INTRODUCTION

§1. Historical Context

This edition of the work of Jean de Terrevermeille (also known as Terre Rouge) has a long history. It began fifty-five years ago in Firestone Library at Princeton University, where I chanced upon an edition of Terrevermeille's *Tractatus*. Up to then I had known about that work only from secondary sources, one of which said that there was no copy of it in the United States–an error evidently stemming from the author's belief that the 1526 publication of the work by Jacques Bonaud de Sauset was unique. Bonaud's text, however, had been used for two reprintings of the Tractatus by François Hotman in the 1580s. It was one of them (a copy once owned by Charles H. McIlwain) that had found its way into the Princeton University library.

At the time of making this discovery I was assistant to Professor Ernst H. Kantorowicz at the Institute for Advanced Study, engaged in the process of revising my doctoral dissertation, *The Royal Funeral Ceremony in Renaissance France.* The principal task was to attune my narrative with the theme of Kantorowicz's *The King's Two Bodies.* In that work, which was just then being brought to its conclusion, Kantorowicz integrated material on royal funeral effigies from my dissertation.[1] Terrevermeille's work had only marginal relevance for the study of the royal funeral, but its extensive use of concepts such as *corpus mysticum regni* served very well in "A Study in Mediaeval Political Theology", the subtitle of *The King's Two Bodies.* The index to that work reveals how useful Terrevermeille's work was for Kantorowicz. He felt that a scholarly edition of it was needed, and he encouraged me to undertake that task. I did so, but after a few years the project fell into limbo. By good fortune I am able to resume the job in my octogenarian years, and in fond remembrance of times together long ago I dedicate this work to Kantorowicz.

There were two tangible results of the youthful enterprise. The first professional lecture I ever gave, "The French Estates and the *Corpus Mysticum Regni*",[2] dwelt upon Terrevermeille's political disposition, which vacillated between constitutional and authoritarian modes. More important than that article was a short monograph I published entitled *The Juristic Basis of Dynastic Right to the French Throne*[3]. That essay had originally meant to become the

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[1] See Chapter I of my *Reminiscences about Ernst H. Kantorowicz* (elsewhere on this website), for extended remarks about the "daily exchange of ideas and material" between him and me during the years, from mid-1953 to mid-1955, that I spent as his assistant.

[2] Published in *Album Helen Maud Cam* [=Études présentées à la Commission Internationale pour l'hístoire des Assemblées d'États, 23] (Paris & Louvain, 1960), 155-171; reprinted in my *Rulership in France, 15th-17th Centuries* (Aldershot, Hampshire, 2004).

[3] Transactions of the American Philosophical Society, New Series, vol. 51, part 5 (Philadelphia, 1961).

introduction to my edition of Terrevermeille, establishing the historical and intellectual parameters of the first tractate (of the three in the *Tractatus,* which must be understood in the plural), which argues the right of the Dauphin Charles [VII] to be regent during the incompetence of his father. Since regental right was intimately related to successoral right, I found myself studying the juristic facet of succession to the French throne. I determined that seven legal species were involved: Divine law. Canon law, Feudal law, Customary law, Salic law, Roman law, and Fundamental law.

It was deemed worthwhile to publish the results of this research separately from the edition of his work. In the *Juristic Basis*, Terrevermeille was given five pages in a section entitled "Customary Law: Simple Succession". Since that constitutes a fitting introduction to this digital edition of the *Tractatus*, it will be reproduced here in its entirety.

§2. ***Juristic Basis of Dynastic Right to the French Throne*** (1961)

(Pages 12-17, original footnote numbers in brackets)

The greatest external threat the Capetian dynasty ever faced came in the year 1420, when the moribund Charles VI was induced to adopt his son-in-law, Henry V of England, as his heir. To give the greatest possible validity to this act, which was part of the Treaty of Troyes, the Parlement of Paris was persuaded to endorse it in 1421. The following year Henry V and Charles VI died in quick succession, and the double dignity of King of England and France fell on Henry's infant son, Henry VI.

The supporters of the Dauphin Charles [VII] could reject the Treaty of Troyes on the grounds that Charles VI was mentally deranged and was acting under duress as a virtual captive of the English. They could also point to edicts of 1403 and 1407, when Charles VI himself had declared the inviolable right of his eldest son to succeed to the throne.[4] The fact is, however, that the treaty of Troyes was anticlimatic as far as the Dauphin's supporters were concerned. The real crisis had occurred two years earlier, in 1418, when the Dauphin had been disinherited by his father, forced to flee to the south of France, and the regency taken from him and given to the Duke of Burgundy, Jean sans Peur. This event had brought forth from the pen of an *avocat du roi*, Jean de Terre Rouge, a treatise in the Dauphin's favor. Its arguments could be applied equally well to the situation a bit in 1420, and it seems that they were–although the Dauphin's destiny soon passed from his to his men of arms (finally even a maid in arms). But a century later, in the blossoming of French political thought in the age of the Renaissance, when printing allowed wide dissemination of all doctrines, Terre Rouge's treatise gained considerable stature in French constitutional thought.

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[4] [33] "... droict de nature baille le premier né iceulx [i.e., des fils du roi] heritier et suceesseur audict Royaume, et que tantost que son pere est allez de vie à trespas, icellui ainsné...est & doit estre tenu et repputé pour roy." Ordonnance of 26 December 1407 (reaffirming a near-identical one of 26 April 1403), in Ordonnances des rois de France de la troisieme race IX, 267 (VIII, 579 for the I403 edict). 1 have discussed these edicts, as well as the other political and legal issues involved in the Treaty of Troyes in 1420, in *The Royal Funeral Ceremony in Renaissance France*, 91, 95f.

Jean de Terre Rouge was born in Nimes, educated probably at Toulouse and exercised public office as royal advocate in the seneschalship of Bearne. His principal legal frame of reference was Roman law. In the treatise in question[5] a third of his total allegations (which run over a thousand)are from the Corpus Iuris Civilis and its *glossa ordinaria*, but quite noticeably he utilized only sparingly the works of the commentators: Bartolus he cited a few times, but not at all Baldus,[6] Lucas de Penna, and other great fourteenth-century Italian civilians. Being a Doctor of the Two Laws, his canon law allegations about equal civil law ones. For the rest, he was very well versed in Scripture and knew Aristotle both independently and through the works of Aquinas and Egidius Romanus. In short, he brought into his political writings a fair balance of legal, theological, and scholastic thought. And since he was thoroughly eclectic in his view of how the French nation was constituted, the wide range of authorities he drew upon brought forth some unusual compounds of ideas, which challenge not only the reader's learning but also sometimes his credulity.

