VINCENTIUS HISPANUS, ‘PRO RATIONE VOLUNTAS,’
AND MEDIEVAL AND EARLY MODERN THEORIES
OF SOVEREIGNTY
BY GAINES POST

Some years ago I called attention to these words of the early thirteenth-century decretalist, Vincentius Hisp anus, on the powers of the pope and of the prince: ‘... sit voluntas pro ratione.’ What is the meaning? Did Vincentius hold that the supreme authority was arbitrarily absolute, that the *voluntas* of the monarch must in all circumstances be accepted as reason itself? Must we believe that he advanced a doctrine of unlimited absolutism — of the pope in the Church and of the emperor in the Empire? And that he anticipated a theory of sovereignty as the authority and powers of the ruler subject neither to the law nor to the laws?

At the time I paid little attention to these questions, for I was chiefly interested in the connotation of the words for the principle of ‘reason of State.’ I assumed that the will of the sovereign ruler was to be taken for reason only when he acted for the public welfare and safety or *status* of the Church or of the State. Quite recently, however, a rereading of Bertrand de Jouvenel’s book, *Sovereignty*, called my attention to the fact that ‘sit pro ratione voluntas’ (henceforth in this paper *pro ratione voluntas*) comes from Juvenal. Unaware of any medieval usage, de Jouvenel assumed that seventeenth-century applications of the words to Louis XIV meant that the royal will was unlimited and arbitrarily absolute. The purpose of this study is to show how Juvenal’s words were used by canonists and legists and jurists from about 1150 to 1300 in their opinions on the authority of popes, emperors, and kings, and how they adapted them to traditional ideas of monarchy.

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1 See my study ‘Ratone publicae utilitatis, ratio status, und ‘Staatsräson’ (1100-1300),’ in *Die Welt als Geschichte* 21 (1961) 94 n. 118 — now in my Studies in Medieval Legal Thought: Public Law and the State, 1100-1322 (Princeton 1964) 302 (henceforth referred to as Studies). Below it will be shown how Ennio Cortese, *La norma giuridica* (2 vols., Milan 1962-64) has also observed some medieval usages of *pro ratione voluntas* (II 217, 260f., 277, 296f.), but without any reference to Vincentius Hispanus. There is no treatment of the subject by Walter Ullmann — see below, nn. 18, 27, 43, 45. Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge 1963) 151f., 154, has observed *pro ratione voluntas* in Guillaume Durantis and Augustinus Triumphus, but assumes that it meant an arbitrary, unlimited absolutism.


3 *Sovereignty* 170, 209-11.
Perhaps the study will also suggest that historians might well reconsider early modern theories of sovereignty in Jean Bodin and his successors.

In the Satires 6.219-224, Juvenal describes a termagant or shrewish wife who, angered by a slave, ordered the slave to be crucified. Refusing to listen to her husband’s reasonable pleas in defense of the slave, she angrily exclaimed: ‘Hoc volo, sic iubeo, sit pro ratione voluntas’ (‘But this is my will and command: let my will be the voucher for the deed’). ‘Imperat ergo viro’ (‘thus does she lord it over her husband’), Juvenal adds.4

Here, certainly pro ratione voluntas literally means the superiority of arbitrary will over any reasoning based on the ideals of fair trial and justice. It is therefore not surprising that, finding Juvenal’s words in seventeenth-century writers on kingship, de Jouvenel interpreted them to mean that ‘the will of the sovereign takes the place of reason’;5 that, according to Jurieu, the pro ratione voluntas of Louis XIV signified an arbitrary authority unlimited by the necessity of the king’s being right or reasonable in his acts; and this was the same as ‘this boundless and unregulated sovereignty of today.’6 Further, pro ratione voluntas, if the monarch confused his own desires with the common good, signified ‘the reign of arbitrariness’: ‘sit pro ratione voluntas.’7

Having said that, according to pro ratione voluntas, ‘the will of the sovereign takes the place of reason,’ de Jouvenel suggests that if we change the wording to pro voluntate ratio, the meaning becomes that of an absolute sovereignty which is not arbitrary, but ‘a government in which the sovereign will is absolute but in which every precaution, moral or material, has been taken to ensure that this will coincides with reason.’ The monarch’s will is absolute, but ‘he is allowed to will only what is just and reasonable — he cannot do what is unjust and unreasonable because he is deemed not to have willed it.’ And this was the theory of Bossuet and other defenders of royal absolutism in the seventeenth century.8

I do not propose to discuss the confusion in this interpretation caused by the problems involved in defining absolutism and sovereignty. Rather, I propose to discuss the confusion caused by de Jouvenel’s own arbitrary definition of pro ratione voluntas (‘the will of the sovereign takes the place of reason’) and by his attempt to make ratio prevail over voluntas by proposing his own maxim, ‘sit pro voluntate ratio.’

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5 Sovereignty 209.
6 Sovereignty 170.
7 Sovereignty 210f.
8 Sovereignty 209f.
My discussion is based on the general medieval interpretation of Juvenal’s ‘sit pro ratione voluntas.’ As I have mentioned already, I found the words in Vincentius Hispanus’s opinion some years ago. But before considering how he used them, it is needful to remark that, as Antonio Rota and Ennio Cortese have observed, the words were useful to at least one legist or civilian of the late-twelfth century. (We must remember that professors of the two laws at Bologna shared in the revival of the Latin classics, and often enough quoted either directly or indirectly Virgil, Terence, Horace, Ovid, and of course Juvenal.) Pillius, a distinguished legist at Bologna in the later-twelfth century, no doubt influenced by Roman ideas about property and inheritance, was puzzled by a feudal law or custom (Libri feudorum 1.1.3) which stated that females and their sons could not succeed to a fief. To him this seemed unreasonable, for they could inherit allodial property, and a woman’s sons were able to render military service to the lord. So the feudal custom was not based on ratio according to the Roman law. Yet the custom must be accepted in feudal affairs. In this, therefore, the voluntas of the law must be accepted as ratio (‘... sic ergo pro ratione voluntas’), even though the ratio of the Roman law on property and inheritance was lacking.

Perhaps Pillius was influenced by passages in the Digest stating that a valid law which offers no clear statement of the ratio behind it must be interpreted according to its meaning or spirit (voluntas). Whether he had in mind also the will (voluntas or intention) of the creators of a feudal custom or law is doubtful. Accursius, on the same passage in the Libri feudorum, stated an opinion which helps one understand more clearly the attitude of a civilian toward Lombard or feudal custom (the legists sometimes called the Lombard law ‘asinine’). The Roman law, he implies, was reasonable and natural, the Lombard was not. For by the Roman law males and females equally inherited and succeeded to the property. Women should not be punished for being born as women! ‘How then did nature sin’ because sons were not procreated? (C. 6.28.4)
Another legist, whose gloss occurs in the *Glossa ordinaria* of Accursius (ca. 1230ff.) to the *Libri feudorum* 1.1.3, ad vv. *a successione feudorum*, offers a defense of the Lombard-feudal custom or law, saying that great as the authority of the Roman law is, its force does not prevail over *consuetudo* (that is, long-recognized custom: he refers to *Libri feudum* 2.1 De feudi cognitione, the statement by Obertus de Orto [ca. 1150] to his son, a student at Bologna). But why, he asks, is the condition of women (and their sons) worse in Lombard custom than that of men? It is because they cannot furnish military aid to the lord of the fief. But if it is argued that their sons can do military service, no matter — for women cannot succeed to the fief. Therefore, *est pro ratione voluntas.* The will of the legislator, then, as stated in the Lombard or feudal law, must be taken as reason, even though the feudal custom violates both natural reason and the legal reason in Roman law.

I have found one more usage of *pro ratione voluntas* in the *Glos. ord.* of Accursius. Papinian (D. 30. 1. De legatis et fideicom. 1. 87 Filio pater) said that a son named as an heir by his father could justly (for ‘just reasons’) refuse to accept the legacy and be entangled in the complicated problems of an inheritance (*negotia hereditaria*). A gloss to Papinian’s opinion, ad v. *iustis rationibus*, states that the son can refuse to accept for ‘unjust’ reasons, for his *voluntas* can be taken for *ratio* — ‘*Vel non iustis, nam est pro ratione voluntas.*’ The author refers to D. 36.1.4 and 29.4.22 (see also D. 9.2. 51.2). Given these references, the principle is that a man named as an heir did not need to advance a reason for refusing to accept the burdens connected with an inheritance. His wish or will was sufficient in itself. In this case *voluntas* seems to be arbitrary — yet in the circumstances it is the same as *ratio*.

