THE REFORMATIONAL LEGACY WITHIN POLITICAL THEORY

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Abstract

Political theory in the West continued to suffer from the disturbing one-sidedness of atomistic (individualistic) and holistic (universalistic) orientations precluding a proper understanding of the nature of a differentiated society and the place of the state as a public legal institution within it. In this contribution attention is asked for the theoretical legacy within which Prof. Daan Wessels pursued his teaching, research and public performances. Traditional theories of the state never succeeded in delimiting the competency of the state because they did not proceed from an understanding of the sphere-sovereignty of the jural aspect of reality that serves as the guiding or qualifying function of the state as a public legal institution, having its foundation within the cultural-historical aspect of reality.

1. INTRODUCTORY REMARK

When someone of the stature of Prof. Daan Wessels retires it is certainly justified to honour him with an appraisal of the theoretical frame of reference with which he worked throughout his academic career. When he started his academic career the discipline was still known as "staatsleer" (literally: state theory). Within the legacy of German and Dutch scholars this was a standard characterisation of theoretical reflection on the nature of the state and its place within human society. Particularly as an effect of developments within the Anglo-Saxon world the designation *staatsleer* eventually was largely replaced by the phrase "political theory".

2. HISTORICAL CONTOURS REGARDING THE NOTION OF THE "STATE"

Purely from a historical perspective this switch entails a broadening of the scope of the discipline, because the term "political" has a wider reach than the term "state". Within Greek culture the *polis* (city state) actually embraced all of society – and both Plato and Aristotle developed views in which the state was supposed to bring humankind to its highest form – perfection, moral goodness. Particularly in the Germanic parts of Europe the medieval era witnissed a unique dual political ordering, with the king on the one hand and the various estates (*Stände*) on the other. As independent bodies the estates throughout opposed the kings or landowners.

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The idea that the monarch and the estate bodies ought to be thought of as a unitary political entity did not match the practical situation, which much rather appeared as a dual or two-fold state in which each part had its own peculiar offices, courts of justice, treasuries, and even their own distinct armies and ambassadors (Jellinek 1966:321).

At the close of the medieval era, after the Roman Catholic church had been elevated to become a supranatural institute of grace, destined to accomplish eternal bliss for its members,[2] the early modern period, since and after the Renaissance, managed to break through this hierarchical ecclesiastically unified culture and, particularly after the Reformation, Western Europe started to experience the slow but definitive differentiation of society.

It was during this process that the term state, which is of a fairly recent origin, started to emerge. The term political is already found within Greek culture – Aristotle‘s work on the state bears the title: *Politica*, while Plato used the term *Politeia*. During the medieval period and the early modern time the Latin term *regnum* conveyed the same meaning. It was as recent as the 16th and 17th centuries that the term state surfaced in different modern languages, in particular in French, English and German.[3] The picture was still quite mixed, for in 1576 Bodin continued to use the word “republic” for the state. Only when different “forms” of the state are at stake he used the word *etat*. Interestingly Shakespeare frequently used the word state (mentioned in the second edition of the Shakespeare lexicon). However, it was actually only during the later part of the 18th century that the word “state” acquired a more general use. In Austria the words “kingdom” and “state” were used alongside each other in 1804.

3. DIVERGING THEORETICAL PERSPECTIVES

However, the moment attention is given to the history of theoretical reflection on the nature of a differentiated society and what eventually became known as the state, it appears that the two mutually contradictory orientations dominating the scene since ancient Greece up to the present never succeeded in giving a satisfactory account of the nature of the state and its place within a differentiated society.

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2 The initial Roman idea of a holy empire (*sacrum imperium*) was continued in the Byzantine Empire, and since Charlemagne (800) and his successors, it returned in the shape of the idea of the *Corpus Christianum*, as the perfect society (*societas perfecta*). In all of this, medieval society persisted in a relatively undifferentiated state, further enhanced by the rise of the feudal system. In the process of conquering many countries, the Frankish king laid claim to unoccupied land and then started to hand it out to servants and the nobility as a reward for their support during the wars.

3 Concerning the emergence of the word state, see Jellinek 1966:132-135.

Representative of the one theoretical stance are the initial social contract theories of the early modern era – commencing from an atomistic (individualistic) orientation with Pufendorff, Thomasius and Locke. The political philosophy of John Locke is based upon his atomistic contract theory[4] and the ideas of the classical school in economics (Adam Smith and his followers) were both in the grip of the natural science ideal that originated during and after the Renaissance and blossomed in the idea that the rational autonomy and freedom of the human person will be accomplished through the instrument of the rising modern natural sciences, in particular mathematics and physics. The influence of this science ideal is clear from Viner's characterisation: "The claim to fame of Smith in the first place therefore appears to have a foundation, because he has applied the conception of a uniform, natural order just as comprehensively to the world of economics; an ordering that functions on the basis of a natural law and, if left to its own functioning, will be beneficial to humankind" (Viner 1956:92).

