

The Formation of a Liberal Thinker: Georg Jellinek and his Early Writings (1872 – 1878)

La formación de un pensador liberal: Georg Jellinek y sus escritos de juventud (1872 – 1878)

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Abstract

Georg Jellinek is known as one of the most prominent representative of German legal positivism. This article aims at identifying and discussing the more theoretical-political connotation of Jellinek's thought with a particular focus on his liberal inspiration. According to the perspective of the history of political thought, this article shows how some intellectual premises to Jellinek's liberalism take shape and emerge from a series of young Jellinek's writings on history of philosophy and history of ideas.

Keywords: liberalism, limits to power, individual, State.

Resumen

Georg Jellinek es generalmente conocido como un teórico y experto en derecho público, como exponente del positivismo jurídico alemán de finales del siglo XIX. Desde la perspectiva de la historia del pensamiento político, este artículo tiene como objetivo rescatar del pensamiento de este importante autor la connotación teórico-política de inspiración liberal. Más precisamente, el artículo trata de demostrar cómo algunas de las raíces intelectuales del pensamiento liberal de Jellinek pueden ser en parte identificadas en una serie de escritos de juventud sobre la historia de la filosofía y la historia de las ideas.

Palabras clave: liberalismo, límites del poder, individuo, Estado.

1. Introductory considerations: the early writings of a liberal thinker

In 1872, the future representative of German legal positivism, Georg Jellinek (1851-1911), was invited to publicly present his dissertation on *Die Weltanschauungen Leibniz' und Schopenhauers* (*The Worldviews of Leibniz and Schopenhauer*)¹ with which in the same year he had earned his doctorate in philosophy at the University of Vienna. A work in which the young author compared the philosophical worldviews of the two renowned German thinkers, identifying in the first the representative of optimism and in the second the champion of pessimism. No trace of the theory of State and law: the dissertation of 1872 was an erudite and elegant exercise in the history of philosophy.² The beginnings for the father of the *Allgemeine Staatslehre* (*General Doctrine of Law and State*) were therefore linked to a scientific field well removed from that of legal science. It is correct to note that the first of his intellectual passions was philosophy.³

Six years after the presentation of his dissertation, the scholar gave a lengthy discourse at the *Association of Friends of Literature in Vienna* on an apparently singular theme, *Die Beziehungen Goethes zu Spinoza* (*Goethe's relationship with Spinoza*).⁴ He thus had the opportunity to combine his interest in philosophy with his interest in literature and, in particular, in the work of Johann Wolfgang Goethe who, with Lessing, Kant, and Schiller, comprised what Jellinek designated “the four evangelists”, points of reference not only for the young scholar but also for the German-Jewish middle-class culture from which he came.⁵

¹ G. Jellinek, *Die Weltanschauung Leibniz' und Schopenhauer. Ihre Gründe und ihre Berechtigung. Eine Studie über Optimismus und Pessimismus. (Inauguraldissertation)*, Wien, Alfred Hölder, 1872, in Id., *Ausgewählte Schriften und Reden*, Band 1, Aalen, Scientia Verlag, 1970 (Neudruck der Ausgabe Berlin 1911), pp. 3-41. For the Italian translation of this writing see now: G. Jellinek, *Le concezioni del mondo di Leibniz e Schopenhauer. Fondamenti e giustificazione. Uno studio sull'ottimismo e il pessimismo. Dissertazione inaugurale tenuta a Vienna nel 1872*, in Id., *Il “Tutto” e l'“Individuo”. Scritti di Filosofia, Politica e Diritto*, a cura di S. Lagi, Catanzaro, Rubbettino, 2015, pp. 69-107.

² From 1879 to 1889 Jellinek taught at the University of Vienna, experiencing in the Habsburg capital the most difficult and tormented period of his academic career. See: C. Keller, *Viktor Ehrenberg und Georg Jellinek im Spiegel ihres Briefwechsels 1872-1911*, in Id., *Viktor Ehrenberg und Georg Jellinek. Briefwechsel des 19. Jahrhunderts*, Frankfurt am Main, Vittorio Klostermann, 2005, pp. 22-33; see also: C. Jellinek, *Ein Lebensbild, entworfen von seiner Witwe Camilla Jellinek*, in G. Jellinek, *Ausgewählte Schriften und Reden*, Band 1, *op. cit.*, pp. 7-140.

³ A. Fijal-R.R. Wiengärtner, “Georg Jellinek, Universalgelehrter und Jurist”, in *Juristische Schuulung* XXVII, 1987, pp. 97-100, here p. 98.

⁴ G. Jellinek, *Die Beziehungen Goethes zu Spinoza. Vortrag gehalten im Vereine der Literaturfreunde zu Wien*, Wien, Alfred Hölder, 1878, in Id., *Ausgewählte Schriften und Reden*, Band 1, *op. cit.*, pp. 178-207. For the Italian translation of this writing see now: G. Jellinek, *Il rapporto di Goethe con Spinoza. Relazione tenuta alla Associazione “Amici della letteratura” di Vienna*, in Id., *Il “Tutto” e l'“Individuo”. Scritti di Filosofia, Politica e Diritto*, *op. cit.*, pp. 109-138.

⁵ C. Keller, *op. cit.*, p. 28.

The texts to which we have just referred and the themes and characters discussed within should not surprise us. It is enough to simply browse the extensive database of Jellinekian thought that are the *Ausgewählte Schriften und Reden* (*Selected Writings and Discourses*)⁶—a collection of essays, speeches, and writings that the jurist elaborated in the course of his intellectual and academic life—to realize an incontestable fact, namely the impressive diversity of Jellinek’s interests: the history of political thought, the history of ideas, philosophy, music, theater, literature, poetry, and as well, law.

