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COMMENTARY

REFORMATIO IURIS AND LUTHER'S REFORMATION

COMMENT ON THE LUTHERAN REFORMATION AND GERMAN LAW

STEVEN ROWAN*

Professor Berman's conceptualization of the relationship between Lutheranism and the law in the sixteenth century stresses the importance of the collapse of Gregorian objective ecclesiology. Priesthood, and with it the True Church, suddenly was seen to be everywhere, but at the same moment nowhere in particular. The elimination of a visible institution which was also the Church left human society without a divinely-sanctioned polity, either in state or Church. At the same time, the state survived as an institution necessary to a merely human life, while the Church persisted *de facto* only as a subordinate element within the state, a ministry of prayer. At the very center of this revolution stands Martin Luther, an Augustinian friar who gained a tremendous following by articulating conclusions which thousands upon thousands had already reached in the privacy of their own hearts. In the first years of the Protestant Reformation, the medieval Church crumbled precisely because of a failure of conviction and will. What once had been easy to assert with the verve of *Unam sanctam* had become untenable both intellectually and emotionally.¹

Understanding this process requires a close attention to chronology, lest we wander down the path to *a priori* history and the madness which that entails. Professor Berman repeatedly concedes

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1. This article is a commentary on Harold Berman, "Revolution and Law," part II, both as delivered at Valparaiso University in November, 1983, and as published. I shall not try to recapitulate the copious notes found in the published text. The citations which follow will supply sources for specific quotations or for material not used by Professor Berman.

that many of the "results" of the Lutheran revolution actually started to operate before Luther published his *Ninety-Five Theses*. This should alert us to the fact that the legal revolution of the sixteenth century was neither a function of the Lutheran revolt nor a result of it, but rather that both upheavals were cognate functions of a larger movement which embraced them both. Luther's own ideas on the proper function of law did generate some legal doctrines peculiar to areas under his direct influence, but the parameters of the legal revolution of the sixteenth century were established prior to Lutheranism and flourished in Catholic as well as evangelical climes.

The "scientification of legal life" (*Verwissenschaftlichung des Rechtslebens*) was simply one channel of the great intellectual and institutional transformation brought to perfection by the advent of printing in the middle of the fifteenth century. This transformation entailed the replacement of ritual by jargon, scribal elegance in handwriting by the scrawl of specialized engineers of order, and linear oral/aural disputation by pictorial mosaics comprehensible only with the eyes.² The last half of the fifteenth century is an era in which all meaningful power passes into the hands of a technical power-elite. The workshop of this revolution was the university, particularly the new-style small university supplying a limited territorial clientele. Here the new elite was trained and the ideological tools for battle were forged. The other nerve-center was to be found in princely and municipal chanceries and courts, where the crystallization of corporate institutions into the *Obrigkeits* was carried through to completion. Citizens were rebaptized subjects, custom was molded or judged according to an exotic *ius commune* (either Roman or Romano-canonical), and a unified academic legal profession linking government and university was forged. This revolution from above was one of the great events of the closing years of the fifteenth century, and those who participated in it expressed the verve of a vanguard passing from triumph to triumph.

One of the inevitable results of a rapid increase in the demand for trained jurists was a rush by ambitious young men to obtain law degrees, the quicker the better. Germans of good family had long crossed the Alps to pursue training and degrees (often not the same thing) at one of the schools of northern Italy, particularly Bologna, Pavia or Padua, though some Germans did attend the chief law school

2. See my forthcoming article, Rowan, *German Jurists and the Printing Press: The First Century*, THE CULTURE OF PRINT IN THE RENAISSANCE (S. Schoenebaum ed., to be published by University of Delaware Press in 1984).

of northern France at Orléans.³ This flow would continue throughout the German Renaissance, but from the mid-fifteenth century it was disturbed or diverted by novel influences. German law schools began to compete with the Italian institutions, and the French invasion of Italy which began in 1494 either disrupted the schools there or made it impossible for Germans to attend them. The humanistic vogue in southern French law schools also enticed more and more Germans to Bourges and Avignon.