Rousseau was the exception, because his contract theory started in an atomistic way, but then allows the contract to produce a moral-collective whole in a typical universalistic fashion (the "body politic", the *volonté générale*). With law turned into an expression of the general will manifesting itself only within the state, Rousseau – in spite of his apparent intention to secure individual and societal freedoms – succumbed to a totalitarian and absolutist view in which those who are not conforming to the general will (which is supposed to be their own will – since freedom is defined as obedience to a law that we have prescribed to ourselves) will be "forced to be free" "*... ce qui ne signifie autre chose sinon qu'on le forcera à être libre*" (Rousseau 1975:246).

Rousseau's notion of the "general will" anticipated the romantic movement and the views of Schelling, Fichte and Hegel, who further explored a holistic (universalistic) understanding of human society. However, the newly emerging ideology of the community actually revived the mixed Greek-Medieval tradition. The synthesis of Greek and biblical motives is particularly clear in the thought of Augustine. In line with the legacy of platonic ideas Augustine positioned the eternal ideal forms (Plato's ideas) in the Divine Mind. Prior to creation these ideas were supposed to be present within the Divine Mind (*divina intelligentia – De diversis questionibus*, 83,46). In his famous work, *Civitas Dei* (*The City of God* – see Augustine 1965), Augustine does observe the biblical distinction between the kingdom of God and the kingdom of darkness, but owing to the neo-Platonic influence upon his thought he gives it an unbiblical (dualistic) twist. He interprets the earthly world as the temporal and changeful which as such already displays an inherent defect in relation to God. The earthly state is understood in the sense of

4 His atomistic orientation is reflected in the following significant phrase: "For all being kings as much as he, every man his equal" (see Locke 1690:179, chapter IX § 123).

the classical Greek totalitarian state – thus continuing the holistic (universalistic) orientation of Greek political thinking. According to Augustine, both are related and mixed within this dispensation. Yet, the earthly state is merely a copy of the city of God – their relationship is conceived in accordance with the platonic scheme of ideal form and its copy. This copy is inherently bad – explaining why it is also designated as *Babylon* and why its monarch is called *Diabolus*. It should also be kept in mind that the City of God does not coincide with the temporal church institution, for as sacramental institute of grace the *Corpus Christi* (Body of Christ) is elevated above all societal institutions and is intended to encompass the entire life of the Christian. The fact that Augustine confused creation and fall not only resulted in this misrepresentation of the antithesis between sin and redemption by focusing the latter upon two totalitarian spheres of life (the *City of Babylon* versus the *City of God*), but also exerted a significant influence upon the subsequent struggle between church and state during the later Middle Ages.

In addition, by viewing the church as a perfect society superior to the state, Augustine laid the foundation for the Scholastic ground motive of nature and grace. This motive was brought to a unique synthesis in the thoughts of Thomas Aquinas (1225-1274).

The account given by Thomas Aquinas of medieval society flows from an attempt to synthesise Aristotle‘s philosophy with biblical Christianity. He accepted Aristotle’s dual teleological order with its hierarchy of substantial forms arranged in an order of lower and higher, designated as the *lex naturalis* (natural law) and related to the transcendent *lex aeterna* (eternal law) as contained within the Divine Intellect. The important point for us is that the state (both the polis and the Holy Roman Empire) is viewed in line with the conception of Aristotle, as the all-encompassing, self-sufficient community (*societas perfecta*). The provision is that Thomas Aquinas applies this only to the natural terrain as we noted above. As the highest community within the domain of nature the state embraces all other temporal relationships. These lower communities do possess a relative autonomy, subsumed under what is known as the principle of subsidiarity. However, this principle does not eliminate the universalistic starting-point operative in St. Thomas’s view of society, since the so-called relative autonomy of these lower communities remains connected to the nature of the state as parts of a larger whole. What is part of a whole shares in the same structural principle as the whole. As a result, the view of St. Thomas does not allow for the acknowledgment of societal collectivities that are structurally different from the political community. In line with the conception of Aristotle the family therefore for Thomas also remains the germ-cell of society. The hierarchical ordering of these communities coheres with each other according to the mutual relationship of a means to an end, of matter to form. In this way the Greek

form-matter motive was transformed and absorbed within the Scholastic ground motive of nature and grace.

