *respublica* which increasingly occupies his attention is the monarchical modern state, but never as the *Machtstaat* of Hobbes and his followers, but always as the *Rechtsstaat* of the English and German tradition—a constitutional order based upon the preeminence of law.

*Conception of State and Government.*—It is artificial and anachronistic to impute to Leibniz a clear distinction between a political (sociological) and a juristic conception of the state. To be sure, in line with his inclination to distinguish between the realm of natural necessity and the realm of spiritual freedom, such a distinction might appear logical. But Leibniz was much too deeply involved in the realities of practical politics and much too aware of the interdependence of the actual operations and legal norms to have considered such a distinction important. For Leibniz the state as a reality of the human dimension is necessarily a part of the world of the spirits that the human monads inhabit.<sup>32</sup> A political community (*civitas*) is "*coetus hominum satis magnus ad spem defensionis mutuae contra vim magnam, qualis metui solet, animo cohabitandi, certa quadam rerum communium administratione constituta, initus.*"<sup>33</sup> Are we entitled to render *civitas* as "state"? Or is it not rather a body of citizens, a city in the ancient sense? Only when the *administratio* is linked with authority under ordinary law, would Leibniz speak of a state (*respublica*); and he immediately introduces the normative dimension, by insisting that it presupposes that action is taken *salutem publicam spectans*, that is to say, with a view to the public good. "Ordinary law" means enforced law, and for the enforcement of law someone in authority must have the right to command (*jus imperandi*), which is the right to coerce and make people do what has been commanded.

In keeping with his general view of law and politics, Leibniz does not, however, accept the doctrine of sovereignty in the Bodinian tradition. Indeed, his difference with Hobbes and Pufendorf is *inter alia* based on his sharp disagreement on this subject. Gierke has rightly pointed out that Leibniz operated with a "relative" concept of sovereignty; that is to say, he basically rejects this concept in its essence which is its indivisibility. Hence Leibniz can speak of multiple sovereignty within a state. At one point Leibniz developed a distinction between *majestas*, *superioritas*, and *supremitas*, but we need not go into this detail.<sup>34</sup>

<sup>32</sup> The opposite view is set forth with much supporting evidence by RUCK, *op. cit. supra* note 3, at 36ff. For the reasons stated below, his argument remains unconvincing.

<sup>33</sup> "A union of men sufficiently great for hope of mutual defense against great force, such as is customarily feared, with the intention of living together, and constituted with a certain definite administration of common goods." CAESARINI FUERSTENERII ch. 10. Ruck cites this passage on p. 37, but fails to note the fact that Leibniz here speaks of *civitas*, rather than *respublica*. This often happens in continental writings, because modern authors in their preoccupation with the concept of the state, speak of both as "state." Note the German term *Gottesstaat* for *Civitas Dei* and related confusions. Cf. my TRANSCENDENT JUSTICE—THE RELIGIOUS DIMENSION OF CONSTITUTIONALISM 11ff. (1964) for more detailed comment on this important point.

<sup>34</sup> CAESARINI FUERSTENERII, Praefatio, chs. 10-12, and 26-33. Cf. also *Specimen demonstrationum politicorum pro Rege Polonorum eligendo* (1669), prop. 16 Dutens, IV, 537, and the interesting comment by OTTO VON GIERKE, THE DEVELOPMENT OF POLITICAL THEORY, p. 220, n. 166 (this is the English version of Gierke's JOHANNES ALTHUSIUS UND DIE ENTWICKLUNG DER NATURRECHTLICHEN STAATSTHEORIEN [1880]).

What is decisive for an understanding of Leibniz's theory of government is that he not only accepts but prefers the constitutional state and believes it in fact to be operational. Arguing against Pufendorf, who had described the German empire as a *monstrum*,<sup>35</sup> he points out that there is little sense in first defining sovereignty in an absolute way, and then proceeding to subject all existing orders to abuse; every existing state becomes a *monstrum*, and the only true state is "*ea Respublica, cujus Rex Deus est.*" This discussion is very symptomatic for Leibniz's political philosophy; on the basis of his harmonizing optimism he inclines toward accepting the existing orders as in keeping with the preestablished harmony.

Gierke rightly commented that "Leibniz himself did not attain to any different conception of the "*persona civilis seu moralis Reipublicae*" than others of his time. The unity of the civitas is manifest in the ruler: "*Una persona civilis habens summam potestatem in partes suas est civitas*"; and "*una voluntas unitasque personae civilis, qua respublica constat*" is typically found in the ruler who represents all; in him "*persona Reipublicae civilis seu moralis continetur.*"<sup>36</sup> All this sounds very much like the political theory of absolutists such as Hobbes and Pufendorf expounded, but Leibniz does not accept these extreme consequences; he retains, as we have shown, the medieval notion of the supremacy of the law. All rulers, including even the divine being, are bound by the rational rules of a universe operating according to a preestablished harmony.

