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Liberty of Conscience and the Right of Resistance in Montaigne's Essays and Charron's 'La sagesse'*

1. The right of resistance as subject of legal history
2. The rise of Henry IV as the historical background
3. Pierre Charron
4. Right of resistance in „La sagesse“
5. Comparison with Montaigne and Bodin
6. The impact of religion
7. Conclusion

1. The right of resistance as subject of legal history

Is the history of the right of resistance really a suitable topic for a legal historian? As this topic touches law and history this question may seem superfluous. Yet resistance against the lawful order is a question of utmost political consequences, in which any historian will be interested. And it can be doubted whether under extreme political circumstances the doctrine on this theme will be observed and whether these doctrines are developed for more than the political moment. Brought up in the course of political struggles ideas on the right of resistance detail the interests of parties and their political ideas, not the law. Specialists to the historical moment and time are fit to evaluate such theories for their value as indicating the political objectives. One would overestimate such arguments to give them any significance for more than the political moment; to view them in context with other historical instances or questions might even be misleading. The historian, not the legal historian, therefore has to deal with the questions concerning the right of resistance.

1

* This paper was originally presented at a Conference in Bologna in February 2001. According to the organizers' wish it was given in English. A German version will be published by Angela de Benedictis and Karl Heinz Lingens in the *Ius Commune Sonderhefte* series of the MPI. I would like to thank both for the invitation to Bologna and the permission to publish the English version. - This paper is dedicated to Robert von Friedeburg and Christoph Strohm in grateful remembrance of long discussions in Bologna.

Yet the authors writing on the right of resistance don't just refer to the necessity of the day, nor do they appeal to political doctrines, but claim to state on the law. As they argue with legal issues they invoke a theory beyond the sphere of political issues of the historical moment. An argument drawn from law has always had a force superior to many others. These authors assume that there are assumptions, which may even induce the enemies to yield¹. Thus law demands cooperation even from the losing opponent just because it has a more general validity. This argumentation can be understood or criticized only with a sound knowledge of legal traditions. According to such authors only the lawyer is able to understand their writings and actions. History of law therefore tries to grasp the notions as brought into play by the actors themselves. Furthermore, it reveals when writers try to argue for their position with false proof. In case legal reasoning wins over people, legal history describes the background notions, which influenced the way people thought and acted.

2

Yet one may say that ideas on loyalty, rightful government and the right to oppose sovereign forces argue with political, not legal notions. Contract law may be the field to use the almost holy principles of Roman law; public law, however, is different insofar as it isn't simply law but ethics mixed with power politics. The historians of political ideas may write on such topics, whereas legal historians overestimate the significance of the invocation of law. Michael Stolleis starts his mayor work on the history of public law with the year 1555, since this is the time in history when the structures of public law were sharpened and became clearly distinct from private law². Perhaps the renewal of contractual theories for the origin of society in the 16th century was just a means to enforce legal argumentation and to apply Roman law on matters that hitherto had been regarded as merely political³. Again in this instance authors try to use legal reasoning to prove the validity of their assumptions. Public law as a science becomes necessary in order to find a sounder basis for positions other than merely power. Also in the literature on the right of resistance law has become increasingly important⁴.

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But what is it that gives legal statements such specific plausibility and persuasiveness?

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1 Alike Angela de Benedictis, *Introduzione*, in: same/ V. Marchetti (Eds.), *Resistenza e diritto di resistenza*, (Università di Bologna. Dipartimento di discipline storiche, 15), Bologna 2000, 9-44, 16.

2 Michael Stolleis, *Geschichte des öffentlichen Rechts*, I München 1988, 46 ss.

3 Quentin Skinner, *The Foundations of Modern Political Thought*, II Cambridge 1996, 124 ss; Richard Tuck, *Natural Rights Theories*, Cambridge 1979, 177. See as well my article „Recht durch Erziehung – Gesetz zur Bildung. Usus legis Reformatorem“, in: Ch. Strohm/ Henning-P. Jürgens (Ed.), *Martin Bucer und das Recht. Beiträge zum internationalen Symposium vom 1.-3. März 2001 in der Johannes a Lasco Bibliothek Emden*, (Travaux d'Humanisme et Renaissance), Geneva 2002, 245-270.

4 Cf. for doctoral dissertations Karl Mommsen, *Auf dem Wege zur Staatssouveränität. Staatliche Grundbegriffe in Basler juristischen Doktordisputationen des 17. und 18. Jahrhunderts*, Bern 1970, 47 f.

Even if we accept that there is justice, how can we achieve it and state on it? Legal standpoints are mainly sorted out by argumentation, which try to convince opponents. Legal reasoning therefore is nothing else but the political struggle put into the special words of this science. Especially ideas on the right of resistance, it can be argued, are not dogmatically consistent positions but rather a disguise for political intentions.

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Law, however, has had a special consistency since Roman jurisprudence, which historians often fail to see. At all times different solutions can be found invoking different laws and principles. Therefore legal coherency is rather due to a way of reasoning than to actual answers. Like a special language it enables lawyers to understand each other. There is a body of rules, which creates the possibility of coherent argumentation, and for the sake of preciseness lawyers adopt a specific vocabulary. Therefore it can also be called a system. It may take some time to understand the way it works, but once understood the similarities in the reasoning of ancient, medieval and modern lawyers are fascinating. This consistency of argumentation is the key in understanding to what extent an author respected the legal tradition and authorities or simulated false proofs. On the one hand this shows that the intention and the solution of legal reasoning is due to, or biased by, the political objectives of the day. Yet on the other hand, only by the means of history of law can one judge authors by their own standards of being lawyers, whether they stuck to the legal standards or complied with political demands.

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For this reason historians may doubt to what extent legal argumentation was presented by a specific author. Moreover, law cannot form ideals and ideas itself, but carries out the notions inspired by religion and other fields. Political ideas therefore have to be taken into consideration. The effect of legal advice can only be explained in context with the political intentions of its author. One has to understand the purpose of legal argumentation in order to understand the bias of legal authors. Finally, traditional legal assumptions may have different effects once the social situation changes. Only a thorough investigation of the political background and the aspirations of the actors can lead to an understanding of their legal argumentation. Thus, if statements of authors arguing with law cannot be clarified without legal historians, their standpoints cannot be understood without historical investigations. This may generally be valid, in the case of the right of resistance, however, it becomes particularly obvious.

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In the case of the right of resistance it becomes evident that the history of law is in a special way linked to the history of political ideas. The history of political ideas has its often-stated shortcomings in being vague and supposing consequences as well as links, where nothing of that kind can be proven⁵. Especially ideas on resistance show political options and can remain rather vague and abstract, but when it comes to practise, the authors refuse to be judged according to political actions. In my opinion, the combination

5 Quentin Skinner, *Meaning and Understanding in the History of Ideas, History and Theory. Studies in the Philosophy of History* 8 n.1 (1969), 3-53.

of the history of political ideas and the history of law can surpass these inconveniencies. It is able to show how these ideas can be put into practise and in what way the government and society may be influenced in its daily work. As ideas become practise, their consequences can be neatly demonstrated by the way new rules are carried out by the state. So differences and similarities in spite of different regional and historical settings can be demonstrated in detail.

Legal history may help to strengthen the issues and to prove the theories of the history of political ideas. Especially in the field of public law the combination of both disciplines can give new and very precise ideas of the past. For this reason and to this degree the legal historian is competent to write on the history of resistance theories.

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2. The rise of Henry IV as the historical background

How law is intertwined with politics and theology historically, shall be demonstrated by a chapter of French history in the second half of 16th century. Not only historians, but also great novelists such as Voltaire and Heinrich Mann taught numerous generations to regard these years as the youth of great Henri IV⁶. In few historical situations was the right of resistance so widely debated and practically relevant as in these years, so that the necessity to find new political solutions became evident with Henry's accession to the throne. The establishment of different confessions in France conferred an overriding political importance to the question of the right Christian doctrine. Still subjects had to be obedient and Calvin stressed the duty of everybody to follow the government⁷. He argued that only magistrates may or must resist. But in case the king infracts God's commandments, the people not only have the right, but even the obligation to resist, since everybody has to follow God more than men. Thus a conflict of duty acquired utmost political actuality: the obedience to the king could differ from what was due to God. The people had to decide whether they should obey their temporal masters or resist in order to observe god's

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6 This tradition is still strong in François Bayrou, *Henri IV. Le roi libre*, Paris 1994. For a new historical investigation into the political background see also Scott M. Manetsch, *Theodore Beza and the Quest for Peace in France, 1572-1598*, (Studies in Medieval and Reformation Thought, 79), Leiden/ Boston/ Köln 2000.

