American Legal Thought from Premodernism to Postmodernism: An Intellectual Voyage

Stephen M. Feldman

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Printed in the United States of America
on acid-free paper

To my family,
Laura,
Mollie,
and
Samuel

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The science of the Law is, of all others, the most sublime and comprehensive, and in its general signification, comprises all things, human and divine.

—Professor D. T. Blake, Columbia University, 1810
(quoted in Perry Miller, *The Life of the Mind in America*)

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ONE

Introduction

On Intellectual History

To travel from premodernism through modernism and into post-modernism might take several centuries and even millennia. American legal thought, remarkably so, has made the voyage in just over two hundred years. My purpose is to tell the story of this mercurial journey.

To narrate this story successfully, I divide the book into two parts. The first and briefer part (chapter 2 only) explores the general concepts of premodernism, modernism, and postmodernism. Drawing extensively but not solely from philosophy, I describe these concepts as a series of major intellectual stages or periods, which I then break into numerous substages. These stages and substages, as I conceptualize them, are not historical or structural necessities that somehow are fated to occur. Rather, I proffer premodernism, modernism, and postmodernism and their respective substages as heuristic devices somewhat akin to Weberian "ideal types."[1] They are interpretive constructs designed by highlighting certain recurrent and prominent (though contingent) historical phenomena, and, as such, the stages and substages can facilitate the narrative analysis of the developments in different intellectual disciplines or fields.

The second part and bulk of this book applies this interpretive framework of premodernism, modernism, and postmodernism to American legal thought, or jurisprudence. My narrative follows the movements of legal thought in America from around 1776 onward. These movements do not necessarily embody a progression—a movement upward or toward better conceptions of jurisprudence—but rather suggest a series of understandable transitions or stages of development. In short, I present American legal thought as a coherent albeit unplanned intellectual voyage over previously charted waters.

This narrative voyage of legal thought, moreover, has implications beyond the jurisprudential field. While some (or many) might question whether legal scholars have been intellectual leaders in America, few would deny that law always has been a central social institution in this nation. Alexis de Tocqueville proclaimed this truism as early as 1835: "[s]carcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." Over 150 years later, in 1994, Mary Ann Glendon reiterated: "Much of America's uniqueness . . . lies in the degree to which law figures in the standard accounts of where we came from, who we are, and where we are going." Partly for this reason, the story of the movement of jurisprudence from premodernism to modernism and into postmodernism depicts more than one small and insular facet of American society. Rather, the story of American jurisprudence captures much of how Americans—or at least, American intellectuals—represent themselves. For example, a crucial component of modernism is the human desire to purposefully control social relations. Modernist intellectuals, in particular, confidently profess their ability to engineer societal change and order. And frequently, this desire for control is implemented through law, as exemplified by the New Deal Congress: its repeated legislative attempts to restructure the economy can be understood as prototypical modernist efforts to reorder society. Modernism, in a sense, has "an imperative to express itself in and through the law."[2] Subsequently, in postmodernism, this instrumental use of law as well as the authoritativeness of judicial and other legal pronouncements becomes highly problematic. Hence, without overstating the point, jurisprudential theories from the various eras concerning these and other aspects of law might disclose more than initially meets the eye: they might reveal much about prevalent American perceptions and representations of social reality.

Throughout the book, I use the terms *legal thought* and *jurisprudence* interchangeably. Some current scholars prefer to define jurisprudence narrowly, as no more than a type of analytic philosophy focusing on legal concepts. Contrary to this position, my broader conception of jurisprudence—as the equivalent of legal thought—encompasses multiple perspectives of the law, including but not limited to philosophical, sociological, historical, and cultural views. Thus, I explore how jurisprudents, broadly defined, have explained, described, and theorized from a variety of perspectives the nature and practice of law in relation to judicial decision making and government in general. Indeed, during the very first stage of premodern American legal thought, most jurisprudents themselves viewed legal, political, and social thought as inextricably intertwined. Individuals such as James Wilson and Nathaniel Chipman were intellectual and political leaders of the late eighteenth century who typically wrote about law as encompassed within political and social theory. Wilson, for example, sat on the first United States Supreme Court after having been one of only six individuals who signed both the Declaration of Independence and the Constitution. In the early 1790s, he delivered to the College of Philadelphia the first lectures on American constitutional law—lectures that

ranged widely in their observations and theories on human nature, morality, history, government, law, and more. To be sure, in the latter nineteenth century, the development of the professional legal academician led to more specialized jurisprudential writings—more focused on law per se, ostensibly independent from political and social thought. Yet, such a limited conception of jurisprudence, characteristic of modernism, does not adequately capture the scope of early American legal thought or, as it turns out, the rich variety of perspectives evident in postmodern legal writing.[3]

