LEGAL PHILOSOPHY IN 17TH-CENTURY FINLAND: SOME REFLECTIONS

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In the 17th-century European universities legal philosophy was not an autonomous discipline. Fundamental theoretical questions concerning law were discussed within the framework of theology, politics (speculative political philosophy), and moral philosophy as much as they were in the practice-orientated teaching of law (*iurisprudentia*). We thus find several interacting viewpoints, often combined in unexpected ways. The authors of those days themselves sometimes *expressis verbis* indicate such a combination of approaches.

If the discussion went on outside theology, theological influence was nevertheless generally felt strongly. In the 17th century, theology was still an all-embracing, fundamental discipline. The intellectual atmosphere and the control mechanisms created by Lutheran orthodoxy in Sweden and Finland at this time can be compared to the intellectual atmosphere and the control mechanisms in some Marxist states today. Of course, the differences between the material value systems must not be overlooked.

Is an unbiased analysis of 17th-century philosophical thinking possible and, if so, what meaning should be given to the term "unbiased"? To some degree a present-day scholar inevitably approaches the texts of that epoch in the spirit of his own age. But his main effort should be to find out the specific kind of thinking inherent in the texts analysed. He ought not to concentrate mainly on "criticizing" the argumentation contained in this thinking, applying the criteria of his own time. For if he does so he will never establish real contact with the type of thinking he intends to analyse.

If the scholar takes a strong interest not only in historical research but also in legal philosophy as such, an analysis of the thinking contained in an ancient text will, as a by-product, provide him with a fascinating commentary upon the philosophy of his own epoch. But is this really only a by-product? For the scholar concerned, it may be the main thing, a continual

Professor Brusiin died from a heart disease before he had the opportunity of revising personally the final translation. His death is universally regretted as a great loss to Scandinavian jurisprudence.

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widening of his intellectual outlook, an escape from the prison of time.

Latin was the common international language of the old European universities, and this may have contributed to the creation of a widely homogeneous intellectual community. Europe was politically split by antagonistic religious ideologies but, as we shall see, in the international world of the universities, the main problems of legal philosophy are much the same in Catholic and in Protestant states. Catholic authors (both Counter-Reformation writers and others) were frequently quoted in dissertations and systematic lectures in the old university of Turku,[1] the "Academia Aboënsis".

There is especially one theme, *De legibus* (best translated as: On the law in general), where the pattern of research and the interdependence of the questions examined are truly Eruopean. In 17th-century Finland we have numerous dissertations on this theme or connected with it,[2] and it appears also in systematic lectures on politics.[3] The scholarly discussion in these dissertations and lectures closely follows a common European model. This is understandable, inasmuch as contemporary European Protestant textbooks quoted by authors at the Academia Aboënsis also follow such a model.[4] These textbooks are

[1] Latin *Aboa*, Swedish *Åbo*. Authors quoted included, e.g., Gregorius de Valentia, Domingo de Soto, M. Becanus, Gabriel Vázquez, Francisco Suárez, Macrin.

[2] Michael Wisius and J. A. Tibelius, *Disputatio politica de legibus* (Aboae 1649; author the *praeses* Wisius); Axel Kempe and O. N. Vallinus, *Dissertatio politica de legibus* (Aboae 1664; *pro gradu:* author Vallinus?); Andreas Wanochius and A. Thuronius, *Dissertatio philosophica, indolem et naturam legum, praecipue civilium exponens* (Aboae 1685; congratulation: author Thuronius); Andreas Wanochius and D. Mill-Berg, *Tyrocinium academicum de legibus in genere* (Aboae 1690; author Mill-Berg: p. 19: "... Praeceptoris mei Mag. Andr. Wanochii ..."). See also Axel Kempe and M. C. Wichmann, *Dissertatio politica de legislatione* (Aboae 1668; dedication: author Wichmann); Daniel Achrelius and J. Auricola, *Dissertatio politica de legum civilium necessitate in republica* (Aboae 1682, *pro gradu*; congratulation by D. Achrelius: author Auricola?); Petrus Laurbecchius and J. O. Lauraeus, *Exercitium academicum ... de immutabilitate juris naturae* (Aboae 1685; dedication: author Lauraeus); Johannes Munster and E. Gestrinus, *Discursus philosophicus, qvaestiones aliqvot de jure naturae et gentium complectens* (Aboae 1694).

