Professorial Lecture

by

Professor David Saunders

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Law, politics and religion: some early modern lessons for today’s humanities

1. A strange anticipation

This lecture’s title is ‘Law, politics and religion: some early modern lessons for today’s humanities’. Ten years ago, the term ‘society’ would not be missing; the term ‘religion’ would not have appeared. The French political philosopher, Blandine Kriegel, announces the end of ‘the paradigm of the social’. ¹ Something familiar is on the way out. This last weekend, in San Antonio, Texas, the American Bar Association devotes its 1999 Higher Education Conference to ‘Law, Religion and the Moral Order’. Something unfamiliar is on the way in. And none too soon, if we are to address an issue that has exercised me for a decade.

Their lives are anything but the worst the world has seen. Yet today’s humanities students have been programmed into a strange anticipation: that to succeed in their studies and perhaps also in their lives, they must be critical of existing institutions, in particular the state, bureaucracy and law. For a German romantic of last century such as Novalis (aka Baron Friedrich von Hardenberg) anti-juridism was no doubt appropriate.² As Baron Novalis put it: ‘I am a profoundly anti-juridical man. ... I have neither any sense of law or need for law’. The Baron committed his life to making the German Middle Ages the aesthetic high point of his nation’s world-redeeming spiritual mission. Our students enter twenty-first century careers in middle-level administration and the service industries. Why ever should they view our institutions in the critical and transgressive manner of a

² On Novalis, see Neubauer (1980) and Molnar (1987).
long-dead aristocratic German romantic literary aesthete? This question implies a
different pedagogic program, aimed at practical complicity with institutional life not at
high-minded critical opposition to it.

Where did this anti-institutionalism come from? To anticipate my argument...by drawing
a picture, in fact a picture of a picture painted in 1672 in Holland. What matters is not the
art or artist, but the date and the image.\(^3\) If we in states under the rule of law (États de
droit) enjoy relatively pacific and orderly conditions of life, to appreciate these conditions
we should approach the institutions of law and state in terms that are more positive than
critical. Such an approach invites us to return to the history of such states. The generation
of the 1660s and 1670s in western Europe lived for peace after a century of religious wars
between Catholics and Protestants, between Lutherans and Calvinists, and between all
these and what Kolakowski (1969) called chrétiens sans église (Christians without
churches, that is, sectarians who cut themselves from any instituted church). Peace was
being achieved...by political jurists removing the great issue of salvation to one side of
the scene. The sovereign state was imposing a juristic order on the religious and moral
lives of individuals. Has empire of religion struck back?

To answer, I shall trace my intellectual path from the heights of 1980s theoretical
humanities towards but not beyond the institutions of law. It is a tale of five books, three
published since 1992 and two I now plan (what my bookseller terms category 3 or ‘yet to

\(^3\) At this point, the lecturer sketched the picture of a civic square in which the city hall threw its shadow on
a church to the right hand side of the image, while a crowd of mixed identities, some wearing hats, some
turbans and some bare-headed, peacefully occupies the foreground.
be published'). The published books defend positive law against normative critique. 

Authorship and Copyright (1992) sets copyright law as an enduring market regulator against literary theoretical notions of creativity. On Pornography: Literature, Sexuality and Obscenity Law (1993), written with Ian Hunter and Dugald Williamson, sets obscenity law as a sophisticated distribution mechanism against philosophical liberal notions of sexuality and its literary expression. Anti-lawyers. Religion and the Critics of Law and State (1997) is broader in conception and timescale. It sets the early modern state's separation of law from religion, following the religious wars, against today's critical jurisprudence that realigns law with some higher moral principle. But such specific histories had not previously been my concern.

2. Playing in the pen of abstraction

My favourite Italian intellectual, Franco Fortini, put it well: none of us likes to be seen changing our mind, so we do it in the dark when no one is looking. Perhaps you should now look away, because I begin by telling what preceded my turn to history.

Anti-institutionalism need not be crude or obvious. It can be ingenious and indirect. Once upon a time I taught the structure of the language system. Invisible yet ultimate, this structure was organised by polar abstractions read about in French—nature or culture, raw or cooked. War or peace, religion or law were not on the list. Once inside this linguistic pen, we generalised the lessons of structuralist phonology to all of language. We learned to have no positive points of reference: stone was non-fish, fish was non-bird, bird was

4 For instance moral reason. Schlag (1998) offers an acute dissection of this particular (in)disposition prevalent in the American legal academy.
non-cat, cat was non-dog...and so on up the chain (which was of course non-chain). In a socio-economic parallel, theoretical Marxists transcended the institutions of politics and law, demoting them to ideological non-realities with no real existence of their own.

