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Georg Jellinek, a liberal political thinker between the Habsburg Empire and Germany (1885-1898)

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Abstract

Georg Jellinek, a liberal political thinker between the Habsburg Empire and Germany (1885-1898)

Georg Jellinek is commonly known as one of the most prominent 19th century jurists. There is an extensive and excellent academic production stressing his fundamental contribution to German juspositivism and the influence German cultural context had on him and his works.

In this paper we want to re-consider this “image” of the German jurist: we will seek to show and prove that he was not only a jurist but also a political thinker with a clear and strong liberal profile. Moreover we will show how part of his liberal view was influenced by the period he spent in Vienna as a Professor of Law. In this sense, we will analyze how Jellinek responded to crucial questions on *freedom, minorities and State power* as a political thinker who lived between Austria and Germany.

Georg Jellinek, a liberal political thinker between the Habsburg Empire and Germany (1885-1898)

I. Introducing Georg Jellinek as a jurist and political thinker in the Habsburg Empire (1883-1885)

The name and the personage of Georg Jellinek are always associated with German juspositivism, with the *Staats* and *Rechtslehre*, with the idea that only positive Law does exist. Nobody wants to deny these aspects but there is much more in his works and his vast academic production. Jellinek was not only a prominent jurist and scholar of Law but also a political thinker, with a clear and interesting ideological and political profile that we will seek to delineate in the following pages. Our conviction is that such profile developed and took shape between the Habsburg Empire – where he spent the initial stage of his academic career – and Germany.

He was born into a middle-class Jewish family of German culture and language; his father – Adolf Jellinek – was a rabbi and one of the most important scholars of Jewish theology. Georg Jellinek studied History, Philosophy and Law in Germany and for some years he lived and taught Law in Vienna. In the late 1880s he finally moved to the University of Heidelberg where he “inherited” the Chair of International Law previously held by Bluntschli.¹

In Germany Georg Jellinek published his most relevant and innovative works on *Staats* and *Rechtslehre* while paying attention to politics and political changes in Germany as well as in the Habsburg Empire: even after Jellinek moved to the University of Heidelberg he kept studying the Habsburg political and juridical system.² The German jurist spent three intense and problematic years in Vienna, where he could experience the complex political reality of the Habsburg Empire.

Here he was particularly struck by the numerous and often violent political contrasts characterizing the Austrian Central Parliament. Jellinek dedicated to this particular issue an interesting essay, entitled *Ein Verfassungsgerichts für Österreich (A Constitutional Court for*

¹ This paper is going to be presented at the Institute of Philosophy, the Research Centre for the Humanities, Hungarian Academy of Sciences, on 27 January, 2015 (the editor).

¹ 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, p. 22

² In the 1880s and the 1890s Jellinek wrote and published relevant works on the “juridical nature” of the Habsburg Empire, and more specifically on the Ausgleich of 1867, while focusing on the Hungarian half of the Reich. To mention some of them: *Die rechtliche Natur der Staatenverträge. Ein Beitrag zur juristischen Konstruktion des Völkerrechts (1880)*; *Das rechtliche Verhältnis Kroatiens zur Ungarn. Mit einem Anhang das ungarisch-kroatische Ausgleichsgesetz enthaltend (1885)*; *Ungarn und die österreichische Verfassung (1897)*; *Ungarische Staatsrecht (1897)*.

Austria) (1885), with the declared purpose to understand how to better stabilize the Western side of the Empire, after the *Ausgleich* of 1867.³

In his opinion, the core component of those contrasts was the unsolved Austrian national question (*Nationalitätenfrage*) and more precisely the fact that the Austrian parties were not political but rather national.⁴

Jellinek stresses how most of the Austrian parties embodied precise and defined national identities: behind these parties there were specific national groups often in contrast with each other.⁵ In Jellinek's opinion, this aspect made the relationship between parliamentary minority and majority particularly controversial and difficult. The impact of this complicated situation on the legislative process was often disastrous: it could happen that a minority felt to be mistreated or abused by majority or it could happen that majority vehemently opposed to those bills aiming at giving more rights or freedoms to a national minority.⁶ In more juridical terms, in Jellinek's opinion, the Austrian central parliament – that is the main and most important legislative body of the Empire – was characterized by a widespread instability and «parliamentary illegality».⁷

As a Professor of Law living in Austria, Jellinek identified the *Verfassungsgerichtshof* – the Constitutional Court – as a perfect, *legal* solution to that problem. Jellinek's proposal can be better understood and clarified if we briefly take into account the Habsburg legal-political tradition embodied by the Imperial Court (Reichgerichtshof).