Between the mid-1490's and 1521 the law schools at the many smaller German universities were in great ferment over the way lawyers were to be trained. At the same moment when the law faculties were being inundated with students, princes were heaping the jurists with heavy new governmental and juridical duties as sources of opinions or as actual courts of appeal.⁴ Starting in the 1490's, Italian academics brought in to start up or revive Civil Law programs in earlier decades were being replaced with native Germans, though at first they were mostly Germans with Italian degrees.⁵ The result

3. H. Thieme, *Le rôle des doctores legum dans la société allemande du xvie siècle*, *INDIVIDU ET SOCIÉTÉ DANS LA RENAISSANCE*, 3 Université libre de Bruxelles, Travaux de l'Institut pour l'étude de la Renaissance et d'humanisme (Brussels, Paris 1967); on Orléans, see M. FOURNIER, 3 *HISTOIRE DE LA SCIENCE DU DROIT EN FRANCE*. (Paris 1892); on the German nation at Orléans, see G. FLEISCHER, *ULRICH ZASIVS UND PETRUS STELLA*, *JD Dissertation* (Freiburg 1966); P. KOSCHAKER, *EUROPA UND DAS RÖMISCHE RECHT* (Munich 1947); D. MAFFEI, *GLI INIZI DELL'UMANESIMO GIURIDICO* (Milan 1956); D. R. KELLEY, *FOUNDATIONS OF MODERN HISTORICAL SCHOLARSHIP* (1970); D. KELLEY, *THE BEGINNING OF IDEOLOGY* (1981); M. P. GILMORE, *ARGUMENT FROM ROMAN LAW IN POLITICAL THOUGHT, 1200-1600* (1941); M. GILMORE, *HUMANISTS AND JURISTS: SIX STUDIES IN THE RENAISSANCE* (1963). Useful Italian surveys touching German developments include V. P. MORTARI, *ASPETTI DEL PENSIERO GIURIDICO MEDIEVALE*, *CORSO UNIVERSITARIO* (Naples 2d ed. 1979); A. CAVANNA, 1 *STORIA DEL DIRITTO MODERNO IN EUROPA. LE FONTI E IL PENSIERO GIURIDICO* (Milan 1979); CARLO AUGUSTANO CANNATA, 2 *LINEAMENTI DI STORIA DELLA GIURISPRUDENZA EUROPA, DAL MEDIOEVA ALL'EPOCA CONTEMPORANEA* (2d ed. Turin 1976). The German *magnum opus* is 1, 2 *HANDBUCH DER QUELLEN UND LITERATUR DER NEUEREN EUROPÄISCHEN PRIVATRECHTSGESCHICHTE* (Munich, Helmut Coing ed. 1973-77). See also COING, *RÖMISCHES RECHT IN DEUTSCHLAND, Ius Romanum medii aevi, pars V*, 6 (Milan 1970).

4. CLAUDIETER SCHOTT, *RAT UND SPRUCH DER JURISTENFAKULTÄT FREIBURG I. BR.*, 30 *Beiträge zur Freiburger Wissenschaftsgeschichte* (Freiburg 1965). On the growth of learned opinion-writing in Germany, H. GEHRKE, *DIE PRIVATRECHTLICHE ENTSCHEIDUNGSLITERATUR DEUTSCHLANDS. CHARAKTERISTIK UND BIBLIOGRAFIE DER RECHTSSPRECHUNGS- UND KONSILIENSAMMLUNGEN VOM 16. BIS ZUM BEGINN DES 19. JAHRHUNDERTS, Ius commune Sonderheft 3* (Frankfurt 1974), has replaced KISCH, *CONSILIA*.

