

# THE POWER OF RULERS AND VIOLENT RESISTANCE AGAINST AN UNLAWFUL RULE IN THE POLITICAL THEORY OF WILLIAM OF OCKHAM

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## Resumen

El artículo intenta realizar un breve análisis sobre la teoría política de Ockham, enfocado en algunos conceptos centrales de su obra: Violencia indebida (*violencia*), fuerza legítima (*potentia*) y autoridad legal (*potestas*). Ockham desarrolla estos conceptos en un marco de sus creencias generales. El establecimiento de reglas es una licencia otorgada por Dios a los hombres después de la pérdida del paraíso en conjunto con la licencia de organizar la propiedad (*dominium*) con el objetivo de hacer posible la preservación. El objetivo final es justificar, estandarizar y limitar el poder. Los gobernantes deben ser medidos por sus materias de acuerdo a esta intención original. De esta forma, la resistencia en contra de la violencia indebida, incluso por la vía violenta, no es solo posible, es también una obligación si el hombre quiere vivir en libertad.

## Abstract

Here is intended a short analysis of Ockham's political theory focussed on his use of some central concepts: "unlawful violence" (*violencia*), "lawful force" (*potentia*), and "lawful rule" (*potestas*). Ockham is developing these concepts within the framework of his general assumptions. Establishing rulers is a license given by god to men after the loss of paradise together with the license to sort out property (*dominium*) in order to make possible preservation. This final aim is justification, standard and limit for rulership. Rulers ought to be measured by their subjects by this original intention. Therefore resistance against unlawful rule, even in violent terms, is not only possible, but is the obligation, if men want to live in a free constitution.

PALABRAS CLAVE • Rulership • Resistance • Violence • Property • Freedom

The word "violence" in its connotations is an amorphous concept, which nonetheless seems indispensable for the task of the analytic construction of political organizations.<sup>1</sup> The latin equivalents

<sup>1</sup> Here the lecture is printed as it was held at the Pontificia Universidad Católica de Santiago de Chile on Monday, Nov. 30, 2003. I did not make any changes, I only added the most necessary notes. Stylistically the manuscript was polished by my friend and colleague prof. William J. Courtenay (University of Wisconsin, Madison, Wisconsin, U.S.A.) and his student Eric D. Goddard. I thank them both warmly, but, of course, any faults that might have remained or added later, are mine. A German version of this paper has appeared: "Herrscherliche Gewalt und gewaltsamer Widerstand in der politischen Theorie Wilhelms von Ockham", in: *Gewalt und ihre Legitimation im Mittelalter*, ed. Günther Mensching (= 'Contradictio', Studien zur Philosophie und ihrer Geschichte, 1) Würzburg: Königshausen & Neumann, 2003, 266-285. For a history of the concept of *potestas* (power, competence, violence) cf. e.g. the survey given by Faber, Karl Georg (e.a.), 1982. "Macht, Gewalt", 817-935. - In the following notes I use the sigle "OPol HV" for the 4 volumes of the critical edition of Ockham's Political Writings; I shall cite his "Dialogus" (which has not yet appeared there) after an *incunabula* print by Jean Trechsel, Lyon 1494 (reprinted in: Guillelmus de Occam, 1962, Opera plurima, vol. I [cited as "OpPlur"]); the critical edition announced by John Kilcullen/John Scott/Volker Leppin for "Opera politica" is partly accessible (in a first internet version) for I Dialogus HV ([www.mq.edu.au/HPP/Ockham/](http://www.mq.edu.au/HPP/Ockham/)); it has been of some use for me, too. A rich bibliography for older literature on Ockhamist questions was published by Beckmann, Jan P., 1992. *Ockham-Bibliographie 1900-1990*. I take this as an advantage, citing henceforth mainly more recent titles.

(*potentia, vis, violentia*) make clear that the broad connotations of the word have some specific fields of application, and they illustrate that these translations can characterize very different theoretical positions and have done this for a long time.

My lecture today cannot go through the large forests of the medieval development of all these concepts, from the first comprehensive essays of the Greek philosophers and the Roman learned men to the medieval clerks and churchmen. I cannot do this because of shortness of time this morning, but equally for want of sufficient competence in all these fields. I take, rather, a singular example as a momentous section of this topic, a section indeed which had long-enduring consequences in the following centuries in continuing reflections on political phenomena and acquired a canon-like authority both among later thinkers and among a select group of his own contemporaries, so that the man I shall deal with here is recognized as a "Classic Political Thinker" in our own handbooks. I shall address here my special hero, William of Ockham.

Ockham reacted to the sorrows and troubles of his time with theoretical efforts. In the middle of the revolutions of his times – the late medieval changes in society and culture – he tried to give answers to his contemporaries by scientific reflection upon traditions, which he subjected to a earnest proof, and he tried to find convincing answers to the concrete questions he wanted to ask. In one of his last treatises, the memorandum for the English king Edward III, "*An princeps Anglie,*" he wrote shortly before his death and with emphasis: "*I dare to assert the following statement: "Whoever is not interested at the present time to bring to public knowledge, what the power of the pope's office is, what is its extent and scope, and what are its legal reasons, has not the right zeal for the Christian belief or is working with a foolish want of judgement. Therefore, in our dangerous times all literate men must be busy without interruption with these thorny questions, if only because of the innumerable evils which have arisen since antiquity in the Christian tradition from ignorance regarding these questions. Otherwise the word of God will be bound in their mouth (II Tim. 2,9) and they will be dogs who are not able to bark (Is. 56,10)."*"<sup>2</sup>

It is clear that Ockham thought that it would be appropriate to remind his contemporaries of the fact that his reflection on the papal competence "*De potestate papae,*"<sup>3</sup> alone could help to analyse the dangerous situation of his time. By that he could hope to meet the exigencies of the main office of a Christian theologian, the explanation of the truth of the Christian faith. He thought that beyond this he could also satisfy his duties as an intellectual and medieval university cleric. He is describing his own destiny. Almost all the writings he produced during the twenty years from 1328 to his death (about 1348) are written in fulfillment of this duty. And this duty, in his opinion, was a prophetic one that he claimed to exert in the church of his day.<sup>4</sup>

<sup>2</sup> De imperatorum et pontificum potestate, c. XXVI (OPol IV, 325): *Autumo vero quod <qui> nequaquam ferventer desiderat ad publicam deduci notitiam, qua et quanta et quo iure papa polleat potestate, zelum Christianitatis non habet vel non secundum scientiam [Rm. 10,2]. Quamobrem omnes litterati circa ipsam indagandam hiis periculosus temporibus occupari deberent propter infinita mala, quae ab antiquis temporibus inter Christianos ex ipsius ignorantia provenerunt. Aliter enim alligatum est verbum Dei [II. Tim. 2,9] in ore ipsorum et erunt sicut canes muti non valentes latrare [Is 56,10].* The citation from the versicle of Tritojesaja is used equally in I Dialogus VII.38 (OpPlur fol. 140<sup>va</sup>): *Pastores, qui gregem sibi commissum non defendunt a lupis crudeliter invadentibus, damnabiliter peccant. (...) Sed teste Esaia propheta sunt canes muti non valentes latrare. Sunt etiam iuxta vocem dominicam mercenarii, non pastores [cf. Ioh. 10,12].*

<sup>3</sup> Cf. e.g. Miethke, J., 2000. „*De potestate papae*“.

<sup>4</sup> Cf. e.g. Leppin, Volker, 2001. "Ockham und die Prophetie".

