I

THE ABSTRACT THESIS

The Ecclesiological and Corporational Theme of Subject and Society
There are probably few topics in modern social and political thought which arouse greater interest than the status, function, and power of the individual within the State, within the organized body of citizens. Although it would be too optimistic to say that the problem has been satisfactorily solved everywhere, there is, nonetheless, at least within the Western orbit, a fairly general agreement on the autonomous, independent status of the individual within society. I think I am right in saying that since the eighteenth century it has become a more or less universally accepted point of view that man as an individual has certain inalienable rights which no power of government can take away and with which no government may with impunity interfere; and further, that as a matter of fact no less than as a matter of doctrine, the individual’s participation in government—provided that certain requirements of a formal nature are fulfilled—is his undoubted right; that, in other words, the abstract notion of the State is in reality nothing else but the concrete aggregate of the individual citizens. Hand in hand with this go what are called individual liberties which it would be tedious to enumerate before this forum.

Man’s present status is taken so much for granted that it is difficult to realize that it was not always so, that the emergence of the individual within society as its full, autonomous, and constituent member was the result of weary and protracted conflicts which in some respects have not everywhere reached their end. In inviting you to follow
me on a historical exploration of the Middle Ages, I am fully conscious not only of the great responsibility which, with inadequate means at my disposal, I, perhaps rashly, have taken upon myself, but also of the delicate nature of the subject itself, especially in view of the brittle state of research on this topic. I derive some comfort, however, if comfort it be, from the fact that there is hardly any modern literature on the topic of the individual and society in the Middle Ages. This, no doubt, is a salutary reminder which is only apt to underline the difficulties and to emphasize the pitfalls confronting me in opening what is virtually virgin soil. And yet, it cannot surely be denied that the European Middle Ages constitute the period in which the basic doctrines affecting the relations between the individual, society, and its government were formulated and applied to an extent which is certainly remarkable.

Considering the intellectual effort that is presently still spent upon the presentation of many already well-trodden medieval topics; reflecting upon the zeal and single-mindedness with which historically quite inessential, if not trivial, matters of medieval history are often pursued by the antiquarians posing as historians; contemplating, further, the great mental labors which go into the transcription, let alone the edition, of medieval manuscripts and the works they contain which add, as often as not, extremely little to our knowledge or better understanding of the historical process itself—one is indeed forcefully struck by the absence of all recognition of the topic which forms the subject of these lectures. This topic is to me, at least from a wider historical angle, a crucial and fundamental one and also a topic of perennial interest, if only for the sake of a better understanding and a more adequate appreciation of the forces which, first, gave the medieval period its character and complexion, and, secondly, potently shaped and influenced modern relevant conceptions.
It seems to me—and I would like to stress the point—that the historical recognition of the vital difference between the individual as a mere subject and the individual as a citizen is long overdue. The two conceptions, subject and citizen, reflect and epitomize in an almost classical and certainly impressionable manner the basic standing of the individual in the public sphere. The recognition of this distinction would seem to further not only the historical-political understanding but also—and perhaps even more so—an appreciation of the ideological forces which in their turn produced these concepts. In a rough sense one may well say that for the larger part of the Middle Ages it was the individual as a subject that dominated the scene, while in the later Middle Ages and in the modern period the subject was gradually supplanted by the citizen. Why was this so? Why did the subject in the high Middle Ages stand in the foreground, and what forces were at work which replaced him by the citizen?

I cannot promise you a cut and dried answer to all the multifarious problems which these questions, in themselves quite simple, pose, but what I intend to do is to invite your attention to some specific medieval conceptions so as to throw the contrast, and herewith the subsequent development, into the clearest possible relief. Looking at the medieval scene from a broad point of view, I find that the topic divides itself quite naturally into three different compartments. There was, first, the purely doctrinal and intellectual standpoint which, for understandable reasons, was the point of view held by those who set the tone and gave the medieval period its particular complexion, that is, by those who attempted to translate the Christian theme into the workaday world, an attempt made by the pronouncedly theocratic governments and writers in the earlier part of the Middle Ages. To this I will devote my first lecture.

There is, secondly, the theme which—with some notable
exceptions—has not been accorded the attention which is surely its due, that is, the feudal complexion of society and the concomitant view of the individual within feudal society. It seems to me impossible to exaggerate the fructifying significance of the feudal theme, precisely in respect of my topic, for within its precincts we do not move in the higher regions of speculative doctrine, dogma, and authority, but keep our gaze firmly fixed on the concrete, mundane, and earthly activities of contemporary, that is, medieval society.

In my third lecture I propose to show that, as a result of the potent fertilization of the ground by feudalism and other agencies not directly linked with political ideology but at least indirectly impinging upon it, new ideas emerged with fructifying effects in the public field. I hope to demonstrate that the new ideas concerning the individual and his standing within society could and did in fact combine and fuse to give birth to a full-fledged humanism, to provide the release of the individual from the tutelage in which he had been kept for so long a time. This is the dawn of the modern era in which the citizen had won the victory over the subject, the era in which the individual was liberated and emancipated.

My first lecture, therefore, will be an attempt to answer the question of why, doctrinally, in the medieval period the individual had not yet emerged as a fully grown citizen, that is, as someone who had in the public field autonomous, independent, and indigenous rights and was entitled to take part in public government itself. In trying to answer this question I am afraid I shall have to ask you to follow me over the somewhat arid and barren ground of some medieval religious and ecclesiological matters, because it seems to me that without at least putting these matters into their proper focus one cannot hope to understand the properly medieval point of view nor the subsequent development.

We must set out from the incontrovertible fact that for
the greater part of the Middle Ages ideas relating to the public sphere were shaped partly by Roman concepts and notions and partly by Christian doctrines. The concepts of Roman parentage which are directly relevant are those concerned with the structure of society as a corporation. This corporational element seems to me a crucial and vital feature of medieval society and has particular relevance to my topic, for in combination with the ecclesiological strain of thought it led without great effort to the thesis that the Christian was a member of the all-embracing, comprehensive corporation, the Church.\(^1\) The incorporation of the Christian into the Church, his becoming a full member of the *corpus Christi*, was effected by his baptism.

Now baptism was not, as one might be inclined to think, merely a liturgical or a sacramental act: to be sure, it was this, too, but within the field of public government, it assumed additional significance that is by no means fully appreciated. The sacramental act of baptism was also endowed with effects in the public field since as a baptized Christian the individual was said to have become a new creature, was said to have undergone a metamorphosis—he ceased to be a mere man; he ceased to be, to use Pauline language, a man of nature, a man of flesh, an “animalic man.”\(^2\) As a result of the working of divine grace, he had divested himself of his natural humanity, his *humanitas*,\(^3\) and had become a participant of the divine attributes them-


\(^2\) See I Cor. 2:14 and 3:3; Gal. 5:24; Col. 2:12.

\(^3\) See, for instance, Rom. 6:19: “*Humanum dico propter infirmitatem carnis vestrae.*” It is highly significant that this passage also gave birth to an entirely different interpretation which, coming as it did from so great an authority as Gregory the Great, exercised considerable influence. See Gregory *I* Moral. xi. 49. 65 (Jacques Paul Migne, *Patrologia Latina* bxxv. 982): “Homo natus ex infirmitate, quia de muliere ortus.” *Patrologia Latina* is hereafter cited as *Patr. Lat.*
selves. I think one can speak of a renaissance, of a rebirth, because, to use Pauline language again, man emerged as a *nova creatura*: he was *renatus*, was reborn. In view of the later development it is important to bear in mind this concept of a renaissance, for which the New Testament itself can be called upon as a witness. This status of being reborn was also expressed by the metaphysical use of resurrection or of a *regeneratio* or *renovatio*. No doubt, the *glossa ordinaria* on the Bible exegetically paraphrased the gist of the relevant biblical statements by saying that “*Renascitur homo ex aqua*.”

In this context we should take due note of the tension amounting to a dichotomy which, on the basis of this idea of rebirth, was held to exist between man’s natural being, his *humanitas*, and his being as a Christian who moved, so to speak, on a level different from that of his naturalness. The concept of *humanitas* became equated with the merely carnal, the main reason being to bring into clearer relief the contrast to the elevated status of the Christian himself. Thus, Gregory the Great declared that Scripture itself denoted by the collective term *humanitas* the occupation with carnal matters.

This is not merely a doctrinal point of view but also one with fundamental repercussions in the public sphere, for

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4 II Cor. 5:17; Gal. 6:15.
5 See, for instance, John 3:3–5, which deals with the physical birth and metaphysical rebirth. How, it is here asked, can an old man be reborn? Is he supposed to enter his mother’s womb again to be reborn? See further I Pet. 1:23. It may well be that the modern canon law of the Roman Church still adheres to this same principle when it declares (can. 87) that “through baptism man becomes a person”—natural man, as it were, is transformed or reborn into a full person, which he was not before baptism.
6 See, for example, Titus 3:5. The same idea was expressed by Augustine when he declared that baptism turned its recipient from a mere slave into a son of the great paterfamilias: *Miscellanea Agostiniana*, Vol. I: *Sancti Augustini Sermones post Maurinos reperti* (Rome, 1930), p. 418, ll. 3–11.
7 See Gregory I *Moralia* xviii. 54. 92 (Patr. Lat. lxxvi. 94): “Scriptura quippe sacra omnes carnalium sectatores, *humanitatis* nomine notare solet,” referring to I Cor. 3:3, 4.
as a Christian the individual was held to stand on a level quite different from that of a mere man. Not only did he become a member of the Church, but he was also designated as a fidelis, with the important consequence that the individual no longer was considered to have shaped his life in accordance with his natural, human insight, a fact which in theory and practice meant that he no longer was endowed with autonomous, indigenous functions insofar as they related to the management of public affairs. As a member of the corporation, of the Church, the fidelis was now subjected, as far as his social and public life went, to the law as it was given to him, not the law as it was made by him. The consequence of the incorporation was that his fidelitas, his faithfulness, consisted precisely in his obeying the law of those who were instituted over him by divinity. The individual became absorbed in and by the corporation itself, by the Church, which itself, however, was governed on the monarchical principle, according to which original power was located in one supreme authority, from which all power in the public sphere was derived—a system which, for want of a better name, I call the descending or theocratic theme of government and law.\(^8\)

