

THE KING'S
TWO BODIES
A Study in
Mediaeval Political Theology

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and canon law, teaching that the Church, and Christian society in general, was a "*corpus mysticum* the head of which is Christ," has been transferred by the jurists from the theological sphere to that of the state the head of which is the king.²³

It would be easy to extract from Plowden's *Reports*, and from the writings of later lawyers as well, a not too modest number of similar passages.²⁴ New places, however, would not add new aspects to the general problem; and the passages referred to, rendering, as they do, the pith of the doctrine, will suffice to illustrate the leading idea, the trend of thought, and the peculiar idiom of the Tudor lawyers to whom, understandably, "a king's crown was a hieroglyphic of the laws."²⁵ Any reader of those passages in the Law Reports will be struck by the solemnity to which the legal language occasionally rises, notwithstanding the seeming drolleries of logic in their argumentations. Nor will the reader have the slightest doubt as to the ultimate source of that parlance which has a most familiar ring to the ear of the mediaevalist. In fact, we need only replace the strange image of the Two Bodies by the more customary theological term of the Two Natures in order to make it poignantly felt that the speech of the Elizabethan lawyers derived its tenor in the last analysis from theological diction, and that their speech itself, to say the least, was crypto-theological. Royalty, by this semi-religious terminology, was actually expounded in terms of christological definitions. The jurists, styled by Roman Law so suggestively "Priests of Justice,"²⁶ developed in England not only a "Theology of Kingship"—this had become customary everywhere on the Continent in the course of the twelfth and thirteenth centuries—but worked out a genuine "Royal Christology."

This observation is not entirely new, though hitherto hardly evaluated. Maitland made the very appropriate remark that these English jurists were building up "a creed of royalty which shall

²³ For the state as a *corpus mysticum*, see below, Chapter v.

²⁴ In Coke's *Reports* much information can be found, especially in *Calvin's Case*; see also *Rep.*, vii, 32. It is, however, noteworthy that Coke refers in most of those cases to Plowden's *Reports* as evidence.

²⁵ Coke, *Rep.*, vii, 112a.

²⁶ *D.1.1.1* ("... quis nos sacerdotes appellet. Justitiam namque colimus") was, of course, a frequently quoted passage; see, for England, e.g., Bracton, *De legibus et consuetudinibus Angliae*, fol. 3, ed. G. E. Woodbine (New Haven, 1922), II, 24; Fortescue, *De Laudibus*, c. III, ed. Chrimes, 8. See below, Ch. IV, nos. 94ff.

which perforce would resemble those produced in view of the Two Natures of the God-man. Anyone familiar with the christological discussions of the early centuries of the Christian era will be struck by the similarity of speech and thought in the Inns of Court on the one hand, and in the early Church Councils on the other; also, by the faithfulness with which the English jurists applied, unconsciously rather than consciously, the current theological definitions to the defining of the nature of kingship. Taken all by itself, this transference of definitions from one sphere to another, from theology to law, is anything but surprising or even remarkable. The *quid pro quo* method—the taking over of theological notions for defining the state—had been going on for many centuries, just as, vice versa, in the early centuries of the Christian era the imperial political terminology and the imperial ceremonial had been adapted to the needs of the Church.⁸²

The religious strand within political theory was certainly strong during the age of the Reformation when the divine right of secular powers was most emphatically proclaimed and when the words of St. Paul "There is no power but of God" achieved a previously quite unknown importance with regard to the subjection of the ecclesiastical sphere to the temporal.⁸³ Despite all that, there is no need either to make the religiously excited sixteenth century responsible for the definitions of the Tudor lawyers, or to recall the Act of Supremacy through which the king became "pope in his realm." This does not preclude the possibility that corporational and other concepts defining the papal power were directly transferred and purposely introduced into Tudor England to bolster the royal power. However, the jurists' custom of borrowing from ecclesiology and using ecclesiastical language for secular purposes had its own tradition of long standing, for it was a practice as legitimate as it was old to draw conclusions *de similibus ad similia*.

It may be added that the crypto-theological idiom was not the personal spleen of any single one among the Tudor lawyers, nor was it restricted to a small coterie of judges. Individual judges,

⁸² The numerous studies of A. Alföldi (esp. in *Mitteilungen des deutschen archäologischen Instituts: Römische Abteilung*, vols. XLIX and L, 1934-35) and, more recently, a study by Th. Klauser, *Der Ursprung der bischöflichen Insignien und Ehrenrechte* (Bonner Akademische Reden, 1; Krefeld, 1948), have shed much light on that development.

⁸³ Gierke, *Johannes Althusius* (Breslau, 1913), 64.

mortal body politic and his material and mortal body natural, it would have been next to impossible for Parliament to resort to a similar fiction and summon, in the name and by the authority of Charles I, King body politic, the armies which were to fight the same Charles I, king body natural.⁸⁶ By the Declaration of the Lords and Commons of May 27, 1642, the King body politic was retained in and by Parliament whereas the king body natural was, so to say, frozen out.

It is acknowledged [ran the parliamentary doctrine] that the King is the Fountain of Justice and Protection, but the Acts of Justice and Protection are not exercised in his own Person, nor depend upon his pleasure, but by his Courts and his Ministers who must do their duty therein, *though the King in his own Person should forbid them*: and therefore if Judgment should be given by them against the King's Will and Personal command, *yet are they the King's Judgments*. The High Court of Parliament is not only a Court of Judicature . . . , but it is likewise a Council . . . to preserve the publick Peace and Safety of the Kingdom, and to declare the King's pleasure in those things that are requisite thereunto, *and what they do herein hath the stamp of Royal Authority, although His Majesty . . . do in his own Person oppose or interrupt the same. . . .*⁸⁷

Shortly after the May resolutions of 1642, medallions were struck showing the King in Parliament. We recognize, in the lower section of the reverse, the Commons with their Speaker; in the upper, the Lords; and uppermost, on a dais of three steps, the royal throne on which the king, visible in profile, is seated under a canopy (fig. 1).⁸⁸ He is clearly the King body politic and head of the political body of the realm: the King in Parliament whose task it was to stand together with Lords and Commons, and, if need be,

⁸⁶ For the Declaration, see C. Stephenson and F. G. Marcham, *Sources of English Constitutional History* (New York, 1937), 488; C. H. McIlwain, *The High Court of Parliament* (New Haven, 1934), 352f and 389f. See also S. R. Gardiner, *The Fall of the Monarchy of Charles I* (London, 1882), 11,420 and passim. David Hume, *History of England* (New York, 1880), v,102 (Year 1642), interestingly overrated the originality of Parliament when he assumed that it was "inventing a distinction hitherto unheard of, between the office and the person of the king." The distinction, all by itself, was many centuries old and known in England as well (Declaration of the Barons in 1308); but Parliament pushed it to extremes in view of its application.

⁸⁷ See McIlwain, *High Court*, 389f, including his quotation from John Allan: ". . . it is obvious that the two houses not only separated the politic from the natural capacity of the King, but transferred to themselves the sovereign authority attributed to him by lawyers in his ideal character."

⁸⁸ E. Hawkins, *Medallic Illustrations of the History of Great Britain and Ireland* (London, 1911), pl.xxv,5-6; also E. Hawkins, A. W. Franks, and H. A. Grueber,

THE PROBLEM: PLOWDEN'S REPORTS

Earl of Essex (fig. 1d), whereas once more the reverse side, the King body politic in Parliament, survived without change. In other words, the king body natural in Oxford had become a nuisance to Parliament; but the King body politic still was useful: he still was present in Parliament, though only in his seal image—an appropriate illustration of the concept justifying the Puritan cry of “fighting the king to defend the King.”⁴²

Nor can the fiction of the King's Two Bodies be thought of apart from the later events when Parliament succeeded in trying “Charles Stuart, being admitted King of England and therein trusted with a limited power,” for high treason, and finally in executing solely the king's body natural without affecting seriously or doing irreparable harm to the King's body politic—in contradistinction with the events in France, in 1793. There were very great and serious advantages in the English doctrine of the King's Two Bodies. For, as Justice Brown on one occasion explained:⁴³

King is a Name of Continuance, which shall always endure as the Head and Governor of the People (as the Law presumes) as long as the People continue . . . ; and in this Name the King never dies.

⁴² See, for the Puritan slogans (some in poetical form), Ethyn Kirby, *William Prynne, a Study in Puritanism* (Harvard, 1931), 60, and, for the badges of Essex, Hawkins, pl.xxv, 10-11, and 1, p.295, No.113.

⁴³ Plowden, *Reports*, 177a.

See
for
Alan's
House
of England?

CHAPTER I I

SHAKESPEARE: KING RICHARD II

TWIN-BORN with greatness, subject to the breath
Of every fool, whose sense no more can feel
But his own wringing. What infinite heart's ease
Must kings neglect that private men enjoy! . . .
What kind of god art thou, that suffer'st more
Of mortal griefs than do thy worshippers?

Such are, in Shakespeare's play, the meditations of King Henry V on the godhead and manhood of a king.¹ The king is "twin-born" not only with greatness but also with human nature, hence "subject to the breath of every fool."

It was the humanly tragic aspect of royal "gemination" which Shakespeare outlined and not the legal capacities which English lawyers assembled in the fiction of the King's Two Bodies. However, the legal jargon of the "two Bodies" scarcely belonged to the arcana of the legal guild alone. That the king "is a Corporation in himself that liveth ever," was a commonplace found in a simple dictionary of legal terms such as Dr. John Cowell's *Interpreter* (1607);² and even at an earlier date the gist of the concept of kingship which Plowden's *Reports* reflected, had passed into the writings of Joseph Kitchin (1580)³ and Richard Crompton (1594).⁴ Moreover, related notions were carried into public when, in 1603, Francis Bacon suggested for the crowns of England and Scotland, united in James I, the name of "Great Britain" as an expression of the "perfect union of bodies, politic as well as natural."⁵ That Plowden's *Reports* were widely known is certainly demonstrated

¹ *King Henry V*, IV.i.254ff.

² Dr. John Cowell, *The Interpreter or Booke Containing the Signification of Words* (Cambridge, 1607), s.v. "King (Rex)," also s.v. "Prerogative," where Plowden is actually quoted. See, in general, Chrimes, "Dr. John Cowell," *EHR*, LXIV (1949), 483.

³ Joseph Kitchin, *Le Court Leete et Court Baron* (London, 1580), fol.1r-v, referring to the case of the Duchy of Lancaster.

⁴ Richard Crompton, *L'Autoritie et Jurisdiction des Courts de la Maiestie de la Roygne* (London, 1594), fol. 134r-v, reproducing on the basis of Plowden the theory about the Two Bodies in connection with the Lancaster case.

⁵ See Bacon's *Brief Discourse Touching the Happy Union of the Kingdoms of England and Scotland*, in J. Spedding, *Letters and Life of Francis Bacon* (London, 1861-74), III.90ff; see, for the print of 1603, S. T. Bindoff, "The Stuarts and their Style," *EHR*, LX (1945), 206,n.2, who (p.207) quotes the passage.

theological literature, liturgy, and canon law, failed to treat in his always original, always surprising, and always lively fashion. Among the many topics which he saw fit to discuss, there was also what later would be defined as *persona mixta*, the "mixed person" in which various capacities or strata concurred. "Mixtures" of all kinds of capacities, of course, may be found today as in every other age and under almost any conditions. However, the yoking of two seemingly heterogeneous spheres had a peculiar attraction for an age eager to reconcile the duality of this world and the other, of things temporal and eternal, secular and spiritual. We need only think of the "mixture" of monk and knight postulated in the orders of spiritual chivalry to grasp the pattern of ideals by which that time might have been moved; and when an abbot of Cluny was said to be *angelicus videlicet et humanus*, it was more than just a metaphor chosen by chance, because we have to remember that the monk claimed to exemplify, while still in this world and in the flesh, the *vita angelica* of the celestial beings.²

What matters here is only the *persona mixta* in the religio-political sphere where it was represented chiefly by bishop and king, and where the "mixture" referred to the blending of spiritual and secular powers and capacities united in one person. Dual capacity in this sense was a feature customary and rather common with the clergy during the feudal age when bishops were not only princes of the Church but also feudatories of kings. We do not need to look for such extreme cases as that French bishop who claimed to observe strictest celibacy as a bishop while being duly married as a baron, or the case of Odo of Bayeux who, at Lanfranc's suggestion, was tried by the Conqueror as an earl, and not as a bishop;³ for

² See John of Salerno, *Vita S. Odonis*, c.5, *PL*, cxxxiii, 69C: "Erat enim velut lapis angularis quadrus, angelicus videlicet et humanus," whereby it has to be known that according to Christian exegesis the Biblical "Corner Stone" was identified with Christ joining together "two walls," that is, Jews and Gentiles. In this sense, then, Odo of Cluny not only receives an epithet due to Christ, but also is said to join together "two walls," those of angels and men. See, for the concept, Gerhart B. Ladner, "The Symbolism of the Biblical Corner Stone in the Mediaeval West," *Mediaeval Studies*, II (1940), 43-60. For monachism as *vita angelica*, see, e.g., Kassius Hallinger, "Zur geistigen Welt der Anfänge Klunys," *DA*, x (1954), 417-445, esp. 429f; and, for *Angelus tuus* as an address, Henri Grégoire, "'Ton Ange' et les Anges de Théra," *BZ*, xxx (1929-30), 641-644.

³ T. F. Tout, *The Place of Edward II in English History* (Manchester, 1914), 130, n. 1; James Conway Davies, *The Baronial Opposition to Edward II* (Cambridge, 1918), 22. For Odo of Bayeux, see Ordericus Vitalis, *Historia ecclesiastica*, III, c.vii,

the economy of salvation. The kings of the New Covenant no longer would appear as the "foreshadowers" of Christ, but rather as the "shadows," the imitators of Christ. The Christian ruler became the *christomimētēs*—literally the "actor" or "impersonator" of Christ—who on the terrestrial stage presented the living image of the two-natured God, even with regard to the two unconfused natures. The divine prototype and his visible vicar were taken to display great similarity, as they were supposed to reflect each other; and there was, according to the Anonymous, perhaps only a single—though essential—difference between the Anointed in Eternity and his terrestrial antitype, the anointed in Time: Christ was King and *Christus* by his very nature, whereas his deputy on earth was king and *christus* by grace only. For whereas the Spirit "leaped" into the terrestrial king at the moment of his consecration to make him "another man" (*alius vir*) and transfigure him within Time, the self-same Spirit was from Eternity one with the King of Glory to remain one with him in all Eternity.⁹ In other words, the king *becomes* "deified" for a brief span by virtue of grace, whereas the celestial King *is* God by nature eternally.

This antithesis is applied by the Anonymous over and over again. It is not his own invention, but merely reproduces theologically familiar concepts. The antithesis of *natura* and *gratia* was commonly used to indicate not only that the weakness of man's nature was remedied by grace, but also that grace disposed man to participate in the divine nature itself. In the latter sense the antithesis of *natura* and *gratia* actually formed the vehicle for the early Christian "deification" of man in general, and not just for consecrated and anointed kings. The Anonymous, however, applied that "deification by grace" pre-eminently to the king as an effluence of his anointment and the ritual act of consecration, and used the antithesis to point out that the "eminence of deification" provided his king with a body of grace by which he became "another man" excelling all others—a deification which he describes as coterminous with the Greek *apotheosis* and the ancient Roman

⁹ *Ibid.*, 665,2f: "Post unctionem vero insilivit in eum spiritus Domini, et propheta factus est, et mutatus est in virum alium." From this "leap" of the Holy Spirit the king's two personalities actually derived; cf. 664,20ff: "[Ad unctionem] insiliebat in eos spiritus Domini et virtus deificans, per quam Christi figura fierent et imago et que mutaret eos in viros alios, ita ut . . . in *persona* sua esset *alius vir*, et *alius in spiritu*. . ."

consecratio.¹⁰ The antithesis served the Anonymous, it is true, to observe very strictly the inherent difference between the God and the king; but it served him also to blur that line of distinction and to show where the difference between "God by nature" and "god by grace" ended; that is, in the case of *potestas*, of power. Essence and substance of power are claimed to be equal in both God and king, no matter whether that power be owned by nature or only acquired by grace.

The power of the king is the power of God. This power, namely, is God's by nature, and the king's by grace. Hence, the king, too, is God and Christ, but by grace; and whatsoever he does, he does not simply as a man, but as one who has become God and Christ by grace.¹¹

Thus, the king appears the perfect *christomimētēs* also with regard to power, since his power is the same as that of Christ. The author may add, therefore, that the One who is God and Anointed by nature, acts through his royal vicar who is "God and Christ by grace," and who *in officio figura et imago Christi et Dei est*.¹² That is to say, the king, otherwise an individual man, is *in officio* the type and image of the Anointed in heaven and therewith of God.

¹⁰ For Christian deification, see, e.g., M. Lot-Borodine, "La doctrine de la déification dans l'église grecque," *Revue de l'histoire des religions*, cv-cvii (1932-33); J. Gross, *La divinisation du chrétien d'après les pères grecs* (Paris, 1938); also G. W. Butterworth, "The Deification of Man in Clement of Alexandria," *Journal of Theological Studies*, xvii (1916), 157ff, and Cuthbert Lattey, *ibid.*, 257ff; A. D. Nock, in: *Journal of Religion*, xxxi (1951), 214ff, and Kantorowicz, "Deus per naturam, deus per gratiam," *Harvard Theological Review*, xlv (1952), 253-277. For *apotheosis* and *consecratio*, see below, n.13.

¹¹ *MGH, LdL*, iii, 667, 35ff. The priest instituted by the king is not instituted by the power of man, but by the power of God: "Potestas enim regis potestas Dei est; Dei quidem est per naturam, regis per gratiam. Unde et rex Deus et Christus est, sed per gratiam, et quicquid facit non homo simpliciter, sed Deus factus et Christus per gratiam facit." See also 676, 14ff: "Summi et celestis imperatoris et secundi terrenique una eademque potestas est, sed celestis principaliter, terreni secundarie." The ruler as *a Deo secundus* (so already Tertullian, *Apologeticus*, xxx, 1) and Christ as *deuteros θεός* (see, e.g., Origen, *Contra Celsum*, v, 39, and vii, 57) belong to another cycle of problems for which some relevant material has been collected by H. Volkmann, "Der Zweite nach dem König," *Philologus*, xcvi (1937), 285-316. It is interesting, however, that the Byzantine emperor was sometimes addressed as "second God by grace" (*δευτος σου του κατα χάριν και δευτερον θεου*); see Spyridon P. Lampros, *Μιχαήλ Ἀκομιράτου του Χωριάτου τὰ σωζόμενα* (Athens, 1879), 1, 221, 11f; M. Bachmann, *Die Rede des Johannes Syropoulos an den Kaiser Isaak II. Angelos (1185-1195)* (Munich diss., 1935), 11 and 26.

¹² *MGH, LdL*, iii, 667, 8f: "... in spiritu et Christus et deus est, et in officio figura et imago Christi et Dei est." *Ibid.*, 667, 39: "Immo ipse, qui natura Deus est et Christus, per vicarium suum hoc facit, per quem vices suas exsequitur."

These reflections on both the bipolarity and the potential oneness of nature and grace led the author to the concept of his Christ-impersonating king as a "twinned" being. He, the anointed by grace, parallels as a *gemina persona* the two-natured Christ. It is the mediaeval idea of Christ-centered kingship carried to an extreme rarely encountered in the West.¹³ The king is a twinned being, human and divine, just like the God-man, although the king is two-natured and geminate by grace only and within Time, and not by nature and (after the Ascension) within Eternity: the terrestrial king is not, he *becomes* a twin personality through his anointment and consecration.

The expression itself, *gemina persona*, does not represent a poetical metaphor, but is a technical term derived from and related to christological definitions. That actually this term was rarely applied to Christ is a different matter. According to the orthodox dogma, *Christ is una persona, duae naturae*. "Twin person," therefore, was an expression to be avoided as dogmatically unsafe; it was just as bad as "two Persons," since it did not safely preclude a Nestorian or Adoptionist interpretation. It is noteworthy, however, that the image of "twins," generally rare in that connection, occurs with relative frequency in the acts of the early Hispanic councils. A certain wavering may be found in the numerous Creeds which the Hispanic synods have produced, but their wording is dogmatically correct. The second Hispanic Coun-

¹³ *Ibid.*, 665, 19f: "Erat enim . . . christus Domini et unus cum Domino spiritus. Christus etenim Deus et homo est." And more explicitly, *ibid.*, 665, 28ff, a passage showing that king and Christ have the "Two Natures" in common:

Rex autem . . . huius Christi, id est Dei et hominis, imago et figura erat, quia . . . totus homo erat, totus deificatus erat et sanctificatus per gratiam unctionis et per benedictionis consecrationem. Nam et si Graeci sermonis utaris ethimologia, consecratio, id est *apotheosis*, sonabit tibi deificatio. Si ergo . . . rex . . . per gratiam deus est et christus Domini, quicquid agit et operatur secundum hanc gratiam, iam non homo agit et operatur, sed deus et christus Domini.

I have constantly omitted the references to the bishop; see below, n.30. For the Anglo-Saxon king as *christus Domini*, see the legatine report of 787, in Haddan and Stubbs, *Councils and Ecclesiastical Documents* (Oxford, 1871), iii, 454, §12; and, for Henry II, Peter of Blois, *PL*, ccvii, 440D; in general, see Leonid Arbusow, *Liturgie und Geschichtsschreibung im Mittelalter* (Bonn, 1951), 95, n.60. It should be added that according to the Anonymous (670, 5ff) only the king is a true and genuine *christomimētēs*; for the bishops act *interposita vice et imitatione apostolorum*; they are quasi-*apostolomimētai* and only indirectly, through the Apostles, also *christomimētai*. The "etymology" of the Anonymous is perfectly correct: in Rome the *consecratio* of the emperor was his *apotheosis*, whereas the word *deificatio*, like the Greek *θεοποίησις*, belongs almost exclusively to Christian terminology.

Reccesvinth of 653, which, through the medium of the Spanish material in the Pseudo-Isidorian Decretals, was widely known. In that law, the Visigothic king pointed out that honor was due, not to the king's person, but to the royal power: not to the king's personal mediocrity, but to the honor of his sublimity: "The rights, not the person, make a king."⁸⁴ With due alterations, such distinction was formulated also in a letter of Humbert of Silva Candida to the Patriarch Kerullarios: [*Papa*] *qualis Petrus officio . . . non qualis Petrus merito*—"The pope is like Peter by his office . . . he is not like Peter by his merits."⁸⁵ And during the great conflict between Empire and Papacy the Emperor Henry IV drew a clear line separating the papal office from the individual Hildebrand when pronouncing his sentence of deposition against Gregory VII.⁸⁶

All those features are found, overtly or latently, in the writings of the Norman pamphletist, too. Where he seems to differ from others is in the philosophy which supports, and builds up, his theory, and in the fact that the king's duplication of persons is not founded in law or constitution, but in theology: it mirrors the duplication of natures in Christ. The king is the perfect impersonator of Christ on earth. Since the king's divine model is at once God and man, the royal *christomimētēs* has to correspond to that duplication; and since the divine model is at once King and Priest,

⁸⁴ PL, LXXXIV, 431A; Hinschius, *Decret.Ps.Isid.*, 392: "Regalis proinde ordo ex hoc cuncta sibi debere convincit, ex quo se regere cuncta cognoscit; et inde conquisita non alteri quam sibi iuste defendit; unde non personae, sed potentiae suae haec debere non ambigit. Regem enim iura faciunt, non persona; quia nec constat sui mediocritate sed sublimitatis honore. Quae ergo honori debent, honore serviant, et quae reges accumulunt, regno relinquunt." The notion of *honor* comes very close to the meaning of *dignitas* in later political theory (below, Ch.vii). The principle disclosed in the last words—"what kings accumulate, they leave to the realm"—was certainly disregarded in Carolingian times and thereafter. An exception is formed by the words which Wipo, *Gesta Chuonradi*, c.7, ed. H. Bresslau (*MGH, SS.r.Germ.*), 29f, probably following antique authorities, attributes to Conrad II: "Si periit rex, regnum remansit, sicut navis remanet cuius gubernator cadit. Aedes [destroyed by the people of Pavia] *publicae fuerunt, non privatae*"; cf. A. Solmi, "La distruzione del palazzo regio in Pavia nell' anno 1024," *Rendiconti dell' Istituto Lombardo di scienze e lettere*, LVII (1924), 97ff.

⁸⁵ Anton Michel, *Die Sentenzen des Kardinals Humbert, das erste Rechtsbuch der päpstlichen Reform* (*MGH, Schriften*, VII; Leipzig, 1943), 32,n.1.

⁸⁶ See the king's letters of 1076 (*H. dei gratia rex Hildebrando*), ed. C. Erdmann, *Die Briefe Heinrichs IV.* (*MGH, Deutsches Mittelalter*, 1, Leipzig, 1937), 14f, nos. 11 and 12; see also C. Erdmann and D. von Gladiss, "Gottschalk von Aachen im Dienste Heinrichs IV.," *DA*, III (1939), 168.

This philosophy was not that of the times to come. It has often been noticed and held against the Norman Anonymous that his passionately anti-hierocratic pamphlets, carried by a mystical belief in the power of sacramental anointings, had no practical effects on the age in which they were written. This is correct. Indeed, the victory of the revolutionary Reform Papacy in the wake of the Investiture Struggle and the rise of the clerical empire under papal guidance, which monopolized the spiritual strata and turned them into a sacerdotal domain, negated all efforts to continue or renew that king-priestly pattern of liturgical kingship which the Anonymous so fiercely defended. On the other hand, the new territorial states which began to develop in the twelfth century were avowedly secular despite considerable borrowings from the ecclesiastical and hierarchical model; secular law, including secularized canon law, rather than the effects of the holy chrism, were henceforth to justify the holiness of the ruler. The ideas of the Norman Anonymous, therefore, found no resonance in either the ecclesiastical or the secular camps. His image of rulership was unacceptable to the hierarchy and it no longer was of major interest to the secular state. Hence, despite the modernism of his dialectical and antithetical method, the pattern of Christ-centered kingship for which he fought belonged to the past. He is the champion of ideals of the Ottonian and early Salian period as well as of Anglo-Saxon England, and in his tractates he actually sums up the political ideas of the tenth and eleventh centuries. But like every bard who glorifies a bygone age, he overlaborers and overstresses past ideals, and thus becomes the chief exponent of the christocentric theory of kingship in its most concentrated, most consistent, and most extreme form. His tractates, therefore, have to be used, not as a

merly called the York Tractates) have been made by Wilhelm Berges, *Die Fürstenspiegel des hohen und späten Mittelalters* (MGH, Schriften, II, Leipzig, 1938), 28ff: "Nie zuvor und nie nachher hat der Christus König-Gedanke die politische Theorie so beherrscht wie im Yorker Tractat." Williams, *Norman Anonymous*, 190, is a little more precise when he comes to the following conclusion: "The Anonymous' ecclesio-political theory is Christocentric, but the Christ whom his king imitates and whose power he shares is the Royal Exalted Eternal Christ, for whom the Crucifixion was but an incident to be pondered over by priests. Christology has become almost completely regalized." That this development towards an over-emphasis of the Exalted Christ should be viewed against a generally European background, of which Williams is aware, has been recently discussed by Josef Andreas Jungmann, "Die Abwehr des germanischen Arianismus und der Umbruch der religiösen Kultur im frühen Mittelalter," *Zeitschrift für katholische Theologie*, LXIX (1947), 36-99.

reflection of ideas valid in his time or foreshadowing the future, but as a kind of mirror that magnifies, and thereby slightly distorts, the ideals current in the preceding era.⁴² Iconographic evidence will bear out this assertion.

2. *The Frontispiece of the Aachen Gospels*

A Romanesque type of crucifix, known as the *Volto santo* and showing the Crucified with an imperial diadem on his head and the purple around his shoulders, renders perhaps the briefest iconographic formula of at once the regal and the sacrificial characters of the God-man.⁴² The compact brevity and terseness of that formula is so striking that the image cannot fail to impress directly: the *Volto santo* is signally *una persona, duae naturae*. The theme of the two natures of Christ, of course has often formed the subject of artistic representations, though normally each nature would be figured individually: the newly-born or the cross-bearing Jesus in the lower part of the panel, and in a superimposed register, the King of Glory. In the *Volto santo*, however, the duality is so stirring, and it is expressed so powerfully, that the effect is much stronger here than in the images displaying the two natures separately.⁴³

Only in the full flush of the uncompromisingly christocentric period of Western civilization—roughly, the monastic period from 900 to A.D. 1100—could it happen that also the two natures of the imperial *christomimētēs* ruling on earth were depicted in a similarly brief, if iconographically very different, fashion. The famous miniature in the Gospel Book of Aachen, executed about A.D. 973 in the Abbey of Reichenau, shows the Emperor Otto II enthroned

⁴¹ See the "Summary" of Williams, *Norman Anonymous*, 199ff.

⁴² For the *Volto Santo*, see A. Kingsley Porter, *Spanish Romanesque Sculpture* (New York, 1929), II, pls. 63ff; G. Schürer and J. M. Ritz, *Sankt Kümmeris und Volto Santo* (Forschungen zur Volkskunde, XIII-XV, Düsseldorf, 1934), with full bibliography; see also Clairece Black, "The Origin of the Lucchese Cross Form," *Maryas*, I (1941), 27-40.

⁴³ Later Byzantine art, however, produces similar effects in the startling imagery of the Divine Liturgy and in the illustration of the Cherubic Hymn: "Thou art he that offerest and art offered; and that acceptest and art distributed." See J. D. Stefanescu, "L'illustration des liturgies dans l'art de Byzance et de l'Orient," *Annuaire de l'institut de philologie et d'histoire orientales*, I (1932), 72ff; for the formula itself, cf. J. M. Hanssens, *Institutiones liturgicae de ritibus orientalibus* (Rome, 1932), III, 289, §1117.

bear out this assertion.⁴⁹ These parallels demonstrate that the emperor appears not simply as the *vicarius Christi* and human anti-type of the World Ruler above, but almost like the King of Glory himself—truly the *christomimētēs*, the impersonator and actor of Christ. It is as though the God-man had ceded his celestial throne to the glory of the terrestrial emperor for the purpose of allowing the invisible *Christus* in heaven to become manifest in the *christus* on earth.

Related ideas were carried through iconographically by other means as well. Attention has been called recently to the mosaic in the Martorana at Palermo, representing the coronation of King Roger II at the hands of Christ, where the desired effect of making the God manifest in the king was achieved by a striking facial resemblance between Roger and Christ—a duplication (*Zwillingsbildung*) which has its parallel in certain images of the Ottonian period, and has its precursors in imperial coins of the third and early fourth centuries (see fig. 32).⁵⁰ In the Aachen Gospels, however, the emperor's assimilation with Christ is indicated, not by means of facial and physiological resemblance between ruler and divine prototype, but rather by a christological and indeed meta-physiological resemblance: the image, to say it immediately, represents the emperor's two natures, human and divine, or rather, in the language of that age, a ruler "human by nature and divine by grace."

⁴⁹ Adolf Goldschmidt, *Die Elfenbeinskulpturen aus der Zeit der karolingischen und sächsischen Herrscher* (Berlin, 1914), pl.LXXV, Book Cover from St. Gall (c. A.D. 900), where the right hand is open and empty "like on representations of the Last Judgment" (cf. p.80, No.162); see *ibid.*, pl.LXXIV, for a Book Cover from Belgium, now in Darmstadt, and p.80, No.163a; Christ holds the scroll in his right hand whereas the left is open "to show the stigmata." See also Vöge, *Malerschule*, 282, who likewise thinks of representations of the Last Judgment and of the Ascension. In fact, the gesture performed by Otto II, though not at all rare in the iconography of Christ, seems to be unique in mediaeval imperial iconography. Beissel, *Bilder*, 62f, mentions that the image of the emperor in the Aachen Gospels has actually been mistaken for an image of Christ; Schramm, *Die deutschen Kaiser*, 82, briefly indicates the impossibility of that hypothesis.

⁵⁰ See Ernst Kitzinger, "On the Portrait of Roger II in the Martorana in Palermo," *Proporzioni*, III (1950), 30-35; for Ottonian parallels, see the remarks by Schramm, *Die Deutschen Kaiser*, 94f, 112, for Otto III and Henry II (also pl.65); similar observations were made by Georg Leidinger, *Miniaturen aus Handschriften der bayerischen Staatsbibliothek in München*, Munich (n.d.), VI, 25 and pl.XIII. For a few coin specimens (Postumus, Probus, Constantine the Great), see Kantorowicz, "The Quinity of Winchester," *Art Bulletin*, XXIX (1947), figs.27-29 (following p.78); also H. Usener, "Zwillingsbildung," *Kleine Schriften*, IV (1913), 334ff. See *Panegyrici*

The interpretation of the image actually hinges on the interpretation of the banderole, and the understanding of both the details and the whole will be considerably simplified once we know what the banderole designates.

The white scarf is not a band or a banderole at all, nor is it merely an ornamental drapery: it is a veil. It is actually THE VEIL, that is, the curtain of the tabernacle which, according to the oldest Eastern tradition, symbolizes the sky separating earth from heaven. Speculation about the meaning of the veil was at all times alive in the East, since the curtains of the iconostasis, which have a definite function in the rites of all Eastern Churches, actually demanded some explanation.⁵³ However, the interpretation of the veil of the tabernacle as "sky" was very common in the West as well. Bede, for example, in his work *On the Tabernacle*, explains in full agreement with the Eastern expositors that "the veil figures the sky." He adds that when once a year on the Day of Expiation the high priest of Israel passed through the sky-curtain of the tabernacle in order to offer (Leviticus 16: 12ff), he—like Christ, the eternal Highpriest—actually "entered into heaven itself" (*in ipsum coelum intravit*).⁵⁴ Now the sky-curtain, according to Exodus (26: 31f), was hung before four pillars. Those pillars were often identified with the four corners of the world, but full scope was also given to other interpretations. Bede, for example, identified the

Mémoire relatif au Paréage de 1307, ed. A. Maisonobe, in *Bulletin de la société d'agriculture, industrie, sciences et arts du Département de la Lozère* (Mende, 1896), 521 and 532; cf. Strayer, "The Laicization of French and English Society in the Thirteenth Century," *Speculum*, xv (1940), 82, n.5, who was kind enough to call my attention to this interesting passage.

⁵³ For the interpretation of the curtains, see Carl Schneider, "Studien zum Ursprung liturgischer Einzelheiten östlicher Liturgien: ΚΑΤΑΠΕΤΑΣΜΑ," *Kyrios*, 1 (1935), 57-73; J. Sauer, *Die Symbolik des Kirchengebäudes* (Freiburg, 1902), 133f; also Robert Eisler, *Weltenmantel und Himmelszelt* (Munich, 1910), 191 and 250f.

⁵⁴ Bede, *De Tabernaculo*, II.8, PL, xc1, 445f; see 446D: "velum quo coelum figuratur"; 445C: "Velum hoc, coelum interpretatur." For the passage quoted, see 445D: "Summum vero sacerdotem, qui semel in anno sancta sanctorum cum sanguine victimarum ingrediebatur, ipsum intellegi esse pontificem magnum, cui dictum est: 'Tu es sacerdos in aeternum. . . .' Qui semel oblatas pro peccatis nostris, ipse sacerdos et hostia per proprium sanguinem in ipsum coelum intravit." Bede's *Tabernacle* follows Eastern sources; see M. L. W. Laistner, in A. H. Thompson, *Bede, his Life, Times and Writings* (Oxford, 1935), 246. It remained authoritative, was copied, paraphrased, and quarried by a great number of continental writers; see, e.g., Peter of Poitiers, *Allegoriae super Tabernaculum Moysi*, ed. P. S. Moore and J. A. Corbett, in *Publications in Mediaeval Studies*, III (Notre Dame, Indiana, 1958), 122f.

four pillars with "the powers of the celestial hosts, adorned with the four virtues," and later interpreters of the tabernacle claimed that the pillars signified Apostles.⁵⁵ In the Reichenau miniature it is neither the celestial hosts nor the virtues nor the Apostles that are credited with representing the four pillars holding the veil of the tabernacle, but the four animal *virtutes*, the Evangelists—logically, insofar as the picture precedes a Gospel Book.⁵⁶

It would be pleasant to think that the artist, when introducing the four Gospel animals, intended also to allude to the emperor's missionary task. After all, the emperor was "crowned by God" *ad praedicandum aeterni regis evangelium*, "to preach the Gospel of the Eternal King." This idea was expounded in the official "Mass for the King," it was repeated in many a Coronation Mass, and it was programmatically adhered to by the Ottonians in their missionary policy.⁵⁷ The combination of veil and animals, however, derived directly from the Carolingian models which the artist followed. These technicalities, interesting though they are, shall

⁵⁵ Bede, *op.cit.*, 446A: "Quatuor autem columnae, ante quas appensum est hoc velum, coelestium sunt potestates agminum, quatuor virtutibus eximiis praedictae." Gregory the Great identified the four animals with the four Virtues, and in Byzantium they were mainly "angelic powers"; see Gregory the Great, *In Ezech.*, I, Homil. III, 8, *PL*, LXXVI, 809A, and F. van der Meer, *Maiestas Domini* (Vatican City, 1938), 227f. For other interpretations, see Sauer, *Symbolik*, 134.

⁵⁶ For a survey of the literary tradition concerning the four animals, see van der Meer, *Maiestas Domini*, 223ff; see also Irenaeus, *Adversus haereses*, III, 11, 8.