5. K. H. BURMEISTER, *DAS STUDIUM DER RECHTE IM ZEITALTER DES HUMANISMUS IM DEUTSCHEN RECHTSBEREICH* (Wiesbaden 1974). A powerful if idiosyncratic treatment of scholarship and jurisprudence is H. E. TROJE, *GRAECA LEGUNTUR. DIE ANEIGNUNG DES BYZANTINISCHEN RECHTS UND DIE ENTSTEHUNG EINES HUMANISTISCHEN CORPUS IURIS CIVILIS IN DER JURISPRUDENZ DES 16. JAHRHUNDERTS*, 18 *Forschungen zur neueren*

was that German law schools continued to operate according to Italian rules, and in true German fashion they kept to the ultramontane model more stubbornly than was the case in the Italian universities themselves.

Even those who rode the wave of this revolutionary generation harbored serious misgivings about the totality of its success. The Ordinary Professor of Laws at Freiburg im Breisgau, Ulrich Zasius (1461-1535), can act as spokesman for this self-critique.⁶ He spent the second decade of the sixteenth century castigating the greed and arrogance of the current brood of law students in orations at the start of academic terms or at doctoral promotions.⁷ One reason for Zasius' critique of the gilded generation of lawyers on the make is found in his own biography: Zasius had been a governmental administrator for many years before making a midlife career switch. He had clawed his way to an academic appointment against great odds when he was well into his forties. His resentment toward wealthy young men with every social and economic advantage was palpable, but he was particularly distressed to see the nakedness of the greed which animated them. He sought jurists and found lawyers.⁸

Privatrechtsgeschichte, (Cologne, 1971). Prof. Dr. Guido Kisch has written much on the clash between *mos italicus* and *mos gallicus*, his greatest being G. KISCH, ERASMUS UND DIE JURISPRUDENZ SEINER ZEIT. STUDIEN ZUM HUMANISTISCHEN RECHTSDENKEN, Basler Studien der Rechtswissenschaft, no. 56 (Basel: Lichtenhahn, 1960), and as a summary of his late work one should consult G. KISCH, STUDIEN ZUR HUMANISTISCHEN JURISPRUDENZ (Berlin/West 1972).

6. Besides Erik Wolf's biography, E. WOLF, GROSSE RECHTSDENKER DER DEUTSCHEN GEISTESGESCHICHTE, 59-101 (Tübingen 3d ed. 1963), see Wolf, *Ulrich Zasius (1461-1535) monument historique ou exemple actuel?*, 1 MÉLANGES EN L'HONNEUR DE JEAN DABIN 373-96 (Paris 1963), and my own articles leading up to a new biography of Zasius: Rowan, *Ulrich Zasius and the Baptism of Jewish Children*, 6 THE SIXTEENTH CENTURY JOURNAL, 3-25 (October 1975); Rowan, *Ulrich Zasius and John Eck*, 8 THE SIXTEENTH CENTURY JOURNAL, 79-95 (supp. 1977); Rowan, *The German Works of Ulrich Zasius*, 21 MANUSCRIPTA, 131-43 (1977), 131-43; Rowan, *Ulrich Zasius on the Death Penalty for Anabaptists*, 41 BIBLIOTHEQUE D'HUMANISME ET RENAISSANCE, 527-40 (1979).

7. A. Mazzacane, *Theoria della scienza e potere politico nelle sistematiche tedesche del secolo xvi*, 1 LA FORMAZIONE STORICO DEL DIRITTO MODERNO IN EUROPA, Atti del terzo congresso internazionale della società italiana di storia del diritto 289-316 (Florence 1977), esp. 301, stressing the usefulness of these and other term-orations of jurists.

8. This emotion came out most dramatically in Zasius' letters to Boniface Amerbach, the arch-gilded youth of his generation of lawyers, see 3 DIE AMERBACHKORRESPONDENZ, no. 1209 (Basel, Alfred Hartmann, ed. 1942 ff.).