Despite the breadth of my subject matter, I otherwise limit this study in one crucial respect: I concentrate on the mandarins of American legal thought. I discuss jurisprudential leaders such as James Kent and Joseph Story in the nineteenth century and Karl Llewellyn and Henry Hart in the twentieth century. I rarely discuss the daily practice of law by the average attorney. And surely, the fully developed jurisprudential musings of someone such as Story, a Harvard professor and Supreme Court justice, would differ significantly from the average attorney's notion of law. At the same time, it is worth noting, many of the jurisprudential elites of the nineteenth century, including Kent, Story, and Oliver Wendell Holmes, Jr., were both scholars and judges, so their conceptions of law were somewhat informed by their practical experiences in deciding cases. The same is true of at least some twentieth-century elites; Benjamin Cardozo is a notable example.

Although I focus on the mandarins of American legal thought, I do not explore their ideas as pure abstractions. To the contrary, my notion of a history of ideas demands that the ideas be explicated within the social, cultural, and political contexts in which they developed. Even in chapter 2, where I tend to trace premodernism, modernism, and postmodernism as abstract heuristics, I sketch those ideas on at least some broad contextual fabrics. Most intellectual developments would be grossly distorted if presented as arising in some ethereal world, apart from their historical surroundings. The general themes of modernism, for example, cannot be understood adequately without accounting in part for the influence of the Protestant Reformation on western civilization. Thus, in the chapters focusing on American legal thought, I seek to explain (or narrate) how and why the various stages and substages emerged in jurisprudence at specific historical times. Social, political, and cultural factors always and importantly influence the development or movement of the ideas. Yet, simultaneously, from my perspective, broad ideas tend to develop in certain directions because of the content and force of the ideas themselves. Such broad ideas have, so to speak, a relatively autonomous existence. They do not solely arise from or depend on social interests or structures; the ideas are not mere superstructure in the Marxian sense. Ideas and social interests interact in a complex dialectical relationship.[4]

For example, a broad idea X might tend to develop into another idea Y, but this development might not emerge unless and until particular social, political, and cultural circumstances arise that facilitate or trigger it. As a general matter, the ele-

ments for a major intellectual change—say, from X to Y—often seem to gather over an extended time period, like clouds on the horizon, but the transition remains latent, as a mere potential, until a large social disturbance such as the Civil War or the World Wars occurs. This social upheaval then precipitates the intellectual transformation, like a sudden burst of rain. Of course, as described, the intellectual transformation is neither exactly sudden nor exactly gradual—neither revolutionary nor evolutionary. Despite final appearances, the intellectual transition should not be understood as an unexpected or unpredictable cloudburst because it has been building for years and sometimes even decades. Yet, even so, it is not truly gradual, steady, and slow because the transition does not emerge in a clearly recognizable form until the requisite social event finally triggers the ultimate transformation.[5]

When America's legal mandarins are understood in this manner within their respective historical contexts, many of them seem intelligent, erudite (and not just in law), and sometimes even brilliant. Nonetheless, all too often, legal historians and jurisprudents denigrate earlier schools of thought as insipid or downright stupid.[6] Looking backward at the legal process scholars of the 1950s, for instance, one might wonder how they could devote their careers to articulating such trite maxims as "treat like cases alike." But when understood within their distinctive historical context, including the Cold War, their efforts to defend the rule of law and legal objectivity become understandable and even compelling. Throughout this work, then, I try to make intellectual sense of the various schools of legal thought within the contexts in which they arose, although to be sure, I do not seek to justify or rejuvenate any of these earlier schools of jurisprudence.

