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The impact of Scholasticism and Protestantism on Ulrich Huber's views on constitutionalism and tyranny*

Summary

Ulrich Huber's (1636-1694) contribution to public law was initiated with his lectures on the general principles of constitutional law at Franeker. The fruits of his work culminated in his *De Jure Civitatis*. The era in which Huber produced this work was generally characterized by the emergence of rationalism and enlightenment in Dutch jurisprudence. More specifically Huber's work reflects the influence of the transition from enlightened absolutism to democratic government based on the will of the subjects. His views on popular sovereignty culminated in Huber's theory of limited government and resistance to tyranny. A study of the Latin text of Huber's pioneering work reveals valuable perspectives on these trends in the transition of Dutch jurisprudence from scholasticism to enlightenment.

Die invloed van skolastiek en protestantisme op Ulrich Huber se standpunte oor konstitusionalisme en tirannie

Ulrich Huber (1636-1694) se bydrae tot die publiekreg het 'n aanvang met sy lesings oor die algemene beginsels van die konstitusionele reg te Franeker geneem. Die vrug van sy werk het in sy *De Jure Civitatis* neerslag gevind. Die tydperk waarin Huber hierdie werk geproduseer het, is in die algemeen deur die opkoms van die rasionalisme en die verligting in die regsgeleerdheid van Nederland gekenmerk. Meer spesifiek toon Huber se werk die invloed van die oorgang vanaf verligte absolutisme na demokratiese regering, gebaseer op die wil van die onderdane. Huber se siening van populêre soewereiniteit het in sy standpunte oor beperkte regering en verset teen tirannie neerslag gevind. 'n Studie van die Latynse teks van Huber se pionierswerk in Latyn, bring waardevolle perspektiewe oor hierdie tendense in die oorgang van die Nederlandse jurisprudence vanaf die skolastiek na die verligtingsdenke aan die lig.

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1. Introduction

N.G. van Kampen¹ regards Ulrich Huber's (1636-1694) contribution to the juridical sciences as belonging to the fourth period (1648-1713) in the scientific development of Dutch culture. V.H.H. Green describes the Dutch culture of this period as "bourgeois rather than aristocratic, practical rather than idealistic, forthright rather than evasive, simple rather than elaborate, Puritan without being purely secular or rigidly religious."² The main trend in the legal thought of this period was a strong upsurge in studies on natural law, a previously neglected field of study, together with the history and antiquities of law, in general, and Dutch law, in particular.³ Huber's contribution to legal science in the field of public law was initiated with his lectures on the general principles of constitutional law at Franeker.⁴ The fruits of his work culminated in his *De Jure Civitatis*, a pioneering work on constitutional law. In this work Huber examines public law through perspectives drawn from jurisprudence and political science. Roman and canon law also play a leading role in this work. The laws of Dutch states are also considered, though less extensively.

This period also saw the establishment of lectures on Canon and Church law because the fear of the influence of Rome and Roman Catholicism had abated and the title of Doctor of both fields of law (Civil and Ecclesiastical) was highly regarded. During this period the method of lecturing had also changed. Lectures were mostly conducted at the residences of the law professors.

1 1822 II:33.

2 Green 1969:339.

3 Van Kampen (1822 II:33) observes: "Omtrent de *Regtsgeleerdheid* was dit Tijdvak zekerlijk het schitterendste, althans wat de Republiek betrof. Het Akademisch onderwijs werd thans met het *Natuurlijk Regt* vermeerderd, hetwelk, voorheen zoo min als Geschiedenis en Oudheden van het Regt werd geleerd." This was the broad tendency within Renaissance thought, in general, and humanism, in particular. Van Asselt and Rouwendal 1998:67-68, give a most useful explanation of the relationship between renaissance and humanism in the academic field: "Het Humanisme als historisch verschijnsel uit de veertiende tot de zestiende eeuw is nauw verwant met de Renaissance en is evenals deze een gecompliceerde geestesstroming, die niet gemakkelijk in een definitie te vangen is. In het algemeen zou men kunnen zeggen dat het Humanisme een doorwerking is van de Renaissance op het gebied van de geesteswetenschappen, met name op dat van de geschiedenis, taalwetenschap (filologie) en filosofie. Een tweede algemeen kenmerk van het Humanisme uit deze periode is de oriëntatie op de klassieke oudheid. Men greep terug op de antieke cultuur, omdat men in deze cultuur de beste mogelijkheden zag om de mens te vormen en zich te doen ontplooiën. De term 'humanist' stamt echter uit de vijftiende eeuw en werd gebruikt om degenen aan te duiden die *de studia humanitatis* (*de humanitoria* of geesteswetenschappen) beoefenden. Een umanista was iemand die zich toelegde op de studie van grammatica, retorica, dichtkunst, geschiedenis en van de ethiek (*philosophia moralis*)."

4 He was at first Professor of History and Oratory, and afterwards Professor of Law at the University of Franeker in Friesland. According to Gane (1939 I:xix), he also lectured on the general principles of constitutional law at the same university (see Van Kampen 1822 II:33). Huber had fame outside his own country, for his lectures were attended by students from England, Scotland and Germany, as well as by those from Holland. For three years he served as Judge of the Provincial Court of Friesland (Gane I:xix).

The public disputations and promotion of doctoral candidates by way of public disputations still formed a most important part of the academic exercises of the time.⁵

Studies in law changed as a result of the introduction of shorter works for studying the various fields of law. The so-called *Compendia* became the fashionable sources for studying law — probably as a result of Böckelman's⁶ moving from Germany to Leyden, where scholars, as at all the Dutch universities, conducted lectures mostly on the law as such. The format of academic books was determined largely by considerations of convenience and by the inherent usefulness of these sources for study purposes in order to glean a good overview of both the whole field of study as well as the different sections thereof. These study works gained in popularity and contributed towards the problem of neglecting the sources themselves. Ulrich Huber was one of the earliest Dutch authors who commented extensively on the publication of the first *Compendia* and incorporated elements of these in his works.⁷ Some substantial studies materialized in the field of inaugural dissertations (*dissertationes inaugurales*). Previously these consisted mostly of short statements with an abundance of quotations from other authors.

Among the Dutch authors of the so-called “Golden Age”, Huber, born in Dokkum, Friesland, in 1636, the son of the talented Zacharias Huber, a member of the State of Friesland, for Westdongeradeel, was of Swiss descent. He was a student of Wissembach (1607-1665),⁸ and at the age of twenty-one attained the status of professor of rhetoric and history at Franeker. Six years later (1663) he obtained the freedom to lecture in law because he had committed himself more to this field of study than to his study of letters.⁹ He pursued both fields of science with a burning passion. According to Vitringa, he worked “all hours of the day, from the morning at six to eight in the evening, busy with giving either public or private lectures (Collegiën), with the exception only of the hour of eleven in the morning when he had his lunch; an example without comparison.”¹⁰

5 See Van Kampen 1822 II:33-4.

6 Böckelman (1632-1681), of German origin and learning. From Heidelberg he moved to Leyden, where he became professor in 1670. His commentaries on the Digest reflected the spirit of humanism. His *Tractatus Postumus de Differentiis Juris Civilis, Canonici et Hodierni* was published in 1737.

7 For the appearance of the first *Compendia* see Ulrich Huber, *Dialogus de ratione discendi docendique Juris*, later added to his *Digressiones*. On the earlier legal compendia, mostly intended for the learned, Panzirolus (1554) already expressed himself in a work entitled *Compendia Juris*.

8 For a brief biographical perspective of Wissembach's work, see De Wet 1988:144.

9 For a biographical overview of Huber's life and work, see Van Zyl 1983:360-361 and De Wet 1988:144-146. Van Zyl (1983:157) reckons Huber among the “humanists” because of his interest in Roman law. According to De Wet (1988:144), he attained the status of professor of law in 1660.

10 It is astonishing to note that apart from his lecturing responsibilities, Huber maintained a very productive publishing profile. His first book was a literary work: *De genuimè aetate Assyriorum, et regno Medorum* (1662); thereafter followed his *Digressiones Justinianae* (1670), *De Jure Civitatis* (1672) (including an exposition

After the death of Wissembach, Huber was appointed as his successor. In 1667 he was promoted to the position of first professor (*Professor primarius*). His early success was mainly due to his Latin and Dutch works on Frisian land law; his lectures on the civil law according to Justinian and on Roman and contemporary law, according to the Pandects, soon became authoritative sources on Frisian law. Some of Huber's most important contributions to the legal sciences in the Dutch states were his lectures on constitutional law, later published as his *De Jure Civitatis*.

According to his colleague Vitringa,¹¹ Huber was an exceptionally well-balanced person whose character reflected a true piety — his regular conducting of religious exercises revealed his pious demeanour and interest in theology.¹²

defending the atonement of Christ for legal purposes) (1684, 1694, 1708, 1752); *Positiones Juris Contractae* (1682); *Auspicia Domestica Exercitium* (1682) (also dealing with a comparison of Frisian with Roman law); *Hedendaagsche Regtsgeleerdheid* (1686), in two parts (third impression extended by Z. Huber, 1726, fourth print 1742); *Institutiones Historiae Civilis* 3 vols. (1692, 1703); *Eunomia Romana, sive Censura Juris Justiniani* (1700, 1724) and *Opera minora* (1746) in two volumes. When he died at the age of 58 he had between forty and fifty works on history, education, philosophy (political and otherwise), religion and law, to his credit (Gane I:xix). Gane (*ibid.*) adds that next to Hugo Grotius, he was probably the greatest, as “he was certainly the most prolific Dutch jurist.” Gane observes: “His broad humanism and knowledge of life redeemed his work from legal dullness.” He was also highly regarded among practitioners in Holland. Huber's principal legal works included: 1656: *Disputatio de actionibus bonae et stricti juris* (Disputation on actions *bonae fidei* and *stricti juris*); 1665: *Oratio exhibens historiam juris Romani et ex ejus argumento continuam probationem literas humaniores cum jurisprudentia esse conjugendas* (Speech setting forth the history of Roman law, with a continuous proof, derived from arguments based upon it, that literature and law ought always to be conjoined); 1668: *Disputationes juris fundamentales* (Fundamental dispositions of law); 1670: *Disgressiones Justinianae in humaniora juris* (Justinian excursions on the humaner side of law) (three editions); 1672: *De Jure Civitatis* (The law of the State) (six editions); 1678: *Praelectiones ad Institutiones Justinianaeas* (Notes of lectures on Justinian's Institutes); 1682: *Positiones juris secundum Institutiones et Pandectas ad primordia disciplinae usumque saeculi adtemporatae* (Propositions of law based on the Institutes and Pandects, adjusted to the early stages of legal training and to the uses of the present age) (six editions); 1682: *Auspicia domestica exercitationem, quibus otium, quod illustres Frisiae Ordines ei apud Academiam suam fecerunt, occupare constituit* (Homely tokens of guidance for the exercises, in which it was decided to employ the leisure, which the high orders of Frisia enjoyed at their University); 1684: *Beginnelsen der Rechtskunde in Friesland gebruikelijk* (Principles of law in use in Friesland); 1686: *Hedensdaegse Rechtsgeleertheit, soo elders, als in Friesland gebruikelijk* (The Jurisprudence of my time, as in use both in Friesland and elsewhere in the Netherlands) (probably two editions published at Leeuwarden, and four editions later in Amsterdam); 1689 and 1690: two further volumes of his *Praelectiones*, being on the Digest or Pandects, forming with his work of 1678 the complete series of notes of lectures on the Roman law (apparently five later editions of the complete work appeared), and 1700: *Eunomia Romana sive Censura Juris Justiniani* (The greatness of Roman law, or a review of the law of Justinian) (published posthumously with a funeral oration by his son, Zacharias Huber). For a list containing other works of Huber, see Van Zyl 1983:361 n. 373.

11 Mentioned in Van Kampen 1822 II:38.

12 *Ibid.*

It is a pity, states Van Kampen, that Huber's involvement in many literary disputes creates the impression that he was unable to match his piety with a true love for those who differed from him.¹³ Although his sound knowledge of religion even proved a match for Röell, he involved himself with trivialities in the field of literature in his sharp dispute with Perizonius and he came into sharp conflict with Van Eck on matters of academic privileges.¹⁴ Huber died in 1694.¹⁵ Although his contribution to law has generally been regarded favourably, his work on constitutional law, published in Latin and not translated since, has hitherto remained an almost obscure source.¹⁶ It was in this work that Huber made some of his most important contributions to the establishment of the principle of constitutionality and defining the limits of public authority. In this pioneering work on constitutional law Huber also deals with some of the sensitive issues pertaining to tyranny.¹⁷

2. Ulrich Huber and the scholastic tradition

2.1 St. Thomas Aquinas and scholasticism

From the twelfth-century Aristotelian renaissance through the Enlightenment, legal and political philosophy relied heavily on the Aristotelian basis of politics and law.¹⁸ St. Thomas Aquinas received the Aristotelian conception of the State and embedded it within the framework of the scholastic conception of the law of nature. Instead of considering the State as an institution which may well be necessary and divinely appointed, in view of the actual conditions of corrupted mankind, Thomas Aquinas followed Aristotle in deriving the idea of

13 *Ibid.*

14 *Ibid.*:38-9.