Before becoming one of the most authoritative representatives of German legal positivism of the century, Jellinek was an intellectual in the fullest sense, in the truest and deepest meaning of the term, a true scholar. His interests were varied, eclectic, and his own theory of law and State—in this, profoundly different from the cold formalism of Hans Kelsen⁷—was interwoven with references to historical and cultural-historical dimensions, to the history of political thought, and to philosophy. It was Jellinek in fact who asserted “legal science could not exclude historical analysis”.⁸

In this sense, one of the most famous examples was his essay of 1895 dedicated to the *Erklärungen der Menschen und Bürgerrechte* (*The Declarations of the Rights of Man and of Citizens*).⁹ Jellinek formed a comparison between the American *Bills of Rights* and the French Declaration of 1789, with a dual purpose. First, he sought to explain the originality of the *Bills of Rights* charter, focusing on the particular historical and cultural conditions in which they had developed. Second, he sought to legitimate, by means of this very analysis, his historicist and positivist conception of law and State, demonstrating how the *Bills of Rights* does not contain abstract freedoms and rights in the natural sense but freedom and rights that the earlier settlers directly and concretely experienced in history, before the American Revolution, freedom and rights that were subsequently put to paper.¹⁰

⁶ G. Jellinek, *Ausgewählte Schriften und Reden*, *op. cit.*

⁷ For a critical approach to Jellinek and Kelsen see the fundamental H. Heller, *Souveränität. Ein Beitrag zur Theorie des Staats und Völkerrechts*, Berlin und Leipzig, W. De Gruyter, 1927. In this case, we referred to the Italian translation in Id., *La sovranità e altri scritti sulla dottrina del diritto e dello Stato*, a cura di P. Pasquino, Milano, Giuffrè, 1987, pp. 67-301.

⁸ G. Jellinek, *La politica dell’assolutismo e quella del radicalismo. Hobbes e Rousseau*, [Italian trans. of Id., *Die Politik des Absolutismus und des Radikalismus (Hobbes und Rousseau). Vortrag gehalten in der Aula des Museums zu Basel am 10. Februar 1891*, in Id., *Ausgewählte Schriften und Reden*, *op. cit.*,] in S. Lagi (a cura di), *Georg Jellinek. Storico del pensiero politico (1883-1905)*, Firenze, CET, 2009, p. 53.

⁹ G. Jellinek, *Die Erklärungen der Bürger und Menschenrechte. Beitrag zur Geschichte des Verfassungsrechts*, München und Leipzig, Duncker & Humblot, 1895. See: D. Kelly, “Revisiting the Rights of Man: Georg Jellinek on Rights and State”, in *Law and History Review* 22, 3, 2004, pp. 493-529.

¹⁰ G. Jellinek, *Das Recht der Minoritäten*, hrsg. und eingeleitet von W. Pauly, Goldbach, Keip Verlag, 1996, pp. 1-48.

It is in the context of this diversity of interests and lines of research—here synthetically noted—that Jellinek’s dissertation on the two renowned German philosophers and his discourse dedicated to Goethe and Spinoza become better understood.¹¹

If we wanted to stop at this level of analysis, we would limit ourselves to reading Jellinek’s two early writings as a mere *divertissement* of a particularly erudite character driven by a voracious curiosity for diverse areas of knowledge. However, it is our belief that the essays dedicated to the two German thinkers, to Goethe, and to Spinoza – the father of *Ethica more geometrico demonstrata* – offer something more. The literature has extensively analyzed Jellinek’s legal theory, his doctrine of law and State, his model of constitutional justice, his theory of subjective public rights, and this same literature has in general agreed in attributing an unquestionably *liberal* value and matrix to the *Rechts e Staatslehre* of the Hebrew-German thinker. Maurizio Fioravanti, in fact, effectually observed that never in Jellinek is there the endeavor to reduce the relationship between the State and the citizens in terms of “mere dominion”.¹²

¹¹ C. Keller, *op. cit.*, p. 22.

¹² For the liberal connotation of Jellinek’s legal and political theory see: V. Emanuele Orlando, *Introduzione a G. Jellinek-V. E. Orlando, La dottrina generale del diritto dello Stato* [Italian trans. of G. Jellinek, *Allgemeine Staatslehre*, 1900], Milano, Giuffrè, 1949, p. XVI f. M. Stolleis, *Geschichte des öffentlichen Rechts in Deutschland (1814-1900)*, Bd. 2, München, C. B. Verlag, 1992, p. 145 f; M. La Torre, *Disavventure del diritto soggettivo. Una vicenda teorica*, Milano, Giuffrè, 1996, pp. 144 f; C. Schönberger, “Ein Liberaler zwischen Staatswille und Volkswille. Georg Jellinek und die Krise des staatsrechtlichen Positivismus um die Jahrhundertwende”, in S. L. Paulson, M. Schulte (hrsg. von), *Georg Jellinek. Beiträge zu Leben und Werk*, Tübingen, Mohr Siebeck, 2000, pp. 3-32; J. Kersten, *op. cit.*, p. 17; W. Pauly, *Majorität und Minorität*, Introduction to G. Jellinek, *Das Recht der Minoritäten*, *op. cit.*, pp. VII-XIV; D. Quaglioni, “Sovranità e autolimitazione (Rileggendo la «Dottrina generale dello Stato di G. Jellinek»)”, in M. Basciu (a cura di), *Crisi e metamorfosi della sovranità. Atti del XIX Congresso nazionale della Società italiana di filosofia giuridica e politica. Trento 29-30 settembre 1994*, Milano, Giuffrè, 1996, pp. 273-282 and by the same author *La sovranità*, Roma-Bari, Laterza, 2004, pp. 96-100; Also, see: M. Fioravanti, *La scienza del diritto pubblico. Dottrine dello Stato e della Costituzione tra Otto e Novecento*, Tomo I, Milano, Giuffrè, 2001, p. 6; Id., *Lo “Stato moderno” nella dottrina della Costituzione della prima età moderna del Novecento (1900-1940)* in Id., *Ordo Iuris. Storia e forme dell’esperienza giuridica*, Milano, Giuffrè, 2003, p. 185; O. Jounjan (ed.), *Figures de l’Etat de droit. Le Rechtsstaat dans l’histoire intellectuelle et constitutionnelle de l’Allemagne*, Strasbourg, Presses Universitaire de Strasbourg, 2001, pp. 293-312; W. Pauly-M. Siebinger, “Staat und Individuum. Georg Jellineks Staatslehre”, in A. Anter (hrsg. von), *Die normative Kraft des Faktischen. Das Staatsverständnis Georg Jellineks*, Baden-Baden, Nomos Verlag, 2005, pp. 135-151; R. Marra, *La religione dei diritti. Durkheimer, Jellinek, Weber*, Torino, Giappichelli, 2006; More recently, J. Von Bernstoff, “Georg Jellinek and the Origins of Liberal Constitutionalism in International Law”, *Göttingen Journal of International Law* 4, 2012, pp.659-675.; D. Drüll, *Heidelberger Gelhertlexikon 1803-1932*, Berlin-Heidelberg, Springer Verlag, 2012.

