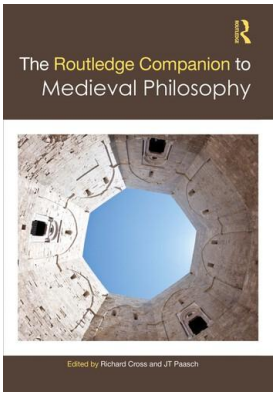

The Routledge Companion to Medieval Philosophy

Richard Cross, JT Paasch

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Jonathan Jacobs
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LAW AND GOVERNMENT

Jonathan Jacobs

Medieval political thought contains a great deal of analytically astute and highly sophisticated argumentation and theorizing. Medieval thought concerning the claims of various legal authorities and how and why one rather than another has priority is very rich. Different authorities and legal principles were often in conflict and those authorities and principles were connected with fundamental values concerning temporal and spiritual life. The conflict between the papacy and temporal authorities is perhaps the most visible of the conflicts but there were many controversies concerning authority and they challenged thinkers to articulate conceptions of the scope of legitimate power, the rule of law, and the authority to sanction. Also, it was during the Middle Ages that recognizably early modern conceptions of state and church and political institutions began to be formulated. It was a period of remarkable intellectual gestation.

This chapter highlights some of the main views and developments in medieval political thought. The discussion includes three topically organized sections. I begin with some remarks on context, background, and the significance of custom. The second section focuses on fundamental medieval concepts concerning rights, property, and political obligation, particularly as understood in terms of feudal society. That is followed by a discussion of the contests between secular authority and spiritual authority and the emerging conception of the nation-state.

Custom

Our focus is almost exclusively on Latin medieval thought. There are a couple of reasons for this. One is that Christianity was the dominant religion of the lands that became the nations of modern Europe. There was an Islamic presence in Europe even after the Middle Ages and in places that presence continued until nearly the sixteenth century. But the geographical region of the medieval world that is most continuous with the political history of modern Europe (and also the New World) is what was often referred to as "Christendom." There were Jewish communities, too, but Jews did not have political sovereignty (though they sometimes had their own community administration and courts) and medieval Jewish political thought often addressed issues arising from Jewish exile and diaspora, an important set of concerns but not among those shaping the main lines of European political thought. Islamic and Jewish thinkers wrote important works addressing politics and had a key role in the transmission of the ancient inheritance to the Latin West. But there simply is not the space here to try to give them their due, even just briefly. A second reason for focusing on Christian thought is that questions regarding the scope and character of

church power and questions concerning relations between ecclesiastical and temporal power were centrally important to medieval Europe.

Many of the main issues for political thought were informed by Christian conceptions of humanity's place in the created order, of human nature, and divine governance of the world. What Christianity implied for politics was among the most pronounced features of medieval political thought.

While our focus is on Christianity's relevance to medieval politics some important common elements of the three Abrahamic monotheisms merit mention. Among them (*especially* in medieval thought) was the notion that human beings are created in the image of God and that reality exhibits a normative, hierarchical order. There were thought to be various orders of intelligences between human beings and God, and while revelation and grace show that being united with God is possible for human beings, the sublunar order of reality we inhabit is one in which corruption and passing away occur. It is far from the perfection a rational agent can aspire to attain with divine guidance and assistance.

This is relevant as an important background consideration insofar as the medievals did not tend to think in terms of progress, or in terms of human beings making fundamental improvements to the world, or in terms of human beings having the role of designing and constructing the overall order in which they are to live. Instead, human beings are remote from the perfect *origin* of things and the medievals tended to think of *origins* as having normative weight and authority. Especially during the earlier periods of the Middle Ages it was widely held that the social and political structures in which people are to live are inherited; they are *given* rather than *made*. We should be careful to not overstate this; Roman law had considerable influence, and that was a human construction. However, in much of the medieval understanding of law and political order custom had very considerable authority. It was common to claim that the articulation of law was a rendering explicit of law, transmitted by custom, with its origin in a remote past.

The significance of custom had much-diminished resonance in the post-Enlightenment West, especially in those places where explicit projects of constitution writing and the design of institutions were undertaken. Moreover, popular sovereignty, constitutionalism, the formal separation of powers, and democratic accountability, all of which are features of politics that many moderns are likely to regard as essential were not concerns of medieval politics either at all or at least, not in the way they became concerns of modern politics. It is worth considering the significance of custom in medieval political thought not just for the sake of understanding the time, but also because changed views of the authority of custom were important in the development of later thought.

The authority of custom was so great that even positive law was often interpreted as the articulation of customary law rather than being regarded as a formulation coming into being as original legislation. However, the notion that custom reflected reason or that it reflected the will of the people, even if there was no historical record of the people making law, was fairly common. Of course, human agents articulated law explicitly but for much of the Middle Ages that process was interpreted as an articulation of legislative authority that did not reside in this or that human agent or institution as an original maker of law. As Ewart Lewis writes, "From their early sources, the civilists and canonists learned to think that positive law was based on the human recognition of norms of right not dependent on human construction but rooted in the very nature of the world."[1]

Political practice throughout much of the Middle Ages had little scope for the notion of law as an explicit expression of will. Early medieval thinkers did not attempt to explicate custom in terms of reason or rational principles, but with the passage of time there were increasingly ambitious attempts to articulate and justify law on the basis of rational (rather than merely customary) considerations. This project often involved a central role for natural law.

Natural law had sources in ancient, particularly Stoic thought and was sometimes mediated by the influence of Roman civil law and the notion of *jus gentium*. The latter, the law of peoples, was

thought to express those principles applying to human beings anywhere on account of reflecting considerations grounded in natural reason. The natural law tradition provided a conceptual framework for articulating rational, universal considerations much more effectively than the appeals to custom. Medieval natural law theorizing is an excellent example of how, for a great many medieval thinkers, it was important to find the bases of authority in a ground other than human volition or agreement. Along with the Stoics Patristic sources also were important influences. In each of those cases, the conception of natural law was a conception of something fundamental to which persons are to be responsive.

