“Man is born free, and everywhere he is in chains. Many a man believes himself to be the master of others who is, no less than they, a slave. How did this change take place? I do not know. What can make it legitimate? To this question I hope to be able to furnish an answer.” Thus recasting an ancient Stoic sentiment, Jean-Jacques Rousseau laid bare the modern problem of “the state”: the state as Other, as coercive Other, opposed to the free-willing self. If nature is good and naturalness the touchstone of virtue, how can the state be anything but evil? How can coercion of the self by what is not the self be justified? This concentration on coercion, on the exercise of power over the free will of the individual self, distinguishes Rousseau and all modern political philosophers from the ancients from whom they otherwise draw so much.

Not that the ancients were unaware of the anguish that wells up when one’s selfhood and the demands of the polis collide. Crito, urging Socrates to escape on the eve of his execution, is its eloquent spokesman. But Socrates, though he calls himself the slave-and child-of the law, cannot conceive of the laws as chains. Quite the contrary: “Did we [the laws] not bring you into existence,” he has them say. “[Do you object] to those of us who after birth regulate the nature and education of children, in which you also were trained?” Indeed the very otherness of the state was alien to Plato, whose principal task in his “political” dialogues was to describe the state in which no such conflict would appear. Aristotle might have considered the issue in his
discussion of slavery, but he chose to answer the implicit question of why the slave should obey his master with the lapidary answer: Because it is good for him. Tyranny appears in the *Politics* as a disease of the political body and a practical problem for the tyrant, but not-as it would for lawyers and publicists of late medieval Europe and for centuries of their successors-as a problem of obedience and legitimate resistance.

For Plato and Aristotle, as for the Stoics of later antiquity, the naturalness of the political community or of law was less the solution to the problem of obedience than the reason why it cannot arise. If the community or just law is analytically prior to the individual, the demands of the community or of the law cannot be coercive. Even though poets and sophists argued that it was the function of law to inspire fear-and the Greek laws that have survived seem to assume the same function-the ultimate justification for that fear was justice, meaning harmony and virtue, a state of political health. Only those who believe the laws to be mere convention or brute force might have argued otherwise.

Then no man on earth is truly free. All are slaves of money or necessity. Public opinion or fear of prosecution Forces each one, against his conscience, To conform. (Euripides, *Hecuba*, 1.864–867)

The sentiment with which Rousseau opened his *Social Contract* could only have introduced among the ancients a discussion of the right relationship of reason to will or, later, among Christian philosophers, of the right relationship of the soul to God. For Rousseau it expressed the problem of all political communities.

I

Why did the modern West come to view the state in these peculiar terms? Why in consequence did it come to think of law, human law, as essentially coercive, and of political organization, of which law is a functional component, as essentially an apparatus, the human embodiment of that Other? What happened between antiquity and the modern world to make this difference?

We now know much of the history of the words and concepts with which modern discussions of state, law, and politics are carried on. Once believed to be novelties of the sixteenth century, the direct reflection of the assumed changed conditions of political life, these terms in fact have long medieval pedigrees. Common utility was a political argument already used in the twelfth century. Corporate concepts, applied not only to ecclesiastical bodies but also to villages, cities, and kingdoms were being elaborated in the twelfth and thirteenth centuries. Sovereignty was a commonplace of political and legal argument by the turn of the fourteenth century.

For most of these words and concepts, the twelfth and thirteenth centuries seem to have been the great arsenal. What gave this extraordinary inventiveness to these centuries? The answer seems almost automatic: it must have been the rediscovery of Roman Law followed by the rediscovery of Aristotle. And yet the conclusions that medieval professors and politicians drew from both these sources would never have been recognized in antiquity; nor was the system of states that resulted a replay of either the Greek *polis* or the Roman res *publica*. Could these texts alone have been the cause of what occurred in the twelfth and thirteenth centuries? One’s readiness to ascribe such effects to them must surely be qualified. Aristotle and the Roman Law seem rather to have been rediscovered within a conceptual world that had already altered fundamentally. And this alteration called forth both the new interest in ancient law and political philosophy and the political inventiveness that followed. When did this change occur and what was its nature?

An older view would have rejected outright the notion that the state was invented afresh in the Middle Ages. For if the history of the centuries between the Carolingian Empire and the rise of Western monarchies was essentially a “battle between the central power and particularism,” as Heinrich Mitteis argued a generation ago, the state in some sense was always there. It had to be neither invented nor reinvented but only brought to fruition from its inchoate germ. It was there in desire, even if the apparatus and, perhaps, the conscious idea itself were wanting. This view was shared by those who imagined the state
What existed was potentially a state, a not-yet-state, waiting for the mighty figures of the twelfth and thirteenth centuries to bring it forth. Historians could thus speak easily of the “fragmentation of public powers” in the tenth and eleventh centuries, of the “passing of public powers into private hands” when castellans spread their might across the land. Such judgments were made all the more easy by the language of the twelfth- and thirteenth-century documents themselves, which spoke often enough of “usurpation” of regalian or ecclesiastical rights, while publicists in France and the Empire laid claim to a strict continuity between Charlemagne and the reigning king or emperor.

We can now see how strongly these historical attitudes of previous generations were shaped by the application of modern legal terms and even more by the imposition of nineteenth-century liberal political ideals to medieval phenomena. As we watch the nation-state gradually fade from its glory as the ultimate goal of all historical experience, we begin to understand that such concepts as “public,” “private,” “central power,” and “particularism” are themselves the value-laden products of historical development and not atemporal categories of human thought. The most basic categories of constitutional and legal history, categories that assume these concepts or their equivalents, in consequence become problematic. They cannot be the starting point for historical analysis or description, because they are themselves history-bound: “public,” “private,” “particularism,” and all the remaining vocabulary of constitutional history, scientific and judgmental, had their particular origins and their particular developments. Their appearance, like the appearance of the state as their summation, was part of a larger process, and they cannot appropriately be used to talk about the world before they appeared, when they did not exist. To ask when the state began is therefore to ask a meaningful and important question.

In 1970 Joseph Strayer answered this question, dating the invention to a full half-millennium, 1100 to 1600, and ascribing it to “the formation of impersonal, relatively permanent political institutions.” These institutions, which could “survive changes in leadership and fluctuations in the degree of cooperation among subgroups,” and which were quite different from the officials who “simply protect the private interests of the wealthy and the powerful,” grew in “prestige and authority” and finally gained “a moral authority to back up [their] structure and [their] theoretical legal supremacy.” The state was thus an invention but a slow one, an accumulation, or even an accretion, of a multitude of changes.