7 Cf. Robert Kingdon, *Calvinism and resistance theory, 1550-1580*, in: *The Cambridge History of Political Thought 1450-1700*, 193-218, 193, talks of Calvin's seminal influence; Ernst Wolf, *Das Problem des Widerstandsrechts bei Calvin*, in: A. Kaufmann (Ed.), *Widerstandsrecht, (Wege der Forschung 173)*, Darmstadt 1972, 152-169, shows (157 s) that in the 1550s Calvin tended to restrict the right of resistance as it would hinder the Lord to help his people. Furthermore Josef Bohatec, *Calvins Lehre von Staat und Kirche*, Breslau 1937 Aalen 1968, 76 ss; Ludwig Cardauns, *Die Lehre vom Widerstandrecht des Volks gegen die rechtmäßige Obrigkeit im Luthertum und im Calvinismus des 16. Jahrhunderts*, Bonn 1903/ Darmstadt 1973, 49 ss; Stefan Bildheim, *Calvinistische Staatstheorien. Historische Fallstudien zur Präsenz monarchomachischer Denkstrukturen im Mitteleuropa der Frühen Neuzeit*, (Europäische Hochschulschriften, III.904), Frankfurt a.M. 2001, 25 ss.

demand.

For this reason theological differences created vital political conflicts. The massacre at Vassy in 1562 by the Catholic party lead by François duc de Guise, triggered of civil wars until 1598, which were fought with unheard of brutality⁸. In the course of these conflicts some regions were depopulated by about 20% and more. The political leader of the Huguenots, Louis de Bourbon prince de Condé, was murdered as well as the Duc de Guise, but both were immediately replaced. In the night of St Bartholomew, August 12th, 1572, Queen Catherine of Medici and the Catholic forces tried to solve the problem biologically. 3000 or 4000 Protestants were butchered in Paris, perhaps 10.000 slaughtered in the provinces⁹. 10

After this event the fiction of a good monarch could no longer be upheld¹⁰. In the following years Protestant authors, among them Calvin's successor in Geneva, Theodore de Bèze, tried to show the criteria of just monarchy and the limits of obedience. Buchanan later called them „monarchomachi“¹¹. Beza claimed that God must be obeyed above all other authorities. Individuals, however, are only entitled to passive disobedience, even if they must endure martyrdom. Only magistrates have the right to decide on active steps against the sovereign¹². 11

But these positions were soon copied or even intensified by authors in favour of the position of the Catholic league¹³. From over 300 books and pamphlets, historiography focused mainly on the works of Boucher and Rosé¹⁴ - obviously extreme ideas attract more attention. In 1584 the leader of the Protestant party, King Henri of Navarre, became the next heir to the throne. As a response the Catholic forces renewed the League. Again the only remedy Henri III could think of was to order the assassination of the duc de Guise and 12

8 Cf. Oscar Jászi in O. Jászi/ J. Lewis, *Against the Tyrant*, Glencoe (Illinois) 1957, 59 ss.

9 Cf. Klaus Ganzer, *Bartholomäusnacht*, in: *Lexikon für Theologie und Kirche*, 3rd ed. Freiburg etc. 1994, 46.

10 Eckehard Quin, *Personenrechte und Widerstandsrecht in der katholischen Widerstandslehre Frankreichs und Spaniens um 1600*, (Beiträge zur Politischen Wissenschaft, 109), Berlin 1999, 57 s.

11 See the detailed study of Quentin Skinner, *The Foundations* (n. 3), II 325 ss, 338 ss; John W. Gough, *The Social Contract*, 2nd ed., Oxford 1963, 49 ff.

12 Theodor Beza, *De iure magistratum*, ed. K. Sturm, (Texte zur Geschichte der evangelischen Theologie, 1), Neukirchen-Vluyn 1965, qu.6, 41; 2.obj., 78; cf. Kingdon, *Calvinism and resistance theory* (n. 7), 209 ss; Bildheim, *Calvinistische Staatstheorien* (n. 7), 47 ss.

13 For an overview see J. H. M. Salmon, *Catholic resistance theory, Ultramontanism, and the royalist response, 1580-1620*, in: J. H. Burns (Ed.), *The Cambridge History of Political Thought 1450-1700*, Cambridge 1991, 221 ss.

14 E.g. Quin, *Personenrechte* (n. 10), 145 ss; for an analysis of the leaguist positions see the still most important study of Frederic J. Baumgartner, *Radical Reactionaries: the political thought of the French catholic League*, (Études de Philologie et d'Histoire), Genève 1976, 19 for the number of pamphlets. Baumgartner, however, doesn't mention Charron.

his brother in December 1588. Immediately afterwards the Sorbonne publicly called upon the people to kill the King of France¹⁵. Pamphlets were handed out stating that every citizen should have good conscience in assassinating the king¹⁶. Half a year later, on August 1st, 1589, Henri III was murdered by the fanatic monk Jacques Clément, an action which the Leaguist author Jean Boucher justified immediately afterwards. But Henri III still had enough time to appoint Henri of Navarre as his successor, who due to his conversion to Catholicism in 1593 over time became accepted as King Henri IV of France. He survived the attack of Jean Chastel in 1595, and again Boucher wrote an apology for the assassin and encouraged all Frenchmen to murder the king¹⁷. François Ravailac finally carried out this call in 1610. So one really cannot say that the right of resistance ceased to be of importance at the end of the 16th century¹⁸. Quite on the contrary, the right of resistance based on conscience practically took precedence over obedience, as it remained a personal decision whether any killing might be justified.

3. Pierre Charron

One of the Catholic authors of the time still studied less than the extremists like Boucher or Rosé is Pierre Charron (1541-1603)¹⁹. He was a doctor of civil and canon law, who after working as a lawyer became a priest in Bordeaux and throughout southern France. He preached at the court of King Henry of Navarre at Nérac²⁰. After settling in Bordeaux in 1586, he met the lawyer and philosopher Michel de Montaigne (1533-1592). We are informed about Charron's life only by a study of one of his followers, Rochemaillet, and it

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- 15 Manetsch, Theodore Beza (n. 6), 187; Ekehard Quin, „Der Friede ist unser Tod, der Krieg unser Leben“. Die katholische Widerstandslehre Frankreichs im späten 16. Jahrhundert, in: Th. Angerer u.a. (Eds.), *Geschichte und Recht. Festschrift für Gerald Stourzh zum 70. Geburtstag*, Wien/ Köln/ Weimar 1999, 37-61, 37 ss.
- 16 Manetsch, Theodore Beza (n. 6), 189.
- 17 A narrow description of the most famous catholic writers gives Quin, *Personenrechte* (n. 10), 19 ss; Salmon, *Catholic resistance theory* (n.13), 224, spells out that not everybody, but only upper class members of virtue and integrity were addressed.
- 18 Amongst others Eike Wolgast, *Die Religionsfrage als Problem des Widerstandsrechts im 16. Jahrhundert*, (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, phil.-hist. Klasse, 9), Heidelberg 1980, 54.
- 19 For a detailed biography still see J. B. Sabrié, *De l'humanisme au rationalisme. Pierre Charron (1541-1603). L'homme, l'oeuvre, l'influence*, Paris 1913; the lack of sources about Charron's life notes as well Alfred Soman, *Methodology in the History of Ideas: The Case of Pierre Charron*, *Journal of the History of Philosophy* 12 (1974), 495-501, 495. For a bibliography of Charron's works and secondary literature see V. Dini/ D. Taranto, *Bibliografia delle opere di e su Charron*, in: *La saggezza moderna. Temi e problemi dell'opera di Pierre Charron*, (Pubblicazioni dell'Università degli Studi di Salerno, 18), Roma/ Napoli 1987, 419-435.
- 20 Cf. Michel Adam, *Montaigne, Henri IV et Pierre Charron*, in : *Montaigne et Henri IV*, Biarritz 1996, 101-123, 116.

is unclear to what extent we may trust his biography²¹. Many legends exist, one of which claims that Charron inherited Montaigne's coat of arms. First adhering to the League, later sticking to the king's party, Charron didn't enjoy a truly successful career. But he gained a reputation as political author of various books, the most famous being „La sagesse“. He started writing it in 1597 and finished one year later. A second revised edition in 1604 followed a first publication in 1601²². It met strong opposition by the catholic University of Paris²³.