\(^8\) For some details see Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London, 1961), pp. 20ff. It should perhaps be noted that the concept of papal monarchy was also constructed by means of a somewhat faulty linguistic interpretation. Innocent III, in trying to explain the statement in John's gospel (1:42), declared that cephæs meant caput, obviously confusing the Aramaic term kephæs with the Greek kephale. See his *Sermo II* (Patr. Lat. ccxvii. 658a); *Sermo XVIII* (395b): "'Tu vocaberis, inquit, Cephas,' quod exponitur caput. Utique cæphas a capite, sicut Petrus a petra"; *Sermo VII* (482c); No. XIII (517b). In No. XXI (552c), however, he realized that there was some difficulty: "Cephas enim licet secundum unam linguam interpretatur Petrus [which in fact was what the John passage said], secundum aliam tamen dicitur caput." This linguistic curiosity was already contained in Pseudo-Isidore. See Anacletus in Paul Hinschius, *Decretales Pseudo-Isidorianae* (Berlin, repr. 1960), cap. 33, p. 83. For the royal field which operated on essentially similar premises, see the seventh-century Visigothic laws (*Monumenta Germaniae historica* [hereafter cited as *M.G.H.*], *Legas Visigothorum* ii. 1. 4), according to which the king was the head and the
Most, if not all, of the basic principles relative to the individual as a subject to higher authority are contained in the Bible, notably in the Pauline letters. If one realizes—as every medievalist ought to, but so few in fact do—what an unparalleled influence the Bible as the repository of divine wisdom exercised in the Middle Ages, one will have no difficulty in appreciating that it was taken not merely as a model, but above all as a ready-made philosophy relative to matters of public government. The all-pervasive Christian theme made the Bible a pattern—a whole philosophy was so conveniently assembled within two covers. Where else could man look for a pattern? Quite especially it is in the Pauline arsenal that the crucial concepts and terms of the subject, of the _subditus_, and the corollary of the higher, of the _sublimis_, as well as the corresponding concept of obedience, appear most fully. One or two examples should illustrate the essential meaning of Pauline expressions. In the letter to the Romans Paul says that because whatever power there is comes from God, every soul should be _subjected_ to the higher authorities, from which follows that it is a necessity for the sake of good functioning of the body that individual Christians should be _subjects_ of princely power. Titus was advised to bring home to his people the knowledge that they were subjects of the princes and powers and that they therefore had the duty of obedience. The same correla-people the members of the body. The same theme also occurred, of course, in the medieval coronation orders; see, for example, the prayer text on the occasion of conferring the ring (the king as "caput regni et populi").


10 Rom. 13:1–2: "Omnis anima _sublimioribus_ potestatibus _subdita_ sit."

11 Ibid., vs.5: "Ideo necessitate _subditi_ estote . . . ."

tion between subjection and obedience is struck up in another Pauline letter, and exactly the same principle emerged also in one of the Petrine letters. When one realizes that these were not just passages which were read only on specific occasions in the Middle Ages, but that they were statements making basic pronouncements, with which all literate persons in the Middle Ages and especially those who composed the chanceries of the ruling personnel, were familiar, one will perhaps appreciate how much the medieval mind became attuned to these programmatic declarations.

The essential point here is that profound Pauline and deeply Christian themes were in theory and fact transferred to society itself. It was precisely in explaining Pauline doctrine that at the turn of the fourth and fifth centuries John Chrysostom declared that

... it is the divine wisdom and not mere fortuity which has ordained that there should be rulership, that some should order and others should obey.

Nor does it need much historical imagination to visualize the far-reaching effect of yet another Pauline statement: "What I am, I am by the grace of God." In other words, the translation of this latter Pauline thesis was held to entail that the fidelis christianus not only had no rights but also had no autonomous standing within the Church itself or within society. Furthermore, the Church itself was always defined as the congregatio fidelium or the universitas fidelium, in which the accent lay on the fidelis. This congregation of the faithful, all-embracing as it was, included both laity

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13 Heb. 13:17: "Obedite prepositis vestris et subjacete eis"; see also I Tim. 2:1–2: Prayers, thanksgiving, and intercessions were to be made "pro regibus et omnibus qui in sublimitate sunt."


15 For the character of the Church as a corporation modeled on Roman law, see above, n. 1.

16 St. John Chrysostom In Epistolam ad Romanos homil. 23 (Patr. Graeca lx. 615).

17 I Cor. 15:10.
and clerics. Indeed, it was the concept of the *fidelis* which dominated thinking and writing and acting in the medieval period, because what discerned and distinguished the Christian was his faith. And because he had faith, he obeyed the law, in the creation of which he had no share. Faith, in other words, yielded the essential substratum for the validity and efficacy of the law. Differently expressed, the element of obedience presupposed the existence of faith. This is indubitably the message of Pauline doctrine. Conceptually it was impossible to maintain that the *fidelis* could share in government. We are here presented with an unadulterated conception of the subject, of the *subditus*, who, by virtue of his baptism and the consequential incorporation into the Church, had no autonomous character. Because he had instead the required faith, he accepted—or perhaps I should say, was supposed to have accepted—the will of him who was set above him, the will of the superior.\(^{18}\) It is this kind of consideration which makes understandable Augustine’s view that “the Christian is to be led by the weight of authority” or, conversely, that obedience to the command of the superior authority was his hallmark.\(^{19}\)

The concept of the superior and the inferior, the one above, the other under, seems to me to sum up the function and status of the individual, at least within the pure descending doctrine, for only by identifying himself with the law and government of the superior, that is, by active

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\(^{18}\) That these views on the faithful as a subject are still those of the modern canon law (see also above) is shown by Carlos M. Corral Salvador, “Incorporación a la Iglesia por el bautismo y sus consecuencias jurídicas,” *Revista Espanola de Derecho Canonico*, XIX (1964), 817ff., esp. 828ff. (“el bautizado queda costituido indebentemente *subditus ecclesiae*”).

\(^{19}\) Augustine *Sermo CCCLXI 3* (Patr. Lat. xxxix. 1600): “Auctoritatis enim pondere christianus ducendus est”; Augustine *Enarratio in Psalmum LXXI* (Patr. Lat. xxxvi. 904): “[Obedientia] est in hominibus et in omni rationali creatura omnis justitiae origo atque perfectio”; see also his *De civitate Dei* xiv. 12, where obedience is called “the mother and guardian of all virtues.”
obedience, could the faithful be and remain one. When, therefore, in the late sixth century Gregory the Great stated that the verdict of the superior—no matter whether just or unjust—had to be obeyed by the inferior subject, he expressed in unmistakable language (which was to be repeated a hundred times throughout the subsequent period) the essential point of the inferior's duty of obedience to the law of the superior.\(^{20}\)

It was these conceptions of the inferior status of the individual and the superior status of ruling authority which explains not only the prevailing medieval view on the inequality of men—a point to which I will revert in a moment—but also the development of the concept of majoritas and its corollary of obedientia. Superiority of public rank necessarily yielded the demand for obedience on the part of the inferior subject. To my mind it is, therefore, highly significant that in the fully matured medieval canon law there is a section which bears the very title of De majoritate et obedientia. It was in this section of the canon law that the basic legal rules relative to the superior or major authority and the inferior subject were stated, and it was also here that the concept of obedience emerged as an operational concept correlative to major (= superior) authority. Perhaps nothing is more illustrative of this fundamental medieval topic than the postulate for obedience on the part of the subject to the command or law of a superior, although the subject, precisely because he was an inferior,\(^{21}\) had no share in the making of the command or law, obedience to which was based upon his faith as a Christian. By replacing consent, faith served as the basic ingredient of the law.

That on this ideological basis there resulted a hierarchical ordering of all members of society cannot cause much sur-

\(^{20}\) To the passages cited in Ullmann, *Principles of Government*, p. 107, n. 1, should be added Gratian, xi. 3. 1, and D.a.c.78, *ibid.*

\(^{21}\) See, for example, the *glossa ordinaria* on *Extravagantes* iii. Ne sede vac., c. un.: “Lex superiori per inferiorem imponi non potest.”
prise. This hierarchical ranking was clearly foreshadowed in Pauline doctrine\(^{22}\) and was made a special programmatic point in the late fifth century by Pseudo-Denys,\(^{23}\) who in fact coined the very term *hierarchy*. One aspect of this hierarchical thesis was the inequality of the members of society. One should never forget that the principle of equality is of fairly recent date; in other words, that the members of society had, by virtue of being members of society, equality of standing within the public field was not a doctrine that was known to the high Middle Ages. Here operated inequality before the law.\(^{24}\) It is interesting to see how, for instance, Gregory the Great argued to justify this principle of inequality. Although nature had made all men equal, Gregory declared, there nevertheless intervened what he called “an occult dispensation,” according to which some were set over others “because of the diversity of merits” of the individuals. He had no doubt that this was in reality the effluence of the divine ordering of things.\(^{25}\) The significance of this basic point of view lay in once again setting aside what nature had produced—for by nature we are all equals, he had said—and in replacing the natural ordering by a purely speculative theorem which in its eventual roots went back to the fall of man. Again, it is worthy of remark that this was not merely a doctrinal standpoint, but one that had concrete applications in the social and public field. Augustine

\(^{22}\) See Eph. 5:22–24.


\(^{24}\) For the similar view of the modern Church, see August Hagen, *Prinzipien des katholischen Kirchenrechts* (Würzburg, 1949), p. 178 (the Church had never acknowledged equality of all men or of all Christians before its forum: if it had done so, it would have denied its own being); Hugo Schmieden, *Recht und Staat in den Verlautbarungen der katholischen Kirche seit 1878*, (2d ed.; Bonn, 1961), p. 122.

had already more than hinted at this unequal standing of the various members of society when he said that it should be everyman's rule of conduct not to offend a superior, a point of view which in varying degrees was repeated. The significance of this hierarchical ranking lay in that through subordination to the superior there was to come about an integration of the whole society, thus creating harmony and order where diversity otherwise would have resulted. *Una concordia ex diversitate* (Humbert of Silva Candida) expressed this idea well enough. The fundamental presupposition, however, was that the individual accepted his standing in society, that he divested himself of his individuality and will by following the direction "from above," that he, in other words, obeyed.

The inequality of the members of society showed itself most manifestly in the unequal treatment before the law, for a superior was treated differently from an inferior. Once again Gregory the Great gave the lead when he stated that those in a commanding position were to be treated differently from those who were subjects. This statement came to be a major principle: no inferior could legitimately bring any accusations against a superior. In other words, subjects were not entitled to invoke the help of a law court against a superior. From the mid-ninth century this point of view became universally accepted and had specific reference within the ecclesiastical sphere and also general reference within the royal field. Within the former the practical


27 See, for instance, Gregory I *Moralia* xxv. 16. 36 (*Patr. Lat.* lxxvi. 344d): "Quia rectores habent iudicem suum, magna cautela subditorum est non temere vitam iudicare regentium."