The Imperial Court was officially established in 1867 on the occasion of the *Ausgleich* which had transformed the Austrian Empire into the Austro-Hungarian constitutional dual monarchy. The Imperial Court was given relevant powers and tasks: it acted as *Spezialverfassungsgerichtshof* to protect the rights of citizens, although its decisions were not “cassatory”. It acted as *Kausalgerichtshof* to neutralize potential conflicts between Länder (the Regions) and the Central authority and finally it could act as *Kompetenzgerichtshof* to supervise the

³ G. Jellinek, *Una Corte costituzionale per l'Austria*, a cura di E. Palici di Suni, Torino: Giappichelli, 2013, pp. 42-25. [Italian translation of G. Jellinek, *Ein Verfassungsgerichts für Österreich*, Wien: Alfred Hölder, 1885]

⁴ G. Jellinek, *Una Corte costituzionale per l'Austria*, p. 45. In the use of the term “national party” as opposed to “political party” he said to be inspired by Adolf Fischehof's work on the Austrian national question. G. Jellinek,

⁵ Ibidem

⁶ Ibidem. In the 1880s, for example, the Austro-German deputies residing in the Austrian Central Parliament violently opposed to some decrees aiming at giving more “linguistic rights” to the Bohemian community. See: G. Stourzh, *Ethnic Attribution in Late Imperial Austria: Good and Evil Consequences*, in R. Robertson-E. Timms (ed. by), *The Habsburg Legacy. National Identity in Historical Perspective*, Edinburgh: Edinburgh University Press, 1994, pp. 71-74.

⁷ G. Jellinek, *Una Corte costituzionale per l'Austria*, p. 45.

boundaries between administrative and judicial authorities, as well as between regional and state administrative authorities.⁸

According to Jellinek, the main challenge was to improve the traditional Austrian Imperial Court by transforming it into a true Constitutional Court.⁹

He called for a Constitutional Court to make decisions about: 1. potential conflicts of competences between ordinary legislation and constitutional legislation; 2. conflicts of competences between the Reich legislation and the Lander legislation.¹⁰ More precisely, as far as the potential conflict of competences between ordinary and constitutional legislation was concerned, Jellinek clearly proposed an articulated and interesting legal mechanism which would impact, for example, one of the most important 20th century jurists and scholars of Constitutional law, Hans Kelsen.¹¹

Jellinek's plan for an Austrian Constitutional Court recognized the right of a minority to submit the Constitutional Court those bills that could be considered detrimental of the constitutionally granted minority's rights and freedoms.¹² In this sense, Jellinek's plan for a Constitutional Court had two main purposes: it aimed at improving and enforcing the division of competences between the Reich (the Center) and the Länder (the Regions) – which Jellinek judged to be utterly unclear and insufficient – and moreover it aimed at better defending the Constitution from potential excesses and transgressions committed by the parties, parliamentary organs and more notably by aggressive majorities. Through a better protection of the Constitution a better protection of minorities could be reached and in Jellinek's opinion this was particularly useful and vital within the complex context of the Austrian Central Parliament characterized by conflictual national parties.¹³

It is undeniable that Jellinek's plan for a Constitutional Court was based on an undeclared but clear mistrust towards the legislative organ, in this specific case towards the Austrian Central Parliament. It is also undeniable that the transformation of the Imperial Court into a Constitutional Court was the only way, in Jellinek's opinion, to make the Habsburg monarchy a solid

⁸ See: S. Lagi, *Hans Kelsen and the Austrian Constitutional Court (1918-1929)*, Co-herencia, vol. 9, n. 16, 2012, pp. 275-277.

⁹ It is interesting to observe that similar consideration was expressed years before by the political thinker and exponent of Hungarian liberal movement, Baron Joseph Eötvös, who in 1854 proposed introducing a Superior Court to prevent the parliament from violating the Constitution.

¹⁰ W. Brauner, *Österreichische Verfassungsgeschichte. Einführung in Entwicklung und Struktur*, Vienna: Manzsche Verlag, 1992, pp. 738-739.

¹¹ See: S. Lagi, *El pensamiento político de Hans Kelsen. Los orígenes de "De la esencia y valor de la democracia"*, Madrid: Biblioteca Nueva, 2007.

