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Samuel and Saul in Medieval Political Thought



Abstract: The Old Testament narrative of Samuel and Saul has been interpreted by Jewish and Christian thinkers in many ways. Some find there a justification of kingship and even a divine right of kings, while others consider the Israelites' request for a king sinful, emphasizing God's reluctance to grant their request and the inherent primacy of spiritual over temporal rule. This article traces the history of a medieval struggle for supremacy between spiritual and temporal authority, between pope or church and monarch, following the employment of the aforementioned Old Testament narrative—alone or in dialogue with Roman sources—in political thought and action. Ultimately, we find argued here, the struggle between king and priest would be replaced by a struggle between king and people, which may have departed from Samuel and Saul but did not depart altogether from biblical parallels and divine foundations.

The Old Testament had a significant influence on medieval Christian political thought. Particularly in the struggle for authority in which the empire and the papacy were engaged, the two competing camps were anxious to find support for their opinions in a legal authority that was beyond censure or doubt. The Bible was such an authority and served as the court of highest appeal. At the same time, however, each party to the conflict chose only those proof-texts that confirmed its own arguments.

It was most appropriate, and even natural, that the relationship between the kings and priests of the Old Testament served as the *tertium comparationis* (arena for comparison). The struggle that broke out between Samuel and Saul had been particularly tempestuous, with Samuel

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first anointing Saul as king and later denying him his sovereign authority. Did this not imply that the highest political authority rested with the priests and that the kings served only as their representatives? Another interpretation, pointed out by the royalist party, was that Samuel had acted only on the express instructions of God, and no conclusions of general import can be drawn from his acts: rulers and priests are both organs of the Church. Anointment transforms a prince into a king, with authority both in the Church and over the Church. He is the highest priest, within whose power it lies to appoint other priests and to dismiss them.

1. THE ANOINTING OF KINGS ('UNCTIO')

Since all the arguments of the royalist party take the anointment ceremony as their point of departure, we must begin our investigation there. The Bible portrays the anointment of a king as an act of legitimation. As such, it is mentioned only in connection with those Israelite or Judean kings who either instituted a new ruling dynasty (Saul, David, Jehu) or had been involved in struggles against rivals for the throne (Absalom, Solomon, Joash, Jehoahaz).¹ This was also the original purpose of anointment ceremonies for Christian kings. The anointing of Pippin, Charlemagne's father, is the first instance where such a ceremony appears fully illuminated by a historical tradition. We have only fragmentary knowledge of earlier examples. By consecrating Pippin as king of the Franks in 751, Pope Zachary granted legitimacy to the dethroning of the Merovingian kings and to the sovereignty claimed by the new ruling dynasty. The ancient heathen symbol of the *reges criniti* (long-haired kings) was replaced by the theocratic notion of the *rex unctione sacratus* (anointed king). It is probably also at this time that the phrase *gratia Dei* (by the grace of God) was added to the royal title.²

¹ Thus also according to Jewish tradition; cf. *Sifra* on Leviticus 8:1, §9; *Babylonian Talmud*, Horayot 11b, Keritot 5b; *Jerusalem Talmud*, Shekalim 5:1, Horayot 3:3; Maimonides, *Mishneh Torah*, Laws of Kings 1:12.

² See F. Kern, "Gottesgnadentum und Widerstand im frühen Mittelalter," *Mittelalterliche Studien* 1:2 (1914), p. 77; it would appear that the unction and the devotional phrase were taken over from the British (through the intermediary of Boniface?). See also W. Schücking, *Der Regierungsantritt*, vol. 1 (Leipzig, 1899), p. 197; F. Liebemann, *Die Gesetze der Angelsachsen*, vol. 1 (Halle, 1903), pp. 88ff.; W. de Gray Birch, *Cartularium Saxonicum*, vol. 1 (London, 1885), 116. On *gratia Dei*, cf. K. Schmitz, "Ursprung und Geschichte der Devotionsformeln," in U. Stutz, ed., *Kirchenrechtliche Abhandlungen* (Stuttgart: Enke, 1913), pp. 171ff.; W. Staerck, "Dei Gratia," in *Judeich Festschrift* (Weimar: Boehlaus, 1929), pp. 160ff.; Kern, "Gottesgnadentum und Widerstand," pp. 77, 92, 304ff.; A. Daniel, *Die Kuralienformel von Gottes Gnaden* (Berlin, 1902), *passim*.

From this time onward, the Carolingians and their successors began to see themselves as the heirs to the kings of Israel. The popes address them as *novus Moyses novusque David* (a new Moses and a new David).³ At court the monarch is termed *mediator cleri et plebis, clericus, episcopus, rex et sacerdos, vicarius Christi* (judge of clergy and people, clerk, bishop, king and priest, vicar of Christ).⁴ The anointment transforms a prince into "a new person," which reflects Samuel's remarks to Saul following the coronation.⁵ The sacrament endows him with divine qualities.⁶

2. 'REX ET SACERDOS': KING AND PRIEST

Saul is God's anointed, and whoever lays a hand upon him renders himself guilty of a capital crime. While Saul was anointed by Samuel, and it was also by Samuel that his sovereignty was abrogated, this was not an expression of the prophet's own power over the king. Samuel had acted only in fulfillment of a specific mission assigned by God. This was the reason David did not kill Saul, even when Saul sought to kill him.

