

The Path to the Relationship between Constitutional and Religious Freedom: Joachim, Telesio and Rossi

This paper takes its starting point from the scholarly need to correctly rearticulate the relationship between fundamental liberties, as elaborated by the constitutional doctrine, and the freedom of conscience, within confessional legal orders and the historical experiences of faith. Particularly in Western legal systems, and not exclusively therein, the two notions have woven parallels, shared claims, and established profiles of autonomy and separation. The contribution aims to analyze with particular focus the relevance of individual dissent, which finds its primary expression first and foremost within the framework of the posited and positive legal order, projecting itself as far as normative transgression for higher reasons of conscience and justice. The thematic trajectory identified intersects three precise case studies: Joachim of Fiore, Bernardino Telesio and Pasquale Rossi. Having restored the full juridical character of the apocalyptic reading of the Calabrian abbot, having internalized the epistemological turn advanced for the first time by Telesian thought, and having registered the early anti-authoritarian critical tension present in Rossi's positivism, the conclusions will highlight the hermeneutical possibilities inherent in the constitutional recognition of dissenting thought. Forms of continuous mobility within the system for the adaptation of its regulatory structures to the sharing of principles ordered around participation and equal liberty, inside and beyond the canonistic science.

Keywords: religious freedom, constitutionalism, canon law, dissent

Introduction

There are no merely intuitive definitions of the legal concept of liberty, which moreover is captured in different languages by a plurality of terms grasping distinct portions of its meaning within a polysemous juridical interplay. Western legal theory has traditionally distinguished two major operative criteria for the formal qualification of liberty. The first concerns the originary versus positivized, derivative nature of liberty. In the former sense, it is innate or connatural; in the latter, it is conditional upon the effectiveness of its recognition (Lillo 2024a).

All jusnaturalist and juspositivist approaches can be located within this quadrant: either as a positive act of affirmation — self-exercised or exercised by an authority — or as a subjective status of the natural person arising at birth or even prior to it. The second major distinction does not concern the semantic and ontological qualification of liberty, but rather the concrete realization of its exercise. Until the nineteenth-century liberal State, the prevailing conception understood liberty as realized in the absence of interference — regardless of its source: whether from a fellow private individual — as often held in Roman private law — or from an institutionally organized authority (Berlin 1969).

Since the crisis of legitimacy of classical liberalism, a differently proactive role of public power has emerged, as an active participant in rendering liberties

effective. Despite the undeniable merits and considerable success of this second formulation, it does not appear free from ambiguities. If a power organizes and limits a liberty that is not its own, is that liberty truly full? Does it depend on the enactment of rules? Are those rules not rather the typical form of its various limitations (Hayek 1998: 72-74)? The general ideological, existential and anthropological tension concerning liberty originates in all cases from the interrelation between the individual and the community to which he pertains, irrespective of who between the two — and in what terms — is considered the effective holder of rights.

Human actions do not arise within a schema, but enter into a network of relations: they compose it, therefore are distinguishable from it, yet cannot do without it. Each time has its own organization of the political community, constituted by the outcome of individual choices recombined in accordance with ethical proposals, beliefs, and positive regulations.

It is the necessary existence of a positive normation and of a substantial physical incoercibility of thought that has brought face to face liberty as a constitutional acquisition, deserving of stable and precise recognition, and liberty as an unsanctionable sphere in the convictions of each person. Having clarified this ineliminable coexistence of meanings, and of the juridical institutions that embody them, it is however necessary to interrogate what the real relations are between political and civil liberties in constitutional doctrines and the archetypal mould of religious liberty as an expression of the most intimate and at times reserved — and not necessarily secret — human convictions (Zeidan 2003: 109-110).

Has freedom of religion constituted the paradigm of constitutional liberties, or has it rather been the converse, that is, that the current notion of religious liberty has sense and meaning only within democratic, secular and separatist constitutions? The debate is wide open (Nussbaum 2008).

Literature review

Apocalyptic literature should belong to the eminently theological domain. External, that is, even to the canonical domain juridically understood: if canon law does not forget the original and eternal end of the salvation of souls, in view of divine judgment, eschatological elaboration is nevertheless situated at a certain distance from ecclesiastical dogmatics (Helmholz 2010: 395).