13 September 1527, Zasius to Boniface Amerbach: If I had half, even a fourth, of your wealth, no prince on earth could entice me to take a case. But I am forced by my situation to follow this pestiferous profession, a profession which encourages hatred against those who do not deserve it or whom one does not even know, and which—worst of all—violates the precept of our Lord to love our neighbor.

Indeed, Zasius proclaimed, it was a shame for his students to squander their youth and vigor on mere greed. Truly the law was a hard calling, requiring extraordinary sacrifices if one were to keep his moral conscience intact. The very jurists whose opinions were enshrined in the *Corpus iuris civilis* had all met dreadful deaths or had lost all worldly goods due to their dedication to the truth.⁹ Law was an active rather than a contemplative activity, since it applied maxims and rules to life itself. It was preeminently a godly science, for Marsiglio Ficino had demonstrated that even pagan jurists had exploited the highest truths of Christianity, even if imperfectly.¹⁰ After having broached this particular idea in a promotion speech, he picked the question up again in the inaugural lecture for the next term: law was a divinely-inspired institution, and those who did the hard work to master it would have more than mere riches. They would, in fact, have ultimate power:

You will be promoters of prosperity, interpreters of things human and divine, leaders of life, oracles of the fatherland, moderators of cities, realms and empires, and—to put it in one word—vice-gerents of the immortal gods.¹¹

In 1514 or 1515, Zasius began to explore the frontier between law and theology in a promotion speech for a canon-law judge. This address was published in 1518, but the unfolding Reformation crisis made it too controversial to be reprinted.¹² Zasius conceded at the outset that theology was the queen of sciences, but he insisted that jurisprudence was its absolutely necessary adjunct. Theology without law led at once to sterility, dryness and weakness when brought to bear on human situations. This was due to the fact that theology had both speculative and active dimensions, and jurisprudence was necessary to make the speculative moment applicable to everyday life. A glance at the *Sentences* of Peter Lombard was enough to demonstrate the relevance of law to theological questions. The twin professions of law and theology had a close affinity, since Moses and the prophets had dealt familiarly with both divine and human affairs. Unfortunately, latter-day theologians had taken to chasing jurists away

9. U. ZASIUS, 5 OPERA OMNIA, 495-97, 503-05 (Joachim Mynsinger von Frundeck, Johann Ulrich Zasius eds., Lyon 1550) (reprint, Aalen 1964).

10. *Id.* at 501-03.

11. *Id.*

12. EXCELLENTISSIMI UIRI VDALRICI ZASII LL. DOCT. EARUNDEMQUE IN PERCELEBRI FRIBURGENSIUM ACADEMIA PROFESSORIS ORDINARIJ LUCUBRATIONES ALIQUOT SANE QUAM ELEGANTES, NEC MINUS ERUDITAE . . . 106-08 (Basel 1518); H. WINTERBERG, DIE SCHÜLER VON ULRICH ZASIUS, 18 Veröffentlichungen der Kommission für geschichtliche Landeskunde in Baden-Württemberg, 58 series B. (Stuttgart 1961).

from all matters touching even the further limits of theology, and by so doing they robbed jurists of their proper patrimony. The pope himself was a fount of law, and canon law was a truly holy discipline. Though speculation was always tempting, the active life was both more useful and more fruitful.

Another frontier worth exploring lay between jurisprudence and eloquence. Since a jurist used eloquence to argue his points, it is easy to confuse the methods exploited by a mere advocate with the truthful eloquence of the jurist. To Zasius, the jurist *sans phrase* was not a barrister but a jurisconsult:

A jurisconsult, who forms laws in keeping with their proper ends, is not tired out by the formulae of pleaders, does not sell his voice to others, nor does he disturb the halls of judges or the grubby courts of law save when the state requires it or his friends call. His office is to respond on matters of law, to resolve ambiguities, and to present his counsels in public and in private.¹³