Terre Rouge's treatise is composed of three tracts, but only the first one acquired eminence in constitutional thought. In it, his main theory of royal succession is expounded. As a starting point, Terre Rouge used the basic distinction in Roman law between the spheres of public and private property. Some things are possessed patrimonially, as houses and fields; others are possessed publicly, as roads and rivers. Correspondingly, there are two kinds of succession to these kinds of property: succession by transmission, i.e., [p. 13] patrimonially or hereditarily, and succession by removal or by successive position, that is, where one person simply follows another, as in dignities, offices, and the like. Terre Rouge refers to this as "simple succession", and in this general category French royal succession falls.[7]

There are many ways in which simple succession can be accomplished, depending upon the nature of the office or dignity, and depending upon the traditions of a particular

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[5] [4] The first editor, Jacques Bonaud de Sauset, gave Terre Rouge's treatise the title *Contra rebelles suorum regum*, (Lyons: Constantin Fradin, 1526), which is apt only to describe the third of the three tracts, the one which was not included in the later printings of Terre Rouge by François Hotman (see below, n. 115). Almost all we know of Terre Rouge's life is found in Sauset's introductory epistle, which forms the basis for the biographical sketches in L. Ménard, *Histoire...de la ville de Nismes* (Paris, 1752) III, notes, p. 17, in Moreri, *Le grand dictionnaire historique*, and other biographical dictionaries. (Note that sometimes the name appears as Terre-Vermeille.) The fullest appreciation of Terre Rouge by modern scholars will be found in Lemaire, *Lois fondamentales*, 54-61; La Perrière, *Droit de succession*, 95ff; Prince Sixte de Bourbon, *Traité d'Utrecht*, 131-137; and John Potter, “The development and significance of the Salic Law of the French,” *English Historical Review*, 52 (1937), 244ff, but they and all others have misconstrued Terre Rouge's constitutional position by overlooking the definitely absolutist bent of the third tract, as I have pointed out in "The French Estates and the Corpus mysticum regni," *Album Helen Maud Cam* [=Études présentées à la Commission Internationale pour l'Histoire des Assemblées d'États, 23 (1960)], 153-171. I am preparing a new edition of Terre Rouge's treatise, and in the introduction will weigh the factual Terre Rouge against the Terre Rouge of fancy.

[6] An error: Baldus is cited just once, at Tract. II, Art. 3, concl. 9–i.e., §2.3.9 in the edited text below.

[7] [35] Art. I, conclusions 1-3: in ed. Arras, 1586 (as appendix to François Hotman, *Consilia* [copy in Princeton University Library]), 28-29. All my citations are from this edition, and unless otherwise noted the "Articles" and "conclusions" are those of the first of the three tracts. The relevant civil law allegations here are Inst. 2, 1 and Dig. 1,1,1.

country. But in all cases, custom is the deciding factor. It may appear that in kingdoms where rulership is transmitted by hereditary succession (Hungary), or by testamentary succession (Aragon), that common law (which should dictate simple succession) has been violated; actually, custom ultimately regulates these matters, and it just happens that the custom of these countries has allowed a place in public succession for the kind of succession which usually is restricted to private law.[8] In France, custom has determined that simple succession should be conferred upon the firstborn son, and failing a son upon cognate males. This is not at all a testamentary succession, for no king ever has willed, or can will, his rulership in France; such an act never has been recognized by custom in France. And since the kingdom cannot be conferred by dispositive will, neither can it be said to pass on intestate.[9] In short, he who succeeds to the realm of France cannot be called the heir of him to whom he succeeds, nor his patrimonial successor; he is successor only by simple succession. Still, this kind of succession, established by custom, bears resemblance to the rules of hereditary succession, and might be labeled "quasi hereditary." [10] Terre Rouge calls it often a *tertia species successionis.* This "third species of succession" belongs to the genus of simple succession, one might say, but has many of the characteristics of patrimonial succession. What it lacks, primarily, is the dread paternal power *(patria potestas)* accorded the *paterfamilias,* which gives him the right to disinherit his son or to pass on to him only part of the patrimony. By contrast, the king of France cannot alienate any part of his realm, and cannot block his son from the full possession of it. The reason is that in patrimonies the disposition of the goods is an inherent right of the father, but in the realm of France the king's right of possession stems from the force of custom. This custom is not amenable to the king's dispositive will because it has been founded by the "Three Estates and the whole civil and mystical body of the realm" to whom the kingdom really belongs, while the kings are only the administrators.[11]

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[8] [36] Ed. cit., 29-30: Art. I, concl. 4 (citing from *Decretales* III, 34, 6, the example of Hungary--see above, p. 6), and concl. 5-7, on the force of custom, which is also mentioned in the next note.

[9] [37] "In regni Franciae successione reperitur duntaxat consuetum, et ex sola vi consuetudinis obtentum, quod successio simplex defertur primogenitis maribus ex linea recta eorum quibus succeditur, & illa deficiente succedunt mares trans-versales, iuxta gradus praerogativam. Nec mirum si ex sola vi consuetudinis in dicto regno succedatur, nam & aliquando ex sola vi legis defertur suecessio...[ut Inst. 3, 2 et 3, 3], ergo similiter ex consuetudine potest successio deferri, tenet consequentia, qnia paris sunt potentiae lex & consuetudo, [ut Dig. 1, 3, 32 [31] & 33 [32].]" Art. t, conl. 8 (ed. cit., 30). Concl. 9, 10, & 11 deny testate and intestate succession.

[10] [38] "Primogenitus, aut alius in regno Franciae succedens non est, nec proprie dici potest heres eius cui succedit, nec patri-monialiter successor, sed successor solum quadam simplici & non hereditaria successione in vim eonsuetudinis, quae ei con-fert suecessionem; quasi hereditaria autem haec suecessio sub quadam similitudine dici potest." Art. t, concl. 12 (ed. cit., 31). It is interesting to note that in the fifteenth century the English narrowed the use of word "successors" to those who arrived at something virtute officii, while different terms were used for real and personal property transference, showing that the public-private distinction was lurking in the background of common law; see W. W. Buckland and A. D. McNair, *Roman law and common law* (Cambridge, 1936), 111.

[11] [39] Art I, concl. 24 (ed. cit., 34): "Rex Franciae non posset constitutionem aut legem facere per quam patrimoniali iure, aut hereditario (quam consuetudine iuerit [sic] obtentum) in regno succederetur. Probatur conclusio, quia eonsuetudo quae est iam in actu super hoc, fuit & est introducta ex consensu trium statum, & totius

At this point we have the vital elements of a truly parliamentarian argument, which some later commentators have professed to see strongiy developed in Terre Rouge. All have at least taken note or the distinction between successive and hereditary transmission, upheld by the force of custom, which also gives Terre Rouge the aspect of a constitutionalist.[12] But these points of view are deceptive, for they ignore the continuation of Terre Rouge's arguments when he takes up the question of greatest immediate importance to him: the Dauphin's right to be regent. For, having denied Charles VI the right to disinherit the Dauphin from the throne was only half the battle won. since it did not necessarily follow that the Dauphin could not be disbarred from the regency. Owing to a quirk of history, the major development of the royal succession in the previous two centuries had to be reversed. Since the time of Philip II, the principle of familial succession had been strengthened by having the son succeed his father by his own right as *primogenitus,* instead of the heavy-handed device of making him *rex designatus* [p.14] while his father lived. Now, in 1418, with the old King moribund, the Dauphin had to be "designated" as associate ruler with his father. This could not be done by the old means of crowning the heir; nor could it be done by royal fiat, since Charles VI had rejected his son. The best device that occurred to Terre Rouge was the analogy with civil law, where the son (provided the father approved of him as heir) was regarded as co-administrator of the estate along with his father, so that when the father died the son was regarded as simply continuing the existing administration rather than getting a new one.[13] This meant the reactivation to some extent of the *patria potestas,* upon which this co-administerial power was predicated; but Terre Rouge had already denied that the *potestas* operated in the French royal succession, because it would have allowed alienation and/or testamentary disposition by the father contrary to the son's interest. It required some neat juristic legerdemain to negotiate this return to the milieu of civil inheritance in order to capitalize upon the son's power as co-administratori.e., the Dauphin's regency power. It is convenient to summarize how Terre Rouge did this under three main headings: (1) the "right of filiation"; (2) the "right of primogeniture"; (3) the "seminally impressed force."

