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The Roots of our Liberties: On the Rise of Civil Society in the Medieval West

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Abstract: This article deals with the genesis of civil society in medieval society in the hope that this might elucidate the general conditions in which a civil society can flourish. We are, moreover, well aware that some of the viewpoints espoused have strong contenders with opposed views. We mention them in order to indicate to the reader the major dilemmas, which arise on the concerned historical subject. In order to avoid misunderstandings on the main tendency of our historical analysis, we deal briefly with the notion of civil society as it appears in political philosophical literature because this notion is used with strongly diverging meanings. Then we build a picture of European society at the dawn of the emergence of civil society, during the period 843-1073 . We deal subsequently with crucial factors in the emergence of civil society in the Middle Ages such as peace and labour, associative life, the medieval "nomos", including medieval humanism, the "ius commune" of Europe and the rule of law in the Middle Ages. We conclude with some considerations about the late medieval era, in order to bridge the gap with the modern conception of civil society.

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Introduction

Alexander Kojeve, philosopher and pre-eminent interpreter of Hegel came, whilst still in the middle of his career as a philosopher, to the conclusion that his philosophical master was correct about the end of history and decided because of this to stop his career and become a full-time bureaucrat in the European Commission (Fukuyama 1996, p. XIII). About a thousand years earlier, the Holy Roman emperor Otto III and pope Sylvester II spent New Years' eve praying in the church of St. John of Laterans as they were fearful of the coming apocalypse at the end of the millennium. As ex-post-spectators we know that Kojeve, Otto III, and Sylvester II were wrong.

History did not and will not end because history is not an energy, a process, or a fatality, separated from the action of innumerable human agents. History is driven by the perceptions and preferences of its actors, who affect the decisional context of other actors, present and future, by the intended and unintended consequences of their actions. Pretending to know the end of history, as Hegelian historians do, is, therefore, an act of supreme hubris. It presupposes that we know what preferences and inspirations are the most common and most profound to humanity, and by what mechanisms they will finally triumph over their historical obstacles.

Releasing such strong Hegelian assumptions about the cognitive position of the historian does not necessarily entail extreme scepticism, according to which history is "only a confused heap of facts", as was considered by Lord Chesterfield (Mencken 1991).

Theoretical insights about the human psyche and about relationships between human action and its unintended consequences, do allow us to understand some concatenation of events and compatibilities of different political institutions and social structures. In this way, knowledge, useful for our moral engagement in the present, can be won from the study of the past. Advocates of a free society may learn from history that some strategies, the purpose of which may not have been liberty-driven, resulted, through their unintended consequences, into more freedom. The movement for the "libertas" of the 11th century church, for instance, was not liberty-driven in the modern, classical liberal sense. It may even have had some theocratic traits. Nevertheless, it produced, as an unintended consequence, a less monopolised and

thus freer political context. From this, a classical liberal can learn what kind of political, religious and social evolution, even when non-liberal in its main aim, deserves his support.

From history we can learn the type of institution we should cherish in order to safeguard liberty. The leaders of the medieval "communes", for instance, though driven by aims which were fairly close to modern classical liberal ones, often surrendered their liberties quite easily in an alliance with the king, in order to reap some short-term benefits (Spruyt 1996, p. 86). They clearly lacked insights into the long term value of communal independence.

This article deals with the genesis of civil society in medieval society, in the hope that this might elucidate the general conditions in which a civil society can flourish. We do not pretend to have found the key to ultimate wisdom on this matter. Many subjects remain open to further research. We are, moreover, well aware that some of the viewpoints espoused, have strong contenders with opposed views. We will mention them in order to indicate to the reader the major dilemmas, which arise on the concerned historical subject.

In order to avoid misunderstandings on the main tendency of our historical analysis, we will deal briefly in the first two sections with the notion of civil society as it appears in political philosophical literature because this notion is used with strongly diverging meanings. In the third section we will build a picture of European society at the dawn of the emergence of civil society, during the period 843-1073. In the fourth, fifth, sixth, seventh, eighth, and ninth section we deal subsequently with crucial factors in the emergence of civil society in the Middle Ages such as peace and labour (section 4), associative life (section 5), the medieval "nomos", including medieval humanism (section 7), the "ius commune" of Europe (section 8) and the rule of law in the Middle Ages (section 9). We will conclude with some considerations about the late medieval era, in order to bridge the gap with the modern conception of civil society.

1 The Concept of Civil Society in Its Liberal Meaning

Not satisfied with the usual dichotomy market-state, several liberal scholars developed a sociological concept of "society" or "civil society" opposed to the state, but wider than the "naked" market. David Green puts it as follows: "Contrary to the view attributed to Mrs. Thatcher, that there is 'no such thing as society', there is indeed such a thing. But it is not synonymous with the state. It is the realm of 'activity in common', which is at once voluntary and guided by a sense of duty to other people and to the social system on which liberty rests" (Green 1993, p. 3). In his last book "Trust", Francis Fukuyama speaks about "The Twenty Percent Solution", arguing that neo-classical economics is correct, up to eighty percent, in explaining society, but needs to be supplemented by a theory on "social capital", in order to explain the other twenty percent (Fukuyama 1996, p. 13).

Older liberal scholars, such as Hayek (Hayek 1973) and Oakeshot (Oakeshot 1975, p. 313) developed similar notions: Hayek distinguished the cosmos of a great society, resting upon a nomocracy, from the taxis of a constructed order such as the state, directed by teleocratic strategy; Oakeshot distinguished the civil association, based on general rules of conduct, from the enterprise association, set up in pursuit of a common objective.

It seems that all these liberal notions about "society" have two elements in common: 1) their notion of society is about a "horizontalistic" network of interpersonal co-ordinations of individual action; 2) these co-ordinations are voluntary and based on respect for property rights.

The notion is horizontalistic because it covers relationships from person to person, persons to groups (community), or groups to groups, but never a relationship from the single to the whole. The society is just a construction of the mind to conceptualise the broad "cosmos" of interaction in which individuals, groups and organisations are involved and through which actions and strategies of some reflect in an intended and unintended way on the position of others. As a consequence of which, it would be absurd to conceive a relationship between an individual and "society". It is

even more absurd to speak about "duties" of the individuals towards society. In a civil society, within the liberal meaning, individuals have duties towards other individuals or groups, according to values, which may be shared by most actors in society. This fact, however, does not allow us to substitute dyadic relationships among actors in society for a dyadic relationship of actors with society.

To put it differently: the liberal notion of society is non-holistic and by this, also non-organic. This latter point is not unimportant with regard to the discussion about the conception of society ("universitas", "societas") during the Middle Ages (see below section 5). Society, in its liberal version, is not constructed as a whole but develops either by the deliberate social constructions of groups and organisations, or by spontaneous (unintended) adaptation.

The horizontalistic character of society in its liberal version also implies that it has no formal borders such as membership (groups, corporations, political parties) or territorial borders (nation-states). If we try to visualise it, it would not look like an organisational structure, but rather like a nebula, with thicker and thinner areas, according to the intensity ("close knittedness", Ellickson 1991) of interaction. The informal and gradual borders of a society in its liberal version are influenced by several factors, be they natural (e.g. innavigable oceans), religious and cultural (e.g. xenophobic tradition), or political. The latter ones do not only concern radical measures such as erecting Iron Curtains, but also policies such as linguistic and monetary policies intended to obstruct interaction between subjects of different states.

Besides the structural feature of horizontalism, society in the liberal sense also requires two normative elements: voluntarism and respect for property rights. The notion of voluntarism should here be understood in its widest sense; it covers deliberate as well as spontaneous co-ordination. Deliberate co-ordination occurs through the discipline of conventions (e.g. Victorian "manners and morals") (Himmelfarb 1995, p. 21), contracts and firms. Spontaneous co-ordination occurs through processes in which actors adapt their behaviour to changing social environments, while the actions which caused these changes were not aimed at these adaptations of behaviour. The latter form the unintended consequences of the former. Patterns of spontaneous co-ordination are the subject of study by economists par excellence,

while sociologists and historians tend to focus more on the various forms of deliberate co-ordination. Both traditions can contribute to the understanding of the working of civil society. Moreover, processes of spontaneous co-ordination and acts of deliberate co-ordination do not occur in isolation from each other. The fact that a specific deliberate co-ordination, or a class of such co-ordinations appear at a certain moment in society, can be often understood as an unintended consequence of other patterns of human action. Thus, the notion of civil society within its liberal meaning, offers not only room for the different disciplines of social sciencebut also a context for co-operation and mutual enrichment.

Finally, it has to be remarked that both normative elements of civil society, voluntarism and respect for property rights, constitute only the most basic characteristics of it. This does not endorse the claim that both characteristics suffice to uphold a civil society in the longer run. Several authors, qualified by Green as "civic capitalists" (Green 1993, p. 12), emphasised the need for a constant moral effort in order to protect civil society against its "demoralisation" and thus, degradation.

According to Macedo, Tocqueville was the pre-eminent civic capitalist because he emphasised "the stable moorings of religious belief, a caring sphere of family life and a variety of ties to intermediate groups" as the prerequisite for the development of individual confidence and pride (Macedo 1989, p. 133).

These viewpoints of "civic capitalists" are, however, positions about the workability and stability of a civil society. It is also conceivable to deny these positions of civic capitalism by claiming that a legal order of individual rights and the elimination of all obstacles to individual freedom, suffice for the constitution of a stable civil society and that consequently all the "values" talk of civic capitalists is historically contingent and morally paternalistic. Hence, by including the moral values of "civic capitalism" within the definition of civil society we would already give a positive answer to the question, raised by civic capitalism. It remains an open question whether moral values, such as family-mindedness, self-confidence, pride, honesty, reciprocity, decency, etc., are prerequisites for civil society or just consequences, which will probably be produced in a society, based on voluntarism and respect for property rights.