28 Gregory I *Regula pastoralis* iii. 4.

29 See, for example, the Council of Frankfurt presided over by Charlemagne (794), which incorporated the old ruling of the Council of Carthage, (Jean Dominique Mansi, *Sacrorum Conciliorum Collectio* [Venice, 1798], III, cap. 8, 714): those who had been convicted of a crime must not prefer charges against "maiores natu aut episcopos suos" (*M.G.H.*, *Concilia* ii. 170, 36).
The Individual and Society

consequence was, since the inferior could not judge the superior,\textsuperscript{30} that the layman was not only precluded from partaking in matters of ecclesiastical government but also from charging a cleric with any crime, because he was a mere subject.\textsuperscript{31} It was merely an extension of this selfsame principle of inequality that inferiors could not make laws by which the superiors could be bound.\textsuperscript{32} Perhaps the best illustration of social and legal inequality came in the early seventh century from Isidore of Seville, who combined with it the duty of obedience on the part of the subjects:

Superiori aequalem te non exhibeas. Senioribus praesta obedi­entiam, famulare imperii eorum, eorum auctoritati cede, obsequere voluntati. Defer obsequia justa majoribus . . .\textsuperscript{33}

Considering that politological thought was so markedly clerical in the earlier and high Middle Ages, one will not be surprised to learn that within the public sphere, the layman as such had none of the rights with which even the most insignificant member of a modern society is credited. He had, for example, no right of resistance to superior authority. Behind all declarations stood the concept of the office, which made possible the distinction between the superior and the inferior, since the office itself was capable of fairly precise measurements. The very nature of hierarchy presupposes a gradation of ranks or offices, according to easily recognizable criteria. It is this feature which imparts practicability to the

\textsuperscript{30} See the pseudo-Isidorian passages in Gratian, ii. 7. 4.
\textsuperscript{31} The numerous councils of the ninth century made this perfectly clear when they spoke of the “subditi” of priests and bishops, and Pseudo-Isidore in the mid-ninth century frequently stated the same principle. See the passages in Gratian, ii. 7. 1ff. Pope Nicholas I, also in the ninth century, rendered the same principle: Ep. 88, in M.G.H., Epistolae vi. 469.
\textsuperscript{32} See above n. 21; further, see Liber Extra i. 33. 16: “Cum inferior superiorem solvere nequeat vel ligare, sed superior inferiorum liget regulariter et absolvat . . .”; also see cap. 6, 9, et cetera.
\textsuperscript{33} Isidore Synonyma ii. 74 (Patr. Lat. lxxxiii. 862); similarly, in the twelfth century, Hugh of St. Victor, Expositio in hierarchiam celestem S. Dionysii i. 5 (Patr. Lat. clxxv. 931).
descending theme of government and explains why those members of society who had no office not only stood at the very bottom of the social ladder but also were without public rights. The individual’s standing within society was based upon his office or his official function: the greater it was, the more scope it had, the weightier it was, the more rights the individual had. As a mere subject the individual was no more than a recipient of orders, of commands, of the law, and as a layman, in particular, he was merely a passive spectator who was to obey: his role was that of a learner.\textsuperscript{34}

For illustrative purposes permit me to adduce some source material from the high Middle Ages which, although of primary importance to the diplomatist, should be of interest to the historians of governmental ideas as well. The books of instructions for the chancery personnel in the public chanceries contained quite detailed regulations concerning the very points which I have just tried to make.\textsuperscript{35} They laid down that a \textit{persona minor} was he who had no public office, such as a merchant, a simple citizen, an artisan, or a person of similar standing.\textsuperscript{36} Certain members of society were not even permitted to write or to receive letters to which the ordinary formal requirements were applicable: such persons "who had neither name nor honour" were the lame, the

\textsuperscript{34} See, for instance, already the spurious \textit{Epistola Clementis} (composed about the end of the second century), which clearly struck up the theme when it said: "Discentes, id est, laici": \textit{Die Pseudo-Klementinen}, ed. Bernhard Rehm in \textit{Die griechischen christlichen Schriftsteller} (Berlin, 1953), 5. 4. 9. 11. 28–29. This principle of functions within society was a point in the genuine epistle of Clement I sent to the Corinthians: it was in this letter that the term \textit{laikos} appeared for the first time; see Ullmann, \textit{Principles of Government}, p. 67, n. 1.

\textsuperscript{35} About the great importance of these so-called diplomatic formulae, see Walter Ullmann in \textit{Annali della Fondazione Italiana per la Storia Amministrativa}, I (1964), 117ff.

\textsuperscript{36} See, for example, Ludolf, \textit{Summa dictaminum}, or the Formulary of Baumgartenberg, both of the thirteenth century, in Ludwig Rockinger, \textit{Briefsteller und Formelbicher} (Munich, 1863), pp. 361f. and 727: minor persons are "mercatores, cives simplices, et artis mechanicae professores et omnes consimiles carentes dignitatibus."
The general rule was that when a superior wrote to an inferior subject, certain terms of an imperative character had to be employed; vice versa, the inferior subject writing to the superior had to use "adverbia subjectionis." These chancery books allow the discerning student unimpeded ingress into the workshop of the governments themselves and deserve, along with similar source material, greater attention than they have hitherto received.

It would be quite misleading and erroneous to think that my foregoing considerations apply only to the ecclesiological set of ideas, for, as I have already had occasion to remark, it was no different in the royal field proper, where it was very much the same premise by which the individual was absorbed in the body corporate of the kingdom. If anything, the individual was far less in a position to assert any autonomous rights, because the possibility of a distinction between private and public, which was to some extent operative in the ecclesiastical field, was for the greater part of the Middle Ages not drawn in the royal sphere. Here the very concept of subject, of the **subditus**, of the **Untertan**, was in actual fact far more, and more directly, an operational instrument. Often enough do we read in the royal field that the **populus** was **commissus** to the king—that the people or the kingdom was entrusted to the king's government—just as we read in the ecclesiastical domain that the Church was committed to the pope's government. This was not a mere formula nor a device of some high-sounding chancery practice, but a statement with profound contents.

That the kingdom or the people were entrusted or committed to the king's government meant, firstly, that the king's

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38 See Guido Faba *(ca. 1230)*, *ibid.*, p. 186, no. 1: "Si majores, clerici vel layci, prelati ecclesiastici vel domini saeculares, subditis vel minoribus scripserint, materiam per ista verba poteris incipere preceptiva: mandamus, precipimus, instantissime, constanter, indubitante, et peremptorie"; p. 188, no. 3: "Principia de subditis et minoribus"; p. 197: "De episcopis ad subditos"; and so on.
power itself was not derived from the people or the kingdom or any individuals, but from divinity. The title of the king as “King by the grace of God” expressed the idea that his powers were the result of the working of God’s good will or of God’s grace, which was merely another way of applying the Pauline thesis that what I am, I am by the grace of God, or seen from another angle, that the kingdom or the people or the totality of the individuals had nothing to do with the powers which the king possessed. The king received his powers as a concession from divinity—another Pauline principle was concretely applied: there is no power but of God—and what he had received through the grace of God in the shape of public power, he could concede to his subjects. The individuals as subjects had no rights in the public field. Whatever they had, they had as a matter of royal grace, of royal concession. One will understand now, I hope, why the king’s grace was so vitally important for the subjects, for without it they had no standing in public: this is the vital contrast of the king’s grace and his disgrace, the latter of which the subject incurred if for the one or the other reason he had jeopardized the king’s good will.


40 It should by no means be assumed that this kind of argumentation was characteristic of the medieval period only. On the very eve of the American Revolution, statements were made by the defenders of the status quo which, though anachronistic at the time, nevertheless betray a proper medieval spirit. Thus Jonathan Boucher declared in 1775 that “kings and princes . . . were doubtless created and appointed not so much for their own sakes as for the sake of the people committed to their charge; yet they are not, therefore, the creatures of the people. So far from deriving their authority from any supposed consent or suffrage of men, they receive their commission from Heaven; they receive it from God, the source and origin of all power. . . .” And to him the duty of the subjects is, in the phraseology of a prophet, “to be quiet and to sit still”; quoted in Bernard Baylin, (ed.), Pamphlets of the American Revolution 1750–1776 (Cambridge, Mass., 1965), I, 201. See also ibid., p. 197, for Isaac Hunt’s similar anachronistic view, also of 1775, of the principle of subordination and obedience to the superior.
and caused his benevolentia to turn into malevolentia. And this is the deeper meaning of the medieval penalty of the amercement—the subject had lost the mercy, the good will of the king, and in order to regain it, had to pay a fine or some other compensation. One has but to read through the thousands of medieval charters and diplomata to realize how potently this ideology was entrenched, so entrenched, in fact, that to this day in England one can daily read in the official London Gazette that the queen has “graciously appointed” an individual to a particular post or has “graciously conferred” the office of Governor General or the office of High Commissioner or has “graciously approved” of the appointments made by the Prime Minister, and so on. These expressions portray distinctly the idea of royal grace and employ language which very clearly links the present age with the early Middle Ages. What this medieval thesis of royal grace (or its counterpart, royal disgrace) meant was stated in graphic manner at a time when it had no longer any practical meaning. A statement of James I which could have been made in the high Middle Ages, leaves nothing to be desired by way of clarity:

The plain truth is [he said] that we cannot with patience endure our subjects to use such anti-monarchic words to us, concerning their liberties, except that they had subjoined that they were granted unto them by grace and favour of our predecessors.

The essential point of the concession thesis is that whatever rights a subject has, he has as the effluence of the king's good will, of the king's own grace, which was a favor and which the subjects could not claim as a right. One has no right to claim a good deed, to claim a favor.

