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AN INTERPRETATION OF FORTESCUE'S *DE LAUDIBUS LEGUM ANGLIAE*

MARY POLLINGUE

Sir John Fortescue's *De Laudibus Legum Angliae*, a work written about 1470, impresses its reader with the modern outlook of its political theory. Its author argues that government is rightfully based on the consent of the people and that a political community comes into being when a people agrees to form itself into one. Furthermore, this consent of the people is politically operative in England through the institution of Parliament, which, together with the king, is the law-making agent of the polity. It has been suggested[1] that Fortescue was the first writer to identify the English constitution with a form of parliamentary monarchy—that Fortescue held that the English monarchy was limited not merely in theory but also in practice by the institution of parliament. Furthermore, Fortescue's thought seems to agree with that of Hobbes and Locke concerning the ends of government. We learn from *De Laudibus* that "all the power of the king ought to be applied to the good of his realm, which in effect consists in the defense of it against invasions by foreigners, and in the protection of the inhabitants of the realm and their goods from injuries and rapine by natives" (p. 89).[2]

Fortescue supports his formulation of the proper end of the king's power by referring to St. Thomas' statement in *De Regimine Principum*, "the king is given for the sake of the kingdom and not the kingdom for the sake of the king." But while Fortescue and St. Thomas agree that the king's power should be applied to the good of the realm, there is a radical disagreement between the two concerning the definition of that good. The highest duty of a king, according to Thomas, is not to protect the lives and the goods of the subjects, but to make the subjects virtuous.[3] Fortescue's reference to Thomas' *De Regimine*, then, points not merely to his agreement with Thomas but also to his break with the tradition that Thomas represents. It is our purpose in studying *De Laudibus* to learn whether this impression of Fortescue's political theory is correct: did he in fact propose as preferable a parliamentary monarchy based on consent and dedicated primarily to the protection of the lives and

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[1] By S. B. Chrimes in his edition of *De Laudibus* (Cambridge, 1942), pp. ci–cii. All citations to *De Laudibus* are to this edition.

[2] I have corrected Chrimes' translation where appropriate.

[3] *On Kingship: To the King of Cyprus*, trans. Gerald B. Phelan (Toronto, 1949), pp. 58–67. Thomas' work was continued by Tolomeo de Lucca. In Fortescue's time, this work, with its continuation, was entitled *De Regimine Principum*, and Thomas was thought to be the author of the whole work.

the goods of the subjects? If so, on what grounds does such a proposal rest?

The foregoing might be thought to suggest that Fortescue, in writing *De Laudibus,* intended to advance a certain theory of government or advocate a particular regime. In fact, any conclusion regarding Fortescue's intention can follow only from the interpretation of the text *as a dialogue,* whereas the foregoing, merely provisional, conclusions have been drawn directly from particular passages or speeches of the book. By this I mean that Fortescue presents us not with a political teaching in the form of a treatise but with a dialogue between himself, in his role as chancellor of England, and Prince Edward, the heir to the throne. The chancellor tries to persuade the prince first, to study the law, and second, to study the law of England. The chancellor is compelled to explain such things as the origins, the institutions, and the ends of the English government because of the prince's objections to the chancellor's plans for him. Each statement in *De Laudibus* about government and politics occurs in a particular context which must be considered before the statement can be understood. We might therefore distinguish the intention of Fortescue the author of *De Laudibus,* which might be to present his reader with a theory of government and an understanding of the English regime, from the intention of Fortescue the character in the dialogue, which is to educate the prince in some way. We might also distinguish what the chancellor intended to accomplish in his conversation with the prince from what he actually accomplished. Any discrepancy between the chancellor's intention and his achievement would be crucial for understanding Fortescue's political teaching. The study of *De Laudibus* must therefore entail an analysis of the chancellor's intention and achievement as it is revealed in the interaction of the two characters of the dialogue. The dialogue form is considered here to be a literary device used to convey a teaching about politics which could perhaps not be as easily or as prudently conveyed in another form. Whether the conversation between Fortescue and the prince actually occurred is irrelevant.

The Setting

The dialogue occurs when "not long ago, a savage and most detestable civil war raged in the kingdom of England." During this war, Henry VI, England's "most pious king," and his family were driven away, and "eventually King Henry himself was seized by his subjects, and for a long time suffered the horrors of imprisonment" (p. 3). Because of the war Fortescue, the Queen, and Prince Edward live in exile in France. It is there that the dialogue takes place. The war to which Fortescue refers is the War of the Roses, which was caused by the claim of the Yorkists that they, and not the Lancastrians, were the legitimate rulers of England. Fortescue, however, mentions the war without

referring to its particular causes or naming those responsible for it. He does not tell the reader that the war involved a question of legitimacy; Henry was imprisoned by "subjects," Fortescue writes, rather than by "contenders."[4] Rebelling subjects, if the question of legitimacy is involved, justify their insurrection by claiming that the ruler is a usurper. If the question of legitimacy is not involved, they justify their insurrection by claiming that the ruler is in some way a bad ruler. The latter claim implies that legitimate descent is an insufficient basis for the right to rule. Because of the generality with which Fortescue describes the events accounting for the setting of his dialogue, he raises the second possibility at the outset.

Of course Fortescue, a Lancastrian supporter, does not approve of the rebels. Henry is "a most pious king," he writes, and his admiration of Henry's virtue is unqualified here. However, in his earlier work on the succession problem, *De Natura*, in arguing that rule by woman is not according to nature, he writes that while woman is "as perfect in faith, hope, and charity, as devout and as holy as man," she is inferior to him in wisdom, self-control, justice, and courage, those virtues "by which the world is ruled and its peace preserved."[5] Although this argument suggests that the man who is most excellent in respect to these latter virtues is the best ruler according to nature, the good ruler as he is presented at the outset of *De Laudibus* is particularly characterized by justice. It is Prince Edward's failing to do what is required to possess this virtue that causes the chancellor to speak to the prince.

The Chancellor's Proposal

The dialogue begins when the chancellor observes how the prince is occupying himself as he grows up: the prince "[gives] himself over entirely to martial exercises; and, seated on fierce and half-tamed steeds urged on by his spurs, he often delight[s] in attacking and assaulting the young companions attending him" (p. 3). The chancellor therefore expostulates with the prince: the one thing in which the prince delights prepares him for success only in war; he will be unprepared to rule successfully in time of peace. The chancellor arques in favor of the two duties by quoting scripture: "For the office of a king is to fight the battles of his people and to judge them most rightfully" (p. 3). The prince must therefore prepare himself in two ways: "I wish that I observed you to be devoted to the study of the laws

[4] Fortescue's abstraction from the controversy between the Lancastrians and the Yorkists is even more notable because the legitimacy of the Lancastrians was the central focus of almost all of his previous works, the most comprehensive of which is *De Natura Legis Naturae et Eisu Censura in Successione Regnorum Suprema* (hereafter cited as *De Natura*). See *Collected Works of Sir John Fortescue*, ed. Lord Clermont (London, 1869).

[5] P. 325.

with the same zeal as you are to that of arms, since, as battles are determined by arms, so judgements are by laws" (pp. 3–5). Only later does the chancellor reveal that military exercises are subordinate to legal study, for justice, the result of legal study, must control both wartime and peacetime activities (p. 13).

The prince appears to engage in martial exercises only because he delights in them, but the chancellor speaks of military exercises as an obligation for an heir to a throne. The end of his pursuit is the defense of his future subjects. By referring to the need to defend his people and therefore to the possibility of battle that is not play and of opponents who are not one's companions, the chancellor hints at a non-pleasurable aspect of military practices. The chancellor's attempt to redirect the prince from considerations of play to those of a serious nature is also an attempt to move him from a concern with himself (his own delight) to a concern with the welfare of his subjects. This attempt to enlarge the prince's concerns is coincident with the chancellor's introduction of the need to study law and is perhaps necessary if the prince is to follow the chancellor's advice.

When the chancellor quotes for the prince the scriptural statement of the two duties of a king, he refers him to the eighth chapter of the first book of Kings, yet fighting the battles of the people and judging the people are referred to there not as the duties of the king but as the duties which the people of Israel who are asking for a king expect that king to perform. When the people ask Samuel for a king, they say, "our king will judge us, and he will go out before us, and he will fight our battles for us."[6] However, earlier in that chapter Samuel proclaimed to the people the right of the king (*jus regis*) who would rule over them; the right of the king seems to be to oppress the people in his own interest, and Samuel concludes his warning to the people with the statement that "you will be his slaves." Thus when the chancellor states the two duties in which the office of a king consists, he is speaking from the point of view of the wishes of the people. Not only does he identify his outlook with that of the people, but he also states as a duty binding at all times what the Israelites stated as a wish for the future, and he improves upon the wishes of the people by qualifying the king's judging of the people with "most rightfully."

The chancellor buttresses his argument by further appeal to authority. After quoting Justinian (*Institutes*, Poemium), he returns to the Old Testament for support. The greatest legislator, Moses, he says, commanded future kings of Israel to study the law of Deuteronomy: "After the king has sat on the throne of his kingdom, he shall write for himself the laws of Deuteronomy in a book, receiving a copy from the priests of the Levites, and he shall have it with him, and he shall read it all the days of his life, so that he may learn to fear the Lord his God,

[6] 1 Kings 8: 20. All biblical citations refer to the Vulgate.

and to keep his words and his ceremonies, which are written in the law" (p. 5, quoted from Deuteronomy 17:18–19). Just as the Israelites describe kingly duties that may or may not be actualized in the future, so Moses commands kings who will rule the Israelites after they have reached the Promised Land. When the event to which Moses refers takes place and the Israelites ask for a king, it is Samuel who, after proclaiming that the Lord has chosen Saul to be king, writes the law in a book. But that law is not "the laws of Deuteronomy" but "the law of the kingship" (*legem regni*, 1 Kings 10:25), which apparently refers to the *jus regis* that he previously proclaimed. The chancellor's statements referring to the king as ruling in the interests of the people and as obedient to the laws occur in the Bible prior to the institution of kingship. Insofar as the education of the prince requires the prince's acceptance of the role of the king as ruling in the interests of the people and as obedient to the laws, the discrepancy between the expectations concerning the future kings of Israel and the rights and activities of the king which Samuel proclaimed adumbrates the ultimate failure of the chancellor's education of the prince.

