

## Development of the Political and Legal Thought in Europe in the Modern Period

Vera. B. Romanovskaya

N. I. Lobachevsky State University of Nizhny Novgorod

Eduard. B. Kurzenin

Institute of Business Studies of the Russian Presidential Academy of National Economy and Public Administration  
Email: sci.publ@gmail.com

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### Abstract

In this article, the authors analyze the effect of the works by the professors of law on the formation of the European political and legal tradition of the early modern period. They explore the German Protestant school of law and the works by its representatives. Special emphasis is placed on the study of the German political and legal thought of the 17th century and the formation of the public administration ideas in Germany in the mentioned period. The authors reveal the history of the lives and scientific work of the famous German legal scholars H. Conring, J. Lipsius and V. L. von Seckendorf, and they characterize the key propositions of their political and legal doctrines. The authors of this article explore the political and legal thought of the German thinkers that are not so well known in the modern historical and legal science but still no less important in the history of the political and legal thought.

**Keywords:** european political and legal thought, modern period, public administration in German, professor of law, legal education, Hermann Conring, Justus Lipsius, Veit Ludwig von Seckendorf, Protestant school of law.

### 1. Introduction

Such names as Jean Bodin, Hugo Grotius, Thomas Hobbes, and Samuel von Pufendorf are well known to the scientists who study the development history of the European political and legal thought. A lot of works, including dissertation studies (Kurzenin, 1999) have been written about them. Figuratively speaking, they were the "first line" of the creative elite of the European society in the modern period and they made an inestimable contribution to the development of the political and legal thought of that time. No less important is to know who was in the "second line" of the intellectual elite of Europe of the 17<sup>th</sup> century. Such persons lived in every country, and many of their works were read and treated with no less distinction than the books by Bodin, Grotius and Hobbes.

### 2. Methods

To perform the research tasks, the authors used the general scientific methods (dialectical approach, principle of the unity of the historical and logical research, system approach, etc.), as well as methods of particular sciences, including those of legal sciences (concrete historical approach, sociocultural analysis, comparative and legal approach, etc.). Historical and legal analysis allowed the best understanding of the essence of the legal ideas of various periods of history.

### 3. Literature Review

It appeared quite interesting to find out that the "second echelon" of the European intellectuals struggled actively against the "revolutionizing" ideas of the "first echelon" and stood up for the habitual "Treuga Dei" ("Truce of God"), which is of no surprise as the medieval Europe was totally imbued with the theological construct of the Christian philosophers and the norms of the canon law of the Roman Catholic church (Romanovskaya V. B., Romanovskaya L. R., 2014).

Specialists know the pamphlet by the Dutch professor Claudius Salmasius, *Defensio regia pro Carolo I* (*Defense of the Reign of Charles I*), which states that the king's power comes from a divine source and thus totally rejects the right of the subjects to correct the monarch's deeds. Also typical of that ideological trend is the work by Robert Filmer, *Patriarcha, or The Natural Power of Kings*, where kings are said to be Adam's descendants and the monarch's subjects are declared

to be his children. The writings of Archbishop Bossuet (17<sup>th</sup> century) were also considered as authoritative statements in Europe. Basing on some of the Jean Bodin's ideas, Bossuet suggested that the French should cultivate an "extraconscious" religious feeling for the monarch, a kind of "religion of the second majesty". The most eloquent Bossuetist in Germany was Martin Schoock, who defended his theses titled *Dissertatio singularis de majestate* (*Singular Dissertation on Power*) in Groningen in 1659. It is worth mentioning that following the example of the Groningen scholar, the "majestate" term came into general use in the political vocabulary. Peter the Great was also among those who liked the word, so he often used it as part of his title. Among the active advocates of the traditional ideas of the divinity of the monarchical power, specialists also mention some other political scientists of the 17<sup>th</sup> century, such as Reinckings and Horn (Spektorsky, 1907). Probably, this trend in the scientific thought has to be associated with Catholicism in its outright militant form. However, many political writers or those who associated, in some ways, political science with jurisprudence tried to behave in a more delicate manner, taking account of the recognized authorities in the fields of knowledge that they had chosen as their professions.