Salvo Mastellone noted that Jellinek “sought to give liberal society legal justification with a general theory of law”.¹³ Such justification was developed around the concept of self-limitation (*Selbstbeschränkung*) and subjective public rights. In 1892, Jellinek dedicated one of his most famous works to these concepts, *Das System der subjektiven öffentlichen Rechte* (*The System of Subjective Public Rights*), in which the jurist maintained that subjective public rights are founded in the self-limitation enacted by the State, conceiving for the State a dual role: singular holder of sovereignty and at the same time subject according to the limits in relating itself to the citizens.¹⁴

The principle of self-limitation and its affirmation of a sphere of freedom for citizens encompass in its most concise form the liberal heart of Jellinek’s legal and political view and more precisely his endeavor to imagine a “liberal society”. At the same time, all his works, including the *Allgemeine Staatslehre* (*General Theory of the State*) (1900), were interwoven with references to the great classics of liberal-political and liberal-democratic thought: Benjamin Constant, J. S. Mill, Alexis de Tocqueville, James Calhoun, Herbert Spencer, to name a few of those most frequently cited. An even more relevant aspect, one of the more significant works in Jellinek’s extensive production is an essay, published in 1898, entitled *Das Recht der Minoritäten* (*The Rights of Minorities*),¹⁵ in which the professor of Heidelberg considered a theme particularly dear to him and to liberal tradition itself: the protection of minorities as an antidote against the tyranny of the majority and against the degradation of democratic society, dangers already exposed many years before by one of his favorite thinkers, Alexis de Tocqueville.¹⁶

This overview of Jellinek’s work and thought presents and issue, however, in terms of the history of political thought, quite relevant to us: to understand the extent to which the early writings on Leibniz, Schopenhauer, Goethe, and Spinoza found voice in the jurisprudential liberal reflections of this Hebrew-German intellectual. On the following pages, we will endeavor to demonstrate how these contributions—chronologically preceding the theory of self-limitation, the work on subjective public rights and also those on the rights of minorities and other writings from which emerged a liberal political sensitivity—encompass an intellectual vision, a *Weltanschauung*, that, in part, we rediscover in his major works. It is our judgment that this intellectual vision is fully presupposed in the principle of self-limitation and, in a broader sense, in the endeavor to think and define a liberal society capable of guar-

¹³ S. Mastellone, *Storia del pensiero politico europeo XIX-XX*, Torino, UTET, 2002, p. 99; G. De Ruggiero, *Storia del liberalismo europeo*, Roma-Bari, Laterza, [first edition 1925], 1995, pp. 275-277.

¹⁴ G. Jellinek, *Sistema dei diritti pubblici soggettivi* [Italian trans. of Id., *System der subjektiven öffentlichen Rechte*, 1892], Milano-Napoli, Società Editrice Libreria, 1912.

¹⁵ For the Italian translation of this writing see now: G. Jellinek, *Il diritto delle minoranze*, in Id., *Il “Tutto” e l’“Individuo”. Scritti di Filosofia, Politica e Diritto*, op. cit., pp. 165-205.

¹⁶ G. Jellinek, *Das Recht der Minoritäten*, op. cit., p. 44 f.

anteeing rights, a sphere of freedom, and the protection of minorities, because—as Jellinek wrote in *Das Recht der Minoritäten*— “all progress of history originated from the minorities. And in this regard, signs exist that in the best natures something moves in opposition to the dominant currents that I would define as the obstinate sentiment of the minority”.¹⁷

The essays that we chose to bring to the attention of the reader—the dissertation on the two German philosophers and the discourse on Goethe and Spinoza—can help us not only to grasp the unedited nuances of the intellectual figure of Jellinek but also to understand – in a perspective of the history of political thought – some of the profound roots of his liberal vision, before his liberal vision fully formed in the works of his maturity.

2. Georg Jellinek, interpreter of Leibniz and Schopenhauer

We previously noted that Jellinek never reduced the relationship between State and citizens to a mere question of dominion and subordination, rather—as Massimo La Torre noted—in Jellinek’s works, individuals are always connected in the fabric of the community, always considered an integral part of a larger reality, of a “Whole”, of the community.¹⁸

Jellinek’s liberal jurisprudential view, developed from the 1880s to the early 1900s, is formulated precisely around two poles of reflection and interest: the State and the citizens, the community and the individuals. In our opinion, the writings we have selected enable us to better understand the intellectual roots of this polarity, absolutely central to the legal and political thought of this German scholar.