Whether custom or natural law was regarded as an anchoring authority the Christian understanding of fallenness had important implications for political thought. The profound wounding of human nature and the loss of its original integrity through the first sin, the wounding transmitted to all future generations, is a basis for the view that not only are human beings distanced from the First Cause in the normative order of reality but that, left to our own devices, humans will almost surely make things worse rather than improve them. Greed, envy, dishonesty, injustice, cruelty, and all other vices came into the human world via the first sin and human beings are not capable of overcoming that profound corruption on their own or in worldly life. Redemption, and a re-turning to God, is possible but only with external, graciously given aid. God is the source of all that is good, including that aid, and to the extent that human beings are capable of realizing good, it is through being receptive and responsive to God. Aquinas spoke for Christian thought in saying, "For in all things, good comes from one perfect cause."[2] Responding to God's guidance and grace makes it possible to once again be close to God and in that sense, even the notion of a human *telos*, a perfective end to be actualized, is understood in terms of the significance of origins, a restoration of undamaged integrity.

Because of fallenness human beings are not to be entrusted with the project of fashioning a conception of political order except through the guidance supplied by custom or natural law. Even when political theorizing highlighted the importance of rule being for the sake of the common good, and law serving the ends of the community, these notions were often cast in terms of ruling and law being modes of stewardship of certain aspects of the created order, a normatively organized hierarchy including human beings at a fixed position in it, and having certain ends proper to their nature as human beings.

Some thinkers argued that the fact that there is a need for government at all is because of the fall, and the same is true of private property. Some held that in the original condition of innocence, all property was common and there was no slavery. In humanity's fallen condition various institutions and practices are sanctioned so that important needs can be met. These are responses to predicaments that simply would not have arisen in the state of innocence. Some maintained that natural law provided a set of principles and rules for sinful man, no longer in an innocent state. Others held that natural law is the same prior to the fall and after it. Sir John Fortescue wrote:

> Yet the status of man was changed by sin, but not the law of nature, of which also the Civil Laws say that natural rights which are preserved among all peoples everywhere, constituted by a certain divine providence, remain always firm and immutable . . . Even so the equity of natural justice which once assigned to innocent man the common ownership of all things is none other than that equity which now, because of his sin, takes away from man corrupted by guilt the good of common ownership.[3]

Aquinas held that natural law applied to man only after the fall and thus, the norms of natural law applied immutably, not needing to be adjusted, as it were, for the difference made by the fall. Fallenness also had a bearing on the question of slavery. Aquinas argued that in the state of innocence "no man was lord of another" if by "lordship" we mean that the person subject to lordship is the

slave of the other. There is also the sense in which "one dominates another as a free man when he directs him to the proper good of him who is directed, or to the common good" and "this kind of lordship of man over man would have existed in the state of innocence."[4] This is because man is naturally a social animal and because it is right that he who has greater knowledge and virtue should direct the other for the sake of the good of the person directed. Aquinas quotes I Peter 4:10 and Augustine, who in the *City of God* (Book XIX, chs. 14, 15) argued that one rules another "by the just rule, not by cupidity of dominating, but by the office of counseling: this natural order prescribes; thus God established man."[5] Rufinus wrote:

> The dignity of man before sin was lofty, hanging as if on cords on these two qualities: namely, rectitude of justice and clarity of knowledge; through the one he controlled human affairs, through the other he approached divine matters. However, as the wickedness of the devil grew within him, the rectitude of justice was depressed by the weight of perverse malice and by the mist of error the light of knowledge was made dim.[6]

Men managed to find a way to live together, to "submit to the bonds of concord, and to make fixed contracts; and these are called the laws of peoples, because nearly all peoples use them: for instance, sales, leases, barters, and the like."[7] But God "sent His Son, through Whom He established for us the law of life, the law immaculate, converting souls, to which we give that happy name, the Gospel."[8] What potential for virtue remained in man after the fall enabled him to live by law but God's grace was necessary for bringing man to perfection. Teleological conceptions, oriented to the actualization of the perfections proper to a thing's nature, were joined to Christian theology's notion that humanity's condition in history is a fallen one, yielding important results for politics.

There were multiple sources of medieval law and authority and these were not integrated in a stable, systematic arrangement, universally acknowledged as legitimate. Custom was woven through some of these views in complex ways. There was feudal law, with its own considerable complexity, Roman law, canon law, and numerous theories of natural law and notions of the law of peoples. In modern politics we might be disposed to distinguish between custom and the law, thinking of the latter in positive, explicit, legislative terms (unless we have natural law in mind but that, too, includes specific principles or norms). Custom, we might think, is *other* than law, the latter involving a kind of rational design or intention that the former typically lacks. (Though, of course, there is a significant tradition of common law that has developed in ways that differ from medieval customary law.) Yet, until the latter portion of the Middle Ages the notion that custom is an authoritative anchor for law was widely held, and finding a basis for a rule or policy in custom was regarded as a way of showing its legitimacy.

This changed over time, with an increased scholarly interest in Roman law, the explicit elaboration of several conceptions of natural law, complex debates over the nature and control of property, and disputes concerning the relations between temporal authority and church authority. All of those factors contributed to the development of theories of law that relied less on custom as the basis of normative authority.

Rights, Property, and Obligation

Medieval political thought did not include the notion of the individual in a pre-political condition, consenting to enter into a political order, the consent being an expression of the person's rational judgment and volition. That basis of political legitimacy and political obligation came later. Even though political legitimacy was not explained in terms of a mandate of democratic sovereignty the notion that the power of the ruler is to serve the common good or that it is ultimately an expression of the legislation grounded in the will of the community, was commonly held. The

king was to rule justly and to preserve peaceful order; he was to serve the good of the community. Again, Aquinas expresses a common notion; "it pertains to the duty of the king to promote the good life of the multitude in line with reason."[9] There was not yet an explicit doctrine of natural rights, though the king could be deposed for failure to fulfill the responsibilities of the office. Notions of absolute power and rule by divine right would come later. The notion of serving the good of the community was not yet connected with a formal notion of *the state*, with formally organized institutions of governance. Instead, the governance occurred through the complex obligations and expectations accompanying various feudal statuses in the community. The king was the lord at the peak of a complex pyramid of feudal relations. The notion of a state with enduring, dedicated institutions of administration developed slowly, in conjunction with the developments of estates as recognizable corporate bodies, members of which had a collaborative conception of their interests, frequently asserted against the king in regard to taxation.