⁵⁷ For the prayer "Deus, qui ad praedicandum aeterni regis (regni) evangelium Francorum (Romanum) imperium praeparasti," see Gerd Tellenbach, *Römischer und christlicher Reichsgedanke in der Liturgie des frühen Mittelalters* (S.-B. Heidelberg, 1934-35), Abh. 1, to whose texts there may now be added the 8th-century *Sacramentarium Pragense*, ed. Alban Dold and Leo Eizenhöfer (Texte und Arbeiten der Erzabtei Beuron, 1. Abt., Heft 38-42; Beuron, 1949), II, 137*, No. 246.4. See also Hans Hirsch, "Der mittelalterliche Kaisergedanke in den liturgischen Gebeten," *MÖIG*, XLIV (1930), 9ff, against whom C. Erdmann, "Der Heidenkrieg in der Liturgie und die Kaiserkrönung Ottos I.," *MÖIG*, XLVI (1932), 129-142 (also *Ideenwelt*, 19f, nos. 6-7), emphasizes that the *praedicatio evangelii* was the task of every Christian king, and not only that of the Roman emperor. See, e.g., the exclamations to King Reccared (Third Council of Toledo, in 589): "Ipse mereatur veraciter apostolicum meritum, qui apostolicum implevit officium"; *PL*, LXXXIV, 345CD. For the missionary ideology under the Ottonians, see Joseph Kirchberg, *Kaiseridee und Mission unter den Sachsenkaisern und den ersten Saliern von Otto I. bis Heinrich III.* (Historische Studien, 259 [Berlin, 1934]); also M. Bünding, *Das Imperium Christianum und die deutschen Ostkriege vom zehnten bis zum zwölften Jahrhundert* (Historische Studien, 366 [Berlin, 1940]). For the prayer in the Coronation *Ordines*, see, e.g., Schramm, "Die Ordines der mittelalterlichen Kaiserkrönung," *ArchUF*, XI (1929), 371, and "Die Krönung bei den Westfranken und Angelsachsen von 878 bis um 1000," *ZfRG*, kan. Abt., XXIII (1934), 220; Paul L. Ward, "An Early Version of the Anglo-Saxon Coronation Ceremony," *EHR*, LVII (1942), 360.

the emperor's body in two sections, one supra-celestial and the other sub-celestial. The comparison explains also the function of the four animal symbols as carriers of the veil: the curtain attached to the pillars of the throne canopy does not suggest the word "tabernacle" nor could it convey the meanings of "sky" and "far above all heavens" which the Reichenau painter obviously wished to express. Moreover, the very presence of the animals as well as the mandorla surrounding the emperor indicate that he is in the place of Christ, the Emperor "militating for us in the tabernacle." Finally, the veil dividing the body emphasizes that the emperor on earth has in common with Christ the two substances—human by nature, but divine by grace and by consecration.

All this results from a philosophy of state which is very different from that suggested by the Carolingian throne images. It is true, the Hand of God the Father emanates the divine blessing and grace also on the Carolingian monarch, and there is a relationship between the ruler on his throne and the far remote Father in Heaven; but Christ is absent from those scenes. The Carolingian concept of a David-like kingship was decisively theocentric: "Thou art the vicegerent of God, and the bishop is in the second place only, the vicegerent of Christ," as the English scholar Cathwulf wrote to Charlemagne.⁸⁴

Nothing could have been more contrary to the Reichenau painter. His emperor is in the place of Christ, and the hand stretching down from above is surrounded by a cross-halo: it is probably not the hand of the Father, but rather that of the Son.⁸⁵ In short,

⁸⁴ *MGH, Epp.*, iv.503,3ff: ". . . tu [rex mi] es in vice illius [Dei regis tui] . . . et episcopus est in secundo loco, in vice Christi tantum est." M. Buchner, in *Hist.Jhb.*, LV (1935), 604, claims without evidence that the Cathwulf letter is a fiction of the 9th century. There is no reason whatever for this assumption, but even if correct, it would make little difference here: the otherwise unknown Cathwulf would be replaced by the otherwise unknown contemporary author of a "school exercise" who (and this is all that matters) reflected the so-called "Ambrosiaster"; see Williams, *Norman Anonymous*, 175ff. See below, Ch.IV,n.12, for Ambrosiaster in Canon Law.

⁸⁵ It is, of course, impossible to tell whether it is the Hand of God stretching down from heaven (Beissel, *Evangelienbücher*, 211) or that of the Son. The crossed nimbus surrounding the hand, however, is a very suggestive feature, since it is very rare in that period, though very common in the later Middle Ages. There seem to be no more than three earlier examples: an ivory plaque of the 10th century (Goldschmidt, *Elfenbeine*, II,pl.IX,24b: Incredulity of Thomas); an antiphony from Prüm of the same century (Paris, Bibl.Nat., MS.lat.9448, fol.10v: St. Stephen in the Synagogue); and the Bamberg Apocalypse of ca.1000-1010 (Bamberg, Staatsbibl., MS 140,fol.24v, ed. H. Wölfflin, 1921, pl.24: Rev. 9: 13). To these there may be added,

the Ottonian concept of rulership displayed by the Reichenau artist was not theocentric: it was decisively christocentric. A hundred years or more of Christ-centered monastic piety⁸⁶ have affected also the image of rulership. In fact, the unique Reichenau miniature is the most powerful pictorial display of what may be called "liturgical kingship"—a kingship centered in the God-man rather than in God the Father.⁸⁷ As a result, the Reichenau artist ventured to transfer to the Ottonian emperor also the God-man's "two natures in one person." No less distinctly than the Norman Anonymous in his tractates has the master of the Aachen Gospels expounded the concept of the ruler's *gemina persona*.

3. The Halo of Perpetuity

Things difficult and circumstantial to describe in words are sometimes more easily and succinctly expressed by an iconographical formula. It has been stated above that in the tractate of the Norman Anonymous Tiberius *qua* "Caesar" appeared, so to say, with a halo whereas "iniquitous Tiberius," the individual man, was certainly without a halo. This metaphor, not chosen at random, may actually help us to clarify yet another aspect of the mediaeval concept of the ruler's *gemina persona*.

In late antique art, we often find the halo bestowed on such figures as might impersonate a supra-individual idea or general

as the definitely earliest one, a representation of the Hand on the Cross in the Bible of Charles the Bald (Bibl.Nat., MS.lat.1.fol.317^{ro}, see W. Köhler, *Die Schule von Tours* [1930], pl.89,fig.n: the upright Hand flanked by two angels). Whether in those cases the hand is meant to be that of God or of Christ is not at all clear in every case. However that may be, of major interest is the fact all by itself that the symbol of Christ begins to be passed on to God the Father, an impossible feature in Byzantine iconography of that period, especially in coronation scenes. Contrariwise, Christ as coronator is very common; see, e.g., the Sacramentary of Emperor Henry II, in Schramm, *Die deutschen Kaiser*, fig.85a; and, for Byzantium, Grabar, *L'Empereur*, pl.xix.1-2, and also (below, fig.12; see above, n.61) the triumph of Basil II. In the Aachen Gospels, where the full figure of Christ could hardly have been represented, the cross-haloed hand therefore seems to imply the abbreviated formula of the Crowning Christ.

⁸⁶ This problem is in need of a thorough investigation, although Georg Schreiber, *Gemeinschaften des Mittelalters* (Münster, 1948), touches upon it time and time again; see also Hallinger, *DA*, x.43of. Jungmann, of course (above, n.76), especially in his fundamental book *Die Stellung Christi im liturgischen Gebet* (Liturgiegeschichtliche Forschungen, 7-8; Münster, 1925) is fully aware of the general problem, but does not seem to have dealt with monastic piety in particular.

⁸⁷ See below, Ch.IV, pp. 89f.

notion. This special mark of distinction indicated that the figure was meant to represent in every respect a continuum, something permanent and sempiternal beyond the contingencies of time and corruption. Roman provinces such as Egypt, Gaul, Spain, and others were sometimes represented with a halo—for example, in the late antique *Notitia dignitatum*.⁸⁸ In that case, we usually call these haloed females "abstractions" or "personifications," which is correct so far as it goes; but we have to be aware that the most significant feature of all abstractions and personifications is their supra-temporal character, their continuity within time. In fact, it was not so much the personification which was made conspicuous by the halo, as the *Genius* of the individual province, that is, its perennial creative and seminal power, since *genius* derives from *gignere*. Much of what we today are inclined to associate with slogans such as *Roma aeterna* or *La France éternelle*,⁸⁹ was very precisely expressed by the *Aegyptus*, the *Gallia*, the *Hispania* when adorned with the nimbus. The same was true with regard to notions or virtues: *Justitia* or *Prudentia*, who were goddesses in pagan Antiquity, were meant to represent forces perpetually effective or forms of Being perpetually valid when depicted in Christian art with the halo.⁹⁰ In other words, whenever we capitalize a notion and, in the English language, even change the gender from neuter to feminine, we actually are "haloing" the word or the notion and are indicating its sempiternity as an idea or power.

In this sense, and very much in the sense of the anonymous Norman pamphleteer, the Byzantine emperors, until and beyond the Fall of Constantinople, were represented haloed. The origin

⁸⁸ It is not intended here to discuss in any detail the function or origin of the halo; see the standard work on the subject by A. Krücke, *Der Nimbus und verwandte Attribute in der frühchristlichen Kunst* (Strassburg, 1905) and K. Keyssner, "Nimbus," *RE*, xxxiii (1936), 591ff, esp. §§18,24,cols.611,622. See *Notitia Dignitatum*, ed. Seeck (Berlin, 1876), e.g., 108 (*Italia, Illyricum, Africa*), 101 (*Felicitas, Virtus, Scientia militaris*), 102 (the Four Seasons, with *Autumnus* cross-haloed[!]); see, for the haloed Seasons, George M. A. Hanfmann, *The Season Sarcophagus in Dumbarton Oaks* (Dumbarton Oaks Studies, II, Cambridge, Mass., 1951), 1,266; II,115, n.29.3; also 45,46,48,52, and passim.

⁸⁹ The expression "Eternal France" does not seem to antedate the 16th century, and we may wonder whether it was not transferred from "Eternal Rome," just as the notion *Roma communis patria* was transferred, in the 13th century, to France: "corona regni [Franciae] est communis patria." See Gaines Post, "Two Notes," *Traditio*, ix, 288ff (n.44), also 301.

⁹⁰ See, for a few remarks on a related subject, my note "Σύνθηρονος Δίκη," *American Journal of Archaeology*, LVII (1953), 65-70.

CHAPTER IV

LAW-CENTERED KINGSHIP

1. *From Liturgy to Legal Science*

THE KING a *gemina persona*, human by nature and divine by grace; this was the high-mediaeval equivalent of the later vision of the King's Two Bodies, and also its foreshadowing. Political theology in that early period was still hedged in by the general framework of liturgical language and theological thought, since a Church-independent secular "political theology" was as yet undeveloped. The king, by his consecration, was bound to the altar as "King" and not only—we may think of later centuries—as a private person. He was "liturgical" as a king because, and in so far as, he represented and "imitated" the image of the living Christ. "Thou art the vicar of Christ; none but his imitator is the true lord," proclaimed the historian Wipo in the imperial camp.¹ "In his king, truly, Christ is recognized to reign," echoed the saintly Cardinal Peter Damiani,² while Cardinal Deusdedit, his younger contemporary, included in his canonical collection the words with which Pope John VIII, in an assembly of bishops, had praised the Carolingian Emperor Charles II as the *salvator mundi*, "the saviour of the world constituted by God," whom "God established as the Prince of His people in imitation of the true King Christ, His Son, . . . so that what he [Christ] owned by nature, the king might attain to by grace."³

¹ Wipo, *Gesta Chuonradi*, c.3, ed. Bresslau (*MGH,SS.rer.germ.*, 1915), 23: "Ad summam dignitatem pervenisti,/vicarius es Christi./Nemo nisi illius imitator/verus est dominator." Cf. c.5,p.26,18; also his *Tetralogus*, line 19,p.76,21, and lines 121f, p.79,15f, where the emperor is called *alter post Christum* and *secundus post dominum caeli*. See above, Ch.III,n.11, for the Prince as a *Deo secundus*.

² Petrus Damiani, *Ep.*, VII,2, *PL*, CXLIV,436: "In rege suo vere Christus regnare cognoscitur."

³ Deusdedit, *Collectio canonum*, IV,92, ed. Victor Wolf von Glanvell, *Die Kanonesammlung des Kardinals Deusdedit* (Paderborn, 1905), 1,439; the passage is quoted also by his contemporary Anselm of Lucca (ca. 1085), *Coll.can.*, 1,79, ed. M. Thaner (Innsbruck, 1906-1915), 52f (*PL*, CXLIX,489, numbered 1,78). See, for the Pope's address at Ravenna, in 877, Mansi, *Concilia*, XVII,App.172; also Bouquet, *Recueil*, VII,695C: ". . . unxit eum Dominus Deus . . . principem populi sui constituens ad imitationem scilicet . . . veri Regis Christi filii sui . . . , ita ut, quod ipse [Christus] possidet per naturam, iste [imperator] consequeretur per gratiam." See also Schramm, *König von Frankreich*, 1,40 and 45, II,36,n.3; Eichmann, *Kaiserkrönung*,

Nevertheless, it is remarkable for the changing patterns of piety and for the general religious mood that after the Carolingian period, during which the *vicarius Dei* predication seems to have been the rule, a definite preference for *vicarius Christi* becomes noticeable in the christocentric age of the Ottonians and early Salians.⁹ The difference between the two designations, however, became articulate and therewith historically meaningful when the vicariate of Christ was claimed as a prerogative of the hierarchy—"Where are there emperors found obtaining the place of Christ"?¹⁰—until finally the *vicarius Christi* title became a monopoly of the Roman Pontiff.

As usual, many strands of political, religious, and intellectual life concurred to bring about the general shift and to dissolve the image of Christ-centered kingship. The spell of the Coronation *Ordines* waned under the impact of the Investiture Struggle. That struggle itself, on the one hand dismantling the secular power of spiritual authority, ecclesiastical competency and liturgical affiliation, and, on the other, imperializing the spiritual power, had certainly its share. However, the dogmatic-theological development of the twelfth century towards defining the real presence of Christ in the Sacrament also produced a new accentuation of the ancient idea of the presence of Christ in the person of the vicariously mass-celebrating priest.¹¹ Moreover, the new impetus of Canon Law

so acutely discussed. The christological problem was definitely visualized, though purposely not treated in detail, by Berges, *Fürstenspiegel*, 26ff. The texts for *vicarius Dei (Christi)* collected by J. Rivière, *Le problème de l'église et de l'état au temps de Philippe le Bel* (Louvain, 1926), 435ff, are discussed in Maccarrone's comprehensive study which also fills considerable gaps in A. von Harnack's famous study *Christus praesens—Vicarius Christi* (S. B. Berlin, 1927, No. xxxiv), 415-446. For the interrelations between christology and rulership in earlier times, see G. H. Williams, "Christology and Church-State Relations in the Fourth Century," *Church History*, xx (1951), No. 3, 3-33, and No. 4, 3-26.

⁹ Among the Carolingian examples collected by Maccarrone, *op.cit.*, 79f, there is only one referring to the ruler as vicar of Christ (Smaragdus, *Via regia*, c.18, *PL*, cii, 958), though in fact more are to be found (see above, n.3). The shift from *vicarius Dei* to *vicarius Christi* should probably be sought in the later ninth century as a result of the clericalization of the royal office (*imitatio sacerdotii* according to Schramm, "Austausch," 404f), of the language of the *Ordines*, and of the spirit of monastic piety.

¹⁰ *De ordinando pontifice*, *MGH, LdL*, 1, 144: "Ubi enim inveniuntur imperatores locum Christi obtinere?"

¹¹ Pascher, "Die Hierarchie in sakramentaler Symbolik," 285f; J. Geiselmann, *Die Eucharistielehre der Vorscholastik*, Forschungen zur christlichen Literatur- und Dogmengeschichte, xv, 1-3 (Münster, 1926).

authors such as Seneca and Vegetius, began to style the emperor almost without exception *deus in terris*, *deus terrenus*, or *deus praesens*. Apparently they took it for granted on the basis of their sources that the Prince was above all vicar of God; for as an imperial designation, the expression *vicarius Christi* would not have been within the range of their language at all.¹⁶ Thus it came to pass that the christocentric ideal of rulership dissolved also under the influence of Roman Law. Henceforth a papal *Christus in terris*¹⁷ was sided by an imperial *deus in terris*. As a *pater subiectorum*, "father of his people," the Prince, it is true, was granted a faint resemblance with the invisible Father in Heaven;¹⁸ but the

¹⁶ The references are usually *D.35,2,1,5* (*lex Falcidia*: ". . . quae Deo relinquuntur," to which the *Glossa ordinaria* remarks: "celesti, idem in terreno"), *D.14,2,9* (*lex Rhodia de iactu*, where the emperor says of himself: "Ego quidem mundi dominus"), or *C.7,37,3,5* (*de quadriennii praescriptione*: ". . . nutu divino imperiales suscepimus infulas"), though there are other relevant places as well. Baldus, e.g., who uses those places too, quotes very often for *Deus in terra (terris)* *Nov.105, 2,4*, saying that the emperor is the *lex animata*; see, e.g., *Consilia*, 1,333,n.1.fol.105, in addition to the places quoted by Gierke, *Gen.R.*, III,563,n.122. Other favored places were Seneca, *De clementia*, 1,1,2: "[Ego, Nero,] . . . qui in terris deorum vice fungerer," a passage (though without quoting precisely these words) used by Frederick II, *Lib.aug.*, proem., ed. Cervone, 4, with the gloss of Marinus de Caramanico, v. *Velut executores*; cf. A. Marongiu, "Concezione della sovranità ed assolutismo di Giustiniano e di Federico II," *Atti del Convegno Internazionale di Studi Federiciani* (Palermo, 1952), 43,n.70, and "Note federiciane," *Studi Medievali*, XVIII (1952), 298. Quoted was also Vegetius, *De re milit.*, 2,5: ". . . nam imperator cum Augusti nomen accepit, tamquam praesenti et corporali deo est praestanda devotio"; see, e.g., Andreas of Isernia, on *Authentica 'Habita'* (cf. *MGH,Const.*, 1,249,No.178), n.3, in *In usus feudorum commentaria* (Naples, 1571), fol.318, and the places quoted by Gierke, *loc.cit.*, but also John of Salisbury, *Policraticus*, IV,c.1, and VI,c.7, ed. Webb, 1,235f, and II,20. A number of places from legal sources may be found in M. A. Peregrino, *De privilegiis et iuribus fisci*, 1,2,n.46, and 1,3,n.2 (Venice, 1587), pp.26 and 52 (Venice, 1611), fols.7 and 14^v, mostly applied to kings not recognizing a superior; see also Andreas of Isernia, on *Feud.* II,56 ('Quae sunt Regalia'), n.63, fol.301: "et dicitur 'nostri numinis,' quia Imperator vel Rex in Regno dicitur habere numen divinum, quia est in terris sicut Deus in coelo, inde dicitur rescriptum suum coeleste oraculum. . . ."

¹⁷ See the passage from Arnald of Villanova, in Carl Mirbt, *Quellen zur Geschichte des Papsttums und des römischen Katholizismus*, 4th ed. (Tübingen, 1924), 211, no.373.

¹⁸ The place usually quoted is *Nov.98,2,2*: "hoc post deum communis omnibus pater (dicimus autem qui imperium habet) per legem . . . servet." See *Glos.ord.*, v. *Dicimus autem*; also Marinus de Caramanico, on *Lib.aug.*, 1,74, v. *Post Deum*, ed. Cervone, 134; also Andreas of Isernia, on *Lib. aug.*, proem., ed. Cervone, 6: "Rex est pater subiectorum in regno suo." In his gloss on *Lib.aug.*, III,26, Cervone, 355, Andreas says: "Princeps legislator, qui est lex animata in terris . . . est pater subiectorum," and refers to *C.3,28,34,1*: "Sed nos qui omnes subiectos nostros et filios et nepotes habere existimamus adfectione paterna et imitatione. . . ." For the origins of the notion "father of his people," see A. Alföldi, "Die Geburt der kaiser-

appears to be made not to his arbitrary private volitions, but to the *voluntas* active in him as a *persona publica*.²⁶ As a public person, however, the Prince serves public utility; and therewith the bearer of the *imago aequitatis* becomes at the same time the "servant of Equity"—*aequitatis servus est princeps*.²⁷

John of Salisbury's antithesis of *persona publica* and *privata voluntas* seems to contain, by implication, the distinction between the Prince as a public person and the Prince as a private person. We might expect some theory saying that the Prince as a private person is under the Law, *legibus alligatus*, whereas his public person is above the Law, *legibus solutus*. This, however, is not the conclusion which John of Salisbury draws. He, like the Norman Anonymous, is not particularly interested in the Prince as a *persona privata*, at least not in that connection, since every private person is under the Law anyhow. He is interested in the *persona publica*, that portentous notion introduced from Roman Law upon which political theory in the later Middle Ages and thereafter hinged. In the passages of John of Salisbury's *Policraticus* under discussion here, the inner tension is found within the Prince's *persona publica* itself: as a public person he, the Prince, is at once *legibus solutus* and *legibus alligatus*, is at once *imago aequitatis* and *servus aequitatis*, at once lord and serf of the Law. The duality is in the office itself, a conclusion at which John of Salisbury was almost bound to arrive on the basis of two contradictory laws of the Roman Corpus, the *lex regia* and the *lex digna*, as shall be explained presently.²⁸

It may be correct to say that the Prince of John of Salisbury is not a human being in the ordinary sense. He is "perfection" if at all he be Prince and not tyrant. He is—in good mediaeval fashion, and yet in a new juristic sense—the very Idea of Justice which itself is bound to Law and yet above the Law because it is the end of all Law. Not the Prince rules, but Justice rules through

²⁶ The whole passage (p.238) deals with the various aspects of *voluntas* and with the distinction between private and public will.

²⁷ "Eius namque voluntas in his vim debet habere iudicii; et rectissime quod ei placet in talibus legis habet vigorem, eo quod ab aequitatis mente eius sententia non discordet . . . Judex etenim incorruptus est cuius sententia ex contemplatione assidua imago est aequitatis. Publicae ergo utilitatis minister et aequitatis servus est princeps, et in eo personam publicam gerit."

²⁸ The *lex digna* is quoted IV,c.1, Webb, 237,1ff. See below for *lex regia* and *lex digna*.

or in a Prince who is the instrument of Justice and, though Salisbury does not quote Justinian to that effect, is at the same time the *lex animata*.

All that may appear hazy and ambiguous today. But in that ambiguity we shall learn to recognize the king's *gemina persona* mirrored by Law as well as the idea of royal mediatorship transferred from the liturgical to the juristic sphere.

2. Frederick the Second

PATER ET FILIUS IUSTITIAE

Two generations after John of Salisbury, legal thought unmistakably prevailed over the spirit of the liturgy: Jurisprudence now felt invited to create its own secular spirituality.

The *locus classicus* of a new pattern of *persona mixta* emerging from the Law itself is found in the *Liber augustalis*, the great collection of Sicilian Constitutions which (at Melfi, in 1231) Frederick II published as a Roman Emperor, though in his capacity of King of Sicily—a king truly competent to act as *imperator in regno suo*.²⁹ Title I,31 of this lawbook is inscribed "On the Observation of Justice."³⁰ It is a juristic and philosophic discussion of both the origin of the imperial right to legislate and the emperor's obligation to protect and observe the Law. Those, of course, were topics which the lawyers of that age had dealt with frequently, and doubt could not arise about prerogatives and duties at large of the Prince

²⁹ Frederick II, publishing his laws as emperor in his kingdom, was in fact the only monarch of the 13th century who literally acted in accordance with the new maxim *Rex est imperator in regno suo*, or its equivalents. For the development of that maxim in the Sicilian kingdom, see the latest study of Francesco Calasso, *I glossatori e la teoria della sovranità* (2nd ed., Milan, 1951), who (26ff) reviews the earlier literature, and (179ff) reprints also the Prologue of Marinus de Caramanico's gloss on the *Liber augustalis*; see also *Liber aug.*, ed. Cervone, pp. xxxiii-xl; the same ideas, of course, were developed also in the Prologue of Andreas of Isernia's *Lectura on the Liber aug.*, ed. Cervone, pp. xvii-xxxii. The problem of the origin of that phrase and its equivalents has been greatly clarified by Sergio Mochi Onory, *Fonti canonistiche dell'idea moderna dello stato* (Pubblicazioni dell' Università del Sacro Cuore, xxxviii, Milan, 1951); see further the highly important contributions (on the basis of legal material not used by Mochi Onory) and corrections by Gaines Post, "Two Notes on Nationalism in the Middle Ages: II. Rex Imperator," *Traditio*, ix (1953), 296-320; also his study, "Blessed Lady Spain—Vincentius Hispanus and Spanish National Imperialism in the Thirteenth Century," *Speculum*, xxix (1954), 198-209.

³⁰ *Lib. aug.*, 1,31, ed. Cervone, 81 (this edition is used throughout on account of the glosses); see Huillard-Bréholles, iv,33; also Theseider, *L'idea imperiale* (cf. below, n.44), 179.

this political theology, or politico-religious hybridism, the words of the *Liber augustalis*—written by the Bologna-trained jurist and stylist Petrus de Vineas⁴³—have their definite place.

However, Frederick's imperial "theology of rulership," though pervaded by ecclesiastical thought, touched by Canon-Law diction, and infused with quasi-christological language to express the arcana of government, no longer depended on the idea of a Christ-centered kingship. The chief arguments of Frederick and his legal advisers derived from or were determined by Law—more accurately by Roman Law. In fact, the emperor's dual function of "lord and minister of Justice" descended from the *lex regia* or was linked to it, as the passage cited from the *Liber augustalis* shows quite unambiguously; that is, it descended from that famous law by which the Quirites of olden times used to confer the *imperium* together with a limited right of creating law, and of law exemption, on the Roman *princeps*.⁴⁴ And therewith a strictly Law-centered ideology begins to supersede the stratum of the mystery-like *christomimēsis* predominant in the earlier centuries.

iv (1928), 80f, and my study "The Absolutist Concept *Mysterium of State*, and its Late Mediaeval Origins," *Harvard Theological Review*, XLVIII (1955), 71, n. 22. For *religio iuris*, see below, n. 159, and for the *ecclesia imperialis*, *Erg. Bd.*, 208. For Vineas addressing the emperor "pacator iustissimus, quem supremi manus opificis formavit in hominem," see Petrus de Vineas, *Epistolae*, III, 44, ed. Simon Schard (Basel, 1566), 469, ed. Huillard-Bréholles, *Vie et correspondance de Pierre de la Vigne* (Paris, 1865), 426, no. 107, and for some remarks on the history of that phrase, my study "Kaiser Friedrich II. und das Königsbild des Hellenismus," *Varia Variorum: Festgabe für Karl Reinhardt* (Münster and Cologne, 1952), 171-174. For Frederick II as *Sol Iustitiae*, see Huillard-Bréholles, VI, 811, also my study "Dante's Two Suns," *Semitic and Oriental Studies Presented to William Popper*, ed. W. J. Fischel (Berkeley and Los Angeles, 1950), 221f, 227ff; for the application of that title to the King of France, see Berges, *Fürstenspiegel*, 263; Johannes Haller, *Papsttum und Kirchenreform* (Berlin, 1903), I, 470, n. 1. See further the quite recently discovered eulogy on Frederick II by Nicholas of Bari, ed. Rudolf M. Kloos, "Nikolaus von Bari, eine neue Quelle zur Entwicklung der Kaiseridee unter Friedrich II.," *DA*, XI (1954), 166-190, esp. 169ff.

⁴³ Hans Niese, "Zur Geschichte des geistigen Lebens am Hofe Kaiser Friedrichs II.," *Hist. Ztschr.*, CVIII (1912), 535, stresses that Vineas "has formulated all the laws incorporated in the *Liber augustalis*," and I agree with him today even more than in former days. The rhetorical "hybridism" with its tendency towards building up "theologies" of all sorts (political theology as well as a theology of science or rhetoric) was actually taught in Bologna; see, e.g., my study "An 'Autobiography' of Guido Fabas," *Mediaeval and Renaissance Studies*, I (1941-43), 253-280.

⁴⁴ For a useful collection of extracts concerning the *lex regia*, see Eugenio Duprè Theseider, *L'Idée imperiale di Roma nella tradizione del medioevo* (Milan, 1942), 255ff. For the older literature, see *Erg. Bd.*, 85ff; see also Karl Jordan, "Der Kaisergedanke in Ravenna," *DA*, II (1938), 110ff; F. Schulz, "Bracton on Kingship," *EHR*, LX (1945), 153ff; Ullmann, *Lucas de Penna*, 48ff.

The mediaeval lawyers could not possibly fail to notice the antinomy prevailing between the maxims *princeps legibus solutus* and *princeps legibus alligatus*. By this antinomy, in addition to other considerations, John of Salisbury was prompted to interpret the Prince as at once *imago aequitatis* and *servus aequitatis*; and this solution, in its turn, appeared to him as a reflection of the biblical model, namely, of Christ who, though King of Kings, "was born under the Law, fulfilled all justice of the Law, and was subjected to the Law *non necessitate, sed voluntate*. For in the Law was his will."⁵²

That was, by and large, the expedient to which substantially many mediaeval lawyers resorted when they tried to reconcile the seemingly irreconcilable maxims of the *lex regia* and the *lex digna*. They pointed out that the emperor, though not legally bound by the laws, yet bound himself to the Law and lived voluntarily in accordance with the Law: his subjection to the Law was considered a *velle*, and not an *esse*.⁵³ Frederick II followed the customary legal exegesis. He, too, referred on one occasion to the *lex digna*, voluntarily recognized a superior judgment, and made a formal account as to the kind of Law to which he considered himself obligated. To the senators and people of Rome he wrote:

Both all-powerful Reason, who commands the kings, and Nature impose upon us the obligation to enhance in the times of our imperium the glory of the City. . . . In accordance with Civil Law we

patus which appears to me as the axis of the whole sentence. See also W. Ensslin, "Der Kaiser in der Spätantike," *Hist.Ztschr.*, CLXXVII (1954), 465. The *lex digna* was paraphrased also in an arena of Frederick's son, King Henry (VII) in 1228; see J. F. Böhmer, *Acta imperii selecta* (Innsbruck, 1870), 1,283, No.326, where one should read *digna voce* (for *vice*).

⁵² It was common practice of jurists and political philosophers to link the *lex digna* together with the maxim *legibus solutus*, and thereby to solve that dilemma; see, e.g., Azo, *Summa Instit.*, proem. ("Quasimodo geniti," the author of which was Boncompagno), fol.267v: "Licet romanus princeps sit legibus solutus, tamen digna vox ex maiestate regnantis legibus alligatum se principem profiteri." See also Carlyle, *Political Theory*, v.97, and 475f; A. Esmein, "La maxime *Princeps legibus solutus est* dans l'ancien droit public français," *Essays in Legal History* (Oxford, 1913), 203,n.1; 208,n.4; 209,n.1. See also below, n.54, for Frederick II. The difficulty was sometimes overcome by indicating the model of Christ who, though *Rex regum*, was nevertheless *sub lege*; see, e.g., John of Salisbury, *Policraticus*, 523bc, ed. Webb, 1,252,6ff: ". . . sicut Rex regum, factus ex muliere, factus sub lege, omnem implevit iustitiam legis, ei non necessitate sed voluntate subiectus; quia in lege voluntas eius."

⁵³ Schulz, "Kingship," 168 (including n.6) and 163,n.1; cf. above, n.52, for John of Salisbury. See also Esmein, *op.cit.*, 203,n.1.

profess our obligation with a word most worthy [of majesty]. . . . For although our imperial majesty is free from all laws, it is nevertheless not altogether exalted above the judgment of Reason, herself the Mother of all Law.⁵⁴

What that statement amounts to may be called the Prince's *voluntas ratione regulata*, his "Will directed by Reason."⁵⁵ The emperor, in his manifesto, strongly emphasized that he was *legibus solutus*, but at the same time he acknowledged that he was bound to Reason which commands all kings. The general proportions were similar to those which he established when he expounded in his law-book the *lex regia* and proclaimed himself the father and son of Justice. The passage again reveals the emperor, theoretically, as the intermediate part: he is free from all laws; he is above the ties of Positive Law, which Reason, complying with public Utility and changing Necessity, may alter at any time, and of

⁵⁴ "Ad extollendum imperii nostri temporibus decus Urbis . . . et ratio prepotens, que regibus imperat, et natura nos obligat, et civiliter obligatos voce dignissima profitemur . . . Sed quamquam soluta imperialis a quibuscumque legibus sit majestas, sic tamen in totum non est exempta iudicio rationis, que iuris est mater." Huillard-Bréholles, v.162; Theseider, *L'Idea imperiale*, 187. The submission to Reason on the part of every authority was emphasized by the early glossators; see, e.g., the 12th-century *Quaestiones de iuris subtilitatibus*, IV,4, ed. Fitting, 58: "Dicat ipsa Ratio, qua et ipse nituntur auctoritates . . ." See next note. The word *civiliter*, which might appear ambiguous, obviously refers to *D.1.1.8*: "viva vox est iuris civilis," so that we have to consider a contamination of *digna vox* and *viva vox*; see, for the related law *viva vox*, Steinwenter, "Nomos," 266f, and, for the combination of *ius civile* with the *lex digna*, Boncompagno, *Rhetorica novissima*, IX,5, ed. Gaudenzi, *Bibliotheca juridica medii aevi* (Bologna, 1892), II, 289. By chance, we have a gloss of one of Frederick's judges of the *Magna Curia*, Guillelmus de Vineia, on *Lib.aug.*, III,5, v. *iure proprio*: ". . . quod princeps sit absolutus legibus, tamen iure privato(?) vivere debet, ut C.de leg.et cons.l.digna vox." Cf. B. Capasso, "Sulla storia esterna delle costituzioni di Federico II," *Atti della Accademia Pontaniana*, IX (1871), 439,n.2. To quote another Sicilian, see Andreas de Barulo, on *C.10.8.3.n.1*, pp.24f: "Nota quod licet Princeps sit legibus solutus, vivit tamen secundum leges, ut . . . de legib. digna."

⁵⁵ See A. P. D'Entrèves, *The Mediaeval Contribution to Political Thought* (Oxford, 1939), 39, for the *voluntas ratione regulata* in the sense of Thomistic doctrines, and Ullmann, *Lucas de Penna*, 54f, for the principle of the Civilians: "cum voluntas principis ab aequitate, iustitia et ratione deviet, non est lex." For the emperor's subjection to Reason, Baldus was later to some extent the authority; see Baldus, on *D.4.4.39.n.45*, fol.234v: "magnus est Caesar, sed maior est ratio"; also, *Cons.*, I,36, n.6, fol.100v: "Praeterea princeps potest se subiicere rationi" (with reference to *D.2.1.14*); also *Cons.*, I,333,n.1, fol.105v: "Item princeps iura utilia potest con(ce)dere sine causa . . . nam ipse [princeps] et ratio idem sunt." See also Matthaeus de Afflictis, on *Lib.aug.*, I,7,n.37, fol.57v, who refers continuously to Baldus: ". . . Imperator licet sit solutus legibus, tamen non est solutus a praeceptis divinis et sanctae matris ecclesiae . . . Item non est solutus a dictamine rationis, quia est animal rationale . . . Ideo princeps etiam ligatur naturali ratione. . . ."

which Reason is the mother as he is the father; but Reason is also above the Prince as she is above any king, and to her the emperor is bound: he is *legibus solutus*, but *ratione alligatus*.

The doctrine was not without danger, since the interpretation of Reason might easily depend on the Prince alone. Indeed, less than a century later this semi-divine *Ratio* will become a *ratio regis et patriae*, synonymous with Reason of State, and what formerly was a goal in itself will turn into a tool, a mere instrument of statecraft. Reason, in many respects, was all that already under Frederick II; yet, in legal philosophy she still showed the features of a goddess—a manifestation of Nature equal to God.⁵⁶

IUSTITIA MEDIATRIX

To worship the absolute power of legal Reason was nothing peculiar to Frederick II and his advisers. The lawyers, and especially the Civilians (who were also the true rediscoverers of a non-ecclesiastical Stoicism and therewith the initiators of the later humanistic Neo-Stoicism of Petrarchan pattern), were generally fond of playing with the notion of Reason, and of hallowing Reason as well as Justice like ancient deities. The leading lawyer of the generation just before Frederick II, the great Placentinus (died 1192), was in all probability the author of a legal dialogue called *Quaestiones de iuris subtilitatibus*, the poetical prologue of which is of some relevance here.⁵⁷ In this prologue, the author actually erected a literary monument of the goddesses of Law when describing, solemnly and in glowing colors, the beauty and majesty of the *Templum Iustitiae* which he pretended to have dis-

⁵⁶ For the necessity of producing new laws caused *per rerum mutationes et temporum*, see *Lib.aug.*, I,38, ed. Cervone, 85, the preamble of which was framed after *C.1.17.2.18*; the leading idea, found already in the *Dictatus papae* (§7), was of course repeated over and over again. See also, for the parallelism of divine Law (*ius gentium*) and natural reason, the preamble of *Lib.aug.*, I,16, Cervone, 35: "Iuris gentium induxit auctoritas et naturalis haec ratio non abhorret, ut tutela cuilibet sui corporis permittatur"; further *Lib.aug.*, I,31, where the emperor claims ("Hac igitur consulta ratione commoniti . . .") to be prompted by the advice of Reason.