15 *Ibid.*:39. His son who followed in his footsteps, Zacharias Huber (1669-1732), was also a distinguished jurist. He became a member of the Frisian Court in 1716. He was responsible for the publication of a number of his father's works (Van Kampen 1822 II:39).

16 Mostly because it is only accessible in the original Latin.

17 The *De Jure Civitatis* (The law of the State) (1672) was printed through six editions. This contains three books: (a) Of sovereign power; (b) Of those who are subject to the sovereign power; (c) Of the law of the administration of the State. This work is political and philosophical rather than legal in character and Huber deals with and refutes the political and ethical theories of Thomas Hobbes, in particular.

18 The emphasis on Aristotle was part of a broader academic movement, after the Reformation, representing a "return" to the ancient philosophers. Van Assel and Rouwenal (1998:31) describe this trend as follows: "Na de Reformatie, die wordt afgeschildert als een helder licht waarbij de Middeleeuwen duister afsteken, valt de theologie terug in antiek-filosofisch en aan Aristoteles ontleend taalgebruik. Volgens deze visie adopteren de gereformeerde scholastici de terminologie van de Griekse filosofen, waarbij Aristoteles als grote winnaar uit de bus komt. Het kan niet anders, of de gereformeerde scholastiek vormt een terugval in de donkere Middeleeuwen waarin de theologie ook al een huwelijk aangegaan was met het aristotelisme."

the State from the very nature of man.¹⁹ Thomas Aquinas followed the Aristotelian approach that man is a “political animal” because he is a social being. This means that the State must have its roots in social experience and that it cannot be solely the creation of the human will — the State is the highest expression of human fellowship and all that pertains to that fellowship is natural to man.²⁰ In his *Summa Theologica*, Thomas describes man as subject to a threefold order: divine law, reason and political authority. If man had been by nature a solitary animal, the order of reason and that of revealed law would have been sufficient. But man is a political being. It is necessary, if he is to attain his proper end and the highest forms of life and virtue that he should show in political life, that he practised *virtutes politicae*.²¹

Commenting in his *Summa Theologica*²² upon the necessity for human laws, Thomas stresses that there is in man a natural aptitude for virtuous action. However, man can achieve the perfection of such virtue only by the practice of a “certain discipline”.²³ The one, therefore, must help the other to achieve that discipline which leads to a virtuous life.²⁴ Because there are men of evil disposition and prone to vice, it is necessary to restrain them from doing evil in order to assure the rest of the community — such discipline which compels for fear of penalty is the discipline of law.²⁵ Quoting Aristotle,²⁶ Thomas states that when man reaches the perfection of virtue he is the best of animals, but if he goes his way without law and justice he becomes the worst of all brutes:²⁷ “For man, unlike other animals, has the weapon of reason with which to exploit his base desires and cruelty.”²⁸

To Thomas the end of law is the common welfare: for as Isidore states: “Laws must be formulated, not in view of some particular interest, but for the

19 D'Entrèves 1965:xiv: “Thus was the Aristotelian conception of the State received and embedded within the Scholastic conception of the law of nature ...” He adds: “Aristotle had provided a rational explanation of the State. He had attributed a positive value to social and political institutions, as being grounded on the very nature of man” (*ibid.*).

20 *Ibid.*

21 See *ibid.*:xv.

22 Quaestio XCV, Art. 1, concl. The version of the *Summa* used here is *The Summa Theologica* translated by members of the Dominican Order, 25 volumes (London, 1920).

23 “Respondeo dicendum quod, sicut ex supradictis patet, homini naturaliter inest quaedam aptitudo ad virtutem; sed ipsa virtutis perfectio necesse est quod homini adveniat <<*aliquam disciplinam*>> ...”

24 *Ibid.*

25 *Ibid.*: “Sed quia inveniuntur quidam protervi et ad vitia proni, qui verbis de facile moveri non possunt; necessarium fuit ut per vim et metum cohiberentur a malo, ut saltem sic male facere desistentes”

26 I *Politics* II.

27 *Ibid.*: “<<*sicut homo, si sit perfectus virtute, est optimum animalium; sic, si sit separatus a lege et iustitia, est pessimum omnium*>>; ...”

28 Thomas states: “... quia homo habet arma rationis ad explendas concupiscentias et saevitias, quae non habent alia animalia (Que. 95. Art.1. concl.)”

general benefit of the citizens.”²⁹ Laws enacted by men are just when they are directed at the common welfare, or when the burdens they impose upon the citizens are directed at the common welfare.³⁰ For since every man is part of the community, all that any man is or has, has reference to the community: just as any part belongs, in that which it is, to the whole. For this reason nature is seen as sacrificing a part for the preservation of the whole.³¹ In the light of this principle, laws which observe due proportion in the distribution of burdens are just, and oblige in conscience; they are legitimate laws.³² Contrariwise, laws may be unjust for two reasons. Firstly, when they are detrimental to human welfare — either when a ruler enacts laws which are burdensome to his subjects and which do not make for common prosperity, but are designed better to serve his own cupidity and vainglory. Or with respect to their author; should a legislator enact laws which exceed the powers vested in him.³³ Or, finally with respect to their form; if burdens, even though they are concerned with the common welfare, are distributed in an unequal manner throughout the community — laws of this sort have more in common with violence than with legality, because such laws do not oblige in conscience, “except, on occasion, to avoid scandal or disorder.”³⁴ Secondly, laws may be unjust through being contrary to divine goodness: such as tyrannical laws enforcing idolatry, or any other action against the divine law. Such laws may under no circumstances be obeyed: for, as it is said in Acts 5: 29: “We must obey God rather than man.”³⁵

Thomas identifies compulsion as one of the two essential characteristics of law. There are two ways in which a human being may be subject to law: either as that which is ruled is subject to the rule, or when a human being is constrained.³⁶ Regarding the first aspect, all who are subject to a certain power are subject also to the laws which emanate from that power — for example the citizens of one city or realm are not bound by the laws of the

29 Que. 96, Art. 1, concl.: “... quia ut Isidorus dicit, in libro Etymol. (lib. II, cap. 10), << nullo privato commodo, sed pro communi utilitate civium lex debet esse conscripta >>.”

30 He then adds: “But the common wellbeing is made up of many different elements. It is, therefore, necessary that the law should take account of these diverse elements, both with respect to persons and affairs, and with reference to different times. For the political community is composed of many persons; its welfare entails much varied provision; and such provision is not confined to any period of time, but should continue through successive generations of citizens: as St. Augustine says in *De Civitate Dei* (XXII, 6).”

31 *Ibid.*, Art. 4, concl.: “Unde et natura aliquod detrimentum infert parti, ut salvet totum.”

32 *Ibid.*: “Et secundum hoc, leges huiusmodi, onera proportionabiliter inferentes, iustae sunt, et obligant in foro conscientiae, et sunt leges legales.”

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*: “Alio modo leges possunt esse iniustae per contrarietatem ad bonum divinum: sicut leges tyrannorum inducentes ad idololatriam, vel ad quodcumque aliud quod sit contra legem divinam. Et tales leges nullo modo licet observare: quia sicut dicitur *Act. V* (v.29), << obedire oportet Deo magis quam hominibus >>.”

36 *Ibid.*, Art. 5, concl.

ruler of another city or realm, or when persons are subject to a higher law.³⁷ Regarding the second aspect, Thomas holds that in a certain sense the virtuous and the just are not subject to the law, but only the wicked — the will of the good is at one with the law, whereas in the bad the will is opposed to the law.³⁸

Thomas³⁹ approached the issue whether a ruler is bound by the law,⁴⁰ from an interesting angle: a ruler is said to be above the law with respect to its constraining force, for nobody can be constrained by himself; and law derives its power of constraint only from the power of the ruler.⁴¹ So it is said that the prince is above the law, because should he act against the law nobody can bring a condemnatory judgement against him. With respect to the directive power of a law, a ruler is voluntarily subject to it, in conformity with what is laid down in the *Decretals*:⁴² “Whoever enacts a law for another should apply the same law to himself. And we have it on the authority of the wise man that you should subject yourself to the same law which you promulgate.”⁴³ Quoting from the *Codex*,⁴⁴ Thomas⁴⁵ refers to the Emperors Theodosius and Valentinian who wrote to the Prefect Volusianus: “It is a saying worthy of the majesty of a ruler, if the prince professes himself bound by the laws: for even our authority depends upon that of the law. And, in fact, the most important thing in government is that power should be subject to laws.”⁴⁶ Thomas’s conclusion is, therefore, that in the judgement of God, a ruler is not free from the directive power of the law, but should voluntarily and without constraint fulfil it.⁴⁷

Having established the legal basis of the relationship between subjects and rulers in the political sphere, Thomas, in his *Summa Theologica*, considers

37 *Ibid.*

38 *Ibid.*: “Et hoc modo homines virtuosi et iusti non subduntur legi sed soli mali. Quod enim est coactum et violentum, est contraium voluntati. Voluntas autem bonorum consonat legi, a qua malorum voluntas discordat. Et ideo secundum hoc boni non sunt sub lege, sed solum mali.”

39 *Ibid.*, ad 3um.

40 This principle derives from Roman law: “*Princeps legibus solutus est*” (*Dig. I, iii, 31*, Ulpianus).

41 Ad 3um.: “Ad tertium dicendum quod princeps dicitur esse solutus a lege, quantum ad vim coactivam legis: nullus enim proprie cogitur a seipso; lex autem non habet vim coactivam nisi ex principis potestate.”

42 I, II, 6.

43 *Ibid.*: “<<Quod quisque iuris in alterum statuit, ipse eodem iure uti debet. Et Sapientis dicit auctoritas: Patere legem quam ipse tuleris>>.”

44 I, XIV, 4.

45 *Ibid.*

46 *Ibid.*: “<<Digna vox est maiestate regnantis, legibus alligatum se principem profiteri: adeo de autoritate iuris nostra pendet autoritas. Et re vera maius imperio est subiicere legibus principatum>>.”

47 *Ibid.*: “Unde quantum ad Dei iudicium, princeps non est solutus a lege, quantum ad vim directivam eius; sed debet voluntarius, non coactus, legem implere.” Thomas adds that a ruler is also above the law in the sense that he may, if it be expedient, change the law, or dispense from it according to time and place (*ibid.*).

the right to resist tyrannical government.⁴⁸ The essence of tyrannical government, following Aristotle, is that it is an unjust form of government because it is directed not at the common welfare but to the private benefit of the ruler.⁴⁹ Consequently the overthrowing of such a government is not strictly speaking sedition; except perhaps when it is accompanied by such disorder that the community suffers greater harm from the consequent disturbances than it would from a continuance of the former rule.⁵⁰ Thomas adds that, in fact, a tyrant is far more guilty of sedition when he spreads discord and strife among the people subject to him, “so hoping to control them more easily” and “it is a characteristic of tyranny to order everything to the personal satisfaction of the ruler at the expense of the community.”⁵¹ Elsewhere in the *Summa*, Thomas reiterates the principle justifying civil disobedience: “Man is bound to obey secular rulers to the extent that the order of justice requires. For this reason if such rulers have no just title to power, but have usurped it, or if they command things to be done which are unjust, their subjects are not obliged to obey them; except, perhaps, in certain special cases when it is a matter of avoiding scandal or some particular danger.”⁵²

In Book II of Thomas's *Commentary on the Sentences of Peter Lombard*, he deals more elaborately with the whole matter of obedience owed by Christians to the secular power and, in particular, to tyrants.⁵³ Having considered the seemingly conflicting Scriptural pronouncements on the Christian's duty to obey the secular powers, Thomas concludes that obedience derives from the order of authority which carries with it the power to constrain, not only from the temporal, but also from the spiritual point of view, and in the conscience, because the order of authority derives from God.⁵⁴ For this reason the duty of obedience is, for the Christian, a consequence of this derivation of authority from God, and ceases when that ceases.⁵⁵ Authority may fail to derive from God for two reasons: either because of the way in which the authority has been

48 Qu. 42, Art. 2. Bears the title: The Right to resist Tyrannical Government.”

49 *Ibid.*: “Ad tertium dicendum, quod regimen tyrannicum non est iustum; quia non ordinatur ad bonum commune, sed ad bonum privatum regentis ...”

50 *Ibid.*: “Et ideo perturbatio huius regiminis non habet rationem seditionis; nisi forte quando sic inordinate perturbatur tyranni regimen quod multitudo subiecta maius detrimentum patitur ex perturbatione consequenti quam ex tyranni regimine.”