[3] Michael Wexionius, *Politica praecepta* (Aboae 1647; disp. VIII: *De legibus et judiciis*). Second edition (the author was ennobled in 1650) under the name Michael GyllenStålpe, *Politica* (Aboae 1657; disp. XII: *De legibus earumque interpretatione*). Samuel Gyldenstålpe's *De jure publico. Tractatus generalis, II: Disputatio politica de legibus* (Aboae 1673) may well be a lecture text by Samuel Gyldenstålpe.

[4] E.g. Theodor Reinkingk, *Tractatus de regimine seculari et ecclesiastico*

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of unequal scholarly value, but they all have one thing in common: they do not represent serious research into the theme *de legibus*. They give us in concentrated form general information about the prevailing method of thinking in continental European universities. Any systematic presentation of politics written in the 17th century necessarily contained, so it seems, a chapter *De legibus*.

Some of the dissertations published in Finland are very good indeed. Among the best are those written by Wisius and by Mill-Berg. We know that Wisius,[5] after he had presented his dissertation *De legibus* in Finland, published other dissertations in Germany, and obtained a doctor's degree at the University of Jena in 1656. He later refused the post of *professor iuris* at the University of Dorpat. Mill-Berg, a student of Swedish origin, after publishing his excellent dissertation in Finland, worked in Sweden as a schoolmaster and later as a clergyman. He never became a university teacher. His dissertation *De legibus in genere* was written under the guidance of the gifted Finnish-born Professor Wanochius. We can safely imagine that pupil and teacher had many interesting discussions.

A dissertation might be written by the professor, by the student, or by both together. A fourth, fraudulent, possibility existed: the text of the dissertation could be written by a third party.[6] To find out the identity of the real author can be very difficult. Even if the student is mentioned as the author on the title page, in a dedication or in a congratulation, there is always the possibility that the teacher did the lion's share of the work, but gave the honour to his pupil. A student who wrote a dissertation may also have drawn heavily on those of the teacher's lectures which he had attended.[7] We know, too, that a professor in 17th- and 18th-century Finland was morally and legally responsible for the contents of a dissertation written under his guidance (*praesidium*). A dissertation ostensibly written by a student is by no means necessarily so straightforward a production as it

(Basileae 1622); H. Arnisaeus, *Doctrina politica in genuinam methodum quae est Aristotelis, reducta* (Lipsiae 1623); M. F. Wendelinus, *Institutionum politicarum libri III* (Francofurti 1638); G. Schoenborner, *Politicarum libri septem* (Amsterodami 1642); Christianus Liebenthal, *Collegium politicum* (Marpurgi 1644); M. Z. Boxhornius, *Institutionum politicarum libri duo* (Lipsiae 1665); J. H. Boecler, *Institutiones politicae* (Argentorati 1688). The editions mentioned are those used by the author of this article. In quotations by 17th-century authors the edition is never mentioned.

[5] His father was mayor of Turku/Aboa.

[6] At least one such case occurred in Finland in the 18th century.

[7] A remark by Professor Matti Sainio.

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appears to be. We can presume that the student-author generally tried hard to present the prevailing European doctrine conscientiously and, just as today, avoided the risk of too personal an interpretation. Thus dissertations written by students can yield a good deal of information about the prevailing European intellectual atmosphere.