It seems very easy to take a little notice of the concept of *potestas-potentia-violentia* in Ockham's treatises, and to give a very brief outline of its contents. But, on the contrary, the seemingly easy task is in reality very difficult. We must look very closely at the citation we have just presented. Ockham does not give a general theory on the competence (*potestas*) of rulers, but he speaks on the *potestas* of the pope. The English Franciscan theologian does not develop a general theory on politics or on the statal organization of men, because a "state" in the modern sense of the term was not yet existant in the 14<sup>th</sup> century. It was growing up in a complicated process of formation, and Ockham himself contributed much to its development by his theories.<sup>5</sup> Ockham was entering the stage of political theory, by a side-entrance, so to speak. He was motivated by the socalled theoretical strife regarding apostolic poverty<sup>6</sup> which arose between the Franciscan order and pope John XXII, and Ockham was there not as a revolutionary novice. Rather, he started on his way as a defender of the highly ideological position of his own order, the mendicant Franciscans, because he tried to show that the strictest poverty by which the order claimed to live was a possible goal and a meritorious way of living, whereas both of these contentions were attacked by the pope who declared the Franciscan ideas to be untenable, impossible and, ultimately, heretical.

We do not have to dwell on this point, but we do have to keep in mind that Ockham, on the opposite side, made the really shocking assertion that the pope appeared to him to be a real heretic. This was a contention unheard of until this time. Here, he saw not only reflections on the mere possibility of a pope fallen into heresy, but the reality of an apocalyptic scenario. When John XXII declared that the Franciscans should shoulder the lawful possession of the things the order was using every day (i.e. the cheese the friars would eat, the cowls they were wearing, the books they were reading and writing), he was applying to the Franciscans only all the legal apparatus that all the other orders of Christianity had to use in their daily life. But whereas this may seem to a modern mind an evident assertion and an easy task to perform, for the Franciscans it seemed impossible to fulfill: Ever since Saint Bonaventure as the Minister General of the Order had stabilized the stormy history of its development with his special theory of meritorious Franciscan poverty, the order was accustomed to the idea that the Franciscans, like Christ and his apostles on earth, did not have anything by possessive right (individually anyway this was the case already for a Benedictine monk or a Dominican friar alike!), but from him this was also true for Franciscans as an order of the church, as an organization of at that time about 30,000 men – which means in the 14<sup>th</sup> century the largest order of Christianity. Pope John XXII had declared bluntly that the order had to live like all the other orders of the church by its own possessive rights, and that the beloved exemplary life of Christ and his apostles on earth was a life by rights and possessions too.<sup>7</sup> Beyond that, the pope had declared

<sup>5</sup> Cf. e. g. Miethke, Jürgen, 1996. "Die Anfänge des säkularisierten Staates".

<sup>6</sup> Among many others cf. Miethke, Jürgen, 1969. *Ockhams Weg zur Sozialphilosophie*, 348-427; Kriebbaum, Maximiliane, 1996. 'Actio', 'ius' und 'dominium', 24-89; Tabarroni, Andrea, 1990. 'Paupertas Christi et apostolorum'. Generally cf. Miethke, Jürgen, 1999a. "Paradiesischer Zustand - Apostolisches Zeitalter - Franziskanische Armut", 503-533; cf. Coleman, Janet, 1988. "Property and Poverty"; Lambertini, Roberto, 2000. *La povertà pensata*; Tabarroni, Andrea, 2002. "Povertà e potere nella tradizione francescana"; De Boni, Luis Alberto, "Proprietade e poder. Aspectos de pensamento político da escola franciscana", and: "O debate sobre a pobreza como problema político nos séculos XIII e XIV", both now in: De Boni, Luis Alberto, 2003. *De Abelardo a Lutero*; Leppin, Volker, 2003. Wilhelm von Ockham, esp. 205-224.

<sup>7</sup> "Ad conditorem canonum" (8. Dezember 1322) in: *Bullarium Franciscanum*, vol. V, ed. Conrad Eubel, Rom 1898, 235-237 nota [first version] and 233-246 (nr. 486) [final version]; the final version in the canonistic vulgate was edited lastly in: *Extravagantes Iohannis XXII*, ed. Tarrant, Jacqueline, 1983. Città del Vaticano 1983 (=Monumenta Iuris Canonici, B 6), 228-254 (nr. 18). Cf. already Miethke, Jürgen, 1969. *Ockhams Weg*, 377-385.

formally regarding Christ's life: "The pertinacious assertion that our savior and master Jesus Christ and his apostles did not own anything either as individuals or as a group will be a heresy in the future."<sup>8</sup> The Franciscans should, in the opinion of the pope, take on their shoulders the normal Christian and human life on earth and should not think that they could imitate a nonexistent way of living that Christ not at all had given as a perfect example.

We cannot tell here, how the reactions in Franciscan treatises and writings grew up in a short time to comprise a huge amount of literature. Ockham himself – who was living until then as a Franciscan university cleric at Oxford and perhaps in London as well, and who had had to go to the papal court in Avignon in the summer of 1324 in order to defend his positions on very abstract questions of theoretical philosophy and theology, which had nothing to do with the questions of poverty– left this immense field of study and switched over to a totally new endeavor. His "Opera philosophica et theologica" are printed in 17 enormous volumes in quarto, and they are with very few exceptions all written before his entrance into the strife on evangelical poverty. The rest of his life Ockham was occupied in writing his "Opera politica", another eight or ten volumes published in another series. And, in addition, he participated in collective treatises of the Franciscan group that had fled from Avignon to the emperor's court in Munich. So the amount of papers running in a steady stream from his pen is indeed impressive and hardly to be condensed in a short formula.

In contrast to his friends and companions, William of Ockham in Munich was not merely occupied in producing a huge amount of polemic, in which he did participate. He also tried to give the basic theories and a reflective reasons for his assumptions, so that his writings give more to the reader than merely a list of arguments for one side of the controversy. They try to give to the reader a real fund of theoretical insights, in order to make certain that the perversion of all right judgment, which as Ockham thought was published by the pope, would be impossible in the future. And with his clear and extensive theories he tried to blaze a way out of the immediate strife. In the end he did give a political theory of his own, a theory with a very special imprint, which was to be a road sign for coming generations.

The *potestas*, i.e. the competence of the rulers or– to use the famous definition of Max Weber, the chance to get obedience for a given command or order– is a very important thing in human society. Ockham did not approach this problem by trying to give immediately a definition of that problem, but rather by discussing property and use of things by men. *Dominium* (i.e. dominion or rulership) is the word that had to be thought about. On the one hand, *dominium* is for Ockham, as for many other contemporaries, rulership and governance, but on the other hand, the jurists of the Roman law had found the word in many laws in the *Corpus Iuris Civilis* of the late antique emperor Justinian (535 C.E.) to be the equivalent of property. *Dominium* is according to this usage the dominion of men over things, and an adequate theory of this relationship will be extremely important for a correct and appropriate theory of the relationship between men and the things of the world in

<sup>8</sup> *Enchiridion* edd. H. Denzinger/A. Schönmetzer, <sup>32</sup>1963, Nr. 930 [the same numbering was held by the last edition of the *Enchiridion* by Peter Hünermann, <sup>37</sup>1999]: *Cum inter nonnullos viros scholasticos saepe contingat in dubium revocari, utrum pertinaciter affirmare, redemptorem nostrum ac dominum Iesum Christum eiusque apostolos in speciali non habuisse aliqua nec in communi etiam haeretum sit censendum. (...) Nos huic concertationi finem imponere cupientes assertionem huiusmodi pertinacem (...) deinceps erroneam fore censendam et haereticam de fratrum nostrorum consilio hoc perpetuo declaramus edicto.* Ockham was totally disappointed on the *deinceps*, too: cf. *Contra Benedictum*, II.8 und II.11 (OPol III, 220-222 und 226).

general. So it is not so astonishing that *dominium* is the phenomenon, which is central for the first political writing of Ockham, the "Opus nonaginta dierum," the Work of Ninety Days, a treatise composed in 1330/31. Ockham is extensively analyzing property and the resignation of property in the mendicant and monastic *vita religiosa*. He shows that the apostles, as obedient disciples of Jesus, are not exceeded by others in perfection, especially not by monks or friars, who have taken a formal vow of poverty – of the highest poverty conceivable– a vow which is ascribed to them as perfection of religious life. Therefore, to sum up Ockham briefly, it is to be presumed that the apostles also took such a vow of perfect abdication of property which was totally correspondant to the three *vota monastica* a Franciscan had to make in his profession, poverty, chastity and obedience.<sup>9</sup>

But Ockham does not stop here with this scholastic and dialectic differentiation of terms. He draws a theoretically based history of the development of property, a history serving as a genetic history of property, but at the same time a history designed as a perfect measure and rule for all the property regulations of daily life. Ockham continues in this task and gives, in relation to the whole tradition, a new picture of the history of the original status of men and things in the paradise before the fall, the changes which came by the fall of Adam and Eve, and the history after paradise. So, we can read here a story of the way Adam and Eve had to take from the creation of the world and their life in paradise to the thorns and thistles in their fields and the murder of Abel by Cain in those fields.