It is worth noting, at this point, that any intellectual history of American jurisprudence that focuses on legal mandarins and that emphasizes transitions among various stages and substages might tend to overlook details and to ignore certain dissenting views that would detract from the persuasive force of the narrative. History, including intellectual history, is not carefully patterned, but a narrative that focuses on legal elites and broad periods might misleadingly suggest just such an orderliness. As a postmodernist might assert, the writing of grand narratives, meta-narratives, or meta-histories generally should be resisted because, in part, periodizations tend to flatten history. So-called stages frequently are described as if they were represented by a single voice or position. Dissenting views and oppressed voices are ignored or minimized in the rush to neatly characterize an era as illustrative of a particular idea or approach. Thus, for example, in jurisprudence, the 1920s might be presented as the age of the early American legal realists without acknowledging that many would-be realists held divergent views and that many legal scholars during that decade were not realists at all. Furthermore, one might easily fail to account for the outsiders of those years—African Americans, women, Jews, and others—who usually could not even articulate their jurisprudential views in public forums.[7]

To be perfectly candid, these potential difficulties make me pause. I have de-

voted much of my previous scholarship to disclosing and discussing the marginalized voices of minorities and outgroups in other contexts.[8] I do not now dismiss the importance of such voices in the history of American jurisprudence. Unfortunately, many legal elites have participated to varying degrees in racism, sexism, antisemitism, and economic classism. In this regard, despite their legal and theoretical acumen, these scholars were all too ordinary; for much of American history, it seemed that only an exceptional person could somehow escape such biases. To be sure, then, there are vital stories to be told about American jurisprudence from the perspectives of various outgroups, yet those stories are not the ones I currently wish to explore, at least not as my primary task.[9] Instead, at the outset, these potential difficulties for a jurisprudential history can serve as a caveat that helps to clarify my narrative goals.

In particular, I seek primarily to account for specific intellectual developments in jurisprudence as understood against the background of American society and through the prism of certain intellectual commonalities or tendencies that range across disciplines or fields. From my perspective, although certain broad themes and transformations are recognizable in numerous disciplines, intellectual history should not be reduced to some grand narrative of universal themes and progressions. Different intellectual fields do not develop exactly the same way or at the same pace. Consequently, I first offer a general heuristic and interpretive framework for understanding the potential transformations of intellectual history, and then I explore the application of that framework in the specific context of American legal thought. In so doing, I focus on the social, cultural, and political factors that influenced the transitions in jurisprudence. Other intellectual fields and disciplines very well may have developed in divergent manners or at different speeds. Nonetheless, over the expansive fabric of *American* intellectual thought, significant resemblances and overlaps among different areas should be expected exactly because the sundry disciplines and fields often developed in similar social, cultural, and political contexts. For that reason, my narrative of American legal thought occasionally discusses developments in other intellectual fields to help elucidate jurisprudential transitions.

To emphasize a crucial point: my general interpretive framework and more particular narrative of American jurisprudence offer, I believe, an especially fruitful and persuasive way for explicating and understanding intellectual developments. Yet, my conceptualizations of premodernism, modernism, and postmodernism, as well as the various substages within those respective eras, should not be taken to represent categorical distinctions or rigid demarcations either in intellectual history generally or in the specific instance of American jurisprudence. Without doubt, one could define premodernism, modernism, and postmodernism differently and could therefore argue that the various stages emerged at other points in American legal history. Without doubt, one could focus on different voices—dissenting jurisprudents, or regular attorneys, or state court judges, or Supreme

Court justices—and could therefore present an alternative but still persuasive history of American legal thought. And without doubt, even an intellectual history focusing on legal mandarins could instead emphasize the psychological details and idiosyncratic motivations of individual jurisprudents rather than the wide social, cultural, and political contexts for broad intellectual transitions. For example, while I stress the broad trends of the post–Civil War era as influencing Christopher Columbus Langdell's crucial deanship at Harvard Law School (during the early modernist period), an alternative approach might focus more on Langdell's life experiences, both personal and professional, as shaping his intellectual directions. What did he himself do during the Civil War? What did he do before the war? What type of legal practice did he have? Did he have a family? Who were his friends? What did he write in his letters to his friends? To his professional colleagues? One might explore these questions in detail in a more psychologically or personally oriented intellectual history.[10]