In addition to the people's (the aggregate of all the individuals) or the kingdom's being in the trust of the king, there is, secondly, the thesis that the individuals as members of the people were in the Munt of the king. Now this was a
crucial governmental concept in all medieval kingdoms and also one of the oldest concepts which clearly indicated that the individual as well as the people had no autonomous power. The Munt (Latin: Mundium or mundeburdium; Anglo-Saxon: mundbora; old-French: mainbour; Italian: Manovaldo [= mundoaldus]) placed people on the same level as a minor under age and meant the supreme protection, the over-all superior and controlling knowledge of the king of when and how and where and why the subjects needed his protection. One can best understand the meaning of the Munt if one compares it to the guardianship of a child: it is the kind of protection which a father affords to a child, or a guardian to his ward, or in Anglo-Saxon and Anglo-Norman England the husband to his wife. The kingdom or the people in the trust of the king were treated—

41 For the late Roman conditions see Cassiodore Varia ii. 29; vii. 39; etc. For modern literature see Adolf Waas, Herrschaft und Staat im deutschen Frühmittelalter (Tübingen, 1938); Walter Schlesinger in Historische Zeitschrift, CLXXVI (1953), 237ff.; Ullmann, Principles of Government, pp. 126f. All the expressions mentioned in the text probably go back to manus. In modern German there are still Vor/mund, Mündel, Ent/mündigung; mündig; etc. One of the earliest royal applications of the concept of the Munt I have found is that by King Childeberth I in the year 528; he gave a number of privileges to monks and said this: "Per hanc auctoritatem a nobis firmatam sub immunitatis nostrae tuitione vel mundeburdie quietos residere"; M.G.H., Diplomata regum Francorum 5.2.

42 In Anglo-Saxon England marriage was constituted by the sale of the Munt, which the bridegroom bought from the bride's parents or guardians: she then came under the Munt of her husband, who controlled her and whom she had to obey. What is also interesting is that the wife could not in Anglo-Norman England transact any legal business without the husband's permission; see Leges Henrici Primi (ca. 1114–18) 45. 3 (in F. Liebermann, Die Gesetze der Angelsachsen, II [Halle, 1913], 570), where she was put on the same level as a boy or a girl and where the husband was called her dominus. See also below for the consequences of her murdering the husband. For further details concerning husband and wife, see Frederick Pollock and Frederic William Maitland, History of English Law (2d ed.; Cambridge, 1926), II, 403ff., esp. 406, where Maitland speaks of an "exaggerated guardianship" by the husband; here also quotations from Glanvill, et cetera. We should bear in mind that many of the reasons for the wife's subjection to her husband were derived from Paul's view that the husband was "the head of the wife."
and explicitly so—as if they had been minors who needed the protecting and guiding hand of the king.

There may well have been adequate and justifiable reasons for this view, and we should not measure this fundamental conception by modern standards. It is not necessary to exercise one's historical imagination to realize how little knowledge of the matters which were the concern of governments could in fact be presupposed not only among the rural population but also among the townsfolk. In obvious contrast to modern conditions, the individual as a subject had no means to inform himself; he had not much opportunity of acquainting himself with any of the issues at stake, and he could not be expected to have an adequate grasp of the matters which the king, by virtue of his own governmental apparatus, necessarily possessed. It is against this sort of background that one can understand not only the preponderant influence of Platonic and Neo-Platonic ideas in the Middle Ages but also the requirement postulated in all spheres of theocratic governments—whether papal, royal, or imperial makes no difference—the requirement of knowledge, of scientia, with which the subjects, precisely because they were subjects, were not credited. One can also understand the allegorical utilization of the head to symbolize the potestas regitiva, or in a roundabout way one can here apply the concept of office, because its hallmark was special knowledge (scientia) and a special power (potestas), both evidently relative to the kind of office which the individual occupied.

At the same time we should not think that the subjects in any way felt that they were oppressed or suppressed. The

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43 See Endre von Ivánka, Plato Christianus (Einsiedeln, 1964), especially pp. 309ff., also 476f.
44 Indeed, Hegel's view on Platonism that its essential feature was the suppression of individuality appears to be supported by the medieval application of Platonic axioms, powerfully advocated as they had been by Augustine, who called Plato the most Christian of pagan philosophers.
awareness of being suppressed presupposes considerable knowledge and critical judgment. Furthermore, the individuals and their aggregate, the people, had every opportunity of expressing their requests, petitions, and aims; and in times of stress and tension the king was well advised to listen to the people, but—and this is the crucial point—a right to demand action or a duty on the part of the king to carry out the petitions of the people could by no means be constructed or was even asserted. This is a point which we should do well to keep in mind if we wish to assess the importance and the fructifying effects of the feudal system. The ideology concerning royal power in the Middle Ages showed—in no wise differently from the ecclesiastical thesis—that the individual was placed under the tutelage of those who had been selected by divinity as the trustees of the people, of those to whom the people or the kingdom (or for that matter the Church) was entrusted.

An immediate, practical as well as theoretical consequence of this ideology was the king’s duty to care for his subjects, a duty which was in fact embodied in the concept of the Munt. This duty was always made a strong point in all

45 Apart from Old Testament models, there were numerous early Christian testimonies which made this a specific point. See, for instance, Origines Homilia 22. ad Num. c. 27: “Gubernatio populi illi tradatur quem Deus elegerit, homini scilicet tali, qui habet, sicut scriptum audistis, in semetipso spiritum Dei et precepta Dei” (incorporated in Gratian and ascribed to Jerome in viii. 1. 16); Justinian in his Novella viii. Epilogue: “Traditae nobis a Deo reipublicae curam habentes”; hence, his constant preoccupation with rendering justice to his subjects (ibid., Preface, and cap. 11); Novella iv. Epilogue (“cautela subjectorum”); Novella lxiii. Preface (giving the law “in commune subjectis”); Novella cxxx. Epilogue; Novella cxxxiv. Preface (“ad utilitatem nostrorum subjectorum” was the law issued); et cetera. See, further, Council of IV Toledo (in Mansi, Concil. Coll., x, 640); Smaragdus, Via regia (Patr. Lat. cii. 933b): “Constituit te [Dominus] regem populi terrae, et proprii Filii sui in coelo fieri jusit haeredem”; and so forth.

46 See, also, for example, some of the statements made by councils in the ninth century: e.g., Council of Arles (813): “populus commissus imperatori” (Charlemagne) (M.G.H., Concilia i. 248. 1. 25); Council of Paris (829): “populus sibi (imperatoris) subjectus” (ibid., 612. 5); Council of Aachen (836): “populus vobis subjectus” (ibis., 767.27); et cetera.
doctrinal expositions on kingship, including the numerous *Specula regum*, and what is particularly interesting is that in this specific instance one notices a confluence of old Germanic and Pauline views, for the Pauline advice was frequently invoked to show the biblical foundation of this duty.\(^{47}\) The concept of kingship was held to contain the obligation toward the so-called feeble members, to use this Pauline expression. But no right on the part of the subjects corresponded to this royal duty: they had nothing to do with the office of kingship, which was an emanation of the divine good will toward the king. The king’s position in regard to his subjects was envisaged on a level similar to that of a father to his family. Numerous testimonies there are which urged the king to manage his government in a manner profitable to his subjects. These statements were, however, merely of an exhortatory character.\(^{48}\) This duty was also expressed in no less formal a place than in the Arengae of royal or imperial documents. Thus, for instance, Charles III in 887 stated in a diploma that it behoved imperial dignity “curam *omnium subjectorum* gerere,”\(^{49}\) and most interestingly, the subjects were in the same place designated as “cuncti fideles.”\(^{50}\) In the manner of classical Roman writers, notably Cicero, the ruler was often enough said to be “the common father of all” (“*communis pater omnium*”), and the

\(^{47}\) See I Cor. 12:22.

\(^{48}\) See, for instance, Isidore of Seville *Synonyma* ii. 77 (Patr. Lat. lxxiii. 862): “Summa bonitate subditos rege, non sis terribilis in subjectis”; Isidore *Sententiae* iii. 49 (ibid., 721a): “Dedit Deus principibus prae suasulatum pro regimine populi, illis eos praesse voluit... nec dominando premere, sed condescendo consulere...”; ibid., 48 (ibid., 718b–19b): “Tune autem bene geritur [scil. insigne potestatis], quando subjectis prodest... Recte enim illi reges vocantur, qui tam semetipsum quam subjectos, bene regendo modificare noverunt.” See also Gregory I (incorporated in Gratian, xi. 3. 61): “Judicarre de subditis digne nequeunt qui in subditorum causa sua vel odia vel gratiam sequuntur.”

\(^{49}\) M.G.H., *Diplomata* ii. DK III. 166. 269.

\(^{50}\) “... idcirco cunctorum fidelium.” This identification of the subjects with the faithful was quite common at the time. See, e.g., Council of Cabillon (813), in M.G.H., *Concilia* i. 9 and 10. p. 276; of Paris (825), ibid., 483. 42; Paris (829), ibid., 616. 9; et cetera.
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deduction drawn from this was that the ruler's government of his subjects was similar to the relation of a father to his children, of the pastor to his flock, for "in a fatherly manner he should govern his people." In fact, there was virtually no commentary or tract that did not in one way or another emphasize this royal duty; yet, it was a purely one-sided obligation which the subjects had no means of enforcing in a legal manner, which they could not demand because they had no rights. True enough, it was often stated—and sometimes quite forcefully, for instance, by John of Salisbury—that "the feeble members" were necessary for the smooth operation and function of the public body, but this recognition was a very long way from ascribing to the subjects (such as the feeble members indubitably were) any indigenous, autonomous rights with which they could confront the king. If he did not fulfill this duty of his, no power existed on earth to make him do it. The frequency of these hortatory statements stood in inverse proportion to the practical as well as theoretical feasibility of translating them into reality.

Another practical consequence of this subjection of the individual to the superior concerned the right of resistance: within the cluster of theocratic ideas it would have been very hard to construct any such right, for the question arose at once as to how to prove this right of resistance. Where did the individual as a mere subject get this right? Not only was the well-known Pauline thesis of not offering resistance to ordained power readily at hand, for to resist power was to resist divine ordinance, but there was also the consideration that the king was the Lord's anointed, the christus domini, who by virtue of the unction had been shown in a most

53 The idea and expression were biblical. See I Paral. 16: 22; I Reg. 26: 11, 16, 23; et cetera.
tangible and visible way to be the recipient of God's favor—unction was the one concrete element which lifted the king out of the mass of all his subjects, because unction was the means by which God's grace was seen to have entered the king's body. How could a right of resistance be asserted against him whom divinity had selected in so palpable a manner? I am sure that there is no need to refer specifically to the very real difficulties presented by a king whose government had become tyrannical. The only road open was either to commit regicide—which is not really a constitutional step—or to pray for the king's conversion, which too does not seem to fall within the constitution. The fact that both suggestions were made by eminent writers clearly indicates how difficult it was to deal with the king by the grace of God who had turned out to be a tyrant.