¹² G. Jellinek, *Una Corte costituzionale per l'Austria*, pp. 56-97; pp. 103-117.

¹³ G. Jellinek, *Una Corte costituzionale per l'Austria*, pp. 56-97.

“constitutional State” but the truly interesting aspect is to observe how profoundly political this plan was.¹⁴

In his work of 1885, Jellinek sought to give a *legal solution* to an eminently *political problem*. This problem dealt with the protection of minorities from potentially illiberal laws wanted and pushed by majority, and this is exactly one of the two major political issues Jellinek confronted for all his life. In the mid-1880s he moved to Heidelberg: in Germany he kept thinking, reflecting on the problem of minorities; a problem that he had seriously experienced for the first time in Austria. If in the Habsburg Empire Jellinek mainly focused on the concept of minorities with a national and ethnic connotation, in Germany his attention shifted to political minorities.

II. From the Habsburg Empire to Germany: Georg Jellinek and political liberalism

While living in Austria, Jellinek was struck by the effects of having a parliament made up of many different national groups. That kind of complex reality stimulated his interest in the problem of minorities. He never forgot the Austrian experience as we can see in his work 1898, *Das Recht der Minoritäten*, where he referred to the national component of the Austrian parties and the instability characterizing the Austrian Central Parliament.¹⁵

His focus on minorities and the importance of providing them with a concrete and efficient protection is clearly *liberal*. Like all, traditional liberal thinkers – such as Constant, Tocqueville, Mill – Jellinek considered the protection of minorities (both national and political) as a value *per se*, as prerequisite of every, truly liberal society based on the respect of personal and human dignity.¹⁶

If we take into account his vast scientific and academic production we can observe that even his works on *Staats* and *Rechtslehre* included many references to the “spiritual fathers” of the great European liberal tradition. Jellinek's focus on the problem of minorities and their protection – that was in part influenced, in our opinion, by his Austrian experience – was profoundly connected with his idea of *Selbstbeschränkung* (self-limitation), that is the core concept of his theory of Law and State. In the following pages we will seek to show and demonstrate how this theory had a political

¹⁴ See: E. Palici di Suni, *Introduzione a G. Jellinek, Una Corte costituzionale per l'Austria*, pp. 1-35.

¹⁵ G. Jellinek, *Das Recht der Minoritäten*, Wien: Hölder, 1898, pp. 35-36.

¹⁶ See: G. Jellinek, *Das Recht der Minoritäten*, Wien: Hölder, 1898.

connotation and how this political connotation can be better understood within the context of European liberalism.¹⁷

In 1892, when Jellinek was already in Heidelberg, he published one of his major works on *Rechtslehre: Das system der öffentlichen subjektiven Rechte*. On the one hand, Jellinek repropounded the classical concepts previously elaborated by Friederich Gerber and Paul Laband. Like his predecessors, Jellinek recognized the ownership of sovereign power as belonging to the State alone. Also, he reaffirms that only positive law does exist.

At the same time, he took distance from the traditional German legal doctrine when he wrote that the State limits itself by recognizing and providing individual rights. In this sense, Jellinek imagined the State as a subject capable of limiting itself, and subsequently capable of granting a “space of freedom” to individuals.¹⁸ This was, in a few words, the core of Jellinek's work on the *öffentlichen subjektiven Rechte*.

As a juspositivist he identified the State alone as the supreme subject of sovereign power but as a liberal thinker he tried to elaborate a legal theory including the protection of individual freedom and individual rights. We are insisting on this point because we think that even his work of 1892 on *Das system der öffentlichen subjektiven Rechte* can be considered – in some respects – as a work of political theory and an excellent example of Jellinek's liberalism.

While living and teaching in Austria, the German jurist proposed a legal solution to an eminently political problem. As we have seen, this particular solution, consisting in the creation of a Constitutional Court, had a clear and undeniable liberal connotation because it was based on the idea that minorities should be respected and protected. In his work of 1892, Jellinek theorized a positivist foundation of individual rights based on the idea that the State was capable of limiting itself. In both cases – in his work on the Constitutional Court as well as in his work on the *öffentlichen subjektiven Rechte* – Jellinek as legal theorist and moreover as a political thinker was convinced that granting and preserving freedom implied to protect minorities and individuals from abuses committed by despotic rule.

