

PROLOGUE

OCCASION FOR WRITING.

[1] Six months have already passed, O Francesco Ventura, since I was favored with your presence; before an audience of many learned and eminent men I dared to disclose in public debate the argument of this present work on which I have been meditating assiduously for more than twenty-two years. In that public debate I set forth the one principle on which stands all our demonstrable knowledge of divine and human things. I did that in a foolish attempt to learn what such men think of it, like a painter who conceals himself near his painting to learn how educated people judge it. After I finished my presentation, the eminent Gaetano Argento, your maternal uncle and Chairman of the Naples' Council of Regents, a man who cannot be praised enough for his memory, wit, and judgment, and who is exceptionally well-versed in Latin and Greek and celebrated for his lectures, deep reflections, elegant style, and his knowledge of human and divine law, both public and private, the first in knowledge and acuity in our time—this man gave this judgment to all present about my lecture: that in my argument I had spoken like an orator, philosopher, and a jurist. Nothing he said could have been more welcome to me, for indeed I had attempted to excel in all three; I had submitted philology, the greatest ornament of oratory, to philosophy and analyzed everything according to its method, and in this way did I establish the principles of jurisprudence. Later I visited your home—as I often do—but this time for the best of causes, that I might thank you for the patient and keen attention with which you listened to my hour-long presentation. You who possess that acute judgment with which you think through the most

dubious cases in court; in conversing among the learned men who frequent your home, your moderate discourses about subjects that are lighthearted or very grave; you discern and judge with profound wisdom about the true, the worthy, and the useful. You admonished me to polish and refine this embryonic work. For it is the nature of some truths that, if they are arranged in the correct order, other truths will be seen to follow from them; you claimed that you could see in your mind's eye that still more new and true things (things which I was neither able to suspect or predict) would follow from new and true knowledge derived from human and divine learning. For these reasons, your eminent uncle's judgment has declared what your own authority confirms, an authority I feel in your knowledge, honor, and generosity, and so I dedicate to you this argument, now more profound and more extensive.

MOTIVES FOR WRITING.

[2] Jurisprudence depends upon reason and authority and it depends on these two principles when established law is accommodated to the facts. Reason consists of natural necessity, while authority consists of the will of one who commands.¹ Philosophy traces the necessary causes of things, while history is the witness of what has been willed. Therefore universal jurisprudence is the synthesis of these three: philosophy, history, and the art of applying laws to facts. [3] Among the Athenians the philosophers taught τὰ πρῶτα, or the principles of law, each following the teaching of his own sect, reasoning about virtue, justice, laws, the commonwealth, the constancy of wisdom, all of which are but one part of philosophy. Philosophy, insofar as it deals with laws and the state, is called "civil doctrine," which because of its concern with virtue and justice, grows from moral teaching as from a young plant. Moral teaching has to do with passions of the soul and their remedies, as well as with the virtues and their influence on the duties of one's state in life. Civil doctrine and moral doctrine are both embraced in the notion of "human affairs." Our idea of these descends to us as a stream from a fountain, that is, it teaches us about God, the human soul, the mind which is the life of the soul, reason which is the eye of the mind, and ideas which are the light of that eye; and they teach us about the true and the eternal that serve to strengthen and perfect our reason and thus

establish the constancy of wisdom. For this reason Aristotle correctly says in his *Ethics* that the principles of civil philosophy must be sought in divine philosophy. The philosophers established that metaphysical arguments constituted the second part of philosophy that they named “divine things.” Wisdom grows from knowledge of both these sciences; consequently wisdom is defined as “knowledge of human and divine things” and elegantly called by Plato the “perfectness of the human” because it perfects both parts of the interior person—the mind with truth, the will with virtue. The first of these influences the second, and wisdom is composed of both. They are called wise who either withdraw to the contemplation of highest things, or who with good laws found commonwealths based on truth and justice, or who administer them on these principles.

[4] Those are called “pragmatics” [*pragmatici*] that preserved and taught the history of the law, its current interpretations, and all the established laws of Attica.

[5] The Greeks had no art of law, but in its place the Athenians had rhetoric, and orators chiefly used the art of oratory to handle cases which involved only facts. When a case involving legal principles would come before them, the orators would turn to the philosophers to discover the principles of law, and they would turn to the *pragmatici* when they needed to know the laws or legal precedents in order to plead their case in accord with all the precepts of rhetorical art. Thus their arguments were not drawn from the truth of the law but applied the law to the facts and requirements of each individual case. For this reason Hugo Grotius illustrates his teaching about interpretation with precepts drawn from the rhetorical art of stasis.