4. THE LEGACY OF REFORMATIONAL PHILOSOPHY

As we have noted, the view found in Augustine's *Civitas Dei* represents the outcome of a synthesis between biblical and neo-Platonic ideas. In the case of Thomas Aquinas the synthesis partner from Greek philosophy is Aristotle. Although the Reformation movement of the 16th century introduced a break with the Greek-Thomistic tradition in various respects, it still continued elements of this synthesis tradition in many respects (see Van der Walt 2009 and 2009a and Strauss 2009a). Besides, it had to compete with the increasing influence of the late-Scholastic nominalistic movement, which, since the end of the 13th and the beginning of the 14th centuries, started to oppose the preference Thomas Aquinas had for the primacy of the intellect by opting for the primacy of the will (Ockham). Opposed to the realistic conception of truth as the correspondence of thought and being (*adequatio intellectus et rei*), nominalism introduces a criterion applicable only to the thoughts present in the human mind – truth concerns the compatibility of concepts. In this way Ockham contradicts the realistic view of reality, including its appraisal of the church as a supernatural (universalistic) institute of grace – communal forms within human society are simply universalia representing a mere collection of truly existing individuals. Consequently, the reality of the church is reduced to a mere collection of believers (*congregatio fidelium*).[5]

At the time of the Reformation the relatively undifferentiated condition of human society had the effect that the emerging state-institution did not, as yet, have had the monopoly over the "swordpower" on a delimited territory. When Calvin, in the third volume of his *Instituion*, wrote on the right to resist with reference to the civil government, he took refuge to the then still existing estates (recall the above-mentioned *Stände*), "minor governments" with their own original "sword-power". Calvin's biblical starting-point, however, prevents him from succumbing to the nominalistic conception of arbitrariness. When it comes to resistance he maintains the idea of legitimacy and the necessity to operate within positive law – as pointed out by Bohatec (1961:247) who also refers to the *populares magistrates* (Bohatec 1961:81). Subsequently also the "Monarchomachen" (namely Beza, Hotman, Duplessis-Mornay and Languet) in their reflections on the right to resist, referred to the *magistrates* (cf. Dennert 1968:LVIII e.v.). After the slaugther of the

5 Dooyeweerd remarks: "Ockham places all the emphasis on the congregation of individual believers as a constituent part of the church and draws consequences from it that not only attack papal supremacy but call the entire hierarchy of the church in question" (Dooyeweerd 2008:59).

Saint Bartholomew night (August 1572) Beza in particular called upon the "minor magistrates" to protect the legal order of the estates (Von Friedeburg 2004:717).

Because the Protestant Reformation did not succeed in developing a nuanced theoretical understanding of reality informed by its biblical starting-point, it should not be surprising that the universalist Aristotelian-Thomastic views continued to dominate Christian thinking on society.

5. ON THE WAY TO SPHERE SOVEREIGNTY

It is only when the untenable bias of an atomistic or holistic approach to society is rejected, that it becomes possible to appreciate diverse societal institutions and collectivities in terms of their own intrinsic natures; in terms of their own distinct spheres of operation. We have noted that this atomist-holist (individualist-universalist) dilemma held sway for the larger part of the past 2000 years.

Perhaps the first scholar who effectively questioned the whole-parts scheme inherent in universalist theories of society was the German legal scholar, Johannes Althusius. He realised that not every societal entity (such as families, churches, etc.) is part of the state – true parts are solely provinces and municipalities (see Althusius 1603:16). This insight was accompanied by a clear understanding of the inner structural principles governing distinct societal collectivities – Althusius holds that there are proper laws (*leges propriae*), according to which "particular associations are ruled", required by their nature (Althusius as translated in Carney 1965:16). Two 19th century Dutch politicians explored this idea further by designating it as sphere sovereignty, namely Groen van Prinsterer and Abraham Kuyper. Within the context of contemporary political theory, it reminds immediately of Walzer's "spheres of justice" (see Kuyper 1880 and Walzer 1983).

The revival of Parsons's structural-functional approach to society in the neofunctionalism of Alexander gave birth to a more recent but equally significant emphasis on the "inner laws" of differentiated societal spheres of life. Münch in particular holds that the starting point of the theoretical debate of the 1980s is found in "Weber's theory of the rationalisation of modern society into spheres that are guided to an increasing extent by their inner laws" (Münch 1990:442). In particular, he mentions the "political system" with "its inner laws" (Münch 1990:444). Similar points of connection for the acknowledgement of the sphere sovereignty of social entities are present in the political philosophy of John Rawls. In spite of the fact that his thoughts are torn apart by atomistic and holistic tendencies, he does succeed in transcending this opposition when he shows a sensitivity for different principles applicable to distinct kinds of subjects: "But it is the distinct purposes and roles of the parts of the social structure, and how they fit together, that explains there being different principles for distinct kinds of subjects" (Rawls 1996:262). When he

continues on the same page by mentioning the distinctive autonomy of elements in society, where principles within their own sphere fit their peculiar nature, his entire mode of formulation approximates the idea of sphere sovereignty. Rawls says: "Indeed, it seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that, within some sphere, they act from their own principles designed to fit their peculiar nature."