The dissertation on Leibniz and Schopenhauer was, first of all, an articulated reflection on optimism, of which, according to Jellinek, the father of *La Monadologie*¹⁹ had been the most representative, and on pessimism, embodied by the author of *Parerga und Paralipomena*.²⁰

The young scholar made transparent his preference for Leibniz’s thought and related the works of the two German philosophers, first and foremost, to the particular historical and cultural context in which they had evolved. According to Jellinek, the philosophy of Leibniz gave voice to a period of great and positive transformation especially for the German people, who finally knew a new peace after the tragedy of the Thirty Years’ War,²¹ whereas the work and thought of Schopenhauer reflected an era of torment and deep contrast, marked by the tri-

¹⁷ *Ibidem*, p. 45.

¹⁸ M. La Torre, *La crisi del Novecento. Giuristi e filosofi nel crepuscolo di Weimar*, Bari, Ed. Dedalo, 2006, p. 36. We translated the Italian term “Tutto” – used by La Torre in his book – with “Whole”.

¹⁹ G. W. Leibniz, *La Monadologie* (1720).

²⁰ A. Schopenhauer, *Parerga und Paralipomena: kleine philosophische Schriften* (1851).

²¹ G. Jellinek, *Die Weltanschauung Leibniz’ und Schopenhauer*, *op. cit.*, p. 17.

umph of Romanticism with its *Weltschmerz* of which Schopenhauer was one of its greatest “singers.”²²

Reference to historical context comprised only the initial part of the analysis proposed and developed by Jellinek: through a careful study of the philosophy of Leibniz and that of Schopenhauer, Jellinek investigated the fundamentals of optimism and pessimism, concluding in the former an expression of a profoundly “universalistic” vision and in the latter an irreducible “subjectivism”. Both definitions—“universalism and subjectivism”—presuppose, for Jellinek, a particular way of understanding the relationship between the “Whole” and the “individual”, between the “Whole” and the “single thing”.²³

In the essay of 1872, these terms carried a purely *philosophical* significance: Leibniz, as interpreted by Jellinek, elaborated a view, monadology, that succeeded in grasping the “Whole and the individual”, in a reciprocal relationship, never in conflict.²⁴ Behind this conception, Jellinek perceived a spirit and individuality in their turn deeply harmonious:

With a universal view Leibniz observes reality: in the great he does not forget the small, so much the foundation of his philosophy. He represents, in the deepest sense of the word, a veritable microcosm, in which are reflected all the tendencies of his era, all the scientific and religious efforts and achievements.²⁵

The future author of the *Allgemeine Staatslehre* recognized in Leibniz the ability to think in terms of “unity and harmony”:

If two views find themselves in reciprocal opposition to each other, he seeks to reconcile, unite, and transform the dissonance into harmony. In him are overcome all contradictions and conflicts. His scientific work and practice consists essentially of continuous efforts to unify conflicting doctrines and therefore surpass the rifts that separate political and religious parties. He wants to unite Plato and Aristotle, the theological and the mechanical, nature and creation, the Protestant church and the Catholic, the Evangelical church and the Reformed, in Germany the imperial power and the territorial sovereignty, and in England the Tories and the Whigs.²⁶

²² *Ibidem*, pp. 28-29.

²³ *Ibidem*, p. 20.

²⁴ We translated the German term “Ganze” with “Whole”, whereas we translated “Einzelne” with “Individual, Individual thing, single thing”.

²⁵ G. Jellinek, *Die Weltanschauung Leibniz' und Schopenhauer*, *op. cit.*, p. 17.

²⁶ *Ibidem*, p. 18.

Citing Kuno Fischer²⁷ and his *Geschichte der Philosophie* (*History of Philosophy*) Jellinek summarized the “universalistic” character of Leibniz’s philosophy:

In this sense, the search for mediation between opposites and for universality in the most elevated sense of the word constitutes the most significant element in the personality of our philosopher. He understands the most significant relationships and moves toward the broader horizons. The harmony of the world—this thought so deeply ingrained in his philosophical system and life—is always, consistently present. He knows that those grievous and painful contradictions that concern us in a precise moment of life are nothing other than “false notes” in passing, unable to disturb the harmony of things.²⁸

From Leibniz’s philosophy transpires a profoundly harmonious vision, according to Jellinek, full of trust that even evil and opposition will end up vanishing, annul themselves in a process that veers, inevitably and necessarily, toward development and progress.²⁹

In Leibniz, Jellinek perceived the superseding of contradictions, the capacity to see the “cosmos unfolded in each of its smallest parts”.³⁰ The interesting aspect for us is not so much to evaluate the objectivity (or lack thereof) in the young scholar’s interpretation of the German philosopher as much as to follow Jellinek step by step in his comparison of the author of *La Monadologie* and Arthur Schopenhauer. In the latter—Jellinek emphasized—the “universalism” of Leibniz, or the capacity to think about the “Whole and the individual” in terms of accord, is replaced by an extreme “subjectivism”, well summarized in the expression “*the world as will and representation*”:³¹

Subjectivism is the fundamental character of his philosophical system. The individual represents, according to him [Schopenhauer], the whole world, the macrocosm and microcosm. From here derives his inability to understand historical phenomena and to identify with another individuality.³²

²⁷ Kuno Fischer (1824-1907) was a German philosopher and a historian of philosophy; he was a follower of the Hegelian school.

²⁸ K. Fischer, *Geschichte der neuen Philosophie, Bd. II, G. W. Leibniz und seine Schule*, Mannheim, 1855, p. 10, p. 22, quoted in G. Jellinek, *Die Weltanschauung Leibniz’ und Schopenhauer, op. cit.*, p. 19.

²⁹ *Ibidem*, p. 17.

³⁰ *Ibidem*, p. 12.

³¹ A. Schopenhauer, *Die Welt als Wille und Vorstellung* (1819).

³² G. Jellinek, *Die Weltanschauungen Leibniz’ und Schopenhauer, op. cit.*, p. 28; p. 21.

