

THE KING'S
TWO BODIES

A Study in
Mediaeval Political Theology

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PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS

1957

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

The ancient idea of liturgical kingship gradually dissolved, and it gave way to a new pattern of kingship centered on the sphere of Law which was not wanting its own mysticism. The new "halo" began to descend upon the nascent secular and national state, headed by a new *pater patriae*, when the state began to claim for its own administrative apparatus and public institutions a sempiternity or perpetuity which hitherto had been attributed only to the Church and, by Roman Law and the Civilians, to the Roman Empire: *Imperium semper est*.³¹¹ Clearly, the mediaeval dichotomy of *sacerdotium* and *regnum* was superseded by the new dichotomy of the King and the Law. In the Age of Jurisprudence the sovereign state achieved a hallowing of its essence independent of the Church, though parallel to it, and assumed the eternity of the Roman empire as the king became an "emperor within his own realm." But this hallowing of the *status regis et regni*, of state institutions and utilities, necessities and emergencies, would have remained incomplete had not that new state itself been equated with the Church also in its corporational aspects as a secular *corpus mysticum*.

³¹¹ See, e.g., *Nov. 6*, epil., in addition to many other places (see below, pp. 291ff.).

CHAPTER V

POLITY-CENTERED KINGSHIP:
CORPUS MYSTICUM

INFINITE cross-relations between Church and State, active in every century of the Middle Ages, produced hybrids in either camp. Mutual borrowings and exchanges of insignia, political symbols, prerogatives, and rights of honor had been carried on perpetually between the spiritual and secular leaders of Christian society.¹ The pope adorned his tiara with a golden crown, donned the imperial purple, and was preceded by the imperial banners when riding in solemn procession through the streets of Rome. The emperor wore under his crown a mitre, donned the pontifical shoes and other clerical raiments, and received, like a bishop, the ring at his coronation.² These borrowings affected, in the earlier Middle Ages, chiefly the ruling individuals, both spiritual and secular, until finally the *sacerdotium* had an imperial appearance and the *regnum* a clerical touch.

A certain state of saturation was reached by the beginning of the thirteenth century, when both the spiritual and secular dignities were rigged with all the essential attributes of their offices. The borrowings between the two orbits, however, did not then come to an end; only the objectives changed during the later Middle Ages when the center of gravity shifted, as it were, from the ruling personages to the ruled collectives, the new national monarchies, and the other political aggregates of human society. In other words, the exchanges between Church and State continued, but the field of mutual influence, expanding from individual dignitaries to compact communities, henceforth was determined by legal and constitutional problems concerning the structure and interpretation of the bodies politic. Under the *pontificalis maiestas* of the pope, who was styled also "Prince" and "true emperor,"³ the hierarchical apparatus of the Roman Church

¹ See, in general, Schramm, "Austausch," for the earlier period; also my *Laudes regiae*, 129ff.

² For the imperial mitre and other symbols, see Schramm, *Herrschaftszeichen und Staatssymbolik* (Schriften der MGH, xiii [Stuttgart, 1954]), esp. 68ff.

³ For the title *pontificalis maiestas*, see Mochi Onory, *Foniti*, 113; cf. *Laudes regiae*, 140, nos. 94, 95.

tended to become the perfect prototype of an absolute and rational monarchy on a mystical basis, while at the same time the State showed increasingly a tendency to become a quasi-Church or a mystical corporation on a rational basis.

While it has often been felt that the new monarchies were in many respects "churches" by transference, it has far less often been pointed out in detail to what extent late mediaeval and modern commonwealths actually were influenced by the ecclesiastical model, especially by the all-encompassing spiritual prototype of corporational concepts, the *corpus mysticum* of the Church.

1. *Corpus Ecclesiae mysticum*

The corporational doctrine of the Roman Church has been summarized and dogmatized, in 1302, by Pope Boniface VIII in the lapidary sentences of the bull *Unam sanctam*:

Urged by faith we are bound to believe in one holy Church, Catholic and also Apostolic . . . , without which there is neither salvation nor remission of sins . . . , which represents one mystical body, the head of which is Christ, and the head of Christ is God.

The general context of the bull leaves no doubt about the meaning of the introductory sentence. It betrays the supreme effort on the part of the spiritual power to answer and, if possible, to overcome the challenge of the nascent self-sufficiency of the secular bodies politic. Pope Boniface was bent upon putting political entities in what he considered their proper place, and therefore stressed, and overstressed, the hierarchical view that the political bodies had a purely functional character *within* the world community of the *corpus mysticum Christi*, which was the Church, whose head was Christ, and whose visible head was the vicar of Christ, the Roman pontiff.⁴

⁴ Ladner, "Aspects," esp. 409ff, also his more recent study, "The Concepts: Ecclesia, Christianitas, Plenitudo Potestatis," *Sacerdotio e regno da Gregorio VII a Bonifacio VIII* (Miscellanea Historiae Pontificiae, xviii; Rome, 1954), 49-77, esp. 53ff. The literature on *corpus mysticum* is very extensive, especially after the publication of the encyclical *Corporis Christi* in 1943; see, for a more recent comprehensive study, Emile Mensch, *Le corps mystique du Christ, études de théologie historique* (2 vols., Louvain, 1933). An excellent evaluation with regard to the history of ideas is owed to Henri de Lubac, *Corpus mysticum* (2nd ed., Paris, 1949), also in *Recherches de science religieuse*, xxix (1939), 257-302, 493-480, and xxx (1940), 40-80, 191-226; in the following pages I have merely ransacked the wealth of his material (much of which was inaccessible to me) and his ideas. For early

The Church as the mystical body of Christ—and that means: Christian society as composed of all the faithful, past, future, and present, actual and potential⁵—might appear to the historian so typically mediaeval a concept, and one so traditional, that he would easily be inclined to forget how relatively new that notion was when Boniface VIII probed its strength and efficiency by using it as a weapon in his life-and-death struggle against Philip the Fair of France. The concept of the Church as *corpus Christi*, of course, goes back to St. Paul,⁶ but the term *corpus mysticum* has no biblical tradition and is less ancient than might be expected. It first came into prominence in Carolingian times and gained some importance in the course of the controversy about the Eucharist carried on over many years by Paschasius Radpertus and Ratramnus, both of the monastery of Corbie. On one occasion, Ratramnus pointed out that the body in which Christ had suffered, was his "proper and true body" (*proprium et verum corpus*) whereas the Eucharist was his *corpus mysticum*. Perhaps Ratramnus relied on the authority of Hrabanus Maurus, who had stated, shortly before, that within the Church the *corpus mysticum*—meaning the Eucharist—was administered by the priestly office.⁷

Here then, in the realm of dogma and liturgy, there originated that notion whose universal bearings and final effects cannot easily be overrated. *Corpus mysticum*, in the language of the

scholasticism, see also Ferdinand Holböck, *Der Eucharistische und der Mystische Leib Christi in ihren Beziehungen zueinander nach der Lehre der Frühcholastik* (Rome, 1941). The very important book of Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge Studies in Medieval Life and Thought, N.S., iv; Cambridge, 1955), appeared too late to be considered here; see esp. Part II, 87ff, 100ff, 132ff.

⁵ Aquinas, *Summa theol.*, III, q.viii, a.3.

⁶ For St. Paul's metaphor, see I Cor. 12: 12, and 27, also 6: 15; Eph. 4: 4, 16, 25, and 5: 30; Col. 2: 19. The study of T. Sotiron, *Die Kirche als der Leib Christi nach der Lehre des hl. Paulus* (Düsseldorf, 1951), was not yet accessible to me. For the place of St. Paul's organological concept within antique philosophical tradition, see Wilhelm Nestle, "Die Fabel des Menenius Agrippa," *Klio*, xxx (1926-27), 358f, also in his *Griechische Studien* (1948), 302ff; also the study of A. Ehrhardt, "Das *Corpus Christi* und die Korporationen im spät-römischen Recht," *ZfRG*, rom.Abt., lxx (1953), 299-347, and lxxi (1954), 25-40, is relevant for the present problem, and so is M. Roberti, "Il corpus mysticum di S. Paolo nella storia della persona giuridica," *Studi in Onore di Enrico Besta* (Milan, 1939), IV, 37-82.

⁷ For the Carolingian controversy, see Lubac, *Corpus mysticum*, 39ff; cf. 41f, for Hrabanus Maurus, *De clericorum institutione*, I, c.33, PL, cxxv, 324A.

Carolingian theologians, referred not at all to the body of the Church, nor to the oneness and unity of Christian society, but to the consecrated host. This, with few exceptions, remained, for many centuries, the official meaning of the "mystical body," whereas the Church or Christian society continued to be known as the *corpus Christi* in agreement with the terminology of St. Paul. It was only in the course of a strange and perplexing development—*un curieux chassé-croisé*—that finally, around the middle of the twelfth century, those designations changed their meaning. The change may be vaguely connected with the great dispute of the eleventh century about transubstantiation. In response to the doctrines of Berengar of Tours and to the teaching of heretical sectarians, who tended to spiritualize and mystify the Sacrament of the Altar, the Church was compelled to stress most emphatically, not a spiritual or mystical, but the *real* presence of both the human and the divine Christ in the Eucharist. The consecrated bread now was termed significantly the *corpus verum* or *corpus naturale*, or simply *corpus Christi*, the name under which also the feast of *Corpus Christi* was instituted by the Western Church in 1264.⁹ That is to say, the Pauline term originally designating the Christian Church now began to designate the consecrated host; contrariwise, the notion *corpus mysticum*, hitherto used to describe the host, was gradually transferred—after 1150—to the Church as the organized body of Christian society united in the Sacrament of the Altar. In short, the expression "mystical body," which originally had a liturgical or sacramental meaning, took on a connotation of sociological content. It was finally in that relatively new sociological sense that Boniface VIII defined the Church as "one mystical body the head of which is Christ."

Concomitant with the new emphasis laid upon the real presence of Christ in the sacrament—a doctrine finally culminating in the dogma of transubstantiation of 1215, by which the Eucharist was officially designated as *corpus verum*—was the development of

⁹ Lubac, 88.

⁹ For the reaction against Berengar, see Lubac, *Corpus mysticum*, 104ff, 162ff. and, for the "inversion" in general, p.19. For the institution of the feast of *Corpus Christi*, see P. Browe, "Die Ausbreitung des Fronleichnamfestes," *Jahrbuch für Liturgiewissenschaft*, VIII (1928), 107-143, who has collected also the early sources in his *Textus antiqui de festo Corporis Christi* (Münster, 1934); and for the most recent studies, Anselm Strittmatter, in *Traditio*, V (1947), 396ff.

the term *corpus mysticum* as a designation of the Church in its institutional and ecclesiological aspects. It was adopted at a critical moment in Church history. After the Investiture Struggle there arose, for many reasons, the "danger of too much stress being laid on the institutional, corporational side of the Church" as a body politic.¹⁰ It was the beginning of the so-called secularization of the mediaeval Church, a process which was balanced by an all the more designedly "mystical" interpretation even of the administrative body and technical apparatus of the hierarchy. The new term *corpus mysticum*, hallowing, as it were, simultaneously the *Corpus Christi Juridicum*,¹¹ that is, the gigantic legal and economic management on which the *Ecclesia militans* rested, linked the building of the visible Church organism with the former liturgical sphere; but, at the same time, it placed the Church as a body politic, or as a political and legal organism, on a level with the secular bodies politic which were then beginning to assert themselves as self-sufficient entities. In that respect the new ecclesiological designation of *corpus mysticum* fell in with the more general aspirations of that age: to hallow the secular politics as well as their administrative institutions. When in the twelfth century the Church, including the clerical bureaucracy, established itself as the "mystical body of Christ," the secular world sector proclaimed itself as the "holy Empire." This does not imply causation, either in the one way or the other. It merely indicates the activity of indeed interrelated impulses and ambitions by which the spiritual *corpus mysticum* and the secular *sacrum imperium* happened to emerge simultaneously—around the middle of the twelfth century.¹²

By that time, it is true, the expression *corpus mysticum* as a designation of the ecclesiological body corporate was found only sporadically. Nevertheless, it was then that both theologians and

¹⁰ Ladner, "Aspects," 415, who noticed, and vigorously stressed, the connections between the new *corpus mysticum* interpretation and the ecclesio-political and constitutional development of the thirteenth century; see, for some related observations, G. Le Bras, "Le droit romain au service de la domination pontificale," *Revue historique de droit français et étranger*, XXVII (1949), 349.

¹¹ This useful notion, quoted by Ladner, "The Concepts of Ecclesia, etc.," 53.n.2, was introduced by Alons Stuckler, "Der Schwerebergriff bei Huguccio," *Ephemeres Iuris Canonici*, III (1947), 216, who sets it against the *corpus Christi mysticum*.

¹² The term *sacrum imperium* seems to appear programmatically first under Frederick I, in 1157; MGH, *Const.*, 1.224, No.161; cf. Kern, *Gottesspendentum*, 134, n.245.

canonists began to distinguish between the "Lord's two Bodies"—one, the individual *corpus verum* on the altar, the host; and the other, the collective *corpus mysticum*, the Church.¹³ Around 1200, Simon of Tournai, who began to teach at Paris in 1165, could write:

Two are the bodies of Christ: the human material body which he assumed from the Virgin, and the spiritual collegiate body, the ecclesiastical college.¹⁴

The question shall be left aside here whether, or to what extent, corporational diction may have been contributive when Simon of Tournai described the supra-personal body of Christ as a *spirituale collegium*, a *collegium ecclesiasticum*. What matters here is that the distinction between Christ's *Two Bodies* was not simply identical with the ancient christological distinction between the *Two Natures* of Christ, divine and human. What Simon of Tournai produced was rather a sociological distinction between an individual body and a collective body, a distinction put forth very clearly by his contemporary Gregory of Bergamo, who explained:

One is the body which is the sacrament, another the body of which it is the sacrament . . . One body of Christ which is he himself, and another body of which he is the head.¹⁵

In the writings of other authors of that period we find a similar dichotomy. Guibert of Nogent, for example, discussed the "bipartite body of the Lord" (*corpus dominicum bipertitum*) and distinguished between the *corpus principale*, the individual body as the prototype, and the *corpus mysticum* which he called also the *corpus figuratum*; he claimed that Christ had intended to lead mankind from his individual *corpus principale* to his supra-individual *corpus mysticum*.¹⁶ The scholars around 1200—Sicard of

¹³ Lubac, *Corpus mysticum*, 116ff.