These sure-fire ways to rise above our institutions look rather dotty now. But it was enthralling then, theory map in hand, on a transcendental treasure island of linguistic abstraction. X marked the spot where the deep structure of language was hidden; later, X marked a different treasure, the formal rules for all possible statements or the grammar of all possible narratives. Theory was immediate revelation.\(^5\) In a flash, we saw the structure below or the rule beyond the surface. Unlike Neoplatonists recovering the language of divine creation, we never found the wonder-working word\(^6\) whose utterance, in one account of Renaissance Cabbalism, was capable of ‘reviving the dead, curing the sick, exorcising demons, turning rivers into wine, feeding the hungry, repulsing pirates, and taming camels’.\(^7\) We turned some wine into rivers, but our ‘turn to language’ did nothing for the camels.

Committed to eradicating anthropomorphism, I embraced these abstractions in an intense pedagogy. In week 4 of semester, a noise was heard: the murmur of students asking ‘Why are you doing this to us?’. The answer was ‘salvation’: to free you from the theoretical error of subject-centered thinking. We scorned every personal anecdote. Our classes made

\(^5\) Cf. George Keith (1675) *Immediate Revelation* (or, Jesus Christ the Eternal Son of God Revealed in Man, Revealing the Knowledge of God, and the Things of his Kingdom Immediately), London.


\(^7\) Coudert (1999: 88). She offers a deadly serious account of Renaissance Cabbalism as prelude to the modern scientific disposition.
that well-run laboratory where Dr Pavlov fined any worker mentioning the feelings of the experimental dogs look soft. These now antique intellectual exercises did much for careers in theorising on theory, discoursing on discourse, reflecting on reflecting, to the point where most first-year humanities subjects today make theoretical and/or critical claims. What, I wonder, are the effects of long-term exposure to critical theory on those intelligent young who, surprisingly meekly, go through this training? Looking back, one thing was for the worse. We denounced historians as pre-theoretical, blind to the formal codes of narrative that made their practice possible. Histories were mere convention, derivative effects of the language system of which we were the enlightened theorists. At best, history was that into which Rudolph the Red-Nosed Reindeer would go down...as we would have pointed out, it rhymes with ‘glee’.

3. From great abstractions to specific histories

Then things changed. Abstraction lost the shine of hidden treasure. Far from formalising them away, I became interested in the particular histories of legal institutions. I recall reading C.M. Rolph’s self-congratulatory account of the failed 1960 prosecution of Penguin Books for *Lady Chatterley’s Lover*, with the exchange between the Prosecution and Professor Richard Hoggart, called as expert witness. Launching a literary lecture at the court, he was reminded: ‘Mr Hoggart, you are not at Leicester University now’. This would be a bad moment for any professor. It showed that what is sayable in one institutional context is not necessarily believable in another. Belief in the language system as the unified theoretical base was useless when the research task was to describe
how English law had come to recognise an expert witness within the terms of the Obscene Publications Act (1959).

New research tasks meant new authorities for bringing the specifics of an institutional context to the fore: Marcel Mauss (1985) on persons and the capacities accorded them by the institutions of law and morality; Amelie Rorty (1988) on multiple personae; Max Weber, ‘reconstructed’ by Wilhelm Hennis (1988), on the ‘conducts of life’ in their institutional settings. These were essential preliminaries to writing Authorship and Copyright, On Pornography and Anti-lawyers.

Authorship and Copyright did not tie the history of copyright into a broader philosophical scheme or a critical theory of authorship. In fact it stressed the independence of copyright law from normative literary theory, arguing that whatever the latter got up to had no particular consequences for the former. If they happened to overlap in certain academic debates, copyright law and literary theory nonetheless were different intellectual practices, each with its history and ethos, purposes and institutional location. My primary aim was to contrast the particular history of copyright in its common law context to the different history of the droit d’auteur in the context of European civil law. An interesting comment on the book suggested I adopted a ‘systems theory’ approach to copyright law.\(^8\)

This raises a key question: how to envisage the relations between law as an independent institution and the adjacent fields (or ‘systems’) that might overlap with it?

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\(^8\) See, for instance, Bently (1994).
On Pornography: Literature, Sexuality and Obscenity Law was a history stripped of a future, a legal history of obscenity not a moral augury or a normative statement of what the law should have been. The book describes obscenity law historically in its shifting political, religious and cultural circumstances. This description is nothing like the usual moral-critical approach that equates obscenity law with a mentality of repression and a machinery of censorship. Indeed, the book errs—if it errs, which it does not—in the opposite direction. It shows obscenity law to have been a sophisticated administrative means of distributing a morally difficult commodity—pornography—to populations differentiated by age, gender and cultural literacy.