I can offer no more examples of the usage in the *Glossa ordinaria* of Accursius to the *Corpus Iuris Civilis* — other examples no doubt could be found, as they could also in unpublished glosses of early legists. But the examples given show well enough that by and large the opinions of the glossators treat the principle of *pro ratione voluntas* in relation to a court’s interpretation of *ratio* and *voluntas* within the context of the laws and customs themselves. While the laws and customs should be based on reason or reasons, the *voluntas* (intention and spirit) must be accepted if the *ratio* is not stated or is vague. In the background, it is true, one can detect the premise that custom and positive (legislated) law should be based on reason, on long-accepted custom, and on the purpose and the ‘evident utility’ of the custom or law.\(^\text{14}\) (I cannot

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\(^{14}\) See Cortese, *La norma giuridica* II, Indici, s.v. *legge*, for some meanings of *ratio* and *mens legis* — also s.v. *mens* and *ratio*.
engage in a treatment of the problem of consuetudo, custom, which was recognized as law if it was ‘reasonable’ and recognized in the courts as such because it had been long accepted. In general, it can be said that custom was law only when it was accepted as such by the courts, especially by the king’s courts, as a result of the interpretation by the royal justices.)

The legists of the twelfth and early thirteenth centuries did not discuss, it seems, pro ratione voluntas in their treatment of the authority of emperor, pope, or king. They did offer important implications of the principle. In their comments on D. 1.3.31 Princeps legibus solatus est and on C. 1.14.4 Digna vox, they held that while the prince in the sense of legal necessity was above the laws, he should by his own voluntas (‘the worthy voice of majesty’) submit to the laws, not only because of his coronation oath, but also because of his duty to judge, interpret, and act in accordance with ratio, just cause, necessity, and the public welfare and safety of the State. It is therefore strange that in commenting on these passages and on Quod principi placuit (D. 1.4.1 and Inst. 1.2.6) Accursius did not make a direct, explicit use of pro ratione voluntas.

Not until toward the middle of the thirteenth century did the legists connect the idea with the legislation of the prince. Odofredo, to D. 1.3.20 Non omnium (the opinion that not all laws contain a perceptible ratio), asserted that the placet and voluntas of the legislator were sufficient ratio — hence, ‘sit ibi pro ratione voluntas.’ Given other theories of Odofredo on the powers of the emperor, it is evident that he did not interpret pro ratione voluntas as a principle of arbitrary, unlimited absolutism.

If the glossators of the Roman law hesitated or were slow to use Juvenal’s words for the authority and acts of the monarch, Vincentius Hispanus fully understood their importance. A distinguished decretalist, as early as 1210-1215 in his Apparatus of glosses to the decretals of Pope Innocent III in what is called Compilatio III, he clearly applied pro ratione voluntas to the power

16 See my article, ‘Bracton on Kingship,’ Tulane Law Review 42 (1968) 519-54, and references therein; also Cortese, op. cit. I 144f., 152-55, II 402f., and Indici, s. vv. principi, voluntas principis.

18 Cortese, op. cit. II 280f. On the placet of the prince see below, nn. 27, 38, 53, 54. No doubt other examples of the usage exist. According to Bartolus, Accursius accepted the same principle — in the Apparatus to Extravagantes 1, Ad reprimendum (a constitutio of Emperor Henry VII, in Volumen Legum). Bartolus quotes Accursius as saying that leges which are ‘mere positive’ are not subject to interpretation in accordance with ‘ratio juris antiqui’; the ratio of purely positive or human laws is taken from the particular law itself, or from its preface if the ratio is stated in it; also, if the ratio is not apparent, a literal interpretation of the words is necessary (Vol. Legum, Extrav., 133f.).

17 See Stephan Kuttner, Repertorium der Kanonistik ... (Studi e Testi 71; Città del Vaticano 1937) 355-57.
of prince and pope. In a famous decretal, *Quanto personam* (Comp. III 1.5.3; *Decr. Greg. IX* 1.7.3), Innocent III had declared that the Roman pontiff was the vicar of God and of Christ on earth, and that in matters involving the necessity and utility of churches the papal authority was more divine than human.18 Here, now, is the comment of Vincentius:

Nota, quanta est potestas [voluntas in the MS]19 principis ut in eo sit voluntas pro ratione, in Inst. de iure naturali §, set quod principi (Inst. 1.2.6). Nec est aliquis qui dicat contra hoc fac. (-tum?). de pe. di. iii. §, ex persona (*Decretum*, C. 33 q.3 De poenitentia, Dist. 3 c. 22 Quamvis) [the reference given by Vinc. is wrong].20 Hanc tamen potestatem tenetur ipse reformare utilitati publice. C. de legibus. digna (C. 1.14.4 Digna vox), infra, de cen. cum instantia (Comp. III 3.37.2; *Decr. Greg. IX* 3.39.17).21

Some twenty or more years later he repeated the essential parts of this opinion in his *Apparatus* of glosses to the *Decretals of Gregory IX* (1234; Vincentius died in 1249). To the pope’s entitling himself *servus servorum Dei*, he said that the papal *polestas* is great, and the pope should use it for the *utilitas publica*, like the emperor spending sleepless nights in the care of the *respublica*.22 On the decretal of Innocent III (1.7.3), again he called on *pro ratione voluntas*:

‘Nota, quanta est potestas principis, ut in eo sit voluntas pro ratione... Nec etiam est aliquis qui dicat contra hoc... Hanc tamen potestatem tenetur ipse informare utilitati publice...’ He added the opinion of Johannes (Galensis?): ‘In hoc gerit vicem dei, quia de nichilo facit alienum. Jo.’23

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19 No doubt *polestas* originally; see below at nn. 22 and 23.

20 Vinc. actually refers to a *dictum* of Gratian, after c.21 Nihil prodest, *De poenit.*, Dist. 3. This is an error; the reference should be to *De poenit.*, Dist 3 c.22 Quamvis — St. Augustine, ‘... quis tamen audet dicere Deo: “Quare, etc.”’ Significantly, Johannes Teutonicus says ad v. Deo: ‘Vel pape.’ The words ‘contra hoc fac.’ may be related to *non disputare* (below, n. 49).

21 Bamberg, Staatsbibl., MS Can. 20, fol 104v. On the *Appar.* of Vinc. see Kuttner, *Repertorium* 356f. For the gloss see also my *Studies* 302 n. 132.

22 Paris, B.N., MS lat. 3967, fol. 1; my *Studies* 302 n. 132. For a similar reference to ‘sleepless nights,’ from *Auth.* 2.2 (Nov. 8), see the *Gloss. ord.* of Bernard of Parma to *Decr. Greg. IX*, Prooem., ad v. *servus*. The duty of the ruler to spend sleepless nights, to be always vigilant, in the interest of State or Church, was a commonplace in the later-twelfth and thirteenth centuries — Justinian’s ideal is stated even for Henry II of England. See below, n. 37.

23 MS lat. 3967, fol. 30v. Whether Jo. refers to Joh. Galensis or to Joh. Teutonicus is uncertain, but it is probably Joh. Gal. Trancred gives the same opinion without attri-
As far as I can learn, Vincentius was the first canonist to apply *pro ratione voluntas* to the authority of the secular ruler and of the pope. Apparently he did not get the idea of doing so from the glossators of the Roman law. Did he read Juvenal? It is doubtful that he did so, for we shall see that his interpretation is not in the sense of arbitrariness — yet this is no proof that he did not know Juvenal's words and the literal meaning of them. It is not likely that he found the words 'sit voluntas pro ratione' in the classical humanist, John of Salisbury, who in all his theories about the *ratio* and *voluntas* of the king did not quote Juvenal on *pro ratione voluntas*. However, legists and canonists of the age were acquainted with many passages from the Latin classics. It is therefore probable that Vincentius, without having read the *Satires* of Juvenal, was familiar with a common quotation and had the wit to apply it to the words of Pope Innocent III and hence to the power of pope and prince.

In any event, what did Vincentius mean? Did he anticipate later canonistic theories of papal absolutism by emphasizing *pro ratione voluntas*? Did he anticipate the idea of the seventeenth century that, as de Jouvenel says, *pro ratione voluntas* signified an arbitrary, willful, unlimited absolutism? Did later decretalists who were influenced by his opinion advance a theory of arbitrary papalism? To answer these questions we must analyze Vincentius's comments and his references to passages in the Roman law, in the *Decretum* of Gratian, and in the decretals of Innocent III.

We return to the principal opinion of Vincentius (above, at n. 21). In the first two sentences he gives the impression that he did advocate an arbitrary *voluntas* of the ruler. For after saying that the *poleslas* of the prince is so great that his *voluntas* stands for reason, he refers to *Inst.* 1.2.6 ('Sed et quod principi placuit, legis habet vigorem, etc.' — and Ulpian, *D.* 1.4.1). Since to this day some writers on medieval political theories sometimes interpret the *placet* of the prince in the sense of arbitrary absolutism, it would be

*bution: 'In hoc gerit vicem dei... Item de nichilo facit aliquid ut deus...': to *Comp. III* 1.5.3 ad v. dei *vicem* gerit, in Bamberg, MS Can. 19, fol. 124*.