As it is, though, my purpose is to explore the movement of American legal thought over more than two centuries, and consequently, I necessarily stress broad trends and large factors. An intellectual history focusing more on personal or psychological influences, in order to be a manageable project, must concentrate on a narrow range of time or a small number of individuals, and thus is not amenable to my purposes. This is not to suggest that I ignore psychological factors, just that I do not stress them. More important, though, I also do not ignore the views of jurisprudents dissenting from the major schools of legal thought. I discuss such views when doing so seems important to the narrative flow—when such views are part of the basic story that I am telling. In fact, quite often, such critical or dissenting views help illuminate the mainstream and then lead into the next stage or substage of jurisprudential development (sometimes a dissenting view becomes the next leading school of thought). And in the latter part of the twentieth century, when members of outgroups—particularly women and racial minorities—finally secure some positions within the legal academy, their voices and views move to the forefront of the narrative. That is, in chapter 5, I highlight the critical perspectives of some outgroup members because they represent, in effect, some of the main themes of postmodern jurisprudence.

In a somewhat similar vein, I discuss judicial decisions only insofar as they fit within the narrative of my main story. Since that main story is about the mandarins of American jurisprudence and since those individuals often wrote about cases, especially Supreme Court cases, I must occasionally do likewise. For the most part, though, I discuss only those cases, such as *Lochner v. New York*, *Brown v. Board of Education*, and *Roe v. Wade*, that significantly influenced the legal scholarship of an era.[11]

Two final definitional points should be clarified. First, some writers distinguish premodern*ity* from premodern*ism*, modern*ity* from modern*ism*, and postmodern*ity* from postmodern*ism*. These writers typically characterize, for example, mod-

ernism as a cultural phenomenon and modernity as a particular social, political, and economic arrangement. Similar distinctions between the cultural and the sociological are then applied to the other eras (premodernism and postmodernism). From my perspective, though, such sharp dichotomies are problematic because cultural and social practices necessarily conjoin. As already suggested, even if intellectual developments are understood primarily as cultural manifestations, they nonetheless depend in part on social and political interests. Thus, I use the terms *premodernism, modernism,* and *postmodernism* broadly to encompass the cultural and the sociological. Most often, I will be referring to constellations of certain ideas as they occurred within particular social and historical contexts.[12]

Second, as the terms themselves suggest, premodernism, modernism, and postmodernism should be understood relationally, with modernism being the central concept both temporally and analytically, at least at this point in intellectual history. That is, premodernism is understood as pre- or before modernism, and postmodernism likewise is understood as post- or after modernism. The centrality of modernism might be due partly to an aspect of intellectual history itself: namely, that modernists were the first to periodize intellectual developments as a series of stages or broad transitions. Yet, despite this centrality of modernism, the portions of the book on postmodernism are slightly longer than those on either modernism or premodernism, at least relative to the number of years encompassed by each of the stages. For instance, the respective chapters on modern and postmodern legal thought are approximately equal in length even though modernism stretches over a century or more while postmodernism, so far, covers perhaps two decades. Although somewhat disproportionate, this space for postmodernism was nonetheless necessary. For one thing, since we are presently in the midst of the postmodern era, I lack the historical distance that would facilitate a narrower focus on what might become the most enduring threads of postmodern jurisprudential thought. Thus, in chapter 5, I discuss eight postmodern themes, but fifty years from now, a jurisprudential historian with hindsight might well conclude that, let's say, only four themes had lasting significance and deserve extensive discussion. This problem of historical distance is exacerbated by the character of postmodernism itself. In particular, postmodern intellectual thought is so strikingly interdisciplinary that a neat and brief depiction of postmodernism would be problematic; there are just too many complex and interconnected themes crisscrossing the crumbling disciplinary fences of the academic and intellectual postmodern landscape. Moreover, precisely because of this interdisciplinary complexity, the slightly disproportionate space accorded to postmodernism in this book seems worthwhile to help counter the offhand dismissals and condemnations of postmodern thought that have surfaced in some intellectual circles—dismissals and condemnations that are due most often, in my opinion, to serious misunderstandings of major postmodern themes. Admittedly, these misunderstandings occasionally arise because of the jargon-filled argot of some (but not all) postmodern writing, but regardless of the cause

of the confusion—whether complexity or obfuscation—a clear presentation of postmodern themes seems vital to the main storyline of this book.

