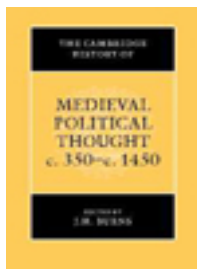


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### Chapter

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## SPIRITUAL AND TEMPORAL POWERS

Towards the end of his classic six-volume scrutiny of medieval political thought in the west, A.J. Carlyle pronounced that

To the Western Church it was in the main clear that there were two great authorities in the world, not one, that the Spiritual Power was in its own sphere independent of the temporal, while it did not doubt that the Temporal Power was also independent and supreme in its sphere . . . This conception of the two autonomous authorities existing in human society, each supreme, each obedient, is the principle of society which the Fathers handed down to the Middle Ages, not any conception of a unity founded upon the supremacy of one or other of the powers.<sup>1</sup>

In one important way, Carlyle was right. That Christ himself had separated the functions of king and priest was one of the axioms of medieval politics. And Boniface VIII's much-publicised burst of irritation at a French insinuation that he was unaware of that fact symbolises the western Church's adherence to the principle of dualism.<sup>2</sup> Nor was that headstrong champion of the *libertas ecclesiae* any less doubtful than his predecessors that it was also axiomatic that the spiritual power was independent of the temporal. But a pope who claimed the papacy's right to institute the lay power 'that it may be' (*ut sit*), to judge it if it acted unethically, even to depose a lay ruler for serious, persistent political misconduct? This was surely to doubt the independence and supremacy of the temporal power in its own sphere, to reject the concept of an autonomous lay authority and to go on, by way of the 'two swords' allegory, to assert a unity of the powers founded on the supremacy of the spiritual. The argument that *Unam sanctam* was atypical and to be set aside as a serious misinterpretation of conventional papal theory before and after the pontificate of Boniface VIII cannot be taken seriously.

Dualism in fact meant different things to different types of ruler. The papacy accepted a principle of dualism but it was so fundamentally

1. Carlyle 1903–36, vol. v, pp. 254, 255.

2. 'Quadragesima anni sunt quod nos sumus experti in iure et scimus quod due sunt potestates ordinate a Deo. Quis ergo debet credere, vel potest, quod tanta fatuitas, tanta insipientia sit vel fuerit in capite nostro?' Dupuy 1655, p. 77; Muldoon 1971.

conditioned by another axiom, the superiority of the spiritual power, that it was in effect replaced by a unitary view of the two powers. Emperors and kings, in the name of dualism, challenged and rejected this hierocratic logic. This chapter will seek to identify three main areas within which debate focused on the significance of dualism. It will begin with the papal position since this was the earliest to be systematically articulated, was the one urged, with all the weight of the Church's *magisterium*, on the politicians and intellectuals of Christendom, and gave substance and direction to the policies adopted in that hurly-burly of international politics in which the papacy was such an enthusiastic participant. The evolution of the theory was inseparable from both the actual events of papal politics and the forms of political discussion developed in the schools. In turn, papal theory and practice formed the anvil on which the lay powers hammered out their own particular readings of the principle of dualism. The most important single stimulus to the development of hierocratic theory was the papacy's special relationship with the Holy Roman Empire. Imperialists provided an alternative view of that relationship. Other challenges to the papacy's own concept of its political authority came from national kings. Those mounted by the kings of France and England, for the purposes of a short discussion, may be considered representative of the attitudes of medieval Christian kingship generally.

## I

At the very beginning of our period, the nearest approach to a full articulation of the hierocratic logic in its simplest form is to be found in the *De sacramentis christianae fidei* of Hugh of St Victor. It was to prove very influential and, with its inclusion in *Unam sanctam*, achieve classical status. Typically, the context of Hugh's analysis of the relations of the powers was the section of his treatise concerned with the nature of the Church. Thus the premise of his analysis is the reality of the one corporate society of all Christians: one Lord, one faith, one baptism – in the one body of Christ. Certainly this society knew an essential dualism: two orders, lay and clerical, formed the two walls or the two sides of the one body. Each order had its own distinctive way of life. Two peoples, therefore, and two powers, each with its own appropriate grades and orders of rank. Lay and clerical orders, corporal and spiritual, earthly and heavenly, spiritual and temporal: duality within the *multitudo fidelium*, the *universitas Christianorum*,

the Church.<sup>3</sup> The logic advances: just as the spiritual life is worthier than the temporal and the spirit than the body, just so much must the spiritual power be considered to excel in honour and dignity the earthly or secular power.<sup>4</sup> A simple honorific precedence, without practical implications in the sphere of government? Certainly not. The superiority of the spiritual translated immediately into severely juridical terms. The spiritual power has both to establish the temporal power and to judge it if it fails to do good. The spiritual power is judged by God alone.<sup>5</sup>

This is a far from complete exposition of the hierocratic theme. Hugh of St Victor had made his points far too laconically for the commentator to be able to define with certainty all its implications. But within his short compass he had revealed much of how dualism could be tempered by being situated within the unitary context of the congregation of all the faithful. Royal power came into being in that congregation which Hugh expanded to include the people of Israel, God's first chosen people, prefiguration of those chosen in baptism.<sup>6</sup> The greater importance of the spiritual life with its corollary, the precedence of the clergy, was interpreted to mean a power to coerce that lay power which it had brought into being. Hugh of St Victor left those principles understated and underdeveloped. There was much to come from canonists, theologians and popes themselves in the way the superiority of the spiritual was elaborated and expanded. But he had gone far towards formulating the essence of hierocratic thought: the lay power enjoys no autonomy; the powers are a unity founded upon the supremacy of the spiritual.

Hugh of St Victor had found no ready formula to blend the different axioms which medieval theory postulated about the relations of the powers: that they were two, that the spiritual power was superior, that the powers were meant to be joined in mutual support and co-operation. Theorists of different persuasions had for some time been feeling their way towards just

3. 'Quid est ergo ecclesia nisi multitudo fidelium, universitas christianorum? . . . Universitas autem haec duos ordines complectitur, laicos et clericos, quasi duo latera corporis unius . . . Duas esse vitas, et secundum duas vitas duos populos; et in duobus populis duas potestates et in utraque diversos gradus et ordines dignitatum; et unam inferiorem, alteram superiorem . . . Due quippe vitae sunt: una terrena, altera coelestis; altera corporea, altera spiritualis.' *De sacramentis*, II.11.2, 3, 4.

4. 'Quanto autem vita spiritualis dignior est quam terrena, et spiritus quam corpus, tanto spiritualis potestas terrenam sive saecularem potestatem honore ac dignitate praecedit.' *Ibid.*, c.4.

5. 'Nam spiritualis potestas terrenam potestatem et instituere habet ut sit et iudicare habet si bona non fuerit. Ipsa vero a Deo primum instituta est, et cum deviat, a solo Deo iudicari potest, sicut scriptum est: *Spiritualis diiudicat omnia, et ipse a nemine iudicatur* [1 Cor. 2.15].' *Ibid.*

6. 'Quod autem spiritualis potestas, quantum ad divinam institutionem spectat, et prior sit tempore et maior dignitate; in illo antiquo veteris instrumenti populo manifeste declaratur, ubi primum a Deo sacerdotium institutum est; postea vero per sacerdotium iubente deo regalis potestas ordinata.' *Ibid.*

such a formula. They looked for it particularly in the allegory of the ‘two swords’.

In Chapter 22 of his Gospel, St Luke recounted the events of the Last Supper and began his history of Christ’s passion. Having foretold that Peter would deny him and subsequently repent, Jesus warned the apostles that what the scriptures had said of him was about to be fulfilled and his arrest was imminent. They reacted with thoughts of physical resistance: ‘But they said: Lord, behold here are two swords.’ Jesus replied enigmatically: ‘And he said to them: It is enough.’

Modern commentary reads this reply as an abrupt dismissal, perhaps ironic, perhaps sad, of a reaction to his warning of the crisis at hand which Christ found imperceptive and inappropriate. The misunderstanding shown by the apostles achieved its full expression shortly afterwards when ‘one of them struck the servant of the high priest and cut off his right ear’ (Luke 22.50) only for the action to be rejected by Jesus and the servant healed by him. Peter was ordered to ‘Put up thy sword into the scabbard’ (John 18.11, cf. Matt. 26.52). The transformation of the two swords literally shown to Jesus by the apostles into an allegory of the two powers, spiritual and temporal, ecclesiastical and lay, was possible only by the medieval approach to the Bible, rejected by modern exegetes. Medieval commentators were far from indifferent to the literal sense but, following the example and instruction of the Latin fathers, moved quickly beyond ‘the letter’s veil’<sup>7</sup> to elucidate any teaching the text might be communicating ‘mystically’, by allegory. That two swords had been shown in fact to Jesus was one thing. The significance of the event was another: the figurative meaning of two swords, of Jesus’ assertion that they sufficed and his command that the wielded sword should be sheathed was yet another. One of the earliest medieval allegorical interpretations of Luke 22.38 which was also one of the best known because it passed into the *glossa ordinaria* read one sword as the Old Testament, the other as the New, weapons with which the devil was to be combated. They were ‘enough’, for he who was armed with the doctrine of both Testaments lacked nothing he needed for spiritual warfare.<sup>8</sup> The allegory was apt, dovetailing neatly with St Paul’s likening of the ‘word of God’ to ‘the sword of the spirit’ (Eph. 6.17). It took no great imaginative leap to understand the clerical function of preaching the word

7. Smalley 1952, p. 1.

8. ‘*Ecce gladii duo . . . unus noui, alter veteris testamenti, quibus adversarius diaboli munimur insidias. Et dicitur Satis est quia nihil deest ei, quem utriusque testamenti doctrina munierit.*’ *Glossa ord. ad Luc.* xxii.38.

as the exercise of the spiritual sword: 'the priestly sword of the divine word' as Gregory VII put it.<sup>9</sup>

Nor did it strain language to use the word *gladius* in another specifically clerical context. The spiritual sword was the instrument which cut off diseased members from the body of the Church: the sword of excommunication, of anathema, of due canonical retribution, of apostolic indignation: 'the anger of God and the sword of St Peter', in another of Gregory VII's characteristic expressions.<sup>10</sup> The spiritual sword was thus not merely the image of the ecclesiastical pastoral function of preaching the faith. It was also the image of the exercise of ecclesiastical jurisdiction itself. Such had become the ordinary usage of the papal chancery by the pontificate of Gregory VII.<sup>11</sup>

It also used the term 'material sword' for the exercise of the function of kingship. Again, the image came into the papal vocabulary ready-made from scripture itself. St Paul had decreed the duty of Christians to submit themselves to the civil authority and provided, incidentally, a definition of the role of that authority: 'For he is God's minister to thee, for good. But if thou do which is evil, fear: for he beareth not the sword in vain. For he is God's minister: an avenger to execute wrath upon him that doth evil' (Rom. 13.4). St Peter echoed the substance of this teaching though without specific use of the word 'sword': the civil authority established 'for the punishment of evildoers and for the praise of the good' (*ad vindictam malefactorum et ad laudem bonorum*, 1 Pet. 2.14). This language of the apostles, expressing the divine origin of the temporal power and the ministerial function of monarchy, was the substance of the symbolism of the conferring of a sword in royal coronation ceremonies from their beginnings. Thus the two swords, spiritual and material, were the weapons of Christian warfare: 'the priest fights, as the Apostle says, with the sword of the word . . . the king fights with the material sword, since he is the Lord's minister, avenger in wrath on those who act with evil'.<sup>12</sup> The swords image conveyed in shorthand form two basic principles: God had established two powers and he meant them to co-operate. Together, 'under him and for him', they promote the common welfare of the Christian people. Such were the unexceptionable basics of the relationship of the two powers.

If the two swords image symbolised nothing more than the distinction

9. *Registrum* III, 4: 'gladius sacerdotalis divini verbi'.

10. *Reg.* II, 31: 'ira Dei et gladium sancti Petri'. 11. Levison 1952, pp. 22-3.

12. 'Pugnet sacerdos iuxta apostolum gladio verbi . . . Pugnet rex gladio materiali, quoniam Domini minister est et vindex in iram his, qui male agunt.' Deusededit, *Libellus contra invasores*, 2.300.

and necessary concord of the powers it would not have found a major role in any account of medieval political thinking. What gives the doctrine of the two swords its especial significance springs from what it tried to say about the relative superiority and inferiority of one to other. No one denied that in some sense the spiritual power was the superior. But what had the image of two swords to express concerning the nature of that superiority? The matter was debated for at least a century and a half, sometimes in all the acrimony of empire–papacy controversy, more frequently, more coolly, among academics in the schools. Such discussions go far to reveal to the historian how medieval men analysed the basic principles of the relationship of the powers, or if one will, of Church and State.

The period of debate began in 1076 with a broadside from Henry IV (or from his ghost writer, Gottschalk of Aachen) against what he called the *Hildebrandica insania*. Pope Gregory VII's madness had been to excommunicate the king and threaten his throne. Thereby, the royal propaganda urged, the pope was holding in contempt that divine decree, demonstrated in Luke 22.38, that there were two powers. The two swords signified a dualism (*dualitas*) of the powers. Dualism meant the autonomy of the lay power; the pope had no power over the emperor. Two swords doctrine taught the co-operation of the powers, not the jurisdictional superiority of the spiritual power.<sup>13</sup> This principle, which we may very properly call dualistic, since that was Henry IV's own word, continued to be asserted and justified by Frederick Barbarossa, Frederick II, the polemist of Philip the Fair, and Dante, champion of Henry VII. Its echoes rumbled on in the later middle ages, occasionally, as with the pen of William of Ockham, finding a new burst of vitality.

The direct answer to dualism was to be that the pope held both swords. It was not given, in those terms, by Gregory VII to Henry IV. His justification of his alleged authority to depose kings did not employ two swords imagery. The assertion that the pope held both swords did not in fact emerge during the Investiture Contest. When it did, it was not in any context of empire–papacy confrontation. It was in the didactic letters addressed by St Bernard to Pope Eugenius III. In 1150 he told him, by way of Luke 22.38 and John 18.11, that in a critical period of threat to the Christian position in the Holy Land,

The time has now come when the swords spoken of in the Lord's passion must be drawn, for Christ is suffering anew where he suffered formerly. But by whom, if not by you? Both swords are Peter's: one is unsheathed at his sign, the other by his

13. *MGH Legum sectio. IV. Const.* 1, pp. 112–13; Ullmann 1955, pp. 345–8.

own hand, as often as is necessary. Peter was told concerning the sword which seemed less his: 'Put up thy sword into the scabbard.' Thus that sword was undoubtedly his, but it was not to be drawn by him.<sup>14</sup>

St Bernard returned to the theme, spelling out the same doctrine in more detail:

Why should you try to usurp the sword which you were once ordered to replace in its scabbard? Yet he who would deny that the sheathed sword is yours seems to me not to have paid enough attention to what the Lord is saying when he says, 'Put up thy sword into the scabbard.' Therefore this sword is also yours and is to be drawn at your command although not by your hand. Otherwise, if that sword did not belong to you in some way, the Lord, when the apostles said to him: 'Behold, here are two swords', would not have said: 'It is enough', but 'It is too much.' Both swords, spiritual and material, then, belong to the church; the one exercised on behalf of the church, the other by the church: the one by the hand of the priest, the other by the hand of the soldier, but clearly at the bidding of the priest (*ad nutum sacerdotis*) and the order of the emperor.<sup>15</sup>

St Bernard was urging, persuading, preaching, appealing to the pope's feelings as well as to his mind, not writing a political treatise about the relations of the powers. In turning the two swords image to his own immediate purposes, he did not elaborate his understanding of it beyond these two passages. Much, then, is left unsaid. We would not be entitled, for instance, to deduce from them that St Bernard would have agreed with a contemporary such as Hugh of St Victor who argued that it was for the ecclesiastical power, that it was for the priesthood, to institute the temporal power into being (*instituere ut sit*). He would, however, no doubt have agreed with John of Salisbury that the prince was, in a way, *sacerdotii minister*.<sup>16</sup> The transition from being God's minister, as St Paul taught, to the pope's minister was not a difficult one for a theologian like St Bernard who

14. 'Exserendus est nunc uterque gladius in passione Domini, Christo denuo patiente, ubi et altera vice passus est. Per quem autem, nisi per vos? Petri uterque est, alter suo nutu, alter sua manu, quoties necesse est, evaginandus. Et quidem de quo minus videbatur, de ipso ad Petrum dictum est: "Converte gladium tuum in vaginam." Ergo suus erat et ille, sed non sua manu utique educendus.' *Ep. cclvi, Opera viii*, p. 163.

15. 'Quid tu denuo usurpare tentes, quem semel iussus es reponere in vaginam? Quem tamen qui tuum negat, non satis mihi videtur attendere verbum Domini dicentis sic: "Converte gladium tuum in vaginam". Tuus ergo et ipse, tuo forsitan nutu, etsi non tua manu, evaginandus. Alioquin, si nullo modo ad te pertineret et eis, dicentibus Apostolis: "Ecce gladii duo hic", non respondisset Dominus: "Satis est", sed: "Nimis est". Uterque ergo Ecclesiae, et spiritualis scilicet gladius, et materialis, sed is quidem pro Ecclesia, ille vero et ab Ecclesia exserendus: ille sacerdotis, is militis manu, sed sane ad nutum sacerdotis et iussum imperatoris.' *De consideratione iv, iii, 7, Opera iii*, p. 454. For arguments that in this context Bernard was arguing that 'le glaive temporel n'est pas le symbole du pouvoir civil de l'Etat, mais le symbole du pouvoir coactif de la force armée', Jacqueline 1953, p. 197, following Stickler 1951. See also Kennan 1967, pp. 101–4; Congar 1970, pp. 143–4.

16. *Policraticus iv.3*.



believed that the pope was vicar of Christ. What is unquestionable, however, is that St Bernard had fashioned phraseology that became classic. The lay power must act, at need, *ad nutum sacerdotis*. This was to be the language of such major theologians of the thirteenth century as Aquinas and Pierre de Tarentaise (the future Innocent V) and came to form an important argument in Boniface VIII's *Unam sanctam*. The word *nutus*, in classical Latin, meant 'a nod of command'. In twelfth-century usage it tended to mean 'sign' or 'order'. In any translation it must include the idea of command. Thus the expression must be read as the principle that the co-operation of the civil power could have its services commanded by the ecclesiastical power. No churchman, incidentally, thought that the ecclesiastical power could be commanded by the civil power. But what if the spiritual power issued a command and the lay power refused to obey?