That, in brief, is the royalist position as it developed from the Carolingian period onward. Its most pointed expression is found in the court propaganda of the Investiture Contest.⁷ Extreme situations are conducive to battle both with the sword and with the pen.

"Only God can pass judgment on the emperor," exclaims Henry IV as he throws down the gauntlet to Pope Gregory VII.⁸ In the same vein, the author of the *Liber de unitate ecclesiae conservanda* (*Book on the Preservation of the Unity of the Church*) proclaims to all of Christendom: "*potestas a Deo concessa reprehensione est plane indigna*" ("the power

³ *Monumenta Germaniae Historica* (henceforth MGH), epist. 111, pp. 480 1, 505 2.

⁴ E. Eichmann, *Quellen zur kirchlichen Rechtsgeschichte* 1 (1912), pp. 75, 76, 82ff.; Wipo, "Gesta Cuonradi," MGH SA (1915), p. 23; Paulinus of Aquileia, "Libellus sacrosyllabus," in Migne, *Patrologia Latina* 99, col. 166.

⁵ I Kings 10; Wipo, "Gesta Cuonradi," p. 23.

⁶ Petrus Damianus, *Liber gratissimus* MGH Libelli de lite imperitorum et pontificum (henceforth Ldl.) I, p. 31.

⁷ Sigebert of Gembloux, Ldl. p. 453; Sigebert, *Liber de unitate ecclesiae conservanda* Ldl. II, pp. 212, 226; Hugo of Fleury, Ldl. II, p. 470.

⁸ Bruno, *De bello Saxonico* (MGH SS V, cap. 67): *me... quem sanctorum partum traditio soli Deo iudicandum docuit* (I... who am to be judged only by God, according to the tradition of the holy fathers). The following sentence does, however, contain a contradiction of this proud assertion: *nec pro aliquo crimine nisi a fide... exorbitaverimus deponendum* (nor to be deposed for any crime unless we shall have deviated from the faith), recognizing at least in principle the possibility of the emperor being deposed if he deviates too widely from the faith.

given by God is clearly unsuited to revindication").⁹ The anointed is transformed from *naturaliter individuus homo* (an individual man by nature) into *Christus, id est Deus-homo* (a Christ; that is, a God-man)—explains the Anonymous of York, who elaborates on this assertion:

For indeed, by reason of this anointment, the spirit of God rose upon them [that is, the king and the priest] and a deifying quality that would change them into different men, such that each becomes his impersonal self, one as a man and the other in both spirit and virtue. Thus, Aaron became impersonalized in the former sense, and Saul in the latter; for by no means is there [a transformation] in spirit and virtue except for the anointed of the Lord.¹⁰

So it is that the sovereign is like Jesus, a high priest, on the example of Melchizedek (king of Shalem, who united kingship and priesthood in one person). Sovereign and priest are thus identical; the sovereign performs sacrifices, the priest rules—in *spiritu* (in spirit). The kingship of Jesus, however, ranks higher than his priesthood:

He is king by virtue of his eternal divinity, not by having been made or created such... whereby he is a priest by virtue of having assumed his humanity, made such and created in the way of Melchizedek.¹¹

Thus, it is only right and natural for the sovereign to undertake the investiture of priests; it is merely the appointment of a lesser king by one more powerful.¹²

Nevertheless, the royalist party failed in its efforts to establish the *rex et sacerdos* principle of biblical kingship throughout Christendom. Under the Staufien dynasty, the theocratic conception of the state gave way to a Roman-heathen *deificatio* (deification) of the state as such. The distinction between the sacredness of the office and that of the officeholder was lost, and the sovereign himself was now *divus, perennitas nostra, dominus heros, Jupiter, Tonans* (divine, our life eternal, lord hero, Jupiter, Thunderer).¹³

⁹ *Ldl.* II, p. 200.

¹⁰ "Ad ipsam quippe unctionem insiliebat in eos [s.c., in regem et sacerdotem] spiritus Dei et virtus deificans quae mutaret eos in viros alios, ita ut uterque impersona esset alius vir et alius in spiritu et virtute. Iste impersona sua erat Aaron, ille autem Saul; in spiritu vero et virtute nequaquam sed christus Domini."

¹¹ "Rex est ex eternitate divinitatis non factus, non creatus... sacerdos vero est ex assumptione humanitatis, factus secundum ordinem Melchisedech et creatus."

