

'Law Makes the King': Richard Hooker on Law and Princely Rule

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Much of Richard Hooker's (1554–1600) career was spent in theological controversy concerning the constitutional provisions of the Elizabethan Settlement of 1559 (Kirby 2008: 1–26). In his capacity as Master of the Temple in the Inns of Court, Hooker preached a series of sermons in the mid-1580s on some of the central themes of Reformation theology, including *A Learned Discourse of Justification*, an influential piece on the doctrine of faith and salvation first published in 1612 (Hooker 1977–90: 5:83ff.). Hooker's orthodoxy was formally challenged by the disciplinarian Puritan divine Walter Travers in *A Supplication made to the Privy Council*: he sharply challenged Hooker's strong appeal to the authority of reason and natural law in religious and ecclesiastical matters as inconsistent with the chief tenets of reformed doctrinal orthodoxy (Hooker 1977–90: 5: 264–9). Hooker's formal *Answer* (Hooker 1977–90: 5:227–57) to Travers's objections laid the groundwork of the philosophical and theological system, which he expounded, in considerably greater detail, in his treatise of the 1590s, *Of the Laws of Ecclesiastical Polity*. From the outset the question of the consistency of Hooker's defence of the 'Erastian'¹ presuppositions of the Elizabethan religious settlement with his theological premises – more specifically on the question of the unification of civil and ecclesiastical jurisdiction in the Crown – lay at the very heart of these disputes.

The *Laws* is a very considerable undertaking, and consists of a lengthy preface and eight books, usually published in three separate volumes.² The first four books address (1) the nature of law in general, (2) the proper uses of the authorities of reason and revelation, (3) the application of the latter to the government of the church, and (4) objections to practices inconsistent with the continental 'reformed' example. The final four address the more particular issues of (5) public religious duties, (6) the power of jurisdiction, (7) the authority of bishops, and (8) the supreme authority or sovereignty of the prince in both church and commonwealth, and hence their unity in the Christian state. Throughout the treatise Hooker's express aim is to explicate systematically the principles underlying the religious Settlement of 1559 in such a manner as to

secure conscientious obedience and conformity by means of all the instruments of persuasion:

my whole endeavour is to resolve the conscience, and to show as near as I can what in this controversy the heart is to think if it will follow the light of sound and sincere judgement, without either cloud of prejudice or mist of passionate affection. Wherefore, seeing that laws and ordinances in particular, whether such as we observe, or such as your selves would have established, when the mind doth sift and examine them, it must needs have often recourse to a number of doubts and questions about the nature, kinds, and qualities of laws in general, whereof unless it be thoroughly informed, there will appear no certainty to stay our persuasion upon. I have for that cause set down in the first place an introduction on both sides needful to be considered, declaring therein what law is, how different kinds of laws there are, and what force they are of according unto each kind (Hooker 1977–90: preface, 7.1, 2; 1:34.20–35.2)

The treatise is framed as a response to Thomas Cartwright, who had been John Whitgift's formidable adversary in the Admonition Controversy of the 1570s (see CHAPTER 27, ENGLISH REFORMATIONS). The preface is in fact addressed formally 'to them that seek (as they term it) the reformation of laws and orders ecclesiastical in the Church of England' (Hooker 1977–90: preface title; 1:1.1), that is to disciplinarian Puritans who, like Cartwright and Travers, sought closer conformity to the pattern of the 'best reformed churches' on the continent, especially Calvin's Geneva. The preface sets the tone of the work and announces Hooker's main apologetic intent. There is a significant difference between Hooker's rhetorical approach and that of previous contributions to Elizabethan polemics. He abandons the usual recourse to ridicule and personal abuse, which was so characteristic of the vast majority of tracts contributed by both sides of the controversy, and speaks irenically (in the spirit of peace) to the fundamental theological assumptions, with the professed aim of securing conscientious acceptance of the Settlement. To this end he sets out to persuade by an appeal to mutually acceptable theological assumptions and authorities: 'we offer the laws whereby we live unto the general trial and judgement of the whole world' (Hooker 1977–90: 1.1.3; 1:58.5–6). Hooker's starting-point is to accept unconditionally the disciplinarian premise that the doctrinal tenets and the pastoral aspirations of the Reformation had to be fulfilled in the polity of the Church of England. The rhetorical slant is intended to serve the main apologetic aim of the treatise, namely to justify the Elizabethan Settlement as consistent with the principles of reformed doctrinal orthodoxy. Thus the grand cosmic scheme of laws set out in Book 1 is intended to place the particulars of the controversy within a foundational context:

because the point about which we strive is the quality of our laws, our first entrance hereinto cannot better be made than with consideration of the nature of law in general and of that law which giveth life unto all the rest, which are commendable, just, and good, namely the law whereby the Eternal himself doth work. Proceeding from hence to the law, first of nature, then of scripture, we shall have the easier access unto those

things which come after to be debated, concerning the particular cause and question which we have in hand. (Hooker 1977–90: 1.1.3; 1:58.11–19)