24 I have not found Juvenal's *pro ratione voluntas* either in the *Policraticus* or in the *Metalogicon* — see the editions by C. C. J. Webb, and the Indexes; also *Policr. 4.2.4, 5.2, and 6.25; below at n. 63. Nor does Hans Liebeschütz, *Mediaeval Humanism in the Life and Writings of John of Salisbury* (Studies of the Warburg Institute 17; London 1950), refer to it.

25 See above, at nn. 3, 5-7.

26 Below, at nn. 43-45, on Tancred and Johannes (Galensis?); at n. 56 on Bernard of Parma; at n. 59 on Guillaume Durantis.

27 R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the West* (Edinburgh and London 1903-1936) I 64 ('the Emperor's will is law') — but with qualifications on the subject of the medieval legists, II 56-67, because of the theory of some of them that
an easy assumption that Vincentius's *pro ratione voluntas* coupled with *quod principi placuit* proves that he believed in the unlimited powers of the ruler. It is all the easier to accept this interpretation because he does not mention the second part of *quod principi placuit*, that the Roman *populus* conferred the supreme power and authority on the emperor; and because he does not deduce from this, as some legists did, that the 'people' could take back what had been granted and thus limit the emperor's authority if he ruled unjustly.  

In his second sentence Vincentius gives even a stronger impression of a doctrine of absolutism: 'nor is there anyone who can speak against this.' And he refers to this important passage in the *Decretum* (C. 33 q.3 De poenit., Dist.3 c.22 Quamvis): as St. Augustine said, 'Who dare say to God,' asking why he spares a man who after a first penance repeats his wickedness — 'Quis autem audeat dicere Deo, quare, etc.?' (As Tancred said, 'Nec est qui dicat ei cur ita facis?' What Vincentius seems to mean literally, then, is that no man has the right to challenge the *voluntas* of the prince or of the pope. (In fact, a decretist said to the word *Deo*, 'vel pape' — 'or to the pope.')

No doubt Vincentius had the pope chiefly in mind. Yet did he really support the arbitrary absolutism of the pope? He did not. For at once, after making the statements given above, he offered important qualifications. If the *potestas* of the ruler is so great that his will must be accepted for reason, nevertheless prince and pope are obligated to use *voluntas* for the public utility or welfare: 'Hanc potestatem tenetur ipse reformare utilitati publice...'.

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the powers which the *populus* or community had conferred upon the emperor could be taken from him, and that the customs of the community could not be arbitrarily overridden by laws promulgated by the emperor. See also Fritz Schulz, 'Bracton on Kingship,' *English Historical Review* 60 (1945) 145, 154f.; and Ernst H. Kantorowicz, *The King's Two Bodies* (Princeton 1957) 103, 150-55. Walter Ullmann assumes that *placuit* meant an arbitrary *voluntas*: *Principles of Government and Politics in the Middle Ages* (London 1961) 101f., 159, 281, and Index, s.v. *voluntas principis*; and *The Individual and Society in the Middle Ages* (Baltimore 1966) 72f., 94. (See below, at nn. 38, 53, for the correct interpretation by the late Mrs. Ewart Lewis.) Wilks also assumes that *voluntas* and *placet* mean arbitrariness: *Problem of Sovereignty* (cit. supra, n. 1) 151-54.

28 Carlyle, II 56-67; Ullmann, *Principles*, Index, s.v. *voluntas populi*; Cortese, *La norma giuridica* II chs. 3-5.

29 Bamberg, MS Can. 19, fol 124*, to Comp. III 1.5.3, ad v. del vicem gerit. It is interesting that he accepts Vincentius' error in the reference — see above, n. 20. The full gloss of Tancred is quoted below, n. 43.

30 Also above, at nn. 21, 23. It is difficult to translate 'reformare.' Since in his later opinion Vinc. said 'informare,' perhaps the meaning of 'to shape,' 'to make use of,' or 'use' or 'employ' is better than 'to reform.' After all, why should he say that the prince or pope is obligated to 'reform' his power, when his power was in theory steadily the same? Of course, 'to inform' might do, in the sense that it was the duty of the ruler to be aware
The theory of the *utilitas publica* (related to just cause, necessity, reason) will be considered below. But first let us note this important point, that Vincentius to support his statement referred to the famous *Digna vox* (C. 1.14.4) and to a decretal of Innocent III, *Cum instantia* (Comp. III 3.37.2; Decr. Greg. IX 3.39.17). The *Digna vox* is the renowned late Roman imperial acknowledgment of the duty of the emperor to submit to the laws: 'It is a word worthy of the majesty of the ruler that the Prince professes himself bound to the Law...; greater than the *imperium* [power, authority] is the submission of the principate to the laws.'\(^{31}\) The *Digna vox* meant, according to the glossators of the late-twelfth and early-thirteenth centuries, that while the prince was above the laws with respect to any legal necessity, he should by his own *voluntas* choose to observe the laws. That is, although *legibus solutus* (D. 1.3.31), because as the supreme judge the prince could not be judged in his own courts, it was the moral duty of the prince to be bound by the laws. His moral duty it was, for Johannes Bassianus, Hugolinus, and Azo held that the emperor at his coronation took an oath, swearing that he would keep the laws. By this oath the emperor submitted directly to God's command that he do justice, judging his subjects in accordance with the laws and customs of the Empire. The same theory was applied to the king of England by Bracton in the mid-thirteenth century.\(^{32}\)

It has already been remarked that the early glossators did not literally connect *voluntas* and *ratio* in their comments on D. 1.3.31 and C. 1.14.4. Yet they subjected the will of the prince to the sanctions connected with the coronation oath, to the moral duty of the prince to submit to the laws, to his obligation to maintain the common and public welfare, and to the necessity of using *ratio* in order to preserve the State (‘*ratio publicae utilitatis, ratio status reipublicae*’). One can but conclude that they limited the *voluntas* of the prince by emphasizing *ratio* as a necessary concomitant of *voluntas*.\(^{33}\) They did not find it necessary to say 'sit pro ratione voluntas,' for the presumption of the use of *ratio* was implicit in their general theory. The canonists in general adhered to the same doctrine for the papal authority or the *plenitudine potestatis*\(^{34}\) — but of course they did not need to talk about a papal coronation oath.

\(^{31}\) Translation quoted from Kantorowicz, *Kings Two Bodies* 104.
\(^{32}\) For details and references see my study, ‘Bracton on Kingship’ (*cit. supra*, n. 15) 519f., 528-31, 536-42, 544-46.
\(^{33}\) See *my* *Studies* 269-82.
\(^{34}\) *Ibid*. 264-69.
To return to Vincentius. He does not mention a coronation oath of the secular ruler; he does not discuss the problem of a reconciliation of *legibus solutus* (*D*. 1.3.31) with *Digna vox* (*C*. 1.14.4). But he does refer to *quod principi placuit*, which could mean that the prince was above the laws. Nevertheless, he holds that the ‘pleasure’ of the prince is not his arbitrary *voluntas*. Rather, the * placet* of the monarch is limited by *ratio*. The fact that he says that prince or pope should use his supreme *poestas* for the public welfare indicates already that he had in mind a limitation of arbitrary absolutism. It must be presumed, he implies, that the *voluntas* of pope and prince should always be under the control of the *ratio* of the status (*utilitas publica*) of the faith, the Church, and the State. It must be presumed that the will of the monarch is based on reason. Thus, his appeal to *Digna vox* is a reminder that the pope was bound by the laws of the Church and by his duty to rule the clergy and churches according to the canons, all for the maintenance of the faith and the *status Ecclesiae*, just as the emperor was bound by the laws of the State.

This interpretation is supported by Vincentius’s second reference, to *Comp. III* 3.37.2 (*Decr. Greg. IX* 3.39.17) *Cum instantia*. In this decretal Pope Innocent III spoke of his daily perseverance in the care (*sollicitudo*) of all churches. Vincentius himself, in his *Apparatus* to *Comp. III*, commented on the word *sollicitudo*, referring to pious attitudes of Justinian:

> Voluntarios enim labores appetimus, ut quitem alii preparemus, in autem ut divine iussiones, in prim. coll. viii (*Auth. 8.15; Nov. 115*), et pro re publica imperator noctes ducit insomnies, in autem ut iudic. sine quoquo suffra. (*Auth. 2.2; Nov. 8*).