2 Civil Society: Other Meanings

This outline of a liberal concept of civil society allows us to contradistinguish it from other current and often radically different meanings. To cover the most important ones, we will deal briefly with the concept of civil society in social contractarianism in the Hegelian line of thought and in neo-corporatism.

In social contractarianism civil society is opposed to the state of nature, a (mostly) hypothetical state without institutions and without social bonds stretching beyond the natural family. Civil society on the contrary is a state with developed political institutions and established political, legal, and religious authorities. Because the picture of the state of nature varies widely across the many social contract-theories, civil society, the outcome of the contracting process out of the state of nature, also takes a different shape depending on the concerned authors. So, the monarchist civil society of Hobbes differs substantially from the liberal-constitutional civil society of Locke, while the latter differs again from Rousseau's civil society of popular democracy.

It should be emphasised that the concept of civil society in the social contractarian context is not necessarily politically hostile to the development of civil society in the previously outlined liberal sense. Lockean civil society for instance, with its stress upon limited government and individual rights, is particularly conducive for such a development, as the history of eighteenth century England and nineteenth century America shows.

Both notions of civil society differ, however, in their expository status. The liberal notion conceptualises the possibility and the value of a broad, non-planned but ordered cosmos of human interaction in opposition to social theories, denying or neglecting spontaneous co-ordination and advocating a deliberately created and imposed order in society. In this way, the liberal notion is a substantive part of a deep analytical and normative debate. The social contractarian notion on the contrary, has only a formal status. It is a step in the form of argumentation about the foundation of political authority and political institutions. This difference between substantive and formal expository status explains why the meaning of both notions can be politically reconcilable.

Within the tradition of social contractarianism no distinction is made between civil society and the state (here in the sense of a political institution). Civil society as a stage in the hypothetical genesis of institutions encompasses the institutions of the nomocratic cosmos (civil society in the liberal sense) as well as the institutions of the state (the holder of the monopoly of organised violence within a given territory). Moreover, the borders between the different civil societies in the social contractarian sense correspond with the borders of the state territory. Civil society in its social contractarian sense is as much "national" as civil. Through the equation "civil = national", social contractarianism, especially in its Rouseauan version, contributed a lot to the violent nationalism of the nineteenth and early twentieth centuries.

Closer to the liberal notion of civil society is the Hegelian one ("bürgerliche Gesellschaft"). According to Hegel, the life of the individual should evolve on three levels: 1) the family, in which natural solidarity prevails, 2) the civil society, in which individualism and selfishness ("das Prinzip der Persönlichkeit") dominates, 3) the state, in which the individual acts as a "citizen", i.e. oriented towards the common interest of the whole political community (Hegel 1820, par. 181). Being familiar with the works of contemporary authors such as Smith, Say, and Ricardo, Hegel realised that most individual action on the level of civil society benefits the well-being of others through the mutual benefits of exchange and the division of labour (Hegel 1820, par. 243). Moreover, Hegel did not consider civil society as a jungle, as Marx did. Hegel realised very well that a well functioning civil society required an institutionally protected discipline of respect for individual rights and property rights, and respect for mutual promises ("pacta sunt servanda"). Hegel evaluated the genesis of the civil society as an immense progress in human history and rejected strongly a return to the "Staat des Altertums", in which individuality was suppressed for the sake of common interest. He did not consider, however, the emancipation of the individual on the level of civil society as the ultimate realisation of freedom. In civil society, the person remains narrowly constrained by the horizon of his self-interest. Limiting our lives to the levels of family and civil society would make of us crippled personalities. In order to be really free, the human being needs a third level, the state, on which he can join his own possibilities with the ones of his fellow citizens ("citoyens", not "bourgeois") in order to realise the common good of all members of the state (Hegel 1820, par. 257-259).

When we compare the Hegelian notion of civil society with the liberal one, as outlined above, we remark at least two important differences. Firstly, the liberal notion encompasses the family, the Hegelian does not. This difference is not merely conventional. By isolating the family from civil society, Hegel "demoralises" the latter level, for few will deny that the family is a solid source of natural solidarity and as such is a hotbed for wider forms of voluntary solidarity. Secondly, the Hegelian tripartite distinction overlooks systematically the possibility of voluntary associations, aimed at non-selfish goods (charity, philanthropy, mutual aid, solidarity, etc.). Hegel restricts the associative capacity of human beings to the level of the state. It is true that between state and civil society Hegel situated the so-called "Korporation" (Hegel 1820, par. 201-208). But these associations ("Stand des Gewerbs", "Handwerksstand", "Fabrikantenstand", "Handelstand", "allgemeiner Stand", i.e. civil servants) are half-political institutions, established to cater to the link between state and civil society.

By locating our moral capacities of altruism within the family and within the state, only a "demoralised" shell is left for civil society. As for Hegel himself, an excuse can be found in the fact that he did not experience the amazing flourishing of voluntary associations in the second half of the nineteenth century (for instance, the Friendly Societies in England) (Green 1993, p. 89). Such an excuse does not exist, however, for the numerous authors who continued to rely on the "demoralised" notion of civil society of Hegel, and to use it as an argument for the nationalisation of solidarity.

In order to minimise the risk of confusion about our notion of civil society, we should also mention the usage of the notion in its present, "neo-corporatist" sense. Traditions of thought, such as "corporatism" and "neo-corporatism", are much more popular in continental Europe than in the Anglo-Saxon West. This is due to several factors, such as the survival until deep into the nineteenth century of pre-modern, corporatist economic (guilds) and political ("die Standen") institutions and the pre-eminence of the Catholic Church, which advocated often corporatism as a "third way" between capitalism and socialism (see the Encyclical "Quadragesimo Anno", 1934). In general, corporatist thought favours the organisation of the population into several bodies, which are not directly initiated by or dependent on state authorities, but do,

however, perform tasks, which are of public interest and may, by this, have compulsory characteristics. The corporations are not a part of the state, but act "loco" the state.

Although a complete failure in its main aim to constitute a third way, corporatist thinking left its traces within the organisation of the welfare state in continental Europe. Often the collection of contributions to welfare and social security-institutions and the payment of social allowances are handled, not by state agencies, but by associations with a voluntary pedigree (mutual aid-organisations, professional associations, labour unions). Furthermore, the regulations of certain professions (doctors, pharmacists, architects, lawyers) are left to corporate bodies, independent from the state but enjoying a monopolistic protection from it.

The wide and often very heterogeneous collection of such intermediate bodies between state and individuals are also called, in present political literature in Europe, civil society ("societé civile", "middenveld"). The champion of "global governance", Riccardo Petrella and The Group of Lisbon, pretends to rely on the "global civil society" in order to accomplish his dream of governance of the world through different social contracts (Petrella 1993, p. 173). The advocates of the welfare state shrewdly presented the neo-liberal attack on the welfare state as an attack on "civil society" and as a relapse into brutal atomism, in which the isolated individual was put naked before the state and private enterprise. By this, the debate about present welfare statism was perceived by the majority of public opinion, not as a choice between compulsory and voluntary solidarity and mutual aid, but as a choice between co-operation and isolation, the group and the atomised individual, the warm group-solidarity and the cold market mechanism. The way how the debate about welfare-statism developed during the last decade, especially in continental Europe, illustrates well how important it is to define "civil society" in its wide and rich liberal sense.

3 At the Dawn of Civil Society: Europe between 843-1073

During this period the European West touched the absolute bottom of its social, economic and cultural evolution. During the same period, however, the seeds were sown

for the spectacular revival of the 12th century. Economically and demographically the European West must have looked during the 9th and 10th century like one vast wilderness with only small spots of habitation and cultivation. Total population around 1000 is estimated at about 12 million, the population of the present greater Paris area. In 1200 the population had risen to about 50 million, an increase of more than 300% (Cameron 1993, p. 54). Rome, once a city of two million inhabitants, was now inhabited by only 20,000 people, living amidst antique monuments, which were gradually falling into ruins.

Militarily, the European West was constantly plagued by internal civil wars and by outside threats of barbarian invasions. Especially France, the former heart land of Merovingian and Carolingian Empires, was the theatre of dynastic wars between the Carolingians and Capetians, and countless battles between the lesser castle nobility (Duby 1978, p. 178). Very probably, the deep incursions from invaders into the Western heartlands were made by small and unorganised bands. Nevertheless, public power was too weak to ward off these dangers. In 854 the flower of chivalry in France had to be mobilised to repel an attack of Normans on Paris.

Only in 912, by the treaty of Claire-sur-Epte, Norman invasions came to an end by ceding them the territory west of Paris, the later duchy of Normandy. Between 889-972, Saracens occupied the fortress Fraxinetum in the neighbourhood of Marseille, from which they organised raids up to the lake of Constanz. In 972 count William of Provence was finally able to chase them out of the south of France. The south of Italy and the western part of the Mediterranean Sea was dominated by Saracen pirates. Emperor Otto II was killed in a campaign against them in southern Italy.

Only during the 11th century with the conquests of Sardinia (1022), Sicily (1058-1090), and Corsica (1091) was the Mediterranean Sea cleared and did it become open for trade with the East. The German Empire was attacked from the east, first by the Avars and then by Magyars. The defeat of the latter at Lechfeld in 955 finally ended this threat. Large parts of England were occupied and terrorised by Vikings and Danes until they were finally expelled in the second half of the eleventh century.

As this overview of wars and raids shows, it would not be exaggerated to say that Western European civilisation was threatened, during the ninth and tenth centuries

with virtual disappearance. The social structure during this period reflects all but that of a civil society in its classical liberal sense. The picture of society during this period is far from the broad network of interactive co-ordination based on exchange, the division of labour, and free association. Due to the constant threat of war, trade had virtually disappeared and economic agricultural life retreated to the small unit of the manor. Within the already mentioned dichotomy, made by Oakeshot and Hayek, these manors should be qualified as "enterprise associations" or "taxis" rather than as "civil associations" or "cosmos" of a great society.