6. THE CONTRIBUTION OF DOOYEWEERD

Dooyeweerd grew up in a house familiar with the ideas of the influential Dutch statesman and theologian, Abraham Kuyper, who founded the Free University of Amsterdam in 1880, with an oration discussing sphere sovereignty. In this presentation, Kuyper made a plea for acknowledging the inner sphere of academic pursuits free from interference by the state and the church. He applied the principle of sphere sovereignty to human society – though not in a consistent way – and he also emphasised the diversity of laws found within creation. Kuyper had a significant understanding of the fact that all human beings have a faith function and that the human selfhood, the heart, in terms of the figurative speech of the Near East during Old Testament times, plays a central and directing role in the lives of human beings. This insight was worked out in his view of the Christian world and life view as an encompassing orientation differing in principle not only from the traditional Roman Catholic world and life orientation but also from that of modern humanism.

Unfortunately the theological account of the basic orientation of the Free University soon took refuge in what was called "reformed principles" – largely understood in accordance with the idea that intrinsically scholarly problems and issues could be settled by a direct appeal to the Bible and certain texts within Scriptures. Most of the time the unique historical circumstances of quoted Bible texts evinced such a large historical distance between then and now, that this method lost its dependability. Such a biblicistic or fundamentalistic use of the Bible in scholarship distorts both the Bible and the nature of scholarship. A new approach to Christian scholarship is found in the thoughts of Herman Dooyeweerd.

Dooyeweerd finished his PhD in law in 1917 with a dissertation on the place of the cabinet within Dutch constitutional law. By the early twenties he and his brother-in-law, Hendrik Vollenhoven, arrived at their first rudimentary ideas regarding a radically new understanding of created reality. Dooyeweerd started to work at the Kuyper Foundation in the early twenties on the explicit condition that he be allowed to spend half of his time on the elaboration of this new philosophical view of reality. He immediately established the scholarly journal known as *Antirevolutionaire Staatkunde* and started to publish extensively in it.

His series of articles on *The struggle for a Christian politics* (1924-1926 – see Dooyeweerd 2008) demonstrates to what an extent he involved himself with the history of philosophy in general. But it also contains the emerging articulation of an entirely novel and innovative theoretical view of reality. The development of this new approach benefited from his struggle with the dominant schools of thought within the domain of the science of law, particularly with those of (neo-Kantian) Baden and Marburg. Rudolf Stammler, Gustav Radbruch, Emil Laski and Hans Kelsen were prominent neo-Kantian legal philosophers of the time and their challenge for Dooyeweerd‘s development is mainly found in their unsuccessful attempts to derive the basic concepts of the discipline of law from supposedly purely logical thought forms. Hans Kelsen even conjectured that, disconnected from other disciplines, something like a “pure theory of law” is possible (see Kelsen 1960).

In response to these approaches, Dooyeweerd first elaborated his new philosophical insights within the field of law in order to test their fruitfulness, but soon he started to explore their general philosophical implications.

In his investigation of the basic concepts of the science of law, Dooyeweerd discovered that some of the most basic concepts primarily relate not to things and events (i.e. not to the concrete what of reality), but to the modes of being, i.e. to the ways in which things and events exist and function (i.e. to the how of reality). For example, answering the question “what is this?”, calls for a response in which some concretely existing “thing” such as a chair, is identified. However, once something is pointed out, subsequent questions about this entity relate to its aspectual properties, embedded in questions about the how, about the modes of existence of such an entity: “How many legs does it have?”; “How expensive is it?”; “How comfortable is it?“, and so on. Clearly these last three questions address aspects, functions, or modalities of chairs, respectively the quantitative (how many), the economic (how expensive) and the mode of sensitive feeling (how comfortable). Diemer speaks of an “aspect discipline” (*Aspektediziplin*) and shows an awareness of the multi-aspectual nature of “objects” of everyday life, such as a coin (Münze), which can be something physical-chemical, historical, aesthetic, a means of payment and eventually even a cultic object (see Diemer 1970:219).

Let us explore these new insights of Dooyeweerd further. When a dead person is found, this fact has to be reported to the police. Why? Because the integrity of the human body constitutes a public legal interest protected by the legal order of the state as a public legal institution. The discovery of a dead body is therefore an effect relevant to jural considerations. For example, the first question is: what or who caused this jurally relevant legal effect? Since the discipline of physics also speaks of (physical) causes and effects (causality), one can step back and ask the more fundamental (philosophical) question: is there a difference between jural causation and physical causation?