In concluding this first speech exhorting the prince to study the laws, the chancellor interprets Moses' statement of the consequence of the kings' study of the law. The injunction was given by Moses, the chancellor says, so that future kings of Israel would learn to fear God by keeping his commandments. According to the chancellor's statement here, not just a king but any individual will benefit from studying the law. He will acquire the filial fear of the Lord, which he distinguishes from servile fear. According to St. Thomas, servile fear is fear of the Lord's punishments, while filial fear, rooted in love for God, is fear of being alienated from Him by offending Him. Filial fear intensifies as love of God increases; at the same time servile fear decreases. The more one loves God, the more one fears being alienated from Him and the less one fears his punishments, both because one is less concerned with one's own welfare, which punishment threatens, and because one has greater confidence in God's rewards.[7] Filial fear of the Lord, then, is the goal of every believer, and its attainment would benefit the prince as it would any individual. Thus the chancellor has moved within this first speech from an argument that the prince should study the law because it is the duty of a prince to do so, to an argument that he should do so because the result will be good for him. In his first argument, the chancellor showed himself to be concerned with the good of the people at least as much as with that of the prince; while it may be good for the prince to do his duty, it is definitely good for the people that he do so, since then they will be judged well. The chancellor's shift to the second argument suggests a harmony between the interests of the people (to be judged well) and that of the prince (to grow in

[7] St. Thomas Aquinas, *Summa Theologica*, II–II, Q. 19, in particular Art. 10.

filial fear of the Lord), since both interests are promoted by the prince's study of the law. The chancellor, who is concerned with the good of the people, may thus without conflict be concerned with the good of the prince.

The First Objection to the Proposal

There is an obvious flaw in the chancellor's argument that the prince should study the law for his own sake: while one can argue that filial fear of the Lord results from a study of the law found in scripture, it does not seem likely to result from the study of the law the prince is being advised to study. Fear of the Lord, according to the chancellor's presentation, is derived from knowledge of the will of the Lord, which is found in his law. The prince is quick to object: Moses ordered kings to study the law of God, "but the law, to a knowledge of which you invite me, is human, decreed by men, and treats of this world." Moses' command to kings to study Deuteronomy cannot persuade other kings to do the same with their laws, "since the purpose in studying the two sets of laws is not the same" (p. 7). The prince evidently means that the purpose of studying the law of God is to grow closer to God in love and fear of Him, while the purpose of studying human law is to govern the people well. The prince's objection to the chancellor's proposal, that the promised good will not result for him, applies only to the last part of the chancellor's argument: if it is not the case that the prince must study human law in order to grow to fear the Lord, he might nonetheless have to study human law for the sake of doing his duty and ruling well. The prince ignores his duties concerning his kingdom.

Because of the prince's objection, the chancellor must now discuss these matters "not merely more clearly but also more profoundly up to a point." Answering the prince's objection that Moses commands the study of only divine law, the chancellor asserts that all law is sacred, "inasmuch as law is defined by these words, 'Law is a sacred sanction commanding the honest and forbidding the contrary'" (p. 9). This definition duplicates the one given by Bracton except that the chancellor substitutes "*sanctam*" for "*justam*."[8] Only by elevating the law from what is just to what is sacred could the chancellor answer the prince's objection and conclude that all law is sacred, "for what is by definition sacred must be sacred" (p. 9). In the second place, "all laws that are promulgated by man are decreed by God" (p. 9), since God gives man power to "establish" laws. The chancellor denies the sharp disjunction which the prince made between human law, decreed by men and treating the things of this world, and divine law.

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[8] Henrici De Bracton, *De Legibus Consuetidines Angliae*, I, iii. According to Chrimes (*De Laudibus*, p. 147), Bracton derived this definition from the *Accursian Gloss to the Institutes*.

The chancellor has attempted to show by the two preceding arguments that the laws made by man are sacred, but does this mean that one should study human law so that one may learn to fear the Lord? Presumably not, since the fear of the Lord is an effect of the knowledge and then the observance of the will of the Lord, which is found in divinely inspired scripture. Only in a certain sense can the will of God be known from a study of the human law. Since God gives power to man to make laws, He wills that man make laws, and in this sense all human laws are decreed by Him, yet in a crucial sense one learns the will of the ones who made the law from studying the law. The chancellor no longer claims that Moses commanded the kings to read Deuteronomy that they might learn to fear the Lord, as he had claimed before the prince's objection; instead, he proposes that Moses issued such a command "because the laws are set forth in Deuteronomy rather than in other books of the Old Testament—the laws by which the king of Israel is obliged to rule his people" (p. 9). The chancellor, then, now rests his argument that the prince should study the laws on the ground that it is his duty to do so. Moses' exhortation to the kings of Israel is considered an authority for the existence of such a duty but no longer for the purported consequence of such a duty, the filial fear of the Lord.

In the next part of his argument, the chancellor promises the prince the "Summum Bonum" of this life as a result of legal study. Fortescue begins a new chapter with the chancellor's statement: "The laws, most honorable prince, not only invite you to fear God and thereby be wise, saying with the prophet, 'Come, children, hear me, and I will teach you the fear of the Lord,' the laws invite you to their study also that you may obtain happiness and blessedness so far as they are obtainable in this life" (p. 11). These personified laws are not the divine laws found in scripture but the laws which the chancellor is urging the prince to study. Yet that law seems to claim that it can provide what the chancellor previously hinted that it cannot provide, namely, the fear of the Lord. The law made by man confuses itself with divine law, in which the will of God is revealed. Not only does this personified law promise the way to other-worldly bliss, but it also promises the happiness and blessedness of this life. Since the promise of the first gift by the law is based on a confusion of itself with something greater than itself, we may wonder whether the promise of the second gift is not based on a similar confusion.

The chancellor, here placing himself in the service of the law which he has personified, upholds the law's claim that the earthly Summum Bonum will result for its student. Whereas he drew on scripture for information about the desirability of fear of the Lord, he now enlists the philosophers to support his contention that virtue alone procures the happiness of this life. The chancellor then argues that virtue is obtained through the law. Therefore, since "the learner of them [the

laws] shall obtain the happiness which according to the Philosopher is the end and completion of human desire" (p. 13), the prince should study the law. This argument identifies law-abidingness or "legal justice," "which the laws reveal," with "perfect virtue" or "whole virtue." Legal justice may be called the whole virtue, the chancellor argues, "because it eliminates every vice and teaches every virtue" (p. 11). He calls upon the fifth book of Aristotle's *Nicomachean Ethics* for a description of the virtue of law-abidingness as the whole virtue, yet shortly before Aristotle calls legal justice the perfect virtue (1129^b31), he distinguishes "law laid down rightly" from "law made at random" (1129^b25). And a bit earlier he makes another distinction, one between laws aimed at the common benefit of all and those aimed at the benefit of the rulers (1129^b15–16). Furthermore, the chancellor's argument identifies the perfect virtue that is legal justice with that virtue the perfect exercise of which is happiness or the Summum Bonum, as far as it may be obtained in this life. The chancellor's argument at this point implies that a function of the law is to make men virtuous—"to eliminate every vice and to teach every virtue" (p. 11).

When the chancellor concludes his offer of earthly happiness as the result of legal study, he adds a qualification: "Not, indeed, that law can do this [lead a man to the greatest good] without grace, nor will you be able to learn or strive after law or virtue without grace." The need for divine grace is the result of original sin, which corrupts the appetite of man for virtue: "Therefore that some give themselves to love and pursuit of virtues is a gift of divine goodness, not derived from human merit" (p. 13). If "some" receive this divine gift, however, some do not. The chancellor cannot promise the prince that he will obtain the earthly Summum Bonum from his study of the law. He later urges the prince to pray for grace that his undertaking may not be in vain (p. 19).

If these considerations concerning his eventual attainment of happiness do not move the prince to study the law, the chancellor says, perhaps the word of scripture will. The chancellor's appeal to the authority of scripture has the nature of a threat. He quotes from Psalms, "Be instructed, you who judge the earth ... Lest at any time the Lord be angry, and you perish from the right way" (p. 15). Between the lines which the chancellor quotes is a command to kings to "Serve the Lord in fear and exalt him in trembling" (Psalms 2:11). The chancellor is suggesting that if the prince is not instructed in the law, he will suffer punishment as a result of the Lord's anger. The chancellor appeals to the prince's servile fear—servile fear, he said earlier, "often incites kings to read the law, but it is not itself the offspring of the law" (p. 5).

The chancellor next tells the prince that he must love justice as well as know the justice that the laws reveal. But this love of justice is

something that comes after the laws are studied, since the unknown cannot be loved. The more that one reflects on the good, the law of England that the prince is being advised to study, the more one delights in it. The possibility of delight in the laws, the just, and the good stands in contrast to the prince's actual delight in military exercises. As the chancellor elaborates on the theme of the love of justice, he suggests that he intends to remake the character of the prince: "all that is loved transfers the lover into its own nature by usage," he teaches; "a virtue practiced engenders a habit so that the practicer thereof is thenceforth called by the name of the virtue." He gives examples: "one practiced in modesty is called modest, in continency, continent, in wisdom, wise" (p. 17). And so the prince, once he has done just things with delight and has become imbued with the habit of the law, will rightfully be called just. The chancellor here mentions four virtues to the prince; there are also four virtues, we have seen earlier, "by which the world is ruled and its peace preserved." When one compares the two lists of virtues, one sees that in speaking to the prince, the chancellor replaced courage with modesty. It may be that the chancellor knows that the prince needs no urging toward courage, which indeed he might confuse with a boldness that is not a virtue. Whether this reminder to the prince of the goodness of modesty is in order will become apparent as we consider the rest of the dialogue.

The chancellor begins his conclusion by summing up the argument, but in doing so he adds a new consideration that might compel the prince to study the law, the advice that in so doing "you will be able to avoid the disgrace of ignorance of the law" (p. 19), appealing to the prince's sense of shame. Disgrace is a certain earthly punishment. The operation of such an earthly punishment on the ruled as well as on the ruler will later assume a crucial importance in the chancellor's teaching concerning the English regime.