The comprehensive systematic lectures on politics (*Politica*, 1657) by the *politices et historiarum professor* Michael Wexionius contained a section on the compulsory topic, *De legibus*. Wexionius was not a lawyer, and presumably had no personal experience of the way in which the machinery of the law worked. But he was a very learned and reasonably clearheaded teacher, who transmitted to his students the prevailing European philosophical doctrine. The content of his lectures was very similar to the content of prevailing European textbooks. His son Samuel Gyldenstålpe[8] was also the *politices et historiarum professor* at the Academia Aboënsis. His *Disputatio politica de legibus* tried to analyse the same theme in greater detail than did his father's work, and the discussion of *jus naturae* (pp. 71–127) is thorough. Michael Wexionius had deliberately rejected the logic of neoscholasticism, but Samuel Gyldenstålpe accepted and employed this logic throughout. For a modern reader this is the most interesting aspect of his *Disputatio* (see especially pp. 103–22). From an intellectual point of view, however, Samuel Gyldenstålpe is not very impressive, although he gives many details not contained in the lectures of his father. Michael Wexionius cites his European literary sources with care. Samuel Gyldenstålpe, although heavily dependent on the European scholarly tradition, gives only a few hints of the literature used. But the Bible is quoted continually, much more than by Michael Wexionius.

The special vocation of theologians in fundamental questions concerning law can partly be explained by the fact that they were experts on the *lex Dei* (contained in the Old and New Testaments). Martinus Chemnitius, e.g., gives in his *Loci theologici* (1610–1623) an impressive (Lutheran) treatment of the Decalogue, including discussions on laws in general.[9] It is

[8] After Michael Wexionius had been ennobled in 1650, the new family name was not written in a uniform way. We find, e.g., GyllenStålpe, Gyldenstålpe, Gyllenstolpe, Gyldenstolpe. The form Gyldenstolpe is used for Michael Wexionius in Professor J. Vallinkoski's bibliography *Die Dissertationen der alten Universität Turku (Academia Aboënsis) 1642–1828* (Helsinki 1962–66).

[9] See, e.g., the section *De Lege Dei*, ch. II: *De definitione legis*; ch.

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understandable that theologians, as experts on *lex Dei*, held the opinion that they also had a profound knowledge of secular law, for the validity of secular law was ultimately derived from the validity of divine law. Philipp Melanchton includes in *Loci praecipui theologici* (1559) a section *De Magistratibus civilibus* where he treats questions of legal and political philosophy.[1] In the *Loci theologici* (1657) of the famous Lutheran theologian Johannes Gerhard, we find a section on secular laws, *De Legibus politicis.*[2]

But leading European theologians did not only include discussions on legal philosophy in their systematic treatises on theology. They also wrote special treatises on law. Perhaps the most acute and thorough systematic treatise on law published in the seventeenth century is the *Tractatus de legibus ac Deo legislatore* by the Spanish Jesuit Francisco Suárez.[3] This author is cited by Finnish authors of the 17th century, but we cannot know whether their acquaintance with his works is firsthand or not. Another Spanish Jesuit who also belonged to the army of the Catholic Counter-Reformation is Gabriel Vázquez, the contemporary and rival of Suárez. He treated the subject *De legibus* in the *Commentariorum, ac disputationum in Priman Secundae S. Thomae, Tomus secundus.*[4] Vázquez, too, is cited by Finnish authors. It is a pity that this high-level commentary on the legal philosophy of St Thomas Aquinas is fragmentary. Many parts of St Thomas's text are not commented on at all.

It seems that there is not a single *Tractatus de legibus* of the epoch written by a Protestant author that from the intellectual point of view can compare with the work of the great Spaniards Suárez and Vázquez.[5] Of especial interest are

III: *De perfecta obedientia*; ch. IV: *De divisione legum*; ch. V: *De abrogatione legis.*

[1] Compare also his *Definitiones multarum appellationum, quarum in Ecclesia usus est* (1552/53). *Oratio de legibus* (1523/25; 1550); *De dignitate legum oratio* (1538; 1543); *Oratio de dignitate doctrinae legum et iurisconsultorum* (1553); *Oratio de dignitate studii iuris* (1556). Guido Kisch, *Melanchthons Rechts- und Soziallehre* (Berlin 1967), Anhang.