The king's having had God's authority—hence also his having been designated as God's vicegerent on earth or God's vicar—in theory and largely also in practice removed him from the control of the very men for whose guidance and care he was established in the first place; the king as the Lord's anointed could not be withstood or resisted or subjected to any control by those over whom divinity had set him. Indeed, since Paul himself had made the ruler a "minister Dei" and since he also considered everybody subjected to higher power, it would have been nothing less than rebellion against divinity, itself meriting eternal punishment, for the subject to resist the king. But quite apart from this, what individual or what body or group was by law entitled to declare the king's government tyrannical? Who was qualified to pronounce that the Lord's anointed oppressed his subjects? This problem was as insoluble as the

54 Of course Paul was again to be invoked. See Rom. 13: p.t.; Eph. 6: 1ff.; 5: 22–24; et cetera.
56 It was no coincidence that this very same Pauline text was incorporated prominently in the coronation service.
parallel problem in the ecclesiastical field: who was entitled to declare the pope heretical? If the principle of concession is taken seriously enough, the insolubility of this problem is self-evident.

Considering the strongly pronounced superior-inferior relationship between king and subject, it is interesting to see the consequence of criminal conduct against the king: it was nothing but high treason, and the very term and concept of high treason is a vivid reminder of the underlying ideology. Treason was committed against the highness of the king, against his high status, against his majestas, and the very concept of majestas is itself, of course, a very strong pointer to the prevailing ideology, majestas designating the office and the function of him who was major. This was indeed the constant doctrine—and probably also practice—in the Middle Ages. Majestas was explained as “quasi major stans,” as a power which stood higher than any other power, and the crime of treason could not be committed by a mere vassal of the ruler—which is a highly significant exception—but solely by a subject.

57 For the meaning of the term majestas, which is of Roman origin, see Georges Dumézil, “Maiestas et gravitas,” Revue de philologie 3d ser., vol. XXVI, 1952, pp. 7ff.; see especially p. 17: “A l'époque ancienne dans la Rome royale, maiestas était de même la caractéristique des rois. . . sous la république elle reste des hommes qui sont les plus près de Jupiter, ou qui ‘incarnent’ Jupiter, tant les consuls que l’imperator triumphant. Plus tard elle appartiendra au princeps, puis, à travers lui, aux rois du moyen âge.” Hence, also, the appellation of “Your Highness,” which is a translation of the medieval altitudo, frequently employed; see, e.g., the Merovingian King Childeric II in 673 (“monasterium . . . petit altitudinem nostram”) in M.G.H., Dipl. R. Francorum 30.31, or Charles III in 885 (“hoc nostrae altitudinis pactum”) in M.G.H., Diplomata regum et imperatorum Germaniae ii.122.194.

58 It may be recalled that the first statutory enactment of any criminal law in England was made in 1352 by Edward III; see William S. Holdsworth, History of English Law (2d ed.; London, 1926), III, 249.

59 See, for example, Oldradus da Ponte, Consilia (Frankfurt, 1568) Cons. 43, fol. 15vb no. 8: “Majestas dicitur quasi major stans sive major potestas, argendo ergo a ratione nominis . . . subditus committens in principem, committit crimen laesae majestatis, sed in non subdito non est ista lex imposita.”
treason evidently depended upon positive law, but the one essential ingredient of the crime was that the action at least be aimed at offending the divine power represented in the king. High treason was clearly seen as something which violated the very core of the king's sublime status; it was, therefore, rather apt to bring the Pauline view on resistance to divine ordinance clearly into full view. It is, moreover, not in the least insignificant that the inferior-superior relationship which so markedly appears in high treason constituted also the reason for declaring "petty treason," murder of the master (the superior) by his servant (the inferior), or murder of the bishop by a clerk or a layman of his diocese, or murder of the husband by the wife.  

There is really no need to elaborate on the symbolic meaning of the throne, upon which the king sat visibly elevated and exalted—higher (major) than any of those entrusted to him. Even the dullest, most insensitive and illiterate subject of the king became perfectly aware of his own inferior status when he looked up to the majestas enthroned. It is also noteworthy that in medieval western Europe the throne came to be the symbol of kingly majestas (or his sublimitas) at the time when theocratic kingship began its triumphant career, that is, in the eighth century. Furthermore, the symbol had a clearly discernible biblical origin and betrayed also some ancient Roman and Germanic roots.  

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60 This was Anglo-Saxon law, also incorporated in the English statute of 1352. In 1828 these offences were made simple cases of murder; see Holdsworth, *English Law*, II, 373.


62 In Rome the *cathedra* or *sella* were symbols of the power of public officers. The former became also the bishop's seat by the third century; see the Muratorian canon in Carl Mirbt, *Quellen zur Geschichte des Papsttums und des römischen Katholizismus* (4th ed.; Tübingen, 1924), no. 31, p. 14, ll. 74ff., and Hans Ulrich Instinsky, *Bischofsstuhl und Kaiserthron* (Munich, 1955); and for the Germanic pattern, see Percy Ernst Schramm, *Herrschaftszeichen und Staatssymbolik* (in *Schriften der M.G.H.* [Stuttgart, 1956ff.], I, 316ff., 336ff.)
is, therefore, easily understandable that the coronation services devoted special attention to the king's enthronement and the accompanying solemn and pregnant prayer texts. These texts and the benedictions belong to the oldest stock of the coronation ritual, and they leave no doubt about the meaning of the throne as a visible means to present the king as “high” above the people, occupying, symbolically, an estate of his own which because of its sublimity cannot be shared by anybody else. The rubric heading the ancient and sonorous prayer text *Sta et retine* indeed means what it says: it is the *designatio status regii*. Through enthronement the king assumed the royal status by occupying a seat high above his subjects in his kingdom. The superior-inferior relationship could hardly be better presented. Appropriately the enthronement was always the last ceremonial action in any royal coronation proceedings—the other acts, such as the coronation itself, the conferment of the individual symbols (scepter, rod, armils, ring, et cetera) were preparatory to his occupying the throne. Not without reason, therefore, did the directions of the coronation proceedings lay special stress on the preparation of “the high throne” (*thronus excelsus*), so that “the king may be clearly behelden by the people.”

What is of further interest in this context is that, at any rate, the German medieval kings had not only in their palatine residences thrones, on which they sat during official functions, but also so-called traveling folding stools (*faldistoria*) for the occasions on which they had to camp in the open or had to reside in another castle. In other words, the sublime status of the king, his majesty, had to be brought to the attention of the subjects on all conceivable occasions. In passing, it should be noted that between the folding stools of the kings and those used by bishops for similar purposes there was no difference. It was while sitting on the throne

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64 See *ibid.*, col. 2, for examples.
that the king received the supplications of his subjects, received homage, and acted in a royal capacity. Once again, a highly developed symbolism served to bring into clearest possible relief the abstract relationship between the inferior and the superior.

One could hardly expect that these ideological premises would facilitate constitutional progress. If the subjects were mere recipients of the law given them, and if the law was, as was often enough said and written and stated, a gift of God, a donum Dei, made known through the mouth of the king, how could progress be made in a constitutional respect and the subject released from the fetters into which this doctrine had put him? Any incipient opposition at once smacked of sacrilege since these basic conceptions were of a theocentric, Pauline pedigree. One has only to look at and analyse properly such notions and terms as dignitas, honor, gratia, beneficium, salus, and so on, with which official, semi-official, and literary writings teem to realize their theocentric background. These were not just bombastic or sanctimonious or naïve terms, but concepts which had translated—or perhaps I should say, had attempted to translate—the profound Pauline doctrine into mundane matters of government: nobody has a right to demand an honor, nobody is entitled to claim a good deed, and so on. What all forms of theocratic government made abundantly clear was that man was to be subjected to a power which was outside and above man himself, superior to him, a power over which he had no control.

In particular, what characterized all forms of the descend-

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65 For the throne symbolism in Constantinople, where the idea of the majestas was still more developed than in the West, see Otto Treitinger, Die ostromische Kaiser-und Reichsidee (2d ed.; Darmstadt, 1956), pp. 32ff., 199ff.

66 The individual's prayers—to which the divine (or royal) conferment of gratia, dignitas, et cetera, was held to have been the answer—were by their very nature mere supplications, containing no shade of any assertion of a right on the part of the individual.
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ing theme of government and law in the Middle Ages was that the ancient requirement of the consent of the citizen was replaced by the faith of the subjects, for it was the faith in the substance of Christianity which gave birth to the theocratic institutions themselves. Moreover, the king within the descending theme of government did not belong to the kingdom; the pope did not belong, in his function as pope, to the Church—each stood outside and above the entity entrusted to him. To “No writ runs against the king” and “Princeps legibus solutus” corresponded “Papa a nemine judicatur,” and all these maxims expressed the same thing: no subject could call the ruler to account.67 The ruler formed an estate of his own; he formed a corporation sole, established and ordained as he was by divinity for the sake of governing and guiding the people, as the prayer texts of the numerous coronation services amply and incontrovertibly prove. And the corollary on the individual’s side was obedience to the ruler’s laws, emanating as they did from a divinely instituted superior. Understanding of the nature of superior and inferior roles should not lead, however, to the assumption that the will of the ruler was, so to speak, imposed, as a conqueror imposes his will upon a conquered population. Rather the construction chosen in the Middle Ages was that obedience was simply the outward sign of faith and that the ruler demanded from his subjects nothing that was not already contained in the unquestioned and unrestricted faith of the subjects. Since faith was all-embracing, compliance with the law given by the superior followed as a matter of course. The whole complex theme of obedientia facit imperantem resolves itself in the Middle Ages into a co-operating accept-

67 The jurists in the medieval universities also operated with, and elaborated the Roman law dicta of, “Omnia jura princeps habet in suo pectore” (The prince has all the laws in his breast) or “Quod principi placuit, habet legis vigorem” (What pleases the prince has the force of law). The modern canon law of the Roman Church still has the maxim quoted in the text.
ance by the inferior subject of the superior’s decrees and laws, because the subject has faith in the superior’s institution. The eulogies which the virtue of obedience received in the Middle Ages are, therefore, easily understandable, for obedience was the external sign of faith in the institution, was the yardstick which offered a ready measurement for the degree of the individual’s subjection. That these postulates were intimately linked with the medieval search for unity seems so evident that no comment is called for.