By pointing to institutions, Strayer brings us directly to the core of our problem. For what are institutions, of whatever kind, if not the very embodiment of that Otherness that so troubled Rousseau? And to the extent that these institutions in the Middle Ages were essentially fiscal and judicial, they were the very embodiment of coercive Otherness. They were, furthermore, an Other, an alien being, not just to those whom they taxed and judged: to the degree that they were truly impersonal and relatively permanent, to the degree that they truly survived changes in leadership (and membership), they were also definably something other than the individual persons who temporarily embodied them or filled the posts within them. “A bishop has two persons,” wrote the fourteenth-century jurist Cinus, “one in so far as he is bishop, another in so far as he is Peter or Martin.” His near contemporary Bartolus expressed it in corporate language: “universitatis universitas, unam personam, quaestus est alius scholaribus seu ab hominibus universitatis.” [A corporation manifests itself as a single person, which is other than the students (of a university) or the men of a corporation.] Institutions assumed a distinction between person and institution as much as they assumed a coercive relationship between institution and subject. Their invention thus found a world already face to face with the problem of the modern state.

Strayer would argue, of course, that there is more to the modern state than institutions. There are the attitudes of loyalty, the acceptance of legitimacy, the complex of moral and political judgments that over the centuries the state has gathered around itself. However, as he himself states, these attitudes and ideas have adhered to institutions. His argument thus becomes circular: the modern state was created by institutions which themselves conceptually presupposed the nature of the modern state. How can we escape this circularity? We cannot begin the history of the state with the growth of institutions because that is already within the conceptual world of our own political culture.
It is only by transcending that conceptual world that we can observe the state in the process of becoming.

Yet how difficult it has been even for sociologists and anthropologists—those very professionals who make it their task to transcend the narrow bonds of Western concepts—to go beyond the limits of the state, to think away the category of institution. Strayer’s developmental categories are strikingly parallel to the analytical categories with which Max Weber defined the sociological realm of law. “An order will be called law if it is externally guaranteed by the probability that coercion...”Although Weber extended the notion of “staff” to include the clan and the notion of coercion to include feud, he admitted that these were marginal cases. One is surely justified in believing that institutional officials are peeping out from behind the purposely vague term staff (for what otherwise would be marginal about clan enforcement and the feud?). And, indeed, no matter where one turns—to legal anthropology, political anthropology, or philosophy of law—the controlling image of the modern state is often not far, sometimes making primitive peoples lawless by definition and frequently leading to bitter struggles over the definition of fields of ethnological endeavor.

These discussions, of course, will not answer the historical question that I have posed. Conceptually, however, the problem faced by ethnologists seeking the realm of law or political organization in a primitive society is identical to the problem faced by the historian looking for the origins of the modern state. Before the modern state, there must have been something else. What was that something else? How did it turn into what we know? Before there was law in the modern sense, was there something law-like, potentially law, not-yet-law? Before there were institutions in the modern sense, were there forms that were institution-like? Before there was a state, was there an organization of society that was state-like, potentially a state, a not-yet-state? Or is a culture without a state, was Europe before the state, fundamentally different and thus difficult or impossible to analyze by these terms? This is the path of inquiry we must follow to see the invention of the modern state.

II

It is with good reason that those who have written about the theory or history of the state have not tried to define it. The range of its manifestations appears too vast. Behind the idea, however, and above all behind its manifestations as institutionalized social control, permanent and impersonal, lies a small number of fundamental distinctions, so fundamental we tend to take them for granted. One need only enumerate them to recognize immediately their power and importance. They define what we might call the realm of discourse of the modern state.

These distinctions are five:

- office/person
- the rule of law/the rule of man
- public/private
- authoritative/nonauthoritative
- artifice/naturalness

To these we may add a basic definition, obvious, perhaps, but worth pointing to: law is a set of verbalized rules.

It is difficult for us to imagine a world in which these distinctions did not exist, so readily do they come to our lips when we begin to talk about law or government. Yet there was an era when a few intellectuals thrust them impetuously into the stream of European thinking about society, its laws, and its organization, and imposed them upon a society that found these distinctions strange, difficult to manipulate, uncertain in their consequences. That era was the late eleventh century. We must now try to enter into the culture that Europeans shared when those distinctions were not yet commonplace.

It was not a state of nature. Europeans lived in a society whose organization may seem excessively simple compared with ours, but it was organized. They shared certain mores, certain patterns of accepted behavior, certain ideals, and a store of acquired techniques. The mores they shared, their patterns of accepted behavior, their ideals and techniques were transmitted orally. Technically speaking, it was not a “primitive” society. It was, however, a nonliterate society dependent essentially on memory for the transmission of all except clerical culture. The term nonliterate rather than preliterate is appropriate because this society contained a small group of people who...
shared a craft literacy—the clergy. The invention of the state is the story of how this small minority of literate men slowly imposed upon the nonliterate their special ways of thinking about politics and law.

Around the year 1000 the vast majority of lay society shared an exclusively oral culture. How do we know that this was the case? There is, first of all, the simple quantitative testimony of what has survived. It is one of the curiosities of medieval history that there exists less archival documentation for the tenth century than for the ninth, and that, in many areas of Europe, this decline continues on into the eleventh century. For just this reason the early stages of medieval economic development remain so impenetrably obscure. For much the same reason so many regional studies of medieval society begin only in the eleventh century. The reason seems obvious enough: fewer written documents survive because fewer were produced. There is no reason to believe that time would have dealt more severely with tenth-century charters than with documents of the ninth or the twelfth.

Some, of course, do survive. These, however, are largely the products of a few centers: Rome; a few major monasteries and cathedrals (for example Regensburg, St. Gallen, Liége, Fleury); the Imperial court; and, rather oddly, the very fringes of the European world—Anglo-Saxon England and the kingdoms of the Hispanic frontier, fringes to which we will have to return. On the Continent there were scarcely enough documents to maintain a literate transmission of even a simple social and political culture from generation to generation.

Monks, to be sure, were required by their rule to read and write. But writing was a labor; how laborious an occasional voice sighing at the end of a manuscript lets us know. “The act of writing is difficult. It tires the eyes, breaks the back, and cramps the arms and legs.” “The end has come. Give me a pot of wine.” “Give the poor scribe a pretty girl.”

Nor was learning one’s letters a task to elate the youthful spirit. Here, for example, are the memories of Guibert Nogent, who was learning to read and write in the early 1050’s.

There was still in my youth such a scarcity of teachers that hardly any could be found in the towns . . . . and those who by good chance could be discovered had but slight knowledge. The man in whose charge my mother decided to put me had begun to learn grammar late in life, and he was the more unskilled in the art through having imbibed little of it when young. . . . [But] he was, in fact, utterly unskilled in prose and verse composition. Meanwhile I was pelted almost every day with a hail of blows and harsh words while he was forcing me to learn what he could not teach.

Among the clergy, the physical act of writing was, furthermore, an art form. There were local schools of handwriting, as there were local schools of manuscript illumination or sculpture. Because there were local schools, writing as a means for transmitting information or instruction over long distances was occasionally an impediment rather than a handmaid to communication. Two different chronicles from the eleventh century tell stories of bishops unable to read the so-called curial script of the Roman court; one of these bishops even claimed that the papal letter was false because he was unable to read it.