As in Authorship and Copyright, the law’s institutional specificity was a central theme. Our history of obscenity law depicted legal judgements and categories as tied to definite but limited legal purposes—the regulation of certain trades, the constraint of certain behaviours. Hence our conclusion:

This technical and purposive mode of judgement, coupled with the fact that the law is amongst other things an institution for settling disputes, is what allows the law to adjudicate in the cases of pornography, through the [shifting] historical category of obscenity. The law adjudicates on pornography not through a universally true judgement but by maintaining a quite narrow set of procedures, categories and purposes that permits a judgement to take place and to be seen to have taken place. (Hunter, Saunders and Williamson 1993: 229)

This conclusion displeased those who fault obscenity law for failing to respect a higher moral reason—the uncoerced expression of human sexuality.
Shorter than the previous books, *Anti-lawyers: Religion and the Critics of Law and State* addressed a broader phenomenon: anti-juridism. I took the historical focus four hundred years back to the Wars of Religion when rival Christian confessions tore one another apart, their sheer brutality driven by purity of principle. First, my purpose was polemical: I invited contemporary moral critics of legal institutions to view themselves in the light of the early modern state’s disengagement of law from religion. I asked to what extent their critical stance might itself be a religious phenomenon. A second point was to recover dignity for the ordinary routines of institutional life in the offices of law, government and administration.

4. *‘Within the orbit of this life’*

*Anti-lawyers* was the tip of two icebergs, one more jurisprudential, the other more historical. These tips will become the two books yet to be written. The first will focus further on anti-juridism as a particular mode of anti-institutionalism. The second will be an early modern biography, an extraordinary prospect for me who would once have fined himself for even thinking of a personal anecdote.

To give some background to the future book on anti-juridism. Writing *Anti-lawyers* taught me a forgotten history. Perhaps not everyone here celebrated last year the 350th anniversary of the Peace of Westphalia, the treaty that in 1648 settled competing territorial claims of 135 princes of different Christian confessions and ended multiple conflicts: Holy Roman Empire v. France, Spain v. Netherlands, Protestants v. Catholics, and so on. The genius of the Westphalia jurists and administrators was to end religious
conflict by not answering the religious question— which is the true path to salvation? Recognising that confessional differences between the territorial states were irreducible, they reworked imperial legal arrangements to outlaw interference by one state in the internal religious affairs of another. Setting this boundary to salvation gave sovereign states protection against invasion by another state whose prince was bent on saving everyone by forced conversion. Territorial limits were applied to heavenly religion. A confessionally neutral law displaced confessionally committed faith as arbiter of conduct in this world. Of course, true believers did not abandon the absolute pursuit. Yesterday’s bellicose Protestants and today’s pacified Catholics each still believed in victory tomorrow for their own exclusive version of the faith.

Not that we have carelessly forgotten what happened 350 years ago. It is worse. Our history has been re-written. This is the thesis of the German political historian, Reinhart Koselleck, who has inspired me to follow law’s institutional independence back in time. You must accept there are people, meaning myself, deeply moved by a book with Koselleck’s title: Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society. This, you will have noted, is the first mention of ‘society’ since I indicated that the term did not figure in my lecture’s title. ‘Society’ figures in his title, but Koselleck links ‘society’ with ‘pathogenesis’, the genesis of a disease.

In Critique and Crisis, Koselleck (1988) traces two developments subsequent to the confessional wars: the act of pacification that established civil order in an early modern

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9 The English version appeared no less than nineteen years after Koselleck’s German original: Kritik und Krise. Eine Studie zur Pathogenese der bürgerlichen Welt.
state under law and an act of moral revenge against that state. The first development was political: in the face of a religious holocaust which had outrun any final theological solution, the Absolutist state of law was brought into being. To end a religious tragedy incapable of reaching its own dénouement, this state imposed a juristic order--peace, in Thomas Hobbes' terms--on the religious lives of individuals and associations. Pacification depended on a brilliant legal invention, unique to early modern European political culture: a civil sphere governed in the interests of security by reason of state and a law independent of religion. This unprecedented juridification of religion denied a political role in this civil sphere to the churches and sects whose spiritual zeal had so completely bound their followers into a belligerent lust for mutual extirpation.\textsuperscript{10}