The absorption of the individual by the community or by society accounts for a number of features with which every medievalist is familiar. There is no need here to refer to collective punishments, such as the interdict of a locality or the amercements of towns, villages, or hundreds, and so on: the basic view seems to have been the corporate character of the group, and it made not the slightest difference how many innocent suffered from these impositions.

Moving to an entirely different manifestation of the absorption of the individual by society, that is, the anonymity of writers, scholars, pamphleteers, chancery personnel, architects, scribes, and so on, I can only testify to my own annoyance—though I feel I am not alone in experiencing this reaction—when I come across a work of art or of literature or of documentation which so successfully hides its author. What do we know of the men who conceived and executed some of the finest architectural works still the marvel of even this highly sophisticated generation? Who wrote this or that tract which often started a new line of thought or even a

68 See also above, nn. 19, 20.
69 See, for instance, Gregory I Moralia xxxv., 14. 18 (Patr. Lat. lxxvi. 765): “Sola (obedientia) quae fidei meritum possidet”; ibid., 14. 28 (ibid., 765½): “Sola namque virtus est obedientia quae virtutes caeteras menti inserit, insertasque custodit. Unde et primus homo praecepsit quod servaret, accepit, cui se si vellet obedientiam subdere, ad aeternam beatitudinem sine labore perveniret . . .”; ibid. (ibid., 766*): “Nobis quippe obedientiaria usque ad mortem servanda praecipitur”; et cetera. These were statements which re-echoed throughout the Middle Ages.
school? As often as not we are confronted with a *siglum* at the end of a gloss or of a *Summa*, but who was B? Who was M? There were many Bernards, and there were many Martins. In the case of official documents this anonymity is particularly serious: who was the head of the chancery at this or that time, drafting this or that decree or law with its beautifully arranged *Arenda*? To be told that it was chancery clerk W₁ or B₁ really does not help matters very much. Who conceived Ely Cathedral? Who was the architect of Strasbourg Cathedral? Who were the builders of the dozens of magnificent monuments? To be told, again, that this work comes from the school of Reichenau and that work from the school of St. Albans, and so on, is really no substitute for an identification of the individual who composed and executed or illuminated this or that manuscript. Today when a new apartment house goes up, the name of its architect is splashed all over the papers, but in coming ages neither the architect nor his building will be remembered, while after so many centuries medieval productions still evoke justifiably great admiration.

Similar observations apply to the lack of individuality in handwriting. Paleographical examinations are—I speak from experience—some of the trickiest and most treacherous examinations a medievalist is forced to take. To be sure, one can distinguish between Italian and Anglo-Norman *scriptoria*, but this does not seem to help very much because there were hundreds of "graduates" from these schools, and every one of them exhibited exactly the same traits, the same scribal features which often spanned a whole century. It is indeed very hard sometimes to detect any kind of individuality in the handwriting itself, which, I would be inclined

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70 In this context see the observations of Ernst Robert Curtius, *Europäische Literatur und Lateinisches Mittelalter* (2d ed.; Berne, 1954), Excursus XVII, pp. 503-5: it is especially interesting to note that from the twelfth century on the author's name appeared more and more frequently (p. 505), though juristic writings continued to be anonymous down to the thirteenth century.
to think, aimed at producing the impersonal character of the modern letterpress.

A symptom which may incontrovertibly indicate how little standing the individual had is the absence of what we nowadays call the majority principle in voting procedures. We are so familiar with it that we do not realize its fairly recent origin. Throughout the greater part of the Middle Ages decisions made by corporate bodies were not arrived at by the operation of the numerical or quantitative majority principle, but by a qualitative majority. This was usually expressed by the *pars sanior* (or similar terms), which did not take into account the exact numbers voting on either side, but the greater weight of those voters who had a higher authority, partly by virtue of their office and partly by virtue of greater knowledge, learning, experience, or the consideration which they derived from their rank. In other words, it was not the individual casting his vote who counted; it was the value which he had to the corporate body; it was his position and function which were reflected in the weight attributed to his vote and which counted. Only when all the voters had the same office, hence the same standing, was the qualitative majority replaced by the quantitative-numerical principle, as could be witnessed in the procedure adopted for papal elections (1179), when a two-thirds majority was required: because no distinction between the voting cardinals could be drawn, counting by heads only remained.71

On the other hand, one can hardly doubt that the requirement of the rule of unanimity on certain occasions, such as in the medieval English jury system, was connected with

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the functions of the jurors, who spoke not for themselves and who issued their veredictum (verdict) not as their own, but who spoke "for the country." Here a majority rule, of whatever shape, would have failed to implement what Maitland once called the communal principle, because the parties to a conflict had "put themselves" upon the country, and the verdict of the jurors was the verdict of the country. How could the verdict of the country be divided? "Just as a corporation can have but one will, so a country can have but one voice: le pays vint e dyt."\(^{72}\) There is some evidence, however, that a simple majority was not unknown to Anglo-Norman England: in the Leges Henrici Primi of the second decade of the twelfth century, we read that "if there is dissension amongst the parties in the course of the trial, the majority opinion shall prevail."\(^{73}\) Significantly, the study of Roman law in the medieval universities had a considerable share in weakening the monopolistic position of the qualitative principle.\(^{74}\)

\(^{72}\) Pollock and Maitland, English Law, II, 626. Maitland also suggests as a further reason for the unanimity rule (p. 627) that it saved the judges from "that as yet unattempted task, a critical dissection of testimony." This is certainly true, but the very difficulty of assessing the credibility of witnesses presupposes, as every practicing lawyer and judge knows, not only a great deal of analytical perception, but also an appraisal of the witness’s personality, his individuality, his bearing, his conduct during the trial, and so on. But the voice of the country (or of the neighborhood), on the one hand, reflects the corporational (Maitland’s communal) principle and, on the other hand, dispenses the judiciary from an evaluation of the individual’s worth as a witness.

\(^{73}\) F. Liebermann, Die Gesetze der Angelsachsen, I (Halle, 1903), 5.6. p. 549: “Quodsi in judicio inter partes oriatur dissensio, de quibus emerserit certamen, vincat sententia plurimorum.” But there was no consistency about it; see ibid., 31.2. p. 564 (“sententia meliorum”), with ed. note (b).

\(^{74}\) See Dig. 50. 1. 19; Dig. 50. 17. 160(1); Dig. 4. 8. 32; Odofredus, ibid., et alii. Odofredus even maintained that if a body had 600 members, and only 400 appeared, 201 members constituted the majority and bound the other 399 members. For a similar view held by Hugolinus, see the passage in Otto Gierke, Das deutsche Genossenschaftsrecht (Berlin, 1868-1913), III, 222, n. 110: “Quod universitas vel major pars vel illi qui a majore parte universitatis electi sunt, faciunt, perinde ac si tota universitas faceret.” For a similar principle in Magna Carta, see also below, p. 78.
Here some specific observations are called for regarding the medieval thesis of the corporational structure of society, rooted as this was in Roman conceptions. Students of medieval history are familiar with the trite postulate *Utilitas publica prefertur utilitati privatae*. In drawing attention to this medieval maxim, I am well aware of the resuscitation of this very same maxim in more recent days, but we should not forget that a considerable span of time has intervened between the medieval application of the principle and its modern revival. The significance of this principle in the medieval period is that what mattered was the public weal, the public welfare, the public well-being, in brief, the good of society itself, even at the expense of the individual well-being if necessary. If we were to try to pursue the matter a little further, we would understand on the one hand why the law played so crucial a role in the Middle Ages, for law, in order to be law, is at all times addressed to the generality, and on the other hand the very real concern of medieval governments for safeguarding the interests of society, that is, the public good, which was considered to be the *supremum bonum*. From this consideration arose the demand for suppressing publicly all individual opinion contrary to the assumptions upon which society allegedly was built.

The most readily available instance in this respect is the inquisitorial procedure which was based upon the consideration that the cementing bond of the corporate body, that is, the faith, must be safeguarded under all circumstances. Society was one whole and was indivisible, and within it the individual was no more than a part: but what mattered was the well-being of society and not the well-being of the individual parts constituting it. The individual was so infinitesimally small a part that his interests could easily be sacrificed at the altar of the public good, at the altar of society itself, because nothing was more dangerous to society than the corrosion and undermining of the very element
which held it together, that is, the faith.\textsuperscript{15} Publicly to hold opinions which ran counter to or attacked the faith determined and fixed by law was heresy, and the real reason for making heresy a crime was—as Gratian's \textit{Decretum} had explained it—\textsuperscript{16} that the heretic showed intellectual arrogance by preferring his own opinions to those who were specially qualified to pronounce upon matters of faith.\textsuperscript{17} Consequently, heresy was high treason, committed against the divine majesty, committed through aberration from the faith as laid down by the papacy.\textsuperscript{18} Behind this thesis stood the reflection that not only had the individual no right to express himself on matters of faith but also that faith itself was an issue of profound public concern, for if the faith as the bond of society were allowed to be corroded, the foundations of society would break down and society itself would collapse. The severe punishment meted out to heretics proved that the principle of public utility was carried to its logical conclusion; and the confiscation of the property of the culprit and of his descendants, even if as yet unborn, as well as the inability to occupy public or ecclesiastical offices, is further testimony to the fact that the individual had to suppress his views on matters which might well have vitally affected him.

\textsuperscript{75} From the medieval point of view this suppression of the individual's opinion was not by any means seen as a violation of his rights or of his dignity as a Christian, because a Christian attacking established faith forfeited his dignity and could be considered "a bad man." Killing this individual did not violate his dignity, just as killing an animal did not affect anyone's dignity; see for further details my Introduction to Henry Charles Lea, \textit{A History of the Inquisition of the Middle Ages} (London, 1963).

\textsuperscript{76} Gratian, xxiv. 3. 30. Hence, it was also declared that deviation from faith was an implicit attack on Christ as "the stable and perpetual foundation" of society; see Innocent IV \textit{Quia tunc} (in \textit{Bullarium Romanum} iii. 584). After all, Christ was corporeally present in the pope; see Walter Ullmann, \textit{The Growth of Papal Government in the Middle Ages}, (2d ed.; London, 1962), p. 444, n. 1. See further text.

\textsuperscript{77} Aberration from faith as laid down by authority was in itself a rebellion against the legitimately constituted superior.

\textsuperscript{78} For some details see Walter Ullmann, in \textit{Etudes d'histoire du droit canonique dédiées à Gabriel Le Bras} (Paris, 1965), I, 729ff.
because the good of society demanded this. Nevertheless, in stating these matters, no moral evaluation is intended; above all, it would be quite anachronistic to assess these and other similar measures by the yardstick of our modern, somewhat refined and sophisticated criteria.