Throughout the centuries Charron has been called a plagiarist of Montaigne. In fact, an impressive list of direct citations has been drawn up²⁴. More benevolently, the parallels in the works of Montaigne and Charron are explained by their friendship and intellectual interaction²⁵. Indeed, „La sagesse“ consists of an incredible amount of fragments literally based on Montaigne or being at least very close to his works. Therefore, Charron's „La sagesse“ transfers Montaigne's ideas in the different environment of another time²⁶. 14

Like Montaigne, Charron's „La sagesse“ covers so many topics that it has even been called a sort of encyclopaedia²⁷. In its results, however, it differs from Montaigne's essays. Charron didn't just want to question common assumptions and traditional suppositions or to expose individual experience. Instead, he tried to establish new valid notions. By the establishment of a perfect way of reasoning he wants to teach indubitable rules of good life²⁸. 15

Charron's means of cognition are suspicion, reason, and plausibility. Hesitation is a way to detect inner sources of errors such as emotions or external causes such as prejudices. This sort of scepticism is a demand of common sense, a way of reasoning and a method of cognition rather than the negation of any reliable knowledge²⁹. Charron uses this „vraye et essentielle preud'homie“ to find and teach as many certainties as possible³⁰. According to Charron wisdom is the best way to acquire true cognition³¹ and 'la sagesse' is the origin of 16

21 Sabrié, De l'humanisme au rationalisme, 46.

22 Sabrié, De l'humanisme au rationalisme, 90 ss.

23 Sabrié, De l'humanisme au rationalisme, 130.

24 Françoise Kaye, Charron et Montaigne. Du plagiat à l'originalité, Ottawa 1982, 30-122, gives an list of direct or indirect quotations.

25 Adam, Montaigne, Henri IV et Pierre Charron (n. 20), 117.

26 Adam, Montaigne, Henri IV et Pierre Charron (n. 20), 121.

27 Sabrié, De l'humanisme au rationalisme, 241.

28 Kaye, Charron et Montaigne (n. 24), 216.

29 Cf. Michel Adam, Etudes sur Pierre Charron, Bordeaux 1991, 46 ss, 50.

30 Christian Belin, L'œuvre de Pierre Charron 1541-1603. Littérature et théologie de Montaigne à Port-Royal, (Bibliothèque littéraire de la Renaissance sér.3, t.31), Paris 1995, 134.

31 Belin, L'œuvre de Pierre Charron (n. 30), 113.

knowledge. It isn't knowledge itself, but rather a consideration of facts and thus the way to perceive verity and can even lead to the recognition God³². This is not so different from Montaigne, who commenting on various topics and stories tries to detect errors³³.

Insofar Charron seems to be a sceptic. But he doesn't merely criticize personal opinions or raise some questions. Charron compares conflicting positions and their results and gives cautious consideration based on common sense³⁴. He uses all his might to establish incontestable positions and to define correct behaviour. His purpose was to construct a body of coherent, logically organized rules. He relies on what Montaigne could affirm, but he puts these ideas together in order to construe a new corpus of firmly established rules. „La Sagesse“ reveals the same method of perception. It starts with a portrait of human senses, humours, ambitions and emotions such as love, hatred, and envy. After this the varieties of groups formed by man are described such as marriage, family, state, and the way in which people form a part thereof as legislator, magistrate, or subject. After this the different ways to act in society are investigated. All human possibilities of comportment in the state are studied and Charron tries to find the right way to act. All these topics can also be found in Montaigne's work.

17

But Charron puts them into a distinct order. As he uses a systematical approach he clearly differs from Montaigne. For Montaigne the habit of critical observation is to some extent already the goal of his work. Montaigne seems to write about everything that is on his mind, so an inherent order to his essays is hard to detect.³⁵ Yet Charron doesn't establish a deductive system in the way the Calvinist Pierre de la Ramée suggested³⁶, which would be very unfit for Charron's „prud'homie“ or sceptical point of departure. Charron's „sagesse“ in no way displayed *more geometrico*, than Johannes Althusius, also a Calvinist, did in about the same years³⁷. But such a method of construction reveals that the result of

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32 Belin, L'œuvre de Pierre Charron (n. 30), 121.

33 Cf. Andrée Comparot, *Amour et vérité*. Sebon, Vivès et Michel de Montaigne, Paris 1983, 153 ss.

34 Giampiero Stabile in Vittorio Dini/ Giampiero Stabile, *Sagezza e prudenza*, Napoli 1983, 142 ss, calls this pragmatism.

35 For the structure see the analysis of Geralde Nakam, *Montaigne. La manière et la matière*, Paris 1992, 82 ss.

36 Cf. Christoph Strohm, *Ramus, Petrus (1515-1572)*; TRE XXVIII Berlin/ New York 1997, 129-133; R. Pozzo, *Ramismus. Semiramismus*, *Historisches Wörterbuch der Philosophie*, VIII Darmstadt 1992, 15-17.

37 Cf. Robert von Friedeburg, *Reformed Monarchomachism and the genre of the „Politica“ in the Empire: The „Politica“ of Johannes Althusius and the meaning of hierarchy in its constitutional and conceptual context*, *Archivio della Ragion di Stato* 6 (1998), 129-153; the same, *Widerstandsrecht und Konfessionskonflikt*, Berlin 1999, 76 ss with further references; Dieter Wyduckel, *Johannes Althusius*, in: B. Grossfeld u.a. (Eds.), *Westfälische Jurisprudenz*, Münster u.a. 2000, 95-110; cf. as well the contribution of Merio Scattola to the Bologna conference, which will be published in the volume mentioned in n.*.

Charron's work is more than a mere number of observations.

Although conditions of life may differ according to climate and time there are basic rules, 19
which are valid for everybody³⁸, and lead to a happy life everywhere³⁹:

„Voilà pourquoy la doctrine de tous les Sages porte que bien vivre, c'est vivre selon 20
nature, que le souverain bien en ce monde, c'est consentir à nature.“

Thus unlike Montaigne, Charron doesn't just state conclusions for a specific problem, but 21
aims to define universally valid positions. This is not only a question of different
temperaments⁴⁰, but reveals basic differences.

There is only little man can take for unquestionable such as the very existence of God⁴¹. 22
Generally man's perception is so limited that the possibility of understanding God hardly
exists⁴². But 'sagesse' doesn't lead to the finding of new truths, but wants to show the right
use of these fundamental assumptions⁴³. Cautiously considering the effect of regulations
even so few fundamental notions are sufficient to draw up a whole system of rules.
Charron starts with some fundamental assumptions such as the existence of God, the
perfection of his creation and of wisdom as a faculty, which God conferred upon man. But
such elemental ideas are already sufficient to understand what is necessary for the true
religion, which respects God and the nature of man at the same time⁴⁴:

„La [vraye, M.S.] religion ayme et honore Dieu, met l'homme en paix et en repos, et loge 23
en une ame libre, franche et genereuse [...].“

It is therefore easy to state that traditional Catholicism provides for this peace, whereas the 24
promotion of Protestantism leads to riots and chaos. Without judging upon dogmatics it is
therefore possible to decide on the confessions. This approach is fideism⁴⁵, which is rather
a belief in the necessity of religion than in the contents of its teaching. In spite of this
cautious reasoning it is possible to draw up a number of rules which are necessary for the

38 Pierre Charron, *De la sagesse*, ed. Barbara de Negroni, (Corpus des œuvres de philosophie en langue Française), Paris 1986, 2.5, 446. The book gives the text of the second and the differences to the first edition; my references will be given, if not indicated otherwise, to the 2nd edition.