St Bernard's writings provide no clear answer. But there is present in them a strong hint of the way the two swords logic was tending. The ministerial view of rulership – that the prince was God's minister for good and, by extension, the clergy's subordinate agent – readily implied coercion for non-compliance with the divinely ordained ground rules. St Bernard put it rather guardedly:

The lord of the kings of the earth has established you as ruler so that under him and on his behalf you protect the good, coerce the evil, defend the poor, do justice to those suffering injury. If you do this, you do the work of a ruler . . . if you do not then you should fear lest what you seem to hold of honour and power might be taken from you.<sup>17</sup>

This admonition or threat did not state explicitly that the ecclesiastical power had the authority to take away the sword of a ruler if he was bearing it in vain. The deposition of rulers for non-fulfilment of their duty was the *ne plus ultra* of sacerdotal imperialism. Gregory VII's deposition of Henry IV was the actualisation of all the potential that lay in the claim that the pope held both swords.

## II

It was in the rapidly expanding world of ecclesiastical jurisprudence, with its close contacts with the papal curia and its sensitivity to contemporary

17. 'Ad hoc te constituit principem super terram "Princeps regum terrae" [Apoc. 1.5], ut sub eo et pro eo bonos foveas, malos coerceas, pauperes defendas, facias "iudicium iniuriam patientibus" (Ps. 145.7). Si haec facis, opus Principis facis, et spes est ut tuum Deus dilatare et roborare debeat principatum. Si non, timendum tibi, ne hoc ipsum quod videris habere honoris vi maioris potestatis, auferatur, quod absit, a te.' *Ep. CCLXXIX, Opera VIII*, p. 191.

political developments, that the theory of the two powers received the fullest attention in the second half of the twelfth century. It was the canonists who after the death of St Bernard did most to fashion the doctrine of the two swords into the formula which came as near as any one formula could to welding a variety of particular political principles and experiences into a general analysis of the basic principles of the relations of the ecclesiastical and civil authorities. They did this within the established dialectical methodology of the newly restructured and invigorated schools of twelfth-century Europe. They shaped the allegory of Luke 22.38 into a *quaestio* of conventional scholarship, to make of it the most important single guide to hierocratic logic for a century after the appearance of Gratian's *Decretum*.

It was Gratian who brought the dialectical method pioneered by Abelard to the service of canon law. His own title for his compilation reveals his intention: he was to harmonise discordant canons. His *Concordia discordantium canonum* (c. 1140) aimed to reconcile the differences, often considerable, between the teachings of different authorities on the same subject. Further he grouped his texts on a new plan, itself with a strong dialectical emphasis, for the discussion and resolution of problems. Gratian himself offered his own solutions in the numerous *dicta* which punctuate his work. His whole method invited further discussion. That spirit of dialectic which he did so much to foster in the medieval schools, when applied to two swords doctrine, produced no less than four discussions of it in the *glossa ordinaria* of the *Decretum*<sup>18</sup> and, in turn, provoked two more in the *glossa ordinaria* on the *Decretales*.<sup>19</sup>

Gratian himself produced no pronounced political interpretation of the swords imagery. The spiritual sword was the word of God; by Christ's command to Peter after he had cut off the ear of Malchus, priests are forbidden the use of the material sword. This usage is for the prince, who 'beareth not the sword in vain' and to whom all are commanded to be subject.<sup>20</sup> But if his own view was cautiously dualist<sup>21</sup> he had assembled such a range of politically viable material that more elaborate and very different consequences could be drawn. The *Decretum* contained an amalgam of ethico-political doctrine and terminology and political history which it was the work of its commentators to bring to concord. The *quaestio* concerning the two swords was one of their more important processes of reconciling discordant canons. By and large, the twelfth-century canonists

18. *Decretum Gratiani* 1561, D. 10 c. 8, s.v. *discrevit*; D. 22 c. 1, s.v. *celestis*; D. 96 c. 6, s.v. *usurpavit*; D. 96 c. 11, s.v. *divinitus*. 19. *Decretales* 2.1.13 s.v. *iurisdictionem nostram*; 4.17.7 s.v. *ad regem*.  
20. *Decretum* 23 q. 8 Grat. *I Pars* and *dict. p.c.6*. 21. Stickler 1948, pp. 108–11.

were conservative about attributing two swords to the pope. When, after half a century or so of vigorous debate, Huguccio, the most distinguished of them, wrote his comprehensive survey of the discussion, he came down on the side of those who maintained that ‘the emperor had the power of the sword and the imperial dignity through election by the princes and people, not from the pope’<sup>22</sup> and produced a strong case to prove his point. But the most lucid review of this type came with a development in the technical literature, when canonists started to produce collections of *questiones*, separate from marginal glosses in the *Decretum*. Freed from the cumbersome task of repeating the same material through different parts of the *Decretum*, canonists could dispose of the argument in a single context. Easily the best of the twelfth-century *questiones* concerning the two swords was that of Ricardus Anglicus, written about the turn of the century, exemplary in its thorough coverage of basic texts and of decretist commentary. It allows a comprehensive over-view of the nature, evolution and content of the decretist discussion of the relations of the two powers subsumed under the question ‘whether or not the pope has both material and spiritual swords’.

Ricardus followed classical *quaestio* procedure. He produced arguments for and against the proposition that the pope possessed the power of both swords, a third section replied to the *pro* arguments and a fourth, for and against a compromise solution. He concluded by giving his personal opinion but, very fairly, left the very last word with those who disagreed with him. His discussion involved all the major texts of decretist analysis of the relations of the powers, was conducted with full knowledge of the play of opinion and was presented with that lucid succinctness that only the very best decretist writing could achieve.

The arguments adduced in support of papal possession of both swords constituted the most trenchant of the papacy’s political claims. At the head of the list stood a politically extreme reading of Matthew 16.18: to Peter had been given the rights of both heavenly and earthly empires. This was to read literally Peter Damian’s rhetorical paraphrase of Christ’s conferring on

22. ‘Ego autem credo quod imperator potestatem gladii et dignitatem imperialem habet non ab apostolico, set a principibus et populo per electionem, ut di. xciii. legimus [D.93 c.24]; ante enim fuit imperator quam papa, ante imperium quam papatus. Item in figura huius rei quod diuise et discrete sint ille due potestates scilicet imperialis et apostolica, dictum fuit: “ecce duo gladii hic”.’ D.96 c.6 s.v. *officia* (Lincoln Cath. MS 2). The whole of this important gloss has been printed by Mochi Onory 1951, pp. 148–50. Huguccio was far from alone among twelfth-century decretists in favouring a dualist interpretation of Luke 22.38. Cf., e.g., Simon of Bisignano: ‘imperator uero habet potestatem gladii; distincte enim sunt he potestates nec una pendet ex altera, unde in huius rei figuram dictum fuit “ecce gladii duo hic”.’ D.96 c.6 s.v. *propriis actibus* (Lambeth Palace MS 411). On Huguccio, see especially Stickler 1947.

Peter, with the commission of the keys of the kingdom of heaven, of power to bind and loose in heaven and earth. If the pope controlled both these 'empires', ran the argument, the emperor received his imperial authority from the pope and, likewise, other rulers. That the emperor swore an oath of fidelity to the pope at the coronation was to be construed as an acknowledgement of the papal source of the empire. Then following the logic of the deposing power: if popes could depose kings not so much for their evil deeds as for their uselessness, as Pope Zachary had done (it was argued) in the case of King Childeric, then it should be deduced that the pope was taking away what he had bestowed. The same deduction followed another lesson of history. When Emperor Constantine transferred the seat of empire to Constantinople, his concession of the city of Rome and the Western Empire to Pope Sylvester was an acknowledgement that he held the empire from him. When later on Pope Adrian removed the empire from the Greeks and conferred it on Charlemagne, there was a further demonstration that the pope has both swords and the emperor holds from him. Ricardus' last argument in this section took him back to his starting-point: the nature of the papal office as such. God had meant it to be omniscient, a refuge for all the oppressed, as much for its lay as its clerical subjects. It followed, then, that appeal lay from the civil judge to the ecclesiastical: this is what St Paul meant when he wrote: 'Know you not that the saints shall judge this world? And if the world shall be judged by you, are you unworthy to judge the smallest matters?' (1 Cor. 6.2.)<sup>23</sup>

These are extremist arguments and no twelfth-century decretist was prepared to press the canons quite so hard. But the arguments of the deposing power and the translation of the empire, with the view of the

23. 'Quod videtur posse probari: utriusque enim imperii, scilicet celestis et terreni ei iura concessa sunt, ut xxii di. c.i. [*Decretum* D.22 c.1]. Si ergo habet utrumque imperium, ab eo habet imperator potestatem quam habet, et eodem modo alii principes. Item fidelitatem facit ei imperator tanquam domino, ut di. lxiii, tibi domino [D.63 c.33]. Item legitur quod papa reges deposuit, puta Zacarias regem francorum, non tam pro suis iniquitatibus quam pro eo qui tante potestatis erat inutilis ut xv. q. vi. alius [15 q.6 c.3]; si ergo regi potuit auferre potestatem, videtur quod eo habuerit. Unde a simili videtur hodie quod si imperator abutitur potestate sua, ille possit auferre imperium et alium principatum. Hoc idem potest probari alio exemplo: Constantinus enim postquam urbem romanam et partes occidentales beato Silvestro concesserat, ad partes orientales imperium et regiam potestatem transtulit et constantinopoli sedem constituit imperii, ut di. xcvi, constantinus [D.96 c.14 *palea*]. Sic itaque aliquando fuit imperium apud grecos; postea vero ab Adriano papa Carolo est concessum, et eis ablatum est ut lxiii. di., adrianus. Ex his ergo videtur quod utrumque habeat [papa] gladium et imperator ab eo. Item romana ecclesia potestatem habet de omnibus iudicare ut ix. q. iii cuncta [9 q.3 c.18]. Item alibi dicitur quod omnis oppressus libere sacerdotis vocem appellet iudicium ut ii. q. vi. omnis [2 q.6 c.3]. Ex hoc videtur quod a iudice civili possit appellari ad ecclesiasticum, maxime cum causas privatorum apostolus iussit deferri ad ecclesiam, ut xi. q. i. placuit [11 q.1 c.43; cf. 1 Cor. 6]. *Summa Quaestionum*, Zwettl MS 162, fols. 147va–148vb collated with the text published by Stickler 1953, pp. 610–12.

nature of papal power which lay behind them, were common opinion among later twelfth-century canonists. These were the arguments developed especially by Popes Innocent III (1198–1216) and Innocent IV (1243–54) with whom the papal theory of the Holy Roman Empire was to be brought to completion.

It was not difficult to find support in the *Decretum* for a contrary position. Gratian's texts, or a selection of them, readily yielded up a dualist position. Popes of the early middle ages, concerned to halt imperial intervention in ecclesiastical affairs, had emphasised God's division of the powers and his will that neither power should usurp what was proper to the other's sphere. Gratian, sensitive to the need to conserve *libertas ecclesiae*, had reproduced many of the classic papal dualist texts of the early centuries, the texts which Carlyle had especially in mind when forming the judgement cited at the beginning of this chapter. For Ricardus Anglicus, the dualist principles formulated by popes in the period from the fifth to the ninth century had been powerfully reinforced by Alexander III in his own time. A very important ruling of this pope stated quite categorically that appeal did not lie from a civil judge to the pope in a temporal matter; a clear indication to Ricardus that the emperor did not receive his authority from the pope, for if it were so, appeal from secular to ecclesiastical judge would be permissible. He also confirmed that Alexander III's position about the autonomy of secular jurisdiction was the established teaching of the canons. Ricardus Anglicus argued further (anticipating Robert Grosseteste and John Wyclif) that it was Christ's wish that bishops should not be involved as judges in secular courts. He deduced that the Lord was thus intimating that ecclesiastics had no authority to confer power in civil affairs on temporal rulers. Finally in this *contra* section of the *quaestio*, Ricardus posited the view that since historically there had been kings before there were priests and they had the same authority now as they did formerly, it should be concluded (as Huguccio had) that their power came not from the pope but from God.<sup>24</sup> An argument that was left to Dante to make the most of.

24. 'Econtra videtur quod [papa] non habet utrumque: distincte enim potestates sunt, quia *nec imperator iura pontificis nec pontifex iura imperatoris usurpare* potest, ut di. xcvi. c. cum ad verum [d. 96 c. 6]. Item a Deo consecuta est potestas imperatoris ut di. xcvi. c. si imperator [d. 96 c. 11]. Idem dicitur xxiii. q. iv. quesitum [23 q. 4 c. 45] ubi dicitur quod *memerint homines has potestates a Deo fuisse concessas*. Si ergo a iudice civili ad summum pontificem appelletur, non tenetur appellatio ut in ex. alexandri iii, denique [2. 28. 7§1]. Ex hoc ergo manifeste potest colligi quod imperator a summo pontifice non habet imperium, quod si haberet ab eo, ad illum posset appellari. Idem potest confirmari auctoritate illius capituli, ii. q. vi. omnis oppressus [2 q. 6 c. 3], ubi dicitur de illo qui appellat quod coram patricio deberent ventilari secularia negocia, coram ecclesiastico ecclesiastica. Item secularium negotiorum prohibetur esse cognitor apostolicus, ut xi. q. i. te quidem [11 q. 1 c. 29]. Videtur ergo quod nullum

The two sides of the argument thus summarised, Ricardus observed that different writers drew different conclusions from these texts. There were those who were convinced that the emperor had his power from God alone and in support of their case, proffered counter-arguments to those advanced from the other side. Thus 'the rights of heavenly and earthly empires' of the gloss on Matthew 16.18, they read simply as spiritual power over both clergy and laity. The imperial oath of fidelity was an acknowledgement by the emperor not that he held his authority from the pope but that he was subject to him spiritually. Pope Zachary could be said to have deposed Childeric because he excommunicated him and so ordered the king's subjects to withdraw their obedience from him because subjects should not obey an excommunicate lord; this was to degrade the king *per consequentiam*. Finally, when the canons stated that the pope had power to judge in all types of case, this was to be understood as referring specifically to judgements in ecclesiastical cases.<sup>25</sup>

Ricardus then proceeded to examine what some commentators considered to be an acceptable compromise solution. It ran along the same lines as that adopted by St Bernard in his reading of the two swords allegory. Their view was first formulated by Rufinus and argued that the pope had the authority of both swords: one to be exercised, the other not. Those canons which said that the emperor had his power from God alone should be interpreted as meaning that he had his power from God *principaliter*, since all power comes from God. But he has it too from the pope, *secundario*. However to this solution, Ricardus offered the objection that it left the pope with ultimate responsibility for the imposition of capital punishment, though the clergy were forbidden to shed blood. Further, if it were by his authority that the emperor had cognisance in a *causa sanguinis*, it followed

ius habeat cognoscendi super causis secularibus vel committendi cognitionem secularium aliquibus. Item antequam essent summi pontifices erant imperatores, et idem ius et eandem potestatem habebant quam nunc habent. Unde videtur quod non ab isto nacti hanc potestatem fuerint set a Deo.'

25. 'Ad premissa diversi diverso modo respondeunt: sunt enim qui dicunt quod imperator a solo Deo habet potestatem suam et hoc auctoritate premissorum capitulorum. Qui autem dicit quod utrumque imperium est ei concessum ita exponit id est, tam super laicos quam super clericos habet quoad spiritualia ut si quem ligaverit in terra, sit ligatus et in celis. Si autem obiciatur quod fidelitatem facit imperator, dicunt hoc non contingere ratione alicuius potestatis quam accipiat ab eo, sed illud facit ut sciatur quod illi subiectus est in spiritualibus nec hoc est facere fidelitatem quam fideles faciunt dominis, ut ex illo capitulo colligi potest, Tibi domino [D.63 c.33]. Item si dicatur quod Zacarias deposuit regem hoc factum est set ideo deposuisse dicitur quia pro contumacia sua excommunicatus est et ita subditos ab eius obedientia subtraxit, quia subditi domino excommunicato non tenentur obedire, ut xv. q. vi. iuratos [15 q.6 c.5]. Et hoc fuit regem degradare per consequentiam. Quod autem dicitur quod potestatem habet in omnibus causis iudicare restringi debet ut tantummodo restringatur potestas illa ad causas clericorum.'

that appeal lay from emperor to pope in a case involving loss of life. But such appeals had been forbidden by Pope Alexander III in the decretal already cited.<sup>26</sup>

Ricardus Anglicus concluded his ‘two swords’ review by giving it as his own opinion that it seemed safer and therefore preferable to agree that the emperor had his power from God alone. He concluded by drawing attention to the fact that those who took the other view agreed that the pope must delegate the material sword to the civil power.<sup>27</sup>

The trace of this early decretist caution about attributing both swords to the pope remained in the *glossa ordinaria* on the *Decretum*, the work of Johannes Teutonicus (c. 1216). But the canonist common opinion, as expressed by Bernard of Parma in the *glossa ordinaria* on the *Decretales* (1241–63) came to accept that the pope held both swords.<sup>28</sup> The theologians came into line. Aquinas’ adoption of the Bernardine formula in his *Commentary on the Sentences* against the Lombard’s view that the Church ‘non habet gladium nisi spirituale’ is sufficient evidence of that.<sup>29</sup> The ‘safer’ view, as Ricardus Anglicus had put it, however, continued to be

26. ‘Sunt alii qui dicunt quod utrumque gladium habet summus pontifex, alterum auctoritate et amministrazione, reliquum auctoritate absque amministrazione. Capitula que dicunt quod a solo Deo habet imperator potestatem sic exponuntur: a Deo habet principaliter, quia omnis potestas a domino Deo est; a summo pontifice tamen secundario. Sic tamen dicentibus potest obici: si enim potestatem habet a summo pontifice imperator, eius ergo auctoritate cognoscit in iudicio sanguinis. Item aliter dicitur *eripe eum qui ducitur ad mortem* [Prov. 24.11], xxiii. q. iii. non in inferenda [23 q.3 c.7]. Si ergo tenetur reos sanguinis defendere ecclesia, non eius auctoritate ultima debet punire superfluo. Item si eius auctoritate debet imperator cognoscere in causa sanguinis ergo ab imperatore potest ad papam appellari, quod manifeste negatur in decretali Alexandri iii. denique. Item si appelletur ad ipsum, quod facit in causa sanguinis, ipse siquidem cognoscere non potest, quia nec agitare iudicium sanguinis, ut xxiii. q. viii. sepe, his a quibus [23 q.8 cc.29, 30].’
27. ‘Propter has et consimiles rationes videtur nobis securior via eorum qui dicunt quod imperator a solo Deo habet potestatem. Qui tamen aliam tenent sententiam dicunt quod eam deligare debet iudici civili.’
28. ‘*Ad regem (pertinet non ad ecclesiam de talibus possessionibus iudicare)*. Et sic patet quod iurisdictio spiritalis et temporalis distincta est et diuisa, de cons. dist. iii. celebritatem, in fine, et in authen. de fi. instrum. circa princ. per unam columnam, et sic papa non habet utramque iurisditionem, argu. supra eod. lator [4.17.5] et xxiii. q. iiiii. regum [*Decretum* 23 q.5 c.23] et viii. dist. quo iure [d.8 c.1] et xxxiii. q. ii. inter haec, in fine [33 q.2 c.6] et xxiii. q. iiiii. quesitum. argu. quod papa intromittit se de hereditate. Argumentum contra, supra eod. ca. i. [4.17.1] et xx. q. iii. presens, in fine [20 q.3 c.4], xv. q. vi. alius [15 q.6 c.3], et xxiii. q. i. loquitur [24 q.1 c.18]. Huguccio dixit quod imperator a solo Deo habet potestatem in temporalibus, papa vero in spiritualibus, et sic diuisa est iurisdictio, prius enim fuit imperator quam coronam reciperet a papa, et gladium ab altari, xciii. dist. legimus [p.93 c.24], quia ante fuit imperium quam apostolatus. Sed Alanus et Tancredus dixerunt quod imperator, licet imperium a solo Deo dicatur processisse, executionem gladii temporalis recepit ab ecclesia. Ecclesia enim est unum corpus, ergo unum solum caput debet habere. Item Deus utroque gladio usus est, ut notatur de iudic. nouit [2.1.13], hic adde quod ibi dicitur. Item Moyses utrumque gladium habuit, cuius successor est papa. Preterea papa ipsum confirmat et consecrat et coronat, et eum deponit, supra de elect. venerabilem [1.6.34], et xv. q. vi. alius. Hoc ultimum verius credo’. *Glossa ordinaria ad Qui filii sint legitimi* c. *Causam* (4.17.7). 29. *In IV Sent.*, d. 37, exp. text.



widely publicised in the standard commentaries as the dialectical spirit of canonist scholarship kept its vitality in the thirteenth century. A canonist-fashioned dualism lay handily in the literature for those able to appreciate its value in opposition to the hierocratic logic.