1. The *ius filiationis* may be defined as a right which the children have to some part of the family belongings and privileges independent of the will of the father. Terre Rouge locates

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civilis sive mystici corporis regni, ad quos spectabant de inre communi regis institutio & electio." Art. t, concl. 13 draws out the decisive difference between patrimonial and regnal successions on the basis of alienation, which leads to this interesting contrast: "Caeterum successor in patrimonialibus dominis habet multo plenius ius quam rex in regno, nam ille potest vendere, alienare, diminuere, & etiam per alienationes patrimonialia in alios transferre, sic quod consequenter liberi aliqui nihi1 ex eis vendicabunt, quae tamen rex agere non potest, nec per aliquas alienationes ad alius regimen transferre" (ed. cit., 31).

[12] [40] See, in addition to the modern authors cited in n. 34, the sixteenth-century writers in n. 55 and in the text below, § 7.

[13] [41] *Digest* 28, 2, 11, the key lines of which are "In the case of proper heirs, it is perfectly evident that a continuation of ownership legally remains so that there appears to be no succession...; after the death of the father, the children are not considered to have obtained the inheritance, but rather to have acquired the free administration of the property."

some minor instances of this within the *Corpus Iuris Civilis* itself: children, because they are children, have the right to be buried in the family sepulchre; freedmen pass to the patron's children, as children, even if they are not his heirs; near relatives cannot be deprived by testament of their "legitimate portion."[14] These cases do not appear in the civil law as the workings of an autonomous principle; at most they only put limits upon the *patria potestas,* and without the *patria potestas* they would have no existence. But not so for Terre Rouge. The sum of these exceptions he makes into a rule, not just an appendage to the *patria potestas* but independent from it by dint of "the sole cause of the nature of things"

Today a difference has appeared in the old law of paternal and emancipational power, in consideration of the sole cause of the nature of things, as in *Cod.* 55, *Cod.* 6, 58, 15, and *Dig.* 28, 2, 29: verily in those things which are deferred to which are deferred to the children as children, even as the ancient law considered the sole cause of the nature of things, when the paternal power is removed (as *Dig*. 38, 2, 2 and 38, 2, 5), therefore also in the instance the realm is deferred to the first-born son likewise such sale cause of natural filiation should be' heeded when civility [i.e., the operation of civil law] and paternal power have been removed by said laws.[15]

It is true that at the time of the compilation of the *Corpus Iuris Civilis* there were inklings of limitations being put upon the ancient paternal power, but it is strictly Terre Rouge's own doing, after gleaning these flaws in the paternal power, to throw out the paternal power altogether and make the remnants into a principle founded in the "nature of things," which in his own time he claims has been extended to embrace French royal succession. But the cleverness, if not the correctness, of this argument must be admired, since by raising minutiae to a higher order of things, to the realm of Nature, he does allow them easily to be transferred from the sphere of

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[14] [42] Art. I, concl. 16 (ed. cit., 32), alleging *Dig*. 38, 1, 29 and *Dig*. 38, 2, 2, regarding freedmen, *Dig*. 11, 7, 6, regarding sepulchral rights, and Dig. I, 7, 22, regarding the legitimate portion which "does not come to the son by an exercise of the testator's will, but by the emperor's provision (principali providentia)." Terre Rouge renders these final words as legis providentia (Art. I, concl. 18; ed. cit., 32).

[15] [43] Art. I, "Sexta conclusio, quod hodie differentia antiqui iuris patriae potestatis & emancipationis, est sublata naturali sola causa inspecta, ut in auth. in successione. C. de suis & legit. lib. [*Cod*. 6, 55 (54), 12 or Nov. 118, 1] & in corpore unde sumitur, & per legem, meminimus, C. de legibus habetur [*Cod*. 6, 58 (57), 15]; & potissime moto casu, quo ex testamento non succeditur, igitur, etc., iuxta glossam 1. Gallus §. primo de liberis & postumis [*Dig*. 28, 2, 29]; veruntamen in his quae deferuntur filiis, ut filiis, etiam de iure antiquo, sola naturalis causa, patria semota potestate inspicienda est, ut D. de bonis libertorum 1, 2, §. fin. [*Dig*. 38, 2, 1 & 2] & l. libertinus, §. primo [*Dig*. 38, 2, 5] ; igitur moto casu, quo regnum defertur primogenito ut talis sola naturalis causa filiationis attendetur, semota civilitate & patria potestate per dictas leges" (*ed. cit*., 36). Terre Rouge here is right for the wrong reason. The Roman law does distinguish kinds of succession, such as of freedmen mentioned in the previous note, which are exempt from the usual laws of inheritance, but instead of being innovations they are actually archaic survivals (akin to the principle of tanistry found in primitive societies) which never gave way to the testamentary power of the paterfamilias that finally dominated the civil law. This has recently been shown by J. N. Lambert, "Le patronat et la succession romaine," *Revue historique de droit français et étranger*, 4e sér., 34 (1956), 479-512, who states in passing that Terre Rouge's argument that French royal succession is not hereditary but statutory (as at the beginning of this note) "n'est rien très exactement qu'une autre survivance de la même archaîque conception" (p. 510). I myself would hesitate to call Terre Rouge's argument a "survival" until I could show a line of transmission.

private law over to public law. Dismay may well have been the reaction of the skeptic, seeing here a French public law based upon a twisting of ideas in Roman private law, but for the many who believed in some historical attachment between the Roman and the French constitutions, Terre Rouge offered a satisfying theory that his nation had brought to consummation a principle of Nature which the Romans recognizd but had failed to give full expression to.

