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978-0-521-29157-6 - Law and Politics in the Middle Ages: An Introduction to the Sources of Medieval Political Ideas

Walter Ullmann

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STUDIES IN THE USES OF HISTORICAL EVIDENCE

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For  
Nicholas

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## *General Editor's Introduction*

By what right do historians claim that their reconstructions of the past are true, or at least on the road to truth? How much of the past can they hope to recover: are there areas that will remain for ever dark, questions that will never receive an answer? These are problems which should and do engage not only the scholar and student but every serious reader of history. In the debates on the nature of history, however, attention commonly concentrates on philosophic doubts about the nature of historical knowledge and explanation, or on the progress that might be made by adopting supposedly new methods of analysis. The disputants hardly ever turn to consider the materials with which historians work and which must always lie at the foundation of their structures. Yet, whatever theories or methods the scholar may embrace, unless he knows his sources and rests upon them he will not deserve the name of historian. The bulk of historical evidence is much larger and more complex than most laymen and some professionals seem to know, and a proper acquaintance with it tends to prove both exhilarating and sobering—exhilarating because it opens the road to unending enquiry, and sobering because it reduces the inspiring theory and the new method to their proper subordinate place in the scheme of things. It is the purpose of this series to bring this fact to notice by showing what we have and how it may be used.

G. R. E.

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## Preface

This book may fairly claim to be one of the first attempts to present the principal sources of medieval political ideas in an integrated and coherent manner. That the study of political ideas in the Middle Ages has been growing in recent years is due partly to the analysis of sources which have not before been considered proper bases or channels for conveying political ideas, partly to the better and more easily available editions of these sources, and partly to the realization that for the earlier medieval period 'political' or governmental ideas were frequently enough embodied in unexpected repositories, such as annalistic records, the numerous *Gesta* of kings, popes, emperors, etc.,<sup>1</sup> inauguration rituals, doxological and symbolic compendia, in sermons, tracts, epistolary communications, no less than in the law and the charters of rulers, municipal statutes, chancery regulations and practices, and so on. If to these are added the formal academic lecture, the severely scholarly commentary, the biblical exegesis, the monographic literature on specific topics, the books instructing young princes in the art of government, one will perhaps realize what an enormous amount of source material is at the disposal of the historian who wishes to extract relevant principles of government from this variegated material.

The systematization of concepts and doctrines which can be

<sup>1</sup> For some excellent observations see G. Melville, 'De gestis sive statutis romanorum pontificum: Rechtssätze in Papstgeschichtswerken' in *AHP* 9 (1971) 377ff. Cf. also H. Diener below, 301 n. 4, and F. Wasner below, 263 n. 1, at end.



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abstracted from the concrete manifestations of governments, presupposes some familiarity with the law, its creation and application. For it is increasingly recognized that the so-called political ideas in the Middle Ages are in reality governmental principles conceived, elaborated, applied and modified (or abandoned if necessary) by the governments themselves. It is evident that for the greater part of the Middle Ages government and its underlying principles were considered first and foremost as integral parts of applied Christian doctrines, and thus shared the latter's character of indivisibility in regard to thought and actions. It was the undifferentiated Christian wholeness point of view that indelibly impressed itself upon all modes of thought and imprinted its intellectual complexion upon the chronologically largest span in the Middle Ages. And as far as society and its government were concerned, this wholeness standpoint found its most conspicuous expression in the law and in its (later) scholarly exposition, that is, jurisprudence.<sup>1</sup>

The concept of politics or political science as an autonomous science did not exist within the precincts of the medieval Christian theme of wholeness. Political ideas in the strict meaning of the term could not and did not emerge until matters of government came to be subjected to the full force of Aristotelian thinking. Then indeed the principle of indivisibility of human actions was to give way to atomization, differentiation and the splitting up of human activities into religious, moral, political, etc., categories with their appropriate norms. But this process, which was a result of the absorption of Aristotle, did not come about until the thirteenth century. Although political science then emerged as an autonomous science it still continued to have strong ties with its parent and begetter, medieval jurisprudence. In a word, the wholeness point of view engulfed virtually all public activities and made its appearance in many variegated forms. The em-

<sup>1</sup> This point of view of exclusiveness and totality was still common in the fourteenth century. Cf., e.g., Conrad of Meigenberg, *De translacione Romani imperii*, cap. 12 (ed. R. Scholz in his *Unbekannte kirchenpolitische Streitschriften II* (1914) at 292: 'Liquidum est religionem christianam quoddam totum esse', and hence it was considered all-embracing, comprehensive and indivisible.

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barrasingly rich source material finds its ready explanation in the all-embracing claim of the Christian theme itself. It was only when this unipolarity of outlook and action yielded to bipolarity, if not multipolarity, that political ideas and political science could be spoken of as independent categories of thought and action.