Those writers established a school of their own, which was Protestant according not only to the formal confessional attributes but also to the essence of the problems that they were trying to solve. Sometimes they are called, not without reason, theorists of princely absolutism. The well-known principle of the Religious Peace of Augsburg (1555), "Cujus regio, ejus religio" ("Whose realm, his religion"), which made religious and confessional issues dependent on the policy of the local rulers, added some specific tenor to the works of those writers. Thus, to a certain extent, the theoretical proposition mentioned even earlier by Niccolò Machiavelli was the prevalent one: religion was becoming a servant of the state and confession was a political function.

Due to some particular conditions, the German (Speaking of Germany, we mean not only the territories of the modern Federal Republic of Germany but also the neighboring countries, mainly to the north, such as Holland, Denmark, Sweden, and others. In other words, it is the entire Protestant world of Central Europe that speaks Germanic dialects) political and legal thought became the most active and the most fruitful in Europe. Scientific literature often touches upon the issues related to the origins of the modern federative system of Germany and the "special way" of the state political development of the country. At the same time, foreign literature often emphasizes the fact that Germany became part of the "western world" only after the Napoleonic Wars. However, this kind of approach does not mean any negative attitude towards the Holy Roman Empire and its relations with the German territorial princedoms. On the contrary, its three most distinctive features are paid attention to: first, the traditional supranational character of the imperial monarchy; second, the high importance of the small sovereign states; and third, the active presence of all the major confessions (i.e. Catholicism, Lutheranism and Calvinism) in the public life. Those were exactly the circumstances, along with the economic needs, that were conducive, regardless of the religious wars (the Thirty Years' War in particular), to greater religious and national tolerance in Germany in the 16<sup>th</sup>–18<sup>th</sup> centuries than in other Western European countries, especially after the Peace of Westphalia.

Just after the treaties of the Peace of Westphalia had been signed (1648), the land princes got the possibility to establish unions with foreign states without taking the opinion of the imperial government into consideration, which strengthened their sovereignties greatly and made their dependence on the emperor nominal. As a result, there appeared a lot of alliances and alignments in Germany, which were constantly at war or establishing unions with one another, mainly in the West and South-West where there were a lot of small states.

The system of the states, which formed in Europe at the time, was functioning according to the "balance of forces" principle that did not allow any of the state to dictate its laws to the others but did not rule out the possibility of territorial acquisitions or increments either. This fact is mentioned by a lot of researchers (Kunisch, 1982). In those conditions, some new trends in the political thought appeared quite clearly in Germany. To the foreground came spiritual interpretation of the current social and political problems, which depended, not in the last instance, on the social and political positions of those who were inventing the new state legal ideas. Resulting from the social and political changes, the accents were being shifted from serving for the public well-being, which was typical of the Renaissance way of thinking, to the public service. The breakup of the spiritual and religious unity in Europe, the discovery of the New World, the early capitalism growing, the nations being formed, the social disturbances among the lower classes, and the local authorities becoming more stable – all those factors accompanied the development of the states of the modern period (Weber, 1992).

The issues related to the state formation across the German lands were so important that at the turn of the 16<sup>th</sup> and 17<sup>th</sup> centuries universities started teaching public law as an independent subject, along with ecclesiastical, private and feudal laws. There appeared textbooks with a standardized title: *The Public Law of the Roman-German Empire*.

At the same time, a stratum of highly educated lawyers started to come into being there. Not only were they university professors but they also acted as aides to the princes and performed various diplomatic missions. The well-

known German historian of law M. Stolleis names the following reasons for that: a) the political activities were released from the chains of religion; b) the medieval feudal state was reforming into a modern centralized one; c) there occurred a crisis in the western world's conception of the unity of the Church and the Empire, and the dynastic states, which would later become separate national states, were coming to the foreground; d) in the period between 1555 and 1648, the crisis of the imperial constitution was getting deeper in the religious conflicts and in the desires of the larger territories for sovereignty (Stolleis, 1986).