51 *Ibid.*: “Hoc enim tyrannicum est, cum sit ordinatum ad bonum proprium praesidentis, cum multitudinis nocumento.” This passage has to be read in conjunction with Qu. 104, Art. 5, on the limits of obedience.

52 Qu. 104, Art. 6, ad 3um.: “Ad tertium dicendum, quod Principibus saecularibus in tantum homo obedire tenetur, in quantum ordo iustitiae requirit. Et ideo si non habeant iustum principatum, sed usurpatum; vel si iniusta praecipiant: non tenetur eis subditi obedire. Nisi forte per accidens, propter vitandum scandalum vel periculum.”

53 Dist. 44, Quest. 2, Art.2. *et seq.*

54 *Ibid.*: “Respondeo dicendum, quod sicut dictum est, obedienti respicit in praecepto quod servat, debitum observandi. Hoc autem debitum causatur ex ordine praelationis, quae virtutem coactivam habet, non tantum temporaliter sed etiam spiritualiter propter conscientiam ...”

55 *Ibid.*

obtained, or in consequence of the use which is made of it.⁵⁶ Regarding the first cause, there are two ways in which it may occur: either because of a defect in the person, if he is unworthy; or because of some defect in the way in which the power was acquired, if, for example, by means of violence, or simony or some other illegal method.⁵⁷ Although the first defect is not such as to impede the acquisition of legitimate authority, the second defect prevents the establishment of any just authority: “for whoever possesses himself of power by violence does not truly become lord or master.”⁵⁸ Therefore it is permissible, on occasion, for a person to reject such authority; except in the case that it subsequently became legitimate, either through public consent or through the intervention of higher authority.⁵⁹

Regarding the abuse of authority, this may come about in two ways: either it is ordered by an authority opposed to the object for which that authority was constituted, in which case there is no obligation to obey the authority, “but one is obliged to disobey it, as did the holy martyrs who suffered death rather than obey the impious commands of tyrants” or when those who bear authority command things which exceed the competence of such authority; “as, for example, when a master demands payment from a servant which the latter is not bound to make”, in which case the subject is free to obey or disobey.⁶⁰

In his political treatise, *On Princely Government*, Thomas elaborates upon the evils of tyranny. His basic message is that government by a tyrant is the worst form of political rule.⁶¹ He emphasizes that the power of an unjust ruler is exercised to the detriment of the community, because it substitutes his private interests for the common welfare of the citizens, so “the greater the damage to the common well-being, the greater will be the injustice of the government.”⁶² Because the tyrant is heedless of the common welfare, he seeks his personal satisfaction; in consequence, he oppresses his subjects in various ways, “according to the nature of the passions by which he is swayed in the pursuit of self-indulgence.”⁶³

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*: “... qui enim per violentiam dominium surripit non efficitur vere praelatus vel dominus ...”

59 *Ibid.*

60 *Ibid.*

61 Chapter III: “Si igitur optimo opponitur pessimum, necesse est quod tyrannis sit pessimum.”

62 *Ibid.*: “Quanto igitur magis receditur a bono communi, tanto est regimen magis iniustum ...”

63 *Ibid.*: “Idem etiam maxime apparet, si quis considerat mala quae ex tyrannis proveniunt, quia cum tyrannus, contempto communi bono, quaerit privatum, consequens est ut in subditos diversimodo gravet, secundum quod diversis passionibus subiacet ad bona aliqua affectanda.”

Aquinas's influence in the Netherlands increased in the course of the Dutch revolt against Spain.⁶⁴ The treaty of Anjou, in August 1580, in terms of which a commission under Marnix of St. Aldegonde was sent to France to offer Anjou the lordship over the Netherlands, was followed on 26 July 1581 by the Act of Abjuration and the formal renunciation of Philip II by the States General. In defence of the lawfulness of the abjuration, an anonymous treatise, *Political Education*, was published the following year.⁶⁵ Referring to Thomas Aquinas's *Summa Theologiae* the author relies on the principle that there is merit in killing a tyrant; that rebellion is not by definition a mortal sin, and that resistance against a tyrannical regime should not be equated with rebellion if it is to the benefit of the suppressed subjects.⁶⁶

By the middle of the 1600s authors like Huber reflected a strong influence of Thomist scholasticism. Ulrich Huber's methodology in his *De Jure Civitatis*, for example, is essentially scholastic. In his approach and arrangement of the subject matter of this work, as well as the system of his arguments, Huber is heavily imbued with the typical Aristotelian methodology. The system of his exposition on tyranny, in particular, tends to highlight the distinctions drawn rather than the substance of his discourse. Invariably Huber is subservient to Aristotelianism and its logical systematic. He deals with tyranny in book I, section IX, of his *De Jure Civitatis*.⁶⁷ The broad topic of this section is the corruption and demise of supreme power. In the first chapter he covers the

64 The "Dutch Revolt" between 1570 and 1590 produced a series of revolutionary events that led to the abjuration of Philip II by the States General of the Dutch provinces in 1581, and to the subsequent founding of the "Dutch Republic of the Seven United Provinces", one of the great powers of the seventeenth century. In this period the justification of the protest and resistance against the government of Philip II formed a very important topic for discussion. The two main issues in the running debates were firstly, the limits of political obedience, and secondly, the justification for political resistance. However, Thomas generally speaking stopped short of accepting resistance by individuals. Although he acknowledged the Old Testament examples of tyrannicide, he states that, in his opinion, this is not in accord with apostolic teaching. Martyrs, able to bear death for Christ, are admirable in a way killers of kings can never be (see McDonald s.j.:135).

65 The Dutch title is *Politieq onderwijs* (Malines, 1582). The English title reads: *Political Education Containing Various and very important Arguments and Proofs, founded on God's Word, and on written Imperial Rights and on authorities of pagan authors, which demonstrate forcefully that not without cause and very good motives, His Excellency and the States general of the united Netherlands request to forsake by means of a new oath the King of Spain and his adherents, and to promise, against him, Homage and Fidelity to the present Government, the Country and one another, because of which this Oath should be taken and solemnized by each one (wishing to be a good Patriot). And in order that no one pretends ignorance of the Oath, the Form of the Oath is enclosed here. Cicero, De Officiis, Book III "For our ancestors were of the opinion that no bond was more effective in guaranteeing good faith than an oath." Hebrews, 6:16 "Men indeed swear by one who is greater than themselves, and in all their disputes an oath is the final confirmation* (Malines: Jacob Hendrixx, 1582). The text of this treatise is contained in Van Gelderen 2001:165-226).

66 lia-liae, Que. 42, 2, article 2. Van Gelderen 2001:xxiv; 190.

67 1708:250-263.

issue of tyranny by usurpation (in twenty-nine numbered paragraphs);⁶⁸ the second chapter deals with the exercise of tyranny (composed of twenty-one paragraphs);⁶⁹ the third chapter deals with resistance to practising tyrants (in fifty-four paragraphs),⁷⁰ and the fourth chapter deals with the legal punishment of tyrants (fifty-six paragraphs).⁷¹ In the summary to chapter I Huber draws a further distinction between titular tyranny (or Pisistratism),⁷² practising tyranny (or Neronism)⁷³, and a mixture of both (or Phalarism)⁷⁴. Not only his methodological approach to tyranny, but also the substance of his work, reflects a strong Thomistic influence. In similar style as Thomas, Huber states that tyranny “is the corruption of the real republic” because, according to Huber, Aristotle defines a tyrant as someone who uses government for his own benefit and not that of his unwilling subjects.⁷⁵ He adds: “This is in opposition to the duty of a king whose power has been established for the sake of the citizens.”⁷⁶ Following Aristotle, Huber adds that a tyrant can only exercise his power over subjects who are recalcitrant, because “nobody endures this power willingly as is often stated: the willing party suffers no injury.”⁷⁷ Huber devotes the following paragraphs to elaborate upon this principle: the interests of the ruler and those of the subjects should be opposed “positively” and not “comparatively” — “in essence and not in degree.”⁷⁸ Therefore somebody is regarded as a tyrant, who seeks after his own interests more than those of the citizens.⁷⁹ According to Aristotle, a tyrant is somebody “who arranges everything for his own benefit” and neglects the interests of the subject or overturns them, as Nero did when he imprisoned the Prefect;⁸⁰ “so much more if someone is bent upon the destruction of the entire populace”.⁸¹ Elsewhere in the same chapter Huber once again quotes Aristotle as authority for the definition “according to which if any king behaves himself in such a way that everything is conducted to satisfy his lusts and to

68 *Ibid.*:250-253.

69 *Ibid.*:253-254.

70 *Ibid.*:255-258.

71 *Ibid.*:259-263.

72 Pisistratus was a tyrant of Athens.

73 Referring to the Roman ruler Nero who was notorious for his cruelty.

74 This refers to the tyranny of Phalaris of Agrigentum. The sculptor Perrillus made a brazen bull for the tyrant Phalaris of Agrigentum (c.570-554 BC), in which Phalaris roasted his victims alive.

75 Book I, Section IX, Chapter II, paragraph 3 (page 253 (column 1) I, IX, II, 3 (253(1)).

76 I, IX, I, 3 (251(1)).

77 I, IX, II, 4 (253(1)).

78 I, IX, II, 5 (253(1-2)): “Velim abesse illud, *tam quam*; nec enim est in Graeco, nec convenire videtur; quia propria Imperantis atque subjectorum utilitas simpliciter, *positive non comparative* opponuntur, ... specie non gradu.”

79 I, IX, II, 6 (253(2)).

80 I, IX, II, 7 (253(2)): “Erit igitur Tyrannus Aristotelicus, qui omnia dirigit ad propriam utilitatem, populi vero commoda penitus negligit aut evertit, cujusmodi Neronis institutum erat, cum Praefecto inculcaret; hoc agamus, *ne quisquam quiquam habeat*, ut *Suetonius* narrat.”

81 I, IX, II, 8 (253(2)).

further his interests.”⁸² Huber rejects the amendment of Heinsius to Aristotle’s definition of tyranny, in which he proposed that tyranny is “not so much to the benefit of those whom he rules but for his own.”⁸³ Huber responds by strictly applying Aristotle’s definition: “I prefer that the “so much” should be omitted. It does not appear in the Greek and does not fit in with the meaning.”⁸⁴

2.2 Medieval legal scholars and political scholasticism

Famous commentators on Roman law, such as Bartolus De Sassoferrato (1313/14-1357)⁸⁵ and Baldus De Ubaldus⁸⁶ (c.1327-1400), had a profound impact on European political thought, in general, and Dutch political discourse, in particular.⁸⁷ What Skinner called “the scholastic defense of liberty” as developed in the course of the fourteenth century by Bartolus of Sassoferrato and his pupil Baldus,⁸⁸ was conceived of liberty in republican terms as political independence and self-government. It saw civil discord as the main danger to liberty and had a lasting influence upon the constitutional history of Europe. Van Gelderen observes that in order to ensure that sectional interests were set aside and that citizens equated their own good with that of the community as a whole, scholastic theorists felt that an efficient and complex constitutional framework was needed.⁸⁹ Its leading principle was that the people were and remained the sovereign authority in the body politic.⁹⁰ If the people conceded authority to a “ruling part”, it was essential to ensure that that ruling part was kept firmly under control and represented “the mind of

82 I, IX, III, 52 (258(2)).

83 *Ibid.*

84 I, IX, II, 5 (253(1-2)).

85 He was an outstanding political philosopher and famous commentator on Roman law. He studied at Perugia and Bologna and taught at Pisa. He spent the last years of his life at Perugia. Because of his political theory legitimating the *de facto* sovereignty of the city republics in Italy, he can be regarded as one of the founders of late medieval republicanism.

86 He was a student of Bartolus. From 1351 he taught at Pisa, Florence, Perugia, Padua and Pavia. He followed in Bartolus’s footsteps as the principal legal expert and greatly contributed to late medieval political thought and jurisprudence. In his recent study of Baldus, J.P. Canning, *The political thought of Baldus de Ubaldis* (1987), analyses the major contribution of Baldus’s political theory to late medieval politics.

87 Canning (1987) states that the political thought of Bartolus had such an influence on the political thought of Europe that he ranks with Thomas Aquinas and Marsilius of Padua.

88 Together with Bartolus, Baldus de Ubaldis shared the greatest fame and influence among the Commentators, the school of jurists who in the late thirteenth century dominated Roman law studies in the late Middle Ages, and as *mos italicus* (Italian manner) remained highly influential throughout the sixteenth century and beyond (Canning p. 1).