Since governmental actions and political ideas cannot be considered in a vacuum but only in close connexion with the actual historical situation, this book furthermore attempts to show the kinds and the growth of the sources in their relation to the historical background. Because in the medieval period reality and ideology cannot be divorced, the one cannot be understood without the other. For every historical contingency produced its own momentum and generated its own ideological dynamics which then found expression in the relevant governmental measures. Hence in order to understand the nature of the sources and their impact adequately, some realization of their historical context is necessary. Although the subject of this book is strictly historical, it is not a history of law, political ideas, or institutions, but an introduction to the principal sources which contained governmental and political ideas. Within its limits the book may perhaps be a modest contribution to the literature and scholarship concerned with politics and may thus possibly add a new dimension to historical-political studies.

It can readily be seen why the almost limitless range of material imposed some fairly drastic restrictions upon me. Having lived with most of the sources for close on four decades, I am in the unenviable position of realizing how much is omitted here. But if this book is to serve its purpose of introducing the main sources on which medieval political ideas rested, some selection is inevitable.<sup>1</sup> The difficulty which has confronted me in writing this

<sup>1</sup> Critics will be right in pointing out certain omissions: the Platonic-Hellenistic sources; the Stoic school; Macrobius; or in the high Middle Ages the Graphia circle; the contribution made by, say, Wazo of Liège, Raoul Glaber, Benzo of Alba; the humanist group of the turn of the eleventh and twelfth century (Hilbert of Lavardin, Marbod of Rennes, etc.); the Franciscan school; William of Auxerre; Praepositinus de Cremona; the Paris circle grouped around Peter the Chanter and Stephen Langton; English and French judicial decisions; sphragistics; different kinds of documentary materials, notably of

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book has been how to present this vast mass of varied material. An integrated conspectus of this diversified material has not appeared before. I have therefore tried to marshal it in such a way that the importance and relevance of the sources becomes intelligible to those with a genuine interest in the subject. They will above all wish to know *what* sources there were as well as their characteristic features and contents; *why* they were important; *where* they can be found; *how* they have formed the subject of modern research and how the latter has illuminated their comprehension; and *who* the authors of influential works were. Here and there I have taken the liberty of indicating what topics are in need of scholarly exploration.

In writing this book I have derived some comfort—if comfort it be—from my long-standing familiarity with these sources: this indeed has given me confidence without which I would never have had the courage to embark upon this task. But as the overriding consideration has been to be of assistance to the readers, I have tried to point in the notes to the necessary literature which is as disseminated and variegated as the source material itself. Even so, the extent of the footnotes is only a fraction of the original apparatus: in the last stages I have severely pruned the notes. Since some of the modern literature is of necessity specialized and known to only a few researchers, I considered it a self-evident duty to acquaint students, researchers and readers in general with at least a modicum of this secondary literature. The amount cited appears to me the irreducible minimum for any serious student. Perhaps I may refer to my own experience as a researcher, reviewer and examiner when I have noted how often some very good primary work has been marred by an author's inadequate acquaintance with secondary literature or lack of familiarity with recent advances in research and scholarship. To have further reduced the secondary literature would have been a disservice to scholarship and would have rendered nugatory the very purpose

the papal chancery (letters of grace; letters of justice, the *littera clausa*, etc.); Sicilian, Spanish, Polish and Scandinavian materials, and so on. But this would have needed a multi-volume work, and even this would not have been complete. Completeness cannot be aimed at in this subject.

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of the book itself. The sources together with modern literature show how keenly interdisciplinary in character the subject itself is: in the best meaning of the term it is an integrated whole, in no wise different from the original cosmology that produced the material.

More so than on other occasions have I been dependent on the kindness of colleagues, friends and pupils who have sent me over the years their offprints, books and even in some instances special extracts from the sources which I might otherwise have missed. It would be a long list—and would make tedious reading too—were I to name them all individually. What I can do here is to thank them once more for their unfailing kindness and thoughtfulness in sending me copies of their works. I can only hope that they will see how greatly I have profited from their researches. It is moreover particularly gratifying to find that my own previous work has aroused the spontaneous interest of a surprisingly large number of scholars—personally unknown to me and apparently belonging to the younger generation—who have probed into and meritoriously developed topics relative to government and political ideas in the medieval period. With an especially warm feeling of gratitude I would like to mention the stimulus I received from my own research students past and present—and also from some undergraduates—who greatly contributed to my penetration into the sources. My sense of gratitude to my wife is as intense and profound as it has ever been: she has patiently borne with me during all the stages of preparation and gestation of this book, and once again has substantially helped me in the final revision: her realistic critical sense has been of inestimable value to me.