Thus, the pope should use his *voluntas* always in the interest of the welfare of the faithful, of the faith, and of the Church — like the emperor, who should spend ‘sleepless nights’ for the sake of the tranquility and welfare of his subjects and for the care of the State (*res publica*).

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36 Bamberg, MS. Can. 20, fol. 160.

37 *Auth. 2.2* (*Nov. 8*): ‘Omnes nobis dies ac noctes contingit . . . degere . . . pernoctantes, et noctibus sub aequalitate dierum utentes, ut nostri subiekti sub omni quietae consistant . . . illa agere quaerentes, quae utilitatem nostris subiektis introducendo . . .’; and *Auth. 8.15* (*Nov. 115*): ‘Nostrae serenitatis sollicitudo remediis invigilat subiektorum, nec cessamus inquirere si quid sit in nostra republica corrigendum. Ideo namque voluntarios labores appetimus, ut quietem alii praeparemus. Unde ad universorum utilitatem praeparemus. . . .’ The influence of these words on Innocent III and Vincentius is obvious. This imperial piety and duty Justinian repeats elsewhere also: it is always the pious duty of
In other words, Vincentius did not free the will of the ruler from reason. His argument is simply that the prince's *voluntas* should be used justly, both in accordance with the laws that protect private rights and in accordance with the maintenance of the public welfare and safety of Church and State. So also the *placet* of pope and prince was limited. It should be presumed that the pleasure and will of the monarch were under the control of that *ratio* which was the essence of a just government; the ruler should have in mind the welfare of the community and of its members. As we shall see, good *voluntas* (as opposed to arbitrary, despotice *voluntas*) was considered to be the same as *ratio* whenever the monarch could allege that in any important decisions he had in mind just cause, evident utility, or necessity — whenever 'reason of State' prompted his acts. *Voluntas* was bad, violating all reasons of law and of the State, only when the prince became a tyrant by using his will and authority not for the common and public welfare, but for his own private, selfish interest and pleasure. In that case resistance became lawful — at least if the magnates of the realm were strong enough to make effective their claim that the king had willfully lost to view the *ratio* of the common and public welfare, and that they better than the king could assure the maintenance of the *utilitas publica, commun profit, status regni, or lestat du roialme*.

Thus Vincentius was not a champion of the unlimited absolutism of the pope and the secular ruler. Yet he said, 'sit voluntas pro ratione.' It is an interesting paradox that two decretalists, his contemporaries, commenting on Innocent III's *Quanto personam*, did not mention *pro ratione voluntas*, but arrived at a doctrine that suggests a stronger emphasis on the absolutism of the pope than Vincentius did. One decretalist (ca. 1210-1215) asserted that the *potestas* of the pope was beyond that of man but less than that of God. Indeed, he implied that the papal authority was more divine than human: if it is said that the prince possesses a heavenly authority (*arbitrium*),
so much the more can it be said of the pope as the vicar of Jesus Christ; nor is the law laid down to the pope, for the pope is the law, and 'what is pleasing to him is lex.'

His references, too, imply an unlimited absolutism: to C. 1.1.1 Cunctos, Justinian's declaration that his law, on the faith and the punishment of heretics was inspired by a celestial arbitrium; to the Decretum of Gratian, C. 9 q.3 c.14 Aliorum hominum, the claim of Pope Symmachus that God alone could judge the successors of Peter; to C. 9 q.3 c.16 Ipsi sunt, the statement of Pope Gelasius that the Holy See is the final interpreter of the law and can be judged by no man; to Auth. Coll. 8 t. 6 (Nov. 105), Justinian's law, in which the emperor says that God placed him above the laws, making him lex animata, the living law; and to D. 1.4.1 and Inst. 1.2.6, the familiar Sed et quod principi. True, these references and the theory of this decretalist must be interpreted in the context of canonist theories of monarchy in the thirteenth century, as we shall see. Nonetheless his opinion is not qualified by any reference to C. 1.14.4 Digna vox, nor by any recall of the public welfare and the res publica. Therefore, he seems to offer a defense of arbitrary absolutism.

Another decretalist, the famous Tancred, writing ca. 1215-1220, in one gloss gives the first impression of supporting an even more sweeping, unlimited absolutism. Commenting on the same decretal, Quanto personam, he says that the pope is the viceregent of God because he sits in the place of Jesus Christ, verus Deus and verus homo; like God, from nothing he can create ('facit') something; the pope acts in the place of God in ecclesiastical

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39 Gloss in Paris, B.N., MS lat. 15398, fol. 112v, to Comp. III 1.5.3 Quanto personam, ad vv. non purt hominis: 'Unde potestas elus ultra hominem et citra deum. Celeste enim dicitur arbitrium habere prnceps secularis, nedum vicarius Iesu christi, ut C. de summa tri. I I in fl. Nec el lex posita est, ut ix. Q. illi. aliorum hominum. Ipse est lex, ut e. Q. Ipsi sunt, et aut. de consululis. §. ult. coll. iiiij [rather, Auth. Coll. 8]; et quod placet el lex est, ut Inst. de iure naturali. §. sed quod principi.'

On the glosses to Comp. III in this manuscript (also in Bamberg, MS Can. 19) see Kuttner, Repertorium 356; Franz Gullmann, Der Laurentius Hispanus Apparat zur Comp. III (Mainz 1935); G. Post, 'The So-Called Laurentius Apparatus...,' The Jurist 2 (1942) 3-29; and P. Antonio Garcia, O.F.M., Laurentius Hispanus (Roma-Madrid 1956) 73-87. My own thesis, that this Appar. was not compiled by Laurentius, is now supported by Knut W. Nörr, 'Der Apparat des Laurentius zur Compilatio III,' Traditio 17 (1961) 542f.

40 On the prince as lex animata and as lex see Kantorowicz, King's Two Bodies, Index, s.v. Lex animata. By 1220 a decretist had already compared the pope with the emperor in this respect — Glos. ord. to Decretum, C.9 q.3 c.16 Ipsi sunt: 'Sicut Imperator est lex animata in terris: ut in authen. de consulibus, in fl. coll. iiiij (Auth. 8.6; Nov. 105).'

41 About 1230, on the lex animata of the emperor, Accursius (to Auth. 8.6; Nov. 105 in fl.) granted this, but he refers to C. 1.14.4 Digna vox and D. 1.3.31 Princeps legibus solutus and holds that, while the emperor is above the laws, he should voluntarily submit to them. He reflects the general doctrine of voluntas, that it does not mean arbitrary absolutism.
affairs, for because of his *plenitude potestatis* he can correct and change the law (*ius*) and can turn injustice into justice; and, finally, no one shall say to the pope, ‘Why do you do this?’ (‘Cur ita facis?’).

A careful examination of Tancred’s references, however, shows that he by no means advocates arbitrariness in his ‘papalism.’ For example, on the idea that like God the pope can create something from nothing, his references show that he means only that for the sake of peace the pope can accept a king’s deposition of bishops, thus making lawful what was technically contrary to the laws of the Church (C. 3 q.6 c.9 *Haec quippe*); or, like the emperor, the pope can create a new law that provides a new procedure for suits for the return of dowries (C. 5.13.1). Obviously, Tancred was simply offering an analogy that could not mean that like God the pope could really create *ex nihilo.* Another example is this: the pope, Tancred says, can grant dispensations from the laws. But can the pope dispense at his own pleasure, willing what he pleases? Tancred’s reference, to *Comp. III* 3.8.1 (Decr. Greg. IX 3.8.4 Proposuit), indicates that he seriously limits the papal *plenitude potestatis* in dispensations, for he quotes a gloss (without contradicting it) of Johannes (Galensis?), who says that the pope can grant no dispensation which is against the ‘universal state of the Church’ or against the articles of the faith. The decretalists agreed, moreover, that all dispensations should be for ‘just cause’ or reason.
But how can we explain Tancred’s last sentence and reference? — ‘Nor is there anyone who can say ‘to the pope ‘Cur ita facis?’ He refers to the Decretum, ‘ut de pe. di. iii. §. ex personis — like Vincentius he is in error, for the reference should be to c. Quamvis (De Poenit. Dist. 3 c.22; \(^{46}\) this is the passage from Eccles. 8.4-5 and St. Augustine, ‘Who dare say to God, “Why, etc.?”’ — ‘quis tamen audeat dicere Deo: quare, etc., etc.’\(^{47}\) My explanation is that Tancred meant only that no one should question the decisions and facula of the pope, just as no one should dispute those of the emperor,\(^{48}\) for it should be presumed that papal acts are based on reason or just cause. It is well known that other canonists also were thus placing the papal authority and judgments above disputation — except when the pope was accused of heresy and could be tried by a General Council.\(^{49}\)

Bracton applied the same principle to the royal authority in England: ‘Nemo quidem de factis suis praesumat disputare....’\(^{50}\) This does not mean, however, that he attributed to the king an unlimited authority. The royal voluntas was indeed above the laws in that the king was subject to no human jurisdiction. But his will should be analogous to that of Christ and the Virgin Mary, who humbly chose to submit to human laws although they were above them; and besides the king was under a moral obligation to rule according to the laws, for at his coronation he had sworn to do so.\(^{51}\) Later on I shall discuss similar limitations of the voluntas of the emperor and the pope with respect to non disputare. Suffice it to remark here that an English can-

\(^{46}\) Above, n. 20.