89 Van Gelderen 2002:284.

90 *Ibid.*

the people”, as Bartolus put it (Canning 198).⁹¹ To achieve this goal the scholastic theorists of liberty favored a number of constitutional arrangements: rulers were to be elected, they were only allowed minimal discretion in administering the law, and a complex network of checks of magistrates and ruling councils was to be devised.⁹²

Bartolus applied the basic Roman law principles to formulate his constitutional theory. According to Roman law, there are two sources of the emperor's universal authority. According to the *Lex Regia*, the Roman people were the original source of the emperor's jurisdiction, while the *Corpus Juris Civilis* stresses the divine source of imperial authority. The principle that the people are bound to the emperor because God has set the emperor on earth as the vicar and ruler in faith, truth and justice, flowed from the demands of sacred scripture that every soul must be subject to the emperor. This was also adopted by Bartolus and applied to the princeps in particular.⁹³ The problem of subjecting the absolute power of the princeps to the law was addressed in the *Corpus Juris Civilis* by maintaining that although the *princeps* is *legibus solutus*, it is fitting for him to be bound by the *leges*, specifically because his power derives from law. The implication is that, although positive law ultimately depends on the will of the *princeps* and could theoretically be swept away by him, its existence limits him in practical terms, otherwise the whole legal system would be subject to imperial caprice. It would be self-contradictory for the emperor to create a body of law and then be unwilling to accept its authority. The tension between the sovereignty of the *princeps* and his subjection to law was solved by Bartolus (and other medievalists) who stated that, although he was under no compulsion to obey the *leges*, he would nevertheless wish to do so. However, in terms of positive law the emperor's will remained paramount.⁹⁴

Bartolus's political theory also made provision for popular government. The main component of his view on this issue was that the general assembly of people, which has no superior, has the right to elect the council. The council acts as the governing body of the city and in turn elects the city's

91 “Concilium representat mentem populi” (ad *Digestam Justiniani* 1.3.32, n. 10 (fol. 17v)). See *Codex Justiniani* 10. 32.2, n. 8: 32 (ed. Basel, 1588). The following abbreviations are used in this article: C=*Codex Iustinianus*; Cons.=*Consilium*; D=*Digesta Iustiniani*; Feud.=*Libri feudorum*; Inst.=*Institutiones Iustiniani*; X.=*Decretales Gregorii P. IX. Seu Liber Extra*.

92 Canning 2003:198 *et seqq.*

93 Also Baldus, *Commentarium super Pace Constantie* hereafter cited as *De pace Constantie*, ad v. “Imperialis clementie”: “Nota quod omnes tenemur principi, quia ut deus princeps in celis, sic imperatorem [imperator ed. cit.] vicarium suum et dominatorem in fide ac veritate et iustitia constituit in terris ... Preterea divina pagina dicit, ‘omnis anima subdita sit principi’.”

94 The *Corpus Iuris Civilis* recognizes the problem by stating that the *princeps* is *legibus solutus*, and in *I. Digna vox* (C. 1.14.4) that it is fitting for him to be bound by the *leges* because his power is derived from the law. For this principle in medieval thought see Accursius, gl. Ad D. 1.3.31; Odofredus ad C. 1.14.4, n. 1 (fol. 36r); id. Ad D. 1.3.31, n. 1 (fol. 14); Cynus ad C. 1.14.4, n. 2-3 (fol. 25v-26r); Albericus de Rosciate ad D. 1.3.31, n. 8 (fol. 33v); Bartolus ad C. 1.14.4, n. 1 (fol. 27v).

executive and judicial officials.⁹⁵ This council is truly representative of the “mind of the people”. Acting through the representative structures, the people remain sovereign.⁹⁶

On the issue of tyranny, Bartolus remained committed to the Aristotelian views. To Bartolus the rule by one person does not necessarily amount to tyranny — dukes only become tyrants when they act as such. In his *De regimine civitatis*,⁹⁷ he strongly relies upon the definition of tyranny formulated by Aristotle: “In the case of a particular lord he is sometimes said to rule over a kingdom, and sometimes over a dukedom, a march or a country, as in ... ‘Preteria ducatus’. The common name, however, which we give to rulership [by one man] is natural lordship, and this is so, if the said lord strives towards a common and good end. But if he strives towards a bad end and his own advantage, his rule according to Aristotle is called tyranny, and it is also according to Roman law and custom.” Furthermore, Bartolus distinguishes between tyranny *ex defectu tituli* (by defect of title) and that *ex parte exercitii* (by acting as a tyrant). The distinction between tyranny in title and tyranny in exercise is made by Bartolus in *De Tyranno*.⁹⁸ In (chapter 8) referring to Aristotle, Bartolus deals with the description of the marks of tyranny. The acts which characterise a tyrant, are three in particular: that he maintains faction strife amongst his subjects, that he impoverishes them, and that he has them persecuted and tormented in body and goods. Bartolus concludes that neither by right nor reason does one owe such a government submissiveness but one should remove and forsake it. In his comment number 21 (Third Question) on the law “omnes” of the Digest, Bartolus maintains that princes are bound by their undertakings and contracts. Furthermore, when a ruler does not uphold his fidelity, one is no longer obliged in conscience to remain faithful to him — “to whom breaks faith, faith is broken”.

The relationship of the *princeps*'s power to positive law, is explained by Baldus on the basis of his distinction between the emperor's *potestas absoluta* and his *potestas ordinaria*: “The emperor should live according to the laws because his authority depends on law. Understand that this word, ‘should’, is interpreted as applying to the obligation of honesty which the emperor should possess to the highest degree. But this is not a precise interpretation because the supreme and absolute power of the emperor is not beneath the law. The law in question therefore applies to his ordinary not his absolute power ... Note that the emperor says he is bound by the laws and this is so

95 Canning, 2003: 198.

96 *Ibid.*

97 At 151 (ed. Quaglioni, *Politica e diritto*): “Si vero [est dominus] particularis aliquando appellatur regnum, aliquando ducatus, marchia vel comitatus, ut [*Feud.*, 2.55], ‘Preteria ducatus’. Communi vero nomine appellamus regnum dominium naturale, et hoc si dictus dominus in communem et bonum finem tendit. Si vero tendit in malum finem et in proprium commodum, secundum Aristotelem appellatur tyrannides, sic etiam secundum leges mores appellatur.”

98 Chapter 5, pp. 184-5. For his description of the marks of tyranny, see chapter 8, pp. 196-9, where Bartolus refers to Aristotle, whose views on tyranny are outlined in *The Politics*, Book 5, chapter 10. Here he discusses the origins and downfall of monarchy, for example in 1311a; see also chapter 11, for example 1313a-b.

out of his good will and not of necessity.⁹⁹ The implications of Baldus's statement are that there are aspects of the emperor's power which are exercised under the law, in spite of the fact that he has ultimate and absolute sovereignty on which his jurisdiction in positive law is based. Furthermore, the positive law powers of the emperor are subject to the principles of the *ius naturale*, the *ius gentium* and the *ius divinum*. In typically Aristotelian fashion, Baldus argues that, in the final instance, the emperor is subject to the higher norms of human reason: "By positive law the emperor is obliged by the dictates of reason, because he is a rational animal, and therefore the emperor is not freed from human reason. For no authority whether of the emperor or the senate can make the emperor other than a rational and mortal animal, or free him from the law of nature or from the dictates of right reason or the eternal law".¹⁰⁰ The nature of the office of emperorship also restrains him from governing the empire as he pleases — he has to manage his office in the empire's interests: "But the emperor cannot divest himself of or sell the property [of the empire], because he does not possess it in his own right of the *lex regia*, and because it is not transferred to him and therefore cannot be alienated by him. Indeed, the emperor is the main *procurator* of the empire: he is not, however, the empire's absolute owner, but rather an officer".¹⁰¹ If the emperor were to alienate part of the empire committed to his care he would be guilty of destroying his own *dignitas*, that is his office, and thus breaking his coronation oath: "The emperor could not, however, donate the keys of the empire just as he who holds the gate-keys is bound to hand them over to his successor, otherwise he can be called a traitor, as ... note. Again, he cannot eviscerate the empire, because he would be the murderer of his office ... Again, nor can he concede one barony which could undermine the majesty of the empire, because he would be a perjurer."¹⁰²

99 Ad C. 1.14.4 (fol. 50r-50v): "Princeps debet vivere secundum leges quia ex lege eiusdem pendet auctoritas h.d. Intellige quod istud verbum, 'debet', intelligi de debito honestatis que summa debet esse in principe. Sed non intelligitur precise, quia suprema et absoluta potestas principis non est sub lege, unde lex ista habet respectum ad potestatem ordinariam non ad potestatem absolutam ... Nota quod imperator dicit se esse legibus alligatum et hoc benignitate non ex necessitate."

100 Baldus ad C. 3.34.2 (fol. 190v). The reference to "(b)y positive law" probably alludes to D. 7.5.2: "Nec enim naturalis ratio auctoritate senatus commutari potuit": "Lege positiva princeps obligatur a dictamine rationis, quia est animal rationale, ideo ea non est princeps solutus. Nulla enim auctoritas, neque principis neque senatus potest facere quod princeps non sit animal rationale mortale nec eum absolvere a lege nature vel a dictamine recte rationis vel legis eterne [D. 7.5.2]."

101 Baldus, *Cons.*, 3.277, fol. 84v, ed. Brescia, 1491 (= *Cons.*, 1.456, fol. 139v, ed. Brescia, 1490; and *Cons.*, 1.327, ed. Venice, 1575): "Sed imperator non potest propriam a se eradicare vel vendere, quia non habet eam iure suo sed iure legis regie, et non transmittitur ergo nec alienatur. Et quidem imperator est procurator maximus tamen non est proprietatis imperii dominus, sed potius officialis."

102 Baldus ad X.2.19.9, n. 7 (fol. 248r): "Non tamen posset imperator donare claves imperii, sicut ille qui tenet claves portarum tenetur eas resignare successori, alias potest dici proditor, ut not. [C.7.32.12; D.31.1.77, 21]. Item non potest viscera imperii eviscerare, quia esset homicida sue dignitatis ... Item nec unam baroniam concedere, que posset subvertere maiestatem imperii, quia esset periurus."

The coronation oath, therefore, plays a crucial role in legitimating the powers of rulers. This is also relevant to the transfer of authority from the people to the ruler: the setting up of a king involves a transfer of sovereignty by the people “in the sense that the royal dignity once created cannot be removed”.¹⁰³ This implies that the members of the *respublica regni* become the subjects of the ruler. Although, therefore, the subjects may *de facto* expel a tyrannical king, they cannot deprive him of his royal dignity, because he legally remains their superior: “The second question is whether subjects can expel their king on account of his intolerable injustices and tyrannical actions. And it seems that they can, as below, for a bad king becomes a tyrant ... The contrary is true because subjects cannot derogate from the right of their superior. Therefore, although they may expel him in fact, their superior does not however lose his dignity”.¹⁰⁴ However, on the other hand, there is no substance to the rule of a king who is not obeyed — a king could not be said to reign if his people were to withdraw their obedience.¹⁰⁵ This means that the ruler in the state derives his authority from the body of the people and that the people have a right of resistance against tyrannical rulers.¹⁰⁶ Because royal office is set up by the kingdom as a corporation, kingship is a function limited by the purpose for which it is instituted, namely to protect the rights of the kingdom. Therefore, all medieval kings, says Baldus, should swear a coronation oath to conserve the rights of their kingdoms: “Note that all the kings in the world should swear at their coronation to conserve the rights of their kingdom and the honour of their crown.”¹⁰⁷ The coronation oath formalizes the tutorial functions of rulers: “The king ought to be the tutor of his kingdom, not its pillager or destroyer ... Note that perjury is not the final cause why alienations should be revoked, because alienation is not valid, even if it is supported by [another] oath, on account of the nature of his office, for the king ought to protect the welfare of the *respublica*.”¹⁰⁸

In typically Thomistic fashion Baldus argues that the emperor acts through republics to procure the common good. If the emperor were to act unilaterally

103 Canning 2003:218, observes that a hierarchy of authority is established in which the physical members of the *respublica regni* become the subjects of their ruler. Thus Baldus considers that subjects, although they may *de facto* expel a tyrannical king, nevertheless cannot deprive him of his royal dignity, because he remains in legal right their superior.

104 Ad D.1.1.5 (fol. 7r): “Secundo queritur an regem propter iniusticias suas intollerabiles et facientes tyrannica subditi possint expellere. Et videtur quod sic. Infra [D.1.2.2], nam malus rex tyrannus fit ... Contrarium est verum, quia subditi non possunt derogare iuri superioris; unde licet de facto expellant, tamen superior non amittit dignitatem suam [C4.55.4].”

105 *Cons.*, 1.359, fol. 109v, ed. Brescia (= *Cons.*, 3.159, ed. Venice, 1575): “Circumscripta obedientia populorum rex non posset dici regnare, ut [D.1.2.2, 3].”

106 See Canning 2003:219.

107 Ad X.2.24.33, n. 3 (fol. 315r): “Nota quod omnes reges mundi in sua coronatione debent iurare iura regni sui conservare et honorem corone.”