Consider for example the case of a naturalistic understanding of human actions, where a jural act is defined as a "willed muscle movement". In connection with train signals Dooyeweerd, in an article on jural causality, writes: "The person controlling the signals who disregards the duty to switch the signal from safe to unsafe, causes a dangerous condition on the railway lines through this neglect" (Dooyeweerd 1997a:61).

This person did not move the muscle needed to make the switch and therefore, in terms of the definition of a human action as a "willed muscle movement", did not act. But because of the obligation to switch the signal from safe to unsafe, that person jurally caused the derailment of the train and the damage flowing from it. In other words, both a commission and an omission from a juridical perspective are seen as jural acts! Consequently, the person not "doing" anything in a physical sense is still held responsible (liable) for the accident. This concerns the legal issue of accountability.

Considerations like these opened Dooyeweerd's eyes for a two-fold perspective.

(i) First of all, one has to distinguish between different aspects or functions (modes of being) of events and (natural and social) entities. For example, as we have just seen, the jural aspect differs from the physical aspect, and also from the quantitative aspect, the emotional aspect and the economic aspect, to name a few other facets of reality as well.

(ii) Secondly, these modes are interconnected in a peculiar way, because without such connections, it will be impossible to articulate compound phrases expressing the coherence between different modes, such as evidenced in the expression jural causality briefly discussed above.

The uniqueness of each aspect is captured by referring to its sphere sovereignty. This term was first employed by the 19th century Dutch statesman, Groen van Prinsterer, in his political thought. Kuyper then explored the significance of this principle for human society, and eventually Dooyeweerd applied it to an understanding of reality in three of the four dimensions he distinguished. Furthermore, the interconnectedness between the various aspects, through which every aspect displays moments of coherence with the others, is designated as the principle of sphere universality.

On the basis of his analysis of the various aspects of reality, Dooyeweerd in addition realised that every entity, societal collectivity and concrete process in principle function in a peculiar way within all aspects of reality. This insight entails that the nature of any (natural or societal) entity in principle exceeds the scope of any particular *modal aspect* and therefore also the scope of any academic discipline exploring only one modal perspective.

7. THE MULTI-ASPECTUAL NATURE OF THE STATE

Acknowledging the multi-aspectual nature of the state ultimately indicates the type law for being a state. This type law concerns more than searching for some or other distinctive property or properties of the state.

Since Bodin (1530-1596) entered the scene we have been confronted with his idea of sovereignty as a unique feature of the state. He developed this view in answer to the question of how we should designate the highest authority within society. For this purpose, Bodin introduced the term "sovereignty". He differs from Machiavelli in that he regards the government to be bound to both natural and divine law (cf. Mayer-Tasch 1981:35; Bodin 1981:211). For this reason, he supported the classical principle of natural law: *pacta sunt servanda* (contracts ought to be kept). Moreover, according to Bodin, the sovereign authority and absolute power of the government is clearly seen from the fact that it is entitled to make laws to which the subjects are bound without their consent (Bodin 1981:222). His understanding of sovereign power as "*summa ... legibusque soluta potestas*" reminds us of the view of Occam (1290-1350) regarding the supposed absolute, despotic arbitrariness of God (*postestas Dei absoluta*). Mayer-Tasch characterises this position of Bodin as a choice for the "classical formula of juridical-political absolutism" (Mayer-Tasch 1981:35).

According to Bodin, sovereignty is not only absolute, but also indivisible. As a result, he is convinced that, within its territorial boundaries, the state displays an absolute and original competence to the formation of (statutory) law. Of course this view is connected to the relatively undifferentiated medieval society, dominated by the Roman Catholic Church as supranatural institute of grace. The striking fact about the feudal communities, with their multiple relations of super- and subordination, is that all these forms of organisation are characterised by an absence of a monopoly over governmental swordpower of the government. This makes it clear why Bodin interpreted every original claim to the formation of law as a threat to the idea of the state of a *res publica* – in the sense that it aimed at acquiring original swordpower.

Although the guild system obstructed the realisation of a genuine state organisation, breaking down the artificial hold of power of the Roman Catholic Church after the Renaissance, it led to a process of societal differentiation that was decisive for the emergence of the modern state, because this process generated the distinct legal interests that were eventually bound together within the one public legal order of the state.

The irony is that the intention of Bodin's theory of sovereignty, namely to establish an absolute monarchical power by means of a monopolisation of the swordpower of the government (with its exclusive competence to form positive law), is that such an integration of governmental authority necessarily forms part of

the differentiation of society. He did not realise that this process of differentiation contradicts the idea of such an exclusive competence to the formation of law, because differentiation gives rise to societal collectivities distinct from the state with their own internal spheres of law.