[2] See also *De magistratu politico.*

[3] First edition in Coimbra 1612. We have used the edition of 1613 (Antverpiae, apud Ioannem Keerbergium).

[4] We have used the edition of 1606 (Ingolstadii, ex officina typographica Ederiana). Vázquez died in 1604.

[5] On Suárez, see Reijo Wilenius, *The Social and Political Theory of Francisco Suárez (Acta Philosophica Fennica* XV, Helsinki 1963, pp. 34–74). On Vázquez, see José M. Galparsoro Zurutuza, *Die vernunftbegabte Natur, Norm des Sittlichen und Grund der Sollensanforderung. Systematische Untersuchung*

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these scholars' prefaces to *De legibus*. Here they give personal views on the nature of legal philosophy and of its relation to theology.[6]

Suárez and Vázquez are interesting from a Finnish point of view, for their model in analysing the theme *De legibus*, decisively influenced by St Thomas Aquinas, is much the same as we find in Finnish dissertations and systematic lectures of the 17th century. There are differences, of course, but mainly on points where the Catholic and Protestant religious idelogies differ.[7] On other points, the great medieval European tradition strongly influenced Protestants and Catholics alike. Kempe and Vallinus, in their *Dissertatio politica de legibus*, thesis III, give the contents of this study *expressis verbis*: "Explicato Nomine et supposito dari legem ... *Primo* de definitione et divisione legis generali, *Deinde* de lege Naturae et *demum* de Lege humana, ejusdem sanctione et variis divisionibus breviter est agendum." (Compare with the contents of Suárez and Meisner).

The Lutheran theologian and moral philosopher Malthasar Meisner, in his systematic treatise *Dissertatio de legibus*[8] (an acute and concentrated book, much quoted by Finnish writers), quotes Catholic authors repeatedly and mostly with approval. On the title page by Meisner we read: "Dissertatio de legibus, in quatuor libellos distributa, quorum primus agit de Lege in genere. Secundus de Lege aeterna. Tertius de Lege naturae. Quartus de Legibus humanis, tum Politicis, tum Ecclesiasticis." The structure of Suárez's *Tractatus de legibus ac Deo legislatore* is: I. De natura legis in communi, de eiusque causis, et effectibus; II. De Lege aeterna, naturali, et iure gentium; III. De Lege positiva humana secundum se, et prout in pura hominis natura

der Naturrechtslehre Gabriel Vázquez's (Bonn 1972), pp. 60–138. On the differences between Suárez and Vázques, see *op. cit.*, pp. 172–93.

[6] *Suárez:* "... considerando ... omnem legislatorem a Deo deriuari, omniumque legum auctoritatem in eum esse ultimo refundendam. -- Theologia ... sub altiori lumine de legibus tractat." *Vázquez*: "... Theologus non solum naturam, et vim legis humanae ciuilis, sed etiam legis Ecclesiasticae, et Pontificiae consideret, habet quidem multa principia cum Philosopho morali communia. . .".

[7] Such as relations between monarch and church, the nature of ecclesiastical law, mortal and venial sins—On *lex humana* and *peccatum mortale*, see Vázquez, *Commentariorum.. Tomus secundus*, Disp. 158.

[8] We have used the edition of 1632 (Wittebergae). Meisner, who had been teaching moral philosophy (see *Epistola dedicatoria*) was later on Professor of Theology at the University of Wittenberg. He died in 1626. R. Cumberland's strongly anti-Hobbesian *De legibus naturae disputatio philosophica* (1672) is quoted only once by a Finnish author.

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spectari potest, quae lex etiam Ciuilis dicitur; IV. De Lege positiva Canonica; V. De varietate legum humanarum, et praesertim de poenalibus, et odiosis; VI. De Interpretatione, mutatione, et cessatione legum humanarum; VII. De Lege non scripta, quae Consuetudo appellatur; VIII. De Lege humana fauorabili, seu de Privilegis; IX. De Lege Divina positiva veteri [Old Testament: Decalogue]; X. De Lege noua Diuina [New Testament].