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W.U.

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## Abbreviations

AA	<i>Atti del Convegno Internazionale di Studi Accursiani</i> ed. G. Rossi (1968)
ACDR	<i>Atti del Congresso Internazionale di Diritto Romano</i> (1934–5)
ACII	<i>Acta Congressus Iuridici Internationalis VII Saeculo a Decretalibus Gregorii IX et XIV Saeculo a Codice Justiniano promulgatis</i> , ed. Pontificium Institutum utriusque iuris (1935–1937)
AD	<i>Archiv für Diplomatiek</i>
AHP	<i>Archivum historiae pontificiae</i>
AUF	<i>Archiv für Urkundenforschung</i>
Bartolo	<i>Bartolo da Sassoferrato: Studi e Documenti per VI centenario</i> , ed. Università degli Studi di Perugia (1962–3)
BEC	<i>Bibliothèque de l'école des chartes</i>
Bibl.	Bibliography; bibliographical
Calasso <i>Medio evo</i>	F. Calasso, <i>Medio Evo del Diritto</i> (1954)
CC	<i>Corpus Christianorum</i> (1954– in progress)
CMH	<i>Cambridge Medieval History</i>
CR	<i>The Carolingian Renaissance and the idea of kingship</i> , by W. Ullmann (1969)
CSEL	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i>
DA	<i>Deutsches Archiv</i>
DAC	<i>Dictionnaire d'archéologie chrétienne et de liturgie</i>
DBI	<i>Dizionario biografico degli Italiani</i> (in progress)

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<i>D(D)</i>	<i>Diploma(ta)</i>
<i>DDC</i>	<i>Dictionnaire de droit canonique</i>
<i>Decreta</i>	<i>Conciliorum oecumenicorum Decreta</i> , 2nd ed. by J. Alberigo et al. (1962)
<i>DHGE</i>	<i>Dictionnaire d'histoire et de géographie ecclésiastiques</i> (1951– in progress)
<i>Dn</i>	<i>Digestum novum</i>
<i>DTC</i>	<i>Dictionnaire de théologie catholique</i> (1923–56)
<i>Dv</i>	<i>Digestum vetus</i>
<i>ED</i>	<i>Enciclopedia del Diritto</i> (1958– in progress)
<i>EHD</i>	<i>English Historical Documents</i> , ed. by D. C. Douglas
<i>Epp.</i>	<i>Epistolae</i>
<i>ET</i>	English translation
<i>F.-Le Br.</i>	<i>Histoire des collections canoniques en Occident</i> , by P. Fournier et G. Le Bras (1931–2)
<i>FT</i>	French translation
<i>gl. ord.</i>	<i>Glossa ordinaria</i>
<i>GT</i>	German translation
<i>HBS</i>	Henry Bradshaw Society
<i>HEL</i>	<i>History of English Law</i> , by W. S. Holdsworth, new ed. (1924–56)
<i>Hist.</i>	History; historical; histoire; historique
<i>Hjb</i>	<i>Historisches Jahrbuch</i>
<i>HPT</i>	<i>History of Political Thought: The Middle Ages</i> , by W. Ullmann (rev. ed. 1970)
<i>HQL</i>	<i>Handbuch der Quellen &amp; Literatur der neueren europäischen Privatrechtsgeschichte 1100–1500</i> , I (1973), ed. H. Coing
<i>HZ</i>	<i>Historische Zeitschrift</i>
<i>IRMAE</i>	<i>Ius Romanum Medii Aevi</i> (1961– in progress)
<i>IS</i>	<i>Individual and Society in the Middle Ages</i> , by W. Ullmann (1967)
<i>IT</i>	Italian translation
<i>J.</i>	<i>Journal</i>
<i>JEH</i>	<i>Journal of Ecclesiastical History</i>
<i>JR</i>	<i>Juridical Review</i>