⁵⁷ The *Quaestiones de iuris subtilitatibus* were ascribed by their editor, H. Fitting (see above, n.35), to Irnerius, and more recently, for indeed very good reasons, to Placentinus; see Hermann Kantorowicz, *Glossators*, 181-205, and also his study, "The Poetical Sermon of a Mediaeval Jurist: Placentinus and his 'Sermo de Legibus,'" *Warburg Journal*, II (1938-39), 22ff; the *Sermo* betrays a poetical spirit similar to that of the prologue of the *Quaestiones* and quite alien to Irnerius. Absolute certainty as to the authorship cannot, of course, be established at present.

Very different from that emotional author's proximity to the altar were the new ideas about both the royal *sacrificium iustitiae* and the ancient ideal of the *rex et sacerdos*. The Prince did not cease to be "king and priest," but he regained his former priestly character—shattered, or at least reduced, after the Investiture Struggle—through the high pretensions of Roman legal philosophy which compared the jurists with priests. The ancient solemnity of liturgical language mingled strangely with the new solemnity of the Civilians and their idiom when King Roger II of Sicily, in the Prologue of his Assizes (1140), called his collection of laws an offering of mercy and justice and an oblation to God, and then added:

In qua oblatione—By this oblation the royal office presumes for itself a certain privilege of priesthood; wherefore some wise man and jurist called the law interpreters "Priests of the Law."⁸⁹

A few words in this Prologue are reminiscent of the Canon of the Mass.⁹⁰ But the chief source of the Prologue was Justinian who

sacrificium, quod sacerdos offerebat iuxta ritum visibilem sacramenti." The author may have drawn from the *Liber responsalis*, attributed to Gregory the Great, and the *Antiphonae de suceptione regum* (PL, LXXVIII, 828B); cf. Williams, *Norman Anonymous*, 168, n. 566. In that responsory the *rex et sacerdos* ideal is stressed quite powerfully: "R. Elegit te Dominus sacerdotem sibi, ad sacrificandum ei hostiam laudis. V. Tunc acceptabis sacrificium iustitiae, oblationes et holocausta. *Ad sacrificandum (ei hostiam laudis). V. Immola Deo sacrificium laudis et redde Altissimo vota tua." The plural *regum* in the rubric of this *susceptaculum* suggests a considerable age, since it stands probably for the plurality of the Eastern emperors; see, for this plural in the political prayers, G. B. Ladner, "The Portraits of Emperors in Southern Italian *Exultet* Rolls and the Liturgical Commemoration of the Emperor," *Speculum*, xvii (1942), 189ff.

⁸⁹ F. Brandileone, *Il diritto Romano nelle leggi Normanne e Sveve del regno di Sicilia* (Turin, 1884), 94: "In qua oblatione regni officium quoddam sibi sacerdotil vendicat privilegium: unde quidam sapiens legisque peritus iuris interpretis iuris sacerdotes appellat." See also Hans Niese, *Die Gesetzgebung der normannischen Dynastie im Regnum Siciliae* (Halle, 1910), 46, who rightly stresses the phrase *regni officium*, that is, the office character of kingship. See also Gierke, *Gen. R.*, III, 563, n. 129; Maitland, *Political Theories*, 34 and 141f.

⁹⁰ Compare the first words of King Roger's Prooemium—*Dignum et necessarium est*—with the Preface of the Mass: *Vere dignum et iustum est*, and the relative junction *In qua oblatione* with *Quam oblationem* before the Consecration. Neither the similarities nor the slight variations are incidental; one wanted the assonance with the Mass, but refrained from profanation. These scruples were less prominent under Frederick II; see, e.g., the letter about the victory over the Lombards (Vinea, *Epp.*, II, 1): "*Exultet iam Romani Imperii culmen, et pro tanti victoria principis mundus gaudeat universus*"; also Vinea, *Epp.*, II, 45: "*Exultet iam universa turba fidelium . . . et pro tanta victoria principis precipue gaudeatis*"; and compare the *Praeconium paschale*: "*Exultet iam Angelica turba caelorum . . . et pro tanti Regis*

Distinctions, antitheses, parallelisms, and adaptations such as these, repeated over and over again, were contributive in creating the new holiness of the secular state and its "mysteries,"¹⁰⁶ and therefore have an importance far beyond the mere effort of hallowing the legal profession, of placing legal science on equal footing with theology, or of comparing legal procedure with the rites of the Church. The professional pride of the jurists certainly played an important role. Already Accursius answered the self-posed question whether it be necessary "that everyone who wants to become a jurisprudent or legal expert is bound to study theology," with a straight "No; because all that is found in the body of Law."¹⁰⁷ Baldus, when raising the question whether the Doctors of Law should be included among the higher dignities, answered: "Why not, since they discharge the office of priesthood";¹⁰⁸ and, being himself a professor of Law at Bologna, very neatly said: "Professors of Law are called priests."¹⁰⁹ Professors of Law, of course, wanted to be called "Counts" as well, for the juristic *quid pro quo* method of so-called "equiparations" led to practical success in the field of social stratification: by the end of the thirteenth century the jurists really acquired the quasi-knighthood which they claimed as their due on the basis of some wrongly interpreted passages of Jus-

dicitur etiam, immo creditur, esse deus in omnibus pro hominibus (C.2,58[59].2,8)." Cf. C.2,58(59).1,1 for the Holy Scripture handled by the judge.

¹⁰⁶ See, for the problem in general, my study "Mysteries of State," *Harvard Theological Review*, XLVIII (1955), esp.72ff. x

¹⁰⁷ *Glos.ord.* on D.1,1,10, v. *Notitia*: "Sed numquid secundum hoc oportet quod quicumque vult iurisprudens vel iurisconsultus esse, debeat theologiam legere? Respondeo, non; nam omnia in corpore iuris inveniuntur."

¹⁰⁸ Baldus, on c.15 X 1,3,n.9, *In Decretales*, fol.37v: "Sed numquid includantur legum Doctores [inter maiores et digniores]? Dic quia non, quia funguntur sacerdotio."

¹⁰⁹ Baldus, on D.1,1,1,n.5, fol.7: "Item nota quod legum professores dicuntur sacerdotes." Even the priestly rank of doctors may be defended; *ibid.*, n.17, fol.7v: "Quarto opponitur et videtur quod Doctores non sint sacerdotes quia non habent ordines sacros. Solutio: sacerdotium aliud spirituale, et sic loquitur contra; aliud temporale, et sic loquitur hic." Besides, adds Baldus, the *doctoratus* is *publici iuris* and is a *dignitas auctoritate publica*, and "in signum huius datur infula tanquam Principi seu praeceptorum legum," so that the doctor may have a "priestly" rank similar to that of the professor of Law. See also Paulus Castrensis, on D.1,1,1,n.3 (Venice, 1582), fol.2: "propter quod iuris professores dici possunt sacerdotes, quia administrant leges sacratissimas . . . ; quia professores iuris colunt iustitiam." These and similar considerations finally prompted Thomas Diplovatius to write his compendium on the great jurists and their right of precedence at ceremonies; see Diplovatius, *De claris iuris consultis*, ed. H. Kantorowicz and F. Schulz (Berlin and Leipzig, 1919), 145,cf.28ff. See next note.

tinian's *Code*. Henceforth, the promotion of a doctor and the dubbing of a knight were paralleled because they conferred the same grade of social dignity. A new nobility ranked now together with the *militia coelestis* of the clergy and the *militia armata* of the gentry, the so-called *militia legum* or *militia litterata*, which Baldus occasionally called a *militia doctoralis*, a "doctoral knight-hood."¹¹⁰ Needless to say, nothing comparable was achieved with regard to the fiction of the sacerdotal character of the jurists. The jurists never even attempted to materialize their claim to "legal priesthood" in the way they materialized their claim to "legal knighthood." The whole talk about their priesthood reflected the long drawn battle between theology and jurisprudence, ending in the *de facto* victory of the laical spirit. Only in one respect did that talk about legal priesthood come close to the real problem of clerical status: with regard to the ruler.

What held good for the judges held good for the Prince who, after all, headed the legal hierarchy. In the *Digest*, it is true, only the jurispudent is called a *sacerdos*; but the transfer of this quasi-sacerdotal character from "judge" to "king" was no problem; already King Roger II had utilized the words of Ulpian when he presumed for the royal office "a certain privilege of priesthood."¹¹¹ Strangely enough, this legal priesthood of the king eventually served even to prove the clerical status of the ruler *within* the Church and thus to bolster the common assertion that the king was, ecclesiologically, *non omnino laicus* or, as Pierre d'Ailly once put it, *une personne moyenne entre spirituelle et temporelle*, referring thereby to the anointings of kings.¹¹² On the other hand,

¹¹⁰ The material has been summed up by Fitting, *Das Castrense peculium in seiner geschichtlichen Entwicklung und heutigen gemeinrechtlichen Geltung* (Halle, 1871), who mentions (p.543,n.1) that already Placentinus styled the jurists *milites inermi militia, id est, literatoria militantes*; see for *militia doctoralis*, Baldus, on C.7.38,1,n.1, fol.28, who holds that in this *militia* Hebrews and non-Christians could not militate. Placentinus' contemporary Ralph Niger, a friend of John of Salisbury, stresses that the lawyers were called *domini* and scorned the titles of doctor or master, a complaint sided by Stephen Langton's remark: "Sacerdotes etiam magis volunt vocari *domini* quam sacerdotes vel capellani." See H. Kantorowicz, "An English Theologian's View of Roman Law: Pepo, Irnerius, Ralph Niger," *Mediaeval and Renaissance Studies*, 1(1943), 247 (n.2), and 250,32f.

¹¹¹ Andreas of Isernia, on *Feud.* II,56 ("Quae sunt regalia"), n.64, fol.301: "Principes est iudex iudicum . . ." See above, n.89, for Roger II.

¹¹² Dom Jean Leclercq, "L'idée de la royauté du Christ pendant le grand schisme," *Archives d'histoire doctrinale et littéraire*, XXIV (1949), 259f.

imperial office of *pontifex maximus* when discussing the dedication of temples and other *res sacrae* at the hands of *pontifices*.¹¹⁷

Guillaume Budé, one of the founders of the humanistic historical school of jurisprudence in the sixteenth century, was perfectly correct when he ridiculed the error of Accursius and the glossators in general who were inclined to confuse the *sacerdotes* and *pontifices* of ancient Rome with the presbyters and bishops of their own time.¹¹⁸ However, it was by means of these objectively false equivocations of which the works of the mediaeval jurists abound, that completely new insights were gleaned and conclusions were drawn which in many respects were to shape our own age and remain highly influential even today. The mediaeval jurists, as natural, were struck by the grave solemnity of the ancient Roman Law which, of course, was inseparable from religion and things sacred in general. They now were eager to apply also the Roman religious ethos of Justinian's collections to the conditions of their own world of thought. Hence, it was through the agency of the jurists that some of the former attributes and cherished similes of kingship—the divinely inspired king, the offering king, the priestly king—were carried over from the age of liturgical and Christ-centered kingship and were adapted to the new ideal of rulership centered on scientific jurisprudence. It is true, of course, that the former liturgical values of kingship did not cease to exist and that, with varying degrees of intensity, they lingered on also in their original setting—though their substance grew paler as both the legal and the religious importance of royal consecrations decreased. But it may be said nevertheless that the jurists salvaged much of the mediaeval inheritance by transferring certain peculiarly ecclesiastical properties of kingship to the legal stage setting, thereby preparing the new halo of the rising national states and, for good or evil, of the absolute monarchies.

In one case, however, the mediaeval theory of kingship was actually brought into bolder relief by the introduction of a secular

¹¹⁷ The places were *Inst.* 2,1,8; *D.* 1,8,9; occasionally also *D.* 1,1,1 (see above, nos. 114-115). They were quoted also by the canonists; see also Baldus, on *Rex pacificus*, n.5, *In Decretales*, p.5 (Prooemium of the Decretals of Gregory IX).

¹¹⁸ Budé, *Annotationes*, p.30: "Similis est ignorantia Accursii vel saeculi potius Accursiani, quae hac aetate ridicula est . . . Ubi pontificum Ulpianus meminit, de collegio pontificum loquens, a quo ius pontificium apud antiquos dictum, quod Accursius ad nostros pontifices retulit."

animata, practically unknown in the West during the earlier Middle Ages,¹²⁵ was revived through the revival of scientific jurisprudence and the literary style of Bologna. If we may trust Godfrey of Viterbo, the famous Four Doctors of Bologna addressed Barbarossa at the Diet of Roncaglia, in 1158, with the following words:

You, being the living Law, can give, loosen, and proclaim laws; dukes stand and fall, and kings rule while you are the judge; anything you wish, you carry on as the animate Law.¹²⁶

Whether these words were really spoken or not makes little difference here, because by the end of the twelfth century the doctrine of the Prince as *lex animata*, or *lex viva*, must have been common enough anyhow to be known to Godfrey of Viterbo, who died in 1191. Moreover, the English Canonist Alanus, writing between 1201 and 1210, transferred, even at that early date, the notion to the pope. Talking about the fact that a marriage may be forbidden sometimes by the judge, and sometimes by the law, Alanus asserts that the judge's decision stands, "unless you wish to say something about the prohibition on the part of the supreme pontiff, who is the living law or living canon."¹²⁷ To refer also to the pope as the *lex animata in terris* was not uncommon in the later thirteenth century and thereafter;¹²⁸ but it was a more natural thing to refer

¹²⁵ An allusion may perhaps be detected in Benzo of Alba, *Ad Heinricum*, vi, 7, MGH, SS., xi, 669, 1: *De coelo missus, non homo carnis* (cf. Nov. 105: *eum mittens hominibus*). But the similarity is very vague.

¹²⁶ MGH, SS., xxii, 316, line 388:

Tu *lex viva* potes dare, solvere, condere, leges,
Stantque caduntque duces, regnant te iudice reges;
Rem, quocumque velis, *lex animata* geris.

Cf. Steinwenter, "Nomos," 255.

¹²⁷ ". . . nisi quid speciale dicere volueris circa prohibitionem summi pontificis, qui est *lex vel canon vivus*." Cf. Franz Gillmann, "Magister Albertus, Glossator der Compilatio II," *AKKR*, cv (1925), 153, a passage to which Mochi Onory, *Fonti*, 76, called attention.

¹²⁸ Cf. Joannes Andreae, on c. 11 VI 1, 14, v. *Iuris*: "[arbitri electi] ad ipsum ius a quo potestatem habent, oportet appellari: et sic ad Papam qui est *lex animata in terris*." See Steinwenter, "Nomos," 251, for this and later examples to which there might be added Oldradus, *Consilia*, 328, n. 6 (Venice, 1571), fol. 164, who simply refers to Nov. 105. See also F. Gillmann, "Dominus Deus noster papa?," *AKKR*, xcvi (1915), 270, n. 3. It may be mentioned in this connection that the papal political theory in general was constructed in analogy to the imperial theories. The pope, though the lord of the *ius fori*, was bound as a minister to the *ius poli* (cf. Rudolph Sohm, *Das althatholische Kirchenrecht und das Dekret Gratians* [Munich and Leipzig, 1918], 611 ff); of him, too, it was expected that he submit voluntarily to the Law; see, for example, Hostiensis, *Summa aurea*, on X 1, 30 (*De officio legati*), n. 3 (Venice, 1586), 324, who quotes for that purpose the *lex digna* together with the maxim *princeps*

And, of course, Frederick II himself resorted to that definition of his legislating power. In 1230, the "Lord Emperor" was styled in a South-Italian document the *lex animata*.¹⁸² Two years later, the emperor referred to his own person when declaring a decision void because it was directed against "the majesty which is the animate Law on earth and from which the civil laws originate."¹⁸³ With the last phrase, the diction comes close to the legal maxim saying that the emperor has all laws in *scrinio pectoris*, "in the shrine of his breast," a maxim likewise deriving from Roman Law and belonging to the same general compound of ideas.¹⁸⁴ Hence, a Bolognese teacher of the *dictamen*, the famous Magister Boncompagno, deemed it correct to address (ca. 1235) the emperor as "Most serene Emperor of the Romans, who keepest all the natural and civil laws in the innermost of thy breast."¹⁸⁵ The tenet of the *lex animata*, however, penetrated the most unexpected areas. Johannes de Deo, writing his *Liber poenitentiarius* about 1245, declared that the emperor may confess to any confessor he chooses, "for the Prince is not subject to laws: He himself is the animate Law on earth."¹⁸⁶ It was probably due to the fact that Frederick II's son, King Henry (VII), acted in Germany as his father's deputy when, in 1231, he stressed "the plenitude of royal power by which we as

"NΟΜΟΣ ΒΑΣΙΛΕΥΣ," *Philologus*, LXXXIII (1928), 225-258; see also below, n.148, for a fusion of the two theories in the writings of Aegidius Romanus. That the Chrysippus fragment (ὁ νόμος πάντων ἐστὶ βασιλεὺς θεῶν τε καὶ ἀνθρωπίνων πραγμάτων . . .) exercised relatively little influence on mediaeval political theory may have been caused by the translation; for whereas Marinus de Caramanico translated the decisive phrase correctly (*lex est rex*), the official version says *lex est regina*, an allegorizing metaphor no longer suggesting a realistic identification of the Law with the Prince. Baldus, it is true, refers to it (on *D.1.3.2.n.2*, fol.177) in the literal sense: "Nota quod lex est Princeps, Dux et regula," but then he returns immediately to the more familiar formulation of *Nov.105.2.4*, and says: "Rex est lex animata: et . . . subditi possunt tunc dicere: Ego dormio et cor meum, id est, Rex meus, vigilat (*Cant.5.2*)," which neatly illustrates the ruler's omnipresence (see below, n.167). For the *vigilans iustitia*, see below, n.146; I shall discuss the new ideal of the *rex exsomnia* in another connection.

¹⁸² Wolfram von den Steinen, *Das Kaisertum Friedrichs des Zweiten* (Berlin and Leipzig, 1922), 63, quotes the relevant places; see also Steinwenter, "Nomos," 255, n.28.

¹⁸³ Böhmer, *Acta imperii*, 1,264.No.299: "(maiestas nostra) que est *lex animata in terris* et a qua iura civilia oriuntur." Cf. *MGH, Const.*, II,184.n.1; *Erg.Bd.*, 86f.

¹⁸⁴ See above, Ch.II.n.15.

¹⁸⁵ *Erg.Bd.*, 85.

¹⁸⁶ See Gaines Post, "Blessed Lady Spain," *Speculum*, XXIX (1954), 200, n.10; perhaps the passage quoted by Post, "Two Notes on Nationalism in the Middle Ages," *Traditio*, IX (1953), 299.n.11, belongs to the same compound of ideas.

the living and animate Law on earth are above the laws."¹³⁷ For it seems to belong to a slightly later period that, in the course of the customary development, the national king, too, was styled, and himself claimed to be, *in terra sua lex animata*; and this designation played a considerable role in the later political theory of royal absolutism.¹³⁸ Nor will it be surprising to find the *lex animata* theory applied to the *universitas*, the legislating community.¹³⁹

That in all these cases Justinian's *Novel* was the common source of Civilians and Canonists is obvious. In the latter half of the thirteenth century, however, one of the ultimate sources of Justinian himself became no less important: Aristotle. In the *Nicomachean Ethics*, Aristotle called the perfect judge a *δικαιον ἔμψυχον* (*iustum animatum*), which in English usually is rendered by "animate justice." The judge, in this capacity of animate justice, is the intermediate between the litigant parties who seek nothing but justice itself. Hence, concludes Aristotle, "justice is something intermediate, and so is the judge," who is the living justice.¹⁴⁰

What matters here is not so much Aristotle himself as his interpreters in the thirteenth century. In his commentary on the *Nicomachean Ethics*, Aquinas, of course, recognized that the judge was *quoddam iustum animatum*; but to the definition of the judges as "intermediates" (*medios*) he added: *vel mediatores*, "or mediators," which is not quite the same thing.¹⁴¹ In the *Summa*

¹³⁷ Cf. *MGH, Const.*, II, 184, n. 1; Huillard-Bréholles, III, 469.

¹³⁸ See Church, *Const. Thought*, 58, 70, 193, and *passim* (see Index, s.v. "King"); also Esmein, "Princeps legibus solutus," 206, n. 1. Cf. Matthaes de Afflictis, on *Lib. aug.*, 1, 6, n. 32, fol. 52v: "et rex in regno dicitur lex animata." See, for an early example (Charles II of Naples, 1295), Romualdo Trifone, *La legislazione angioina* (Naples, 1921), 119, No. LXII.

¹³⁹ Lucas de Penna, on C. 11, 69, 1, n. 4 (Lyon, 1582), 613: "nam si potest hoc [sc. aedificare in publico permittere] lex municipalis, fortius ipsa universitas quae legem municipalem constituit . . . quia potentior est lex viva quam mortua sicut excessive animatum potentius est [in]animato." Lucas thereby implies that the *universitas* is a living being or animate "person," a concept which presupposes the *persona ficta* theory. For his distinction between *lex viva* and *lex mortua* he refers to his own commentary on C. 11, 41, n. 20; see below, n. 150.

¹⁴⁰ *Eth. Nicom.*, v, 1132a, 20ff: τὸ δ' ἐπὶ τὸν δικαστὴν λέγειν, λέγει ἐστὶν ἐπὶ τὸ δικαιον· ὁ γὰρ δικαστὴς βούλεται εἶναι ὅσον δικαίον ἔμψυχον. Cf. Delatte, *Traité*, 246; Goodenough, "Hellenistic Kingship," 63; Steinwenter, "Nomos," 260. Justice herself, of course, is an intermediate like all virtues, though of a different and most august kind, because she does not hold the balance between two extremes each of which is a vice (e.g., Fortitude as the mean between Cowardice and Rashness); see *Eth. Nicom.*, v, 1129a, 1ff; 1133b, 30ff.

¹⁴¹ Aquinas, *In Ethicorum Aristotelis ad Nicomachum Expositio*, §955, ed. R. M.

theologica, Aquinas brings the king into this image and says that "the judge is animate Justice, and the king the guardian of what is just."¹⁴² In the later section of the commentary on the *Politics*, written by Aquinas' continuator, Peter of Auvergne, the judge has dropped out completely and there remained the king whose office it was "to be the guardian of *Iustitia* . . . and therefore, to resort to the king is to resort to the *iustum animatum*."¹⁴³ The transition from judge to king worked as smoothly here as in the case of Ulpian's *sacerdotes Iustitiae*. It is pardonable that Aristotle's simile of *iustum animatum*, referring to the judge or Prince as an intermediate between subjects, was taken to be a mere variant of Justinian's well-known definition of the Prince as the *lex animata*, referring to the Prince as a mediator between heaven and earth. At any rate, the Prince was soon identified with the "living Justice." John of Paris, around 1300, refers quite bluntly to the Prince as *Iustitia animata* and guardian of what is just.¹⁴⁴ And the confusion of Aristotle with Justinian is finally borne out by Baldus who styled the king the *iustum animatum* and referred, not to Aristotle, but to Justinian's *Novel*.¹⁴⁵ However that may be, the Prince appeared not only as the living Law but also as the living Justice. Already Albertus Magnus demanded that the king be neither torpid nor sleepy, but be the "living and vigilant Justice," adding that the king was above the Law because he was the "living form of the Law."¹⁴⁶ And Dante, thoughtfully, lets Justinian him-

Spiazzi (Turin and Rome, 1949), 261f: ". . . nam iudex debet esse quasi quoddam iustum animatum, ut scilicet mens eius totaliter a iustitia possideatur. Illi autem qui refugiunt ad iudicem, videntur quaerere medium inter partes quae litigant; et inde est quod iudices vocant medios vel mediatores." See, however, Arist., *Nic. Eth.*, 1132a, 22-23: καὶ ζητοῦσι δικαστὴν μέσον, καὶ καλοῦσιν ἄνθρωποι μεσσίους.

¹⁴² Aquinas, *Summa theol.*, II-IIae, q. LVIII, a. 1, ad 5: "iudex est iustum animatum et princeps est custos iusti." For the king as "guardian," see next note.

¹⁴³ Aquinas, *In Politicorum Aristotelis Expositio*, §849, ed. Spiazzi (Turin and Rome, 1951), 284: "Et dicit [Aristoteles] quod officium regis est esse custodem iustitiae. Et vult custos esse iusti. Et ideo recurrere ad regem est recurrere ad iustum animatum." See Arist., *Pol.*, v, 1311a, 1, who does not use the term "guardian of justice," but simply says: βούλεται δὲ ὁ βασιλεὺς εἶναι φύλαξ ("Vult enim rex esse custos"; §706, ed. Spiazzi, p. 282), although the meaning is that of *custos iusti*.

¹⁴⁴ John of Paris, *De potestate*, c. xvii, ed. Leclercq, 225, 6: ". . . ad principem pertinet qui est iustitia animata et custos iusti." For the two aspects of the king as intermediate between subjects and as intermediate between God and men, see Valdenberg, in *Byzantion*, I, 572f.

¹⁴⁵ See Baldus, on c. 33 X 2, 24, n. 1, *In Decretales*, fol. 261: "Item debet esse iustum animatum, ut in Auth. de consulibus (= *Nov. 105, 24*)."

¹⁴⁶ Albertus Magnus, *In Matthaum*, vi, 10, ed. A. Borgnet (Paris, 1893), xx, 266f:

self use the expression *viva Giustizia* to designate the Godhead which inspired him.¹⁴⁷

It may be claimed that the theory about the ruler as the living Law or living Justice was brought to some conclusion by Aquinas' pupil and follower Aegidius Romanus who dedicated, between 1277 and 1279, his political tractate *De regimine principum* to the son of the King of France, later King Philip IV. Since this "Mirror of Princes" was one of the most-read and most-quoted works on a political topic during the later Middle Ages, the main problems were, so to speak, settled by its author for many centuries to come. Aegidius Romanus, having digested Aristotle very thoroughly, likewise styled the Prince "Guardian of Justice" and defined him as the "organ and instrument of the just Law." Moreover, referring directly to the *Nicomachean Ethics*, he quoted the passage concerning the judge who represented a *iustum animatum*, though not without adding: *et multum magis ipse rex*, "and much more so the king himself." For, so Aegidius explained,

the king or prince is a kind of Law, and the Law is a kind of king or prince. For the Law is a kind of inanimate prince; the prince, however, a kind of animate Law. And in so far as the animate exceeds the inanimate the king or prince must exceed the Law.¹⁴⁸

In this description of the interrelations between Law and Prince we find an antithesis of *animate* king and *inanimate* Law which, in the last analysis, goes back to Plato's *Politicus*; and also the

"Haec autem potestas animata debet esse iustitia, quia rex non tantum debet esse iustus . . . , non torpens vel dormiens, sed *viva* et *vigilans iustitia* . . . Et licet rex supra legem sit, tamen non est contrarius legi: et est supra legem, eo quod ipse est *viva forma legis*, potius formans et regulans legem quam formatus et regulatus a lege . . ." See, for the *rex exsomnis* or *vigilans*, above, n.131, and below, n.167.

¹⁴⁷ Dante, *Parad.*, vi,88: "Chè la viva Giustizia che mi spira." By letting Justinian quote the decisive words in the right place, Dante, as none but he could, interlaces Empire, Church, Roman Law, Aristotle, the emperor as a divinely inspired antitype of God, and many other related matters and ideas.

¹⁴⁸ "Si lex est regula agendorum: ut haberi potest ex 5 *Ethic.*, ipse iudex, et multum magis ipse rex cuius est leges ferre, debet esse quedam regula in agendis. Est enim rex sive princeps quaedam lex; et lex est quaedam rex sive princeps. Nam lex est quidam inanimatus princeps. Princeps vero est quaedam animata lex. Quanta ergo animatum inanimatum superat, tantum rex sive princeps debet superare legem . . . Rex quia est quaedam animata lex, est quaedam animata regula agendorum . . ." See, on Aegidius, Carlyle, *Political Theory*, v,70ff, esp.75f, where the texts are cited in full; Steinwenter, "Nomos," 253f; Berges, *Fürstenspiegel*, 211ff, esp.218f, who gives a succinct analysis of the tractate; cf.320ff, for the literature and for the incredible number of mediaeval translations into at least ten different languages.

superiority of the living king over the rigidity of the lifeless Law has its predecessors.¹⁴⁹ The definitions of Aegidius were repeated over and over again,¹⁵⁰ and his additional conclusion holding that "it is better to be ruled by a king than by the Law," was finally boiled down by the jurists to the maxim *Melius est bonus rex quam bona lex*—a total reversal of what Aristotle had said and meant to say.¹⁵¹ Furthermore, these reflections on the King-Law mediator led Aegidius to summarize also the numerous discussions about the ruler's position with regard to Natural and Positive Laws. He could arrive practically at one conclusion only: "The Positive Law is under the ruler just as Natural Law is above him." Or, as he remarks in that connection: "The ruler is the intermediate between Natural Law and Positive Law."¹⁵² The tenets of mediatorship and duality of Laws thus were fused.

A Prince who was the intermediate between the two Laws, who was the *lex animata* sent by God down to men, and who was both *legibus solutus* and *legibus alligatus*, was for obvious reasons a not uncommon concept in that period. For every legal philosophy of the Middle Ages was inevitably founded on the assumption that there existed a, so to speak, meta-legal Law of Nature the existence of which did not depend on the existence of kingdoms and states—in fact, of any kingdom or state at all—because the Law of Nature existed self-sufficiently *per se* and apart from any Positive Law.

¹⁴⁹ Plato, *Politicus*, 294-296; Steinwenter, "Nomos," 262ff.

¹⁵⁰ See, for Engelbert of Admont, Steinwenter, "Nomos," 253; also George B. Fowler, *Intellectual Interest of Engelbert of Admont* (New York, 1947), 170f. Cf. Lucas de Penna, on C.11.41.n.20 (Lyon, 1582), 453, "Et sicut animatum excessive potentius est inanimato, sic princeps excessive potentior est ipsa lege, dicit [frater Aegidius] ibidem lib.1, parte 2. Et periculosius est contemnere legem vivam, maiusque crimen, quam legem mortuam."

¹⁵¹ Carlyle, *Political Theory*, v,75.n.2: ". . . quod melius est regi rege quam lege." Cf. Baldus, on D.1.1.5.n.5, fol.10v; also Matthaeus de Afflictis, on *Libaug.*, 1,30.n.8, fol.147v. Aquinas, *Summa theol.*, 1-11ae, q.xcv, art.1, ad 2, who follows Aristotle, is more sceptical, at least with regard to the judge: he thinks it better to have everything ordered by the laws "quia *iustitia animata iudicis* non invenitur in multis."

¹⁵² Carlyle, *loc.cit.*: "Sciendum est regem et quemlibet principantem esse medium inter legem naturalem et positivam . . . Quare positiva lex est infra principantem sicut lex naturalis est supra . . ." Cf. Gierke, *Gen.R.*, III,614.n.264. Since Aegidius referred, in the preceding sentence, to 5 *Ethicorum*, it is certainly the Aristotelean image of the "judge as an intermediate" which prompted him to interpret the ruler likewise as an "intermediate." Aquinas (see next note) interpreted the ruler's position in a similar fashion, and in his commentary on Aristotle's *Politics* (§15, ed. Spiazzi, p.7) he explains that the political power "quasi secundum partem principetur . . . , et secundum partem sit subiectus."

About this fundamentally dualistic aspect of the Law there was no serious disagreement between jurists and theologians. It was actually Thomas Aquinas who made at least one essential point perfectly clear when he declared that indeed the Prince was *legibus solutus* with regard to the coercive power (*vis coactiva*) of Positive Law, since the Positive Law received its power from the Prince anyhow; on the other hand, however, Aquinas held (in full agreement with the *lex digna* which for this purpose he quoted) that the Prince was bound to the directive power (*vis directiva*) of the Law of Nature, to which he should submit voluntarily.¹⁵³ This cleverly phrased definition, which apparently offered an acceptable solution of a difficult problem (acceptable to both adversaries and defenders of the later royal absolutism and still quoted by Bossuet),¹⁵⁴ conformed essentially not only with John of Salisbury, but also with Frederick II when he stated that the emperor, though above the Law, was yet bound to the directive power of Reason.

It will be rather obvious by now to what extent the duality of Laws, natural and human, was interlocked with the idea of an intermediate in matters of Law and with the dualities inherent in Justice herself as well as in the Prince. And it is at this point that, philosophically, also Frederick's self-definition as "father and son of Justice" becomes meaningful, since his claim to mediatorship in

¹⁵³ Aquinas, *Summa theol.*, I-II, q. xcvi, a. 5, ad 3; see the discussion of that passage by Carlyle, *Political Theory*, v, 475f.; also Jean-Marie Aubert, *Le droit romain dans l'oeuvre de Saint Thomas* (Bibliothèque thomiste, xxx [Paris, 1955]), 83f.

¹⁵⁴ *De iure magistratum* (quoted by Esmein, "Princeps legibus solutus," 209, n. 1): the Prince is "solutus nonnisi de legibus civilibus . . . , non autem de iure publico et ad statum (!), ut dici solet, pertinente, multoque minus de iure naturali et divino." The references to Aquinas' distinctions are innumerable; they do not begin with Andreas of Isernia, on *Feud.* II, 51 ("De capit. qui"), n. 29, fol. 231 ("nam quantum ad vim directivam legis, Princeps est subditus legi, sicut quilibet . . ."), nor do they probably end with Bossuet, *Politique tirée des propres paroles de l'écriture sainte*, IV, proposition 4 (ed. H. Brémont, *Bossuet: Textes choisis et commentés*, Paris, 1913, II, 115), who, after having quoted the *lex digna* ("cette belle loi d'un empereur romain"), said: "Les rois sont donc soumis comme les autres à l'équité des lois . . . ; mais ils ne sont pas soumis aux peines des lois: ou, comme parle la théologie [sc. Aquinas], ils sont soumis aux lois, non quant à la puissance coactive, mais quant à la puissance directive." See also the distinction made by Albericus de Rosate, on *D. 1.3, 31, n. 10*, fol. 31: the Prince being the *lex animata* is placed not really under the Law, but in the Law (above, n. 129); then, quoting Ps. 1:2 ("In lege Domini voluntas eius"), he explains: "dicit aliud est esse in lege, aliud sub lege. Qui enim in lege est, secundum legem agit voluntarie obediendo legi; qui autem sub lege est, secundum legem agit necessitate timore coactus." He finally refers to the *lex digna*. See also above, nos. 25 (John of Salisbury), 52ff, and, for the later theory, Church, *Constitutional Thought*, 197, 232, passim.

and so numerous that the transition was often imperceptible;¹⁶⁵ and that the formerly valid features contributed to shape the image, messianic or apocalyptic, of the Prince also during the "jurists' century."

What matters here is the obvious secularization of royal mediatorship through the new jurisprudence, a development comparable to the secularization of the *rex et sacerdos* ideal and of many another notion. It is true, Frederick II's formula defining the Caesar as both *pater et filius Iustitiae* still had in its phrasing a quasi "physiological" content which would seem to link the emperor to the interpretations of earlier times, to the ruler as a *gemina persona*. Undeniably there evolved some superficial conformities between the Christ-centered and the Law-centered concepts of rulership. But those similarities, if such they be, should not deceive us. The essence of every liturgical kingship, Grace, had no share in the metaphysical superworld which the jurists constructed and into which they placed the Prince as the "living Justice." To the Norman Anonymous, the anointed king appeared as a "twinned person" because *per gratiam* this king reflected the two natures of the God-man, "Man by nature and, through his consecration, god by grace." That is to say, the king's ambivalent appearance was founded theologically on the tension between "human nature and divine Grace." And it was Grace which bestowed upon the individual man that super-body of which the anointed king appeared as the living image.

In the Law-centered era, however, and in the language of the jurists, the Prince no longer was "god by grace" or the living image of Grace; he was the living image of Justice, and *ex officio* he was the personification of an Idea which likewise was both

¹⁶⁵ See above, n.22. See also c.84,C.XI,q.3, ed. Friedberg, 1,666 ("Christus sapientia est, iustitia . . ."), a passage to which, e.g., Lucas de Penna, on C.12,45,1,n.61 (ed. 1582), p.915, refers when explaining that the selling of justice is simony: "gravius crimen est vendere iustitiam quam praebendam. Legimus enim Christum esse iustitiam . . . Non legitur autem esse praebendam . . . Vendere iustitiam quae Christus est, gravissimum est censendum" (see, for the underlying problem, Gaines Post, "The Legal Theory of Knowledge as a Gift of God," *Traditio*, XI [1955], 197-210); see also on C.10,70,4,n.8, p.345, and *ibid.*, n.4: "Iustitia quidem (sicut verissime Trimegistus diffinit) nihil aliud est quam Dei motus." Further, *ibid.*, n.5, where he refers to Pseudo-Chrysostomus' *Opus imperfectum super Matthaeum*: "qui omne iustitia facit et cogitat mente sua, Deum videt, quoniam iustitia figura Dei est. Deus enim iustitia est . . ." And he alludes to Prov. 11: 4, when he says (n.7): "Qui vero iustitiam sectatur, non moritur."

divine and human. The new duality of the Prince was founded on a legal philosophy which indeed was interspersed with theological thought; it was founded on the goddess of the *religio iuris*. However, the field of tension no longer was determined by the polarity of "human nature and Divine Grace"; it had moved towards a juristically formulated polarity of "Law of Nature and laws of man," or to that of "Nature and man," and, a little later, to that of "Reason and society," where Grace no longer had a discernible place.