In any event, because of the relational quality among the concepts of premodernism, modernism, and postmodernism, one should not expect to grasp the entire meaning of any stage in isolation. Rather, full understanding can emerge only by comprehending the relations—the differences and similarities—among the various stages and substages. Ultimately, then, the focus on all the stages of American legal thought—premodernism, modernism, and postmodernism—distinguishes this book from other historical treatments of American jurisprudence. Many other such books ignore the pre–Civil War era and thus begin their narratives with the emergence of Langdellian legal science and Holmesian jurisprudence after the Civil War—that is, at the outset of the modernist period. I have instead included the time from the nation's inception through the Civil War as an integral part of the sweep of American jurisprudential history. This coverage of the premodern period then, it is hoped, renders the modern and even postmodern periods more vivid and intelligible.[13]

Throughout the book, the concepts of premodernism, modernism, and postmodernism structure the narrative so that it revolves around two broad interrelated themes: jurisprudential foundations, and the idea of progress. Much of the story of American jurisprudence turns on the problem of identifying (or doubting) the foundations of the American legal system and judicial decision making. Premodern jurisprudents, for example, largely agreed that natural law principles undergirded the American legal system, while modernists repudiated natural law and thus set out on a quest for some alternative foundation. The various conceptions of jurisprudential foundations that characterized the different eras, furthermore, were closely tied to shifting ideas of progress—ideas that entailed a series of different definitions of progress, different assumptions about the possibility of progress, and different hopes about how law might contribute to progress. Hence, at least for second-stage premodern jurisprudents, the natural law principles provided both a goal and a limit for social and legal progress, whereas for modernist jurisprudents, the possibilities for progress seemed endless, limited only by human ingenuity. I elaborate the general ideas of foundations and progress—as well as the general concepts of premodernism, modernism, and postmodernism—in chapter 2. For those readers interested solely in legal thought and not in the broader concepts of premodernism, modernism, and postmodernism, however, chapters 3 through 6 can be understood on their own. For that matter, chapter 2 also can stand alone as a general introduction to the broader concepts. Nonetheless, the book is an integrated whole, and all the chapters together are intended to contribute to a unified narrative.

TWO

Charting the Intellectual Waters

Premodernism, Modernism, and Postmodernism

Premodernism

Premodernism can be divided into two consecutive substages, which I call, respectively, the cyclical and the eschatological.[1] The first was marked by an abiding faith in nature or God (or the gods) as a stable and foundational source of knowledge and value. Universals were presumed to exist and to be evident in all modes of life, both physical and normative. Plato, for instance, posited the existence of Ideas (or Forms)—such as absolute beauty, goodness, and equality—that are distinct from sensible things. The Ideas are universal, unchanging, and stable, while sensible things are particular, ephemeral, and in flux. In a fashion, the particular or sensible things participate in or are imperfect manifestations of the universal Ideas.[2] More broadly, the classical Greek concept of the *kosmos* encompassed "the ordered totality of being," including universal and eternal moral and aesthetic values as well as the physical world. The Greek *kosmos* included "the *physis* of organic being, the *ethos* of personal conduct and social structures, the *nomos* of normative custom and law, and the *logos*, the rational foundation that normatively rules all aspects of the cosmic development."[3]

Because of this metaphysical unity—the integration of the normative and the physical—human access to knowledge and value (or more precisely, virtue) always remained immanent within ourselves and within the world. Individuals and societies seemed to belong to rather than to exist separately from nature and divinity. The *kosmos* was "intrinsically intelligible" and therefore accessible (or knowable) because "both mind and reality participated in the same intelligibility." Reason, as understood in classical thought, could discern the virtuous or good life. Thus, humans

seemed capable of directly accessing and therefore knowing the eternal and universal principles that arose from or within the world (nature or divinity). According to Plato's doctrine of recollection, each person contains the immanent potential to achieve true knowledge of the Ideas or universal principles. "[K]nowledge and right reason," Plato contended, are already within each of us, but we have, in a sense, forgotten them. Thus, to fulfill our potential for knowledge, we must recollect the universals, or in other words, we must recover "that which we previously knew."[4]