God did create man as an *animal rationale*. This is a thesis Ockham could find in the great stream of traditions passed on from the ancient Greeks to the church fathers to writers of the Middle Ages. The reception of the Aristotelian texts since the 13<sup>th</sup> century had strengthened this idea further, and Ockham gives many citations that show he was aware of this background. Because he created man as a reasoning being, God has given to man the right to use all unreasoning creatures. In paradise Adam and Eve were allowed to use all other creatures absolutely and reasonably. They did not resist this use, so the dominion or rulership of man over creatures was somehow like a magical governance. It seems obvious that, according to Ockham, this use was somehow similar to man's present use of inanimate things. With the fall, this miraculous rulership over animate creatures was destroyed. Men encountered resistant animals and other creatures. Thorns and thistles the fields would bear, and worse, men had to encounter in the future the confrontation of other men, also of evil-thinking, bad-tempered men, who would not be friendly to each other. The right of men to use the other creatures from now on was restricted to use for the mere gaining of a living. That was in any case always a very uncertain thing because of the resistance of the postlapsarian world to the intentions of men.

But under these worse circumstances God nevertheless gave to the man a new possibility in order to give him a certain chance to gain his living under such radically deteriorated conditions. God gave him a new license, a license that both ancestors in Paradise did not have as they did not need it, when all things had been fitted to their necessities: now they were allowed to designate for themselves certain pieces of the creation and to attach them specifically and exclusively to themselves, to say it in one word, they were allowed to form property. Ockham was very anxious

<sup>9</sup> Opus Nonaginta Dierum c.17 (OPol II, 444-453, esp. 446sq.):...*sicut dictum est, (...) religio fratrum Minorum vovet abdicationem proprietatis omnium in speciali et in communi, ergo et vita apostolica idem votum emisit.* Cf. *ibid.* cc. 23 u. 32 (OPol II, 471, lin.107-131; 501-504, lin.56-166); also *Contra Iohannem* c. 14 (OPol III, 62-68, esp. 66, lin. 5 sqq. u. 65 note).

to use the exact terms and to make the appropriate specifications. God has given to men only the license (*licentia*) to form property as a new anthropological potentiality (*potentia*); he did not give them the property itself. This was an important restriction, because only by that terminological differentiation could Ockham uphold the patristic authorities who had said that property was introduced by men in consequence of sin.<sup>10</sup> And secondly, it was also only that specification that he could prevent the idea that property as a gift given by God was an inalienable right of every man so that nobody could renounce it and therefore so that no Franciscan could give up any right to property a conclusion that would have irrefutably supported the ideas of pope John XXII.. Saying that property came from a license given by God to mankind after the Fall, has also made possible for Ockham the building of a very flexible theory which declared property in its given circumstances an "invention" of men (not of God). Property therefore could be shaped and elaborated by men following the needs of certain historical changes and various circumstances. Mankind could form different types of property *secundum necessitatem temporis* and was not constrained to use one and the same form all over the world and at all times. Even in the Middle Ages property could be shaped in new patterns, and Francis of Assisi could radically renounce all property for himself and for his brethren of the Franciscan Order.

Where in this is violence, which we have promised to speak about? The answer is that Ockham conceived the political organization of men in direct analogy to this theory of property. In the years around 1340 Ockham will write it down explicitly in the "Breviloquium" (of 1342). This analogy between the concepts of dominion over things and dominion over men certainly were very nearly adjacent, but Ockham actually expressed it only this late in his career. He declares both to be founded upon a double competence, a *duplex potestas* (a "twin competence") given to men, "to ascribe to oneself property and to install a regent with power to govern," which means to organize themselves politically.<sup>11</sup> This double or twin license is part of the anthropological basic equipment and it is *naturalis et concreata potestas* (i.e. a natural endowment of competence given together with the act of creation).<sup>12</sup> So it is a natural and original equipment of men, but at the same time it is given to men as men, not to the men as redeemed Christians. So legitimate rulership is given not only to the redeemed or justified sinner, but to the heathen as well. So the theory of Ockham says quite the opposite of the thesis of his contemporaries, for instance of the Augustinian Hermits Aegidius Romanus or Jacobus of Viterbo, who had restricted legitimacy of rulership and social organization to Christians alone.<sup>13</sup> Ockham would have criticized sharply either John Wyclif or Jan Hus because of their assumption that only the justified can have legitimate rulership. Theologians of ockhamistic stock like Pierre d'Ailly consequently sat at the bench of the persecutors of heresy

<sup>10</sup> Cf. Stürner, Wolfgang, 1987. *Peccatum' und ,potestas'*.

<sup>11</sup> Breviloquium III.8 (OPol IV, 180sq.). *Duplex potestas predicta, scilicet appropriandi res temporales et instituendi rectores iurisdictionem habentes, data est a Deo immediate non tantum fidelibus, sed etiam infidelibus (...)*. Cf. bereits *Opus nonaginta dierum*, c. 61 (OPol II, 559): *Ius utendi naturale commune est omnibus hominibus, quia ex natura, non aliqua constitutione superveniente habetur. Verumtamen licet omnis homo habeat omni tempore tale ius utendi, non tamen habet tale ius utendi rebus pro omni tempore: illi enim, qui nullas res habent proprias neque communes, licet habeant ius utendi rebus alienis, non tamen habent ius utendi rebus alienis nisi pro tempore necessitatis extremae...* Look at Tierney, Brian, 1997. *The Idea of Natural Rights*, esp. 121sq., 171-175.

<sup>12</sup> *Opus Nonaginta Dierum* c. 27 (OPol II, 489) where there is said upon the *dominium* in paradise: *Quia videtur eis [scil. to the adversaries of pope John XXII.] quod istud dominium non fuit nisi naturalis et concreata potestas potenter gubernandi res, quarum habebant dominium [scil. Adam und Eva], et ita a principio habuit Adam tale dominium...*

<sup>13</sup> Miethke, Jürgen, 2001. *De potestate papae*, 94-108.

at the council of Constance, and they sent Jan Hus to the stake. And, at the same time, we must consider the fact that Ockham saw all political organization as based upon a God-given license. On the one hand, this has the consequence that social organization is fully justified and legitimate, and, on the other hand, that the singular forms of its shaping are human inventions and are changeable and variable according to the necessities of time and place. It is given by God that there is rulership or social organization, but what this looks like is the consequence of human inventions and human agreements. You may also say that it is a consequence of historical circumstances. The early modern theories of society founded by contract are not far away from this.