39 Charron, *De la sagesse*, 2.3 n.7, 424.

40 Renée Kogel, *Pierre Charron*, Genève 1972, 42.

41 This is what Charron tried to establish in his book prior to the „*De la Sagesse*“ called „*Les trois véritez contre les athées, idolâtres, juifs, mahométans, hérétiques et schismatiques*“, 1st edition Bordeaux 1582. This book was dedicated to Henri IV, who just had reconverted to Catholicism, cf. Adam, *Etudes sur Pierre Charron* (n. 29), 102.

42 Belin, *L'œuvre de Pierre Charron* (n. 30), 122.

43 Belin, *L'œuvre de Pierre Charron* (n. 30), 109, 121.

44 Charron, *De la sagesse*, 2.5 n.9, 545.

45 Richard Tuck, *Hobbes*, (here quoted from the German translation) Freiburg i.B. 1999, 127.

true religion.

As God created a perfect world, all that leads to a happy life for everybody is done in accordance with God's creation⁴⁶. Man therefore has to consider his nature and try to do the best for himself and society⁴⁷. As human reasoning may be biased by custom, a comparison to wild Indians or even animals may help to find the true way of nature. To act according to one's nature means to act according to God's will⁴⁸. The reasonable man therefore studies natural law. In this point Charron clearly contradicts Montaigne⁴⁹. 25

Influenced by wisdom man will adopt six principles⁵⁰: piety, domination of wishes and thought, endurance of fate, conservation of the law, custom and ceremonies, indulgence against the next, and prudence in all matters. The observation of these rules will be rewarded with tranquillity regarding death, good balance and evenness of temper. Based on these postulations Charron can develop his theory. 26

In this regard, Charron's scepticism rather resembles stoicism⁵¹. But what is neostoicism⁵²? If it is defined with a conviction of the necessity of inner constancy and the fulfilment of duties, so that for the sake of civil order self-discipline wins over own sentiments⁵³. Charron's „La sagesse“ is different, insofar as it not only reaches prudence and self-denial. The process set off by „La sagesse“ is to find truth; Charron suggests not only constancy, but also true values. Hespanha describes stoicism as a philosophy proposing unchangeable natural law, which all can find with good reason that leads to clear and precise rules⁵⁴. If we see neostoicism as teaching rules, which have to be followed regardless of faith, 27

46 Belin, L'œuvre de Pierre Charron (n. 30), 126.

47 Charron, De la sagesse, 2.3 n.4, 420: „Le ressort de cette prud'homie est Nature, laquelle oblige tout homme d'estre et se rendre tel qu'il doit“.

48 Charron, De la sagesse, 2.3 n.6, 422: „Qui agit selon elle [sc. la Nature, MS], agit vrayement selon Dieu, car c'est Dieu, ou bien sa premiere, fondamentale, et universelle loy qui l'a mis au monde, et qui la premiere est sortie de luy, car Dieu et Nature sont au monde, comme en un estat, le Roy son autheur et fondateur, et la loy fondamentale qu'il a bastie pour la conservation et regle dudit estat. C'est un esclat et rayon de la divinité, un defluxion et dépendance de la loy eternelle, qui est Dieu mesmes, et sa volonté“.

49 Michel de Montaigne, Les Essais, ed. Pierre Villey, 2nd edition Paris 1992, 2.12 A, 579 s.

50 Charron, De la sagesse, 2, 372 before ch.1.

51 Charron has been regarded as one of the three representatives of neostoicism, cf. Adam, Etudes sur Pierre Charron (n. 29), 68; much the same are the views of Domenico Taranto, Il posto dello scetticismo nell'architettura della „Sapesse“, in: La saggezza moderna. Temi e problemi dell'opera di Pierre Charron, (Pubblicazioni dell'Università degli Studi di Salerno, 18), Roma/ Napoli 1987, 9-34, 27 s; Alfred Soman, Methodology in the History of Ideas: The Case of Pierre Charron, Journal of the History of Philosophy 12 (1974), 495-501, 495.

52 For this school see Christoph Strohm, Neostoizismus, TRE XXXII Berlin/ New York 2000, 190-193.

53 Stolleis, Geschichte des öffentlichen Rechts, I 96.

54 António Manuel Hespanha, Introduzione alla storia del diritto europeo, Bologna 1999, 162 s.

country, or government; it does exactly what the „sagesse“ prescribes. Arguing against Lipsius, Montaigne denies the possibility of rules applicable in all circumstances. He retains his liberty to decide in a given moment whether to adopt new, different principles or not⁵⁵. Charron, on the other hand, not only suggests such rules, but he argues that they are valid because they are just. Herein Charron opposes Montaigne and may therefore be called a neostoicist in this regard.

But Charron is strikingly reluctant to ascertain some practical consequences of the essential truths. The moment exact comportment has to be defined Charron backs away⁵⁶. His values lose their importance due to this cautious approach⁵⁷. Anna Maria Battista therefore regards Charron as scepticist⁵⁸, although she shows to what large extent Charron borrowed from Lipsius⁵⁹. Obviously it is not easy to group Charron. As he combines elements of scepticism and neostoicism it seems better to call his position eclectic, as Giampiero Stabile has done.⁶⁰ Stating on cognition, Charron used the philosophy of the sceptics, which was very modern at the time; in regard to ethics, Charron clung to stoic principles⁶¹. But he presents a consistent mixture, which can be regarded as typical for its time. Systematic procedures for the examination, the accumulation of rationally checked rules and knowledge as the purpose of this process build the common assumptions of political authors in the 17th century⁶².

28

The influence of „De la sagesse“ has been evaluated differently. Some thought Charron’s writings to be of very little influence⁶³. Mainly the Italian tradition drew up the hypothesis that through Charron the ideas of Montaigne spread and influenced the theorists of natural law in the 17th century⁶⁴.

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55 Cf. Pierre Villey in Montaigne, *Essais*, introduction to 3.9, 945.

56 This is pointed out by Anna Maria Battista, *Alle origini del pensiero politico libertino. Montaigne e Charron*, Milano 1966, 168.

57 Battista, *Alle origini* (n. 56), 132.

58 Battista, *Alle origini* (n. 56), 277.

59 Battista, *Alle origini* (n. 56), 90 ss.

60 Stabile, *Sagezza e prudenza* (n. 34), 155; cf. Adam, *Etudes sur Pierre Charron* (n. 29), 56.

61 Cf. Adam, *Etudes sur Pierre Charron* (n. 29), 58.

62 Cf. James Tully, *An Approach to political philosophy : Locke in contexts*, Cambridge 1993, 266.

63 Alfred Soman, *Pierre Charron: A Revaluation*, *Bibliothèque d’humanisme et renaissance* 33 (1970), 72-77, 65.

64 Battista, *Alle origini* (n. 56), 212, 277 s; Gianfranco Borelli, *Obligation juridique et obéissance politique : les temps de la discipline moderne pour Jean Bodin, Giovanni Botero et Thomas Hobbes*, in : Luc Foisneau (Ed.), *Politique, Droit et théologie chez Bodin, Grotius et Hobbes*, Paris 1997, 11-25, 14; for a critical evaluation of the latter see Brian Tierney, *The Idea of Natural Rights*, Atlanta Ga. 1997, 320 s.

This paper deals with the question, to what extent Charron's wisdom gives way to the liberty of conscience⁶⁵. Especially the religious war taught the necessity of order and obedience to the temporal authorities: the defence of the right Christian doctrine had led to unimaginable bloodshed, for the maintenance of life religious truth had to stand back. On the one hand there is the principle of sovereignty, which just had become the key notion of political theory, and Charron adopted Bodin's theory to a great extent⁶⁶. On the other hand there is the inner force of conscience, which forms an irreplaceable device of man to detect the right way⁶⁷. It helps to understand God's commandments and faith was still unanimously accepted as the foundation of just life. Sovereignty is necessary in order to preserve the nation and the life of all and demand obedience. Conscience as the basis of ethical life demands an individual decision and implies a choice between different solutions. Both, sovereignty and freedom of conscience seem to be irreconcilable. 30

4. Right of resistance in „La sagesse“

Charron defines sovereignty as a perpetual and absolute power to enact law valid for all and which is not bound to law itself⁶⁸. Correspondingly, the most important rule for subjects is to obey their temporal lord⁶⁹. 31

„En premier lieu, selon tous les sages, la regle des regles, et la generale loy des loix, est de suivre et observer les loix et coustumes du Pays où l'on est, *sequi has leges indigenas honestum est.*“ 32

Then again, the power implies great sacrifices for the monarch, as this duty imposes on him a „riche captivité“⁷⁰. It is his duty to administer justice and to preserve piety and 33

65 For the emergence of human rights see Wolfgang Schmale, Archäologie der Grund- und Menschenrechte in der Frühen Neuzeit, (Ancien Régime, Aufklärung und Revolution, 30), München 1997, 288 ss; esp. for the liberty of conscience see Heinrich Scholler, Zum Verhältnis von (innerer) Gewissensfreiheit zur (äußeren) religiösen Bekenntnis- und Kultusfreiheit, in: G. Birtsch (Ed.), Grund- und Freiheitsrechte im Wandel von Gesellschaft und Geschichte, Göttingen 1981, 183-204; Günter Birtsch, Gewissensfreiheit als Argument in England vom 16. bis zum 18. Jahrhundert, in: G. Birtsch (Ed.), Grund- und Freiheitsrechte von der ständischen zur spätbürgerlichen Gesellschaft, Göttingen 1987, 88-116.