The presumed existence of universal and eternal principles led to distinctive conceptualizations of the temporal; time or history had to harmonize with the idea of the eternal and universal. In the first stage of premodernism, time was understood to be cyclical. The Greeks observed in the physical world "the continual growth, maturity, and decline" of organisms as well as the revolutions of the planets. From these observations, they developed their understanding of the relationship between immutable principles and temporal change, which they then extended to human affairs and societal history. Civilizations would rise and fall in a type of "cyclic motion," but the eternal and universal principles remained intact. "According to the Greek view of life and the world," Karl Löwith wrote, "everything moves in recurrences, like the eternal recurrence of sunrise and sunset, of summer and winter, of generation and corruption." Thus, Thucydides assumed that his history of the Peloponnesian War revealed as much about the future as about the past: "[I]f he who desires to have before his eyes a true picture of the events which have happened, and of the like events which may be expected to happen hereafter in the order of human things, shall pronounce what I have written to be useful, then I shall be satisfied. My history is an everlasting possession, not a prize composition which is heard and forgotten."[5]

Within this integrated premodern world, the idea of the universal pervaded political thought. To Aristotle, the universal nature and ends of human life determine the best form of political society. Most important, then, one must recognize that "man is by nature a political animal" and that the *telos* or natural end of human life is *eudaimonia*, or happiness. One achieves happiness by living in accordance with virtue, and one cannot live virtuously except by acting prudently and sagaciously *within* a *polis* or political community. The good of the individual and the good of the political community are intertwined and inseparable. In "the best regime," Aristotle declared, "[the citizen] is one who is capable of and intentionally chooses being ruled and ruling with a view to the life in accordance with virtue." The government, regardless of its form or type—whether a government of the one, the few, or the many—should pursue the satisfaction of the common good and not mere private interests. For the individual, in short, virtuous participation in the political community was deemed the highest good.[6]

During the fourth century C.E., the Roman Empire established Christianity as the imperial or official religion. With this coming of the Christian era to western civi-

lization, premodernism entered upon its second stage, the eschatological. Universal and eternal principles still were presumed to exist, though at this point, clearly, God supposedly ordained them. Yet, Christianity stressed a distinction between the spiritual and the carnal that led to a more constrained understanding of the *kosmos*. The *kosmos* (or now the cosmos) became associated more with the carnal than the spiritual and thus seemed to be more physical than normative, although it "still contained the marks of God's presence." The concept of human reason, too, became more limited. With reason alone, a person supposedly could not grasp universal and eternal truths, though one still could do so through religious faith.[7]

A key difference between the first and second stages of premodernism lay in their respective characterizations of time or history. Early in the fifth century, St. Augustine wrote *The City of God*, a tremendously influential theological, philosophical, and political treatise. Augustine argued that original sin leads to "two kinds of human society, which we may justly call two cities, according to the language of our Scriptures. The one consists of those who wish to live after the flesh, the other of those who wish to live after the spirit." The earthly city is formed by love of self, while the heavenly city—the City of God or the community of Christians—is formed by love of God. Although notoriously ambiguous, Augustine's conception of the two cities appeared to revolve around two related distinctions. According to the first distinction, the heavenly and earthly cities referred to "two communities": the saved and the damned. These two communities are "eschatological realities"—they will fulfill themselves only in their ends. One community "is predestined to reign eternally with God, and the other to suffer eternal punishment with the devil." Although unfulfilled eschatological entities, both cities nonetheless presently exist; Augustine stated that the cities have begun "to run their course." Here, then, Augustine edged over into the second distinction. He differentiated two measures of time or history: the sacred (eschatological time) and the *saeculum* (secular or temporal history). The two cities, as eschatological realities, must be understood in *sacred* history as revealed in the Scriptures. Yet, within *secular* time, the two cities currently exist together in unfulfilled (or impure) forms: "[i]n truth, these two cities are entangled together in this world, and intermixed until the last judgment effect their separation." Augustine, it seems, sought to disentangle the future of Christianity from the fate of the then crumbling Roman Empire. He therefore posited that the Christian City of God was progressing toward its fulfillment in sacred time, even though empires and kingdoms might rise and fall throughout secular (or carnal) history.[8]