Though during much of the Middle Ages it was understood that the king is God's minister, that did *not* mean that the king had unconditional authority or power. Henry of Bracton writes:

> The king's power is of right and not of unright . . . Therefore, the king ought to exercise the power of right as God's vicar and minister on earth, because that power is from God above; but the power of unright is from the devil and not from God, and the king will be the minister of that one of the two whose works he does.[10]

Again:

> For king is not the name of a nature, but of an office, like bishop, priest, deacon. And when any man for certain causes is deposed from the office entrusted to him, he is not what he was, nor should the honour due to the office be afterwards paid him.[11]

The question of whether the kingly office was higher than the priestly office was, of course, to become one of the central controversies of medieval politics, reflected in theorizing and in actual events and sometimes in violent struggles for power.

Though the medievals did not have a conception of individual rights and liberties similar to modern conceptions this is not to say that the medievals had no notion of a person's rights; indeed, one could have many well-defined, status-based rights. But rights were typically a matter of status, of one's place in a hierarchy that was regarded as a natural order, and one's place in that order was not a voluntary matter. A great deal of modern political thought has been influenced by Hobbes's claim that all persons have the same natural liberties and his insight that the state is an artifact with its origin in human intention and decision, rather than political life being natural and its form answering to fixed (if customary) principles and values. Hobbes's willingness to accommodate absolutism and his exclusion of the sovereign from the social contract distance him from much of the political thought that developed after, and in response to, his own thought. However, the significance of rational endorsement of the principles of the political order, and the consensual contractarian enactment (by individuals with equal rights) of that endorsement owe much to Hobbes, even if they are now employed to obtain very unHobbesian results.

Notions of the common good or the good of the community figured prominently and there was widespread acceptance of the notion that custom expressed the people's legislative will yet, this was not part of a doctrine of popular sovereignty in the liberal-democratic sense. Nor was there a counterpart to the kind of representation that is a regular feature of modern liberal democratic government. In the Middle Ages it could be said that the ends of common people were served by those above them in the feudal order, for they were to act with a view to the good of all. But they were not accountable representatives selected by and answerable to those whose ends

they serve. Moreover, those higher up in the hierarchy had their own ends on account of their own place in the social order. The good of the community was a complex, its components differentiated on the basis of the complexity of the social world.

Notions of the intrinsic worth of each individual human being, and the significance of each human soul and the equality of those souls owe much to Judaism and Christianity. However, the church was not a self-conscious, energetic exponent of *political* equality and the rights of the individual.

> The early church had made peace with Roman absolutism and with the great inequalities and injustices of Roman society; it was prepared to accept the stratification of the feudal age and the irresponsibility of medieval kings. For Christ's kingdom was not of this world.[12]

The notion of a harmoniously integrated normative hierarchy suited the church both in regard to metaphysics and in regard to social order. A great deal of medieval Christian philosophy up to the thirteenth century was one or another variant of Christianized Neoplatonism, though Plato's *Republic* and *Laws* were not translated into Latin until later. Neoplatonism's conception of the world as involving a fixed order of beings at multiple levels of perfection was integrated with Christian theology but not all of the necessitarian metaphysics of Neoplatonism could be included. The notion that beings at different levels in the ordered hierarchy processed from the One, the highest being, by a necessity logical in its rigidity conflicted with the doctrine of God's free act of creation of the world. But other elements of the Neoplatonic conception—with appropriate revision—could be accepted. The view that justice involved persons fulfilling the duties of their stations, without egalitarian principles to challenge the conception of what those were, suited the church.

While there was a sense in which each human soul was equally precious and in its spiritual mission the church could be said to value all souls equally, with regard to humans as natural beings there was little impetus for a principle of equality. The church accepted the high degree of economic inequality and the inability of those at the lower reaches of the social hierarchy to ever have any realistic ambition of elevating themselves. Inequality was accepted within the context of the view that property and wealth were in the service of the welfare of the community overall and the stratification of society was almost universally accepted as a natural order.

Notions of equal standing, universal rights and liberties, and of bargaining and compromise as unavoidable elements of politics—notions integral to a great deal of modern political culture—were basically unknown to the medievals. As suggested above, the notion that progress, development, aspiration, and the more or less remaking of the world in accord with a vision of what politics could accomplish did not figure centrally in medieval politics. Even when groups argued for some revision in powers or authority, often, the case was made on the basis of asserting customary rights and powers, on the basis of the discovery of what was already properly inherent in the political order instead of on the basis of novel ideas, progress, and change. Plus, thinkers influenced by Augustinian skepticism regarding the prospects and virtues of the earthly City would have had little optimism about what human beings can accomplish by way of striving to perfect themselves through their own unaided efforts.

It is important also that the many distinctions of jurisdiction and authority did not bear a likeness to conceptions of constitutionally defined separations of power. Much modern political thought concerns the question of the locus of sovereignty and the accountability of political institutions and agents and articulation of the conception of popular sovereignty. Many medievals did not conceptualize distinct modes of political powers, such as legislative power, judicial, and executive power. These tended to be combined in something like an overall notion of jurisdiction and administration. If those powers were institutionally separated, ruling would lack integrity and unity. Aquinas wrote, "The good and welfare of an associated multitude is the preservation of its

unity, which is called peace, without which the utility of social life is destroyed—nay more, the discordant multitude becomes a burden to itself."[13] Many medievals believed strongly in the unity of rule but not for Hobbesian reasons concerning the dangers of divided sovereignty, the resulting confusion over where authority is located, and the precariousness of life in such a condition. Instead, they were accustomed to a plurality of authorities but it also seemed nearly axiomatic to them that, for any given locus of authority, there should be unity of rule "at the top." A separation of powers was just not part of their conceptual idiom. Marsiglio of Padua argued that if there was a plurality of ruling bodies "there would occur the division and opposition, fighting and separation, of citizens and ultimately the dissolution of the city . . . conflict would occur between the ruling bodies themselves."[14]

Unity of rule at the top was compatible with there being a role for discretion but it was discretion understood as tightly connected with the ends proper to rule. The ends and obligations of rule were defined independently of the will or personal aims of the ruler. Governing's agenda included the preservation of peace and the administration of justice with persons fulfilling the responsibilities of their roles in a fitting manner. It did not include significant discretionary ends of this or that ruler or regime. The medievals did not think of political matters in terms of *interests*, but rather, in terms of *ends*.