¹² Anonymous of York, *Ldl.* III, pp. 664ff., 667ff.

¹³ *MGH Constit.* I, p. 322; *MG SS* 16, p. 541; Petrus de Ebulo, *Liber ad honorem Augusti*, ed. E. Winkelmann (Leipzig, 1874), p. 82 n. 9.

Imperial majesty freed itself from its ecclesiastic ties and began to insist on its own independent sovereignty. Attempts in this direction had also been undertaken earlier (suffice it to recall Otto III and the arguments of the Anonymous of York, Petrus Crassus, and the so-called *Privilegium Maius* [Major Privilege] of Leo VIII during the Investiture Contest).¹⁴ Now, however, we find arguments deduced from Roman legal principles at the center of the debate. Even when Frederick II of Hohenstaufen sees himself as the heir to the kings of Israel, this is not an attempt to breathe new life into the theocratic concept of royal office. Rather, as king of Jerusalem, he is, in his own eyes, the direct descendant of the biblical kings. The proclamation in which Frederick announced his coronation in Jerusalem to the rest of Christendom is filled with quotations from the Psalms. It ends by glorifying the liberation of the holy city, by means of which "the horn of salvation has been raised in the house of David."¹⁵ From that point onward, the emperor speaks of "our predecessor David, the illustrious king of Israel." Similarly, the letters of condolence on the death of his son Heinrich compare his grief to that of David's lament for Absalom and Caesar's for Pompey.¹⁶ David and Caesar in one—that was what the Staufen king aspired to be. In this, too, "the first modern man on the throne"¹⁷ led the way.

From this time onward, Western rulers surrounded themselves with the trappings of sanctity rooted in ancient heathen custom and alien to the Church. Even as early as Dante, we find a vision of universal monarchy based, in the main, on a reconstruction of Rome. It is true that in one of his controversial letters he compares Henry VII to Saul, anointed to wage war against Amalek and Agog, and calls upon the emperor to continue his march of triumph through Italy and, particularly in Florence, to crush the *vipera versa in viscera genitricis* (vipers turned upon their mother's womb); should he fail to do so, he will be called to account, like Saul by Samuel.¹⁸ In the *Monarchia*, however, Dante refers to the Old Testament only to refute the arguments of the Church, as, for example,

¹⁴ See on this subject P.E. Schramm's insightful book, *Kaiser, Rom und Renovatio* (Warburg: Studien der Bibliothek Warburg, 1929), pp. 2ff., and the literature suggested by E. Kantorowicz, *Kaiser Friedrich II*, vol. 2 (Berlin: George Bondi, 1931), pp. 176ff.

¹⁵ Cf. O. Vehse, *Die amtliche Propaganda in der Staatskunst Friedrichs II* (Munich: Münchner Drucke, 1929), 94, p. 154.

¹⁶ Huillard-Breholles, *Historia diplomatica Friderici II* (Paris, 1852–1861), vol. 4, p. 528; vol. 6, pp. 28, 31, 32.

¹⁷ J. Burckhardt, *Kultur der Renaissance in Italien* (Leipzig: Alfred Kröner, 1925), p. 5.

¹⁸ Dante, *Opera omnia* (Leipzig: Insel, 1921), II, epist. VII, pp. 473ff.

the *argumentum a creatione et depositione Saulis per Samuelem* (argument based on the creation and deposition of Saul by Samuel):

They say Saul had been enthroned and deposed by Samuel, who had in turn been acting on God's instruction.... From which would doubtlessly follow that the authority of the emperor was dependent.... [However,] it is one thing to be a vicar, another to be a herald or a minister, just as it is one thing to be a teacher and another to be an interpreter....¹⁹

In *The Divine Comedy*, Rome is the shining example of all imperial glory.²⁰ In Marsilius of Padua's *Defender of the Peace*, the status of the sovereign is also presented loosed from its Old Testament bonds. Marsilius is well versed in the Old Testament, and his political theory is grounded in Adam's original sin: in the state of innocence, worldly power would be unnecessary. He uses the Old Testament not as a means of fortifying the status of temporal rulers, but rather to refute the papal party: the pope is neither Aaron nor Moses nor Samuel, each of whom had received his authority directly from God. On the contrary, the pope is a successor to the Apostles. Moreover, Moses and Samuel ruled over all Israel, while the pope rules only over priests.²¹ The bases of temporal power are shifting. A foreshadowing of the Renaissance has begun.

3. 'SACERDOS ET REX': PRIEST AND KING

The concept of a royal priesthood quickly met with strong opposition. As early as the ninth century, a number of synods made a point of stating that only Christ could be both *rex et sacerdos* (king and priest) simultaneously. The *Decretals* of Pseudo-Isidore demanded, moreover, both the autonomy of the Church and the primacy of spiritual authority.²² Accordingly, Pope Nicolas I was able to consider himself lord of all of Christendom. However, the attacks of the Normans and the Saracens

¹⁹ "Dicunt quod Saul rex inthronizatus fuit depositus per Samuelem, qui vice Dei de praecepto fungebatur.... Ex quo sine dubio sequeretur quod auctoritas imperii dependeret.... Aliud est esse vicarium, aliud est esse nuntium sive ministrum, sicut aliud est esse doctorem, aliud est esse interpretem...." Dante, *De Monarchia*, lib. III, cap. VI.