This has not prevented that same literature from achieving a particular following in constitutional law, particularly that of the twentieth century. At stake was the need to intercept the foundation of law outside the possibilities of a religious legitimation. Secularism had relocated the sacred, but without removing it, rather displacing it, downsizing it. From this point of view, the Apocalypica of Joachim of Fiore is not a foreign body to Western juridical culture (Joachim of Fiore 1995), nor a systemic alternative to the Augustinian and Thomistic perspective - although the opposite hermeneutic result is usually emphasized.

1 Augustine and Thomas are considered to have brought about a functional
 2 rationalization of the relations between the historical Church and the Church as
 3 the Body of Christ. Revelation begins its ecclesiological becoming, and founds
 4 its full and coherent reality in human action (Hinze 2016).

5 The point is that Joachim by no means wants to dismantle this approach: his
 6 apocalyptic vision does not compete with the canonical perspective, nor does it
 7 attack or insult it. It sketches, rather, a further evolutionary-applicative
 8 dimension. The Augustinian system does not betray faith (Ettenhuber 2011: 99);
 9 it sets itself to provide an exegetical framework suitable to include the Church
 10 in a design of salvation. Joachim carries out a different operation (Joachim of
 11 Fiore 2025), similar in certain respects to the considerations of Peter Damian on
 12 human time and divine time (Bilotti 2022). When the theologian is interrogated
 13 on the impossibility, for divine intervention, of restoring things already
 14 happened, his answer is logically unassailable.

15 This may be true on the plane of human time (in the ordinary biological
 16 cycle, God does not reunite earth divided by an earthquake, does not restore to a
 17 virginal state a wife who has consummated the conjugal act), but divine time
 18 interrogates temporal dimensions external to human cognition. Human free will
 19 is free in the time of its choices; divine omniscience, rather than preceding it,
 20 includes it within itself (Ventrella 2012).

21 The relation between history and salvation for Joachim has a similar
 22 connotation. The time of the Spirit will come, because it must be established. It
 23 does not exclude, however, the theological lawfulness of what happens before
 24 that advent.

25 In the scientific production of Telesio even the most curated anthologies
 26 limit themselves to the opus magnum that occupied a lifetime of reflections,
 27 systematizations and corrections (Telesio 1586). Probably philology has not
 28 been able to have at hand sufficient reworkings by the Author to describe the
 29 parabola of stylistic and expository perfection. The fact then that to the legacy
 30 of Telesio there have been linked above all empiricists and economists,
 31 precursors of the classical acceptance of political liberalism, has limited its
 32 reception in juridical studies. His considerations on individual choice, survival,
 33 preferences and sensorial knowledges have inevitably had a wider audience
 34 among Austrian economists (Clark 2016: 41-42) or those of the Chicago School
 35 (Csere 2005: 26-28) than in the erudite twentieth-century legal-positivist
 36 treatises. And the reason reveals itself to us with surprising clarity: twentieth-
 37 century law is a law thought around the state phenomenon; in Telesian
 38 philosophy, the institutional dogma of an interventionist State does not exist.

39 A historical-cultural connection of peculiar juridical relevance in the lived
 40 experience of Bernardino Telesio appears to us as particularly underestimated:
 41 the authentic relation between the choices practiced and his public profile. The
 42 thematic rejuvenation that Telesio proposes is that is specular to his institutional
 43 reception. The authentic return to the reading of classical sources and the
 44 primacy of observational technique are instances of freedom wisely cultivated
 45 inside a given order. To appear unbound, as a consequence of a freedom not to
 46 be granted and therefore to be limited, is not so much the already notable

1 eversive force of the content, but rather the call to a liberation from
 2 preconception. There does not exist in Telesio a "forbidden" culture, a
 3 prohibition on returning to investigate the sources, advancing even more a
 4 concretely radical epistemology of a new type. The frames of meaning concur to
 5 render the norm effective, they cannot however fix even the sanctions relative to
 6 the violation of a canon, of a style, of an obligation of conformation. Telesio is
 7 not revolutionary because he sustains mass agitations: he does not support
 8 peasant revolts as those that will be present and frequent in the German century.
 9 He does not posit a reinterpretation of Scripture that institutes an alternative
 10 confession to the Church that on that tradition has consolidated itself. He
 11 implements rather a devolution of competences from the plane of acquired
 12 knowledges to those still to be acquired. In this double movement stand
 13 contemporaneously the reasons for his appreciation (he does not appear
 14 immediately disturbing for public order) and for his contestations (he does not
 15 provide an ethical table of support for the cogency of academic notions). More
 16 than to Marx and Luther, he is metaphorically related to Galileo Galilei: "eppur
 17 si muove". An incise of the kind becomes subversive only at the act of fixing a
 18 new constitution of circulation of knowledge: in itself and for itself it can even
 19 pass unobserved, it can even not arrive at the direct and necessary gap between
 20 theology and law (Nancy 2008).