Baldus, in one of his ethically most high-toned legal opinions, talked about the Prince who surrendered himself to Justice, "that is, to the Substance of what is good and right; for the person who judges, may err, but Justice never errs." And yet (Baldus pointed out), "wanting a person, Reason and Justice act nothing"; they are incapacitated without the personator of their substance, wherefore, if controversy arises, "wanting an official dignitary Justice is buried."¹⁶⁶ Hence, the Prince in his capacity of a *Iustitia animata* had to make that goddess manifest, and as her constituent he could claim for himself with some inner logic a virtual omnipresence in his courts: through his officers he owned, as Frederick II repeatedly termed it, "potential ubiquity" even though in his individual body he could not be present everywhere.¹⁶⁷

¹⁶⁶ Baldus, *Consilia*, III, 218, fol. 64 (col. b, in fine): "Et certum est quod submittit se iustitiae, id est, substantiae boni et aequi [realitati iustitiae] in the preceding sentence]. Ius enim reddens quandoque errat, sed iustitia nunquam errat . . . Item certum est quod ratio et iustitia sine persona nihil agit . . . Unde sine magistratu iustitia in controversiam posita sepulta est." See below, Ch. VII, n. 420. The underlying idea is that Justice, being a "potentiality," has to be "actualized" by a person or dignity; cf. Petrus de Vineis, *Epp.*, III, 68, ed. Schard, 507: "quod in potentia gerimus [the emperor] per eos [judges and officials] velut ministros iustitiae [above, n. 162] deduceretur ad actum." We recognize, of course, the Aristotelian categories ("de potentia ad actum").

¹⁶⁷ *Lib. aug.*, I, 17, Cervone, 41: "Et sic nos etiam, qui prohibente individuitate personae ubique praesentialiter esse non possumus, ubique potentialiter adesse credamur." See also Vineis, *Ep.* II, 8, ed. Schard, 271; *MGH, Const.*, II, 306, 37f, No. 223; cf. *Erg. Bd.*, 94. Further Nicholas of Bari, ed. Kloos, *DA*, XI, 175, § 16, the encomium in praise of Frederick II: the author demands that every subject serve the emperor "quia omnia novit et falli non potest [see above, n. 166, for Baldus on *Iustitia*] . . . quia ubique eius potentia invenitur et ideo fuge aditus denegatur." Baldus, *Consilia*, I, 333, n. 1, fol. 105^v, uses very similar words to explain the nature of delegations ("Ipse [Imperator] personaliter ubique esse non possit . . ."). See also above, n. 131, for the ubiquity of the emperor because he is the *lex animata*: "I sleep, and my heart, that is, my king, watches." The image was not uncommon; see Philip of Leyden, *De cura reipublicae*, VI, 1, p. 36: ". . . princeps, qui ad quietem subditorum praeparandam noctes transire consuevit insomnes . . ." All those ideas (the Prince's ubiq-

his work; but *Justitia* is far from being the Virgo of the Golden Age, and even farther from being incarnate in King Henry III or, for that matter, in any English king. England in the thirteenth century was less messianically minded than Italy and the rest of the Continent, and the doctrine of the ruler as a *lex animata* descending at the command of God from high heaven down to men seems to have fallen on particularly barren ground in England before the age of Queen Elizabeth, the new *Astraea*.¹⁷⁶ To accept domination by an abstract idea has never been a weakness of England, though a useful fiction might more readily be accepted. Hence, also in Bracton's work the Idea of Justice is eclipsed by the concreteness of Law. The question was not whether the king was at once "father and son of Justice," but whether he was "above or under the Law."

Bracton, though quite unwilling to diminish the sublimity of the Crown or impair the royal prerogative by binding it without qualification to the Positive Law of which the king was the lord, nevertheless emphasized strongly what Frederick admitted only with some reservation: that the king was "under the Law." In other words, where Frederick deduced from the Roman law-books a confirmation of his personal prerogative rights while conceding to some degree his subjection to Natural Law and to Reason, Bracton deduced from the same passages that the king was under the Law of the land, but acknowledged at the same time the unique position of the king against whom Law could not legally be set in motion. Hence, Bracton's king, too, was in some respects above and beyond the Law. There is, not to mention many other points of divergency between Frederick and Bracton, a very tangible difference of emphasis concerning the Prince and the Law; but it is nevertheless a difference within the same general system of politico-legal thought in which the Law as such, incarnate in the ruler or not, appeared as the true sovereign.

One difficulty with Bracton and with so many another political theorist of that age is the equivocal usage of the word *lex*. It may

¹⁷⁶ This does not exclude philosophizing on Justice. Bracton has many passages about *pax et iustitia* in the mediaeval sense, that is, as the genuine *raison d'être* of the state; also political and parliamentary sermonizing on Justice will be found at any time (see, for an interesting example, Chrimes, *Const. Ideas*, 121f, 197); for the Elizabethan period, see Yates, "Queen Elizabeth as *Astraea*," *Warburg Journal*, x (1947), 27-82.

cover both the Divine or Natural Law and the Positive Law, written or unwritten. There certainly was a strong tendency in thirteenth-century England to subject the king, in the language of Aquinas, not only to the *vis directiva* of Natural Law, but also to the *vis coactiva* of Positive Law, and thus to establish that "tyranny of the Law" which, in the very days of Bracton, and so often thereafter, threatened to paralyze the orderly functioning of government. It is certainly going much too far to maintain that Bracton endeavored to bind the king to Positive Law without discrimination or restriction. This has been clearly recognized by Professor McIlwain who ingeniously extracted from Bracton's work the distinctions of *gubernaculum* and *iurisdictio*—the former being the sphere of Government within which the king was "absolute," and the latter the sphere of Right, over which the king had no power. And it is most gratifying to find that others also laid stress on the fact that even when *lex* seemed to encompass also the *leges humanae* the term would often refer to that part of the Positive Law only which "corresponds to the Divine Law and has been approved by the continuing consent of past generations."¹⁷⁷ Or, as Aegidius Romanus later formulated the problem most accurately:

When it is said that some Positive Law is above the Prince, such language does not refer to the Positive Law as such, but to the fact that in the Positive Law there has been preserved some strength of the Natural Law.¹⁷⁸

That is to say, the king was bound only to the Divine or Natural Law. However, he was bound to the Natural Law not merely in

¹⁷⁷ McIlwain always emphasizes that the Bractonian king was both above and below the Law; see *Growth of Political Thought*, 361ff, 367 (the king "absolute but limited"), and even stronger *Constitutionalism*, 75ff. His distinction between *gubernaculum* and *iurisdictio* is closely related to the problems outlined here and in the following pages. If I do not avail myself of these notions, the reason is that the notions of "Crown" and "King" do not really coincide with *gubernaculum* and *iurisdictio*. The "Crown," above Law and Time, is not identical with *gubernaculum* in regard to which the ruler is "absolute," nor is *iurisdictio* identical with the king body natural, nor could the identifications easily be reversed. It would render a complicated problem even more complicated if the notions *gubernaculum* and *iurisdictio* were integrated here, since the resulting chiasm would make things almost incomprehensible. For the other quotation, see Lapsley, *op.cit.* (above, n.172), p.8f.

¹⁷⁸ "Si dicitur legem aliquam positivam esse supra principantem, hoc non est ut positiva, sed ut in ea reservatur virtus iuris naturalis." Aegidius Romanus, *De regimine principum*, III,2,c.25 and c.29, quoted by Gierke, *Gen.R.*, III,612,n.259; Maitland, *Pol.Theories*, 175.

had in common was that they borrowed their touch of sempiternity not so much from the Church as from Justice and Public Law expounded by learned jurists—be it by name of *Iustitia* or *Fiscus*.

The ancient idea of liturgical kingship gradually dissolved, and it gave way to a new pattern of kingship centered on the sphere of Law which was not wanting its own mysticism. The new "halo" began to descend upon the nascent secular and national state, headed by a new *pater patriae*, when the state began to claim for its own administrative apparatus and public institutions a sempiternity or perpetuity which hitherto had been attributed only to the Church and, by Roman Law and the Civilians, to the Roman Empire: *Imperium semper est*.⁸¹¹ Clearly, the mediaeval dichotomy of *sacerdotium* and *regnum* was superseded by the new dichotomy of the King and the Law. In the Age of Jurisprudence the sovereign state achieved a hallowing of its essence independent of the Church, though parallel to it, and assumed the eternity of the Roman empire as the king became an "emperor within his own realm." But this hallowing of the *status regis et regni*, of state institutions and utilities, necessities and emergencies, would have remained incomplete had not that new state itself been equated with the Church also in its corporational aspects as a secular *corpus mysticum*.

⁸¹¹ See, e.g., *Nov.6,epil.*, in addition to many other places (see below, pp. 291ff).

2. *Corpus Reipublicae mysticum*

While the lofty idea of the Church as *corpus mysticum cuius caput Christus* was inflated with secular contents, corporational as well as legal, the secular state itself—starting, as it were, from the opposite end—strove for its own exaltation and quasi-religious glorification. The noble concept of the *corpus mysticum*, after having lost much of its transcendental meaning and having been politicized and, in many respects, secularized by the Church itself, easily fell prey to the world of thought of statesmen, jurists, and scholars who were developing new ideologies for the nascent territorial and secular states. Barbarossa, we recall, hallowed his empire by the glorifying title *sacrum imperium*—a perfectly legitimate para-ecclesiastical term which he borrowed from the vocabulary of Roman Law, and not from that of the Church. The efforts, however, to provide the state institutions with some religious aureole, as well as the adaptability and general usefulness of ecclesiastical thought and language, led the theorists of the secular state very soon to a more than superficial appropriation of the vocabularies not only of Roman Law, but also of Canon Law and Theology at large. The new territorial and quasi-national state, self-sufficient according to its claims and independent of the Church and the Papacy, quarried the wealth of ecclesiastical notions, which were so convenient to handle, and finally proceeded to assert itself by placing its own temporariness on a level with the sempiternity of the militant Church. In that process the idea of the *corpus mysticum*, as well as other corporational doctrines developed by the Church were to be of major importance.⁴⁰

An early example of setting the state as a "body" over against the Church as a "body" emerged from the pamphlet literature of the Struggle of Investiture, when an imperial writer advocated *unum corpus reipublicae* to supplement *unum corpus ecclesiae*.⁴¹ The antithesis reflects hardly more than the customary organological concept of both the state and the Church; nor does John of Salisbury's famous statement *res publica corpus quoddam* all by

⁴⁰ See Pollock and Maitland, *History*, 1,495, for some remarks on the influence which the *corpus mysticum* idea exercised on the growth of the law of corporations. Cf. Tierney, *Conciliar Theory*, 134ff.

⁴¹ *De unitate ecclesiae*, in *MGH,LdL*, II,228,16, quoted by Ladner, "Aspects," 413,n.36. See also Hugh of Fleury, *De regia potestate*, 1,3, *ibid.*, II,468,28ff: "rex in regni sui corpore."

itself imply a deviation from customary thought.⁴² It was, however, a very different matter and a different aspect of the state as an organism when, in the middle of the thirteenth century, Vincent of Beauvais, in order to designate the body politic of the state, used the term *corpus reipublicae mysticum*, "mystical body of the commonweal."⁴³ This was a clear case of borrowing from the wealth of ecclesiastical notions and of transferring to the secular commonweal some of the super-natural and transcendental values normally owned by the Church. An intention to raise the state beyond its purely physical existence, and to transcendentalize it, may be gathered perhaps from the *Mirror of Princes* of Vincent's contemporary, the Franciscan Gilbert of Tournai.⁴⁴ He visualized a perfect kingdom directed by the king as the vicar of Christ and guided by the ministers of the Church, and he, too, used in that connection the term *corpus mysticum*. But Gilbert of Tournai wanted his ideal kingdom to be a distinct entity *within* the traditional mystical body signifying the oneness of Christian society, whereas for Vincent of Beauvais the secular entity itself was a "mystical body."⁴⁵

⁴² *Policraticus*, v.c.2, ed. Webb, 1,282ff. The organic doctrines certainly did not begin with John of Salisbury; they were fully developed, without then being original, in the works of contemporary jurists. See, e.g., Fitting, *Jur.Schr.*, 148,20 (above, n.19), the gloss on *princeps*: "Quasi primum caput, iudices enim capita sunt aliorum hominum, qui ab eis reguntur, ut membra a suis capitibus; sed princeps est caput aliorum iudicum et ab eo reguntur." There follows an explicit comparison of the dignities (*illustres, spectabiles*, etc.) with eyes, hands, chest, feet, etc., and also a comparison of the ecclesiastical dignities with the limbs of the human body. The organological metaphor, of course, is found also in Roman Law; see, e.g., C.9,8,5 (*Cod.Theod.*, 9,14,3): "virorum illustrium qui consilii et consistorio nostro intersunt, senatorum etiam, nam ipsi pars corporis nostri sunt." This passage was quoted, time and time again (see below, Ch. vii, nos. 341f), and was applied also to the papacy; see, e.g., Johannes Andreae, *Novella*, on c.4 X 2,24 (Venice, 1612), fol.184: "cum ipsi [cardinales] cum papa constituent ecclesiam Romanam, et sint pars corporis papae, ar.C. ad l.Jul.ma.l.quisquis (C.9,8,5)." See, in general, Nestle, "Menenius Agrippa" (above, n.6).

⁴³ *Speculum doctrinale*, vii.c.8, quoted by Gierke, *Gen.R.*, III,548,n.75; cf. Maitland, *Political Theories*, 131. I admit that I was unable to find that place, but the expression, no doubt, became popular in Vincent's time and surroundings; see, e.g., Berges, *Fürstenspiegel*, 195, n.1, and 306, §15.

⁴⁴ Gilbert of Tournai, *Eruditio regum et principum*, II,c.2, ed. A. de Poorter (Philosophes Belges, IX, Louvain, 1914), 45; Berges, *Fürstenspiegel*, 156.

⁴⁵ For reasons of convenience, the concept of "the state *within* the Church" has been called the "Carolingian tradition" by Ladner, "Plenitudo potestatis," 50f, who very skilfully points out (p.73) that this tradition began to evaporate in the 13th century and that from the thought of Aquinas, for whom the *regna* were natural in origin and character, all traces of the Carolingian tradition seem to be absent.

in the earlier Middle Ages.¹²⁰ During the feudal age, when personal bonds between lord and vassal determined political life and prevailed over most other political ties, the ancient idea of *patria* had all but completely faded away or disintegrated. This does not imply that the word *patria* vanished entirely from the vocabulary of mediaeval Latin. Though hardly applicable to the actual conditions of life and badly fitting the political reality, the term will be found quite frequently in the works of mediaeval poets and scholars who drew their inspiration from Vergil and Horace and other classical authors.¹²¹

The word *patria* existed also in the daily language. In a narrow and purely local sense it referred to the native hamlet, village, township, or province, designating, like the French *pays* or the German *Heimat*, the home or birthplace of a man;¹²² and in that sense it was used, for example, in English legal language: *per patriam se defendere* was a means of defense by which the defendant submitted to the judgment of the community in which he lived.¹²³ *Literati*, to be sure, might continue to extol a man's death *pro patria*; but death for that narrow local unit, which the word *patria* actually described, had—beyond the natural defense

¹²⁰ See "*Pro patria mori*," 474,n.8; further Louis Krattinger, *Der Begriff des Vaterlandes im republikanischen Rom* (Diss. Zürich, 1944), a useful discussion of the problem showing that Italy began to be *patria* only in the times of Cicero and Caesar (p.59) and that the *imperium* was not called *patria* in the classical period (p.69), whereas the *res publica* as well as the city of Rome were *patria* without restriction. This is borne out also by the mediaeval jurists, who, as Post, "Two Notes," 286,n.22, has shown, distinguished between the home-town as *minor patria* and Rome as *communis patria*. See below, nos.165ff.

¹²¹ A few remarks in "*Pro patria mori*," 477,n.16. The poets and *literati*, when describing the heroes of classical Antiquity, used *patria* over and over again; see, e.g., Walter of Châtillon, *Alexandreis*, III,313 (ed. F. A. W. Mueldner, Leipzig, 1863), in his description of the battle of Issus: "Pro domino patriaque mori dum posset honeste. . ." Also *ibid.*, II,355: "Pro patria stare et patriae titulis et honore/Invigilare decet. . ." More interesting is Wipo, who uses *patria* consistently in the sense of the classical tradition, without ever defining it; see his *Gesta Chuonradi*, prol., ed. Bresslau (*MGH, SS.r.germ.*), p.7,20, where he mentions as his *causa scribendi* the fact *quod proderit patriae*; see also p.9,14, and *passim* (cf. Index, 123, s.v. *patria*).

¹²² Du Cange, in his *Glossarium* (s.v. *patria*), refers exclusively to the local meaning. See also Ernest Perrot, *Les institutions publiques et privées de l'ancienne France jusqu'en 1789* (Paris, 1935), 400f: "Le mot même de *patria* . . . n'avait jusqu'alors qu'une valeur géographique avec le sens restreint de 'region.'" See also Koht, "Dawn of Nationalism," 266f,n.6; Post, "Two Notes," for the often very indefinite usage of *patria*.

¹²³ For the English trial *per patriam*, to which Professor Joseph R. Strayer kindly called my attention, see Pollock and Maitland, *English Law*, II,620f,624,627.

of house and home—no political consequences: wanting, with few exceptions,¹²⁴ the broader politico-philosophical background it would have appeared as a private rather than a public sacrifice. Wars, after all, were normally not fought by the citizens, but by an army composed of feudal vassals and knights summoned to defend their lord and his political aims or personal interests. A liegeman's death for his personal lord, of course, rated high as a sacrifice for loyalty, and the mediaeval sagas abundantly glorified victims of *fidelitas* and of *fides*. But those warriors offered themselves up *pro domino*, not *pro patria*, and it only illustrates the general shift of the center of political life, when jurists in the early thirteenth century pointed out "that the duty to defend the *patria* was higher than the feudal obligations of vassal to lord."¹²⁵

There was nevertheless one domain in which the idiom *patria* retained, as it were, its full original meaning and its former emotional values, if only by transference and in a transcendentalized form: in the language of the Church. The Christian, according to the teaching of the early Church and the Fathers, had become the citizen of a city in another world. His true *patria* was the Kingdom of Heaven, the celestial city of Jerusalem. The final return to that spiritual and eternal "fatherland" was, according to the Apostolic Epistles, the natural desire of the Christian soul peregrinating on earth. It was not simply a poetic metaphor, but a word spoken in the spirit of the Epistle to the Hebrews (11: 13-14), when, in the exequies, the priest entreated God that the holy angels be ordered to receive the soul of the defunct and to conduct it *ad patriam Paradisi*. The community of the blessed and saints was, after all, the civic assembly of the celestial *patria* which the soul desired to join. For the sake of that *communis patria* in heaven the martyrs had shed their blood. The Christian martyr, therefore, who had offered himself up for the invisible polity and had died for his divine Lord *pro fide*, was to remain—actually until the

¹²⁴ We may think, e.g., of Anglo-Saxon England during the Norman invasions, and of similar events. One great exception, of course, was formed by the Italian cities which never quite lost the character of ancient city-states; the identification of *Italia* with *patria* is of a later date; above, n.120, and, for a good suggestion, Post, "Two Notes," 292. See also the survey, unfortunately very incomplete, of Hans Haimar Jacobs, "Studien zur Geschichte des Vaterlandsgedankens in Renaissance und Reformation," *Die Welt als Geschichte*, xii (1952), 85-105.

¹²⁵ See Post, "Two Notes," 288, n.13, quoting Johannes Teutonicus (on c.18, C.xlii,q.5) and others.

element integrated into the prosaic business of taxation: taxes then were often imposed *ad defensionem (tuitionem) patriae* or, as Philip IV of France phrased it, *ad defensionem natalis patriae*, "for the defense of the native fatherland."¹²⁸

This new terminology was not the result of some shrewd inventiveness on the part of French nationalists, but an application of legal language to national ends. The word *patria* was found in Canon Law, and it was indeed very frequent in Roman Law. The glossators were prompted to comment on it and to use it freely. When discussing the notion of *bellum iustum*, the "just war," the Canonists, ever since the late twelfth century, pointed out that war was justified, in case of "inevitable and urgent necessity," for the defense of the *patria* as well as for the defense of the faith and the Church, and they repeatedly exemplified such *necessitas* by referring to the wars which the Oriental Christians waged against the infidel in the Holy Land.¹²⁹ They concurred with the Civilians who held that in a case of emergency the emperor was entitled to levy new taxes for the defense of the *patria* and who followed the model of the Digests when talking about the "sweet" or "sweetest fatherland."¹³⁰ The jurists originally spoke of *patria* in general terms without specifying what the term meant, and it will be shown presently how they gradually came to express themselves with greater precision. There can be no doubt, however, that in the case of France in the age of Philip the Fair the word *patria* had actually come to mean the whole realm, and that by

¹²⁸ Strayer, "Defense," 292,n.7, quotes, for the year 1265, a case *ad tuitionem patrie senescallie Carcassonensis* where doubtless a limited military service for the protection of the seneschal of Carcassonne was demanded; however, that seneschals together with that of Beaucaire had belonged, since 1229, to the King of France directly (see F. Kern, *Die Anfänge der französischen Ausdehnungspolitik* [Tübingen, 1910], 319) so that in this case the local *patria* was also directly connected with the Crown of France. In 1302 (August 29), King Philip IV wrote to the clergy of the bailiwick of Bourges concerning subventions "ad defensionem natalis patrie pro qua reverenda patrum antiquitas pugnare precepit, eius curam liberorum preferens caritati." See "*Pro patria mori*," 479,n.26; also Wieruszowski, *Vom Imperium*, 173,n.107. The letter of Philip IV is modelled after *D.49,15,19,7* ("diaplaينا castrorum antiquior fuit parentibus Romanis quam caritas liberorum"), a passage occasionally quoted by the jurists; see, e.g., Petrus de Ancharano, *Consilia*, ccciii,n.4 (Venice, 1574), fol.162. Cf. Post, "Two Notes," 287, n.28, and 290, n.42.

¹²⁹ Post, "Two Notes," 282ff. For the fight against the infidel as the prototype of the just war, see also below, nos.155ff, the opinion of Henry of Ghent.

¹³⁰ Post, "Two Notes," 285ff. Cf. *D.32,1,101*, where the Greek words τῆ γλυκυτάτῃ μου πατρίδι are rendered *patriae meae suavissimae* or (in the *Glos.ord.*) *dulcissimae*; cf. Post, 286,n.22, and *passim*.

Italy as "a land sacred to the gods" (*Haec est Italia dis sacra*).¹⁸⁶ Now France appeared like a *Francia Deo sacra, a regnum benedictum a Deo*,¹⁸⁷ which God embraced with special love, which Christ honored with the prerogative of a special eminence, in which the Holy Spirit dwelled, and for whose sacred soil it was worth while and even sweet to make the supreme sacrifice. To defend and protect the soil of France, therefore, would have semi-religious connotations comparable to the defense and protection of the sacred soil of the Holy Land itself.¹⁸⁸

To grant some religious glorification to the knight who sacrificed his life in the service of the Church and for the cause of God, had become customary even before the crusades.¹⁸⁹ Through the crusades, however, the possibility of acquiring that glorification was expanded from the chivalry to the broad masses, and the privilege of becoming a soldier-martyr was extended to classes which normally would not have engaged in fighting at all. A crusader

iv; Weimar, 1949), p.38, 13, and passim; also the sermon of William of Sauqueville, ed. Hellmut Kämpf, *Pierre Dubois*, 112f; further, the anonymous sermon, published by Leclercq (below, n.176), p.170f, lines 103ff; also Schramm, *Frankreich*, 1,138, for Pseudo-Turpin; Berges, *Fürstenspiegel*, 76f. For the French as a new chosen people, see a letter of Pope Clement V, the first Avignon pontiff: "regnum Francie in peculiarem populum electum a Domino in executione mandatorum celestium specialis honoris et gratie titulis insignitur." *Registrum Clementis V Papae*, No. 7501, quoted by Kämpf, *Pierre Dubois*, 99.

¹⁸⁶ Pliny, *Naturalis historia*, III, xx, 138.

¹⁸⁷ Innocent III, in his decretal *Novit*: c.13 X 2,1, ed. Friedberg, II,242; cf. Post, "Blessed Lady Spain," *Speculum*, XXIX (1954), 203,n.28.

¹⁸⁸ See, e.g., Richier, *La vie de Saint-Remi*, ed. W. N. Bolderston (London, 1912), line 61: "Molt fait dieus aperte monstrance / D'especial amour a France"; or line 114: "A bien Dieus [en] France eslargie / La grace dou Saint Esperite." Some material has been collected by Kämpf, *Pierre Dubois*, 91, 99, and passim; Wieruszowski, *Vom Imperium*, 147f, n.26; Schramm, *Frankreich*, 1,228f. The legists—Flotte, Plaisians, Nogaret, Dubois—repeated the theme of France's election incessantly, and the royalist Dominican William of Sauqueville, harping on the *Franci = liberi* formula, claimed that "proprie loquendo nullum regnum debet vocari regnum Francie nisi solum regnum Christi et beatorum." The sermon of the Dominican, together with others by the same author, has been transcribed from Paris, Bibl.Nat.MS lat.16495, fols.98-100v, and discussed by my former pupil Miss Hildegard Coester, *Der Königskult in Frankreich um 1300 im Spiegel der Dominikanerpredigten* (Thesis [Staatsexamens-Arbeit] Frankfurt, 1935-36, typescript), p.viii; similar phrases are found in the sermon edited by Kämpf, *op.cit.*, 113. We may recall here also the epithets in praise of Paris, in Jean de Jandun's *Tractatus de laudibus Parisius*, in: *Paris et ses historiens aux XIV^e et XV^e siècles*, ed. Le Roux de Lincy and L. M. Tisserand (Paris, 1857), 32-79 (*instar triumphantis Jerusalem, locus sanctus*, etc.). All that was not restricted to France, as Post (above, n.137) has shown for Spain; but it was practiced in France more consistently in that period.

¹⁸⁹ This is one of the leading themes of the excellent study by Erdmann, *Kreuzzugsgedanke*.

For our king we have to die.
 Help to sustain the Christian faith . . .
 I shall absolve you, heal your souls.
 If so you die, you shall be holy martyrs
 Obtaining seats high up in paradise.¹⁴³

Since the warriors in the saga of Charlemagne were fighting the Saracens in Spain, they rated as crusaders and enjoyed the privileges by which, in the times of the poet, crusaders were normally distinguished.¹⁴⁴ However, the death of those "French" crusaders waging war against the Saracens was at the same time a death for the supreme lord, for Charlemagne, *li empereres Carles de France dulce*, a fact which, for a French reader in the twelfth century, gave to the martyrdom of the slain unfailingly also a national flavor.

With due reserve it may be said that, what the *Song of Roland* meant to the French, Geoffrey of Monmouth's *History of the Kings of Britain* meant to the English. To Geoffrey of Monmouth *patria* designated clearly the "monarchy of the whole island" (*totius insulae monarchia*) which King Arthur, after having obtained it by right of inheritance,¹⁴⁵ had to defend against the infidel: Saxons, Scots, and Picts. Once, when the Saxons made an inroad on the British *patria*, King Arthur assembled his army and addressed his soldiers briefly to praise his own faithfulness as opposed to the faithlessness of the Saxons who had disregarded the truce. The main harangue, however, was again made by a bishop, Saint Dubrick of Caerleon, who admonished the soldiers to be valiant defenders of *pietas et patria*¹⁴⁶ for the sake of their fellow-citizens:

¹⁴³ *La Chanson de Roland*, lines 1128-1135, ed. J. Bédier (Paris, 1931), 96; Leonardo Olschki, *Der ideale Mittelpunkt Frankreichs* (Heidelberg, 1913), 14ff; see also Franz Cumont, *Lux perpetua* (Paris, 1949), 445.

¹⁴⁴ Concerning Charlemagne himself, Jocundus, *Translatio S. Servatii, MGH, SS.*, XII, 93 (written around 1088), says: "Karolus mori pro patria, mori pro ecclesia non timuit. Ideo terram circuit universam et quos Deo repugnare invenit, impugnabat" (I am indebted to Professor M. Cherniavsky for calling my attention to this place). See, in general, Robert Folz, *Le Souvenir et la Légende de Charlemagne dans l'Empire germanique médiéval* (Paris, 1950), 137f.

¹⁴⁵ Geoffrey of Monmouth, *Historia Regum Britanniae*, IX, c.1, ed. Jacob Hammer (Mediaeval Academy of America Publications, No. 57 [Cambridge, 1951]), 152, 7f: "Dubricius ergo, calamitatem patriae dolens, associatis sibi episcopis, Arthurum regni diademate insignivit." *Ibid.*, line 17: ". . . cum [Arthurus] totius insulae monarchiam debuert hereditario iure obtinere."

¹⁴⁶ *Hist. Reg. Brit.*, IX, c.2, Hammer, 154, 80: "[Saxones] patriam usque ad Sabrinum mare depopulant." For Arthur's allocution, *ibid.*, lines 88ff; see lines 95f, for *pietas*

tions which the lawyers customarily produced,¹⁵³ and Tolomeo himself was well versed in handling at least Canon Law.

The whole problem of *patria*, stimulated not only by the Two Laws but also by intensified study and practical-political interpretation of Aristotle, was more lively discussed in the age after Aquinas than ever before in the Middle Ages. Aquinas himself touched upon the problem quite frequently. He too demanded that the virtuous citizen expose himself to the danger of death for the conservation of the commonweal, and he held that the virtue of *pietas*, often hardly distinguishable from *caritas*, was the power animating devotion and reverence to both parents and *patria*.¹⁵⁴ Later in the century, Henry of Ghent, the *Doctor solemnis* teaching at Paris, came to discuss related problems.¹⁵⁵ Taking as his starting point the Christian retreat from Acre and the fall of this city in 1291, he dealt with the question under what circumstances a soldier should either sacrifice his life or turn his back and flee. Henry strongly rejected any self-sacrifice for selfish reasons (vain-glory, rashness, injustice, and others) and made it clear that flight and self-preservation might often be more valuable and commendable—except in the case of a priest who was not allowed to flee if his presence were demanded for the salvation of souls or the care of the sick.¹⁵⁶

¹⁵³ Post, "Two Notes," 287, n.28, and *passim*.

¹⁵⁴ *Summa theol.*, I, qu. 60, art. 5, resp.: "Est enim virtuosi civis ut se exponat mortis periculo pro totius reipublicae conservatione." See above, n. 147, for another passage on *patria*, and also the good commentary on the notion *patria* according to Aquinas, in *Die Deutsche Thomas-Ausgabe* (Heidelberg, 1943), xx, 343ff. Usually, however, Aquinas means "Heaven" or "Paradise" when talking about *patria*; see, e.g., *Summa theol.*, II-II, qu. 83, art. 11; III, qu. 8, art. 3, etc.

¹⁵⁵ Henry of Ghent, *Quodlibeta*, xv, qu. 16 (Paris, 1518 [*Quodlibeta Magistri Henrici Goethals a Gandavo*]), fols. 594ff (Dr. Schafer Williams kindly provided me with photocopies). The argument, inspired ultimately by Cicero, *De off.*, I, 83, is: "Quod miles praevolans in exercitum hostium non facit opus magnanimitatis." See Paul de Lagarde, "La philosophie sociale d'Henri de Gand et de Godefroid de Fontaines" (above, n. 52), 80ff, through whose article my attention was called to this *Quodlibet*.

¹⁵⁶ Henry discusses, fol. 596, those who take a stand while the others flee: "Hoc licitum est eis, et tunc alii tenentur cum eis contra hostes stare et esse parati aut cum aliis hostes devincere aut simul mori cum illis; aut si sint aliqui inter illos qui tenentur eis ministrare spiritualia, fugere non possunt." Also the preceding passages (fol. 595r) bring a discussion *de fuga praelatorum*. Henry finds it difficult to decide "si licitum sit fugere bellum, quod contra patriam aut patrias leges attentatum est ab hostibus legis et fidei christianae. Et censeo in hac materia idem de fuga praelatorum maiorum et minorum, et principum superiorum et inferiorum . . . quia sicut praelati tenentur ministrare populo in spiritualibus ad fomentum et

In the arguments of Henry of Ghent the humanistic note is audible. It is even stronger with Dante to whom those giving their lives for the salvation of the *patria*, like the Roman Decii, appeared as "most sacred victims," bringing "that ineffable sacrifice" (*illud inenarrabile sacrificium*)¹⁵⁸ of which Cato was praised as the exemplary offeror. *Pugna pro patria*, "Fight for the fatherland," was supposedly Cato's device, for so it was found in the *Distichs* falsely ascribed to him.¹⁵⁹ Both *literati* and lawyers liked to refer to this maxim, apply it, expound it, and thereby ethicize the idea of *patria* after the model of the suicidal pagan.

With patriotic ethics, of course, Roman Law abounded. The lawyers could not fail to come across that passage in the *Institutes* where it is stated that those who "fell [in battle] for the *respublica* are understood to live forever *per gloriam*," and to gloss on this passage in which eternal fame or glory so conspicuously takes the place of eternal beatitude or is paired with it. Nor could they fail to come across that law in the *Digest*, formulated by a Roman jurispudent of the times of Hadrian, which said that for the sake of the *patria* a son might kill his father, and a father his son.¹⁶⁰ The mediaeval jurists, when interpreting this law, pointed out that an action normally considered parricide was a praiseworthy deed when committed in the name of *patria*, though only when committed in self-defense.¹⁶¹ They did not revel in the idea of patriotic massacre as occasionally humanists did—for example Coluccio Salutati, who exclaimed:

Thou knowest not how sweet is the *amor patriae*: if such would be expedient for the fatherland's protection or enlargement [*sic!*], it would seem neither burdensome and difficult nor a crime to thrust the axe into one's father's head, to crush one's brothers, to deliver from the womb of one's wife the premature child with the sword.¹⁶²

¹⁵⁸ *De monarchia*, II,5,15, and the important study on that chapter by Silverstein (above, n.151).

¹⁵⁹ W. J. Chase, *The Distichs of Cato* (Madison, 1922), 12; and for the whole problem, of course, Post's note on *Pugna pro patria* ("Two Notes," 281ff).

¹⁶⁰ *Inst.* I,25,prol.; *D.* I,17,35; cf. Post, *op.cit.*, 287.

¹⁶¹ See, for Accursius' gloss on that law, Post, 287,n.25, and, for the canonists, 285,n.10. See also below, nos.163 and 178, for Lucas de Penna and Nogaret. The argument, of course, was repeated over and over again. See, e.g., Durandus, *Speculum iuris*, IV, part. III, §2, n.32 (Venice, 1602), III,321: "Nam pro defensione patriae licitum est patrem interficere."

¹⁶² Salutati, *Ep.*, I,10, ed. F. Novati, *Epistolario di Coluccio Salutati* (Rome, 1891), I,28,22ff: ". . . ignoras quam sit dulcis amor patriae: si pro illa tutanda augendave

of this devotion was that at a certain moment in history the state appeared as a *corpus mysticum* comparable to the Church. Hence, *pro patria mori*, death for the sake of that mystico-political body, made sense; it became meaningful, as it was considered equal in value and consequence to the death for the Christian faith, for the Church, or for the Holy Land. If indeed every Christian "who lives in the body of the Church is held to rise in defense of that body," it was a straight and simple conclusion to maintain that every Frenchman who lived in the body of France, was held to rise in defense of that national body.²²⁶ By analogy, therefore, death for the body politic or the *patria* was viewed in a truly religious perspective and was understood religiously even without classical heroization and the later amplifier of the humanistic tuba. It was a sacrifice all the more worthy to offer because it was made for the sake of a body moral and politic which cherished its own eternal values and had achieved its moral and ethical autonomy alongside of the *corpus mysticum* of the Church.

Far more difficult it is to answer the question raised simultaneously: whether or not the concept of the *duplex corpus Christi*, the "two bodies of Christ," had any bearing upon the idea of the "king's two bodies." The tenet of the two bodies (not "natures") of Christ—his bodies natural and mystical, or individual and collective—hinged of course on the organic-corporational concept of the Church. While the Church as *corpus Christi* was a notion going back to St. Paul, the Church as *corpus Christi mysticum* was a concept of a more recent date which attained its legalistic connotations in the course of the thirteenth century. Did the idea of doubleness—"One body of Christ which is he himself, and another body of which he is the head"²²⁷—find its equivalent in the secular sphere when the *corpus reipublicae mysticum* came into being?

At first glance we might be tempted to look here for the solution of the whole problem of the king's two bodies. The analogies built up by jurists and philosophers were indeed numerous: the Prince, being the head of the mystical body of the state and sometimes even that body itself, paralleled Christ who was both the head of the mystical body of the Church and that body itself; also,

²²⁶ Dupuy, *Histoire du différend*, 243f, §§26, 27, 29; cf. 586, and passim. Not only kings and knights, but every Christian had to rise as a member of the *corpus Ecclesiae* for the protection and conservation of the Church.

²²⁷ Gregory of Bergamo, *De veritate*, c.18, ed. Hurter, 75f; see above, n.15.

just as Christ laid down his life for his corporate body, so was the Prince supposed to sacrifice his life for the commonweal. We may recall also the persistence of those analogies: the suicide committed an act of felony not only because he acted against Nature and God, but also (as the Tudor jurists pointed out) against the king "in that hereby he [the King] has lost a subject, and he being the Head has lost one of his mystic members."²²⁸ *Obiter* it may be mentioned that according to the *Nicomachean Ethics* the suicide did not wrong himself or any other person, but he wronged the *polis*, the commonweal—in Christian language: the *corpus mysticum*, or its head.²²⁹ It would be probably not too difficult to assemble more material which might make the parallelism of the spiritual head of the *corpus mysticum* and the secular head of the *corpus politicum* even more striking. Why, then, should we not deduce from the *duplex corpus Christi* the *duplex corpus regis*, and let the whole problem remain at that?