¹⁴ "Duo sunt corpora Christi. Unum materiale, quod sumpsi de virgine, et spirituale collegium, collegium ecclesiasticum," quoted by Lubac, *Corpus mysticum*, 122.

¹⁵ Gregory of Bergamo, *De veritate corporis Christi*, c.18, ed. H. Hunter, *Sanctorum patrum opuscula selecta* (Innsbruck, 1879), vol. xxxix, 75f: "Aliud est corpus, quod sacramentum est, aliud corpus, cuius sacramentum est. . . : Christi corpus, quod videlicet ipse est, aliud autem corpus, cuius ipse caput est." Cf. Lubac, *Corpus mysticum*, 185.

¹⁶ Guibert of Nogent, *De pignoribus sanctorum*, II, PL, cxi, 659, 634C (*corpus figuratum*), and 650A: ". . . a principali corpore ad mysticum Dominus noster nos

Cremona, for example, or Lothar of Segni (later Innocent III)—in their discussions of the Sacrament of the Altar almost customarily distinguished between the individual body (*corpus personale*) and the collective body (*corpus mysticum*) of Christ. And in the first quarter of the thirteenth century, William of Auxerre reflected upon the *duplex corpus Christi* and contrasted the body natural (*corpus naturale*) with the *corpus mysticum*.¹⁷

Here, at last, in that new assertion of the "Lord's Two Bodies"—in the bodies natural and mystic, personal and corporate, individual and collective of Christ—we seem to have found the precise precedent of the "King's two Bodies." It will remain to be seen whether interrelations between the ecclesiological and the political spheres were effective.

It should be recalled that the definitions quoted above were still connected, more or less directly, with the Eucharist and with the liturgical sphere at large. However, the terminological change by which the consecrated host became the *corpus naturale* and the social body of the Church became the *corpus mysticum*, coincided with that moment in the history of Western thought when the doctrines of corporational and organic structure of society began to pervade anew the political theories of the West and to mold most significantly and decisively the political thinking in the high and late Middle Ages.¹⁸ It was in that period—to mention only the classical example—that John of Salisbury wrote those famous chapters of his *Politicus* in which he compared, under the guise of Plutarch, the commonweal with the organism of the human body, a simile popular also among the jurists.¹⁹ Similar comparisons of the Church with a human body, stimulated by St. Paul (I Corinthians 12: 14ff), are found sporadically through-

voluit traducere." Cf. Lubac, *Corpus mysticum*, 46, who explains (p. 93) the word *principalis* as the equivalent of the Greek *πρωτότυπον*.

¹⁷ Lubac, *Ibid.*, 123f, also 185 (n.155), with additional examples for the *duplex corpus Christi*.

¹⁸ For the following, see Gierke, *Gen. R.*, III, 346ff; also Nestle, "Mementis Agrippa" (above, n. 6), for the ancient model.

¹⁹ John of Salisbury, *Politicus*, vaff. 340a, Webb, 1282ff, pretends to borrow his metaphors from Plutarch's *Institutio Traiani*; see H. Liebeschütz, "John of Salisbury and Pseudo-Plutarch," *Warburg Journal*, VI (1943), 33-39, who suggests that Pseudo-Plutarch was none but John of Salisbury himself; see, however, A. Momigliano, *Ibid.*, xii (1949), 189ff: For contemporary jurists, see, e.g., Fitting, *Jurist. Schriften*, 148, 23ff, gloss on "princeps" (below, n. 42).

out the Middle Ages, and it was only an adaptation to the new terminology that Isaac of Stella, a contemporary of John of Salisbury, applied the metaphor of the human body with great precision to the *corpus mysticum* the head of which was Christ and whose limbs were the archbishops, bishops, and other functionaries of the Church.²⁰ That is to say, the anthropomorphic imagery was transferred as a matter of course to both the Church as the "mystical body of Christ" in a spiritual sense and the Church as an administrative organism styled likewise *corpus mysticum*.

The organic pattern furnished the standard interpretation of the *corpus mysticum* during the thirteenth century, especially after Thomas Aquinas had started to apply the term "mystical body" rather freely to the Church as a social phenomenon. In many respects he remained within the tradition. Like Isaac of Stella and others he compared the *corpus mysticum* with man's body natural:

Just as the whole Church is styled one mystical body for its similarity to man's natural body and for the diversity of actions corresponding to the diversity of limbs, so is Christ called the "head" of the Church. . . .²¹

Aquinas, to be sure, was still fully aware of the fact that the mystical body really belonged to the sacramental sphere, and that *corpus mysticum* was to be set over against the *corpus verum* represented by the consecrated host. Even he, however, spoke of both bodies—the true and the mystical—without reference to the Eucharistic bread. In his teaching, the "true body" repeatedly signified not at all the Eucharistic Christ of the altar but Christ as an individual being: physical and in the flesh, whose individual

²⁰ Isaac de Stella, *Serm.*, xxxiv, PL, cxxv,1801C; Lubac, *Corpus mysticum*, 120. Isaac compared Christ with the root of a tree ("in hoc mystico corpore sub uno capite Christo et una radice . . . membra multa sunt"), a tree having the roots above while branching down to earth; Lubac, very correctly, calls this mystic body "semblable à un arbre renversé." That strange inverted tree, however, has a long history which may be traced back to Plato's *Timaeus*, ga, where—in agreement with ancient plant physiology according to which the root of a plant is its "head"—man's head is called also *ῥίζα*, the root, which is suspended and which "directs the whole body" (*ἡ δὲ ῥίζα τῷ σώματι*). The metaphor has a very complicated history; see the forthcoming study of Otto J. Maenchen-Helfen, *The Inverted Tree*, who has collected, above all, the archaeological material.

²¹ Aquinas, *Summa theol.*, III, q. viii, 1; Gierke, *Gen. R.*, III, 518, n. 7; Lubac, *Corpus mysticum*, 127ff, nos. 60-64, who has collected the relevant places.

"body natural" became sociologically the model of the supra-individual and collective mystical body of the Church: *corpus Christi mysticum* . . . *ad similitudinem corporis Christi veri*.²² In other words, the customary anthropomorphic image comparing the Church and its members with a, or any, human body was sided by a more specific comparison: the Church as a *corpus mysticum* compared with the individual body of Christ, his *corpus verum* or *naturale*. Moreover, *corpus verum* gradually ceased to indicate solely the "real presence" of Christ in the Sacrament, nor did it retain a strictly sacramental meaning and function. The individual body natural of Christ was understood as an organism acquiring social and corporational functions: it served with head and limbs, as the prototype and individuation of a super-individual collective, the Church as *corpus mysticum*.

The development did not stop here. Aquinas, quite frequently, used the term *corpus Ecclesiae mysticum*, "the mystical body of the Church." Hitherto it had been the custom to talk about the Church as the "mystical body of Christ" (*corpus Christi mysticum*) which sacramentally alone makes sense. Now, however, the Church, which had been the mystical body of Christ, became a mystical body in its own right.²³ That is, the Church organism became a "mystical body" in an almost juristic sense: a mystical corporation. The change in terminology was not haphazardly introduced. It signified just another step in the direction of allowing the clerical corporational institution of the *corpus ecclesiae iuridicum* to coincide with the *corpus ecclesiae mysticum* and thereby to "secularize" the notion of "mystical body." In that development Aquinas himself holds a key position. For it is not devoid of some inner logic that the *Doctor angelicus* on several occasions saw fit to replace, straightforwardly, the liturgical idiom by a juristic idiom.

The term *corpus mysticum*, despite all the sociological and organological connotations it had acquired, nevertheless preserved its definitely sacramental ring simply because the word "body" still recalled the consecrated sacrifice. That last link to the sphere of the altar, however, was severed when Aquinas wrote: "It may be said that head and limbs together are as though one mystical

²² Lubac, *Corpus mysticum*, 129, n. 71.

²³ Lubac, *Corpus mysticum*, 128, n. 69, stresses these changes emphatically.

person."²⁴ Nothing could be more striking than this *bona fide* replacement of *corpus mysticum* by *persona mystica*. Here the mysterious materiality which the term *corpus mysticum*—whatever its connotations may have been—still harbored, has been abandoned: "The *corpus Christi* has been changed into a corporation of Christ."²⁵ It has been exchanged for a juristic abstraction, the "mystical person," a notion reminiscent of, indeed synonymous with, the "fictitious person," the *persona repraesentata* or *ficta*, which the jurists had introduced into legal thought and which will be found at the bottom of so much of the political theorizing during the later Middle Ages.²⁶

Undeniably the former liturgical concept of *corpus mysticum* faded away only to be transformed into a relatively colorless sociological, organological, or juristic notion. It has been observed—correctly, it seems—that this "degeneration" made itself felt very strongly in the circle of theologians around Pope Boniface VIII.²⁷ This is certainly true with regard to the papally-minded pamphleteers of the early fourteenth century. In their writings, the Church appeared, the later the more so, as a "Christian polity"—*regnum ecclesiasticum* or *principatus ecclesiasticus, apostolicus, papalis*²⁸—so that even a Civilian as, for example, Lucas de Penna,

²⁴ Aquinas, *Summa theol.*, III-q.xviii.a: "Dicendum quod caput et membra sunt quasi una *persona mystica*." See Lubac, *ibid.*, 127,n.60, for a number of similar places.

²⁵ Rudolph Sohm, *Das althochkirchliche Kirchenrecht und das Dekret Gratians* (Munich and Leipzig, 1908), 582: "Aus dem Körper Christi hat sich die Kirche in eine Körperschaft Christi verwandelt."

²⁶ See Gierke, *Gen.R.*, III,246ff. for the general development; also G. de Lagarde, *Ockham et son temps* (Paris, 1942), 116ff. for the *persona representata*. See also the remark of Le Bras, "Le droit romain" (above, n.10), 349, concerning the political *corpus mysticum* which he styles "un concept . . . que l'on en venait à classer dans l'album des personnes juridiques."

²⁷ Lubac, *Corpus mysticum*, 130ff. sums up most interesting material concerning the degeneration of the *corpus mysticum* idea. The legalistic interpretation of this idea is anything but surprising in an age when the question was frequently discussed whether the souls of Christians were better taken care of by a jurist, or by a theologian, as supreme pontiff; see M. Grabmann, "Die Erörterung der Frage, ob die Kirche besser durch einen guten Juristen oder durch einen Theologen regiert werde," *Eichmann Festschrift* (Paderborn, 1941), who discusses Godfrey of Fontaines and Augustinus Triumphus; some additions (Francesco Caracciolo) have been made by Michele Macarone, "Teologia e diritto canonico nella *Monarchia*, III,3," *Rivista di storia della Chiesa in Italia*, v (1951), 20, an article which skillfully exposes Dante's profound dislike of the domination of jurists in the Church.

²⁸ The expression *regnum ecclesiasticum* was very common in the thirteenth century; see, e.g., Alexander of Roes, *Memoriae*, cc.142,37,38, and *Notitia sacelli*, c.8, ed. H. Grundmann and H. Heimpel, *Die Schriften des Alexander von Roes*

while quoting Aquinas, could say: "Hence the Church compares with a political congregation of men, and the pope is like to a king in his realm on account of his plenitude of power."²⁹ To the extent, however, that the Church was interpreted as a polity like any other secular corporation, the notion *corpus mysticum* itself was charged with secular political contents. Above all, that originally liturgical notion, which formerly served to exalt the Church united in the Sacrament, began to be used in the hierarchical Church as a means to exalt the position of the emperor-like pope, "the chief Prince moving and regulating the whole Christian polity" (*primus princeps movens et regulans totam politiam Christianam*).³⁰ We now find all the well-known similes, metaphors, and analogies centered on the new *primum mobile*, the pope as vicar of Christ.

Just as all the limbs in the body natural refer to the head, so do all the faithful in the mystical body of the Church refer to the head of the Church, the Roman Pontiff.³¹

The implications of the terminological changes become obvious: the pope could be the head of the "mystical body of the Church" as a corporation or polity or *regnum* more easily than head of the "mystical body of Christ." However, even the latter was not beyond reach. In order to prove that it made no difference whether

(Deutsches Mittelalter: Kritische Studententexte der MGH, IV, Weimar, 1949), pp.32, 46,66,78; see also Lubac, *Corpus mysticum*, 129, for James of Viterbo; also Scholz, *Publizistik*, 140f. See further, Scholz, *Streitschriften*, 1232, for *principatus christianus* (Anonymous); II,34 and 42, for *principatus ecclesiasticus* (Petrus de Luttra); II,450ff., 488,479 for *principatus papalis* and *apostolicus* (Ockham); also Scholz, *Wilhelm von Ockham als politischer Denker und sein 'Breviloquium de principatu tyrannico'* (Leipzig, 1944), 59ff. and passim; for *politia christiana*, see Scholz, *Streitschriften*, 1232ff., II,42f. and passim; Ladtner, "Aspects," 412,n.34. See also Lubac, *Corpus mysticum*, 126,n.55, quoting the Roman Catechism, according to which the clergy's sacerdotal power (*potestas ordinis*) refers to the *corpus verum* (the eucharist), whereas the political power (*iurisdictionis potestas*) refers to the mystical body of Christ; both the body natural and the body mystical thus become the source of clerical *potestas*, but the mystical body is the source of jurisdictional power. See, for this doctrine, James of Viterbo, *De regimine christiano*, cc.4-5, ed. H. X. Arquillière (Paris, 1926), 199f., 201.