That logic, however, had been much strengthened by Innocent III's detailed and trenchant reconsideration of the relationship between pope and emperor occasioned by the prolonged succession crisis following the death of Henry VI in 1197. Two lines of thought developed in this context proved especially influential. One had been pioneered by Hugh of St Victor. Under God's plan for mankind, unfolding through sacred history, the priesthood had always supplied the leadership of his chosen people: initially, as revealed in the Old Testament, then, in fulfilled fashion, in his church, ruled over by his vicar. In this pronouncedly providential and ecclesiological vision of politics, the dualism of function of each of the powers existed within the one body, the Church, under the control of its one head, the pope. The generalisation received specific exemplification in a second line of thought which Innocent III explained in meticulous detail: the constitutional relationship of empire and papacy. The function of choosing an emperor belonged to the electoral college of the German princes. But its constitutional right to exercise that function had been conferred on it by the papal act of translating the empire from Greeks to Germans, in Charlemagne's time, when the former had shown themselves incapable of fulfilling the work for which it had been established: protection of the Roman Church. It was for the pope to verify that any election had been legally conducted (Innocent III deliberately modelled the procedure on the canonical pattern for the appointment of bishops) and to scrutinise the suitability of their choice, exercising a right of veto on any candidate found wanting. If the candidate were confirmed as emperor-elect, he became emperor when anointed and crowned by the pope, and received his sword from him. Ecclesiology, history, constitutional law and liturgical symbolism led inescapably to one conclusion.

The conclusion that unquestionably the pope had two swords was rapidly drawn by the decretalists of the early thirteenth century and it was they who were responsible for the *glossa ordinaria* acceptance of two swords doctrine. Innocent III's decretals about the empire are lengthy and nuanced.<sup>30</sup> The decretalists summarised their message tersely: though the empire is said to

30. Especially important are: *In Genesi* (Reg. Innocentii III super negotio Romani imperii no.18); *Venerabilem* (Decretales 1.6.34).



proceed from God alone, yet the emperor receives the exercise of the sword from the Church,

For there is one body of the Church and therefore it ought to have only one head. Also, the Lord himself used both swords . . . but it was Peter alone that he made his vicar on earth, therefore he left him both swords. Further, Moses had both swords and his successor is the pope. Moreover, the pope is the emperor's judge because he confirms him, consecrates and crowns him and can depose him.<sup>31</sup>

Dualism, in the hierocratic logic, is only meaningful in the context of a single, papally-headed society, for which dual headship would be deformity. A body with two heads was a monster.<sup>32</sup> There was no place, in this logic, for an autonomous lay authority.

### III

As the last citation shows, the two swords theory as standardised by the canonists was in part a general theory of the relations of the powers and in part a specific theory of the relations of empire and papacy. The latter could not be an exact microcosm of the former, though commentators kept trying to make it so, because the empire–papacy connection was a unique one, a special relationship, with features fundamentally different from the papacy's relations with other lay powers. Innocent III had defined this *specialis coniunctio* with two adverbs: the empire related to the papacy *principaliter* (in its origin, referring particularly to its translation from Greeks to Germans, and to the coronation ceremony) and *finaliter* (in its end or purpose, which was the protection of the Roman Church).<sup>33</sup> Consequently the papacy had a right (it was argued) to oversee the conduct of

31. Text in n. 28 above, where the *glossa ordinaria* is correct in attributing the formulation to Alanus and Tancred.

32. Hostiensis: 'nec unum corpus nisi unum caput . . . igitur opinionem contrariam monstruosam' (*Apparatus* 4. 17. 13 s.v. *plenitudinem potestatis*); *idem*: 'Cum enim unum corpus simus in Christo, pro monstro esset quod duo capita haberemus, ut supra de offic. iud. ord. quoniam [1. 31. 14]. Hoc etiam expressim innuitur, 96 dis. Constantinus' (*Summa* 4. 17 n. 9). Whence to *Unam sanctam*: 'Igitur ecclesiae unius et unice unum corpus, unum caput, non duo capita quasi monstrum, Christus videlicet, et Christi vicarius Petrus, Petrique successor, dicente Domino ipsi Petro: "Pasce oves meas"' (John 21. 17).

33. What became the standard decretalist interpretation of the *Translation of Empire* was adopted by Hostiensis from Tancred: 'Legitur in cronicis quod cum ecclesia romana opprimeretur ab arstulpho rege lombardorum, petiit auxilium a Constantino et eius filio Leone imperatoribus constantinopolitanis, et cum nollent patrocinari ecclesie Stephanus papa secundus natione romanus transtulit imperium in Karolum magnum qui fuerat filius Pipini quem Zacarias predecessor eius substituerat Childerico regi francorum quem deposuerat, sicut legitur xv. q. vi. alius [15 q. 6 c. 3] et translatio illa facta est anno domini cccccclxxvi; qui Karolus coronatus est a Leone papa iii, elapsis post hoc xv. annos. T [ancredus].' *Apparatus* 1. 6. 34 s.v. *a Grecis*.

imperial elections and to veto unsuitable choices. It followed inevitably that those who became unsuitable after initial approval and subsequent coronation could be judged by the pope, deposed for sufficiently grave and incorrigible misconduct and the college of electors instructed to choose a replacement. The two swords allegory sat well to this sort of constitutional relationship.

It was not, however, a reading of Luke 22.38 that Roman emperors readily accepted. Indeed it seems that the first strictly political usage of the text of any significance was that of Henry IV designed to buttress dualism and protect the autonomy of kingship against the encroachments of Gregory VII. It was again to this scriptural authority that the Germans were to have recourse at Besançon in October 1157. The supporters of Frederick Barbarossa threatened papal legates with violence in defence of the honour and dignity of the empire against alleged papal usurpation in the claim that the pope conferred the empire as a *beneficium* or fief. The maladroitness of Adrian IV's vocabulary was compounded when one of the legates, possibly the future Alexander III, asked: 'From whom, then, does the emperor have the empire, if not from the pope?' Frederick's lawyers produced a vigorous restatement of Henry IV's dualism. The autonomy of the empire, its freedom from direct subordination to the Roman Church was emphatically asserted. The imperial crown came from God alone through the election of the princes. This was what God had demonstrated in the symbolism of the two swords shown to him by the apostles. Whoever claimed that the emperor had received the imperial crown as a *beneficium* from the pope thus contradicted God's plan for the world. That plan had been revealed both in the division of powers implicit in Christ's saying that there should be two swords and in Peter's teaching that everyone should be subject to the king and his officials (1 Pet. 2.13–14). Such a claimant 'stood accused of falsehood'.<sup>34</sup> Such indignant bluster, however, did not prevent Barbarossa's grandson becoming emperor on Innocent III's terms nor save him when Innocent IV decided that he had violated them.

The deposition of Emperor Frederick II at the council of Lyons in 1245 was at once the papacy's most spectacular political action and the implementation of the hierocratic logic in its plenitude. Two swords theories were manufactured to promote or repel the claim that the papacy

34. 'Cumque per electionem principum a solo Deo regnum et imperium nostrum sit, qui in passione Christi filii sui duobus gladiis necessariis regendum orbem subiecit, cumque Petrus apostolus hac doctrina mundum informaverit: "Deum timete, regem honorificate" [1 Pet. 2.17], quicumque nos imperialem coronam pro beneficio a domno papa suscepisse dixerit, divinae institutioni et doctrinae Petri contrarius est, et mendacii reus erit.' *MGH Const.* 1 n.165 p. 231.

could, or could not, confer or withdraw the imperial authority. But the claim itself developed from a logic much wider than any single scriptural allegory. The image expressed the logic; it did not in itself prove it.

It was a logic which began with the principle that the head of the Church had the power to expel a person from the Christian community.<sup>35</sup> To Peter had been given the power of binding and loosing in heaven and on earth, supreme judicial authority over the whole body of the faithful. A necessary part of that jurisdiction was the power of judging whether or not an individual had so conducted himself as to forfeit his membership of the society whose charge had been confided to Peter. The primary effect of excommunication was spiritual. It cut off the guilty from the sacramental and liturgical life of the Church. But there were important secondary consequences of a social nature. The individual's expulsion was to be marked by the public disapproval of the community and he was to be prevented from contaminating others. He was to be ostracised and isolated, treated, in the expression well-known from Bracton, as a spiritual leper. Dignity of office, height of rank, splendour of majesty allowed no exemption from this sacerdotal power of judgement and sanction. If a ruler suffered major excommunication, he was to be shunned by his ministers and officials and he was to be refused obedience. In societies where the oath was of such prominence in manifesting the obedience of subject to ruler, the overt declaration that ostracisation was being ordered was the subjects' release from their oaths of obedience.

Gratian and the twelfth-century decretists in his wake, discussed this release in the context of the replacement of the last of the Merovingians by Charlemagne's father. A ninth-century precedent was not without its importance. But of more impact on contemporary thinking was Innocent III's practical demonstration of papal power to release subjects from their obedience. In the aftermath of the Albigenian crusade, the fourth Lateran council approved the transfer of the lands of Raymond VI, count of Toulouse, to Simon of Montfort. In effect, count Raymond had been deposed for the crime of harbouring heretics and his territories were adjudged forfeit to another who had proved his fidelity to the faith. The papal action was generalised into formal legal definition in c.3 *Excommunicamus* of the council's decrees. Secular rulers who proved persistently neglectful in purging their lands of heretics and defiant of excommunication by their local bishops were to be denounced to the pope who would declare their vassals absolved from fealty and their lands forfeit

35. Hageneder 1957–8.

to the orthodox in faith.<sup>36</sup> The fate of Raymond VI proved, as the early decretalist glosses show, a powerful reinforcement of the deposition logic.

Even more so did the fate of Emperor Frederick II, victim of Innocent IV and the first council of Lyons. The deposition decree declared that it was Frederick's own persistence in impenitence which had rendered him unfit to be Holy Roman Emperor and king of Sicily and that it was God himself who had cast him out of the Christian community and deprived him of all honour and dignity. The papal sentence, its authority based on the power of binding and loosing, was simply a public declaration of God's judgement. All Frederick's subjects were absolved from their oaths of allegiance, all were forbidden under pain of excommunication to obey him or hold him as emperor or king. The imperial electors were instructed to select a successor. The task of finding a new king of Sicily, the pope reserved for himself.<sup>37</sup>

Innocent IV, in his capacity as private doctor of canon law was to write a commentary on the deposition decree he had promulgated as pope. Its most striking feature was a disquisition on the decree's emphasis on the papal judge as God's mouthpiece. Just as Christ had had power when he was on earth, Innocent argued, to impose sentences on kings and emperors and any other sort of ruler had he so wished, so he had empowered his vicar with the same jurisdiction. Christ himself had meant his people to be subject to the rule of one overriding authority with discretionary power to act for the common good of the whole, a ruler whose responsibilities included power to judge and punish the political conduct of Christendom's lay rulers.<sup>38</sup> Frederick had been guilty of four very serious crimes (perjury, violation of the peace, sacrilege, suspicion of heresy), had reduced the clergy and laity of Sicily to beggary and servitude and had persistently refused to repent. Deprivation of office was the inevitable consequence of such defiance of morality and spiritual sanction.<sup>39</sup>

This logic was of course denied by Frederick II. As against 'the government of one person' (*regimen unius personae*) postulated by Innocent IV as the basic constitutional principle of the Christian community, the

36. Definitive text of *Excommunicamus* in García y García 1981, pp. 47–51. J. Teutonicus: '*uasallos ab eius fidelitate denunciati absolutos: Sic ergo papa potest omnes iudices siue duces siue comites deponere propter heresim et etiam propter alias iniquitates, ut xv. q. vi. Alius, nam et transfert dignitatem de loco ad locum ut extra. iii. de elect. Venerabilem.*' *Ibid.*, p. 189.

37. Text of the decree *Ad apostolicae dignitatis* (17 July 1245) in *Conciliorum oecumenicorum decreta*, ed. Alberigo *et al.* 1960, pp. 254–9. Analysis, Wolter and Holstein 1966, pp. 104–12.

38. On Innocent IV's theory of the relationship of the powers, Carlyle 1903–36, vol. v, pp. 319–24; Cantini 1961; Watt 1965a, pp. 66–70; Tierney 1965.

39. Hostiensis supplies important evidence for opinion about the deposing power at the first council of Lyons, Watt 1965b. Other aspects in Peters 1970, pp. 135–69.

emperor did little more than fall back on the classic dualist position of Henry IV and Frederick I, that human society should be governed by two autonomous authorities. The two swords allegory dictated a co-ordination and co-operation of the powers and decreed the supremacy of the temporal in its own sphere. The 'eternal provision' for mankind established two types of government by which human frailty was to be supported and disciplined. The fullness of sacerdotal power in spiritual matters granted to the pope was no more, in essence, than that same power to inflict spiritual punishment for sin as had the humblest priest. Frederick professed his belief in papal possession of the keys as an article of faith. Nevertheless, he argued, it was not of faith that it constituted a power to depose emperors: 'nowhere can it be found commanded in either divine or human law that [a pope] can transfer empires at will or punish kings temporally by depriving them of their kingdoms, or judge temporal rulers at all'. Granted also that it was for the pope to consecrate and crown an emperor, nevertheless this right no more gave him the power to depose emperors than it gave the right to depose to those prelates who in other countries consecrated and crowned their rulers.<sup>40</sup>

Frederick's propaganda against Gregory IX and Innocent IV tended to concentrate more on papal character deficiencies than on principles of papal government. It is perhaps surprising that the controversy did not stimulate an outburst of pro-imperial political writing. Dante had ample justification for complaining, more than half a century later, at the beginning of his *Monarchia*, that the theory of Empire had been neglected. German apologists of imperial dualism, a thoroughly respectable intellectual position, as Ricardus Anglicus had demonstrated from the leading school of canon law, were few and undistinguished. Jordan of Osnabrück avoided the issue of empire–papacy relations; Engelbert of Admont posited a relationship of simple co-ordination but shied away from any extended exposition of it. Other Germans went far towards accepting the gist of the papal position. Alexander of Roes accepted the substance of the papal view of the Translation of Empire theory and of the depositions of Childeric III and Frederick II; the *Schwabenspiegel* accepted the hierocratic reading of the two

40. Frederick professed his belief in the fullness of papal power in spiritual matters 'ut quod in terra ligaverit sit ligatum in celis, et quod solverit sit solutum, nusquam tamen legitur divina sibi vel humana lege concessum quod transferre pro libito possit imperia aut de puniendis temporaliter in privacione regnorum regibus aut terre principibus iudicare . . . Nam licet ad eum de iure et more maiorum consecracione nostra pertineat, non magis ad ipsum privacio seu remocio pertinet quam ad quoslibet regnorum prelatos, qui reges suos, prout assolet, consecrant et inungunt.' *MGH Const.* II no. 262, p. 362. On Frederick's opposition more generally, Ullmann 1960b.

swords text; Rudolf of Habsburg in the first opportunist step of the most successful dynasty in European history accepted with his electors in 1279 the papal theory of the imperial constitution.<sup>41</sup> In Italy, the civilian lawyers certainly kept alive the classic imperial dualist position. But they were content to leave it undeveloped in the bald summaries that the literary genre of the marginal gloss demanded.<sup>42</sup> Fullblooded counter-attacks on the triumphant hierocracy with reasoned expositions of the imperial ideology had to wait for Dante and Marsilius of Padua, in days when imperial power had been emasculated.

#### IV

The two swords theory, in its hierocratic interpretation, was well-known in England. It is to be found well-ventilated in the glosses of English decretists written in English manuscripts at the turn of the twelfth century and in early decretalist writing as it reached England from Bologna. Its Bernardine version was professed by Adam Marsh and so, we may take it, was current in the theology faculty of the university of Oxford: the temporal sword was to be exercised *ad nutum*, at the command of the priest.<sup>43</sup> It received a particularly eloquent formulation from Bishop Robert Grosseteste.<sup>44</sup> He anticipated that grand historical vision of Innocent IV, noted earlier, envisaging God's enduring purpose for his chosen people, first of Israelites, then of Christians, that it should be headed by one priest-ruler. Moses, Joshua and his successors down to Christ himself, then his vicars, wielded supreme authority over God's people, exercising the authority of both

41. Rivi re 1926, pp. 308–19; Lecler 1931, pp. 327–30, 335–6.

42. *Authentica*, Nov. VI: 'Administrationes et iurisdictiones pape et principis distincte sunt. Prefatio. Maxima quidem in omnibus sunt dona Dei, a superna collata clementia, sacerdotium et imperium: illud quidem diuini ministrans, hoc autem humanis presidens ac diligentiam exhibens, ex uno eodem principio utraque procedentia humanam exornant vitam. [Gloss] maxima. Vere est maxima quia ex his duobus totus regitur mundus. Unde illud: *Ecce gladii duo hic, secundum unum intellectum*. Alii dicunt quod duo testamenta significant.' *Collatio Ia*, t.vi. n.6, *Quomodo oporteat episcopos et ceteros clericos ad ordinationes perducere*.