The chancellor concludes by comparing the future king to the future artisan—both must be educated when young. But while the artisan educates his son in his craft so that he may attain a comfortable life, the prince is educated so that his kingdom may be ruled justly. The chancellor thus begins his appeal to the prince to study the law by referring to his duty to rule justly, and ends with the theme of just rule and therewith the good of the kingdom. Although he claims that it is proper for artisans to educate their sons, he states that it is proper for a king that his son be educated: the king himself, it is implied, does not educate his son. His duties may make him too busy to do so, or he may be unable to teach his son what he needs to learn.

At this point, this much has emerged: the prince must study the law in order that he may be just; he must be just in order to possess the happiness that is the perfect exercise of virtue and in order to rule his kingdom justly. Now if knowledge of the law is sufficient for the

education of a just man, then the education of the prince might be more easily accomplished than if it were not. Although the chancellor, in his eulogy of the law early in the dialogue, identifies the legal with the just, a problem with this formulation is indicated even by the elevated definition that he gives of the law. The prince is exhorted to reverence the law—the law, which is a sacred sanction commanding the honest and forbidding the dishonest. The conjunction between law and honesty exists by definition. Only because the chancellor has defined the law in such a way that all laws are good laws is he able to identify the legal with the just. The rightness of a sanction is an essential element of its being considered a law and therefore of its being respected and obeyed. In other words, not everything which calls itself a law is truly a law. Therefore the teacher of a prince must teach him to judge the goodness of those enactments which are considered laws. Consistent with this pedagogical schema, the greater part of the dialogue, as we shall see, is a comparison of the merits and the disadvantages of different laws on particular points. Through comparing the civil law of France with the law of England, the chancellor teaches that some laws are better and therefore more desirable than others. As the chancellor teaches the prince to see the just in the English law, he gives the prince practice in judging the worth of particular laws.

Two Remaining Obstacles to the Prince's Study

Although the prince claims to be convinced by the chancellor's persuasive discourse, he still sees two difficulties: "One difficulty is that when I recollect how many years students in the curricula of the law devote to their study before they attain to an adequate expertness therein, I fear lest I myself spend the years of my youth in the same way. The second difficulty is whether I should devote myself to the study of the laws of England or of the civil laws which are renowned throughout the world. For one should not govern the people by any save the best laws" (pp. 19–21). In his first reply the prince did not accept the chancellor's proposal because the chancellor had promised him, as a consequence of his legal study, a good, the fear of the Lord, which was in fact a consequence of the study of the divine law in which the will of the Lord was revealed. The prince, in objecting, demanded from the chancellor an argument that was not "beyond all reason." The chancellor then promised the prince another good, the happiness of this life, through the acquisition of perfect virtue. Now the prince, following the pattern of his first objection, might object that the study of the law willed by man, which he was being advised to study, does not result in the earthly Summum Bonum any more than it results in the filial fear of the Lord. In *De Natura*, Fortescue explains that the law of nature conducts man to his first end, virtue, the Summum Bonum of this life, while the divine law conducts man to his

ultimate end, beatitude, which consists in "the Divine vision alone."[9] (We learn later in *De Laudibus* that the prince is familiar with *De Natura.*) The prince, however, does not object that it is the study of natural law which leads to virtue and happiness. Instead, he agrees to study the law but at the same time, makes it clear that he does not want to engage in a lengthy undertaking of a studious nature. These considerations may in part explain the chancellor's response to the prince's two objections.

In answer to the first objection, the chancellor tells the prince that he need not become skilled in the fine points of the law, as those who would be judges must; the knowledge which he needs may be acquired in only one year rather than the twenty years which judges require. The prince must have knowledge of the law not precisely but generally and as a whole (*in confuso et universali*). Such is the case, the chancellor says, with respect to divine law: we say we know the divine law when we feel we know faith, hope, charity, the sacraments of the Church, and the commandments of God, but we leave the other mysteries of theology to the prelates of the Church (p. 21). Just as the chancellor will discuss only "up to a point" the reasons why the prince must study the law more deeply, now it seems that the prince must study the law only "up to a point." The prince, the chancellor says, will not "explore the mysteries of the law of England." Fortescue discusses a similar issue in *De Natura,* but there he speaks of the subjects' knowledge rather than the knowledge of a prince: "it is enough for a subject that he recognize the commands of the law, as for a servant the will of his lord, while the higher mysteries of the law remain for those who are learned in the law [i.e., the judges of England]. For thus the laws are often more meritoriously obeyed by those who know little than by those who are more expert in the laws."[10] While the prince will obviously learn more about the law than his subjects, neither subjects nor prince will explore the higher mysteries. To what extent does this reasoning about subjects' knowledge apply to the prince as well? The chancellor quotes to the prince Christ's words to his disciples: "Unto you is given to know the mysteries of the kingdom of God, but to others in parables, that seeing they may not see" (p. 23). Christ speaks these words to those who will see, while the chancellor speaks them to one who will not.

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[9] Pp. 243–44. Although it is clear that divine law and natural law operate for different ends and are therefore different from each other, the difference between natural law and human law is left ambiguous. Fortescue first states that "the law of nature can have no operation other than to dispose man to virtue" (p. 243), but later in a similar vein adds a reference to human law: "virtue is the end of the whole effect of the law of nature and every human law" (p. 243). This elaboration suggests that the end of the human law insofar as it is in harmony with the law of nature is to dispose man to virtue because of this very harmony.

[10] P. 247.

In this context, the chancellor also quotes Romans to the prince: "Know not more than you ought to know" and "Knowing not high things" (12:3, 16). Here the chancellor suggests a limitation on the desirability of knowledge or an application of the notion of the virtuous mean to the acquisition of knowledge. Although the biblical injunction which the chancellor quotes is given to all men, the chancellor by implication, as we saw, exempts some from the command—the judges.

The chancellor's response to the prince's concern that he may waste his youth in legal study begins with the thought that the prince must learn only the most important things concerning the law (its principles, causes, and elements), not details. Yet in the course of the argument he moves to the thought that it is the "high things" and the mysteries which the prince will not know. He will lack knowledge of the most important things.

At this point, the prince, although he was first told that he must study the law because it is his duty to judge the people, is now informed that his judicial duties are to be severely limited. Only in a certain sense can he be said to be a judge at all. Not only must he leave the investigation of judicial niceties to judges and serjeants-at-law, but, the chancellor tells him, "In fact, you will render judgements better through others than through yourself, for none of the kings of England is seen to give judgements through his own mouth, yet all the judgements of the realm are his, though given through others, just as Jehoshaphat asserted that 'All judicial sentences are the judgements of God'" (p. 23). Not only does the prince himself not judge, as do the judges, but it cannot even be said that the judgments they hand down are actually his, since they are ultimately assigned to God.

In the context of telling the prince something that pleases him, namely, that he will not need to waste his youth in legal study, the chancellor tells him of his limited role in rendering judgments. It is this very limitation of his power which accounts for the pleasing news. The chancellor assumes that one who has the power to do something should be the one who has the knowledge to do it. If the prince objects to the limited judicial role assigned to him, he must accept the burden of twenty years of study to prepare himself for the most important judicial role. This encumbrance he does not seem prepared to assume. To lessen the unpleasant implication here, the chancellor ends his answer to the first objection raised by the prince with appeasing words: While you study the law for a year "do not neglect the military exercises which you ardently seek, but enjoy them at will as a recreation even during that year" (p. 25).

The prince is not given an opportunity to reply to this before the chancellor now takes up his second objection, perhaps because his acceptance of the chancellor's response to his first objection depends upon his acceptance of the answer to the second. If the prince accepts the chancellor's response to this first problem, he is admitting that he

is willing to defer to the judgments of the judges and to the English tradition upholding the authority of the judge, that is, he is admitting that there are some things which he as king cannot do. His second objection implies that he believes he may change the law of England to the civil law at will. The chancellor's answer to this suggests that the civil law appeals to princes because of its principle "Quod principi placuit legis habet vigorem." Now if what pleases the prince has the force of law, he would probably not defer to the decisions of judges, since, according to this principle, the prince is both supreme judge and supreme legislator (p. 81).

In answer to the prince's second question, the chancellor says that the prince should not be troubled with desires to study the civil law,

> for the king of England is not able to change the laws of his kingdom at will, for he rules his people with a government not only regal but also political. If he were to preside over them with a power entirely regal, he would be able to change the laws of his realm, and also impose on them tallages and other burdens without consulting them; this is the sort of dominion which the civil laws indicate when they state that "What pleases the prince has the force of law." But the case is far otherwise with the king ruling his people politically, because he is not able to change the laws without the assent of his subjects nor to burden an unwilling people with strange imposts, so that, ruled by laws that they themselves desire, they freely enjoy their goods, and are despoiled neither by their own king nor by any other (p. 25).

The chancellor does not reply at this stage that the laws of England are superior to the civil laws; such a reply would have been an answer to the prince's difficulty. He replies that the king's legislative power is limited because of the nature of the English regime. Since he cannot change the English laws to the civil laws, the prince has no reason to study the civil laws. The chancellor later argues that English statutes are superior because of their manner of promulgation (p. 41); the superiority of the English regime therefore implies the superiority of English law. But he leaves open the question of whether the English or the civil law is superior until much later in the dialogue. Only insofar as the laws embody the "legal justice" which is the "perfect virtue" will they lead their student to the happiness of this life. If the prince must study the English law rather than the civil law, regardless of which law is superior, the chancellor is subordinating the prince's happiness to the perpetuation of the English regime, a regime which provides that the people's goods shall be despoiled neither by the king nor by any other. A king ruling politically and not simply regally, however, is benefited by the regime in that he is prevented from wrongdoing, since the "regal power" of the king is "restrained by political law." The chancellor admits that if the best man were king, government by a king ruling only regally would be better than government by a king restrained by law, but because "it does not always happen that the man presiding over the people is of this sort," joint

royal-and-political rule is preferable. The regal government lacks the restraints needed to prevent the ruler from degenerating into a tyrant (p. 25).

The chancellor's answer to the prince's question would strongly contradict the prince's notion of what his future rule will be like if what attracted the prince to the civil law was its principle "what pleases the prince has the force of law." It will emerge later that because they were attracted to this principle other English kings tried to introduce the civil law into England. And, as we have seen, in suggesting that he study the civil laws, the prince implied that he thought that he could introduce the civil laws into England if he so wished. In any case, the prince now interjects a question for the chancellor which may be an attempt to find some flaw in the chancellor's theory of the two types of kingly rule: "How comes it, chancellor, that one king is able to rule his people entirely regally, and the same power is denied the other king? Of equal rank, since both are kings, I cannot help wondering why they are unequal in power" (p. 27).

