THE WESTPHALIAN PARADOX

the natural right to rule    vs    the natural right to leave

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ABSTRACT

Many historians have highlighted the religious and social meaning of the right to freedom of conscience as well as the political role it played throughout the history of the religious wars of the late medieval period and their troubled and long appeasement in the peace settlements of Augsburg and Westphalia. The object of such right consisted, as we know, in the individual freedom to practice religion and in the corresponding negative duty of princes not to interfere with it. However, some historians also claim that this was no simple right: its relevance resided in its internal constitution as a ‘cluster of rights’, that is, a set of rights that depended on each other and operated together so as to make ‘freedom of conscience’ possible from both a de iure and a de facto point of view. Among them was the ius emigrandi, the right of members of religious groups to leave the realm, lest they be discriminated on the basis of their religious belief. This right hence correlated with the overall right of religious freedom of which it was an integral and essential part. ‘Letting people go’ hence played a stabilising role both in terms of civil peace but also among the sovereign states that were now the new makers of international order. This hidden aspect of the history of individual rights is of direct import to contemporary discussions on rights and their nature as well as to one of the most crucial aspects of current rights theories, that is, the issue of correlativity. The nature of the ius emigrandi thus sheds light on the potential set of relations that obtain with state duties but also with other rights, suggesting that its emergence as the first individual right in modern international law was not without geopolitical significance. It is in that context that I claim that the right of emigration started to be portrayed as a natural right by late medieval thinkers - following premodern reflections on a natural right to free movement but also on a natural right to life in early modern political and legal thought. This is was because the codification of emigration as a ‘legal right’ constituted an unprecedented challenge to political allegiance, and hence confronted what had also started to be characterised, under the theory of the divine right of kings, as the natural right to rule. What was at stake therefore was a conflict of natural rights. We must therefore revisit the philosophical grounds upon which certain rights were deemed as natural over others.