²⁰ For example, Dante, *Purgatorio* XVI, 106f., and *Paradiso* VI, XVIII–XX (in the image of the Roman eagle, which, to be sure, also contains the souls of David and Hezekiah).

²¹ Marsilius of Padua, *Defensor Pacis*, II, 28.

²² Synods of Diefenhofen (844) and Carisiacum (858), *MGH Capit.* II, pp. 114, 440; Synod of Marca (881), *MPL* 125, pp. 1069ff.; Paul Hinschius, ed., *Decretales Pseudo-Isidorianae* (Leipzig, 1863).

and the subjugation of the Curia by the urban aristocracy of Rome toppled the papacy from the heights it had attained toward the middle of the ninth century. When the German kings regained strength, they were able to force the Church into complete submission.

It was not until the movement for Church reform in the early eleventh century that a change in this relationship started to take shape. Rather than continuing to emphasize the similarities, there was a tendency to point out the differences between the consecration of rulers and that of priests. The king, it is noted, is anointed on his right arm and on the shoulders, not on his forehead, and the ceremony is performed not with Chrism, but with normal sacramental oil.²³ Shortly thereafter, Wazo von Lüttich voiced his opposition to Henry III's interference in the election of bishops and that of the pope. Rulers, he claimed, are anointed only *ad mortificandum* (for putting to death), while priests are anointed *ad vivificandum* (for bringing to life): Whence, to the extent that life surpasses death, by that same degree is our unction unquestionably superior to yours.²⁴

At this point, Wazo still challenged only the imperial prerogative of removing priests from office, not that of installing them. Following the death of Henry III, however, the election of Stephan IX took place without the accord of the German court. Cardinal Humbert of Silva Candida then posited the primacy of the celestial dignity of the priesthood over the terrestrial dignity of the king, just as the soul rules over the body.²⁵ Thereafter, Nicolas II, in his famous decree, forbade almost all involvement of monarchs in the election of popes and demanded an end to simony and lay investiture.²⁶ It was not until Gregory VII, however, that the foundations of sacral kingship were shattered entirely.

Henry IV's powerful opponent was thoroughly imbued with the idea of being the successor to the prophets and priests of the Bible. It was because Saul had distinguished himself by his modesty that Samuel had given him the authority to rule, and he had taken it away from him again

²³ Cf. Kern, "Gottesgnadentum und Widerstand," p. 115; E. Eichmann, "Die rechtliche und kirchenpolitische Bedeutung der Kaisersalbung im Mittelalter," in *Festschrift G. Hertling, Presented by the Görresgesellschaft* (Munich: Kösel, 1913), p. 269. This was intended, according to Innocent III (*Decret.* I, 15, 1) to show *quanta sit differentia inter auctoritatem pontificis et principis potestatem* (how great was the difference between the authority of the pontiff and the power of the prince).

²⁴ *Unde quam vita morte praestantior, tantum nostra vestra unctione sine dubio est excellentior.* MGH SS VII, p. 230; Alcuin had already expressed himself similarly in a letter to Ethelhard of Canterbury. Cf. Alcuin, *Epistles* 190, ed. Jaffe, VI, p. 670.

²⁵ *Libri tres adversus Simoniacos*, ldl. I, pp. 225ff.

²⁶ Cf. MGH *Constit. et acta* I, pp. 539ff.

when he became too haughty. Thus, obedience to the priest is obedience to God; disobedience toward the Church is equivalent to idolatry. No king must ever dare to raise his hand against God's anointed or to perform priestly investiture ceremonies. "*Nolite tangere Christos meos*" ("do not touch my anointed") and "*qui vos tangit, tangit pupillam oculi mei*" ("whoever touches thee touches the pupil of my eye") are Gregory VII's words of warning to temporal rulers.²⁷

Furthermore, secular rule is the work of Satan. This concept is expressed particularly clearly in Gregory VII's famous second letter to Hermann of Metz: "Who can be unaware that kings and princes take their origin from men who, ignorant of God, through arrogance, robbery, perfidy, and murder, inspired by the prince of the world—that is, by the devil—strove in blind greed to dominate their equals, mankind?"²⁸ At the same time, however, in a series of other remarks, the pope makes specific mention of the divine origins of princely power. Examples can be found in his letter to Duke Gottfried of Niederlothringen and Duchess Adelheid of Turin. In writing to the Spanish princes, Gregory even cites from the Bible: "*per me reges regnant*" ("through me [God] do kings rule") and "*quoniam data est a Domino potestas et virtus ab Altissimo*" ("because power is granted by the Lord, and virtue by the Exalted").²⁹

This contradiction has been the source of much perplexity among scholars. Gierke and Eicken³⁰ take Gregory's letters to Hermann as the definitive expression of his opinion and conclude that the pope considered secular power to be the work of the devil. Hertling, Pfülf, and, most recently, Voosen³¹ draw a distinction between the divine origins of the state (as an institution) and the rise of individual states (as political

²⁷ *Reg. Greg.*, ed. Caspar, VIII, 21; II, 66, 75; IV, 11, 28, and in many other passages. Compare Caspar's index of citations, p. 644, s.v. "I Kings 15:22–23."