43. Marsh 1858 *Ep.* 246, pp. 436–7. The letter contains a long quotation from Bernard's *De consideratione* and concludes: 'ille sacerdotis, is militis manu, sed sane ad nutum sacerdotis et iussu imperatoris. Est igitur uterque ecclesie, sed verbalis ad usum, ferreus ad nutum.'

44. Grosseteste 1861, *Ep.* 23, p. 91: 'Debent quoque principes seculi nosse quod uterque gladius, tam materialis videlicet quam spiritalis, gladius est Petri; sed spiritali gladio utuntur principes ecclesie qui vicem Petri et locum Petri tenent, per semetipsos; materiali autem gladio utuntur principes ecclesie per manum et ministerium principum secularium, qui ad nutum et dispositionem principum ecclesie gladium, quem portant, debent evaginare et in locum suum remittere [with a reference to Rom. 13.4].'

swords (*uterque gladius*) and of both laws (*utraque lex*).<sup>45</sup> The powers were distinguished, as the allegory indicated, but their essential unity was preserved within the authority of the one sacerdotal monarchy. And this by divine decree:

I consider that it was the lord Jesus Christ himself who demonstrated and commanded the division of the functions of each of the two swords and of the two laws between temporal and ecclesiastical rulers, yet with the oneness of each sword and each law retained in the charge of the rulers of the church.<sup>46</sup>

But what was the relevance of this highly abstract principle for the relationship in practice of the English monarchy to the *ecclesia anglicana*?

Grosseteste's first excursus on two swords theory came in a letter to William Raleigh, the celebrated royal judge who was later to become, with some difficulty, bishop of Winchester. Grosseteste was trying to persuade William to use his influence to persuade the king and his council to adopt the ecclesiastical law principle that the subsequent marriage of the parents legitimated children born before the marriage. In 1236 the bishop had fallen foul of the civil power by refusing to answer to the standard royal writ which ordered ecclesiastical judges to certify as to the married state of persons concerned in property cases in the lay tribunal where exception of bastardy was being argued. It is not altogether clear whether Grosseteste's objection was to being instructed to provide the required information, which was to put the ecclesiastical court in the subordinate position of being ordered to do something by its theoretical inferior, or to participating in a procedure which involved a principle which canon law found defective, for common law did not recognise legitimation *per subsequens matrimonium*. The letter to Raleigh is a lengthy exposition of arguments drawn from the Bible, philosophy, civil and canon law to prove the correctness of the ecclesiastical doctrine and to convince the judge that he was obliged in conscience to work to have the common law brought into line with the canon law. Raleigh slyly hinted at the absurdity of changing the custom of England to fit Old Testament principles. But the real core of Grosseteste's argument was something simpler. The law of the Church, in this issue

45. 'Quod autem uterque gladius, utraque pax, utraque lex sit principaliter principum ecclesiae, liquet non solum ex sacrorum scriptorum expositionibus, sed ex antiquorum principum populi Dei a Deo dispositis actionibus. Moyses enim constitutus a Deo princeps populi Israelitici, in omnibus habens typum praelatorum ecclesiae, utroque gladio, utraque lex, in utraque pace populum sibi commissum per seipsum regebat' *ibid.*, p. 92.

46. 'Divisionem autem duorum gladiatorum actuum et duarum legum in principes seculi et principes ecclesiae, unitatem tantum potestatis utriusque gladii et utriusque legis penes principes ecclesie retentam, puto monstrasse et ordinasse ipsum Dominum Jesum Christum' *ibid.*, p. 93.



defined by Alexander III in two decretals,<sup>47</sup> should be obeyed just because it was the law of the church and thereby superior to any lay law, which should follow it. The relationship of temporal law and ecclesiastical law was the relationship of the two swords: distinguished in operation but united in the priesthood so that 'the laws of princes which contradict the decrees of Roman pontiffs are of no validity'.<sup>48</sup> If the secular prince goes against divine or ecclesiastical laws in the exercise of his sword or in the constitution of his law, he is to be regarded as disobedient to Christ. Grosseteste's two swords doctrine, expressive of the principle of the superiority of the spiritual, found practical expression in the demand that where canon law has a clear ruling, civil law has no alternative but to follow suit.<sup>49</sup>

Bracton records the upshot in a famous passage: 'the bishops having asked the king and magnates to consent that those born before marriage should in all respects be as legitimate as those born after. And all the earls and barons as many as there were, answered with one voice that they did not wish to change the laws of England which had hitherto been used and approved.'<sup>50</sup> Maitland thought of this reaction that 'perhaps we do well to treat this as an outburst of nationality and conservatism'.<sup>51</sup> Maybe. But it was also symbolic of English rejection of hierocracy and of that reliance on the primacy of English custom which was the constant in the specifically English experience of the relationship of the powers. All thirteenth-century kings, barons and royal judges would no doubt have agreed with Grosseteste and the episcopate that secular laws which contradicted divine law should be corrected. But they were not prepared to agree that canon law should be equated with divine law just because the clergy said it should be, nor to go along with the suggestion that the pope knew best when it came to drawing up the rules for succession to landed property in England.

Grosseteste's was the commanding influence when the episcopate as a whole shaped into petition-form its resentment of the burdens allegedly laid on churchmen by the civil power; the crown was to remedy their grievances in return for grant of taxation. One cause they espoused, and for

47. *Decretales* 4.17.1, 6.

48. 'Constitutiones quoque principum contra canones et decreta praesulum Romanorum nullius sint momenti.' Grosseteste 1861, *Ep.* 23, p. 89. The text is a quotation from *Decretum* d.10 c.4.

49. 'Obtemperare igitur oportet leges principum seculi legibus divinis, et ecclesiasticis non repugnare; quod si gladio aut legis constitutione repugnat princeps secularis Christo aut ecclesiae, inobediens invenitur Patri suo Christo qui eum genuit verbo veritatis, et matri suae quae eum peperit de sacro fonte baptismatis.' Grosseteste 1861, *Ep.* 23, p. 93.

50. '... sed rogabant [omnes episcopi] regem et magnates quod ad hoc consensum praeberent, quod nati ante matrimonium quoad omnia legitimi esse possent sicut illi qui post. Et omnes comites et barones quotquot fuerunt una voce responderunt quod noluerunt leges Angliae mutare, quae usque ad tempus illud usitatae fuerunt et approbatae.' *De legibus* iv, p. 296.

51. Pollock and Maitland 1898, vol. 1, p. 189.



which Grosseteste attempted theoretical justification, was already well lost: that the clergy should be exempt from all lay jurisdiction except in cases involving lay fee. Again, Grosseteste's defence, stripped of its ample rhetoric, amounted to a simple deduction from the superiority of the spiritual: no mere custom should prevail against the canons. But English custom did. No need was felt to provide theoretical justification.

Grosseteste defended another lost cause which is nevertheless worth looking at for the light it throws on the respective ways, hierocratic and dualist, of looking at a major issue of principle. In 1239, the English episcopate laid before the cardinal-legate Otto twenty-nine specific articles of complaint against the lay power's alleged infringement of liberty of the Church. One clause demanded that the decision as to whether a particular case was ecclesiastical or lay should not be that of secular judges.<sup>52</sup> Clearly this was a crucial matter. If, for hierocrats, the superiority of the spiritual meant anything in practical terms it meant that whenever there was doubt as to whether a case was spiritual or temporal, the decisive voice should be ecclesiastical. To hold otherwise was to leave the lay power in command of the frontier dividing the jurisdictions and thus able at will to redraw it.

Grosseteste based his rejection of this principle of the supremacy of the temporal on his two swords theory. Both swords belonged to the clergy and thus both laws and, therefore, though in different ways, all judgements, civil and ecclesiastical. The ecclesiastical it controlled *per administrationem*, the temporal *per auctoritatem et per doctrinam*. It exercised this latter doctrinal authority when it had to be decided in doubtful cases which tribunal should have the administration. Expanding the argument, he appealed to scripture, 'a difficult and doubtful matter in judgement shall come to the priest of the Levitical race and to the judges that shall be at that time' (his paraphrase of Deut. 17.8, 9), and to Innocent III's citation of the passage in his decretal *Per venerabilem* (4.17.13).<sup>53</sup>

52. The legate was asked to persuade the king that twenty-nine current practices were to be abandoned as against ecclesiastical liberty. The sixth read: 'Item, quod per solos iudices seculares non determinetur de aliqua causa utrum debeat dici ecclesiastica vel secularis': Powicke and Cheney 1964, p. 281.

53. 'Potestas vero iudiciaria iudicis ecclesiastici extendat se etiam in secularia, cum, ut supra dictum est [at p. 218], omne iudicium per auctoritatem et per doctrinam sit ecclesiae, licet non omne per ministerium. Is igitur, cuius potestas extendit se tantum in alterum et minus, iudicabit utrumque. Nec erit potestas secularis "iudex et divisor" [Luke 12.14] inter ecclesiam et seculum, sed iudex ecclesiasticus qui praest ecclesiae et seculo.' The Deuteronomy and *Per venerabilem* passages follow, Grosseteste 1861, Ep. 72 pp. 220–1. The text concludes with the summary: 'quod iudices seculares graviter peccant cum in foro suo determinare praesumunt quae causa sit ecclesiastica et quae secularis, quando ad utrum forum pertineat vertitur in dubium,' *ibid.*, p. 231.

Divine law—codes old and new notwithstanding, the common law view of the matter prevailed. Bracton caught well its easy assurance in the power of the crown and its confidence in the rectitude of English custom:

And though in spiritual matters as in temporal [each] ought to decide whether jurisdiction is his or not, in order to ascertain whether the person ought to appear or not, nevertheless, lest the ecclesiastical judge, putting his sickle into another's harvest, presume against the crown and royal dignity, as with respect to lay fee or chattels, when he receives a prohibition from the king he ought in every case to stay proceedings, at least until in the king's court it is settled to whom jurisdiction belongs. For if an ecclesiastical judge could decide whether the jurisdiction was his, he would proceed in every case without distinction, despite the royal prohibition. He must stay proceedings altogether or when attached, come or send, so that, the plea having been examined in the royal court, he desist or proceed by counsel to the [royal] court. If he does not do so, let him be punished with the appropriate penalty.<sup>54</sup>

This was what happened in practice as episcopal *gravamina* testify.<sup>55</sup> The power of the crown with its coercive writ of prohibition was not to be shaken by a papal legate, the bench of bishops and one of the leading intellectuals of thirteenth-century Christendom. Such strength reveals how little earlier papal efforts to shape English customs to a more acceptably hierocratic model had affected the substance of royal control over the relations of the powers.

The two great Church–State crises of medieval England, the confrontations of Henry II and Archbishop Thomas Becket and of King John and Pope Innocent III, both accidental creations of personality and circumstance rather than of any great inevitable clash of principle, did not significantly weaken royal dominance of ecclesiastical jurisdiction. It is true that both

54. 'Et quamvis in temporalibus sicut in spiritualibus aestimare deberet rex vel iustitarius suus an sua sit iurisdictio vel non, ut sciri possit an summonitus venire debeat an non, tamen si iudex ecclesiasticus falcem ponens in messem alienam aliquid praesumpserit contra coronam et dignitatem regiam, sicut de laico feodo vel de catallis, cum prohibitione a rege suscepit, supersedere debet in omni casu, saltem donec constiterit in curia regia ad quem pertineat iurisdictio, quia si iudex ecclesiasticus aestimare posset an sua esset iurisdictio, sic in omni casu indifferenter procederet non obstante regia prohibitionem. Debet igitur vel omnino supersedere vel cum attachiatus fuerit venire vel mittere, quod examinato placito in curia regia de consilio curiae supersedeat vel procedat, quod si non fecerit, poena debita puniatur ut supra.' *De legibus* iv, p. 282.

55. As, for example, the complaints of the clergy at the Canterbury provincial council held in London in 1257: 'Item in quibus omnibus casibus et similibus, si iudex ecclesiasticus contra prohibitionem regiam procedat, attachiatur. Comparens coram iustitiariis, compellitur iudex exhibere acta sua ut per ea decernant utrum negotium pertineat ad forum ecclesiasticum vel seculare. Et si videatur eis quod pertineat ad forum regium, querelatur iudex; si neget, indicitur ei purgatio per iudicem secularem, ad testimonium duorum vilissimorum ribaldorum. Et si purgare se noluerit, incarcerationur donec iustitiariis sacramentum prestiterit corporale quod non processit contra prohibitionem; et si facere noluerit, in carcere retinetur. Similiter actor, si sequatur.' Powicke and Cheney 1964, p. 544.

kings were forced to make concessions. Henry II conceded 'benefit of clergy' so that the trial and punishment of felonious clerks was a matter for the church court. But the crown preserved a significant measure of control. Proceedings against the accused clergyman began in the royal court, with outlawry the penalty for failure to present himself for accusation. Before he was relinquished to the ecclesiastical court, the royal court rigorously scrutinised the validity of his claim to clerical status. It made sure, too, that the bishop's commissary who appeared to claim the cleric for the ecclesiastical court had been properly authorised. The lay court decided whether or not there was a charge to be answered to. If there were, the trial took place before the ecclesiastical judge. Technically, no doubt, the accused had not been tried in the lay court, but the ecclesiastical judge and any possible compurgator already knew that a lay jury thought the man guilty. The lay power closely supervised that the ecclesiastical court had followed its own procedure of purgation exactly. If the accused were found guilty in the ecclesiastical court, his chattels were forfeit to the crown. Indeed they were forfeit to the crown on his being relinquished to the ecclesiastical judge and were only released to one cleared of the charge by grace and favour and payment of a fine.<sup>56</sup> Every stage, therefore, was carefully monitored to make it clear that the *privilegium fori* was privilege granted by the crown.

For the rest, however, Henry vindicated all the important principles of English jurisdictional custom set out in the Constitutions of Clarendon: that, benefit of clergy and a few minor issues apart, 'the clerk was protected by and subject to the same rules of temporal law which guarded and governed the layman',<sup>57</sup> that all questions touching the possession and ownership of land, including advowsons of churches and land granted to churches in alms, were reserved most strictly to the royal jurisdiction; that the application of spiritual penalties to tenants-in-chief, royal officials and crown demesne subjects should be carefully controlled. It was no coincidence that the writ of prohibition with all its potentiality for full control over the operation of the ecclesiastical court made its appearance at this time. And all this gained without recourse to political theory; Henry II produced no theory of royal power. Probably, as has been suggested, he did not even have one.<sup>58</sup>

56. Pollock and Maitland 1898, vol. 1, pp. 439–57; Cheney 1936.

57. Pollock and Maitland 1898, vol. 1, p. 439.

58. Smalley 1973, p. 238: 'It emerged from the muddle of anti-Becket propaganda that Henry II had no coherent theory of royal power to oppose Becket's defence of the Church, or preferred not to state it, if he had one.'

John's brush with Innocent III brought him over four years of personal excommunication and over five years of interdict on England as a whole.<sup>59</sup> Fear of French invasion and unrest among his officials and barons forced him to make peace with the pope. His climb-down brought him significant favours from Innocent III: condemnation of French invasion plans, condemnation of *Magna Carta*, suspension of Innocent's own choice as archbishop of Canterbury, the Stephen Langton whom John had rejected and thereby incurred excommunication, a veto on the appointment of Langton's brother to York because of John's suspicions of him and, finally, at the fourth Lateran council, excommunication and interdict for all baronial leaders of the rebellion and their aiders and abettors, with an interdict for the city of London. These diplomatic gains remind us that hierocracy was there to be exploited by kings as well as defied, resisted or ignored.

For papal support, John made two concessions. The first was the surrender of the kingdoms of England and Ireland to papal suzerainty. England remained a papal fief until parliament abolished the relationship in 1366. If, as Cheney has suggested, Innocent III intended to 'claim direct power in political as well as ecclesiastical matters'<sup>60</sup> over his new vassal state, the pretension was never actualised either by him or his successors. The second concession, the charter guaranteeing free elections, was a matter of more consequence. Indeed it has been claimed that by it, 'State-churchism in England was annihilated'.<sup>61</sup>

The twelfth clause of the Constitutions of Clarendon had laid down procedure for the conduct of episcopal elections and of elections of abbots of religious houses on the king's demesne. It contained the injunction that such elections were to be made in the king's chapel by clergy present because the king had summoned them. The king's personal presence seems to be assumed. In any event, his assent to the choice was a necessary part of the procedure. This procedure was modified in an important way in 1214. Elections were now to be transferred from the king's chapel to the chapter houses of cathedrals and monasteries and they could take place according to the canonical rules soon to be updated in the legislation of Lateran IV. But just as Henry II was able to qualify his concessions concerning procedures envisaged by the Constitutions of Clarendon, so John was able to preserve important elements of their clause 12. Though the crown was to be no

59. Definitively analysed by Cheney 1976. 60. Cheney 1976, p. 337.

61. Tillmann 1980, p. 84. Richardson and Sayles 1963, p. 357, are nearer the mark: 'John was not conceding anything more than words . . . The concession of free election was quite illusory.'

longer in such an all-commanding position in the making of prelates as previously, there remained to it at least a platform for decisive intervention. Electors were obliged to give formal notice of vacancy and were forbidden to proceed to an election until they had been given royal permission to do so. This procedure gave the king an opportunity of making known the name of any candidate he might have in mind and to bring to bear any informal pressure he might wish to exercise. With the requirement of his consent to the elect, he had effectually a veto on any candidate whose loyalty was suspect. And the taking of the temporalities into the king's hand during vacancy could be exploited in circumstances of dispute and, more importantly still, the threat of confiscation during tenure gave the crown a sanction on episcopal conduct whose value it was not slow to appreciate. Coercion *per baroniam* was not just an occasional expedient but became established, as will be seen, as a routine legal procedure.

Thus John's concessions in the charter of free election were much less substantial in actuality than full hierocratic theory, the demand for removal of all royal participation, would have hoped for. In fact, John and Innocent III had produced an eminently sensible compromise, a classic example of dualism in action. The agreed procedure recognised the two-fold status of the bishop, both pastor of souls and tenant-in-chief of the crown and the respective legitimate interests of both powers in his appointment. By and large, despite an occasional spectacularly protracted wrangle and not infrequent episcopal complaints of undue prolongation of vacancies by the crown, the system worked well in the thirteenth century, producing conscientious bishops who were also, in the formula of the royal licence to elect, loyal and useful to the kingdom.