The rhetorical aim is to persuade opponents of the Settlement to conscientious conformity by demonstrating the coherence of the ‘particular decisions’ of the Settlement – the liturgy of the Book of Common Prayer, hierarchy, episcopacy, royal supremacy, and thus ultimately ‘ecclesiastical dominion’ or sovereignty itself, with certain ‘general meditations’ on the metaphysics or first principles concerning the nature of law.

Hooker’s foundational proposal in Book 1 of the *Laws* is easily summarised: ‘God is Law’. From a metaphysical or theological point of view, this claim is neither original nor remarkable. It represents a restatement of classical ‘*logos* theology’ such as one finds in Platonic and Aristotelian metaphysics, in the thought of Philo of Alexandria derived from pre-Socratic sources (Heraclitus and Anaxagoras), and developed into the premise of a complete practical philosophy in the writings of the Stoics. Drawing upon the *florilegium* of Stobaeus (a Greek anthologist of the fifth century CE), Hooker cites all of these authorities. Christian appropriation of this Greek metaphysical theme is prominent among the early Church Fathers, for example Justin Martyr, Clement of Alexandria, Origen, Ambrose, Jerome, Eusebius of Caesarea, Gregory of Nyssa, Cyril of Alexandria, or Augustine (Kirby 2008: 51–88), as it was characteristic also of the later scholastic theology of such as Anselm, Bonaventure, Aquinas, and Duns Scotus, as well as Protestant reformers like Luther, Calvin, and Zwingli. Again, Hooker’s eclectic references remind us of the extraordinary breadth of his scholarship. For all of these theologians, an uncreated divine principle, the Word (*logos*, or *ratio*, or *paradeigma* – i.e. reason, order, or plan) constitutes the ‘idea of ideas’, the Platonic ‘archetypal idea’ and ‘first principle’ of all created order, while the creation itself, both visible-material and invisible-spiritual, proceeds from and is wholly dependent upon this original, underived, hidden, and transcendent first principle as its first and primary cause.

For Hooker, an appeal to *logos* theology entails considerably more than a purely metaphysical claim concerning the nature of the first principle. As the argument of Book 1 develops it becomes clear that Hooker is thoroughly invested in the practical, political, and constitutional consequences of this elaborate theology of law, of the claim that ‘God is law’. Indeed the edifice of his apology of the Elizabethan Settlement rests upon this philosophical point of departure:

The stateliness of houses, the goodliness of trees, when we behold them delighteth the eye; but that foundation which beareth up the one, that root which ministreth unto the other nourishment and life, is in the bosom of the earth concealed. And if there be at any time occasion to search into it, such labour is then more necessary than pleasant both to them which undertake it and for the lookers on. In like manner the use and benefit of good laws, all that live under them may enjoy with delight and comfort, albeit the grounds and first original causes from whence they have sprung be unknown, as to the greatest part of men they are. (Hooker 1977–90: 1.1.2; 1:57.6–16)

The burden of his argument is thus to demonstrate that the entire constitutional arrangement of the Elizabethan Settlement – the ‘stately house’ of the established church and the ‘goodly tree’ of the flourishing commonwealth united under the rule of one sovereign – has its ultimate ground and justification in a ‘hidden’, transcendent first principle, a ‘first original’ of all external manifestations of order. For Hooker the institutions of the Elizabethan religious settlement rest upon this foundational proposition of metaphysical ontology, viz. that God is Law. This account of his apologetic purpose constitutes, moreover, Hooker’s own explicit claim to coherence of argument – he *intends* this theory of law to provide the necessary justification for his later defence of the institutions of the Settlement, and more specifically for his account of the theory of sovereignty.

Hooker’s adaptation of this classical *logos* theology to the concrete political and constitutional issues of his particular time and place is unique when judged beside other contemporary contributions to Elizabethan religious polemics (Kirby 2008: 121–50). Indeed his prodigiously sustained effort to explore the underlying theological and metaphysical connections connecting the theories of law and sovereignty – his intimate knitting together of high theology and politics – is arguably the defining characteristic of Hooker’s thought, such that the designation ‘political theology’ is probably the most accurate designation of his venture (Kirby 1990: 1–4). Such an approach to political theory is thoroughly in keeping with Hooker’s repeated affirmation of the Neoplatonic logic of ‘participation’, whereby all things are understood to exist within their ‘first original cause’ and, conversely, the cause to dwell within all derivative beings (Kirby 2003: 165–84). As C. S. Lewis once commented in this connection, Hooker’s universe is ‘drenched with Deity’ (Lewis 1951: 462). ‘Nomos-theology’ or a theology of law, then, is the substantive proposition of Book 1 of the *Laws*. Hooker summarises his general aim towards the end of Book 1:

the drift and purpose of all is this, even to show in what manner as every good and perfect gift, so this very gift of good and perfect laws is derived from the father of lights; to teach men a reason why just and reasonable laws are of so great force, of so great use in the world; and to inform their minds with some method of reducing the laws whereof there is present controversy unto their first original causes, that so it may be in every particular ordinance thereby the better discerned, whether the same be reasonable just and righteous or no. (1977–90: 1.16.1; 1:135.11–13)

Hooker defines law in general as ‘that which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure of working ... so that no certain end could ever be attained unless the actions whereby it is attained were regular, that is to say, made suitable for and correspondent unto their end, by some canon, rule or law’ (1977–90: 1.2.1; 1:58.26–9). This definition places him in a scholastic teleological tradition derived ultimately from the metaphysics of Aristotle and mediated by Thomas Aquinas. The definition is an

almost verbatim quotation of Aquinas's definition of the 'essence of law' (Aquinas 1947: Ia IIæ, qq. 90–6).

Hooker asserts that everything works according to law, including God himself: 'the being of God is a kind of law to his working: for that perfection which God is, giveth perfection to that he doth' (Hooker 1977–90: 1.2.2; 1:59.6). Just as the traditional *logos* theology accounts for the genesis of the world by means of an emanation or *processio* from an originative principle of divine unity, so also Hooker derives a diverse hierarchy of laws from the eternal law as their 'highest wellspring and fountain'. In this respect he also adheres to Aquinas's position (compare Aquinas 1947: Ia IIæ, q. 91, art. 1). Hooker's emphasis upon the divine unity is marked: 'our God is one, or rather very Oneness and mere unity, having nothing but itself in itself, and not consisting (as all things do besides God) of many things besides' (1977–90: 1.2.2; 1:59.14–19). It is precisely, however, in his insistence upon the divine unity and simplicity that we can begin to discern a glimmer of Hooker's departure from the Thomistic paradigm. On a certain level, it is as if Hooker had conflated Aquinas's treatise on law in the *secunda pars* with the argument of the articles on the divine simplicity in the third question of the *prima pars* (Aquinas 1947: Ia, q. 3, art. 7).

All derivative species of law participate in the divine, undifferentiated unity of what Hooker calls 'that law which as it is laid up in the bosom of God' (1977–90: 1.3.1; 1: 63.15), and emanate from it 'dispositively', that is, by way of a gradual hierarchical 'procession' from higher to lower species. In this respect, Hooker's nomos-theology adheres to the Neoplatonic logic of the so-called *lex divinitatis* (the law of cosmic order, the law of the 'great chain' of being) whereby the original and generative principle of law remains simple and self-identical while simultaneously emanating beyond and below itself 'dispositively' in its process of bringing into being the manifold, derivative species of law (Kirby 2005: 29–44). Unlike Aquinas's definition of eternal law in the second part of the *Summa*, however, Hooker distinguishes between a 'hidden' first eternal law and a 'manifest' second eternal law on the ground that God is a law *both* to himself (*in se*) in his inaccessible divine simplicity, *and* to all creatures besides (*ad extra*), and thus invokes the ineffably transcendent divinity of Thomas's discussion of the 'simplicity of God' (Aquinas 1947: Ia, q. 3) in his definition of the original Eternal Law: 'that law which as it is laid up in the bosom of God, they call eternal' (Hooker 1977–90: 1.3.1; 1:63.6–64.3). While his discussion of the first eternal law adheres closely to traditional formulations of *logos* theology (such as found in the opening questions of the first part of Aquinas's *Summa*), Hooker's invention of the category 'second eternal law' introduces something thoroughly distinctive, unusual, and unexpected within the tradition of Christian legal theory (Hooker 1993–7: VI(1), 92).