This thesis has some implications: the legitimacy of rulership is unquestionable. Rulership and all its means, that is money, the canvassing for consensus in politics, friendships, political and military constraint, judicial pursuit and police enforcement, and lastly, the death penalty are justified without special reasoning by Ockham. They are conditions of politics that are not discussed further or founded upon arguments.<sup>14</sup> The famous words of chapter 13 of Saint Paul's Letter to the Romans can legitimize the existence of rulership: *Non est enim potestas nisi a Deo; quae autem sunt, a Deo ordinatae sunt.*<sup>15</sup> Therefore, Ockham does not doubt anywhere the legitimacy of statal constraint. And he is not inclined to derive statal constraint from ecclesiastical or spiritual delegation, as was done by many canonists of his time. He presupposes constraint in the persecution of the heretical pope as obvious and gives no reasoning for it. So for him there was no question that a ruler can use all means of constraint, and that is not discussed or argued for in Ockham's writings. It was not his aim to demonstrate that the princes and kings could use enforcing constraint; it was his aim to demonstrate that even the lay people - and therewith also the lay rulers - could and must participate in the persecution of heretical clerics, and, in any case, of a heretical pope. The problem of Aegidius Romanus and of Pope Boniface VIII was put turned upside down by Ockham. Whereas these both wanted to answer the question, what were the rights of the pope reaching out into the field of normal competencies of lay rulers, Ockham tries to answer the question, what competencies does a lay ruler (who - naturally- for Ockham was a baptized Christian) have within the church and over clergymen. Ockham says bluntly: God is not only a God of clergymen, he is in the same manner a God of lay people.<sup>16</sup> If the rulers are Christians, they are obliged as Christians to intervene against any heretic, and against a heretic pope, too. In this case they use only their ordinary competence. They have to send the heretical pope into prison, keep him in prison, and wait for a final judgment of the pertinent council, and after the final sentence of the general council the prince has to execute him. Ockham and his friends write somewhere explicitly that heretical books are to

<sup>14</sup> Cf. e.g. the little "Mirror of Emperor" in III Dialogus II.i.15-18 (OpPlur fol. 236<sup>vb</sup>-238<sup>va</sup>), printed too (with a German translation) in: Ockham, Wilhelm von, 1995. *Texte zur Politischen Theorie, Exzerpte*, ed./transl. J. Miethke, 198-225.

<sup>15</sup> Potestà, Gian Luca, 1986. "Rm. 13,1 in Ockham, Origine e legittimità del potere civile", in: *Cristianesimo nella storia* 7, 465-492.

<sup>16</sup> I Dialogus VI.100 (OpPlur fol. 111<sup>va</sup>):... *dicere causam fidei vel dei nullo modo spectare ad iudicem secularem vel laicos omnino esset insanum. Et est verbum clericorum avarorum et superborum, qui ideo ab ecclesia dei laicos conantur excludere, ut ipsi exclusi possent ab ecclesia laicorum domini reputari...*

be placed at the stake "together with their author" (*cum suo auctore*)!<sup>17</sup> There was no lenient tolerance in these Franciscans!

A ruler, says Ockham, is installed as a ruler. He is not dependent upon any other person or body of persons. He is not the mere executive organ of the group that is instituting rulership. He does not need consent or a special referendum for his activities by his electors. On the contrary, he has obtained by his installation - Ockham is speaking expressively of *instituere*, that means: installing of the ruler - a subjective right to his rulership, which can only be taken from him, if there are sufficient causes. Here we reach a second point in Ockham's political theory of rulership and constraint, of power and violence: there are certain limits to the prince's power. Ockham does not grow tired of repeating again and again that the installation of a ruler is made in order to accomplish a certain purpose or a certain aim. Rulership remains to be measured by this original aim and purpose.

How can this be done? It seems clear that the *rector iurisdictionem habens*, the ruler installed, in the traditional manner, deriving its roots from ancient Christian traditions and from Saint Paul and Augustine, is thought of as a reward for the pious and a punishment for the wicked. His installation is based on the consequences of the fall. Political organization is made *per iniquitatem*, as a remedy against sin.<sup>18</sup> The same tradition Ockham is using here had concretized these ideas in manifold ways. The lawyers and the theologians of the scholastic university had in the end identified the rulership of a ruler as his *iurisdictionem*,<sup>19</sup> his rulership by judgment and judicial procedures. This rulership is described in some different, but in general very coherent ways. It appears in the Latin terminology of Ockham, as the bound to the frame of law. Rulership is legitimated if and only if it sticks to the law and justice, as it is installed only in order to do right and justice. The reality of rulership is to be proven and evidenced by the application of justice in just judgments, in upholding the laws and in making new laws.

Ockham follows this tradition without hesitation. Law and justice are, as we have seen with his theory of property, a multiform, but graduated frame for human actions. The general license of use of things and other creatures remains with men even after they have fallen into sin, but it was weakened and had to be supported in this lesser strength by the license to ascribe special property

<sup>17</sup> In the anonymous Treatise of the Munich minorites "Quoniam omnis", which was an answer to the sentence of removal of Michael of Cesena from his office by the pope, which was later on inserted into the compilation of the so called "Nicolaus Minorita", *Nicolaus Minorita*, 1996. *Chronica*, edd. Gál, Gedeon/ David Ethelbert Flood., 938-960, it is said at the very end (960):... *dictus frater Geraldus non est generalis minister legitimus, sed tyrannus, perversus, malloquus et crudelis. (...) Concluditur non fuisse nec esse sententiam, sed libellum famosum tradendum cum suo auctore flammis voracibus consumendum*. Generally to this compilation and to the edition cf. Miethke, Jürgen, 1998. "Der erste vollständige Druck der sogenannten 'Chronik des Nicolaus Minorita'". Cf. for Ockham himself I *Dialogus* VI cap. 82 (OpPlur I, fol. 96ra), where the heretical pope is to be deposed and driven from the Apostolic See by a General Council, *nisi ad fidei unitatem redierit, tradendus est curie seculari; si autem redierit, est perpetuo carceri mancipandus (...)*. It was very clear to all contemporaries of Ockham what it only could mean to be "delivered to the secular arm"! Tierney, Brian, 1988. *Origins of Papal Infallibility, 1150-1350*, Leiden: Brill, 235, means (with some exaggeration): Ockham "wanted to see all his enemies punished as heretics".

<sup>18</sup> This is said in the canon 'Dilectissimis' (Decretum Gratiani, C.12 q. 1 c.2). cf. e.g. Töpfer, Bernhard, "Vorstellungen von einem ursprünglichen und einem endzeitlichen Idealzustand", 387-406; and more succinctly Töpfer, Bernhard, 1998. *Urzustand und Sündenfall in der mittelalterlichen Gesellschafts- und Staatstheorie*, 166sq.

<sup>19</sup> Cf. mainly Costa, Pietro, 1969. '*Jurisdiction*', *Semantica del potere politico nelle pubblicistica medievale 1100-1433*, Milano: Giuffrè [1966] <sup>2</sup>1969. Already especially pertinent Kern, Fritz, 1910/1954. *Gottesgnadentum und Widerstandsrecht im früheren Mittelalter*.

to oneself. The first license, the license of use of other things, was not given to any individual man, but rather to the whole species of mankind. This license is consequently delegated to a common use of men together, not to the use of one individual. The license to ascribe to oneself particular property, which was obtained after the fall in order to restrain the consequences of sin, limits the borderlines around the individual piece of property, make fences around it and withdraws the proper things to the use of others. It makes it a reserve of the one who is competent to act on behalf of this piece of property, to use or consume it, to sell or lend it out, to allow some use by aliens or to forbid that, without any prescription by law as to how it should be managed.