Dualism, English style, which is to say it was effectively dualism at the king's command, emerged relatively unscathed from its two most important challenges. Thereafter the will for the extremes of confrontation was lacking. Royal tempers were lost, churchmen wrung their hands, but there was to be no second Becket, no repeat interdict. By and large the powers achieved a harmonious *modus vivendi* under the authority of the crown.<sup>62</sup> Unquestionably the most striking example of the co-operative harmony of the two powers in England is the procedure known traditionally as caption of excommunicates.<sup>63</sup> In what became from the early thirteenth century an established routine procedure, the crown placed itself as a police arm at the disposal of bishops acting in their capacity as

62. Jones 1966, 1969, 1970; Donahue 1974; Adams and Donahue 1978–9, pp. 97–103.

63. Logan 1968.

ecclesiastical judges. A bishop faced with an accused who had been excommunicated for persistent disobedience to attend his court could call on the help of the civil power to compel him to appear. On signification of the facts to the royal chancery, the appropriate sheriff would be instructed to arrest and detain the excommunicate until he made his peace with his episcopal accuser. The procedure was the classic implementation of a truism known to all canonists from the rubric to a text of Isidore: 'What priests are powerless to accomplish by exhortation, the force of discipline may exact by fear.'<sup>64</sup>

The reality of such co-operation did not make it any the less true that in the thirteenth century 'there is always a brisk border warfare simmering'<sup>65</sup> between the two jurisdictions. The episcopate, on the whole led by able and spiritual men, did not lack energy and ingenuity in standing up for their view of liberty of the Church. The drawing up of long lists of their objections to royal practices in the form of *gravamina* and the attempt to link their remedy with granting of taxation and the observance of *Magna Carta*'s guarantee of the Church's liberties are evidence enough of that. These tactics brought concessions, clarifications and assurances of correction of admitted malpractices. But these were palliatives of the system. They did not diminish the royal control of it. Significantly, it was the royal writ *Circumspecte agatis* with its supplement that the clergy were happy to promote to statute status as the authoritative definition of the competence of the ecclesiastical courts.

The chief instrument with which the crown commanded the frontier between the jurisdictions and decided where the boundary should be drawn was the writ of prohibition.<sup>66</sup> Henry II had devised it, and with experience successive kings strengthened and diversified the prohibitory procedure. The writ in question was a royal command that under threat of sanction proceedings in the ecclesiastical court should be stayed until the crown decided where jurisdiction lay – the procedure stated by Bracton in the passage quoted earlier. Writs might originate with the king and council or from royal judges, for it was routine for justices on general eyre to search out abuses of ecclesiastical jurisdiction. But they were available also to private individuals, including clergy; in effect, therefore, to any litigant who hoped to gain advantage thereby. The persistent unpopularity of the writ of prohibition with ecclesiastical judges testified to its effectuality, until gratefully they accepted *Circumspecte agatis* as a guarantee against the

64. 23 q. 5 c. 20: 'Quod sacerdotes efficere docendo non ualent disciplinae terrore potestas extorqueat.'

65. Pollock and Maitland 1898, vol. 1, p. 479. 66. Flahiff 1944, 1945; Helmholz 1976.

arbitrary issuing of such writs and, even more gratefully, the procedure of consultation which allowed appeal against them when there was reason for challenging the validity of a writ.

There were other ways in which the lay power could and did coerce. Both Bracton and Grosseteste spoke of *coercio propter baroniam*.<sup>67</sup> The episcopal barony or the *temporalia* of a see could be confiscated to pressurise a bishop who was considered to have stepped out of line. Such action might therefore be taken quite arbitrarily; but it could also be part of routine procedure. It was the sanction employed to force bishops to compel their clergy to appear in lay courts or to pay fines imposed by royal justices. It was of course much resented by the bishops but their protests availed them little. The ultimate lay weapon against the clergy was brought to bear by Edward I. Faced in 1296 with clerical refusal to pay taxes to help finance his wars, he combined the sanction of confiscation of temporalities with withdrawal from the un-cooperative of the protection of the common law: he outlawed them. Later, his grudge long harboured, he procured from the sycophantic Clement V the suspension and exile of the archbishop of Canterbury who had so honourably led the opposition.<sup>68</sup>

Physical force, or the threat of it, unquestionably played a major role in the assertion of the royal supremacy. But it would be a serious error to see the clergy's submission to the royal will as simply the response to force. Dualism at the king's command was not wrung from a cowed clergy. Perhaps it was as much their creation as the king's. Several considerations suggest this. The most fundamental of these is social: the homogeneity of the English ruling class. A network of family connection, where the sons and brothers of royal officials were bishops, where bishops were royal ministers, judges and civil servants, where royal and aristocratic patronage greatly facilitated the ready movement of men from lay to ecclesiastical service and *vice versa*, formed its own community of interest. The social and governmental order had thus a built-in inclination to a spirit of compromise and co-operation in both spheres. Within this homogeneous ruling class, churchmen were allowed to discover the very real advantages of co-operation with the lay power: the protection of the law in general terms

67. Bracton: 'Sed numquid capietur aliquis ad mandatum iudicum delegatorum nec archidiaconi vel alterius iudicis inferioris, quia rex in episcopis coercionem habet propter baroniam.' *De legibus* IV, p. 327; Grosseteste (the context is patronage to benefices; if a bishop refuses to institute the cleric presented by the lay patron): 'praesentator impetrat a curia regis ut episcopus citetur per vicecomitem, et tandem compellatur per baroniam suam quod veniat responsurus coram iustitiariis domini regis'. 1861, *Ep.* 72, p. 205. 68. Denton 1980, pp. 107–30, 231–5.



and, more specifically, such privileges as benefit of clergy, relative freedom of elections, caption of excommunicates, a safeguard and a not inconsiderable area of ecclesiastical jurisdiction. Politically, the higher clergy, the lords spiritual in their parliamentary capacity, and in their convocations, had a formidable potential for influencing royal policy not least for bargaining about their liberties and the extent to which they were to be taxed.

V

The canonists and theologians of Paris and of the other French universities continued to discuss whether or not the pope held both swords because such discussions were part and parcel of a legal or theological education.<sup>69</sup> It was of some significance that the two swords doctrine remained a *quaestio*, a matter for regular scholarly debate, for this academic exercise kept alive the dissenting tradition typified by such earlier canonists as Ricardus Anglicus. But there was little doubt either as to where orthodoxy lay or as to the language in which it was best expressed. Aquinas, graduating in theology at Paris, voiced common opinion in his *Commentary on the Sentences*. Faced with the Lombard's assertion that 'the Church of God knows no other sword than the spiritual', he postulated 'what Bernard said to Pope Eugenius, namely that the pope has both swords', adding Bernard's own refinement as expressed in the *De consideratione*: 'It must be said that the church [i.e. the clergy] has only the spiritual sword in the context of what it exercises itself by its own hand. But it has also the temporal sword; at its command (*nutu*) it must be drawn, as Bernard said.'<sup>70</sup> Thus the Bernardine formula held sway in the schools. It could hardly be otherwise when the papal curia itself professed the same doctrine, often in the same words, no matter how cautiously it might choose to express it in particular diplomatic circumstances.

The French monarchy shared the curia's point of view to the extent that it was prepared to co-operate with the spiritual power. Its co-operation in the suppression of heresy is the most striking illustration of that willingness. But it was no more disposed to accept the hierocratic interpretation of co-operative dualism than was the English monarchy. Joinville has an anecdote which makes very clear how firmly under royal control were the

69. Good examples from the beginning of the thirteenth century (Simon of Tournai, Robert Courson, Stephen Langton) have been published by Baldwin 1970 vol. II, pp. 110–11 with commentary vol. I, pp. 163–7. 70. *In IV Sent.*, d.37, exp. text.



circumstances in which the secular arm should come to the assistance of the ecclesiastical power. The issue in question was what in England was called caption of excommunicates. The whole French episcopate had complained strongly to Louis IX that its sentences of excommunication were being nullified through lack of royal co-operation in enforcing them. The bishops therefore demanded of the king that he should order his officials and judges to compel all those who had been under the ban for a year and a day to answer to their ecclesiastical judge. Louis replied that he would willingly do so, always providing that the civil authority was given the full facts so that it might be judged whether the sentence passed in the ecclesiastical court was just or not. The bishops indignantly rejected the notion that their judgements should be subjected to lay assessment, arguing that the whole procedure should be under their sole control. In other words, demanding that the material sword should act at their *nutus*. But Louis withheld his co-operation. He cited a case of a man excommunicated in a French ecclesiastical court who had his sentence quashed at the papal curia, thereby demonstrating the fallibility of the judge. Therefore, argued the king, if he did not scrutinise such possibly erroneous ecclesiastical sentences, before lending his aid, 'he might be acting contrary to God's law and justice'.<sup>71</sup> In other words, even in the area of divine law – domain *par excellence* of the priesthood – he was not prepared to give way to sacerdotal ruling without exercising his independent judgement in a matter which concerned the common good of the kingdom.

This moral of Joinville's instructive anecdote translates easily into juridical doctrine. Beaumanoir, as acceptable a spokesman of the Capetian view of monarchy as Bracton is of the Angevin, was just as uncompromising as his English counterpart in asserting that it was the king who decided how the two powers should relate and co-operate. Certainly each sword should assist the other in the ways appropriate to its proper sphere and function. And especially must the temporal sword be available to guard holy church in her every need. It was, therefore, perfectly in order, for example, in a testamentary case, for the temporal power, at the request of the ecclesiastical judge, to seize property which had been bequeathed in order to force the executor of the will to do his duty. But this request was not to be interpreted as a command. It must not be thought, Beaumanoir stressed, that the temporal sword was exercised at the *commandement* of the spiritual power. It was called into action only at its *supplicacion*; in the

71. Joinville, *Histoire de S. Louis* §§ xxi, cxxxv.

custom of France, such exercise of the royal power in the service of the ecclesiastical, was only *par grace*.<sup>72</sup>

The 'custom of France' with its definition of the boundary between the two jurisdictions and the nature of the co-operation between them was ordinarily well under the control of the monarchy. The episcopate could be outspoken – Joinville's anecdote told how the bishops accused Louis IX, of all people, of dishonouring Christendom – as could their brothers in England. But, as in the neighbouring kingdom, their protests left the system of royal control substantially intact. Beaumanoir, no less than Bracton, articulated a two swords theory which expressed accurately the realities of the relationship between the two powers: co-operative dualism at the king's command. The Capetians controlled the *ecclesia gallicana* whilst rarely allowing their overruling of the hierocratic interpretation of two swords theory to provoke head-on clashes with the papacy. And, for its part, the papacy was anxious to avoid conflict. Preservation of a harmonious relationship with the French crown, in the general context of the suppression of heresy and the promotion of the crusade, was the cornerstone of papal diplomacy throughout the thirteenth century.

Franco-papal harmony came under considerable strain, however, at the turn of the century when Boniface VIII called into action every piece in the hierocratic armoury in an attempt, as he saw it, to reduce the king to filial obedience. The Capetian defied him and though less well-supported with polemical firepower, easily defended the 'custom of France' and the heights of command long occupied by his dynasty. This celebrated confrontation has always been accorded by historians a special significance in the evolution of the relationship of Church and State. G. de Lagarde was not far wide of the mark in his assessment of this significance:

In fact, while the supporters of the Holy See lost their way in defending for the first time an abstract system which corresponded neither to the past history of the Church nor to its future needs, the advocates of the 'prince' with singular success identified the fundamental claims of the modern State when confronted by religious society: sovereignty over property and persons, exclusive exercise of justice, absolute autonomy in legislation, and even (the claim is still confused) control over the spiritual life of the nation. Thus they sketch the earliest efforts of the State to recover the fullness of its personality.<sup>73</sup>

72. Beaumanoir, *Coutumes de Beauvaisis*: 'Nepourquant la justice laie ne fet pas ceste contrainte au commandement de la justice de Sainte Eglise, mes a sa supplication, car de nule riens qui touche cas de justice temporel, la justice laie n'est tenue a obéir au commandement de la justice espirituel, selonc nostre coustume, se n'est par grace. Mes la grace ne doit pas estre refusée de l'une justice a l'autre, quant ele est requise benignement.' Carlyle 1903–36, vol. v, pp. 361–3.

73. Lagarde 1948a, p. 258.

A theology untutored by experience challenged a political theory well-grounded in a nation's established political system.

Boniface VIII personally, his curia collectively and his loyal theologians and canonists, produced a hierocratic dossier of unprecedented proportions and ingenuity, whose general trend was to assail or abandon every moderating or qualifying tenet about papal omnipotence suggested by past theory and experience. The pope himself 'reminded' French ambassadors that his predecessors had deposed three French kings and threatened to dismiss their king like an errant stable-lad.<sup>74</sup> In *Ausculda fili*, pope and cardinals summoned the French hierarchy to Rome to investigate the whole conduct of the king's government.<sup>75</sup> Henry of Cremona forced every canon of Gratian's *Decretum* and every political decretal thereafter to maximum support of papal authority.<sup>76</sup> Giles of Rome produced a lengthy and exceptionally emphatic restatement of the Bernardine two swords doctrine and devoted a third of his *On Ecclesiastical Power* to an immoderate refutation of those elements in existing canonical and political opinion which militated against his main thesis, that the pope held a plenitude of power *sine pondere, numero et mensura*.<sup>77</sup> James of Viterbo constructed a specifically ecclesiological logic in his *On Christian Government* to establish the same position, in the same phrase.<sup>78</sup> It is in this treatise especially that is caught the authentic hierocratic note of this period: 'It is indeed well said that the vicar of Christ has fullness of power, because the whole of that power to rule which Christ has given to the church, priestly and royal, spiritual and temporal, is held by the pope, vicar of Christ.'<sup>79</sup> In these theories, where society is equated with the *ecclesia*, the autonomy proper to the temporal order is suffocated by the primary authority of the spiritual and lost to the demands of an all-embracing Christian ministry.

74. Dupuy 1655, p. 79.

75. Full analysis and partial translation in Digard 1936, pp. 89–92.

76. *De potestate papae* ed. Scholz 1903.

77. The final chapter of the *De ecclesiastica potestate* is headed: 'Quod in ecclesia est tanta potestatis plenitudo, quod eius posse est sine pondere, numero et mensura.' And it concludes: 'Ecclesia quidem est timenda et mandata eius sunt observanda, sive summus pontifex, qui tenet apicem ecclesie et qui potest dici ecclesia, est timendus et sua mandata sunt observanda, quia potestas eius est spiritualis, celestis et divina, et est sine pondere, numero et mensura.' 3.12, ed. Scholz 1929, pp. 206, 209.

78. 'Merito ergo in summo pontifice dicitur existere potestatis plenitudo. Unde et propter hoc dicitur esse potestas eius sine numero, sine pondere et sine mensura, quod sic potest intelligi.' *De regimine christiano*, ed. Arquillière 1926, p. 273.

79. 'Verumtamen dicitur Christi vicarius habere plenitudinem potestatis: quia tota potentia gubernativa que a Christo communicata est ecclesie, sacerdotalis et regalis, spiritualis et temporalis, est in summo pontifice Christi vicario. Tanta vero potestas communicata est ecclesie quanta erat oportuna ad salutem fidelium; quare in vicario Christi tota illa potentia est, que ad hominum salutem procurandam requiritur.' *Ibid.*, p. 272.

Such views were not confined to academic theology, remote from the realities of Franco-papal diplomacy. When the French protested, in Rome, that the pope was asking the king of France to acknowledge that he held his kingdom from the Church, this was strenuously denied.<sup>80</sup> But Cardinal Matthew of Aquasparta, in the presence of the pope, who explicitly concurred with his spokesman's views, expounded a general theory of sacerdotal preeminence which did not differ in substance from that of Giles of Rome or James of Viterbo: 'Thus in the church which is the ship of Christ and Peter, there must be one rector and one head whose command all are obliged to obey. And he who has the plenitude of power ought to be the lord of all temporalities and spiritualities.'<sup>81</sup> This principle has its relevance in a dualistic context:

There are indeed two jurisdictions, spiritual and temporal. The pope holds in principle (*principaliter*) spiritual jurisdiction and that was given by Christ to Peter and to the popes his successors. The emperor and other kings have temporal jurisdiction, yet the pope has cognisance and judgement of all temporal causes by reason of sin (*ratione peccati*) . . . Hence temporal jurisdiction belongs to the pope, who is vicar of Christ and Peter . . . by right (*de iure*) . . . but does not pertain to him as to action and exercise, as shown by what was said to Peter: 'Put up the sword into the scabbard' [cf. John 18.11].<sup>82</sup>

The cardinal's apologia was essentially a gloss on *Ausculda fili*. But it was equally a preview, as was Giles of Rome's *On Ecclesiastical Power* (especially I.2–5), of *Unam sanctam* wherein the curia sought to compress the full hierocratic logic into its basic principles.

*Unam sanctam* was the culmination of an ideology that had been given its first recension by Hugh of St Victor, as outlined in the beginning of this chapter: two powers inscribed within the one corporate society of Christians. The spiritual power institutes the temporal power and judges it if it errs. It incorporated too both the doctrinal content and terminology of St Bernard's two swords allegory, as reworked by Giles of Rome. Above

80. By Boniface VIII himself, in the words cited in n. 2 above.

81. 'Sic in ecclesia, quae sit navis Christi et Petri, debet esse unicus rector et unum caput, ad cuius preceptum omnes tenentur obedire. Et ille debet esse dominus omnium temporalium et spiritualium, qui habet plenitudinem potestatis . . . ' *Sermo de potestate papae*, ed. Gal 1962, p. 187.

82. 'Sunt enim duae iurisdictiones: spiritualis et temporalis. Iurisdictionem spiritualem principaliter habet summus pontifex, et illa fuit tradita a Christo Petro et summis pontificibus, successoribus eius; iurisdictionem temporalem habeant imperator et alii reges, tamen de omni temporali habet cognoscere summus pontifex et iudicare ratione peccati. Unde dico quod iurisdictio temporalis potest considerari vel prout competit alicui ratione actus et usus, vel prout competit summo pontifici, qui est vicarius Christi et Petri, de iure; unde qui dicit contrarium, impingit in illum articulum: "Iudicaturus est vivos et mortuos"; et in illum etiam predictum: "Sanctorum communionem". Sed iurisdictio temporalis quantum ad usum et quantum ad executionem actus non competit ei; unde dictum est Petro: "Converte gladium in vaginam"' *ibid.*, pp. 189–90.

all, it is what might be called a Christological political logic: the pope, in unshared headship, rules the Christian community as vicar of Christ. He has therefore such power as the general good of souls requires, his judgement of what constitutes that good is absolute, and therefore obedience to what he decides is essential, for that good is necessary for salvation. This jurisdiction covers every aspect of morality and thus kingship and the temporal order are not exempt from it.<sup>83</sup> *Unam sanctam* is a more explicit and official version of Aquinas' principle that to the pope 'vicar of Christ, all kings of the Christian people should be subject, as if to our lord Jesus Christ himself'.<sup>84</sup>

The French took *Unam sanctam* sufficiently seriously to extract from Clement V, some four years after its promulgation, an assurance that it contained nothing prejudicial to the king, the kingdom and the French people. The pope duly emphasised that he wished it to be understood that the French church, king, kingdom and people remained 'in the same state' in relation to the papacy as they had been before *Unam sanctam*.<sup>85</sup> No doubt this formula of compromise left many questions unanswered and open to each party to interpret as it would precisely what that same state was. But the course of the dispute had shown how the French understood it.