The similarity in contents on fundamental points is evident. It is interesting to note how extensively the theologian Suárez, whose *Tractatus* of over 930 folio pages is written with close reference to St Thomas Aquinas, treats the law of the state (*lex civilis, leges humanarum*). The Finnish authors of the 17th century, when they treat the theme *De legibus*, concentrate on the law of the state,[9] but none the less they give prominence to the theological outlook. For them, all kinds of law derive from God, either immediately (*lex aeterna* and *lex Dei*) or mediately (*lex politica*).[1] The obligatory character of law is explained through its dependence on God. The predominantly religious outlook of legal philosophy, Protestant and Catholic, in the 17th century makes a thorough analysis of the postulates and deductions of that philosophy highly fascinating for us who are living in an altogether different spiritual and intellectual atmosphere. Daniel Mill-Berg, in *Sectio III* of his dissertation *De legibus in genere*, gives a thorough analysis of the concept *obligatio*. He discusses much the same problems as Suárez in *Liber III* of *Tractatus de legibus ac Deo legislatore* and Vázquez in *Disputatio 160* and *Disputatio 161* of *Commentariorum . . . Tomus secundus (Tractatus de legibus)*.

None of the Finnish studies on the theme *De legibus* was published by the law faculty of the *Academia Aboënsis*. They

[9] Michael Wexionius-Gyldenstolpe, *Politica* (1657), p. 388: "Humana lex, de qua hic primario agendum . . ."; Michael Wisius, *Disputatio politica de legibus* (1649), thesis XIV: "In sanciendis Legibus humanis, de quibus nobis praecipue hic agendum . . ."; A. Wanochius and A. Thuronius, *Dissertatio philosophica, indolem et naturam legum, praecipue civilium, exponens* (1635).

[1] M. Wexionius-Gyldenstolpe, *op. cit.*, pp. 387–9: "Lex est decretum naturae vel magistratus ad vitam feliciter degendam. Hinc patet Legem, ex efficiente causa, aliam *divinam*, aliam *humanam* esse. Illa vel ab ipso Deo *naturae* insculpta est; inde *naturae* lex dicta . . . Vel peculiari patefactione promulgata est lex divina . . . (Humana lex:) Dilucida satis haec Horneij, Lex est decretum factum et promulgatum, ab eo qui publicam authoritatem in civitate habet, praescribens quodpiam a subditis servandum, quod ad reip. tranquillitatem et utilitatem facere probabiliter putatur."

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were issued from the *facultas philosophica* under headings such as *disputatio politica* or *dissertatio philosophica*. Their outlook was not the technical outlook of a lawyer. Law was viewed from a distance, from "above". The characteristics and the effects of good laws were accordingly stressed. Wexionius–Gyldenstålpe (*Politica,* 1657, pp. 391–2) emphasizes that laws of the state should be just, beneficial and possible. They must provide for things to come, not for things past, and for things that occur frequently. The laws must be sensible (*lex animata est, i.e. firma ratione nitatur* . . .). Ancient laws may not be lightly amended. The number of laws should not be too great. The laws must be short. Good laws favour peace and concord, they hinder violence and oppression. They promote the good of citizens without causing harm to anybody. They oblige everyone to give obedience and hold citizens to the fulfilment of their duties. We find similar statements by other Finnish authors.[2] The legislator should be pious, honest and wise.[3] Wisdom (*prudentia*) is one of the key concepts of 17th-century political philosophy. The point of departure for law was philosophy (Kempe and Vallinus, thesis XVI).

A study on the topic *De legibus* always had an introduction on the necessity and value of law,[4] and here the authors of antiquity (especially Plato and Cicero) were regularly quoted. All this was not peculiar to Finland: the pattern was taken from other European textbooks. The citing of ancient authors was not an empty embellishment. In the 17th century the classical cultural tradition was still a living reality in Northern universities.