²⁸ "*Quis nesciat reges et duces ab iis habuisse principium, qui Deum ignorantes superbia rapinis perfidia homicidiis... mundi principe diabolo videlicet agitante, super pares, scilicet homines dominare caeca cupiditate... affectaverunt?...*" *Reg. Greg.* VIII, 21. In his first letter of 1075, Gregory had already written: "*illam [i.e., reginam dignitatem] superbia humana repperit, hanc [episcopalem dignitatem] divina pietas instituit*" (Royal dignity is procured through human pride; ecclesiastical dignity is established through divine piety).

²⁹ *Reg. Greg.* I, 9, 37; IV, 28.

³⁰ O. Gierke, *Das deutsche Genossenschaftsrecht*, III, p. 524; A. Eicken, *Geschichte und System der mittelalterlichen Weltanschauung* (Stuttgart, 1887), pp. 357ff.

³¹ G. Hertling, *Historisches Jahrbuch* X (1889), pp. 151ff.; O. Pfülf, *Maria Laacher Stimmen* (1891), p. 112; E. Voosen, *Papauté et pouvoir civil à l'époque de Grégoire VII*, etc. (Gembloux: diss. Univ. de Louvain, 1927), p. 162.

entities). Bernheim³² believes that the solution lies in distinguishing between heathen and Christian states—the former being of human origin and finding their continuation in the *civitas terrena* (earthly city); the latter having been instituted by God as part of the *civitas Dei* (city of God). According to Michael and Carlyle,³³ the state is a product of sin, instituted by man and, at the same time, granted by God as a means of providing a limit to sin. Gförer³⁴ traces Gregory's conception of the state to the biblical tale of Nimrod; Jellinek³⁵ traces it to Adam's original sin. All of these proposed solutions, however, have something forced about them, and they fail to satisfy. When Gregory writes, "*dignitas a secularibus etiam Deum ignorantibus inventa*" ("a dignity invented by the worldly who know not even of God"), or "*illam superbia humana repperit*" ("that which human pride has procured"), he is clearly referring not only to the historical origins, but also to the legal basis of secular rule, which he considers to be an invention of man. The suggestions made by Carlyle and, even more fully, by Bernheim show a clear inclination to justify Gregory at any cost. Gförer's and Jellinek's interpretations suffer from the obvious shortcoming that the pope himself, who had a predilection for quoting, at no time refers to either Nimrod or Adam.³⁶

It is more likely that the prototype Gregory had in mind was the coronation of Saul: the people had demanded that the aging Samuel give them a king, and had maintained that demand in spite of all warning. Only after that did the prophet receive his instructions from God to anoint Saul. Here we already have the two central components: the human origin and the divine calling of the sovereign. Kingship is a work of man, of heathen origin, which was only later adopted by Israel. "Now make us a king, to judge us, as all the nations."³⁷ Nimrod, the first tyrant, owed his rule to Satan. From Saul onward, however, kingship is recognized by

³² E. Bernheim, *Mittelalterliche Zeitanschauung*, etc., part 1 (Tübingen: J.C.B. Mohr, 1918), pp. 206ff.

³³ R.W. Carlyle and A.J. Carlyle, *A History of Mediaeval Political Theory in the West* (Edinburgh: Blackwood, 1922/1928), vol. 3, pp. 94ff.; vol. 4, pp. 204ff.; E. Michael SJ, "Gregor VI. und die weltliche Macht," *Zeitschrift für katholische Theologie* (1891), pp. 168ff.

³⁴ *Historisch-politische Blätter* 36 (1855), p. 519; cf. Genesis 10.

³⁵ Georg Jellinek, "Adam in der Staatslehre," *Ausgewählte Schriften und Reden*, 2 (Berlin: O. Häring, 1911), pp. 25ff.; Jellinek, *Allgemeines Staatsrecht* (1922), pp. 187ff.

³⁶ The solutions proposed by the scholars of his day were already rejected by Martens (*Gregor VII*, 1894, II, pp. 13ff.), who concludes that, in this matter, *Reg. Greg. VII* contains irresolvable contradictions.

³⁷ Cf. I Kings 8.