[6] Conditions developed differently at Rome. In the beginning of the free commonwealth, Roman customs gave to the Romans a nobility of soul that can only be compared to the integrity and virtue of formal moral teaching. Piety toward their fatherland made the Romans give the common good of the commonwealth priority over all private affairs; this priority was reinforced by the continual experience of holding several public offices as public affairs required. The result was that the Romans valued and developed a doctrine of civil affairs; likewise their religious piety flourished, to which, according to Plutarch, they were as devoted as to their power to rule; these two characteristics served them in

place of Greek metaphysics. The patricians kept for themselves the secret of the knowledge of the law and of the rules and customs of the fathers. On account of this, the patricians were imbued with every good habit and, instead of being trained in the principles of law, they were trained in the practice of prudent political judgment. They knew the legal formulations and also had the ingenuity to accommodate them to the case at hand. Thus a Greek philosopher, a *pragmatici*, and an orator were combined in one Roman jurisconsult.

[7] But in the free commonwealth, a short time before the first Punic war, Tiberius Coruncanus was the first to begin teaching the patrician youths the art of interpreting the laws.² With the passing of time this became the teaching of jurisprudence, a doctrine wholly Roman and unknown to the Greeks. The Romans taught it with the gravity proper to wisdom, not with oratorical ambitions, not with flattering eloquence but with consideration for the weight of evidence in the affair itself as it pertained to the law and with elegantly and concise expression. For in a free commonwealth civil affairs must conform rigidly to civil reason, while under a benign monarch they must conform to natural reason. The jurisconsults were called “the Roman sages” by Pomponius in his history of law. Ulpian also defines jurisprudence as wisdom, in a sense far different from the Greeks. Knowledge of “divine affairs” refers to all that concerns the sacred, that is, to the worship of the gods and to divination, while knowledge of “human affairs” refers to the profane, both public and private. The Romans determined jurisprudence to be “knowledge of all laws human and divine.”³ To this must be added “the science of the just and the unjust” which means that those who know the law must also have the ingenuity to accommodate it to specific cases.

[8] The jurisconsults also taught about the origin and proper meaning of words which are the chief illuminators of statutory law. Thus we see the jurisconsults extremely diligent in their investigation of the root meaning of words such as “servant,” “will,” “loan,” “agreement,” “theft,” “prohibition,” and countless others. In the *Digests* we find a Chapter entitled “Concerning the Signification of Words”; five books of the *Concerning Legacies* deal with nothing except the proper signification of words; in general the first part of the various Chapter titles in the *Digests* is occupied with evaluating and explicating the words of the Edicts.

[9] The Greeks made the teaching of etymology subject to the principles of philosophy and reason: thus Plato's *Cratylus* deals with the origins of words, while Aristotle makes the interpretation of words part of his logic, and the Stoics constantly explained the nature of things by explaining the meaning of words.

[10] The grammarians separated these teachings from philosophy and after long possession they claimed them for their own, and so made the history of words a matter of authority. I accept the description of grammarians formulated by Quintilian, who during his time was pre-eminent in the Roman forum. According to him grammarians were all those who wrote in learned languages about any art or discipline and who had knowledge of the arts and sciences about which they wrote; nowadays the common people term such people "critics" or "the erudite."⁴ Here we see that the grammarians were greatly learned in matters of jurisprudence and the juriconsults in matters of grammar. This is commonly attested to. Carolus Sigonius, a bright light of Roman erudition, published his *On Roman, Italian, and Provincial Law*; Paullus Manucius published his *On Roman Laws*; Justus Lipsius wrote his *On the Laws of the XII Tables*; Angelus Politianus wrote his *Lectures* on the Florentine codes; Antonius Nebra compiled his *Index of the Errors of the Accursians*.⁵ Though I pass over others, I must mention Marcus Antonius Muretus, who taught law publicly at Rome, whom I number among the grammarians as easily as among the interpreters of the law.⁶ Among the jurists Franciscus Hotemanus wrote commentaries on Cicero's orations, Antonius Goveanus wrote a commentary on Terence's comedies, and Barnabas Brissonius wrote *On Roman Formulas*.⁷ The *Observations* of the great Cujas could have a place in your library next to the *Adversaria* of Adrian Turnèbe, if only Cujanus had not claimed, in his literary works, to be an interpreter of the law.⁸ Suetonius tells us that Tiberius Caesar, who religiously observed correct Latin usage, when he was ready to issue the edict *De strena*, consulted the grammarians as to how to replace words of Greek derivation with native Latin terms. Tacitus records that Ateius Capito, the leader of one of the schools of jurisprudence, responded with his usual compliance that it was permitted to Caesar to use Greek. Pomponius Marcellus, however, whom Suetonius records as among the most brilliant grammarians, said to Caesar: "You, Caesar, can grant citizenship upon men, but