2. Primogeniture, in a certain sense, contradicts the right of filiation, since the latter is enjoyed by all children [p. 15] and not just the first-born son. Outside the civil law, of course, primogeniture is easily enough upheld, and, in a separate section entitled *De Iuribus Primogeniturae,* Terre Rouge gives full due to the scriptural and canonical sources.[16] When it comes to squaring primogeniture with filiational right within the terms of civil law, Terre Rouge reverts to his initial contrast between patrimonial succession and simple succession, and in particular to the question of alienation. In patrimonial successions, if the father should exercise his right to alienate his possessions, the co-dominion which the son had had in those things would be terminated *de facto;* but in the realm of France, where the king cannot alienate any part of his domain, it is obvious that the son's dominion cannot be preempted *de facto.* Therefore, while the father lives, "the first-born son holds much more full and solid administration in the kingdom than children hold in patrimonial things of the father."[17] To put it briefly, the sum of many such arguments as this used by Terre Rouge can be reduced to a simple sophism: if the father in a "simple succession" cannot end the son's condominium on a *de facto* basis, then the son must possess that condominium *de iure*. To the unsympathetic reader it might seem as though the father had engendered a little monster whom he is powerless to disable in any fashion from acquiring every part of the inheritance, even to the point of having to share the dominion with the son during his own lifetime. Primogenitary right thus joins filiational right as a "natural right" existing independently of the father's will. A true reversal of the ancient civil law notions results. Originally, the paternal power of the father was almost unlimited, and the son had dominion only *patris gratia.;* by the workings of French public law, on the other hand, the son enjoys unquestioned rights *naturali causa,* and the father is powerless to affect them.[18]

3. What I have given the label "seminally impressed force" is an argument which Terre

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[16] [44] These sources are referred to above, p. 8 and in n. 19; Terre Rouge cites them in Art. II [pt. 2, a subsection entitled “De iuribus primogeniturae],” concl. 1– 8 (ed. cit., 38-39). Terre Rouge never uses the term droit d'ainesse of feudal law, probably because it was not the custom in his part of France ; his citations of feudal law are all from the *Libri feudorum* and its commentaries.

[17] [45] Art. II, concl. 14 (ed. cit., 37). Contrast this statement supporting the dauphin with the statement in Art. I, concl. 13 (above, n. 39) which had shown that the father had less power in the realm than he had in the patrimony, since he could freely alienate the latter, etc.

[18] [46] The remote source of the growing freedom of the children may lie in a difference between the Roman and Lombardic rules of guardianship. The tutela of the Roman father over his children lasted all his life, whereas the mundium of the Langobard father lasted only until his children were capable of bearing arms ; see Villari, *Florentine history*, ed. cit., 393-394.

Rouge derived from the field of philosophy, based upon some assumptions about the procreation *of* human beings which he garnered from Artistotlc, via Thomas Aquinas, and set rorth in the following passage:

> The father and the son, granted that they may be differentiated, nevertheless have been supposed as one and the same species and nature--not in common (because each one is a man) but rather in the particular nature of the father. The conclusion follows, for according to the Philosopher, there is a kind of active force which impresses itself in the semen of man, derived from the soul of the progt;nitor, and from his remote parents, and such is the identity of the particular nature of the father and the son.[19]

This quasi-traducian idea has clearly great potential for a dynastic mysticism based on the magical quality of physical properites, and by being related to the semen instead of the blood this magical power would be especially fitted to French royal succession, which excludes women. Terre Rouge was not too inclined towards thaumaturgy, however, and so he did not develop the "seminally impressed force" far along these lines.[20] But one does find it operating at the junctures where he appeals to "nature" to explain a certain principle within the civil law, or to "nature" to justify some alteration of the civil law wrought in time. In the context just quoted, the seminally impressed force gives reason to the practice of co-administration of father and son. But in the passage explaining the basis of [p. 16] filiational right, the "cause of natural filiation" is a thinly disguised seminally impressed force. In several places Terre Rouge refers to the Dauphin's "constituted right" (*ius formatum*) to the crown,[21] an elusive concept until viewed as

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[19][47] "Pater & filius, licet distinguantur, supposito tamen unum idem sunt specie & natura nedum communi (quia uterque homo) sed etiam in natura particulari patris. Probatur conclusio, nam secundum Philoso. in semine hominis est quaedam vis impressiva, activa, derivata ab anima generantis, & a suis remotis parentibus, & sic est identitas particularis naturae patris & filii, ut haec habentur & notantur per sanctum Thom. in l. parte, quaest. ult. artic. 1."; Art. II, concl. 1 (ed. cit., 35). See Aristotle, *De generatione animalium*, IV, 3 (767a-768b), and Aquinas, *Summa theologica*, qu. 119, art. 2 (ed. Benziger Bros. [New York, 1947], 1, 456). I have not tried to trace the transmission of this idea, but it will be found verbatim as in Terre Rouge (and probably lifted from him), in the treatise of Guillaume Benedicti (ca. 1500), *Rep. in cap. Raynutius*, "Mortuo itaque Testatore ii," § 35 (ed. cit., 2, 113v), but also embellished with additional notions from Aristotle, as in this passage (*ibid.*, §§23-24, ed. cit. 2, 113v) : "Tales enim scilicet sui [as in sui heredes, or suitas--see below, n. 83], portio sunt paterni corporis transfusa in liberorum procreationem, ex quo dicit Philosophicus in v. & vi. Ethic. quod filius est aliquid patris...[Pater] praebet formam in procreatione filii, & mater praebet materiam, secundum Philosophum in ii de generatione animalium. Or [sic] certum est, quod forma est, quae dat esse rei & substantiam...ideo quia pater praebet formam, quae nobilior est, filius eum eo censetur esse idem." To complete the list of authorities Benedicti uses, this passage should also be cited: "ut Galenus ait, sperma hominia est velut fidas ad ceram, id est instrumentum ad materiam circa se coagulandam" (*loc. cit.*). "Fidas" probably should be read "Phidias," whom Galen used in a simile when comparing the role of the semen in the generation of humans to the artificer molding a wax figure; cf. *De naturaIibus facultatibus*, II, iii (*Opera Galeni* [Basel, 1542], I, 1059-1060).

[20] [48] Of the older apparatus of sacral kingship, Terre Rouge cites only once in his text the divine approbation of the French monarchy which was expressed by the heaven-sent balm used for the royal consecration (above, n. 4); see Art. I, concl. 13 (ed. cit., 31), but also at some length in the prologue which is found only in the first edition of 1526.

[21] [49] See Art. III, concl. 1 and 2 (ed. cit., 40). Speaking of the "rights to the thing," as it were, it will be appropriate to cite a little-known source contemporary to Terre Rouge, which has ideas very similar to his : "Examen

another transmogrification of the seminally impressed force. It would not do to exaggerate these symptoms of dynastic theory in Terre Rouge's thought, but they provide enough evidence to temper the impression given at the outset of his treatise that he was a believer in limited monarchv.