The chancellor, immediately before the prince's interruption with this question, referred to *De Natura,* where, he said, he discusses the differences between royal rule and royal-and-political rule. He tells the prince that he wrote the work for his perusal. In that work, Fortescue explains how a king ruling politically is equal in power to one ruling royally. When the prince now asks why the two kings are unequal in power, we learn either that he has not read *De Natura* or that he does not accept the argument which Fortescue gives there. His neglect of *De Natura* would be consistent with his former absorption in military exercises.

Although the chancellor states that "sufficient" treatment of the distinction between the two types of kingly rule appears in *De Natura,* Fortescue does not discuss the provenance of the two types there. The chancellor ostensibly believes that a discussion of the two types of kingly rule is sufficient without an explanation of their origins; we see here that he tells the story only when compelled to do so by a question from the prince. Regal government originated, he now says, when "men excelling in power, greedy for honor and glory, subjugated neighboring peoples to themselves, often by force, and compelled them to serve them, and to submit to their commands, which in time they themselves sanctioned as laws for those people." The people at length consented to such rule, "whereby they were protected from others," supposing it to be better to submit, "than to be exposed to the oppression of all those who wished to attack them" (p. 29).

Regal government therefore began in man's ambition or desire for glory, yet the chancellor gives an example of merely regal rule of kings who became kings not because they desired glory but because God appointed them—the kings of Israel. He does not say that these kings were divinely appointed, but only that they ruled on the basis of the

"regal law" which the prophet explained to the Israelites—"the law which was none other than the pleasure of the king who presided over them" (p. 29).

The desire for honor and glory, which is the cause of the institution of merely regal governments, is the same passion which, in *De Natura*, Fortescue claims infects almost everyone: "the thing which the human mind desires above all things on earth" is "most of all to be first." He explains: "An angel coveted exultation, so did the first created of men, whereby he has so diffused the lust of domination throughout all his progeny that hardly a man can be found whom the ambition for honor has not infected."[11] Yet it is not in *De Laudibus* that Fortescue writes of an almost universal lust for domination and desire for glory; here its existence is referred to only in the case of those men who institute the regal government, and an alternative institution of monarchy is presented.

The chancellor's explanation of the origin of the second type of kingly rule is ambiguous: it happens both naturally, he says, and as a result of the will of the people. Since a body must have a head, and since, when many constitute a body, one rules and the others are ruled, a people gathering itself into a political body must appoint one man to govern that body. As the physical body grows out of the embryo, regulated by one head, the chancellor explains, "so the kingdom issues from the people, and exists as a body mystical, governed by one man as head."[12] The will of the people is the source of life; forethought for the interests of the people is the blood, transmitted to the head and all the members of the body; the law by which a group of men is made into a people is the nerves, binding together the members of the political body; through the law the members preserve their rights (p. 31).

Certain things concerning the king, the head, follow from this analogy: "And just as the head of the body physical is unable to change its nerves, or to deny its members the powers and nourishment belonging to them, so a king who is head of the body politic is unable to change the laws of that body, or to deprive that same people of their own substance if they protest or are unwilling" (pp. 31–33). While the chancellor first compares the nerves of the body to the law by which a group of men are made into a people, he subsequently declares that the nerves are the much less specific "laws." As the body's nerves cannot be changed, the chancellor might conceivably argue that the law

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[11] P. 191. In a work in which the title to the crown is not disputed, however, Fortescue seems to see in man's desire for preeminence a nobler aspect: "For manis corage is so noble that naturally he aspirith to high thinges, and to be exaltid, and perforce enforsith hym selff to be always gretter and gretter" (*On the Governance of England*, ed. Charles Plumber [Oxford, 1885], p. 128).

[12] For a discussion of the history of the use of the concept of "mystical body" in the Church and its application to political society, see Ernest H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, N.J., 1957), ch. 5, especially pp. 193–232.

which makes a group into a people—that is, that law which also determines the type of regime and therefore the limited nature of the king's powers—cannot be changed. But this law states, as the chancellor said when he first mentioned the regal-and-political regime to the prince, that the king can change the laws and levy taxes with the assent of the people (p. 25). Now, however, the chancellor explains that laws, like nerves, cannot be changed, although a willing people can be taxed. The chancellor seems very reluctant to make clear to the prince that changeability characterizes the laws, although he nevertheless strongly emphasizes changeability at the end of the dialogue.

That there is a difference between the two types of kingdoms, the chancellor concludes, is the result of the diversity of their beginnings. The kingdom of England is an example of the second type because of its origin among the band of Trojans which Brutus led out of the territories of Italy and of the Greeks.

The prince agrees to study the English law, and summarizes what the chancellor has said. His summary differs slightly from the chancellor's elaboration. The chancellor explained the beginning of royal-and-political rule for the most part as something that happens naturally—as the mature physical body grows out of the embryo, so such a kingdom issues (*erumpit*) from the people. The prince, however, making use of the chancellor's single reference to "a people wishing to erect itself into a kingdom," states: "never did a people incorporate themselves into a kingdom by their own will by any agreement, unless in order to possess safer than before both themselves and their own, which they feared to lose—an expectation which would be disappointed if the king were able to deprive them of their means, which was not permitted before to any one among men" (p. 35). All traces of a comparison between the physical body and the body politic are absent from the prince's recapitulation. While the chancellor says that a king ruling politically cannot change the law, just as the head cannot change the nerves of a physical body, the prince argues that neither the power to harm the people in their bodies or in their substance nor the power to rule the people by laws strange and hateful to them could come from the people, and that therefore a king who rules only by that power which comes from the people does not possess either of the two powers.

In general, it seems that, unlike the chancellor, who speaks of the body politic ruled royally and politically as a mystical body, the prince is speaking of the polity in terms of human acts based on human interests. He speaks of it in the way in which the chancellor spoke of the regal rule, which originated in the interest of the ruler, continued in his interest, and was accepted by the people in view of their interests. The prince explains royal-and-political rule as coming into existence because of the interests of the people and as continuing in existence to further those same interests, namely, security of life and property. The prince, however, does not mention any interest of the king who rules

royally and politically. Furthermore, while he states that the king ruling politically has power only to protect the lives and the goods of the people, he says nothing of such a king's obtaining the assent of the people to any of his measures.

After he has given his summation, the prince admits that he remembers the argument from *De Natura* that the two types of kings are equal in power: since there is no power except for good, the ability to do wrong (which wrongdoing the king ruling only regally can perpetrate more easily than can the king reigning politically and royally) does not increase one's power. But, as we have seen, immediately before the chancellor explained the origins of the two kingdoms, the prince asked why the two kings were unequal in power, implying either that he had not read *De Natura* or that he had not accepted the argument there. Now we see that he had read *De Natura*, for, after the chancellor tells the story of the origins, he states the argument without objection.[13] Two puzzling questions arise: why did the prince have reservations when he asked the question, and why does he later choose to ignore them?

What does the fact that the prince read *De Natura* reveal about the dialogue we are discussing? When he suggested to the chancellor that he should study the civil law rather than the English law, he knew of the civil law principle—what pleases the prince has the force of law—since it was discussed there. Also, he was not so concerned with military exercises to the exclusion of other political matters that he had not read *De Natura* carefully enough to recapitulate one of its arguments. Furthermore, in order to support this argument, he quotes a statement of Boethius concerning power. In *De Natura* Fortescue also quotes Boethius, but his quotation is not the same,[14] so the prince probably has read at least part of Boethius. Before the dialogue began, then, the prince was concerned with questions regarding the power of the king or at least regarding the nature of the kingly office in general. Were the chancellor's motives for speaking to the prince at the beginning of the dialogue other than those which Fortescue explicitly mentions? The defect in character which the chancellor is attempting to overcome cannot be the prince's total concern with military exercises, since we see that he is not totally concerned with military exercises. Could there be a character defect graver or more dangerous to the polity than the one indicated by Fortescue?

Let us return to the question of what reservations the prince might have about the argument that the king ruling politically is equal in power to the king ruling regally. The argument rests on the supposition that the absence of restrictions on the power of the king who rules

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[13] The prince does not say that he now remembers the argument that he had forgotten; he says that the argument has not so far slipped his memory (p. 35). That is, Fortescue makes the prince point directly to the fact that he raised a difficulty the solution to which he was aware of.

[14] Pp. 217, 243.

royally gives him power only to do wrong, and that this power is no power in any true sense. The prince did not seem to quarrel with this statement, since he himself cited Boethius to the effect that power is only for good. We might therefore suppose that he had doubts about the statement that the power possessed by the king ruling regally but not by the king ruling politically is merely power to do wrong. In other words, one might assert, in opposition to Fortescue's argument, that the lack of restrictions on the king increases his power to do good. Now just before the prince asked why the two kings were unequal in power, the chancellor made his first statement about the good effects of a royal-and-political regime: because the king cannot change the laws without the assent of the subjects, the subjects freely enjoy their goods unmolested by their king or by any other authority. The good accomplished by the regime is the security of property. But we read, and the prince had read in *De Natura*, that "the office of a king, to whom, as St. Thomas says, the highest charge of government in human affairs is committed, has this function only, to make men virtuous, and this is the end of every legislator." Moreover, Fortescue goes on, "every polity is corrupted if it be turned aside from this end."[15] As we have seen, the chancellor implicitly denies St. Thomas' view in *De Laudibus*. But if the prince understood from *De Natura* that this great undertaking of making men virtuous was to be his function as king, he might have thought that the restriction that he make and change laws only with the assent of the people limited the amount of good he might accomplish. One might show this by arguing that since the function of the king is to make and to keep his subjects virtuous, subjects in general will not be virtuous without the king's efforts, and so the assent of the unvirtuous to virtuous measures is problematic.

If the prince did in fact find the argument inadequate, we are left with the question of why he later states it without objection. What did the prince learn from the explanation of the origins of kingly rule? Should he deny that there are limitations on his power, he would have to explain the basis for his unrestricted power. But he has learned that the unrestricted power of regal rule is based on conquest and on the conqueror's greed for glory. Such a claim to rule manifestly fails to provide an unambiguous ground for the loyalty and obedience of the ruled. Yet the chancellor suggested an alternative basis for regal kingship when he referred to "the kingly law" by which the kings of Israel ruled. Perhaps he was providing the prince with a way to justify regal rule without recourse to conquest, but a way so bold that the proclamation of it necessitates caution.