With the passage of time the guidance of custom became increasingly inadequate and more fully elaborated theories of just order and political power were needed. Resources were borrowed from Roman law and from Aristotle's political thought in developing those elaborations. In that sense, medieval political thought used conceptual tools borrowed from the past to address contemporary problems but that use of the past differed from the reliance on custom. The powers of the king and the institutions of political order came to be theorized about in steadily more intellectually self-conscious and explicit terms.

Property had a central place in medieval thought concerning both social order and political order. The development of feudalism made it possible to interpret a kingdom as the property of the monarch but this was part of a much more complex conception of property. Private property was widely considered as having the sanction of natural law and utility. However, the question of the origin and sanction of private property was disputed and some defenders of the church's lordship over property were anxious to make the case for papal supremacy over that of any individual, even the king. Some defenders of papal *plenitudo potestatis* maintained that not only did the pope have a monopoly of power in the church but that he also had power over temporal affairs. Giles of Rome said of the pope that, "the power of all agents is contained in him, so that in him is all the power of all the agents in the church; and therefore it is said that in him there is a plenitude of power."[15] John of Turrecremata held a similar view, claiming that, "the plenitude of power cannot exist subjectively and formally in the corporation of the church, but only in the Roman pontiff."[16]

In the latter centuries of the Middle Ages Ockham and others (e.g. Marsiglio of Padua) argued against the church's claims to superior lordship over property, and part of their argument was that the church's primary mission is spiritual and not the promotion of social utility. Marsiglio wrote that, "no Roman bishop or other bishop, priest or any other spiritual minister as such is suited to the office of coercive rulership over any individual person regardless of condition or any community or association whatsoever."[17] Advocates of the church's view answered that all lordship ultimately has a divine origin and that the approval of the church is needed to support *any* valid title to property because one's relation to God is the proper ground of any claim to lordship and the church is the judge of that relation. Claims regarding property were related closely to claims regarding political authority overall, the disputes about each entangled with disputes about the other.

Some theorists held that property had originally been in common and that it was only in the sinful condition that private property is justified, as meeting the needs of fallen humankind.

Numerous churchmen argued that the world was given man in common but "the fact of sin necessitated the establishment of private property to check man's avarice and to secure such order as might be."[18] Alexander of Hales held that, "it is good that some things be private; for otherwise good men would be in want and human society would not endure, because the wicked would seize everything."[19] At the same time, Christian charity meant that the fruits of the earth were to serve the needs of all, and the fact of ownership, even if it included sole ownership with the right to dispose of the land as one wished, did not take precedence over the requirement of benevolence. Aquinas, for instance,

> distinguished between property as the right to acquire and administer and property as the right to use for one's own advantage. In the former sense, private property had the natural sanction of social utility; but as a right of use it remained subordinate to and restricted by the principle that material things were created by God for the common good of men.[20]

Aquinas argued that the right to private property was based upon the norms of natural law, and was explained by private property's utility to human ends overall. To many medieval thinkers,

> private property appeared as blessed by reason and more or less directly by natural law. It was most often classified as an institution of the *jus gentium*, with the implication that, while its human origin was a matter of agreement, that agreement reflected a universal need. Moreover, as an institution of the law of peoples, property appeared as coordinate in origin and dignity with rulership, and this construction provided a basis for the protection of property from the arbitrary intervention of the king, even while it left the way open for the subjection of property to his control in other ways.[21]

Property was understood in such a way that several different persons could have rights to a given property and for persons of a certain status those rights could extend to inheritance. There could be several contractual relations filling the "space" between the lord who owned the land and the persons who actually worked it. Multiple levels of subinfeudation were common, with various contractual relationships as links in the chain connecting the lord with the person growing crops or keeping animals. The vassal to a feudal lord typically did not have the right to sell the land and landed property was not regarded as something to be bought and sold in a money-economy. When the vassal died it was likely that the land would pass to the vassal's heir, who, as such, had certain contractual obligations to the lord. Other persons might contractually come to have certain rights in the land, the chain of contractual relations anchored in the lord who provided protection and the vassal owing payment or other duties to the lord. "The sale of land thus burdened was, in the earlier feudal period, virtually impossible; but the vassal might by subinfeudation with the lord's consent grant the land to a third holder on similar terms."[22]

The political dimension of this conception of property was that the king could regard the land he ruled as his property but there could be numerous legally enforceable rights-claims to a single piece of land. The king could not simply claim that his office trumped all those rights claims. In consequence, a king's claim that the kingdom and all the property to which others had rights belonged to him would have been recognized "only in the sense that they are subjects to his protection and jurisdiction."[23] Moreover, there was a long history of thinking of kingship as a public office, and as noted above, while the people did not make law, it was widely held that the law—though enacted by the king—was an expression of the customary law of the people.

> Indeed, the promulgation of fundamental law in the Middle Ages was more like an act of jurisdiction (*juris dictio*) than an act of legislation. The king with his council or the king with his

> parliament declared the law as a court declares it, except that it was declared in general terms rather than applied to the settlement of a particular dispute. The authority given to custom by such formal declaration was parallel in its significance to the authority which, according to Beaumanoir, a custom received through its "proving" in a successful lawsuit.[24]

Property was not bought and sold as in later eras. The king, responsible for the security of the realm, might make claims on property (through taxation) on the basis of exigencies of security. However, the king's claim on property was vulnerable to interpretation as despotism and the complexity of rights in property was often a barrier against the king simply making successful claims on property. In, say, the twelfth or thirteenth century a king's advisors might have assured him that, at his discretion, he could levy taxes for the sake of paying for military forces needed to secure the safety of the kingdom. However, feudal barons might have balked at this, claiming that their property rights, supported by considerations of *jus gentium*, took priority over the king's claim. (Consider, for example, the barons' claims that led to King John accepting Magna Carta in 1215.).