66 Cf. Kogel, Pierre Charron (n.40), 136 ; Stabile, Sagezza e prudenza (n. 34), 155, points at Charron's selective use of Bodin.

67 For the history of conscience in his time see H. Reiner, Gewissen, in: Historisches Wörterbuch der Philosophie, III Darmstadt 1974, 574-592, esp. 583 ss; Gerhard Ebeling, Theologische Erwägungen über das Gewissen, in: same, Wort und Glaube, Tübingen 1960, 429 ss; Joseph Lecler, Die Gewissensfreiheit. Anfänge und verschiedene Auslegung des Begriffs, in: H. Lutz (Ed.), Zur Geschichte der Toleranz und Religionsfreiheit, (Wege der Forschung, 246), Darmstadt 1977, 331-370.

68 Charron, De la sagesse, 1.49, 321.

69 Charron, De la sagesse, 2.8 n.1, 497; this point is stressed by Stabile, Sagezza e prudenza (n. 34), 140 ss.

70 Charron, De la sagesse, 1.49, 323.

religion in the state⁷¹. Otherwise he acts tyrannical. A prince is a tyrant if he acts against law and custom⁷², if he acquires power without justification or becomes evil during his reign⁷³.

Charron names some certain ideals with which the prince has to comply. The monarch should rather be loved than dreaded⁷⁴. The sovereign has to be pious himself⁷⁵. Furthermore, he has to find the true religion, which places man in accordance with God, which makes him honour God and learn piety⁷⁶. The success of a peaceful state with pious subjects proves the monarch right. 34

But this is in no way a condition for obedience. Quite on the contrary, as a rule all princes must be obeyed. Man owes obedience to kings because of their office, not according to their worthiness⁷⁷. So regardless of the confession imposed by the king, everybody must comply with legal government. Charron gives several reasons. Sometimes a prince has to resort to acts, which seem tyrannical, but are necessary due to political circumstances⁷⁸. A king may ruse and use tricks⁷⁹. Even if the prince abuses his subjects' bodies or property, people have to comply with the government. They have to honour, obey, serve with good will and pray for the regime, because all power derives from God. 35

Any government, even tyranny, is better than insurrection and civil war⁸⁰. Equally, laws have to be observed not because they are just, but because they have been enacted⁸¹. Furthermore, nobody can be certain that new law will be better. According to Charron, tyranny is to be preferred over civil war⁸², which is the worst that can happen to a state⁸³. „C'est une mer de malheurs“. Usually, civil wars are God's punishment for a state or due to a common corruption of manners⁸⁴. Therefore, there is generally no right of resistance. 36

71 Charron, De la sagesse, 3.2 n.4, 553 s.

72 Charron, De la sagesse, 3.4.10 n.1, 617.

73 Charron, De la sagesse, 3.16 n.11, 714.

74 Charron, De la sagesse, 3.15, 710.

75 Charron, De la sagesse, 3.16 n.1, 711.

76 Charron, De la sagesse, 2.5, 457 ss ; this is a direct quotation of Montaigne, Essais, 1.3 C, 16, cf. Kaye, Charron et Montaigne (n. 24), 117 s.

77 Charron, De la sagesse, 3.16 n.13, 716 s.

78 Charron, De la sagesse, 3.3 n.9, 582.

79 Cf. Adam, Montaigne, Henri IV et Pierre Charron (n. 20), 121.

80 Cf. the sources given by Roman Schnur, Die französischen Juristen im konfessionellen Bürgerkrieg des 16. Jahrhundert, Berlin 1962, 21.

81 Charron, De la sagesse, 2.8 n.2, 498; cf. Kogel, Pierre Charron (n. 40), 138

82 Charron, De la sagesse, 3.4.10 n.2, 617.

83 Charron, De la sagesse, 3.4.10 n.2, 618.

84 Charron, De la sagesse, 3.4.11 n.2, 619.

Subjects are not allowed to form groups against the king for any reason⁸⁵. However, Charron admits three exceptions⁸⁶.

a. If the power is usurped without any legal title, people may have the right to use legal remedies and to resist⁸⁷. But, properly speaking, as Charron admits, this is no legal authority, it is not the case of a right of resistance. 37

b. If the prince tries to alter the constitution, for example in changing aristocracy to monarchy, Charron admits a true right of resistance, which even includes activities against the government, reason therefore being that the prince is not the master but the custodian of the state. This is the only case in which activities against the prince are allowed⁸⁸. 38

c. The last exception supposes a legitimate monarch who not only governs unduly, cruelly and evilly, but also violates divine or natural law. This becomes clear as he disobeys God's Commandments and the religion of the country. In case he obliges people to act against their conscience, this prince is called a tyrant and should be disobeyed. As an argument Charron points at the holy axiom⁸⁹ that you shall obey God more than man. But this resistance is restricted to the right to refuse what has been asked for, it doesn't include active resistance on the subject's part. In order to escape punishment they may flee or have to endure the unlawful king's revenge⁹⁰. Thus active resistance is excluded⁹¹. 39

Only in this case, the common subject can decide for himself. In the other instances, it is up to the lawyers and specialists to point out the fact, that an action is unlawful and violates the constitution. The right of resistance is restricted in „La sagesse“ and saved for some extreme cases. The act based on conscience is only justified if the prince violates the religion of the land. For this reason the right of resistance is accepted as a means to keep the common religion which has been given by the legitimate prince. The individual decision based on conscience is relevant only to defend this public good. This restriction to the right of resistance and the small role granted to religion are rather unlike what has hitherto been presented as the opinion of Catholic authors of its time. 40

Constantly Charron refers to law and legal issues. In the end he argues for a proper government and a decent comportment of citizens, but all this is presented as a result of 41

85 Charron, *De la sagesse*, 3.4.8 and 9, 614 ss.

86 Charron, *De la sagesse*, 3.16 n.12, 714.

87 Charron, *De la sagesse*, 3.16 n.11, 714.

88 Charron, *De la sagesse*, 3.16 n.11, 716.

89 *Acta apostolica* 5,29.

90 Charron, *De la sagesse*, 3.16 n.11, 715.

91 Pierre Charron, *Discours chrestien, qu'il n'est permis au sujet, pour quelque cause et raison que ce soit, de se liguier, bander, et rebeller contre son Roy*, Extrait d'une Lettre escrete à un Docteur de la Sorbonne en Avril 1589, annex to Charron, *La sagesse*, 872-879, 877, stresses this point.

law. Evidently, Charron uses the persuasive force of legitimacy. Moreover, he utilizes law to lessen the stress on religious matters. Laws are valid because they are law, not because they are good: thus the contents is irrelevant. Most strikingly the validity of law can overrule the freedom of conscience, as Charron excludes resistance to defend the personal convictions.