At the end of the first article, which had proven the king's inability to regulate the succession, Terre Rouge said:

> Certainly the disposition of kings and princes belongs to the people, and so in this matter [i.e., succession] it belongs to .the ,status of tl:e realm and of the republic. etc.; for the kmg is not permitted to change those things which are ordinary to the public status of the realm.[22]

But at the end of the fourth and last article, after having shown the unblockable right of the Dauphin to the crown, Terre Rouge says:

> When any king is impaired from ruling by madness or any other reason, not the pope or the three estates or the civil or mystical body of the realm can give another person the coadjutorial power, or constitute a governor to rule the kingdom, while there is alive the first-born son nor impede him in any way.[23]

For all the difference in the mood of the two statements, they are not logically incompatible. One should think in terms of temporal sequence. The Estates have an original right to determine the law of succession, and at some time in the past they approved the custom of primogenitary succession. But by the very nature of the custom so established, the Estates abdicated their actual control over the succession to the series of first-born sons (or cognate heirs) of the descendants of the first king. The right of the Estates, therefore, becomes purely contingent, and will never again be realized unless the entire male Capetian lines dies out. As

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de la question si le Duc de Bourgogne pourroit faire sa paix parficulière avec le Roy de France," in Dom Urbain Plancher, *Histoire de Bourgogne*, Preuves, no. cxxii (ed. Dijon, 1781: 4, clvii): "Non tamen potuit eum privare jure sibi succedendi, omissa ordinaria pena, quia sicut ipsi regi in regno erat jus quesitum ad rem, quod quidem jus non pendet ex voluntate vel ordinacione patris sicuat in privata persona quae potest sibi instituere heredem extraneum relicto legitimo filio, sed totum regnum si tanquam primogenito defertur legitima, quia regnum & ius indivisibile quod non potest in partes partiri filio erat jus quesitum ad rem quo jure non potest eum pater privare quia non habet ab ipso patre, sed a consuetudine regni, sicut Beneficiatus [qui] habet jus quesitum in re, non potest privare expectantem qui habet jus ad rem."

[22] [50] "Caeterum regum & principum dispositio pertinet ad populum, & ita in hoc pertinet ad stature regni & reipublicae, ergo, etc; nam regni non licet immutare ea quae ad stature publicum regni sunt ordinaria." Art. I, concl. 24 (ed. cit., 34)--cf. the quote from the same section above, n. 39.

[23] [51] Art. IV, "Quinta conclusio, quod rege aliquo per dementiam, aut aliter regere impedito, Papa, aut tres status, sive corpus civile, seu misticum regni alium non potest coadiutorem dare, ant gubernatorem constituere ad regni regimen primogenito existante, vel aliquantenus impedire" (*ed. cit.*, 44). A few lines later (concl. 8) he says "quod rege regere impedito carenti primogenito, & alio successore legitimo non potest accipi coadjutor," which is one of the very few places where Terre Rouge makes allusion to other than a son as successor; another is in n. 37 above, and a third in the next note. The allusion to the Pope's possible right to deal with French rulership seems to refer to *Decretum* c. 3, C.XV, qu. 6–see above, n. 13.

long as they continue to propagate, the Capets enjoy an imprescriptable right to the throne.[24] An analogy might be drawn with the Roman *lex regia.* As the imperialist party viewed it, anyway, the Roman people had surrendered rulership to the series of emperors perpetually and it need never be renewed. The sovereignty of the Roman people was just a sentimental memory. The French Estates, by implications drawn from Terre Rouge's argument, held a comparable position, save that they stood a chance to recover authority since their grant had been limited to a single family, which might perchance die out, while the Roman people's grant was irrevocable, having been made not to a series of mortals but to an abstraction of authority, the Imperial Dignity, which never died. (This may help explain, at least in a negative fashion, why the French dwelt much less upon the royal dignity than upon the person of the king as the embodiment of authority.)

Terre Rouge's politics might be summarized in this way: while in no way a partisan of popular sovereignty, he was in some ways a devotee of constitutionalism–at least the kind of medieval constitutionalism which viewed kings as having power within and not above some great order of things that came into being by a god-inspired popular acclamation, Andre Lemaire quite rightly has placed Terre Rouge as a forerunner of the traditionalist school of political thought in the sixteenth century, although it is difficult to trace the influence of Terre Rouge's ideas from 1418, when composed, until 1526 when first put in print. A very clear echo of Terre Rouge's ideas is found in a mid-fifteenth-century treatise by Jean Juvénal des Ursins, who argues that [p. 17] "the male heirs of the blood are necessary" and cannot be blocked by the king, who has only a kind of "administration and usage during his lifetime," and that the king's son must be "reputed and deemed as Seigneur," [25] The manuscript of Terre Rouge was in the hands of the Toulousan lawyer Guillaume Benedicti, around 1500, and he quoted from it copiously in his own

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[24] [52] But if the last legitimate ruler should somehow be incapable of ruling, the Estates would also name an administrator: "rege superiorem non recognoscente, regere impedito si non successit et filius consanguineusve, seu successor ad quem regimen pertineret, & propterea locus esset provisioni de administratore faciendo, quod hoc casu provisio facienda imcumbere tribus statibus regni, quorum status superiorem non recognoscit, non autem ad Papam vel alterum"; Tract II, Art. I, concl. 7 (ed. cit., 46). This clearly establishes king and Estates both as sovereign, according to the traditional mark of "not recognizing a superior" but only one at a time. Cf. this statement: "si alicui regi superiorem non recognoscenti dandus esset coadjutor, illius consumptio & institutio pertineret ad tres status regni, quos [sic] superiores non habet [sic] ;" Art. IV, concl. 9 (ed. cit., 44). Regarding the translation of this thorny last line, see my "French Estates," 161, n. 2.

[25] [53] Car au regard de la couronne et du Royaume, les heritiers masles du sang sont neeessaires et ne peut le Roy preiudicier à son heritier descendant de sa chair, ny aliener ou bailler le Royaume en autre main, que à celle de celuy auquel il doit venir par succession hereditaire. Tellement que s'il avoit fils, eomme au cas present, il ne pourroit faire qu'il ne fust Roy après luy. Et à proprement parler, le Roy n'y a qu'une maniere d'Administration, et Usage, pour en ioüyr sa vie durant taut seulement. Et quand il a fils, le fils durant la vie du pere, en est reputé et censé comme Seigneur: Et le luy peut le Roy son pere, ny autre, abdiquer ou oster ce Droict." Bib. Nat. ms. fr. n.a. 741, pp., 25-26, quoted by G. Péré, *Le sacre et le couronnement des rois de France*, (Bagnères-de-Bigorre, 1921), 126.; also printed as an appendix to Jean Juvénal des Ursins, Histoire de Charles VI, ed. Godefroy (Paris, 1653), 695. This manuscript is an eighteenth-century copy, without the title, of an original fifteenth-century manuscript "Traictie compendieux de la querelle de France contre les anglois fait par tres reverend pere en dieu monseigneur Jehan Juvenal des Ursins", Bib. Nat. ms. fr. 17,512.

works.[26] After the *editio princeps* of Terre Rouge's treatise itself in 1526, however, its ideas were common coinage. Especially widespread became the fundamental distinction between hereditary succession and simple succession. It has been identified in the works of Grassaille, Du Moulin, L'Hospital, Belloy, Bodin, Hotman, Coquille, L'Hommeau, Loyseau, Joly, Le Bret, and Dupuy, which makes it well-nigh universal.[27] Few important parts of the fundamental law can be so clearly traced back to a single source. In Terre Rouge's view of customary law–a truly medieval view–the ultimate norms never lie in statutory enactments, but are found always in natural law and divine law, which custom reflects. Within a century of his time, however, the rightness of law had begun to shift to new grounds. Rather than finding its roots in Heaven, as it were, it began to find them in History. Specific historical expressions of French customs began to be searched out and venerated as monuments of the country's peculiar greatness. Frequently this meant that some variety of statute law acquired a unique importance that would never before have been accorded it. In the older view, positive law was distinctly below and posterior to customary law; in the newer view, the very origin of custom might be explained by some statutory enactment. A truly historicist explanation of the French constitution would not be arrived at for centuries, of course, but the search for a national historical past certainly had begun by the late fifteenth century. It is this movement which accounts for the appearance of the singularly French rule of royal succession: the Salic Law.