²⁹ Lucas de Penna, on C.11,58,7,n.8 (Lyon, 1582) p.563: "Unde et ecclesia comparatur congregationi hominum politicæ et papa est quasi rex in regno propter plenitudinem potestatis" (a reference to Aquinas, *Summa theol.*, Suppl.III,q.xxvII,2-3); see, for the papal plenitudo potestatis, Ladtner, "Concepts," 60ff.67,n.64.

³⁰ See Scholz, *Streitschriften*, 1233, for the anonymous tractate *De potestate ecclesiæ* (14th century).

³¹ Hermann of Schilditz, *Contra hereticos*, II,c.3, ed. Scholz, *Streitschriften*, II,143f.

the pope resided in Rome or in Avignon, since the pope was the Church,³² Alvarus Pelagius exclaimed:

The Church, which is the mystical body of Christ . . . and the community of Catholics . . . is not defined by the walls [of Rome]. The mystical body of Christ is where the head is, that is, the pope (*Corpus Christi mysticum ibi est, ubi est caput, scilicet papa*).³³

Ubi est fuscus, ibi est imperium was the twist given by Baldus to the ancient maxim "Rome is where the emperor is."³⁴ That Rome is where the pope is—"even were he secluded in a peasant's hut"—was a saying repeated over and over by the Canonists who linked also Jerusalem, Mount Sion, the *limina Apostolorum*, and the "common fatherland" to the person of the pope.³⁵ In a sacramental

³² For the famous formula "summus pontifex qui tenet apicem ecclesie et qui potest dici ecclesia," see Aegidius Romanus, *De ecclesiastica potestate*, III,c.12, ed. Scholz (Weimar, 1929), 209; also Scholz, *Publizistik*, 60. The resistance against that identification began soon after 1300, and the decretalist Panormitanus (d. 1453) expresses his view perfectly clearly: "Caput et sponsus est ipse Episcopus [Christus]; papa autem est vicarius Episcopi, et non vere caput Ecclesie." See Lubac, *Corpus mysticum*, 131,n.85.

³³ N. Jung, *Alvaro Pelayo* (L'Église et l'état au moyen âge, III; Paris, 1931), 150, n.2, quotes the passage, but omits the decisive second sentence. See Scholz, *Streitschriften*, II,966ff. One may be inclined to think of Ignatius, *Ad Smyrn.*, VIII,2, usually rendered "Where the bishop is, there is the Church" (e.g., H. Lietzmann, *Geschichte der alten Kirche* [Berlin, 1936], II,49). However, the text says "Where Christ is, there is the Catholic Church," and says about the bishop that "where he shall appear, there let the multitude be"—that is, the people shall gather where the bishop is.

³⁴ Baldus, on C.10,1,n.13, fol.232 (above, Ch.IV, n.276). For the origin of the maxim, see Herodian, I,65 (ἐκεῖ τε ἡ Ῥώμη ποτ' ἀν' ὁ βασιλεὺς ἦ), with interesting parallels quoted in the old edition of Herodian by T. G. Irmsch (1789), 1209. See also *Panegyric*, XI,12 (Mamertinus, *Genehli. Maxim.*), ed. W. Baethrens (1911), 285,2, and *Cambridge Ancient History*, XII,374-386. Further, Claudian, *In Rufinum*, II, 246f, ed. Birt, *MGH. Auctant.*, X,43: "quocumque loco Stilicho tentoria figat, haec patria est," which makes the military camp the soldier's fatherland; see Reinhard Höhn, "Der Soldat und das Vaterland während und nach dem Siebenjährigen Krieg," *Festschrift Ernst Heymann* (Weimar, 1940), 255, quoting from an anonymous tractate by S.B.N., *Die wahren Pflichten des Soldaten und insonderheit eines Edelmanns* (trans. from the French, 1753), p.12: "Der Ort wo der Feldherr sein Lager hat, muss Euer Vaterland seyn." See also Modinus, *Ecloge*, 40f, *MGH. Poetae*, 1386, referring to Charlemagne and Aachen: "Quo caput orbis erit, Roma vocata liebit/ Forte locum . . ." Also Frederick II availed himself of that maxim; see Huillard-Bréholles, II,690 (June, 1266): ". . . ibi sit Alemannie curia, ubi persona nostra et principis imperii nostri consistunt." See *Erg.Bd.*, 41.

³⁵ See, e.g., Oldradus de Ponte, *Consilia*, I,XXII,3, fol.22r: ". . . ista intelligentur de ecclesia Romana universalis, quae est ubiqueque est papa." Hostiensis, *Summa aurea*, on X 1,8,n.3, col.155: ". . . quia non ubi Roma est, ibi Papa, sed econverso; locus enim non sanctificat hominem, sed homo locum." See, for the maxim *non locus sanctificat hominem*, etc., Hermann Kantorowicz, *Glossators*, 22. Johannes Andreae, *Novella Commentaria*, on c.4 X 2,24 (Venice, 1612), fol.185r: "Imina enim

sense, it was rather usual to say that "where Christ is there is also Jordan," meaning, of course, that every baptismal font was "Jordan" with regard to Christ and with Christ being present.³⁶ The new twist produced by Alvarus Pelagius, however, carried the idea considerably further: not where the consecrated host is, but where the pope is, there the *corpus mysticum* was supposed to be present. It was a long way from the liturgy and the sacramental *corpus mysticum* to the mystical polity headed by the pope.

The curious definition of Alvarus Pelagius was matched by yet another terminological change which at least should be mentioned. When William of Ockham denied the pope the power to alienate Church property he merely repeated what scores of jurists had pointed out before him, though one of his arguments is of interest here. Ockham said the pope could not alienate these possessions because they did not belong to him personally, but belonged to "God and his mystical body which is the Church" (*Dei et corporis eius mystici quod est ecclesia*).³⁷ The Church as the mystical body of God, not of Christ, is a concept demonstrating the swiftness with which the *corpus mysticum* idea had been moving away from the original sacrificial sphere, from altar and Eucharist, so

apostolorum esse intelligentur, ubi est papa." Cf. Jung, *Alvaro Pelayo*, 148,n.1: "Et quod ubiqueque est papa, ibi est Ecclesia romana. . ." Baldus, on D.1,18,1,n.26, fol.44: ". . . puta ubi est palatium regis vel episcopi, sicut in regno regia civitas dicitur caput regni. . . Et in mensa, ubiqueque est dominus, ibi caput; sicut ubi Papa, ibi Roma, etiam si esset in quodam tugurio rusticano reclusus." Baldus, on D.3,2,3,n.2, fol.164, brings a new note (important for the formula *rex et patrie*; see below): "nota quod Roma et Imperator acquirantur. Unde verum quod notat Innocentius IV] ubi est Imperator, ibi est Roma, scilicet intellectualiter, quia idem iuris est de Imperatore et de urbe. . ." Baldus then can draw the conclusion (on D.5,1,2,3,n.1, fol.287v): ". . . Roma sit communis patria, et intelligo ubiqueque est Papa vel Imperator." See also Baldus, on c.4 X 2,24,n.1, fol.249, quoting Innocent IV: "Dicit Innocentius quod ubi est Papa, ibi est Roma, Hierusalem et mons Sion, ibi et est communis patria." For Rome as the *communis patria*, see above, Ch.III, n.89, also below, p. 247; and for the connection of Rome with Jerusalem, see Tierney, *Cath. Hist. Rev.*, XXXVI, 428,n.37, quoting Hostiensis ("Urbs ista [Roma] altera Jerusalem intelligentur") and referring to the Norman Anonymous. The theory of Rome-Jerusalem, of course, is ancient Christian; it was important in Christian art (see, e.g., for the Presentation in Santa Maria Maggiore, A. Grabar, *L'empereur dans l'art byzantin* [Paris, 1936], 216ff.), and it played later on a certain role also in legal literature; see, e.g., Oldradus de Ponte, *Consilia*, I,XXXV,1, fol.32. It would be certainly rewarding to investigate systematically the transfer of the Jerusalem-Idea to Rome. See, for a few remarks, Williams, *Norman Anonymous*, 137ff.

³⁶ Ambrose, *Sermones*, XXXVIII,c.2, PL, XVII,702B: "Ubique enim nunc Christus, ibi quoque Jordanus est."

³⁷ Scholz, *Streitschriften*, II,428, where the expression occurs twice.

that a later jurist could easily define the Church as a corporation "representing a person which cannot be said ever to have lived, because that person is neither corporeal nor mortal, since it is God."³⁸ Admittedly, Ockham could have defended his diction, since the first and second persons of the Trinity no longer were distinguished as clearly in his time as they were in the earlier Middle Ages.³⁹ Nevertheless, *corpus mysticum Dei* has a false ring; it is an expression indicative of that new direction of which William of Ockham was, in so many respects, the exponent.

To summarize, the notion of *corpus mysticum*, designating originally the Sacrament of the Altar, served after the twelfth century to describe the body politic, or *corpus iuridicum*, of the Church, which does not exclude the lingering on of some of the earlier connotations. Moreover, the classical christological distinction of the Two Natures in Christ, still powerfully alive in the political theology of the Norman Anonymous around A.D. 1100, has all but completely disappeared from the orbit of political discussions and theories. It has been replaced by the corporational, non-christological concept of the Two Bodies of Christ: one, a body natural, individual, and personal (*corpus naturale, verum, personale*); the other, a super-individual body politic and collective, the *corpus mysticum*, interpreted also as a *persona mystica*. Whereas the *corpus verum*, through the agency of the dogma of transubstantiation and the institution of the feast of *Corpus Christi*, developed a life and a mysticism of its own, the *corpus mysticum* proper came to be less and less mystical as time passed on, and came to mean simply the Church as a body politic or, by transference, any body politic of the secular world.

³⁸ Gierke, *Gen.R.*, III, 277, n.91, quoting Paulus de Castro (d.1499): "[ecclesial] universitas representans personam quae nunquam potest dici vixisse, quia non est corporalis nec mortalis, ut est Deus." The jurist could not have made this remark had he thought of the Church as the mystical body of Christ of whom it could not be said that he never lived.

³⁹ In the bull *Uranm sanctam*, e.g., Pope Boniface VIII, on the basis of I Cor. 11: 3, referred to the mystical body of the Church "cuius caput est Christus, Christi vero Deus." See also Aquinas, *Summa theol.*, III, q.viii, art.1, ad 2. For the extreme reluctance of earlier centuries to style God the Father *caput ecclesiae*, see, e.g., Peter of Poitiers, *Sententiae*, IV, c.20, PL, cxxi, 1215C, and, dependent on him, *Quaestiones Paracausenses trinitariae et christologicae*, ed. F. Stegmüller, in *Miscellanea Giovanni Mercati* (Studi e Testi, 122, Rome, 1946), II, 309f, §§4 and 6.

2. *Corpus Reipublicae mysticum*

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

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

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

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

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

⁴² *Policraticus*, v.c.2, ed. Webb, 1282ff. The organic doctrines certainly did not begin with John of Salisbury; they were fully developed, without then being original, in the works of contemporary jurists. See, e.g., Fitting, *Jur.Schr.*, 128.20 (above, n.10), the gloss on *princeps*: "Quasi primum caput, iudices enim capita sunt aliorum hominum, qui ab eis reguntur, ut membra a suis capitibus; sed princeps est caput aliorum iudicum et ab eo reguntur." There follows an explicit comparison of the dignities (*illustras, spectabiles*, etc.) with eyes, hands, chest, feet, etc., and also a comparison of the ecclesiastical dignities with the limbs of the human body. The organological metaphor, of course, is found also in Roman Law; see, e.g., C.9.8.5 (*Cod.Theod.*, 9.14.3): "Virtutum illustrium qui consiliis et consistorio nostro intensus, senatorum etiam, nam ipsi pars corporis nostri sunt." This passage was quoted, time and time again (see below, Ch. vii, nos.341f), and was applied also to the papacy; see, e.g., Johannes Andreae, *Novella*, on c.4 X 2.24 (Ventive, 1612), fol.184: "cum ipsi [cardinales] cum papa constituent ecclesiam Romanam, et sint pars corporis papae, ar.C. ad 1.Jul.mal.lquisquis (C.9.8.5)." See, in general, Nestle, "Mententus Agrippa" (above, n.6).

⁴³ *Speculum doctrinale*, vii.c.8, quoted by Gierke, *Gen.R.*, III,438n.73; cf. Maitland, *Political Theories*, 131. I was unable to find that place, but the expression, no doubt, became popular in Vincent's time and surroundings; see, e.g., Berge, *Fürstenspiegel*, 195, n.1, and 306, §15. [Gierke erred: read *Spec.Docr.* VII.c.15.]