“Subjectivism” inevitably, according to Jellinek, led to a profoundly conflictual vision.³³

Everywhere Schopenhauer sees struggle and conflict, already at the lowest level of objectification of the will the centrifugal force finds itself in opposition to the centripetal, and such a contrast becomes ever fiercer as we enter into the essence of nature. He knows only thesis and antithesis, not synthesis. And it is for this reason that he sympathizes with the doctrine of Schelling, the doctrine of polarity, [...] with that Hobbesian *bellum omnium contra omnes*.³⁴

In Schopenhauer’s *Weltanschauung*, Jellinek believed to also perceive the influence of particular biographical elements: the substantial failure of the philosopher’s work; the indifference by the public and by leading scholars of his day did nothing but engender in him a melancholy, an obstinate pessimism, an extreme “subjectivism”, so ingrained and complete, according to Jellinek, as to “crush” and undermine the very foundation of his metaphysics.³⁵

This latter, the young scholar noted, corresponds to the principle of an eternal, irrational, uncaused “single will” that represents the “true vision of the world”, a principle in which Jellinek perceived an element of “universalism” since, in his judgment, the “single will” comes to substantially identify with something existing eternally in respect to which individuals, with all their passions and suffering, end up appearing nothing more than mere fleeting “apparitions”.³⁶ In his essay of 1872, Jellinek identified precisely those passages of Schopenhauer’s work from which seemed to emerge, paradoxically, a sort of indifference to “all that is individual”, but at the same time noted that this sort of underground “aspiration to the universal” ends up hopelessly obscured and hidden by “subjectivism”, from the incessant lament over the tragic fate of humanity.³⁷

Nevertheless, what really interested Jellinek was highlighting the far-reaching implications of a Schopenhauer-type pessimism: this pessimism, in his opinion, decidedly refutes any notion of progress, of development, and therefore—unlike Leibniz—maintains that “history brings before our eyes only the nullity and futility of human aspirations”³⁸:

Who sees in himself the whole world will then be easily led to project and reflect on the things of his own humors and personal sufferings [...] Who in an insensitive

³³ *Ibidem*, p. 24.

³⁴ *Ibidem*, pp. 24-25.

³⁵ *Ibidem*, pp. 32-33.

³⁶ *Ibidem*.

³⁷ *Ibidem*.

³⁸ *Ibidem*, p. 22.

and ungenerous nature sees only struggle and hatred, who conceives opposition and conflict as the basic elements of Being then will not be able to recognize in the world any omnipresent, creative reason, because the world will inevitably appear to him the product of blind power, senseless and dark, unbound by any law, by any reasoning.³⁹

In this sense, for Jellinek, Schopenhauer rejected the idea of a rational principle underlying life, the world, reality, and thus the idea of a greater design within which the “the Whole and the single thing” could successfully harmonize. In other words, Schopenhauer rejected that very principle that, according to Jellinek, was fully acknowledged and esteemed by Leibniz. The contrast between the two German philosophers could therefore not be more evident:

On the one hand the highest objectivity, on the other the most profound subjectivism. On the one hand harmony, on the other the most strident dissonance. On the one hand, the love for humanity and the joy that comes from doing and creating; on the other, contempt for the world, the search for quietude, and the distancing from worldly semblances.⁴⁰

According to Jellinek, only Leibniz could be considered a “true” philosopher, precisely because Leibniz was able to think in “universalistic” terms, and to the ranks of “true philosophers” the young scholar ascribed Plato, Aristotle, Spinoza, Kant, and Hegel, but definitely not Schopenhauer.⁴¹

Again Jellinek emphasized his spiritual and intellectual adherence to Leibniz’s optimism as an expression of a universalistic thought, capable of grasping the harmonious relationship between the “Whole and the individual”. At the same time, he named Spinoza as another worthy representative of the “universalistic” concept.

Some years later, the Hebrew-Dutch thinker would find himself a central subject of Jellenikian analysis, with the scope of understanding the relationship between Spinoza and the “greatest German poet”, Wolfgang Goethe. With the essay of 1878, as we will try to demonstrate, Jellinek further developed the themes and ideas discussed in the dissertation of 1872.

3. Jellinek, interpreter of Goethe and Spinoza

If true that Kant and Hegel were two essential points of reference in Jellinek’s work and thought,⁴² equally undeniable is the fascination the young scholar exert-

³⁹ *Ibidem*, pp. 25-26.

⁴⁰ *Ibidem*, p. 20.

⁴¹ *Ibidem*, p. 28.

⁴² M. La Torre, *La crisi del Novecento. Giuristi e filosofi nel crepuscolo di Weimar*, op. cit., p. 18.

ed on the author of *Ethics, Demonstrated in Geometrical Order*. Exactly as with Leibniz and Schopenhauer, Jellinek described and analyzed what he considered the essential aspects of Spinoza's *Weltanschauung*, drawing from biographical data. Jellinek thus spoke of the unfortunate life of the Hebrew philosopher from Amsterdam, repudiated by his own religious community because of his ideas and his interpretation of sacred texts, constrained to remain a lens grinder, and yet—according to Jellinek—capable of possessing and embodying a calm, balanced, peaceful vision of existence.⁴³ The future exponent of legal positivism maintained that such “peace of mind” transpires from Spinoza's philosophical worldview, centered on the concept of “God-Nature”, a concept that had caused much scandal. Jellinek, accordingly, summarized the “heart” of Spinoza's philosophy:

In the opening pages [of *Ethics, Demonstrated in Geometric Order*] one immediately comes upon the assertion that God constitutes unity with creative Nature, that we can represent it—by means of human analogy—as endowed with human understanding and human will, that thought and corporeal being are not two entities, separate substances, but two different aspects that show us the divine unitary essence.⁴⁴