On further thought, however, it will appear less likely that the organic concept of the commonweal, though otherwise highly effective, led *per se* to a theory of the "king's two bodies" or, for that matter, to the secular equivalent of the "two bodies" of Christ. To begin with, our sources do not support that suggestion: nowhere do we find, merely on the basis of the organic concept of the state, the idea expressed that the king as the head of the body politic has two bodies.²³⁰ Nor is there any reason why he

²²⁸ Above, Ch.I, n.21.

²²⁹ *Eth. Nicom.*, 1138a.9ff (v,15); see, for the Latin version, Aquinas, *In Ethic. ad Nicom.*, ed. Spiazzi (Turin, 1949), 300, §§781ff, and also Aquinas' commentary, 301, §1094: "Sed considerandum est cui iniustum facit. Facit enim iniustum civitati quam privat uno cive, sive non facit iniustum sibiipsi." Cf. R. Hirzel, "Der Selbstmord," *Archiv für Religionswissenschaft*, XI (1908), 271; Hamburger, *Morals and Law*, 80f. According to Roman Law (D.48.21.3), confiscation of property and disinheritance of the heirs followed a suicide, provided that the act was committed to escape punishment for some crime; otherwise suicide was not punishable. In England, suicide was considered an act of felony (*felo de se*) and punishable, although Bracton was inclined to follow Roman Law practice; see Güterbock, 170; Pollock and Maitland, II.488. Between the concept of the state as a "body politic" and the interpretation of suicide as an act of "felony" there is a connection which, however, is still in need of further clarification; see above, n.194 (who rises against the Prince and the body politic commits suicide); also "Pro patria mori," 491.n.62.

²³⁰ Baldus, of course, distinguished between a *persona personalis* and a *persona idealis*, and other jurists attributed to a judge a *duplex persona* (see below, Ch.vii, nos.275, 397, 422); but in all those cases, the organic concept has been eclipsed by the corporation theory. Seneca, *Ep.* 85.30, talks about the two persons of a helmsman (*Duas personas habet gubernator*) because he is both passenger and master

should. King Philip IV of France was the head of the body politic of France as a natural man, and like every French citizen he was merely one part, though the most prominent part, of that body. Canon Law, it is true, made a clear distinction between the bishop and the chapter: each was said to represent a *corpus separatum*, even though in other respects bishop and chapter together formed one body of which the bishop was the head.²³¹ But this tenet presupposes other than organological doctrines, and the theorists of the secular state do not seem to have recognized the head of the commonweal as a *corpus separatum*; they were, on the contrary, most reluctant to separate the limbs from the head, or vice versa, and the idea of the organic unity of head and limbs was too strong to allow a separation of one from the other.²³² That the king could appear in two different capacities—that is, as feudal overlord and as head of the whole body politic—has been pointed out before: death *pro rege et patria* would suggest this double aspect of royal authority. But this doubleness had no analogy in the natural and mystical bodies of Christ. For what would it have meant, or what would have been gained, had one coined an analogous formula saying: "There is one body of the king which is he himself, and another body of which he is the head?" It would have been a definition without consequence or obligation, amounting to nothing.

Another possible argument may be disposed of quickly: the state as a *persona ficta*, an abstract personification beyond its members. It is true, the Church was occasionally defined by Aquinas as a *persona mystica*.²³³ Would that questionable term entitle us to understand accordingly also the state as a *persona politica et moralis*? The term does not seem to occur; for the state, around 1300, was not a "fictitious person" but an organic or organological whole. It did not exist apart from its members, nor was the "state" some superior being *per se* beyond its head and members or beyond moral values and the Law.²³⁴ To put it succinctly, the *regnum* or *patria* was not "personified"—it was

of a vessel; but this passage, though known, apparently was referred to only by very late jurists; see Vassalli, "Fisco," 205ff.

²³¹ Gierke, *Gen.R.*, III, 266ff; see also Post, "Two Laws," 425, n. 35.

²³² Wilkinson, in *Speculum*, XIX (1944), 460, n. 4; above, n. 115.

²³³ Above, n. 24.

²³⁴ Cf. Post, "Public Law," 45f; "Two Laws," 422.

"bodified." Mainly because the state could be conceived of as a "body," could there be constructed the analogy with the mystical body of the Church. The parallel hinged, as it were, upon the word *corpus*, and not on the word *persona*, just as the theologians reflected on the *duplex corpus Christi*, and not on the *duplex persona Christi*—which would have been Nestorianism anyhow. In like fashion, the Tudor lawyers argued about the "king's two bodies," and not about the "king's two persons"—even though they might slip occasionally. The terminology itself should prevent us from lightheartedly discarding the old organic oneness of head and limbs in the body politic and from rashly replacing it by the abstraction of a personified state.²³⁵

Our laborious quest for the interrelations between the *corpora mystica* of Church and state will nevertheless have been not quite futile once we change our question. Instead of asking for features transferred from the spiritual to the secular, we should ask: In what respect did the concept of the "two bodies of Christ" fail to be transferable or even indirectly applicable to the head of the mystical body of the state? Where is the flaw in the analogy?

The answer will be simple enough once we recognize that perhaps the chief problem involved is a problem of Time. The head of the mystical body of the Church was eternal, since Christ was both God and man. His own eternity, therefore, bestowed upon his mystical body likewise the value of eternity or rather timelessness. Contrariwise, the king as the head of the body politic was a common mortal: he could die, and did die, and was not eternal at all. That is to say, before the king could represent (as in the language of Tudor jurists) that strange being which, like the angels, was immortal, invisible, ubiquitous, never under age, never sick, and never senile, he had either to stop being a simple

²³⁵ For the notion of "State," see Post, "Two Laws," 420ff, n. 8. Aquinas' Commentary on Aristotle's *Politics* should be considered in that connection. He uses *status* in a descriptive fashion without any connotation of abstractness, e.g., §§393-398, ed. Spiazzi, 139f, where *status popularis* (Democracy), *status paucorum* (Oligarchy), *status optimatum* (Aristocracy) are mentioned time and time again. See also §414, p. 147, where William of Auvergne (Aquinas' continuator) brings those various *status* into line with the *regnum*, though always with reference to the form of government. In other words, *status* has not the meaning of "well being" (*bonus status regni, ecclesiae*, etc.), nor, of course, of "estates" (though that notion then became current too), nor of state in the abstract. It means "government," the *status publicus* of the community—which later on, admittedly—came to mean "State."

mortal or to acquire somehow a value of immortality: the eternity which Christ, in the language of theology, owned "by nature," had to accrue to the king from another source. Without some *character aeternitatis* he could not have his *character angelicus*, and without some inherent value of eternity he could not have "two bodies" or have a super-body distinct from his natural mortal body.

Admittedly, Grace as well as Justice and Law remained eternity-values not easily to be discarded, and they were co-operative at building up the continuity of the new monarchies; for the idea of rulership "by the Grace of God" gained new life in the dynastic ideologies, and the continuity of a Justice "which never dies" played a major part with regard to the continuity of the Crown. But the value of immortality or continuity upon which the new polity-centered rulership would thrive, was vested in the *universitas* "which never dies," in the perpetuity of an immortal people, polity, or *patria*, from which the individual king might easily be separated, but not the Dynasty, the Crown, and the Royal Dignity.

CHAPTER VI ON CONTINUITY AND CORPORATIONS

1. Continuity

UNDOUBTEDLY the concept of the "king's two bodies" camouflaged a problem of continuity. This was less evident, or perhaps only more concealed, in the earlier Middle Ages. But the truly essential point became manifest as well as articulate when, as a result of the reception of the Aristotelian doctrine of the "eternity of the world" and its more radical Averroist interpretation, the question of perpetual continuity itself became a philosophic problem of the first order.

The revival of the doctrine of the eternity of the world, which captivated Western minds after the middle of the thirteenth century,¹ coincided with analogous, if independent, tendencies towards "continuity" in the constitutional and legal-political spheres. For it would be a mistake to assume that the new philosophic tenet produced, caused, or created a new belief in the perpetual continuity of political bodies. Facts of chronology would preclude such a hypothesis anyhow, because the development towards continuity in the fields of law and politics was already in full swing before an influence of the new philosophy could have been effective. Practice, as usual, preceded theory; but existing practice made the minds all the more receptive for a new theory. However, simultaneity does not imply causality, and all that can be said is that the philosophy defending the infinite continuum of Time made its appearance as a concomitant of related trends in other fields; further, that the ground was peculiarly well prepared to receive a doctrine which confirmed and justified what one thought or did anyhow, and thereby intensified and accelerated existing conditions; finally, that both strands—the philosophic-scholastic theory and the politico-legal practice—together decisively influenced the general pattern of Western social and political thought in its formative period.

¹ Frederick II had already asked Ibn Sabin for the proofs of the eternity of the world; see *Erg.Bd.*, 102,152.

saw fit to cherish, had its roots and premises in those intellectual changes which stirred the thirteenth century—stirred it no less profoundly than the combats between empire and papacy, or between spiritual and secular powers at large.

AEVUM

The great crisis in man's approach to Time, while previously latent, came to a head when the doctrine of the uncreatedness and infinite continuity of the world was recovered from Aristotelian philosophy. This tenet dealt an all but mortal blow to the supremacy of the traditional Augustinian concepts of Time and Eternity. Time, under the influence of Saint Augustine's teaching, had enjoyed a bad rather than a good reputation. Time, *tempus*, was the exponent of transitoriness; it signified the frailty of this present world and all things temporal, and bore the stigma of the perishable. Time, rigorously severed from Eternity, was of inferior rank. For whereas the Eternity of God was conceived of as a Now-and-Ever without Time, the fugitive Time showed all the weakness of the evanescent moment. As Saint Augustine pointed out in one of the most famous passages of the *Confessions*,^a Time—like sun and moon, plant, beast, and man—was created. It was created, not before, but together with the transitory world as a short span which, like a blind alley, was doomed to meet an abrupt end at any given moment, just as the whole created world might be overtaken at any hour by the Last Events. Time was finite. It covered no more than the hours from Creation to the Last Day, and words such as *temporalis* and *saecularis*, indicating the, so to speak, moral degradation of Time, were burdened to express the brevity of an only relatively important life of this world and the nearness of death in it.

The validity of the Augustinian teaching on Time and Eternity

^a Augustine, *Confessions*, xi. The literature on Christianity and Time is next to infinite, and the flood has been swelling constantly during the last years; see, e.g., J. Baudry, *Le problème de l'Origine et de l'Eternité du Monde* (Paris, 1931); Jean Guitton, *Le temps et l'éternité selon Plotin et saint Augustin* (Paris, 1933); Oscar Cullman, *Christus und die Zeit* (Zollikon-Zürich, 1948); Henri Marrou, *L'Ambivalence du temps de l'histoire chez saint Augustin* (Montreal, 1950); and, for a brief bibliographic survey of more recent publications, Paul Henry, "The Christian Philosophy of History," *Theological Studies*, xiii (1952), 419ff. In general, see the useful study of Frank Herbert Brabant, *Time and Eternity in Christian Thought* (Bampton Lectures, 1936; London, 1937).

was broadly attacked, together with the most fundamental premises of the Christian faith, by the Averroists who carried Aristotelianism to sweeping conclusions; but even a moderate Aristotelian such as Aquinas had to admit at least the potentiality of a world without beginning.⁴ In the long lists of *errores condemnati* which Church authorities drafted to curb the Averroist plague, the tenet of the "eternity of the world" played a major part. The Church proclaimed it an error to maintain that motion had no beginning; that Time was eternal; that heaven was not created; that there would be no resurrection of the dead; that corruption and generation followed each other successively without a beginning or end; that there was no such thing as a first man, and that there would never be a last man; that there always was and ever will be a human race and a generation of man from man, and many similar or related maxims.⁵ All those condemned errors pointed in the same direction: they all asserted that there was neither Creation nor Last Day, that by corruption and generation the dispositions of the world might change but that the present world itself was permanent by the laws of nature, and that Time was infinite, a continuum of successive moments rolling forth perpetually from endlessness to endlessness.⁶ *Tempus*, the

⁴ See the famous passage in *Summa theol.*, I, qu. 46, art. 2: "Respondeo dicendum, quod mundum non semper fuisse, sola fide tenetur, et demonstrative probari non potest."

⁵ Best known is the long list of 219 errors drafted by Bishop Stephen Tempier of Paris (1277) and published by H. Denifle, *Chartularium Universitatis Parisiensis* (Paris, 1889), 1, 544ff; but there were many other lists published as well; see J. Koch, "Philosophische und theologische Irrtumslisten von 1270-1329," *Mélanges Mandonnet* (Paris, 1930), II, 305-329. Those lists were, in fact, the best propaganda for Averroism insofar as they condensed most difficult problems into easily conceivable slogans. No bibliography on Averroism will be required here; but Martin Grabmann's *Der lateinische Averroismus des 13. Jahrhunderts und seine Stellung zur christlichen Weltanschauung* (Sitz.Ber., Munich, 1931, No. 2), his *Studien über den Einfluss der aristotelischen Philosophie auf die mittelalterlichen Theorien über das Verhältnis von Kirche und Staat* (Sitz.Ber., Munich, 1934, No. 2), as well as the studies collected in his *Mittelalterliches Geistesleben* (esp. vol. II [Munich, 1936]) may just be mentioned as a landmark of scholarship on mediaeval Aristotelianism during the last decades. Attention, however, should be called to the recently discovered tractate of Boethius of Dacia, ed. Géza Sajó, *Un traité récemment découvert de Boèce de Dacie "De mundi aeternitate," texte inédit avec une introduction critique* (Budapest, 1954).

⁶ By rejecting the Aristotelian tenets concerning the infinity of Time and the impossibility of a spatial void, Bishop Tempier most curiously was compelled to defend the possibility of a plurality of worlds; see Alexander Koyré, "La vide et l'espace infini au XIV^e siècle," *Archives d'histoire doctrinale et littéraire du moyen âge*, XXIV (1949), 45-91. The problem of primordial matter was discussed in the

limited span of terrestrial Time, thereby lost its ephemeral frailty and limitation, and its character also changed morally: Time no longer appeared predominantly as the symbol of caducity, of Death; Time, to the Averroists, became a vivifying element, a symbol of endless duration, of Life.

To be sure, not the individual life was immortal; but immortal was the life of the genera and species which the mortal individual represented. Time now became the symbol of the eternal continuity and immortality of the great collective called the human race, of the species of man, of the seminal powers, of the forces of germination. It gained, through its connection with ideas of religious and scientific progress,⁷ an ethical value when one recognized that "the daughter of Time was Truth."⁸ Finally, the unlimited continuity of the human race itself bestowed a new meaning on many things. It made meaningful, for example, the craving after worldly fame, the *perpetuandi nominis desiderium*, which increasingly became a decisive impulse for human actions. Perhaps this trail, too, was first trodden by the jurists: "Notice that the dead lives through glory," says an Accursian gloss, while in another connection the glossator held that those who fell in battle for the *respublica* as well as those killed in tournaments lived forever in

twelfth century in a scholarly fashion; see Heinrich Flatten, "Die *primordialis materia* in der Schule von Chartres," *Archiv für Geschichte der Philosophie*, XL (1931), 58-65.

⁷ The problem of progress in the thirteenth century will be discussed separately on a broader basis and in another connection. For the religious aspect of the problem, which is inseparable from the doctrines of Joachim of Fiore and the Spiritualists, see most conveniently Ernst Benz, *Ecclesia spiritualis* (Stuttgart, 1934), 265ff, and passim; the ever increasing literature on Joachim (see Herbert Grundmann, *Neue Forschungen über Joachim von Fiore* [Marburg, 1950]) rarely fails to consider also the idea of progress as an implication of Spiritualist doctrines. The scientific idea of progress, stimulated very strongly by Priscian, *Institutiones grammaticae*, I, 1 (see above, Ch. v, n. 187), has been briefly discussed by R. Klibansky, "Standing on the Shoulders of Giants," *Isis*, XXVI (1936), 147f; cf. G. Sarton, "Query n. 53," *Isis*, XXIV (1935-6), 107ff; J. de Ghellinck, "Nani et gigantes," *Bulletin Du Cange*, XVIII (1945), 25-29. The best source on that subject, however, has passed almost unnoticed; that is, the philosophical reflections of the jurists.

⁸ The phrase comes down from Gellius, *Noctes Atticae*, XII, 11, 7. For the earlier history of this maxim, often represented in Renaissance art and found also in Erasmus' *Adagia*, see the remarks of F. Saxl, "Veritas filia Temporis," *Philosophy and History: Essays Presented to Ernst Cassirer* (Oxford, 1936), 200, n. 1. For the pre-Renaissance period the material has not yet been investigated; but it was probably again the jurists who equated Time and Truth; see, e.g., Baldus, on *D. 1.3.32*, n. 88, fol. 23, discussing the validity of unwritten customary Law, that is, of custom "of which human memory is not to the contrary," to which he remarks: *tempus loco veritatis est*.

fame and glory.⁹ Other jurists wrote, and Frederick II, their pupil, built, for the perpetual fame of their names.¹⁰ The new continuity of Time did not create, but it intensified, the desire for the perpetuation of a man's fame and name. Fame, after all, made sense only if this world and if mankind were believed to be, in one way or another, permanent and immortal; and if Time was Life, and not Death. We may consider, perhaps, "immortal fame" in this world as the equivalent of or secular substitute for the immortal beatitude of the other world, and Dante consequently was implored by the lost souls in *Inferno* to keep alive their memory and their fame on earth in order to compensate for the forfeited, and often even despised, eternal beatitude of the soul.¹¹

It would be tempting to understand the infinite duration of the

⁹ See Post, "Two Notes," 286, n.24. The essential place of reference is *Inst.* 1.25, pr. (above, Ch.v, n.160) to which the *Glos.ord.*, v. *per gloriam vivere*, says: "Nota, mortuum vivere per gloriam," with an allegation of *D.9.2.7.4* (no punishment if "in publico certamine alius alium occiderit . . . , quia gloriae causa et virtutis, non iniuriae gratia videtur damnum datum"), to which the *Glos.ord.*, v. *gloriae causa*, remarks: "Per gloriam quis occiditur, ut hic [the one killed in publico certamine, interpreted as tournament]: et ideo post per gloriam vivere potest, licet sic mortuus dicatur." Also *Glos.ord.*, on *D.3.2.25*, v. *ceciderit*: "Qui per gloriam vivere intelligitur," with allegation of *Inst.* 1.25, pr.

¹⁰ Placentinus, *Summa in Tres Libros*, proem., ed. Savigny, *Geschichte des Römischen Rechts im Mittelalter* (2nd ed., Heidelberg, 1850), IV, 245: "Secundo, credidi multum expedire mihi ad memoriam meique nominis famam in perpetuum conservandam. . . ." See also the proemium of the *Margarita super Feudis* (late 13th century) of Dulus Gambarini: ". . . cunctos literaturae scientiae amatores expedit dare operam studio indefesso ut sua in evum memoria relinquatur"; cf. Jean Acher, "Notes sur le droit savant au moyen âge," *Nouvelle revue historique de droit français et étranger*, XXX (1906), 125. See also Angelo de Ubaldis, on *D.1.1.1.2* (Venice, 1630), fol.3r (v. *perpetui*): "Vel dic quarto quod Justinianus est perpetuus perpetuitate memoriae . . . [C.1.3.23]." The same jurist (*loc.cit.*, v. *Itaque procul dubio*, n.7, fol.2v) draws also an interesting parallel with saints: "Memoria no[ta]: post mortem quis salvatur in sua memoria. Item no[ta] quare omni anno celebrantur festa Sanctorum." For Frederick II, see Huillard-Bréholles, v.907, the reconstruction of an aqueduct *ad laudem et gloriam nostri nominis*; see also the places quoted *Erg.Bd.*, 181. See also Dante, *Monarchia*, I, 1: "ut palmam . . . in meam gloriam adipiscar." Or Andreas of Isernia, *In usus feudorum*, proem., n.11, fol.1v, quoting Seneca: *immortalis est ingenii memoria*.

¹¹ *Inferno*, XIII, 53 (Petrus de Vine): ". . . tua fama rinfreschi / Nel mondo su . . ." Also *Inferno*, VI, 88f; XVI, 85; XXXI, 127; cf. Burckhardt, *The Civilization of the Renaissance in Italy*, trans. by S. G. C. Middlemore (Vienna, n.d.), 307, nos.285-287. It is, of course, perfectly logical that *per perpetuam gloriam vivere* is desired by those in *Inferno*, since only the *Inferno* is of perpetual duration (Purgatory ends and Paradise is timeless), an idea expressed by the inscription of the Gate of Hell (*Inf.*, III, 7f:

Dinanzi a me non fur cose create
Se non eterne, ed io eterno duro.

See below, n.15.

Aristotelian uncreated "world without end" likewise in terms of some secularized Eternity. But if we were to proceed on that assumption, the difficult question arises immediately: What kind of Eternity was it that was secularized and became immanent in this world? It was certainly not the Eternity of the Divine Being which Augustine had set against the short span of created Time allotted to this world and to mankind. For the *aeternitas* of God was timeless; it was a static Eternity without motion, and without past or future; it was, as Augustine called it, "a Now ever standing still" (*nunc semper stans*), or, as Dante put it, "the point at which all times are present."¹² This was certainly not the continuously flowing mutable Time of permanently successive moments which the Averroists had in mind and defended.

The answer comes from scholastic philosophy. A readiness on the part of theologians and scholastic philosophers to revise the Augustinian dualism of Time and Eternity and to embark on the problem of an unlimited continuity which was neither *tempus* nor *aeternitas*, may be noticed as far back as the twelfth century. The revival of Pseudo-Dionysius, John the Scot, the theological writings of Boethius, and the reception of the works of Avicenna by the school of Gilbert de la Porrée produced, so it has been said, "a powerful whiff of dynamism."¹³ It led, among other things, to the revival of the notion of *aevum* ("eon"), a category of endless infinite Time which Saint Augustine's forcefully simplifying dualism had not really accounted for. Something comparable to a great intellectual clearing began, since it now became the task of scholastic philosophers to distinguish between the various categories of Time. It was not too difficult to explain the difference between *aeternitas* and *aevum*. Eternity, of course, was God's timeless and motionless Now-and-Ever, knowing neither past nor future. *Aevum*, however, was a kind of infiniteness and duration which had motion and therefore past and future, a sempiternity which according to all authorities was endless. There was differ-

¹² *Paradiso*, XVII, 18.

¹³ See M. H. Vicaire, "Les Porréains et l'Avicennisme avant 1215," *Revue des sciences philosophiques et théologiques*, XXVI (1937), 449-482 (p.455: "un souffle dynamique puissant"); R. de Vaux, *Notes et textes sur l'Avicennisme latin aux confins des XII^e et XIII^e siècles* (Bibliothèque Thomiste, XX [Paris, 1934]); also J. M. Parent, *La doctrine de la création dans l'école de Chartres* (Publications de l'Institut d'études médiévales d'Ottawa, VIII [Paris and Ottawa, 1938]).

ence of opinion though, whether that sempiternity, which was created, was created before Time or together with Time; that is to say, whether *aevum* was infinite only in view of the future or also in view of the past. Whatever the correct answer may be, the fact remains that a third category had been worked into the former dualism of Eternity and Time, the *aevum*, which had a share in both Eternity and Time and which Aquinas later defined very accurately as something "placed in the middle between *aeternitas* and *tempus*."¹⁴

Hence, scholastic philosophy had to distinguish between three categories: *aeternitas*, *aevum*, and *tempus*. But which belonged to whom? The distribution of *aeternitas* and *tempus* was self-evident. The timeless Now-and-Ever was identical with God alone; and the finite created Time of this world, lasting from Creation to the Last Day, belonged to man. And *aevum*? The answer must have been likewise self-evident to an age which began to discover the intellectual joy and stimulus emanating from angelological investigations: *aevum*, of course, belonged to the angels and celestial Intelligences, the "eviternal" beings which were placed between God and man. The angels, like man, were created; but man's transitory *tempus* could not be theirs, since angels were eternal beings, bodiless, immortal, and outlasting the Last Day. On the other hand, being created they could not be coeternal with the Creator. It was, so to speak, true that the angels by their permanent vision of the divine glory participated, like the souls of the blessed, in the timeless Eternity of God. But the immortal spirits had a share also in terrestrial Time, not only because they could appear to men within Time, but also because they were created

¹⁴ For *aevum*, see the survey by A. Michel, "Eternité," *Dictionnaire de théologie catholique*, v:1, col.919. In general, Brabant, *Time and Eternity*, 74ff. Of course, the philosophers did not always interpret *aevum* in the same way; see F. Beemelmans, *Zeit und Ewigkeit nach Thomas von Aquino* (Beiträge zur Geschichte der Philosophie im Mittelalter, xvii,1; Münster, 1914), 52ff; E. Gilson, *The Philosophy of St. Bonaventura* (New York, 1938), 260ff; C. R. S. Harris, *Duns Scotus* (Oxford, 1927), II,141ff; Gilson, *Jean Duns Scot* (Études de philosophie médiévale, XLII [Paris, 1952]), 401ff. The notion of *aevum* was certainly not unknown in the earlier Middle Ages; in 799, Alcuin defined it on the whole correctly (MGH, *Epp.* IV,263ff, No.163). Philosophically and theologically, however, *aevum* gained new impetus by its integration into the angelologies of scholasticism. For the infinity of Time with regard either to past and future or to future alone, see Ambrose, *Hexameron*, I,1,3. PL, XIV,135, who connects those differing concepts with Aristotle and Plato respectively; cf. Richard McKeon, "Aristotelianism in Western Christianity," in *Environmental Factors in Christian History* (Chicago, 1939), 224, n.68.

and therefore had, after their peculiar angelic fashion, a Before and an After. *Aevum* (in fact a far more complicated notion than can be demonstrated here), bridged the chasm between timeless Eternity and finite Time. If God in his Eternity was the Immutable beyond and without Time, and if man in his *tempus* was the Mutable within a mutable and changing finite Time, then the angels were the Immutable within a changing, though infinite, *aevum*.¹⁵

To summarize this brief excursus into meta-history, there existed indeed an otherworldly equivalent of the changing and infinite Time which the Averroists claimed for this present world: the *aevum* of the angels in heaven. This fact is less surprising than it may seem once we realize that the celestial Intelligences—Spirits without a material body—were the created Ideas or Prototypes of God. They were the transcendentalized Christian descendents, not really of the Platonic Ideas which had an independent status, but of the Aristotelian *εἶδη*, the immanent actualizations of the separate types. The revival of the Aristotelian "eternity of the world," which presupposed and resulted in the immortality of the genera and separate species, was therefore indeed a "secularization" of the angelic *aevum*: an infinite continuum of Time was, so to say, transferred from heaven to earth and recovered by man. It was the secularization of the Christian concept of continuity perhaps even more than the classical belief in the circular motion of an infinite time, which the Averroists likewise endorsed, but which was one of the least acceptable of their theses. Public opinion quickly discarded this theorem implying a periodical recurrence of events, and replaced the circular continuity by the conventional linear continuity characteristic of Christian thought in general—and probably also of the angelic *aevum*.¹⁶

¹⁵ See Brabant, *Time and Eternity*, 77. I am fully aware of the fact that *aevum* has many other aspects as well, and that the Time continuum of the angels is a most involved problem, discussed over and over again by the scholastic philosophers in their *Quodlibet* literature and elsewhere. That Hell belonged to *aevum* is suggested by Aquinas, *Quodlibet*, v,7, ed. P. Glorieux, *La littérature quodlibétique de 1260 à 1320* (Bibliothèque Thomiste, v. [Kain, 1925]), 1,281: *Utrum Lucifer sit subiectum aevi?* See, above, n.11, for Dante, in whose system the three categories are represented: to the Paradise belongs *aeternitas*, to the Purgatory *tempus*, and to Hell *aevum*. It would be senseless, of course, should the sinners be made to suffer in timelessness, since in that case there would not be an infinite succession of punishment and pain.

¹⁶ For the doctrine of eternal recurrence in periodical circles, see, in Bishop

be said that the political and legal world of thought of the later Middle Ages began to be populated by immaterial angelic bodies, large and small: they were invisible, ageless, sempiternal, immortal, and sometimes even ubiquitous; and they were endowed with a *corpus intellectuale* or *mysticum* which could stand any comparison with the "spiritual bodies" of the celestial beings.

Undeniably the problem of Time and Continuity was close to the center of discussions carried on by both scholastic and secular philosophers. To maintain that the problem of Time had the effects of an activating intellectual undertow throughout the later Middle Ages and the Renaissance would probably be an understatement. Man's new attitude in his relation to Time affected almost every sector of life. The world, of course, did not turn "Averroist" as a result of the teaching of a Siger of Brabant, Boethius of Dacia, and other masters in the faculty of arts at the University of Paris: the world remained Christian. Nevertheless, what had been epidemic in the thirteenth century became endemic in the fourteenth and fifteenth: one did not accept the infinite continuity of a "World without End," but accepted a quasi-infinite continuity; one did not believe in the uncreatedness of the world and its endlessness, but one began to act as though it were endless; one presupposed continuities where continuity had been neither noticed nor visualized before; and one was ready to modify, revise, and repress, though not to abandon, the traditional feelings about limitations in Time and about the transitoriness of human institutions and actions.¹⁹

This, we may take it, marked the new approach to Life and to Time of the intellectual sector of society. One had not invented a new notion of Time, but accepted Time's other aspect. Only in so far as another aspect of Time—its continuity and practical infiniteness—was emphasized, where previously the emphasis was laid on Time's transitoriness, was there a change of man's sense of the nature of Time. "If you want to govern for thousands and

heading: *Ad memoriam sempiternam*. Durandus, however, establishing a general rule concerning the passing of sentences, refers to it wrongly (*Speculum iuris*, II, part.iii,§6,n.7, vol.II,790), when he says: "Sententia enim fertur *ad aeternam rei memoriam*, ut legitur . . . [c.2 VI 2,14] in superscriptione." See below, Ch.vii,n.6.

¹⁹ G. de Lagarde, *La naissance etc.*, II: *Marsile de Padoue* (Paris, 1948), 79 and 85ff, remarks correctly: "L'Averroïsme est moins une doctrine qu'une attitude." See also Leclercq, *Jean de Paris*, 75.

It is true, of course, that the scholastic doctrines concerning taxation strictly denied the right of the state to any annual or even periodically recurrent taxation.²⁴ However, by the *casus necessitatis*, which also the Church acknowledged, a new principle was set.²⁵ It was set for the permanent annual taxation such as finally became the recognized right of the sovereign state in order to meet the needs of the polity. By the fourteenth century, or even in the thirteenth, the pretense of an *ad hoc* taxation was occasionally dropped, and the fictitiously extraordinary became the overtly ordinary: public taxation, at least in many parts of the Continent, became synonymous with annual taxation. In other words, taxation, formerly linked to an unrepeatable event, now was linked to the calendar, to the eternally rolling wheel of Time. The state had become permanent, and permanent were its emergencies and needs, its *necessitas*.

The notion of *necessitas*, thereby, acquired another, in fact, a completely new meaning. As a ground for taxation, the *casus necessitatis* originally referred to emergencies arising chiefly from without: defense of the *patria* against a hostile inroad, a war against political or religious enemies, also against rebels, against heretics, even against the spiritual power. Around 1300, however, the notion of *necessitas* began to be focused also upon the ordinary and (so to speak) budgetary needs of administration; and to meet these administrative needs the governments arrived at the new fiction of a *perpetua necessitas*, implying (not unlike the modern tenets of "perpetual revolution") the perpetuation of something that, by definition indicated an exception, some singular condition or some momentary deviation from the rule.

The perpetuation of *necessitas*, of course, was noticed also by

²⁴ For the scholastic and theological doctrines on taxation, see Paul Kehl, *Die Steuer in der Lehre der Theologen des Mittelalters* (Volkswirtschaftliche Studien, 17, Berlin, 1927), 74ff and passim. It is true that in France, after 1314, the estates had the right to grant a special tallage; but the assumption began to develop later on that the tallage had been granted perpetually. Cf. Holtzmann, *Französische Verfassungsgeschichte*, 408. In England, of course, every general subvention to the king had to be granted by Parliament.

²⁵ Langlois, "Philippe III," in: Lavis, *Histoire de France* (Paris, 1901), III:2, 250f: "Le principe était posé." See, for France, the numerous studies of Carl Stephenson, above all "Les 'aides' des villes françaises au XII^e et XIII^e siècle," *Moyen âge*, 2^e sér., XXIV (1922), 274-328, and "La taille dans les villes d'Allemagne," *ibid.*, XXV (1925), 1-43; further, Joseph R. Strayer and C. H. Taylor, *Studies in Early French Taxation* (Cambridge, Mass., 1939).

contemporaries, and a jurist of the early fourteenth century, Oldradus de Ponte (d. 1335), provides us with all the clues we may desire. In one of his legal opinions, dealing with the taxability of certain noblemen with regard to an annual tallage, Oldradus distinguished between the ancient singular necessity and the new perpetual necessity. The question posed to the legal expert is described in the title, as follows:

Is a person, that is held to contribute to taxes imposed for the sake of [public] utility or necessity, held also to pay taxes imposed for the sake of an *habitual* necessity, though [this be] not an *actual* necessity?²⁶

The distinction made here between an habitual, that is, perpetual need (*necessitas in habitu*) and an actual emergency (*necessitas in actu*) is telling enough all by itself. Oldradus, of course, was fully aware of the fact that formerly the imposition of a direct tax for the sake of "public and common utility and necessity" was understood as an exception, an extraordinary taxation (*indictio extraordinaria*). He knows also that the reason (a case of necessity) for imposing a tallage as well as the king's regalian right of imposing the emergency tribute agreed with old feudal custom, and he is honest enough to admit that "the imposition of an annual tallage is a new action: and in this respect the taxes are called ordinary (*indictio ordinaria*)."²⁷ However, ordinary and extraordinary taxes served the same idea: to meet a *necessitas*. Only, *necessitas* itself had in each case a different point of reference; and this too has been clarified by Oldradus.

The question laid before the jurist was whether certain noblemen could claim tax exemption if the King of France demanded annually a tallage "for the public and common utility and neces-

²⁶ Oldradus de Ponte, *Consilia*, 98 (Venice, 1621), fol.39: "Contribuere si unus tenetur ad munera, quae fiunt causa utilitatis vel necessitatis, tenetur praestare munera, quae fiunt causa necessitatis in habitu, licet non in actu." It is not certain, of course, whether this summary is by the author himself or by a later editor. However, the distinction between *necessitas in actu* and *necessitas in habitu* covers precisely what Oldradus discusses in his *Consilium*.

²⁷ *Ibid.*, n.4: ". . . quod, si contingat aliquam talliam indici quae fiet gratia publicae et communis utilitatis et necessitatis et cetera, quasi de futuris et extraordinariis indictionibus intellexerit. Sed huic respondetur. . . . Licet enim talliam indicendi causa et regalia sint antiqui actus: tamen indictionis omni anno est novus: et hoc respectu ordinariae praestationis indictiones appella[n]tur. Extraordinariae vero superindicta. . ." See, for the distinction between ordinary and extraordinary taxations, also above, nos.23f.

In addition to the change—clearly outlined by Oldradus—from an *ad hoc* obligation to a permanent and ordinary taxation, it is evident that the meaning of *necessitas* has shifted from an outer emergency to an inner administrative need, that this inner need has been perpetualized, and that the perpetual administration of justice required an annual emergency tribute just as a singular emergency contribution was required for the defense of *patria*. But even the defense of *patria* was now perpetualized. There was, in the fourteenth century, as yet no permanent professional army of an individual government, although the companies of mercenary knights then roaming about Italy represented, so to speak, independent armies in permanence. There was, nevertheless, permanent taxation for military purposes. The *cavalcata* or *chevauchée*, originally the feudal obligation of performing military service, came to mean the commutation of this service into a fine or scutage paid annually. Oldradus de Ponte saw again the essential point.

Even though the army might not be summoned in every year, it is nevertheless advisable to look ahead that there be money in the treasury to pay the soldiers if [or when] an army be raised. . . . For, the purpose of an army is the public good.³²

Oldradus, while conveying to us some foretaste of the approaching mentality of mercantilism, again demonstrates that a *necessitas in actu* has been commuted into a perpetual *necessitas in habitu* in order to meet potential needs in the future.³³ Annual taxation, at any rate, was rationalized by perpetuation of public needs, by a *perpetua necessitas* belonging either to the present as in the case of

publicam utilitatem et necessitatem, . . . videtur quod huiusmodi expensas nobiles, de quibus quaeritur, contribuere teneantur: quia verum est propter provinciae utilitatem et necessitatem." See, for the annual payment of the *droit de gîte* already in the 13th century, Holtzmann, *Französische Verfassungsgeschichte*, 257.

³² *Ibid.*, n.1: "Cavalcata est pro exercitu regis: quae quamvis non fiat, solvitur in pecunia annuatim." *Ibid.*, n.3: "Et idem videtur de secunda [i.e. cavalcata] dicendum: licet enim non semper fiat exercitus, expedit uti provisione, ut cum locus fuerit, in aerario sit pecunia, ex qua militibus satisfiat. . . . Finis autem exercitus est ad bonum publicum. . ." See above, Ch.v,n.222.