Zasius' claims for law also touched the outskirts of philosophy. All positive qualities could be ruinous in excess or when applied without due jurisprudential care. Hence "fortitude without law became tyranny, constancy stubbornness, discretion confusion."¹⁴ For this very reason, Zasius spoke directly to a young Duke of Bavaria sitting in the audience of an inaugural lecture in 1517, law was the very best study for statesmen and princes.¹⁵ This, together with the great dignity of Roman jurisconsults in Roman society, underlined the absurdity of the contempt which the German nobility directed against law degrees.¹⁶

These legal orations typify the attitude of thoughtful jurists in the decade before the onset of the Reformation crisis. Everything seemed to be possible to the jurist, nothing was definitively closed or really foreign. The attacks on the scholastic system, which seemed about to crumble, brought together a broad spectrum of writers and academics from all over Europe. The international humanist movement achieved concrete form at the symposium held in Strasbourg in 1505, when Gianfrancesco Pico della Mirandola was fêted by the

13. ZASIUS, *supra* note 9, at 507-11.

14. *Id.* at 511-12.

15. *Id.* at 516-18; Universitätsbibliothek Basel, Ms. C VI b 14, fol. 192r-193v, dated 1 September 1517.

16. ZASIUS, *supra* note 9, at 518-22.

humanists of the Upper Rhine as well as by Conrad Peutinger from Augsburg.¹⁷ Serious efforts were afoot to have the Emperor Maximilian I promulgate an entirely new Civil Code to clear away the confusions in the existing text by executive fiat.¹⁸

What codifications did emerge were municipal or territorial in scope, since the old *Code of Justinian* retained such a mesmerizing effect as *ius commune* that it could not be replaced. The municipal codes, often called *Reformationes*, grew out of the practical requirements of governments even more than out of juristic elegance. This can be demonstrated in detail in the case of the Freiburg Code of 1520. Despite the fact that its date would seem to make it contemporary with Luther's Reformation, it had its beginnings more than two decades earlier when Ulrich Zasius was serving as town clerk (*Stadtschreiber*) of Freiburg im Breisgau, 1494-96. In his oath of office, Zasius pledged to keep a register of all decisions of the council as well as a chronicle (*Geschichtbuch*). In practice, Zasius kept a short protocol of ordinary decisions, a register of legal precedents and a chronicle.¹⁹ The second of these three, supplemented by Zasius' copy-book of past laws and privileges, was the basis for the later codification project. In 1502, the town council of Freiburg actually retained Zasius to prepare a Code and a manual for court procedure. Work on the codification actually turned serious in 1516, when the council saw a codification as a means of solving several major legal and political problems in one fell swoop.²⁰ The result was a coherent, pithy German Code which applied Roman-legal principles where useful and rendered the whole in lapidary German prose. Zasius' name was nowhere to be found in the Code, since he acted throughout as the mouthpiece of the town council. Subsequent generations celebrated his efforts as a nomothete, and he himself was not at all backward

17. See S. Rowan and Gerhild Scholz-Williams, *Jacob Spiegel on Gianfrancesco Pico and Reuchlin: Poetry, Scholarship and Politics in Germany in 1512*, 44 BIBLIOTHÈQUE D'HUMANISME ET RENAISSANCE, 291-305 (1982), esp. 293.

18. 2 DIE AMERBACHKORRESPONDENZ (Anhang no. 3, September 1517) (Zasius to Francesco Calvo).

19. FOLKMAR THIELE, DIE FREIBURGER STADTSCHREIBER IM MITTELALTER, 13 Veröffentlichungen aus dem Archiv der Stadt Freiburg im Breisgau, 107-09 (Freiburg 1973).