For writing to serve as a vehicle to transmit mores, ideals, patterns of behavior, and techniques from generation to generation it must, first of all, be fairly widespread. It clearly was not widespread in the tenth and eleventh centuries. Writing to serve this purpose must also contain those mores, ideals, and patterns. Continental literate production in fact contained principally religious literature: the Bible, the Fathers of the Church, and books of church ritual. Only England, with its remarkable series of vernacular laws and its equally remarkable vernacular poems and chronicles, stands out as an exception in the tenth and eleventh centuries. Yet even there—at least as far as poetry was concerned—what was written had been composed and long transmitted orally.

Listen! [the Beowulf poet enjoins]
We have heard of the glory of the Spear-Danes
in the old days, the kings of tribes—
how noble princes showed great courage!

Although England could boast of its King Alfred, its Dunstan, and even an occasional literate nobleman, centers of literate culture there in the tenth century were few and fragile. The strength of its vernacular tradition was testimony not just to the lasting impulse given it by the great Wessex king but equally to the dearth of clergy

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trained in Latin, whose own instruction therefore depended heavily on works glossed or translated into Old English.24

Here and there, other kinds of documents were produced that might have served to record for posterity a few, at least, of the accepted patterns of social life. Those that survive are extremely rare, and they—like Beowulf and Widsith—likewise betray an essential nonwritten culture. They betray it in their physical form itself.

One of the many reforms undertaken at the court of Charlemagne was the reform of handwriting. Of the many aspects of this reform probably the most far-reaching was the decision to separate individual words by blank spaces rather than running all words together or placing spaces randomly as one lifted his hand or re-inked his quill. This made it possible for the first time to read an unknown text with ease and to transmit new information or commands visually, rather than using the written text as an aide-memoire. The Carolingian minuscule became the court hand of the ninth and tenth centuries. But what was being produced away from the major centers of learning? The documents reproduced in Figures 1 and 2 come from the archives of the Abbey of LaGrasse, just north of the Pyrenees; they are thus also examples of monastic writing.25 Although the Carolingian handwriting was by this time a century or more old (Fig. 1 is dated 893, Fig. 2, 957), it had not yet reached this house. Spaces are arbitrarily placed, usually in the middle of words, rather than between them; letters are unevenly formed. The scribes were apparently not very used to holding the quill. In Figure 1, the donor, a priest, has signed his own name—an indication of minimal literacy, to be sure, but he clearly has not mastered the craft of writing.

Early contracts, donation, quitclaims, and other land transactions likewise betray a predominantly nonwritten culture. The wording of some suggests that they were recording an oral procedure that had taken place sometime before the actual writing of the document, that they were not the acts themselves but only their confirmation, their record.26 In England the picturesque alliterative couplets of Old English law-sacu and socn, toll and team—represent the intrusion of colloquialisms of the countryside into the language of royal donations? Yet even on the shores of the Mediterranean, where late Roman notarial traditions remained strong and even humble peasants kept written Contracts in their huts, one suspects that scribes drew up their documents following a craft tradition that prescribed only a few fixed forms, with the result that what they wrote may have corresponded only distantly to the actual relations between the parties involved. How else is one to understand the degradation of distinctions between sales, gift, and quitclaim—as charter after charter in the eleventh century used these terms synonymously—except as the attempt of scribes to place into the mold of fixed formulae exchanges of land and money that in fact were technically neither sales, nor gifts, nor quitclaims?726 How, likewise, is one to explain the appearance of Roman legal technicalities in Latin charters a half-century before they appear in vernacular charters in the same region or, even in the twelfth century, the enormous differences in technical quality between charters drawn up in major centers and those drawn up by hill-village scribes except as the consequence of the variable force of purely craft learning only partially in touch with social forms maintained by oral tradition?

In the Mediterranean region scribes occasionally did record the oral act itself, the words the parties said to each other. When this occurred the resultant documents took a very special and peculiar form. The most remarkable of these were the oaths that southern fighting men took to their lords when they were given possession of fortifications or that great men took to each other when they entered into a peace treaty or other important agreements. These oaths often contained a mixture of Latin and vernacular words which when pronounced aloud sound out a peculiar rhythmic or rhyming chant suggestive-like the alliterations of Old English Law—of the oral tradition that passed these oaths from generation to generation. Rhythm and rhyme sit more solidly in the memory.31

De ista hora in ante (name) te (name) non vos decebrei, ne vos nols tolrei, ne nols vos devedarei lo caste (name), las fortetas que hodie in illis sunt. . . .

Non decebsa (name) de sua vita ni de sua membra que in suum corpus portat, per que o perda, ni non engenera sua persona suo damno suo sciente.32

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Unlike other written acts of the eleventh and twelfth centuries whose formulae changed significantly over time, these oaths and the documents that contained them kept rigidly to this highly archaic speech through the entire period—even to the extent of naming the persons who gave and received the oaths by their given names and the names of their mothers while in all other documents people identified themselves through the early eleventh century by patronymic and then gradually by family name.

Early written charters thus present the historian with a difficult and troubling problem. Do they really contain the act as it was performed? Or are their verbal contents dictated mainly by a tradition of how acts were to be recorded? Many things about these early acts suggest that the latter is the correct answer. If so, these charters do not precisely record the accepted patterns of social life as it was lived and experienced.

In the tenth and eleventh centuries there seems to have existed side by side a literate craft culture of the clergy, a culture devoted almost exclusively to ritual and to spiritual learning; a modest craft culture; especially in Anglo-Saxon England and in lands that had been heavily Romanized, devoted to the recording of certain very special social arts and occasionally to recording oral literature; and the oral culture of the rest of society.

III

The society of the tenth and eleventh centuries differed from ours in two ways. It was largely an oral culture, and it lacked the realm of discourse, the set of distinctions, that are the foundation of the modern state. How were these two connected? For greater clarity, let us turn the problem over. Did the creation of a dominant Literate culture side by side and occasionally in conflict with oral culture lead to the invention of the state?

In some ways, the answer is very easy. Increasing literacy meant improved record keeping and easier transmission of administrative orders and by these means the creation of a more efficient administrative apparatus. The administrative history of the medieval state, however, as I have argued, is not conceivable without the prior invention of a realm of discourse that made something called administration possible and legitimate. Let us therefore return to this oral culture and ask what constraints orality placed on the way men thought about politics, law, and social organization.

Obviously, this society, in order to transmit its mores, its accepted habits, and its ideals from generation to generation, had to rely on the human memory. So ingrained in this culture was the social value of memory that, long after writing became the dominant form of transmission, reliance on memory and oral performance continued to play an important role. Think only of those professorial virtuosi in the thirteenth and fourteenth centuries who committed the entire corpus of Roman Law to memory; or of the continued importance of oral disputation in the medieval schools. Literary scholars in recent years have even found evidence for the continuing literary influence of an oral tradition as late as the sixteenth century and have reminded us that the training of memory was an important part of Renaissance humanistic learning.