not upon a word.”⁹ In the same way Aulus Gellius, the darling of grammarians, abandoned his field of expertise when he proposed in his *Nights* so many famous questions about Roman law.¹⁰ For all these reasons we are able to confirm the truth of the proposition that the teaching of the signification of words is a proper part of the philosophy of law.

[11] Ulpian defines civil law as “what does not differ *in toto* from the natural law [*ius naturalis*] or the law of the gentes [*ius gentium*], nor what is completely like them, but what is partly added to them or partly subtracted from them.”¹¹ On this account, what deviates from the natural law is civil law; what follows natural law is natural law. We have seen that among the Greeks there is no doctrine about how laws are to be interpreted, and what there is, is the same as rhetoric. Among the Romans, jurisprudence is a corollary of civil prudence.

[12] Until now I have seen no author who has tried to formulate a doctrine of Roman law based on an interpretation of civil reason. In my book *On the Study Methods of Our Time*, published thirteen years ago, I suggested that someone attempt this.

[13] It is risky to try to derive the origin of the natural law from the writings of the juriconsults who tried to interpret the principle of the law according to civil reason. Although the jurists said they were working from the principles of natural reason, nevertheless they used civil reason, as we indicated in our book *On the Study Methods* and which we are developing more broadly. For this reason we must keep in mind that, while other disciplines rest on principles that have been well thought out, everyone who knows even a little about jurisprudence knows that the juriconsults’ definition of the natural law is rough, their divisions rocky, their explication of the law’s characteristics, especially its immutability, strewn with dangers. For this reason Hugo Grotius notes that in no part of the law did the juriconsults err more than in the part concerning the acquisition of property, which they say was derived from the natural law.

[14] Some ingenious thinkers cannot resist believing that the principles of natural law were deduced from some sects of Greek philosophers, but these principles are simply not deducible in this way. No philosophers ever discussed how justice or laws could be accommodated to the Athenian city-state or its laws, nor is it possible

to conclude that the principles of Roman law originated in a philosophical sect and then passed into Attic law and thence into the Laws of the Twelve Tables.

[15] There are some that used philosophical dogmas to explicate the rationale of Roman law but they cannot make heads or tails of it. Thus when we read their learned commentaries, ingenious and copious as they are, we see philosophical reason in profound conflict with itself, and one testimony contradicts another.

[16] When we inquire into the causes of this conflict, we discover that it arises from not being able to reduce jurisprudence to a single principle. Jurisprudence in fact actually arises from two related principles: reason and authority, but authority does not arise only from passion and desire, as if it had nothing to do with reason. The perpetual dissent between philosophy and philology arises from precisely this cause, for the philosophers never inquired into the rationale of authority, and philologists viewed the philosophical doctrines as mere stories.

[17] Therefore the ancient interpreters of the law were satisfied with philosophy alone and used one rule to interpret Roman law in the context of Roman history (for that age was ignorant of philology), namely, they used false supposition. They displayed ingenious subtlety in extracting a principle of equity from a mass of innumerable particular cases. These interpreters richly deserved the judgment of Hugo Grotius, that “they were the best authorities for establishing a new law but the worst interpreters of existing laws.”¹²

[18] Recent interpreters, on the other hand, enthralled by the pleasures of humane letters, rejected the philosophy of their own time that cared nothing for elegance of expression. They would rather use philology to purge the history of Roman law of barbaric archaisms and restore the splendor of its truth than study philosophy.