How then are we to understand the idea of sovereignty when it is ascribed to the authority of a state? It should indeed capture the legal competence, embedded in the office of government – a competence enabling the formation of positive law. This legal power represents an analogy of the cultural-historical aspect within the structure of the jural aspect (jural competence), and it embodies the official power of a state government over its citizens (power over persons – an instance of subject-subject relations). In this way, typical principles for being a state are given form, i.e. they are positivised. Moreover, it must be remembered that legal power – representing the cultural-historical analogy on the norm side of the jural aspect – is not the same as the original function of the state within the cultural-historical aspect. The latter is found in the power of the sword.

As a result of the unbreakable coherence between the qualifying jural aspect and the foundational cultural-historical aspect of the state, both functions ought to be recognised as intrinsic to the multi-aspectual nature of the state. When Habermas distinguishes between positive law and political power, or when he says that law serves the organisation and guidance of state power, it is clear that he does not sufficiently recognise the intrinsic qualifying role of the jural aspect in the state. Although he acknowledges a conceptual kinship between *Rechtsetzung* (lawmaking) and *Machtsbildung* (power formation), he does not realise the difference between the jural power entailed in lawmaking (a retrocipation to the cultural-historical aspect within the jural) and original power formation in a cultural-historical sense.

Considering the legal principles involved in erecting and maintaining a state there is a focus on an all-important aspect of reality, in which the state as a societal collectivity functions, namely the jural aspect. Accounting for the legal competencies entailed in the office of government, however, adds a complication to the picture, because it shows that functioning within a particular aspect implies that such an aspect cannot be understood in isolation from all other aspects, as can clearly be seen in the nature of legal competence, which reveals an interconnection between the jural and the cultural-historical aspects of reality. Before we explore this complication further, we first briefly articulate what is meant with the title of this paragraph concerning the many-sidedness of the state.

We remarked that natural and social entities, as well as all events (or processes) within reality, in principle function in all the (ontologically-given) distinguishable modal aspects. The state, indeed, is also such a social entity that comprises a multiplicity of individuals (designated as citizens). As such, the state therefore has a function within the quantitative aspect of reality. Stating

that the state functions within the numerical aspect of reality, affirms one of its many modes of being (existence). Yet the existence of the state is not exhausted by its arithmetical functioning. Regarding the spatial function of the state, one contemplates the territory of a state. On the basis of this locality, a state not only embraces the existence of its citizens in a specific way, since it is also dependent upon their connection to the state in spite of their relative movements (a term stemming from the kinematic aspect). Through its juridical organisation, the swordpower of the state is capable of using the required force whenever necessary – in service of restoring law and order when certain legal interests are encroached upon (think about the actions of the police or the defence force). The term "force" stems from the physical aspect of energy-operation and in this context, it elucidates the function of the state within this aspect.

The state as a public legal institution binds together the lives of its citizens in a specific way – in the sense that a certain portion of one's lifetime actually belongs to the state (insofar as work for the part of one's income destined for tax-paying is concerned) and also in the necessity that the state can only maintain its territorial integrity against possible threats from outside if citizens are integrated within the defence force – even running the risk of being killed in military action. Clearly, life and death assume their own roles within the state as an institution – and it undeniably testifies to the fact that the state does function within the biotic aspect of reality as well. Jim Skillen correctly points out: "Likewise, a political community exhibits biotic functions by the fact that its citizens function biotically, and many of its laws deal with public health and natural environmental regulations" (Skillen 2008:12). The nation of a state (transcending diverse ethnic communities without eliminating their right of continued existence) operates on the basis of a national consciousness and an emotional sense of belonging. Although it does not apply to all citizens, a worthwhile state should succeed in making its citizens feel at home (the notion of a *Heimat*). These phenomena clearly cannot be divorced from the sensitive-psychic function of the state. Furthermore, once we realise that citizens ought to feel at home within the state, they can also positively identify with it (consider identity documents in this regard) – the political content of what sociologists would call the "we" and the "they" – those belonging to this state and those not belonging to it. Since the core meaning of the logical-analytical aspect is captured in the reciprocity of identification and distinguishing – whoever identifies something is also involved in distinguishing it from something else, the national identity of the citizens of the state testifies to the fact that this identity cannot be understood apart from the function of the state within the logical-analytical aspect. When we take into account the argumentative possibilities entailed by functioning within the logical-analytical aspect of reality, we discover that the nature of the

public opinion within any particular state in a broader sense manifests the function of the state in the said aspect.