God. Every sovereign consecrated since that time is a successor to the biblical kings and appointed by God. This appointment is not conferred directly, however, but only through the intermediary of the Church: the pope is Samuel, God's representative. Only the one he chooses can become a legitimate ruler: "*quos sancta ecclesia sua sponte ad regimen vel imperium deliberato consilio advocant... humiliter oboedient...*" ("let those whom the Holy Church, of its own will, in deliberate counsel, calls upon to govern or to rule... obey in all humility").³⁸ Similarly, a Christian ruler who fails to show absolute obedience to the Church sinks, like Saul, to the level of a heathen tyrant. In such a case, a prince anointed with the consent of God falls back to the primitive status of a despot ruling by the might of Satan.

Gregory lent tremendous momentum to the Church's standpoint. His interpretation and subsequent appropriation of biblical priesthood and kingship (in which Augustine's theory of the state arising out of Adam's original sin also played a role)³⁹ was a stroke of genius, and it captured the minds of the Church's propagandists. Bernald of Sankt Blasien explains secular rule as being "*potius ex humana adinventione quam ex divina institutione*" ("a result of human invention rather than of divine institution").⁴⁰ Cardinal Deusdedit pursues this further:⁴¹ God himself has appointed the priests to their office, and they alone can perform it. They are the patrimony of the Lord, and disobedience toward them is idolatry. Kingship, on the other hand, is something that God conceded only unwillingly, in response to the people's demand. Very soon thereafter he speaks the words "It repenteth me that I have set up Saul to be king." Did God repent only having made the wrong choice in Saul, or was he referring to kingship as an institution? Deusdedit consciously avoids a resolution of this ambiguity, suggesting thereby the weakness of the foundations on which arguments for the divine origins of secular rule rest. The Church's position on *sacerdos et rex* gained rapid acceptance. Bernard of Clairvaux seems fairly overwhelmed by the preeminent status of the pope. "*Princeps episcoporum, heres apostolorum, primatu Abel, gubernatu Noe, patriarchatu Abram, ordine Melchisedech, dignitate Aaron, auctoritate Moyses, iudicatu Samuel, potestate Petrus, unccione Christus*" (Prince of bishops, heir of the Apostles, in primacy Abel, in guidance Noah, in status

³⁸ *Reg. Greg.* VIII, 21.

³⁹ See Jellinek, "Adam," p. 25; Jellinek, *Staatsrecht*, p. 187; Giercke, *Das deutsche Genossenschaftsrecht*, III, p. 126.

⁴⁰ *Ldl.* II, p. 147.

⁴¹ *Ldl.* II, pp. 300ff.

Melchizedek, in dignity Aaron, in authority Moses, in judgment Samuel, in power Peter, and by anointment Christ)—in such terms does he address Pope Eugene in his *De consideracione* (MPL 182, col. 752).

The position of the Church on the relationship between Samuel and Saul finds its most succinct expression in the words of Pope Innocent III: *Minor es qui ungitur quam qui ungit, dignior est ungens quam unctus* (Lesser is he who is anointed than he who anoints; more worthy is the anointer than the anointed). That is why the priests are referred to as *dii* (gods; divines) in Exodus 22:28, while the princes are merely *principes* (princes). This reflects the diverse origins of the two powers: *Sacerdotium per ordinationem divinam, regnum autem per extorsionem humanam* (Priesthood through divine ordinance; kingship, however, through extortion by man). For this reason, those guilty of creating division within the Church are severely sanctioned. Korah, Dathan, and Abiram pay for their sedition against Aaron with their lives. King Jeroboam's attempt to create a spiritual schism fails and is justly punished. Rebellion against tyrants, on the other hand, can reckon with divine support. In this way was David victorious over Saul, while the division of the kingdom of Israel lasted down to the exile. This shows that the priesthood is divine and eternal, while kingship is human and of limited duration.⁴²

The efforts of Gregory VII were crowned by those of Innocent III and, later, by those of Boniface VIII. In his renowned bull *Unam Sanctam*, Boniface VIII declares:

For by the witness of truth, it is for the spiritual authority to institute terrestrial power and to pass judgment if it is not good.... Further, we declare, we state, and we determine that it is entirely necessary for salvation that every human creature be subject to the Roman pontiff.⁴³

This triad of popes is the most luminous personification of the principle that "The dignity of royal power owes its brilliance to the authority attached to the office of the high priest, just as the moon receives its light from the sun." Innocent is the feudal lord of numerous European states who compels Otto IV to renounce the Concordat of Worms. For a brief moment, Gregory VII's concept of a priestly kingship comes to fulfillment: the pope has become the *arbiter mundi* (arbiter of the world).

⁴² MPL, 216, pp. 1012ff.

⁴³ "Nam veritate testante spiritualis potestas terrenam potestatem instituere habet et iudicare si bona non fuit.... Porro subesse Romano pontifici omni humanae declaramus, dicimus et definimus, omnino esse de necessitate salutis."