What was it, then, that nonliterate people of eleventh- and twelfth-century Europe stored in their memories? In what form was it organized? Undoubtedly, much of it was composed of motor skills—the techniques of the artisan; the way to plough, hoe, sow, and harvest for the peasant; the wielding of sword and lance for the nobleman; spinning and weaving for women of every class. These were learned in games or by working alongside the masters of the craft. Other pieces of knowledge combined motor skills with verbal instructions—one thinks of those folklore jingles that aided the remembrance of time to plant and time to reap or that transmitted peasant medicine from mother to daughter.

But much of the apparatus of society can be transmitted only in verbal form. Ideals of behavior are of this kind, whether etiquette or that vast ground encompassed in our own culture within the bounds of law and politics: the ways property can be transferred, for example, or relations of authority and dependence. These are neither motor skills nor discrete items of information. They “exist” only in so far as they are known—which means, in an oral culture, remembered. They exist only in so far as they can be expressed and remembered by words or by gestures accompanied by words. They are language-bound.

It is therefore of considerable importance that, with the exception

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of an Anglo-Norman work called the *Leges Henrici Primi*, Europe produced no treatises on secular law before the late twelfth century. It is of considerable importance that historians should have difficulty reconstructing the rules of political or legal organization before such treatises appeared. For treatise and rule are special kinds of discourse, special ways of organizing words. Their presence indicates a particular way of thinking about society. Their absence is significant, despite one’s normal hesitance in arguing *ex silentio*. Rules were not expressed, and therefore not thought of, in the same way before the twelfth century as they were from that time on.

How did people think of them? What was the discourse that contained them? In an oral culture such discourse is created and transmitted under two constraints. First of all, it must be composed orally. Second, it must be *memorizable*. And the most important parts of that culture, the ideals and habits most necessary for society’s daily functioning, must be *memorizable by the average mind*. They therefore take particular forms: mnemonic jingles, narratives (often poetic, for the rhythm helps the memory), formulae, and fixed rituals. And so it was in the oral culture of the Middle Ages. Mores, ideals, and the standards, techniques, and instruments of social behavior were expressed, first of all, in oral formulae and gestures that people used, for example, to transfer land or reach agreements to end vendettas. We can occasionally see them vividly in medieval chronicles, as in the numerous oath-taking scenes described by Galbert of Bruges, or the *exfestucatio*, or more bizarre rituals, such as the magical dinner on the tomb of the dead Count Charles. These formulae and gestures lie somewhere behind or outside the narrow confines of the Latin charters of sale, donation, mortgage, marriage, and other agreements that are the substance of early archives. They were expressed, secondly, in the *vernacular chansons de geste* - the popular literature of the twelfth-century aristocracy - and undoubtedly in much oral literature that has forever disappeared.

These forms of discourse have two qualities that we must insist on. They are narrative. They are *exclusively concerned* with individuals. To say that twelfth-century vernacular epics were narrative is to insist upon the obvious. It is worth noting, however, that these texts were narrative to their didactic core. They present the audience with ideals and with admonitions to seek those ideals by describing the actions that heroes and villains perform and the consequences of those actions. Rarely, except in formulaic epithets, does the poet categorize his characters or step more than briefly outside his tale to instruct his audience directly.

The old formulae and gestures that people used in their ordinary transactions were also narratives. They were visible performances. This visibility was their critical quality - public, witnessed. It seems, indeed, that written records of these transactions may have served in some parts of Europe primarily to list the witnesses. They were also, probably, ritualized performances: not only those that one might immediately think of - the taking of homage, kneeling, hands between hands, or the investing of a bishop with his ring and staff, or the formalities of arbitration, duel, and ordeal - but also more commonplace rituals, such as passing a stone to confirm the sale of land, or the ritual dinner that followed a quitclaim, or the annual placing of a symbolic rent on the altar of a church.

To say that these are all forms of discourse exclusively concerned with individuals may seem less clear and more arbitrary. The figures who strut across the stage not just of the epic poems but of many chronicles as well may appear to us to be characters rather than individuals. They lack the rounded opacity and ambiguity of real human beings; their actions, larger than life in virtue or vice, consciously exemplary, do not have the multitude of referents that we experience in real human actions. They seem to exist only within the narrative, to come into being at its beginning and to end with the last strophe. Yet, though these characters may often seem two-dimensional, they are not personified abstractions. They are not *Everyman* or the Perfect Knight. And, whether their tales were told in epic or in chronicle, there is no evidence that singers, writers, or audience were particularly aware of them as *fictions*. Concerning the major figures of the epics, there were enough stories current to give them a life beyond the narrative of any given poem. And learned monks, even in the twelfth and thirteenth centuries, were only too willing to confuse historical patrons of their monasteries with the figments of epic imagination.

Furthermore, poets and chroniclers often called on their audience to emulate their heroes and learn from the example of their *villains*. Was their advice followed? Were these figures emulated? Louis VII apparently insisted on following the "route of Charlemagne" to Con-
And in that curious play between “reality” and “fiction” which makes the reader of any medieval writing wonder when and where to suspend his disbelief, King Louis’ crusade may very well have been the historical model for the poem La Pèlerinage de Charlemagne. A generation later, at the other end of the social scale, Peter Waldo may have converted to the life of poverty after hearing the story of St. Alexis. Yet when we read these accounts in seemingly serious chronicles we must wonder what in fact we are being told. Were Charlemagne and St. Alexis merely topos? Were the references to them meant only to create a moral or political response in the audience? Peter Waldo himself may indeed be a fiction. The question of emulation leads us quickly into the long-standing controversy over the functional relationships of epics to the society that found them so appealing. It would be prudent to tread no further upon this battleground.

The transactions of real life do not pose such difficult problems of literary sensibility and the relationship of literature to life. It was in real life that the obstinate ambiguity of real people and the multiple referents for their actions dominated perceptions. How were people imagined when they engaged in social action? What did the witnesses see? Did they witness abstract vendors and purchasers, donors and donees? Or did they see particular people, members of particular families, solidarities, neighborhoods, or ecclesiastical groups, individuals embedded in the full complexities of their social relations? The texts of the charters themselves, in the tenth and eleventh centuries as later, would suggest the former. The participants tell us directly, “Ego Diaz faemina, et vir meus Isimbertus consentiens nos simul in unum venditores Rostagno abbate emptore.”

But how seriously are we to take this? Many other clauses in these charters are commonly considered purely formulaic: penalty clauses that promise payment in gold, for example. So, too, one must question the meaning that vendicor and donator had for those who were made to name themselves in that way, when “donors” are shown receiving payments for their “gifts.”