[19] One man, Antonius Goveanus, renowned as both a most acute philosopher and philologist, approached jurisprudence with learning in both these disciplines and interpreted Roman law with great felicity, though only for fun and as a way to relax his mind. Iacobus Cuicacius might have feared to lose his place as the most elegant of the law’s interpreters, if Goveanus had applied himself seriously to jurisprudence.¹³ But he occupied himself with the minutiae of Roman law; the principles, which make up the natural law of the gentes, he neglected.

[20] On the other side there is Hugo Grotius, a weighty philosopher and most eminent philologist. He omits any consideration of Roman civil law and restricts himself to the natural law of the gentes. He presents it so systematically that he has earned the title of “jurisconsult of the human race.” But when his principles are submitted to critical examination, they are found to be more probable and verisimilar than necessary and irrefutable.

[21] At this point we are back in the time of Carneades, who discussed whether justice in human affairs was possible, since he could argue both sides of a particular case equally well. So too Epicurus, Niccolò Machiavelli in *The Prince*, Thomas Hobbes in *De Cive*, Benedict Spinoza in his *Tractatus Theologico-politicus*, and Peter Bayle in his recent *Dictionary*, written in French, all echo the vulgar sentiment: law is to be judged according to its utility in a particular time and place, and only the weak demand equity. As Tacitus says, “With princes might was the only right.”¹⁴ From this they conclude that human society is held together by fear and that laws are the collusion of the powerful to dominate the many.

[22] Therefore we must begin by establishing that there is a law, true and eternal, and this law obtains everywhere, among all people, and at all times. Metaphysics explicates the eternal knowledge of true things, and metaphysics defines this explication as “criticism of the true.” Only metaphysics can demonstrate that such a law exists and remove the wretched doubt that justice does not exist. Thus we must derive from that philosophy the principles of that law to which everyone agrees amicably and constantly. This philosophy would be an eternal rule according to which we can measure how much Roman civil law had contributed to the natural law of the gentes and how much it had taken from it. In this way we would be able to investigate the principles of Roman civil law.

[23] At this point I feel compelled to inquire if, with the help of metaphysics, the principles of jurisprudence can be established in such a way that everything demonstrated from them will be perfectly congruent and logical. Indeed, two huge volumes, recently published, grandly promise on their title pages to teach jurisprudence just this way, but actually they merely present a method for memorizing what previous authors had said rather than a method for discovering real knowledge of a new truth.¹⁵ Without this, the books are more suited

to teaching students about individual laws rather than to forming them to philosophize about laws and the commonwealth.

THE BEGINNING OF THE WRITING.

[24] Once while reading *The City of God* by the divine Augustine, I came upon a passage by Varro (who because of his philosophy and erudition was called the “the most learned of the Romans”). Varro says that if he had had the power of telling the Roman people which gods they ought to worship, he would have proposed to them “according to the formula of nature” that they worship only one incorporeal infinite god, not many in the forms of idols.¹⁶ After reading this my mind was illuminated as if by a new light and I grasped this truth: the natural law is a formula; it is the idea of truth that manifests to us the true God.¹⁷ Thus as the true God is the principle and beginning of true religion, so is He of true law and of true jurisprudence. On this account does not Christian jurisprudence, which is totally contained in the *Imperial Constitutional Codex*, take its keynote from the title *Concerning the Highest Trinity and the Catholic Faith*? Therefore true jurisprudence is the true knowledge of divine and human things; metaphysics teaches us a critique of truth for it gives us true knowledge of God and man. From all this we finally conclude that the principles of jurisprudence must not be deduced from the sayings or writings of various peoples but from a true knowledge of human nature, which takes its origin from the true God.

THE ARGUMENT OF THE BOOK.

[25] After applying myself attentively and consistently to this insight I finally realized that there are three elements to all divine and human learning: to know, to will, and to do, and these all have one principle, the Mind whose eye is reason to which God gives light. I define this divine light as eternal truth, but this definition will have to remain nominal until I have demonstrated it.

THE METHOD OR ORDER OF THE BOOK.

[26] We know these three elements exist, and know them to be our own just as certainly as we know we are alive. We will explicate

them according to their one true source—our own thought. In order to do this more easily I have divided the whole treatise into three parts.

THE PARTS OF THE ARGUMENT.