The prince's acceptance of the chancellor's advice is accompanied by a rephrasing of his question about the relative goodness of the English and the civil laws. Instead of asking whether the civil law is the best,

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[15] P. 243.

the prince asks whether the English law is as good for England as the civil law is thought to be for the government of the whole world. He is no longer suggesting that he should study the civil law if it should prove to be the better, and he is no longer asking which law is best: he inquires about the goodness of the English law for England. The chancellor's answer to this question, which constitutes the major part of what remains of the dialogue, is that the English laws are better than the civil laws. This response answers the prince's original question: he need not study the civil law rather than the English law because, contrary to the common opinion to which he refers, the civil law is not the best. Before offering this argument, the chancellor taught the prince that the English laws cannot be changed by him at will. This sequence shows that the chancellor's purpose is not merely to persuade the prince to study the English law but to persuade him of certain other things as well.

The Three Fountains of Law

To answer the prince's question about the relative goodness of the English law and the civil law, the chancellor will show that the English law excels with respect to the three fountains of all law, nature, customs, and statutes (p. 37). Explaining the relations among the three fountains of law, he suggests how the laws of one country might excel those of another with respect to the law of nature. Customs and rules of the law of nature are called statutes once they are written down and promulgated by the king's authority. No small part of the codified civil law, for example, is composed of customs and the rules of the law of nature which have become statutes (p. 37). There is another source of statute law, however, which is presumably what the king (or the king with the assent of the people) wills when that which is willed is neither a rule of the law of nature nor a custom. This presentation suggests that if the law of one country excels that of another with respect to the law of nature, it does so because its statute law, which is promulgated and therefore more binding, has the law of nature as its source to a greater degree than the other. Yet the chancellor ignores this line of reasoning and asserts that no law is pre-eminent with respect to the law of nature, that because the law of nature is the same everywhere, the laws of England "in those points which they sanction by reason of the law of nature are neither better nor worse in their judgements than are all laws of other nations in like cases" (p. 39). Although he claims that he will prove the English law pre-eminent in respect to the three fountains of law, he then states that no law is superior with regard to the law of nature, in an argument that seems deliberately confusing.

Turning to the second fountain of law, the chancellor argues that English customs are the best in the world. The kingdom of England was

ruled by different peoples—first inhabited by the Britons, then possessed and ruled by the Romans and then by the Saxons, then conquered by the Danes, again by the Saxons, and finally by the Normans. Throughout these devolutions it retained the customs which it now has; certainly at least a few of these customs, he argues, would have been changed by some of these rulers, urged on by a sense of justice or inclination, had they not been the best. Some of the conquering kings who "possessed the kingdom of England only by the sword, could, by that power, have destroyed its laws" (p. 39). The chancellor here reveals that the kingdom of England, since its founding by Brutus' band of Trojans, has not always been ruled politically as well as regally. On some occasions it has been ruled by the power of the sword, and in such a situation we can assume that the prince's will has the force of law. Thus, if England is now a regal-and-political regime, its present status cannot derive from its institution by Brutus, a conclusion which contradicts his earlier assertion. Since a regal regime comes into being when a powerful man, often by force, subjugates a people, England, whatever sort of government it had before that time, became ruled merely regally when it was conquered. But Prince Edward is the heir to the throne by right of his descent from William the Conqueror, and, as far as we are told, there has been no new self-incorporation of the English people into a political community ruled regally and politically. This curiosity leads one to wonder whether *De Laudibus*, which provides merely a *story* of the self-incorporation of the English people, is itself intended to be the source of the government based on the consent of the governed and whether its author intends to found a regime. In other words, Fortescue may be inculcating in the prince and in others a certain understanding of the English regime, rather than describing that regime as it functioned at the time.

The chancellor next argues that the statutes of England, the third foundation of law, must be good because of the way in which they are made. The English statutes "do not emanate from the will of the prince alone, as do the laws in kingdoms which are governed entirely regally, where so often statutes secure the advantage of their maker only, thereby redounding to the loss and undoing of the subjects." But because the statutes of England are "established" by the assent of the whole realm as well as by the prince, they benefit the people. And the assent of the whole realm is expressed in parliament: the laws are "decreed" by the prudence of "more than three hundred chosen men ... as those who know the form of the summons, the order, and the procedure of parliament can more clearly describe" (p. 41). The expression in parliament of the people's assent links this institution with the original self-incorporation of the people, whereby the will of the people is the source of the life of the body politic (p. 31). The chancellor thus provides a foundation for the power of parliament, a foundation which enhances its dignity and importance. At this point the chancellor

makes no distinction, when speaking of the provenance of the laws, between "decreeing" (*edere*) and "establishing" (*condere*); what he had earlier contrasted as divine versus human doings he now subsumes under human doings (p. 9).

English Law vs. Civil Law: Proof by Jury and Proof by Witnesses

Having discussed English law in terms of its three fountains, the chancellor turns to particular cases in which the English law differs from the civil law. When the prince sees the differences in each case, he will decide which law is more just (p. 43). He mentions six cases in which the English and the civil law differ. In the first case, the legal systems differ in their judicial method of determining the truth in matters of fact. Under civil law, the testimony of two witnesses establishes the truth. But this procedure does not necessarily reveal the truth, since it is not difficult to find two men willing to lie for the sake of love, fear, or advantage. Because of the availability of such men, the civil law of France in capital cases "prefers the accused to be racked with tortures until they themselves confess their guilt, than to proceed by the deposition of witnesses who are often instigated to perjury" (p. 47).

Torturing, however, fails to achieve its purpose because many lie to escape its torments (p. 51) and because it also corrupts the judge who orders the torture: if the accused does not confess even under torture, so that the judge must pronounce him not guilty, he stands culpable for having had an innocent man tortured. The judge might object that he does not participate in these tortures. The chancellor responds: "Yet what is the difference between doing them with one's own hands and being present at them, and aggravating what is done again and again by his [the judge's] command? It is the master of the ship who alone brings her into port, though by his command others ply the helm" (pp. 51–53). His reference to the master of the ship seems to indicate that he intends the principle which he states with respect to judges to apply to the king, who is responsible for the actions of his subordinates. Yet it might be thought that the judges whom the chancellor considers guilty are themselves subservient to the law which causes the evil to be done—it is the law of France itself which prefers torture to the word of two witnesses. So it seems that the chancellor holds the judges responsible for applying their country's law, which they are powerless to change. The king of England, presumably like the French judges, cannot simply change the law at will. Since England is, in this example, blessed with the better law, the prince is not directly confronted with the problem of what he should do if the English law were not the better and if the assent of the people could not be obtained to rectify matters. But since the comparison of two laws in terms of their relative justice separates the legal and the just—which we earlier saw portrayed as identical—the issue does arise indirectly.

In his discussion of the second case in which the two laws differ, the chancellor will make it clear that the definition of law which he gave at the beginning of the dialogue is the definition of good law; he will observe that the French law in question here "contradicts the very nature of good law, since law is a sacred sanction commanding the honest and forbidding the contrary" (p. 93). With the comparison of the English and the civil law, the possibility of bad law arises, and in the context of the first comparison the chancellor blames someone for acting in accordance with a bad law which he was not responsible for making. It seems that a regal-and-political regime, because of its advantages over a merely regal regime, might impose some injustices which a regime ruled only regally by the best man would not. The chancellor in *De Laudibus* does not imitate Fortescue in *De Natura* by advising the king ruling politically to govern royally in certain cases.[16] But in *De Natura* the disjunction between the law of particular kingdoms and "the law of nature, which is natural equity," is more strongly indicated.[17] There Fortescue gives an explanation of why the rule of the best man is preferable to the rule of the best laws. For example, the problem partly stems from the nature of promulgated law itself, for in certain cases "the office of a good prince who is called a living law, supplies the defect of written law, which, like a dead thing, continues always immovable."[18] But in *De Laudibus* the chancellor merely states that the best man is preferable to the best law, without giving any reasons (pp. 25–27), i.e., without pointing to the defect of the law as such, and immediately prefers the rule of law on the grounds that it does not always happen that the best man rules. He gives the prince little indication of the active role which he might play as king, while emphasizing his subservience to the law.

The chancellor now describes the English jury system. In England it is not likely that one "can die unjustly for a crime, when he can have so many aids in favor of his life, and none save his neighbors, good and faithful men, against whom he has no manner of exception, can condemn him" (p. 65). Yet the guilty are punished, since if they were not, their life and their habits would be a terror thereafter to the neighbors who deliver the verdict, and the process does not lead to torture. The prince judges the English law to be better, observing that neither men's bodies nor their goods can be safe if they can be convicted on the testimony of two unknown witnesses.

When the prince wonders why the excellent English law is not used everywhere (p. 67), the chancellor has an opportunity to withdraw his blatant criticism of the civil law. Other countries cannot gather

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[16] *De Natura*, pp. 214–16.

[17] P. 215.

[18] *Ibid.* Also, a king governing politically is advised to act royally, "for it is not all cases which will admit of being embraced in the statutes and customs of [the] kingdom" (p. 214).

adequate juries, but fertile England, which produces more consumable goods than almost any other country, is inhabited by men of the sort who make good jurymen. In the first place, Englishmen are more able to "investigate causes which require searching examination than men who, immersed in agricultural work, have contracted a rusticity of mind from familiarity with the soil" (p. 69). In the second place, the land produces such an abundance that in each hamlet one finds many men with substantial material possessions. Jurors must have such possessions so that their own interests will compel them to deliver a correct verdict; if they do not, they may lose not only their possessions, if they are found by a jury to have delivered a false verdict against the accused, but also their reputation. And so they will not be suborned, "not only because of their fear of God, but also because of their honor, and the scandal which would ensue, and because of the harm which they would do their heirs through their infamy" (p. 69). A juryman will not voluntarily deliver a false verdict because of fear of God—i.e., fear of his punishment in the other world—fear of the loss of his goods, and aversion to dishonor.[19] (The chancellor does not mention the possibility that a juryman might act justly because the just act is preferable, apart from the unprofitable consequences of injustice.)