'All things', Hooker maintains, including God's own self, 'do work after a sort according to law' (1977–90: 1.2.2; 1:58.33–59.1). Whereas all creatures work 'according to a law, whereof some superior, unto whom they are subject, is author', nonetheless 'only the works and operations of God have him both for their worker and for

the law whereby they are wrought. The being of God is a kind of law to his working' (1977–90: 1.2.2; 1:59.12–15). As the first principle of law, God alone is a completely self-regulated agent and, 'being the first, it can have no other than itself to be the author of that law which it willingly worketh by. God therefore is a law both to himself, and to all other things besides' (1977–90: 1.2.3; 1:60.16–18). All derivative species of law, therefore, have their origin in this first eternal law; however, for Hooker their derivation from the first eternal law is *not* in the first instance through a gradual, hierarchically mediated *dispositio*, but rather they are understood by him to be gathered together *within* the second eternal law. In this fashion Hooker simultaneously guards the transcendent simplicity and unity of the divine source of law – God in his 'very oneness', the first eternal law – *and* by positing the second eternal law he asserts the radical immanence of God in all the manifold participating forms bound together within it. The crucial consequence of this gathering together of the various species of law within a second eternal law is to diminish the overall significance of the hierarchical *dispositio* as the primary mode of mediation between the divine source of law and the finite, created order of laws. In place of the Thomist logic of a gradual, hierarchical disposition of the species of law, Hooker's positing of the second eternal law sets up an Augustinian 'hypostatic' relation between the Creator/Eternal Law and creature/manifold determinate species of law, i.e. a relation which presupposes such a radical distinction between their respective natures as to preclude the possibility of any proportional *dispositio*.

The other principal aspect of the second eternal law, i.e. the law of God's special revelation of himself in the Scriptures, presupposes a disruption of the order regulated by the natural law and introduced into that order by the Fall and by original sin. This divinely revealed law provides the means of the restoration or 'return' of the creation to its original condition of unity under the eternal law; the second eternal law thus works through the revelation of Scripture to ensure that nothing in the created order falls outside the regulation of God's ordering purpose. Hooker's distinction between these two *summa genera* of the second eternal law – viz. natural law and divine law – corresponds, as has already been shown, to the cosmic logic of procession and return of Neoplatonic metaphysics, but for Hooker it also reflects the epistemological distinction of the twofold knowledge of God (*duplex cognitio Dei*), namely by the light of supernatural revelation and by the natural light of reason so critically important to Protestant theology (Calvin 1986: 1.2.1).

On the side of natural law there are further derivative and composite species of law – chief among them human positive law and the law of nations, for example – which depend upon a conscious, pragmatic reflection upon the general principles contained in the natural law and their application to particular, concrete circumstances. These additional derivative species of law are viewed by Hooker as a consequence of human sin and, like the divine law, they constitute part of the divinely ordained means of correction to the disorder introduced by the Fall – as Augustine would say, coercive human law is both a penalty and remedy for sin (Augustine 1998: Book 19). Throughout all this the human creature as the *imago dei* is portrayed by Hooker as the focal

point of the divine operation of procession from and return to the original fount of order established in divine simplicity of the first eternal law.

To sum up, Hooker's theology of law displays many of the distinctive characteristics of the Thomist account of law as a hierarchical emanation of the Eternal Law. Yet, by gathering natural law and divine law together within the second eternal law, Hooker introduces a decisively significant Augustinian theological turn derived from the thoroughly Protestant assumptions of his doctrine of grace. The Eternal Law proper, i.e. the first eternal law, is distanced from its derivative forms of law in such a fashion that the natural law cannot serve to mediate between fallen humanity and the divine source of justice. In this respect Hooker's theory of law takes on the marked Augustinian flavour of his theology of grace outlined earlier in *A Learned Discourse of Justification*:

the light of nature is never able to find out any way of obtaining the reward of bliss but by performing exactly the duties and works of righteousness. From salvation, therefore, and life, all flesh being excluded this way, behold how the wisdom of God hath revealed a way mystical and supernatural, a way directing unto the same end of life by a course which groundeth itself upon the guiltiness of sin, and through sin deserving of condemnation and death. (Hooker 1977–90: 1.11.5, 6; 1:118.11–18)

There is no 'natural' mediation between fallen humanity and divine justice: solely by means of grace – 'a way mystical and supernatural' – is the gulf between man and God bridged. In this respect, the hierarchical *dispositio* of laws cannot serve to link heaven and earth in any saving fashion. Grace alone is capable of overcoming the distance. In this way, Hooker's appropriation of the Thomist legal theory with its assumption of gradual hierarchical mediation is properly understood to be *contained within* the boundaries of an Augustinian logic of hypostatic mediation. Hooker allows the logic of hierarchy, but not at all in the Thomist sense of a gradual *dispositio* connecting heaven and earth, with nature assisting grace. This 'containment' of the hierarchical principle within an Augustinian hypostatic framework has very pronounced implications for ecclesiology and constitutional theory. Hooker works out these implications throughout the remainder of his treatise. Leaving Books 2 through 7 aside, in admittedly procrustean fashion, I propose to examine the consequences of my reading of Hooker's theology of law for the interpretation of his theory of sovereignty.