³³ Oldradus (*ibid.*, nos.3-4) points out that those military general taxes had been customary in the Roman Empire and that Christ himself recommended the payment of the tribute: "Christus tributa Caesari monet reddi, quia per bella necessario militi stipendia praebentur [c.4, C.xxiii, q.1, ed. Friedberg, 1,893], et ab huiusmodi contributione nullus excipitur. Si enim census filius Dei solvit, quis tu tantus es qui non putas esse solvendum [c.28, C.xi, q.1, ed. Friedberg, 1,634]?"

collections, found its way finally into Gratian's *Decretum* where it was supported by a passage from Saint Augustine, inserted into a letter of Pope Pelagius, saying that "it cannot be that there be no Church"—*ecclesia nulla esse non potest*.³⁷ Thus, the dogmatic sempiternity of the Church militant found its juristic equivalent in the maxim *Ecclesia nunquam moritur*, "the Church never dies."

Sempiternity was attributed also to the Roman Empire. The belief in the continuity of the empire *in finem saeculi* was as common in the Middle Ages and as much an established fact as was the late-antique belief in the "eternity" of the city of Rome; and the struggle against Antichrist, expected to take place just before the End, bestowed upon the Christian empire an eschatological function related to that of the militant Church.³⁸ The belief in the sempiternity of the Roman Empire, to be sure, was not a matter of dogma. It rested, for one thing, on Jerome's identification of Daniel's vision of the Four World Monarchies the last of which, that of the Romans, was to continue till the end of the world; and the late-mediaeval jurists occasionally found it convenient to recall the popular argument.³⁹ This argument was not defeated by a

³⁷ See c.33, C.XXIV, q.1, ed. Friedberg, 1,978f.

³⁸ Baldus, *Consilia*, 1,328,n.8, fol.103: "[imperium] quod debet durare usque in finem huius saeculi." The eternity of Rome was denied by Augustine insofar as the fall of Rome was supposed to signify the end of the world; but the old belief survived; see Theodor E. Mommsen, "St. Augustine and the Christian Idea of Progress," *Journal of the History of Ideas*, XII (1951), 351; also J. Straub, "Christliche Geschichtsapologetik in der Krisis des römischen Reiches," *Historia*, I (1950), 52ff, and, for the idea in general, esp. in the Middle Ages, F. Kampers, *Die deutsche Kaiseridee in Prophetie und Sage* (Munich, 1896). The basis of the whole speculation was II Thess. 2: 1-8, quoted already by Tertullian, *Apol.*, XXXII, 1, in connection with the prayer for the emperor and the Roman Empire; see Ladner, "Aspects," 419,n.55, on the later interpretation of the Pauline epistle. The belief in the duration of the Empire, of course, was alive also in Byzantium; see, e.g., Endre von Ivanka, "Der Fall Konstantinopels und das byzantinische Geschichtsdenken," *Jahrbuch der Österreichischen Byzantinischen Gesellschaft*, III (1954), 19ff.

³⁹ For the doctrine of the four empires, see C. Trieber, "Die Idee der vier Weltreiche," *Hermes*, XXVII (1892), 321-342; F. Kampers, "Die Idee von der Ablösung der Weltreiche," *Hist. Jhb.*, XIX (1898), 423ff; and, for the most recent literature, Mommsen, "St. Augustine," 350,nos.5-6; also Schramm, *Kaiser, Rom und Renovatio*, 1,244f. Interesting is Otto of Freising, *Chronica*, v, prol., ed. Hofmeister, 226f, who connects the idea of the four empires with that of "progress" as represented by Priscian, *Inst.gram.*, 1,1 (above, Chapter v,n.187); see also Joseph Schmidlin, *Die geschichtsphilosophische und kirchenpolitische Weltanschauung Ottos von Freising* (Freiburg, 1906), 28ff. For the jurists, see, e.g., Bartolus, on *Ad reprimenda* (Edict of Emperor Henry VII, in *MGH, Const.*, IV,965, No.929), n.8, v. *totius orbis*, in Bartolus, *Consilia, quaestiones et tractatus* (Venice, 1567), fol.115v, also in *Corp.Iur.Civ.*, IV,124, where the Edict is in fact the *Extravagantes* of mediaeval emperors appended to the *Libri feudorum*. Bartolus, referring to Daniel 2: 39-40, talks about "Nabuchodonosor rex

defending the identity and continuity of a law court even though individual judges may have been replaced by others.

For just as the [present] people of Bologna is the same that was a hundred years ago, even though all be dead now who then were quick, so must also the tribunal be the same if three or two judges have died and been replaced by substitutes. Likewise, [with regard to a legion], even though all soldiers may be dead and replaced by others, it is still the same legion. Also, with regard to a ship, even if the ship has been partly rebuilt, and even if every single plank may have been replaced, it is nonetheless always the same ship.⁴⁸

It was, in fact, the continuity and invariability of "forms" which the glossator defended.⁴⁹ Baldus, glossing that gloss, was quite explicit on that point: "Notice, that where the form of a thing does not change, the thing itself is said not to change." And in an additional example Baldus explained that an interdict of the Church, imposed on a community, even though all the individuals who had caused the interdict may have died, could nevertheless remain valid for a hundred years or more "because the people does not die"—*quia populus non moritur*.⁵⁰

⁴⁸ *Glos.ord.*, on *D.5.1.76*, v. *proponebatur*: "Primum est, quia sicut idem dicitur populus Bononiensis qui erat ante-C-annos retro, licet omnes mortui sint qui tunc erant, ita debet etiam esse [idem iudicium] tribus vel duobus iudicibus mortuis, et aliis subrogatis. Secundum est, quod licet omnes milites moriantur et alii sint subrogati, eadem est legio. Tertium est in navi, quia licet particularim fuit reflecta, licet omnis tabula nova fuerit, nihilominus est eadem navis." The glossator, Vivianus Tuscus of Bologna, a contemporary of Accursius (cf. Savigny, v.339f), adds laconically: "quia . . . non idem esset homo hodie qui fuit ante annum." (See below, n.50.) For repetitions of those images, cf. Gierke, *Gen.R.*, III,365,n.42, to whose collection there might be added Bracton, fol.374b, ed. Woodbine, IV,175: "In collegiis et capitulis semper idem corpus manet, quamvis successive omnes moriantur et alii loco ipsorum substituuntur, sicut dici poterit de gregibus ovium, ubi semper idem grex, quamvis omnes oves sive capita successive decedant." The source of all those examples (*populus*, *legio*, *navis*, *grex*) is *D.41.3.30*, rubr., and they descended, through the agency of the Roman jurist Pomponius writing under Severus Alexander, ultimately from Greek philosophy; see, on this law, the study of Alexander Philipsborn, "Der Begriff der juristischen Person im römischen Recht," *ZfRG*, rom.Abt., LXXI (1954), 41-70.

⁴⁹ The "form" itself remains identical and, though existing as form only compositely with matter, it is yet independent of the variability of the component matter. See, e.g., Aquinas, *Summa theol.*, I,q.9,a.1,ad 3: "Ad tertium dicendum, quod formae dicuntur invariables, quia non possunt esse subiectum variationis; subiiciuntur tamen variationi, in quantum subiectum secundum eas variatur."

⁵⁰ Baldus, on *D.5.1.76*, n.4, fol.270: "Quarto, nota quod ubi non mutatur forma rei, non dicitur mutari res." He then quotes the example of the interdict which may last a hundred years or more, "*quia populus non moritur*, licet sint mortui illi qui praestiterunt causam interdicto." The principle has been formulated by Paulus de Castro (d.1441), who opined, likewise on *D.5.1.76*: "quod stante identitate

universitas on the one hand, and the individual and material community of Bologna composed of mutable citizens and perishable buildings on the other hand, there arose a third entity different from both, an entity which was immaterial and invariable, though not devoid of individuation, which existed (as it were) in some perpetual *aevum*, and which appropriately might have been called *Bononitas* or "Bolognity," had the lawyers not preferred to talk about the corporate *universitas*—that is, the juristic person or personified community—of Bologna. Nevertheless, that corporate, if incorporeal, *Bononitas* represented, like the angels, species and individuation at the same time.⁶⁶

It might be mentioned parenthetically that the personifications of communities, cities, and kingdoms created by juristic speculation were not simply a revival of those toponymic personifications of classical Antiquity which had lingered on in the miniatures of Carolingian, Ottonian, and even later manuscripts.⁶⁷ In fact, the juristic personifications of cities and countries were not at all identical with their august predecessors of classical cults. The classical city goddesses, adorned with mural crown or halo, still belonged, in a broad sense, to the stratum of ancient anthropomorphism: they were the *genius* of a city and they could claim immortality and perpetuality simply because they were goddesses. The personifications of the jurists, however, were philosophical fictions belonging to the realm of speculation. The cities, instead of receiving, like Antique city goddesses at their epiphanies, a

⁶⁶ For the *Socratitas*, see Harris, *Duns Scotus*, II, 20, n. 3: "Et sicut Socratitas quae formaliter constituit Socratem, nusquam est extra Socratem, sic illa hominis essentia quae Socratitatem sustinet in Socrate, nunquam est nisi in Socrate, vel quae est in aliqui alio individuorum." What Scotus seems to mean (see Harris, *loc. cit.*) is the "collection" of the concrete material object and of the universal in the "image" or "intelligible species." See, e.g., Baldus, on c. 3 X 1, 31, n. 14 (*In Decretalia*, fol. 126), and his definition of *universitas*: "Omnis universitas dicitur corpus, quia compositum et aggregatum, ubi corpora sunt tanquam materia; dicitur autem forma, id est, formalis status [see above, n. 49]. . . . Est igitur collegium imago quaedam quae magis intellectu quam sensu percipitur [D. 41, 3, 30; 4, 2, 9, 1; c. 53 X 5, 39]." Or see, for the intermediate stratum between the genus and the concrete individual, Baldus, on c. 3 X 2, 12, n. 15 (*In Decretalia*, fol. 178): "Est autem universale quod non distinguitur in species dialectico modo assumptas, sed in res. Generale autem est id, quod habet species sub se. . . ." In other words, the *universale* and *universitas* is, in legal philosophy, itself a species ranging above the things in which it individualizes, but ranging below the *generale* which itself is divisible into species. It must be left, however, to the specialist to analyze the juristic terminology and to compare it to that of scholastic philosophy.

⁶⁷ See above, Chapter III, n. 88.

visible body, were actually deprived of their visible body and were granted by legal thought only an invisible one. This invisible body, to be sure, was immortal and perpetual; yet it was immortal, not because it was the body of a goddess, but precisely because it was invisible—the body of an immaterial being. Hence the lawyers were far from reviving classical “anthropomorphic” personifications; they created instead, in full agreement with the mediaeval scheme of thinking, what may be called “angelomorphic” personifications. In other words, legal corporations compared structurally with Christian angels rather than with pagan goddesses.

In his gloss on the Peace of Constance, Baldus called a city “something universal that cannot perish by death,” and he compared that “universal” with the genus or species of man which does not die either.⁶⁸ It is possible that the term “something universal” (*quoddam universale*) evoked associations with the likewise immortal Universals of philosophic speech; but what the term *universale* really meant in legal language was quite unambiguous: it was synonymous with the technical term *universitas* deriving from Roman Law, the corporational collective at large which the early glossators defined as “a conjunct or collection in one body of a plurality of persons.”⁶⁹ On that basis, Bartolus could maintain that “the whole world is some kind of *universitas*,” not to mention kingdoms and cities.⁷⁰ Baldus could define a *populus* as “a collection of men in one mystical body,”⁷¹ or call a *regnum* “something total which both in persons and things contains its parts integrally,”⁷² or talk briefly about “some universal person.”⁷³ For to interpret a collective bluntly as a “person” was suggested

⁶⁸ Baldus, *De pace Const.*, p.162D (above, n.61).

⁶⁹ Gierke, *Gen.R.*, III,193f.

⁷⁰ Bartolus, on *D.6,1,1,3*, fol.204: “[The emperor is lord of the world] Nec obstat quod alii sunt domini particulariter, quia mundus est universitas quaedam; unde potest quis habere dictam universitatem, licet singulae res non sint suae.” Cf. Woolf, *Bartolus*, 22,n.3; cf.123f, for the three kinds of *universitates*.

⁷¹ Baldus, on *C.7,53,5,n.11*, fol. 73v: “[populus] debet intelligi de hominibus collective assumptis. . . . Unde populus proprie non dicitur homines, sed hominum collectio in unum corpus mysticum, et abstractive assumptum, cuius significatio est inventa per intellectum.” Cf. Gierke, *Gen.R.*, III,432.

⁷² Baldus, *Consilia*, I,333,n.1, fol.105: “regnum quoddam totum suas partes integraliter continens tam in personis quam in rebus, sicut omne nomen collectivum populorum et territorii.”

⁷³ Baldus, on *C.6,26,2*, n.2, fol.80v: “Est et quaedam persona universalis . . . ut populus [*lex mortuo*: *D.46,1,22*; cf. next note], et haec persona similiter loco unius habetur, et individuum corpus reputatur.”

"The King never dies" seems to have made its first appearance; and probably one could afford being a little careless, since the distinctions between the King's immortal Body politic and his mortal Body natural were so well established that misunderstandings were practically impossible. However that may be, where so much talk had been going on about immortal royal Dignities and Majesties, and where—as especially in France—the tendency was so strong to read into the individual living king features of a living *persona idealis*,³¹⁸ it was almost to be expected that one day, sooner or later, also the phrase *Le roi ne meurt jamais* would make its appearance.

LE ROY EST MORT . . .

Very little attention, if any, has been paid to the indisputable fact that the famous device *Le roi ne meurt jamais*, current in France since the sixteenth century,³¹⁹ descended in direct succession from the legal maxim *Dignitas non moritur*, and therefore ultimately from Pope Alexander's decretal *Quoniam abbas*. In other words, it represented merely another twist of the well-worn corporational doctrines of mediaeval canonists and civilians. That this quite unambiguous genealogy has so rarely been noticed may

³¹⁸ Church, *Constitutional Thought*, 94.n.41, 197.247ff. and passim.

³¹⁹ It would be difficult to tell when exactly the slogan first appears in France. Cf. Jean Bodin, *Les six livres de la république*, 1.c.8 (Paris, 1583; first edition 1576), 160: "Car il est certain que le Roy ne meurt jamais, comme l'on dit, ains si tost que l'un est decedé, le plus proche masle de son estoc est saisi du Royaume et en possession d'iceluy au paravant qu'il soit couronné." This shows that by the time Bodin wrote (ca.1576) the maxim was well known (*comme l'on dit*). It is also interesting that Bodin raises the device *le mort saisit le vif* (above, n.268) from the sphere of private legal inheritance to the public sphere by replacing *le mort* by *le Royaume*: the kingdom itself seizes the heir to the throne. The same connection of *le Roy ne meurt jamais* with *le mort saisit le vif* is found in Charles Loyseau, *Cinq livres du droit des offices*, 1.c.10.n.58 (Lyon, 1701; first published in 1610), 66, quoted by Church, *Const. Thought*, 319.n.44. By that time, of course, *le Roy ne meurt jamais* had become a religious dogma of the French nation, which, e.g., Bossuet, while still relying on the juristic doctrines, flamboyantly interprets in a new fashion: the image of God, visible in the king, cannot be but immortal; cf. Bossuet, *Oeuvres oratoires*, ed. J. Lebarq (Lille and Paris, 1892), iv.256ff ("Sur les devoirs des rois," a Palm Sunday Sermon delivered before the king, on April 2, 1662), who renders (p.262) an exposition of Psalm 81: 6, *Ego dixi: dii estis* (see my paper "Deus per naturam," 274.n.72): "Vous êtes des dieux . . . Mais ô dieux de chair et de sang, ô dieux de terre et de poussière, vous mourrez comme des hommes." N'importe, vous êtes des dieux, encore que vous mouriez, et votre autorité ne meurt pas: cet esprit de royauté passe tout entier à vos successeurs . . . L'homme meurt, il est vrai, mais le roi, disons-nous, ne meurt jamais: l'image de Dieu est immortelle."

have been caused—at least, to some extent—by the fact that the legal maxim has far too often been combined, for deceptively obvious reasons, with the cries heard at the burials of French kings in the Abbey of St.-Denis: *Le roi est mort! Vive le roi!*³²⁰ Unduly, however, have those two slogans of legalistic and dynastic continuity been coupled together and finally confounded—for each has its own peculiar history. *Le roi ne meurt jamais* is dynastic only accidentally; *le pape, l'évêque, l'abbesse ne meurt jamais* would have been valid maxims even though in these cases dynastic dignity was not involved. Nor does the far-famed French device, which after all was daily bread in the jargon of English jurists of that time, appear in the burial ceremonial of French kings, since the funerary cries at St.-Denis originated in a totally different setting.³²¹

By the Treaty of Troyes, in 1420, the sick King Charles VI of France and Queen Isabeau recognized King Henry V of England as the legitimate successor presumptive to the French throne; the English claims were acknowledged in northern France, including the city of Paris. Two years later, on August 31, 1422, Henry V died at Vincennes, leaving his French claims to his son Henry VI. While the dead king's body was being conveyed first to St.-Denis, thence via Rouen to London, King Charles VI of France died also, on October 21, 1422. The Duke of Bedford, in his capacity of Regent of France for the infant Henry VI of England, returned to Paris, on November 5th, where the *Conseil* seems to have awaited his arrival to make the arrangements for the funeral and to conduct the funerary rites.³²²

Other events, however, imperiled the English succession to the French throne. South of Paris, at Méhun-sur-Yèvre, the Dauphin

³²⁰ See, e.g., Robert Holtzmann, *Französische Verfassungsgeschichte* (Munich and Berlin, 1910), 311; Schramm, *English Coronation*, 1, and *König von Frankreich*, 1, 260. Bloch, *Rois thaumaturges*, 218f, stresses mainly the dynastic aspect of the St.-Denis cries, which is important but not decisive. The two notions have been confused already by the French authors around 1600.

³²¹ Much, and sometimes most, of the following paragraphs are drawn from the forthcoming book of Ralph E. Giesey, *The Royal Funeral Ceremony in Renaissance France*, a thorough and comprehensive study (based upon his University of California Ph.D. dissertation, Berkeley, Cal., 1954), which I quote according to chapter and footnote numbers. I am greatly indebted to Dr. Giesey not only for allowing me to use his manuscript freely, but also for contributing additional relevant passages and for placing liberally at my disposal his own excerpts from hitherto unpublished material collected by him abroad.

³²² Giesey, *Royal Funeral*, Ch.vi,nos.87ff.

Charles VII was acclaimed by his officers with the cry *Vive le roi!* while the banner of France was hoisted.³²³ The Duke of Bedford, therefore, was pressed to act quickly and efficiently to protect and proclaim the rights of his sovereign lord, King Henry VI of England. When Charles VI was entombed at St.-Denis, on November 11th—just four days after Henry V had been buried at Westminster Abbey—the ceremony was concluded by the customary short prayer for the deceased king: "*Priez pour l'ame de tres-excellent prince Charles VI, roy de France.*" Then, after a short pause, a king-of-arms proclaimed the rights of the child Henry VI, and cried with loud voice: "*Vive Henry par la grace de Dieu roy de France et d'Angleterre!*" Whereupon the other heralds responded with the cry: *Vive le roy Henry!* to which the English added *Noël!*—"as if the Lord were descending from heaven," according to the French chronicler.³²⁴

Here, for the obvious purpose of forestalling the claims of the rival Dauphin and his party, the prayer for the dead king was coupled with the acclamation of the new king in the form in which normally it would be heard at royal coronations and on other occasions. Henceforth that procedure remained the custom in France: the prayer for the dead king was said and then, after a short silence "long enough to say a *Pater noster*,"³²⁵ the acclamation of the new king followed. However, the prayer for the dead king as well as the proclamation of the new king were gradually reduced in length, until finally the brief impersonal cries, interrupted only by short ceremonial, were heard: *Le roi est mort! . . . Vive le roi!* This brief and depersonalized version seems to have made its first appearance at the interment of Louis XII, in 1515, whereas an intermediary formula—the short successive cries with the mention of the individual names of both the dead king and

³²³ This ceremony is described in detail by Monstrelet, *Chroniques*, ed. Douët d'Arco (Soc. de l'hist. de France, Paris, 1857-62), iv,310: "*Sy fu lors levée une banière de France dedans la chapelle, et donc lesditz officiers commencèrent a crier hault et cler par plusieurs fois Vive le Roy!*" For the date (Oct. 30th instead of Oct. 24th), see Giesey, *op.cit.*, Ch.viii,n.20f.

³²⁴ The cries for Charles VI and Henry VI reported here are from the "original" version of the *Cérémonial de l'inhumation de Charles VI*, the oldest ms of which (Paris, BN.fr.18674,fol.119f) is reproduced by Giesey, *Royal Funeral*, Appendix II. The cry "Noël" is reported, e.g., in *Chronique du Religieux de Saint-Denis*, ed. M. L. Bellaguet (Coll. des documents inédits, Paris, 1852), vi,496.

³²⁵ Mathieu d'Escouchy, *Chroniques*, ed. G. du Fresne de Beaucourt (Soc. de l'hist. de France, Paris, 1863-64), II,443f, relating the funeral of Charles VII in 1461.

the new king—apparently was used before 1515.³²⁶ This is all the more likely, since in 1509, on the death of Henry VII of England, the English funerary ceremonial observed that intermediary style. The stewards broke their staves, the vault was closed,

and incontinent all the herauds did [take] of their cotearmours and did hange them uppon the Rayles of the herse: cryinge lamentably in French "The Noble kynge Henry the Seaventh is deade." And as soone as they had so done, everie heraud putt on his cotearmour againe and cryed with a loude voyce: "Vive Le noble Roy Henry le VIII^{me}," which is to say in englyshe tonge "God send the noble Kynge Henry the eight longe life."³²⁷

The English procedure which, in all likelihood, followed the example of the French ceremonial, suggests that the short succession of the two brief cries, though as yet with the invocations of the kings' names, actually was the French custom before 1509, a consideration which sends us back to the funeral of Charles VIII, in 1498.³²⁸ The later omission of the individual names certainly brought into prominence the perpetuity of the *Dignitas* as such, severed from its impersonators; but it is impossible to tell whether this was intended or not. What matters here is that the cries "The king is dead! Long live the king!" which—with or without mention of proper names—powerfully demonstrated the perpetuity of kingship, were introduced in England at a time when in the Inns of Court the maxim saying that "the king as King never dies" was just about to be formulated.

A broad political idea has been given expression through the funerary ceremonial in lapidary terms and in a dramatic display. Nevertheless, the famous cries were neither the first nor the only

³²⁶ It is commonly assumed that those cries were heard, in their shortest form, for the first time at the funeral of Francis I, in 1547; see, e.g., Bloch, *Rois thaumaturges*, 218f; Schramm, *Frankreich*, II, 125 (= 1,260, n.4). The depersonalized cries, however, are actually found already in a contemporary report of the funeral of Louis XII in 1515: *L'obsèque et enterrement du Roy* (Paris, 1515), reprinted in L. Cimber and F. Anjou, *Archives curieuses sur l'histoire de France* (Paris, 1835), Ier sér., II, 69f. Cf. Giesey, *Royal Funeral*, Ch. VIII, nos. 50f, for further detail.

³²⁷ The relation is preserved in Brit. Mus., *Harley MS 3504*, fol. 259^{r-v} (ancient 271), a copy of which Dr. Giesey kindly placed at my disposal.

³²⁸ French, being the language of heraldry, cannot, of course, be taken as evidence of the French origin of the ceremony. The cries, however, are not found in the ceremonial of the interment of Edward IV, in 1483 (cf. Brit. Mus., *Egerton MS 2642*, fols. 186^v-188^v), while they are almost verbatim the cries used in 1498 at the funeral of Charles VIII of France; cf. Jean de Saint-Gelais, *Chronique*, in Th. Godefroy, *Histoire de Louys XII* (Paris, 1622), 108; cf. Giesey, *op.cit.*, Ch. VIII, n.45.

which formerly dominated the funerary ceremonial, a new triumphal element was added, which may not have been caused by the introduction of the effigy, but which certainly received from the introduction of the funerary image, and through it, new and unexpected impulses. It should be emphasized, however, that the new triumphal idea differed profoundly from that substratum of triumph which, of course, gave a certain tinge also to the mediaeval funeral rites; for that new concept of triumph did not mean to anticipate the king's future *conregnatio* with Christ in heaven, but to celebrate and display the dead king's *conregnatio* with the immortal royal *Dignitas* on earth of which the substance had passed on to the successor, but which still was visibly represented by the effigy of the deceased ruler.³⁰⁵ For the last time, the dead king "acts the person of the Dignity." Moreover, the deceased king now approached the eternal Judge in heaven in a different attire: in the Middle Ages the king was buried with his crown and his regalia, or copies thereof; now, however, he was naked or in his winding sheet, and he came to heaven as a poor wretch, whereas the regalia were reserved for the effigy, the true bearer of royal glory and the symbol of a Dignity "which never dies."³⁰⁶

effigy was still lying on top of the coffin, a separation took place at the funeral of Louis XII. With Francis I's funeral (1547), the coffin in a black draped chariot went in the van of the procession, while the effigy, in full royal triumph, was carried near the rear, the position of honor. For the details of a complicated development, see Giesey, Ch.vii,n.42ff.

³⁰⁵ This antithesis was felt apparently as early as the 1560's by Du Tillet, *Recueil des Roys de France* (ed. 1617), 1,341, when he remarks that with Francis I and Henry II "a commencé estre divisé le corps de l'effigie, et mis dedans le chariot d'armes, ou de parement, pour faire (comme est vray-semblable) l'effigie plus eminente: par ce moyen à l'effigie seule ont depuis esté rendues les honneurs appartenans au corps mis en arrière: combien que par la future resurrection il sera immortel." That is to say, the eminence of the image which receives on earth all the honors, is set over against the now decaying corpse which nevertheless will be the truly immortal body after the Day of Resurrection. For the *conregnatio* with Christ in the future life (a privilege of the Redeemed at large, but especially of kings), see the material collected by Schramm, "Herrscherbild," 222-224; also O. Treitinger, *Die oströmische Kaiser- und Reichsidee* (Jena, 1938), 155f.

³⁰⁶ When the tombs of the French kings were opened during the Revolution, the skeletons of all the kings up to Charles VII were found in royal robes, and also enclosed were crown, scepter, hand of justice and ring (not always all of these items, but always some of them). Beginning with Charles VIII, however, the corpses were found to have been buried without any royal attire or insignia. Cf. A. Lenoir, *Musée des Monumens Français* (Paris, 1801), II,xcixff: "Notice historique sur les inhumations faites en 1793 dans l'abbaye de Saint-Denis." The same account is in G. d'Heilly (pseud. for E. A. Poinsot), *Extraction des cercueils royaux à Saint-Denis en 1793* (Paris, 1868). See Giesey, *Royal Funeral*, Ch.vii,nos.14,15,34.

Byzantium, as the saying is, was liturgically bifocal: a "liturgy of the court" had been developed side by side with the normal liturgy of the Church. At the French funerary rites, another bifocality developed: one ritual of the Church, observed by the clergy for the misery of the naked or half-naked man in the coffin ("internally there remains what is human"), and another ritual of the state, celebrating through the effigy the immortal and regal Dignity exposed on the coffin ("externally there appears the Majesty of God"). The triumph of Death and the triumph over Death were shown side by side.

Only a few features of the ceremonial connected with the effigy shall be mentioned here to illustrate the continuous juxtaposition of the dead king's earthly remains and his undying Dignity, each of which alternately was given prominence. At the funeral of Francis I, the encoffined body in the flesh was exhibited for about ten days in the hall of the palace. Then the scenario changed: the coffin containing the corpse was placed in a small chamber while in the hall the lifelike effigy of the king, made by François Clouet, took its place and lay in state—the so-called "imperial" crown on its head, the hands folded, scepter and *main de justice* on pillows on either side of it (fig. 27).³⁰⁷ No signs of mourning were visible in the colorfully decorated room in which cloth of gold,

³⁰⁷ The picture shows not Francis I, but Henry IV on his *lit d'honneur* (cf. Benkard, *Undying Faces*, pl.I, facing p.18, with the notes on p.59), since Clouet's effigy of Francis I is not preserved; however, from the extracts of accounts, published by L. Delaborde, *La renaissance des arts à la cour de France* (Paris, 1850), 1,85-90, the makeup of the effigy of Francis I can be completely reconstructed; see Giesey, *Royal Funeral*, Ch.I,n.17f. For the "imperial" crown of the French kings, see the two fundamental studies by Josef Deér, "Die abendländische Kaiserkrone des Hochmittelalters," and "Der Ursprung der Kaiserkrone," *Schweizerische Beiträge zur allgemeinen Geschichte*, VII (1949), 53-86, and VIII (1950), 51-87; but the transition of that emblem to the kings of France and England (cf. Schramm, *König von Frankreich*, 1,210) has as yet to be studied in detail, whereby interesting aspects may be gleaned from the French jurists. For the *lit d'honneur* of Francis I, see Giesey, who stresses the triumphal character. It is interesting to note in this connection that the so-called *Castrum doloris* (liturgically called also *tumba*) of the Prussian kings (Frederick William I and Frederick the Great) displayed the triumphal idea exclusively, as the picture published by Benkard (*Undying Faces*, pl.vi, and pp.34ff) shows clearly: a canopy of gold brocade vaulted the effigy in the show coffin; on the back of the canopy was the dead king's "State Portrait" (below, n.371), while a trumpet-blowing Victory or winged Genius (taking the place of the Roman *consecratio* eagle or of a Christian angel) ascended from the top of the canopy and carried as an *imago clipeata* the monogram flourish (which by that time had joined the heraldic emblems) of the dead king to heaven—a weird conglomeration of many symbols (excepting Christian symbols, which apparently did not fit the mood of an apotheosis).

because the image was treated as the live king in his Dignity. Apparently one of the two kings, either the demised or the living one (though *one* only), had to represent that immortal Dignity. From the fifteenth century onward the ceremonial involvements were such that, when both the corpse and the effigy were paraded in the great funerary procession, the successor king had to stay away altogether and leave the office of chief mourner to one of the princes of the royal blood: the new king could not at once wear mourning and not wear mourning; nor could he, at the same time, "act the person of the Dignity" and cede this privilege to the effigy of his deceased predecessor. Therefore, there was no other solution except staying away.⁸⁷⁶

The funerary procession itself demonstrated very clearly the concurrence of two heterogeneous ideas: the triumph of Death and the triumph over Death. There was the ecclesiastical ritual of the exequies and the general care attached to the dead king's body and soul; and there was the triumphal state ceremonial attached to the sempiternal glory symbolized by the effigy. This dichotomy was noticeable as early as 1498, at the funeral of Charles VIII. The procession conveying the corpse alone, without effigy, on a chariot from Amboise, where Charles died, to Paris

⁸⁷⁶ Cf. Giesey, Ch. IV, passim, esp. 47f. Jacques de la Gueule, *Remonstrances* (see above, n. 371), p. 52, says: ". . . mesme la presence des Roys, doit estre accompagnee de joye, et de contentement; raison pour laquelle ils n'ont accoustumé se trouver aux obseques de leurs predecesseurs, ny encore le fils à celles du pere, n'estant convenable à leurs sacrees personnes s'entremettre des mortuaires." See also Du Tillet, 1, 337f. However, it was not only unsuitable for a king to show mourning, but also it would have been most awkward for the new king to appear in the presence of his predecessor's effigy, to which regal honors still adhered; see, e.g., Vieilleville, *Mémoires* (above, n. 343), 62, who describes how the new king (Henry II) watched together with Vieilleville and the Marshal de St. André the funeral of Francis I—secretly and incognito: *y estant comme travesti*. The custom of staying away was fixed by Louis XII, at the funeral of Charles VIII in 1498. It is perhaps not amiss to recall in this connection the fact that the Byzantine emperor avoided also the wearing of mourning in the ordinary sense: whereas all others wore black, he alone wore white, later yellow, before he returned to purple garments; nor does the pope seem to wear mourning; cf. Treitinger, *Oströmische Kaiseridee*, 156, n. 57. The underlying idea goes far back in the history of ceremonial: "He [the king] must separate himself from the human passions, and draw himself close to the gods (*χρηρίζοντα μὲν αὐτὸν ἀπὸ τῶν ἀνθρώπων παθῶν, συνεγγίζοντα δὲ τοῖς θεοῖς*)," wrote Diotogenes, author of a Hellenistic tractate *On Kingship*; cf. Goodenough, "Hellenistic Kingship," 72; Delatte, *Traité de la royauté*, 42f, 269f; and for the problem in general, M. P. Charlesworth, "Imperial Department," *Journal of Roman Studies*, xxvii (1947), 34-38. That actually the Hellenistic tractates *On Kingship* were used in the 16th century for the interpretation of the French king's "absolutism" will be demonstrated on another occasion; see, however, below, Epilogue, nos. 12f.

ments in which the deceased appeared both as a dead human being (though not as yet as a "corpse") and in the costume of his social rank in life are found sporadically during the late thirteenth and the fourteenth centuries.³⁸⁴ Finally, a new feature was added. By the very end of the fourteenth century, the skeleton or cadaverous body began to appear in mediaeval art, a definitely late-mediaeval feature; we may recall, for example, that the first *Danse macabre*, the one in the cloisters of Saints Innocents in Paris, was executed under Charles VII, in 1425 or 1426.³⁸⁵ By that time, however, this grim theme of high Gothic art was combined with the sepulchral representation of both the *gisant* and the (as yet rare) double representations of the dead. The result was a species of monuments showing the reclining dead as a putrefying skeleton-like corpse, whereas on some higher level, or superimposed on the tomb, the deceased would be seen pictured such as he had been during his life. The *gisant*, thereby, was often transformed into a kneeling, or sometimes sitting, figure.³⁸⁶

It is usually said that the first to have himself represented as a cadaverous corpse was a physician of Charles VI, Guillaume de Harcigny, who died in 1393 and was buried in the episcopal chapel at Laon; in fact, not too much will be lost if we forget about the

sculptured or incised tomb plates) laid horizontal: the drapery hangs stiffly down to the feet as on a standing figure, over the head there is often a sculptured niche, and the eyes are open. The genuine *gisant*, however, is truly a reposing figure; the eyes are closed, and the folds of the gown fall naturally to either side of the recumbent body. Probably the earliest tomb effigies of the genuine *gisant* pattern are those in the Abbey of Fontevrault of the Plantagenets Henry II and Richard I as well as their queens, and the Brunswick tombs of Henry the Lion and his wife, a daughter of Henry II of England. The *pseudo-gisant*, however, dominated (see, e.g., the tombs of the English bishops, figs. 30, 31), lasting in some places until the 16th century, although in the early 14th century the genuinely reposing *gisant* became more and more popular.

³⁸⁴ For one of the earliest specimens—the tomb of Philip de Courtenay, pretender to the Latin Empire (d. 1283), at San Francesco in Assisi—see W. R. Valentiner, "The Master of the Tomb of Philippe de Courtenay in Assisi," *The Art Quarterly*, xiv (1951), 3-18.

³⁸⁵ For the latest monograph on this subject, see James M. Clark, *The Dance of Death in the Middle Ages and the Renaissance* (Glasgow, 1950), who could not yet profit from Robert Eisler, "Danse Macabre," *Traditio*, vi (1948), 187-225, a study on the basis of which a few items in the brilliant chapter on "Das Bild des Todes" by J. Huizinga, *Herbst des Mittelalters* (3rd ed., Stuttgart, 1938), 193-213, may be revised.

³⁸⁶ For the kneeling figure atop the reclining dead, see above, n.381; a seated statue of William the Silent in addition to the reclining sarcophagus figure (made between 1614 and 1621) is found in the Nieuwe Kerk at Delft.

the precious mitre on his head, the feet in pontifical shoes. His eyes are wide open, his hands folded in prayer. Nor is he in the miserable loneliness of the emaciated body below: angels are near the pillow on which his mitred head rests, and kneeling attendants near his feet join him in prayer.

The funerary ceremonial observed on his death has to be considered too. Chichele died in Lambeth from where his remains were transferred in solemn procession to Canterbury, escorted by scores of torchbearers and two hundred gentlemen on horseback with their retinues. Whereas in later times it was the custom to carry four banners of saints at the four corners of the coffin, the usage still prevailed in the fifteenth century to have instead the bishop's personal banner as well as the banner of his bishopric displayed by a gentleman mounted on a charger. One feature, in particular, attracts our attention: the coffin, shouldered on a bier, was topped by Chichele's effigy dressed in full pontificals and adorned with all the insignia of his office.³⁹¹ It is true, the display of a bishop's effigy fell in desuetude in sixteenth-century England; but it was the common custom in the fifteenth to parade at funerals the dead body of a high dignitary of the Church together with his image.³⁹² Hence, the sepulchral monument of Archbishop Chichele, showing the effigy on the top of the tomb and the corpse within the tomb, was the naturalistic reproduction of reality, rendering simply what was seen at the funerary procession: the effigy in regalia on top of the coffin which contained the almost naked corpse.

Since the parading of the effigy was the general usage at a bishop's funeral in fifteenth-century England, it might be expected to find more episcopal tombs worked during that period after

³⁹¹ Jacob, "Chichele and Canterbury," 388. For the banners displayed, see next note.