20. An edition of Zasius' GESCHICHTBUCH is forthcoming, edited by Hans Thieme and myself, to be published in the series Veröffentlichungen aus dem Archiv der Stadt Freiburg im Breisgau. See also H. Thieme, *Die 'Nüwen Stattrechten und Statuten der löblichen Statt Fryburg' von 1520*, FREIBURG IM MITTELALTER, Veröffentlichungen des Alemannischen Instituts, no. 29 (Bühl/Baden, Wolfgang Müller ed. 1970); T. Zwölfer, *Dr. Ulrich Zäsi und die Bestätigung des Freiburger Neuen Stadtrechts*, SCHAU-INS-LAND, 80 (1962), 70 ff.

about taking a bow, but it was more than simply a ploy. Every line of the Code had to be discussed and approved by the council before being passed by a representative assembly of guildsmen. Only then did the Code go to a Basel press.²¹

The concrete links between the legal reform and Lutheranism can be tested with great precision in Zasius' case. Although Zasius had regarded Luther as an ally in the fight against scholastic ignorance as late as 1519 (they shared many of the same enemies for a season),²² Zasius would in fact be one of the first of the Upper Rhenish humanists to turn against him on a matter of principle, long before it was either necessary or fashionable. The reason for this alienation was Zasius' horror over the obliteration of the Church Universal as a juristic body, since this meant the loss of canon law. Although Zasius retained a lifelong contempt for the pharisaism of the contemporary Catholic Church, he was profoundly aware of the extent to which canon law underpinned the European civilization. He was distressed by much of Lutheranism, but he did not have the profound aversion to it which he developed toward the Zwinglian movement.²³ One of Zasius' most important opinions in the later 1520's sought to lecture the (Catholic) government of the Rhenish Palatinate over its abandonment of the therapeutic principles of medieval inquisitorial jurisprudence in favor of the ramshackle civilian legislation on heresy.²⁴ In the end, Zasius was a great advocate of *Verwissenschaftlichung*, but he would never be more than a proto-Protestant. The German legal profession would survive the Reformation crisis as a unified body only because it had achieved maturity before the storm had set in. The sudden maturation of the German territorial and municipal states at the start of the sixteenth century had made Roman jurisprudence a vital part of German public life, and in the end a part which could only increase in importance when the Church was blown away as an objective international institution.

21. The Code is best read in the facsimile edition, (Ulrich Zasius/Zäsy), *NEUE STADTRECHTE UND STATUTEN DER STADT FREIBURG IM BREISGAU* (Basel 1520) (reprint Aalen 1968).

22. P. Mesnard, *Zasius et la Réforme*, *ARCHIV FÜR REFORMATIONSGESCHICHTE*, 52 (1961) 145-62 is generally sound, but other letters should be added. Zasius' first negative statement on Luther is a letter to Ulrich Zwingli, 13 November 1519, 7 *HULDREICH ZWINGLIS SÄMTLICHE WERKE*, no. 100 (Berlin 1905 ff.). Zasius' letter of defiance to Luther came 1 September 1520, 2 *WEIMAR AUSGABE, BRIEFE*, 182, and Luther's reply is quoted in MARK U. EDWARDS, JR., *LUTHER AND THE FALSE BRETHREN* 27 (1975).

23. *E.g.*, *AMERBACHKORRESPONDENZ*, 3, no. 1477 (5 November 1530) (Zasius to Boniface Amerbach).