They took their stand on that dualism which Capetian practice had established. The king professed himself a true and devoted son of the Holy See, attentive to such pastoral admonitions as it chose to make for the good of his soul. But such *ratione peccati* authority carried no political jurisdiction. The *regimen temporalitatis regni* belonged exclusively to the king and there he was sovereign, subject to no superior.<sup>86</sup> This sovereignty extended no less

83. *Unam sanctam* should be read with the lengthy gloss of Jean Lemoine in any of the early printed editions of the *Extravagantes Communes* (1.8.1).

84. 'Huius regni ministerium, ut a terrenis essent spiritualia distincta, non terrenis regibus, sed sacerdotibus commissum, et precipue summo sacerdoti, successori Petri, Christi vicario, Romano pontifici, cui omnes reges populi christiani oportet esse subditos, sicut ipsi domino nostro Iesu Christo. Sic enim ei ad quem finis ultimi cura pertinet, subdi debent illi ad quos pertinet cura antecedentium finium et eius imperio dirigi.' *De regno* 1.14. Congar considers this to be Aquinas' 'la formule la plus extrême'. Congar 1970, p. 240.

85. 'Hinc est quod nos regi et regno per definitionem et declarationem bonae memoriae Bonifacii papae viii. praedecessoris nostri quae incipit, unam sanctam, nullum volumus vel intendimus praedictum generari. Nec quod per illam rex, regnum, et regnicolae praelibati amplius ecclesiae sint subiecti Romanae, quam antea existebant, sed omnia intelligantur in eodem esse statu quo erant ante definitionem praefatam: tam quantum ad ecclesiam, quam etiam ad regem, regnum et regnicolas superius nominatos.' *Extrav. Comm.* 5.7.2 (*Meruit*).

86. Discourse to papal legates, 20 April 1297: 'Regimen temporalitatis regni sui ad ipsum regem solum et neminem alium pertinere, seque in eo neminem superiorem recognoscere . . . super rebus pertinentibus ad temporale regimen regni. Quantum autem ipsius regis tangit animam et ad spiritualitatem attinet, idem rex . . . paratus est monitionibus et praeceptis sedis apostolicae devote et humiliter obedire, in quantum tenetur et debet, et tanquam verus et devotus filius sedis ipsius et sanctae matris ecclesiae reverentiam observare.' Dupuy 1655, p. 28; Rivière 1926, pp. 101–2.

over the clergy than the laity. The Knight of the *Disputation between a Knight and a Clerk* put the official point of view with characteristic severity:

Curb your tongue, sir clerk, and acknowledge that the king, in right of his royal power, is supreme over the laws, customs and liberties granted to you clergy and that he may add to them or take away from them or amend them according as equity and reason or the advice of his magnates counsels.<sup>87</sup>

It was just such a principle that informed the replies made by Philip the Fair to each of the pope's specific complaints of alleged French violation of ecclesiastical liberty. In the jurisdiction allowed to ecclesiastical courts, in royal rights over ecclesiastical properties and revenues and in collation to benefices, the king took his stand firmly on 'the custom of St Louis and his predecessors'.<sup>88</sup> Throughout the whole conflict, the French upheld 'the custom of France' and resisted what the baronage, alarmed by hierocratic language which suggested that the king of France had power in his kingdom conferred on him by the pope, called '*mauvaises et outrageuses nouvelles*'.<sup>89</sup>

They were not content, however, simply to defend the autonomy of the temporal power and the subjection of the clergy to it. Against *Unam sanctam*'s claim that the supreme spiritual power was immune from human judgement, the French proposed to put Boniface VIII on trial before a general council and actually attempted to arrest him in his Anagni residence. The charges levelled against the pope are scarcely credible. But as a procedure, the projected course of action was not indefensible. Its justification lay in a double line of argumentation, neither line new in itself, but now fused together in a uniquely forcible way.

The first of these was taken from the canonists. They had for long argued that there was an exception to the ordinary rule, reiterated in *Unam sanctam*, that a pope could be judged only by God. Gratian's *Decretum* contained a text, purportedly of St Boniface, which apparently allowed human judgement of a pope who had fallen into heresy. On the basis of this authority, canonists argued that a pope guilty of heresy was accountable to the Church at large and could be deposed. A breach once made in papal immunity, it could be widened. The *glossa ordinaria* on the *Decretum* went on to argue that a pope could be tried for any notorious crime which

87. 'Et ideo domine clerice linguam uestram coercete et agnoscite regem legibus, consuetudinibus et privilegiis uestris, et libertatibus datis, regia potestate praeesse, posse addere, posse minuere quaelibet, aequitate et ratione consultis, aut cum suis proceribus, sicut uisum fuerit, temperare.' Ed. Goldast 1611, p. 687.

88. Characteristically expressed in his replies to articles put to him by Boniface VIII, well analysed by Digard 1936, vol. II, pp. 143–5. 89. Dupuy 1655, pp. 60–2; Rivière 1926, p. 107.

constituted a public scandal when he had shown himself incorrigible.<sup>90</sup> When canonists considered ways and means of getting rid of an heretical or incorrigibly criminous pope, they generally agreed that the proper agent was a general council which canonists regarded as the ordinary mechanism for the discussion of important problems of unusual difficulty and for the resolving of crises. They tended to be vague, however, as to the actual procedure whereby a general council might be summoned in these circumstances, a tricky question, when by definition a general council was one adjudged such by the pope who alone could summon it. The French were to exploit the canonist argument about trying a heretical and criminal pope; they were to provide their own answer to the problem of summoning a general council to conduct such a trial.

The process of bringing Boniface VIII to trial was started at a meeting of the king's council in the Louvre held on 12 March 1303. Guillaume de Nogaret opened for the prosecution, headlining his speech with prophetic words of St Peter which he saw fulfilled in his days: 'There were also false prophets among the people even as there shall be among you, lying teachers' (2 Pet. 2.1). Boniface was the lying teacher now among God's people – manifest heretic, usurper of the chair of Peter, simoniac, blasphemer, destroyer of churches, incorrigible public sinner – the very personification of that abomination of desolation of the Temple of which Daniel had spoken (Dan. 9.27). Nogaret undertook to prove these charges at the general council before which he demanded Boniface be arraigned. In the meantime, he should be suspended from office immediately and held under close arrest, a vicar of the Roman Church being appointed until a new head of the Church could be chosen.

Where the canonists were vague as to the procedure for summoning the general council before which an heretical or criminous clerk was to be tried, Nogaret was quite specific. He called on Philip to act like the angel who confronted Balaam with a drawn sword (Num. 22.31) and give the orders to prelates and all concerned to assemble in general council 'to condemn this infamous brigand and provide the church with a legitimate pastor'. Nogaret gave reasons why it was for the king to take the initiative: it was the function of Christian kingship to defend the Church when it was in danger; it was a duty especially incumbent on the kings of France.<sup>91</sup> This double theme, of kingship as religious office and of the special dynastic obligation to fulfil it, runs through all the justifications for royal action against

90. D.40 c.6, s.v. *a fide devius*. Cf. Tierney 1955a, pp. 60–7.

91. Dupuy 1655, pp. 56–9. Digard 1936, vol. II, pp. 156–7.



Boniface VIII, not least in those made by Philip himself. Kings were divinely appointed to uphold and spread the faith and to defend the Church, he argued, and his royal house was renowned for its defence of truth. Christian kings must defend the Church – the coronation oath bound them to it. The dynastic pride of the *reges christianissimi*, newly enhanced by the recent canonisation of Louis IX, ensured Philip would not shirk his duty to protect the Roman Church from its invader.

It was on 14 June 1303 at an assembly of prelates and barons that Philip the Fair made public his determination to bring Boniface VIII before a general council. On this occasion, five archbishops and twenty-one bishops with an assortment of other senior clergy associated themselves with this request. With some help from royal pressure, they were to be followed by all sections of French opinion. An early supporter of Philip's proposed action was the university of Paris. There is some evidence that Nogaret had invited the university to debate whether or not the pope held jurisdiction of the temporal sword in France. No collective response is known, but individual Parisian theologians joined in the current debate and contributed significantly to the literature of the theory of the relationship of the two powers. Two of these works are of especial interest: the *Quaestio in utramque partem*, of unknown authorship and the *On Royal and Papal Power* written by the Dominican John of Paris.

The treatises have much in common, in aim, in content, in tone. Both command an easy mastery of the *quaestio* technique in a comprehensive marshalling of all the authorities, philosophical, juridical and especially scriptural, which schoolmen considered relevant for the methodical examination of the principle of dualism of the powers, their co-operation and the political implications of the superiority of the spiritual power. They are pro-French without being blatantly partisan in producing a rigorous critique of hierocracy and a powerful defence of the autonomy of the temporal. Despite their French sympathies, these writers remain academics, searchers after truth, rather than royal propagandists. Indeed a good case can be made for the view that both authors were seeking, and went far towards achieving, a *via media* between the claims of papacy and monarchy.

The *Quaestio* accumulated evidence and opinion from many sources that the powers were distinct and that the pope enjoyed no predominance in the temporal order. The author was at particular pains to defend the autonomy of the king of France in his own kingdom and to deny that he derived his power from the papacy. The case for dualism, argued with a solidity that can only be suggested in a short summary, proceeded along three main



lines.<sup>92</sup> The first came from the political thought of the ancient world. Aristotle and Cicero in particular established the intrinsically natural and ethical origin and function of government; there was no need, therefore, for any sacerdotal validation. The second derived from the experience of the Church gained in the long history of its relationship with lay authority; that practical acquaintance with the relevant problems was reflected in canon law, especially in Gratian's *Decretum*. The third, the most important, came from scripture; inevitably, as the word of God, the ultimate authority.

It was, then, from this last source that the author took his most telling argument. God had created man in a two-fold nature, soul and body, and this duality involved him in a two-fold way of life (*duplex vita*), each with its appropriate societal context (*duplex civilitas*), each regulated by an appropriate power ('two swords'). That God had intended duality of jurisdictions was shown in Luke 22.38. St Paul had indicated the role of each: the one 'beareth not the sword in vain. For he is God's minister' (Rom. 13.4); the other denoted 'the sword of the spirit, which is the word of God' (Eph. 6.17). God gives his minister the sword without recourse to intermediaries and expects him to exercise it on his own responsibility. Since the apostles used only the sword of the spirit, so their successors should follow their example. Scripture said nothing of their use of the material swords, except in the context of Peter's cutting off the ear of the servant of the high priest. Christ's command that he desist was one forbidding him, and thus his successors, the use of the temporal sword.<sup>93</sup> Christ, the model for all, had further lessons for popes: his flight from wordly ambition when the people wanted to make him king, his refusal to act as judge in temporal matters, his command to his apostles that they should render to Caesar what was his.<sup>94</sup>

92. More fully analysed, Watt 1967, pp. 420–7, 431–5.

93. 'Ad utriusque civilitatis regimen, Deus gladios ordinavit, duas iurisdictiones distinctas et differentes ad invicem, sicut exponunt sancti illud Luce XXII: "ecce gladii duo hic", et respondit Dominus: "satis est!". Materiali gladio utuntur principes sicut ait Apostolus, ad Rom. XIII: "principes non sine causa gladium portat, Dei enim minister, et vindex in iram ei qui malum facit"; de spirituali gladio dicit idem Apostolus, Ephes. VI: "galeam assume et gladium spiritus quod est verbum Dei". Gladio spirituali utebantur apostoli, materiali vero nunquam uti esse leguntur, nisi dicatur quod imminente Domini passione Petrus cum haberet gladium exemit et unius auriculam amputavit. Distincte sunt igitur hec potestates nec debent se mutuo perturbare, quia sicut principes non debet de spiritualibus introrittere se, ita nec pontifex debet in temporalibus se immiscere, nec iurisdictionem temporalem assumere, nisi in certis casibus determinatis a iure, sicut dicitur.' Ed. Vinay 1939, p. 108.

94. 'Cum igitur Christus dominus hac potestate uti noluerit sed oblatam refugerit, exemplo suo evidenter ostendit et evidencia facti docuit vicarium suum talem potestatem refugere non ambire, nec sibi imperatoriam maiestatem aut dignitatem regiam vindicare. Ecce Christus Ihesus, rex regum et dominus dominancium, regale prefugit dominium et fastuosum fastigium recusavit: quomodo igitur, qua ratione vel auctoritate, vicarius eius vendicabit sibi culmen vel nomen regie dignitatis.' *Ibid.*, p. 110; p. 96 for the Matthew 22.19 reference.

Philosophical and historical arguments reinforced what was essentially the classic dualist position, no doubt now well-known in scholastic circles, after many decades of debating the two swords *quaestio*. The author covered the ground more thoroughly and methodically than, say, Ricardus Anglicus, but his only novelty, perhaps, was to sharpen its relevance to France and to introduce a dash of Aristotle into the argument. It is significant that in the last analysis, this re-presentation of a traditional position was scarcely less successful than its predecessors in making its dualism absolute, that is to say, in freeing the temporal completely from any vestige of sacerdotal authority. The author, having made his case for dualism, then went on to allow a subjection of the king of France to that authority, *incidenter et casualiter*. Even such a committed champion of dualism could not escape hierocracy altogether. This emerges very clearly from the most important issue of all, the papal power to depose kings. The author rejected any suggestion that a pope had a direct power of deposition. Nevertheless, he had an indirect or 'incidental' power: 'in a case where action against a prince is allowable, the pope can release vassals from their oath of fidelity, or rather, he can declare them to be released, in a case, for example, of heresy or persistent defiance of the Roman Church'.<sup>95</sup> It is difficult to envisage such a conclusion being acceptable to Philip the Fair whose defiance of Boniface VIII was such a thorn in the flesh of that irascible pontiff. Nor in the preservation of his king from hierocratic sanction (in the theory of the matter) did John of Paris do much better. John too was a trenchant critic of all the major hierocratic arguments. He too produced a reasoned and comprehensive defence of dualism. He shared his colleague's view (and indeed drew on his treatise) that the spiritual power possessed no direct power in the temporal order, did not possess both swords and was not the intermediary through whom the king of France received his power from God. Yet he also allowed the pope a role in the deposition of kings, albeit an indirect one. If a ruler, he argued, were an incorrigible heretic, paying no heed to excommunication, the pope might himself initiate such action among the ruler's subjects as might be expected to lead to his deposition. He was very explicit as to how this might be done. The pope could excommunicate all those who continued to obey a king who by his misdeeds had forfeited the right to rule and to his subjects' loyalty.<sup>96</sup> This

95. '... in casu in quo potest agere contra principem, potest etiam absolvere vassallos a iuramento fidelitatis, vel potius, absolutos declarare, utpote ratione heresis vel contumacie contra Romanam ecclesiam'. *Ibid.*, p. 133.

96. 'Dico etiam "nisi per accidens", quia si esset princeps haereticus et incorrigibilis et contemptor ecclesiasticae censurae, possit papa aliquid facere in populo unde ille privaretur honore saeculari et

was not exactly what Philip the Fair wanted to hear from a Parisian theologian.

In one very important respect, however, John of Paris can be considered of greater service to his king than the author of the *Quaestio*. John was a known supporter of Philip the Fair's proposal that Boniface be summoned before a general council for he put his signature to a royal document urging this. In his treatise (it cannot be decided whether it was written before or after Nogaret's Louvre address of 12 March 1303) he provided a rationale for the proposed course of action. He was not concerned with the specific charges so much as with the general principles involved.

One of the most important of these was papal immunity from human judgement, an established principle which *Unam sanctam* reiterated. As has been seen, the canonists already allowed an exception to that rule in the case of an heretical or incorrigibly criminal pope. John of Paris certainly exploited that loop-hole. But his main argument was rather different. Given the especially divine origin of papal power, did it not follow that it could only be taken away by God? The argument had been given recent prominence by those who opposed the abdication of Celestine V in 1294. John of Paris took over the refutation of it given by Giles of Rome in his *On Papal Resignation* but extended it to include papal deposition. A distinction was made. Certainly the papacy in itself came from God alone. But the decision as to which particular person should be chosen as pope is a human one; a pope is made by choice of the electors and the consent of the elect. What has been conferred by human agreement can be dissolved in the same way: by abdication, on the decision of the individual (when for good cause he withdraws his consent previously given), by deposition, on the decision of the whole Church (when for good cause it withdraws its consent previously given). It was the Church as a whole which chose the pope: the college of cardinals was simply its agent, acting on its behalf. What the whole Church has conferred it may withdraw, its will expressed either in a general council or even by the college of cardinals: 'the body whose consent in the place of the whole church makes a pope might, conversely, unmake him'.<sup>97</sup>

There must of course be reasonable cause. 'No one is chosen to be pope

deponeretur a populo, et hoc faceret papa in crimine ecclesiastico cuius cognitio ad papam pertinet, excommunicando omnes qui ei ut domino oboedirent, et sic populus ipsum deponeret et papa per accidens.' *De potestate regia et papali*, XIII, ed. Bleienstein 1969, p. 138, English translation of the treatise, Watt 1971.