The "enterprise association" character of the manor was particularly reflected by the status of the unfree tenant, who was tied to the land and restricted in his personal rights, such as the right to move and to marry. The unfree tenant belonged to the enterprise of the manor. The rule of the lord over the unfree tenant coincided totally with the management of his estate. It was a rule of men on men in the most literal sense (Duby 1978, pp. 173-195).

This stringent inequality of rights within the early medieval manorial economy found itself expressed in the image of the three orders. The bishops Gerard of Cambrai and Adalbero of Laon represented the ideal society as an organic body with three functional parts: the praying and thinking part, i.e. the clergy ("oratores"); the fighting part, i.e. the military ("bellatores"); the working part, i.e. the vast majority of agricultural labourers ("plebs", "populus"). Clergy here referred more precisely to secular clergy, i.e. the hierarchy of archbishops, bishops, members of chapters, parish priests. The status of the top-layer, especially of the bishops, was in many respects similar to that of the fighting nobility. Bishops too had the status of manorial lords. They were linked within feudal relationships of lord and vassal and were recruited from the sons of landed aristocracy. They were regarded as real "church princes". It is important to note this, because, as we will see later, the other clergy, i.e. the regular one of the monks, played a crucial role in the disturbance of this three order image of society.

Within the prevailing political theory of these centuries, church and secular political institutions were hardly considered as separate entities. The church ("ecclesia") was not conceived of as a well outlined and organised body, with its own legal entity, but as the vast collection of Christian people ("populus christianus"). At the head

of this "populus christianus" stood, not "the bishop of Rome", but the king, considered the Vicar of Christ. Because his body was permeated with the Holy Unction, his mind was permeated with wisdom, "sapientia" (Duby 1978, p. 26). As a king he did not only protect Christianity by arms, he was also considered as the moral head of it. This theory of sacred kingship is well developed in the famous Norman *Anonymus*, a book written in 1100 in reaction to the new developments triggered by the papal revolutions. The theory of sacred kingship had its impact on political practice. The German emperors, considering themselves as the supreme head of Christianity, required the pope on his election to swear an oath of loyalty to the emperor. Of the twenty-five popes who held office during the century prior to 1059, twenty-one were directly appointed by emperors and five were dismissed by them (Berman 1983, p. 91). By this thorough merger of secular and spiritual power in the person of the king or emperor, religion remained a tool in the hands of the powerful in order to legitimise their privileges and to control the intellectual life of the rest of the people. Being faithful meant for a large part recognising without any sign of resistance the power of kings, lords, and bishops and resigning to their humble position, determined by birth.

However dark these centuries were from a civil society viewpoint, two prevailing factors should be mentioned, which would contribute to the dramatic change in the twelfth century, i.e. feudalism and Christian universalism. Both factors as such did not trigger social change. They would, however, do just this when combined with other factors such as the papal revolution, the booming of associative life, and the development of the rule of law.

The notion of feudalism is taken here in a narrow sense, i.e. as a system of recognised relationships between members of the ruling military or cleric order. The duties stipulated in the feudal contracts between lords and vassals could encompass elements of a private and public character as well. With reference to private character we should mention: the granting of a benefice ("beneficium"), that is land or other property such as cattle (the German term "feod" originally meant cattle, as the German word "Vieh" indicates, Berman 1983, p. 298). With reference to public character we should mention the pledge of fidelity by the vassal ("hommage"), the obligation of the vassal to render military service to the lord and the granting of the exercise

of offices (manorial justice, taxation, service monopolies) by the lord to the vassal (Berman 1983, pp. 295-313; Heirbaut 1997; Ganshof 1982). We can distinguish feudalism from the manorial system, which relates to the relationship between the lord of a manor and the peasants, working on the manor under different statutes, such as free tenants, serfs and slaves. Of course, the feudal and the manorial system were related. The manor was often a benefit ("beneficium") within the feudal relationship and obtaining a feudal benefit was attractive due to the dominant position the lord held within the manorial system (Berman 1983, p. 316).

The narrow sense of feudalism is to be preferred for analytical reasons, for it is possible that a manorial system persists without a feudal system. After the emergence of the monarchic states during the 15th and 16th century in Europe, feudalism was gradually hollowed out, especially of its public content, while the manorial relationship persisted in many parts of Europe, especially the more eastern ones. Within Marxist thinking the notion of feudalism has even acquired the status of a universal stage in the history of mankind, i.e. the stage between slavery or the Asiatic way of production and capitalism. This obliges the Marxist historian to distinguish feudal stages in the historic development of non-western cultures. As a result, the notion of feudalism receives such a wide meaning that it loses all analytical capacity. Marxist historians are, as Berman pointed out (Berman 1993, pp. 296, 541), by no means able to explain why the political "superstructure" of western feudalism differed so radically from that of the east. The Marxist historian Perry Anderson has well perceived this problem and attempted to save the Marxist notion of feudalism by arguing that the distinction of superstructure and infrastructure is not applicable to feudalism. The mode of production and the mode of exercising political and legal power are, according to Anderson, completely intertwined in feudalism (Anderson 1979, p. 400). This position, however, threatens the whole distinction between super- and infrastructure, which is vital for Marxist economic materialism. By the same token, we can question the distinction between superstructure and infrastructure within capitalism. As the Marxist legal theorist Pasukanis argued, institutions such as property and contract also belong, in fact, to the capitalist infrastructure because a capitalist mode of production is not thinkable without circulation of commodities and this circulation presupposes legal institutions, such as property and contract (Pasukanis 1970).

Feudalism, as we understand it in its narrow sense, was indeed a pillar of the "old order", the one prevailing in the tenth and eleventh centuries. Through feudalism the military class organised its dominance on the rest of the population. Through feudalism some order prevailed after the total collapse of the Carolingian state. The effect of feudalism was, however, not only conservative.

First of all, feudalism allowed for a more or less ordered decentralisation of political power. Western Europe of the eleventh century was, especially in the heart-land, France, a patchwork of innumerable small political entities. According to the theory of federalism (Tiebaut 1956, Inman and Rubinfeld 1998) decentralisation allows for beneficial effects such as voting with the feet, the submission of political power to some competitive pressure, and institutional competition, allowing political entities to learn from each others' experiences.

Voting with the feet under feudalism occurred in many ways. The most important movement concerns the constant escape of serfs from the manor to the emerging cities (Bouckaert 1997). Often lords, but especially monasteries, attracted serfs from other manors by offering them a better legal status. The coastal area of Flanders, for instance, only had free peasants, because the abbeys, which undertook the winning of land on the sea, offered them this status.

Learning by competition also occurred in feudalism. The reaction of feudal lords to cities was, at the beginning, very hostile. Ivo of Chartres for instance, advised the bishops, who were forced to concede liberties to revolting communes, to retract them because they were made under threat (Pirenne 1925, p. 128). Some feudal authorities, such as the Flemish counts of the house of Alsace during the twelfth century, pursued a "supply side" policy towards the cities by granting them many freedoms in the hope of getting tax returns. This attitude spread quickly. According to Spruyt, the alliance between king and cities laid even the base for the emergence of the French nation-state (Spruyt 1996, p. 153).

Secondly, feudalism was crucial in the later development of the rule of law. This remark, probably surprising for many, deserves some qualification. In its major characteristic feudalism is indeed a flat negation of the rule of law, for it favours the emergence of numerous concrete legal arrangements between lords, vassals and their

subjects, characterised by inequality and diversity. The emergence of a more abstract rule of law, adequate for a broad abstract order, would occur entirely at the expense of the different concrete feudal legal orders (Macfarlane 1987). Yet, feudalism contained one feature, crucial for the expansion of the rule of law, namely its character of reciprocity. Lord and vassal had reciprocal duties. When the lord did not fulfil his duties, the vassal could consider himself to be freed from his. He even had a right of resistance towards acts of his lord, which were contrary to the feudal agreement. Consequently, the power of the lord was not absolute. Moreover, the vassal had the right to defend himself against misdeeds of his lord. Such a reciprocity is completely absent in the later, emerging theory of state sovereignty. The reciprocity of feudalism is clearly at the base of the famous founding document of the English constitution, the Magna Carta. The freedom of the barons against the kings articulated in it were later on gradually extended to all citizens of the kingdom. In Flanders, at the beginning of the twelfth century, the cities revolted against Count William of Normandy, the political favorite of the French king. Their spokesman, Iwein of Aalst, claimed that William had broken his contract with the cities so that they were freed from their political obligations towards the count. William of Normandy was killed in battle during the following civil war in Flanders and Dirk of Alsace, a pro-city-count became the new count. Both events, crucial for the respective countries, show that the reciprocal element within feudal law was invoked as a legitimate base to claim initially and to extend gradually the rights status of the vassal to broader layers of the population (Heirbaut 1997, p. 225).

The second element, which contributed to the dramatic change in the twelfth century, needs much less explanation, for it is less contested. Whatever the complicity of the church authorities with the secular political authorities, the church has to be credited with upholding the idea of Christian universalism and, more or less linked with it, the cultural legacy of Roman antiquity. Thanks to the existence of the church and the however limited intellectual activity within it, the total spiritual decomposition of the West into tribal or local mini-cultures was prevented. The church not only "saved the books" during this period, but was also able to maintain the idea of the Latin West ("l'Occident"), a culture with a common destiny and common overarching values. The revolutionary potential of this idea remained only latently present

during this period, due to mentioned factors. As soon as these obstacles would waver, the power of this idea would be soon unleashed.