The central role played by this kind of problems in Jellinek's intellectual and academic production is also perfectly showed by some writings he published in the 1890s: *Hobbes und*

¹⁷ On the concept of “self-limitation” see: D. Quaglioni, *Sovranità e autolimitazione (Rileggendo la «Dottrina generale dello Stato di G. Jellinek)*, in *Crisi e metamorfosi della sovranità. Atti del XIX Congresso nazionale della Società italiana di filosofia giuridica e politica. Trento 29-30 settembre 1994*, a cura di M. Basciu, Milano: Giuffrè, 1996 p. 276 ss; M. La Torre, *Disavventure del diritto soggettivo. Una vicenda teorica*, Milano, Giuffrè, 1996, pp. 144-145.

¹⁸ G. Jellinek, *Sistema dei diritti pubblici soggettivi*, Milano-Napoli: Società Editrice Libreria, 1912,[Italian translation of G. Jellinek, *System der öffentlichen subjektiven Rechte*, 1892], p. 67 f.

Rousseau; *Adam in der Staatsrechtslehre* and mainly *Die Erklärungen der Menschen und Bürgerrechte*.¹⁹

In the first two essays, the German jurist critically analyzed the Natural Law tradition and its impact on European political thought and State organization, whereas in the third work he made a direct comparison between the American Bill of Rights and the French Declaration of Rights of Man and Citizens. Despite evident differences in terms of content, all these essays shared the same question: “*is the State power unlimited?*”, “*does majority have an absolute power?*” Let's see how Jellinek responded to these crucial questions.

In the first of the three works mentioned above, Jellinek brilliantly delineated a history of political and juridical concepts with a strong focus on the Natural Law tradition. As a positivist Jellinek was vehemently anti-jusnaturalist but the truly interesting aspect emerging from his analysis – particularly from his work on *Hobbes and Rousseau* – is that the German jurist considered the Natural Law tradition nothing but a mere philosophy, a *Weltanschauung*, a dream, with no historical basis, and characterized by undeniable elements of despotism.²⁰

The Natural Law tradition had elaborated and justified the idea of State organization through the “paradigm” of the State of Nature and through the concept of a “contract” by means of which men would establish and legitimize political institutions. First of all, Jellinek criticized the Natural Law tradition as a product of imagination. He stressed how all Natural Law arguments were false because they were not based on historical experience.²¹

Yet, in Jellinek's opinion, there was something even more dangerous in the Natural Law teachings than their “falsehood”: he thought, they would inevitably “open” the door to a despotic rule as a necessary and logical consequence of the idea that the only way to leave the State of Nature with all its dangers and lack of safety is to give up one's fundamental rights and liberties to a “third subject” which is the State itself. From a perspective of the history of political ideas and

¹⁹ G. Jellinek, *Die Erklärungen der Menschen und Bürgerrechte. Betrag zur Geschichte des Verfassungsrechts*, München und Leipzig: Duncker & Humblot, 1895, [Italian translation, G. Jellinek, *Le dichiarazioni dei diritti dell'uomo e del cittadino*, con Introduzione a cura di G. Bongiovanni, Roma-Bari: Laterza, 2002]. And also G. Jellinek, *Die Politik des Absolutismus und Radikalismus (Hobbes und Rousseau). Vortrag gehalten in der Aula des Museums zu Basel am 10. Februar 1891*, in Id., *Ausgewählte Schriften und Reden* [Berlin: 1911], vol 1. Aalen: Scientia Verlag, 1970; Id., *Adam in der Staatsrechtlehre. Vortrag gehalten in der historisch-philosophischen Verein zu Heidelberg (1893)*, in Id., *Ausgewählte Schriften und Reden* [Berlin 1911], vol 1. Aalen: Scientia Verlag, 1970; Id., *Allgemeine Staatslehre*, Berlin: O. von Häring, 1905. Now Italian translation of Jellinek's essays on *Hobbes und Rousseau* and *Adam in der Staatsrechtslehre* are available in S. Lagi, (a cura di), *Georg Jellinek storico del pensiero politico (1883-1905)*, Firenze: CET, 2009.

²⁰ G. Jellinek, *Die Politik des Absolutismus und Radikalismus (Hobbes und Rousseau)*.