In France, the chancellor goes on, jurymen would be both unable and unwilling to render correct verdicts. There only the nobles have the wealth and position to make suitable jurymen, at least outside the walled towns. A jury in France would necessarily include both men very remote from the facts and "paupers who have neither shame of being infamous nor fear of the loss of their goods, since they have none, and are also blinded by rustic ignorance so that they cannot clearly perceive the truth" (p. 71). The chancellor tacitly suggests that fear of the Lord or concern with the safety of one's soul is not sufficient to move a man to act justly.

The chancellor says nothing about the cause of the French people's poverty, but the prince assumes that, as in England, the land creates the conditions which make the jury system possible or impossible. Later, however, the chancellor indicates that the social and economic conditions in the two countries are caused not so much by the fertility of the land as by different types of kingship. This development occurs in the following way. Since the laws of England are superior to the civil law, the prince asks why some of his ancestors attempted to introduce the civil laws into England (p. 79). They did so, says the chancellor, because they were attracted by the civil law principle that what pleases the king has the force of law. They wanted to be like those other kings

[19] These three reasons for jurymen's impartiality were given earlier: "Who, then, even if he be unmindful of the safety of his soul, will not, having been sworn, speak the truth, in fear of so great a penalty [imprisonment and confiscation of goods] and in shame of such deep infamy?" (p. 63).

who "change laws at will, make new ones, inflict punishments, and impose burdens on their subjects, and also determine suits of parties at their own will and when they wish." To discourage the prince from imitating his ancestors, the chancellor compares England and France, examples of the two types of regimes, and shows that the type of regime is the crucial determinant of the condition of the people. The villages in France, although fertile, are burdened with men-at-arms of the king (p. 81), who compel the villagers to provide their food ("the choice provender") and other necessities; further, they are assessed huge sums annually to pay the men-at-arms and must buy salt only from the king (p. 83). The chancellor describes the various taxes and the "no little misery" in which the French people live as a result. Furthermore, "if anyone grows in wealth at any time, and is reputed rich among the others, he is at once assessed for the king's subsidy more than his neighbors, so that forthwith he is levelled to their poverty" (p. 85). It is therefore not the barrenness of the land but the type of regime which keeps the people in such a condition that adequate juries cannot be found among them. Furthermore, the accused is often examined in the king's chamber or other private place and may be judged guilty at the discretion of the king and imprisoned without any other form of trial. The chancellor brings forward the evils of the king as the supreme judge and as the supreme legislator.

In the regal-and-political kingdom of England, in contrast, the regal-and-political rule engenders the freedom to prosper:

> In the realm of England, no one billets himself in another's house against its master's will, unless in public hostelries, where even so he will pay in full for all that he has expended there, before his departure thence; nor does anyone take with impunity the goods of another without the permission of the proprietor of them; nor, in that realm, is anyone hindered from providing himself with salt or any goods whatever, at his own will or of any vendor. . . . Nor can the king there by himself or by his ministers, impose tallages, subsidies, or any other burden whatever on his subjects, nor change their laws, nor make new ones, without the concession or the assent of the whole realm expressed in his parliament.
>
> Hence every inhabitant of that realm uses at his own pleasure the fruits which his land yields, the increase of his flock, and all the emoluments which he gains, whether by his own industry or that of others, from land or sea, hindered by the injuries and the rapine of none without obtaining at least due amends (p. 87).

A royal-and-political government benefits not only the people but also the king, since such a government, the chancellor argues, assures the king's power. The king's power should be used for the protection of his subjects from any seeking to injure them. But if the prince's passions or poverty lead him to impoverish his subjects, he must be considered impotent, "for who can be more powerful and freer than he who is able to restrain not only others but also himself?" the chancellor asks, and answers that "the king ruling his people politically can and always does this" (p. 91). The chancellor does not mention

here, as he had in *De Natura*, that according to nature the soul rules the body and man's reason rules the irascible and concupiscible parts of the soul.[20] And the prince does not protest that it is not the king himself but the law which restrains his passions, even if he accepts that law as a restraint upon himself as well. He now apologizes for causing the chancellor to digress, and urges him to continue his comparison of the English and the civil law (p. 93).

Other Comparisons of English and Civil Law

The civil law legitimates children born before matrimony and allows them to succeed to the parental inheritance, while the English law does not. Those in favor of the English law, says the chancellor, claim that "such sinners repent by so much the less as they consider the laws favorable to them" (p. 93). The English law, in contrast, deters potential sinners by threatening to punish them for sinning. In answer to the possible objection that the English law punishes the children of the guilty rather than the guilty and therefore does not accomplish its object, the chancellor notes that man is more effectively restrained by punishment of his children than by punishment of himself because he is moved to procreate by his desire for immortality (p. 95).

The thrust of the chancellor's argument is that the English law is less lenient than the civil law, which lacks the harshness which he believes necessary. He further defends the superiority of English law to civil law by adducing the civil law's possible injustice to legitimate children. The identity of the father of a child born out of wedlock may be uncertain:

> Therefore it would appear inconsistent that a son born in wedlock to the same woman, whose procreation could not be dubious, should have no share in the inheritance, and the son who does not know his father should displace him in the succession to his father and mother, especially in the kingdom of England, where the elder son alone succeeds to the paternal inheritance; and a fair arbiter would consider it no less inappropriate, if a son born of disgrace should participate equally in the inheritance, which by the civil law is divided among the males, with a son born of a lawful marriage bed (p. 97).

In the process of showing the superiority of the English law with respect to the legitimation of bastards, the chancellor calls attention to another case in which the two laws differ—a major point concerning the laws of inheritance. But he does not discuss the arguments for and against the two different inheritance laws, passing over this difference in silence. He thus tacitly raises the question of which law more justly decides the case of inheritance. This question might then direct us to the larger question of what is the best law of inheritance. Without having heard argument to the contrary, one might suppose

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[20] P. 209.

that the English arrangement involved some unfairness to younger sons. The conclusion of the argument in favor of the English law that does not legitimate bastards, however, throws light on Fortescue's view of the general problem of inheritance. The chancellor observes that it is thought that illegitimate offspring contract a blemish from the sin of the parents (p. 99); born in sin, "a bastard is not disposed in his nature, like a legitimate son, to knowledge and virtue." Here we have a further reason why the English law is superior to the civil law: "that law which makes bastards by birth equal to legitimate offspring in their patrimony does not make the right distinctions" (p. 101). In advancing this argument, the chancellor assumes that the virtuous and knowledgeable should inherit.

To explain why the punishment of a man's offspring effectively punishes the man himself, the chancellor uses the example of Noah, who cursed his grandson Canaan rather than his son Ham, who saw his nakedness (p. 95). Not only does the chancellor's example show that there may be concerns which override one's otherwise strong desire to see one's progeny prosper, but it also points to the fact that an elder son may not be more deserving than a younger son—Ham's progeny will be subject to the progeny of the youngest son. The problem of sons inheriting from fathers might be even graver if one's father happened to be king. Because of the setting of the dialogue, the problem of royal succession remains in the background of the issues discussed. Assembling these observations, we find that the following pattern emerges. The "simply best" rule for determining who will inherit favors those possessing knowledge and virtue, yet the chancellor does not praise such a rule or even openly suggest such a possibility, probably because the practical problems to which it gives rise are insurmountable. If primogeniture sometimes brings the incompetent, not to mention the vicious, to positions of power, the English realm is nevertheless protected from the greatest harm by means of the restraints upon the ruler provided by the institutions of the royal-and-political regime. *De Laudibus* seems to outline not the simply best but impractical regime, but the regime which is practical, nontyrannical, and characterized by the presence of the conditions conducive to individual prosperity.

The chancellor then proceeds to another point of difference between English law and civil law. If a free man marries a bondsman, the civil law decrees that the condition of the child follows that of the mother, while the English law decrees that the child's condition follows that of the father. The chancellor bases his preference for the English law mainly on the wife's subjection to the husband. Thus there is nothing cruel in the English law's holding that the child of a serf who marries a free woman shall be a serf, but "the law indeed ought to be accounted cruel which without cause commits the son of a free man to servitude, and transfers the land, for which a free man, innocent of crime, has toiled to give title to his innocent son, to an idle stranger, and which

besmirches the father's name with the taint of the son's servitude." The English law, unlike the civil law, favors freedom, "for which human nature always craves" (p. 105). The prince agrees with the chancellor, but states that the English law is superior to the civil law because it is less rigorous. "For I recall a rule of law," the prince remarks, "which says thus, 'It is right that harshness be restrained and favor amplified'" (p. 107). For the first time the prince, when called upon to announce his preference for one of the two laws which the chancellor has just compared, ventures to add a supporting quotation of his own to the chancellor's exposition, a legal maxim taken from the civil law.[21]

The next difference between English and civil law which the chancellor discusses pertains to the guardianship of minors. According to English law, if an inheritance held in socage descends to a minor from his agnates, the minor's guardian is his nearest cognate, and if it descends from his cognates, the guardian is the nearest agnate. On the other hand, the civil law decrees that a minor's guardian is his next in blood, whether cognate or agnate (p. 107). The English law says, in justification of itself, that "to commit the care of a minor to him who is next in succession to him is like committing the lamb to be devoured by the wolf" (p. 109). The civil law, in contrast, assumes that the next in blood will rear the minor most suitably (p. 107). The chancellor's statement of the underlying difference between these two laws helps to clarify the principles involved. The English law assumes that a man will do injustice if it is in his interest to do so and if he can escape recriminations, and so it attempts to prevent such injustice, either by imposing a harsh penalty and thereby making wrongdoing too risky or by precluding situations in which a man may choose to act justly or not. This latter point is illustrated by its treatment of the guardianship of minors. The harsh penalty imposed on wrongdoing revealed in the discussion of the legitimation of bastards illustrates the former point—the fear of a penalty—as does the English law's punishment of theft (to be discussed later by the chancellor). The English juryman refrains from delivering a false verdict, we recall, because the law has made it against his interests to do so. The civil law appears more trusting of the likelihood of man's acting virtuously when he is in a situation where he may act either virtuously or not. It assumes that the relative closest in blood makes the best guardian of a minor, not considering the power of that guardian's interest in inheriting what his ward would otherwise inherit. And the civil law trusts the word of two witnesses, as we saw, without considering the ease with which men are corrupted by fear, love, or advantage. But it itself must acknowledge that this method does not work, and so it resorts to tortures in order

[21] According to Chrimes (*De Laudibus*, p. 193), the maxim is from the *Accursian Gloss to the Institutes*.

to obtain the truth. Again, the civil law makes the same mistake: torturing will reveal the truth only if men will speak the truth in spite of a very pressing interest to speak what the torturers expect to hear.