'Law Makes the King'

There are two critical features of Hooker's theory of sovereignty that stand at the centre of the debate over the coherence of his thought. First is his claim that the power of 'supreme jurisdiction' over the church or 'ecclesiastical dominion' rightfully belongs to the 'civil prince or governor' to 'order and dispose of spiritual affairs, as

the highest uncommanded commander in them' (Hooker 1977–90: 8.1.8; 3:330.14–16); the second is the distinctively dialectical manner of his assertion of the divine right of sovereigns as 'God's lieutenants' who, nonetheless, should attribute to the law what the law attributes to them, namely power and dominion (*Attribuit rex legi et ad lex attribuit ei potestatem et dominium*): 1977–90: 8.2.1; 3:332.23–4).

into kings by human right, honour, by very divine right, is due. Man's ordinances are many times presupposed as grounds in the statutes of God. And therefore of what kind soever the means be whereby governors are lawfully advanced unto their seats, as we by the law of God stand bound meekly to acknowledge them for God's lieutenants and to confess their power his, so they by the same law are both authorised and required to use that power as far as it may be in any sort available to his honour. (1977–90: 8.3.1 [Keble 1888: 2.6]; 3:335.22–336.4)

Scholars have frequently portrayed the Erastian constitution described and boldly defended by Hooker in Book 8 as essentially irreconcilable with the supposedly Thomistic theology of law outlined in Book 1. Peter Munz sets the pattern when he argues that in his defence of the royal ecclesiastical supremacy Hooker abandons his previous adherence to a Thomist theology of law with its gradual disposition of the powers of nature and grace in favour of a species of 'Tudor Averroism' (Munz 1970: 49–57). Hooker's willingness to affirm subjection of the governance of the church to the civil power is deemed inconsistent with the Thomist first principles, that is to say, with the logic of the *lex divinitatis* whereby the temporal power must be subordinated hierarchically to the spiritual power, as the order of nature itself is subordinated to the order of grace, or as natural law is subordinate to divine law. Munz's argument takes as its unspoken premise that Hooker actually affirms the Thomist metaphysics of hierarchical *dispositio*. Given such a premise, Hooker's 'general meditations' of Book 1 are plainly contradicted – in the view of Munz and in that of many other scholars besides – by the 'particular decisions' concerning constitutional order argued in Book 8 (Munz 1970: 96–111).

This conclusion concerning the logical incoherence of Hooker's account of sovereignty with his legal principles rests, however, on a fallacy, namely that the theology of law of Book 1 is indeed a simple appropriation of Thomist metaphysical principles. I have attempted to show above how Hooker does indeed appropriate elements of Aquinas's theory of law, how on occasion he appears almost to be quoting directly from the *Summa*, but how also, nonetheless, he modifies the Thomist legal theory substantively by setting it within a larger framework marked by its Augustinian soteriological assumptions. Our main purpose in comparing the arguments of Books 1 and 8 yet again is to attempt to show that, far from tending to logical incoherence, Hooker's Erastian defence of the civil magistrate's role as the 'highest uncommanded Commander' (Hooker 1977–90: 8.1.8 [Keble 1888: 2.1]; 3:330.15) of the ecclesiastical as well as the civil hierarchy is nothing less than the practical completion of his argument, the necessary fulfilment of his nomos-theology.

Hooker's defence of the constitutional arrangements of the Elizabethan Settlement is accurately described as an instance of 'Tudor Averroism' following the path blazed two centuries earlier by Marsilius of Padua (1275–1342).³ Marsilius was a resolute critic of the claims of the papacy to jurisdiction over princes on Augustinian theological grounds, very similar to those embraced by Hooker (see Marsilius of Padua 2005). The particular relevance of this fourteenth-century work of Augustinian political theology to Hooker is evident in Marsilius' chief aim, namely to expose the Roman papacy's quest for domination – the *libido dominandi* of Augustine's earthly city – that is, supreme jurisdiction not only over the spiritual and ecclesiastical realms but over the temporal or civil realms as well. According to Marsilius, such over-reaching of spiritual authority was the central cause of conflict and disorder within Christendom. In the bull *Unam Sanctam* Boniface VIII (pope 1294–1303) set out a series of dogmatic propositions that culminated in the assertion of papal supremacy.⁴ His assertion of the pope's supremacy with the corollary subordination of princes and civil rulers to the so-called papal 'plenitude of power' is grounded in an interpretation of Romans 13 according to the logic of the *lex divinitatis* – the same logic which informs Thomas Aquinas's theory of the hierarchically ordered, dispositive emanation of the species of law in the *Summa Theologica* (Aquinas 1947: IIa IIæ, q. 172, art. 2). Over against logic of *dispositio* implied by the *lex divinitatis* favoured by both Aquinas and Boniface VIII, Marsilius proposes a radical redefinition of spiritual power along Augustinian soteriological lines and consequently in direct opposition to the hierarchical claims of the papacy to the *plenitudo potestatis* implicit in the *lex divinitatis*. Over against the metaphysics of hierarchical *dispositio*, Marsilius' Augustinian critique asserts a hypostatic relation between the spiritual and temporal realms, between the orders of grace and nature. This Augustinian rejection of the metaphysical primacy of mediated hierarchy (*lex divinitatis*) undergirding the logic of *Unam Sanctam* led Marsilius to assert the converse and equally totalising claim of temporal power over all matters of ecclesiastical jurisdiction.