²¹ See: G. Jellinek, *Die Politik des Absolutismus und Radikalismus (Hobbes und Rousseau)* and G. Jellinek, *Adam in der Staatsrechtlehre*.

ideologies, there was no difference between the author of the *Leviathan* and the father of the *Contract social*: their use and legitimation of the State of Nature “paradigm” inevitably would lead to an illiberal, despotic political system.²²

His critique of the Natural Law tradition of thought was functional to his foundation and legitimation of State and Law in positivist terms. But if jusnaturalism had to be considered nothing but a “philosophy”, a potentially dangerous dream, how to explain and contextualize the American and French Declarations of Rights that seemed to be inspired by the Natural Law tradition? As a legal theorist and as a political thinker, Jellinek responded to this question in his work of 1895 on *Die Erklärungen der Menschen und Bürgerrechte*. This essay deserves our attention: against those saying that the American and French Declarations of Rights had to be correctly considered as the logical consequence of the Natural Law intellectual tradition, Jellinek replied by explaining how, for example, the American Bills of rights – which he considered the “source” of the French Declaration of rights itself – were nothing but the “historical product” of the very particular, unique American experience, characterized by the development of small communities of people who moved to the New World to freely profess their religious beliefs.²³

Despite his Jewish background, Jellinek studied Christian theology in depth and the history of Christianity;²⁴ his main interest was the history of Reformation and Protestantism; in his book of 1895 on the *Erklärungen der Menschen und Bürgerrechte* he also emphasized the religious roots of the Bill of Rights in America and the influence the Protestant spirit and culture had on the history of the former British colonies. His idea was that some of the fundamental freedoms included in the Bill of Rights had a religious – and more precisely a Christian – origin.²⁵

Over years, according to Jellinek, Americans created a society based on values of freedom and emancipation, and when they gathered to establish a new political order against their former Motherland, they wrote the Bills of Rights including freedoms and rights these people had concretely experienced before the Revolution against England broke out.²⁶

As far as the French Declaration of Rights of Man and Citizens is concerned, Jellinek stressed the “debt” the French revolutionaries had toward the American Bills of Rights and moreover he denounced that unlike the American revolutionaries the French ones, inspired by the

²² Ibidem, chiefly G. Jellinek, *Die Politik des Absolutismus und Radikalismus (Hobbes und Rousseau)*.

²³ G. Jellinek, *Le dichiarazioni dei diritti dell'uomo e del cittadino*, p. 44.

²⁴ Jellinek converted to Christianity a few years before his death. See: K. Kempter, *Die Jellineks 1820-1955. Eine Familienbiographische Studie zum deutschjüdischen Bildungsbürgertum*, Düsseldorf: Droste Verlag, 2005.

²⁵ G. Jellinek, *Le dichiarazioni dei diritti dell'uomo e del cittadino*, p. 44-50.

²⁶ Ibidem

Natural Law tradition and more exactly by Rousseau and his theory of *volonté générale*, had applied the philosophical concept of “people's sovereignty” to the French political reality without seriously analyzing whether or not this kind of concept could be successfully carried out.

The “sin” of the French Revolution was to apply the very abstract and intrinsically absolutistic political concepts elaborated by the Natural Law tradition – and notably by Rousseau – to the French reality, a reality whose complexity, in Jellinek's opinion, went beyond the “natural law philosophy”. The American revolutionaries were successful because they established their new independent political institutions on historical experience, the French revolutionaries were unsuccessful because they wanted to radically cut with the past, introducing a totally new political system based on ideas and values people had never seriously experienced before.

In other terms, under the French revolution one passed from a despotic rule embodied by the King to a despotic rule embodied by the People and the people, as Jellinek stresses, meant the State.²⁷

Some questions arise from all this information: is there any connection between these works of 1890s (*Hobbes und Rousseau; Die Erklärungen der Menschen und Bürgerrechte*) and, for example, Jellinek's essay on the Austrian Constitutional Court? Moreover, what can we learn from Jellinek's reflections on the American and French revolutionary legacy about his political view? First of all, we are convinced that a sort of intellectual continuity does exist between Jellinek's essay of 1885 and those he published when he was already in Germany. This continuity consists in the fact that his plan for the Austrian Constitutional Court as well as his writings on jusnaturalism, the Declarations of Rights and the comparison between the American and French Revolution share the common idea and conviction that there is a profound difference between “good rule” and “bad rule”: a good rule is based on a intrinsically limited power, constitutional guarantees, rights – that is on a “space of freedom” to protect – whereas a bad rule is the opposite: it is a despotic rule consisting in an unlimited kind of power and, according to Jellinek, this unlimited kind of power can be sometimes be carried out and enforced in the name of people's will.²⁸

All the writings we have mentioned and discussed so far contain clear elements of a truly liberal political view. Like all liberal thinkers, Jellinek emphasized the importance of a limited power. But only in 1898 he published a book that can be considered as the *summa* of his liberalism: *Das Recht der Minoritäten*.