Contests of Power

Once Aristotle's philosophy was retrieved on a large scale, elements of it were combined with Stoic-informed natural law thinking and patristic thought in ways that marked significant developments. The integration of Aristotle's thought required some modification. Aristotle's focus was the city-state, and much medieval thought was concerned with monarchy and empire. Also, the Christian concern with blessedness and the universal relevance and authority of the church had no counterpart in Aristotle's thought. For the medievals, there was a combination of universality and transcendence that is just not part of Aristotle's conceptual idiom. The feudal order was not part of Aristotle's conception of the social world and political life but it was possible to combine feudal custom with elements of that conception by seeing feudal order as an articulation of integrated, end-oriented organization.

By the thirteenth century several different lines of thought were converging in new ways. One important development of the period was a transition from feudal hierarchy as the most basic and significant mode of social (and economic) arrangement to more corporatist forms. To be sure, hierarchy remained very important but corporate forms of social and economic organization were responding to changing circumstances and were also bringing about changes. Corporate forms, whether of a guild, town, university, or some other group or association typically involved persons in at least some community of interest and in deliberations and decisions about the pursuit of those interests. That included electing officers and introducing governance structures quite different from feudal structures, both formally and in regard to their purposes.

An individual could feel that he was a valued member of a group with shared interests and this was a new way to give voice to one's interests (within certain contexts and departments of activity). The corporation was also potentially immortal; it could outlive any particular group of individual members. This, in turn, required new kinds of legal thinking.

> The tendency of feudalism was, in fact, to reduce all social and political organization to a network of contractual bonds between pairs of individuals, to assimilate public power to private property, to regard the ruler as part of this contractual system, and to limit the role of government to the minimum which was compatible with the unimpaired maintenance of feudal property rights.[25]

During the height of feudalism it was sometimes not even clear what precisely counted as a monarch's kingdom. States did not have well-defined borders and while allegiance was certainly

important the medievals did not have a notion of citizenship recognizably similar to modern notions. For one thing, persons were subjects, not citizens. Also:

> Even bodies that might have been construed as acting for the community through delegated power—for instance, the king's great council, or the electors of the Holy Roman Empire—tended also to appear as groups of private individuals whose right to advise, to decide, to elect was attached to each one as an incident of his individual status rather than to the whole group as a corporate body representing a larger corporation. From this conception followed the typical requirement of unanimity for the decisions of such groups.[26]

The development of corporate bodies, with fairly clear notions of aims, purposes, and interests, and with organized, enduring governance began to alter the political landscape, making for an important change from the terms of the feudal order.

The investiture struggle gave rise to considerable debate and theorizing regarding the origin and scope of political authority and it brought into relief the question of the relations between temporal and spiritual power. The state (and its organs) was not the conceptual center of gravity that it came to be in early modern thought. Medieval thought concerning both the church and temporal political power tended to focus on the proper ends of the church or the king rather than on structures of political authority. Granted, one can point to the debates about the powers of church councils *vis a vis* papal power as an important exception to that general rule.[27] However, even in that case, much of what was at issue concerned how best to enact or actualize the powers of the church, given that its primary end is to aid human beings in attaining blessedness. The medievals were primarily concerned with right ends in a way that rendered organizational questions secondary. They tended to avoid the separation of powers. Administration, jurisdiction, and discretion belonged together, the substance of each being determined by the office in question and its place in the normative order. A separation of powers would have been regarded as a dangerous disintegration of the capacity to govern.

It is unsurprising that there should have been centuries of debate over the scope of authority of pope and king (or emperor, as the Holy Roman Empire took on a more coherent, lasting shape, with the emperors having a self-conscious awareness of the significance of the office). Moreover, there were complex debates within the church over the powers of the pope and church councils. Conciliarists argued that while the pope indeed had a unique position of leadership of the church, the councils were the voice of the whole church, and represented the church as a whole. They rejected the view that the pope had exclusive, sole powers of governance of the church. This was analogous in some respects to debates over the character of kingly rule and the appropriate role of the barons or other lords. True, they were vassals to the king but the king was the servant of the realm, with special responsibilities for peace and order. His ability to serve those ends well depended upon the unity of his rule well-serving those for whose good he was responsible.

There had been considerable controversy over investiture, over the issue of whether the pope or the king invested a bishop with his authority. On the one side was the papal claim to have responsibility for, and thus, authority over, all of Christendom. On the other side was the secularist claim that the appointment of bishops and abbots was properly the responsibility of the secular ruler, because the papal authority concerned spiritual matters and the investiture of a bishop or an abbot concerned the appointment to an office with administrative responsibilities in a specific part of a kingdom. To be sure, less than principled considerations often figured in various parties taking one or another side in these disputes. However, the investiture controversy was a crucial context for motivating the formulation of sophisticated arguments concerning papal and temporal power. In view of the fact that (i) there was not yet a well-defined conception of the state and its powers, and that (ii) the pope's office was spiritual and had jurisdiction of a sort over all of Christendom,

and that (iii) the king had responsibility for the public good, that (iv) significant lands and their wealth were at stake, and that (v) there was not yet an agreed, satisfactorily elaborated account of just where the lines were to be drawn between ecclesiastical and temporal powers and obligations, it is not difficult to understand why the issues motivated a great many arguments, objections, and replies.

Among the factors influencing the development of the arguments was the growth of better-organized state institutions, making it possible for the monarch to rule more effectively and to regularize state functions, strengthening the king's hand in pushing back against papal claims of authority and power. In addition, there was sufficient corruption in the church to motivate programs of reform, some of which included arguments for minimizing the church's role in worldly affairs and focusing upon and purifying its spiritual functions. William of Ockham is an important figure in that regard. Also, Marsiglio of Padua formulated an ambitious case for limiting papal rule over worldly affairs, and Dante, in *De Monarchia*, argued for the unity of rule over a restored empire, the chief aim of which was to preserve peace so that human beings need not be distracted from their proper intellectual perfectionist end. These three were among the most robust critics of papal claims to authority over temporal affairs.