\(^{47}\) Above, at nn. 29 and 43.

\(^{48}\) C. 1.25.5 Sacrilegii, and C. 9.19.2 Disputare.

\(^{49}\) Gratian’s Dictum, ‘Qui autem,’ following c. 22 Si quis, C.17 q.4, referring to C. 9.19.2 Disputare: ‘... Committunt etiam sacrilegium ..., aut qui de principali judicio disputant ... similiter de judicio summi pontificis aliqui disputare non licet.’ A late-twelfth-century canonist, Honorius, says in his Distinctiones or Summa decretalium questionum (Paris, B.N., MS lat. 14591, fol. 50): ‘Item ipse [papa] est canon. ... Item sacrilegii instar habet de facto pape disputare ...’; and the author of a thirteenth-century Summa juris (Monte Cassino, Archivio, MS 396, fol. 57): ‘... magna et ampla est potentia pape, nec de ea disputandum.’ On Honorius see Stephan Kuttner and Eleanor Rathbone, ‘Anglo-Norman Canonists of the Twelfth Century,’ Traditio 7 (1949-51) 304-16. On papal heresy and the General Council, see Tierney, Conciliar Theory 42-45 and ch. 11.

\(^{50}\) De legibus et consuetudinibus Angliae, ed. G. E. Woodbine (New Haven - London 1915-1942) II 33 and II 168f; see Kantorowicz, King’s Two Bodies 158.

\(^{51}\) See my ‘Bracton on Kingship’ (cit. supra, n. 15) 519-54 for a general treatment and references to Schulz, Tierney, Lewis, and others.
onist, Richard de Mores (ca. 1186-1200), implied all this in saying that 'the pope sins mortally if he refuses justice, or does not reply to a consultation.'

It is probable, therefore, that if Tancred’s apparently extreme doctrine should be interpreted as one of a moderate absolutism, that is, absolutism limited by law and reason, so the opinion of the anonymous decretalist (above, at n. 39) must be interpreted with care. His concluding words, ‘et quod placet ei lex est,’ do not mean that the ruler can arbitrarily declare that whatever he pleases or wills is law. It is not literally ‘what he pleases’ that is law, but what is promulgated as law by his authority, after the procedure of consulting with expert advisers and with the proceres (higher officials or dignitaries or magnates) has resulted in the framing of the law. As we saw above, Vincentius’s reference to Inst. 1.2.6 must be interpreted in the same sense.

The point is that in the context of the ideas of the decretalists of the early thirteenth century, one must be cautious about arriving at the conclusion that any of them believed in arbitrary absolutism. So much the more is it necessary to refute any attempt to say that Vincentius advocated a doctrine of arbitrary absolutism simply because he made use of Juvenal’s pro ratione voluntas. Vincentius was not an extreme papalist. This is all the more evident in his thought, because of his references to the Digna vox (C. 1.14.4) and to Justinian’s ideal of working ceaselessly in the interest of the res publica.

It is probable, in fact, that in spite of his pro ratione voluntas, he was less an absolutist than some of his contemporaries.

What was the future of pro ratione voluntas? Did it develop into a theory of arbitrary absolutism in the later Middle Ages? Was Vincentius’s use of it of influence? I have not explored the literatures of the canon law and Roman law in any detail. But as we have seen, the great legist Odofredo mentioned pro ratione voluntas. The Glossa ordinaria of Bernard of Parma to the Decretals of Gregory IX (after 1234) abbreviated the opinion of Vincentius while including his pro ratione voluntas and combining it with the gloss of Tancred to Quanto personam (Decr. Greg. IX 1.7.3), ad vv. veri Dei vicem (italics indicate the use of the opinion of Vincentius):

Unde dicitur habere celeste arbitrium . . . et ideo etiam naturam rerum immutat, substantialia unius rei applicando alii . . . et de nullo potest

52 Gloss in MS Vat. lat. 1377, fol. 13, to Comp. I 1, tit. de off. et pot. iud. del., c. Consultationibus, ad v. restitutur: ‘Ergo mortaliter peccat papa si iustitiam negat, vel ad consultationem non respondet . . . R.’

53 Lewis, ‘King above Law?’ (cit. supra, n. 38) 243 n. 1; and C. 1.14.8 Humanum. Cf. above, n. 38.

54 See also at nn. 27, 38.

55 For Odofredo, above, at n. 16.
aliquid facere... et sententiam quae nulla est, facit aliquam... quia in tis quae vult, est pro ratione voluntas... nec est qui dicat cur ita facis... ipse enim potest supra ius dispensare.... Item de iustitia potest facere iustitiam corrigendo iura et mutando... et plenitudinem obtinet potestatis....

Thus Bernard of Parma used Tancred's opinion more than that of Vincentius, and so apparently accepted Tancred's stronger statement. But the references, chiefly repeating those made by Tancred, show that Bernard did not accept a doctrine of unlimited absolutism. Yet it is interesting that Vincentius, probably the first decrétaliste to stress pro ratione voluntas, was alone in referring to C. 1.14.4 Digna vox and to the subjection of the ruler's voluntas to the utilitas publica and the res publica. He was more interested in refuting the doctrine of arbitrary absolutism than were Tancred and Bernard of Parma. Hostiensis held that pro ratione voluntas meant that the pope should use the ratio of equity and the intention (mens) of the laws in deciding cases. No unlimited absolutism is involved, but simply interpretation in accordance with reason. Guillaume Durantis, making use of the gloss of Bernard of Parma and therefore of the idea of Vincentius and Tancred, treated the pro ratione voluntas and plenitudo potestatis of the pope as if they meant papal absolutism. He says that 'the pope can do and say whatever he pleases, at his will depriving anyone of his right; for no one can say to him, Why do you do this?' For the voluntas of the pope takes the place of reason, 'and what is pleasing to him has the force of law.' If Durantis's doctrine as a whole is that nonetheless the papal authority is limited by the faith, the 'just cause,' and the general status Ecclesiae, he seems to emphasize absolutism more than Vincentius did.

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56 Glos. ord. of Bernard of Parma, in 1558 edn. (Lyon) of Decr. Greg. IX; given in full by Watt, 'Theory of Papal Monarchy' (cit. supra, n. 18) 262f., but with no reference to Vincentius as one of the sources—only Tancred is referred to (n. 42). Cf. above, nn. 29, 43.

57 Above, nn. 21, 37, for Vincentius.

58 See Cortese, La norma giuridica II 296 n. 2; also, for a thorough treatment of limited absolutism in the papalism of Hostiensis, Arturo Rivera Damas, Pensamiento político de Hostiensis (Zürich 1964) — emphasis on papacy and Empire rather than on the papal authority in the Church itself.

59 Speculum iudiciare (Basel 1574) I.i. De legato, no. 51: the pope has the plenitudo potestatis, 'et per omnia potest facere et dicere quicquid placet, auferendo etiam lus suum cui vult: quia non est qui el dicat, Cur ita facis.... Nam et apud eum est pro ratione voluntas, et quod et placet, legis habet vigorem....' Cortese, La norma giuridica II 277, calls attention to this passage; so also Wilks, Problem of Sovereignty (cit. supra, n. 1) 151.