It was exactly the lawyers who invented those numerous theories, which were quite similar to one another and adapted to the German reality. In those works, one can see their desire to establish some principles of absolutist manifestation that would correspond, at least in theory, to the interests of the subjects of the land princes.

Some scientists believe that the most significant absolutist political ideas were born and given their meanings not in the classical absolutist country, which is France, and not in Italy where they actually came from, but in Central Europe. The majority of the European universities were located in the Holy Roman Empire, and they were playing the key role in the formation of the German territorial states. The same as in the High Medieval Period (Romanovskaya V.B, 2013), the university professors were the creators of the administrative system, especially in the legal authorities. The professors made up that influential group of the so-called territorial bourgeoisie which, as soon as in the middle of the 16<sup>th</sup> century, began to separate from the urban commercial and industrial bourgeoisie. On the one hand, they were competing with the local aristocrats for the influence in the princes' administrations. On the other hand, they established certain relations with the urban bourgeoisie. It looked as if they had imbibed the rich social experience of the feudal administrative structures, together with the bourgeois pragmatic approach to life at the same time (Weber, 1995).

This combination was exactly what the formation of the new social and political system was based on. The system was typical of a territorial state governor whose image was already different from the perfect humanistic monarch. The practical needs of the prince's land, which was a state now, became the essential factors there, so the "existential" or specifically actual empiricism prevailed, rather than any theoretical abstractions.

In the 17<sup>th</sup> century, we observe the birth of the German constitutional theory with the Protestant sub-basis. Denying the ancient political postulates, which served the official doctrine of the medieval German empire under the reception of the Roman law, the professors tried to justify and develop the distinctive features of the German political and legal system. The most vivid anti-imperial work was the treatise *De ratione status in imperio nostro Romano-Germanico (On the Reason of the State of Things in Our Roman-German Empire)* by Boguslaw Chemnitz. His ideas were developed further by H. Conring who was trying to prove the advantages of the common law established in the German lands over the Roman law. Those ideas were also developed in the late works by H. Conring and J. Lipsius.

Hermann Conring (1606 – 1681) was one of the outstanding German thinkers of the 17<sup>th</sup> century. People called him "the wonder of the 17<sup>th</sup> century" for his encyclopedic knowledge and scientific interests. He wrote a lot on the theory of natural law and on the history of the German law. With his treatise titled *De natura ac optimis auctoribus civilis prudentiae (On the Nature and the Most Respectable Writers on Civil Law)*, he paid his tribute to civil law. Conring was the head of the Department of Natural Philosophy at the University of Helmstedt for a long time and was the founder of the German history of state and law. He grew up in Northern Germany under a strong influence of the anti-Habsburg ideas and the mixture of ancient and humanistic conceptions. In the history of Germany and the laws of the German statehood, Conring found the grounds for breaking up with the papacy and Catholicism. Already in his *Philosophical Discourse on Law (1637)*, he mentioned that the law of the German tribes was one of the most significant sources of the German statehood. In *Experiment on Roman-German Emperor (1641)* and in *New Discourse on Roman-German Emperor (1642)*, he declared the succession from the Roman emperors to the German ones and spoke on the uninterrupted existence of the German state. In Conring's works, some of the newest researchers see the turn from the medieval concept of the political order to the concept of the political order of the modern period. The new ideas were mainly the result of the Reformation, which had destroyed the conception of the universalist system of public administration (Fasolt, 1997). As it was mentioned by Conring, the Roman Empire, in its old form, had disappeared, and its crown had been usurped by the papacy. As a matter of fact, the German kings were never Roman emperors; they only wasted a lot of time and money in the struggle for the Roman crown. As a result, the Roman law was not what the constitution was based on but only a historical document. And that is the origin of the right of the German princes to break up with the Roman imperial tradition and, what is especially important, to become independent of the Holy Roman Empire (Fasolt, 1997).