The historical aspect of reality concerns formations of power, since it brings to expression the basic trait of culture, namely the uniquely human calling to have stewardship of the earth and to disclose the potential of creation in a process of cultural development. Such a process goes hand-in-hand with an ongoing development of human society in which – through increasing differentiation and integration of specific societal zones (spheres) – distinct societal collectivities, such as the state, eventually emerge. It is only on the basis of its swordpower that the state can function as a public legal institution, because maintaining a public legal order requires a monopoly of the swordpower over the territory of the state. Of course, the function of the state in the historical aspect is also clearly evidenced in the actual history of every distinct state. That the state has a function within the sign mode of reality is obvious from its national symbols (anthem, flag, etc.) and from its official language(s). Similarly, the function of the state within the social aspect of reality is evident in the way it binds together its citizens within a public legal institution. It thus determines a specific kind of social interaction. Participating in a general election, acquiring an ID, observing traffic rules, respecting the rights of fellow citizens – and many more forms of social interaction exemplify the function of the state within the social aspect of interhuman interaction.

Raising taxes not only affects the financial position of the citizen, but also enables the state to fulfil its legal obligations in governing and administering a country – bringing to light a facet of the economic function of the state. Although a state is not an artwork, it is a typical task of a government to harmonise clashing legal interests. Establishing balance and harmony amongst the multiplicity of legal interests within a differentiated society is always guided by the jural function of the state. In addition to this internal coherence between the jural and aesthetic aspects of the state the latter also has an external (i.e. original) function within the aesthetic aspect, displayed in the characteristic format of published (promulgated) state laws, in the aesthetic qualities of governmental buildings (houses of parliament, jails), and so on. The idea of public justice is impossible without the function of the state within the jural aspect of reality. The state also requires an ethical integrity amongst its citizens, for without this loyalty, the body politic will fall apart (of course the government must also conform to standards of public decency and integrity). It is therefore appropriate that the extreme of disobedience to this loyalty is punishable if a citizen is found guilty of high treason. The nation of a state must share in its vision, its convictions regarding establishing a just public legal order, and give each citizen its due. It is only on this basis that the highly responsible task of governing a country could be en-trust-ed to those in office. Terms like “trust”, “certainty” and “faith” are synonymous. The certitudinal or fiduciary aspect of reality – the faith

aspect – is therefore not foreign to the existence of the state. Just like all the other aspects this one intrinsically co-conditions the existence of every state and also explains why no single state can exist without functioning within the faith aspect of reality as well.

8. THE STRUCTURAL PRINCIPLE OF THE STATE

Perhaps the most striking fact concerning the history of political theories is that they always return to the nature and interconnection of "might" and "right". Sometimes the state is portrayed as an institution endowed with absolute power, while and at other times it is seen as protecting what is right. Litt notes that all reflection on the nature of the state oscillates between the two poles of state acitivity: *Macht* and *Recht* (might and right – see Litt 1948:23).

Power within the state is easily identified with the military strength at its disposal. Concerning the earlier development of modern political theories theorists confined themselves to choosing between the two extremes of popular sovereignty and the sovereignty of the monarch. By the turn of the 20th century an alternative theory of sovereignty emerged, namely that of state sovereignty. Prominent political theorists in this tradition are Gerber, Laband, Jellinek and Otto Von Gierke (1841-1921). By identifying the state with its power, the demands of right are excluded – the state turns into a pure power institution. For this reason, Gierke considers might and right as two independent and specifically distinct sides of communal life (see Von Gierke 1915:105).

The jural is thus turned into something completely external to the state. This raises a question regarding the jural competence involved in the formation of law. Is it possible for an institution that is characterised by the non-juridical feature of cultural-historical power to play a role within the domain of law formation? Parsons echoes this tradition in his view that the political organisation ought to obtain effective control over the internal organisation of "force", and it should be integrated with the "legal system". "Because of the problems involved in the use and control of force, the political organization must always be integrated with the legal system" (Parsons 1961:47). The doctrine of the sovereignty of law (legal sovereignty) is also misguided, because the judiciary constitutes merely one of the three central government functions of a state (alongside the legislative and the executive). The office of government is not occupied by any one of these three state functions. Of course performing these functions are constantly bound to and normed by the type law of a just state.

The integral coherence between the dimensions of modal aspects and multi-aspectual entities (including societal collectivities) first of all calls for the acknowledgement of both the cultural-historical and the jural aspects as

intrinsically belonging to the structural principle of the state. Might and right cannot be separated. In fact, they serve as the two characteristic functions of the structural principle of the state, its type law. These functions may be respectively designated as the foundational function and qualifying function in order to capture the structural uniqueness (typicality) of different kinds of entities.