*In casu necessitatis omnia sunt communia, id est communicanda.* "In the case of necessity all things are common, that means are to be made common".<sup>20</sup> This was a sentence one could read all over Europe in the "Decretum Gratiani". And Ockham incorporates this several times into his own theory without any reduction. He adds that adage to his own system with great ability. In the case of danger of life, in extreme necessity, he says, a man who is starving, has the unrenounceable (!) right to use things which belong, according to the laws of property, to another man, if they are not immediately needed by their owner for the same reason.<sup>21</sup> That means: there is no struggle for survival by means of the same goods, but surplus goods of the rich have to be used by the starving poor. The poor man who uses such things does not commit a crime as long as his use is restricted to the real situation of succor in the case of danger. On the contrary, the poor acts according to his natural rights and to natural law. The man who has taken a foreign coat, in order to help himself against freezing to death, is obliged to give it back to its owner when the situation of danger has gone, but he is not obliged to pay for it, if it is damaged or used up. And the starving man is not obliged to give back or pay for the foreign bread or cheese he has eaten, if the situation has changed.<sup>22</sup>

We can grasp by this example the ideas Ockham had established for the structure of the framework of the lawful conditions of life and therewith, of course, of politics. Property is intended to be a restrictive barrier or fence which can hinder, in the normal relations of individuals, foreign interference or trespass into things owned. In cases of extreme necessity, however, all such barriers or fences are made permeable. They have to let through the act of use of the starving or freezing neighbor. And that is allowed by a higher law, the law of nature which is above the positive law of property. This higher law is not totally coincident with the laws that regulate our normal life, and they can

<sup>20</sup> Couvreur, Gilles, 1961. *Les pauvres ont-ils des droits?* Tierney, Brian, 1948. *Medieval Poor Law.*

<sup>21</sup> Opus Nonaginta Dierum c. 65 (OPol II, 577):... *uti rebus temporalibus pertinet ad ius naturae, cui nemo licite renuntiare potest: non tamen sic pertinet ad ius naturale, quin possit in multis casibus limitari et quodammodo coartari et ne in actu licite exeat impediri...*

<sup>22</sup> Cf. Opus Nonaginta Dierum c. 65 (OPol II, 578): "Communis omnium possessio et omnium una libertas" [cf. note 25] *ad ius pertinet naturale, et tamen istud ius quodammodo coartatur, quia et temporalia appropriantur et multi servituti subduntur. Non tamen istud ius naturale potest totaliter evacuari, quia nunquam sic possunt temporalia appropriari, quin tempore necessitatis debeant esse communia: sic posse uti temporalibus potest per legem humanam et voluntatem propriam liberi hominis quodammodo coartari et aliquando ne in actu utendi exeat impediri (sic enim potest aliquis voto firmare quod a carnibus abstinebit, sic etiam homines prohibentur uti rebus alienis); posse tamen uti temporalibus totaliter evelli non potest. Et ideo iure poli potest quilibet uti re temporali quacunquē, qua uti neque iure naturae neque iure humano neque iure divino neque facto proprio prohibetur. Et ideo tempore necessitatis extremae potest quilibet iure poli uti qualibet re temporalis, sine qua vitam suam conservare non posset; quia ad non utendum re temporalis in hoc casu neque iure quocunque neque facto proprio obligatur. Cf. e. g. Miethke, Jürgen, 1969. *Ockhams Weg*, esp. 492sq. Cf. generally Tierney, Brian, 1999. *Natural Rights*, esp. 118-194; Brett, Annabel S., 1997. *Liberty, Right and Nature*, Cambridge (etc.): Cambridge University Press (=Ideas in Context 44), esp. 50-68.*

become valid in exceptional cases, especially in case of emergency, when the original structure of human life comes through the thin blanket of civilization immediately.<sup>23</sup>

Ockham has elaborated his well-known teaching on natural law in the last part of his great "Dialogus", and that means during the last years or months of his life.<sup>24</sup> Here we find the results of lifelong thought on the question. His starting point is the old definition of Isidore of Seville, who incorporated into his "Origines" the old definitions of the Roman lawyers and had concentrated it. This authority was taken over by Gratian into his "Decretum" and had won therewith a general validity. Here we can read: "Natural law (*ius naturale*) is common to all peoples, because it is followed everywhere by a natural instinct, not by a (positive) law. Such cases are the connection of man and woman, the heredity of children and their education, the common property and the common liberty of all, the right to occupy all what is caught in heaven, on earth or in the sea, the handing back a deposit or the returning borrowed money, the defense against a violent aggression by force (*violentiae per vim repulsio*). For all this is never unjust, but is meant by natural and just."<sup>25</sup>

It seems to me obvious, that this very shaky list<sup>26</sup> of Saint Isidore does not correspond to earnest systematic interests. For instance it is said here that the common property is "natural and just" (*naturale aequumque*) in same manner as handing back a deposit or returning borrowed money, the parental power, the hereditary law or violent self-defense. We understand why the scholastic art of distinction has taken this up as a real challenge. Ockham, too, has seen this challenge. He makes a distinction among three grades or modes (*modi*) of natural law, which can be valid in daily life. First there is a natural law that can claim immediate obedience because it is the immediate law of reason. As examples for that law there are evocated the commandments of the Decalogue, e.g. Thou shall not commit adultery, thou shall not murder!<sup>27</sup> Secondly, there is a natural right that is valid for men, who did live according to natural equity along (if this is possible)<sup>28</sup> before all the human customary rights. Examples for that are the common property or the original common freedom. These rights cannot be valid today in the same immediate manner as the first laws, because the laws of the first category are unchangeable and indispensable, being laws of right

<sup>23</sup> The date of III Dialogus II is discussed by Miethke, Jürgen, 1969. *Ockhams Weg*, 117-121, 547sq.

<sup>24</sup> III Dialogus II.iii.6 (OpPlur fol. 263<sup>ra</sup>-264<sup>ra</sup>). A critical edition is given by Offler, Hilary Seton, 1977. "Three Modes of Natural Law", in: *Franciscan Studies* 37, 212-218 [now reprinted in: Offler, Hilary Seton, 2000. *Church and Crown*, nr. VIII]. Cf. Tierney, Brian, 1998. *Natural Rights*, 175sqq.

<sup>25</sup> Isidorus of Sevilla, *Etymologiae sive Origines*, ed. W. M. Lindsay, Oxford 1911, V.iv.1-2; taken over into the Decretum Gratiani, D.1 c.6-7 (ed. Friedberg, Aemilius 1879. *Corpus iuris canonici*, Vol. I, Leipzig 1879), whose version I follow here: [c. 6:] *lus autem aut naturale est aut civile aut gentium*. [c.7:] *lus naturale est commune omnium nationum eo quod ubique instinctu nature, non constitutione aliqua habetur, ut viri et femine coniunctio, liberorum successio et educatio, communis omnium possessio et omnium una libertas, acquisitio eorum que celo, terra marique capiuntur, item deposite rei vel commendate pecunie restitutio, violentie per vim repulsio. Nam hoc, aut si quid huic simile est, numquam iniustum, sed naturale equumque habetur*.

<sup>26</sup> Isidorus himself has said the he gives only a enumeration:... *hoc, aut si quid ei simile est*,...

<sup>27</sup> Loc. cit. (note 24) [Offler, S. 212]: *Uno enim modo dicitur ius naturale illud quod est conforme rationi naturali, que in nullo casu fallit, sicut est "non mehaberis", "non mentieris" et huiusmodi*.