21 The idea of a science that is simultaneously new and universal, grounded in
 22 sensory knowledge and rational re-elaboration, is not hindered only by the
 23 obscurantist legacies of religious conflict. To establish itself in the legal field as
 24 well, it requires a suitable economic and cultural underpinning: the emergence
 25 of new social classes, the advantageousness of new forms of regulation of
 26 intersubjective relations, and the adoption of such advantageousness as a shared
 27 value. In other words, to change the role of science it is necessary to restructure
 28 the forms and contents of the dominant morality. This trajectory takes place
 29 within the process of secularization, but does not end with it. And in law it is
 30 more demanding for the scientific character of juridical knowledge to assert
 31 itself, although once that common view is achieved it will be almost impossible
 32 to dispense with it.

33 This is not the place to fully investigate the fascination exerted on the jurist
 34 from the nineteenth century onwards by the insistent parallelism, up to the daring
 35 methodological equivalence, between natural sciences and social sciences. What
 36 is being constructed, however, is a science that takes into account the
 37 predictability of its effects to the point of configuring them as necessary and that
 38 separates every other "impure" element from its analytical parabola. There is no
 39 longer a science of the sacred; what becomes "sacred" (cogent, impossible to
 40 exclude, true without need for adverse or concordant demonstrations) is that such
 41 science exists. Nor is it possible to evaluate with a claim to absoluteness why the
 42 revisitation of the Cartesian method, through political liberalism, does not
 43 immediately take root in law (Herrick 2021). Some contextual factors (the non-
 44 homologability of every custom, the resilience of the superseded canonical-
 45 Romanistic institutions, the cultural formation of professional jurists) may
 46 contribute to explain the hiatus, but it is their combination that is relevant, not

1 one to the detriment of the others. It is certain that the positivist mentality
2 permeates legal studies and even confessional schools begin to absorb its
3 formalism and determinism, despite the complex richness of historical
4 experiences that should have suggested to prudent spirits some greater caution,
5 if only to protect those excluded from the vast world of negotiable lawfulness.

6 Pasquale Rossi, from positions internal to scientific positivism, expresses a
7 very strong critique of its inevitable dogmatic, ideological and even authoritarian
8 curvature. Lombroso's criminology was born from vaguely progressive
9 positions, postulating unprecedented interconnections between anthropology
10 and forensic sciences, between biological and ethnographic competences,
11 between technical progress and social justice. It went in directions opposite in
12 more than one respect, indeed supplying fascist juridical doctrine with a
13 suggestive and authoritative picklock for affirming principles of prevention and
14 policing. The historian and ecclesiasticist Francesco Ruffini, from liberal
15 positions and yet not forgetful of the social question (with a sense of justice that
16 makes him partly eccentric with respect to the canon of classical liberalism),
17 harshly criticizes the still anti-modernist Church's choice to provide itself with a
18 code: the stratification of custom is sacrificed, without even embracing the
19 doctrine of civil liberties (Van Schaik 2025: 14-17). In the first decade of the
20 twentieth century, Rossi sees and attempts to orient these great debates: the clash
21 of values between progress and tradition, the anti-state polemic of the Church
22 more as a political actor than as a "benevolent mother", science bent and
23 redirected to ends of public order (Rossi 1904). The fact that there is no written,
24 rigid Constitution of guarantees seems almost an accidental element: the porosity
25 of the Albertine Statute even more easily dissimulates the prevarication that
26 power legislates as its own norm.

27 To conduct a study on the presuppositions of religious freedom, within
28 confessional systems and particularly in its secular projection onto the legal
29 orders of the century, it can be anticipated that elements normally excluded from
30 the generalist debate will be taken into consideration. In underscoring the
31 position of the believer and his rights within the religious community, specific
32 mention will be made of the theology of Joachim of Fiore. It represents, in the
33 early centuries of the second millennium, an instance of reform simultaneously
34 internal and external to the Church itself: a renewal without schism.