If texts are ambiguous, the consequences of such acts speak with a more straightforward voice. When acts of donation or sale came into dispute, what occurred? Before the late twelfth century, the consequence was most likely to be violence followed by arbitration or compromise, solutions in which two results were important: that both sides agreed and that neither left without compensation. That is to say, disputes were settled, not by considering the parties as vendors and purchasers, donors and recipients, and applying rules appropriate to those categories, but rather by the search for a resolution in which the status and self-esteem of both parties would be saved and a continuing social relationship created or renewed. No differently did men imagine the consequence of oaths of homage and fealty. Far from creating identical obligations on all vassals and lords, in the eleventh century such oaths—even within the confines of a small region—could place one man in the bonds of strictest obedience, while for another it was but the affirmation of a treaty of peace or an obligation of nothing more than the gift of a candle. Oaths and acts were embedded in the totality of the social network; they were indeed expressive of that network. They were the actions of individuals in all their complexity as men of wealth, family, status, friendship, and title.

It was for this reason that most notions of law, ideals of behavior, political rules, and social mores were remembered in the form of statements about particular persons or members of defined social groupings doing things, statements with active verbs in the present or past tense, statements about actions that were visible and had visible consequences. When Anglo-Saxon kings set out the compensations to be paid for personal violence it was in this form:

If, when men are drinking, one draws his weapon but inflicts no injury with it, he shall pay is. to the householder and 2s. to the hing.

If a man coming from afar, or a stranger, leaves the highway and neither calls out nor blows a horn . . .

Even in the thirteenth century, French witnesses that were asked to tell who had the right to administer justice in a place would recount what people had done: “. . . for forty years and more he saw that the archbishops of Reims had high justice in the borough . . . and never saw the king or any other temporal lord get involved in it.”

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surely the source of the rigorous connection throughout the Middle Ages between deed and right.

We can immediately see the difference between this mode of thinking about laws and mores and our own. Our mode, like that of Greek philosophers after Plato and of European literate intellectuals from the twelfth century on, is dominated by atemporal statements making large use of the copula “to be.” The entities which this atemporal predicate serves are not individuals but categories. They are statements essentially about invisibles. Because they are about abstract categories, we can test them for logical consistency. Because they are atemporal, we can use a two-hundred-year-old document not only as the foundation but also as a constant referent for our government. For that part of medieval European culture which depended on memory, such categorical thinking, such logical testing, such precise reference to the past would not have been possible. It required that individual rules be formulated in the abstract way we formulate them; but such rules were remembered instead in the form of actions by particular persons or social groups: actions that received praise and thus were to be emulated or actions that brought shame, harm, or vengeance and were thus to be avoided. This is why we have the impression that the people of earlier medieval Europe lived according to a “cake of custom” in which the distinctions we are used to—between law and morality, between private and public rules—were not made. For such distinctions are the very stuff of abstraction.

IV

To see people acting as vendors or debtors, rather than as the particular persons we know them to be, or to see them acting as officials, as persons with institutional roles, requires a special and peculiar act of the imagination, one which reduces the individual to a single role specified by a rule or a set of rules. To be a vendor means to have the obligations defined by rules concerning vendors, rules that take nothing into account except for the characteristics that define what a vendor is. Similarly, to be an official is to have the duties and obligations defined by rules concerning that kind of official and to be con-

sidered as an official only within the confines of those rules. Whatever lies outside the rules is irrelevant, whether it be status, character, family, or wealth. It is precisely the relation to rules, atemporal and impersonal, that makes these roles themselves permanent, impersonal, and abstract. When we speak of institutions or of political organization distinct from the structure of society, when we speak of a legal order, we assume this act of the imagination.

In the late eleventh century this way of thinking was discovered or rediscovered by clerical polemicists arguing the issues of the Investiture Controversy or seeking a compromise to quiet the furies and bring harmony once again to the Church. They discovered it in the very attempt at reform, as they endeavored to impose upon Europe a set of institutions whose justification they found in ancient texts and whose realization required the destruction of the status quo of custom and habit: to impose a literate conception of good order on an oral culture and its own far different way of conceiving of what was proper. The form they gave to their discovery was to distinguish between person and office, artifice and naturalness, authoritative and nonauthoritative, the rule of law and the rule of man. The distinction between public and private came soon after. Before a generation had passed, a Bolognese monk began to elaborate the law of the Church as a consciously constructed system of verbalized rules. These clerical intellectuals had invented the world of discourse of the modern state.

Our long fascination with the Investiture Controversy as the start of the conflict of Church and state (a setting that obviously derives from the secularization controversies of the nineteenth century) might incline us to place the invention of the state as a reaction to the Church, an attempt to restructure secular rule on a new foundation in response to Gregorian claims of supremacy and the collapse of what Ernst Kantorowicz has called “Christ-centered kingship.” This would hide, however, the more important invention of the state within the Church itself, the Church as a political, institutional body.

If we would see the old and the new side by side, the mental habits of nonliterate politics intertwined with the threads of literate institution building, we can turn nowhere better than to the work of Pope Gregory VII himself, and especially to the text that enunciated the major features of his program, the Dictatus Pupae. In March 1075 twenty-seven statements concerning the powers and rights of the

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pope were inserted into Gregory’s register under this title, immediately following the acts of the Lenten synod that had suspended six bishops, deposed another, anathematized the Duke of Apulia, and threatened Philip I of France and five members of the Imperial council with excommunication. The Dictatus is now taken by most scholars to comprise the chapter titles or heads of argument for a collection of justificatory texts.53

Most of the statements in the Dictatus enunciate general rules that define the range of papal action, such as:

5. That the pope may depose the absent.
7. That he alone may establish new laws according to the needs of the time.

But one of them must make any modern reader stop short:

23. Quod Romanus pontifex, si canonice fuerit ordinatus, meritis beati Petri indubitanter efficitur sanctus testante sancto Ennodio Pavia episcopo a multis sanctis patribus fuentibus, sicut in decreta beati Sym machi pape continetur.

[That the Roman Pontiff, if canonically ordained, is undoubtedly rendered holy by the merits of Saint Peter; of this Saint Ennodius, Bishop of Pavia, gives witness with the accord of many holy fathers, as is found in the decrees of Saint Symmachus, Pope.]

What did this mean, and why was it included? On the answers to these questions there is little agreement. To some the phrase “meritis... efficitur sanctus” argues a mystical union between St. Peter and the pope. To Walter Ullmann it asserts identity only “as regards the objective totality of powers, that is, as regards office or status.”54 Ullmann is surely correct in judging the first of these explanations “a not particularly happy formulation of a profound idea.”55 For not only is it almost as obscure as the text it glosses, but also Gregory at crucial moments is too urgently aware of the distance that separates him from St. Peter.56 Ullmann’s own explanation, however, is contradicted by the texts themselves.57 And neither of these modern glosses explains clearly why this statement is included as a separate chapter heading rather than as a justificatory text for one of the others. What meaning, then, did this text have for Gregory?