Yet this denial was no crude suppression of individual freedom by institutions of state power. On the contrary, Koselleck argues, the Absolutist state instituted a positive domain of private conscience over which it had no jurisdiction.\textsuperscript{11} Here the right to freedom of religion could be practised without legal penalty...provided that that practice did not disturb the peace. In this extraordinary feat of political self-limitation, the state circumscribed its own sphere of action. The Absolutist state, while authoritarian, was not perfectionist. Absolutism was not despotism.\textsuperscript{12}

\textsuperscript{10} There is reason to recall the etymology of 'religion': to bind again. The unequalled binding powers of the Christian confessions produced moral communities ready to kill and be killed for the faith. The twentieth century's despotic one-party states give some inkling of what this binding power has done.

\textsuperscript{11} Thomas Hobbes well understood the political invention of an imprescriptible right of conscience for the overriding purpose of peace. However, Koselleck's teacher, Carl Schmitt, saw in this 'freedom of thought and conscience conceded by Hobbes...a "flaw" in the system, a mark of death on the great Leviathan' (in Saunders 1997: 8). There was no control over what went on in the enclave of conscience.

\textsuperscript{12} On this crucial argument, see Kriegel (1995).
The second development was the act of vengeance on the new juristic order by moral theologians and their descendants, Enlightenment intellectuals and, later, romantic critics in the Novalis style. Koselleck traces their masonic affiliations. Safe in their philosophical clubs and moral cells, these mouthpieces for Enlightenment, reason and humanity were left free to plot revenge on the political state that had sidelined them into the new free space of moral conscience.\textsuperscript{13} To belittle their adversary, they re-described the new legal capacities granted to citizens by the state as timeless natural rights of men claimed against the state. To subvert the ‘amoral’ institutions of Absolutist politics and positive law, they devised a future ‘society’ where the existing institutions would be subsumed into a forthcoming universal moral order. This immoderate vision statement took sufficient hold on the educated to provoke a crisis of legitimation for the Absolutist state. Hence Koselleck’s thesis in \textit{Critique and Crisis}: ‘society’ was invented as a pathogenic agent of critique to infect the state into crisis. ‘Society’ was a moral elite’s designer virus of vengeance. Our institutional amnesia suggests the incubation period is not over yet.\textsuperscript{14}

In the \textit{sciences politiques} section of Paris bookshops, next to Reinhart Koselleck sits Blandine Kriegel. As far as I know, these German and French scholars make no reference to each other’s work. I shall bring them together in my history of anti-juridism. We noted

\textsuperscript{13} Their side-lining has subsequently been re-written as a freely chosen preference. For a certain distance, Lucien Goldmann’s (1955) \textit{Le Dieu caché} traces a parallel route, showing how the centralising state of Louis XIV manoeuvred the \textit{noblesse de robe} into redundancy and how this estate’s intellectual voices—notably Pascal and Racine—took refuge in a morality of other-wordliness. But nothing in Goldmann’s great study parallels Koselleck’s account of the Absolutist State’s extraordinary act of juristic self-limitation.\textsuperscript{14} Kriegel (1995: 91) is milder than Koselleck when it comes to this historical amnesia, but she has no doubt that a juristic history has been obliterated: ‘...it is also important to observe that [liberalism and democracy] have erased from our memory the origin of the state under law’. 
Kriegel's provocation: the 'paradigm of the social' is exhausted. The 'paradigm of the social' shades out historical reality by persuading us--as it persuaded Marx--that 'society' must be the model for the state in its demarcated, indeed disappearing, role. Kriegel (1998: 185) observes: 'Nous sommes aujourd'hui moins sociologues et davantage juristes, et cette évolution déourage une histoire réduite à l'histoire des forces sociales'. With this evolution, legal history emerges from the normative shadow of social theory as the city hall did from the theological shadow of the church. But the evolution will not happen if humanities intellectuals continue to waste time in socio-moral critique. Economics, modes of production and property relations, Kriegel reminds us, do not explain everything (which is not to say we should trivialise economic activity or social conflict). Justice does not reduce to social justice.