4 Peace and Work

Few will question that war is detrimental to the development of civil society. War not only causes the destruction of economic and cultural wealth, but it often affects profoundly the relationships between rulers and ruled, between state and civil society. War tends to turn a civil association, to use Oakeshots' terminology again, into one gigantic enterprise association. War disrupts familial and voluntary relationships and drags large parts of the young male population into the machine of military massification. Examples of the profoundly "decivilising" effect of war are not hard to find. The rather peaceful and libertarian political relationships within early Anglo-Saxon tribes were pushed into an authoritarian direction by the constant wars with the Vikings and the Danes (Benson 1989, pp. 1-81). As mentioned already, the retreat of the early medieval economy into the manor was due to the threat of constant warfare, by which peasants sought refuge under the umbrella of armed protection of the knights. The endless wars of the monarchist states between 1450 and 1750 triggered the rise of taxation and the formation of a state bureaucracy (Webber and Wildawsky 1986, pp. 228-298; Tilly 1975). The First World War disrupted entirely the emerging civil society in Russia and provided Lenin with the revolutionary masses he needed for the realisation of his totalitarian plans. In more liberal and democratic societies, such as the US and Western Europe, the world wars led to upswings in state regulation and central planning, which could only be partially reduced after the war (the "ratchet" effect, Higgs 1987).

How did war evolve after the disastrous era (843-1077) outlined above? By about 1050 all external threats to the Latin West had been warded off. However, internal warfare by the armed knights continued, causing enormous terror and damage to the labouring peasant population. Indeed, fighting remained, even without external military threat, a part of the life style of the large class of knights inhabiting their fortified castles across the West, especially in the heartland, France. Among Germanic peoples

honour ("die Ehre") ranked high in the value scale, especially among the elites. As a consequence, the slightest feeling of insult or humiliation could trigger a feud ("faida, Fehde, vete") between knights (Heyn 1982, p. 24). It is unnecessary to add that these "wars of honour" created very unpleasant spill-over effects to the peasant population: harvests were burnt, serfs killed, women raped, churches and monasteries pillaged. In the German Reich, which was ruled during the tenth and eleventh centuries by powerful emperors, knightly warfare was quite successfully reduced by a policy of "Landesfrieden". The emperor convened on regular time intervals with the "Great" of the Reich in order to take oaths of peace. The "Great" in turn tried to do the same in their stemduchies (the Landfriede of 1084, Ronkalisher Landfriede of 1158, Rheinfränkischer Friede of 1179, Reichslandfriede of 1234, Bayerischer Landfrieden of 13th century; see Heyn 1982, pp. 26-32).

In France ("West-Francia" still at that time), no royal power was able to impose such a peace. The early Capetian kings (987-1180) ruled effectively only in the area between Paris and Orleans. Especially the south of France, escaping totally from royal control, was plagued by vehement knightly wars. In these regions the movement of the Peace of God ("Pax Dei") arose. Contrary to the imperial Landesfrieden, the French peace movement rose from the lower layers of society. Special attention should be paid, however, to the role of the monks. Since the tenth century, the monks manifested themselves more and more as a power, independent from secular clergy and the knightly class. They did so mostly by putting themselves under the direct supervision of the pope. They must have thought it better to have a remote ineffective overlord than a petty but close, and hence, effective one. The leading monastery in this respect was no doubt Cluny, founded in 910 and exempted from local supervision in 998. This exemption was later extended by pope Benedictus VIII to all dependent monasteries. As a result a whole network of intellectually and economically flourishing enterprises spread in Europe, escaping totally from local control. Unarmed but quite wealthy, the monasteries were easy prey for the warring knights. As a result, the monasteries took the lead in the peace movement in France during the tenth and eleventh century. They organised large, regional meetings, on which the local population gathered, and during which series of war restrictions were voted (e.g., meetings of 989-990 in Charroux-Poitou, 990 in Narbonne, 994 in Limoges, Le Puy

and Anse-Lyon) (Duby 1978, p. 158). The Pax Dei forbade all violent actions of a knight, including pillage and rape, against unarmed people, under which the clergy, monks and peasants were understood. During the eleventh century, in a second wave of the peace movement, the Truce of God (treuga Dei) was promoted, which provided a total ban on warfare from Wednesday evening to Monday morning, during Lent and Advent, the three great vigils and the feasts of the Blessed Virgin and the twelve apostles. Not much time was left for fighting. At the meeting Verdun-sur-le-Doubs in 1016, it was provided that all knights had to swear oaths to comply with these rules. These provisions were at the base of the ethos of chivalry.

This mass movement for peace, energised by the monastic movement, did not last very long. After the eleventh century its heyday was definitively over. Gradually, the task of providing peace was again taken over by strong secular rulers, such as the king of England, the count of Flanders (Van Caenegem 1993) and by local princes in Germany after the collapse of the First Reich.

The peace movement did not ban war from European history. The military energy was refunneled to outside wars, especially to the crusades during the twelfth and thirteenth centuries. From the fourteenth century on large dynastic wars started, such as the Hundred Years Wars between French and English kings in the fourteenth and fifteenth century and the wars between Habsburg and Valois in the sixteenth century. During the seventeenth century the west became the theatre of religious-dynastic wars, during the nineteenth century (till 1918) of national wars, and during the twentieth century of ideologically inspired wars.

Nevertheless, we can credit the medieval peace movement with some lasting consequences for Western civilisation.

Few will question the beneficial economic consequences of it. The drop in warfare made travelling much safer, allowed more long-term investment in industry and agriculture, made peasants less dependent on the military protection of their lord, allowed the expansion of large non-militarised settlements, which were devoted to trade and craft. It is certainly not a coincidence that the total population started to rise steeply from the twelfth century onwards, whilst the urban component in it rose even faster (Cameron 1993, pp. 54-62; Bairoch 1988). Rather timidly during the last

half of the eleventh century, but tempestuously from the first decades of the twelfth century, trade associations multiplied, fairs were organised, artisans were attracted to cities, monetary circulation soared, risky ventures (the "commenda") were set up. The proximity in time between the reduction of warfare and the revival of trade and urban life is too obvious to deny its causal relationship.

In order to reshape society, trade and industry not only need to be done, but should also be regarded in society as respectable, even honourable activities. As long as trade and craft are just tolerated by the leading clerical and military layers of society as wealth producing machines, their long-term stability is not guaranteed because short sighted political leaders may be tempted then to exhaust trade and craft for short-term benefits.

Moreover, when social respect for trade and craft is lacking, the elites of the trade community will be steadily skimmed off in order to become part of the more respected elites. This certainly happened often in continental Europe until the French Revolution. Merchants, once well off, often tried, sometimes in a piteous way, to enter into the nobility, for instance, by marrying their daughter to an impoverished aristocrat (Baechler 1975, p. 70).

About the question when and how a change to a positive valuation of trade and work in general occurred in the West, two strongly diverging views prevail. Max Weber places this turn in the sixteenth century with the advent of Protestantism, especially its Calvinist-Puritan component. Due to their strong belief in predestination, they developed a work ethic, conducive to the foregoing of short term benefits and preference for long-terminvestments (Weber 1967). Weber, who studied thoroughly the historic evolution of the West, was, of course, well aware of the dramatic increase of trade in the twelfth and thirteenth century. According to Weber, however, the ethic of the Middle Ages remained basically hostile to trade, craft and entrepreneurship in general. The trader, even when tolerated for economic reasons, remained a foreign element within the medieval value system. Only within the protestant countries such as the United Provinces, England and northern Germany, a social ethic rating such activities positively developed. As a result, the constant skimming off from the merchant class by the nobility ceased. On the contrary, the merchant class became the politically dominant class on its own merit.

Whether Weber was right about the religious origin of the commercial success of countries like England and Holland is a question falling beyond our scope. We have to deal with the other contention of Weber, i.e. the negative, or at least diminishing attitude towards trade and work before Protestantism. Weber's view probably holds for the early medieval period, let us say, until 1100-1150. Most written sources of this period, especially the biographies of saints (the "vitae") treat commercial life with disdain. Take, for instance, the "vita" of St. Godric of Finshale. This poor peasant son, born around 1080 in Lincolnshire, started as a beachcomber, accumulated a little capital as a peddler, went as a "dusty feet"-merchant from market to market, fair to fair, town to town. With his profits he started, together with other merchants, a shipping company, and engaged in coastal trade along the shores of England, Scotland, Denmark and Flanders. After some years, Godric had become a very rich man. In the present day U.S., Godric would be praised as an example for the American dream. The "vita" has, however, another happy end. Godric, moved by grace, suddenly understood the vanity of his fortune. He turned over all his possessions to the poor and became a hermit (Pirenne 1956, p. 82, see also other examples about the "ignobilis mercatura" in Pirenne).

On the other hand, sources from the same period indicate a positive attitude towards a life of work and earning profits. The texts collected by Gratian (c. 1140, De Matrimonio and Decretum) define the status of laity as men, righteously married, tillers of the soil, capable of adjudication amongst themselves, and with rights to pursue their own affairs as possessors and users of worldly goods (Coleman 1988, p. 609). In the same period, the well known theologian Ivo of Chartres (c. 1040-1115) implicitly rejected the three ordersview by holding that "God created man in his own image and rescued him from his pain, the one as well as the other. Both, the poor and the rich, are equal in His love 'and' for Jesus Christ there is no freeman nor serf, because all the ones who participate in His sacrament are equal" (Van der Ven 1968, II, p. 39).

These texts reveal a positive view towards earthly life and towards the third, working order in general, which was no longer regarded as a mere food provider to the two higher orders. During the thirteenth and fourteenth century a much more elaborated positive evaluation of trade and artisanship specifically would become predominant.

The craftsman had allies in theology. Jesus was after all a carpenter's son and apprentice. Moral theologians began to regard manual work as no longer a penalty for sin, but a positive means to salvation (Black 1984, p. 15).