In close proximity to this topic stood the relationship between the individual’s property and the Ruler’s right to dispose of it. It should be borne in mind that, within the framework of the descending theme of government, ultimately property was considered an issue of divine grace,79 which view precluded the emergence of a thesis according to which the individual as owner had an autonomous right to his property.80 Consequently, for sufficient reason property could be taken away by those who were qualified to pronounce upon the issue of grace.81 Because of the theocratic function of the Ruler himself, a theory developed that he was in actual fact the owner of all the goods which his subjects possessed. This thesis was explicitly stated in the twelfth century by the civilian Martinus, who, commenting upon the Roman law, declared that its expression that “everything is understood to be in the prince’s power” meant one thing: the Ruler was the full owner of all the property of his subjects; accordingly, he could dispose of it as he saw fit.82 He had true dominium—property unrestricted and unhampered by any authority or law—precisely because he was the vicegerent of God on earth.83

80 See also Augustine as reported in Gratian, viii. 1.
82 See the report of the glossa ordinaria on Codex vii. 37. 3 (Bene a Zenone), where the imperial law used this terminology: “cum omnia principis esse intelligentur.” Other eminent jurists following this line of thought were, for instance, Ricardus Malumbra and Jacobus de Ravanis.
83 See, for example, Albericus de Rosciate la Const. Dig. (ed. Lugduni, 1545) fol. 4vb. no. 9: “Deus est dominus omnium, ut in psalmo, ‘Domini est terra et plenitudo eius’, et imperator est in terris loco Dei quoad temporalia, et papa quoad spiritualia.”
The Abstract Thesis

This logically unimpeachable thesis could be somewhat modified, however, as indicated by the interpretation of another civilian, Bulgarus, who advanced the theory that the Ruler did not own the individual's property, but was its protector. It is not difficult to see here the re-emergence of the old view of the Munt in the guise of the Roman legal concept of supreme protection and jurisdiction. The crucial point here is that the basis of the Ruler's right to dispose of an individual's property rested not upon his ownership, but rather upon his function as a governor or gubernator, who, because he was the sole judge of what furthered the public weal, the utilitas publica, could legally dispose of property if the public interest warranted it.\(^84\) The general provision which covered the right of expropriation was that the Ruler have a justa causa, and a pre-eminently just cause evidently was the protection of the public interest,\(^85\) which bore no relationship to the interests of the individual, who, it must be remembered, had no means of challenging the Ruler's disposition before a court of law, because the Ruler alone was credited with the special knowledge of what was in the best interests of society.\(^86\) No constitutional or legal machinery existed to impugn the Ruler's judgment that "a

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\(^84\) See glossa ordinaria ad Dig. proem., s.v. “sanctionem”: “Quod hic dicit, ‘Omnem totius reipublicae nostrae’, id est, totius imperii, quod est suum, et res in eo contentae, ratione jurisdictionis vel protectionis, non proprietatis, secundum Bulgarum, sed secundum Martinum etiam proprietatis”; ead. ad Codex vii. 37. 3, s.v. “omnia principis”: “His expone, quod protectionem vel jurisdictionem.” See also ead. ad Dig. 1. 8. 2, s.v. “litora.”

\(^85\) See Ullmann, Idea of Law, pp. 185f., at n. 4 (“ratione publicae utilitatis,” Lucas de Penna). Hence, no compensation for confiscated property: “maxime si propter publicam utilitatem faciat (scil. princeps),” glossa ordinaria ad Dig. 1. 14. 3, s.v. “multo magis.” Later doctrine was inclined to impose on the Ruler some duty of paying compensation; see Baldus Ia Const. Dig. (Venice, 1616) fol. 4va. no. 12, s.v. “omnem”: “Imperator dat precium, licet modicum. . . .”

\(^86\) According to Jacobus Butrigarius the Ruler was not “dominus rerum singularium, nisi cura et sollicitudine”; cited by Albericus de Rosciate Ia Const. Dig. fol. 4ra. no. 9.
just cause" demanded action. The Munt of the Ruler was the operational instrument in this scheme, which is only another way of saying that what mattered was the well-being of society. The disregard of the interests of the individual was not a disregard of his rights—which in any case he did not autonomously have within this framework—but a sign of his complete absorption in society. His situation might be compared to that of heretics in inquisitorial proceedings, in which the overriding interest was the preservation of the faith: this favor fidei meant the setting aside of the ordinary modes of criminal procedure against the accused. Similarly, if the interests of the whole society demanded it, property could be confiscated and transferred to some other individual: it was the favor reipublicae which in the last resort justified this procedure.

Here another observation can be made concerning the mutual relations between society and the individual. Society was pictured as a large organism in which each member had been allotted a special function which he pursued for the common good. Two characteristic facets of medieval life are intimately linked with this consideration. First, there was the stratification of medieval society into its estates. The significance of this stratification within the present context is that it was precisely the hallmark of a member of a particular estate that he could not move out of his own estate and that whatever status he enjoyed, he was rigidly con-

87 This was, for instance, explicitly stated by Albericus, ibid., fol. 5ra. no. 12: "Nec erit qui dijudicare possit utrum sit justa causa vel non, quia ipse [scil. princeps] facta subditorum judicat, sua judicat solus Deus."

88 About this favor fidei see my Introduction to Lea, Inquisition of the Middle Ages.

89 This was the argument used by Albericus de Rosciate, ad Dig. 6. 1. 15. fol. 341. no. 3. Clearly enough, this whole cluster of very important problems is in urgent need of an exhaustive examination, which should focus attention on the implications of such views as those of Baldus, who distinguished between the "jus publicum Caesaris et privatarum personarum" (la Const. Dig.): Baldus, ad Codex vii. 37. 3. fol. 28va. no. 2, and Codex vii. 37. 2. fol. 28ra. no. 1.
trolled by the norms applicable to his estate. These norms concerned his very standing within society, concerned any privileges he might have had, including the right of inheritance, of marriage; in short, the norms of a particular estate contributed to the petrification of society and the ossification of the individual’s status within it.\textsuperscript{90} That the freemen and the unfree were treated fundamentally differently, especially in regard to the \textit{Wergeld}, and that there were basic procedural differences between them need only be mentioned for one to realize how closely linked the individual was with his estate. In cases in which \textit{Wergeld} was paid, it was neither paid nor received by the individual, but by his kindred, by his \textit{Sippe}. Moreover, even the value of an oath depended upon the estate to which the individual taking the oath belonged.\textsuperscript{91} “Queer arithmetical rules will teach how the oath of one thegn is as weighty as the oath of six ceorls, and the like” (Maitland). One has, furthermore, but to think of the medieval serfs such as the ploughman, the cotter, and their offsprings, et cetera, all of whom were praedial and were sold with the ground itself, if one wishes to visualize the sharp legal cleavage that existed within medieval society—a cleavage based entirely on custom and tradition, not on rational considerations. That any change in the structure of society was resisted by the “beati possidentes” is not difficult to understand.\textsuperscript{92}

In close proximity to this feature of medieval life stood

\textsuperscript{90} For the static complexion of medieval society resulting from the division into estates, see also Karl Bosl, “Potens und Pauper,” \textit{Alteuropa und die moderne Gesellschaft: Festschrift für Otto Brunner} (Göttingen, 1964), pp. 60ff., esp. 81ff., now also in Karl Bosl, \textit{Frühformen der Gesellschaft im mittelalterlichen Europa} (Munich-Vienna, 1964), pp. 106ff. That even within the nobility there was, in some regions and countries, little equality of its members has been shown by Marc Bloch, \textit{Feudal Society}, trans. L. A. Manyon (London, 1961), pp. 332ff.


another, and it was that each member of society should fulfill the functions which were allotted to him, because this was held to have been the effluence of the divine ordering of things. It was the principle of vocation—in the last resort traceable to Christian cosmology—according to which every individual had been called (vocatus) to fulfill specific tasks. 

Unusquisque maneát in ea vocazione in qua dignoscitur vocatus (Everybody should abide in that calling to which he is known to have been called) was often said in adapting the Pauline exhortation\(^93\) to the medieval structure of society. This view expressed the functional ordering within society as well as the vocational stratification of society and became a virtually insuperable stumbling block to the release of the individual’s own faculties.

Secondly, the medieval viewpoint that each individual had a specific function which he pursued for the common good had a rather distinguished pedigree. It was Paul who used the human body as a model in order to demonstrate the various functions within the unum corpus christi.\(^94\) This organological or anthropomorphic thesis meant that each part of the human body functioned for the sake of the whole, not for its own sake. If we translate this into terms of the corporate public body, we are here presented with the theory that the individual did not exist for his own sake, but for the sake of the whole society. This organological thesis was to lead in time to the full-fledged integration theory of the corporate body politic, in which the individual is wholly submerged in society for the sake of the well-being of society itself.\(^95\) This thesis also led without undue effort to the allegory of the head’s directing the other parts of the human body, thus metaphorically expressing the superior function

\(^93\) I Cor. 7:20, where the term vocatio seems to have been used for the first time.

\(^94\) See I Cor. 12:4ff.; Eph. 1:23; Rom. 12:5.

\(^95\) For the application of the Pauline organological thesis by John of Salisbury, see Ullmann, History of Political Thought, p. 124.
of the caput—be this king or pope—and the inferior position of the subject individual. The essential point of this organo-
logical thesis is that although the body public was one and indivisible, in which all its members had to play their role,
it nevertheless needed authoritative guidance by the head and, thus, the law "given from above." The closely integrated
structure of society called forth the monarchic principle, the underlying idea being that the members of society were not
fit enough to guide society, which was entrusted to the Ruler's government. The primary concern was the good of
society, of the whole body of subjects, and not of the individuals. In a roundabout way we return to the utilitas
publica, which is to be preferred to the utilitas privata.

An adequate assessment of the medieval point of view must stress a feature which runs right through governmental
actions, writings, speeches, sermons, tracts, pictorial representations, in fact any product of the creative mind. This is a
feature which is perhaps difficult for us to grasp today, but which seems to me essential if one wishes to penetrate the
medieval texture. We are today so easily inclined to put the individual in the forefront and, in assessing him, to proceed
by largely subjective criteria. This is especially marked in historical writings about the more recent period. That such
a modus procedendi harbors all the dangers of a moral evaluation and purely subjective assessment sometimes degenerating
into national if not nationalistic appraisal is in no need of emphasis.