97. '... quia ex quo consensus eorum facit papam loco ecclesiae, videtur similiter quod potest ipsum deponere, et si quidem fuerit causa rationabilis et sufficiens, deponunt eum meritorie. Si vero non fuerint sufficiens, peccant.' XXIV, *ibid.*, p. 202.

for any reason other than the common good of the Church. The purpose of his rulership is the common benefit.' Anything, therefore, which works against the common good, 'anything which is a scandal to the Church or anything which disquiets the Church or disunites the Lord's flock' suffices.<sup>98</sup> John came down to particularities of obvious relevance to the contemporary situation. Suppose there were some doubt as to whether a particular individual had been canonically elected, what should be done about it? John's solution to the problem was to have the person of the elect and the conduct of the election examined 'by learned men and others who were involved'. If anything seriously amiss was uncovered, the wrongfully elected person must be advised to withdraw. What if he refused? Then 'he can be taken captive, a general council called and the case laid before it. If in these circumstances he proves obstinate or violent, he should be removed even with the aid of the secular arm, lest the sacraments of the Church be profaned.'<sup>99</sup>

John referred to another situation whose relevance to the Franco-papal quarrel needs no emphasis. Suppose a pope announced it was heresy to maintain a certain opinion about which the learned differ and he did this without consulting a general council. To declare, for example, that it was heresy to deny the temporal subjection to the pope of the king of France.<sup>100</sup> Or proclaim as an article of faith that the pope held both swords. And this without considerable preliminary discussion by experts and without holding a general council. John argued that to introduce doctrinal novelties of this sort without their acceptance by the whole Church (i.e. in general council: 'the pope with council is greater than the pope alone') would be gravely wrong.<sup>101</sup>

98. '... non eligitur aliquis in papam nisi propter bonum commune ecclesiae et gregis dominici. Ad hoc enim praest ut prosit. Si ergo postquam fuerit in papatu inveniatur se seu inveniatur totaliter ineptus et inutilis vel superveniat impedimentum, ut insania vel aliquid consimile, debet petere cessionem a populo vel a collegio cardinalium quod in tali casu est loco totius populi. Et ideo perpenditur mollities animi vel ineptitudo scandalum ecclesiae vel quod ipse turbet ecclesiam seu quod dividat gregem Domini faciens divisiones et admonitus non desistat, etiam compellendus est ad cessionem ...'. xxiv, *ibid.*, pp. 200–1.

99. 'Si vero circa personam vel electionem summi pontificis, post discussionem diligentem a litteratis et ab illis quorum interest factam, aliquid inveniretur legitimum contra statum, non esset dissimulandum, sed monendus esset cedere, et si nollet, posset excipi et generale concilium peti et ad ipsum concilium appellari. Immo in tali casu deberet si pertinax inveniretur cum violentia, et advocato brachio seculari, a sede removeri, ne profanarentur ecclesiae sacramenta.' xxii, *ibid.*, pp. 192–3.

100. xxii, *ibid.*, p. 195.

101. '... nam papam habere utrumque gladium non continetur in sacra scriptura quae est regula fidei ... cum fides christiana sit catholica et universalis, non potest summus pontifex hoc ponere sub fide sine concilio generali ... eo quod orbis maior est urbe et papa cum concilio maior est papa solo, XCIII D., Legimus' (*Decretum*, D.93 c.24). xx, *ibid.*, pp. 184–5.

It is thus clear that John, without labouring the point, is a conciliarist for whom recourse to a general council would be the acceptable way of dealing with a major crisis such as the alleged illegal election, heresy and public scandal of Boniface VIII. When, however, his text is questioned further as to what he had in mind when he spoke of ‘the aid of the secular arm’ in this context, it seems that he condoned lay action independently of a general council. Considering what he described as ‘abuse of the spiritual sword’ – conferring benefices simoniacally, misusing church property, violating the rights of other clergy, false teaching in faith and morals, are given as examples of such abuse – John produced an interesting new variant of the two swords theory. To remedy such abuses of papal power recourse should be had, in the first instance, to the college of cardinals who, ‘standing in the place of the whole clergy’, should admonish the errant pope. Should he, however, prove incorrigible and the cardinals ineffectual and there is grave danger to the Church in delay, a ruler might intervene: ‘For it is in this way two swords are bound to lend help to each other in that common charity which unites the members of the Church.’ John approved as a precedent for the implementation of this principle Emperor Henry III’s successful intervention in 1046 in the infamous wrangle as to who should be pope:

The prince acting with moderation may resist the violence of the papal sword with his own sword. In this he does not act against the pope as pope but against an enemy of himself and of society, just as Aod the Israelite who slew Eglon king of Moab . . . because he oppressed God’s people in harsh servitude, was not considered to have killed a ruler but a wicked man who was an enemy [cf. Judges 3.16–22]. This was not an action against the church but for it . . . So too the emperor Henry going to Rome deposed by imperial and canonical sanction Benedict IX and two others whose contentions for the papacy scandalised the church, and made Clement II pope.<sup>102</sup>

Not for the first or the last time, we are reminded of the importance of ecclesiastical history in the shaping of medieval politico-ecclesiology.

102. ‘Si tamen periculum rei publicae sit in mora, ut scilicet quod trahitur populus ad malam opinionem et est periculum de rebellionem et papa commoveat populum indebite per abusum gladii spiritualis, ut etiam non speratur quod desistat aliter, puto quod in hoc casu ecclesia contra papam deberet moveri et agere contra ipsum. Princeps etiam violentiam gladii papae posset repellere per gladium suum cum moderamine, nec ageret contra papam ut papa est, sed contra hostem suum et hostem rei publicae, sicut Ahyot Judaeus qui Eglon regem Moab interfecit sagitta infixam in femore eius, eo quod gravi servitute populum Dei premebat, non est reputatus interfecisse rectorem, licet malum, sed hostem. Sic enim populus commendabiliter zelo fidei commotus Constantinum papam, qui ecclesiae scandalum erat, oculis privavit et deposuit. Sic etiam Henricus imperator Romani vadens Benedictum IX et duos alios qui contentionibus suis scandalizabant ecclesiam, imperiali et catholica censura deposuit et Clementem II Romanae ecclesiae papam constituit, ut legitur in *Chroniciis Romanorum*.’ xxii, *ibid.*, p. 196.

VI

Two swords theories of every emphasis and nuance were well-ventilated in Italy.<sup>103</sup> Hierocratic versions<sup>104</sup> reigned triumphant in the papal curia and among its loyal theologians and canonists; *Unam sanctam* gave them a new fillip. On the other hand, the professors of civil law and writers dependent on them remained faithful to a dualist interpretation.<sup>105</sup> So too did the two leading Italian champions of dualism, Dante and Marsilius of Padua, the writers who above all others represent the specifically Italian contribution to the medieval debate about the relationship of the spiritual and temporal powers. It was with them that the traditional imperial dualist position found its most eloquent and comprehensive defenders. It was from them that papal conduct and the hierocratic logic received its most blistering and radical criticism. Both were convinced of the existence of a catastrophic incongruity between the commands and counsels of the Gospel and the conduct of papal government.<sup>106</sup> Both were convinced too that the essential cause of Italy's wretched political condition was the usurpation of imperial power by the papacy. This conviction was animated by a love of Italy and a corresponding hatred of those responsible for its desolation.<sup>107</sup> Both believed themselves to be specially charged with the identification and denunciation of the papacy as destroyer of peace.<sup>108</sup> This consciousness of mission, at once evangelical and patriotic, gave their writing a passion not found elsewhere in medieval theorising about the relationship of ecclesiastical to temporal power.

A full study of Dante's thinking on Empire and Papacy would begin with the *Convivio* which contains the outline of an argument developed fully in the *Monarchia*, continue with the political *Epistolae* which demonstrate especially his emotional commitment to the Roman Empire and climax with the *Commedia*. His doctrine of Empire is consistent throughout all these four very different types of writing. There is no criticism of the papacy in the *Convivio*, nor in the *Epistolae*, where his dualism is notably respectful

103. Lecler 1932.

104. On Augustinus Triumphus and others, Wilks 1963, pp. 261–2. On hierocratic theory generally, McCready 1973, 1974, 1975.

105. But most emphatically, even obsessively, Ockham: e.g. *Breviloquium*, v.3. (on the invalidity of the mystical sense of Luke 22.38) and v.5 ('Per illa verba: "Ecce duo gladii hic" non potest probari, imperium esse a papa'). 106. Leff 1976, pp. 130–9.

107. Dante, *Purgatorio* 6; *Defensor Pacis*, 1.1.2, 6; 2.26.19, 20.

108. Most poignantly through the mouth of St Peter himself: "'E tu, figliuol, che per lo mortal pondo/ ancor giù tornerai, apri la bocca, / e non asconder quel ch'io non ascondo"', *Paradiso* 27.64–6; Marsilius: 'Quoniam ut indubitanter videre videor, *desuper mihi datum est* . . .' (1.19.13); ' . . . tamquam veritatis preco . . .' (2.25.18).

of papal authority. Book III of the *Monarchia*,<sup>109</sup> however, is a sustained attack on hierocracy, aimed especially at those whose exaggerations and misunderstandings of the nature of papal power were motivated by zeal for religion rather than pride or malice. The *Commedia* broadens and personalises criticism of papal government. Boniface VIII, Clement V and John XXII come in for especially vicious attack. Their faults were not simply those of usurping imperial power, though that is condemned and blamed for the incessant strife which was destroying Italy. Condemnation of the contemporary papacy's political stance was only one aspect of Dante's denunciation of the depravity of the papal pastorate as a whole: greed for wealth, nepotism, simony, abuse of the keys are charges added to that of greed for power.

Dante's view of Empire, previewed in the *Convivio* and underpinning much of the political theory of the *Commedia*, received its fullest exposition in the *Monarchia*. It hinged on three fundamental theses, each in the treatise the subject of a book. The first argued that the only guarantee of peace and justice for the Christian world lay in the establishment of unity under one single ruler. The second argued that under God's providence this role had been assigned to the Roman Emperor, even from its origins in pre-Christian times, and given special confirmation of it after the Messiah in sign of its right to rule the world had chosen to live, work and die under its sovereignty. The third thesis postulated that this single universal rulership was given by God directly to each emperor, without mediation by way of the papacy and was exercised independently of any jurisdictional control by the head of the Church. This argument, expounded in Book III of the *Monarchia* gave the principle of imperial *dualitas* its first systematic apologia.

The *Monarchia* has its faults. It is naive in its optimism that because the monarch, as the superior of all other temporal rulers, was left with nothing more to conquer he would be immune from cupidity and hence could not fail to be a just ruler (1.11.13). It is credulous in its argument that Roman military superiority over all rivals was proof of God's endorsement of its world leadership (2.8.9.). It is bizarre in its theology with its argument that the sin of Adam would not have been expiated if the Roman Empire where Christ died had not been based on right (2.12). It is under-researched in that its attempts to refute hierocratic arguments (3.4–15) are elementary as compared with professional theologians such as John of Paris and Remigio de' Girolami or indeed as compared with those very canonists whom Dante affected to despise for their lack of theological and philosophical expertise.

109. Excellent analysis by Maccarrone 1955–6.



It is incomplete, even confused, in that its conclusion allows a certain subordination of emperor to pope, apparently a significant qualification of the dualist case, without providing any precise indication of what this subordination meant in practice (3.16). Nevertheless, there is an undeniable classic quality about the ecclesiological principles on which Dante's dualism rested: the demonstration of the weakness of the theological and historical foundations supporting any clerical claim to confer political authority on an emperor (3.14); the reminder that Christ, exemplar of all pastors, specifically renounced earthly power and that the exercise of temporal power by his priests was contrary to the nature of the kingdom he himself had chosen to rule (3.15); the reworking of the patristic and early papal emphasis on Christ's intention when he divided the powers – precisely to save men from the pride and corruption which followed when spiritual and temporal power were concentrated in one authority (3.16).

The *Monarchia* did not pass unnoticed by papalists. Cardinal Bertrand de Pouget, papal legate in Lombardy in 1329, ordered it to be burnt and would have added Dante's bones to the pyre if he could have had his way. The Dominican theologian Guido Vernani of Rimini wrote a *Refutatio* of it which put forward a counter-argument to all the theses Dante had propounded in each of the three books of the *Monarchia*. Vernani's treatise affords a valuable insight into the developed hierocratic logic, making crystal clear the fundamental importance to it of two theses in particular. The first explained the characteristic relationship of the dualism of the powers to the unitary nature of Christian society, already adumbrated by Hugh of St Victor. Guido Vernani, seeking to refute Dante's arguments for the necessity of a *curator orbis* who should be the emperor (3.16), argued that the only authority whom God had appointed 'keeper of the world' was the pope. All the arguments for the emperor's headship of the world, Vernani argued, applied *a fortiori* to the pope:

To speak briefly and summarily, all the arguments which [Dante] put forward in the first part of his treatise which have any vestige of truth can be applied truly to no other monarch, nor can they ever be so applied, except to the lord Jesus Christ. But since he departed from the sight of men and ascended bodily into heaven, lest his body, which is the Church, should remain without a head, he left behind him on earth as his general vicar, the apostle Peter, and each of his legitimate successors who in Christ's place is the true and legitimate monarch to whom all are held to obedience as to the lord Jesus Christ, as is said specifically by Cyril, doctor of the Greeks, as cited by blessed Thomas Aquinas in his book *Against the Errors of the Greeks*. The monarch of the world, therefore, is the high priest of the Christians, general vicar of Jesus Christ; and if all men obeyed him in accordance with the Gospel law laid down by Christ there would be in the world the most perfect

monarchy. Nor shall there ever be in the world a true monarch other than him . . . and no other power is necessary for men.<sup>110</sup>

The nature of the power exercised by the papal monarch, definition of which formed the second fundamental thesis of the logic, derived from an exegesis of Matthew 16.19. Dante had argued (*Monarchia* 3.8) that though the power of the keys conferred by Christ on Peter gave his papal successors power to continue what had been entrusted to the leader of the apostles, the office to which he had been appointed did not mean jurisdiction in the political sphere. Spiritual fatherhood should not evolve into monarchy unless it be, like Christ's own kingship, 'not of this world' (John 18.36). To this argument, Guido Vernani replied with an adaptation of a distinction much used by contemporary theologians when discussing the power of the keys, that is, the nature of sacerdotal jurisdiction. They distinguished between an internal and an external forum. In the former, the priest's power of the keys was exercised privately, secretly, on the consciences of individuals in the sacrament of penance. In the latter, it was exercised openly, publicly, imposing sanctions of excommunication and other punishments after judicial process. Vernani drew out the full hierocratic potential of this distinction:

the power of the keys is an effect of ordination to the priesthood and is conferred at ordination so that it may be used in the forum of the conscience when absolving the contrite who has confessed his sins and binding him to a penance to make satisfaction for them. And this power was given generally to Peter and the other apostles when Christ said to them all: 'Receive ye the Holy Ghost. Whose sins you shall forgive, they are forgiven etc.' [John 20.22–3]. The other is the power of jurisdiction by which the ecclesiastical judge in the exterior forum binds with and looses from the bond of excommunication or binds in condemning and looses in declaring innocence. This power given generally over the whole Church without distinction was accepted by Peter from Christ, as is shown in John 21 when he was told, 'Feed my sheep' [John 21.17]. On which text the gloss states: 'To feed the sheep is to strengthen those who believe in Christ lest they fall away from the faith, to

110. 'Et sic breviter et summatim omnes rationes quas ponit in prima parte sui tractatus, habentes aliquam speciem veritatis, in nullo alio monarcha possunt, nec unquam potuerunt, veraciter inveniri, nisi in domino Iesu Christo. Sed, quoniam ipse discessit a conspectu hominum et corporaliter ascendit in celum, ne corpus eius quod est ecclesia sine capite remaneret, in terra suum generalem vicarium dereliquit, scilicet Petrum apostolum et quemlibet eius legitimum successorem, qui loco Christi est verus et legitimus monarcha cui omnes oboedire tenentur sicut domino Iesu Christo, sicut expresse dicit Cyrillus doctor Graecorum [*recte* Ps.–Cyril], et allegat hoc beatus Thomas de Aquino in libro suo quem fecit *Contra errores Grecorum*. Monarcha ergo mundi est summus pontifex christianorum, generalis vicarius Iesu Christi, cui si omnes homines secundum legem evangelicam a Christo traditam obedirent, esset in mundo perfectissima monarchia. Nec unquam fuit in mundo monarcha verus aliquis preter eum . . . '1, K pelli 1938, p. 129.

provide their subjects with material help where there is need, to set before them examples of virtue through preaching, to resist adversaries, to correct the errant.' From which it appears that Christ gave Peter and his successors the power of judicial correction over all the sheep. The pope can therefore correct the emperor who is of the sheep of Christ. Hence it has been decided by councils that every Christian is subject to him and can be corrected by him. And if he who is corrected proves incorrigible, not only ought he to be excommunicated, but even deposed and deprived of all honour and dignity; thus the power of the keys in both fora, the secret and the external, extends by reason of sin not only to spiritual matters but also the temporal. Hence the Church of God may justly expel not only heretics but also schismatics and all the contumacious, take away their property, reduce them to servitude and lawfully impose every manner of penalty on these three categories of offender, except that of capital punishment.<sup>111</sup>

It is not for any especial originality of substance that these texts have been presented here *in extenso*. They formulate succinctly what had become the standard hierocratic defence as doctrine hardened in the political controversies of the early decades of the fourteenth century. There is no doubt that in practice the papal curia often tempered such authoritarian rigour in a world where dualism was the norm and hierocracy was readily ignored or defied or even scoffed at. But the potentialities of the logic were fully appreciated and even feared by some contemporaries, especially as they were manifested in papal policies towards the Holy Roman Empire. After Dante's death in 1321, it was most particularly Marsilius of Padua who understood these best and denounced them most passionately and comprehensively. His *The*

111. 'Item dicit quod illud verbum Christi: "Quodcumque solveris super terram etc.," non intelligitur nisi de his que subiacent potestati clavium; unde addit quod papa non potest solvere leges et decreta imperatorum. Ad hoc videtur dicendum quod potestas clavium consequitur ordinem sacerdotalem et simul cum ordine confertur sacerdoti, ut utatur ea in foro conscientie in absolvendo peccatorem, contritum et confessum a peccatis ipsis et ligando ipsum ad penam satisfactoriam pro peccatis. Et ista potestas fuit collata Petro et aliis apostolis equaliter, Ioh. 20, quando Christus dixit omnibus: "Accipite spiritum sanctum, quorum remiseritis peccata remittuntur eis etc." Alia est potestas iurisdictionis per quam iudex ecclesiasticus in foro exteriori ligat vinculo excommunicationis et solvit etiam ab eodem, vel ligat condemnando et solvit innocentem ostendendo. Hanc autem potestatem generaliter quoad totam ecclesiam sine aliqua distinctione accepit Petrus a Christo, Ioh. 21, ubi dictum est ei: "Pascere oves meas". Ubi dicit Glossa: "Pascere oves est credentes in Christo, ne a fide deficiant, confortare, terrena subsidia, si necesse est, subditis providere, exempla virtutum cum verbo predicationis impendere, adversariis obistere, errantes subditos corrigere". Ex quo patet quod Christus dedit Petro et successoribus Petri potestatem iudicarie correctionis super omnes oves eius. Papa ergo potest corrigere imperatorem qui est de ovibus Christi. Unde etiam determinatum est per concilia quod omnis homo christianus est eius subditus et ab eo corrigendus. Et si est incorrigibilis, non solum est excommunicandus, sed etiam deponendus et omni honore ac dignitate privandus, ita quod potestas clavium in utroque foro, occulto et extrinseco, ratione delicti non solum ad spiritualia sed etiam ad temporalia se extendit. Unde ecclesia Dei non solum hereticos sed etiam schismaticos et omnino contumaces cum iustitia exigit, privat bonis, addicit eos capientium servitium et omnes penas, preter penam sanguinis, omnibus predictis licet ei imponere.' III, *ibid.*, pp. 141–2.