A history of anti-juridism must compare French, German and English circumstances. In part this targets multiple audiences, the new reality of the international book market. It also responds to Kriegel's central warning: 'So long as law and institutions, the very source of differentiation among states, are neglected, there can be no history of the state. Instead, there is only a history of societies, precisely Marx's hope' (Kriegel 1995: 13). Refusal to recognise that there are different types of states is a device of moral anti-statism. Kriegel's research program aims to restore historical perspective on the state by returning to early modern political jurisprudence. I shall take this program up in a history of early modern juridification and the subsequent anti-juridism that has endured--unfortunately--as a respected moral posture.
Writing this history will find me reading the early modern authorities: Bodin and Bayle, Barbeyrac and Berlamaqui, Grotius and Pufendorf, Selden and Hobbes. Also twentieth-century legal historians such as Michel Villey and Donald Kelley. Like Kriegel (1995: 14), I shall seek ‘to uncover some of the prescience and originality of the jurists, who in many respects blazed a trail for the philosophers to follow’. Here I have yet more to learn from Ian Hunter, my friend of many years and Griffith colleague. He has drawn my attention to Martin Heckel’s studies of German Protestant political jurisprudence. Heckel (1984: 50) shows the jurists leading the philosophers in instituting the ‘non-confessional or supra-confessional order of coexistence’ that ended war. Then came the philosophers’ revenge, in the form of anti-juridism.

For Koselleck, the exemplary Absolutist separation of law from religion found expression in Brandenburg-Prussia. For Kriegel, anti-statism can be explored in relation to the history of the French administrative state. Both scholars recognise the English case as different, whether in respect of the Anglican settlement or in respect of the successfully ambiguous nature of the English constitutional ‘state’. As for the English common lawyers--Coke, Hale and Blackstone among them--I am not yet sure. They re-wrote the history of English law to make judges less the voice of a particular estate or the historical agents of a centralising state (which they were) than the timeless spirit of the English people (which they wanted to be).

Nor have I yet decided whether to deploy the history of anti-juridism as a further polemic against those I have termed anti-lawyers, today’s moral dealers with jurisprudence. On
the one hand, contesting the notion that historical legal norms derive from or tend towards underlying principles of moral reason—as variously argued by Rawls and Dworkin, Raz and Ackermann—is an over-trodden path. On the other hand, I can envisage an interesting exchange with some recent critics of this moral jurisprudence, notably Pierre Schlag, Paul Campos and Steve Smith. In taking their stand ‘against the law’, these writers lay bare the vacuous normativity of those principled approaches that would always find a law above the laws. Though they show this normativity as an empty idol worshipped most religiously, Schlag, Campos and Smith demonstrate little interest in history lessons about early modern law and the de-theologising of the state. Yet the historian senses allies in these scourges of current normativity. They might be ‘against the law’ but, unlike the other anti-lawyers, Schlag, Campos and Smith are wonderfully against the moral-theological recapture of American law and their legal academy.

Yet there is a more intimate form of polemic, one that we have with ourselves not with our adversaries. There is always a sentence in our last book for which we want to make amends in the next. Anti-lawyers opens with a reference to a 1676 judgement of the English Chancellor, Lord Nottingham:

> With such a conscience as is only naturalis et interna this court has nothing to do; the conscience by which I am to proceed is merely civilis et politica, and tied to certain measures’.  

He then distanced his jurisdiction in equity from a direction of conscience ‘as is only between a man and his confessor’. I cast Nottingham’s last substantial appearance in

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16 *Cook v. Fountain*, 3 Swanston 600.
Anti-lawyers in no less positive a light, contrasting his procedural self-limitation with the religious excesses of the times. In the sentence for which my second future book will make amends, I set the lawyer’s worldly conduct against the spiritual enthusiasm of his sister, Lady Anne Conway: ‘Meanwhile, his brilliant sister became a Quaker with the mystic Dr van Helmont’. This put-down was rhetorically appropriate for my account of law’s historical separation from religion to gain an institutional space of its own. The remedy will be a more even-handed account of the personalities of that post-war generation.

With no less admiration for the lawyers’ achievement in separating law from salvation, I shall not reduce Anne Conway to their simple foil. A growing literature recognises her as England’s first woman philosopher, author of the posthumously printed Principles of the Most Ancient and Modern Philosophy. Defending universal vitalism against Hobbes’ materialism or Descartes’ dualism of matter and spirit, she saw all life-forms—including stones—as greater or lesser manifestations of spirit. It could be ecological. With her capacity for wonder, Anne Conway was the longtime intellectual companion of Henry More, the Christian-Platonist theologian, meditational poet and Cambridge tutor of Isaac Newton. In her last years she became Quakerism’s most aristocratic convert. Her great

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17 To cement the contrast, recall that at the time when Lord Nottingham delimited a juridical form of conscience that was not religious but ‘civic and political’, Newton had shelved his studies of gravity to concentrate on defending his interpretation of the seven Trumpets in the Book of Revelation. Many believed the events accompanying the end of historical time and the second coming of Christ were beginning to happen. See Popkin (1992).
18 In the Nouveaux essais (New Essays on Human Understanding), Leibniz took Anne Conway as representative of the idealist-vitalist thinkers of their time. On Anne Conway, see Nicholson (1992) and Coudert (1999).
19 See Merchant (1979).
house, Ragley Hall, received William Penn and George Keith, as well as George Fox who had founded the Society of Friends in 1648, the year of the Peace of Westphalia, and was a man convinced of his own deiformity.