In the first thesis,[5] a study of *De legibus* regularly dis-

[2] E.g. by Wisius (theses XIV, XV), Kempe and Vallinus (th. XX–XXIV), Wanochius and Thuronius (th. XIII), Kempe and Wichmann (th. IV–VIII). In Kempe and Vallinus, thesis XXIII, the aim of law is divided into *finis intermedius* and *finis ultimus*. The mediate aim is the furthering of virtue and honesty, and the strengthening of justice and fairness among citizens. The ultimate aim is the welfare of the state or the common weal. And the dissertation adds: "Quaecunque igitur lex ad hunc scopum non collineat, ea mala est et legis nomine indigna. Dom. Soto lib. I de Just.q.5.Art.3." One of the numerous quotations made (with approval) from Catholic authors in 17th-century Finland.

[3] Kempe and Vallinus; thesis XIV: *pietas*; thesis XV: *vitae integritas*; XVI: *prudentia*. Thesis XVI: *natura et genius populi*.

[4] According to Kempe and Vallinus. *Prooemium*, the laws are the *animus, spiritus vitalis, oculus, nervus, fundamentum reipublicae*.

[5] In conformity with an established tradition, a dissertation was divided into theses. A comprehensive work was often, at least formally, divided into several dissertations.

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cussed the origin of the word *lex*. The *etymologia* of the word was then followed by its *homonymia* and *synonymia*.[6]

The definitions of law in general and of different kinds of law are dealt with by the authors at the Academia Aboënsis according to generally accepted scholarly rules, and their technique in analysing the four *causes (causa efficiens, materialis, formalis, finalis)* also follows an established Aristotelian pattern. The *causa efficiens prima et principalis* is God (Wisius, thesis V). The competence to legislate is also discussed by the authors, but their viewpoint is philosophical rather than legal. In Kempe and Vallinus, thesis XIII, we read that the legislators of a state are those who retain the supreme power, who are capable not only of making law, but also of implementing it. In a monarchy this competence is vested in the monarch: "... inter prima Majestatis jura politica sit, leges universis in imperio dare, condere et abrogare ...". But the monarch does not legislate alone: he takes the advice of sagacious men. We are to distinguish between *legem ferre, de lege ferenda cogitare* and *ius dicere seu legem facto applicare* (legislation, deliberations *de lege ferenda,* application of law). The development of Swedish constitutional law in the direction of absolutism can be followed in successive Finnish dissertations.

The European model of a study *De legibus* also treated briefly the problem of interpretation, and distinguished between *interpretatio authentica, usualis* and *doctrinalis*.[7] In this connection the authors often discuss the *aequitas* (e.g. Wisius, theses XXIV; Wanochius and Thuronius, thesis XIV), a concept analysed by Aristotle but also with important medieval traditions (canon law). It is worth comparing the Finnish authors on this point with Vázquez *(Comm., disp.* 176) and with Suárez (*Tractatus*, II, *caput* 16, and VI, *caput* 7).

The prevailing religious ideology of the epoch strongly influenced historical speculations about the origins of law. A

[6] Samuel Gyldenstålpe, *Tractatus generalis de jure publico (Disputatio politica de jure publico),* I (Aboae 1673), thesis 10: "Vocem quoad suam originem, ambiguitatem et cognitionem ut in exercitiis Academicis usus invaluit, pro re nata, supra strictim perseqvutus fui ...". See also Vázquez, *Commentariorum.. Tomus secundus,* Disputatio 150, 1.

[7] Michael Wexionius-Gyldenstolpe, *Politica,* pp. 396–7: "Authentica interpretatio est quae ipsius legislatoris fit authoritate, vel ejusdem vicarij. -- Usualis interpretatio ex consvetudine, ipso usu et legum observantia desumitur. -- Doctrinalis legum interpretatio per jurisperitos fit, atque ex ipsa arte et doctrina juris eruitur."