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

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

The notion of *corpus mysticum* signified, in the first place, the totality of Christian society in its organological aspects: a body composed of head and members. This interpretation remained valid throughout the later Middle Ages until early modern times, even after the notion had been applied, by transference, to smaller groups of society. In addition, however, *corpus mysticum* acquired certain legal connotations; it acquired a corporational character signifying a "fictitious" or "juristic" person. We may recall that already Aquinas had used, as an alternative of *corpus mysticum*, the term *persona mystica*, which hardly differed from the *persona facta* of the jurists. In fact, it was chiefly among the lawyers, though not lawyers alone, that the organological interpretation was sided by or amalgamated with corporational contents, and that accordingly the notion of *corpus mysticum* was used synonymously with *corpus factum*, *corpus imaginatum*, *corpus repraesentatum*, and the like—that is, as a description of the juristic person or corporation. The jurists, thereby, arrived, like the theologians, at a distinction between *corpus verum*—the tangible body of an individual person—and *corpus factum*, the corporate collective which was intangible and existed only as a fiction of jurisprudence.⁴⁶ Hence, by analogy with theological usage as well as in contrast with natural persons, the jurists defined their fictitious persons not seldom as "mystical bodies." This term was applicable to every size and rank of *universitas* within the hierarchy of corporate communities of which mediaeval social philosophy, in a blending of Augustinian and Aristotelian definitions, distinguished five: household, neighborhood, city, kingdom, and universe.⁴⁷ Accordingly, a late mediaeval jurist, Antonius de Rosellis (b. 1386), enumerated, if with

⁴⁶ The transition from *corpus mysticum* to *universitas* in the legal sense is well illustrated by Oldradus de Ponte, *Consilia*, 204.n.1 (Lyon, 1550), 78r. The question was raised whether the Abbot of Cluny was the only head of the whole Order of the Cistercians. Oldradus answers by pointing at the analogy with the mystical body: "Et quod unum tantum sit caput, prout probatur primo ex corporis mystici ad corporis veri similitudinem. Sicut enim in corpore naturali unum est caput, alius dicitur declinare ad monstrum . . . sic et in corpore mystico. . . . Constat autem quod universitas et religio unum corpus representat" (follows allegation of the *lex mortua*; see below, Ch.vi.n.73). See Gierke, *Gen.R.*, III,428, for the various expressions describing the juristic person as distinguished from the natural person. See also above, n.16, for the expression *corpus figuratum* as an equivalent of *corpus mysticum*. For *universitas* and *corpus mysticum*, see Tierney, *Conciliar Theories*, 134ff.

⁴⁷ For the problem, see Fritz Kern, *Humana Civilitas* (Leipzig, 1913), 11.n.1; Dante, *Monarchia*, I.c.3.

slight alterations, five *corpora mystica* of human society—the *corpus mysticum* of each: village, city, province, kingdom, and world.⁴⁸ This was certainly a levelling down and a banalization of the originally very complex liturgical term. However, the notion of *corpus mysticum* was easily transferred to other secular units as well. Baldus, for example, defined *populus*, the people, as a mystical body. He held that a *populus* was not simply the sum of individuals of a community, but “men assembled into one mystical body” (*hominum collectio in unum corpus mysticum*), men forming *quoddam corpus intellectuale*, a body or corporation to be grasped only intellectually, since it was not a real or material body.⁴⁹ In a technical sense, Baldus’ “mystical body of the people” appears plainly as an equivalent of “polity” or *universitas* or, in the language of Aquinas and Aristotle, of any *multitudo ordinata*.⁵⁰ Nevertheless, the designation *corpus mysticum* brought to the secular polity, as it were, a whiff of incense from another world.

There was yet another notion which became popular during the thirteenth century, the notion of “body politic,” which is inseparable from both the age of early corporational doctrines and of the revival of Aristotle. Before long, the term “mystical body” became applicable to any *corpus morale et politicum* in the Aristotelian sense. It cannot be ventured here to assess Aristotle’s influence on late-mediaeval political language, or even to ask what it meant that henceforth, owing to Aristotle, the state not only was interpreted as a “body politic,” but also was qualified as a “body moral” or “ethical.” The state or, for that matter, any other political aggregate, was understood as the result of natural reason. It was an institution which had its moral ends in itself and had its own

⁴⁸ Antonius de Rosellis, *Monarchia sive Tractatus de potestate imperatoris et papae*, II, c.6, ed. Goldast, *Monarchia* (Frankfurt, 1668), 1312: “Nam sicut est in uno corpore naturali, ita est in pluribus mysticis corporibus [that the monarchy is the best form of government] . . . Et idem est in aliis mysticis corporibus universitatum, quia melius se habent cum per unum reguntur. Sunt enim secundum Philosophum quinque communitates . . . [cf. Gierke, *Gen.R.*, III, 545, n.64].” See, for the author, Karla Eckermann, *Studien zur Geschichte des monarchischen Gedankens im 15. Jahrhundert* (Abh. zur mitteleuropäischen und neueren Geschichte, LXXIII [Berlin-Grünwald, 1933]).

⁴⁹ For Baldus, see Gierke, *Gen.R.*, III, 428 n.37 and 431 f; also 433 n.61; see below, Ch. VII, n.70.

⁵⁰ Aquinas, *Summa theol.*, III, q. VII, a. 1, ad 2: “corpus . . . aliqua multitudo ordinata.”

ethical code. Jurists and political writers gained a new possibility to compare the state as a *corpus morale et politicum* with, or to set it over against, the *corpus mysticum et spirituale* of the Church.⁵¹

After Aquinas had ecclesiasticized the Philosopher, there remained no difficulty in combining Aristotelian concepts with ecclesiastical thought and terminology. Godfrey of Fontaines, a Belgian philosopher of the late thirteenth century, for example, succeeded in integrating very neatly the *corpus mysticum* into the Aristotelian scheme.⁵² To him the “mystical body” appeared not as a supra-natural foundation, but as a gift of nature. His major premise was that “everyone is [by nature] part of a social community, and thereby also a member of some mystical body.” That is, man is “by nature” a social animal; as an *animal sociale*, however, man is “by nature”—not “by grace”—also part of some mystical body, some social collective or aggregate, which Dante, a little while later, would easily define as “mankind” or *humana civitas*, whereas others might define it, as need be, in the sense of *populus*, *civitas*, *regnum*, or *patria*, or as any other social community and corporation, the ends of which were “moral” *per se*. A new halo descended from the works of Aristotle upon the corporate organization of human society, a halo of morals and ethics different from that of the ecclesiological *corpus mysticum*, yet by no means incompatible with it; in fact, *corpus mysticum* and *corpus morale et*

⁵¹ Aristotle, *Polit.*, III, 6ff (1280a-1282b), and Aquinas, *In libros Politicorum Aristotelis*, III, lect. VI and VIII, ed. Raymundus M. Spiazzi (Turin and Rome, 1951), 141 f. For the moral character of the state according to Aristotle, see also Max Hamburger, *Morals and Law: The Growth of Aristotle's Legal Theory* (New Haven, 1951), esp. 177 f. The essence of the state as a *corpus morale* consists, of course, in the fact that its ends aim at some good, actually “the greatest good and the good which is most pursued; for the good in the sphere of politics is justice.” Aquinas, in his *Prooemium* to the Aristotelian *Politics* (§6, ed. Spiazzi, p. 2), stressed that the *scientia politica* was according to customary classification a *scientia moralis*; Aristotle, though of course not a “corporationalist” in the later sense, has nevertheless supported corporational interpretations by his doctrine holding that the city—and, for that matter, every whole—was prior to its parts, and that neither foot nor hand would exist were there not a whole body, a doctrine which was gist to the mills of the organologists and which Aquinas emphasized also very strongly (*In Polit. Arist.*, I, 1, §35f, ed. Spiazzi, 11 f).

⁵² Godfrey of Fontaines, *Quaestiones ordinariae*, 1, 2, 5, ed. Odon Lottin (Philosophes Belges, XIV, Louvain, 1937), 89; cf. G. de Lagarde, “La philosophie sociale d’Henri de Gand et de Godefrid de Fontaines,” *L’Organisation corporative du moyen âge à la fin de l’ancien régime*, VII (Recueil de travaux d’histoire et de philologie, 5^e série, XVIII, Louvain, 1943), 64.

politicum became almost interchangeable notions, and they were lined up with the same ease with which Dante assembled the terrestrial paradise and the celestial paradise on one denominator as the two goals of mankind.

This assertion will be borne out by the jurists who, especially when discussing the inalienability of fiscal property, fell to the metaphor of the ruler's marriage to his realm. This metaphor, though not unknown in Antiquity,⁵³ will not easily be found in the earlier Middle Ages. It is true, of course, that ever since Carolingian times, the mediæval Prince received at his coronation, together with other symbols and insignia, a ring. The ecclesiastical writers, however, were careful to point out that this ring was conferred only as a *signaculum fidei* and to distinguish it from the episcopal ring by which the bishop, at his ordination, became the *sponsus*, the groom and husband of his church, to which he was married, a simile on which the canonists sometimes expanded at great length.⁵⁴ The secular marriage metaphor, however, became rather popular in the later Middle Ages when, under the impact of juristic analogies and corporational doctrines, the image of the Prince's marriage to his *corpus mysticum*—that is, to the *corpus mysticum* of his state—appeared to be constitutionally meaningful.

It would be difficult to tell when and where or by whom the canonistic metaphor was first transferred to secular legal-political thought.⁵⁵ It may have been fairly common around 1300 when,

⁵³ See below, n.59.

⁵⁴ For a brief survey of the history of the ring in connection with the imperial coronations, see Eichmann, *Kaiserkrönung*, II, 94ff (also Index, s.v. "Ring"). The significance of the episcopal ring was widely discussed during the Struggle of Investiture; see the numerous tracts and poems *De anulo et baculo*, in *MGH, LL*, II, 908ff; III, 720ff; 723ff; 726ff. The ritual of the "Bestowal of the Ring" at episcopal consecrations differed sometimes very little from the corresponding ritual at coronations: the episcopal ring likewise was called *fidei signaculum*, and the marriage formula (*quatenus sponsam . . . custodias*) was not always included at the ordinations; see, e.g., Andrius, *Pontifical romanus*, 148 and 149. See below, nos. 55 and 61, for the canonistic marriage metaphor.

⁵⁵ See Mochi Onory, *Fonti canonistiche*, 151n.1, for excerpts from Huguccio's gloss on c.10.D.63, v. '*subscripta relatio*', the complete text of which (from *Cim.10247, fol.69b^{va}*), together with references to later canonists, I owe to the kindness of Dr. Robert L. Benson. Without referring specifically to D.50.17.30 ("Nuptias non concubitus, sed consensus facit") he compares a bishop's election to a matrimonial consent: "Item electio dicitur vinculum, quod ex mutuo consensu, scilicet eligentium et electi, contrahitur inter eos matrimonium spirituale, ut ille iam dicitur sponsus istius ecclesie vel istorum clericorum et hec ecclesia sponsa ipsius." The same idea is repeated in the *Gloss.ord.* (Johannes Teutonicus), on c.10.D.63, v.

for example, Cynus of Pistoia produced it in a more or less casual fashion in his commentary on Justinian's *Code*. While discussing the extent of power accorded to an emperor elect, he considered the Prince's election on the part of the *respublica* and his acceptance of the election as a kind of contract or mutual consent similar to the one upon which matrimony was based, and then briefly expanded on that comparison which obviously impressed him because he thought it was striking.

And the comparison between the corporeal matrimony and the intellectual one is good: for just as the husband is called the defender of his wife . . . so is the emperor the defender of that *respublica*.⁵⁶

Cynus, whose arguments were repeated almost verbatim by Albericus de Rosate,⁵⁷ wrote his commentaries on the *Code* between 1312 and 1314. In those years others as well availed themselves of that comparison. In 1312, for example, one of the Italian jurists

'*relatio*', and in the *Apparatus 'Ius naturale'* (Kuttner, *Repertorium*, 67ff), on the same canon, v. '*subscripta*' (Paris, Bibl.nac.MS.lat.15393, fol.49), where Huguccio is quoted: "et secundum Ug(uccionem) ex electione et electi consensu legitimo." See also a decretal of Innocent III (c.2 X 1.7; Friedberg, II, 97): ". . . non debeat in dubium revocari, quin post electionem et confirmationem canonicam inter personas adhibentium et electi coniugium sit spirituale contractum." Finally Bernard of Pavia, *Summa decretalium*, 1.45, ed. E. A. T. Laspeyres, *Bernardi Papiensis Fraterrini episcopi Summa Decretalium* (Regensburg, 1860), p.8: ". . . dum approbat [electus] de se factam electionem, ecclesie sponsus efficitur propter mutuum consensum." Both Huguccio and the *Apparatus 'Ius naturale'* parallel the bishop's election with that of the emperor; see, for Huguccio, Mochi Onory, *loc.cit.*; the *Apparatus* says quite succinctly: "et sicut principes imperatorem dicuntur facere, et ita clerici prelatum electi, et" whereby the preceding clause mentions the "matrimonium inter episcopum et ecclesiam contractum." Hence it may be said that sooner or later the matrimonial idea was almost bound to be transferred to the Prince and the *respublica*. See next note.

⁵⁶ Cynus, on C.7.37.3.n.5 (Frankfurt, 1578), fol.446b: "quia ex electione Imperatoris et acceptione electionis Reipublice iam prepositus negari non potest et eum in consecutum esse, sicut consensus mutuo fit matrimonium . . . Et bona est comparatio illius corporalis matrimonii ad istud intellectuale: quia sicut maritus defensor uxoris dicitur . . . ita et Imperator Reipublice . . ." The allegations of Cynus refer exclusively to Civil Law; it is obvious nevertheless that his arguments follow those of the canonists, though it is noteworthy that the *matrimonium spirituale* of the canonists has been transformed into a *matrimonium intellectuale*. I was unable to ascertain whether perhaps one of Cynus' teachers, Jacobus de Ravanis (Révigny) or Petrus de Bellaperica (Belleperche), had used the marriage metaphor before.