The classification of social forms of life with the aid of compound basic concepts, such as those specified in the distinction between societal collectivities, communities and coordinational relationships, does not contain any criteria enabling the discernment of typical differences such as between a church denomination or a state. A university and business firm both display the distinctive features of societal collectivities, namely the presence of a durable relation of super- and subordination and a solidary unitary character. However, these two features do not provide us with criteria to distinguish between societal collectivities as such. The only theoretical access we have to the typical differences exhibited by these forms of life is the point of entry provided by the meaning of distinct sphere-sovereign modal aspects.

The decisive element in applying the idea of sphere-sovereign modal aspects to distinguish between different kinds (types) of societal collectivities, is to realise that the foundational function and the qualifying function of such social forms of life are mutually dependent and co-determinative. This becomes evident as soon as one realises that most societal relationships have their foundational function within the cultural-historical aspect, since most are based upon some or other type of power formation. Without taking the qualifying function of these social forms of life into account, it will not be possible to differentiate the types of power formation exemplified by them. Of course this view assumes the (ontic) modal universality of all aspects, including the jural. It opposes the nominalistic legacy that does not accept ontic universality. Jellinek, for example, explicitly rejects the idea of the jural as independent (in an ontic sense) from the human being. According to him, law is an ingredient of human representations in the human mind, and coming to a closer determination of what law is, amounts to establishing which part of the contents of human consciousness should be designated as law.[6] Compare the equally nominalistic stance of Descartes regarding universals as modes of thought.

In the case of the state, guided by the jural aspect as its qualifying function, the specific type of power formation lies in the integration of the swordpower within the territory of a state. The idea of the state does not allow for original sources of swordpower within its territory distinct from what has been monopolised by the

6 "Entweder man sucht die Natur des Rechtes als einer vom Menschen unabhängigen, in dem objektiven Wesen des Seienden gegründeten Macht zu erforschen, oder man faßt es als subjektive, d.h. innermenschliche Erscheinung auf. ... Das Recht ist demnach ein Teil der menschlichen Vorstellungen, es existiert in unseren Köpfen, und die nähere Bestimmung des Rechtes hat dahin zu gehen, welcher Teil unseres Bewußtseinsinhaltes als Recht zu bezeichnen ist" (Jellinek 1966:332).

state. The government of a state has to have sole jurisdiction (monopoly) over the power of the sword. Of course this entails that the existence of a state presupposes that all undifferentiated forms of life ought to be left behind, such as those in the medieval guild system and the feudal system.

Power formation is not something purely factual, and even less is it a-normative. However, since power originally stems from the historical aspect of reality, it must be clear that the foundational function of the state lies in the historical aspect. Human beings are called to explore different kinds of power formation, both in the context of subject-subject relations and subject-object relations. Depending upon the typical qualifying function of other societal collectivities, alternative types of power formation are found within a differentiated society, such as capital (economic power) in the firm or the power of God's Word in religious life. Power formation within the state should always be guided by its leading or qualifying function. For that reason, the term "power" ought not to be taken in the negative sense of untamed, brutal force. Much rather, according to the cultural mandate to humankind, it must be seen as a cultural calling; an assignment given to humankind, which places a peculiar task and responsibility on the shoulders of office-holders within the power formations of the state. Naturally, owing to the effects of sin, this task can be accomplished to a better or worse extent.

The jural aspect as qualifying function of the state stamps the state as a *res publica* and explains why no other societal collectivity has the calling to function as a universal integrator of diverse legal interests in a truly public legal sense. None of the non-political societal collectivities, such as the firm, university, free association, or the church has a juridical qualifying function. This follows from the fact that, in their formation of law, each one is restricted to a specific private legal sphere (an *ius privatum*). By contrast, the internal law of the state, in a typical universal-juridical way, transcends the boundaries of all classifications on the basis of societal institutions and communities distinct from the state. This diversity of persons is united as citizens of one and the same state.

9. CONCLUDING PERSPECTIVE

Within the context of the legacy of the political theory in the West the disturbing one-sidedness of atomistic and holistic orientations precluded a proper understanding of the nature of a differentiated society and the place of the state as a public legal institution within it.[7] The prevailing intellectual tradition of the Department of

7 Dooyeweerd first investigated *The struggle for a christian politics* (see Dooyeweerd 2008), then analysed the shortcomings within humanistic theories of the state (see Dooyeweerd 2010 – forthcoming) before he published his own elaborate understanding of the structural principle of the state in the third volume of his *magnum opus, A new critique of theoretical thought* (see Dooyeweerd 1997-III:379-508).

Political Science in which Prof. Daan Wessels worked found a competent proponent in Wessels himself. His teaching, research and public performances consistently advanced the reformational understanding of society and highlighted the task of a constitutional state under the rule of law (a *regstaat*).

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