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Lilliegreen embellished his dissertation with this picture, showing Adam, Eve, and some animals in paradise.

politices et historiarum professor in Finland had to lecture on Biblical and on secular history. Biblical history was probably considered the more important of the two. There is a large *Dissertatio historico-politica de republica e suis fundamentis atque fontibus eruenda,*[8] which contains, among other things, a discussion about the laws of humanity before the fall of man. To us this detailed argumentation may seem very strange. But we ought not to forget the prevailing religious-historical ideology of the epoch. Lilliegreen embellishes his dissertation with a picture showing Adam, Eve and some ani-

[8] Aboae 1689. The *praeses* was Professor Daniel Achrelius, the *respondens* Simon Lilliegreen. The author was probably Lilliegreen. Achrelius, who was *eloquentiae professor,* had some years earlier published a highly imaginative *magnum opus* entitled *Contemplationes mundi libri tres* (Aboae 1682). In its preface Achrelius, who was also a well-known poet, fiercely attacked the dominant neo-scholastic method.

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mals in paradise. A reader of our time may perhaps think that the picture was included in the dissertation for fun, but this was hardly the case! The picture is meant to show, without lengthy argumentation, the happy social life existing in paradise.

We have presented some selected problems that occurred in 17th-century studies on the theme *De legibus* in Finland. Other European themes, too, were treated by authors in Finland in this period. We will briefly mention some of them.

One such theme is *De judiciis*, a study of philosophical and legal principles concerning legal procedure. This theme has natural connections with the theme *De legibus*. On the European continent there were in the 16th and 17th centuries numerous studies on the topic *De judiciis*. The authors move in an area between legal philosophy, politics, constitutional law and the law of legal procedure. Some of them had a good firsthand knowledge of the working legal machinery. But the same theme was also treated in contemporary European textbooks of politics, and here the outlook was mainly philosophical.

The concept *jurisdictio* held a key position in medieval political and legal philosophy (e.g. in texts written by Bartolus), and it can hardly be understood if we take modern conceptions as our starting point.

Among studies published in 17th-century Finland the following may be mentioned: the main doctoral thesis of Johannes Gartzius[1] *Sectiones inaugurales de judiciis* (Aboae 1650; at the Law Faculty); the two introductory sections of an unfinished textbook, *Processus judiciarius*, by the same author, entitled *De judiciis in genere* and *De personis judicium constituentibus earumque jurisdictione* (both Aboae 1652); the *Disputatio juridica de jurisdictione* (Aboae 1676; at the law faculty) by Petrus Laurbecchius and Johannes Gyllenkrok;[2] and *Dissertatio academica de causis corruptae justitiae* (Aboae 1683) by Daniel Achrelius and Abraham Falander.[3]

Michael Wexionius-Gyldenstolpe treated the theme *De judiciis* in his *Politica* (Aboae 1657), *disputatio* XIII. The outlook is philosophical. Without energetic and accurate applica-

[1] A young, gifted Swedish-born scholar, whose university career was wrecked. By Michael Wexionius-Gyldenstolpe?

[2] Who was the author? The versatile Professor Laurbecchius or his pupil?

[3] Author Falander: the dedication.

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tion, the laws of the state are useless: "Pro felici itaque gubernatione Deus opt. max: ante omnia invocandus, sedulaque opera danda, ut secundum leges et sancta jura justitia administretur." He quotes the expression *Rex, viva lex*, and gives a definition of *iurisdictio* which stresses its character of political power: "Iurisdictio autem [est] potestas politica, de negocio civili vel criminali aliquid statuendi. Vultej. I.R.l.l.c.12. n.l. et post eum Shon.pol.1.3.c.19." The author mentions that Schoenborner in his *Politicarum libri septem* stresses that jurisdiction must be consistent (*constantia*), and must apply a just sternness (*justam severitatem*), and a moderate leniency (*moderatam lenitatem*). The concept *judicium* is defined: "Judicium est legitima controversiae judicialis inter actorem et reum, apud competentem judicem disceptatio et dijudicatio ut publica authoritate lites sopiantur: Wesemb.parat:in Cod.tit:de judic." The judge must fear God, know the laws and the circumstances of the state, be prudent and brave (*cordatus et strenuus*). He must, further, be truthful and seek the truth (*verax et veritatis amans*). These are not the technical considerations of a lawyer but rather the meditations of a philosopher.