Between Aquinas' view on man with reason and hands, who had to meet his need by some industry, and the later Renaissance cult of business ("negotium", "homo" "faber") there was only continuity (Black 1984, p. 16). Sombart, the most famous opponent of the Weberian thesis, is very convincing when he points to the flourishing literature in northern Italy, upholding without any hesitation classical middle-classvalues, such as hard work, profit making, long term perspective, prudence and sobriety (Sombart 1915, pp. 103-124).

Thomas Aquinas' writings in the thirteenth century still show a static view on the position of each man and the wealth he deserved accordingly. Later schoolmen, however, such as cardinal Cajetan, held that every man ought to have the possibility of working himself up and becoming richer than he was (Sombart 1915, p. 246). Unlike in the "vita" of Goderic, the merchant, who had become rich, could keep his fortune without any remorse, provided he had made his profits in an honest way.

Sombart seems to be right when he advocates that these later schoolmen had more sympathy for and understanding of capitalism than the 17th century zealot preachers of Puritanism (Sombart 1915, p. 244). The aforementioned opinions show that from the twelfth century on a deep intellectual revolution took place concomitant with the economic evolution, by which the values of military honour, subjection, and fatalism were replaced by respect for peace, work, trade, and individual progress.

5 Medieval Horizontalism: The Rise of Associations

Civil society in the classical liberal sense is a non-organic notion. According to this view, the organic picture of society as a teleological body in which individuals and groups perform static functions towards the whole is misleading. Individuals and groups do, of course, perform functions within society. Such functions are often deliberately conceived and performed by individuals in their interaction towards others.

Sometimes such functions are perceived only ex post, by social understanding, when actions of some have unintended consequences for others. In both cases however, individuals or groups do not function "for society" but for benefits and values, perceived ex ante or only ex post within their mutual interaction.

Did medieval man conceive his individual or group-life as organic towards the whole? Since the eighteenth century Enlightenment, most social theorists and historians answer this question affirmatively. The Enlightenment, with its preference for mechanistic explanation and individual emancipation, blamed the Middle Ages for its organicism. Nineteenth century romanticism on the contrary, glorified the Middle Ages for it. Modern corporatist thinkers, such as Otto von Gierke (1841-1921), Ferdinand Tönnies (1885-1933) and Emile Durkheim (1858-1917) found their inspiration in the warm organic group life of the Middle Ages, which was contrasted with the cold rationalistic and atomistic life under liberal capitalism (Black 1984, pp. 210-236). Even contemporary authors, such as the socio-linguist Michaud-Quantin, assume the existence of a communitarian ethos in order to understand medieval social language (Black 1988, p. 588).

There appears to be some weight to this view on the Middle Ages. In its thinking about society, the medieval church used organic categories. The Catholic Church, the extension of the invisible and eternal in time and place, was depicted as the body of Christ, in whose mystery all faithful participated. The members of this body were functionally related to the whole by their duties, their "officia". Individuals only entered the picture as occupants of these "officia". The individual as such, as denuded from his "officia", was never opposed to the whole of society (Black 1988, p. 592; 1992, p. 15; Bouckaert 1991, p. 156).

The organic analogy was also used for smaller entities, such as cities. The city was often rather seen as a close community, as a near family, rather than as a civil, political association. Henry of Ghent (c.1270) sees the city as "... men living together in civil society and communion; for this could not exist unless bound together by supreme friendship, in which each considered the other as a second self, by supreme charity, by which each of them loved the other as himself, and by supreme benevolence, by which each of them wished for the other what he wished for himself" (Black 1998,

p. 597). Parties ("pars, partes") were regarded with a bad eye, because they divided the body. According to Remigio de Girolami (c. 1319), the city is a whole which the parts love more than themselves and to which they are more closely joined than to themselves (Black 1998, p. 597; Skinner 1992, p. 65).

These opinions leave us with a picture of an organicist society, in which people defined themselves merely as an element of a group, in which they were locked in beyond their free will.

Against this picture, which has seduced so many social theorists, we must oppose, first of all, the legal doctrine about associations, and secondly, some features of medieval community life, as it probably was.

The medieval lawyers, especially the glossators of the Roman law, mostly took a liberal position towards the question of the founding of new associations. The original texts of the Digest provided that craft workers could only form a college by permission of senate or emperor, with the exception of some listed crafts (Digest 3.4.1 pr). The medieval glossators circumvented this legal obstacle by considering this latter list as indicative, and thereby legalising all craft-guilds, without any further requirement (Black 1984, p. 19). The same view was adopted by Pope Innocent IV, who also defended the "individualistic" position that corporate bodies could not be punished (Black 1984, p. 21). Innocent IV and Bartolus, perhaps the most famous lawyer of his time, both affirmed the right to freely enter and leave voluntary colleges. Bartolus also opposed any regulation, by which the exercise of a craft was restricted to some persons (Black 1984, p. 23). As far as medieval legal opinion was concerned, no static or organic view on the formation and evolution of associations was exposed. On the contrary, their views were quite close to the later liberal views on the freedom of association. Also their legal concept of an association was all but holistic. Bassianus for instance, considered an association ("universitas") as "a collection of several bodies distinct from each other". He considered the "universitas" neither as "an individual", nor as a "species", but simply as a notion to indicate separate bodies which were joined together (Black 1988, p. 598).

Though influenced by Aristotelian holistic thinking, Thomas Aquinas also rejects holism when he says, "man is not related to the political community as to his whole

being and everything that is his, and therefore not all his actions need be classified as praiseworthy or blameworthy in relation to the political community" (Black 1988, p. 600).

When considering the evolution of associations in medieval social history, one cannot deny its astounding dynamism and variety. Twelfth century Europe was the theatre of a real explosion of associations, not only in number but also in kinds. With regard to teaching and scientific research there was the rapid spread of universities from south to north, west to east. With regard to trade, there were the merchants' guilds, springing up in every city, organising fairs and providing a very effective adjudication system (Benson 1997, p. 43; Trakman 1983, pp. 7-21).

On the political legal level, we have to mention the boom of new cities, which mostly had a voluntary origin in the famous communes (Bouckaert 1997). On the social level, we have to mention the founding of numerous hospitals and other religious charities (Strayer 1985, p. 292).

This tremendous explosion shows that associative life in the Middle Ages was not static at all. Apparently, social entrepreneurs were busy in all niches of society. One should compare twelfth century Europe with a thrifty social laboratory rather than with a static, organic entity.

When considering the relationship of individuals with their association, one also should be cautious of presenting too static a picture. Firstly, most individuals must have been members of several and very different associations. One could be a member of his city, of his guild, of his confraternity, of his chapter, of his university, etc. It is too simple to argue that one was born and died within his group. Usually, urban citizens participated within a very varied group life. Secondly, demographic studies point out that mobility, especially among intellectuals, but also among artisans, was quite high (Berman 1983, p. 123).

It is true that often one or more sons became an apprentice in the same craft as their father, and because of which one business remained sometimes within one family for generations. Other children, however, had to look for other job opportunities, which they often found in other crafts, in trade, or within the wide ranks of secular and regular clergy, which was, of course, not family based at all in its recruitment.

It is true that medieval political literature emphasised the role of the community in the life of individuals and the duties of them towards the community. This does not imply, however, a holistic political philosophy, according to which the individual is considered nothing more than the ephemeral manifestation of a collective entity. The emphasis on the community was mostly related to the need for a joint effort in order to preserve some goods, especially "liberties", for individuals, which they cannot preserve by their isolated efforts (Black 1988, p. 596; 1992, pp. 18-41). The good of the community ("bonum commune") was not perceived as something distinct from the good of the individual. Remigio de Girolami expressed the relationship between the individual and the common good as follows: "Let the citizen, however poor in himself, strive to make his commune flourish, for in this way he himself will flourish" (Black 1988, p. 596). John of Viterbo said about the city: "A city is called the liberty of citizens or the immunity of inhabitants ... for that reason walls were built to provide help for the inhabitants. City means: you dwell safe from violence. Civitas, id est ci (tra) vi(m)(hab)itas. For residence is without violence, because the ruler of the city will protect the lowlier men lest they suffer injury from the more powerful" (Black 1992, p. 19). Such statements about the community and the common good do not reflect holism at all. It would be easy to "translate" them in modern methodological individualist notions such as economies of scale and public or collective goods.

To conclude this section, it must be argued that neither medieval social history, nor medieval political theory provides us with a picture of a static organic society, in which the individual was virtually nonexistent but considered himself only as an epi-phenomenon of the group to which he belonged. We perceive rather the emergence of a society, in which the medieval individual became gradually conscious of his possibilities to use the dynamism of joint efforts in order to improve his status ("libertas") and his material wealth. Group life had, of course, another outlook than in the modern liberal society. It was far more religiously tainted and had often monopolistic traits. All this does not justify, however, the picture of medieval organicism. This seems rather to be a myth made up for nineteenth century anti-liberal, ideological purposes.

6 Is There a Medieval "nomos"?

Order within civil society rests upon a set of common rules, which do not force individuals into a specific, goal-directed strategy, but which allow individuals to pursue in an orderly and peaceful way their own goals. Such rules are subservient to a multitude of very diverse goals, plans and life-styles within a free society. We perceive such rules and their supporting institutions in the traditional bodies of private law, articulated on the European continent in written codes and contained in common–law countries by a body of precedent law. Though these traditions show national differences, they are, nevertheless, subservient to one gradually globalising order. They rest upon similar principles, while the national differences are overcome by the tradition of the law of legal conflicts (international private law). Perhaps this perception of the modern liberal "nomos" is too legalistic. Modern sociological and economic literature stresses the importance of underlying values and ways of social interaction, which may be as important as the formal rules of the law. Fukuyama, for instance, stresses the importance of trust (Fukuyama 1996), Ellickson the importance of basic social moralities (Ellickson 1991), Haberman the importance of conventional rules in Confucian China (Haberman 1995, p. 73), Macauley the importance of reputation in business relationships (Macauley 1963). How the legal component relates to moral components within the "nomos" of modern society is a question beyond our scope. There is, however, a large consensus to perceive such a cluster of legal rules and moral values as underlying the modern global civil society. The question is whether there was something similar in the Middle Ages. Again, much seems to point to the opposite.