Precisely because the individual in the Middle Ages was submerged in society, there is very little danger of these
personal, subjective methods of assessment asserting themselves. It is assuredly not without coincidence that we know
so very little of the personal traits of most of the men who directed the path of medieval society. Hardly any personal
correspondence has survived; no personal anecdotes are there; none of the stories which grow round great men exists; there
are few biographical data; above all, there is hardly any worthwhile contemporary biography or pictorial representation of the great kings, popes, or emperors. Is it not rather symptomatic that we have no pictures which indicate how Nicholas I or Gregory VII or Louis I or Henry II looked? I think it is the lack of knowing the individuality of medieval personalities which explains, to a certain extent at least, why historical writings concerned with the Middle Ages are sometimes quite radically different from historical writings concerned with the more recent periods.

What mattered was not the individual, was not the man, but, as I have already implied, the office which that individual occupied. The office itself is capable of precise measurement, capable of a purely objective assessment: it can be measured by its own contents. It was the office which absorbed the individual, but the office and the power it contained were not of human origin or making, but of allegedly divine provenance. Once again, we move within a human, non-individualistic precincts. Sculpture and portraiture in the high Middle Ages reveal the same features. However finely executed are the illuminations in medieval manuscripts of the Reichenau or Canterbury schools, for example, the men depicted there are not real men at all, but merely types. All individuality is absent. The explanation seems clear enough: the individual personality was not yet seen in its multifarious, infinitely subtle variations. The artist did not lack ability, assuredly not, but what he lacked was the perception of the distinguishing features of the individual he portrayed. On the other hand, however, these same illuminations show that the artist took infinite pains to depict the garments and paraphernalia of the office which his subject occupied. He also devoted great attention to any symbolic gestures or symbolic elements or ritual features which, once again, spoke a purely objective language, a
language which was unambiguous and easily comprehensible.

This objective point of view can also be witnessed with unmistakable clarity in the historiography of the Middle Ages. Why is it, one is, I think, entitled to ask, that medieval historiography is so impersonal? Why is it that we can deduce so little from the purely annalistic accounts, from the Gesta, the Annales, the Chronica, and so forth? All of these seem to me largely variations of one and the same theme. I think it is not always appreciated that so many chronicles start with the creation of the world, that is, the book of Genesis. This fact seems to me a rather clear pointer to the nature of medieval historiography, for the annalist or chronicler did not see in the succession of events the play of human volitions and aims, but the manifestations of God’s will. The individual was only involved in the historical process so far as he was conceived as an instrument, as a vehicle through which God acted. In other words, history seen through the eyes of the medieval annalist was believed to have revealed the divine plan, was a process removed from the individual’s capacity, and the real task of the annalist or chronicler was to uncover the objective divine plan. At most the individual could only further the divine plan or perhaps impede it, but he never made the plan himself.96 That, I think, explains why we find in medieval historiography so little account taken of the actual human, individual features and motives. Everything moved, so to speak, on the objective level of a

The Individual and Society

The divine plan, on a level which purposely disregarded the importance of the individual's own contributions, if not his own initiative. The individual could be compared to a chessman which was moved by divinity across the chess board of historical events. Moreover, there was little separation between the miraculous and the historical. Miracles and legends took the place of rational explanation by means of cause and effect. Being embedded in the divine plan, history was its manifestation in the period between the creation and the day of judgment. That so much of medieval historiography was teleologically conceived and that one can very well speak of a teleology of history itself would seem to be evident.\footnote{97 About this topic see also Geschichtsdenken und Geschichtsbild im Mittelalter, ed. W. Lammers (Darmstadt, 1965), especially the contributions by Johannes Spörzl, pp. Iff., and Herbert Grundmann, pp. 418ff.}

Basically, the medieval viewpoint concerning the standing of the individual in society was the result of the combination of two fundamental themes, to both of which I have tried to give due emphasis: the overriding importance of law in the Middle Ages and the organological conception of society, which latter was nothing less than the Pauline clothing for the Roman corporation thesis. Although the properly medieval doctrine did not and could not give us a thesis of the autonomous standing of the individual in society, it nonetheless bequeathed to the modern world a principle which is not, even today, fully implemented in a number of societies, specifically, the rule of law. Every medievalist is familiar with the allegory of soul and body, with the \textit{anima} which ruled the \textit{corpus}.\footnote{98 It is interesting that Augustine operated with the antithesis of mind and flesh when he expressed a similar point of view. To the question of what order consisted of, he replied: “God commands the mind (soul), the mind commands the flesh (body), and there cannot be anything more orderly than this arrangement,” \textit{Miscellanea Agostiniana}, Vol. I. \textit{Sermones post Maurinos reperti} (Rome, 1930), p. 633, ll. 17–19. For another statement of his to the same effect, see \textit{ibid.}, n. 18.} This is usually taken to mean the higher value of the soul and the lower value of the body; sometimes
The soul was equated with the mind, and the body with matter. This is not incorrect, nor is it incorrect to explain the metaphor by saying that the soul was the symbol of priesthood and the body the symbol of kingship. In a syllogistic way it was frequently asserted that just as the soul ruled the body, in the same way the priesthood ruled the laity and kings.

I think, however, that this allegory has considerably more ideological significance than is usually given it. Transposed to a more general level, the point of substance in the allegory of soul and body—which indeed is pre-Christian and originated in Hellenistic thought—is that the law was the soul, because it was the *norma recte vivendi*, because it was the norm of the right order of living. The law, as the soul, ruled the corporate entity, ruled the body, be it the Church or a kingdom or an empire. When we read in the Visigothic Laws of the seventh century that

> *Lex est anima totius corporis popularis,*

we have pretty clear proof of how strongly entrenched was the idea of law as the regulating and animating force of society, even at that early time. It was an idea that in varying keys was repeated over and over throughout the Middle Ages, down to the seventeenth century, when Spinoza declared that

> *Anima enim imperii jura sunt: his igitur servatis servatur necessario imperium.*

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99 I have made some preliminary observations on this topic in my *Principles of Government*, pp. 92f.; *History of Political Thought*, p. 101; and in the *Atti Primo Congresso Internazionale di Storia del Diritto*, I (1965), but I think I can now go a little further.

100 See, for instance, Isocrates *Areopagitikos* 7. 14 (ed. Loeb Classical Library, 1929, p. 112); Demosthenes *Against Timocrates* 210 (ed. *ibid.*, 1936, p. 508); Sextus Empiricus *Against the Professors* ii. 31 (ed. *ibid.*, 1949, p. 205).

101 M.G.H., *Leges Visigothorum* i. 2. 2.

Indeed, this medieval standpoint would demonstrate that the soul (in this allegory) was the medieval precursor of the idea of the Rechtsstaat, of the supremacy of law, of the rule of law. The prevalent legalism of the Middle Ages which took so little account of the individual seems to me incontrovertible proof of the thesis that only through the instrumentality of the law could a public body live, develop, and reach its end. The soul was considered the vivifying organ of the individual; in the same way the soul, conceived as the law, breathed life into, or animated, the public body.

Because the individual played an insignificant role within the descending theme of government and law, the medieval apotheosis of the law becomes easily accessible to understanding. What mattered was, as I have been at pains to show, not the individual, but society, the corpus of all individuals. In the high Middle Ages, thinking in the public field concerned itself with the whole, with society. But law at all times and in all societies addresses itself to the generality, to the multitude and, by definition, sets aside the individual. One might be inclined to say that the medieval emphasis on the collectivist phenomenon of the law successfully prevented the emergence of a thesis concerning such rights which the individual had had apart from the law and before the law was given. The theme of the law as the soul of the body (public and politic) was, in other words, explicable by the overriding importance attached to society and by the negligible role which the individual played in it. Differently expressed, the collectivist trend of thought gave rise, at least embryonically, to the incipient thesis of the idea of the rule of law, a standpoint upon which all shades of opinion in the Middle Ages were agreed. The law was the invisible Ruler of society, made concrete by the visible

103 This also emerged with unmistakable clarity in the Visigothic Laws of the seventh century, when they declared that the legislator issued law "nullo privativi commodo, sed omnium civium utilitati communi," ibid., i. 1. 3.
Ruler, who disposed of both scientia and potestas, who, in a word, knew what justice and the interests of the society in his charge demanded. One might well be tempted to speak of a nomocratic conception which impressed itself upon the Middle Ages, an amalgam of Hellenistic, Roman, and Christian elements. It is, I think, only from this standpoint that one can understand the often repeated declaration (hardly heeded by modern medievalists) that the Ruler himself was the embodied idea of law, was the nomos empsychos, the lex animata.

The recognition which we now have also makes understandable the theme of immortality or sempiternity of public bodies, precisely because the law was their soul. Because the soul was said to be immortal, public bodies, which were what they were through the law, could also not die and were credited, therefore, with sempiternity. In a roundabout way we return to the collectivist standpoint—all the individual bodies may and will die, but what cannot die is the idea of law, the idea of right order, which holds the public and corporate body together and which, therefore, possessed sempiternity. I believe it was Alexis de Tocqueville who, in reference to the law, once said that “governments may perish, but society cannot die.” By virtue of seeing in the concept of the soul the purest idea of law and right, medieval doctrine took a very great step forward. Although the modern concept of the individual endowed with full, autonomous, independent, and indigenous rights in society was the result of a development which challenged the properly medieval doctrine, this doctrine, by virtue of its collectivist, nomo-

104 According to the same Visigothic laws, the law obtains force (“valorem obtineat”) “in cunctis personis ac gentibus nostrae amplitudinis imperio subjugatis innexum sibi a nostra gloria . . .” ibid., ii. 1. 1.

105 See also above, n. 12. For the role of the nomos in Hellenistic political philosophy, see Victor Ehrenberg, Der Staat der Griechen (Stuttgart, 1965), p. 215: “Aus dem unpersönlichen König Nomos, der die Polis als Rechtsstaat regierte, war der in der Person des Königs verkörperte Nomos geworden.”
ocratic character, nevertheless firmly implanted the idea of the supremacy of the law in the Western mind, not in spite of, but—the paradox is merely apparent—because of the absence of any thesis of autonomous rights on the part of the individual. We shall see, I hope, how important this bequest of the Middle Ages was for the development of the modern Rechtsstaat; the descending theme of government and law, with its concomitant lack of the individual’s standing in society, was only one phase, but a very important one, in the weary history of the relations between man and society.