To better understand Charron, I will compare his positions first to Montaigne, then to the famous authors of the Catholic and Protestant side. 42

5. Comparison with Montaigne and Bodin

Talking about Charron is impossible without comparing his thoughts to those of Montaigne. Montaigne is generally seen as the essayist and a philosopher, the influence of this lawyer on law, however, has been underestimated⁹². Montaigne treats our topic in many parts of his essays. But first of all we have to exclude the role of another work, which has long been attributed to Montaigne⁹³. He planned to insert a tract of his friend Etienne de la Boétie⁹⁴ in this work called „Discours de la Servitude volontaire“ or „Le contr'un“⁹⁵. As a young man this French nobleman (1530-1563) wrote on and pleaded for the natural liberty of man in 1548/9⁹⁶. According to him everybody, even animals want to be free, only by custom do they accept the yoke of serfdom⁹⁷. Yet the political intention of this book has been overestimated. With sympathy de la Boétie recalls famous tyrannicides of antiquity. But he doesn't argue in favour of such actions of the right of resistance. He rather asks everybody to be aware of this possibility: everybody can be free if he accepts this challenge. Montaigne suggested an interpretation that de la Boétie put the emphasis on reason as the motif of subordination under the state⁹⁸; in this perspective, the ideas of de la Boétie, Montaigne and Charron are very similar⁹⁹. This interpretation is rather consistent with de la Boétie's later life, as he became a model citizen and fervently defended the 43

92 For his importance for the abolition of torture see my „Humanität und Staatsraison. Die Abschaffung der Folter in Europa und die Entwicklung des gemeinen Strafprozeß- und Beweisrechts seit dem hohen Mittelalter, Köln/ Weimar/ Wien 2000, 122 ss.

93 Cf. Joseph Schlosser, Die Lehre vom Widerstandsrecht der Untertanen gegen die legitime Fürstengewalt bei den Katholiken des 16. Jahrhunderts, Diss. Phil. Bonn 1914, 25 ss.

94 For a recent biography see Anne Marie Cocula, Étienne de la Boétie, Luçon 1985.

95 For their relationship see Jean-Michel Delacomptée, Et qu'un seul soit l'ami, Paris 1995, 35.

96 Estienne de la Boétie, Le discours de la servitude volontaire, in : Œuvres complètes, Bordeaux 1991, I 65-98.

97 de la Boétie, Le discours, 74.

98 Cf. Montaigne, Essais, 1.28 A, 194 ; cf. the explanations given by other contemporaries in Géralde Nakam, Montaigne et son Temps, Paris 1993, 118 s.

99 Adam, Etudes sur Pierre Charron (n. 29), 176.

king's position as representative of national unity¹⁰⁰. He defied the right of religion to cause political conflicts and pleaded for strict punishment for those who infringed on the king's rights¹⁰¹. Freedom of conscience became a private matter, in public the citizen had to comply with the king's orders¹⁰².

Montaigne's presents his ideas in a huge work full of original aspects, references and self-references scattered throughout the three books. As his statements on our topic are spread throughout his work, everybody trying to put them together has to do the job that Charron once did. Montaigne clearly hates tyranny¹⁰³. If anybody unlawfully usurps sovereign power nobody is bound to follow this tyrant. But Montaigne doesn't allow any active resistance; instead he invites man to wait for extraordinary divine help¹⁰⁴. The legitimate prince has to respect the law and customs of the land. But he has certain prerogatives¹⁰⁵. He knows more than his subjects about public matters and it is no good for the people to know everything¹⁰⁶. Requirements of the state may even make treason necessary, but in doing so the prince forfeits his reputation, so that such measure are useless¹⁰⁷. Therefore it is left for the princes only to decide on political actions against sovereigns¹⁰⁸.

44

Yet obedience has its limits. Orders of the king have to be carried out strictly, only when a discretionary power is implied the directive may be changed¹⁰⁹. Though it may become necessary even in private matters to deceive people, frauds for the sake of the state should be left to others¹¹⁰. Montaigne doesn't want to be considered as such a loyal civil servant that one may regard him as being capable of treachery¹¹¹. So everybody has to judge for himself what is just and honest. Man has to bend his knees, but not his intellect in front of the king¹¹². This is an important residue for personal responsibility and individuality, but in most cases obedience takes precedence.

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100 Claude Paulus, *Essai sur La Boétie*, Bruxelles 1949, 52 ss.

101 Paulus, *Essai sur La Boétie* (n. 100), 58.

102 For this counsel given to Montaigne's brother see Paulus, *Essai sur la Boétie* (n. 100), 63.

103 E.g. Montaigne, *Essais*, 2.27 A, 699.

104 Montaigne, *Les Essais*, 3.12 B-C, 1043.

105 Cf. Géralde Nakam, *Montaigne. La manière et la matière*, Paris 1991, 174.

106 Montaigne, *Essais*, 3.8 B, 933.

107 Montaigne, *Essais*, 2.17 C, 648 against Machiavelli.

108 Montaigne, *Essais*, 3.1 B, 793.

109 Montaigne, *Essais*, 3.17 C, 74.

110 Montaigne, *Essais*, 3.1 B, 791.

111 Montaigne, *Essais*, 3.1 B, 794.

112 Montaigne, *Essais*, 3.6 B, 935.

In order to make decisions conscience is important. Everybody should swear only to follow his conscience¹¹³. But also this principle is limited. Montaigne regards conscience as the source of an inner torture¹¹⁴, which might even be the strongest part of it. But the laws of inner conscience don't derive from nature, but from custom¹¹⁵. Children should be educated so that they adopt good principles of conscience¹¹⁶. Therefore he treats freedom of conscience without clear decision. He admits that will and wishes make their own laws, but deeds should follow what is good for public welfare¹¹⁷. Montaigne admires the Roman emperor Julian Apostata, who returned to the old pagan faith and allowed the free choice of religion¹¹⁸. But he used this device to fight Christianity. Consequently one could say that on the one hand, freedom of conscience leads to political conflicts and war. On the other hand, the endurance of infidels may take the stress on religious matters away. This, however, is a very ambivalent argument, as it challenges the overriding importance of religion.

46

Yet in one respect Montaigne becomes very clear. Resistance for the sake of the true religion he regards as a very impious act. This active disobedience only leads to murder and war. Although this right of resistance in his days is upheld by both parties¹¹⁹, this false conception of religion negates all principles and virtues of Christianity¹²⁰. The subject therefore has to follow the lawful princes and the law made by this sovereign. As the king of France is Catholic, so is the loyal Frenchman, regardless of what he personally thinks to be right. He has no right to question these authorities or to resist them. Law has to be obeyed not because it is just, but because it was enacted. Often the legislator is a fool, but this is of no importance. Whoever complies to law because it is just, doesn't obey as he should¹²¹. Law and authority are one the one hand radically demystified. On the other hand

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113 Montaigne, Essais, 3.1 B, 797.

114 Cf. Montaigne, Essais, 2.5 „De la conscience“ A, 369.

115 Montaigne, Essais, 1.23 C, 115. Montaigne denies furthermore the existence of any law of nature, cf. 2.12 A 579 f, as also religion depends on law and may be changed rapidly as illustrated by the British queens Mary and Elisabeth.

116 Montaigne, Essais, 1.26 A, 155.

117 Montaigne, Essais, 3.1 B, 795.

118 Montaigne, Essais, 2.19 „De la liberté de la conscience“ A, 669.

119 Montaigne, Essais, 2.12 C, 443.

120 Montaigne, Essais, 2.12 C, 444.

121 Montaigne, Essais, 3.13, B,C 1072: „Or les loix se maintiennent en credit, non par ce qu'elles sont justes, mais par ce qu'elles sont loix. C'est le fondement mystique de leur autorité ; elles n'en ont point d'autre. Qui bien leur sert. Elles sont souvent faictes par des sots, plus souvent par des gens qui, en haine d'equalité, on faute d'equité, mais tousjours par des hommes, autheurs vains et irresolus. Il n'est rien si lourdement e largement fautier que les loix, ny si ordinairement. Quiconque leur obeyt parce qu'elles sont justes, ne leur obeyt pas justement par où il doit.“

the validity relies not on outward factors and so the importance of law grows.

But also in this instance there is one exception. Man may follow a just cause even to the funeral pile, but he is not obliged to enter this fire¹²². This means that everybody is entitled to preserve his own life. The validity of law doesn't hinder man to preserve his own life. At this point this theory reaches its limits. So concerning the right of resistance Montaigne doesn't argue with law, but rather uses theological arguments and those of common sense. Yet Montaigne argues for the loyal observation of law. The state is free to decree and order civil life, whereas the individual is bound to obey to the limit of the maintenance of his life.