108 Baldus ad X.2.24.33 (fol. 314v): “Rex debet esse tutor regni, non depopulator nec dilapidator ... Nota quod periurium non est causa finalis quare revocentur alienata, quia ex natura officii etiam in iuramento non valeret, nam rex debet salutem reipublice tueri [D.1.15.1].”

and for his private interest only, he would be a tyrant. The purpose of the empire is to achieve the common good: "It is to be noted therefore that the original intention in creating the empire was the public good and advantage rather than private, say that of the emperor Charles. If therefore the emperor were to turn his anger on the republics, to shake off his yoke of such servitude would not be contrary to natural reason".¹⁰⁹ In effect it means that tyrannical emperors can be judged by their subjects. Although Baldus sometimes uses the term *tyrannus* in a non-pejorative sense, he also applies this term to the unjust or illegitimate rule of a single man.¹¹⁰ Tyranny is morally reprehensible because it threatens the common good. Although he does not follow Bartolus's distinction between tyranny by defect of title and by acting as a tyrant, Baldus condemns usurpatory rule as tyranny: "And I say first of all that provinces which have been accustomed to be ruled by kings and princes are said to be beneath their natural lordship, that is by the law of peoples, And if someone else accepts lordship there against the will of the king or prince, he is a tyrant. The text for this is here. That lordship by usurpation is called tyranny".¹¹¹

The works of both Bartolus and Baldus were authoritative sources in the Netherlands in the sixteenth century. In the course of the Dutch Revolt, William of Orange desperately tried to elicit the support of the French Huguenot leaders and the German princes. On 26 October 1570 a petition was presented to the Reichstag, the title of which was *A Defence and true Declaration of the things lately done in the lowe Countrey whereby may easily be seen to whom all the beginning and Cause of the late troubles and calamities is to be imputed*.¹¹² This document asserted that from all ages the princes have been subject to the power of the general Parliaments, have been elected by them and confirmed of them, without whose assent and authority they never would decree anything. The underlying principle in the Defence is that political rulers are bound by their contractual obligations, as stated by the fourteenth-century commentators Bartolus of Sassoferrato and Baldus de Ubaldis. Martin van Gelderen observes that this was one of the first deliberate

109 *Cons.*, 3.283, fol. 88r, ed. Brescia, 1491 (= *Cons.*, 1.333, ed. Venice, 1575): "Notandum est ergo quod originalis intentio creationis imperii fuit bonum et utilitas rei publice non private, puta Caroli imperatoris. Ergo si imperator in respublicas seviet, excutere ab eo iugum tante servitutis non esset contrarium rationi naturali."

110 Canning, 2003: 225.

111 Ad C.1.2.16 (p. 79): "Et dico in primis quod provincie que consueverunt regi per regis et principes dicuntur esse sub eorum dominio naturali, id est de iure gentium, ut [D.1.1.5]. Et si alius accipit ibi dominatum contra voluntatem regis vel principis, ille est tyrannus. Textus est hic. Ista igitur usurpatoria dominatio vocatur tyrannides."

112 Originally entitled *Libellus supplex Imperatoriae Maiestati*. Although until recently it was thought that Petrus Dathenus was the author of the *Defence*, Nauta, 1975: 151-70 has argued that Marnix of St. Aldegonde could be the author.

113 See the text of the document in Van Gelderen 2001:xlvi-77. Van Gelderen 2002: 125, points out that in the original version of the Defence reference was made to Bartolus's comment on Ulpian's rule that the conditions on which an office has been accepted must be respected (Digest, book 50, title 6, paragraph 2), and to

attempts to locate Dutch arguments within the broader European framework of Roman law.¹¹³

In the treatise on *Political Education*¹¹⁴ of 1582, the anonymous author relied heavily on classical authors such as Cicero, in order to emphasize the principle that political rulers are ordained by God and accepted by the people to serve the common good and that they are subject to law. In this work it is argued that public authorities who serve their own interests and passions, suppressing what is right with force and violence, should be regarded as tyrants.¹¹⁵ The author refers at length to Bartolus' *De Tyranno*, concluding that the governance of Philip II fitted Bartolus' definition of tyranny. The right to resist is placed within the context of the political scholasticism of authors such as Bartolus, and Domingo de Soto (a Spanish neo-Thomist from the Salamanca school).¹¹⁶ The author concludes that, if the tyrant obtained his authority by means of succession or election, he should not be killed by any "private person" — in such cases only the States of the country, and those who represent the subjects have the right and duty to resist and kill the tyrant.¹¹⁷

Even a superficial glance at Huber's views on tyranny reveals his application of the scholastic distinctions of Bartolus and Baldus. First, under the heading "Tyranny and Usurpation" Huber distinguishes between three types of tyranny: "There are three varieties of tyranny, titular called Pisistratism, practice or Neronism and a mixture of both called Phalarism."¹¹⁸ He distinguishes between two forms of tyranny in particular: "There are two forms of tyranny of which one is called usurpation and the other [tyranny by] practice ..."¹¹⁹ The first form of tyranny is named Pisistratism and the second Neronism.¹²⁰ The mixture of these is called Phalarism.¹²¹ Huber has certain reservations about calling titular tyrants "invaders and usurpers": "Titular tyrants are called invaders and usurpers. This title was introduced by politicians in a very arbitrary manner because in law *usurpatio* is the interruption of prescription. But this takes place lawfully or by force. And from this example the use of the word is derived".¹²² Huber

his comment on the famous *lex omnes populi* (*Digest*, book 1, title 1, para. 9). "In so doing", states Van Gelderen, "the *Defence* made one of the first attempts to connect Dutch arguments with the European framework of the Roman law."

114 The English title is *Political Education Containing Various and very important Arguments and Proofs*

115 For the text see Van Gelderen 2001:165-226.

116 *Ibid.*:189-190.

117 The *Political education* explicitly supported the principles contained in the preamble of the Act of Abjuration, and concluded that it had been legitimate to abjure Philip II.

118 In the heading to *De Jure Civitatis*, I, IX, I (250), he states: "Tyrannidem esse Triplicem, titulo tantum, qui Pisistratismus, exercitio tantum seu Neronismum, & ex utroque mixtum Phalarismum."

119 I, IX, I, 6 (251(1)): "Est verò duplex Tyrannis, alia *titulo* sive Usurpationis; alia in *Exercitio* quae dicitur, nisi & *mixtam* dicere velis, titulo simul & exercitio."

120 I, IX, I, 7 (251(1)).

121 *Ibid.*

122 I, IX, I, 8 (251(1)): "Tyranni titulo, aliter Invasores & *Usurpatores* dicuntur. Et hoc quidem vocabulum arbitrarii usus Jurisperitis usurpatio sit usucapionis interruptio ... Et hab hac specie transit in hunc usum, ut quidem videtur."

also maintains the view that tyranny is the unlawful exercise of authority — usurpers are those people who have a power in the state unlawfully, whether they are individuals or more than one like the *decemviri* in Rome after the promulgation of the Law of the Twelve Tables and the forty men in Athens.¹²³ Tyranny does not apply to the thirty although their example is often quoted by the common people, because they have a just origin and were appointed by the Spartans by the right of conquest. Consequently they were tyrants in practice.¹²⁴ Neither is it correct to equate the factual king with the usurper or the tyrant, because the lawful king is also a legitimate king.¹²⁵ The principle of the unlawfulness of tyranny as such is again stressed by Huber: “We maintain that usurpers and tyrants are those people who govern the empire unlawfully”.¹²⁶ Someone is regarded as holding the throne unlawfully if he does so against the wishes of those who have the right to rule”.¹²⁷ Elsewhere Huber equates usurpers (or titular tyrants) with men who attack “with slaughter and rape”.¹²⁸ Furthermore, anybody who exercises a power not properly given to him is a titular rather than a practising tyrant.¹²⁹ From the foregoing it follows that a titular tyrant and a practising tyrant have no right to simultaneously rule and abuse the power which they have usurped.¹³⁰

Secondly, Huber also relies heavily upon the principle that the ruler's legitimate rule is reliant upon the coronation oath he made. In the first chapter of his discussion of tyranny, he states that if somebody forces the citizens to consent with open violence and immanent terror, he rules without consent and he never ceases being a tyrant as Rome in the time of the triumvirate, because they were bound by an oath.¹³¹

Thirdly, Huber's approach to the limitations to political power exercised by rulers fits in with the approach of Bartolus and Baldus on these issues. To Huber the limitations of power are contained in the definition. Imperial power is given simply or subject to certain limitations. That which is given simply has no express limitations but it is not limitless — there are tacit limitations to the exercise of public authority.¹³² Consequently, if anybody publicly and openly infringes upon those limitations which are tacitly included in all grants of power, he goes beyond the power given to him and may justly be

123 I, IX, I, 9 (251(1)).

124 I, IX, I, 11 (251(1-2)).

125 Ibid.

126 I, IX, I, 14 (251(2)): “Nos teneamus, Usurpatores & Tyannos esse qui regnum nullo jure tenent, qui Regnum injustum tenent, cujus indolem & dotes si tenerent ambitiosi principes, minus multi id appeterent ...”

127 I, IX, I, 15 (251(2)-252 (1)).

128 I, IX, I, 29 (253 (1-2)).

129 I, IX, II, 13 (254 (1)).

130 I, IX, II, 15 (254 (1)).

131 I, IX, I, 18 (252 (1)).

132 I, IX, II, 16 (254 (1-2)).

133 I, IX, II, 17 (254 (2)): “Proinde qui illa quae in omni Imperio tacitè excepta diximus, notoriè & prae fracte violant, hos potestatis sibi delatae terminos excedere & esse tyrannos, so modò excessus non sit contra singulos vel paucos; ut modo de Nerone & Caligula diximus, est statuendum.”

called a tyrant, “provided his unlawful conduct is not directed against individuals or against a law, this applies to Nero or Caligula”.¹³³ Also there are those who received supreme power which is not limitless or limited according to the constitution. There are clearly limits to their power and those limits may be imposed on the ruler, and once imposed they have to be observed, otherwise those who break rules achieve nothing and abuse their powers.¹³⁴ However, “one act does not constitute a habit, one swallow does not bring about the spring”, consequently “one single act will not brand someone as a tyrant.”¹³⁵ Frequent acts of indubitable violence are required before rulers may be regarded as tyrants.¹³⁶ Therefore, anybody who has not yet refused to give an undertaking not to commit crimes against basic laws or an undertaking to improve himself and has not yet destroyed the hope that he would mend his ways cannot yet be regarded as a tyrant.¹³⁷ From the above it is clear that if power is given simply the rulers may behave themselves badly, before they can be regarded as tyrants. This also applies to those whose powers are limited by statutes who can bring upon themselves this name.¹³⁸

3. Ulrich Huber and the Reformational tradition

3.1 The Lutheran Reformation

The Lutheran Reformation was mainly a university movement. The *Stiftungsbrief*, the imperial letter dated 6 July 1502, which founded the University of Wittenberg, envisaged that the new university was to be modelled after the medieval scholastic universities of Bologna, Siena, Padua, Pavia, Perugia, Paris, and Leipzig.¹³⁹ More closely, the university was modelled after those of Paris and Bologna.¹⁴⁰ It was at this university that the Reformation under Martin Luther and Philip Melancthon struck root. The university library at Wittenberg played a crucial role in providing the academic basis for the Lutheran Reformation. Not only were the courses offered at the university structured to further the classical Aristotelian scholastic tuition, but also the book collection was stocked with the typical scholastic law sources of the late medieval period. The library holdings included the *Code of Justinian*, the *Digestum Velum Vetus cum glossis* (Venice, 1488); the *Infortiatum cum glossis* (Venice, 1491); the *Codicis libri IX, cum glossis* (Venice, 1493); the *Institutiones et Novellae cum glossis* (Venice, 1489), thus providing the Wittenberg School of Law with ample source material in Roman Law of the Code of Justinian. It is noteworthy that the legal works of Bartolus and Baldus were also represented: Bartolus’ *Super*

134 I, IX, II, 18 (254 (2)).

135 I, IX, II, 19 (254 (2)).

136 *Ibid.*

137 I, IX, II, 20 (254 (2)): “Quicumque igitur nondum à commissis adversus Leges Fundamentales desistere, neque cautionem in futurum melius consulendi recusant, nec emendationis spem consumserunt, hos pro tyrannis habere non licet.”

138 I, IX, II, 21 (254 (2)).

139 Schwiebert 1996:185.

140 *Ibid.*

Digestum (Venice, 1491); his *Super Informatium* (Venice, 1489); his *Super Digestum novum* (1489), and also his 1. and 2. *Partem codices* (1491) are listed. Baldus' *Super 9. Libros codicis* (Venice, 1485), in a *Sammelband* part one, his *Singularia and Repertoria cum singularibus Angeli* (Lyon, 1502) were among the legal works that formed part of the law collection during the period of the early Reformation.