35 In observing the premises for a more fully secular legal science and
36 empirical method, free from politico-religious control, the seminal parable of the
37 philosopher Bernardino Telesio will be addressed. As a complement to the final
38 period of open conflict between interests in prevention and interests in
39 participation, the socialist and libertarian stance of the crowd psychologist
40 Pasquale Rossi will finally be recalled. At the beginning of the twentieth century,
41 when secular decisionism occupies the symbolism of religious discourse, his
42 considerations foreshadow forms and axiologies of the constitutional State under
43 the rule of law (Rossi 1898).

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Methodology and Materials/Methods

The analytical methodology employed has inevitably made use of the scientific toolkit of contextual theologies and the history of canon law. Although the field of study has been described through the consequences of the various historical-juridical passages in the definition of Euro-Western constitutionalism, limiting oneself to commenting on the aforementioned critical issues by resorting only to the categories of public law would not have proven sufficient (Jasonni 2004). This can also be affirmed because, in the three periods of which the respective authors constitute the highest testimonies, forms of government and the exercise of political power are found that are very different from one another.

At the time of the Gregorian Church, the political system retains some of the typical traits of medieval juridical culture (Le Goff 2014), but the changes that emerged from the year 1000 onward are also reaching initial results. The network of trade has better connected different territories, the Church tends to structure itself as an institutional subject that attributes competences and roles within itself, and the high spiritual mandate does not prevent its existence as a powerful force in the worldly administrative system. Joachim of Fiore is an internal critic of this structure because his vision, never anti-juridical in the strict sense, is nevertheless critical of an expansion of resources and wealth that takes place within a period of transformation and popular instances aimed at the reaffirmation of faith and its authenticity. As regards the study of his work and its cultural references, it is significant to consider the influence of Eastern canon law, towards which monastic juridical wisdom has always paid much attention (Agamben 2011). The chosen leitmotif (critique of power as a presupposition in the recognition of freedom) does not, however, allow for a deepening of this aspect, nor to effectively incorporate it into the methodologies and materials of this analysis.

The institutional panorama of the 16th century is markedly different. The centralized system, which at the time of Joachim laid very resilient canonical bases, is put under stress not only by the diversified levels of local autonomies but also by the second great schism in the Christian theological context. That it impacts public law is evident because kingdoms and territories, as will be unequivocally affirmed at the end of the wars of religion, follow the faith of their prince and have within them different levels of acceptance and protection of religious tolerance. It can, moreover, be repeated that Telesio does not appear as a juridical commentator in the strict sense; he is, rather, expressive of that diffuse intellectuality that constitutes a sort of "soft power" in Europe between the 16th and 17th centuries. This intellectuality, of ecclesial formation, is inserted in a debate of at least continental relevance (thanks to knowledge of the Latin language), interested in the cultural temper of the academic-university world, and projected, in substance, to inhabit the intrinsic unity of the legal order without renouncing the possible pluralistic options present within it (Di Prima 2023). For this type of intellectual, the only true and profound competitor, the conquest of spaces of mundane power not being at stake, is the hostility of the

ecclesial censorship apparatus.

The Europe of the independent bourgeoisie, which asserts itself precisely starting from the Reformation and Counter-Reformation, reaches its definitive crisis between the end of the 19th century and the 20th century, and it is for these purposes that the methods and materials of canonical science and the history of law are no longer the only ones sufficient to grasp the transition. It becomes rather necessary to juxtapose the then newly forming social sciences, which place at the service of the crisis demographic, psychological, and political-advocacy observation (Gauchet 1999). The long wave of the Marxist 19th century is indeed important in the elaboration of a critique of power, but the socialist world is much more divided than appearances suggest, and its exasperated factionalism limits all too much the consideration of religious freedom. This issue is often resolved in a generic anticlericalism: Pasquale Rossi, thanks to anthropological and ethnographic competences, does not abandon, even as a militant of his time, his interest in rite and folklore (Rossi 1903). In addition, this is the reason for his originality at the source of the doctrine of the social-democratic State.