[27] The first part will show that the principles of all knowledge are from God. In the second I will show that the divine light permeates the three elements that we have proposed and that it connects each one to all the others in a single complex structure which leads back to God from whom they came. In the third part we will demonstrate that whatever is written or said about the principles of divine and human learning that agrees with the forgoing analysis is true and whatever dissents from it is false.

[28] In dealing with human and divine affairs I will consider three things: their origin, their cycle, and their integrity. I will show that they all take their origin from God, they all return to God, and that God maintains and supports their integrity. Outside of God these affairs present us with only error and confusion.

[29] Before discussing the three principles, I must first discuss the proper meaning of two words, then I will extract five truths from divine philosophy and propose them as axioms.

DEFINITIONS OF THE TRUE AND THE CERTAIN.

[30] “True” and “certain” are two words that must be distinguished just as everyone distinguishes what is false from what is merely doubtful.¹⁸ Indeed falsehood is as far from the doubtful as the certain is from the true. If these two things are not carefully distinguished, given that many true things are doubtful, it might appear that a thing can be certain and doubtful at the same time. On the other hand, since many false things are held to be certain, they might be held to be both false and true.

[31] Truth arises when the mind is in conformity with the order of things; the certain arises when the consciousness is secure from doubt. That which conforms to the order of things is called reason. Thus if the order of things is eternal, reason is eternal, from which it follows that truth is eternal. But if the order of things is not permanent in every place for everyone or everything, then rea-

son will have only probable knowledge of things and achieve only a degree of verisimilitude in cases requiring action. As truth rests on reason, so the certain rests upon authority, whether of the senses, called *ἀποψία* [seeing with one's own eyes] or on the words of others which is called "authority" in particular. From both of these persuasion is born. But authority itself is a part of reason: for if the senses are not deceived and the words of others are true, then we are persuaded of the truth. If, on the other hand, the sense impressions or the words are false, we will also be persuaded of falsehood. "Prejudices" should be attributed to all such false persuasions.¹⁹

METAPHYSICAL ASSUMPTIONS.

[32] The following theses are true.

I

[33] At the highest level of abstraction, only two kinds of things may be said to exist, intelligible substance and corporeal substance, and man consists of both.

II

[34] The mind judges the truth of things by means of clear ideas. Sensation is imparted to man so that, from quick and immediate experiences of pleasure and pain, he can discern what is useful or deadly to his life. The mind itself, however, judges the truth of the pleasure and the pain.

III

[35] The occasions of things are not the causes of things. Bodies and whatever is corporeal, such as the senses, are occasions through which the eternal ideas of things are produced in the mind. But transitory things like the body, or corporeal things, or the senses, are not able to give rise to what is eternal and beyond the body. Ignorance of this truth causes men to be ungrateful to God. For God out of his great goodness has provided that sensations bring the idea of the thing that stimulates them before our minds so quickly, so forcefully and so immediately, that men think that

entirely different things are the same. They confuse the merely transient with the eternal, as if they would mix the sea and the sky.

IV

[36] There is only one kind of assent required in life for both contemplating things and doing things, for in either case we assent to a clear demonstration of the truth. For a man who refuses to perform his duty is soon so troubled in his soul that he can no longer clearly perceive that he has a duty in the first place. When this perturbation subsides, and the man's soul has been purged, he regrets his evil deeds. Such a thing does not happen in geometry, for example, because the study of lines makes no impression on our affections and men are not perturbed by it; on this account there appear to be different kinds of assent for pure cognition and for doing one's duty.

V

[37] Finally it is necessary that the idea of the object presented to the mind is adequate to the object itself.

[38] Knowledge of the true God was the founding principle of a new jurisprudence in the time of Constantine the Great. At that time the most acute minds of the Greeks and the Romans meditated profoundly on God's divine nature, and they exceeded the investigations of the philosophers as much as the spirit exceeds the body in purity and mobility. These acute minds were the Fathers of the Church who corrected and emended the wisdom of the ancients according to eternal wisdom, not from studying philosophical sects but from the charity and diligence the Fathers all shared. Let us see, I say, whether this principle will enable us to introduce, to advance, and to conclude a true *ἐγκυλοπαιδείαν*, a discipline truly ample, truly universal, truly without weakness, as the learned described it and as Ulpian defined it. Thus the integrity of Roman jurisprudence in all its doctrines would be established as solidly as life itself, and more solidly than it ever could be by Greek wisdom.