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JTS	<i>Journal of Theological Studies</i>
KGD	<i>Kirchengeschichte Deutschlands</i> , by A. Hauck, 8th ed. (1963)
KRG	<i>Kirchliche Rechtsgeschichte</i> , by H. E. Feine, 4th ed. (1964)
LCC	<i>Library of Christian Classics</i>
LdL	<i>Libelli de Lite</i>
lit.	Literature
LT	Latin translation
LTK	<i>Lexikon für Theologie und Kirche</i> (1957–68)
MA	Middle Ages, Mittelalter, Moyen Age
Mansi	Mansi, J. D., <i>Sanctorum Conciliorum amplissima Collectio</i> 35 vols. (Florence–Venice 1759–1998)
Meijers	E. M. Meijers, <i>Études d'histoire du droit</i> , ed. R. Feenstra and H. F. W. D. Fischer, I (1956); III (1959); IV (1966)
MGH. AA.	<i>Monumenta Germaniae Historica: Auctores Antiquissimi</i>
— Capit.	— <i>Capitularia</i>
— Conc.	— <i>Concilia</i>
— Const.	— <i>Constitutiones et Acta publica</i>
— DD	— <i>Diplomata</i>
— Epp	— <i>Epistolae</i>
MIL	<i>The medieval idea of law</i> , by W. Ullmann (repr. 1967)
Mirbt	Mirbt, C., <i>Quellen zur Geschichte des Papsttums und des römischen Katholizismus</i> , 4th–5th ed. (1932)
Misc. Med.	<i>Miscellanea medievalia</i>
MIOG	<i>Mitteilungen des österreichischen Instituts für Geschichtsforschung</i>
MP	<i>Medieval Papalism: the political doctrines of the medieval canonists</i> (The Maitland Memorial Lectures), by W. Ullmann (1949)
NA	<i>Neues Archiv der Gesellschaft für ältere deutsche Geschichtsforschung</i>

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NCE	<i>The New Catholic Encyclopedia</i> (1967)
PG	<i>The Growth of papal government in the Middle Ages</i> , by W. Ullmann, 3rd–4th ed. (1970)
PGP	<i>Principles of government and politics in the Middle Ages</i> , by W. Ullmann, 2nd ed. (1966)
PICL	<i>Proceedings of the International Congress of medieval canon law</i>
PK	<i>Papst und König</i> , by W. Ullmann (Salzburger Universitatsschriften: Dike, vol. III (1966))
P & M	<i>The History of English law</i> , by F. Pollock and F. W. Maitland, 2nd ed. (1932)
PGr.	Migne, J. P., <i>Patrologia Graeca</i>
PL	Migne, J. P., <i>Patrologia Latina</i>
QFIAB	<i>Quellen und Forschungen aus italienischen Archiven und Bibliotheken</i>
RAC	<i>Real-Lexikon für Antike und Christentum</i> (1950–in progress)
RB	<i>Revue Bénédictine</i>
RDC	<i>Revue de droit canonique</i>
Reg.	Register
RHD	<i>Revue d'histoire du droit</i>
RHDFE	<i>Revue historique de droit français et étranger</i>
RHE	<i>Revue d'histoire ecclésiastique</i>
Riv.	<i>Rivista</i>
RNI	<i>Regestum domni Innocentii tertii super negotio Romani imperii</i>
RQ	<i>Römische Quartalschrift</i>
RS	Rolls Series
Savigny	F. K. Savigny, <i>Geschichte des römischen Rechts im Mittelalter</i> , 2nd ed. (1834–51)
SavZGA; KA; RA	<i>Zeitschrift der Savigny Stiftung für Rechtsgeschichte: Germanistische Abteilung; Kanonistische Abteilung; Romanistische Abteilung</i>
SB. Heidelberg	<i>Sitzungsberichte der Heidelberger Akademie der Wissenschaften</i>
— Munich	— — <i>Bayrischen Akademie der Wissenschaften: phil.-hist. Klasse</i>



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— Vienna	— — österreichischen Akademie der Wissenschaften: phil.-histor. Klasse
SCH	<i>Studies in Church History</i>
Schulte	Schulte, J. F., <i>Geschichte der Quellen und Literatur des canonischen Rechts</i> (1875–7)
SDHI	<i>Studia et Documenta Historiae et Iuris</i>
Stickler	Stickler, A. M., <i>Historia iuris canonici latini</i> (1950)
St. Grat.	<i>Studia Gratiana</i>
St. Greg.	<i>Studi Gregoriani</i>
Stud. Med.	<i>Studia medievalia</i>
TII	<i>Tractatus illustrium iurisconsultorum</i> , 28 vols. (ed. Venice 1584–6)
TQ	<i>Theologische Quartalschrift</i>
Trad	<i>Traditio</i>
TRHS	<i>Transactions of the Royal Historical Society</i>
TU	<i>Texte und Untersuchungen zur Geschichte der altchristlichen Literatur</i>
TUI	<i>Tractatus universi iuris</i> , 18 vols. (ed. Lyons 1549)
van Hove	A. van Hove, <i>Prolegomena ad Codicem iuris canonici</i> , 2nd ed. (1945)
VI	<i>Liber Sextus</i>
WH	Wattenbach, W., <i>Deutschlands Geschichtsquellen im Mittelalter: deutsche Kaizerzeit</i> , ed. R. Holtzmann I (1948)
WL	— — ed. W. Levison and H. Löwe (1951–63)
X	<i>Liber Extra</i>
ZKG	<i>Zeitschrift für Kirchengeschichte</i>

All other abbreviations are self-explanatory.