Jellinek insisted particularly on the fact that the “God-Nature” imagined by Spinoza is a principle capable of including and embracing all:

In his book Spinoza also taught that good and evil exists only in the minds of men, and that before God-Nature all actions had the same value, since everything happened according to the same, identical necessity. He explained that all selfish passions rendered man a slave and weak, that only the knowledge of such truths could lead to true freedom of the spirit and true wisdom.⁴⁵

Already in the dissertation of 1872, Jellinek had designated Spinoza one of the most distinguished exponents of the “universalistic” worldview; with the some years' distance from the dissertation, he identified in the philosophy of Spinoza a true form of “pantheism”.⁴⁶

It was this particular aspect, according to Jellinek, that attracted and intrigued the young Goethe who became interested in Spinoza's philosophy to such an extent as to consider it a fundamental point of reference in his life as a man and as an artist. In this regard, Jellinek cited a passage from Goethe's letter to Knebel,⁴⁷ in which the

⁴³ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, pp. 178-179.

⁴⁴ *Ibidem*, p. 181.

⁴⁵ *Ibidem*.

⁴⁶ *Ibidem*.

⁴⁷ Karl Ludwig von Knebel (1744-1834), German poet and translator; Knebel introduced Goethe into the prestigious Court of Weimar.

young poet declared his admiration for Spinoza, in open contrast with those, such as Jacobi for example,⁴⁸ who had accused Spinoza of professing a sort of atheism:

You know that I do not share your opinion—writes Goethe to a friend with whom at one time he had found himself in perfect harmony—you know that, for me, spinozism and atheism are two distinct things; you know that the work of Spinoza, for me, is of great clarity, and that, despite not having his same way of imagining nature, if I were to indicate the book, among the many read, that is closest to my thinking, I would indicate the *Ethica*. I remain therefore faithful to the concept of God that atheists have and leave to you all that you should call religion.⁴⁹

In many parts of his essay, Jellinek underscored how Goethe himself had recognized a deep intellectual debt to the author of the *Ethica*. In other words, according to Jellinek, the poet had been attracted by the “universalistic” and “pantheistic” character of Spinoza’s philosophy: in the light of this consideration, it is possible to draw a perfect line of continuity between the dissertation of 1872 and essay of 1878—and more precisely between Leibniz and Spinoza, universalistic thinkers—on the one hand, and Goethe, admirer of the philosophy of Spinoza, on the other. For Jellinek, what unite these figures, who belong to very diverse historical and cultural contexts, are the desire, the need, and the ability to regard the “Whole”. In this regard, Jellinek could well observe how “all the doctrines that spoke of a rift in the world, [...] that cast the divine in a distant, unreachable, and unknowable dimension seemed to Goethe incomprehensible or simply detestable”.⁵⁰

Jellinek was porting the hat of the historian of literature when he identified the passages of Goethe’s poems in which, in his opinion, Spinoza’s influence shone. Among these, for example, Jellinek cited the well-known *Bei Betrachten des Schillers Schädel* (*Lines on Seeing Schiller’s Skull*), which, though composed by Goethe in old age, contained intact and unaltered the Spinoza sensibility that, in Jellinek’s opinion, had always characterized the art of Goethe the poet. Addressing his dear friend and genial artist now deceased, Goethe declaimed:

What greater gain in life can man e’er know
Than when God-Nature will to him explain

⁴⁸ Friederich Heinrich Jacobi (1743-1819), son of a wealthy Jewish family from Düsseldorf. He studied Spinoza’s thought and work in depth and personally knew Goethe.

⁴⁹ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, op. cit., pp. 185-186. Jellinek quoted Goethe’s *Annalen* in which the poet declared to be profoundly disappointed by Jacobi’s essay *Von den göttlichen Dingen und ihrer Offenbarung* (*On God’s Things*) (1811) accusing Spinoza to profess atheism. In his work Jacobi targeted and criticized one of the most prominent exponents of German Idealism, Friederich Schelling (1775-1854).

⁵⁰ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, op. cit., p. 187.

How into Spirit steadfastness may flow,
How steadfast, too, the Spirit-Born remain.⁵¹

It was Spinoza's pantheism—and therefore a profoundly “universalistic” concept—that, according to Jellinek, emerged with these powerful words. Also in *Faust*, Jellinek continued to perceive the powerful influence of the Spinozian *Weltanschauung* on the German poet:

How everything moves toward the whole;
each in the other works and lives,
like seraphs climbing up and down,
passing to one another gold buckets!
On blessed fragrant wings
pressing from heaven toward earth,
all sounding through the All with harmony!⁵²

Nevertheless, Jellinek observed, Goethe retained his particular individuality, his own peculiarities, which rendered him very different from Spinoza. Here again Jellinek compared the philosopher and the poet but with the specific intent to better understand the originality of the latter. On a fundamental point, Jellinek noted, the paths of the philosopher and the poet diverge: in Spinoza, the singular element, the single part, the individual, the single thing is nullified in the “God-Nature”, in the higher “unity of the divine”, in which all is finally peace and balance, whereas Goethe, poet and artist, felt—according to the young scholar—a fundamental duty to endorse “the individual”, the individual spirit in its originality:

For the artist, individuals must bring in themselves a kernel of eternity, they must—and this is what true art should know how to communicate—affirm their particularity in respect to the divine principle that envelops and accommodates all in itself. It is by this Goethe succeeds in regarding the particularity of each one and comprehending the singular character [...] For him, the world represents an infinite variety, an infinite wealth of sentient beings united to the omnipresent God and through him are ever-present. [...] A contemplative nature like Spinoza's wholly desired to

⁵¹ *Ibidem*, p. 191. Jellinek was quoting from Goethe's poem *Bei Betrachten des Schillers Schädel* (1827). For the English translation see: H. H. Boyesen, *Goethe's Works: pt 1-2. The Life of Goethe*, Philadelphia, New York, Boston, George Barrie, 1885, p. 167.