<sup>28</sup> *Ibidem: Aliter dicitur ius naturale, quod servandum est ab illis, qui sola equitate naturali absque omni consuetudine et constitutione humana utuntur. Quod ideo dicitur "naturale", quia contrarium est contra statum nature institute et, si homines viverent secundum rationem naturalem aut legem divinam, non esset servandum nec faciendum. Isto modo et non primo modo ex iure naturali omnia sunt communia, quia in statu nature institute omnia fuissent communia, et si post lapsus omnes homines secundum rationem viverent, omnia deberent esse communia et nichil proprium; proprietates enim propter iniquitatem est inducta, xii q.1 c. .Dilectissimis<-' [=C.12 qu.1 c.2; then there follows a citation of D. 1 c. 7, look at note 17].*

reason, whereas into the right of nations (*ius gentium*), that means the rights which are valid for all nations in the same manner, there were introduced servitude and slavery. Therefore, that which is possible everywhere today is against the natural right of the second category. The natural right of original common freedom is valid, but it is possibly restricted by the introduction of a repressive positive law. A third category of natural law is identified by Ockham in the just-mentioned *ius gentium*, the right valid with all the nations. Here, laws are valid under the preconditions of the fallen world in a reasonable way by legislation. But this law can be suspended in certain regions or countries by express legislation, or can be superseded in special cases so that it is not to be followed, for instance the duty to give back a deposit or the right of violent self-defense. Such rights are not introduced by the natural law of the first category, because they cannot be valid in the state of nature before the sin, as there had not been established property which could be given back, or violence which must be answered. But these laws are not indispensable, because they can be suspended for reasonable causes<sup>29</sup> – for instance in the case of emergency, or if a maniac is asking for his deposited sword in order to kill himself or the keeper of the deposit, or if a Franciscan is renouncing radically all property in order to become a perfect follower of Christ and his apostles.

This construct of Ockham is a ingenious combination of a long tradition of scholastic discussions on the foundation of theological reflections of the fathers or the scholastics with his own cascade-like system of legal frames to human action.<sup>30</sup> The construct gives at the same time an analytical instrument of research into identifying the validity of laws in different cases, which are analyzed in the "Dialogus" again and again. In the last event there is found an unambiguous relation of certain human actions with certain reasons of legitimation. If this is possible for the secular rulership and its decisions, then the actions of this rulership are justified and just, and they fulfill the exigencies of equity. The ruler is allowed to think that his actions are within the sphere of legal justice, nay of the legitimate just order. If the relation is not able to be drawn, then resistance against such actions are not only the good right of the subjects of the ruler, but are their holy duty. But this is to touch upon individual subjects according to a certain cascade, a fixed series of appropriate justifications of resistance, which follows the social ladder from top to bottom, until the duty to resist reaches the common man or the "catholic cowboy."<sup>31</sup>

Generally, Ockham measures the effects of rulership and government at the aims of social organization. Together with his contemporaries, he identifies the aim of social organization in a very wide sense as upholding existence and making life safer, with one word social organization is aiming at self-preservation within the framework of the laws. You may use the ancient formula of the *bonum commune* too, and Ockham does not hesitate to add to the *bonum commune* the *utile* as equivalent in the case of

<sup>29</sup> Ibidem [Offler, 213:] *Tertio modo dicitur ius naturale illud, quod ex iure gentium vel alio aut ex aliquo facto divino vel humano evidenti ratione colligitur, nisi de consensu illorum, quorum interest, contrarium statuatur. Quod poterit vocari "ius naturale ex suppositione", sicut secundum Ysidorum, ubi prius [cf. note 17], "ius naturale est deposite rei vel commodate pecunie restituito, violentie per vim repulsio". Ista enim non sunt iura naturalia primo modo, nec etiam secundo modo, quia nec fuissent in statu nature institute nec essent inter illos, qui secundum rationem viventes sola equitate naturali absque omni consuetudine et constitutione humana essent contenti, quia inter illos nulla res esset deposita vel commodata nec aliquis alteri vim inferret.*

<sup>30</sup> Cf. e.g. Miethke, Jürgen, 1971. "Repräsentation und Delegation", in: *Der Begriff der ‚repraesentatio‘ im Mittelalter*, ed. Zimmermann, Albert, Berlin/ New York: Walter de Gruyter (=Miscellanea mediaevalia, 8), 163-185.

<sup>31</sup> Cf. Kys, Franz Walter, 1967. *Die Lehre vom Widerstandsrecht*, Köln [=Partial print of a Phil. Diss. München 1964]; generally Miethke, Jürgen, 1999b. "Der Tyrannenmord im späteren Mittelalter", 24-48; and now Miethke, Jürgen, 2003. "Widerstand", 739-750.

evidence.<sup>32</sup> Both are strictly common, the *bonum* or *utile* is not meant as the good or useful solution for the ruler, but for those subject to the ruler. The usefulness of an action for the subjects in addition must be evident, and this is a very strong condition according to Ockham's theory of evident cognition! Then and only then is there legitimate resistance. Even the emperor himself – and Ockham lived at an emperor's court in Munich and was dependent on his protection – cannot expect obedience to any of his commands that are given "against the good of the people" (*contra utilitatem populi*).<sup>33</sup>

And there is another interesting point: within social organization necessity is quasi omnipotent as in the case of emergency in individual life. Necessity brings society back to, so to speak, to the moment of origin, the *status nascendi*. It activates the contract of society in a new way. The case of necessity permits to everybody a violent resistance: even women are allowed to use weapons in order to defend themselves and their homeland against rape and death, when all men are failing in this task.<sup>34</sup> In addition to that, you may say that in the moment of emergency there awakens the power of the multitude to generate a social and political constitution. The multitude gains by necessity – or by an evident utility which is reckoned in the same way – the competence to change the constitution. It wins a *potestas transmutandi* (viz. *variandi*) *principatus*.<sup>35</sup> This is a competence,

<sup>32</sup> Miethke, Jürgen, 1969. *Ockhams Weg*, 579<sup>b</sup> [Index]; McCord Adams, Mary, 1987. *William Ockham*, Notre Dame, IN: (=Publications in Medieval Studies, The Medieval Institute, University of Notre Dame XXVI, 1-2), 1386<sup>a</sup> [Index]; Leppin, Volker, 1995a. *Geglaubte Wahrheit*, 363<sup>b</sup> [Index]. Cf. Maier, Anneliese, 1963. "Das Problem der Evidenz in der Philosophie des 14. Jahrhunderts", in: *Scholastik* 38 (1963), 183-225, now in: Maier, Anneliese, 1967. *Ausgehendes Mittelalter*, Vol. 2, 419-451; Tachau, Katherine H., 1988. *Vision and Certitude in the Age of Ockham*, Optics, cf. esp. 408, 410 [Index s.v. *certainty* u. *evidence*, *evident*].

<sup>33</sup> III Dialogus II.ii.20 (OpPlur fol. 255<sup>ab</sup>): *Subditi imperatoris non in omnibus tenentur sibi obedire, sed in his tantum, que sunt necessaria ad regendum iuste et utiliter (!) populum sibi subiectum. Et ideo si preciperet aliquid, quod est contra utilitatem populi sibi subiecti, non tenerentur sibi obedire, sed in his, que sunt necessaria ad regendum iuste et utiliter populum sibi subiectum. Et inde est quod servi imperatoris et liberi non tenentur sibi equaliter obedire. (...) Dignitati enim humani generis derogaret, si omnes essent servi imperatoris. Et ideo derogaretur eidem, si imperator in omnibus posset tractare liberos sicut servos. Cf. III Dialogus II ii, c. 28 (OpPlur fol. 259<sup>a</sup>): generale pactum est societatis humane obtemperare regibus in his, que spectant ad bonum commune. Et ideo obligata est societas humana ad obediendum generaliter imperatori in his, que ad utilitatem communem proficiunt, non in aliis, in quibus non dubitat, quod nequaquam bono communi proficiatur.*

<sup>34</sup> Drastically in *Octo Quaestiones VIII.6* (OpOl I<sup>2</sup>, 200sq.): *Quia sicut in corpore naturali uno membro deficiente aliud membrum, si aliquo modo potest, supplet defectum eiusdem - qui enim non potest pedibus ambulare, aliter repit vel volvit se, ut potest, et mancus ore accipit de terra vel alio loco, ut potest, cibum necessarium sibi, et quia non potest cultello scindere panem suum, lacerat dentibus, si potest - sic in corpore mystico et in collegio vel in universitate uno deficiente alius, si habet posse naturale, supplet defectum eius. Ubi enim non sunt milites, rustici pugnant pro patria, si possunt, et deficientibus viris mulieres, si valent, patriam et seipsas defendunt. The metaphore of organisme e.g. in: III Dialogus II.iii.2 u.4 (OpPlur fol. 259<sup>ab</sup>, 261<sup>b</sup>).*