Since the Law School, as at other German universities, taught both civil and canon law, the latter was also well supplied with printed volumes.¹⁴¹ There were also numerous sources in civil and canon law. It is interesting to note that the folio-sized editions on feudal law were even better represented.¹⁴² Books on logic, physics and mathematics included numerous works by Aristotle.¹⁴³ Books on politics, economics, and ethics, from antiquity and more recently, also comprised many works by Aristotle and other classical authors.¹⁴⁴ It was at this scholastic stronghold that both Luther and Melanchthon produced some of their most influential academic work.¹⁴⁵

Born in 1497, Melanchthon was appointed to the University of Wittenberg in 1518, to serve as its first professor of Greek. In his inaugural address on *The Improvement of Education*, he urged his colleagues to abandon the "arid, barbaric fulminations of the scholastics" and to return to the study of pure classical and Christian sources.¹⁴⁶ During his academic involvement at Wittenberg,

141 Schwiebert 1996:404, states that since the law school, as in other German universities, taught both civil and canon law, the latter was also well supplied with printed volumes. Gratian's *Decretum*, the work of the famous canon law professor at Bologna, was regarded as the standard work for canon law; it was also used by the early Wittenberg Law School. Other works included: Gratian's *Distinctionum Liber* (Venice, 1490); his *Decretum libri* (Venice, 1492); also the *Sextus Decretalium* (Venice, 1491); the *Rosarium Decretalium et Distinctionum* (Rome, 1475); the *Summa Azonis super codicem* (Speyer, 1482); the works of Petrus of Ravenna included: *Compendium iuris canonici* (Wittenberg, 1504-1506), in three parts, bound in two volumes; the *Summa* of Alexander of Hales, 4 volumes (Nurnberg, 1481-1482); the *Summa* of Baptista de Salis (Nürnberg, 1488); the *Summa* of Antonius of Florence (Venice, 1480-1487), in 4 volumes. Also Bartolus' *Super Digestum vetus* (Venice, 1491); his *Super Informatium* (Venice, 1489); his *Super Digestum novum* (1489); his 1. and 2. *Partem codices* (1491). The works by Baldus included his *Super 9. Libros codicis* (Venice, 1485), in a *Sammelband*, part one; his *Singularia*, and his *Repertoria cum singularibus Angeli* (Lyon, 1502). For other works in this section of the library, see Schwiebert 1996:405.

142 This included Baldus's treatise *Super Feuda* (Pavia, 1490); Jac. De Alvarottis, *Super feuda* (Venice, 1477); Francis Curtius, *Tractatus feudalis* (Pavia, 1506); Martin de Caratis, *Super feuda* (Tridini, 1516), and De Iserna, *Super feuda* (Venice, 1514). Also represented were several works on the old German law codes: Bocktorffs, *Sachsen-Spiegel samt den Cautelen und Additionen* (Augsburg, 1496); *Klag-Antwort ausgesprochene Urteil aus geistlichen und weltlichen Rechten* (Augsburg, 1497). For other important works in this section, see Schwiebert 1996:405-407.

143 See *ibid.*:411-413.

144 *Ibid.*:413-416.

145 *Ibid.*:447 *et seqq.*

146 Witte 2002:121.

147 See *ibid.*:121-123.

Melanchthon lectured and taught widely on Roman law, and on the theological and philosophical foundations of legal and political institutions.¹⁴⁷ Building on Luther's two-kingdoms theory, Melanchthon taught that God has implanted in all individuals certain "inborn elements of knowledge" (*notitiae nobiscum nascentes*).¹⁴⁸ Melanchthon called these principles "light from above"; a "natural light"; "rays of divine wisdom poured into us"; a "light of human faculty", *etcetera*. These *notitiae* also included certain practical principles (*principia practica*) of ethics, politics, and law.¹⁴⁹

The inspiration emanating from Melanchthon's work bore abundant fruit. The "Wittenberg school of Lutheran jurisprudence" was refined mainly by the work of his students on the basic tenets of Luther's theories of the "two kingdoms and the three estates."¹⁵⁰ Unlike the Wittenberg school, with its jurisprudential focus on theology and moral philosophy, the Marburg school of Lutheran jurisprudence, through its proponents Johannes Eisermann (ca. 1485-1558) and Johann Oldendorp (ca. 1486-1567), shifted the focus to legal history and political theory.¹⁵¹ Under the tutelage of Melanchthon, Eisermann studied theology, medicine and the classical authors Plato, Aristotle and Cicero. Landgrave Philip of Hesse's formal adoption of the Reformation resulted in the Reformation Ordinance of 1526. Eisermann was instrumental in drafting and implementing a wide variety of laws on diverse topics.¹⁵² As the first professor of Civil Law at the University of Marburg, Eisermann distinguished himself as a teacher and scholar of law.¹⁵³ As the author of several tracts and commentaries on Roman law and feudal law, Eisermann played a crucial role in reviving the importance of Roman law for law studies and jurisprudence generally.¹⁵⁴

Eisermann's colleague, Johan Oldendorp, an outstanding jurist in his own right, focussed sharply on the sources of law and equity. In 1539 Oldendorp came into contact with Melanchthon and was particularly impressed by Melanchthon's method of systematic theology reflected in his *Loci Communes Theologi* (1521).¹⁵⁵ He applied this to his study of law and published a legal synthesis called *Loci Communes Iuris Civilis* (1554). In his work Oldendorp relied heavily on classical and medieval authors such as Aristotle and Cicero. In 1543 Oldendorp settled at the University of Marburg where the Reformation had become established under the rectorship of Johannes Eisermann.¹⁵⁶ The work of Oldendorp reflects a strong reliance on classical Greek and Roman jurists and philosophers, medieval civilians and canonists together with interpretations of Scripture. Deviating from the traditional classification of law based on the *Corpus Iuris Civilis* (1565), by the civil and canon lawyers, Oldendorp distinguished

148 *Ibid.*:123.

149 *Ibid.*

150 See *ibid.*:140 *et seqq.*

151 *Ibid.*:141.

152 *Ibid.*:142.

153 *Ibid.*:142 *et seqq.*

154 *Ibid.*

155 *Ibid.*:156 *et seqq.*

156 *Ibid.*

157 *Ibid.*, 157-158.

between divine law (*ius divina*), natural law (*ius naturale*) and civil law (*ius civile*).¹⁵⁷ The implications of his jurisprudential views entailed that political leaders (magistrates) have the duty to maintain peace and to abide by the law (divine, natural and civil). This means that magistrates are not superior to the law but are ministers (servants) of the laws. Therefore, it is false and simplistic to assert that the prince has power to go against the law, for it is proper to such majesty to serve the laws. Like other Lutheran scholars, Oldendorp identified a number of safeguards against tyranny.¹⁵⁸ Reflecting Roman law thinking on this issue, Melanchthon, Eisermann, and Oldendorp emphasized that the magistrate is bound to obey his own laws, since they derive from the natural law. To them Roman law is a written compendium of legal reason, to be used as "something of a template for new laws".¹⁵⁹ Through the work of the Lutheran Reformation, Roman law was established as a most important source of law in the Christian polity.

3.2 The Zurich Reformation

In 1523 the Swiss Reformer Huldrych Zwingli published an influential tract on justice. His work *Von göttlicher und menschlicher Gerechtigkeit (Regarding Divine and Human Righteousness)* gave the first detailed Reformational exposition of social ethics.¹⁶⁰ Distinguishing between divine and human righteousness, Zwingli identifies the rights and duties of government and cautions against rioting and economic exploitation.¹⁶¹ To Zwingli the best form of civil government brings the laws of civil government into line with the laws of God.¹⁶² Zwingli's writings on socio-political issues came at a time when civic humanism saw a strong revival in Germany. Signs of the post-medieval emergence of slumbering ideas supportive of justice in the administration of law, and the cultivation of republican virtues and values in Germany, were observable by the beginning of the 1520s. The importance of justice and charity as key concepts of good rule is, for example, highlighted by a woodcut from Albrecht Dürer on the theme of *sancta iustitia*, with a sword and weighing of evidence, alongside *caritas*, emptying her coin-filled purse over the coat of arms of Nuremberg. In Emden, Brutus, the first Roman consul after the expulsion of the kings, was shown saying that *utilitas* was the mother of justice and equity.¹⁶³

The possibility of the suppression of the Protestant faith by the emperor from the early 1520s made the story of Lucretia a symbol of Protestant civic humanism because she had played an important role in the fall of the late

158 *Ibid.*, 164.

159 *Ibid.*, 173.

160 Zwingli, *Werke*, vol. II:458 *et seqq.* [Z II:458 *et seqq.*].

161 To Zwingli divine righteousness has as its basis the double command of love as expressed by the law of God. In contrast to this ideal form of justice, human righteousness is reflective of the order within a community and administered by the civil government (see Z II:458 *et seqq.*).

162 *Ibid.*

163 Meier 1996:38.

164 Von Friedenburg 2002:137.

Roman king and the establishment of a republic.¹⁶⁴ Reverting to civic humanism, the classical Roman works on politics received new attention in the first part of the 1500s. Cicero's *De officiis* and *De re publica* were popular reading material in this period.¹⁶⁵ In his *De re publica*¹⁶⁶ he recounts the expulsion of Tarquinius Superbus who, when he had reached the summit of his insolence, was deprived of his rule by the people, who rose against him on the instigation of L. Brutus. By becoming the author and leader of the revolt, Cicero adds, Brutus showed that in Rome, nobody could remain unconcerned when the liberty of the people was at stake. Cicero then discusses the differences between kings and tyrants.¹⁶⁷ A tyrant is defined as a *rex iniustus* (an unjust king), and tyranny as the abuse of royal power.

The year 1524 saw an uprising of unprecedented scale among the German peasantry.¹⁶⁸ As many as 300,000 common people in the south and central parts of Germany participated in the revolt against their overlords. By the beginning of May 1525, the peasantry's views on resistance, rebellion and tyranny had received a more refined formulation. In the influential and anonymous pamphlet addressed *To the Assembly of the Common Peasantry*, probably written towards the end of April 1525, the views of the peasants on justified resistance and rebellion of subjects against tyrants were dealt with in the light of Scriptural principles.¹⁶⁹ In Germany, the peasants were faced with two radically opposing theological views on resistance and rebellion — those of the radical Thomas Müntzer, on the one hand,¹⁷⁰ and those of the more pacifist-inclined Reformers, Luther and Melanchthon.¹⁷¹ The twenty-two-year old upcoming follower of Zwingli, Heinrich Bullinger, expressed himself on issues relating to resistance and rebellion in a drama produced in 1526.¹⁷² In his drama, *Lucretia and Brutus*, Bullinger aligned himself closely

165 *Ibid.*:139-140.

166 II, 24, 44 & 25, 46.

167 *Ibid.*, II, 26, 47 & 27, 49.

168 Already at the beginning of the 1520s the peasantry in Germany had hoped that the Reformation movement would improve their socio-political and economic position. This popular rising is traditionally said to have commenced on 24 June, 1524, with the rebellion of the peasants of the county of Stühlingen. Initially it was nothing more than a public demonstration or strike. It rapidly involved peasants of various lordships in the regions of Klettgau and Hegau along the Swiss border (see Scribner 1996:234-7).

169 The dissatisfaction of the peasants witnessed a strong resurgence of the Old Testamentary standards of justice.

170 See Honecker, *Evangelisches Staatslexicon*, 2201-2213, at 2206 and 2211.

171 Ironically the rebellious peasants drew some inspiration, albeit small, from Luther's teachings (see Blicke 1981; Cohen 1979:3-31, and Scott and Scribner, 1991).

172 The full title reads: *Ein schon spil von der geschichte der Edlen Römerin Lucretia / unnd wie der Tyrannisch künig Tarquinius Superbus von Rhom vetriben / und sunderlich von der standhafftigkeit Junii Briti / des Ersten Consuls zü Rhom / uff Sontag den andern tag Mertzens / im 1533 jar / zü Basel gehalten* (Basel: Rhoman Wolff, M. CCCC. XXXIII).