³⁹² Brit. Mus., *Egerton MS 2642*, fol. 194 (I could avail myself of Dr. Giesey's MS copy), contains a *Note of the Manner of the Burieng of a Bysshop in old Tyme used*, of ca. 1560, which describes 15th-century customs no longer practiced:

The Corpse to bee Layed in th'aforesayd charre, and to have upon the corse a figure apparelled in a Bisshopp araye Mytred, and in his hand a Croysier, and on his hands red gloves, and on his feet red shewes, and the said gloves to bee garnyshed with Rynges. The figure is not nowe used. And in tymes past a gentleman was wonte riding upon a goodly coursier trapped to beare a Banner of the Armes of the said Bisshopp and of the Byshoppricke to be parte in palle. But now the usage is to have but the iiii banners of Saynts at the fower corners of the charet borne by fower gentlemen in morning habitts with hoods over their faces.

he distinguished between a Dignity and its human incumbent, and many a time the place assigned by him to a personage in the *Divine Comedy* might tacitly betray such distinctions. The principle of making such distinctions was in itself common enough in his time, and it is not a matter of major interest here to know that Dante too availed himself of it. He struck, however, a completely new chord when, on one occasion, he set over against the office not simply the individual officer, some "Titius" or "Petrus," but Man—Man as both the individual and the exponent of his species, or Man in the most emphatic sense of the word.

To the Third Book of the *Monarchy* Dante assigned the task of proving that the emperor derived his power from God directly, and not through papal mediation, and even less so from the pope as the ultimate source of imperial power. This problem had been broadly treated by the canonists ever since the twelfth century. A powerful group of hierocrats (more recently called the "monists") indeed defended the thesis that the emperor, occasionally styled in a restricted sense the "vicar of the pope," enjoyed only a delegated power, since in the last analysis all power rested with the spiritual head of the hierarchy who disposed of both the spiritual and the material swords.¹⁵ It was against this radical group of canonists and political publicists that Dante raised his voice and thereby sided with the broadening opponent group of moderates, the so-called "dualists." Their most prominent spokesman had been, in the twelfth century, Huguccio of Pisa, and what they stood for was, in fact, the old Gelasian formula of mutual independence of pope and emperor: both powers derived from God directly, and therefore the emperor exercised his power "by his election alone," even before his Roman coronation. But, of course, there was general agreement that the emperor being a member of the Church depended in religious matters on the

¹⁵ Above, Ch. VII, nos. 22ff. Stickler, "Imperator vicarius Papae," *MIÖG*, LXII (1954), 165-212, has a good point when restricting the catchword of the emperor as *vicarius papae* to the coercive functions of the imperial power, at least according to earlier canonistic teaching; he is, however, equally correct when he stresses the perpetual, and inevitable, confusion of juristic and political elements in the arguments of later mediaeval authors as well as the great number of misunderstandings resulting from overcharged language and resisting reasoned solutions. At any rate, the hierocrats around 1300 were not misinterpreted canonists, but true hierocrats who brought the more carefully balanced system of earlier Canon Law necessarily into disrepute.

sacramental power of the pope, and, in some respects, depended on him even in temporal matters.¹⁶ Dante, while on the whole accepting the teaching of the dualists,¹⁷ carried those doctrines to ends of which their authors had never dreamt. In order to prove that his universal Monarch was free from papal jurisdiction, Dante had to build up a whole sector of the world which was independent not only of the pope, but also of the Church and, virtually, even of the Christian religion—a world sector actualized in the symbol of the "terrestrial paradise" which, it is true, served at the same time as a propylaeum of eternal bliss. Nevertheless, Dante's "terrestrial paradise" had its own autonomous and independent functions in juxtaposition with the celestial paradise.¹⁸ Man—Dante argued—being composed of a corruptible body and an incorruptible soul, holds alone of all created beings an intermediary place, "comparable to the horizon which holds a middle place between the two hemispheres." As a result of that duality, man alone among all creatures was bound to attain to a duality of goals.

Two ends have been set by Providence, that ineffable, before man to be contemplated by him: the blessedness, to wit, of this life, which consists in the exercise of man's proper power and is figured by the terrestrial paradise; and the blessedness of eternal life, which consists in the fruition of the divine aspect, to which his power may not

¹⁶ See above, Ch. VII, nos. 24ff, 28, and Kempf, *Innocenz III.*, 212ff.

¹⁷ See *Monarchia*, III, 16, 102ff, where Dante clearly reproduces the opinion of the "dualists." Their tenet *Ex sola electione principum* (see above, Ch. VII, nos. 28 and 32) served almost as a party-cry, and it is significant that Albericus de Rosate (d. 1354) repeatedly referred in connection with that slogan to Dante (especially to *Monarchia*, III) as a juristic authority; see, e.g., on C. 1.1, n. 20, fol. 8; C. 7.37.3, n. 16, fol. 108; cf. B. Nardi, "Note alla *Monarchia* (1. La *Monarchia* e Alberico da Rosciate)," *Studi Danteschi*, xxvi (1942), 99f, 102, who (p. 100) breaks off his long quotation just before Albericus continues: "Quod ex sola electione competat sibi administratio . . ." Another slogan ("Ante enim erant imperatores quam summi pontifices" [above, Ch. VII, n. 24]) was referred to by Dante in *Monarchia*, III, 13, 17ff, though in the guise of syllogisms. The opinion of Huguccio (Kempf, *op.cit.*, 221f): "Ergo neutrum pendet ex altero . . . quoad institutionem" was, of course, the gist of Dante's thesis, and even when Huguccio held that the emperor depended upon the pope "in spiritualibus et quodammodo in temporalibus," this was not incompatible with *Monarchia*, III, 16, 126ff, either. There are, however, far more passages in the *Monarchia* reflecting the teachings of the dualists which, by Dante's times, had pervaded also the writings of the civilians, until these tenets became, in 1338, the official law of the empire.

¹⁸ About the "separatism" of Dante there can be no doubt; see, e.g., M. Barbi, "Nuovi problemi della critica dantesca (VIII. Impero e Chiesa)," *Studi Danteschi*, xxvii (1942), 9-46, also xxiii (1938), 46ff; see also Nardi, "Dante e la filosofia," *ibid.*, xxv (1940), 25ff, and Gilson, *Dante*, 191ff, and *passim*.

ascend unless assisted by the divine light. And this blessedness is given to be understood by the celestial paradise.¹⁹

Those were, according to Dante, two utterly different goals of the human race. Therefore, ran his conclusion, the offices of pope and emperor, by whose direction mankind should be guided to its predestined ends, were assigned by Providence two completely different tasks and functions which were mutually independent. The two supreme offices, which Dante called somewhat abstractly *papatus* and *imperatus*,²⁰ were in fact so different from one another that, taken all by themselves, they precluded comparison. If, however, they were to be compared none the less, they became comparable only after being reduced to their common origin. Had man remained in the state of innocence, both directives would have been superfluous; such as man was after the fall, he needed the remedies of the two offices.²¹ Both *papatus* and *imperatus*, therefore, were institutions established by God for the proper guidance of mankind; both derived from God and both ultimately referred to God. Hence, they became comparable only when reduced to God himself, "in whom all disposition is universally united," or perhaps to some substance inferior to God, some celestial prototype of office, "in which the Godhead appears in a more particularized form."²² In other words, Dante excluded with regard to either office the possibility of a human intermediary, since both depended directly on God. Or, if intermediary there be, he would be an "angel," a celestial prototype of *papatus* and *imperatus* respectively, "some substance inferior to God" from whose universality that particularized form descended.²³

Pope and emperor, however, were to be measured not only by the standards of heaven—of God or angel—but they became comparable also when reduced to a standard valid on earth, the standard of Man.

¹⁹ *Monarchia*, III, 16, 14ff, and 43ff.

²⁰ See above, Ch. VII, n. 44.

²¹ *Monarchia*, III, 4, 107ff.

²² *Monarchia*, III, 12, 85ff.

²³ *Ibid.*, 93ff: "Et hoc erit vel ipse Deus, in quo respectus omnis universaliter unitur; vel aliqua substantia Deo inferior, in qua respectus superpositionis, per differentiam superpositionis, a simplici respectu descendens, particuletur." For the neo-platonic substratum, see Wolfram von den Steinen, *Dante: Die Monarchie*, Breslau, 1926, 118. Dante arrives at angelic or "proto-typical" personifications of *papatus* and *imperatus* which in many respects resemble the *Dignitas* of the jurists.

It is one thing to be man and another to be pope; and just so, it is one thing to be man and another to be emperor.²⁴

At a glance, this may appear like the customary dichotomy of *Dignitas* and individual dignitary. Dante, however, by a sudden twist, presented the conventional problem in a new philosophic perspective. For he wished "Man" to be understood not only generically, but also qualitatively: pope and emperor became comparable as men not merely because they belonged to the same species of mortal human beings, but because Man in his most elated form should determine the standard the two officers had in common.

For as men they have to be reduced to the best man (*optimus homo*), who is the standard of all others and, so to say, their Idea, whosoever he may be; to him, that is, who is in the highest degree One within his own kind.²⁵

Dante, it is true, derived his notions from Aristotle. He himself quoted the *Nicomachean Ethics* and the *Metaphysics*, and the notion of the *optimus homo* was probably inspired also by the Aristotelian *Politics*.²⁶ What matters here, however, is how he applied the Aristotelian notions.

Dante arrived at two standards by which pope and emperor could be measured, the standards of "God or angel" and of "Man at his best." The offices (*papatus* and *imperatus*), established by divine dispensation, were to be measured by the standard of God (or angel). The human incumbent of the office, however, was to be measured according to the standard of Man, that is, of him

²⁴ *Monarchia*, III, 12, 31ff: ". . . sciendum quod aliud est esse hominem, et aliud est esse Papam. Et eodem modo, aliud est esse hominem, aliud est esse Imperatorem." To Dante, just as to the jurists, the office had an independent existence, or was a *res* independent of the incumbents. See, e.g., *Monarchia*, III, 7, 41: "Auctoritas principalis non est principis nisi ad usum, quia nullus princeps seipsum auctorizare potest" (see above, Ch. IV, n. 182, for Pseudo-Chrysostomus, *In Mattheum*: "nemo potest facere se ipsum regem"); also III, 10, 34: "officium deputatum Imperatori"; and *ibid.*, 73ff: "Praeterea omnis iurisdictio prior est suo iudice; iudex enim ad iurisdictionem ordinatur, et non e converso." The *imperium*, however, is a *iurisdictio*; therefore "ipsa [iurisdictio] est prior suo iudice, qui est Imperator."

²⁵ *Ibid.*, III, 12, 62ff: "Nam, prout sunt homines, habent reduci ad optimum hominem, qui est mensura aliorum et idea, ut ita dicam, quisquis ille sit, ad existentem maxime unum in genere suo."

²⁶ The places referred to are *Nicom. Eth.*, x, 5, 1176a16 (cf. Aquinas, *In Ethica Arist.*, §1466, and Commentary, §2062, ed. Spiazzi, pp. 534ff), and *Metaph.*, IX, 1, 1052b18. See also *Polit.*, III, 11, 8, and 12, 1287b20 and 1288a15ff and passim (cf. Aquinas, *In Pol.*, §378, and Commentary, §519, ed. Spiazzi, 178, 182).

"who is in the highest degree One within his own kind" and the "Idea" of his kind, and who by his *humanitas* represented as well as encompassed most perfectly the *genus humanum*.²⁷ That is to say, pope and emperor, who were restricted by their functions to two different orbits and therefore were incomparable entities, became comparable nevertheless when they were referred to God and to Man. They should be measured by either divine or human standards, by either *deitas* or *humanitas*, standards relevant to office and officeholder respectively. But they should not be measured by totally irrelevant standards such as the similes of sun and moon, of the two swords, and other cobwebs or fancies so often spelt out to determine the extent of the papal power or of that of the emperor.²⁸ Dante thus transferred the age-old struggle about the superiority of either pope or emperor to a plane differing from the customary argumentations when he referred both powers to their absolute standards, those of *deitas* and *humanitas*, standards so closely interlocked with one another through the Incarnation that at times they became almost exchangeable.

The question might arise whether in Dante's general concept the capacity of "Being Man" (in the qualitative sense of being the "most One within his kind" and the "Idea of his kind") did not itself amount to an "office," the highly responsible office of Man towards mankind—an office equal in rank and responsibility and universality with *papatus* and *imperatus* and adorned with a Dignity no less sempiternal than that of either the emperor or the pope: the Dignity of Man. Was it perhaps that he, who most perfectly represented the Idea of Man, thereby transcended his incidental individuality of "Petrus" or "Titius" and became the supra-individual representative of his species, the incumbent of a

²⁷ For "maxime unus in genere suo," see *Monarchia*, I, 15, 11ff, where Dante builds up a "gradation" (*gradatim se habent*) of being, being one, and being good: "maxime enim ens maxime est unum, et maxime unum est maxime bonum," which leads to the conclusion: "Propter quod in omni genere rerum illud est optimum, quod est maxime unum." This gradation Dante now transfers to Man: he who is most one within his own kind, is the *optimus homo*, therefore also the Idea of his kind and its standard; he is, as it were, *humanitas* impersonated in both the qualitative and the quantitative senses.

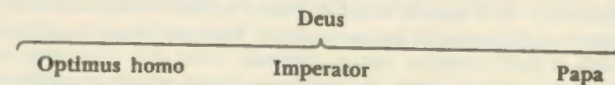
²⁸ It is interesting to note that Albericus de Rosate, on *C.7.37.3.n.19*, fol. 108^{rb}, again makes his allegation to Dante in connection with those similes: "licet hoc [the Sun and Moon metaphor] communiter teneatur, tamen ipse Dantes negat verum esse quod in hoc figurentur sacerdotium et imperium. Et hoc probat in dicta quaestione per subtiles et probabiles rationes. Et idem dicit de duobus gladiis . . . negat enim predicta significare sacerdotium et imperium." Cf. *Monarchia*, III, 4, 12ff, and 9, 1ff. See Nardi, "Note alla *Monarchia*," 103.

personal dignity in which the corporate and generic Dignity of Man became manifest? In fact, the assumption has been put forth that Dante's *optimus homo* not only was identical with the Aristotelian Sage, but also that this philosopher-sage represented, as though in a third orbit, a third *Dignitas* apart from and independent of that of the pope or the emperor.²⁹ Correct though this assumption may be in other respects,³⁰ the trichotomy of pope-emperor-philosopher does not fit the clear-cut duality of the *Monarchy* in which the standard of the *optimus homo* on earth ("whosoever he may be") and the standard of God or angel in heaven were in a state of equilibrium, which corresponded to the equilibrium of Dante's two paradises, terrestrial and celestial.³¹

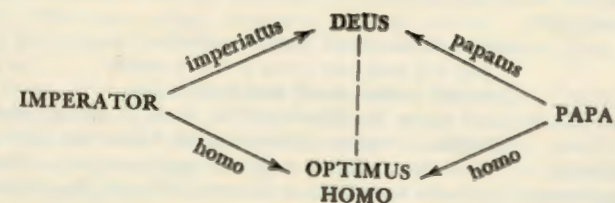
²⁹ Gilson, *Dante*, 189ff.

³⁰ Cf. Burdach, *Rienzo*, 170ff, 501ff, on the "Apolline Empire"; Leonardo Olschki, *Dante "Poeta Veltro"* (Florence, 1953), who identifies the mission of the Veltro with that of the poet-philosopher.

³¹ In his highly stimulating discussion of *Monarchia*, III, 12, Gilson (*Dante*, 188ff) arrives at a trichotomy of orders (pope, emperor, philosopher) by identifying the *optimus homo* with the Aristotelian sage. That identification all by itself would be possible, though in that chapter Dante does not say so, nor does he suggest it. Moreover, Gilson having established the three orders of pope, emperor, and sage—all equal in rank—interprets the phrase *non potest dici, quod alterum subalternetur alteri* in such a way that it refers to all three orders: each of the three sovereign powers remains without a superior within his category. Although such a trichotomy was definitely within the range of 13th century thought as well as that of Dante himself, Gilson's interpretation fails to do justice to the leading idea of *Monarchia*, III, 12. Apart from the fact that his interpretation meets with grammatical difficulties, because *alter* leaves only the choice of two, and not of three (see, e.g., with regard to papacy and empire: "Distincte enim sunt hae potestates nec una pendet ex altera," quoted by Kempf, *Innocenz III.*, 218, n.65, also 221, n.71), Gilson's coordination of the three orders under God is not convincing in other respects. He supports his argument by the following diagram (which has been simplified here):



But this is not at all what Dante says, who simply establishes two different reference points to which he relates pope and emperor (1) *qua* office and (2) *qua* man, as illustrated by the following diagram:



Moreover, the philosopher-sage cannot be conceived of as a third entity in the *Monarchy*, since this work was written to demonstrate that it was the task of the emperor to lead the *genus humanum* to its terrestrial intellectual or philosophic perfection. Hence, in the system of the *Monarchy* emperor and philosopher coincided; they were bound to coincide because otherwise the emperor would be wanting the ethical justification and moral qualification for his natural (that is, his purely human) task of guiding mankind by the proper usage of philosophic reason to its *natural* goal—just as the guidance to the *supra-natural* goal of the Christian formed the trust of the spiritual shepherd, the pope. In other words, Dante's whole scheme of duality postulated with regard to *humanitas* the figure, not of the Greek philosopher-sage, but of the Roman emperor-philosopher, just as it postulated the figure of the Roman pontiff with regard to *Christianitas*. After all, there were no more than two roads leading to no more than two goals of perfection, and these *due strade* were lit up by the two Roman Suns, emperor and pope:

She, maker of the good world, Rome, was wont
To having two SUNS which made plain to sight
Both one road and the other, world and God.⁸²

Whether or not the curious metaphor of the "Two Suns" was perhaps Dante's answer to those canonists who talked about "two emperors, one ecclesiastic and the other secular, who ruled the

Deus and *optimus homo* are the two entities to which both pope and emperor refer: their offices refer to God and their individualities to the "best man" (who may, or may not, be identical with the Aristotelian sage; the latter is likely, but it makes no difference with regard to what Dante wishes to express here). By transferring the *optimus homo* to the denominator of pope and emperor, Gilson deprives, as it were, both of their common human reference point and eliminates, at the same time, the tension between *Deus* and *optimus homo* which compares with that between office and man. In fact, the tension of this crucial chapter ties in with the general duality of human goals symbolized by Adam and Christ, the two paragons of perfection in the two paradises: Adam in the terrestrial paradise and Christ in the celestial.

⁸² *Purg.*, XVI, 106ff:

Soleva Roma, che il buon mondo feo,
due soli aver, che l'una e l'altra strada
facean vedere, e del mondo e di Deo.

See, for the problem, my paper on "Dante's 'Two Suns,'" *Semitic and Oriental Studies in Honor of William Popper* (University of California Publications in Semitic Philology, XI [Berkeley and Los Angeles, 1951]), 217-231. The study of Michele Maccarone, "La teoria ierocratica e il canto XVI del Purgatorio," *Rivista di Storia della Chiesa in Italia*, IV (1950), 359-398, was then not known to me.

whole world," makes little difference here,⁸³ but his lines once more show the fundamental duality of human ends and human leadership.

It was, however, the major premise of the whole scheme of the *Monarchy* that Dante, inspired by Aristotle, attributed to the human community a moral-ethical goal which was "goal in itself," was *para-ecclesiastical*, and therefore independent of a Church which had its own goal. This duality of moral-ethical and ecclesiastical-spiritual values was rather common among the jurists of Dante's age who pointed out that the *universitas* was a *corpus morale et politicum*⁸⁴ which paralleled the *corpus mysticum* of the Church, or held with Dante that "just as the Church has its foundation, so has the empire; for the foundation of the Church is Christ . . . , but the foundation of the empire is human Law."⁸⁵ Dante, in order to justify the self-sufficiency and sovereignty of the *universitas generis humani*, appropriated, like the jurists, theological language and ecclesiastical thought for expressing his views concerning the secular body politic; and thereby he arrived at the construction of "a secularized imitation of the religious notion of the Church,"⁸⁶ while endowing his creation even with a blessedness of its own: the terrestrial paradise. The result was a duality of mutually independent corporate bodies, one "human-imperial" and the other "Christian-papal," both universal, each of which pursued its own ends and had its own goal of human perfection. That duality differed profoundly from the Thomistic system in which invariably the secular ends were subordinated to the spiritual, and it is only too comprehensible that the dantesque system immediately challenged a contemporary cleric, the Dominican Guido Vernani of Rimini, to launch a formidable attack against

⁸³ Cf. Stickler, "Imperator vicarius Papae," *MIÖG*, LXII (1954), 200, n.66 (also Kempf, *Innocenz III.*, 211, n.47), quoting the *Summa Bambergensis*: ". . . infra xcvi di., duo, ibi dicitur, quod duo imperatores scilicet ecclesiasticus et secularis, totum orbem regunt; verum, set per iura regunt." The allegation is c.10, D.XCVI, Friedberg, 1,340, the famous Gelasian definition of pontifical *auctoritas* and regal *potestas*, beginning: "Duo sunt quippe, imperator auguste, quibus . . ." It seems that the author of the *Summa*, so to say, twisted the vocative *imperator* when he said *duo imperatores*.

⁸⁴ See above, Ch.v, nos.60,68,81; also Kantorowicz, "Mysteries of State," 81f.

⁸⁵ *Monarchia*, III, 10, 47ff: ". . . sicut Ecclesia suum habet fundamentum, sic et Imperium suum: nam Ecclesiae fundamentum Christus est . . . ; Imperii vero fundamentum ius humanum est." This passage was quoted in full by Albericus de Rosate, on C.7, 37, 7, n.30, fol.109; cf. Nardi, "Note alla *Monarchia*," 105.

⁸⁶ Gilson, *Dante*, 179f, also 166, and passim; d'Entrèves, *Dante*, 50.

the *Monarchy* and to declare that a political beatitude in this life as an ultimate end, attainable by the working of the moral or intellectual virtues alone, did not exist.⁸⁷ The duality, however, of corporate bodies marching (so to speak) *pari passu* towards different goals, was quite indispensable for Dante's vision of a self-sufficient world-monarchy not controlled by the pope. Dante's monarch was not simply a man of the sword and thereby the executive arm of the papacy; his monarch was necessarily a philosophic-intellectual power in its own right. For it was the emperor's chief responsibility, by means of natural reason and moral philosophy to which legal science belonged,⁸⁸ to guide the human mind to secular blessedness, just as the pope was charged by Providence to guide the Christian soul to supra-natural illumination.

A duality of goals does not necessarily imply a conflict of loyalties or even an antithesis. There is no antithesis of "human" versus "Christian" in the work of Dante, who wrote as a Christian and addressed himself to a Christian society, and who, in the last passage of the *Monarchy*, said clearly that "after a certain fashion (*quodammodo*) this mortal blessedness is ordained toward an immortal blessedness."⁸⁹ Nevertheless, the fact remains that Dante distinguished between a "human" perfection and a "Christian" perfection—two profoundly different aspects of man's possible felicity, even though these two actualizations of man's potentialities were ultimately destined to support, and not to antagonize or exclude, each other. For all that, however, the sphere of *Humanitas* was, in Dante's philosophic system, so radically set apart from that of *Christianitas*, and the autonomous rights of human society—though depending on the blessings of the Church—were so powerfully emphasized that indeed it is admissible to say that Dante has "abruptly and utterly shattered" the concept of the undisputed unity of the temporal in the spiritual.⁴⁰

⁸⁷ Cf. Guido Vernani, *De reprobatione Monarchie composite a Dante*, ed. Thomas Käppeli O.P., "Der Dantegegner Guido Vernani O.P. von Rimini," *QF*, xxviii, 123-146, see especially 126, 14ff, 146, 5ff and passim.

⁸⁸ Above, n. 13. See Hermann Kantorowicz, *Glossators*, 37f.

⁸⁹ *Monarchia*, iii, 16, 132ff: ". . . quum mortalitatis ista felicitas quodammodo ad immortalem felicitatem ordinetur."

⁴⁰ See Gilson, *Dante*, 211ff, who rightly deals heavy blows to the so-called "Thomism" of Dante and recognizes the power of Dante's shattering political passion.

Dante's metaphysical surgery exceeded that of others who before him had separated the empire from the embrace of the Church, distinguished philosophic reason from theology, and questioned the oneness of the "intellectual soul" by appropriating, as it were, the intellect for the state and leaving the care of the soul to the Church. Dante did not turn *humanitas* against *Christianitas*, but thoroughly separated the one from the other; he took the "human" out of the Christian compound and isolated it as a value in its own right—perhaps Dante's most original accomplishment in the field of political theology.

The "separatism" of Dante led to the creation of different sociological strata. His *humana universitas* embraced not only Christians or members of the Roman Church, but was conceived of as the world community of all men, Christians and non-Christians alike. To be "man," and not to be "Christian," was the criterion for being a member of the human community of this world, which for the sake of universal peace, justice, liberty, and concord was to be guided by the philosopher-emperor to its secular self-actualization in the terrestrial paradise. And whereas great portions of men—Jews, Mohammedans, Pagans—did not belong to the mystical body of Christ, or belonged to it only potentially,⁴¹ Dante's *humana civilitas* included all men: the pagan (Greek and Roman) heroes and wise men, as well as the Muslim Sultan Saladin and the Muslim philosophers Avicenna and Averroes. And Dante, while repeating a common argument, could maintain that the world had been at its best when mankind was guided by Divus Augustus, after all a pagan emperor, under whose reign

⁴¹ See Aquinas, *Summa theol.*, iii, q. 8, art. 3, resp.: "Quaedam tamen sunt [membra corporis mystici] in potentia, quae nunquam reducuntur ad actum." The question argued is *Utrum Christus sit caput omnium hominum*, which Aquinas answers in the affirmative, adding, however, "sed secundum diversos gradus." The hierocrats were less careful than Aquinas, but rather inclined to deduce from the potentiality (that is, the calling of the Church to universality) actual universal rights of the vicarius Christi, as, e.g., James of Viterbo (*De regimine christiano*, 14) or Aegidius Romanus (*De eccles. potestate*, iii, 2). Other authors, however, defended views similar to those of Dante. The author of the *Somnium viridarii* (*Songe du Verger*), e.g., says quite specifically: "Papa non est super paganos secundum apostolicas sanctiones, sed solummodo super Christianos," and draws the conclusion: "ergo [papa] non est dominus temporalis omnium." Cf. *Somnium viridarii*, ii, 35, ed. Goldast, *Monarchia* (Hanau, 1612-1614), I, p. 154 (also ii, 174, ed. Goldast, p. 175: "Romanus pontifex non praesit omnibus"). Cf. F. Merzbacher, "Das Somnium viridarii von 1376 als Spiegel des gallikanischen Kirchenrechts," *ZfRG*, kan. Abt., XLII (1956), 67, n. 53.

Christ himself chose to become man, and, for that matter, a Roman citizen.⁴²

According to the opinion of several canonists and papal political writers of the late thirteenth and early fourteenth centuries, there was "no rightful empire outside the Church," which implied that the pagan emperors did not hold the empire rightfully; and Guido Vernani, Dante's adversary, declared straightforwardly "that among the pagans there never was a true *respublica* nor was anyone ever a true emperor." That theory was not even refuted by Dante; it was almost reversed. Saint Paul had styled the moment of the incarnation of Christ the "fulness of the time" (Galatians 4: 4), an expression which referred to Christ exclusively. Dante, however, included Augustus, for he called "fulness of the time" that providential moment in which *both Christ and Augustus* were treading the ground of this earth "that there be no ministry of our bliss lacking its minister."⁴³ That is to say, only under the perfect

⁴² *Monarchia*, 1,16,17ff, and, for the Roman citizenship of Christ, 11,12,44f; also *Purg.*, xxxii,102: "cive/ Di quella Roma onde Cristo è Romano." Dante is far more exuberant in his Augustus theology when he discusses the same problem in *Convivio*, iv,5,50ff: Not only heaven, but also the earth then appeared better disposed than ever before or after. "Nè'l mondo non fu mai nè sarà si perfettamente disposto, come allora che alla voce d'un solo principe del Roman popolo e commendatore fu ordinato . . . E però pace universale era per tutto, che mai più non fu nè fia: chè la nave della umana compagnia dirittamente per dolce cammino a debito porto correa." See, for the *Pax Augusta*, also *Par.*, vi,8of, and, for the Edict of Augustus (*de iustissimi principatus aula prodiisset edictum*), *Epistolae*, vi,64ff, also lines 14f for the application to Henry VII (*tu, Caesaris et Augusti successor*). Bartolus, who knew the *Monarchia* as well as Dante's poetry (cf. Woolf, *Bartolus*, 17,n.4, and 9of), flew the Augustus theology to the highest pitch when glossing on *D.49,15,24,n.7*, fol.261v: "Et forte, si quis diceret dominum Imperatorem non esse dominum et monarcham totius orbis, esset haereticus, quia dicerat contra determinationem Ecclesiae, contra textum sancti Evangelii, dum dicit *Exiit edictum a Caesare Augusto, ut describeret universus orbis, ut habes Lucas II[:1]*. Ita etiam recognovit Christus Imperatorem ut dominum." Bartolus' argument was often referred to or even verbatim repeated; see, e.g., Jason de Mayno, *Consilia*, 111,70,n.3 (Venice, 1581), fol.119v. Others, however, attacked Bartolus vehemently; see Woolf, *Bartolus*, 25,n.2. For Dante, no doubt, Augustus belonged, like David and Solomon, among those redeemed at the Harrowing of Hell. To some extent, of course, Dante followed Orosius as well as Otto of Freising (*Chronica*, 111,6); see, for the Orosian Augustus theology, in addition to Erik Peterson, "Der Monotheismus als politisches Problem," in his *Theologische Traktate* (Munich, 1951), 97ff, the study of Th. E. Mommsen, "Aponius and Orosius," *Late Classical and Mediaeval Studies in Honor of Albert Mathias Friend, Jr.* (Princeton, 1955), esp. 107ff, 110f, to whom I owe many valuable insights in the problem. See also below, n.43.

⁴³ See, for the maxim *extra ecclesiam non est imperium*, Gaines Post, "Some Unpublished Glosses," 408 (with reference to c.39 post, C.xxiv,q.1, ed. Friedberg, 1982) and 411ff, where similar opinions are reviewed. See, for Guido Vernani, below, nos.80 and 82. Cf. Aegidius Romanus, *De eccles. potestate*, 111,2, ed. Scholz,

versal community bound by natural as well as intellectual or educational ties, by a mental attitude which was that of a citizen of the world-polity. Dante did not in that connection avail himself of the term *corpus mysticum*, neither for the supra-natural community of the sons of Christ nor for the natural community of the sons of Adam; but if ever there existed a secular "mystical body," it existed in Dante's *humana civilitas*. For this universal community of man represented, as it were, the mystical body of the father of the human race, the *corpus mysticum Adae*, the head of which was the emperor charged by Dante with the task of leading mankind back to whence it came: the terrestrial paradise.

The way to the terrestrial paradise was marked by the intellectual or moral-political virtues; that is, by the classical-pagan cardinal virtues: Prudence, Fortitude, Temperance, and Justice. Now, scholastic philosophy distinguished between two sets of virtues: the four cardinal virtues, called technically *virtutes intellectuales* or *acquisitae*, which existed in man and were within his reach according to the conditions of his human nature and human reason; and the three theological virtues—Faith, Charity and Hope—which could be bestowed on man only by divine grace and, consequently, only on Christians, and which technically were known as *virtutes infusae* or *divinitus infusae*, "virtues infused by God" for the purpose of ordaining man to his supra-natural ends. Following in the wake of Augustinian arguments, the theologians of the twelfth and thirteenth centuries recognized only the *virtutes infusae* as authentic, as *verae virtutes* without restriction. They did not deny, of course, the existence of the acquired political or moral virtues; but they denied their *raison d'être* without their infused theological sisters, because they attributed to those purely human virtues no independent supra-natural merits, and therefore virtuous actions, performable even by a pagan or infidel, were in view of salvation without true consequence. It was Aquinas only who, under the pressure of Aristotle, broke away from that tradition and first attributed to the moral-political virtues their full and proper value *secundum rationem*: "An action of political virtue is not devoid of consequence, but is good by itself (*actus de se bonus*)." And he added: "and if [such action] were prompted by grace, it would be even meritorious."⁴⁵

⁴⁵ This development has been excellently traced by O. Lottin OSB, "Les vertus

Dante, as usual, was the loyal, if undutiful, disciple of Aquinas. Nothing could be more acceptable to him than a tenet according to which an action of political virtue was *de se bonus*. It was, in fact, so acceptable to him that he could venture to isolate this independent value of the intellectual virtues and to set it over—equal in rank, though different in kind—against the supra-natural value of the *virtutes infusae*. At the same time, he clung to the distinction between humanly acquired and divinely infused virtues to which he referred in unambiguous terms.⁴⁶ But whereas Aquinas merely distinguished between intellectual and theological virtues, their functions and their ends, without disintegrating the functional unity of the total of seven virtues (which in their turn correspond with the seven vices), Dante broke the two sets of virtues apart. He combined them with his concept of the two paradises, consigning the intellectual virtues to the terrestrial paradise and the infused virtues to the celestial. In twelfth-century art the custom arose to represent so-called "Trees of Virtues and Vices"—diagrammatic representations of these two sets of human conduct—whereby the seven vices were sometimes superseded by a human figure inscribed *Vetus Adam* and the seven virtues by one inscribed *Novus Adam*, that is, Christ.⁴⁷ Dante perhaps would have suggested yet another division by allotting, not to the *Vetus Adam*, but to Adam in Paradise the four intellectual virtues, and accordingly to the *Novus Adam*, the three infused ones. He did not say so, but in his scheme of the two paradises it was appropriate to use the pagan-human virtues autonomously in order to provide his universal monarchy with an intellectual ultimate goal which did not depend on the means of grace of the Church. In other words, man, if properly guided, could attain to the terrestrial paradise of the first man through his own devices, through the

morales acquises sont-elles de vraies vertus? La réponse des théologiens de Pierre Abélard à saint Thomas d'Aquin," *Recherches de théologie ancienne et médiévale*, xx (1953), 13-39, who (p.38) quotes the decisive passage of Aquinas, *In II Sent.*, D.40,q.1.a.5. See also the continuation of Lottin's study, *ibid.*, xxi (1954), 101-129.

⁴⁶ *Monarchia*, III,16,53ff; cf. Aquinas, *Summa theol.*, I-II,q.61-63, also q.65.

⁴⁷ A. Katzenellenbogen, *Allegories of the Virtues and Vices in Mediaeval Art* (London, 1939), 63ff, and pls.XL-XLI; also Herbert von Einem, *Der Mainzer Kopf mit der Binde* (Arbeitsgemeinschaft des Landes Nordrhein-Westfalen, Heft 37 [Cologne and Opladen, 1955]), 28,n.83, and figs.30-31. For the spreading of those representations in the 12th century, see also F. Saxl, "A Spiritual Encyclopaedia of the Later Middle Ages," *Warburg Journal*, v (1942), 107ff.

edge, the totality of that by which man became Man, or, briefly, the totality of *humanitas*, could become actuated only by the collective effort of the corporate body of mankind. The fact that this perfection of the human totality was a desirable task, and even a necessary one, is a different matter. Dante's intent perhaps may be conveniently gathered from a stanza in the *Comedy*:

The human nature, when in its totality
It sinned in its first seed, was parted both
From its own dignities and from the paradise.⁵⁸

That is, with regard to original sin the whole of mankind was like one body and one man, as Aquinas put it.⁵⁹ Against that totality of mankind which fell guilty potentially in the first man, Dante set the totality of mankind which potentially can regain "its own dignities" and paradise as well. It can achieve, by its own power and through the intellectual virtues, its own actuation in the terrestrial paradise whence Adam had been expelled, who, in the state of innocence, himself was the actuation of *humanitas* without restriction. Dante reversed, as it were, the potentialities: just as Adam potentially bore mankind and sin in his limbs, so did mankind in its totality bear Adam and his perfection, his *status subtilis* (if we may say so), in its limbs. What had fanned out from Adam—mankind—was reduced again corporately to Adam. For there is no doubt about it that Dante conceived of the *genus humanum* as though it were a single person, a single body corporate which, just like the *universitas* of the jurists, was "always" and "all at the same time" actuality. In comparison with that sempiternal *humana universitas* the intellectual powers of its individual constituents—mortal and ever changing as they were—could be but fragmentary, ephemeral, and imperfect just as in the case of any other corporate community. Hence, the status of perpetual actualization—normally a privilege of the celestial intelligences⁶⁰—could

⁵⁸ *Paradiso*, vii, 85ff:

Vostra natura, quando peccò tota
nel seme suo, da questi dignitadi,
come da Paradiso fu remota.

⁵⁹ See below, n. 72.

⁶⁰ *Monarchia*, I, 3, 55-62. Dante seems to mean that the sempiternal beings are perpetual actualization; but he contends that *esse* and *intelligere* coincided in the celestial intelligences, and thereby immediately met with the protest of Guido Vernani (*De reprobatione*, ed. Käppeli, 127, 4) who branded this coincidence an *intolerabilis error*, because in God alone could there coincide *esse* and *intelligere*. See, for the passage, also Vinay, *Monarchia*, 22, n. 15.

be achieved only by the whole corporation, the species of man, to which Dante attributed a single, if universal, intellect.

That Dante borrowed the notion of the "universal intellect" from Averroes, whom he quoted quite frankly, is evident; but it meant to Dante something different from Averroism. The Averroist dreamt of a separate world-intellect to be actualized in, or by, the philosopher, the *individual*; Dante, however, thought of the *collective*. He had in mind an immanent world-intellect which was not separate from its individual human constituents, though it transcended each one of them, and which could be actualized in its fulness only by an *universitas* acting as "one man," as a collective individual.⁶¹ For all that, however, it is undeniable that Dante's concept could have an odor of heterodoxy, especially since Dante himself quoted, and certainly thought of, Averroes in that connection. In a superficial way, therefore, his adversary Guido Vernani was right when he branded the poet's philosophical tenet a *pessimus error*. But the *pessimus error* was not seated simply in the tenet of a collective intellect itself. Vernani—correctly from the conventional point of view—proceeded from the *anima intellectiva*, the intellectual soul, implying therefore the traditional unity of soul and intellect; and on that premise, Dante's collective intellect would have implied also a "collective soul," or world-soul, denying thereby to man the individual soul and the possibility of its individual perfection and redemption.⁶² Dante, however, had separated, as it were, the intellect from the soul, and the *virtutes intellectuales* from the *virtutes infusae*; and perhaps, in an admittedly exaggerated fashion, one could advance the hypothesis that *qua* intellect Dante visualized a predominantly collective perfection, whereas *qua* soul he foresaw the traditional individual perfection.⁶³ All that, however, is beside the point here.