Anne Conway was the sort of woman who held the trans-European genius of Franciscus Mercury van Helmont in England for nine years until her death at 49 in 1679, after a lifetime’s pain from England’s most incurable headache. Into her circle the eclectic van Helmont brought an amalgam of the Jewish Cabbala’s twelve rebirthings of the perfectible soul and his Paracelsian father’s alchemical medicine.21 Not only did he thus liberate Jerusalem in the English Midlands; on a regime of powdered cedar and daily flag-waving he lived to 84. With van Helmont and George Keith, Conway blended Cabbalism with Quakerism to fashion a global religion of continuous spiritual improvement that would lead to universal salvation for all who purified themselves to receive the light within. Jews would convert to Christianity, the precondition of the Millennium.

Current scholarship is enthusiastically restoring this spiritual dimension of our cultural history, in part to show that twentieth-century boundaries did not apply in early modern circumstances.22 The Cabbalist van Helmont was in touch with Sir William Harvey and Gottfried Wilhelm Leibniz: do we draw a line between alchemy and scientific medicine,

21 For recent discussions of Cabbala and its impact on early modern intellectual and theological circles, see Idel (1988), Beitchman (1998) and Coudert (1999). On a minor scale, the van Helmont ‘circle’ recalls the extraordinary court of Rudolph II at Prague where, at the start of the century, theologians, visionaries and scientists of every colour had gathered in an ecumenical intellectual setting (Evans 1973).

22 ‘So many thinkers in the early modern period did belong to both the occult and the scientific camp, a point made repeatedly by many historians in recent years’ (Coudert 1999: 330).
between Cabbalistic spiritualism and moral philosophy? Perhaps not. I shall draw lines, but aim at a less uneven treatment of the different spheres of life than in Anti-lawyers.

Indeed, that book did not mention Sir John Finch, the younger brother of Lord Nottingham and Anne Conway. Finch studied under More at Cambridge before moving to Padua, becoming Professor of Anatomy at the University of Pisa and a founder of the Royal Society (later, with his lifetime companion and fellow anatomist, Sir Thomas Baines, he was Ambassador to Turkey). These English were European in their scope, before English culture turned indigenous and stupid in the eighteenth century. From the mid-sixteenth century, a neo-Aristotelian medical science had been developed at Padua, based on empirical comparative anatomy. William Harvey studied there, prior to publishing on the circulation of the blood: 'I profess to learn and teach anatomy not from the books but from dissections, not from the tenets of Philosophers but from the fabric of Nature'. From the Paduan anatomists’ observation-based approach he learned to treat the body as an independent organism.

The Aristotelianism taught in early modern Italy was ‘concerned less with the hereafter than with the concerns of men in this world’ (Lohr 1991: 51). Independence for medicine meant non-theological and non-cosmic medicine. Likewise for politics and law. To achieve peace and save whole populations from theological cleansing, the Absolutist state

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23 On the Royal Society—and particularly on Sprat’s early history of the Society as an enterprise designed to distance itself and its members from the millennial visions and magical phantasms that proliferated in the Interregnum, see Vickers (1985). More generally on the establishment of the Royal Society, see Hunter (1989).

had sequestered religion off from law and civil government. As newly independent spheres slipping the theological noose to gain their own intrinsic authority, politics, law and medicine did not promise potential salvation; instead they produced security, procedural justice and health. Kriegel’s lesson applies. In this newly divisible existence, the institutions of politics, law and medicine were no longer harnessed to a uniform moral order or a normative history of society (which may be the same thing).

In 1672, the year of the Dutch painting that I drew for you, the post-war German jurist and historian, Samuel Pufendorf, offered the political and legal worlds his De jure naturae et gentium (On the Law of Nature and Peoples). The juridical Pufendorf, to whom Leibniz was as unremittingly malign as he was benign to the mystical van Helmont, advanced the concept of a natural law ‘confined within the orbit of this life’. The concept was restated in his 1673 digest, On the Duty of Man and Citizen according to Natural Law (De officio hominis et civis juxta legem naturalem):

The scope of the discipline of natural law is confined within the orbit of this life, and so it forms man on the assumption that he is to lead this life in society with others. Moral theology, however, forms a Christian man, who, beyond his duty to pass this life in goodness, has an expectation of reward for piety in the life to come and who therefore has his citizenship in the heavens while here he lives merely as a pilgrim or stranger. (Pufendorf 1991: 8-9).