⁵⁷ Albericus de Rosate, on C.7.37.3.n.12 (*Venice*, 1585), fol.107ra: "quia sicut matrimonium consensus pericitur . . . [D.50.17.30], sic ex mutuo consensu eligentium et electi ius plenum consequitur Imperator . . . Nota ergo quod ex quo res administrat, et est bona argumentatio matrimonii carnalis ad istud intellectuale, quia sicut maritus est defensor uxoris . . . [Inst. 4.4.2], ita Imperator Reipublice . . ."

in the surroundings of Emperor Henry VII found it suitable to compare the emperor's coronation to a marriage rite.⁵⁸ None, however, was so explicit about this comparison or carried it to such an extreme as Lucas de Penna, the Neapolitan jurist, who wrote his commentary on the *Tres Libri*, the last three books of the *Code*, around the middle of the fourteenth century.

Lucas de Penna commented on a law concerning "Occupation of Desert Land" (C.1.1,58,7), excepting, however, lands belonging to the fisc and the princely patrimony. He started his arguments with a quotation from Lucan's *Pharsalia*, where Cato was styled "father to the City [of Rome] and the City's husband."⁵⁹ From this opening, the jurist made his way to the apostolic lesson of the Marimonial Mass, which gave him a chance to discuss a fundamental law of the state on the basis of Ephesians 5. To Lucas de Penna, the Prince was plainly the *maritus reipublicae* whose wedlock with the state appeared as a *matrimonium morale et politicum*. Based on this premise, Lucas then could argue by analogy.

There is contracted a moral and political marriage between the Prince and the *respublica*. Also, just as there is contracted a spiritual and divine marriage between a church and its prelate, so is there contracted a temporal and terrestrial marriage between the Prince and the state. And just as the church is in the prelate, and the prelate in the church . . . , so is the Prince in the state, and the state in the Prince.⁶⁰

⁵⁸ See the Memorandum of John Branchazolus, *legum doctor* of Pavia, ed. Edmund E. Stengel, *Novia Aemaniae* (Berlin, 1921), I, No. 90, li. 86, p. 50. For another vague comparison of that kind, see Ullmann, *Lucas de Penna*, 176, n. 1, who, however, does not seem to have evaluated the interesting passages referred to in the notes following below.

⁵⁹ Lucas de Penna, on C.1.1,58,7, n. 8, p. 563: "Item princeps si verum dicere vel agnoscere volumus . . . , est maritus reipublicae iuxta illud Lucani" There follows the quotation from Lucan, *Pharsalia*, II, 388: *urbis pater urbiq; maritus*. For the history of the Roman *pater* title, see the admirable essay of Alfeldt, "Die Geburt der kaiserlichen Bildsymbolik," *Museum Helveticum*, IX (1932), 204-243; X (1933), 103-124; XI (1934), 133-169. The title *urbis maritus* is not too rare either; see, e.g., Servius, XI, 472, who, like Priscian, quotes Lucan. See, however, Aristophanes, *Aves*, 1706ff, where *gauloena* is called the bride of Alcibiades. Lucas de Penna actually may have elaborated on Cynus whose writings he used abundantly. See, for the following paragraphs, also my paper on "Mysteries of State," *Harvard Theological Review*, XLVIII (1955), 76ff.

⁶⁰ Lucas de Penna, *loc. cit.*: "Inter principem et rempublicam matrimonium morale contrahitur et politicum. Item, sicut inter ecclesiam et praelatum matrimonium spirituale contrahitur et divinum . . . , ita inter principem et rempublicam matrimonium temporale contrahitur et terrenum; et sicut ecclesia est in praelato et praelatus in ecclesia . . . , ita princeps in republica et republica in principe." There follows the passage quoted above, n. 29. The simile of the Prince's marriage

We notice that the jurist availed himself of the very old metaphor of the mystical marriage contracted between the bishop and his see in order to interpret the new relations between Prince and state.⁶¹ Actually, Lucas de Penna quoted verbatim a passage from Gratian's *Decretum*: "The Bishop is in the Church, and the Church in the Bishop."⁶² What the history of this formula implied remains to be seen;⁶³ but it is not too difficult to recognize whence the Tudor lawyers derived their maxims, when they explained that "the king in his body politic is incorporated with his subjects, and they with him."⁶⁴

To illustrate his argument, Lucas de Penna quoted Seneca addressing Nero: "You are the soul of the *respublica*, and the *respublica* is your body."⁶⁵ He achieved the same effects, however, by continuing his political exegesis of Ephesians 5, and applying

to the *respublica* has been carried by Lucas de Penna to far greater detail than it seemed necessary to indicate here. In that respect, however, he had a predecessor in Huguccio (above, n. 55) who not only compared the election to the matrimonial *consensus*, but considered the consent to the election on the part of the ecclesiastical superior synonymous with the consummation of the marriage, or else the ordination with the *concupiscit*. ("Sicut enim in matrimonio carnali precedit matrimonium in dispensatione per verba de presenti, et postea sequitur carnalis coniunctio, sic et hic in mutuo consensu precedit matrimonium spirituale et postea sequitur quasi carnalis coniunctio, cum iam ecclesiam disponsit et ordinat"). And even for the case that the bishop should be debarred temporarily from his office or otherwise suspended Huguccio found a matrimonial simile: "Idem est in marito et uxore tempore menstrui vel partus vel diurnum quadragesimalium . . ."

⁶¹ The metaphor, of course, goes back to Eph. 5: 25 ("sicut et Christus dilexit ecclesiam"), which is basic also for the nuptial mass. The early Christian marriage rings, therefore, displayed on the bezel the marriage of Christ to the Church; see O. M. Dalton, *Catalogue of Early Christian Antiquities and Objects from the Christian East . . . of the British Museum* (London, 1901), 139 and 131; there are many more specimens, a particularly beautiful one in the Dunbarton Oaks Research Library and Collection, at Washington, D.C. The bishop's marriage to his see is mentioned in the rite of the episcopal ordination; see above, n. 54. See further the decretal of Innocent III, c. 2 X 1, 7, ed. Friedberg, II, 97. Pope Clement II, who refused to divorce himself from his bishopric Bamberg, alluded to this marriage in most telling words (Clement II, *Ep.*, VII, PL, CXIII, 588B); contrariwise, the abdication of Pope Celestine V was interpreted, especially by the adversaries of his successor Pope Boniface VIII, as an uncanonical "divorce" from the universal Church to which the pope was married; see, e.g., P. Dupuy, *Histoire du différend d'entre Pape Boniface VIII et Philippe le Bel* (Paris, 1655), 453ff, and passim; Burdach, *Rienzo*, 52f.

⁶² See c. 7, C. VII, qu. 1, ed. Friedberg, 1568f.

⁶³ See below, Ch. VII, nos. 399-409.

⁶⁴ See above, Ch. I, n. 13; Bacon, *Post-nati*, 667.

⁶⁵ Seneca, *De clementia*, 15, 1: ". . . tu animus rei publicae tuae es, illa corpus tuum." Lucas de Penna, *loc. cit.*, n. 8, p. 564. The passage is quoted, in the same connection, also by Andreas of Isernia, *Prooemium in Libaung*, ed. Cervone, p. xxvi.

to the Prince the versicle: "The man is the head of the wife, and the wife the body of the man." And logically, or analogically, he concluded: "After the same fashion, the Prince is the head of the realm, and the realm the body of the Prince."⁶⁶ The corporational tenet, however, was formulated even more succinctly, as he continued:

And just as men are joined together spiritually in the spiritual body, the head of which is Christ . . . , so are men joined together morally and politically in the *respublica*, which is a body the head of which is the Prince.⁶⁷

We may record again the Aristotelian undertone. Above all, however, we envisage here that bold equation by which "the Prince, who is the head of the mystical body of the state" (as Enea Silvio later phrased it⁶⁸), was compared with Christ, the head of the mystical body of the Church. Lucas de Penna, by his *quid pro quo* method, thus arrived at an equiparation not only of Prince and bishop as the grooms of realm and diocese, but also of Prince and Christ. In fact, the jurist made the parallel with Christ poignantly clear, when he added:

Just as Christ joined to himself an alien-born as his spouse, the Church of Gentiles . . . , so has the Prince joined to himself as his *sponsa* the state, which is not his. . . .⁶⁹

Thus, the venerable image of *sponsus* and *sponsa*, Christ and his Church, was transferred from the spiritual to the secular and adapted to the jurist's need for defining the relations between

⁶⁶ Lucas de Penna, *loc.cit.*: ". . . item, sicut vir est caput uxoris, uxor vero corpus viri [Eph. 5: 23] . . . , ita princeps caput reipublicae, et res publica eius corpus." Lucas de Penna adds: *secundum Plutarchum*, meaning Pseudo-Plutarch, quoted by John of Salisbury, *Policraticus*, vi ff (above, Ch.v, n.20), whom the medieval jurists alleged very frequently; see Ullmann, "The Influence of John of Salisbury on Medieval Italian Jurists," *EHR*, lxx (1944), 387-n.4.

⁶⁷ Lucas de Penna, *loc.cit.*: "Item, sicut membra coniunguntur in humano corpore carnaliter, et homines spirituali corpori spiritualiter coniunguntur, cui corpori Christus est caput . . . , sic moraliter et politice homines coniunguntur reipublicae quae corpus est: cuius caput est princeps . . ."

⁶⁸ Enea Silvio Piccolomini, *De ortu et auctoritate imperii Romani*, ed. Gerhard Kallen, *Aeneas Silvius Piccolomini als Publizist* (Stuttgart, 1939), 82, lines 418ff; see below, n.212.

⁶⁹ Lucas de Penna, *loc.cit.*: "Amplius sicut Christus alienigenam, id est, gentilem ecclesiam sibi copulavit uxorem . . . , sic et princeps reipublicam quae, quantum ad dominium, sua non est, cum ad principatum assumitur, sponsam sibi coniungit . . ." Lucas de Penna here refers to cum. C. lxxv, qu. 1, ed. Friedberg, I, 1263 (Gratian's commentary on Augustine, *Civ. Dei*, xv, c.16).

Prince and state—a state which, as a mystical or political body, was an entity in its own right, independent of the king and endowed with property which was not that of the king. What Lucas de Penna aimed at when enlarging on the Prince's *matrimonium morale et politicum*, was to illustrate a fundamental law: the inalienability of fiscal property.⁷⁰ Very appropriately, therefore, he interpreted the fisc as the dowry of the bridal *respublica*, and explained that a husband was entitled only to use the property of his wife, but not to alienate it. He further paralleled the vows, exchanged by groom and bride at their marriage, to the oaths taken at their consecration by king and bishop, by which both dignitaries promised not to alienate property belonging to the fisc and to the church respectively.⁷¹

It is perhaps of minor importance here to recall that Aristotle compared matrimony to a "political" government, whereas he claimed that the power a man had over his children resembled a "regal" government. Lucas de Penna may or may not have thought of this particular passage;⁷² his debt to Aristotle, at any rate, should not be minimized. The real importance of Lucas de Penna's juristic analogies and equiparations has to be sought elsewhere. His model for the relations between Prince and state was—on the

⁷⁰ See below, Ch.vii, on "Inalienability."

⁷¹ Lucas de Penna, *loc.cit.*, n.9, p.564: "Nam equiparantur quantum ad hoc etiam iuramentum super his praestitum de alienatione facta non revocando episcopus et rex. Ita et principis alienatio rerum fiscalium, quae in patrimonio imperii et reipublicae sunt et separate consistunt a privato patrimonio suo, iuste noscitur interdicta. Ita et fortius non potest princeps fiscalem rem alienare quae plus est in bonis reipublicae quam actio iuridarum in bonis ecclesiae. . . . Nam et fiscus est pars reipublicae. . . ." On this basis, Lucas de Penna then identified the fisc with the *dos* of the *respublica*. Naturally, the *patrimonium Petri* figures as the *dos* of the papal *sponsa*, the Roman Church; see, e.g., Oldradus de Ponte, *Consilia*, lxxxv, n.1 (Lyon, 1550), fol.28^r, who admonishes the pope in Avignon "ut sanctias vestra reverentia ad sponsam . . . et reparat suum patrimonium et suam dotem, quae multipliciter est collapsa." See, for the problem of the *dos* in the spiritual marriage of Christ to the Church, Aquinas, *Summa theol.*, Suppl.ii, qu. xcv, art. 1 and 3; the difficulties of assessing the *dos* were particularly great because, as Aquinas points out (art. 1, ad 2), "pater sponsi (scilicet Christi) est sola persona Patris; pater autem sponsae est tota Trinitas"; also, because owing to the oneness with the "mystical body," Christ "nominat se etiam sponsam, et non solum sponsum" (art. 3, ad 3).

⁷² Aristotle, *Polit.*, 1299a; Aquinas, *In Polit. Arist.*, I, lect. x, §152, ed. Spiazzi, 47f: "Vir principatum mulieri politico principatu, id est sicut aliquis, qui eligitur in rectorem, civitatis praestat." In addition, Aristotle discusses the despotic and paternal governments. Perhaps Lucas de Penna, *loc.cit.*, had this passage in mind, when he added: "Praeterea quoque et vir non nisi per electionem assumitur, sicut et princeps."

basis of Gratian's *Decretum*—the bishop in his relations to his church, patterned after the model of Christ in his relations to the universal Church. The Church as the supra-individual collective body of Christ, of which he was both the head and the husband, found its exact parallel in the state as the supra-individual collective body of the Prince, of which he was both the head and the husband—"The Prince is the head of the realm, and the realm the body of the Prince." In other words, the jurist transferred to the Prince and the state the most important social, organic, and corporational elements normally serving to explain the relations between Christ and the Church—that is, Christ as the groom of the Church, as the head of the mystical body, and as the mystical body itself.