24. See Rowan, *Ulrich Zasius on the Death Penalty for Antibaptists*, *supra* note 6.

Not that the Protestants did not play with the idea of doing away with the civilians. Although the Reformation aided the spread of a juristic bureaucracy over the long run, over the short run it administered the lawyers the scare of their professional lives. For a brief but terrifying moment, the fate of jurisprudence appeared to be in the balance. Some argued for a return to the Scriptures as the foundation of a truly Godly civil and criminal code, an approach which would have saddled Christendom with a legal system similar to that of traditional Islam.²⁵ The Peasants' War provided ample opportunities for the common folk to denounce lawyers as ungodly leeches.²⁶ *Juristen böse Christen* was a cliché whose time almost came in 1525. But Melanchthon, the oracle of pedestrian common sense, and with him eventually Luther, came to see Roman law as the closest thing to *ratio scripta* for man in his fallen state. Hieronymus Schürpf, the chief jurist at Wittenberg, appears to have played a major role in preserving the Civil Law among the reformers.²⁷ Luther and his immediate entourage would create a distinct body of juristic literature on the right to resist rulers who acted against God and justice (*Widerstandsrecht*), as well as on oaths and equity. What had begun as a purely passive right to suffer injustice and persecution came to stand as a rationale for active political opposition, even rebellion (by princes against their emperor, specifically).²⁸ Otherwise, Lutheran jurisprudence had little to set it apart from that practiced in the rest of Germany.

The shock of the Reformation hit academia with a sharp body blow, and for a while it appeared that universities would not survive. The universities were emptied with the onset of the Reformation crisis. There was a deep and widespread conviction that the skills taught in the traditional university were doomed, and not just in the oft-criticized Arts faculty, but also in the advanced faculties of theology, medicine and law. The great crisis of enrollments would not be overcome until well into the 1530's, and until then most schools outside of Wittenberg itself continued in existence solely on the basis of their identity as loci of endowments. Enrollment collapsed, and in many cases classes ceased to meet. The confirmation of Roman Law in Lutheran territories helped to return the academic engine of

25. G. KISCH, *MELANCHTHON'S RECHT-UND SOZIALLEHRE*, 102-26 (Berlin/West 1967).

26. See C. Schott, *Wir Eidgenossen fragen nicht nach Bartele und Baldele* . . . , *GERICHTSLAUBEN-VORTRÄGE. FREIBURGER FESTKOLLOQUIUM ZUM FÜNFUNDSTIEBZIGSTEN GEBURTSTAG VON HANS THIEME*, 17-45 (Karl Kroeschell ed. 1983).

27. KISCH, *supra* note 25, at 149, 153.

28. Q. SKINNER, *2 THE FOUNDATIONS OF MODERN POLITICAL THOUGHT*, 194-208 (1978); MARK U. EDWARDS, JR., *LUTHER'S LAST BATTLES* 24-37 (1983).

jurisprudence to the track it had been following when it had been so rudely derailed in 1517.²⁹

The great changes in *methodus* and the method of teaching law being toyed with in the 1510's would not be revived until later in the century, and in most cases the Catholic and Lutheran schools would leave the initiative to the Calvinists. Oddly enough, the apostle of Ramism in German schools was the son of Ulrich Zasius' last secretary, and he exploited his father's manuscripts of Zasius to underpin systematic methods of jurisprudence which ran directly counter to the anti-methodical arguments of the old jurist.³⁰ The method of Pierre de la Ramée (Peter Ramus) epitomized the new print culture to perfection, replacing the agonistic culture of the oral/aural world with the silence of graphic exposition.³¹ The chanted dialogue of the traditional lay pleaders was drowned out by the stillness of the new appeals benches, a silence interrupted only by the rasp of a turning page. As Father Ong has stressed, Ramism came to be a universal taxonomy which would have a disproportionate impact on the Calvinistic world, providing dissenting New England with an encyclopedic educational orthodoxy all its own. In Germany, the systematic approach would only bear fruit in the natural law theorists in the later seventeenth century, who would turn upon the ideological foundations of German Tribonianism with a vengeance.³²

The only matter which remains to be dealt with is language, which is saying a great deal. Both Schwarzenberg and Zasius were artists in their use of German prose, and each has been compared with Martin Luther, whose Bible translation is universally touted as the great landmark in the emergence of *Hochdeutsch* in its modern form. But it is important to remember that both Schwarzenberg and Zasius were products of the old-model German chanceries and courts,

29. B. VOLGER, 1 LE MONDE GERMANIQUE ET HELVÉTIQUE À L'ÉPOQUE DES RÉFORMES, 1517-1618, 238-39 (Paris 1981).

30. A. MAZZACANE, SCIENZA, LOGICA E IDEOLOGIA NELLA GIURISPRUDENZA TEDESCA DEL SECOLO XVI, 16 *Ius nostrum*, (Milan, 1971).