An Augustinian hypostatic view of the relation between spiritual and temporal power similar to that which informs the Marsilian political theology also shapes Hooker's interpretation of the relation between church and commonwealth and the unity of civil and ecclesiastical jurisdiction in the person of the godly prince:

A church and a commonwealth we grant are things in nature the one distinguished from the other: a commonwealth is one way, and a church another way defined ... We may speak of them as two, we may sever the rights and causes of the one well enough from the other in regard of that difference which we grant there is between them, albeit we make no *personal* [emphasis added] difference. For the truth is the church and the *commonwealth* are names which import things really different. But those things are accidents, and such accidents as may and should always lovingly dwell together in one subject. (Hooker 1977–90: 8.1.2, 5; 3:318, 324)

Proceeding from an Augustinian premise, that church and commonwealth can be united as 'accidents' within a single 'subject' and that civil and ecclesiastical jurisdic-

tion may coincide in the person of the prince as the Act of Supremacy proclaims,⁵ is for Hooker a logical and necessary consequence of the nomos-theology set out by him in the first book of the *Laws*. Indeed it is the common thread of Hooker's political Augustinianism that connects the arguments of Books 1 and 8 and renders them coherent with each other.

Hooker's interpretation of the royal supremacy certainly bears more than a passing resemblance to the political theology of Marsilius (Hooker 1977–90: 7.11.8; 3:208.17h). The common ground is their embrace of the precepts of political Augustinianism.⁶ It is precisely owing to Marsilius' thoroughly Augustinian insistence upon the need to distinguish sharply and clearly – and therefore 'hypostatically' rather than 'dispositively' – between the spheres of the spiritual and the temporal powers that the 'external' and coercive jurisdiction over the church as a human, political organisation is ascribed by him to the sovereign power of the Legislator. By a similar line of reasoning Hooker maintains that Christ alone (*solus Christus*) exercises headship over the church as an inner, invisible, and mystical *civitas* – i.e. the church as a 'society supernatural' – while the ecclesiastical jurisdiction of the prince belongs properly to the outward, visible, and external *civitas* – i.e. the church as a 'human, politic society':

The church, being a supernatural society, doth differ from natural societies in this: that the persons unto whom we associate ourselves, in the one are men simply considered as men; but they to whom we be joined in the other, are God, angels, and holy men. The church being both a society, and a society supernatural – although as it is a society, it have the self same original grounds which other politic societies have, namely the natural inclination which all men have unto sociable life, and consent to some certain bond of association, which bond is the law that appointeth what kind of order they shall be associated in – yet unto the church as it is a society supernatural this is peculiar, that part of the bond of their association which belong to the Church of God, must be a law supernatural, which God himself hath revealed concerning that kind of worship which his people shall do unto him. (Hooker 1977–90: 1.15.2; 1:131.6–20)

Just as the second eternal law is related hypostatically (and not dispositively) to the first eternal law, so also the church as a 'society supernatural' with its 'law supernatural' is related to the church as a human 'politic society' (1977–90: 1.15.3; 1:131.25) governed by positive human law which in turn is derived from a reflection upon the natural law – in short, by the authority of the Crown in Parliament.

Yet, just when we think we have found our footing on solid Augustinian ground, Hooker gives us pause to consider further. Early in Book 8 he invokes the *lex divinitatis* in the most explicit terms:

And if things and persons be ordered, this doth imply that they are distinguished by degrees. For order is a gradual disposition. The whole world consisting of parts so many so different is by this only thing upheld: he which framed them hath set them in order. Yea, the very deity itself both keepeth and requireth for ever this to be kept as a law, that wheresoever there is a coagmentation of many, the lowest be knit to the highest

by that which being interjacent may cause each to cleave unto other, and so all to continue one. (1977–90: 8.2.1; 3:331.17–332.1)

Moreover, in Hooker's *Autograph Notes* from Trinity College, Dublin (Hooker 1977–90: 3:494.10–14) he quotes almost verbatim from the bull *Unam Sanctam* where Boniface VIII defends the doctrine of the papal plenitude of power (*plenitudo potestatis*) by asserting the necessary hierarchical subordination of temporal to spiritual jurisdiction:

For according to the blessed Dionysius, it is [by] the law of divinity [*lex divinitatis*] that the lowest things are led to the highest by intermediaries. Then, according to the order of the universe, all things are not led back equally and immediately, but the lowest by the intermediary, and the inferior by the superior ... Therefore if the terrestrial power err, it will be judged by the spiritual power. (Friedberg 1955, 1959: II, cols. 1245–6)

This relation of subordination between the spiritual and the temporal realms establishes the ecclesiastical hierarch as an ordained agent or sacramental mediator between the worlds. Hooker's naming of the sovereign as 'uncommanded commander' – a probable allusion to Aristotle's 'unmoved mover' – would no doubt have pleased both Thomas Aquinas and Boniface, yet the metaphysical premise concerning the manner of that mediation has been radically transformed. Hooker parts company with the two scholastics when he avoids inferring any necessary subjection of the terrestrial (i.e. civil) to the spiritual (i.e. ecclesiastical) power. On the contrary, he attributes the plenitude of power unequivocally to the civil magistrate, thereby completely redefining the meaning of the relation between the powers. Ecclesiastical power is reinterpreted as belonging to terrestrial government; the church is a 'politic society'. Just as Aristotle's unmoved mover gives life and motion to the entire physical cosmos, so also the prince is the *lex animata* of the political realm – 'politic society' – in the case of England, 'a free Christian state or kingdom where one and the selfsame people are the church and the commonwealth' (Hooker 1977–90: 8.3.5; 3:355.33).

In making this claim is Hooker trapped in some deep internal contradiction of argument? Is this the product of an incoherent political theology? Such has been the prevailing judgement of numerous scholars for many years. By attending closely to the underlying Augustinian contours of Hooker's thought, however, we can discern in this account of the nature of the sovereign power a theological pattern reminiscent of the subtle structure of his nomos-theology in Book 1. Just as the hierarchical *dispositio* of the generic division of laws is contained by a broader hypostatic logic on the basis of the distinction drawn between the first and second eternal laws, so here the hierarchical *dispositio* of jurisdiction and authority is interpreted within the larger Augustinian frame. The church, as a mystical, invisible, and divine 'society supernatural', is distinguished hypostatically from the church as an external, visible, and human 'politic society'. Christ alone rules as head of the 'society supernatural', where he rules 'by the inward influence of heavenly grace':

we make the spiritual regiment of Christ to be generally that whereby his church is ruled and governed in things spiritual. Of this general we make two distinct kinds, the one invisibly exercised by Christ himself in his own person, the other outwardly administered by them whom Christ doth allow to be the rulers and guiders of his church. (Hooker 1977–90: 8.4.9; 3:377.7–10)

The species of jurisdiction are hypostatically distinguished as visible/invisible, inward/outward, temporal/eternal, yet Christ is nonetheless ‘personally’ the source of both. Being ‘severed in nature’, these two ‘kinds’ of power are incommensurable, and therefore cannot be ordered by means of gradual *dispositio*. Consequently, there can be no dispositive subordination of human jurisdiction to spiritual jurisdiction, but solely a hypostatic distinction – as Marsilius had also argued. The result is a ‘humanising’ of the church as an external, political organisation under the jurisdiction of the Crown, with the consequence that an ‘essential’ distinction between ecclesiastical and civil power was no longer a theological or metaphysical necessity; both powers are recognised by Hooker as properly belonging to the sphere of the ‘politic society’.

At the same time, there is a parallel, symmetrical ‘sacralising’ of the commonwealth: ‘even as the soul is the worthier part of man, so humane societies are much more to care for that which tendeth properly unto the soul’s estate than for such temporal things as this life doth stand in need of ... so in all commonwealths things spiritual ought above temporal to be provided for. And of things spiritual the chiefest is religion’ (Hooker 1977–90: 8.1.4; 3:321.10–16). Moreover, since civil jurisdiction derives authority directly from heaven, ‘God doth ratify the works of that sovereign authority which kings have received by men’ (1977–90: 8.3.1; 3:336.14). Consequently, power derived constitutionally from ‘below’, that is by consent of the governed, is itself recognised as having a divine sanction from ‘above’: *vox populi, vox Dei* or, as Hooker expresses this famous formula in his discussion of positive human law in Book 1, ‘The general and perpetual voice of men is as the sentence of God himself’ (1977–90: 1.8.3; 1:83.33–84.2) For Hooker the logic of hierarchical *dispositio* is retained *within* the political organisation of the state – a term he uses in a remarkably modern sense for a sixteenth-century theorist – with its ‘natural’ but not ‘personal’ distinction between civil and ecclesiastical powers (1977–90: 8.1.2; 3:320.9–12).