Strange though this kind of political theology may appear to us, it was not the result of a personal whim of Lucas de Penna. The analogy of the *corpus mysticum* served to clarify the relations between the estates of the body politic and their king, and the marriage metaphor served to describe the peculiar nature of the fisc. Hence, comparisons of that kind were not restricted to Lucas de Penna, though it must be admitted that his arguments exercised a surprisingly great influence in later times, especially in sixteenth-century France, where both the *corpus mysticum* analogy and the metaphor of the king's marriage to his realm were linked with the fundamental laws of the kingdom of France.

The comparison of the state with a *corpus mysticum* had deep roots in France. It fell in with the mysticism of French kingship, which reached its first growth in and after the times of Charles V, and at the same time it counterbalanced the royal mysticism by a mysticism of the estates. Jean Gerson (1363-1429), the Chancellor of the University of Paris, for example, spoke with some regularity about the *corpus mysticum* of France whenever he discussed the organic structure of the realm as it appeared in the three estates. He reverted to a customary argument and declared that just as in the natural body all members exposed themselves to protect the head, so were in the "mystical body" all subjects held to defend their lord;⁷³ he warned the people that each be content

with his status, for otherwise l'ordre du corps mystique de la chose publique seroit tout subverti;⁷⁴ on the other hand, he demanded that taxes for the protection of the king and the realm should be distributed evenly per totum corpus mysticum;⁷⁵ and it was likewise in connection with the three estates, when, in one of his letters about the education of the Dauphin, he lets the young Prince meditate: "Thou hast those of the first estate [the chivalry] as the very strong arm to defend thy mystical body, which is the royal polity"—an identification of the Prince with the body politic or mystic which was by no means the rule, but which led Gerson promptly to attribute to the king, not as yet two bodies, but at least two lives, one "natural" and the other "civil or political."⁷⁶

Jean de Terre Rouge, a French jurist (ca. 1418-19), a vigorous defender of the Dauphin's (Charles VII's) right to succeed to the French throne, and an ardent constitutionalist, mentioned the *corpus mysticum* of France likewise in connection with the estates. He argued that the succession to the throne was established by ancient custom and was introduced by the consent of the three estates "and of the whole civic or mystical body of the realm." He pointed out that the royal or secular dignities of the realm were not privately owned but public, because they belonged "to the whole civic or mystical body of the realm" just as did the ecclesi-

⁷⁰6), IV.597B/C: "Secundum quod per naturalem instinctum omnia membra in uno solo corpore esse exponunt pro capitis salute, pariformiter esse debent in corpore mystico verorum subditorum ad suum dominum."

⁷⁴ Schäfer, 58,n.101, quoting the oration of 1413, *Rex in septimum vite, in Opera*, IV.676.

⁷⁵ Schäfer, 53,n.77, quoting *Vivat rex*, in *Opera*, IV.616C/D: "Postquam necessarium est ad protectionem et vitae civilis, regis et regni nutritionem et conservationem accipere et levare subsidia, id in bona aequalitate aut aequalitate per totum corpus mysticum fieri debet."

⁷⁶ *Opusculum de meditationibus quas princeps debet habere*, c.2, ed. Antoine Thomas, *Jean de Gerson et l'éducation des Dauphins de France* (Paris, 1920), 37: "Habes illos de primo statu tanquam brachia fortissima ad corpus tuum mysticum, quod est regalis politica, defendendum." Gerson renders here, as it were, a soliloquy of the Dauphin. For the king's "two lives," see Gerson, *Vivat rex*, II, prol., in *Opera*, IV.592: "De secunda Regis vita verba faciemus, civili videlicet et politica, que status regalis dicitur aut dignitas. Estque eo melior sola vita corporali, quo ipsa est diuturnior per legitimam successionem." See also *Vivat rex*, I, consid. iv, in: *Opera*, IV.591: "Pater post naturalem, aut civilem, mortem in filii sui adhuc vivit persona" (the "civil death" of the king would take place, e.g., in the case of an abdication or of mental incapability), which was true in 1405, when Gerson wrote his tractate, since Charles VI was insane). Actually Gerson seems to add a third or spiritual life; for in the *salutatio* of the tractate he exclaims: "Vivat [rex] corporaliter, vivat politice et civiliter, vivat spiritualiter et indesinenter."

⁷³ Carl Schäfer, *Die Staatslehre des Johannes Gerson* (Cologne diss., 1935), 55,n.86, quoting *Vivat rex*, in Gerson, *Opera omnia*, ed. Ellies du Pin (Antwerp,

astical dignities which belonged to the churches; therefore, the king could not make arbitrary dispositions about the succession to the throne.⁷⁷ Claude de Seyssel, a jurist in the administration under Louis XII, availed himself of words similar to those of Jean Gerson when he warned that, unless the subjects of every estate were content with their lot, the result might be "the ruin of the monarchy and the dissolution of this mystical body."⁷⁸ And at the end of the sixteenth century, Guy Coquille, a jurist going his own way, stated in so many words that the king as the head and the three estates as the members "together form the body politic and mystic" of the realm.⁷⁹

Here as elsewhere we find that in the organological concept of "body politic and mystic" the constitutional forces remained alive which limited the royal absolutism. This became manifest when, in 1489, the Parlement of Paris, France's supreme Law Court, remonstrated against the pretensions of the King's Council under Charles VIII. The Parlement, a body headed by the king and composed of the Twelve Peers, the Chancellor, the four Presidents of Parlement, a few officers and councillors, and of a hundred other members (allegedly after the model of the Roman Senate), objected to interference and proclaimed itself "un corps mystique mêlé de gens ecclésiastiques et laïcs . . . représentants la personne du roy," because this highest court of the kingdom was "the sovereign Justice of the Realm of France, and the true throne,

⁷⁷ Jean de Terre Rouge, *Tractatus de iure futuri successoris legitimi in regis hereditatibus*, I, art.1, conclusio 24, published as an Appendix of François Hotman, *Consilia* (Arras, 1586), p.94: "Consuetudo . . . fait et est introducta ex consuetudine statum et totius corporis civilis sive mystici regni [follow allegations from the *Decretum*, including c.24, D.xciii: "exercitius imperatorem faciat," rendered by Terre Rouge: "exercitius populi facit regem, sive imperatorem"] . . . Praeterea dignitates regiae sunt totius corporis civilis sive mystici regni: sicut dignitates ecclesiasticae sunt ecclesiarum." See, for Terre Rouge, A. Lemaître, *Les lois fondamentales de la monarchie française d'après des théoriciens de l'ancien régime* (Paris thesis, 1907), 58; J. M. Potter, "The Development and Significance of the Salic Law of the French," *EHR*, LV (1937), 244; Church, *Constitutional Thought*, 29, n.20; also Hartung, "Krone," 29 n.3; Jean Comte de Pange, *Le roi très chrétien* (Paris, 1949), 427f.

⁷⁸ Church, *Constitutional Thought*, 34 n.36.

⁷⁹ Guy Coquille, *Les oeuvres* (Paris, 1666), 1323, quoted by Church, 278, n.16: "Car le Roy est le Chef, et le peuple des Trois Ordres sont les membres, et tous ensemble sont le corps politique et mystique. . . ." Coquille adheres to the customary organological interpretation: "Cette distinction des Trois Ordres au corps politique a correspondance à ce qui est du corps humain qui est composé de trois principales parties . . . qui sont le cerveau [Clergy], le coeur [Nobility] et le foye [Third Estate]."

authority, magnificence, and majesty of the king himself."⁸⁰ The idea was, of course, that the king and his council could not act against the Parlement, because this "mystical body" was representative of, or even identical with, the person of the king.

Likewise in the sense of limitation, the French jurists used the metaphor of the king's marriage to the realm; for this metaphor harbored another fundamental law of the country, the inalienability of the fisc. Here the French authors were largely under the influence, direct or indirect, of Lucas de Penna. His formulations were repeated verbatim by Charles de Grassaille, writing under Francis I, who styled the king the *maritus reipublicae* and talked about the *matrimonium morale et politicum* which the king contracted after the model of the prelate who wedded his church.⁸¹ He as well as others—René Choppin, François Hotman, Pierre Grégoire, finally also Bodin—held that the king, when marrying the realm of France, received from the *republica* the fiscal property as a dowry, and that this dowry was inalienable.⁸² The jurists, however, were probably responsible even for an actual change in the coronation ceremonial of the French kings. Grassaille wrote his great work *On the Regalian Rights of France* in 1538.⁸³ On the

⁸⁰ The Remonstrance of 1489, to which Dr. R. E. Ciesey kindly called my attention, was published by Edouard Maugis, *Histoire du Parlement de Paris* (Paris, 1913), 1374f.

⁸¹ Charles de Grassaille, *Regalium Franciae libri duo*, I, ius xx (Paris, 1545), 217: "Rex dicitur maritus reipublicae. . . . Et dicitur esse matrimonium morale et politicum: sicut inter ecclesiam et Praetatum matrimonium spirituale contrahitur. . . . Et sicut vir est caput uxoris, uxor vero corpus viri. . . . Ita Rex est caput reipublicae et reipublica eius corpus." The whole passage stems from Lucas de Penna; see above, nos. 59 and 66. See, for Grassaille, Church, *Constitutional Thought*, 47f, 57f. It may be mentioned *obiter* that the combination of "moral and political" is found over and over again since the 13th century; see, e.g., Pierre Dubois, *De recuperatione Terrae Sanctae*, c.109, ed. Langlois (Paris, 1891), 96: "moraliter et pollice loquendo" (following and preceding quotes from Aristotle).

⁸² René Choppin, *De Dominio Franciae*, tit.1, n.2 (Paris, 1605), 203: Sicut enim Lege Julia dos est a marito inalienabilis: ita Regium Coronae matrimonium individua Reipublicae dos" (see also below, n.83). François Hotman, *Francogallia*, c.1x.n.5 (Frankfurt, 1588), 66f: "Est enim Dominium regum quasi dos regni," and "Par idemque esse ius Regium in sum Dominium quod est viri in dotem suae uxoris," quoting Lucas de Penna (*Francogallia* was first published in 1576, though without Chapter ix). See Lemaître, *Lois fondamentales*, 100, for the marriage metaphor, and 93 n.2, for the editions (also 99 n.2). Pierre Grégoire, *De Republica*, ix.1, 11 (Lyon, 1609; first published in 1578), 267A: the Prince as *sponsus reipublicae* and the fisc as the *dos pro oneribus danda*. See, for Bodin (*De republica*, vi.2, n.641) and others, Vassalli, "Fisco," 198 nos. 3-4, and 201.

⁸³ Above, n.81. It is most unlikely that Grassaille should have been the first to hark back to the formulations of Lucas de Penna, whose work was reprinted in

accession of Henry II of France, in 1547, we find, for the first time in a French Coronation Order, the almost juristic rubric before the Bestowal of the Ring, saying that by this ring "the king solemnly married his realm" (*le roy espousa solennellement le royaume*).⁸⁴ The rubrics of the Order of 1594 were more explicit. They said that the king, on the day of his consecration, married his kingdom in order to be inseparably bound to his subjects that they may love each other mutually like husband and wife, and that the Bishop of Chartres presented to the king the ring *pour marque de ceste reciproque conjunction*.⁸⁵ This is the spirit of Cyprian and

France no less than six times during the 16th century, beginning with the edition of Paris, 1509; see Ullmann, *Lucas de Penna*, 14,n.2. Actually, Master Jacques Cappel, the king's advocate in the Parlement of Paris, may have availed himself of Lucas de Penna's metaphors in a *plaidoyé* of 1536, which is quoted by Pierre Dupuy, *Traitez touchants les droitz du Roy* (Paris, 1655), 275: "... par les droitz commun, divin et positif le sacre patrimonie de la Couronne et ancien domaine du Prince ne tombe au commerce des hommes, et n'est convenable à autre qu'au Roy qui est mari et époux politique de la chose publique, laquelle luy apporte à son Sacre et Couronnement ledit domaine en dot de sa Couronne, lequel dot les Rois à leur Sacre et Couronnement tirent solennellement ne jamais aliener pour quelque cause que ce soit, comme aussi il est inalienable." Cf. *Plaidoyez de feu ministre Jacques Cappel* (Paris, 1561), p. 11. It is easy to recognize the arguments of Lucas de Penna, and there is no need to assume that the passage could not have been written before the revision of the rubrics at the "Bestowal of the Ring" in the French coronation ceremonial (see nos. 84-85).

⁸⁴ Th. Godefroy, *Le Cérémonial de France* (Paris, 1610), 348. It is true that a "Benediction of the Ring," borrowed from the rite of episcopal ordinations, was introduced into the Coronation Order of Charles V; see *The Coronation Book of Charles V of France*, ed. E. S. Dewick (Bradshaw Society, XVI, London, 1899), 33 (cf. p.83); Schramm, *König von Frankreich*, 1288f. (cf. II, 117), holds that this borrowing from the episcopal rite, all by itself, would imply the king's marriage to the realm. However, the decisive words of the episcopal "Bestowal of the Ring" (*sponsam Dei . . . illibate custodias*) are lacking; moreover, the jurists had used the image at a far earlier date, and in the French *Ordines* of the Coronation the metaphor is first found in 1547. That the prayer at the Bestowal of the Ring in the episcopal ordination has also its history is a matter which is of no concern here. See above, n.54.