Results

The results of the undertaken research allow for the capitalization of initial empirical data and further elements of reflection. Firstly, a difference in fortunes and reception clearly emerges in the juridical theses conveyed by the three authors who constitute the case studies of the present diachronic comparison, concerning the issues raised by religious freedom and its institutional recognition. Joachim, contrary to his reputation as an uncomfortable and eccentric figure with respect to the prevailing canonical dogmatics, actually enjoyed particular consensus. Dante Alighieri, who had Ghibelline sympathies but must be considered a disillusioned Guelph in politics, sees in Joachim of Fiore a prophetic spirit capable of projecting the demands for modernization in the ecclesiastical structure also onto the spiritual plane (Dronke 1984: 409). The fact that he never contradicts the humanistic legacy of classical civilizations - at most ascribing to it a superior framework of meaning from the perspective of salvation and the advent of the age of the Holy Spirit - makes him a reservoir of valuable insights for the anti-authoritarian culture of the 13th and 14th centuries. In addition to the great theoretical endeavor, the Calabrian abbot also stands out for his testimony of life, and this proves to be a trait common to other figures of regional religiosity (Finucane 2011). Consider, in this regard, the example of Francis of Paola (a maritime municipality near Cosenza). This time we are not in the presence of a refined theologian nor a monk of meditation, but of a religious of great inner tenacity and personal charisma. His example of life and testimony of Christian faith, in the essentiality of the most intimate choices, elevates him to a model of reference for contemporary spirituality in southern France: sought after as confessor, patron, and spiritual guide. Even Telesio, more than three centuries later, seems to gather significant consensus, which, however,

1 goes beyond the perimeter of contemporary juridical doctrine strictly
2 understood.

3 While Joachim had a following in Tuscan intellectuality and the
4 Francophone world, Telesio's fortune is more rooted in the countries of the
5 Reformation. His thought is made, perhaps hastily and superficially, to oscillate
6 between individualism and pantheism. On the one hand, in fact, the primacy of
7 the capacity for survival and of sensory knowledge pushes one to consider him
8 the proponent of autonomist and even individualist instances. On the other hand,
9 however, his marked attention to nature as a system of study-and not as a page
10 merely constrained, as Creation, to obliterate the conventional interpretation of
11 the Holy Scriptures-has tones that refer to the subsequent Dutch and North-
12 European tradition (Negri 2004). A substantial underestimation emerges in the
13 field of political theory and the doctrine of the State due to a defect of
14 perspective: Telesio appears as a precursor of a discourse on the observational
15 method of science (Telesio 1586). It is forgotten, however, that part of those
16 acquisitions will also be made one's own by juridical science. Above all, it is
17 forgotten that in 16th-century Italian society, the Telesian position is
18 immediately political: it wants to restore knowledge from the meta-semantic
19 territory of obedience to the epistemological one of the circulation of knowledge.
20 This is a fundamental contribution to setting up the critique of censorial
21 legislations of clerical content (Comotti 2013).

22 The results of the research highlight lines of continuity with the position of
23 Pasquale Rossi, in turn three and a half centuries after that of Telesio, if only in
24 the name of a certain sharing of an anti-hierarchical ideal. The socialist program,
25 however, tended to make pure and simple anticlericalism, approaching, as in the
26 case of Giuseppe Mazzini, the idea of a militant civil religion as the spiritual glue
27 of national patriotism (Viroli 2012: 15-72). Rossi appears, already in this phase
28 of selection of the acquired elements, more advanced along a double expository
29 direction. Firstly, given the difficulty in defining the subject of social class,
30 central for communists and conversely too blurred in anarchist mutualism, he
31 works on the notion of mass in almost eschatological terms: not so much as the
32 people of God, but as depositary of a collective psyche that sums up and
33 sublimates a composite picture of individual educational choices. On the other
34 hand, his intolerance for solutions that propose the centralization of power,
35 instead of its decentralized depotentiation, places Rossi at the service of
36 instances of justice that do not forget the authenticity of popular devotion. To
37 inhabit the conflict, one must live it inside the institutions of the legal order
38 precisely because it is outside them that conflict pushes and seeks to re-articulate
39 the distribution of decision and subjection (Besson 2005: 518).

41 Discussion

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43 The doctrinal discussion has focused on ideological elements of some
44 importance; yet, it may be affirmed that these have neither corrected, modified,
45 nor disproved the adequacy of the exegetical data collected, nor have they
46 adequately addressed the juridical institutions and normative sources involved