[End of quotation of *Juristic Basis*]

§3. The edition by Jean Barbey.

The task of editing Terrevermeille's work that I promised in 1961 (see above, at the end of note 6) was carried out in full in 1979 by Jean Barbey in his Thèse d'Histoire du Droit entitled *Les tractatus de Jean de Terre Vermeille* (Paris II, 1979).[28] The thesis has two volumes, the second of them containing the edited text of the *Tractatus.* Only the first volume saw print, however, in the 1983 publication of Barbey's work under the title *Le fonction royal, essence et*

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[26] [54] *Rep. in cap. Raynutius*, "Mortuo itaque Testatore ii" § 50 (ed. Lyon, I575: 2, 115); "In eodem testamento relinquens i," § 153 (*ed. cit.*, 1,196) ; and passim. Cf. above, n. 47.

[27] [55] La Perrière, *Droit de succession*, 103–09, alleges passages from most of these authors in order to prove that "le système coordonné par Jean de Terre-Rouge fut repris et définitivement reçu par les théoriciens de la royauté," and that "à travers les siècles, depuis Jean de Terre Rouge, qui, le premier codifia la coutume établie, le principe que nous étudions s'est perpétué en s'affermissant." La Perrière labels this "principle" La loi de s*ubstitution immémoriale* (Chap. 5), but exactly on this issue of extension of right of succession to distant lines Terre Rouge was weak (see above, nos. 45 & 51), and the major French arguments for this came from sources of feudal custom which Terre Rouge simply ignored or from concepts derived from civil law by jurists after Terre Rouge's time (see below, § 6). In discussing below "fundamental law" [§ 7], it will be made fairly precise just what was the extent of Terre Rouge's influence on sixteenth-century théoriciens de la royauté.

[28] See "Thèses soutenues en 1979", in *Revue d'histoire de droit français et étranger*, 50 (1980), 167.

légitimité d'après les TRACTATUS de Jean de Terrevermeille.[29] I examined that second volume in the library of the École de Droit on rue Cujas (where presumably it can still be consulted), but, not having in hand just then the typescript of the *Tractatus* I had made 25 years earlier, I could not make a close comparison of Barbey's version with mine. Although there should be no paleographical differences between them–no manuscript exists, so the 1526 printing is authoritative–there are sure to be variations in identifying the close to 1,500 legal sources adduced by Terrevermeille, all of them cited in the cribbed, incipit style of reference practiced in the middle ages but not commonly understood in modern times.[30]

The scholarly merit of *La fonction royale* is attested by its having more than 2,000 footnotes in its 400 pages. Hundreds of those notes, however, send the reader to the text of the *Tractatus* which was not published. One can now consult a digital reproduction of the 1526 edition of the *Tractatus* on the website of the Bibliothèque Nationale, but that is not at all an easy way to locate passages which Barbey cites according to the formula "tract / article / conclusion". Since I have also utilized that formula (to be explained a few paragraphs below) in my labeling of the paragraphs in the 1526 edition of Terre Vermeille's *Tractatus*, readers of *La fonction royale* would be well served to have in hand this digital edition of that document, wherein one can locate in a thrice an edited version of every citation by Barbey of a source in Terre Vermeille work – citations which, up to now, have been basically unfathomable.

The term "*La fonction royale*", chosen by Barbey as the title for the published version of his dissertation, suggests that Terrevermeille's work deals with duties inherent to the royal office. But none of the three tractates provide dicta about how a king should conduct himself. What Barbey wants to convey by "la fonction royale" is consonant, however, with a statement about Terrevermeille made by François Olivier-Martin. After giving a succinct resumé of the first of the three tracts of the *Tractatus* of "Terre-Vermeille" [sic], which spells out the Dauphin's inexorable right to succeed his father, Olivier-Martin remarks:

> Telle est en substance la théorie que les juristes modernes ont appelée la théorie statutaire. Elle est remarquablement ferme et logique et a sa racine dans l'idée que *la royauté est une fonction*, dont le roi a, selon l'expression de Juvénal des

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[29] In her preface to the printed volume, Professor Marguerite Boulet-Sautel states that Barbey hoped soon to have "les moyens financiers de publier l'édition scientifique des Tractatus." While I cannot forbear noting irony in the failure of the publisher, Nouvelles Editions Latines, to print Barbey's *nouvelle edition latine* of Terrevermeille, I have to wonder whether I would have had any better luck if I had finished my typewritten edition and tried to be get it published. But it's a different world now, where digital versions of texts can be put on the world wide web for a pittance.

[30] The precise number of 1,453 citations of law I give here (which includes both civil and canon law compilations, along with commentaries upon them) is taken from Barbey's list of "Sources Juridiques" in *La fonction royale*, 409-410. Jean Imbert (who had participated in Barbey's thesis exam), in his review of the book (Revue historique de droit français et étranger, 62 [1984], 647-48), lamented the loss of "les remarquables statistiques des sources utilisées par les *Tractatus*" in the 370 pages of the unpublished second volume.

Ursins, "une manière d'administration et d'usage dont il jouit sa vie durant, mais qu'il n'a pas la propriété."[31]

The phrase I have italicized may well be the source for the title *"*La fonction royale",[32] and when Barbey says, on one occasion, that the king "pour exercer sa fonction...s'ínscrit-il dans *une condition statutaire* [my italics] commensurée à son action et déterminant l'essence même de son pouvoir,"[33] he seems to be in tune with what Olivier-Martin calls "la théorie statutaire". But the "statutory theory" ascribed to jurists at large is not the same thing as the "statutory condition" described by Barbey.

The "statutory theory" has to do with succession to the crown, as set forth in the first Tractate; the "statutory condition" deals with the need for subjects to be unqualifiedly loyal to the legitimate monarch, as expounded in the third Tractate. In my article on "The French Estates and the *Corpus Mysticum Regni*" I had juxtaposed the first and third Tractates to illustrate how (as said above) Terrevermeille vacillated between representational and authoritarian modes of governance. In my reckoning, the constraints put upon the royal power in the first tractate (such as inalienability of the crown and the impuissance of the king to disinherit his eldest son), combined with the role assigned to the three estates (especially that of denominating a new ruling family if the extant dynasty failed to produce agnatic lineage), gave Terrevermeille status as a forecaster of constitutional monarchy. In the third tractate, by contrast, the spirit of absolutism pervades Terrevermeille's call for members of the *corpus mysticum regni* (i.e., subjects) to give obeisance to the *caput mysticum*, the king–or, in the case at hand, the king's eldest son.