⁵² G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, p. 191. Jellinek was quoting from Goethe's *Faust* (1808; 1832). For the English translation see: J. W. Goethe, *Faust/Goethe*, translated by C.F. McIntyre, New York, New Directions Publishing Corporation, 1949, p. 10.

recognize in the surpassing of the self the highest and noblest purpose to achieve, but a poetically creative spirit like Goethe's had to seek and pursue self-affirmation.⁵³

So as Goethe's poetry carried the traces of the spirit of Spinoza, so it bore the traces of the spirit of Goethe, who, while deeply admiring the Hebrew-Dutch philosopher, asserted the greatness of the individual and of "original individuality as the most precious asset".⁵⁴ In this regard, Jellinek cited a passage from the *West-Östlicher Divan* (*West-East Divan*) that allowed him to most effectively illustrate the distance that separated Goethe from Spinoza:

There's not a life we need refuse
If our true self we do not miss,
There's not a thing one may not lose
If one remain the man he is.⁵⁵

In the essay on *Spinoza and Goethe*, Jellinek's attention moved gradually from the "Whole" to the individual, because, in his view, the German poet had been able to fully grasp the significance of individuality, the great contribution it could offer in terms of collective development and progress, and because of this—Jellinek observed—unlike Spinoza, Goethe had been able to develop a philosophy of history, of Nature that entailed change, perpetual action and continual mutability.⁵⁶ Again Jellinek found full expression of this concept in the art of the poet who in *Eins und Alles* (*One and All*) wrote:

And what was not shall spring to birth,
As purest sun, or painted earth.
God's universe may know no rest.

It must go on, creating, changing,
Through endless shapes forever ranging.
And rest we only "seem" to see.⁵⁷

⁵³ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, p. 198.

⁵⁴ *Ibidem*.

⁵⁵ *Ibidem*, p. 201. Jellinek was quoting from *West-Östlicher Divan* (1818). For the English translation see: J. W. Goethe, *West and East Divan. The Poems: with "Notes and Essays": Goethe's Intercultural Dialogues*, translated by M. Bidney, New York, New York State University Press, 2010, p. 86.

⁵⁶ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, p. 201.

⁵⁷ *Ibidem*. Jellinek was quoting from *Eins und Alles* (1821). For the English translation see: J. W. Goethe, *One and All*, in T. Mann (ed. by), *The Permanent Goethe*, translated by D. S. Young, New York, the Dial Press, 1948, p. 644.

In contrast, Jellinek noted, Spinoza's view was constantly turned to the "Whole", to "Nature, not to the single thing, the individual"⁵⁸:

He [Spinoza] voluntarily distanced himself from human society, which, for him, represented an extraordinary laboratory for the material and spiritual needs of individuals but was not an organic All, and what he most profoundly desired was only that it did not disturb him, ensuring him freedom of thought.⁵⁹

Jellinek defined even more explicitly the influence, in his opinion, of Spinoza on Goethe: the poet had so embraced Spinoza's "universalistic" character and in particular his "pantheistic" concept, but, according to Jellinek, also knew how to recognize the value of the individual, yet without ever putting the individual in opposition to the "Whole". The Goethe Jellinek spoke of in his essay of 1878 seemed very akin not only to Spinoza but also to Leibniz, and certainly distant from Schopenhauer. Jellinek could thus observe that:

Spinoza's philosophy has often been defined as "a cosmism," a philosophical system in which the world disappears, because within it, all fades and is absorbed into a divine substance that exists in reality. Goethe instead rediscovered God in the world, which is so full of the divine spirit but also contains a full and diverse wealth of facets.⁶⁰

It was Goethe, according to Jellinek, who "conducted" the philosophy of Spinoza into the nineteenth century; because of him, great German philosophers like Hegel and Schelling could "appropriate" the lesson of Spinoza according to which "the world can be understood in its entirety, it rests on a fundamental principle, and the true explanation of things cannot be anything but monistic".⁶¹

Nevertheless, it was in Goethe that Jellinek recognized the great merit of having enriched Spinoza's "monism" by that same virtue that Jellinek in his essay of 1872 had recognized in Leibniz: the ability to think and see "the independence of the individual and development of the Whole".⁶²

⁵⁸ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, op. cit., p. 202.

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*, pp. 203-204.

⁶¹ *Ibidem*, pp. 205-206.

⁶² G. Jellinek, *Die Weltanschauung Leibniz' und Schopenhauerp*, op. cit., p. 49.

4. Young Jellinek: the “Whole” and the “Individual”

It is not our intention to discuss the accuracy or objectivity of the interpretations of Leibniz, Schopenhauer, Goethe, and Spinoza in Jellinek’s essays referenced here. Instead, we start from the supposition that interest lies in throwing light on certain aspects of Jellinekian *Weltanschauung* in a period of his life still remote from the works of his maturity. From a perspective of the history of political thought, *what do the dissertation of 1872 and essay of 1878 inform us about Jellinek? What do these two writings tell us of his liberal vision, discussed at the beginning of our analysis?*

The philosophical preferences that emerge from these early writings reveal much of the intellectual vision of the Hebrew-German thinker: he admired Leibniz and Spinoza for the “universalistic” character of their philosophy; both were, in his opinion, “true philosophers”, because in both philosophies Jellinek perceived an essentially optimistic vision. Moreover, in *Leibniz and Schopenhauer* he noted:

Schopenhauer correctly observed that every pantheism is necessarily optimistic, because in the moment in which—as is the case with Spinoza—the individual is resolved into the Divine, individual pain and suffering disappear and are nullified among the sufferings of all. The great philosophers of the past and present—Plato, Aristotle, Spinoza, Leibniz, Kant, and Hegel—thought in universalistic terms.⁶³

What seemed to fascinate the young Jellinek and, above all, what he saw in these great authors of the past was the ability to think in terms of the “Whole”. And it is in this light we better understand Jellinek’s fierce criticism directed toward Schopenhauer and Schopenhauer’s “antiuniversalistic” vision and “subjectivism” that saw struggle, despair, and division everywhere.