4. MANDATE OF AUTHORITY AND POPULAR SOVEREIGNTY

The concept of political authority resting with the people, known already in antiquity, was revived in the Middle Ages in the propaganda of the Investiture Contest. Here, again, a biblical source is sought. Was it not the people who had played the decisive role in the events surrounding Saul's coronation? A pro-imperial text, the forged *Privilegium Maius* of Pope Leo VIII, is the first to toss this thought into the arena:

For no one can make himself into a king, but it was the people who first created for themselves the king they desired.... Once a king has been made, however, it is no longer within the power of the people to remove him from authority, and [their free] will... is later transformed into a compulsion.⁴⁴

The state is built upon a contract conferring irrevocable authority—that is the claim of the *Privilegium*. Saul may have been chosen by the people, but only God can depose him.⁴⁵ The contract theory became the battle cry of the royalist party; it was the dominant line of thought at the Court of England in the twelfth century,⁴⁶ and it later formed the basis of Marsilius of Padua's bold constructions.⁴⁷

However, on that same basis, the warriors of the Church also forged weapons with which to shatter the foundations of secular power. During the Investiture Controversy, Manegold of Lauterbach had already argued that a king who broke the contract could be driven off like a thieving swineherd.⁴⁸ Koch has convincingly demonstrated the influence of the *Privilegium* on Manegold,⁴⁹ while it is frequently quite clear that the Lauterbach master is dependent on Gregory VII. Thus, he argues that not only the people but also the Church has the right to depose a tyrant; Henry IV, like Saul, has been repudiated.⁵⁰ In this way, Gregory VII and

⁴⁴ "Nemo enim se ipsum potest regem facere sed populus primum sibi creavit regem quem voluerat.... Facto autem rege, de regno eum repellere non est in potestate populi et sic voluntas... postea in necessitatem convertitur."

⁴⁵ *MGH LL IV*, 1, pp. 673ff.

⁴⁶ See John of Salisbury, *Policraticus*, ed. C.C.J. Webb (Oxford: Clarendon Press, 1909), VII, 20.

⁴⁷ Marsilius, *Defensor Pacis* II, 26.

⁴⁸ *Ldl.* I, p. 365.

⁴⁹ G. Koch, "Manegold v. Lauterbach und die Lehre von der Volkssouveränität im Mittelalter," *Historische Studien*, ed. E. Ebering, 34 (Berlin, 1902), pp. 93ff.

⁵⁰ See, for example, *Ldl.* I, pp. 392, 426.

the *Privilegium* join in a curious alliance: for Gregory, the usurpation of power becomes a mandate of authority freely granted. Contrary to the assertions of the *Privilegium*, however, it is subject to revocation. That both Roman and Germanic thought played godfather to this conception is widely recognized.⁵¹ There is, however, also a biblical garment wrapped around this theory: here, too, Saul is treated as the prototype of the sovereign.⁵²

Once the state had been robbed of its divine resplendence, a theory justifying tyrannicide required only one further interpretative step. John of Salisbury was the one to take it, in the *Policraticus*. As the battle between King Henry and his primate began to rage in England, John called out to the world: It was Samuel who had anointed Saul. The king, therefore, is only a *minister sacerdotum* (minister of the priests).⁵³ When the sovereign becomes a tyrant and refuses to submit to the Church, he forfeits his office, and it is even permissible for him to be killed. Thus, Yael killed Sisera, and Judith slew Holophernes.⁵⁴ John is the first medieval thinker to propound the doctrine of tyrannicide.⁵⁵ In a remarkable contradiction, however, he declares that oaths remain binding, even when given to tyrants—as David remained loyal to Saul, and Zedekiah was severely punished for his revolt against Nebuchadnezzar.⁵⁶ Apparently, John conceives of temporal sovereignty as a contract between Church and prince. The Church alone may depose or kill the tyrant; his subjects, on the other hand, must submit obediently to all injustice.

The temporal sword transferred by contract from Church to king—does this theory not contain *in nuce* the doctrine of the two swords as professed by Boniface VIII?

⁵¹ F. von Bezold, "Lehre von der Volkssouveränität im Mittelalter," *Historische Zeitschrift* 36, pp. 323ff., and Kern, "Gottesgnadentum und Widerstand," p. 266, refer to Roman law; H. Rehm, "Geschichte der Staatswissenschaft," *Handbuch des öffentlichen Rechts*, introductory volume (1896), pp. 165ff., refers to Germanic law. C. Mirbt, *Die Stellung Augustins in der Publizistik des Gregorianischen Kirchenstreits* (Leipzig, 1988), p. 92, and Fliche, *Revue Historique* 125, p. 61, refer to Augustine's definition of *populus*; cf. Augustine, *De Civitate Dei*, XIX, 21, and *Confessiones* III, 8.