60 Speculum iud., I.i. De dispensationibus; Ullmann, Medieval Papalism 53 n. 1.
In the early fourteenth century the decretalist Johannes Andreae referred to Vincentius on the great power of the pope and how this power was limited by the *utilitas publica*, but did not mention *pro ratione voluntas*. Did he believe that it was dangerous to attribute any voluntarism to the pope? I cannot say; but it may be that his doctrine should be fully examined.\(^6^1\)

I have not had access to the work of Pope Innocent IV, and I have not examined much of the literature of the canon law of the later-thirteenth and fourteenth centuries. But my sampling of a few decretalists makes me believe that *pro ratione voluntas* by itself did not become a doctrine of arbitrary absolutism. Perhaps this was because Vincentius had held that it should be limited by considerations of the public welfare, for which the prince or pope should always govern. It was the duty of prince and pope to maintain the welfare and safety of State and Church. *Voluntas* was in fact controlled by that reason which was the ‘reason of State’ or ‘reason of Church’ — that is, the *ratio status rei publicae* and the *ratio status Ecclesiae*. The will of the ruler, according to Vincentius, was limited by his duty to submit to the demands of the public welfare of State and Church. So the *voluntas* whether of secular prince or of pope was not arbitrary. It was not above *ratio*. It was closely related and indeed subject to ‘reason of State’ and ‘reason of Church.’ In other words, the *voluntas* of the ruler who kept in mind the welfare and safety of State or Church was *ratio* itself — the *ratio utilitatis publicae*. *Voluntas* if rightly used was right reason. (It is possible, however, that such extreme papalists as the theologian Augustinus Triumphus assumed that the *voluntas* and *placet* of the pope signified an unlimited sovereignty. And possibly Dante attributed as complete a sovereignty to the Emperor.)\(^6^3\)

We can observe the development of theories of good *voluntas* based on reason, and bad *voluntas* based on selfish arbitrariness, from the twelfth century on. John of Salisbury, Bracton, and Thomas Aquinas carefully distinguished between the two kinds of *voluntas* in the ruler. They and the legists and canonists agreed that bad *voluntas* was the arbitrary will devoted to the selfish interests of the monarch who violated law and justice by injuring the legal rights of his subjects and by acting as a tyrant. Such a *voluntas* was supported by no *ratio*, whether it was the reason given by God to all men but especially to the ruler as a principle of justice and equity, reason

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\(^6^1\) *Novella Com.* to *Decr. Greg.* IX (Venice 1581), L.4a.No. 7: ‘... Dicit Vin. quod magna est eius potestas: sed debet eam conformare publice utilitati...’; nor is *pro ratione voluntas* mentioned in the comments on 1.7.3 Quanto personam.

\(^6^3\) See my *Studies*, ch. v in general; on Augustinus Triumphus’ extreme papalism and on the emperor’s *voluntas* in Dante, see Wilks, *Problem of Sovereignty* (cit. supra, n. 1) 154. But Wilks does not consider the whole context of Dante’s thought.
or *mens* as the normal foundation and spirit of the laws, or reason as the essence of the *ratio utilitatis publicae* or 'reason of State.'

It follows, of course, that good *voluntas* was based on *ratio* in all its meanings, and was indeed *ratio* itself in action. Such was the *voluntas* of prince, king, or pope who in doing justice observed the laws of God and the customs and laws of his State or Church, and who used his will for the public welfare or for the defense of the faith and the Church. The reason of the ruler should reflect the gift of reason from God, and reason should be the determining element in the exercise of the just monarch's jurisdiction and executive authority. This reason was also based on the customs and laws which protected individual rights and the common welfare, and which at his coronation the prince took an oath to observe. Reason should also participate in the *voluntas* and *placet* of the monarch when he promulgated new laws, and it was related to or guided by consultation with legal experts, judges, and the great men of the realm. Normally, therefore, the *voluntas* of the monarch, in every important act and decision, was his *placet* only if *ratio* and customary procedure, along with respect for prevailing laws and customs, preceded them.

The presumption was, in the theories of *voluntas* and *ratio*, that the laws themselves contained *ratio* in the *mens* or spirit (intent) in which they were laid down and promulgated under the *auctoritas* of the prince. Whether legislation was that of a feudal king or that of a pope, the procedure, though feudalized or adapted to the College of Cardinals or to a General Council, was in substance the procedure laid down by late Roman emperors in C. 1.14.8 Humanum: viz., when a new situation or kind of case arose which the known laws did not cover, the emperor and the *proceres* (great officers) of 63 For John of Salisbury see my *Studies* 259-61, 513-21; for the legists and canonists, 262-90, 521-55. For Bracton, as well as earlier legists, see my 'Bracton on Kingship' (*cit. supra*, n. 15) 537-44; and my forthcoming article, 'Bracton as Jurist and Theologian on Kingship.'

The theory of Thomas Aquinas is well presented by C. H. McIlwain, *Growth of Political Thought* (New York 1932) 328: the *placet* of the prince in legislation should be controlled by reason and the common utility; the will of the ruler must be controlled by reason 'if it is to bear the character of a law,' 'and so the maxim *voluntas princips habet vigorem legis* is to be understood' (McIlwain has here created a maxim, but it is fitting); and 'there is no true will but a rational will' (p. 329); the prince is *legibus solutus* with respect to the coercive power (*vis coactiva*) of the law, but is under the law with respect to its directive force (*vis directiva*); the prince should subject himself voluntarily to the law.

64 On the standard theories of legislation in the feudal monarchies of the thirteenth century see Carlyle, *Medieval Political Theory* V, chs. v and vi. For the theories of the legists as reflected in the *Glos. ord.* of Accursius, see Brian Tierney, '"The Prince is Not Bound by the Laws,"' *Comparative Studies in Society and History* 5 (1963) 397f.

the palace should discuss or treat it; if the provisions of a proposed new law should be pleasing (*placuerit*, let us note) to emperor, imperial justices, *proceres*, and the senators, and then put together for final consideration and consent, at last a new law could be promulgated with the authorization of the emperor. 66 Of course, the advice and consent of the senators meant little in the late Roman Empire. Nevertheless the Roman principle of counsel and consent remained important and was to reinforce the Germanic and Frankish heritage of the duty of the chief or king to consult with the greater men of tribe or kingdom. In the twelfth and thirteenth centuries all this underlay feudal custom: the king in his *curia*, the feudal assembly, consulted with the magnates and with his special advisers (legal experts and judges) before promulgating a new statute or law. We must not forget that the *auctoritas* of the feudal monarch, like that of the Roman emperor, remained decisive, outweighing the right of counsel and consent — if consent is viewed as a ‘popular’ or democratic limitation of the king’s powers of governing and interpreting the laws and legislating.

The point is that the royal *placet* was not arbitrary; it was not the uncontrolled volition of the king. No matter how powerful a king actually was, his *placet* and authorization followed customary procedures of consultation with his *proceres* or justices and magnates. No doubt Henry II of England was often in fact arbitrary, ruling with *ira* and impulsive *voluntas*. Yet it is probable that ‘so long as it is pleasing to him’ (*quamdiu placuerit*) in the Assizes of Clarendon and Northampton was a simple authorization of what were really statutes or laws promulgated by the king after consultation with royal justices and prelates and barons. 67 It is doubtful that the magnates initiated the process of legislation; either the king or his advisers

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66 On this also Lewis, ‘King above Law?’ (*cit. supra*, n. 38) 243.

67 William Stubbs, *Select Charters* ... (Oxford 1929) 170-73 (assize or statute of Clarendon, ‘de consilio omnium baronum’); 179-81 (the counsel of the barons is not mentioned, but the contents indicate that the royal justices, and no doubt some barons, were consulted). The royal *placet* and *voluntas* are thus indicated: (173) ‘Et vult dominus rex quod haec assisa teneatur in regno suo quamdiu ei placuerit’; (179, c.1) ‘... et amodo quamdiu domino placuerit. ...’ *Quamdiu placuerit* does not seem to indicate any more arbitrariness in the king’s *voluntas* than the *placuerit* of the Roman emperor in C. 1.14.8 *Humanum* (above, at n. 66). It is probable that it means only that the assize or statute will be the law until it is officially rescinded by the king after the proper procedure of consultation with his *proceres* (justices and barons) takes place. On Henry II’s *ira et voluntas* see J. E. A. Jolliffe, *Angevin Kingship* (London 1955), ch. iv (where there is no consideration of legal meanings of *voluntas*); on his *placet* or *placuerit*, Doris M. Stenton, *English Justice* (*cit. supra*, n. 37) 72. Her interpretation is not based on legal ideas but is good. Wilks, *Problem of Sovereignty* 152, wrongly assumes that *ira et voluntas* was ‘an established feature ... monarchies in the late twelfth and thirteenth centuries.’
or both did so. But consultation with the magnates was necessary. Whether the consent of the magnates was as necessary depended on political circumstances. In any event the royal placet was not arbitrary. The so-called Glanville and Bracton fully support my interpretation.

Thus the voluntas or placet of the ruler was in theory, and usually in practice, limited by the formalities of customary procedure. And so limited, it was presumed also to be limited by ratio. For it was assumed that laws framed and promulgated on the basis of consultation with legal experts, justices, and great men pertained to 'evident utility' (as in D. 1.4.2) or to the public and common welfare or the status reipublicae (regni). Therefore they contained ratio (also mens). As we have seen, however, if the ratio of a law was not clearly stated, the voluntas (intent) of the law should be interpreted as ratio.