Recall the circumstances. Emerging from the flaming insecurity of religious war, the worldly purposes of law were being quarantined from the higher truths of religion.

Separating the offices of civil government from the pursuit of spiritual salvation meant

25 There is nothing of ‘post-modern’ emancipatory play about this early modern Absolutist pluralism.
dislocating the persona designed by positive law for living ‘within the orbit of this life’
from the persona destined by moral theology for living ‘in the heavens’. Historically
speaking, this dislocation was the instrument for peaceful coexistence and civil conduct.

To capture this newly pluralistic scene, my second future book will reconstruct the
overlapping yet separate lives of Heneage Finch (later Lord Nottingham), John Finch and
Anne Finch (later Lady Conway), the lawyer, the doctor and the theological
metaphysician. Previously, their biographies have been discrete. I shall treat them as
creatures in a complex institutional milieu. To focus on the milieu will avoid the risk that
writing about lives could itself be an anti-institutional gesture, the truth of self
transcending the inauthenticity of official roles, etc. The central question is simple: how
did these people live in these particular early modern circumstances? One circumstance is
paramount: for the first time, the different spheres of civil life were not unified in a single
moral order grounded in religion or justified in Christian natural law.

The revenge of the re-unifiers started here. Anne Conway’s monistic program of all-
embracing spirituality aimed at a total unity, to the increasing dismay of an institutional

Anglican like Henry More still mindful of damage from gnostic noise and public

\[26 \text{Today's suspicion of roles and offices as inauthentic impositions on our ideally self-determining post-}
\text{Kantian selves becomes a dubious anachronism when the strategically divided early modern personae are}
\text{reduced to so many expressions of a fundamentally unified self. A recent intellectual biography of Sir}
\text{Matthew Hale provides a case in point: thus, among 'Hale's great virtues was ignorance of the boundaries}
\text{segmenting our own, more timid, mental lives', such that it is 'hard to read Hale’s works without being}
\text{struck by the seamlessness of his intellectual world' (Cromartie 1995: 7, 232).}

\[27 \text{On the divergence of a 'modern' theory of natural law from a theologically-grounded natural law with}
\text{Hobbes and Selden, Grotius and Pufendorf, see Tuck (1987).}\]
religious controversy. Yet, as her revenge was most gentle, so his concern at her declared Quakerism was both deepened and muted by his twenty-nine year devotion to Anne Conway. Let me quote from her letter to Henry More of 4 February 1675, four years before her death, responding to his plea that she keep some reasoned distance from Quaker doctrines of Christ within and human deiformity, while treating individual Quakers as a physician ‘converses with the sick’. She writes to him:

... your Conversation with them at London might be as you expresse it charitably intended, like that of a Physitian frequenting his patients for the increase or confirmation of their health, but I must professe that my converse with them is upon a contrary account, to receive health and refreshment from them. They have been and are a suffering people and are taught from the consolation [that] has been experimentally felt by them under their great tryals to administer comfort upon occasion to others in great distresse, and as Solomon sayes, a word in due season is like apples of gold in pictures of silver. The weight of my affliction lies so very heavy upon me, that it is incredible how very seldom I can endure anyone in my chamber, but I find them so still, and very serious, that the company of such of them as I have hitherto seene, will be acceptable to me, as long as I am capable of enjoying any; the particular acquaintance with such living examples of great patience under sundry heavy exercises, both of bodily sickness and other calamitys (as some of them have related to me) I find begetts a more lively fayth

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28 As a student of Joseph Mede, the scholar of the Apocalypse, More himself was not devoid of flights of fancy. As 'probably the most notable English Christian Cabbalist of the century, ... [More] tended to advocate the anteriority of Cabbala, an archaeology whose discovery was human devolution from an initial position close to divinity' (Beitchman 1998: 269). More was also an irrepressible collector of reports of ghosts and other spiritual phenomena, for use as evidence in the struggle against the atheistic materialists.
and uninterrupted desire of approaching to such a behaviour in like exigencies, then the most learned and Rhetorical discourses of resignation can doe, though such also are good and profitable in their season: I should not have run into this digression, but to take from you all occasion of wonder, if you should heare that I sometimes see some of them, that can see nobody else... (Nicolson 1992: 421-2)

The rare and delicate mutual respect of Anne Conway and Henry More will be a major affective theme of the book. Yet it too overlapped with all the uncertainties of the institutional configuration of church and state in post-war England.