In the preface (what nowadays is fashionably called a *présentation*) to *La fonction royale,* Mme Boulet-Sautel commends me for dealing with the third Tractate, which up to then had been very little studied, but contends that I err in my belief that its conclusions are at odds with the arguments of the preceding Tractates –something, she says, that Jean Barbey believes he can show is not so.[34] To this she adds, a bit later on, that the *distorsion* between the role

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[31] Histoire du droit français des origines à la Révolution, (Paris, 1951), 310, a work cited by Barbey for other reasons (see next note). A more complete form of this quotation from Jean Juvénal des Ursins, and a precise documentation of its source, is given above in n. 26.

[32] In *La fonction royale*, p. 22, n.78, Barbey sends the reader to this page in Olivier-Martin's work as evidence of a modern author who preferred the name "Terrevermeille" rather than "Terre Rouge". Worth noting, perhaps, is that Olivier-Martin's odd form of the splitting the family name into two words–i.e, "Terre-Vermeille", as I have made special note of–was also used by Barbey in the thesis form of his work, cited above at n. 29.

[33] *La fonction royale,* 267. Note too the use of the word "essence", which is part of the extended title of the book (cited above in the text at note 30).

[34] "Le contenu du dernier Traité avait été laissé de coté jusqu'à un historien américain–R. E. Giesey–voici une vingtaine d'années, appelât sur lui l'attention du monde savant, avançant que ses conclusions paraissaient en

assigned to the Estates in Tract I and the exaltation of royal power in Tract III led me to hypothesize an *évolution* in Terrevermeille's reasoning. Contrariwise (she says) Jean Barbey deemed it better to revise the interpretation of the third tract and establish is as the context within which to read and understand the first tract. *Bref*, one should read the three tractates in reverse order –and that is indeed how Barbey analyzed Terrevermeille's political and ideological views in *La fonction royale*.

The second half (i.e., "Deuxième Partie"[35]) of *La fonction royale* has two chapters, the first of them entitled "Corpus mysticum sive politicum regni". Almost all of it is devoted to the articles of Tractate III, which establishes the authority of the head of the mystical body, to whom the subjects owe unswerving reverence and obedience. The end of this chapter deals with Tractate II, the rebellion of the Duke of Burgundy. After that--on the 269th page of Barbey's monograph--comes chapter II of the second part, where we finally begin to examine closely Tractate I, on the rights of the Dauphin.

In the past I have remarked in print (but cannot now recall just where) that I was unpersuaded by Barbey's arguments that the political orientations of Tractates I and III are complimentary. The edition of the Tractates being produced here is the ideal place to expand upon my belief in the incoherence of its three units, but there are good reasons to postpone doing so. The highest priority at this time is the posting an edition of Terrevermeille's work. Especially important is making available the third Tractate, which was suppressed by François Hotman, god father of the the *monarchomachs*, in his editions of the 1580s. Writing 500 years later, Barbey has taken his stance in the ranks of the *monarchophiles* by making *Tractatus III* the centerpiece of *la fonction royale* and extolling the role of the head of the mystical body of the kingdom.[36]

A second reason to postpone further commentary on Terrevermeille's three tracts is to repair a serious deficiency in the study of them up to now. Neither Barbey nor I, the two authors of our time who have prepared (although not published) editions of the *Tractatus*, have not paid attention to the commentary on it by its first editor, almost half a millenium ago. Amends for that dereliction are in order.

§4. Jacques Bonaudi de Sauset

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désaccord avec les analyses de Traités précédents. Jean Barbey croit pouvoir affirmer qu'il n'en est rien." *La fonction royale*, Preface, p. II.

[35] The *Première Partie* has a chapter on Terrevermeille's life and deeds, and a chapter on the language, sources, and earlier editions of the *Tractatus*.

[36] If and when I ever do undertake a full critique of Barbey's work, a major issue will be his use of the concept of the mystical body of the kingdom. The major scholarly work on the subject is Ernst H. Kantorowicz, *The King's Two Bodies* (1957), but it gets scant treatment by Barbey (I find just five citations of it in the footnotes for pp. 157-268 where that subject is featured.) Above all, it needs to be stressed that *corpus mysticum* is a legal fiction, not an ontological entity.

In his 1585 and 1586 editions of Terrevermeille work, François Hotman not only did not include Tractatus III (whether because it was too strongly *monarchophilic* or was too weakly relevant for his purposes, it matters little) but also omitted reference to Jacques Bonaudi's earlier edition.[37] I worked for several years editing one of the Hotman editions before I ever saw the 1526 publication and learned of Bonaudi's work. I was overwhelmed to discovered in it the massive Tractatus III, which induced me to abandon Terrevermeille; now, having returned to the task and prepared a digital version of the entire work, I am overawed by the size of Bonaudi's editorial efforts.

Of its 110 folios (i.e., 220 pages) of text, only 55% (or thereabouts) of the *Tractatus* is devoted to Terrevermeille's work; the other 45% is consumed by Bonaudi's *postilla* (marginal annotation[38]), but when one adds to this Bonaudi's 9-folio (i.e., 18-page) analytical index to Terrevermeille's text (oddly put at the beginning of the book), plus his own *Paneyricus* of the French monarchy (5½-folios–i.e. 11-pages) at the end of the volume, Bonaudi is the more verbose of the two authors.

The sixteenth century is critical for the development of public law notions in France, and Terrevermeille's work attained a significant place in that development. I have the vague recollection of having seen a few references to Bonaudi in the works of renaissance jurists, but in modern times the historians of France (myself included) have been woefully neglectful in weighing the efforts of Jacques Bonaudi.

The first step in rehabilitating Bonaudi's work has been taken in the course of posting the text of Terrevermeille's *Tractatus* in this website. The text of Bonaudi's glosses has not (yet) been transcribed in digital form, but a graphic image of the entire folio (or several folios) on which a given marginal gloss is found (or at least begins) has been hyperlinked to the place in the digital text where the gloss begins, and its text highlighted in orange. A single click brings forth a complete gloss, divorced by dint of its color from everything else on the folio. Quite often a gloss runs more than one page; occasionally the continuation of a gloss consumes a subsequent page entirely; and on one occasion a gloss runs over 3 folios, recto and verso (see below, the gloss on "et ex sola vi constitutionis" in §1.1.8). Graphic images of the entire

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[37] The online catalogue of the Bibliothèque Nationale de France connects Bonaudi with the Hotman editions in a deceptive fashion: when one clicks "Rechercher" for "Bonaudi" all three 16th-century editions appear. Whether the BnF website manager knew that Hotman's Terrevermeille had to have been derived from Bonaudi's edition and thought they were identical, or that Terrevermeille and Bonaudi have simply become bonded in the digital age by virtue of the latter's having rescued the former from authorial oblivion and exempted himself from such a fate by the singular act of publishing the *Tractatus*.