⁸⁵ Godefroy, *Cérémonial*, 661: "ANNEAU ROYAL: Parce qu'au jour du Sacre le Roy espousa solennellement son Royaume, et fut comme par le douz, gracieuz, et amiable lien de mariage inseparablement uny avec ses subjects, pour mutuelle-ment s'entraimer ainsi que sont les epoux, luy fut par le dit Evesque de Chartres presenté un anneau, pour marque de ceste reciproque conjunction." The rubric after the prayer says that the same bishop "mit le dit anneau, duquel le Roy espousoit son Royaume, au quatrieme doigt de sa main dextre, dont procede certaine veine atouchant au coeur." See, for the last remark concerning the ring finger, Gratian's *Decretum*, c.7,CXXXV,qu.5, ed. Friedberg, I,1106. Allusions to this marriage ritual are found frequently in later times; see, e.g., *Recueil des anciens loiz françoises*, ed. Isambert, Taillandier, and Decrusy (Paris, 1829), XV,328, No.191, where Henry IV, in his edict (of 1607) concerning the reunion to the Crown of his private patrimony of Navarre, says about his predecessor kings that "ils ont

Gratian's *Decretum* in its twisted version—the realm is in the king; and the king in the realm; the subjects are incorporated in the king; and the king in the subjects.⁸⁶ Little wonder then that the doctrine of the *corpus mysticum* of the Church, married to its divine *sponsus*, came full circle, when one of the jurists, René Choppin, went so far as to say that "the king is the mystical spouse of the *respublica*."⁸⁷

In mediaeval England, the marriage metaphor seems to have been all but non-existent, though in the speech to his first Parliament (1603) James I said:

"What God hath conjoined then, let no man separate." I am the husband, and all the whole island is my lawful wife; I am the head, and it is my body; I am the shepherd, and it is my flock.⁸⁸

With the *corpus mysticum* tenet, however, England was indeed very familiar. After all, England's greatest jurist of the Lancastrian period, Sir John Fortescue, talked without hesitation about the "mystical body" of the realm. In an important chapter of his *De laudibus legum Anglie*, in which he rendered the essence of his political doctrines, Fortescue discussed the origin of kingdoms ruled "politically"—that is, according to Aristotelian terminology, ruled by the whole body politic of the realm—as opposed to kingdoms such as France, which were ruled "regally"—that is, by the king alone.⁸⁹ If a people, wrote he, wishes to establish itself as a

contracté avec leur couronne (1) une espèce de mariage communément appelle *saint et politique*." [See Addenda, below, p. 568.]

⁸⁶ See above, nos.60,64-66.

⁸⁷ Choppin, *De Dominio Franciæ* (above, n.82), III, tit.5, n.6, P.449: "Rex, curatur *Reipublicæ ac mysticus* . . . ipsius *corium*." The doctrine came the full circle also the other way round when jurists conceded to the pope fiscal and other rights in the States of the Church because they considered him *hujus reipublicæ temporaliæ maritum*, although in other respects he was, spiritually, the *vir Ecclesiæ* anyhow; cf. Vassalli, "Fisco", 209, quoting Cardinal de Luca.

⁸⁸ *Parliamentary History of England* (London, 1806), 1930.

⁸⁹ Fortescue, *De laudibus*, c.XIII, ed. Chymes, 30,17; see also Chymes' remark (p.16): "This chapter is the most famous in all Fortescue's writings." Fortescue, of course, is quite proficient in the jurists' method of "equiparating" secular and ecclesiastical institutions; see, e.g., *Op. cit.*, c.VIII, ed. Chymes, 22, where he sets against the *miseria ecclesiæ* the *miseria legis Anglie* and warns the Prince against trying to legis *sacramenta scripture*, which is the business of professional jurists only trained in legal science (cf. c.III and VII, pp.6ff.,18f.). This is the very argument which so greatly displeased King James I when Coke, in 1608, referred to it; see Coke, *Reports*, XII,63ff. (Case of Prohibitions).

kingdom or any other body politic, it will have to set up one man for the government of the whole body, a king. This necessity Fortescue tried to evidence by harking back to the customary expedient, the analogy between the social and the human body:

Just as the physical body grows out of the embryo, regulated by one head, so does there issue from the people the kingdom, which exists as a *corpus mysticum* governed by one man as head.

On another occasion Fortescue compared the functions of the heart and the nerves of the natural body to the structural system of the body politic. While identifying the nerves of the body with the laws of the state, he explained:

The Law by which a *cetus hominum* is made into a *populus* resembles the nerves of the physical body; for just as the body is held together by the nerves, so is the *corpus mysticum* [of the people] joined together and united into one by the Law.⁹⁰

Fortescue apparently visualized the *corpus mysticum* as the last stage of perfection of a human society which began as a simple multitude (*cetus*) of men, acquired then the status of a "people," finally culminated in the development of a "mystical body" of the realm, a body incomplete without a head, the king.

Fortescue's usage of the term *corpus mysticum* in political matters was not exceptional. At the opening of the Parliament of 1430, Master William of Lyndwood, Doctor of Laws and Professor of Divinity at Oxford, later Bishop of St. Davids and well known for his *Provinciale* of Canterbury, delivered after the sermon the usual keynote speech. He expounded the organic oneness of the realm, and compared it to that of the human body and its limbs and, with regard to the unanimity of the will and of mutual love, to a *corpus mysticum*.⁹¹ Both lawyers, Lyndwood and Fortescue, used

⁹⁰ *De laudibus*, cxii, ed. Chrimes, 28. For the stages *cetus*, *populus*, *corpus*, ultimately derived from Aristotle, see Vincent of Beauvais, *Speculum doctrinale*, vii,c:7 (Venice, 1494), fol. 91r.

⁹¹ *Rot. Parl.*, iv, 367; the speaker "causam summationis eiusdem Parliamenti . . . egregie declaravit." This was common procedure: "Post predicacionem debet cancellarius Angliae . . . vel alius idoneus, honestus, et facundus iusticiarius vel clericus . . . pronuntiare causam parliamenti, primo in genere, et postea in specie." See *Modus Tenendi Parliamentum*, in Stubbs, *Select Charters*, 503. Lyndwood observed that scheme; he spoke on I Chron. 22: 10: "Firmabitur solum regni eius." He then discussed a *triplex unio* of the realm: "unam . . . collectivam, ut in retum mobilium congerite et congregacione; alteram . . . constitutam, ut in corpore humano diversorum membrorum annexione; et tertiam consentaneam, ut in cutislibet

the terms *corpus politicum* and *corpus mysticum* promiscuously and without clear distinction. This is true also of another parliamentary preacher of that century, John Russell, Bishop of Lincoln and Chancellor of England. In his sermon at the opening of Parliament in 1483, he discussed the body politic of England composed of the three estates with the "sovereign Lord, the King," being its head. Referring to the *locus classicus* of I Corinthians 12: 12,⁹² he compared the natural body in which every limb has its proper function, with the body politic of the realm: "So ys hyt yn the mistik or politike body of the congregation of the people."⁹³ In another draft of his sermon he repeated the phrase concerning the "mystical or political body" of the people,⁹⁴ and occasionally remarked that this "grette publick body of Englonde [ys] but that and there where the Kyng ys hym self, hys court and hys counsell."⁹⁵

We recognize a similarity with imperial and papal language: the empire is where the emperor is; and the *corpus mysticum* where the pope is. We are reminded, however, also of the French constitutionalists, the *Remonstrance* of 1489 or the assertion of Guy Coquille; for Bishop John Russell significantly specified the word "King" by adding "his court and his council."⁹⁶ That is to say, the body politic, mystic, or public of England was defined not by the king or head alone, but by the king together with council and parliament. This concept of a "composite" body, and therewith of "composite" authority, was not quite new by that time.⁹⁷ As early as 1365, a justice of Edward III opined that "Parliament represents the body of the whole realm."⁹⁸ Though

corporis mistici unanima voluntate et dilectione." For William of Lyndwood, see Matland, *Roman Canon Law in the Church of England* (London, 1898); Arthur Ogle, *The Canon Law in Medieval England* (London, 1912).

⁹² See above, n.6.

⁹³ Chrimes, *Ideas*, 180, has re-edited the sermon, first published by John Gough Nichols, *Grants from the Crown during the Reign of Edward the Fifth* (Camden Society, ix, London, 1854), p.11.

⁹⁴ Chrimes, *Ideas*, 185; Nichols, *Grants*, p.1viii.

⁹⁵ Chrimes, *Ideas*, 175, also 332, n.6; Nichols, *Grants*, p.xlvi.

⁹⁶ See above, nos.34f, and, for the French doctrines, nos. 79f.

⁹⁷ B. Wilkinson, "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries in England," *Speculum*, xxiv (1949), 502-509, has carefully felt his way through the constitutionally truly "dark centuries." In fact, what he calls the "composite" sovereignty seems to be inseparable from that "organic unity of the state" (p.504, n.8) the perseverance of which prevented England from succumbing to the "abstract state" concepts that developed on the Continent.

⁹⁸ *Year Books*, 39 Edward III, f.7a, quoted by Matland, *SEL.ES.*, 107; see also

this view should not, retrospectively, be considered an inveterate rule of English constitutionalism, it is nevertheless true that indications of this concept may be found a bit everywhere.⁹⁸ Related ideas may have guided, for example, a philosopher of the rank of Walter Burley, who in his Commentary on Aristotle's *Politics* (around 1338) deviated from the official interpretation by Aquinas and Peter of Auvergne only to insert a sentence about the "multitude composed of the King, the powerful and the wise" (so to speak, the king with lords and commons) summoned to Parliament "for the dispatch of hard business," and about the fact that they "rule together in the king and with the king," *sicut hodie patet [Edward III] of the English.*⁹⁹

It all amounts eventually to Fortescue's famous definition of England as a *dominium regale et politicum*, describing a kind of government in which not the king alone but king and polity together bore the responsibility for the commonweal. Fortescue borrowed his famous formula, which in its turn was an effluence of Aristotelian political thought, from the continuation of Aquinas' unfinished treatise *De regimine principum*. The continuator, Tolomeo of Lucca, found the prototypes of that form of government in imperial Rome (which "holds the center between a political and regal government"—*medium tenet inter politicum*

McIlwain, *Constitutionalism*, 89, n.32; Wilkinson, *op.cit.*, 504, nos.14-15. According to the *Modus*, ed. Stubbs, *Select Charters*, 509, the king is "caput, principium, et finis parliamenti," and therewith alone constitutes the *primus gradus* of Parliament (the *Modus* distinguishes six ranks).

⁹⁸ One might think of *Fleta*, II.c.2: "habet enim rex curiam suam in consilio suo in parliamentis suis." With Wilkinson (*op.cit.*, 504, n.13), I too would hesitate to take those words to imply "the king and the magnates exercising sovereignty in the state." Important new points of view have been put forth by Gaines Post, "The Two Laws and the Statute of York," *Speculum*, xxx (1954), 417-432.

⁹⁹ S. Harrison Thomson, "Walter Burley's Commentary on the *Politics* of Aristotle," *Mélanges Auguste Pelzer* (Louvain, 1947), 577: "et adhuc in regno multitudine constituta ex rege et proceribus et sapientibus regni quodammodo principatur. Itaque tantum vel magis principatur huiusmodi multitudo quam rex solus, et propter hoc rex convocat parlamentum pro arduis negotiis expediendis." And later, while producing the customary Aristotelian arguments, Burley alluded to Edward III: "In optima enim policia . . . quilibet diligit gradum suum et contentus est, et quilibet vult singularem honorem, regit, et videtur sibi quod in rege et cum rege congregat, et propter intimam dilectionem civium ad regem est intima concordia inter cives, et est regnum fortissimum sicut hodie patet de rege Anglorum. . . ." For the passage quoted by Thomson, compare Aquinas, *In Polit. Arist.*, 8473. ed. Spiazzi, p.167.

et regale) and in the government of Israel's Judges whose rule was supported by God himself as their king. Fortescue, especially in his earliest writings, ventured to prove that this ideal *dominium regale et politicum* had been actualized a third time, that is, in England. Hence England fell in with the hallowed models of Israel and Rome. The English king, in contrast to the French king who ruled only "regally," appeared to Fortescue definitely polity-centered. Vice versa, however, the polity itself, or the mystical body of the realm, could not exist without its royal head.¹⁰¹

The English form of government by the whole body politic led to an apparently unique fashion of analogizing secular and ecclesiastical institutions. We are used to a semi-theological mysticism with regard to the Prince and the interpretation of his functions, but are perplexed to find in England similar features with regard to Parliament. Before the close of Parliament in 1401, the Speaker of the Commons saw fit to compare the body politic of the realm with the Trinity: the king, the Lords spiritual and temporal, and the Commons jointly formed a trinity in unity and unity in trinity. On the same occasion the Speaker compared the procedures of Parliament with the celebration of a mass: the reading of the Epistle and the expounding of the Bible at the opening of Parliament resembled the initial prayers and ceremonies preceding the holy action; the king's promise to protect the Church and observe the laws compared with the sacrifice of the mass;¹⁰² finally, the adjournment of Parliament had its analogy in the *Itte, missa est*, the dismissal, and the *Deo gratias*, which concluded the holy action.¹⁰³ Although those comparisons do not mean very much all by themselves, they nevertheless reflect the intellectual climate and show to what extent political thought in the "high Gothic" age gravitated towards mysticizing the body politic of the realm.

¹⁰¹ For the problem of Fortescue and Aquinas, see, in addition to A. Passerin d'Entrèves, "San Tommaso d'Aquino e la costituzione inglese nell' opera di Sir John Fortescue," *Atti della R. Accademia di Torino*, lxxi (1927), 261-285, the fundamental study by Felix Gilbert, "Sir John Fortescue's *Dominium regale et politicum*," *Mediaevalia et Humanistica*, II (1943), 88-97, esp. 91ff, where the literature on the subject has been discussed.

¹⁰² For the connection of Law and sacrifice, see above, Ch. IV, nos.91-92.
¹⁰³ *Rot.Parl.*, III,456, §32 (comparison with Trinity), and 466, §47 (comparison with Mass); Chirnes, *Ideas*, 68f. Parliamentary comparisons are sometimes picturesque. Bishop Henry of Winchester, e.g., compared in his parliamentary sermon of 1455 the king's councillors with elephants because they should be "sine felle, inflexibiles, et immensae memoriae." *Rot.Parl.*, IV,261.

