Factions and Parties in Early Modern Swiss Conflicts

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“We put first as a general maxim that factions and parties are dangerous, and threaten the well-being, of all kinds of commonwealths”. This statement by Jean Bodin (1529–1596) might well have been an expression of early modern European common sense about the nature of factions and parties. He continues in his famous “Six Books of the Commonwealth”, printed in 1576: “But if factions and seditions are dangerous to monarchies, they are even more so to popular states and to aristocracies. Monarchs can preserve their authority, either by impartially composing quarrels, or in alliance with one of the parties by bringing the other to reason, or by destroying it altogether. But if the people in a popular state are divided, there is no sovereign to appeal to, any more than there is when the governing class in an aristocracy splits up into cliques”. According to Bodin, the partition of the body politic into rival groups threatens public peace, especially in a “popular state”, because such a state’s “sovereignty is vested in the very people who are divided, and the magistrates are nothing more than their subjects”.1

Bodin’s view represents the mainstream early modern attitude towards the phenomenon of factions. They were considered evil because they were often the first step to sedition, rebellion and even civil war. The Italian legal historian Mario Sbriccoli (1941–2005) reconstructed the semantics of the terms used by medieval and early modern jurists and political writers dealing with any form of disobedience that could be called crimen laesae maiestatis. According to the German jurist Philipp Andreas Oldenburg (c. 1620–1678), cited by Sbriccoli, “Factions and tumults gave birth to sedition which are the mothers of civil wars”.2 Oldenburg also cited Baldus de Ubaldis (1327–1400): “Partiality in the

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2 “Ex factionibus et tumultibus nonnumquam nascuntur et proveniunt seditiones quae ma- tres sunt bellorum civilium”, Oldenbourg (1675), quoted in Mario Sbriccoli, Crimen laesae
state is like the worm in the cheese: as the cheese vanishes, the worm gets fat”, and Andreas Barbatia (1399–1482): “Discord in the state is an open door for intruding enemies”.

But this is only one side of the coin. Sbriccoli insisted on the other side; namely, that the Roman law tradition acknowledged the double character of factio, seditio and discordia. If a State was ruled by a tyrant, the nobles or citizens had the right or even the duty to disobey and organise resistance. One of Sbriccoli’s sources, the German jurist Konrad Braun (c. 1495–1563), put it in 1550 as follows: “Faction is a division among the multitude produced by competition to prevail over others. Factions can be divided between lawful and unlawful according to their justifications. Therefore we have good and bad factions, although at the beginning the term had a positive meaning”. And Braun later on: “If we can assemble our friends to defend our properties, we can even more assemble to defend the political community by connecting the good persons and to protect the political community. For the same reason the faction is right and lawful when it organises good citizens to expel tyranny from the community—if this cannot be done by other, more suitable means”.

Roman law tended to see factions as resulting from organised dissent. From the rulers’ point of view organised dissent tended to disobedience, and disobedience was the basis of all sorts of crimen laesae maiestatis, from faction to conspiracy to rebellion and civil war. The only case of “legitimate” dissent was resistance to tyranny, a situation which permitted the nobles or citizens...