31. E. L. EISENSTEIN, 1, 2 THE PRINTING PRESS AS AN AGENT OF CHANGE, (1979); MARSHALL McLUHAN, THE GUTENBERG GALAXY: THE MAKING OF TYPOGRAPHIC MAN (1969); WALTER ONG, RAMUS, METHOD, AND THE DECAY OF DIALOGUE: FROM THE ART OF DISCOURSE TO THE ART OF REASON (1958); R. HOOYKAAS, HUMANISME, SCIENCE ET RÉFORME: PIERRE DE LA RAMÉE (1515-1572) (Leyden 1958); N. W. GILBERT, RENAISSANCE CONCEPTS OF METHOD (1958).

32. P. BENDER, DIE REZEPTION DES RÖMISCHEN RECHTS IM URTEIL DER DEUTSCHEN RECHTSWISSENSCHAFT, 8 *Rechtshistorische Reihe*, (Frankfurt 1979); H. GROSS, EMPIRE AND SOVEREIGNTY: A HISTORY OF THE PUBLIC LAW LITERATURE OF THE HOLY ROMAN EMPIRE, 1599-1804 (1975).

which had been honing German as an instrument of government since the end of the thirteenth century. Zasius had made a switch to academic life, where he became a master of spoken and written Latin capable of being praised unstintingly by Erasmus, but he remained both bilingual and bicultural. His German was kept clear of Latinisms even when he discussed the most complex of Romanist arguments. When he had to write a bilingual opinion for a court, as he often did, his two texts were parallel rather than translated one from the other. The important point for us is that Schwarzenberg, Zasius—and Luther—would be among the last professionals to be able to write easily in their respective disciplines without making heavy use of a jargon drawn from Latin. Zasius' students were constitutionally incapable of writing good German prose, particularly when addressing a legal question. The professionalization of the legal craft meant that most German juristic writing over the next two centuries would be done in Latin, with brief communiqués to *hoi polloi* using a mixed German and Latin intended to mystify and humble.³³ Law had become the property of a freemasonry, speaking a language all its own. Schwarzenberg would be the last major lay jurist and Zasius the last of the “crossovers” from the chancery to the university. Their German eloquence was not prophetic but atavistic, at least so far as jurisprudence was concerned.

Luther's Reformation helped to complete the *reformatio iuris*, both in Protestant Europe and in those areas inaccurately described as “remaining Catholic.” The new autonomous state created on the ruins of the Church Universal had been long in the making, but it would not be a despotism but a bureaucratic autocracy. The freedom of action for princes was restricted rather than expanded, since his powers were “put in commission” and exploited by the very gilded youngsters who were working their way through schools in the early years of the century. At the same moment that the laity first received the cup in communion and heard German in their services they were excluded from active roles in law courts and waved farewell to German sentences at law. Both prince and people were held in thrall by a *tertium quid*, which tied them together in a seamless skein of red tape.

Despite the enormous importance of the transformation of German legal life in the sixteenth century, Johannes Gutenberg still seems

33. See Rowan, *German Works of Ulrich Zasius*, *supra* note 6; OPUS EPISTOLARUM DESIDERII ERASMI, no. 2196 (Percy Allen ed.) (15 July 1529) (Erasmus to Willibald Pirckheimer).

to have been a greater generator of change than Martin Luther. Luther's principled refusal to pursue ideas to Christianize society itself left unregenerate man to the best "merely human" law, namely Roman Civil Law. The result was the rejection of the Rome of Gregory VII but the reception of the Rome (or rather Constantinople) of Tribonian.