<sup>35</sup> III Dialogus I.ii.20 (OpPlur fol. 198<sup>b</sup>-199<sup>b</sup>): *Una <opinio> est quod expedit communitati fidelium, ut habeat talem potestatem transmutandi principatum aristocraticum in principatum unius summi sacerdotis et econverso secundum quod necessitas et qualitas temporis unum principatum vel alium exigit et requirit. (...) In rebus novis constituendis evidens debet esse utilitas ut recedatur ab eo iure, quod diu equum visum est. Ex quo colligitur quod propter evidentem utilitatem est novitas facienda. (...) Quare ecclesia habet potestatem constituendi principatum aristocraticum super cunctos fideles, si perpendunt quod principatus unius incipit esse dispendiosus fidelibus. (...) Si principatus unius summi pontificis rendit ad noxam, i.e. ad amorem dominandi seu tyrannice principandi vel etiam ad scisma periculosum inter christianos, sicut si videlicet maior et potentior temporaliter aut equalis pars christianorum nullo modo vult sustinere principatum unius summi pontificis et tamen vult sustinere principatum aristocraticum multorum simul regentium, quorum quilibet sit summus pontifex, quemadmodum aliquando fuerunt simul plures imperatores et aliquando in eadem causa sunt plures iudices equalem potestatem habentes, tollendus est saltem ad tempus principatus unius regali principatui similis et instituendus est - saltem quousque predicta mala seu pericula et consimilia cessent - aristocraticus principatus (...). Cf. Tabacco, Giovanni, 1949. *Pluralità di papi*, esp. 7 sqq., and R. Lambertini, 1992. "Wilhelm von Ockham als Leser der ‚Politica‘, 207-224. Cf. Aurelius Augustinus on ‚qualitas temporis‘ in: *Decretum Gratiani* (1879), D. 79 c.9 und C. 2 q.1 c.19. Ockham is using the concept in: I Dialogus VI.26, III Dialogus I.ii.17, II.ii.5, II.ii.9 (OpPlur fol. 52<sup>o</sup>, 197<sup>o</sup>, 233<sup>o</sup>, 251<sup>o</sup>). Cf. also Schreiner, Klaus, 1987. "Diversitas temporum", 381-428.*

not only to suspend the "normal" regulations for the moment, but also to change them for a longer time. For instance in the Aristotelian system of constitutional regulations the multitude can change a monarchy into an aristocracy or that into a polity (i.e. democracy).<sup>36</sup>

It seems to be not by chance that Ockham says this with respect to the constitution of the church and discusses the pros and cons in an extended aside in his "Dialogus" The constitution of the church is important for Ockham, because he was scandalized by the "heretical" doctrines of Pope John XXII. The constitution of the church was the really important field of problems to be thought of for him. Ockham feels himself obliged to check how it was possible that what had happened had happened, and to find out what was to be done against that in the present time and for the future. In his view, the constitution was not as an endowment, founded by Christ himself and divinely set into its unending existence, now in its shape unchangeable and perfect. The organization of the church is in the same manner subjected to the same principles as the other human organizations. Ockham uses to analyze the organization of the church the same concepts taken from the juristic and from the Aristotelian traditions.

The "state", the secular order of ruling of his time, is not a coherent special theme for Ockham. This topic occurs only in short references to analogies or similarities with phenomena of the church constitution. Sometimes a special theme of the discussions at the court of the Emperor Lewis the Bavarian at Munich gives some cues for a liminary discussion in Ockham's writings. So we do find in his Opera politica several hints to the right of a kingdom to depose its king.<sup>37</sup> For this theme there is indeed some contemporary background in the kingdom of England, where king Edward II was deposed in 1327, a time when Ockham lived far from the British Isles in Avignon. But obviously Ockham had followed eagerly all information from his native land. He can write: a kingdom is allowed and has the right (!) to depose its king. "For the king is regularly above his kingdom, and nonetheless in some cases he is inferior to his kingdom, because in the case of emergency or necessity a kingdom is able to depose its king and hold him in prison. The reason is by natural law, because it is permitted to repel violence by violence."<sup>38</sup> The constitution of rulership is only a

<sup>36</sup> Cf. III Dialogus I.ii.27-28 (OpPlur fol. 203<sup>vb</sup>-204<sup>va</sup>): there you will find a controvers debate for the pope's case. For the emperor see the shorter digression in: III Dialogus I.iv.24 (OpPlur fol. 218<sup>vb</sup>-219<sup>va</sup>), here is said for the church constitution, that according to the *legenda sancti Marcellini pape* there was a vacancy of the Apostolic see of seven years only to continue: *...cessante tamen necessitate vel utilitate ad optimum modum regendi - ut unus sit caput universalis et rector - redire tenentur.* (Cf. dazu III Dialogus I.ii.28, bzw. II.1.8, OpPlur fol. 204<sup>vb</sup>, bzw. 234<sup>vb</sup>). Cf. already Miethke, Jürgen, 1969. *Ockhams Weg*, 549sq. with note 414.

<sup>37</sup> Cf. e. g. I Dialogus VI.55 (OpPlur fol. 75<sup>va</sup>): *... nam et populus posset ex causa imperatorem deponere, quemadmodum diversa regna suos reges deposuisse leguntur*; I Dialogus VI.58, VI.63 (OpPlur fol. 76<sup>vb</sup>, 80<sup>va</sup>). I Dialogus VII.45 (OpPlur fol. 145<sup>va</sup>): *Unde per multa exempla posset ostendi quod populi plures et communitates sepius deposuerunt reges iuste et suos principes, et postea sibi principes elegerunt.* Cf. *Opus Nonaginta Dierum* c. 93 (OPol II, 688); *Breviloquium* VI.2 (OPol IV, 252).

<sup>38</sup> *Octo Quaestiones* II.8 (OPol I<sup>2</sup>, 83): *Rex enim superior est regulariter toto regno suo, et tamen in casu est inferior regno, quia regnum in casu necessitatis potest regem suum deponere et in custodia detinere. Hoc enim habet ex iure naturali, sicut ex iure naturali habet, quod licet sibi [scil. regno] vim vi repellere.* Cf. *Octo Quaestiones* II.9 (OPol I<sup>2</sup>, 85) [where the deposition of Childeric III. the last Merovingian king of the Franks is discussed]: *Illi igitur Franci, dubii forsitan de propria potestate, papam tamquam sapientem et sapientiores secum quam ipsi essent habentem - nondum enim erat studium Parisius - consulebant et interrogabant, an eis secundum Deum liceret regem suum deponere. Nostris autem temporibus quidam de potestate sua nullatenus dubitantes regem suum sententialiter deposuerunt papa nullatenus requisito, quia (ut dicunt isti) nec instituere nec destituere reges spectat ad papam, quando populi circa institutionem et destitutionem regum suorum non inveniuntur periculose et damnabiliter negligentes.* It seems interesting to me, that Ockham is ascribing the function of counseling of politics to the university of Paris here! Universities had an important role to play in deposition processes in the later middle ages: Cf. e.g. Walthers, Helmut G., 1996. "Das Problem des untauglichen Herrschers in der Theorie und Praxis des europäischen Spätmittelalters", in: *Zeitschrift für historische Forschung* 23, 1-28. For Ockham cf. lastly Shogimen, Takahashi, 2001. "From Disobedience to Toleration", in: *Journal of Ecclesiastical History* 52, 599-622.

constitution to meet necessities, and it has to satisfy certain functions. If it does not do this, then a legitimately elected and installed king can lose his right to reign, he can be deposed and be kept in prison or judged otherwise. Thereby the kingdom applied only rights of a higher degree than the constitutional rights, even a right of the very highest degree. It uses natural law and license. At the same place Ockham gives us another example for this possibility: he thinks that it is evident (!) that the mendicant order constitution of the big mendicant orders of his time allow the removal of the minister general or magister general by the general chapter of the order, and therefore it is clear that "in several cases the lesser makes up for the fault and negligence of the greater".<sup>39</sup> Obviously this is negligence sufficient for deposition or removal, it must not be tyranny!<sup>40</sup> But tyranny will justify resistance and deposition in any case!