In sum, not only in his role as legislator, but also in that of supreme judge, it was presumed that the monarch's voluntas was limited by ratio. Morally, if not by legal necessity, the king was bound by his coronation oath, by the 'worthy voice of majesty' (C. 1.14.4), and by honestas to observe and do justice according to the customs and laws of his realm. Both he and the royal justices should base all judicial decisions on the laws of the land. Naturally, some cases brought to light the fact that the standing customs and laws could not be satisfactorily used for the solution of new problems. So the courts, and finally the king, must judge not according to the letter of standing laws but according to equity or reason. In fact, of course, kings often seized properties arbitrarily. But increasingly in the thirteenth century the Roman law provided the king and his advisers with a legal principle by which the royal power could be exercised justly and at the same time to the profit of the king. Even St. Louis, the model of the just king, profited from the use of the Roman law on prescriptive rights in favor of the crown.

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68 Glanville, Tractatus de legibus (ed. and transl. by G. D. H. Hall; London and Edinburgh 1965) 2: saying that 'quod principi placet, legis habet vigorem' is a lex, the author explains that English laws, though unwritten, can properly be called leges if they 'are known to have been promulgated about problems settled in council on the advice of the magnates (proceres) and with the supporting authority of the prince' (Hall's translation). On Bracton see Lewis, 'King above Law?' (cit. supra, n. 38) 240-52, for the texts and for a good discussion of scholarship on the subject (also above, at n. 66).

69 Above, nn. 10-16; again I refer to D. 1.3.20 and the glosses.

70 See my 'Bracton on Kingship' (cit. supra, n. 15) 520-54; on honestas, Jacques de Révigny, quoted by Cortese, La norma giuridica I 149.

71 The literature on equity and ratio and on natural reason in the two laws is abundant; see Cortese, La norma giuridica I 287-91, II 350-54, and Indici, s.v. aequitas; also, on John of Salisbury, Kantorowicz, King's Two Bodies 94-97.

72 Ludwig Buisson, König Ludwig IX., der heilige, und das Recht (Freiburg 1954) 66-70 (and ch. 2 in general), 100-30. On the actual practice in England see now Ralph V. Turner,
could interpret the laws and customs in such a way that the king could profit in many directions without being accused of judging arbitrarily for his own selfish interest. In England, in the time of Henry II, John, and Henry III, the royal seizure of rights in property for the settlement of debts gave the king a great legal advantage. In France, in the time of Philip the Fair, the king, we can say, was a ‘constitutional’ monarch, for he based his major decisions on expert legal opinions of the members of the royal council. Not even the ruthless treatment of the Knights Templar was unjust, given the religious and legal ideas of the age. According to the public law, ‘reason of State’ included the right of the king to defend the faith and the welfare of the souls of his subjects and therefore the State itself against any danger to them. (This is not to say that the Templars were given a fair trial. The end justified the means.)

As Ulpian had said, D. 1.1.2, the public law dealt both with the ‘state of the Republic’ and with religion, priests, and magistrates. This was the essence of the theory accepted in the thirteenth century: whatever the king and his government decided was necessary for the public welfare and safety of the State was lawful and just; and religion was, as in the Roman Empire, a subject of the public law. In such circumstances, again, when the ‘right of State’ demanded it, the voluntas of the ruler was presumed to be ratio itself. The necessity of the safety of State and people was a public right which took precedence over private rights and over private law. Increasingly the voluntas of the king in matters of justice was ratio when decisions were

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The King and His Courts: The Role of John and Henry III in the Administration of Justice, 1199 - 1240 (Ithaca 1968) 49f., 57-101, also ch. 3.

73 J. R. Strayer, ‘Philip the Fair: A “Constitutional” King,’ American Historical Review 62 (1956) 18-32. Recently Professor Bryce Lyon has attacked this interpretation, holding that Philip’s authority was absolute, above the law, and unlimited by such ‘constitutional’ restraints as a general assembly or the laws protecting the rights of his subjects: ‘What made a Medieval King Constitutional,’ in Essays in Medieval History Presented to Bertie Wilkinson, ed. by T. A. Sandquist and M. R. Powicke (Toronto 1969) 157-75. I accept Strayer’s view with perhaps this modification: the royal authority was theoretically absolute in that the final jurisdiction lay in the king, the royal council, and the royal court (the Parlement of Paris); but this means that the king consulted with his council and decided cases in the Parlement; hence, even if counsel and judgments were given in accordance with the king’s own initiative and policies (but policies no doubt sometimes resulted from the advice given by the royal counsellors), the king did not rule by his own arbitrary voluntas, but by the final right vested in his public authority to decide after proper consultation and judgment in the Parlement. (In most cases appealed to the Parlement the decision was made by the royal justices without the king’s intervention; but always, legally, formally, the Parlement was the king’s court, and its decisions were the king’s also.)

74 See the Glos. ord. of Accursius ad v. sacris; and my Studies 284-87, 379f.

75 My Studies, Introduction and ch. v.
made for the *status regni* or the State. It goes almost without saying that the *voluntas* of the king was supreme, as his authority was, with respect to his right to execute the decisions of his courts. His *potestas coactiva*, his right to be above the law in enforcing it, was unquestioned.

The royal *voluntas*, however, extended to another category of the things that a king could do. It extended to special *facta*, to those written acts which pertained not to legislation and jurisdiction (except indirectly), but to the sphere of royal appointments of justices, officials, and advisers, to donations, attestations, and to the grants of special confirmations, privileges, and dispensations. Was the king’s *voluntas* arbitrary in these matters, or was it subjected to reasons of law and justice and the public welfare? The common saying, taken from the Roman law, was that no one had the right to dispute the *facta* of pope, prince, or king — Bracton made good use of it. So the prince in his prerogative had the full right to appoint whom he would as his intimate advisers, as his justices, and as commanders of his castles. In 1215, 1256-66, and 1311 the magnates of England tried to establish baronial committees to limit the king’s powers in such matters. But the royal prerogative prevailed each time. As St. Louis said, in the Award of Amiens, 1264, the king should be able at his own pleasure, by his unfettered will, to choose his own counsellors, justices and magistrates (from chief justiciar to sheriffs and commanders of royal castles), and officers of his household or palace. He should thus have *plenaria potestas* in governing his realm.

Like the Roman emperor, therefore, a king who recognized no superior in temporal affairs was emperor or *princeps* in his own realm and was, as Beaumanoir said of the king of France, ‘sovereign above all.’ He enjoyed an unlimited *voluntas* in choosing not only members of his own council but also those justices and officials who in the name of the king maintained law and order. As in C. 9.29.2 and C. 1.25.5, the *iudicium* or decision of the prince

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76 Lewis, ‘King above Law?’ (*cit. supra*, n. 38) 262; Schulz, ‘Bracton on Kingship’ (*cit. supra*, n. 27) 173; and Kantorowicz, *King’s Two Bodies* 158. In these studies *facta* is not explained, although Kantorowicz (158 n. 209) gives the Roman origin of *non disputare* (C. 9.29.2). I have touched on the problem in my ‘Bracton on Kingship’ (*cit. supra*, n. 15) 524; but a detailed study of *facta* is needed, and I am preparing what I hope is a legally and historically sound one.

77 Stubbs, *Select Charters* 395-97.

78 See my *Studies* ch. x, Part 2; also, on the king of France as *princeps* in his *regnum* (ca. 1250), see Robert Feenstra, ‘Jean de Blanot et la formule "Rex Franciae in regno suo princeps est,“’ in *Études d’histoire du droit canonique; dédiées à Gabriel Le Bras* (Paris 1965) II 885-895; and, most recently on the French king as *imperator* and sovereign both over the kingdom and over its coastal waters, Fredric L. Cheyette, ‘The Sovereign and the Pirates, 1332’ *Speculum* 45 (1970) 40-68.
must not be disputed; and it was a kind of sacrilege to question his appointments. Furthermore, it was a kind of sacrilege to object to privileges granted by the prince, or to cast doubt on the merits of the recipients — so a legist of the thirteenth century. Thus the grant of special privileges and dispensations and also the donations (that did not alienate the public rights of the crown) belonged to the royal prerogative.

Still another factum of the ruler was beyond dispute, even though it upset the normal requirements of the letter of the law. Normally, according to the Roman law, a will was valid if it was witnessed by seven persons. But if the prince was the sole witness to the will, his testimonium was valid in the courts; for, as medieval commentators emphasized, it should be presumed that his testimony was heard and approved by important members of his court. In this respect the prince's factum must not be disputed, because he was above the literal meaning of the laws; nonetheless the specification of important witnesses to the act of the prince removed arbitrariness from it.