173 Bullinger clearly was in opposition to Luther by supporting the cause of the peasants on some points of their resistance to tyranny. This opened up important avenues for introducing the principle of legitimate resistance to tyranny to Reformational thought.

with the political and economic demands of the peasants, and expressed himself on the issues of resistance to tyranny through the representatives of the people, and covenantal politics to replace the old monarchical regimes.¹⁷³ Based on the accounts of Livy and Dionysius, Bullinger's drama reflects essential aspects of the Reformational discourse on resistance to tyranny, the establishment of republican forms of government and the oath-like nature of federal rule.¹⁷⁴ However, the main theme of the play is the issue of legitimate resistance to tyranny. In the opening pages of the work, Bullinger states that the primary aim of his work is to illustrate the position of people who are ruled by tyrants.¹⁷⁵ This is confirmed by his introducing a herald who announces that the two main themes of the play are: firstly, to convey that those who are governed by tyrants are in the gravest danger because such rulers are blinded by greed, spill the blood of the innocent, and rob them of their possessions; and secondly, that tyrants do not uphold justice or law even in the face of feminine love and trust.¹⁷⁶

After the removal of the king and his family as a result of a popular uprising, law and a republican form of government were restored.¹⁷⁷ The basic message of Bullinger's work is twofold: not only is resistance to tyranny on certain conditions permitted, but the more untruthful and ruthless the conduct of tyrants towards their subjects, the heavier the punishment meted out to them should be.¹⁷⁸ In the play, Tarquinius, the tyrant, is removed from office after resistance and rebellion by his subjects.¹⁷⁹ Unlike Tarquinius and his son Sextus, Brutus as the main character and liberator of the oppressed subjects is pictured as a brave, outstanding, excellent, devoted and just man.¹⁸⁰ The people respond to God's intervention and liberation through Brutus, by making an oath never to subject themselves to tyranny.¹⁸¹ The new republican form of government is then introduced by making the oath.¹⁸² The remedy against the evils of tyranny lies rather in the hands of those who make a concerted effort to protect the public welfare than in a private judgement and initiative by individuals. A community should not be accused of disloyalty for deposing a tyrant, even after a previous promise of constant fealty; tyrants leave themselves open to such treatment by their failure to discharge the duties of their office as governors of the community, and consequently, their subjects are no longer bound by their oath to them. This resembles Thomas Aquinas's observation

174 Although Luther and the Swiss Reformers, Zwingli and Bullinger, were largely in agreement on the nature and role of oath-taking by political office bearers, the most important point of difference among these two Reformational positions was the encapsulation of the oath within the covenant by the Swiss Reformers.

175 At 1. According to my numbering of the pages because the original text is unpaginated. All references to page numbers are, therefore, according to the author's numbering.

176 *Ibid.*:5.

177 *Ibid.*:21.

178 *Ibid.*

179 *Ibid.*

180 *Ibid.*:62-3.

181 *Ibid.*:26.

182 *Ibid.*

183 *De regimine principum*, I, vi (ed. D'Entrevès, 1965:32-3).

that the Romans deposed Tarquinius because of his and his children's tyranny, and substituted the lesser or consular power instead.¹⁸³ Unlike Luther, Bullinger does not rule out resistance under all circumstances.

3.3 Junius Brutus and the fusion of the Reformation and Scholasticism

The work by Junius Brutus, *Vindiciae Contra Tyrannos*, was the culmination of his efforts to synthesize Roman law arguments for resistance to tyranny with the Reformational work of the Zurich school of the covenant. Brutus' main line of argument starts from Scripture: At the inauguration of kings there was a twofold covenant — the first between God, king and people, to the effect that the peoples should be the people of God; the second between the king and the people, that while he commanded well he would be obeyed well.¹⁸⁴ For the purposes of his argument that Moses and the Levites are said to have stipulated to the people on God's behalf in the original covenant between God and the people, Brutus relies heavily on the Roman law principles pertaining to the rights and duties of contracting parties. First, in the covenant God is the stipulating party, and the people the promising party. In essence the covenant, therefore, is a unilateral contract, for the stipulating party, by definition, has no obligations, only rights, whereas the promissory party has no rights, only obligations. Furthermore, it is not reciprocal and the people acts as a corporation (*universitas*), a single, abstract, juristic person.¹⁸⁵ This shows clear traces of the work of the medieval post-glossator Bartolus. As a legal person it can act only through persons, or *universi*, acting in their corporate capacity. Because everybody is bound to serve God in and through their corporate capacity, private individuals have no power, fill no magistracy and do not have any right of the sword.¹⁸⁶ With reliance on the Roman law principles pertaining to the transfer of their legal capacity to their representatives, Junius Brutus introduces the notion of tutorship and maintains that the officers of the kingdom, the magistrates and princes, are tutors of the people's safety (*salus publica*), which they have the duty to protect in the same way as a tutor must care for the good of his ward. The people's debt towards God can only be fulfilled by its representatives, defined in terms of the Roman law of tutorship.¹⁸⁷ The legal position of the officers of the kingdom is similar to that of *singuli* who are individually inferior to the king, but as *universi* are his superiors.¹⁸⁸

Kings are constituted for the sake of the public welfare, therefore they should devote themselves to the welfare of the people. Because each king is entirely constituted by the people, the whole people are more powerful

184 Brutus 1994:10-11, 21 *et seqq.*

185 Garnet 1994:xxiii.

186 *Ibid.*:xxvi.

187 *Ibid.*:xxvii.

188 *Ibid.*

189 *Ibid.*:xxxvi.

190 See *ibid.*:xli.

than the king.¹⁸⁹ Brutus provided for the principle that, although an individual magistrate, as a *singulus*, may be inferior to the king, he was still bound to take action against him if the king failed to fulfil his obligations to the people.¹⁹⁰ Relying on Bartolus' incorrect citation of Thomas Aquinas, Brutus refers to Aquinas' *Summa Theologiae* on the point that because tyranny is not ordered to the common good, but to the private good of the ruler, disturbing a tyrannical regime is not sedition, unless the multitude will suffer more from the resulting disorder than they would from continuing tyranny.¹⁹¹ Tyrants are more guilty of sedition for they foster it in order to divide and rule. Referring to Bartolus,¹⁹² Brutus maintains that, although the king is the supreme minister and agent of the kingdom, and the emperor of the empire, the people are lord.¹⁹³ A tyrant commits a felony against the people and is guilty of high treason against the kingdom or empire and is a rebel, and can be deposed by a superior, or most justly punished according to the Julian law on public force. Bartolus originally applied the *Lex Julia* on public force¹⁹⁴ to tyrants by practice only; tyrants without title are said to contravene the *Lex Julia* on treason.¹⁹⁵

Junius Brutus established a synthesis of Reformational and Scholastic thought on the issue of tyranny and resistance to oppression. This was accomplished mainly by interpreting Scriptural concepts such as the covenant by reverting to the traditional Roman law principles. This provided the seventeenth century jurists in the Netherlands with a strong basis from which to address matters pertaining to constitutionalism and tyranny.

Ulrich Huber's commentary on the right to resist tyranny shows clear traces of Reformational influence. The right to resist tyranny is in the first place situated in the hands of the representatives of the people. Therefore, the Council which wishes to exercise its own power has the power to restrain those who try to convert imperial power into absolutism.¹⁹⁶ Although there are political methods to restrain tyrants, such a Council shall have the right to "courageously signify and display" its power to restrain the tyrant.¹⁹⁷ But if he should avail himself of inconsiderate violence and strength, so that he cannot be restrained in the senate, and it becomes well known, there is nothing to withhold from individuals the capacity to resist him.¹⁹⁸ That which an individual or several people may do is more of a political than a legal

191 See Brutus 1994:147, 157. The reference is to the *Summa* II, ii, q 12 (recte 42) Art. 2.

192 *De Guelphis et Gebellinis*, chapter iii:139.

193 Brutus 1994:156.

194 *Digesta*, 48.6.

195 *Ibid.*

196 I, IX, III, 9 (255 (2)).

197 I, IX, III, 10 (255 (2)): "Quominus autem hoc semper faciant, rationes equidem esse possunt, verum politicae magis. Nam de jure non debet omittere tale Concilium, quominus sententiam suam & officium Principis cordatè significant & demonstrent."

198 I, IX, III, 11 (255 (2)).

199 I, IX, III, 12 (255 (2)-256 (1)): "Nam quid singuli vel plures valeant aut quid expediat, servire, an pugnare, facti magis & Politices quam juris est."

200 I, IX, III, 13 (256 (1)).

decision.¹⁹⁹ The same applies where a ruler has supreme but not complete power — he has to share some attributes of power with the senate or the people and refuses to do so.²⁰⁰ Huber refers to the example of the Duke of Alva who, in the name of King Philip, exacted a tithe from the Belgians against the wishes of some of the officials. Without committing a crime individual citizens closed the workshops and resisted the tax gatherers.²⁰¹ This matter is beyond dispute if a *Lex Commissoria* is added to the ruler's appointment, so that, should he fail to adhere to the Constitution, the people are relieved from all the bonds of servitude.²⁰² The same applies where it is stipulated when a ruler is appointed that on the happening of certain events the ruler has to abdicate and "this type of agreement between the people and the king has a natural effect".²⁰³ Until such time as a king is anointed he lacks the power to rule — he is still a private individual and his commands which transgress his authority may be resisted.²⁰⁴ Following the line of Bartolus and Baldus, Huber provides for those in whom sovereignty vests to answer.

Only where the evil intention of the ruler is manifest may he be opposed with armed violence.²⁰⁵ However, to kill a ruler with justification in anger is unheard of and can never exist in a voluntary democracy with the consent of the state.²⁰⁶ Applying the doctrine of Aristotle to this issue, Huber states that if a tyrant behaves himself in such a way as to satisfy his lusts and further his interests; if there is no hope of an improvement in the future; if there can be no doubt that the republic is going to "rack and ruin", then there is nothing unjust or absurd in the opinion which provides the subjects with the capacity to resist.²⁰⁷ When this is firmly established resistance may start with anybody and an official has no more right against the supreme power than the lowest of citizens, although the initiative should come from the highest magistrates.²⁰⁸

The last chapter of Huber's exposition on tyranny deals with the right to punish tyrants. The most important principles involved are firstly, that tyrants who seek to usurp lack supreme power and may without doubt be punished; secondly, the right to punish belongs to those whom sovereignty belongs when the present ruler is removed, and thirdly, there are limitations on the punishment for tyranny.²⁰⁹ The capacity to punish follows in another way the act of resisting. The tyrant may be brought to stand trial so that he can be punished. The right to resist is not followed by the right to punish because it often happens that it is permissible to resist somebody but there is no right

201 I, IX, III, 14 (256 (1)).

202 I, IX, III, 17 (256 (1)).

203 I, IX, III, 18 (256 (1)): "Idem est, si in delatione Imperii sit dictum, ut certo eventu Regi resisti possit; cujusmodi pacta populi adversus Regem habere posse effectum naturalem, contra Hobbesium *suprà*, demonstratum solent."

204 I, IX, III, 19 (256 (1)).

205 I, IX, III, 36 (257 (1)).

206 I, IX, III, 36 (257 (1)-(2)).

207 I, IX, III, 52 (258 (2)).

208 I, IX, III, 53 (258 (2)).

209 I, IX, IV, 259 (Summary).

210 I, IX, IV, 3 (259 (1)).

211 I, IX, IV, 4 (259 (1)).

to punish him.²¹⁰ The titular tyrant who invaded the entire empire, when they are over-powered, may be punished for what he has done and there is no doubt about it. They commit the crime of majestas or high treason for which there is a severe punishment from the free people or from the nobility. He usurped the kingdom from the true king.²¹¹ A difficult question arises regarding the practising tyrants. This problem originates from the fact that it is not known who the tyrant is rather than to apply the law to the hypothesis of the true tyrant.²¹² To Huber only absolute tyrants and no others may be punished. While he still is the king there is no jurisdiction as far as the infliction of punishment in the State is concerned.²¹³ Power is lost if the ruler perpetrates a crime contained in the *Lex Commissoria* or when he openly and without secrecy transgresses the other limits placed on his powers.²¹⁴

From what has been said above, Huber infers that if a tyrant loses the supreme power he reverts to becoming a private citizen and he is subject to those who have the power after his dismissal.²¹⁵ Those people who are in charge of the administration of justice share this power.²¹⁶ The implications of Huber's arguments are that the usurpers from other countries may be punished by the true kings and "the invaders of free people may be punished by those who assert their own rights".²¹⁷ It is possible that the usurpers together with the practising tyrants may be punished by the senate or by the highest magistrates in the way that Nero was punished by the Roman Senate.²¹⁸ Private individuals have no discretion to punish unless the tyrant was caught in the very act of committing violence.²¹⁹ Considering the various types of punishment to be inflicted on tyrants, a distinction should be drawn between usurpers, titular tyrants and practising tyrants.²²⁰ There is no punishment where titular tyrants or usurpers abdicate or are driven from the positions they occupy.²²¹ Exile with or without a sale in execution is often proposed against usurpers. There is nothing to prevent a sentence of death against these people, especially if the usurper added ferocity to the wrongful act. The same applies to titular or practising tyrants.²²² Obviously, there can be no doubt about the death penalty but prudence and political considerations may encourage another course of action.²²³ Huber adds: "By parity of

212 I, IX, IV, 5 (259 (1)-(2)).

213 I, IX, IV, 8 (259 (2)).

214 I, IX, IV, 10 (2)).

215 I, IX, IV, 18 (260 (1)-(2)).

216 I, IX, IV, 19 (260 (2)).

217 I, IX, IV, 20 (260 (2)).

218 I, IX, IV, 21 (260 (2)).

219 I, IX, IV, 23 (260 (2)).

220 I, IX, IV, 24 (260(2)).

221 I, IX, IV, 25 (260 (2)).

222 I, IX, IV, 26 (260 (2)-261(1)): "Exsiliu publicatis aut etiam salvis patrimoniis saepe Usurpatoribus irrogatum; quominus tamen poena mortis iisdem infligatur nihil obstat, maximè si usurpatione saevitiam aliaque injusta facta addiderint, ac ita simul titulo atque exercitio tyranni fuerint."