However, for Jellinek, the “universalistic” *Weltanschauung* also presupposed the equally important ability to understand the mutual relationship between the «Whole and the individual» as, in his opinion, especially Goethe had been able to do. Jellinek stressed the influence of Spinoza and Spinoza’s principle of “God-Nature” on Goethe and on Goethe’s art. But, at the same time, in his favorite poet Jellinek identified an element of further complexity and novelty in regard to Spinoza, and this element is, in our opinion, of great importance: Jellinek retained the view that Goethe was capable of valuing the “individual, the single thing, individuality”, without, however, ever forgetting the “Whole”. Jellinek cited in fact Goethe’s poem *One and All*, in which each of us is part of an “eternal chain”.⁶⁴

⁶³ *Ibidem*, p. 27.

⁶⁴ See: J. W. Goethe, *One and All*, *op. cit.*

And it is on this level of analysis that, between Spinoza and Goethe, the unquestionable, decisive, absolute preference of the German thinker was the father of *Faust*. This latter, according to the young scholar, accentuated in his art and life the importance and value of the “individual”, the importance and value of “individual originality”, and for this Jellinek admired him and recalled in this sense a particularly significant passage in the poem *Doemon (Daimon)*:

As on the day which gave you to this world,
The Sun assumed its place to greet planets,
At once you flourished and continued thus to grow,
According to the law of your beginning.
So must you be, you cannot flee yourself,
So sibyls often said, as well as prophets,
And neither time nor might can break to pieces
A molded form, which through its life evolves.⁶⁵

And it is the endorsement of the individual who, according to Jellinek, brought Goethe to embrace and make his own the Kantian principle of “developing oneself”, distancing himself thus from his beloved Spinoza.⁶⁶

The Jellinekian interpretation of Goethe extends beyond, in our opinion, the disciplinary field of the history of philosophical thought, history of ideas and the history of literature. Such an interpretation speaks to us of an intellectual, a young scholar who already in the 1870s considered it fundamental to think in dual terms, to philosophically recognize the “Whole” and “the single thing”, and who, as emerges from the essay of 1878, attributed to the individual a positive value in terms of progress and development. It may first be noted that already in the early writings just discussed, fully present is a “communitarian” worldview that, according to Massimo La Torre, characterizes the work of the jurist, that is, the idea that the “individual” should always be involved and included in the “Whole” and that from the “Whole” the “actions of individuals” are fully understood.⁶⁷

In this regard, it is in fact useful to remember that Jellinek fiercely criticized Schopenhauer, because he sees in the work and thought of the German philosopher an expression of “extreme subjectivism”, a vision that poses at its center solely and exclusively the “individual” in contrast with the world considered imperfect and full of suffering and deception. Jellinek thus polemically summarized Schopenhauer’s concept:

⁶⁵ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, p. 200. Jellinek quoted from Goethe’s poem *Doemon* (1821). For the English translation see: J. W. Goethe, *Daimon*, in Id., *Blesses Longing. Selected Poems of J. W. Goethe*, translated by K. Stanton, Canada, Trafford Publications, 2007, p. 117.

⁶⁶ G. Jellinek, *Die Beziehungen Goethes zu Spinoza*, *op. cit.*, p. 201.

⁶⁷ M. La Torre, *La crisi del Novecento*, *op. cit.*, p. 36.

Subjectivism is the fundamental character of his philosophical system; the individual represents, in his opinion, the whole world, the macrocosm and microcosm. Hence his inability to understand historical phenomena and to identify with another individuality. [...] Only one who—with Faustian impetus—does not recognize the order underlying the Whole, only one who deduces from the incompleteness of the one the imperfection of the Whole, only such a person can consider this world the worst of all possible worlds.⁶⁸

However, in light of the analysis conducted so far, we would like to advance a further reflection. It is widely held that Jellinek's jurispolitical conception is deeply liberal: he deeply regards subjective public rights, the self-limitation of the State, the importance and necessity to defend minorities and individual freedoms. But this very conception presupposes a fundamental consideration that already fully emerges from the writings so far analyzed, in particular from the essay on *Goethe and Spinoza*: the idea that an individual dimension does exist—individual, individuality etc.—and as such must be recognized and valued. Certainly, Jellinek placed this dimension in relation to the “Whole”, which can sometimes be understood and more concretely so as the State or community, but that, in our opinion, does not render this aspect less relevant. Jellinek is a liberal thinker because he is capable of giving thought to the “individual, to the single thing”,⁶⁹ and this ability is an element worthy of due consideration when we confront and analyze his *Staatslehre*, in which the State “pulls back,” limits itself in light of and in respect to individuals. In his early writings, a particular cognizance finds expression, a particular *Weltanschauung*, which, in my opinion, will continue to be presupposed also in the works of his maturity.

In this sense, in our opinion, the two essays of the 1870s deserve to be considered and re-evaluated as the stages of a long theoretical, intellectual, and personal process that in subsequent years would bring Jellinek, jurist and political thinker, to develop a jurispolitical worldview that belongs with full force to the history of European liberal thought and tradition of the 1800s.

⁶⁸ G. Jellinek, *Die Weltanschauungen Leibniz' und Schopenhauer*, op. cit., p. 21.

⁶⁹ For the key role played by this specific aspect within the long-term tradition of European liberalism see: D. J. Manning, *Liberalism*, London, J. M. Dent & Sons Ltd, 1976; G. Bedeschi, *Storia del pensiero liberale*, Roma-Bari, Laterza, 2004.