Gregory came back to Ennodius of Pavia and Pope Symmachus again in March 1081 in his letter to Bishop Hermann of Metz justifying his second deposition of the Emperor Henry IV.58 In contrast to the Dictatus Papae, where the assertion stands alone, Gregory here placed it in a context from which we can infer how he understood it.

The argument of this letter falls into two parts. The first presents a multitude of what Gregory calls documenta—pieces of written statements by early popes, and examples of excommunications and depositions of kings and emperors. Before this first part comes to an end, Gregory introduces the second: a comparison of the powers of the clergy. This comparison is made partly in moral terms: “Who does not know that kings and princes derive their origin from men ignorant of God who raised themselves above their fellows by pride, plunder, treachery, murder.” But the thrust of the argument lies on the other side of the comparison, in the powers given the clergy. Clerical power, he argues, from the bottom to the top, from exorcist to pope, is superior to all forms of earthly dominion. This superiority derives from the clergy’s power to command the invisible world: to cast out demons, perform the grace-giving sacraments, ordain, and depose. This whole system, furthermore, is arranged in strict hierarchy. Since these sacramental powers derive from ordination, from the grant of indelible character to the clergy, ordination (though never mentioned) is the fundamental assumption behind this part of Gregory’s argument, as it is the recurring argument in the Three Books against the Simonics by Gregory’s contemporary Cardinal Humbert.59

Gregory then turns to a comparison of the moral corruption of earthly rule with the holiness of spiritual rule.

From the beginning of the world to the present day we do not find in all authentic records [seven] emperors or kings whose lives were as distinguished for virtue and piety as were those of a countless multitude of men who despised the world...

Whereas in one single chair of successive bishops—the Roman—from the time of the blessed Apostle Peter nearly a hundred are counted among the holiest of men.

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What we have said above is thus stated in the decrees of the blessed pope Symmachus—though we have learned it by experience: “He, that is St. Peter, transmitted to his successors an unfailling endowment of merit together with an inheritance of innocence”; and again: “For who can doubt that he is holy who is raised to the height of such an office, iii which if he is lacking iii virtue acquired by his own merits, that which is handed down from his predecessor is sufficient. For either he [Peter] raises men of distinction to bear this burden or he glorifies them after they are raised up.”

In phrasing this text for the Dictatus Papae, Gregory had been careful to note that this transformation of the pope by the merits of St. Peter occurred on ordination. In the context of the letter to Hermann of Metz this precision takes on its full significance. Just as ordination gives an indelible character to a priest so that, no matter what his personal moral worth, he has the power to perform the sacraments, to command the supernatural, so the papal ordination gives the pope his indelible character, the “unfailling endowment of merit” and the “inheritance of innocence” transmitted from St. Peter, which allows him to command the supernatural, to bind and loose in heaven as on earth. The powers of the pope do not refer to a set of rules, they do not constitute an office in a rule-referential context, they are the effluence of character supernaturally transformed by the ritual of ordination.

How vital this conception was to Gregory can be seen in the greeting formulae of his letters.60 Elected on April 22, 1073, not until June 30, after his ordination, did he begin in his letters to offer his apostolic benediction. As Pope-elect he could make decisions concerning marriages, write to French barons concerning a campaign in Spain, attend to the rights of St. Peter in Imola, that is, carry out the earthly duties of the pope, but it was only as pope ordained that he could command the invisible world of the Holy Spirit.61

This insistence on sacred character as the source of power is hardly surprising, for the sacred character of each level of the hierarchy was a leitmotif of most of the Gregorian reformers’ polemics against the “simoniacs.” Though one could pick among them almost at random to find a text where this proposition forms the starting point, it is perhaps most striking in Cardinal Humbert’s argument against those who would distinguish between consecratio and res ecclesiae (note he does not say “office” and goods) in Book 3 of his treatise Against the Simoniacs.62 The distinction, of course, was the one that finally allowed the Concordat of Worms in 122. Those who say they have not bought the “invisibilem Spiritus sancti gratiam,” the invisible grace of the Holy Spirit, but only the visible goods of the Church, “visibles ecclesi- arum res,” are none the less heretics. Humbert asserts, because in so doing they lay claim to the name of the bishop and thus to consecration. The episcopal dignity contains the goods made holy to God. Thus, in the selling of consecrated goods it is the sanctification, the grace, of the Holy Spirit, that is sold. Those things are sancta which serve sanctuaries and altars. If they are sancta they have the Holy Spirit in them.63

The reformers’ insistence on the ritual of consecration and the inner dwelling of the Holy Spirit was, of course, deeply dependent upon a thousand-year-old literate tradition. Yet in their insistence on character rather than on rules as the source of power, in their insistence on transformation of persons and property by the ritual of consecration, the arguments of Gregory, Humbert, and their fellows were perfectly congruent with the political conceptions of the nonliterate world around them. Though the reformers laid claim to a literate tradition, the conceptual world within which they placed their texts, the basic structure of their argument was no different from those who likewise imagined power to be the effluence of personality and the totality of relations within which men were placed. It is probably for this reason that the Dictatus Papae seems to us so unorganized and the documenta that Gregory presents in his letter to Hermann of Metz so hap-hazardly arranged. We find them unorganized because we expect them to compose a logical structure of rules. But for Gregory these were emanations of a character and not a structure of rules and precedents. To see them as rules required a far different way of imagining both bishops and property, a way with which Gregory and Humbert would have been totally out of sympathy.

Yet Gregory’s very act of assembling the Dictatus, the very notion of collating ancient texts to justify an assertion of power, contained the germ of that new imagining. It assumed that somehow these di-

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verse texts and reported actions “meant” the same thing, that they were rationally coherent, that from them could be drawn certain conclusions, that they were capable of rational elaboration. What was required was for men to visualize these texts as a coherent system of rules, or potentially such a system, and to agree that it defined the powers and rights of clergy and the nature of ecclesiastical property. That is, they had to see office and property not as having character but as impersonal and abstract because derived from an impersonal and abstract body of rules.

It would take a lengthy investigation of the corpus of late-eleventh-century polemics to discover by what stages and in what minds this new conceptual world appeared. Since the early reformers’ insistence on consecration allowed no compromise in the conflict with secular rulers and the possessors of private churches, no compromise would have been possible without this act of imagination. It is in the work of one of the early moderates within the reform movement that we can see it already accomplished.