Most significantly, then, Augustine incorporated an idea of progress into a world still grounded on universal and eternal principles, as ordained by God. In sacred history, progress was inherent in the very concept of a divine eschatological end or goal of two communities, the saved and the damned. In secular history, civilizations would continue to rise and fall—consistent with the first-stage premodernist conceptions—but now, under the second-stage notion, progress could

be measured, in a sense, by a movement toward the fulfillment or realization of the eschatological City of God. Such progress was due not to human ingenuity or willfulness but rather to divine intervention. Moreover, such progress was not endless, not a series of continuous qualitative advancements, but rather was the realization of ultimate (divine) principles.[9]

The early Christian separation of the spiritual and the carnal threatened the metaphysical unity of the premodern world. Yet, for many centuries, this potential threat went largely unfulfilled, partly because intellectual thought remained focused on spiritual and theological affairs. Indeed, the premodern world's metaphysical unity was, in a sense, even strengthened when Aristotle's writings became widely available to Christian philosophers and theologians in the early thirteenth century. St. Thomas Aquinas explicitly attempted to synthesize the Greek and Christian worldviews, and in so doing, he revitalized human reason and renewed theoretical interest in secular poiltical affairs. According to Thomas, humans can use reason to learn certain truths about God, though other truths concerning God are accessible only by faith. And, consistent with Aristotle's emphasis on the *polis*, Thomas introduced into Christendom the idea of the political, suggesting that an individual was not merely a subject *under* a government descending from above but rather was a citizen who *participated* in government.[10]

An early sign of an approaching metaphysical rift came in the late-Renaissance thought of Niccolo Machiavelli, whose humanist political theory stressed the well-being of the state. Machiavelli strictly limited his Christian presuppositions: whereas medieval Christian thought maintained that divine providence determined the fate of the secular state, Machiavelli emphasized the role of sheer fortune and human nature in political affairs. Machiavelli thus presaged the development of modernist political theory, which was further spurred by the emergence of European nation-states during the sixteenth and seventeenth centuries. Nonetheless, Machiavelli retained the premodernist conception of history: civilizations were doomed ultimately to rise and fall. "Wise men say, and not without reason," wrote Machiavelli, "that whoever wishes to foresee the future must consult the past: for human events ever resemble those of preceding times." At best, then, a virtuous ruler and citizens could preserve a republic only temporarily.[11]

Indeed, for Machiavelli, the preservation and liberty of the republic are the highest values, and the citizen and ruler should do whatever is necessary to accomplish those ends—the common good—regardless of consistency or inconsistency with religious or moral values. Sheer fortune and human (sinful) nature, however, ensure the eventual collapse of all governments. The tension between, on the one hand, political order and, on the other hand, fortune and human nature—and the resultant struggle to maintain the fragile political community through secular time—was therefore a constant theme for Machiavelli. He understood *virtù* (virtue) as the (at least temporary) overcoming of fortune and human nature as one pursued the com-

mon good: citizens and rulers alike must seek to disregard their "own passions" and instead act for the good (the preservation) of the community. Machiavellian *virtù* required a successful ruler, in particular, to do whatever was necessary to preserve the political community: "A prince . . . must imitate the fox and the lion, for the lion cannot protect himself from traps, and the fox cannot defend himself from wolves." Machiavelli's overriding concern, in sum, was with how to maintain the republic despite the dire challenges that arose repeatedly through secular time.[12]