²⁷ Ibidem

²⁸ For this last aspect see: G. Jellinek, *Die Politik des Absolutismus und Radikalismus (Hobbes und Rousseau)*.

Here Jellinek clearly put individual rights and minority rights in connection: the protection of minorities within and out of legislative organs was functional to the protection of individuals and individual rights. Nonetheless, protection of minorities and individual rights embodied an excellent limit to despotic rule and they could also prevent the process of *massification* characterizing, in Jellinek's opinion, modern democratic societies.²⁹

The German jurist directly and openly referenced to Tocqueville when writing about the dangers of massification within a democratic system. The French author was always one of the main points of reference for the German jurist. Like Tocqueville, Jellinek spoke about the tyranny of majority, like him Jellinek thought that an efficient way to neutralize despotic majorities was the creation and development of a political system based on individual rights, minorities' rights; a vivacious civil society.³⁰ Jellinek concluded his work on the Rights of Minorities mentioning Tocqueville's writing on *Democracy in America*.

There is a *fil rouge* between Jellinek's work on the Austrian Constitutional Court, on the one hand, and his writings published in 1890s: the element of connection is his focus on the problem of minority and liberty. In Austria as well as in Germany Jellinek always investigated how to make a political system truly liberal, how to defend individuals from despotism.

III. Some reflections on Jellinek's liberal view

Many years ago, one of the most prominent European scholars of the history of political thought, the Italian Salvo Mastellone, decided to include Jellinek in his book on *Storia del pensiero politico europeo* amongst the “spiritual fathers” of European 19th century liberalism.³¹ Mastellone's choice was absolutely correct for two reasons: first because Jellinek was not only a jurist and theorist of Law and State, the last, prestigious representative of German 19th century legal positivism, he was also a political thinker and he dedicated much of his intellectual curiosity and energy to politics and political theory until he died in 1911.

All his works are characterized by the consciousness of a deep connection between politics and Law, between politics and history, between Law and historical experience. If it is true that his work should be considered as the “product” of the legal theory previously developed in Germany

²⁹ G. Jellinek, *Das Recht der Minoritäten* pp. 42-44.

³⁰ Ibidem

³¹ See: S. Mastellone, *Storia del pensiero politico europeo. Dal XV al XVIII secolo*, (4th edition), Torino: UTET, 2004.

by Paul Laband and Friederich Gerber, we should also recognize that his legal theory had a political component and that this component was clearly liberal.

As a political thinker he feared that process of massification he thought democracy inevitably would generate, and he feared it because he perceived it as a threat to individual freedom. In this sense Jellinek was a genuine liberal political thinker and belongs to the family of 19th century European liberal thinkers such as Tocqueville, Mill, Spencer, Bryce and many others.

All his works, including those on *Staats and Rechtslehre*, are based on the idea that individual freedom is a value to defend and preserve, because, as he states in *Recht der Minoritäten*, some of the best things and innovations carried out in human history have been promoted by minorities and minorities can exist and positively contribute to the development of society, only if individual rights and freedoms are granted.

He was a liberal thinker because he thought in terms of individuals and minorities' rights. In his political view he was undoubtedly influenced by authors such as Mill, Tocqueville, Cahloun, Spencer etc.³² but we think that biographical aspects played key role as well. Nobody can deny that Jellinek's sensibility toward individual rights and minorities was due to his being part of a religious minority, but it is even more important to recognize and stress that he was also influenced by his Austrian experience that is by his personal experience of a complex reality made up of different national and linguistic minorities. It is in the Habsburg Empire that Jellinek's liberal political identity began to take shape; once in Germany his liberal political attitude and view furtherly developed: here he remained loyal to a principle he had already clearly elaborate in his Austrian work on the Constitutional Court: majority has no absolute power over minorities and this is the best guarantee of individual freedoms and rights, the best guarantee of a constitutional state.



³² He referenced to these prominent political thinkers of liberal ideals in all his works, including those on State and Law.