We can now see the connection between the chancellor's interpretation of English law and his interpretation of the English regime. The purpose of this regime is not to make its subjects virtuous; the English laws therefore take into account the fact that subjects are not virtuous. This regime, the end of which is to protect the lives and the property of its subjects, is recommended to the people on the ground that it makes possible greater material well-being than its alternative, the regal regime, and this prosperity necessitates a certain freedom. The discussion of the law concerning the succession's following the father rather than the mother gave the chancellor an opportunity to speak of the liberty "instilled into human nature by God" (p. 105). This is the liberty for which human nature always begs, if deprived of it, and which the laws of England favor in every case. But in *De Natura* Fortescue writes of the order of the universe: "there is nothing low in the scale which does not submit itself to something superior, except rash man, who in his wickedness often abandons and disturbs the order of the universe."[22] According to *De Natura*, rash man is able to grasp for a place higher than he deserves and constantly does grasp at such a place. Such a view would seem to lead to the thought that man's liberty, which is generally abused, needs to be curbed, yet in *De Laudibus* we learn that man's liberty must be favored. The example of a cruel law which does not favor man's liberty is a law which takes away from a freeman who happens to marry a serf the land for which he has toiled, and gives it to a stranger who does not toil (p. 105). The natural liberty which merits favor is a liberty to enjoy the fruits of one's own labor without hindrance. The tyranny avoided by a royal-and-political regime is the deprivation of the lives and property of its subjects; the English regime guarantees that the subject "uses at his own pleasure the fruits which his land yields, the increase of his flock, and all the emoluments which he gains" (p. 87). The liberty about which we learn in *De Natura*, the liberty that allows man to disturb the order of the universe and to lust after power, is replaced in *De Laudibus* with the liberty to prosper as a result of one's own labor. English law as portrayed by the chancellor favors this liberty. Liberty which might threaten the order of the universe, not to mention the order of the polity, English law directs into channels which dilute its potential harm. Nevertheless, the fact that the desire for material well-being cannot replace "a lust for domination" or "an ambition for honor" in all men will impress us in the outcome of the dialogue.

The chancellor mentions cases in which the inheritance is held in

[22] P. 247.

military service rather than in socage: the guardian of the minor is the lord of the fee. The lord to whom military service is owed is more likely to train well the man who will later serve him than would another guardian who has no interest in his ward's military talent, the chancellor asserts. Again, we see the principle behind his interpretation of the goodness of the English law: one will do what one should if so doing accords with one's interest. The chancellor adds in closing, "it will be no small advantage to the realm for its inhabitants to be expert in arms" (p. 109).

The chancellor has advanced the conversation to a topic which, as was indicated at the beginning, is a particular concern of the prince. The prince approves of the legal arrangement, but he does so for reasons which extend beyond those which the chancellor gave: "For as a result of this [law] the sons of the nobles in England cannot easily degenerate, but will rather surpass their ancestors in probity, vigor, and honesty of manners, since they will be trained in a superior and nobler household than their parents' home" (p. 111). While the chancellor mentioned only one excellence that would accrue to the ward, expertise in arms, the prince lists probity, vigor, and honesty of manners. According to the prince, the law promotes virtue. Here the chancellor is looking only to a skill that is necessary for the defense of the realm, while the prince's concerns are broader. The chancellor mentions neither the promotion nor the preservation of virtue as an effect of any of the English laws that he discusses. For example, in giving reasons for the superiority of the English law concerning the legitimation of bastards, he observes that the law prevents dishonest and sinful acts. Thus the reason why one refrains from such acts need not be virtue. The prince, however, approves of the law because it "more strongly eliminates sin from the realm, and more securely preserves virtue in it" (p. 101). Further, the chancellor did not mention the education of minors in the king's household, but the prince turns to this subject: "The princes of the realm, and other lords holding immediately of the king, ruled by this law, cannot so easily slip into lewdness or crudity, if when they are young orphans they are cared for in the king's household. Hence I praise highly the magnificence and the grandeur of the king's household, for within it is the supreme academy for the nobles of the realm, and a school of vigor, probity, and manners by which the realm is honored and will flourish" (p. 111).

Two more cases are now discussed. First, the civil law allows the thief to make certain compensations, while the English law punishes theft with death. Second, the civil law restores an ungrateful freedman to servitude, while the English law holds that a man who has been freed, whether or not he is grateful, must remain free. The prince states the superiority of the English law in both cases. Although in England, the prince observes, thieves "are everywhere punished by death, they do not cease to plunder there, and if they do not in the least

fear so great a penalty, how much less would they abstain from crime, if they anticipated a lesser punishment?" (p. 113). The chancellor earlier said that the law which more effectively accomplishes its purpose should be considered the superior of the two systems. The purpose of the law punishing theft is, at least in part, the prevention of theft, as the prince indicates. If the harsh law does not prevent the crime, and the penalty of death is "not in the least" feared, as the prince says, his words throw doubt on the possibility of preventing wrongdoing through harsh legal penalties. Fortescue has mentioned a harsh English penalty before, the punishment of a couple who have an illegitimate child by punishing the child, allowing him neither to be legitimated nor to inherit. In that discussion, although the chancellor insisted that men are moved to procreate by their desire for immortality, he also remarked that the lustful incitements of the flesh are "almost indefatigable" (p. 95), and his one example of man's desire for his offspring to prosper was that of a father's curse upon his son's progeny. It seems that the threat of punishment provides an incomplete solution to the problem of a man's taking what is not his own, whether property or sex.

The prince specifies the superiority of the English law in the second case, that of the freedman restored to servitude: "Let a man once escaped from servitude not be perpetually under the fear of return to it, especially by reason of ingratitude, for the species of ingratitude can scarcely be numbered, they are so many, and human nature always demands in the cause of liberty more favor than in other causes" (p. 113). He then requests the chancellor to stop his examination of cases in which the civil law and the English law differ in order to tell him why the English laws, since they are so good, are not taught in the universities as are the civil and the canon laws. With this question, the interlocutors reach the last section of the dialogue. The section in which the English and the civil laws are thematically compared thus ends with praise of liberty.

The Legal Profession, Delays in the Courts, and the Prince's Final Statement

The chancellor explains where the laws of England are taught. The discussion of the English legal profession becomes broader in scope, for the Inns of Chancery and the greater inns, the Inns of Court, comprise not only "a school of law," as he says, but also "a kind of academy of all the manners that the nobles learn." Nobles and magnates of the realm, although they desire their sons to live by their patrimonies rather than by their practice of the law, place their sons in these inns in order that they may become virtuous (p. 119), and those who control these schools educate the leading men of the realm. The prince had earlier called the king's household "the supreme academy for the nobles of

the realm" (p. 111), but the suggestion there was that only orphans of nobles holding land immediately of the king were to be educated in the king's household. The chancellor now corrects the prince, telling him that the legal profession, not the king, provides the supreme academy for the nobles. While the chancellor earlier emphasized the English king's limited role in law-making and judging, he now implies that the king has a limited role in educating the men who participate in those political functions.

The chancellor explains that since the legal profession is composed mostly of the nobility (because of the expense of the inns), the legal profession will care for the preservation of their honor and their reputation (p. 119). He thus implies that the desire for a good reputation particularly characterizes the nobility; yet in England the typical juryman shares in this concern, as we have seen.

Another incentive toward good action found in the nobility can be inferred from the chancellor's description of the life of the students in the inns:

> Scarcely any turbulence, quarrels, or disturbances ever occur there, but delinquents are punished with no other punishment than the expulsion from communion with their society, which is a penalty that they fear more than criminals elsewhere fear imprisonment and fetters. For a man once expelled from one of these societies is never received into fellowship of any other of these societies. Hence peace is unbroken, and the conversation of all of them is as the friendship of those united (p. 119).

Wrongdoing loses its attraction for members of the inns because of their desire to remain in these societies. Although expulsion entails dishonor, that which prevents delinquency in these academies, according to the chancellor, seems to be a desire for the way of life there rather than for a good reputation. Such motivation calls to mind the filial fear of the Lord which the chancellor first proposed as a benefit of legal study, but which appearently is a result only of studying scripture. One who attains such a fear does no wrong not through a fear of punishment but through a fear of being alienated from God, just as the members of the inns do no wrong through fear of expulsion. In both cases, the fear that keeps one from erring is the other side of a love, in the highest case a love of God, but also a love of sharing in the life of a community of learners. The chancellor returns to an earlier theme, but returns to it on a lower level. We shall see that descent generally characterizes the end of the dialogue.

Three reasons why a person might refrain from wrongdoing have so far emerged in various contexts in the dialogue: the fear of punishment, the desire for a good reputation or the fear of dishonor, and the desire to maintain a good and pleasant way of life, choiceworthy for its own sake. We have seen that the lowest incentives, both the fear of God's punishments and the fear of the law's punishments, are insufficient to prevent men from acting unjustly and that the highest

incentives operate either among only a few (filial fear) or in a society which aims at the acquisition of knowledge and virtue by its members. The incentive of shame, however, partakes of characteristics of both the high and the low motives, and appears to cause the citizens of a community ruled royally and politically to be law-abiding and decent. A jury was impossible in France, we remember, in part because it would have been composed of paupers who might easily be corrupted because they had no goods to lose and no "shame of being infamous" (p. 71). The chancellor is implying that the very poor are not sufficiently concerned with their good reputation to act justly in order to retain it. Men who are prosperous have a stake in the community and are concerned about what people think of them. The connection between a regal-and-political regime and prosperity is therefore complex: not only does the regime make widespread prosperity possible, protecting the freedom of its subjects to enjoy the fruits of their labor, but it also depends upon that prosperity to create a general law-abidingness on the part of subjects, who will be ashamed to act in any but a virtuous manner.

Although the chancellor refrains from explaining how the laws are learned in the inns, explaining that the prince will not study there, he does describe the great ceremony with which the office of the serjeant-at-law is conferred. The dignity of the serjeant-at-law, in fact, is such that he need not doff his coif, the insignia of his office, even when he speaks with the king (p. 125). After describing the creation of the judges in the king's bench and in the common bench, the chancellor warns the prince: "But you must know, prince, that the justice will swear among other things that he will do justice without favor, to all men pleading before him, friends and foes alike, that he will not delay to do so even though the king should command him by his letters or by word of mouth to the contrary" (p. 127).