The theme *De justitia* was discussed extensively by numerous authors in 17th-century Finland, in systematic treatises of moral philosophy and in dissertations. A delimitation between moral and legal philosophy was not aimed at. The starting point was regularly sought in the *Nicomachean Ethics* of Aristotle, Book Five. The best analysis in these matters was given by Professor Andreas Wanochius in his great work *Disquisitiones practicae* (Aboae 1683–1691), in the dissertations XXXI–XXXIV (pp. 961–1088). Wanochius was a keen-witted, cultivated representative of Protestant neoscholasticism. In his *magnum opus* this philosophical current is often presented in an intellectually stimulating way. I am inclined to compare him, at his best, to the great Francisco Suárez. *Disquisitiones practicae* contains a wealth of discussion concerning law.

The best book Michael Wexionius-Gyldenstolpe ever wrote was his *Collegium ethicum* (Aboae 1649). In this work of systematic moral philosophy he also discussed the problem of *justitia*. As his philosophical conception was strongly influenced by the logic of Petrus Ramus, the methodological approach in *Collegium ethicum* is very different from that represented by his later colleague Wanochius. Numerous dis-

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sertations on the theme *justitia* were issued by the *Academia Aboënsis* (in the philosophical faculty and in the law faculty) under the supervision (*praesidium*) of Wexionius-Gyldenstolpe.[4]

All of the numerous studies on the theme *De justitia*, published in 17th-century Finland (treatises of moral philosophy, dissertations) contain discussions concerning the legal machinery of the state (especially in regard to criminal law as administered by the courts). But here the different authors do not stress the same things or see them in the same manner. A comparison between these authors reveals how richly coloured is the map of 17th-century legal philosophy.[5]

Numerous technically-orientated dissertations with practical intentions were published by the law faculty of the *Academia Aboënsis* in the 17th century, and there were textbooks too. Every one of the authors had, like authors in our day, his personal view on the aims and the methods of a technically-orientated practical research, *jurisprudentia*. Each such publication thus contained an implicit legal philosophy.[6] This interesting kind of legal philosophy should not be neglected: it shows the intellectual breadth and intellectual limitations of different personalities.

[4] Johannes Gartzius, too, published a textbook of moral philosophy entitled *Fasciculus qui ethicae praecipua praecepta et nobiliores plerasque controversias brevibus suis cum explicationibus, continet* (Aboae 1653). The textbook of Professor Axel Kempe, *Philosophia moralis sive ethica* (Aboae 1662), also contains a section on *justitia* (disp. III: *De pietate in genere, et justitia in specie*).

[5] A well-written book on legal and moral values: Erik Falander, *Dissertatio philosophica, disquirens utrum et quomodo polygamia possit dici juri naturali adversa?* (Aboae 1682). See Otto Brusiin, "Professor Falander och månggiftet", in *Festskrift til Carl Jacob Arnholm*, Oslo 1969.

[6] E.g. the textbook of Michael Wexionius, *Brevis eisagoge ad studium juris civilis Sveco-Romani, cum collatione utriusque* (Aboae 1650), with its highly interesting and very exhaustive philosophical introduction. On Wexionius-Gyldenstolpe, see Otto Brusiin, "Wexionius-Studien" I (Grundsätzliches zur Rechtswissenschaft) and "Wexionius-Studien" II (Fasciculus juridicus), both in *Annales Universitatis Turkuensis* B: I 1968, II 1971 (numbers 109, 121). Otto Brusiin, "Zur Ideengeschichte der Rechtstheorie" (*Jahrbuch für internationales Recht* 1962); Otto Brusiin, "Zur Idee der Disputation" in *Festschrift für Sven Krohn*, Turku 1973).

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