*Defender of Peace* (1324) was the most thorough and original treatise on the relations of the powers written by a medieval analyst.

Historians have sometimes been apt to make heavy weather of this book, describing in it complexities and subtleties more perhaps of their own making than the author's. Certainly Marsilius was at pains to define very clearly for his readers his general and particular aims in writing and if his book tends to be prolix and repetitious, it is nonetheless carefully articulated by a meticulous cross-reference system. It is true that the book's relationship to future political theory, its alleged modernity, is complex and highly debatable. But read on his own terms, Marsilius appears as both a vitriolic critic of the papacy of his own day and as a radical analyst of the papal office as such.<sup>112</sup> He proclaimed himself frequently and unambiguously as the champion of Ludwig of Bavaria, aspirant to the office of Holy Roman Emperor. He directed his scorching polemic on specific hierocratic pronouncements of Boniface VIII (*Unam sanctam* was the summation of all he hated most and was an explicitly designated principal target),<sup>113</sup> Clement V and John XXII. His treatise, then, is a tract for the times, focusing on specific contemporary issues and intended to inspire remedial political action. He marshals much the same basic materials as, say, John of Paris – Aristotle on government and society is normative; the New Testament with the standard commentaries is the main source (necessarily, since the problem is essentially ecclesiological); some additional material drawn from twelfth- and thirteenth-century writers long accepted in the schools as authoritative. The nature of the quarrel, yet another in the series of Empire versus Papacy, is familiar enough and so too the matter of the argument. But from it all there emerged a work of true originality. For Marsilius put the axe to the root of hierocratic logic: he denied the divine origin of the papal office. Christ had not chosen Peter and even less so his successors, to be heads of his Church. The headship exercised by the bishops of Rome was of purely human origin, established if not by historical accident at least in purely historical circumstances in which Church members had accepted Roman headship for reasons of piety, and had allowed it to continue for administrative convenience and to establish itself as agreed customary practice. This demotion of the vicariate of Christ is at the heart of the Marsilian logic and was startlingly new in the medieval

112. There are three major, and very different, assessments of Marsilius: Lagarde 1948b, 1956–70, vol. III; Gewirth 1951.1956; Quillet 1970a.

113. As containing papal political doctrine, 'cunctisque civiliter viventibus praeiudicialissimam omnium excogitabilium falsorum'. 2.20.8, ed. Scholz 1932–3, p. 398.

debate on the relations of the powers. It is of course true that the divine origin of the papacy had been denied by others before him. But Marsilius was no product of a Waldensian or Catharist or other heretical sect. He was a man of the establishment or near to it: a former rector of the university of Paris, whose papal provision to a canonry of Padua had been promoted by two powerful cardinals.

There is a crucial difference between Marsilius and Dante who otherwise have much in common as defenders of traditional imperial dualism and denouncers of the corruption of the contemporary papacy. Dante retained his belief in the divine headship of the Church. He based his censure of contemporary popes on the distinction between the office of the papacy, duly acknowledged as the vicariate of Christ, and the persons of those who abused it with their corrupt government. Marsilius by contrast attacked the office itself, asserting that its authority was 'not given immediately by God but rather by the decision and will of men, just like any other office in society' (I.19.6).<sup>114</sup> It was necessary for the congregation of believers in Christ to have a leader. If it had come about that this was the bishop of Rome, it was that body itself which had established and endorsed it, not the direct decree of Christ who alone was the Church's foundation and head.

Marsilius chose to call his book *The Defender of Peace*, he tells us, because it examined how civil peace is made and broken (3.3). The civil peace of Italy has been shattered and its inhabitants brought under 'the harsh yoke of the tyrant' (I.1.2). There is a single and unique cause of the misery which has overtaken Italy and the empire and which is creeping insidiously into the foundations of other kingdoms and, if not checked, will subvert them too (2.26.19). Neither Aristotle nor any other philosopher of his time who had also investigated the causes of political disharmony could have unearthed this particular cause, for it was a product of the specifically Christian era (I.1.7; I.19.3,4). It was Marsilius' divinely commanded task as 'herald of truth' to unmask this cause (I.19.13). He identifies it very precisely as the assumption by the bishop of Rome of 'universal coercive jurisdiction over the whole world' based on the vicariate of Christ and now, in his day, subsumed under the all-embracing term 'plenitude of power'. Thus the 'singular cause' of contemporary civil strife, which Marsilius sees it as his sole purpose to unmask and destroy, emerges in this formulation:

114. '... quoniam non fit hoc per Deum immediate, sed per hominum voluntatem et mentem, quemadmodum officia cetera civitatis'. I.19.6, *ibid.*, p. 130. Marsilius referred his readers to 2.15.17 for more extended examination of the matter.

The meaning of this title [plenitude of power] for the bishops of Rome is that just as Christ possessed plenitude of power and jurisdiction over all kings, princes, communities, groups and individuals, so equally those who call themselves vicars of Christ and of St Peter have this same plenitude of coercive jurisdiction, unlimited by any human law.<sup>115</sup>

Marsilius saw the coerciveness of this plenitude of power and jurisdiction manifested most radically in two papal claims. The first was the two swords doctrine; in Marsilius' formulation: 'no ruler can lawfully exercise that coercive jurisdiction which they call the *temporal sword* without or against their consent or command'. The second was the deposing power: 'the authority to grant and withdraw all temporal kings and governments from kings and rulers who disobey their orders' (2.22.20). On the authority of *Unam sanctam* – 'of all imaginable lies, the most harmful to all who live in civil society' (2.20.8) – belief in this doctrine was allegedly necessary for salvation (2.22.20).<sup>116</sup>

The detailed critical analysis of what he had identified as the unique cause of political disharmony, Marsilius reserved for five lengthy chapters on the plenitude of power. These chapters (2.22–6), almost a treatise within a treatise but closely bound by cross-references to all other parts of *The Defender of Peace*, distil the essence of his whole argument. In them, he traced how 'gradually and secretly' the primacy of the first bishop of Rome established on the basis of reverence for the martyred Peter and Paul, continued for reasons of expediency and, after Constantine I, exercised under the jurisdiction of the Roman Emperor, was converted into a tyranny. These chapters are a review of how that tyranny had been exercised in both ecclesiastical and civil affairs. Foreshadowing Luther, Marsilius recalled a personal visit to the papal court to recount with disgust

115. 'Est igitur huius tituli sensus apud Romanos episcopos, quod sicut Christus plenitudinem potestatis et iurisdictionis habuit supra reges omnes, principes, communitates, collegia et singulares personas, sic et ipsi, qui Christi et beati Petri se dicunt vicarios, hanc habeant plenitudinem coactive iurisdictionis, humana lege nulla determinatam.' 1.19.9, *ibid.*, p. 132.

116. 'Quibus etiam ipsorum moderniores [i.e. popes] excessibus non contenti, suis expresserunt epistolis sive decretis, auctoritatem sive iurisdictionem coactivam, quam vocant ipsi *gladium temporalem*, preter aut contra ipsorum consensum sive dictamen licite valeat exercere; preter autem contrarium facientes principantes et populos excommunicationis vel interdicti sentencie vocaliter pronunciando subiectos. Asserunt enim se solos in mundo Christi vicarios, qui fuit *rex regum et dominus dominancium*; hec latenter intendentes per eum quem sibi debitum dicunt titulum *plenitudinis potestatis*. Propter quod etiam ad suam auctoritatem pertinere omnia mundi regna et principatus conferre ac auferre licite posse regibus et ceteris principantibus ipsorum mandata transgredientibus, quamvis impia sint secundum veritatem et illicita sepe. Hoc autem inter ceteros Romanos episcopos, non minus temerarie quam preiudicialiter et contra scripture sensum literalem, metaphoricis eius expositionibus innisus Octavus Bonifacius intantum expressit et asseruit, ut hanc Romanis episcopis deberi potestatem decreverit ab omnibus credendum et confitendum esse *de necessitate salutis eterne*.' 2.22.20, *ibid.*, pp. 439–40.

what he found in that 'land of misery and darkness, where the shadow of death and no order, but everlasting horror dwelleth' (Job 11.22). The total corruption of the clergy from cardinalate through the episcopate to the lower clergy is attributed to the 'plenitude of power', the doctrine justifying papal monarchy. A parallel sweep through the recent history of Italy and the Holy Roman Empire revealed similar devastation in civil affairs. Pope John XXII's policy towards Ludwig of Bavaria received a long chapter to itself to demonstrate that the pope's arrogation of the 'temporal sword' by right of the plenitude of power was false, evil and a threat to all other rulers of Christendom (2.26).

These chapters, then, in the first place, sought to demonstrate how the manifestly evil deeds of the papal monarchy proved the essential falsity of the doctrine on which its exercise was based. They were, secondly, a refutation of that doctrine and a substitution for it, 'after long, diligent and painstaking examination and study of the Scriptures' of one, he claimed, which was authentically Christian.

Before he turned to the New Testament, however, Marsilius looked to the axioms of political philosophy which the 'established testimonies of eternal truth' would confirm (1.1.8). The first Discourse of *The Defender* established as its central proposition that it is of the intrinsic nature of political communities that ultimate power rests with the whole body of the citizens, by whose authority alone can lawful government be established or disestablished. It is the community itself which is, in Gewirth's phrase, 'the exclusive legitimating principle of the coercive power'<sup>117</sup> which government exercises. This basic principle Marsilius fashioned from reminiscences of Aristotelian philosophy, the *lex regia* doctrine of Roman law deriving the emperor's power from the people, the electoral college of the Holy Roman Empire and the practical workings of Italian urban institutions. It had a corollary: 'The supreme government in a city or kingdom must be only one in number' (3.2.11; cf. 1.17).

The implications of this premise were revolutionary. With it, Marsilius left the world of Dantean dualism – the logic of co-ordinate powers, combined with respect for the autonomy of the spiritual power and conceding to it a certain superiority – and approached that of Hobbes, for whom: '*Temporal* and *spiritual* government are but two words brought into the world to make men see double and mistake their lawful sovereign.'<sup>118</sup> The whole intent of *The Defender* is to ensure that the clergy make no

117. Gewirth 1956, p.xxxviii.

118. *Leviathan*, ed. M. Oakeshott, Basil Blackwell, 1946, p. 306.



mistake as to who is their lawful sovereign: ‘the ruler by authority of the legislator [i.e. the whole body of the citizens] has jurisdiction over all bishops, priests and clergy, lest political society be destroyed by the existence of an unordered multiplicity of governments’ (2.8.9; 3.2.15).<sup>119</sup>

Reason having established these principles, revelation came to confirm them. The Gospel related how Christ himself, in word and deed, ‘sought to remove himself from any type of earthly rulership, wishing always to subject himself to the coercive jurisdiction of temporal authority’ (2.4.13).<sup>120</sup> Christ’s apostles followed his example and ordered their followers, in turn, to hold the same view. The most authoritative teachers read the scriptures in this same way.<sup>121</sup> Bishops, then, have been forbidden the power of coercive jurisdiction and have been instructed to subject themselves to the civil power which alone has been entrusted with the community’s authority to exercise such jurisdiction. They are pastors not judges. A bishop or priest ‘must teach and exhort people in the present life, censure and rebuke the sinner and frighten him by a judgement or prediction of future glory or eternal damnation, but he must not coerce’ (2.10.2).<sup>122</sup> Thus the pope is simply a teacher of souls, a physician, not a coercive judge or ruler (cf. 2.30.1). Reason and revelation, philosophy and theology integrated to announce the same message (cf. 2.30.2; 2.9.2–9).

With the correct identification of the lawful sovereign, Marsilius removed pope and clergy from jurisdiction in civil affairs. There was a second consequence of this identification: the lawful sovereign was also the sole authority in ecclesiastical affairs, beginning with the definition of articles of faith and the determination of disputed interpretations of the Bible. The lawful sovereign, the whole body of the citizens (*universitas civium*) reappears as the whole body of the faithful (*universitas fidelium*) or, more pertinently, as the general council of believers (*generale concilium credentium*).

Three steps went into the making of Marsilian conciliar theory, generally

119. ‘... iurisdictionem in episcopos seu presbyteros et clericos omnes legislatoris auctoritate principantem habere, ne principatum etiam pluralitate inordinata policiam solvi contingat.’ 2.8.9, ed. Scholz 1932–3, 230, with a reference to 1.17.

120. ‘Ex adductis itaque veritatibus evangelicis ac sanctorum et aliorum approbatorum doctorum interpretationibus earum apparere debet omnibus evidenter, Christum seipsum exclusisse seu excludere voluisse, tam sermone quam opere, ab omni principatu seu regimine, iudicio seu coactiva potestate mundana, ipsumque seipsum principibus et seculi potestatibus coactiva iurisdictione voluisse subiectum.’ 2.4.13, *ibid.*, p.177. 121. 2.5 *in toto*.

122. ‘Per reliquum vero iudicem, pastorem scilicet, episcopum seu presbyterum, docendus et exhortandus est homo in vita presenti, arguendus, corripiendus peccator atque terrendus iudicio seu prognostico future glorie vel dampnationis eterne, nequaquam vero cogendus, ut ex priori capitulo palam.’ 2.10.2, *ibid.*, p. 247.

recognised as the most comprehensive such theory before the period of the Great Schism. The first concerned the nature of communities as such: it is only the community itself which can provide adequate safeguard against decision-making being usurped by a particular part of it, liable simply by its own limited nature to be misled 'by ignorance or malice, cupidity or ambition or some other vicious emotion' (2.20.6). The community itself, in other words, is its own best guardian. Marsilius found this axiom strikingly manifested in the practice of the primitive Church. The apostles (who were all equal) solved their problems by the 'method of common deliberation' (2.16.5). The Acts of the Apostles, in particular, showed the model of church government as communal. And it is this model which the general council emulates for the *universitas fidelium*: 'the congregation of the believers or the general council truly represents by succession the congregation of the apostles and elders and the other believers of that time' (2.19.2).<sup>123</sup> The third step in the logic again offered a parallel between the *universitas civium* and the *universitas fidelium*. In the one, so in the other, a link had to be forged between community and ruler; the general council must be related to one who has authority to summon it and enforce its decisions by coercive jurisdiction. To make this relationship, Marsilius again had recourse to the history of the Church. From the primitive Church he moved to the early Church; from the Acts, he moved to the *Codex* of (Pseudo-) Isidore. There he found the history of emperor-dominated general councils, assemblies of bishops summoned by imperial command, their canons enforced by imperial decree.<sup>124</sup> He even unearthed evidence that 'Roman bishops in ancient times begged the emperors to give them rules and laws' (2.21.6). Such should hold no less in the fourteenth century than in the age of Nicea, Constantinople, Ephesus and Chalcedon. Ludwig of Bavaria was to be seen as a Constantine *redivivus*, a new Theodosius. Marsilius had constructed a logic of caesaropapism in direct and conscious opposition to the hierocratic logic of *Unam sanctam*.

No doubt Ludwig of Bavaria was miscast for the role Marsilius had written for him. But Marsilius knew of, and esteemed, Philip the Fair's resistance to *Unam sanctam* (2.20.9; 2.21.9). Here was a sovereign more in the Marsilian mould – prepared to take on the responsibility for the general welfare of Christendom, to call a general council to try a pope, to insist on

123. 'Cum igitur fidelium congregacio seu concilium generale per successionem vere representet congregacionem apostolorum et seniorum ac reliquorum tunc fidelium, in determinandis scripture sensibus dubiis, in quibus maxime periculum eterne damnacionis induceret error, verisimile, quinimo certum est, deliberacioni universalis concilii spiritus sancti dirigentis et revelantis adesse virtutem.' 2.19.2, *ibid.*, p. 385. 124. See especially, 2.21.

continuing the trial even after the accused pope's death. Guillaume de Nogaret and Marsilius of Padua made a harmonious blend in the ideology of fourteenth-century monarchy, as is amply demonstrated in the *Somnium viridarii*.<sup>125</sup> Whence, reinforced by fifteenth-century conciliarism, to fully fledged Gallicanism.

At about the same time as the *Somnium* was being written, Wyclif was producing a specifically English model of caesaropapism. Apparently uninfluenced by Marsilius, his sovereign developed from the traditional position of God's vicar as known to the common law tradition. But Wyclif's vicar of God was invested with more power than the more dualistically minded Bracton had granted. For he is a king with authority to reform a clergy he has shorn of all coercive power, protective privilege and property. As Pollard observed, 'in dealing with the King's relation to the National Church, if Wyclif does not assign to him the position of its Supreme Head, the tendency of his arguments is all in this direction'.<sup>126</sup> But it was not so much Wyclif who was the morning star of the supreme headship as Marsilius. It was the *Defensor Pacis* which Henry VIII commanded to be translated into English and which influenced Thomas Cromwell.<sup>127</sup>

Such developments, however, did little to diminish the papacy's stubborn adherence to hierocracy. This tenacity is best epitomised by the repromulgation on the eve of the Reformation at the fifth Lateran council of *Unam sanctam*. And hierocracy's capacity to do grave damage where it was intended 'to link God's faithful people by the bond of mutual charity in the unity of the Spirit' was never to be more clearly demonstrated than with Pius V's *Regnans in excelsis*, the recourse to traditional deposition theory against Elizabeth I.

This chapter has argued that by the beginning of the fourteenth century the theorists of the relations of the powers had produced two different models: hierocracy and caesaropapism. Each was a logic which rejected any theory predicating a dualism of two autonomous authorities existing co-ordinately in human society. Each was a theory wherein a unity was founded upon the supremacy of one or other of the powers. Each, to continue to use the allegory which has done much to unify the argument here, postulated one

125. Quillet 1977. 126. Wyclif, *De officio regis*, p. xxvii.

127. Elton 1956: 'Though perfect proof is lacking, it does not seem too much to claim that as far as Cromwell was a theorist he was a conscious follower of Marsilius.' In October 1535, the whole community of the London Charterhouse refused to read the *Defensor Pacis*, which William Marshall, its translator, had distributed among them, Dowling 1984, p. 54.

authority to control both swords. Dualism of the type delineated by A.J. Carlyle as quoted at the beginning of this essay, did not wholly disappear. But it is suggested here that it was not that logic which was most characteristic of the later middle ages, nor the one which proved influential when the relationship of the two powers was redrawn in early modern Europe.