1 in the distinct historical periods. The generation of Joachim of Fiore is that which
 2 confronts the Decree of the monk Gratian. Such Decree lies at the basis of the
 3 formal sources of canon law in the second millennium, yet it was not born as a
 4 legislative source of sovereign authority in the proper sense. It is not, in fact, an
 5 imperial constitution, and we know that both in the East and in the West, the
 6 emperors, albeit within different institutional and theological frameworks, did
 7 not refrain from legislating also on religious matters (Bellini 2017). Certainly, it
 8 is not a pontifical source. Gratian's purpose is to provide the interpreter with a
 9 harmonious collection, which lowers the conflict between discordant sources
 10 and delivers an expository instrument not detached from material needs. The
 11 interrelation between didactics and practice obtains the sanction of a source
 12 thanks to the necessity of its use: it is a program for the discovery of the sources
 13 of law quite different from the positivist model. In the Telesian period, by
 14 contrast, both civilians and canonists measure themselves against a far more
 15 structured source, which, although still appearing as compilation and
 16 consolidation, in reality approximates the formal guise of many modern
 17 legislations: the *Corpus Iuris Canonici*. In the Decree, there is still little room for
 18 religious liberty-indeed, perhaps none if we consider it in modern terms
 19 (Robinson 2012). The division between clerics and laity is extremely sharp and
 20 has an evident hierarchical reverberation. The *Corpus*, collecting sources of
 21 different dating, sometimes by mere juxtaposition, cannot but take into account
 22 historical events that have divided Europe: the reformist movements since the
 23 13th century, the Avignon "captivity," which undermined the undivided history
 24 of the papacy (Muldoon 2016), and the open clash with the Lutherans. It cannot
 25 be said that the *Corpus* recognizes, as we would say today, the existence of a
 26 non-Catholic Christianity, but it implicitly raises the question that, once existing,
 27 the latter becomes the term of confrontation. At the time of the Decree, the Great
 28 Eastern Schism, although a late formal acquisition of a separation already begun,
 29 did not appear to contemporaries as necessarily irreversible. Proof of this lies in
 30 the fact that for at least three centuries, attempts at recomposition were
 31 conspicuous and documented. When Joachim addresses the Other par excellence
 32 and yet close by scriptural heritage, he has in mind the Jewish cultural world
 33 (Joachim of Fiore 2011); in Telesio's time, the confrontation is with the nascent
 34 Protestant realities, while the Arab world is destined to appear, at least
 35 figuratively, as hostile and threatening. In Pasquale Rossi's religious analysis,
 36 two new facts emerge: the end of the consuetudinary wisdom of the *Corpus*-
 37 because from 1917 the Church yielded to the principal instrument of Napoleonic
 38 law (Davenport 2018: 28-29): its own codification-and yet the very strong
 39 theology of anti-modernist and temporalist contestation. One and the other
 40 profile seem to interest Rossi almost not at all: the regulation of religion is no
 41 longer to be sought in the internal sources of the confessional order. The
 42 constitutional system is, rather, that which is entrusted with dictating the general
 43 framework of licitness for religious discourse. This apparent neutralism, long
 44 claimed as an important liberal achievement - for instance, with the French law
 45 of separation of 1905 (Pacillo 2024) - is disavowed by Rossi precisely by
 46 following the earlier trace of Joachim and Telesio. No Age of the Spirit has been

established, also because it was erroneously believed to be a static and isolable episode in human history and not a continuous and adaptive mutation based on the capacity of immanent law for self-correction for the purposes of transcendent justice. And yet, the bourgeois individualism of liberal extraction, which conceals its fundamental proprietary conservatism, and the authoritarian corporatism of fascism are not at all opposed. Both aim to resolve individual dissent no longer as a lever for collective claims, but as a mere incident in the saturation of every vital space through the institutions of constituted power. In one case, it is an electoral process, census-based, even democratic, but fundamentally ambiguous, because oblivious to the factuality without which any juridical recognition remains mute (Rohr 2002: 151-152); in the other, the organs of the party coincide with the institutions of the State, and liberty is no longer a question between faithful and unfaithful, but between the ultra-loyal and the deserters (Hametz 2012: 122-123).

Conclusions

The observational sample represented by Joachim of Fiore, Bernardino Telesio and Pasquale Rossi escapes any undue and forced localism. The line of continuity that they express is only partially geographical. It lies rather in the capacity to root the protection of freedom in the manifestation of dissent, whatever the relevant legal order may be and however the administrative, worldly and secular sphere and the religious, spiritual and consciential sphere may communicate with each other (Lillo 2024b).

This juridical scan, which the three scholars perfectly embody, can be taken as a litmus test for the whole of European constitutionalism from 1200 to 1900. If by constitutionalism we mean the doctrine that underpins the institutional physiognomy of a system (Buratti 2019), the three are dissenting opinions that set normative reform in motion, well beyond the rigid schemes that distinguish the constituted order from the constituent order.