At Ragley, to transcend confessional division, a small elite turned to mysticism and metaphysics. Some went further along this path than others dared or approved. In continental Europe, where there was no equivalent to the cooling Anglican settlement, things generally went much further. In the territorial state of Sulzbach, north-east of Stuttgart, van Helmont’s many-coloured protector, Prince Christian August--now Catholic, now Lutheran, now Calvinist, now mystic, and now Catholic again--established the Simultaneum or multi-confessional community. Leibniz spent a month of study there in 1688-9. The aim was universal religion. Sulzbach was to be the global community of primitive Christianity recovered. The Roman Inquisition--having arrested van Helmont on suspicion of judaising--took a different view of life in Sulzbach, as recorded in the following deposition against van Helmont (he was later released):

In order that the appearance of the old religion might remain, since the greater part of the Bible is written in the Hebrew language, [the Prince and the citizens] learn and teach the Hebrew language, in which both the prince and his daughters are
steeped, first in the early morning for one or two hours. Next, everyone goes to work, taking up his weaving or some other craft. Finally, they approach the kitchen pots (a shameful matter) to cook their food and they dare invite the prince himself on the authority of Helmont, so that he might eat (says that teacher) of the labour of his hands and according to the Apostle: he who does not work does not eat. Immediately afterwards they run to and fro through the workshops of the different craftsmen; nay, there is not a worker among them who does not work as smiths at the anvil with their hammers grasped or draw thread with the cobblers so that, in this manner, just as the Anabaptists say, they might put charity and duty before profit. Now and then they suddenly rush into the woods so that they may see the inner light and be moved to speech by it. They say among themselves that in the midst of their work they see visions of angels, wonderful evidence on account of which they teach that princes ought to abandon the management of their affairs, that they ought not to hamper these illuminations of the soul with any consideration of justice or for any other reason. (in Coudert 1999: 48-9)

The Simultaneum was one of many colourful experiments in religion, but it was not Westphalia. To love the sound of Hebrew in the morning produced some interesting talents but Sulzbach was no complex administrative state. Angelic dictation would later produce real dictators...when anti-statist romantics and anti-institutional Nazis subsumed law, administration and politics into their notion of the national community and its fully spiritual life.29 For Kriigel (1995), such ‘secularisation of faith’ replaced a state under the

29 Ledford (1996: 299) has recently chronicled the rapid collapse of the German legal profession ‘in the face of opponents [the Nazis] mobilised by substantive ideas of justice’.
rule of law by a despotic state, the latter characterised by a catastrophically boundless 
spiritual ambition for social transformation and a uniform moral order.

So, to return to my opening. Who are the prototypes of the anti-institutionalism counted 
as normative in today's humanities academy? Van Helmont the alchemist conjuring the 
global spirit? Leibniz the neoplatonic metaphysician harmonising body and soul? The 
vengeful masons in their conscience-ridden enclaves bent on replacing the state with a 
moral vision of society? Baron Novalis and the anti-juridical romantics of last century? I 
leave the question with you.

5. Out of the deep end

Lectures finish, unlike critical theory. I have outlined two future projects, one on 
the history of anti-juridism, the other a biography of people in the mid-1600s. Both 
projects mark a return for the humanities--I stress a return--from great abstractions to an 
institutional focus, from the excitement of theoretical explanations and critical reflection 
to the work of positive historical description and complicity with the institutions of law 
and state. This complicity is not complacency. The complacent are those who imagine 
themselves beyond the institutional circumstances that make them possible.

Thank you for listening to how I got out of the deep end. I'm now a worse intellectual 
than I used to be...I now worry about a humanities enterprise that has acquired an 
extraordinary level of intellectual ingenuity, embraced a pervasive theoretical anxiety,

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30 See Woolhouse and Francks (1997).
and made a deep commitment to anti-institutional critique. I would like to think that this observation is the practical lesson of what has been a very administrative career. Yet in saying this, I'm looking forward, thirteen months from now, to that sweet mix of scholarly solitude (long hours in the library, confinement of the writer with laptop and manuscript) and scholarly engagement with an emerging intellectual trend in the humanities—the new interest in the specific histories of law, politics and religion. If Blandine Kriegel is right and it is now time to renew historical acquaintance with our political and legal institutions, this pro-institutional future will be every bit as exciting as anti-institutionalism seemed in the past.
References