Above, we noted Marsiglio's position on the importance of unified rule. He was equally direct in his objections to papal claims to assert authority over any but spiritual matters. He wrote of bishops' attempts to rule over feudal rights and temporal goods:

> And so such an incorrect judgment about, and perhaps perverted desire for, rulership on the part of certain Roman bishops, which they assert is due to them on the basis of a plenitude of power passed on to them (as they say) by Christ, constitutes that singular cause which we have described as the efficient cause of the intranquility or discord of the city or kingdom.[28]

At the same time, Aristotle's *Politics* provided conceptual resources for giving more determinate form to medieval political thought. Aristotle's taxonomy of different forms of rule and the respects in which they are susceptible to certain kinds of corruption and dissolution enlarged the medieval political vocabulary. The rediscovery came at a time when political entities had structure and senses of identity that had developed beyond the basic contours of feudal structure. In addition, the estates, which would come to be so important to European political history for the next several centuries, were taking shape and beginning to have their own senses of identity *vis a vis* kings and princes.

By the fourteenth century the state was developing with elements of institutional structure making it possible to mount significant arguments against papal power. The state could plausibly claim to have justice and peace as its primary functions, pushing back against church involvement in temporal affairs. Dante argued that the authority of the state came directly from God, unmediated by the church. "Thus, therefore, it appears that the authority of temporal monarchy flows into it directly, without any intermediary, from the fountain of universal authority."[29] With his accustomed subtlety Aquinas made some clarifying distinctions yet still left important ambiguities in his view overall. He wrote:

> It seems that the ultimate end of an associated multitude is to live according to virtue; for this is the purpose for which men congregate: that they may live well together, an end whose attainment would not be possible to anyone who lived alone; now the good life is life according to virtue; therefore, a virtuous life is the end of human congregation.[30]
>
> But because man, in living according to virtue, is ordained to an ulterior end, which consists in the enjoyment of God, as we said above, there must be the same end for the human multitude as there is of one man.[31]

> But because man does not attain the end of the enjoyment of God through human virtue but by divine virtue . . . therefore to guide men to that end will not belong to human government but to divine . . . the ministry of that government was not committed to earthly kings but to priests, and especially to the highest priest, the successor of Peter, the Roman Pontiff . . . For thus those to whom belongs the care of antecedent ends ought to be subject to him to whom the care of the ultimate end belongs, and to be directed by his command.[32]

Aquinas also held that both spiritual and secular power are derived from God and that

> in those things that pertain to civil good, the secular power is to be obeyed rather than the spiritual, according to the saying in Matthew 22:[21], "Render to Caesar the things that are Caesar's."
>
> Unless, perhaps, the secular power is joined to the spiritual, as in the pope, who holds the apex of both authorities, the spiritual and the secular.[33]

Not long after, Nicholas of Cusa was writing of politics in a very different, more modern-sounding tone.

> Whence, since by nature all are free, every government—whether it consists in written law or in a living law in the prince—through which the subjects are coerced from evil deeds and their liberty is regulated to good by fear of punishment is based on agreement alone and the consent of the subjects.
>
> Now, since by a general compact human society has agreed to obey its kings, it follows that in a true order of government there should be an election to choose the ruler himself, through which election his is constituted rule and judge of those who elect him; thus ordained and righteous lordships and presidencies are constituted through election.[34]

This passage is indicative of the growing significance of consent with respect to political legitimacy and political obligation. By the fourteenth and fifteenth centuries the longstanding notion of the will of the people as an anchor of the rule of law was being more explicitly developed into the notion of consent. At the same time, the increasing economic power and organization of guilds, universities, and other corporate bodies meant that there were important, politically interested groups and institutions insisting that rulers be responsive to them.

However, even when medieval thinkers emphasized the importance of consent and the liberty of the individual they were not thinking in terms of Hobbesian or Lockean liberty. They were remote from Hobbes because the medievals generally presupposed that there is an objectively good end for a human being and the realization of that end—which was not interpreted in terms of the individual's desires or a subjective notion of interests—was the *telos* of government. They were remote from Locke because even though medieval thought reflected concern for the individual, this was in terms of each person's supernatural end of closeness to God, rather than a concern with the individual as a participant in the construction of a legitimate political order. When medieval thinkers highlighted consent they tended to think of it in terms of the judgment of the wise, in terms of good judgment about human good, rather than in terms of majority rule.

As noted above, corporate bodies increasingly took shape and had a growing importance in the economic and political life of the Middle Ages. Still, the medieval mindset largely maintained the notion that unity is crucial to rule, to order, and to peace and thus, the importance of the individual to political anthropology (and metaphysics) was not interpreted in terms of having a voice

or a role in governance. The thinking was still largely committed to a conception of hierarchy, harmony, and subordination of the individual to the welfare of the community. The ruling part of the community was to serve the good of the individuals constituting it but that ruling part represented the members of the community without being democratically accountable to them. As Lewis points out, in northern Europe "the idea of the popular origin of law was not originally coupled with a concept of continuing popular legislation."[35] Bracton wrote:

> Moreover, the king was created and chosen for this: that he should make justice for all, and that in him the Lord should sit, and that he himself should decide his judgments, and that he should sustain and defend what he has justly judged, because if there were no one to make justice peace could easily be wiped out, and it would be vain to establish laws and to do justice if there were no one to protect the laws.[36]

The king depended upon others for financial and military resources and the barons and other important groups could claim that they represented the will or at least the support of the people in a manner essential to the king's exercise of power not being despotic. In this way, more scope for consent was emerging despite the fact that it was not comparable to modern democratic consent.

In the ecclesiastical context conciliarists maintained that the papal office was not, in fact, higher than the other offices of the church. The pope had certain specific responsibilities that exceeded those of other officers of the church but his was not an office different in kind. Accordingly, conciliarists argued that the councils were the seat of authority in the church and the pope was to be responsive both to the law as laid down by the councils and to the councils as a form of representative authority. Thus, while the pope had considerable discretionary power, that power was not to be exercised in a way that was independent of the authority of the church overall, as a community, represented by the councils.

In both contexts the unity of rule was highly significant. The "Babylonian Captivity" and the Western Schism made the importance of unity even more evident and the Council of Constance, settling the issue of papal succession, marked a decline in papal power over temporal affairs but, at the same time, strengthened the authority of the pope in the church. Lewis notes that:

> The essence of the conciliarist argument was a kind of pluralism, an implicit denial that the good government of the church required that authority must necessarily always come to a head at the same point. Their pluralism was peculiarly precarious because of their inability to formulate it in a clear-cut separation of powers theory.[37]

Here, again, as in the context of temporal rule, the absence of a conception of separation of powers led to a result in which the ruler "at the top" was able to assert distinctive, independent authority because the strategies for checking it invited division in ways that would render rule ineffective. The legal idiom of the era did not make possible articulation of distinct powers in a manner that was not susceptible to disintegration.