[38] Postilla is a medieval Latin term meaning marginal note, whence *apostil* in modern English. Bonaudi preferred *postilla* to *glossa* (a term he used occasionally), but I choose instead to use regularly the word "gloss", because it is more common.

Tractatus are now online in the BnF website, but even if that set had been reproduced correctly (which it was not, as we shall see in the next section of this introduction) it would test one's patience to have to use it to disengage Bonaudi's work from Terreveremeille's.[39]

The next step in rehabilitating Bonaudi, to make a digital transcription of his work, though not difficult to do will be very time-consuming. It will emancipate Bonaudi from the Gothic character of the 1526 imprint, as well as do away with the handful of abbreviate forms, once common in medieval paleography, that survived in the early years of the printing press. At that point, the *Tractatus III* would achieve the stylish format of the 1580s printings of the first and second *Tractatus*.

The third step will be to edit Bonaudi's work, not only his gloss on Terrevermeille but also his own *Panegyricus.* That will bring his work up to the scholarly level in which Terrevermeille's *Tractatus* has been presented on this website. Then, and only then, will one be able to see Terrevermeille through Bonaudi's eyes. That may not turn out to be very exciting, and the only consolation lie in having been faithful to the standards of the *métier*; but just as well one might find Bonaudi's opinions worthy of the ultimate honor, the final step, of translation into the vernacular. Personally, I think that should be done in French, although I translated the first two articles of *Tractatus I* into English a long time ago and have posted them separately, as the first item in the *Addenda et Corrigenda*.

§5. The *Tractatus* of 1526

No manuscript of Terrevermeille's *Tractatus* has ever been found, nor would we suspect that there ever existed a copy of the work other than the authorial holograph were it not for a certain anomaly in the printed text edited by Jaques Bonaudi in 1526. The last words of the Prologue tells us that "in ***tres*** tractatus...hoc opusculum arbitror dividendum"[40], but near the end of the work he refers the reader (three times, closely upon one another) to something he had said earlier "in hoc ***quarto*** tractatu."[41] We need not presume that that connotes the existence of two complete drafts. The preface itself could originally have been called Tractate I, and the whole work composed as a collection of four tracts, but Terrevermeille then to have decided to convert Tractate I into a preface (its literary character is quite different from the rest of the work). By

[39] I have a life-sized photographic print of the Bonaudi edition (see Kantorowicz's letter to me on 21 Jan 58, in "Letters, Eka to REG" in the *Ekaica* section of this website), made from the microfilm of the work which I purchased from the BnF in 1957, so I am not dependant upon the BnF's poorly executed reproduction of it; but still it is ridiculously time consuming to disengage Bonaudi's commentaries.

[40] See below, text of the Prologue at §Pref.15.

[41] See below, Tract III at §3.5.6, §3.5.11 and §3.6.1,21.

the use of marginal notes conveying additions and corrections, the four-tract work could have been converted easily into a three-tract collection with a preface–although flawed by the author's forgetting to modify his original references to a fourth tractate.

The text of the Tractates has a hierarchical structure, At the top is the cardinal issue to be considered in a given Tract: in Tract I, the Dauphin's rights; in Tract II, Burgundy's rebellion; in Tract III, loyalist resistance. On the next level down, each of these cardinal issues is examined in a series of "Articles": Tract I has 4 of them, Tract II has 3, and Tract III has 10. On the next level down, each "Article" is alloted a certain number of "Conclusions" (from 3 to 20 or more, per article), which typically begin with a sentence containing a basic truth, stated in lapidary fashion, followed by proofs garnered from law and scripture. With few exceptions, it is from the opening sentences of the conclusions that the abbreviated English translation (on the top lines of every page) has been made – not done necessarily word for word, but rather just to keep the reader informed of the flow of the argument.

Knowledge of Latin will still be required to read the full text of "Conclusions", in the bottom portion of every page, but I have enhanced Terrevermeille's text by interposing lots of editorial information – put in brackets, in smaller font, and highlighted in orange – that will allow every reader to see at a glance the sources used to prove a point. I have also bothered to underline certain phrases that should be disregarded by those who can read Latin but do not the conventional form of citing juristic sources in medieval times. I refer to the abbreviations of legal sources according to their incipits, as for example this very first legal citation in Tract 1, Article 1, Conclusion 1 (i.e., §1.1.1):

instit. de rer. divis. in prin. & §. seq. [*Inst.,* 2,1] & l. i. ff. illo titul. [*Dig.,* 1,1].

After each of the medieval style of allegation, underlined here, I have put the modern Roman law location, highlighted.[42]

The expression just used in parenthesis, "i.e., §1.1.1" introduces the system I have adopted to identify the paragraphs in *Tractatus;* it is simply a numerological mimicking of the authors own division of the work into Tracts, Articles, and Conclusions. There is just one case in the three tractates where an Article is not expostulated in terms of Conclusions: Tract 3, Article 8. It does have a series of sections on the next level down – §3.8.l, §3.8.2, etc. – but that third level of argument, rather than designating a series of Conclusions, is just a division into paragraphs I made – simply for editorial convenience -- of what amounts to an essay which enquires (as said in its title, §3.8.0) whether failure of French subjects to resist Anglo-Burgundian aggression constituted infidelity and treason. Like the text of the Prologue, §3.8 differs from all the rest of the *Tractatus* in terms of its literary genre, and this has made me ponder whether it was involved in some fashion with the change from a four-tract to three-tract

[42] This example also has the totally artificial device "ff" used in olden times to designate the Digest, which was kept in the 1526 edition but changed to a "D" in the 1580s ones.

format that we discussed earlier.

Terrevermeille's references "in hoc quarto tractatu", which occurred in §3.5 and §3.6, imply the existence of a "tract", already written, that he must have decided later on should be removed. He could well have made the decision very soon afterwards, if, when he finished §3.7 he realized that the piece on loyalist resistance he already written and labeled as a separate tract would suit very well the arguments he was making in his "fourth" tractate. That that sometime tractate did not utilize the Conclusion format was counterbalanced by the fact that in the first place it was too brief to have qualified for status as a tractate. One marginal note dictating that the text of the earlier "tract" should be moved into the §3.8 slot was all it would have taken to reduce his opus from four to just three tracts. He would remember to change one word in the Prologue's last sentence – read *tres*. rather than *quattuor* for the number of tractates – but fail to recall that similar changes were needed in §3.5 and §3.6.

As a coda for this introduction, it bears iterating that this edition of the *Tractatus* is a work in progress, and that queries, comments and corrections by readers are welcome at **info@regiesey.com** The authors of communications that lead to substantive change in my text will be acknowledged by name in the "Addenda et Corrigenda" (listed on the Terrevermeille homepage of this website). Readers returning to this website should check that list for additions or corrections made since an earlier visit. Some sections of the edition will surely expand over time; new text on a given page will force old text on to the next page; for work in progress, therefore, reference to page location is self-defeating. For that reason, I have not paginated this early draft of the text of the *Tractatus*. The proper sequence of its arguments will be maintained instead by the numerical order of paragraphs according to tract, article, and conclusion.