Many parts of the medieval legal order reflect more a "patchwork quilt"-type of a small, concrete legal mini-order rather than a broad "nomos". This seems to be the case for the manorial law, which affected, needless to say, the daily life of the vast majority of the peasant population. The rules could differ from manor to manor, while the jurisdiction on demesne matters rested entirely with the lord of the manor. According to his whims, the practice of the manorial courts could differ from manor to manor. Manorial law concerned very practical regulations of the management of the realm, such as the use of the commons, of monopolised goods (pond, woods, mills, mines); the rules about manorial labour, duties or rents; easements between estates,

etc. The property of the peasants was not submitted to the abstract rules of markets, but rather to internal family rules such as the "retrait lignager", obliging the vendor of land to offer it first to family members. It looks as if the bulk of the population was caught in the small cages of very restricted and concrete legal orders, looking much more like Oakeshots' enterprise associations than a civil association. From a sociological viewpoint medieval society can be qualified overwhelmingly as a "peasant society", i.e. a society in which the local community (parish, village, manor) is the central economic, ritual, cultural, and social control unit and in which relationships among the inhabitants are based on personal contacts (for an overview on the "peasants' society" literature see Macfarlane 1978, pp. 7-61).

Even the cities, though the most dynamic actors in medieval society, appear rather as closed and concrete legal orders. Each city had its own, sometimes very detailed regulations on trade, taxation, the use of the public domain, the entry of crafts, etc. They acted, in fact, as a large artificial family, thereby subduing their subjects to severe social control. Cities intervened deeply in economic life, such as, for instance, through the so-called staple rights ("vente aux étapes), according to which shippers of vessels of wheat could be obliged to cede a part of their load (one sixth or one quarter), to be sold later after an interval of some weeks. By doing this the city disposed of permanent reserves of wheat (Bouckaert 1997, p. 234).

The absence of an abstract "nomocratic" rule, allowing individuals to pursue their own goals, is perhaps most obvious in the religious practices of the Middle Ages. The tolerance espoused by the church authorities had a meaning totally different from the later modern, liberal principle of tolerance developed by John Locke and John Stuart Mill. Medieval tolerance consisted of a virtue to be practised by the Christian faithful, imposing on them a certain moderation in their battle against evil. Often one had to tolerate evil, i.e. not to intervene violently when even having the means to do so, because the harm of intervention could be worse than the evil one wanted to eradicate. Tolerance was a "permissio comparativa". It was the outcome of a balance made by the Christian ruler between the evil to repress and the evil of repression (Berjczy 1997).

The strategic character of medieval tolerance is clearly shown by the attitude of the church towards heretics. They were excluded from any policy of tolerance, unlike

for instance Jews, Muslims, or prostitutes. The evil of heresy, including the danger of splitting the community of the faithful ("universitas fidelium") outweighed apparently the evil of violent persecution and repression.

The evolution concerning religious tolerance has deeply affected the general perception of the Middle Ages and the periodisation of history. It is very common to outline post-medieval history on this matter as follows: the religious totalitarianism (theocracy, hierocracy) of the Middle Ages led, after some shattered attempts of reformation during the fifteenth century ("conciliarism" of Constanz), to a split in Christianity and to the many religious wars in the sixteenth and seventeenth centuries; a real "civil society"-solution finally emerged in England, where strong religious diversity created the dilemma of either endless civil war or tolerance as an overarching constitutional principle.

When we add together what we mentioned about the medieval "peasant society", about the strictly controlled cities, and about the lack of religious tolerance, we must conclude that the emergence of a "nomos" of a liberal civil society was only enabled by a total breakaway from medieval conceptions and social structures. We will contend this belief in the following three sections. Although the mentioned elements, picturing the Middle Ages as the opposite of a civil society rest upon many historical facts, we see more of a continuity between the philosophical, legal, and political traditions in the Middle Ages and the later emergence of a flourishing civil society in the eighteenth and nineteenth centuries, than a real breakaway.

7 Medieval Humanism

As we mentioned already at the end of section 3, the church had been able, during the preceding centuries (500-1000) to integrate the invading pagan, Germanic, Slavic and Hungarian tribes within a culture of Christian universalism. Unlike the pagan religion of the barbaric tribes and antique cities, the Christian gospel taught that salvation was possible for the whole of humanity because everybody can participate through his faith in God's love. In this way Christianity constituted in the culture of the West a profound anti-tribal and anti-racist intellectual tradition. If Christianity was profoundly tolerant of accepting people to its womb, the question, however, re-

mained how tolerant Christians would be towards the ones who preferred to remain outside Christianity (Jews, Muslims, pagans), and the ones who espoused religious views regarded as heterodox (heretics).

Although no stable constitutional practice of religious tolerance originated during the Middle Ages, the philosophical bases of it on which later liberalism would build were developed during this era. Two doctrines should especially be mentioned with regard to this, i.e. the doctrine of natural law and the distinction of crime and sin.

Natural law theory, brought to its medieval heights by Thomas Aquinas, implied that man, as a rational creature, was able to discover by reasoning and by experience alone basic moral truths necessary for a viable society. In order to open himself to the mercy of God one also had to learn the divine law revealed in the bible and ecclesiastical tradition (Aquinas 1952, pp. 208-209, 221-223). The distinction between natural and divine law provides a "natural" base for a constitutional rule of tolerance, for it implies that faith, however necessary for salvation, is not necessary for an orderly society. Provided they respect the rules of natural law, heathens, Jews, Muslims, and Christians should be able to live together peacefully. This distinction also provides the philosophical base for the later separation of state and religion, allotting to secular authorities the maintenance of at least the natural law-order and to church-authorities the preaching of the Gospel, including the divine law.

Building further on the teaching of the medieval Schoolmen, the Dutch lawyer Hugo Grotius split natural law from theology by stating that natural law was also valid for people who did not believe in God at all ("etiamsi daremus quod sine summo scelere dari nequit, non esse Deum...", Grotius 1993, p. 10). Locke, exiled from England, lived in Holland as a guest of Philip of Limborch, a member of the liberal Arminian party, to which Grotius belonged also. This probably provides us with the historic link between medieval natural law thinking and modern liberal tolerance.

Parallel with the distinction of natural law and divine law, medieval philosophers, especially Abelard and Petrus Lombardus, distinguished crime from sin. All crimes were sin, but not the inverse. Many sins, such as, for instance, thoughts of disbe-

lief, can only be judged by God and not by human jurisdictions, neither secular nor canonic. All acts and thoughts, which are not sufficiently externalised towards others ("operationes ad alterum") should, therefore, remain beyond the reach of criminal sanctions. Eventually, they could be administered by the priest by his sacramental power and be sanctioned by penitence, but not by secular sanctions (Nemo 1996, p. 281). However unclear the distinction between "forum internum" and "forum externum" might have been, it provided the intellectual base for the distinction between mere immoral and illegal acts, between moral, religious and social sanctions and criminal sanctions, and finally as well as for our much cherished freedom of thought.

The question remains, however, why these humanistic tenets within medieval Christian philosophy did not develop into constitutional practice. The answer m t be sought in the interaction between principles and self-interest. Principles will only prevail in practice when the actors perceive some self-interest in the preservation of the principle. The principle of respect for property finds numerous defenders into the wide ranks of individual owners, who experience from day to day the benefits of property and can them elves imagine how bad life would be without respect for property rights.

During the Middle Ages society was homogeneously Christian, while the authority of the church as such was seldom contested. In these circum tances it was hard for church leaders to perceive some interest in a policy of tolerance. The use of violence, willingly offered to the church by secular rules, was a very easy solution in which no harm for the church itself was perceived. Only later would more and more Christian thinkers, like Erasm of Rotterdam, become aware of the fact that thi created the opportunity for rulers to abuse religion and church authority for their own political purposes. In protestant countries the threat of constant civil war created a self-interest in tolerance for the different religious parties. In Catholic countries we have to wait until the nineteenth century before the church perceived, as a result of the teaching of catholic liberals such as Lammenais and Montalambert, the many opportunities of a liberal constitution.

8 The Ius Commune of Europe

With regard to the development of law, the Middle Ages were thoroughly polycentric: legal rules, notions, theories, and procedures were developed in many centres, often without territorial monopoly power. Such centres were the papal curia for canon law, the universities for Roman law, the secular rulers for feudal law, the city magistrates for urban law, the consular courts for commercial law, the manorial courts for manorial law. It is puzzling how such a panoply of law-producing centres could lead towards a general and consistent cluster of legal rules constituting a "nomos" for an abstract order (see above, section 6). Most legal historians, however, agree that during the concerned period (1073-1400) a legal tradition, common to the whole Latin West ("ius commune") came about (Berman 1983, p. 120; Van Caenegem 1988). However paradoxical this may sound, the formation of the body of a European legal tradition originated because of this polycentrism and not against it. The paradox can be explained by two major features of medieval legal polycentrism: 1) some centres of law production were of a non-territorial character, so they were in a constant competitive relationship with other law producers; this was the case for canon law, Roman law and commercial law; 2) the territorial law producers were so manifold that ample room was left for experiment, innovation, and imitation; this was the case for urban law, manorial, and feudal law. We will show this by briefly dealing with canon law, Roman law, urban and manorial law.