Justus Lipsius (1557 – 1606) was another significant person among the new political theorists. He came from a Catholic family from the Southern Netherlands, but he moved to the Lutheran Jena and then worked in the Protestant Leiden. Lipsius emphasized that first of all a prince has to protect the public quiet and order, and the subjects must obey him. He was actually a supporter of the authoritarian state and monoconfessionalism within the boundaries of every

particular principedom or territory (Ostreich, 1989). Lipsius, being considerably influenced by Tacitus, Seneca and Machiavelli, wrote his famous *Politicorum...* (*Politics*) (Lipsius, 1616)), basing mainly on the actual realities of the political life of the Electorate of Brandenburg. Although Lipsius saw the Dutch Revolt in his youth, most likely he did not accept the republican experiments, regardless of the influence of the political culture of the late Dutch humanism. His ideal was a princely absolutist state, while his state political concept was based on the "public interest" and "tolerance" (Golderen, 1996).

The views of the future "lord of the thoughts" Pufendorf were greatly influenced by Erhard Weigel (1625 – 1699), a professor of the University of Jena. A man keen on geometry, he believed in the universalism of the geometrical method and he fostered his keenness to his students, including Pufendorf. It is worth mentioning that his lectures in Jena were a great success, with hundreds of people attending them. His astronomical laboratory was well-known too. Pufendorf, in his early works in particular, used Weigel's ideas on mathematical interpretation of the principles of the science of law.

One of the summits of the German state political thought of the 17<sup>th</sup> century were the works by Veit Ludwig von Seckendorf (1626 – 1692) who introduced the grounds for the rights of a monarch as those of the one who protects the order and the law and invented the concept of the power of the prince as "the father of the land". Seckendorf was also the founder of the theory of cameralism, i.e. mercantilism at the local level (Press, 1991, Vogler, 1996). M. Stolleis, in his essay on Seckendorf, says that he was an example of a "politician-practitioner" in the Lutheran territories after 1648. In his work and activities, Seckendorf embodied, both as a scientist and practitioner and as a Lutheran believer, the strict official ethics, loyalty to the prince, piety, personal frankness, conservatism, and imperial patriotism. His biggest works were *German Principedom* (1656), *The Christian State* (1685), and the huge *History of Lutheranism* (1692). In the second half of the 17<sup>th</sup> century, his book *German Principedom* was the favorite practical handbook of the German princes; it was used as the basis for the university courses of law and ran into twelve editions.

Seckendorf (1703) saw the ideal in a moderate monarchical form of government and in maintaining the balance between the social classes and the princely power, as well as between the territorial principedoms and the Empire. He emphasized the fact that the names of the principedoms (lands) come from the ancient names of the tribes or nations or from the name of the prince's historical residence. It is exactly the historical archaic character that supports their modern authority. Seckendorf's moderate views can be noticed in his discourse on the fact that in the German lands there are no principedoms where everything would be decided by a single person only, with only commitments for the subjects and no counter obligations for the prince. And the supreme objective of the land prince should be maintenance and improvement of the public well-being and prosperity in spiritual and temporal affairs and ensuring justice based on the social fairness. But now, resulting from the Reformation, according to Seckendorf, there appeared possibilities for the temporal authorities to deal with the religious affairs for the sake of the well-being of all the subjects. At the same time, protection of the religion means non-interference with the neighbors' affairs for any religious reasons, which is expected to contribute to the peace between the territories within the Empire.

One of the prince's essential obligation is observance of the special agreements and privileges of his subjects. The prince's personal virtues, education and life experience are supposed to make for it (Seckendorf, 1703).