On the secular plane, Joachim of Fiore is relatively uninterested in correctly placing Greco-Roman juridical hermeneutics along the eschatological-providential track. The historicity of that jurisprudential culture does not hinder salvation; it posits it on the plane of empirical detection, rather than presupposing it metaphysically.

He anticipates, foreruns and bears witness to early reform movements in the Church; however, the accuracy of concretely modificatory proposals remains limited. He deduces them above all from praxis, from the example of life and mentality that the customary monastic culture offers copiously to the European mentality of the time. He places himself increasingly in a dynamic of perspective with respect to the function and interpretation of canon law as such. The Church is not yet fulfilment, since that will be realized only in the Holy Spirit. The instrumental function of its structure, however, is never assumed in a negative sense: defeatism is constantly opposed by the process of evangelical adaptation, in which charity, hope and faith are the necessary presupposition for the

1 realization of every lasting modification in the human race, not only with respect
2 to positivized canonical institutions.

3 On closer inspection, Telesio too lacks the precise positive juridical theory
4 that produces effective systematicity and durability in juridical reformism.
5 Although endowed with sufficient competence, in Telesio's production there is,
6 in substance, no normative commentary, no precise exposition of current
7 institutions, and no critical apparatus intended to suggest well-directed and
8 punctual modifications thereof. That would exceed his practical interests, but
9 also his epistemological objectives. The treatises of the time, moreover, alternate
10 profoundly innovative theses, suited to economic-political changes, and the
11 didactic preservation of methods already acquired. And this probably occurs in
12 all phases in which doctrine is divided on the method to be adopted: the old
13 method denounces its incompetences and incoherences, but a renewed and more
14 ductile one still struggles to assert itself. Telesio's thought is therefore the
15 primordial incubation of a long preparatory work (Telesio 1586).

16 This methodological refoundation had in fact two polemical fronts of
17 primary juridical-political impact. The contestation of Aristotelian doctrine did
18 not constitute, even figuratively, a symbolic mutiny against the authenticity of
19 classical sources; it rather aimed to escape the consolidated interpretative
20 scheme which had transformed Aristotle, from an eminent thinker, into a
21 reservoir of arguments in defense of the status quo (C B Schmitt 2013). The
22 university institution slavishly followed this process and, even when equipped
23 with sanctioning powers relating exclusively to its own order, had on the
24 circulation of knowledge and on the exclusion of adverse and unwelcome theses
25 the same effect as an inquisitorial tribunal, deputed ultimately to discern licit
26 from illicit knowledge, by virtue not of religious dogma, but of its elaboration
27 and harmonization with respect to the exercise of power (Deane 2022).

28 Behind this irreconcilable dichotomy stood a more demanding controversy
29 of juridical anthropology. For established knowledge and common sense, the
30 subjugation of man to a varied network of higher orders was a mediated aid to
31 knowledge. One acquired meaning exclusively by recognizing oneself in a
32 higher order. In the absence of this recognition in the form of mutable, but not
33 removable, subordination, there was no possibility of true intellect. Against this
34 fundamentally pessimistic morality, Telesio opposed a conception indeed very
35 favorable to individual freedom (Bedford 1979: 196-197), capable of perceiving
36 the surrounding world through the senses and able above all to choose for itself
37 the preferable conditions of life.

38 Western law has taken as an index of its own judicial culture the existence
39 of a plurality of fora called upon, for objective reasons of a jurisdictional nature,
40 to decide qualitatively different controversies. This plausibly stems, above all,
41 from canonical culture and, upstream, from the litigation between the Papacy
42 and Empire. The Telesian influence on Descartes is, in its turn, decisive, in the
43 last quarter of the millennium, for the affirmation of a science of law that
44 practices or attempts to practice eminently rational criteria based on the
45 possibility of foreseeing effects. This secular epistemology finds in Pasquale
46 Rossi one of its most astute and far-sighted critics, about a century before the

present crisis imputed to the "Atlantic" politics of law (Negri 1989). The psychic and social reasons for extra-legality, as well as the highlighting of the ritual element even within normativism, constitute effective critiques of the declining model of the liberal-regal State. Rossi is doubly dissenting, both with respect to that conservative and paternalistic paradigm and with respect to the authoritarian regimes that legitimize themselves as a solution and instead plastically represent the gravity of the problem. A universal and coercible command is, symmetrically, a violent technique for the preservation of particular interests (Ricca 2008).

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