From the beginning of the twelfth century, the production of canon law developed at a greater speed. The popes enacted decretal after decretal, but even more important were the efforts to systematise the already past decretals into one coherent body of canon law. This was especially the result of the patient work of Gratian, leading to the Decretum in 1140. This work, generally recognised as the authoritative statement of the canon law, was later on constantly glossed and commented, giving birth in this way to a very rich and consistent body of law (Berman 1983, p. 202). This legal revolution is of course a by-product of the more fundamental papal revolution, which started in 1073 with the papacy of Pope Gregory VII, the famous Cluniac monk Hildebrand. This pope profoundly altered the image of the church and its relationship with the secular world. Under his papacy the church appropriated itself an image

of a well-structured body, separate from secular power, with its own hierarchy and discipline, and with a strong commitment to change the world according to the Christian gospel. The papal revolution had deep political consequences. From then on a strong transboundary power was constituted, limiting the power of secular rulers, even in non-spiritual matters. The papal institutions claimed to be the head of the "respublica Christiana", in which they exercised legislative power, while the secular rulers within this "respublica" acted only as executive agents, owing obedience to the authority of the pope. For two centuries (1100-1300) this papal supremacy was a political reality. Counts, dukes, kings and emperors feared the dictates of the pope. Popes could plunge a whole country into disorder and civil war by their decisions. The popes succeeded in annihilating the power of the German emperor. They only had to bow for the much more efficient and less scrupulous power of Philip The Fair, the French king who submitted the papacy to his political strategy (Spruyt 1996, p. 96).

Besides this political effect, Nemo attaches a more profound meaning to the papal revolution and the ensuing growth of canon law. According to him, this revolution brought about a reconciliation between the Roman legal tradition, based on reciprocity, corrective, and distributive justice, and the Christian faith based on infinite compassion ("misericordia") with those suffering in the world (Nemo 1996, p. 272). Through changes in theology, such as the introduction of purgatory, many moral Christian notions were rendered measurable. Penitence became apportioned to the gravity of the sins. A faithful Christian was able to expiate his sins and to assure his salvation by a virtuous life and giving sacrifices to the church. In short, the papal revolution realised the Christianisation of the legal legacy of antiquity and the juridification of Christian morality. In this way Western civilisation was enriched by a fusion of Rome and Jerusalem.

Within the sphere of legal practice, the courts of canon law arrogated themselves a very wide jurisdiction. First of all, they claimed exclusive jurisdiction on all church matters, which constituted an important part of social activities when taking into account the immense properties of churches and abbeys. Secondly, they claimed jurisdiction on all matters of lay people, which had a religious dimension. Examples of this were marriage law, because marriage was a sacrament; testamentary cases, because a will was seen as a religious act; all cases of contract and property in which a breach of

pledge of faith was involved; criminal cases such as adultery, assault against a cleric, sacrilege, sorcery, usury, fornication and homosexuality (Berman 1983, p. 261). Because of these "materiae mixtae", litigants had often the choice to bring their case for a canonic or a secular court. Due to their intellectual superiority, the legal opinion espoused by canon law gradually spread throughout most courts of Europe and became a part of the "ius commune". Examples of this are: 1) the doctrine "pacta nuda", relieving contracting from formalities and holding that a contract is concluded by mutual expressions of will alone; written documents are only necessary eventually for providing evidence; 2) the peaceful possessor of a good cannot be dispossessed from it in a violent or surreptitious way even when the dispossessor was the true owner ("actio redintegranda"); 3) with regard to evidence law, ordeals were forbidden for priests at the Council of Laterans (1215), which in turn led to the entire disappearance of ordeals; 4) wills can be made nearly without formalities, even orally, provided a witness (e.g., the priest, who heard the last will) can testify to it. Many of these innovations still prevail in present civil law.

During the same period of the papal revolution, a complete copy of the Corpus Iuris Civilis of Justinian was discovered in northern Italy. The texts of Justinian were awarded a status on law which was equivalent to the status of the Bible in religion. They were studied and discussed systematically at the medieval universities ("universitas magistrum et scholarum"), which originated in northern Italy (especially Bologna), and spread rapidly during the twelfth and thirteenth century throughout Europe. The Roman law studied by medieval professors and their students was in fact a "dead" legal system. It was not practised at all in eleventh century society, except in some regions in a very primitive way ("vulgar Roman law"). Yet it was seen as "the law", the product of human reason. The nearly biblical authority of the Roman law, of course, stimulated its spread throughout legal Europe. Two other elements, far more of a structural kind, should be mentioned in this respect. Firstly, Roman society of the classical era (0-200 AD) had important similar traits to the medieval world of the twelfth and thirteenth centuries. Both were worlds of an intense commercial and social interaction within a very broad geographical and cultural space. The abstract rules of the Roman law, especially of its "intertribal" component, the "ius gentium", were consequently very useful for the nascent great society of the me-

dieval "pax Christiana". Secondly, the Roman law was not handled as a series of texts with a fixed meaning. The scholars of Roman law cherished the idea of the law as a "corpus", i.e. as a coherent body with underlying principles. Apparent contradiction could thus be solved by reasoning towards these principles, by which some statements in the Roman texts could be put aside (Berman 1983, p. 140). Especially the second generation of scholars, the "post-glossatores" or "commentatores", took a lot of liberty in interpreting the texts of the Digest. This allowed the scholars to adapt the Roman law to present needs, while at the same time using the prestige of antiquity of the Roman law. We mentioned earlier (section 5) the subtle way by which "glossatores" such as Bassianus reinterpreted the regulation on permissions to found an association.

Another example of the inventiveness of the "post-glossatores" is seen within the crucial notion of individual property. Roman law itself did not provide a definition for a property right. It did not even know the notion of a right itself. "Ius" meant rather a collection of rules and not a right. In feudal and manorial law, nothing similar to a property right existed. All entitlements on land were implicated within a complex web of reciprocal duties between lords and vassals, and between lords and (free and unfree) tenants. Yet in the beginning of the fourteenth century, through reasoning and discussion, the "post-glossatores", more particularly the famous Bartolus, defined property as a right to use, enjoy, and dispose freely over a good, provided the owner did not act against another legal rule (Bouckaert 1990, p. 785). This definition of property triumphed finally with the introduction of the Civil Code in 1804, in which it is nearly literally adopted in art. 544. The Roman law view on property was during the preceding centuries constantly promoted in legal discussions before courts, which greatly helped to erode the feudal-manorial property regime on land.

While canon law and Roman law relied on the transboundary, religious and intellectual authority of the church, the medieval urban law relied on the territorial authority of the city magistrates. During the urban revolution in the first half of the twelfth century, many cities succeeded to be granted in charters the right to legislate on a wide series of subjects (public administration, private law, procedure, criminal law) (Bouckaert 1997, p. 221). This thorough decentralisation in law-making did not evolve, however, into the legal "patchwork quilt" we might expect at first sight.

Among the different urban laws, mostly codified within charters, one can discover wide "families of urban law", within which strong similarities of rules and procedures prevailed. In Flanders, for instance, most charters of the cities, granted in the twelfth century, were modelled after the charter of St. Omer, granted in 1127 by count William Clito (Berman 1983, p. 370). In the German empire about eighty new cities took over, without being forced, the laws of Magdeburg. This city on the Elb had been granted a charter in 1188 (Berman 1983, p. 376). Apparently the cities perceived the benefits of a more or less similar body of rules between the different cities. This bottom-up harmonisation of urban law also allowed for a process of constitutional learning. In the cities of Flanders, which originated quite early, the city constitution did not provide for a distinction between legislative and administrative power on the one hand and judiciary power on the other. All power was concentrated in the hands of powerful aldermen ("scabini"), recruited from the wealthy patrician class. This led, during the fourteenth century, to bloody class struggles between patricians and guilds and among the guilds themselves. In the duchy of Brabant, however, cities were younger and provided in their charters for a separation between legislative, administrative power and the judiciary. They also provided for much more democracy in the election procedures. Apparently, Flemish cities "learned" from this, and introduced similar systems at the end of the fourteenth century (Bouckaert 1997, p. 233).

Manorial law was probably the least nomocratic legal order during the Middle Ages. Yet, the picture we touched upon in section 6, i.e. manorial society as a collection of cages in which peasants were locked in, has to be amended substantially. Manorial law itself evolved thoroughly during the twelfth and the thirteenth century. The rights of the tenants were strengthened by changes either brought about through royal intervention (e.g. the Statute Quia Emptores in England; the enfranchisement of serfs in France by Louis X and Philip the Long) or by the fact that serfs had an easy route to the cities ("Stadtluft macht frei"). Manorial justice, a prerogative of the lord of the manor, evolved gradually to participatory adjudication, by which other, often elected, inhabitants of the manor acted as judges (Berman 1983, p. 325). Around 1450 serfdom was completely abolished in Western Europe. Peasants could freely leave the manor and were rarely submitted to labour duties. The erosion of the subjection of the peasantry, the reciprocal and participatory character of manorial law, and the

many routes of escapes from the manor also destroy the picture of the Middle Ages as a "peasant society". Based on ample social data, such as appearing from parish registers, court rolls, deeds, etc., Macfarlane shows, very convincingly, that medieval England (13th-15th century) was a rather open society, which had a mobile population, a flourishing market for land, an individualistic system of heritage and a free status for the individual tenant (Macfarlane 1978). One can question whether this individualistic character of English agriculture was as unique as Macfarlane suggests. Probably also other parts of Western Europe would fit this picture too. In the west of Flanders for instance, in an area called "Franc de Bruges", all farmers enjoyed a status of freemen, granted to them by the abbeys, in exchange for help in winning troughs and marshland from the sea. It is true, however, that this liberalisation of the peasantry did not occur in Eastern Europe, where lower urbanisation offered fewer escape routes and the nobility was given free reign by the emperor, spending all his energy in Italy pursuing his Roman dream (Spruyt 1994, p. 109).