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The expert on Montaigne, G eralde Nakam, pointed out the similarities in these theories with Bodin. But she also saw the difference between the two, in as far as there is practically no right of resistance in Bodin¹²³, as he is the partisan of a constitutional law based on the sovereignty of the prince. His power relies on the fact, that his subjects have to consider him holy and inviolable¹²⁴. Following Bodin only one religion can exist in a country, which has to be defined by the prince, although he should abstain from using force for tactical reasons¹²⁵. He insists on using legal terms for his theory¹²⁶. Hereby his argumentation is on a more legal level than Montaigne's, his citations of Roman lawyers and laws enforce this impression¹²⁷. Montaigne, however, insist on man's free intellect. It allows man to acknowledge that the prince may know more and is allowed to do more than just the good and honest actions. Reason induces man to abstain from taking political actions and responsibilities. The freedom of the political responsible subject is submission. So there are hardly any political consequences of the intellectual freedom assumed by Montaigne.

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Furthermore, according to Nakam, Montaigne's opinion defines an intermediate position between Bodin's „raison d' tat“ and Calvinist ideas on the freedom of conscience¹²⁸. But again we find conscience degraded severely compared to classical Calvinist positions. It is no longer the mirror of god or nature, as assumed by the theologians, but a consequence of social habits and education. It remains important, as a means to find responsible decisions, thus is a way to act individually. But it is no longer a just cause for any act of resistance in favour of religion against any legitimate government. People should serve religion and not

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122 Montaigne, *Essais*, 3.1 B, 792.

123 G eralde Nakam, *Les Essais de Montaigne. Miroir et proc s de leur temps*, Paris 1984, 242, 255.

124 Jean Bodin, *Les six livres de la Republique*, Paris 1583/ Aalen 1977, II.5, 312 ; for exceptions cf. II.5, 198 ss.

125 Bodin, *Les six livres de la Republique* (n. 124), IV.7, 654.

126 Bodin, *Les six livres* (n. 124), I.6, 76 und 100.

127 Vgl. Borelli, *Obligation juridique* (n. 64), 13.

128 Nakam, *Les Essais*, 260.

use it as pretence to wage war¹²⁹.

It has to be questioned whether Montaigne really achieved a balance between Calvinist theories and the principle of sovereignty. Conscience is important for man in order to live a honourable and decent life. But it is not allowed to dominate civic relations. As conscience is restricted to private matters and is not allowed to influence public matters, the authority, uniformity, and sovereignty of the state take precedence. Religion gains more importance in Charron's work. At least in one instance it entitles man to resist the legitimate prince; in this case religion is placed above the sovereignty and unity of the state. Charron and Montaigne share many assumptions. But in this respect there is rather an important discrepancy. 51

The conversion of Henry IV for the sake of the public good in the light of these theories is no longer treason in regard to God, but a heroic sacrifice. Man has to give up what by the means of his conscience he perceives as just, when the state asks him to act differently. Obliging to the authority he preserves a higher value, that of the maintenance of life and society¹³⁰. 52

Thus the separation of the private and the public sphere is quite clearly developed before the 17th century by Montaigne. At least in this instance we can see that Hobbes is closer to Montaigne than to Charron. We know that he spent several years in France where he studied political theory. An influence of Charron on Hobbes has therefore been suggested¹³¹. The structure of the „Leviathan“ is very close to the „Sagesse“ and already Charron called the sovereign the „image de Dieu“¹³². Yet the role of religion in Hobbes' Leviathan is restricted to the private domain. Anybody may have his conviction, but as soon as public questions are concerned, only the sovereign has the right to define the actions of his subjects. Only in the case of life-threatening danger, man is set back in the state of nature and may defend himself¹³³. 53

The difference between the inward freedom of conscience and the outward obligation of duty to obey the state was already noted as a trait particular to the 17th century¹³⁴. Yet these features quite precisely reflect the earlier statements of Montaigne. In as much as Hobbes doesn't grant the right to resist in pursuit of conscience he plainly contradicts Charron and 54

129 Montaigne, *Essais*, 2.12 A, 443.

130 Nakam, *Les Essais*, 178, sees in this act the prevalence of politics over conscience.

131 Paul Grendler, *Pierre Charron: Precursor to Hobbes*, *The Review of Politics* 25 (1963), 212-223, 221 ss; Battista, *Alle origini* (n. 56), 279; Tuck, *Hobbes* (n. 45), 126 s; the same, *Philosophy and Government 1572-1651*, Cambridge 1993, 348.

132 Vgl. Charron, *De la sagesse*, 2.8 n.1, 490.

133 Thomas Hobbes, *Leviathan or*, ed. R. Tuck, Cambridge 1996, c.14, 98 s.

134 Cf. the important study of Roman Schnur, *Individualismus und Absolutismus. Zur politischen Theorie vor Thomas Hobbes (1600-1640)*, (*Schriften zur Verfassungsgeschichte*, 2), Berlin 1963, 83.

rather follows Montaigne¹³⁵. The genealogy of thoughts in the 16th and 17th century evidently is more complex than has been stated hitherto. The role of Montaigne as one of the post influential political authors of this time is still underestimated.

In one perspective Hobbes' theory is much more elaborate. By fitting it into framework of a social contract the right of resistance could be founded within a system and its limits could logically be justified. But apart from the systematic aspect the character of the theory changed as well. Being interwoven in a legal context the legitimacy of resistance became even more important. So the legal argument was enforced. Arguing that the contract is between all subjects only in favour and not with the king, the king cannot infract the contract¹³⁶. This legal construction of a contract in favour of a third is used to reduce the possibility of resistance. On the whole, political theory here rather develops a legal theory, which could help to convince people by legitimacy.

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6. The impact of religion

The question remains if Charron emphasised religion and allowed a right to resist in this matter only as an author close to the Catholic League. I therefore have to conclude my overview with a brief comparison to some authors, which intimately adhered to confessional parties of the time and may be regarded as their spokesmen.

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It can be stated that Catholic authors of the time generally admitted resistance against the sovereign in more instances than their Protestant counterparts. The most famous Leaguist authors, Jean Boucher (1548-1644) and Guillaume Rose (1542-1602), pleaded for a new night of St. Bartholomew to end all political troubles aroused by Reformation¹³⁷. For Boucher the pope remained the responsible head of the church and Christianity; he has the power to dissolve all subjects from their duty of obedience towards their monarch. He only granted a right of resistance in case the church or a secular authority like the Diet had summoned the people¹³⁸. Also for Rossaeus kings could be dethroned in case they acted against the true religion, but the resistance movement had to be organized by the church¹³⁹. These ideas despise conscience and only balance the interest of state and religion. Even further apart from Charron's views are the Spanish authors of these years.

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135 For Hobbes theory on resistance see Yves Chalres Zarka, *La mutation du droit de résistance chez Grotius et Hobbes : du droit collectif du peuple au droit de l'individu*, in : Jean-Claude Zancarini (Ed.), *Le Droit de résistance XII^e-XX^e siècle*, Fontenay-aux-Roses 1999, 139-151, 146 ss.

136 Hobbes, *Leviathan*, c.17, 120; c.18, 122.

137 Hermann Vahle, *Boucher und Rossaeus, Zur politischen Theorie und Praxis der französischen Liga (1576-1595)*, *Archiv für Kulturgeschichte* 56 (1974), 313-349, 325.