Speaking simultaneously of his adversaries in both Geneva and Rome, Hooker remarks that ‘they hold the necessity of *personal* separation which clean excludes the power of one individual’s dealing in both [i.e. civil and ecclesiastical jurisdiction], we of *natural* which does not prevent that one and the same person may in both bear a principal sway’ (1977–90: 8.1.2; 3:320.9–12). Both the disciplinarian Puritan polemicist Thomas Cartwright and the exponent of the Catholic Counter-Reformation Robert Bellarmine maintained the common position that ecclesiastical authority was autonomous in its foundation. Yet for Hooker these two distinct powers are united in the person of the sovereign, in a manner analogous to the uniting of diverse species of law within the embrace of what Hooker calls the ‘second’ eternal law. Hierarchical order properly obtains within the self-complete unity of the politic society, rather

than through a subordination of a temporal jurisdiction to a separated spiritual jurisdiction. Hierarchy continues to obtain *within* the political realm, but a hierarchy answerable to the prince as sole and supreme ruler:

in a free Christian state or kingdom where one and the selfsame people are the church and the commonwealth, God through Christ directing that people to see it for good and weighty considerations expedient that their sovereign lord and governor in causes civil have also in ecclesiastical affairs a supreme power, forasmuch as the light of reason doth lead them unto it, and against it, God's own revealed law hath nothing; surely they do not in submitting themselves thereunto any other than that which a wise and religious people ought to do. (Hooker 1977–90: 8.3.5; 3:355)

Moreover, in a manner logically parallel to this unification of church and commonwealth, Hooker insists that power from above (divine right) and power from below (human right) are also to be understood as united and yet distinct. It is as if Hooker understood the sovereign power of the Elizabethan constitution to embody a reconciliation of the competing claims of Henry Bolingbroke and Richard II as represented by Shakespeare. On the one hand, Hooker acknowledges Richard's assertion of the divine basis of royal authority and his claim concerning the mystical analogy of sacred kingship between Christ and that of an anointed ruler:

Not all the water in the rough rude sea
Can wash the balm from an anointed king;
The breath of worldly men cannot depose
The deputy elected by the Lord.

(*Richard II* 3.2.54–7; see Mayer 2003: 103–20)

Hooker qualifies this by insisting that divine right is implicated in human right: 'unto kings by human right honour by very divine right is due'. On the one hand,

As for supreme power in ecclesiastical affairs, the Word of God doth nowhere appoint that all kings should have it, neither that any should not have it; for which cause, it seems to stand altogether by *human right* that unto Christian kings there is such dominion given. (1977–90: 8.3.1; 3:335.5–9, emphasis added)

Yet, at the same time,

the Law of God doth give them, which once are exalted unto that place of estate, right to exact at the hands of their subjects general obedience in whatsoever affairs their power may serve to command, and God ratifies the works of that sovereign authority, which Kings have received by men. (1977–90: 8.3.1; 3: 336.11–15)

Thus, in a dialectical fashion, Hooker proposes a bridge to reconcile the competing claims concerning the ultimate source of political power. This subtle argument was destined to be largely ignored throughout the ensuing conflict of the Civil War.

NOTES

- 1 Taking its name from the late sixteenth-century theologian Thomas Lüber, alias 'Erastus' of Heidelberg, the 'Erastian' political theology conceives of society as a single, unified *corpus Aristotanicum*, where membership of church and commonwealth as well as civil and religious authority were understood to be coextensive, and consequently where the civil magistrate exercised sovereign jurisdiction over the church.
- 2 Books 1–4 were published in 1593, Book 5 in 1597, and Books 6 and 8 posthumously in 1648, and the first complete edition, including Book 7, was edited by John Gauden and published in 1662.
- 3 For a discussion of Tudor appeals to the political theology of Marsilius, see Lockwood 1990.
- 4 The bull was issued on 18 November 1502. For an English translation see Tierney 1988:188–9.
- 5 1 Elizabeth I, cap. 1; *Statutes of the Realm*, 4: 350–5. See also 26 Henry VIII, cap. 1; *SR* 3: 492–3.
- 6 On political Augustinianism in the Middle Ages, see Dyson 2003.
- 7 See Hooker 1977–90: 8:19 [Keble 1888: 410]; 5:377, 16–20: 'Him only therefore we do acknowledge to be that Lord which dwelleth, liveth, and reigneth in our hearts; him only to be that head which giveth salvation and life unto his body; him only to be that fountain, from whence the influence of heavenly grace distilleth ...'.

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