9 The Rule of Law in the Middle Ages

A civil society not only needs a "nomos", imposing some basic ethical and legal standards to the interaction of, for the rest left free, individuals. It requires also as its constitutional cornerstone rules and institutions which prevent political power from destroying the nomos instead of upholding it. This constitutional cornerstone, usually called "rule of law", "limited government", "Rechtstaat", "état de droit", only appeared as a systematised doctrine in the seventeenth and eighteenth century, with the works of John Locke and Montesquieu. Again, the question arises whether this doctrine owes its origin to post-medieval roots and experiences, such as the religious wars, Puritan-Calvinist constitutionalism (p.ex. monarchomachs, Althusius), the Levellers' movement and the Enlightenment; or can we trace it further back into the Middle Ages. Again the answer is positive: between (some currents in) medieval political thought and the later "rule of law"-theory, there is continuity, not a break. The medieval roots of the rule of law should be sought in the tradition of natural, canon, Roman, and feudal law.

According to natural lawtheory, the ruler is bound to the principles of natural law. Lack of respect for them entitled his subjects to a right of resistance. This right could be active (revolt) or passive (non-payment of taxes among other things). According to Aquinas, this right had to be used with prudence. When a revolt against an unlawful ruler would create an even greater harm to the common good, restraint was to be recommended.

This limitation of power and "ius resistendi" was elaborated by Gratian in canon law. With regards to the question whether the prince acted according to natural and divine law, the pope was considered the supreme judge. The "ius resistendi" expressed also a power relationship between popes and secular rulers. The canonists, however, were quite consequent by holding that the "ius resistendi" was opposable to the pope himself too (Berman 1983, p. 145). The pope was also subject to natural and divine law. The canonists did not elaborate formal procedures to materialise this right of resistance against the pope. For this, we have to wait until the fifteenth century with the movement of conciliarism in Konstanz. Nevertheless, it is clear that since the twelfth century a theory of limited government was developed within the most dynamic institution of that time. In this respect, the doctrine of the Renaissance political theorist Jean Bodin of "Princeps legibus solutus est" rather seems to be a break from the awakening rule of law tradition (Nemo 1996, p. 284).

The tradition of Roman law is often blamed for having promoted the absolute power of kings and emperors by taking the Byzantine emperor Justinian as its constitutional model (Ullman 1975, p. 85). This is undeniably true. However, the theory of "iurisdictio", developed by the Roman law scholar Azo (1198-1230) contributed also to the rule of law-doctrine. "Iurisdictio" is the publicly established power and duty to pronounce judgement and to establish justice. As such, "iurisdictio" means the use of power according to the "ius", i.e. legitimate power. "Imperium" or "dominium", i.e. the power of the sword, is a species of "iurisdictio". "Iurisdictio" contains "imperium" and not vice versa. This means that the power of the sword can only be exercised according to the law ("ius").

To the question what was the source of the lawmaking power of the ruler, Azo answered that the source was in the "corpus", the "universitas", the "communitas".

Jurisdiction, consequently ascended from the people to the emperor and not vice versa (Berman 1983, p. 292).

As already mentioned earlier, by far the most effective promoter of the rule of law was the feudal structure of political power based on the idea of reciprocity. Unlike many canon law and Roman law theories, the feudal law affected very practically the power relationship between the effective local rulers, such as dukes and counts, and their subjects. During the twelfth, thirteenth, and fourteenth century, the feudal principle of reciprocity between lord and vassal was gradually extended towards the relationship between ruler and subjects in general. The Magna Carta provided not only that the government of the king had to be in consent with the barons, but it provided also general liberties for all freemen in the kingdom. For instance, it states that "...no free man shall be taken, imprisoned, diseased, outlawed, exiled or in any way destroyed except by the lawful judgement of his peers or the law of the land". The Hungarian Golden Bull of 1222 granted rights and 0, similar to the ones mentioned in the Magna Carta, to the bishops the higher lowernobles of ourrealm. This in fact meant arespect for therule of law towards all free men in the kingdom. In the duchy of Brabant, the famous charter of the Joyous Entry of 1356 granted extensive liberties to all free citizens and a government based on the consent of the most important organised bodies (citi, church, guild , nobility) within the duchy.

The feudal roots of the rule of law, which were based on reciprocity, and the canon law roots of the rule of law, which were based on respect for natural and divine law, were probably merging with each other during the thirteenth and fourteenth century. The "ius resistendi" appears in very important law books such as the "Sachsenspi el" of Eike von Repgau (early thirteenth century) and the "De legibus et Consuetudinibus Angliae", ascribed to Bracton (Berman 1983, p. 293). It is difficult to say where these authors foun their inspiration: in canon law or feudal law? Probably in both. It is, however, difficultto denythatarule of law-doctrine was in the making during the Middle Ages. The rise of absolutism and state sovereignty would interrupt this process in most European countries. This is, however, another story.

10 Conclusion

"History is a gallery of paintings, with few original works and many copies", said Alexis de Tocqueville in his analysis of the causes of the French Revolution. Are we able to compare some characteristics of our time with those of the Middle Ages? Are some situations in our time only copies of medieval pictures? Answering such questions is a very speculative business. In order to stress the relevance of our views on the medieval roots of our civil society and also to stress the fragility of the latter, we must take the risk of making some comparisons.

After the collapse of the socialist totalitarian world, the present international world looks medieval in two respects.

Firstly, on the international level a relative stability persists thanks to the so called "pax Americana", clothed or not clothed in a United Nations envelope. The United States, as a military power, is able to exert a certain hegemony on the world but is not able to (and hopefully not willing to) dominate and rule the world. On one hand, we are left with a polycentric international system (many sovereign states) which does not fall, on the other hand, into a Hobbesian war-like situation due to U.S. hegemony. The medieval counterpart of this has to be sought in the "respublica Christiana" during its effective period (1073-1300). The hegemonic power of this era was, without any doubt, the pope and his powerful bureaucracy, disposing, not over armies, but over an immense religious-moral authority to keep the most powerful candidates for domination, especially the Holy Roman Emperor, under control.

Similar to present day "pax Americana", the "respublica Christiana" provided some international order and containment of conflict, without real international domination.

Secondly, the numerous political entities of our time (ca. 200 nation-states) coexist in a world of growing interaction between individuals, enterprises, and voluntary associations. This puts the nation-states under strong competitive pressure for investments in capital goods and probably, in the near future, for skilled labour (human capital). The nation-states who either have given up largely liberal constitutionalism or have never known it, are by this competitive pressure forced to factually liberalise

their policies. This picture can be compared to the medieval patchwork of political entities, in which duchies, counties, bishoprics, cities, and city-leagues coexisted in a world of increasing interaction with merchants, artisans, lawyers, artists, clerics, and scientists across the borders of their polity. The gradual emergence of a wide civil society within the "respublica Christiana" also forced many rulers to adopt a policy of economic tolerance and fiscal restraint. While we live in a "globalisation" of human interaction, the Middle Ages certainly lived in a Western European "continentalisation" of human interaction.

These two parallels between our time and the Middle Ages make it very interesting to look for the main causes of collapse of the "respublica Christiana" after the thirteenth century. This may enable us to watch with particular attention any similar evolution in our time which might endanger the ongoing process of "globalisation".

Basically, the medieval order of the "respublica Christiana" collapsed because one player, i.e. the king of France, was able to break the power of the arbiter of the order, and to reduce the arbiter to a tool of his policy. This happened during the fourteenth century, when Philip the Fair and Guillaume Nogaret overpowered Pope Boniface VIII and brought the papacy to Avignon (Spruyt 1994, p. 153). The elimination of the arbiter and the gradual weakening of a supranational code of behaviour ("ius naturae", "ius gentium") plunged Europe into an open Hobbesian situation, pushing each country into a war-taxation-bureaucracy cycle (Tilly 1975). The wars between the castle nobility during the tenth and eleventh centuries, suppressed by the Peace of God and the "Landesfrieden", were now replaced by a war between powerful monarchist war machines. This was most pronounced in France, Spain, Sweden, and Prussia. Countries like England and Holland, which preserved large parts of their medieval "rule of law" tradition, were able to stop the war-taxation-bureaucracy cycle. This led gradually, after many wars and revolutions, to the "pax liberalis" of the nineteenth century (1814-1914).

Can we perceive similar tendencies in our time comparable with the factors which brought the "respublica Christiana" to its collapse in the fourteenth and fifteenth century? The danger that the present hegemonic power, the U.S., turns into an imperialistic one, trying to rule effectively the whole world, like was the ambition of the medieval Holy Roman emperors or of some popes, is very unlikely. Internal and external

opposition to such plans is far too strong. A dash for power by other national states is even more unlikely, as other states will form counterbalancing coalitions.

The major danger for the present international order and, consequently, for the continuation of the global civil society probably resides in the formation of strong regional blocks like NAFTA and the EU. Such blocks, which originated paradoxically as free market areas and contributed a lot to the formation of transboundary civil societies, may evolve into superstates in which local autonomy is entirely suppressed. The emergence of even one such block, for instance the EU, may have the same effect as the dash for power of Philip the Fair and France at the beginning of the fourteenth century. It would, on one hand, destroy the international discipline now provided by the U.S.-hegemony. On the other hand, such blocks would be able to limit the competitive pressure on national states by reducing the number of political decision centres from the present two hundred to, say, five. Such an oligopolisation of political power would not only stop the emergence of global civil society, but also trigger a dangerous logic of war.

"A historian is a prophet in restrospect," said the German philosopher and historian Wilhelm von Schlegel. Let us hope that the scenario, mentioned in this conclusion, proves to be a false one.

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