Seckendorf believed that the best way to maintain the order in a principedom is to keep the faith in the true religion, which was certainly Lutheranism for him. Not only should religion be carefully protected but it has to be permanently strengthened as well. And the choice of the religion, according to the Peace of Augsburg of 1555, is up to the prince. Another important task of the prince's administration, as seen by Seckendorf, is observance of the good laws and order. The prince must be perfectly aware of what conditions his domain is in. No doubt, he should have hard-working clerks in his administration headed by the chancellor, and the counselors have to be selected from noblemen and scientists.

Probably the most significant element of Seckendorf's state political concept was the question of the relations between the Empire and the land princes. He insisted, above all, on the fact that the princes should have the obligations towards the emperor in such aspects as maintaining the emperor's privileges and rights (his historical regalia) and following the coordinated policy in dealing with foreign states, i.e. those outside the Empire. The rights and obligations of the emperor and the princes are based on dedicated documents, i.e. mutual agreements and the emperor's directions. But every prince should know how much money and how many soldiers he has to provide for any general imperial purposes. At the same time, the princes have the right to demand that the imperial government should observe the princes' freedom and privileges within the same scope as they were formed in the course of the historical development. Such relations should be based on "the fear of God" and "piety, as well as justice". From there, Seckendorf makes a conclusion on the major objective of all the measures of the princely policy: ensuring justice and protecting peace and well-being of the principedom and its people. The "inner peace and quiet of the subjects" are ensured by the prince's directions and by the laws which the subjects must keep.

In his treatise, Seckendorf pays special attention to the administrative activities of a prince. He believed that the

prince did not have to deal with all the administrative affairs, particularly the ones related to court, for there were specially assigned officials for that, the same as there were priests to perform all kinds of spiritual activities. And in the Lutheran princedoms, those priests did not actually differ a lot from the state administration officials (Ivonin, 1996).

Taking account of the economical troubles of the German lands, which resulted from the Thirty Years' War, Seckendorf suggested that the princes should not ruin their subjects with taxes. According to M. Stolleis, Seckendorf considered the prince to be the embodiment of the order established by God and the father of the land. The main instrument of the prince's policy should be "economy", in its broad sense, which has to be based on the "public interest" principle. But opposed to Machiavelli's concept, Lipsius, Seckendorf and other German theorists of law of the 17th century believed that the public interest is something arising from the unity of the policy and the Christian ethics. The appropriateness and legitimacy of the laws are the goals of the state policy of justice, well-being and peace.

Seckendorf kept to the orthodox Lutheranism and spoke of the rights of the prince from the theological point of view as well. He believed that church was a part of the state, so managing church meant serving God and implementing "practical Christianity" (Seckendorf, 1703). As for the life of the prince's court, Seckendorf proceeded from the economical ethics and the Lutheran morals, so he considered performing the official duties to be the essential point.

M. Stolleis describes Seckendorf's views as those oriented at supporting the administrative system of the moderate Lutheran absolutism in its early period when the principles of natural law combined with those of common law, the latter being typical of the Saxon provinces (Stolleis, 1987).

The range of problems that Lipsius, Conring, Seckendorf and other professors of law spoke of entered the information determining field of the future luminary in the German theory of law Samuel von Pufendorf, right from his first years of study, who afterwards made an inestimable contribution to the formation of the theory of natural law.

#### 4. Conclusion

In conclusion, we would like to emphasize the fact that it was exactly the German political and legal thought that was the most fruitful and diverse in Europe in the 17<sup>th</sup> century, but not the French or Italian thought, as it is commonly believed. Thanks to the scientific activities of the professors of law, the progressive ideas spread among their students first, and then among all learned people of that time. Those ideas were producing effect on the current policy and laying the foundation for the new world outlook of the contemporary period.

In the contemporary complicated and contradictory world, education plays the key role in laying the foundation for mutual understanding between people standing for different political platforms. The activities of the professors of law who pass knowledge on from one generation to another contribute to reaching both educational and political objectives. The history of political and legal thought serves convincing evidence to this conclusion.

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