It is consequently possible for Leibniz to accept the notion of a composite state, as did so many of the publicists and jurists of the German empire. In view of this, it is interesting that the great Gierke expressed the opinion that Leibniz came near the conception of the modern federal state; its union differs from a mere confederation, because a "*nova quaedam persona civilis*" is constituted which may be considered a new state (*nova respublica*).<sup>37</sup>

What has been shown so far clearly demonstrates that Leibniz sees the state as a person, as a "rational substance." It is a civil person, a *collegium* which can express a will through a vote or other certain sign. At the same time, such a "person" is characterized by the possession of rights. "*In quem cadit jus et obligatio, ei competit una voluntas. Cui competit una voluntas, is est una persona civilis.*"<sup>38</sup> But this *voluntas* is not arbitrary and unrestrained; indeed for Leibniz (as for many medieval thinkers) the *voluntas* must be rational in order to possess binding effect. Hence Leibniz accepts the doctrine of the ephors or estates assemblies as it had developed since Calvin had first enunciated it.<sup>39</sup>

<sup>35</sup> SEVERINI DE MONZAMBANO (S. PUFENDORF), *DE STATU IMPERII GERMANICI AD LAELIUM FRATREM LIBER UNUS* (Geneva, 1667).

<sup>36</sup> "A civil person having supreme power in its parts is a *civitas*. — One will and unity of civil person, by which a *respublica* is determined. — The person of the civil or moral *respublica* is contained [in the ruler]." CAESARINI FUERSTENERII ch. 11 and the *CODIX JURIS GENTIUM DIPLOMATICUM* Intro., I, para. 22 (1747), as well as *Specimen Demonstrationum Politicarum*, prop. 12. Cf. also Gierke's valuable comment *op. cit. supra* note 34, at 232, fn. 202.

<sup>37</sup> Cf. GIERKE, *op. cit. supra* note 34, at 268 and note.

<sup>38</sup> "To whom falls law and obligation, to him belongs a will. To whom belongs a will is a civil person." IN SEVERINUM, *AKADEMIEAUSGABE*, IV, 1, p. 502.

<sup>39</sup> CALVIN, *INSTITUTES OF CHRISTIAN RELIGION* bk. IV, ch. XX, para. 31. Cf. also my *CONSTITUTIONAL REASON OF STATE* 61ff. (1957). German writers at this point tend to dispute about the problem of *Staatspersoenlichkeit*, Gierke, e.g., denying, Ruck asserting Leibniz's discovery of it. The issue is artificial, and anachronistic. There can be no question

In keeping with the tradition of the *Staendestaat*, Leibniz sees all rulers as parts of the state: "*totum imperium erit Dominus directus feddorum in Imperio*," that is to say, the empire in its entirety is the lord of the feudal powers within it. All rulers are magistrates; they are ministers of the *respublica*, precisely in the sense in which, e.g., a writer like Althusius had interpreted the office.<sup>40</sup>

*Contractual Theory and Justification.*—Like so many other theorists of his time, Leibniz accepted a contractual conception. It is not a particularly original one, but retains traditional elements in contrast to Hobbes and the Hobbesians. He was quite familiar with the patriarchal doctrine of Filmer as well as Locke's criticism and the latter's own construction. Leibniz's own view closely resembles the Lockean position, but he differs from the latter by his retention of a firm belief in the rationality of man, as contrasted with Locke's notion of the ruling importance of the passions. In keeping with his Grotian propensities, Leibniz stresses man's sociability; even in the state of nature man lives in communities operating in accordance with the strict (primitive) law. Like Locke, he believes that men may and do defend themselves against the violator of this law which is the manifestation of the law of nature. Yet, the prevailing state was one of peaceful cooperation.<sup>41</sup> Why, then, did a political order arise? Not as a result of crisis, says Leibniz, but by a gradual process of negotiation and adaptation among the various communal groupings. As men develop and come to recognize a set of common interests and a common good, *congruum esse rationi, ut omnia ordinentur secundum maximum bonum commune*. This is the frame of mind in which the value of equity becomes recognized. To this must be added the need of protection against external enemies; we have indicated above that this need was stressed by Leibniz—not surprisingly in view of the continuous invasions of Germany from east and west and the ravages of the Thirty Years' War. It is a theme which Leibniz returns to again and again, both in his correspondence and in his political writings, especially in connection with the dangers resulting from the aggressions of Louis XIV. But the need of political order as a framework for man's self-perfection—in the great Aristotelian tradition—is the primary goal and end of the polity.

Leibniz does not have much to say on the actual process by which the compact comes into being; it appears to him a contractual bond between individuals rather than between groups, as it is in Grotius, Hobbes, Spinoza, and Locke.<sup>42</sup> Yet, unlike some others, Leibniz does not propound the idea of a contract of submission or subjection; the contracting individuals organize themselves, as they do in Althusius, and on the basis of this organization they call upon someone to become

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that Leibniz recognized a *persona moralis* or *civilis* which might be a *societas*, a *civitas*, or a *respublica*.