223 I, IX, IV, 27 (261 (1)).

224 I, IX, IV, 30 (261 (1)).

reasoning an assassin may lawfully be sent against an attacker. This was the view of the older jurists even if there were no laws making provision for this as in the case of Athens where there were no such laws after Solon Harmodius and Aristogiton were praised, for this is so that nobody may harbour further doubts".²²⁴ On the subject of practising tyrants, Huber observes that it is a far more difficult matter. There are many who state that they cannot be punished at all. Bodinus mentions that if the highest power is bestowed on one man as in the case of the French, Spaniards, British, the Scots, Turks, Tartars, Persians, Indians and all those people of Asia and Africa subject to imperial rule, it does not behove individuals or all the people to endanger the life, reputation, and fortune of the ruler (IV: 32).²²⁵ Huber differs from Bodinus on this point, because to him all problems center on the question whether any ruler can verily be said to be a tyrant. Once that is firmly established he should not be free from all punishment.²²⁵ Huber criticizes Bodinus because he confuses voluntary rule and the violence of the French, Turks, British, and Persians, although he agrees with him on the principle that if the rulers behave like enemies of the people, they cease to be rulers.²²⁶ In addition, if in a government by consent they clearly and openly go beyond that which has been conferred on the ruler against the majority or a notable part of the population, it should be stated that they commit tyranny and that there is room for punishment.²²⁷ On the other hand, if he violates the rights of an individual or a few and goes beyond that which is contained in his authority, then the right to resist is given to those few or those individuals, but the ruler cannot be branded a tyrant.²²⁸

4. Conclusions

The seventeenth century witnessed the upcoming Age of Reason or the Enlightenment. In contrast to both the humanism of the Renaissance and the motivating idea of the Reformation, the Enlightenment was mostly an intellectual, rational movement. The most important intellectual patterns of the Enlightenment were the secularization of learning and the belief that reason was itself the fundamental source of knowledge. Unlike the Medieval scholars who interpreted the universe and man's role in the universe in terms of theological principles, the rationalists of the seventeenth century tended to avoid theological and ecclesiastical authority and turned increasingly to the secularization of knowledge. The Enlightenment was an age of faith in the rational behaviour of nature and immutable scientific laws. The key to knowledge, therefore, was reason. In the course of the seventeenth and eighteenth centuries, the theory of natural law experienced an almost universal

225 I, IX, IV, 32 (261 (1)-(2)).

226 I, IX, IV, 35 (261 (2)): "Bodinus Imperia voluntaria Francorum, Turacrum; Anglorum & Persarum malè confundit; etsi hactenus sane conveniunt, quod in omnibus, si Imperantes se ut hostes populi gerant, Rectores esse desinant."

227 I, IX, IV, 36 (261 (2)).

228 I, IX, IV, 37 (261 (2)): "Nam si nonnisi contra singulos vel paucos vim sunt, etsi jus resistendi datur illis paucis vel singulis, non est tamen adhuc, quod pro tyrannis habeantur."

acceptance. However, it showed marked differences from the natural law thinking of the preceding era. More specifically the following differences emerged: (1) a decline in the Biblical and theological motivations of natural law and attempts to find its source in man's reason alone; (2) while medieval scholastic philosophers were inclined to restrict the scope of natural law to a few first basic principles, the classic natural law theorists tended to favour systems of concrete detailed rules; (3) natural law became the focal point of political debate, and (4) because the emphasis on rationalism and because of its prominence in political theory, natural law became attached to the theory of the social contract.

The evolution of natural law in the seventeenth and eighteenth centuries went through three stages: first, the break with medieval theology and feudalism, together with enlightened absolutism in law and politics in the theories of Grotius, Hobbes, Spinoza and Pufendorf. Secondly, the period marked by liberalism in politics and philosophy, culminating in the views of Locke and Montesquieu. Thirdly, the epoch of popular sovereignty and democracy and natural law theory linked to the "general will" and the majority decision of the people, as formulated by Rousseau. Ulrich Huber's political and legal philosophy provides interesting examples in the preparation of the way for the movement from enlightened absolutism to democratic government based on the will of the people, popular sovereignty, and integrating this with the principles of limited government and resistance to tyranny.

In the span of Ulrich Huber's work as a Roman Dutch legal scholar, philosophical and academic thought in Europe was experiencing a "megashift" from scholasticism towards enlightenment. The twilight of scholasticism was fading into the dawn of the enlightenment. In his *The Crisis of the European Mind (1680-1715)*, Paul Hazard traced the paradigm shift that prepared Europe to be swept into the Enlightenment.²²⁹ Under the guise of "rationalism", "freedom", "tolerance", and "secularism", all areas of Western thought and life were changed according to James T. Dennison, relying on Hazard. The spheres of law and politics were also materially affected by this paradigm shift in Western thought. In the Netherlands this shift in academic thought made itself felt. Naturalism, secularism, subjectivism, and scepticism, according to Dennison, were the forces which altered the orthodox citadels at the end of the seventeenth century; the result of which was reducing God to the service of man; naturalism reducing God's Word to the service of the critic; secularism reducing transcendental thought to the service of materialism; subjectivism reducing his objective metaphysics to the service of an anthropocentric ego, and scepticism reducing his fidelity to the service of the doubter. Dennison adds that the aftermath of the late seventeenth-century assault on orthodoxy was not only an increase in atheism and scepticism, but also a retreat into fideism — retreating from the objective verifiability of the supernatural, claiming the voice of the Spirit within. The resulting de-emphasized sovereignty and Christocentrism produced a virtual monism of an idealistic, mystical optimism about man's spirit. This trend is also reflected in Huber's jurisprudential humanism. Although he absorbed strong elements of Reformational thought

229 See Dennison, 1999: 245.

in his work, the general trend of his work and the system underlying his reflections on constitutionalism reflect a predominant style of humanistic toleration in the general line of Dutch religious toleration of the period. In a sense, this provided the springboard for legal conceptualism from which jurisprudential positivism took root.

Huber's work reflects the impact of scholasticism in the early stages of the Dutch "Golden Age". The overarching Aristotelian approach, along with the Melancthonian systematic analysis of constitutional topics in his *De Jure Civitatis*, provided Huber with a strong legacy of medieval Aristotelianism permeating his constitutional reflections. Huber's jurisprudential humanism, therefore, was mainly the result of his scholastic approach to public law, in general, and constitutional issues, in particular. The most important contribution of Huber's affinity for classical and medieval humanism in his *De Jure Civitatis* is his strong emphasis on constitutionalism — not only for arranging the structures in the public sphere, but also for serving as the buffer against the abuse of power and providing the limits to lawful governance in the public sphere. Furthermore, Huber made a pioneering contribution to the study of constitutional law by systematically interpreting the authors of classical antiquity and the late medieval period from a new perspective. Therefore, although his work reflects strong elements of scholasticism and reformational jurisprudence, traces of enlightened public law theory are discernable in his work.

Because of his reliance on Bartholus and Baldus, Huber at an early stage of the development of Dutch "tolerant" jurisprudence, produced a constitutional theory reflecting a strong undercurrent of constitutionalism and limited powers of governance. However, Huber's typical compendium style makes it difficult to determine the basis of his views and arguments. Therefore, it is of utmost importance to know the ideological décor of his statements in order to fathom the depth of his constitutional theories. Research on the ideological

roots of the work of the classical Dutch authors is a long outstanding matter in Southern African jurisprudence and study of legal history. Because South African jurisprudence has been strongly influenced by Huber's legal theory, a study of his work is essential for understanding the roots of our constitutional history and public law culture.

Bibliography

ACCURSIUS

1497-8. *Glossa ordinaria*. Venice.

ALBERTUS DE ROSCIATE

1545. *Commentarium pars prima super Digesto veteri*. Lyon.

1545. *Commentarium pars secunda super Digesto novo*. Lyon.

1545. *Commentariorum pars prima super Codice*. Lyon.

AQUINAS T

1965. *Selected political writings*. Ed. A.P. D'Entrèves, trns. J.G. Dawson. Oxford: Blackwell.

BARTOLUS DE SASSOFERRATO

1883. *Tractatus de tyranno*. Ed. Quagliani in *Politico e deritto*.

BLICKLE P

1981. *The Revolution of 1525. The German Peasant's War from a new perspective*. Transl. and ed. Thomas A. Brady Jr. and H.C. Erik Midelfort. Baltimore, Md./London.

BRUTUS SJ

1994. *Vidiciae contra tyrannos or concerning the legitimate power of a prince over the people, and of the people over the prince*. Ed. G Garnett. Cambridge: Cambridge University Press.

CANNING J

2003. *The political thought of Baldus De Ubaldis*. Cambridge: Cambridge University Press.

COHN HJ

1979. Anticlericalism in the German Peasant's War 1525. *Past and present* 83:3-31.

CYNUS DE PISTORIA

1578. In *Codicem et aliquot titulos primi Pandectarum tomi Commentaria*. Frankfurt.

D'ENTREVÈS AP (ed)

1965. *Aquinas. Selected political writings*. Oxford: Basil Blackwell.

DE WET JC

1988. *Die ou skrywers in perspektief*. Durban: Butterworth.

GREEN VHH

1969. *Renaissance and reformation. A survey of European history between 1450 and 1660*. London: Edward Arnold.

HONECKER M

1975. Revolution, *Evangelishes Staatslexicon*, eds. Herman Kunst, Roman Herzog. Berlin: Kreuz Verlag.

HUBER U

1708. *De Jure Civitatis, libri tres: novam juris publici universalis disciplinam continentes*. 4th edition. Frenequerae: Wibrand.

1939. *The jurisprudence of my time*. Volume I. Durban: Butterworth.

JOHNSTON P AND SCRIBNER B

2000. *The reformation in Germany and Switzerland*. Cambridge: Cambridge University Press.

LLOYD HA

1996. Constitutionalism. *The Cambridge history of political thought 1450-1700*. Ed. J H Burns. Cambridge: Cambridge University Press, 254-297.

McDONALD LC

s.a. Western political theory. Part I Ancient and Medieval. New York / Chicago / San Francisco / Atlanta: Harcourt Brace Javanovich, Inc.

NAUTA D

1975. Marnix auteur van de *Libellus Supplex* aan de rijksdag van Spiers (1570). *Nederlands Argief voor Kerkgeschiedenis* 55:151-170.

ODOFREDUS DE DENARIIS

1550. *Interpretatio in XI primos Pandectarum libros*. Lyon.

1552. *In secundam Digesti veteris partem praelectionis*. Lyon.

1552. *In primam Codicis partem praelectiones*. Lyon.

QUAGLIONI D

1983. *Politica e diritto nel trecento italiano: il 'De Tyranno' di Bartolo da Sassoferrato (1314-1357), con l'edizione critica dei trattati 'De Guelphis et Gebellinis', 'De regimine civitatis' 'De tyranno', 'il pensiero politico'*, biblioteca, 11. Florence.

RICE EF

1982. *The foundations of early modern Europe 1460-1559*. London: Weidenfeld and Nicolson

SCHWIEBERT EG

1996. *The Reformation*. Minneapolis: Fortress Press.

SCOTT T AND SCRIBNER B

1991. *The German Peasants' War. A history in documents*. New Jersey / London: Humanities Press International, Inc.

TRUEMAN CR AND CLARK RS (eds)

1998. *Protestant Scholasticism. Essays in reassessment*. Carlisle, Cumbria: Paternoster Press.

VAN ASSELT WJ AND ROUWENDAL PL

1988. *Inleiding in de Gereformeerde Scholastiek*. Zoetermeer: Boeken-centrum

VAN GELDEREN M

2002. *The political thought of the Dutch revolt 1555-1590*. Cambridge: Cambridge University Press.

VAN GELDEREN M (ed)

2001. *The Dutch revolt*. Cambridge: Cambridge University Press.

VAN KAMPEN NG

1822. *Beknopte geschiedenis der letteren en wetenschappen in de Nederlanden, van de vroegste tijden af, tot op het begin der negentiende eeuw*. Part II. 's Gravenhage: De Weduwee J Allart en Comp.