Moreover, the analogy of king, lords, and commons with the Trinity may be taken as an additional evidence that a relatively clear idea about the "composite" nature of authority existed, and that in England not the king alone, but the king jointly with lords and commons formed the "mystical body" of the realm.¹⁰⁴

That the king alone should have represented that "mystical body" appears unlikely in mediaeval England, even though Sir Edward Coke in 1608 made a marginal note to that effect: he referred to the Year Books of Edward IV where (said he) the king's "body politic" was styled *corpus mysticum*. This contention is not quite correct, since the Year Book does not refer to the king but to an abbot.¹⁰⁵ The passage shows nevertheless how far advanced corporate concepts were in England by the end of the fifteenth century. However, despite a smattering of strictly corporational interpretations—"The parliament of the king and the lords and the commons are a corporation," declared Chief Justice Fineux in 1522¹⁰⁶—the old organological concept distinguishing between head and limbs still prevailed, and the king was merely the head in which the mystical or political body of the realm culminated. In that sense, Henry VIII, in 1542, addressed his council:

We be informed by our judges that we at no time stand so highly in our estate royal as in the time of Parliament, wherein we as head and you as members are conjoined and knit together in one body politic.¹⁰⁷

That is the same spirit in which earlier, in 1533, the preamble of the *Act in Restraint of Appeals* had been phrased, when Henry VIII declared that according to the most ancient authorities the realm of England was an empire,

governed by one supreme head and king, and having the dignity and royal estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people, divided in terms and by names of spirituality and temporality, be bounden. . . .¹⁰⁸

¹⁰⁴ See, on that point, Chimes, *Ideas*, 116, also 332, n.6.

¹⁰⁵ See Coke, *Rep.*, vii, 10a (*Calvin's Case*), referring to 21 Edward IV, f.88b. See below, Ch.viii, 312.

¹⁰⁶ Quoted by Maitland, *Sel.Ess.*, 107.

¹⁰⁷ See, for that famous passage, *Letters and Papers of Henry VIII*, vol.xii, p.iv, n.3, and p.107, No.221; cf. A. F. Pollard, *The Evolution of Parliament* (London, 1926), 231.

¹⁰⁸ *Statutes of the Realm*, II, 427f; Stephenson and Marcham, *Sources of English Constitutional History*, 304, No.74B; Maitland, *Sel.Ess.*, 107f. Coke, *The 4th Part of*

We still recognize the old organological doctrine which had proved useful long before when it served Philip IV of France, in his struggle against Pope Boniface VIII, to bring the whole "Gallican Church" part and parcel into the French *patria* headed by the king. It now served Henry VIII to incorporate the *Anglicana Ecclesia*, so to speak, the genuine *corpus mysticum* of his "empire," into the *corpus politicum* of England, of which he as king was the head.¹⁰⁹ The fusion of bodies politic and spiritual was absolute and complete, and the resulting confusion was sensed very strongly by Cardinal Pole, who in a pamphlet addressed himself to Henry VIII, saying:

Your whole reasoning comes to the conclusion that you consider the Church a *corpus politicum*. . . . Great as the distance is between heaven and earth, so great is also the distance between the civil power and the ecclesiastical, and so great the difference between this body of the Church, which is the body of Christ, and that, which is a body politic and merely human.¹¹⁰

Here the fronts have been curiously reversed. Instead of treating the state as a *corpus mysticum* Henry treated the Church as a simple *corpus politicum* and therefore as part and parcel of the realm of England. Contrariwise, Cardinal Pole tried in vain to restore the supra-political character of the Church and to undo the

the Institutes of the Laws of England, c.74 (London, 1809), 341, adduces that Act in order to prove that England was, and at all times has been, an "empire." For the problem, see A. O. Meyer, "Der Kaisertitel der Stuarths," *Q.F.*, x (1907), 231ff, who starts with the imperial title of Henry VIII (for some additions, see E. E. Stengel, "Kaiserliche und Suveränitätsidee," *DA*, III [1939], 46), but without exhausting in any respect a most promising subject which still demands a thorough and systematic investigation.

¹⁰⁹ See below, pp. 250ff. for Philip IV. The discussion about the realm's "body politic" (see Chimes, *Ideas*, 304, 332f, nos.6-8) was greatly intensified under Henry VIII; see, e.g., Richard Sampson, *Oratio qua docet, hortatur, admonet omnes etc.* (London, 1533), fol. B^v (pagination according to a microfilm of that rare pamphlet in the University of California Library, at Berkeley): "Quis nescit totum regnum unum esse politicum corpus, singulos homines eiusdem corporis membra esse? Ubi nam est huius corporis caput? Estne aliud quam rex?" Cf. A. Passerin d'Entrèves, "La teoria del diritto e della politica in Inghilterra all' inizio dell' età moderna," *R. Università di Torino: Memorie dell' Istituto Giuridico* (Ser.II, No.IV, 1929), 27, n.15.

¹¹⁰ "Tota tua ratio concludit te Ecclesiam existimare corpus politicum esse. . . . Quantum enim distat caelum a terra, tantum inter civilem potestatem et ecclesiasticam interest: tantum hoc corpus Ecclesiae quod est corpus Christi, ab illo, quod est politicum et mere humanum, differt." Cardinal Pole, *Ad Enricum VIII . . . pro ecclesiasticae unitatis defensione*, in Juan T. Rocchetti, *Bibliotheca maxima pontificia* (Rome, 1698), xviii, 204, quoted after d'Entrèves, *op.cit.*, 27, n.15.

process of secularization which the *corpus Ecclesiae mysticum* had succumbed to ever since the thirteenth century.

That the corporational doctrines *could* result in an identification of the whole body politic with the head alone has been shown by papal writers who claimed that the mystical body of the Church was where the pope was.¹¹¹ The later French identification of the body politic with the monarch, to which Jean de Terre Rouge and other constitutionalists still objected,¹¹² would likewise suggest that the head could engulf the body, although legalistic concepts—*Princeps est imperium, est fœcus*, said Baldus¹¹³—were probably more important in France. It is quite likely that also in England under Henry VIII the Cypriatic formula of the *Decretum* and of the Italian jurists began to gather volume, implying now by a new twist that all Englishmen were incorporated in the king; and that the king's personal acts and deeds were those of a body politic absorbed by its monarchical head. But even while resorting to those formulae, the English jurists, as in the case *Willion v. Berkeley*, still distinguished between head and members, when they said: the other [Body] is a Body politic, and the Members thereof are his Subjects, and he and his Subjects together compose the Corporation . . . and he is incorporated with them and they with him, and he is the Head and they are the Members, and he has the sole Government of them. . . .¹¹⁴

All by itself, however, the corporational doctrine, so long as it was primarily organologic, did not necessarily result in that complete identification of the limbs with the head, nor did it actually in mediæval England. One could accept the precise words of the Bishop of Lincoln when he declared that England's body politic or mystic was where king and council and parliament were; but one

¹¹¹ Above, n.33. See also Gierke, *Gen.R.*, III:596, n.214.

¹¹² For Terre Rouge, see above, n.77. Church, *Constitutional Thought*, has excellently brought to the fore the struggle between constitutional and absolutist ideas in sixteenth-century France, and one sometimes wonders to what extent the persuasive antitheses of Fortescue were valid in his time.

¹¹³ Baldus, on *Cod.* 10.1, rubr. nos. 12, 13, 18; Gierke, *Gen.R.*, III:596, n.216; also Gierke, *Johannes Althusius*, 137, n.47. The essence of '*l'état est moi*' (cf. Fritz Hartung, '*L'état est moi*,' *Historische Zeitschrift*, CLXX [1946], 1ff) may be traced very far back, as Victor Ehrenberg, 'Origins of Democracy,' *Historia*, I (1950), 519, has pointed out recently ('Thou art the state, thou the people' in Aeschylus *Suppliants*, 370ff), though the profound differences of the general climate are probably more worth stressing than the similarities of diction.

¹¹⁴ Maitland, *Sel.Ess.*, 108; Plowden, *Reports*, 233a; above, Ch.I, n.13.

carefully refrained, as in the case of Richard II, from allowing the body to be swallowed by the head, just as on another occasion protests were voiced against the severance of the limbs from the head.¹¹⁵ Perhaps Fortescue's definition of England as a true *dominium regale et politicum* remained the most accurate description, the one which preserved its value even though it was temporarily obscured. That magic formula, so much more important in English political thought than among the scholastic philosophers from whom it hailed, implied that head and body depended mutually on each other and that as the king was supreme in some respects, so was the polity in others. It will not be inappropriate here to recall Fortescue's contemporary, Nicholas Cusanus, who, in his *Concordantia catholica*, said that only so far as the Prince recognized himself "the creature of all his subjects collectively, did he become the father of the individual citizens,"¹¹⁶ a concept later reduced to the more lapidary formula *Princeps maior singulis, minor universis*. "The Prince is more than the individual citizens, but less than their totality."¹¹⁷ Fortescue seems to have cherished similar ideas when he developed his doctrine about an England both regal and political. His king was both above and below the body politic of the realm, just as the thirteenth-century king was both above and under the Law.¹¹⁸

Late mediæval kingship, from whatever point of view it be considered, had become polity-centered after the crisis of the thirteenth century. The continuity, first guaranteed by Christ, then by the Law, was now guaranteed by the *corpus mysticum* of the realm which, so to speak, never died, but was "eternal" like the *corpus mysticum* of the Church. Once the idea of a political community endowed with a "mystical" character had been articu-

¹¹⁵ Above, n.95. See the exclamation in the *Gesta Edwardi* of the canon of Bridlington (*Chronicles of the Reigns of Edward I and II*, ed. Stubbs, II:70): "Mira res! ecce qualiter membra a capite se disjunctant quando fit consideratio per magnates in parlamento: regis assensu minime requisito" (referring to the action against the Despensers in 1321). See Wilkinson, "The Coronation Oath of Edward II and the Statute of York," *Speculum*, XIX (1944), 460, n.4.

¹¹⁶ Gierke, *Gen.R.*, III:590; *Johannes Althusius*, 126.

¹¹⁷ Gierke, *Johannes Althusius*, 144, quoted by d'Entreves, "La teoria," 36, n.27; see also Holdsworth, *History of English Law*, IV:213, and his reference to Hooker's *Ecclesiastical Polity*, I, §2.7.

¹¹⁸ Unless I am mistaken, Professor McLivain, *Constitutionalism*, 89f, indicates precisely this change, when confronting Fortescue with Bracton.

lated by the Church, the secular state was almost forced to follow the lead—to respond by establishing an antitype. This view does not detract from the complexity of other stimuli which were perhaps even more effective: Aristotelian doctrines, Roman and Canon Law theories, the political, social, and economic development at large during the later Middle Ages. But those stimuli seem to have worked in the same direction: towards making the polity co-eternal with the Church and bringing the polity—with or without a king—to the center of the political discussion.

However that may be, the corporational problem of the later Middle Ages began to eclipse the preponderance of the legal problem and the "tyranny of the Law" of the preceding period. This does not imply that the king's relation to the Law had become an irrelevant question, but that it was absorbed by, and included in, the far broader problem of the king's relation to a polity which itself could claim to be the Law and which, by its inherent dynamics, quickly developed its own ethical and semi-religious code—apart from the Church.

3. *Pro patria mori*

PATRIA RELIGIOUS AND LEGAL

Neither from the idea of polity-centered kingship nor from that of the state as *corpus morale, politicum, mysticum* can there easily be separated another notion which came to new life independently of, though simultaneously with, the organological and corporational doctrines: the *regnum* as *patria*, as an object of political devotion and semi-religious emotion.¹¹⁹

Patria, in classical Antiquity so often the aggregate of all the political, religious, ethical, and moral values for which a man might care to live and die, was an almost obsolete political entity

¹¹⁹ For the general problem, see Halvdan Koht, "The Dawn of Nationalism in Europe," *AHR*, LV (1947), 265-280, as well as my paper "Pro patria mori," *AHR*, LVI (1951), 472-492, where the subject has been treated from a somewhat different angle and on a narrower basis, though occasionally with fuller documentation. In the meantime, Gaines Post, "Two Notes on Nationalism in the Middle Ages: 1. *Pugna pro patria*," *Traditio*, IX (1953), 281ff., has published an excellent study in which he, most gratifyingly, supplements my paper by reviewing the legal material on *patria* of which I had not been aware and which I badly neglected. I received his study only after the present book had been concluded, and I could barely do more than to integrate, in a last revision, some of the wealth of his material and some of his suggestive results.

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

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

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

¹²¹ A few remarks in "Pro patria mori," 477n.16. The poets and *literati*, when describing the heroes of classical Antiquity, used *patria* over and over again; see, e.g., Walter of Chatillon, *Alexandris*, III, 313 (ed. F. A. W. Muehlner, Leipzig, 1893), in his description of the battle of Issus: "Pro domino patriaque mori dum posset honeste. . ." Also *ibid.*, II, 355: "Pro patria stare et patriae titulis et honore/Invigilare decet. . ." More interesting is Wipo, who uses *patria* consistently in the sense of the classical tradition, without ever defining it; see his *Gesta Chronotadi*, prol., ed. Bresslau (MGH, SS, r. Germ.), p. 7, 20, where he mentions as his *causa scribendi* the fact *quod proderit patriae*; see also p. 9, 14, and *passim* (cf. Index, 123, s.v. *patria*).

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

¹²³ For the English trial *per patriam*, to which Professor Joseph R. Strayer kindly called my attention, see Pollock and Maitland, *English Law*, II, 501f. 624, 627.