He goes on to describe the day of the judges—only the mornings are spent sitting in court, since the king's courts are not held in the afternoon; the judges in their remaining time study the laws, read Holy Scripture, and contemplate at will. The chancellor might appear to be returning to the theme of the delight in the good, which he earlier claimed to result from study of the law, but he is not. The judges are blessed not with the Summum Bonum but with a large, materially successful progeny. Almost no judge dies without issue, the chancellor observes. Furthermore, "more leading men and magnates of the realm, who have made themselves rich, illustrious, and noble by their own prudence and industry, arise from the issue of judges than from any other estate of men in the realm" (p. 129). Since God favors the just, the judges are fortunate. The chancellor quotes the Lord, "The generation of the righteous shall be blessed," and concludes with another lesson for the prince: "Therefore, king's son, love justice which enriches, cares for, and perpetuates the offspring of its followers. And

be zealous for the law, which brings forth justice, in order that it may be said of you, what is written of the just, 'And their seed shall endure forever'" (p. 131).

The benefits mentioned here by the chancellor are not the same as those proffered at the beginning of the dialogue. There, one's love of justice and respect for the law were said to lead to perfect virtue (p. 13). Here, on the other hand, the benefits descend to perpetuation through one's offspring, and even to fame, or the good opinion of others.

The prince still finds one fault with the English laws. It is said that the laws of England suffer great delays in the king's courts; petitioners are withheld from their right and are burdened with unnecessary expense. The chancellor concedes that in certain personal actions the processes suffer a moderate amount of delay (p. 131) and that in real actions the processes are somewhat slow in all parts of the world. Furthermore, there are advantages to delays: the parties have time to provide themselves with counsel, and there is less danger in an unhurried judgment than in a hurried one (p. 133). But the prince has raised a subject which allows the chancellor to emphasize that the laws of England may be changed: "And if [improper] delays in pleas have occurred in this realm, they can be cut down in every parliament, and all other laws in use in this realm, if defective in any respect, can be amended in every parliament. So it can be rightly concluded that all laws of this realm are the best in fact or potentiality, since they can be easily brought to it in fact and reality. And to do this as often as equity requires it, every king is bound by his oath solemnly taken at the time of his receiving the crown" (p. 135).

These are the chancellor's last words in the dialogue. He praises English laws not so much because they are best as that they may be easily made so in parliament. Here he mentions equity for the first time. Equity requires the king to improve defective laws by changing them in parliament. This "equity" differs from the equity explained in *De Natura*, whereby the king relaxes the strictness of the law in order to remedy defects intrinsic in the very nature of law.

Why is delay in the king's courts the last subject discussed in the dialogue? The prince's question manifests a concern that justice be rendered to the petitioners. The chancellor's answer includes the assertion that the English processes are not slower than those elsewhere, and he refers to an excessive delay in France. The prince may have raised this question in the belief that judicial delays are particularly characteristic of a regal-and-political regime in which the king's interference in the judicial process is limited; if so, he is told that his belief is not correct. Since the prince does not inquire about delays in the legislative processes—delays causing greater injustices than those in the judicial processes, since laws affect the people in general rather than particular petitioners—the chancellor does not directly deal with such delays. In replying to the inquiry about delays in judgments, he

declares that laws needing improvement may be "easily" corrected in every parliament. And in restating this lesson, the prince will say that such laws may be "quickly" improved there. The consideration that injustice may be perpetrated as a result of slowness of action may be a particularly appropriate conclusion to his praise of a regal-and-political regime. The delays in the English courts, the only flaw in the English system that the chancellor openly acknowledges, may be contrasted with the excessive abuses which characterize the regal regime.

The dialogue ends with the prince's statement of what he has learned from his discussion with the chancellor. The concluding chapter is entitled "The laws of England are best for kings to know, yet it suffices for them to know these in general terms." The title refers to the chancellor's solutions to the two difficulties that might prevent the prince from studying the English law—the question of whether he will not be wasting his youth in long years of legal study, and the question of whether he should not study the civil laws, which are renowned to be the best. The prince's declaration of the position found in the title therefore reveals the success of the chancellor's teaching. The chancellor's response to the prince's second objection involved an explanation of and praise for the English royal-and-political regime because in such a regime the prince could not change the English laws to the civil laws at will: only later did he argue that the English laws are better than the civil laws. The prince, however, now concludes that the English laws are best for him to know because they are the best; he does not return to the argument that the English laws are best for him to know because the English king lacks power to employ any other laws in ruling. When he does avow that the English laws are the best, he does so on the ground on which the chancellor stood—the English laws are the best, and if some need improvement, improvement may be quickly accomplished in parliament (p. 135). While such an argument acknowledges the existence of the royal-and-political regime in its reference to parliament, it does not explain this regime's superiority over a merely royal regime: a king ruling regally might also change his laws when they need improvement, and might perhaps do so even more quickly than a king ruling politically. If speed characterizes the political processes of a regal regime to a greater degree than those of a royal-and-political regime, the prince's praise of the English laws also entails praise of a regal regime.

Having agreed that the laws of England are best for kings to know, the prince states that the king must know the laws only in general terms, leaving to the judges definitive knowledge of them. Likewise a prince must know Holy Scripture only in general terms and not as a doctor of sacred theology must. "Vain are all in whom there is no knowledge of God," the prince quotes, and immediately continues, "and in Proverbs, chapter xvi, it is written, 'Let divinity,' that is, divine judgement or divine speech, 'be on the lips of the king,' and then

'His mouth shall not err in judgment'" (p. 137). His dictum about judgment coming from the mouth of the king recalls the chancellor's earlier teaching that as king the prince would not give judgments through his own mouth but would rely on his judges to pronounce them (p. 23)—and perhaps supplies his answer to that teaching.

By referring to unnamed doctors of the law, the prince further elaborates the argument that the king must know the laws only in general terms. These doctors are obviously not doctors of the English law, since they write of the emperor, saying: "'The Emperor bears all laws in the casket of his breast'; not because he knows all the laws really and actually, but since he apprehends their principles, and their form and nature likewise, he is said to know all the laws, which he can also transform, change, and abrogate; so that all laws are in him potentially, as Eve was in Adam before she was formed" (p. 137). This passage is the last statement in *De Laudibus* of the relationship between the ruler and the laws of his country, but does not resemble anything that the chancellor told the prince. Although the prince notes that the ruler can transform, change, and abrogate the laws, he does not assert that what the prince wills has the force of law, since the laws are not willed by him any more than Eve was willed by Adam. The prince suggests a divine source for the law that comes from the ruler, just as he previously suggested such a source for the judgments that come from him. That a ruler bears all laws in the casket of his breast was proclaimed by Pope Boniface VIII, and the ruler about whom Boniface spoke was the pope.[23] The prince seems to assert, contrary to what the chancellor tried to teach him, that the king is the supreme judge and the supreme legislator. Yet he is supreme only in a certain sense, since his judgments are guided by divinity and his laws, it is implied, are brought forth by God. The prince thus affirms the teachings of the chancellor that all judgments of the realm are God's and that human laws are brought forth by God. But the chancellor approved these formulations in the context of teaching that human law as well as divine law is sacred and is therefore worthy of the prince's study. The prince has transformed the chancellor's elevation of human law to the realm of the sacred into an elevation of the king as the one through whom divinity operates.

Conclusion

We now return to the questions with which we began: what does the chancellor intend to accomplish in this conversation with the prince, what does he in fact accomplish, and what do the chancellor's intentions and accomplishments indicate about Fortescue's view of

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[23] *Liber Sextus Decretalium Bonifacii P. VIII*, I. ii. I., in *Corpus Juris Canonici*.

politics in general and of the English regime in particular? The chancellor obviously tries to persuade the prince to study the law. Legal study at first seems to be a means through which the prince will become a good man, possessing "the perfect virtue" that the laws reveal. And so the comparison between the English laws and the civil laws teaches the prince about justice, since it teaches him why some laws are more just than others while teaching him to respect English laws which have been approved at the bar of justice. The chancellor's intention to educate a good man suggests that the character of the ruler constitutes an indispensable element in the goodness and badness of regimes, yet his indication that important knowledge of the law is to be withheld from the prince and his intimation that there is a way of life higher than that which the prince will lead suggest that he does not simply intend to educate a virtuous man.

The chancellor persuades the prince not merely to study the law but to study the English law because under the English regime he cannot change the English law to the civil law. The chancellor's preference for a regal-and-political regime not only ignores the possibility that a good man may rule using laws as he thinks best but also averts the more likely possibility of tyranny. It is a sacrifice for the sake of the certainty, to the extent that one is possible, that neither the worst nor the best shall be allowed to work havoc or achieve greatness. Such a certainty stems from a reliance on the institutional restraints provided by the royal-and-political regime. If one makes the chancellor's choice, one expects less from politics than one might otherwise do: we have seen that the primary end of the royal-and-political regime is the protection of lives and property. The chancellor's preference for such a parliamentary monarchy, with its limited ends and its foundation in the consent of the governed, is the choice of the second-best or most practical regime rather than of the best regime.

What one conceives to be the end of government at least partly determines the education believed necessary for rulers. If the ruler ought to make his subjects virtuous and ought therefore to possess the power to do so, he himself must be a virtuous man. If the ruler ought to make his subjects secure by protecting their lives and their property where institutions also serve this end by providing restraints upon the ruler himself, good government may exist even if the prince is not a virtuous man but is convinced that he must adhere to the institutional arrangements that exist. The education required in the latter case might entail difficulties, but those difficulties would not be as great as those in the former case; the education in the latter case might be carried out through rhetoric, but it is not clear precisely how the education in the former case would proceed. The chancellor's education of the prince in *De Laudibus* aims not so much at making him a virtuous man as at persuading him of the goodness of the English royal-and-political regime which he interprets for him.

We have found strong indications that the chancellor has failed to convince the prince that there should be limitations on his powers as king. To the extent to which the acceptance of the royal-and-political regime by the ruler remains problematic, the viability of even the best practical political solution, the one alternative to that which depends on a combination of power and virtue, is doubtful. Since the ambition of the ruler remains a threat to limited government, the unachievable best solution sometimes becomes a necessity.