Modernism

Almost contemporaneously with the publication of Machiavelli's major writings, Martin Luther launched the Protestant Reformation in 1517 by posting his Ninety-five Theses, which denounced the Roman Catholic Church's materialistic practice of selling indulgences. Once having begun his protests, Luther continued to relentlessly criticize both the Church's widespread involvement in worldly affairs and the interrelated Thomistic concern for the political, including Thomas's Aristotelian emphasis on human reason. From Luther's perspective, he sought not to revolutionize but to purify Christianity by revitalizing the separation of the spiritual and the carnal (or secular). An individual did not need the worldly Catholic Church to explain the meaning of Christian faith; a true Christian could personally experience the primacy and the meaning of the Scriptures.[13] With regard to metaphysics, Luther and the other Protestant reformers represented the flip side of Machiavelli: both Machiavelli and the reformers undermined the metaphysical unity of the premodern world, but whereas Machiavelli focused on the secular (especially the political) at the expense of the spiritual, the reformers stressed the spiritual over the secular. In particular, Luther's most prominent follower, John Calvin, seized upon the dichotomy of the spiritual and the secular to articulate a theological position that crucially set the parameters for modernist intellectual thought.

In a manner of speaking, Calvin insisted upon the strict separation of church and state—or the spiritual and the secular—as a tenet of his Protestant reform theology. Calvin did not directly oppose the secular state to the spiritual realm, but rather he maintained that the secular and spiritual stand so absolutely apart that they cannot be antithetical. "[Secular] government is distinct from that spiritual and inward Kingdom of Christ," Calvin declared, "so we must know that they are not at variance." In other words, to Calvin, secular and spiritual government cannot be antagonistic exactly because they are completely separate: when two realms have no overlap, no point of contact, no interaction, then they cannot be antithetical. Calvin's firm support for Christian freedom of conscience illustrates the theological significance of this radical separation of the spiritual and secular. From Calvin's perspective, each individual must remain free so that his or her conscience can inwardly experience Christ and Christian faith. Neither the secular state nor

even the Reformed church should attempt to coerce faith because genuine spiritual faith, quite simply, cannot be compelled. Coercion (of any type or source) belongs solely in the secular or carnal world, while conscience and faith remain entirely distinct and within the spiritual world. Somewhat ambivalently, then, Calvin and the other reformers introduced a type of proto-individualism. Reformation theology, to be sure, showed newfound respect for the individual qua individual—as the individual, in a sense, now seemed to stand alone before God—but simultaneously, the reformers stressed that, due to original sin, the individual in this world was thoroughly depraved and sinful.[14]

Overall, the Reformation contributed four crucial elements for the building of a new modernist world view. First, and most simply, the willingness of Luther, Calvin, and other Protestant leaders to challenge the Roman Catholic Church set an important social precedent. No longer were societal authorities and arrangements inviolable merely because they were traditionally accepted. If the most powerful social institution of the Middle Ages, the church, could be confronted and at least partially defeated, then no social institution was impregnable. To question, to doubt, to challenge, and to confront traditions became imaginable and even normal.[15] Second, by challenging institutional authority, by emphasizing freedom of conscience, and by insisting that individuals could directly understand the Scriptures, the reformers contributed to the eventual emergence of modernist individualism. Despite the ambivalence of the reformers' proto-individualism, modernist philosophers eventually would posit an increasingly dignified individual—an individual who, it would be assumed, could independently and autonomously choose values and goals.[16] Third, Calvin's theological dualism—his thorough disjunction of the spiritual and secular—facilitated the development of a metaphysical dualism that opposed the individual self to the objective world. This metaphysical dualism would undergird modernist thought for centuries to come. Finally, Calvin's theological dualism allowed the secular realm, in the long run, to gain increasing importance, although Calvin did not intend as much. Calvin himself sought to free the spiritual from the secular, but in doing so he simultaneously freed the secular from the spiritual. In short, Calvin's reform theology may have had the rather perverse effect of strongly contributing to the coming secularization (or disenchantment) of western society.[17]

Again, though, Calvin intended nothing of the sort. To the contrary, despite his theoretical conception of a type of separation of church and state, Calvin seemed determined to establish a Christian society, nurtured by both religious and secular authorities. He even once used his political strength in Geneva to ensure the conviction and burning of a theological opponent. Nonetheless, Calvin enforced such a rigorous division between the spiritual and secular that the secular became conceived as purely material, bereft of any worth, substance, or purpose. This ravaging of the secular realm—the complete stripping of its meaning and purpose—allowed Calvin then, somewhat paradoxically, to posit that the spiritual should, in a