When Ivo of Chartres wrote to Archbishop Hugh of Lyons in 1097 to defend the election of Archbishop Daimbert of Sens against charges of simony (for he was accused of having received investiture from the hands of King Philip I), he turned for support to a text of St. Augustine that said it all:

By what law do you lay claim to estates of the church? By divine law or human? We find divine law in the Scriptures and human in the laws of kings. By what right does a man possess what he possesses? Is it not by human law? For by divine law, “The earth is the Lord’s and the fullness thereof.” But by human law it is said, “This estate is mine; this slave is mine; this house is mine.” Take away the laws of the emperors and who would dare say, “This estate is mine; this slave is mine; this house is mine”? . . . Don’t say, “What is the king to me?” For in that case what are possessions to you? By the law of kings possessions are possessed. You said, “What is the king to me?” Don’t then speak of your possessions, because you have renounced the rights you had according to human laws by which possessions are possessed.64

Goods of the Church were not made sacra by their donation. As property, as meum and tuum, by their very nature they existed only by virtue of human law, for possession is itself a category of human law. By extension, the bishop as holder of property, as possessor, is also a category only of human law. In contrast, and by implication, the bishop as performer of spiritual actions must be a category of divine law. It is for this reason that Ivo can treat the grant of the pastoral staff as merely a symbol of assent or conferral. Humbert had found such usage heretical because the objects of investiture were the very vehicles by which the Holy Spirit passed.65 Once power ceased to emanate from character, however, and was made rule referential, the ritual of investiture became nothing more than placing a person in the context of those rules. The ritual became merely symbolic.

Ivo thus had already made, or discovered in Augustine, the crucial distinction between person and office— the person of flesh and character, the office as an abstract category of law. He likewise had made the distinction between nature and artifice, or in this case, between what is given by God and is thus unalterable and what is created by man and thus mutable. By implication, since power was to be viewed as a category of law, he had also made the distinction between the rule of law and the rule of man—and indeed the preceding portion of the letter, accusing Hugh of altering the old law regarding consecration with “privatis legibus et novis traditionibus” is an explicit appeal to that distinction.66

These distinctions were still in embryo at the end of the eleventh century. In many ways the course of Western political thought from that moment until now may be considered the complex development of the genetic material they harbored. We have seen that they first emerged as a consequence of literate thinkers reassessing, regrouping, and redefining the remembered actions of an oral culture in the light of their texts. The reformers of the mid-eleventh century, and especially Pope Gregory VII, conceived their divinely ordained task to be the reordering, the purification, the “re-formation” of the Church, a return of the Church to its form in the days of the Fathers. This was a wholly literate suggestion and could have occurred only in a literate community, for it depended not on oral memory but on texts, against which Gregory and his fellow reformers judged their contemporary
world. In one of the more striking letters of this entire controversy, Gregory cited an ancient dictum of St. Cyprian to answer the charge that by his demands for reform he was overturning the accepted customs of the Church. "Scire debes creatorem tuum dixisse: Ego sum veritas, non autem usus vel consuetudo." [You ought to know that your creator has said: "I am truth," not "usage" or "custom." ]67 This insistence that "truth" was to be found in texts and not in what people did proclaimed the atemporal, abstract nature of those texts. But it also posed directly the question, Who is to interpret those texts and by what right? And who is to supplement them when they are found wanting? Was it men who by the saintliness of their lives or their trained wisdom earned the right to interpret those texts? Or was it someone else? For years the clerical intellectuals of Europe struggled with this question. Indeed it was never really satisfactorily solved, for it returned again to haunt the clergy during the period of the Great Schism in the fifteenth century. But it posed directly the problem of authority. That authority was finally defined in terms of office: the papal office, first of all, and then other offices both clerical and lay claiming their share of authority in Church and secular government as the twelfth and thirteenth centuries progressed. It was around the concept of office that the distinction between public power and private right finally emerged, and with it the analysis of which rights belonged to an office by human design and which belonged to it by nature or by divine grace.

Law and the state were from the very first an instrument to combat what we might call "habit" and "custom," an abstract, impersonal, literate structure of coercive force. The Gregorian reformers appealed beyond what men remembered to rules preserved in writing, rules with atemporal force, abstracted from the immediacy of daily life, from the obstinate opacity, the multiple referents, of individual lived experiences. By this act they forced themselves and all those who followed in their footsteps-first their opponents, then the dominant literate intellectual tradition-onto the abstract plane where dwells the state.

The men of the eleventh and early twelfth centuries did not take this change easily. Bishops, in the name of custom, stoutly resisted the claims of the papacy. When secular adjudication began to depend on words and their manipulation, even literate men were frightened.

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Here, for example, is the worried account of a Flemish chronicler of 124; a clerk, a professional notary:

Thanks to this boon of peace, men governed themselves in accordance with laws and justice, devising by shill and study every kind of argument for use in the courts. . . . Rhetoric was now used both by the educated and by those who were naturally talented. But, on the other hand, because these by their deceits brought action in the courts against the faithful and the lambs of God, who were less wary, God, who sees all from on high, did not fail to chastise the deceivers. . . .

Therefore God inflicted the scourge of famine and afterwards of death on all who lived in our realm.68

Across the Channel the compiler of the Laws of Henry I, a contemporary of this Fleming, wrote: "There is so much perversity in human affairs and so much profusion of evil that the precise truth of the law . . . can rarely be found, and he who does most harm to most people is valued the most highly. . . . These processes and the quite unpredictable hazard of the courts seem rather things to be avoided."69 Such doubts took long to pass. The process by which the concepts of literate law passed into the habits of European peoples was a long one. In many ways it is still going on.

Yet so long have we dwelled on the abstract plane of the state under the rule of verbalized rules, that we now find it difficult to imagine mankind ever having dwelt elsewhere. I suspect, however, that even today, in the ceaseless flow of lived experience, we still, lawyers and laymen alike, in fact learn and remember many of our mores, our ideals, and our social behavior in the same mode as did men living in the oral tradition of the Middle Ages. Perhaps this is why so many of those problems first posed in the great medieval awakening after 1050 are still with us nine hundred years later.
NOTES