<sup>40</sup> RUCK, *op. cit. supra* note 3, at 42-43. These arguments occur in his criticism of Severinus de Monzambano (*op. cit. supra* note 35) as well as in his *Specimen* . . . (*op. cit. supra* note 34).

<sup>41</sup> NOUVEAUX ESSAIS SUR L'ENTENDEMENT HUMAIN bk. III, ch. 1; MONITA QUAEDAM AD S. PUFFENDORFII PRINCIPIA (Dutens IV, 3).

<sup>42</sup> Cf. my POLITICA METHODICE DIGESTA OF JOHANNES ALTHUSIUS intro. (1932) and the work by Otto von Gierke, referred to above, fn. 34. An interesting chapter is also found in ERIK WOLF, *op. cit. supra* note 15.

legislator or ruler: *populus in legislatorem compromisit*.<sup>43</sup> Quite in keeping with the contemporary trend, as manifest more especially in Bodin and Locke, the emphasis is placed on the legislative function in ruling. For Leibniz, as for Locke, this emphasis is part of the stress they give to a "government of laws and not of men," as the familiar formula puts it. It does not seem necessary to comment at greater length upon this phase of Leibniz's work, even though some interesting details turn up in his arguments against Hobbes and Pufendorf.

*Leibniz's View of the Common Man.*—Leibniz's recognition of the role of the people and his concern with vindicating their ultimate authority in connection with all political orders must not mislead one into claiming him to have been a democrat. Like Locke, he was a constitutionalist and a believer in the *Rechtsstaat*; he was also a believer in a natural aristocracy of the talented. His stress on the need for an order of rule and command has already been noted; it is part of the order of nature that some men are born with the quality to command, others with that to obey. His elitist propensity leads him to assume, optimistically, that "the first kings are risen to the government over their people by their virtue and their spirit," and that "nature desires that those whom she has given the greatest qualities and who have most virtue should govern the others."<sup>44</sup> But since he combines such thoughts with questioning the acquisition of power and rule by mere convention, his position is not simply traditionalist. On the contrary: "*Le but de la science politique à l'égard de la doctrine des formes des Républiques doit estre de faire fleurir l'Empire de la raison.—Le pouvoir arbitraire est ce qui est directement opposé à l'Empire de la raison.—Ainsi il faudroit penser dans le monde à des loix qui pussent servir à restreindre le pouvoir arbitraire non seulement dans les Rois, mais encor dans les députés des peuples et dans les juges.*"<sup>45</sup> This is the decisive point, and it is impressive that Leibniz should have enunciated this central principle of constitutional government in spite of his low opinion of the common man. In contrast to him the nobility is "formed by a nobler clay"; yet not riches or power or noble descent really makes the difference, but noble gifts.

If therefore one were to ask me what really is the common man, I do not know how to describe him except by saying that he comprises those whose mind is preoccupied with questions about their sustenance, who never rise to the point of imagining what might be the passion to know or spiritual pleasure (*Gemuetslust*) any more than a deaf-born man can judge a marvelous concert. These people are without enthusiasm or excitement; it seems they are made of Adam's earth, but the spirit of life was not blown into them. They live day by day and move on like cattle. . . .<sup>46</sup>

<sup>43</sup> NOVA METHODUS JURISPRUDENTIAE, II, para. 18 (Dutens, IV, 3, 186).

<sup>44</sup> Klopp, IV, 461.

<sup>45</sup> "The end of political science as regards the doctrine of the forms of *respublica* must be to make the empire of reason flourish. Arbitrary power is what is directly opposed to the empire of reason. Thus in the world one must think of laws which can serve to restrain arbitrary power not only in kings, but in deputies of peoples and in judges." Klopp, VIII, 267, 268.

<sup>46</sup> DEUTSCHE SCHRIFTEN, I, p. 10.

If one takes into account that Leibniz says all this as part of his argument for founding an adult education society, that he insists that the love of letters and the arts may be stimulated even among the lowly, and that it is all part of his concern for raising the level of culture and civilization among his beloved Germans, it becomes possible to appreciate its true political significance. When taken in combination with his praise of the role of the nobility, his conviction about the rule of law as the basis of all sound government, and his abiding hope for a universal order of peace, Leibniz's dislike for the common man is really a dislike for the common in man. He was a glowing optimist about the perfectibility of man in this "best of all possible worlds."<sup>47</sup> This optimism shapes his philosophical reflections on law, politics, and government. In none of them was he strikingly original; in all he was more concerned with being right than with being novel. With Goethe he would plead that what was needed was the courage to grasp the ancient truths of the great Christian tradition of natural law and constitutional government: *Das alte Wahre, fass' es an!*

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<sup>47</sup> For a discriminating discussion of this much-abused slogan cf. H. W. CARR, *LEIBNIZ* ch. X (1929).