In theory, therefore, it was presumed that all these facta of the prince or king (facta written down in rescripts, writs, or charters) were valid even when they seemed to violate the laws. They were not a real violation of the law in general, but only of the letter of the law. For the assumption must be that the ruler had good reason for interpreting the law in accordance with principles of equity. Given the fact that the laws and customs had to be adjusted to changing situations and to new problems, the prince must have the right to interpret, to adjust the laws to particular circumstances. Often, indeed, in England, in the time of John and Henry III, interested parties in suits asked for the king's voluntas; and royal justices followed the Roman principle that when cases presented questions which they could not resolve, they should postpone decisions until the voluntas or decision of the king was received. Like the emperor, the kings of England and France in the thirteenth century enjoyed the lawful prerogative of every supreme public authority, the prerogative of interpreting laws and customs according to the ratio and mens of the law in relation both to circumstances and to the public and common welfare of realm and people. They often abused this prerogative, arbitrarily taking advantage of their subjects in indulging in facta for their selfish interest,

79 On C. 9.29.2 see Kantorowicz, King's Two Bodies 158n., 209.
80 Casus to C. 1.25.5 Sacrilegii — in edns. of the Corpus Juris Civilis with the Glos. ord. of Accursius.
81 C. 6.23 De testamentis 19 Omnium; also the Glos. ord. thereto.
82 C. 6.23.3 Ex imperfecto, and D. 1.3.31 Principeps; and the glosses to C. 6.23.3 and 19.
On certa scientia see Cortese, La norma giuridica, II, Indici, s.v. scientia.
83 Turner, King and His Courts (cit. supra, n. 72) 49f., 110f.
violating laws and rights. As we have observed, subjects' legal property-rights often suffered for the benefit of the king; and royal courts, in which justices were subservient to the king's wishes, often decided cases to the advantage of the king and his authority. Nonetheless, the facta of the prince, if challenged occasionally by magnates, remained in principle those interpretations of the law in the public interest which belonged to the public prerogative of the office of the monarch. Special privileges themselves could be interpreted as essential to the public welfare, because they were granted to those who 'merited well of the Republic.' In legal theory, in sum, it was to be presumed that in all his acts or facta the monarch decided and acted on the basis of a general knowledge of the laws and customs, on recta ratio and the mens legis in interpreting the law, and on a superior public wisdom in choosing men for privileges and dispensations.84

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I have gone too far afield in considering problems of monarchy that demand special treatment. The brief statement of these problems, however, makes it possible to draw the following conclusions with respect to pro ratione voluntas. On the one side, it must be remembered, princes and popes at times succumbed to the temptation of interpreting recta ratio as a justification of arbitrary voluntas or absolutism. (Yet it must be admitted that one must be cautious about saying this of some rulers accused of arbitrariness — for example, of Henry II of England, of Pope Boniface VIII, or even of Richard II of England.) On the other side, the magnates of a kingdom could argue that a king did not use right reason, that in fact he was guilty of reasoning arbitrarily for his selfish interests rather than for the public and common welfare of realm and people, that his voluntas was taking the place of their right reasoning in the interest of the state of the realm, and that they therefore had the right to resist him. So the party hostile to Richard II accused him not only of arbitrary acts in violation of the laws and customs of England, but also of the assertion that he alone knew the law and he alone could interpret it. That is to say, they accused him of making use of the romano-canonical principle that the prince had omnia iura in scrinio pectoris sui. (Perhaps neither his enemies nor Richard himself understood the legal theory of iura omnia in scrinio pectoris, that it meant that the ruler knew the law only as a result of consulting with his legal experts and justices, who were presumed to do some research in order to learn how to interpret the law for particular cases and on that basis to advise him.)

84 My Studies 279f., 320f.
Recta ratio and voluntas, then, were subject to conflicting political interpretations. In general, however, in medieval legal thought, whatever the actual behavior of the prince, voluntas was subordinate to ratio. It was subordinate above all to that 'right reason' which belonged to the public law of the State. 'Right reason' was fundamentally that 'reason of State' which justified the acts of the ruler that were aimed at the public and common welfare of people and State, especially in times of emergency or necessity when the defense and safety of the State 'knew no law,' when a 'just cause' existed for decisions that were reasonable and not arbitrary because they were made for the public interest or common profit or the status regni (or the status Ecclesiae). In legal theory, whatever the facts of the situation were, such a public ratio controlled and limited the voluntas of the prince. While some canonists and theologians may have glorified the absolute, arbitrary voluntas of the pope at the expense of ratio, by and large the medieval theory was that reason must underlie or be taken for will. One can say that most legists and canonists, and jurists like Bracton, in effect reversed the words of Juvenal and might well have said, 'sit pro voluntate ratio.' They certainly did not accept the literal meaning of Juvenal's 'sit pro ratione voluntas.' It is doubtful that extreme papalists themselves could have believed that the pope enjoyed an arbitrary absolutism devoid of reason, even in favor of the faith and of the status Ecclesiae.

The fact is that in medieval legal thought, in general, the theory of sovereignty with respect to the authority of the government was similar to that of Jean Bodin. Bracton and the legists and canonists stated an apparent contradiction. On the one hand, in matters of public law and the state, in cases of dire emergency and necessity, there were no ordinary limitations of the sovereign (though of course, to repeat, there were always practical, political limitations). On the other hand this sovereignty (or princely prerogative) was not arbitrary absolutism: it was limited by the duty of the ruler to use reason or reasons of the public welfare, by his moral duty to do justice according to the laws and customs of the land, and by his subordination to the laws of God and Nature. So also Bodin: the king or royal government was sovereign and absolute, but the royal sovereignty was limited by the 'proper exercise of the sovereign power, by divine and natural law, by the customary laws of the political community and by the property rights of its citizens.'

Bracton put it succinctly: the king is under no man, but he is under God.

86 I accept the interpretation of F. H. Hinsley, Sovereignty (London 1966) 120-25. De Jouvenel offers a similar conclusion, that according to Bodin there must be a supreme power in the state to make the laws and invest the magistrates, 'a power which is itself subject to no law other than the laws of God and nature' (Sovereignty 183); and sovereignty must be good, voluntas limited by ratio (169f.).
and the law — sub lege meaning that the royal authority was limited not only by the moral commands of God but also by the moral obligation (of the coronation oath) to observe the customs and laws of the land and protect the lawful property-rights of his subjects. Some two or three generations later the Italian jurist, Jacobus Butrigarius, said that the prince was subject not to human laws and courts but to the divine law and judgment.86

Did Jean Bodin, like Bracton and Butrigarius, assume that if the king was arbitrary and unjust he need fear not human or secular justice but the punishment of God? Whatever he might have said in answer to this question, the fact is that Bodin’s theory of royal sovereignty was close to that of Bracton and the legists. Surely Beaumanoir, who in the later-thirteenth century literally attributed sovereignty to the king of France, belongs to the same tradition.

If important medieval legal theories limited the arbitrary absolutism implied by Juvenal’s ‘sit pro ratione voluntas,’ why did the critics of Louis XIV call on the literal meaning and apply it to him? Louis XIV was indeed arbitrary, and his enemies were no doubt glad to find a classical authority for their arguments. Possibly the opponents of monarchical absolutism were more likely than Bossuet to reject the belief in a higher law of God and Nature. This, however, is doubtful, for appeals to a higher fundamental law could support any cause while denying the sovereignty of a ‘tyrannous’ king. ‘Holy Pretense’ (to use Professor George Mosse’s theme; or ‘the end justifies the means,’ or medieval dolus bonus, just cause, and right reason) both enhanced and limited sovereignty, whether in the thirteenth or in the seventeenth century.

However one defines sovereignty and absolutism, it is needful to recall that medieval lawyers and jurists intelligently adapted Juvenal’s words to their belief in some limitation of the authority of the prince. Emphasizing also the duty of the king to seek expert and wise counsel and to consult with the great men of the realm, they were ‘constitutionalists,’ though not in the modern sense of believing in a democratic limitation of the royal sovereignty and prerogative. Pro ratione voluntas always meant that reasons of justice, equity, and of the public welfare and the State should underlie the will of the ruler. So also should reason, consultation, and customary procedures underlie the king’s placet and voluntas in legislation. It is possible, indeed, that modern historians have been too ready to read arbitrary absolutism into the placet of kings in the age of absolutism.

Haskell, Texas

86 ‘Principis non est sub lege fori, est tamen sub lege poll,’ quoted by Cortese, La norma giuridica I 150. This surely expresses the same idea (though nearly a century later) that Bracton expressed in his famous statement: ‘Ipse autem rex non debet esse sub homine sed sub deo et sub lege, quia lex facit regem’; for the influence of D. 1.3.31 and C. 1.14.4 and other sources on Bracton see my ‘Bracton on Kingship’ (cit. supra, n. 15) 519-25, with references; also Kantorowicz, King’s Two Bodies 143-64.