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cago: Aldine, 1969), pp. 16-17. For similar problems in the
definition of political anthropology, see M. Bloch, ed., Political
Language and Oratory in Traditional Society (New York: Aca-
demic Press, 1975), pp. 1-5. For an example of this controlling
image in legal theory that attempts to transcend the Western
model, see H. L. A. Hart, The Concept of Law (Oxford: Claren-
pp. 16-17.
20. J. F. Benton, ed. and trans., Self and Society in Medieval France
21. J. Stenon, L'écriture diplomatique dans le diocèse de Liege du
23. If, that is, the ealdorman Æthelweard was really the translator into
Latin of the Anglo-Saxon chronicle. See D. A. Bullough, "The
Educational Tradition in England from Alfred to Rlfric: Teaching
Utiusque Linguae," in La scuola nell'Occidente latino
dell'Alto Medioevo, Settimane di studio del Centro Italiano di
Studi sull'Alto Medioevo, 1 g (Spoleto: Presso la Sede del Cen-
tr0, 1972), 2:477-478.
24. Forcefully argued by Bullough, "Educational Tradition," pp. 453-
494. For an earlier period, see Philip Grlerson, "Les foyers de
culture en Angleterre au haut moyen âge," in Centri e vie di
irradiazione della civiltà nell'Alto Medioevo, Settimane di
studio del Centro Italiano di Studi sull'Alto Medioevo, II (Spo-
26. Some original eleventh-century charters in Languedoc suffer from
floating tenses, moving irregularly from present to past and
back again. In other areas, because the act was oral, it was vital
to have witnesses alive to testify to it. See Y. Bongert, Re-
cherches sur les cours laïques du XIe au XIIIe siècle (Paris: A. et
27. Sir Frank Stenton, Anglo Saxon England, 3rd ed. (Oxford: Claren-
don Press, 1971), p. 497: "They were obviously taken over by
the king's writing-office from the speech of common men, and
they only give the popular impression of the kind of judicial
authority which generally belonged to a great lord."
28. Numerous examples may be found in almost any collection of
eleventh-century charters. See the discussion of such forms in
M. L. Carlin, Le penetration du droit romain dans les acts de
la pratique provençale (Paris: Librairie générale de droit et de
29. Ibid., p. 300.
30. Numerous examples may be found, for example, in the Cartu-
laire des Templiers de Douzens, ed. P. Gerard and E. Magnou,
Collection de documents inédits sur l'histoire de France, ser.
31. See the forceful argument in E. A. Havelock, Preface to Plato
32. E. Magnou-Nortier provides several examples in "Fidélité et
féodalité meridionales d'après les serments de fidélité," in Les
structures sociales de l'Aquitaine, du Languedoc et de l'Es-
Many others may be found in C. Devic and J. Vaisssete, His-
toire générale de Languedoc, A: Molinier (Toulouse:Privat,
1875), passim.
33. F. Yates, The Art of Memory (Chicago: University of Chicago
34. Those who have read them will immediately recognize my indebt-
edness in the argument that follows to Havelock, Preface to
Plato, and W. J. Ong, The Presence of the Word (New Haven:
Ross (New York: Columbia University Press, 1960), oaths;
passim; exstetucatio: pp. 171, 269, 278, 281; food on the
Count's tomb: p. 218.
37. The use of a stone is mentioned occasionally even in the formula-
ridden Languedocian charters: J. Rouquette, Cartulaire de
Bythiers (Livre Noir) (Montpellier-Paris: A & J Picard, 1918),
nos. 88, 93, etc.; a ritual dinner appears to be the only plausible
interpretation of “nostrum mancucare de absolutione et quip-
itione” (no. 143), or of “denarlis pro manducare de venditione” (no. 152). Symbolic rents: Cartulaires de Douzens, A. 53.
38. See the discussion in C. S. Lewis, The Discarded Image (Cam-
39. See, for example, Lynette Muir’s Introduction to Glanville Price,
and R. Berry (New York: Columbia University Press,
201).
40. As Guibert de Nogent wrote, “I have undertaken to tell the tale of
my fortunes and misfortunes for what help it may be to others” (Benton,
My self and Society, p. 130; see also p. 195). This use of
story and history is analyzed by Lewis, The Discarded Image,
pp. 177–178.
41. Odo of Deuil, De profectione Ludovici VII in orientem, trans. V. G.
48. For background, see P. Alphandery and A. Dupront, La
42. J. Horrent, “La chanson du Pelerinage de Charlemagne et la real-
ité historique contemporaine,” in Ménages de langue et de littéra-
ture du Moyen Age et de la Renaissance offerts à Jean Frap-
43. W. L. Wakefield and A. P. Evans, Heresies of the High Middle
201. What is the relationship between such assertions and the
common medieval exemplum? The question remains open; see
J. T. Welter, L’exemple dans la litérature religieuse et didacti-
44. The literature is now substantial Two works have set the frame-
work of the debate: E. Köhler, Ideal und Wirklichkeit in der
höfischen Epos (Tübingen: M. Niemeyer, 1956); and R. Bez-
zola, Les origines et la formation de la litérature courtoise
en Occident, part 2: La sociétFeodale et la transformation de
285.
46. For one example of such opinion, see M. Castaing-Sicard, Mon-
naires féodales et circulation monnai re en Languedoc, Cahiers
47. Examples can be found in any eleventh-century collection. For a
discussion, see Carlin, Droit romain, pp. 59 ff.
48. See my “Suum cuique tribuere,” French Historical Studies 6
49. Duby, Maconnais, pp. 185 ff.
50. Dooms of Hlothære and Eadric, 12, and of Wihtread, 28; transla-
tions from C. Stephenson and F. G. Marcham, Sources of
English Constitutional History (New York: Harper & Bros.,
1937), pp. 4–8. For a discussion of the verbal texture of these
laws, see D. Korte, Untersuchungen zu Inhalt, Stil und Technik
angeschlossener Gesetze und Rechtsbücher des 6. bis 12.
51. For a discussion of these replies, see my “Custom, Case Law, and
Medieval Constitutionalism: A Re-examination,” Political
52. Kantorowicz, King’s Two Bodies, chap. 3.
53. E. Caspar, ed., Das Register Gregors VII, Monumenta Germaniae
Historica, Epistolae selectae, 2 (Berlin: Weidmann, 1955),
in 1:201–208. For the nature of this text, see K. Hofmann, “Der
‘Dictatus papae’ Gregors VII als Index einer Kanonessam-
54. W. Ullmann discusses the various interpretations of this sentence,
as well as his own, in “Romanus pontifex indubitante efficicur
sanctus: Dictatus Papae 23 in retrospect and prospect,” Studi
55. Ibid.
56. As, for example, in his two depositions of Henry IV, when he
addresses St. Peter, and, especially, in the second, where it is
St. Peter who must make the final determination in trial by bat-
tle (Caspar, Register, pp. 270, 483).
57. The main reason for my disagreement with Ullmann will be ap-
parent in what follows. There are also internal grounds for dis-
agreement. First, his terms objective, office, and status in this
context are filled with ambiguity. The discussion must be of the
precise content of such words within Gregory’s own system of
understanding. Second he contradicts himself explicitly on pp,
248–249 by stating (correctly) that Gregory exercised governmental functions before his ordination but acquired his “purely jurisdictional functions” only after ordination (unless Ullmann understands a distinction here that he does not make clear). Finally, he does not discuss the text within the context of the letter to Ilermann of Metz, ignoring the most important clue we have to its meaning for Gregory.


60. Ullmann discusses this interesting fact but, I believe, misinterprets its meaning (“Dictatus Papae 23,” pp. 246 ff.).

61. Caspar, Register, letters 1, 5, 7, Jo.

62. Libelli de Lite, 1:198 ff.

63. I have greatly abbreviated the argument as Humbert presents it.


65. Ibid., 1:205-206.

66. Ibid., 2:644.


68. Galbert of Bruges, Murder of Charles the Good, p. 84.