Marsiglio argued that the pope does not even have spiritual powers above and beyond those possessed by other priests, and he argued that temporal rulers should have the authority to fill numerous ecclesiastical positions. He held that

> no bishop or church, as such, is head or principal of the others by virtue of the words of Scripture. For, in the absolute sense, the head of the church and the foundation of the faith is, by the immediate ordinance of God, according to Scripture or truth, only Christ Himself, not any apostle, bishop, or priest.[38]

And:

> It belongs only to the human legislator, or to the multitude of Christians of the place over which the minister is to be established, to elect, determine, and present persons to be promoted to ecclesiastical orders; and that no priest or bishop singly, nor any single college thereof, is permitted to confer such orders without the permission of the human legislator or of the ruler who bears its authority.[39]

William of Ockham argued that,

> the papal principate does not regularly include the power to abolish or disturb the rights and liberties of others, especially those of emperors, kings, princes, and other laymen, since rights and liberties of this sort are in most cases reckoned among secular matters, to which the papal principate, as we have shown, by no means regularly extends.[40]

Ockham held that the position of the pope is not "dominative or despotic but ministerial, so that the powers that it has by Christ's ordination extend only to those things that are necessary to the salvation of the believers."[41]

Ockham also held that a council of the church may be convened even without the authority of the pope. He presented several arguments for the view, including the argument that it is appropriate to so convene to judge whether a pope is a heretic and also to elect a pope if the papacy is vacant. The view is significant as an expression of the perspective that the authority of the pontiff does not exceed that of the community of the church, the universal body of believers. We have seen this notion of authority residing in the community, though not on the basis of any explicit constitution, in the context of temporal power, as well.

Defenders of a papal monopoly of power, such as John of Turrecremata, fought back against the conciliarists. He comes late in the medieval era, writing in the first few decades of the fifteenth century. An able polemicist, he formulated a systematic critique of some of some of the conciliarist positions in *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios*. He maintained that "in the Roman pontiff alone resides the plenitude of the power of the church,"[42] and this is so for several reasons. One is that, "it is impossible that the spiritual power by which one is bound or loosed in the soul in regard to heaven should be derived immediately from the person or persons who are bound or loosed by that same power."[43] A second reason is that,

> if the power of the keys of jurisdiction was given to the universal church in common as a corporation, it would follow that neither pope nor prelates of the church could carry out or exercise that power unless all the faithful, both laymen and clerics, had been at least convoked.[44]

This is not the procedure followed by the church and it is not wrong that it is not followed. It is absurd to suppose that a majority of laymen or priests and clerics "would have the power of making decisions in the name of the whole church."[45]

Before John of Turrecremata, Giles of Rome was another defender of the plenitude of papal power, developing a conception of the relation between nature and grace in which the church represented a perfection of the community exceeding the perfection that could be achieved by the state. But, in his view, not only is the church higher than the state (though not historically prior) but, the pope had temporal as well as spiritual power. Giles was influenced by the Augustinian conception of man's fallen condition as so corrupted by sin that the process of salvation was not possible unless all valid political authority was subject to the pope. The pope was understood to have the highest office regarding the good of the community and that was conjoined to the claim

that the pope's power lacked nothing required for the government of the church. In the view of some theorists, this essentially meant that the pope's will was law, even to the extent of interpreting natural law.

By the latter years of the Middle Ages both the state and the papacy had reached a point where theories of very extensive powers—absolute or near-absolute power—had been elaborated for each. While the controversies surrounding investiture and the complications of a simultaneous plurality of popes had been largely resolved, the grounds were being laid for new contests concerning state and church power. These new contests arose within each sphere, as the recently articulated powers of each type of rule were about to be challenged. In the sphere of temporal power the challenge would come from corporate bodies asserting their interests and claims to authority against the crown. The English Civil War in the mid-seventeenth century was a kind of culmination of that process in Britain. More generally, in the spiritual sphere the challenge was motivated by, and directed at, what was perceived as institutional corruption of a kind that could only be remedied by a reconstruction of priesthood—by reformation, and not by a restoration of conciliar power. The perceived autocracy of the pope was a crucial issue but it was also emblematic of what some saw as very objectionable practices of the church, its hierarchical structure, and its sacerdotal function overall. Critics of the papacy and the church had opened lines of reasoning that were to lead to the Reformation.

Conclusion

The Middle Ages produced a great deal of complex thought concerning authority, legitimacy, law, and the powers of both temporal and spiritual government. Some of the issues that exercised medieval thinkers were historical particularities of that age. They involved the intersection and integration of Roman law, Germanic custom, canon law, natural law, and relations between prince and pope. Also, the prevalence of Neoplatonic metaphysics and, in the later Middle Ages, Aristotelian philosophy gave a distinctive character to a great deal of medieval thought. Later thought had different contours. Nevertheless, it would be a mistake to regard medieval thought as relevant only to scholars of the history of that period. Medieval thinkers developed the conceptual idiom needed to formulate and address many of the issues that would come to be fundamental to early modern theorizing about the state, natural law, property, and political legitimacy.

The understanding of the political status of the individual is, by now, much changed, as is the conception of a person's rights. Also, the understanding of the chief responsibilities of political offices and the persons occupying political offices has changed significantly. The political culture of liberal democracies, with an emphasis on progress, change, and highly activist state-policy is alien to the medieval mind, with its understanding of politics anchored in the notion of fallenness and the modest capacity of human beings to be causes of their own perfection. In that regard there is a kind of humility in medieval political thought. While that may appear to the modern mind as an impediment to progress it was anchored in a kind of modesty about the human capacity to govern without excesses of corruption.

A great deal of medieval political history is a story of contests between values anchored in temporal goods and values anchored in spiritual goods. The study of medieval political thought is a study of rival attempts to articulate, distinguish, and integrate multiple values, and the relations and the conflicts between different values remain at the core of political thought. The medievals were impressively aware of the character and significance of fundamental questions concerning the relations between multiple values and how they figure in the institutions and practices shaping human communities. Despite how different our political preoccupations and aspirations are from theirs, their grasp of some of the most basic conceptual architecture of politics—the problem of how a pluralism of values is to be reflected in and realized by political institutions and activities—remains both fascinating and instructive.