⁵² Jellinek, *Staatsrecht*, pp. 201ff., traces the medieval contract theory back to the Old Testament but provides no evidence. Koch, "Manegold v. Lauterbach," p. 134 n. 1, dismisses the assumption of a biblical origin of Manegold's theory, even though he himself had pointed out his dependence on the *Privilegium*.

⁵³ *Policraticus*, IV, 3.

⁵⁴ *Ibid.*, III, 5; VIII, 17 and 20.

⁵⁵ See H.E. Schmidt, *Die Lehre von Tyrannenmord* (Tübingen & Leipzig: J.C.B. Mohr, 1901), who traces the development of the doctrine from antiquity to the modern era.

⁵⁶ *Policraticus*, VIII, 20.

In this way, the principle of a mandate to rule based on popular sovereignty took on a double identity. Partisans of the kings saw therein the basis for the princely majesty of temporal sovereigns; at the same time, the Church initiated a transformation of the underlying principle into a contract between Church and prince.

It is important that this medieval theory of contracts not be equated with later political theories of natural law. The latter had no influence on ideas concerning the ultimate legal basis of the state in the Middle Ages; at issue was a political mandate, not a social contract.⁵⁷ It is true that the principle of a social contract was known, both from Aristotle and from Augustine.⁵⁸ This was understood, however, as referring to the guiding of human desire by divine will. A change in this conception was first brought about by natural law theories in the early modern period.

One thing remained unchanged, however, in early modernity. Whenever the theory of contracts comes up, it signals a period of bitter struggle for the partisans of kingship. Does not Hobbes' theory of the absolute state bear a medieval stamp? Not even the descent from Saul is left out.⁵⁹ Rousseau's *contrat social* is only a reversal of Hobbes' *Leviathan*. Under Locke's influence, the sovereign monarch becomes the sovereign people. Rousseau treats the theocratic doctrine of statehood with his usual command of sarcasm: "God is the source of all power, I admit, but he is also the source of all disease; does this mean that it is forbidden to call a physician?..."⁶⁰ With that, the birth of modern society was announced. It was the completion of a long process beginning with the Investiture Controversy and ending with the French Revolution.⁶¹

5. AFTERWORD

The establishment of a king is foretold in the Bible.⁶² Nevertheless, it was only unwillingly, and after much forewarning, that the prophet Samuel conceded to the demands of the people of Israel. Already in Jewish

⁵⁷ Jellinek, *Staatsrecht*, p. 181: It is not the *populus*, but the *rex*, whose existence originates in a contract.

⁵⁸ Aristotle, *Politics*, I, 1 and 2; Augustine, *De Civitate Dei*, XIX, 21.

⁵⁹ Thomas Hobbes, *De cive*, ch. 11, §§1–3, and ch. 16 on the various political contracts in the Old Testament; Hobbes, *Leviathan*, ch. 40.

⁶⁰ *Toute puissance vient de Dieu, je l'avoue; mais toute maladie en vient aussi: est-ce à dire qu'il soit défendu d'appeler le médecin?... Jean-Jacques Rousseau, Contrat Social*, I, 3.

⁶¹ See Jellinek, "Hobbes und Rousseau," *Ausgewählte Schriften und Reden* 2 (1911), pp. 13ff.

⁶² Deuteronomy 17:14.

tradition this procures a divergence of opinion on the nature of kingship. For some, it is nothing but a willfully acquired gift borne by Greeks: "For they have not rejected thee, but they have rejected me, that I should not reign over them." Behind all of this is concealed a desire for idolatrous worship, as is written: "Now make us a king, to judge us, as all the nations."⁶³ Others see the demand for a king as being, in principle, pleasing to God. The manner in which it was brought forward, however, was untoward, and the timing was bad. The people ought to have waited for God himself to decide upon a king for them.⁶⁴

Medieval political theory also afforded the biblical establishment of kingship various interpretations. Three political dynamics were derived from the story of Samuel and Saul: (a) *rex et sacerdos*; (b) *sacerdos et rex*; and (c) a mandate of authority and popular sovereignty.

Sacral kingship was an artificial creation of imperial court circles. While they explicitly recognized the primacy of the Church, it was the sovereign who was to be high priest. By this means, the temporal state tried to establish a legal basis for its claims to spiritual power. The principle of *rex et sacerdos* failed to take root in the mind of medieval Christendom, however, and the reform of the Church in the eleventh and twelfth centuries brought down the entire artificial construction. From that time onward, the Church doctrine of *sacerdos et rex* found itself in opposition to the concept of a secular mandate to rule. This struggle came to a head in the battle between king and people, and ended with the creation of a new sovereign: the sovereign nation.

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⁶³ I Kings 8 and 15.

⁶⁴ *Sifre* on Deuteronomy 17:14; *Babylonian Talmud*, Sanhedrin 20b; Maimonides, *Mishneh Torah*, Laws of Kings 1.