138 Vahle, *Boucher und Rossaeus* (n. 137), 328, 332; Salmon, *Catholic resistance theory* (n. 13), 226.

139 Vahle, *Boucher und Rossaeus* (n. 137), 345.

The Dominican Francisco de Vitoria (1480/92-1546) liberated subjects from the duty of obedience regarding secular powers when the prince turned out to be heretic¹⁴⁰. The Jesuit Juan de Mariana (1536-1624) stated in 1599 that there should only be one religion in the state. But he admits that a public convent of the Diet can expel princes, yet it should not be done easily¹⁴¹. The individual has no freedom of conscience, he is bound to duty. These Catholic authors place the authority of the pope higher than that of the king. From this point of view Charron is hardly recognizable as a Catholic author. 58

Much closer to Charron's ideas are the statements found in the writings of the Calvinistic monarchomachi. True to Calvin's idea Louis Severin for example considers kings as servants of God, which have been ordered to administer his world¹⁴². For this reason subjects are bound to obey the sovereign not only because of duty and fear, but also with love. And everybody can recognize this obligation by means of conscience. For Danaeus individuals don't have the right of active resistance, but may refuse to obey especially unjust and impious orders¹⁴³. Especially this point is very close to Charron. For this reason our Catholic authors Montaigne and Charron seem to cling more closely to the ideas expressed by Calvinist writers. But again, if we leave France, the discrepancies become more visible. The Calvinist Johannes Althusius (1557-1638), whose „Politica methodice digesta“ was first published in 1603, considered resistance lawful if the administration transgressed its competences, which he restricted to secular matters¹⁴⁴. Thus resistance is allowed even for the subject when the prince orders impious activities. 59

The example of Charron shows that the resemblance of ideas in this time was not only due to a common confession, but that the political setting may have even been more important. The special situation in France provoked some authors as Montaigne and Charron to adopt political ideas of the other side in order to pacify the state. The importance of the political background becomes even clearer if we look at the politics of the Calvinists at this time, 60

140 Francisco de Vitoria, *Comentarios a la Secuna secundae de Santo Tomás*, Salamanca 1935, V 216 n.3 zu II IIae qu. 104 art.6: „Sed de jure positivo, statim quod est haereticus, subditi liberantur a juramento et obedientia, et prohibet ne ei subditi debeant obedire.“

141 Juan de Mariana, *De rege ac regis institutione libri tres*, Toledo 1599, transl. A. Voigt (Ed.), *Der Herrschaftsvertrag*, (Politica, 16), Neuwied 1965, 112. Cf. Quin, *Personenrechte* (n. 10), 355 ff, 466.

142 Louis Severin, *Vindiciae secundum libertatem ecclesiae gallicanae, & Regij status Gallofrancorum sub Henrico IIII. Rege Francorum & Navarrae*, Genevae 1593, 75; for the author see Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, Stuttgart 1875/ Graz 1956, III 690.

143 Christoph Strohm, *Ethik im frühen Calvinismus*, Berlin/ New York 1996, 373 s, 495 ss.

144 Johannes Althusius, *Politica methodice digesta*, 3rd ed. Herborn 1614/ Aalen 1961, c.38 n.40 s, 899, were ten commandments and the mission of the state limit its power; cf. Wolgast, *Die Religionsfrage* (n. 18), 55 ss; Bildheim, *Calvinistische Staatstheorien* (n. 7), 63 ss. - Closer to Charron's position were lutheran authors such as Johannes Gerhard and Detrich Reinkingk, who exclude any *ius armorum* for subjects, cf. Martin Heckel, *Staat und Kirche nach den Lehren der evangelischen Juristen*, ZRG KA 43 (1957), 202-308, 294.

which have recently been investigated. Theodor Beza (1519-1605) advised Henri IV after his accession to the throne and tried to paint a positive picture of his protégé in other countries¹⁴⁵. The critical developments in France led him to fear that Henri might lose his faith altogether or develop antipathy against the Protestant church rather than simply convert¹⁴⁶. So when Henri finally did go to mass it still was a blow for Beza, but due to his comprehension he kept contact to Henri until his death¹⁴⁷. Moreover, he urged French Protestants to stay loyal to the monarch. He refused them the right to rebel or to disobey his orders¹⁴⁸. He stressed the fact that Henri was the rightful King of France with all prerogatives of a sovereign¹⁴⁹. He didn't allow his followers to claim conscience as a reason to resist the king and to cause new quarrels. He argued that the Christian faith requires its followers to keep good company with everybody and that true peace should finally be established in France¹⁵⁰. This is a drastic example of cooperation between the confessional fractions, which influenced authors such as Charron after his adherence to the League. Montaigne, however, somehow anticipated the necessity of such a position, which put the stress on the state and thus mediated between the confessions.

7. Conclusion

Obviously there were some politicians and political writers in France around 1600, which fought hard to establish real peace. For these men the different confessional position of an author was no reason not to adopt his reasoning. What de la Boétie and Montaigne developed after the 1560s, Beza adapted to a great extent at the end of the century. The

61

145 Manetsch, Theodore Beza (n. 6), 200 ss.

146 Manetsch, Theodore Beza (n. 6), 205, 246.

147 Manetsch, Theodore Beza (n. 6), 257 ss.

148 Theodor Beza, letter to Grynaeus dated 25.8./4.9. 1593, Basel, Universitätsbibl, Kirchenarchiv, C.I,2, Band 2 fol.225f, cited by Manetsch, Theodore Beza (n. 6), 261 n.42 : „Deinde, etiamsi Pharaonis animum illi induisset, tamen, si propositum illi est (sicuti certe est) bellis civilibus finem imponere, necesse est, si regnare vult, ut Ecclesiarum pace et alicui libertati caveat [...].“

149 Theodor Beza, Mémoire sur les guerres de religion, 1594, Bulletin historique et littéraire 21 (1872), 28-36, 33, cited also by Manetsch, Theodore Beza (n. 6), 269 n.69: „Pour conclusion donc, que mon advis est, puisqu'on me l'a demandé, que les Églises, suivant le mesme chemin, réquièrent à leur vray Roy de France et de Navarre, Henri quatriesme, paisiblement et en toute révérence due à sa royale majesté, un tolérable règlement pour le repos de leur conscience et pour l'exercice de la religion“.

150 Béza, Mémoire (n. 150), 35 s, cited by Manetsch, Theodore Beza (n. 6), 270 n.72: „Finalement, quant à restituer ceux de l'Eglise romaine aux lieux dont ils ont esté déchassés, je ne vois point qu'on ne puisse ni doive en bonne conscience refuser cela au roy le demandant et le commandant, ni que sans cela, une vraye paix puisse estre establee en France, mais au contraire, il me semble que si on se sait et veult bien gouverner les uns avec les autres es affaires de la vie présente et nous surtout, suivant ce que nostre religion nous commande de garde charitablement envers tous, voire jusques à nos plus grands adversaires, ce sera un moyen de se réunir et lier les uns avec les autres.“

new Huguenot position is taken up in Charron's „La sagesse“ although the author had previously even been close to the League. Although the quickly changing circumstances provided for a laboratory of political reasoning, the historical background proves to be more important than the membership in a party or the adherence to a certain confessions. We can observe the evolution of doctrines that prepare the teaching of Hobbes and we again notice, to what extent his stay in France has influenced him.

The major change we can observe is the tendency to stress the legal aspect. Montaigne and Charron strive to strengthen the legislative authority of the state and the subject's duty of obedience. But the importance of law is strengthened in „La Sagesse“. First of all, Charron uses more legal arguments than Montaigne. Furthermore, even Charron's systematic approach helps to draw up a coherent system of rules binding the subjects. Practical and ethical arguments are used to decree what everybody should observe. Finally, in admitting a right of resistance based on the individual conscience in an extreme case, it is only Charron who balances the ideas of sovereignty and conscience in a theory of resistance. But this idea is put into a rule of law. Hereby we see the influence of the historical background and we understand the wish to diminish the importance of religion in a civil society. But it is the growing importance of legal doctrines, which demonstrates the change of doctrine and marks the transformation of political ideas from the 16th to the 17th century.

62

Also in the respect of political literature, France proves to have been a world of its own and distinct to the writings of other countries. At the end of 14th century Jacques Krynen attests that political solutions were chosen due to the „natural love“ of the French simply for their king as symbol of unity and civil order¹⁵¹. In 1560 Michel de L'Hopital repeated an old principle of French politics in the Diet „Un foi, une loi, un roi“¹⁵². This idea of necessary unity won over the freedom of conscience, which had been demanded by the Reformation. The only residuum left for conscience is the private sphere. Even this small space for a right of resistance granted by Charron was practically rejected even by the Protestant leaders. Later Hobbes adopted this harsh solution. In this respect, the French solution for the political problem to balance sovereignty and freedom of conscience became a dominant political theory at least for one century.

63

151 Jacques Krynen, *L'empire du roi. Idées et croyances politique en France XIII^e- XV^e siècle*, Paris 1993, 458.

152 For de l'Hopital see Henry Kamen, *The Rise of Toleration*, here quoted from the German Translation by P. de Mendelssohn: *Intoleranz und Toleranz zwischen Reformation und Aufklärung*, München 1967, 133 ss.