We will not here follow Ockham into the manifold singular cases where in his opinion a right to resist is granted to the minors or subjects against their major or ruler, prelate, their bishop, pope or king. Even in the church, in an institution founded by God himself, there is the same allowance and possibility. The divine foundation does not rescue the prelate from the normal consequences of his faults. It is clear that not every subject is in any case allowed to switch over immediately to resistance against the authorities. Ockham rather delineates with care the big cascade of delegating the responsibility for acts of resistance. Hundreds of pages in his "Dialogus" are needed to make clear that not all Christians are hit immediately by the faults of an heretic pope, but first the cardinals, then the bishop in whose diocese the heretic pope is staying, then the lay people, and again, first the rulers, who are responsible by different reasons, then the others. And at the end of this ladder of descent everybody may be affected by the task to prevent the heretic pope from further holding his office. In an extreme formulation, Ockham sees the *bubulcus catholicus*,<sup>41</sup> the catholic cowboy competent and obliged to do what he can, and to follow his responsibility and his conscience in spite of the normal social ladder where a cowboy is located at the very bottom of the social hierarchy. In the case of necessity all the normal class differences of the feudal society become permeable and porous.<sup>42</sup> It is clear that Ockham has said good bye to the old tradition of political theory that was in a continuing search after the "best" constitution. He was on the way to searching for a theory of political action, which in its consequences at least was far ahead of the social conditions of his own time, the 14<sup>th</sup> century.

<sup>39</sup> Ibidem: *quod in pluribus casibus minor supplet negligentiam maioris*. (Cf. also note 33).

<sup>40</sup> A short oversight in the article Miethke, Jürgen, 1997. "Tyranen, Tyrannenmord", in: *Lexikon des Mittelalters*, 8, 1135-1138. Cf. also the literature mentioned above in note 31.

<sup>41</sup> De electione Caroli IV (OPol IV, 469): *Ymmo absurdum est et erroneum dicere, quod imperium, quod est a solo Deo, non habet auctoritatem, potestatem et iurisdictionem denunciandi et deponendi papam deviantem a fide catholica vel errantem in bonis moribus et unacum clero et populo Romano alium papam catholicum instituendi, et specialiter quando cardinales habent caudam colligatam cum erroribus pape deviantis a fide catholica et bonis moribus. Ymmo quilibet bubulcus catholicus est maior papa non catholico.* - I Dialogus VII.45 (OpPlur fol. 145<sup>rb</sup>): (...) *primam instantiam dicunt absurditatem perniciosam et periculosam et hereticalem ac etiam stultissimam continere, que est illorum assertio et inventio, qui suam desidiam, immo nequitiam pessimam palliare nituntur. Est ergo hec absurditas, quod negocium fidei quando papa esset hereticus nullo modo spectat ad simplices et paupere, sed solummodo ad prelatos, puta cardinales, archiepiscopos et episcopos, et non ad pauperes religiosos nec ad laycos nec ad clericos sub episcopis constitutos. Quam absurditatem dyabolicam arbitrantur ex astutia dyaboli ad subversionem fidei adinventam. Quomodo enim defensio patrie pertinebit ad omnes, si defensio fidei, que est amplius quam patriam defendere, non spectat ad omnes, aut quomodo defensio proprie vite pertinebit ad subiectos simplices et pauperes, si defensio fidei, que debet esse unicuique carior quam vita corporalis, non spectat ad omnes?* Several times Ockham calls as an example the *pugna pro patria* cf. also I Dialogus VI.37, VII.10; (OpPlur fol. 65<sup>rb</sup>, 120<sup>ra</sup>, 145<sup>rb</sup>) and note 34 above.

<sup>42</sup> Cf. here note 10 and 41.

The same switch over to a functional point of view had allocated to each member of the society a role in social conflict almost unthinkable before. These ideas were developed first for the church structures and within the context of fighting the heretics, which certainly is somehow different than normal political struggle. But Ockham's political theory acquires the character of a doctrine of freedom and liberty and receives a real revolutionary impetus. It seems to me no accident that the Franciscan friar Ockham, who knew the mendicant obligation to a strict obedience by the subjects to the superior in the order, measures the church and its constitution carefully against the Bible and the gospels. Ockham has identified in a long dissertation the law of Christ, the *lex Christi* (Letter of Jacobus 2,12) expressly with a law of liberty in respect to the law of the Old Testament, the *lex libertatis respectu veteris legis*.<sup>43</sup> He uses numerous verses from Saint Paul contrasting law and gospel, in order to demonstrate that the life of Christians under the law of Christ has changed in comparison to the life of the Old Testament, and that this change has been a relief and liberation. Ockham rejects the opinion that this liberation could be only the liberation from sins and their bonds: no, freedom and liberty must really be felt in the social field. There must be some progress and it must be felt by the Christians in their real life. The promises of the apostles cannot lie. The constitution of the church in the 14<sup>th</sup> century must be measured by this conviction.

Ockham did not draw consequences for the secular constitution of the kingdoms of his time. Perhaps this is because there was no clear biblical authority which could be used similar to the law of freedom (the *lex libertatis*) in the case of the church. Or perhaps because his interests were anyway concentrated upon the church and its constitution. At any rate, he did give some hints to the secular constitution, which we should take very earnestly: Also, in a secular order of society freedom is a very important, perhaps the most important purpose. Ockham says once in his "Dialogus" that even an emperor does not have a unrestricted right to the obedience of mankind, also in respect to the famous "*lex regia*" by which the Roman people had transferred all its power to the emperor, because such an unrestricted rulership would be injurious to the dignity of mankind. Rulership over free people is much worthier than despotic rulership over slaves. The resistance of rural bondmen (the *rustici*) is justified expressly by Ockham at the last grade of the social ladder.<sup>44</sup> But indeed, all these ideas remain very shadowy and are not clearly worked out.

We can concede to the Venerable Inceptor William Ockham, that he was able to reach his aim in refuting the teachings of pope John XXII with some precision. We must leave open here, on the other side, the consequences of his ingenious constructions and theoretical designs in the reflections of his contemporaries and immediate successors. We should not underestimate his influence on the later Parisian scholastics of the late 14<sup>th</sup>, the 15<sup>th</sup> and the 16<sup>th</sup> centuries, and therewith we should not underestimate Ockham's influence on the time of Conciliarism and the great councils of Constance and Basle. The English Franciscan Ockham has had a good deal of effects on his times and the times to come. His flexible theory of human groups with their generally stable constitutions, which are able to go back in the cases of emergency to their own origins and build anew their constitutional life, if the emergency is really a danger of death and life, certainly is not a solution for

<sup>43</sup> A thorough analysis of this question has given McGrade, Arthur Stephan, 1974. *The Political Thought of William of Ockham*, 141-149, 219sq.; to Ockham's concept of liberty cf. Miethke, Jürgen, 1991. "Ockham's Concept of Liberty", 89-100; look also at Leppin, Volker. 1995b. "Mit der Freiheit des Evangeliums gegen den Papst, in: *Freiburger Zeitschrift für Philosophie und Theologie* 42, 397-405.

<sup>44</sup> Cf. here note 35 and 40.

all the problems of self-organization of political associations, but it seems to me that this theory delivers a handy concept for grasping the historical and political development of human conditions which have to stay open not only for a change but even for progress. And this is true also for the 21<sup>st</sup> century.

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