⁶¹ Gilson, *Dante*, 169, is excellent on the difference between Averroistic individual perfection and Dante's collective perfection.

⁶² See Vernani, *De reprobatione*, ed. Käppeli, 127f.

⁶³ See, for that distinction, M. Barbi, "Nuovi problemi, VIII: Impero e Chiesa," *Studi danteschi*, xxvi (1942), 13, n. 1. It is more than doubtful, however, whether this distinction can be made: the goal of the *vita contemplativa* in this world is always the beatitude of the individual, whereas Dante, in the *Monarchia*, wishes to speak mainly about the *vita activa* or *politica* (cf. I, 2, 36ff), which is collective by definition. See, e.g., Jacobus de Pistorio, *Quaestio de felicitate*, ed. P. O. Kristeller (below, n. 71), 462, lines 460ff, who distinguishes between *ipsa felicitas* of the contemplating individual, *felicitas practica* of man as *pars multitudinis*, and perpetuation of the human race with regard to man as *pars universi*.

"collectivism" represented by Thomas Aquinas when, in his *Summa Theologiae*, he discussed the reasons of Adam's fall and its effects on mankind. For on that occasion Aquinas, too, advanced a corporational explanation of the guilt of mankind.

We may say that all men born from Adam can be considered as *one man* (*possunt considerari ut unus homo*) in so far as they concur in the nature which they have received from the first man—just as in view of the citizens all men of a community are reputed, so to say, as one body and the whole community as one man.⁷²

"Mankind a corporation by the unity of the original sin, not by the unity of the intellect," so we might sum up the collectivism of Aquinas, thereby leaving undiscussed the curiosity that a collectivity by sin should be orthodox, and a collectivity by the intellect, to say the least, suspect of heterodoxy. It is evident, however, how closely interrelated the arguments of Dante, Aquinas, and the jurists were, and how narrow the margin was which separated corporational doctrines from pure collectivism.

That narrow margin was not always guarded by Remigio de' Girolami/Aquinas' pupil and Dante's teacher. Remigio's extreme and radical corporationalism had all but smothered the value of individual perfection. He, like Dante, operated with the Aristotelian doctrine of the actuation of the potential, and, by applying it to the political field, held that there was perfection only in the community, in the Whole.

The Whole has more being than the part. The Whole, as a Whole, is existing in actuality, whereas the part, as part, has no being except in potentiality.⁷³

'Questio de felicitate,' " *Medioevo e Rinascimento: Studi in onore di Bruno Nardi* (Florence, 1955), 427-463, a treatise revealing once more Dante's affinities to the non-Thomistic philosophers of his time.

⁷² Aquinas, *Summa theol.*, I-II, q. 81, a. 1, resp.: "Et ideo alia via procedendum est, dicendo quod omnes homines qui nascuntur ex Adam, possunt considerari ut unus homo, in quantum conveniunt in natura quam a primo parente accipiunt secundum quod in civilibus omnes homines qui sunt unius communitatis, reputantur quasi unum corpus, et tota communitas quasi unus homo."

⁷³ Remigio de' Girolami's *Tractatus de bono communi* is known to me only through the long excerpts published by Richard Egenter, "Gemeinnutz vor Eigennutz: Die soziale Leitidee im *Tractatus de bono communi* des Fr. Remigius von Florenz († 1319)," *Scholastik*, IX (1934), 79-92. For the place quoted in the text, see 82, n. 10: ". . . totum plus habet de entitate quam pars. Totum enim ut totum est existens actu, pars vero ut pars non habet esse nisi in potentia secundum Philosophum in 7 *Physic*."

Therefore, the citizen must love the city more than himself, because the city is his only possible actuation: the Whole, the city, is more perfect than the individual and, being more perfect, it is more to the likeness of God.⁷⁴ Remigio overstressed that idea to such an extent that he denied the individual deprived of its city even the qualification of man:

If Florence were destroyed, he, who was a Florentine citizen, no longer can be called a Florentine. . . . And if he no longer is a citizen, he no longer is man, because man by his nature is a civic animal.⁷⁵

What Remigio produced was simply a caricature of Aristotle who had explained that a man asocial by *nature*, and not by *fortune*, was either less or more than man—a beast or a god.⁷⁶ However, Remigio, that curious thomistic proto-Hegelian,⁷⁷ was an extremist of anti-individualism: "being man" depended for him upon being a citizen because without a city the individual could not achieve perfection at all. True, Dante also admitted that man would be worse off on earth, were he not a citizen.⁷⁸ Remigio, however, had gone far beyond Dante; he was even ready to deny to the individual the eternal salvation of the soul should that prove necessary for the good of the city. To some extent Remigio finally

⁷⁴ Egenter, *op.cit.*, 84, n. 11: "Unde [commune] . . . directe amatur, praeamatur autem post Deum propter similitudinem, quam habet ad Deum . . ." See also Egenter, 87, n. 20. For the doctrine holding that the superior entity (commune or emperor) "is loved directly" and without intermediary, cf. *Monarchia*, I, 11, 111ff.

⁷⁵ Egenter, *op.cit.*, 82, n. 10: "Unde destructa civitate remanet civis lapideus aut depictus, quia sc. caret virtute et operatione quam prius habebat, . . . ut qui erat civis Florentinus per destructionem Florentiae iam non sit Florentinus dicendus, sed potius fientinus. Et si non est civis, non est homo, quia homo est naturaliter animal civile . . ." See G. de Lagarde, "Henri de Gand" (above, Ch. v, n. 52), 88f, and "Individualisme et corporatisme" (above, Ch. v, n. 220), 38f.

⁷⁶ Remigio actually quotes (in addition to the *Ethics*) Aristotle's *Politics*, I, 1, 1252b, to which Aquinas in his Commentary, §35, ed. Spiazzi, 11, remarks that those being "more than man" might have "naturam perfectiorem aliis hominibus communiter" and therefore could live self-sufficiently without the society of men "sicut fuit in Ioanne Baptista et beato Antonio heremita."

⁷⁷ See, e.g., Hegel's *Philosophie des Rechts*, §258: "Since the state is mind objectified, the individual has objectivity, truth, and ethical status only as one of the members of the state. The community as such is the true content and final aim."

⁷⁸ See the famous terzine in *Par.*, VIII, 115ff:

Ond' egli [Carlo Martello] ancora: "Or di', sarebbe il peggio
per l'uomo in terra se non fosse cive?"

"Si," rispos' io, "e qui ragion non cheggio."

See also the able discussion of that passage by D'Entrèves, *Dante*, 11ff, who, however, does not consider Remigio at all.

toned down his statement. He argued, however, that even the perfectly guiltless citizen should take upon himself his own eternal condemnation, if this would prevent his community from being eternally condemned to Hell; he should prefer being punished to being saved while his city was condemned. Apart from the fact that Remigio recognized a possibility of condemning to infernal punishment a fictitious person which had no soul, he carried his argument in every other respect to quite illicit extremes. For what he advocated was not a simple *pro patria mori*, that is, to suffer the *natural* death of the body for the community and expect the reward in heaven for a sacrifice on earth; Remigio advocated the *eternal* death of the soul, that is, the jeopardy of individual salvation and celestial beatitude, for the sake of the temporal fatherland.⁷⁹

Dante, though lagging far behind his teacher's relentless corporationalism and anti-individualism, was nevertheless not uninfluenced by the general compound of ideas and ways of thinking of which Remigio was but an extreme exponent. Dante, too, carried Aristotelianism to (what seemed to him) the logical ends when he emphasized, time and time again, that the actuation of the total human intellect was a task which could be performed collectively only by the greatest of all possible communities, the *universitas generis humani* organized in the Roman world-monarchy—as it were, the body corporate of Man as distinguished from the body natural of each individual man. Into that scheme, however, Dante had to fit his world-monarch, whom the reader of the *Monarchy* could hardly avoid recognizing as an individual near to perfection and whose shadowy figure, as conjured by Dante, resembled the “body politic” of the world-monarch rather than his body natural. Not quite wrongly did Dante's adversary Guido Vernani describe that imaginary world-monarch as a Prince who (if the teaching of Aristotle be accepted) had to exceed all his subjects by virtue:

⁷⁹ Egenter, *op.cit.*, 89f.n.24. Remigio raises the question about a citizen's attitude in the case that “*suum commune in inferno damnetur*,” and argues that “*ex virtute amoris ordinati homo deberet potius ipsam [poenam] velle pati cum immunitate communis, quam quod commune suum ipsam [poenam] incurreret cum immunitate sui, in quantum est pars communis*.” That monstrosity, it is true, is subsequently somewhat alleviated by the fact that a guiltless person could not be condemned anyhow by divine Justice; also, Remigio leaves a few loopholes in the case that love of the city and love of God should come into conflict; see, on those points, Egenter, 89ff.

reason, and by the intellectual virtues. There is, of course, not the slightest reason for assuming that with regard to the effects of baptism Dante deviated in any respect from the common tradition. But since his idea of a return to the guiltless Adam in a terrestrial Eden was not at all within the scope of either the Church or the ecclesiastical sacrament or even the economy of salvation, the regeneration of man as visualized by Dante had to proceed necessarily para-ecclesiastically, though often in imitation of the procedures of the Church. Hence, as a consequence of his setting apart of *humanitas* from *Christianitas*, of *virtutes intellectuales* from *virtutes infusae*, terrestrial paradise from celestial paradise, Dante had to set apart also Adam from Christ and make the return to man's original image on earth independent of man's transcendental perfection in Christ by grace. In other words, Dante had to cleanse man from the *peccatum originale* in a non-sacramental fashion.⁹²

According to Dante, it was in man's own power to recover the purity of the first man, to re-enter into the Garden of Eden, and finally return to the Tree of Knowledge and undo the effects of its fruits which had turned Adam's lordship to serfdom. In the *Comedy*, it was chiefly the pilgrimage through Purgatory which signified the purification of man in a philosophic, not in a theologico-sacramental, sense, and the result of this pilgrimage and purification paralleled in a way the effects of the sacrament of baptism: just as the neophyte, after his catechumenate, emerged from the baptismal font as one reborn and freed from original sin, so would Dante finally emerge from Purgatory as a new Adam-like being, "free, upright, and whole."⁹³ To be sure, there was also rebirth for Dante; but this rebirth was moral and ethical and not sacramental.

The purifying and regenerating power of moral philosophy and civic virtue was the theme which Dante struck in the first song of the Purgatory. The guardian watching the entrance of the Ante-Purgatory was a solitary old man, Cato Uticensis, the philosopher-hero who sacrificed his life, if suicidally, for political freedom, which in that case was almost identical with philosophic-

⁹² See, in that connection, the diatribe of Guido Vernani, *De reprobatione*, ed. Käppeli, 137f, against *Monarchia*, II, 13, where Dante tries to link the judgment of Pilate with the punishment for the sin of Adam.

⁹³ *Purg.*, XXVII, 140.

nor the catechumen were admitted to the Mass of the Faithful, and both received during that period oral instruction in order to lead them, step by step, to their final illumination and purification. In Dante's Purgatory both penitential and baptismal rites have their place. They are intertwined, and on more than one occasion an interpretation in either the penitential or the baptismal sense would be admissible. It should not be forgotten, however, that Dante was not only a sinner to be reconciled with the Church, but that he was above all a man striving after both human perfection independent of the Church and supra-human perfection within the Church.

According to the rites of the early mediaeval Church, which survived in Northern Italy certainly until the eleventh century and perhaps (if we may trust Durandus) until the thirteenth, the entrance into catechumenate was followed by seven "scrutinies" designed to test the catechumen and to prepare him by degrees.¹⁰⁰ The scrutinies were distributed over the period of the seven weeks of Lent whereby the last scrutiny almost coincided with baptism itself.¹⁰¹ It may be said that Dante's scrutinies in preparation for his intellectual baptism began when he entered into Purgatory proper, ready to start—in accordance with Cato's advice—his ascent of the Mount of Purgatory on whose summit the terrestrial paradise was located.¹⁰²

To the gate of Purgatory Dante was borne by a dream. He dreamt that Jupiter's eagle snatched him like another Ganymede up to the fiery sphere of heaven where both the eagle and the poet seemed to go up in flames—a dream of purification through the imperial (that is, moral-philosophic) power which here compared also with the customary meaning of the eagle as a symbol of bap-

Revue d'histoire ecclésiastique, xxviii (1932), 5-33, 751-787, as well as M. Andrieu, *Les Ordines Romani du haut moyen âge* (Louvain, 1948), II, 382ff. A very elaborate ritual was observed in Northern Italy as late as the 11th and 12th centuries; see Dom C. Lambot, *Recueil d'Ordines du XI^e siècle provenant de la Haute-Italie* (Henry Bradshaw Society, LXVII; London, 1928), xiiff, 7ff.

¹⁰⁰ Martène, *De antiquis ecclesiae ritibus*, I, c. 1, art. 11, § 4, quotes Durandus asserting that in Italy and in a few other churches the ceremonies of the scrutinies were observed even in the 13th century. See the preceding note.

¹⁰¹ Eisenhofer, *Liturgik*, II, 254. The last scrutiny took place on Saturday in Holy Week.

¹⁰² *Purg.* I, 107f.

trimmed *coiffe*, the linen cap for the protection of the holy oil, with which the head of the baptized was covered *quasi quadam mitra*.¹¹⁶ At any rate, it was an opinion current throughout the Middle Ages and beyond¹¹⁷ that baptism conferred on the neobaptized the royal and the sacerdotal dignities to indicate that he had become—said Isidore of Seville—a member of the body of Christ, the King and High-Priest.¹¹⁸

Against the background of these simple facts it seems strange that the coronation of Dante at the hands of Vergil has been subject to so much guessing. It is true, of course, that the emperor in addition to his crown wore a mitre,¹¹⁹ and that the pope in addition to his mitre wore a tiara-crown, and that Vergil may have crowned Dante either emperor or pope or both. Within the setting of the Twenty-seventh Canto of Purgatory, however, the primary meaning is obvious: in the moment when Dante re-enters into the terrestrial paradise like another Adam "crowned with glory and honor," he is "crowned and mitred" by Vergil. That is, the royal and sacerdotal dignities have been bestowed upon Dante just as on every newly baptized who through the sacrament of baptism was reborn in the original status of Adam and thereby potentially acquired immortality and eternal co-rulership with Christ in the kingdom of heaven.¹²⁰ Dante's coronation "with mitre and with crown," of course, was not sacramental; it was,

¹¹⁶ Martène, *De antiquis Ecclesiae ritibus*, I,c.1,art.15,§7 (Rouen, 1700), 1,141 and (Bassano, 1788), 1,54: "Coronae neophytorum." He quotes Durandus, *Rationale*, vi,c.82 (cf. Michels, 85,n.23) to the effect that "hanc fuisse adhuc suo tempore ecclesiae Narbonensis consuetudinem, ut in candidae vestis baptizatorum superiori parte rubea vitta in modum coronae assueretur." See also *ibid.*, §6, where the Anonymous of Tours (*Chronicon S. Martini Turonensis auctore anonymo*) describes the chrisom: "Induitur deinde chrisimali Neophytus, scilicet alba veste, quae instar cappae lineae caputium habet, quo caput quasi quadam mitra operitur et filo rubeo supersuitur."

¹¹⁷ In the *Assertio Septem Sacramentorum or Defence of the Seven Sacraments*, ed. Louis O'Donovan and prefaced by James Cardinal Gibbons (New York, 1908), 422f, Henry VIII argued against Luther and pointed out, while citing I Peter 2: 9, that if all Christians are priests as Luther asserts, then "in a word all Christians are Kings in the same manner that they are Priests." Professor George H. Williams kindly called my attention to this passage.

¹¹⁸ Isidore, *De officiis ecclesiasticis*, II,26,PL, LXXXIII,824A: "Omnis ecclesia unctione chrisimatis consecratur pro eo quod membrum est aeterni regis et sacerdotis. Ergo quia genus sacerdotale et regale sumus, ideo post lavacrum unguimur . . ." Cf. Michels, "Akklamation," 80,n.9. See above, n.114.

¹¹⁹ Schramm, *Herrschaftszeichen und Staatssymbolik* (Stuttgart, 1954), 1,68ff, and 88,n.2.

¹²⁰ Cf. Aquinas, *Summa theol.*, III,q.69,a.7; see also a.5 and a.6.

naturā, non gratiā, an intellectual and moral "baptism by transference," prepared ever since Dante became a "catechumen," seeing again the Four Stars and prostrating himself—"reverent my knees and brow"—before the suicide pagan, Cato.¹²¹ In other words, Dante achieved his "baptism" into *humanitas* in a sacramental and para-ecclesiastical fashion, with Cato acting as the sponsor, and with the prophet Vergil as his Baptist—a Baptist, though, who this time unlocked to man not the heavens, but the paradise of Man.

Whereas Dante's investiture with crown and mitre seems to demand no further explanation, there remain other problems which need some commentary. The baptismal rites of the Church appeared as the conferment of royal and sacerdotal dignities because the neo-baptized became a "member of Christ the eternal King and Priest." Through the intellectual baptism administered by Vergil, however, Dante became a member, not of the *corpus mysticum Christi quod est ecclesia*, but of the *corpus mysticum Adae quod est humanitas*. Dante was baptized into the likeness of Adam, the purely human model of man's perfection and actualization. But the divine model of man's perfection, Christ, was not absent either; he was, most significantly, integrated into the terrestrial paradise when Beatrice, with the first words she addressed to Dante after his slumber in Eden, conjured—and in the same breath transcendentalized—the image of the Incarnate in his human-political capacity of a Roman citizen.

Here shalt thou be short time a forester;
Thou shalt be everlastingly with me
A burgher of that Rome whence Christ is Roman.¹²²

The replacement of transcendental Jerusalem by a transcendentalized Rome; the transfiguration of the purely human capacity of Christ as a Roman citizen and thereby a member of the body of Adam; the promise to Dante of his future co-citizenship with Christ as a fellow-Roman after having been crowned by the Roman Vergil a fellow-citizen and co-ruler of Adam; the setting of Beatrice's prophecy into the scenarium of the terrestrial paradise—so numerous and so chiasmatically intertwined are the cross-

¹²¹ *Purg.* 1,51.

¹²² *Purg.* xxxii,100ff.

relations and inter-relations that it would be hopeless to analyze at length what poetic felicity was able to express by one image. And yet, the imagery of Dante is by no means exhausted.

Adam, of course, who in paradise was the only man and therefore identical with mankind, was at that particular time the full actuality of all intellectual potencies of man, or of *humanitas*. Crowned with glory and honor, he was the sovereign lord not only of the creation in general over which he was set, but also of mankind which he himself represented. He was both species and individual at the same time; he, therefore, quite logically was "angel-like" and he, therefore, was (as we might say) the only genuine corporation sole of this world. Now, however, Dante was crowned Adam's fellow-ruler. His "baptismal" crowning was, metaphorically, his investiture with the *Adam subtilis*, with that supra-individual *humanitas* of which he himself, like Adam, was the actuality; or (as we might say) he was invested with man's body corporate and politic. Hence, he was entitled to receive the insignia of his universal and sovereign status, crown and mitre, which conferred on him not so much the dignity of emperor and pope (these two directives, instituted after the fall of man as a remedy, were superfluous in the state of innocence) but conferred that almost objectified "Dignity of Man" which "never dies," of which Dante was the mortal incumbent, and which in later centuries was to fascinate Renaissance scholars—for example, Gianozzo Manetti and Pico.¹²³ Indeed, "Man" appeared as a sovereign Dignity and a universal Office whose holder was probably that "best man, who is the standard of all others and, so to say, their Idea, *whosoever he may be.*" And that Dignity of Man included supreme jurisdiction over man *qua* mortal man, regardless of position and rank, while he "who was in the highest degree One within his kind," acted as the instrument of that Dignity—*homo instrumentum humanitatis*.

Admittedly, those legal theories most certainly did not cross Dante's mind. But the essence of the doctrine of the Two Bodies, of "Man's Two Bodies," was just as certainly present to his mind.

¹²³ Gianozzo Manetti (1396-1459) wrote a tractate *De dignitate et excellentia hominis*, dedicated to Alfonso of Aragon, which is not easily accessible; for some excerpts, see, however, *Prosatori Latini del Quattrocento*, a cura di Eugenio Garin (Milan and Naples, n.d.), 421-487. For Pico della Mirandola's *De hominis dignitate*, see the edition by Eugenio Garin (Florence, 1942).

"Free, upright, and whole in judgement," Dante had become a likeness of the *Adam subtilis* in paradise, who was supreme over mankind, and that meant, in Adam's particular case, supreme over himself. When Vergil invested Dante with the insignia of crown and mitre, that ceremony meant the coronation of the *Adam subtilis* in Dante over the *Adam mortalis* in Dante. Lapidarily, as a Roman would, Vergil expressed that idea in six all-embracing words when, at the dismissal of his pupil, he concluded his address with the words:

TE SOPRA TE *corono e mitrio.*

Dante crowned and mitred¹²⁴ over Dante himself: there is no need to emphasize that this verse is pregnant with implications and allusions, and that its fulness, radiating into so many directions, is as inexhaustible as that of any work of art charged with life. The image is a reflexive one: object and subject coincide and are turned back each upon itself as well as to each other. And in this respect there was, on the human level, some similarity with the likewise reflexive vision on the divine level, at the very end of the *Comedy*, when Dante visualizes the circle of light of the Second Person "painted, of its own color, with our effigy"—the coincidence of God and Son of Man and of Man in general and of the beholder in the state of perfection, each turned back upon himself and to each other.

The intention was here only to bring one aspect into focus: Dante's Adam-centered or man-centered concept of kingship, the reflexiveness of "man" and "Man," of *homo* and *humanitas*, of *Adam mortalis* and *Adam subtilis*, and, by transference, of body natural of man and body corporate of Man. Perhaps we will find it easier now, or perhaps more difficult, to understand the later definitions of English jurists, opining that "to the natural Body [of the king] there is conjoined his Body politic which contains his royal Estate and Dignity," or that "the Body politic, annexed to his Body natural, takes away the Imbecility of the Body natural." We now

¹²⁴ According to *Ecclus.* 45:14, Aaron receives from Moses a golden crown over a mitre *signo sanctitatis et gloria honoris*, a passage quoted sometimes in connection with the Dante verse; see, e.g., Koenen, "Busswesen" (above, n.98), 100, n.34. Though this place, together with other passages of the Old Testament, certainly had some bearing on the development of the papal headgear (see Schramm, *Herrschaftszeichen*, 1,57f), it has hardly any relevance with regard to Dante's coronation.

CHAPTER IX

EPILOGUE

"ALL precepts concerning kings are in effect comprehended in those two remembrances: *Memento quod es homo*, and *Memento quod es Deus*, or *vice Dei*." Of these two mottos, writes Francis Bacon in his essay *Of Empire*, the first bridles the power and the other the will of princes who, in other respects, appeared "like to heavenly bodies, which cause good or evil times, and which have much veneration, but no rest."¹

Bacon's first "remembrance" should not be mistaken for the famous Camaldolite motto *Memento mori* which, especially in connection with its artistic symbol, the skull, had a singular appeal to the religious sentiment of the later Middle Ages. *Memento quod es homo* is not of monastic origin, but descended from classical Antiquity; and Francis Bacon could not have been ignorant of its proper Roman setting. When, on the day of his triumph, the victorious Roman emperor rolled on the chariot drawn by four white horses from the Campus Martius to the Capitol—a living god clothed in the embroidered purple toga of Jupiter Capitolinus, in his hand the eagle sceptre of the god, and his face painted red with cinnabar—the slave riding with him on the chariot and holding the golden wreath over his head, whispered to him: "Look behind thee. Remember thou art a man."²

This, apparently, was the scene to which Bacon's first motto alluded. His other remembrance may have referred to Psalm 81:6, "Ye are gods," a versicle very much to the taste of political writers in the age of absolutism and most certainly to that of James I, who quoted it and gave his own interpretation of it in great detail.³

¹ Bacon, *Essays*, ed. Spedding (Boston, 1860), XII, 146. For the king who has no rest (*rex exsomnia*), see above, Ch.IV,nos.131,146,167. The passage is quoted by Per Palme, *Triumph of Peace: A Study of the Whitehall Banqueting House* (Stockholm, 1956), 173, a book to which Professor Erwin Panofsky called my attention.

² Cf. W. Ehlers, "Triumphus," *RE*, VIIA:1, 507; Tertullian, *Apologeticus*, xxxiii.4. That Roman emperors could be very conscious of their "manhood" is demonstrated, not to mention Marcus Aurelius, by Tiberius; see, for his letter to the community of Gytheion, near Sparta, E. Kornemann, *Neue Dokumente zum lakonischen Kaiser-kult* (Breslau, 1926), 7, line 20. My thanks go here, as well as in the following pages, to Professor Andreas Alföldi and the kind interest he took in this brief Epilogue.

³ See James' "Speech of 1609," ed. McIlwain, *The Political Works of James I* (Cambridge, Mass., 1918), 307ff; also Kantorowicz, "Mysteries of State," 68, n.9, and (for

is no dearth of historical equivalents. What, for instance, did it imply when King Philip II of Macedonia took his seat in the theatre at Aigai, while in solemn procession the images of the Twelve Gods were carried into the theatre with the image of Philip added to their number as that of the Thirteenth?²¹ Was, in that case, the king in his body natural seated in his royal box (in which, incidentally, this natural body was murdered), whereas in his body politic, or the equivalent thereof, he was displayed on the couches prepared for the deities? Strange situations could easily arise in imperial Rome. Gods who themselves offered sacrifices, were not at all unheard of in Antiquity;²² but it is more perplexing to find Roman emperors in a somewhat similar attitude. As early as 7 B.C. altars were dedicated in Rome to the *genius* of Augustus, and for the cultual functions at the *ara numinis Augusti* a very noble college of priests was instituted.²³ Hence, in his capacity of *Pontifex Maximus*, the emperor could offer sacrifices and also receive them, could be at once offerer and recipient of offerings.²⁴ Caligula, according to Suetonius, went so far as to dedicate a temple with priests to his own *numen* and to put up within the shrine his golden cult statue which was clad daily with the same clothes as were worn, on that day, by the emperor himself²⁵—indeed a perfect, though a rather baffling, form of duplication. What it all implied was an "objectification" of the ruler's *persona publica*. This is true also for the obligation to deliver the oath in court by the *τύχη*, the *genius* of the emperor (a custom observed from Domitian until well beyond the time of

²¹ Diodorus, xvi,92,5.

²² Cf. Erika Simon, *Opfernde Götter* (Berlin, 1953), who has discussed very efficiently the material found in vase paintings. See also S. Eitrem, "Zur Apotheose," *Symbolae Osloenses*, xv-xvi (1936), 137, for various examples of "self-worship" ("*kultische Ungereimtheiten*").

²³ See D. M. Pippidi, *Recherches sur le culte impérial* (Paris, 1939), Chapters I, II, and VII; Georg Niebling, "Laribus Augustis Magistri Primi," *Historia*, v (1956), 303-331.

²⁴ The Christian version of this duplication, or interaction of divine and human natures, has found its most pointed expression in the Cherubic Hymn, sung in the Eastern Churches at the Great Entrance: "Thou art he that offerest, and art offered; and that acceptest and art distributed." Cf. F. E. Brightman, *Liturgies Eastern and Western* (Oxford, 1896), 1,318,34; 378,5; 431,6. See above, Ch.III,n.43, and also my remarks, "Quinity," 83f, for the resulting controversy as well as for the pictorial representations of that duplication.

²⁵ Suetonius, *Caligula*, 22,3: "Templum etiam numini suo proprium et sacerdotes et excogitissimas hostias instituit. In templo simulacrum stabat aureum iconicum amiciebaturque cotidie veste, quali ipse uteretur."

Justinian); consequently, it could, and did, happen that a subject had to swear an oath by the Emperor to be loyal to the emperor.²⁶

While there is no doubt that these are features vaguely related to the later objectification of the king's immortal body politic, the differences are at least as great as the similarities. After all, the *genius* or *numen* of an emperor, though an object of public worship, was not separated from the individual but was still an immanent component of the individual human being. It would, therefore, be difficult to maintain that the emperor became the *instrumentum numinis* or *genii* in the sense in which the late-mediaeval Prince became the *instrumentum Dignitatis* and the incarnation of his immortal office. Yet, "incarnation" as well as "instrumentality" likewise were within the compass of ancient ruler cults.

Instead of worshipping the *numen* or *genius* of an individual emperor, the ruler could be identified with an existing and recognized deity which he represented as a *novus Hercules*, a *novus Sol*. Caligula, it is true, was ridiculed because he consecrated himself to his own service as Jupiter Latiaris—*αὐτὸς ἐαυτῷ ἱεράτο*, as Cassius Dio expressed it.²⁷ Gallienus carried his identity with the goddess Ceres to curious extremes when on coins he not only displayed his bristle-bearded portrait with the attribute of the goddess, the crown of corn-ears, but also surrounded it with the telling inscription GALLIENAE AUGUSTAE.²⁸ Other features have to be taken more seriously. When, in the third century, Diocletian established the Tetrarchy and therewith the "Jovian" and "Herculean" dynasties, the multiplicity of *genii* was difficult to disentangle, because "the Genius of each emperor, itself divine and an object of worship, was declared to be the very Genius of Jupiter

²⁶ See E. Seidl, *Der Eid im römisch-ägyptischen Provinzialrecht* (Münchener Beiträge zur Papyrusforschung, xvii and xxiv [Munich, 1933 and 1935]), 1,11ff, and 11,5ff, for the formulae, which show *τὸχῆ* still invoked under Heraclius I; cf. 1,23f, and 11,16f. For the oath by the Emperor to the emperor, see Eitrem, "Zur Apotheose" (above, no.22), 137.

²⁷ Cassius Dio, LIX,28,5. See, for the *novus* praedication, A. D. Nock, "Notes on Ruler-Cult," *Journal of Hellenic Studies*, XLVIII (1948), 30ff; and, for the Middle Ages, my remarks in *Laudes regiae*, 57,n.148, 69,n.15, 74,n.31.

²⁸ A. Alföldi, "Zur Kenntnis der Zeit der römischen Soldatenkaiser," *Zeitschrift für Numismatik*, XXXVIII (1928), 174ff, esp. 188ff (see above, Ch.III,n.93); cf. 193ff, for the androgynic hybridism (*zweigeschlechtliches Zwitterwesen*) expressed by the inscription. See above, Ch.I,n.8, for the jurists on hermaphrodites.

human body which is mortal together with his concomitant super-body which, being a god, is immortal and divine.³⁴ *Deus imago regis*—so we are inclined to think while twisting the Christian maxim of *rex imago Dei*, a concept responsible also in Christian art for occasional facial similitude between the deity and the ruler, between Christ and his vicar on earth.³⁵

Moreover, when we recall other sets of Roman inscriptions, we seem to close in also on the problem of instrumentality. Ever since late Republican times, the *Genius populi Romani* was represented on coins: Hercules-like, with sceptre and cornucopiae, his feet on the globe of the world or on the footstool of divinity; or else his head only, "accompanied by sceptre, royal wreath, and globe."³⁶ In the third century, we find coins in which the emperor himself was hailed as the *GENIUS POPULI ROMANI*, the incarnation or personification of the eternally productive power of the Roman people.³⁷ Here, then, the emperor may safely be conceived of as an "instrument" of something that was not identical with him and not an immanent component of his own self—indeed, the *instrumentum Genii populi Romani* and the exponent of an immortal polity "which never dies." Or, when, in the third century, inscriptions were dedicated, time and again, *numini maiestatique*, to the emperor's divine *numen* and his earthly *maiestas*, we may remember that it was ultimately the *Maiestas populi Romani* of which he was the incarnation.³⁸ Nor should we forget that a formulation

³⁴ Less suggestive are certain images on coins of Carus where god and emperor face each other; but the imperial title of *deus et dominus*, customary by that time (cf. Alföldi, "Insignien," 92ff), surrounds the two heads as an inscription and tells, in fact, a story similar to that of the *numini maiestatique* inscriptions of the same period (see below, n.38). For the coin of Carus, cf. Mattingly and Sydenham, *op.cit.*, v:2, pl.vi, fig.13.

³⁵ See above, Ch.III,n.50.

³⁶ Cf. Alföldi, "The Main Aspects of Political Propaganda on the Coinage of the Roman Republic," *Essays . . . Mattingly* (above, n.29), 87, 93f.

³⁷ Alföldi, "Zeremoniell," 91, and fig.3 (Gallienus); also in *Zeitschrift für Numismatik*, xxxviii, pl.vii,fig.1, and p.192.

³⁸ That the *maiestas* of the Roman People itself was a continuation of the ancient *maiestas* of the regal power, is a different matter. The formula of dedication is found indeed very often during the third century; see, e.g., H. Dessau, *Inscriptiones Latinae selectae* (Berlin, 1916), III:2, p.779, Index, s.v. "N N M QE." For an example, see Dessau, No.499 (vol.I, p.120): "Imperatori Caesari M. Antonio Gordiano etc. Numisius Quintianus v(ir) p(erfectissimus) ab epistulis Latinis, *devotus numini maiestatique eius*." As Professor Alföldi kindly informs me, the formula itself, probably on account of its frequency, has as yet not been made the subject of a special study.

such as Seneca's "The Prince is the soul of the *res publica*; and the *res publica*, the body of the Prince," implies, philosophically, a very similar idea—no less "antique" than Cyprian's "The Church is in the bishop; and the bishop, in the Church."³⁹

To summarize, it cannot be denied that isolated features are recognizable in classical political philosophy and political theology which would suggest that the substance of the idea of the King's Two Bodies had been anticipated in pagan Antiquity. Moreover, it sounds plausible enough that one or another of those antique theorems became effective in the High Renaissance when, in addition to the literary sources, the archaeological and numismatic material also became available again. There is no doubt that the classical model occasionally served to *rationalize* certain phenomena (as, for example, the display of effigies at royal funerals) which had originated and developed from totally different conditions and strata.⁴⁰ It remains, however, more than doubtful whether a summing-up of all the individual classical features of duplications would result in a compact theory comparable to that of the late mediaeval lawyers. For despite all the parallels, similarities, and "antecedents" in classical times, there is nevertheless *one* detail which would exclude a pagan origin of the Tudor formula from the outset; that is, the concept of the king having two Bodies. There is apparently nothing in pagan thought that would justify this diction, and therefore it has a false ring if, by modern scholars, the Roman emperor is sometimes called a "corporation sole."⁴¹ It is true, of course, that in Greek philosophy the cosmos, the polis, or the individual could be interpreted each as a body (*σῶμα*), and it is true also that St. Paul's definition of the Church as *corpus Christi* reflects that philosophy.⁴² On the other hand, however, this aggressive Pauline concept eventually endowed the late antique "corporations" with a philosophico-theological impetus which apparently those bodies were lacking before Constantine the Great referred to the Church as a *corpus* and thereby

³⁹ Seneca, *De clementia*, 1,5,1; above, Ch.V,n.65, and Ch.VII,n.405, also n.408.

⁴⁰ See above, Ch.VII,nos.372f.

⁴¹ Cf. F. Schultz, *Classical Roman Law* (Oxford, 1951), 90f: "Adopting the English conception of 'corporation sole,' we may simply say that the *princeps* is a corporation sole." Cf. p.89, for the statement: "The Roman people is a corporation."

⁴² For the whole problem, see Arnold Ehrhardt, "Das Corpus Christi und die Korporationen im spät-römischen Recht," *ZfRG.*, rom.Abt., LXX (1953), 299-347, and LXXI (1954), 25-40.

introduced that philosophical and theological notion into the language of law.⁴³ Besides, the influence of the *corpus Christi* doctrine on the interpretation of legal *universitates*, and thereby also on the mediaeval corporational theories, is a fact to be reckoned with.⁴⁴

It might be possible to argue that the general concept of the Norman Anonymous still drifted in the wake of ancient ruler deification. The tenet, however, of the Tudor jurists definitely hangs upon the Pauline language and its later development: the change from the Pauline *corpus Christi* to the mediaeval *corpus ecclesiae mysticum*, thence to the *corpus reipublicae mysticum* which was equated with the *corpus morale et politicum* of the commonwealth, until finally (though confused by the notion of *Dignitas*) the slogan emerged saying that every abbot was a "mystical body" or a "body politic," and that accordingly the king, too, was, or had, a body politic which "never died." Notwithstanding, therefore, some similarities with disconnected pagan concepts, the KING'S TWO BODIES is an offshoot of Christian theological thought and consequently stands as a landmark of Christian political theology.

⁴³ Ehrhardt, *op.cit.*, LXXI, 37-40; also Roberti (see next note), 79f.

⁴⁴ Cf. M. Roberti, "Il corpus mysticum di S. Paolo nella storia della persona giuridica," *Studi in Onore di Enrico Besta* (Milan, 1939), IV, 37-82; Tierney, *Conciliar Theory*, 131ff; also Gierke, *Gen.R.*, III, 108ff, 111ff.

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