Further Reading

Medieval philosophy in general has benefited from the growing interest in the history of philosophy in general in recent decades. This includes an interest in Jewish and Islamic thinkers as well as Christian thinkers, both in regard to the publication of their works and in regard to a rapidly growing secondary literature. Medieval metaphysics, logic, and philosophy of language have long been areas of specialist study, and of course, the medievals are centrally important figures in philosophical theology. They also wrote important works on moral psychology and ethics. Law and government are not among the more intensively studied departments of medieval thought.

One fairly obvious explanation of the neglect of medieval political thought is the fact that so much recent and contemporary thought is preoccupied with theories of the liberal polity, liberal democracy, social democracy, value pluralism, and associated issues. To the extent that religiously grounded considerations are discussed, it is often in terms of how they should be excluded from political discourse on the grounds of failing to satisfy a standard of "public reason." The very considerable body of medieval thought concerning law, authority, jurisdiction, legitimacy, and other topics has received relatively little attention.

However, there are some excellent works dedicated to medieval political ideas. Some are collections of primary sources, some are scholarship on medieval thought, and some include works of both types. A two-volume work, Lewis (1954), is a collection of excerpts from many medieval thinkers, and also includes substantial essays by the editor and an extensive bibliographical note organized in several helpful sections (individual authors, general surveys, chronological listings collections of documents, etc.). A smaller but also excellent work is Nederman and Langdon Forhan (1993). These works include excerpts from several figures (such as Bernard of Clairvaux, Giles of Rome, Brunetto Latini, John of Paris) as well as "the usual suspects" (e.g., Aquinas, Marsiglio, John of Salisbury). In Nederman and Langdon Forhan (1993), there are brief introductions by the editors and the book includes many suggestions for further reading, both primary and secondary sources. Lerner and Mahdi (1972) includes lengthy excerpts from Jewish, Muslim, and Christian thinkers. Many of the excerpts include topics other than politics but that provide helpful philosophical context and show connections between political thought and other areas of philosophical theorizing. Parens and Macfarland (2011) is a more recently published work, also including excerpts from thinkers in all three religious traditions. Among secondary sources, Burns (1991) is an excellent resource.

In various general anthologies of medieval philosophy one can find excerpts of works on politics. For example Hyman and Walsh (1983) includes excerpts from thinkers in each of the three Abrahamic traditions, and some of the excerpts include portions on law and politics. Several of the volumes in the *Cambridge Companion* series (e.g., *Cambridge Companion to Aquinas*, *Cambridge Companion to Maimonides*, etc.) include chapters on law or politics.

Notes

1 Lewis (1954: 7).
2 Thomas Aquinas, excerpt from *On Kingship*, Book I, ch. 3, in Nederman and Langdon Forhan (1993: 104).
3 Sir John Fortescu, excerpt from *De Natura Legis Naturae*, Part I, ch. XX, in Lewis (1954: 134).
4 Thomas Aquinas, excerpt from *Summa Theologiae*, I, q. 96, Art 4, in Lewis (1954: 174).
5 Ibid.: 175.
6 Rufinus, excerpt from *Preface of Summa Decretorum* in ibid.: 37.
7 Ibid.: 37.
8 Ibid.: 37.
9 Aquinas, excerpt from *On Kingship*, Book I, ch. 15, Nederman and Langdon Forhan (1993: 114).
10 Bracton, in Lewis (1954: 146).

11 Ibid.: 146.
12 Ibid.: 196.
13 Aquinas, *On Kingship*, Book I, ch. 2, in ibid.: 212.
14 Marsiglio of Padua, excerpt from *The Defender of the Peace*, Discourse I, ch. 17, in Nederman and Langdon Forhan (1993: 190).
15 Aegidius Romanus, excerpt from *De Ecclesiastica Potestae*, ch. IX, in Lewis (1954: 384).
16 John of Turrecremata, excerpt from *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios*, ch. 71, in ibid.: 428.
17 Marsiglio, *The Defender of the Peace*, Discourse I, ch. 19, in Nederman and Langdon Forhan (1993: 198).
18 Lewis (1954: 94).
19 Ibid.: 96.
20 Ibid.: 97.
21 Ibid.: 97.
22 Ibid.: 90.
23 Ibid.: 93.
24 Ibid.: 4.
25 Ibid.: 194.
26 Ibid.: 195.
27 Councils of the church had played a crucial role in the formulation of Catholic doctrine and in making decisions about key elements of church governance. During the Middle Ages conciliarists were those theorists who argued that councils, rather than the Pope on his own, should be regarded as exercising the church's rule. This is not to say that they thought that a council should always be in session but that the conciliar rule was a way to properly place ultimate authority in the church.
28 Marsiglio, *The Defender of the Peace*, in Nederman and Langdon Forham (1993: 198).
29 Dante, *De Monarchia*, Book III, ch. 16, in Lewis (1954: 157).
30 Aquinas, *De Regimine Principum*, Book I, ch. 14, in ibid.: 178.
31 Ibid.: 178.
32 Ibid.: 179.
33 Aquinas, excerpt from *Commentum in IV Libros Sententiarum Magistri Petri Lombardi*, bk. 2, di. 44, q. 2, art. 3, in ibid.: 567.
34 Nicholas of Cusa, excerpt from *De Concordantia Catholica De Jurisdictione*, in ibid.: 192.
35 Ibid.: 260.
36 Bracton, excerpt from *De Legibus et Consuetudinibus Angliae*, ibid.: 282.
37 Ibid.: 379.
38 Marsiglio, excerpt from *The Defender of the Peace*, Discorse 2, ch. XXII, in ibid.: 397.
39 Ibid.: ch. XVII, in ibid.: 602.
40 William of Ockham, excerpt from *De Imperatorum et Pontificum Potestae*, II, ibid.: 608–609.
41 Ibid.: 609.
42 John of Turrecremata, excerpt from *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios*, Book II, ch. LXX, ibid.: 422.
43 Chapter LXI, in ibid.: 422.
44 Chapter LXXI, in ibid.: 426.
45 Chapter LXXI, in ibid.: 427.

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