

GIORGIO AGAMBEN

TRANSLATED BY ADAM KOTSKO

*The Highest Poverty*MONASTIC RULES
AND FORM-OF-LIFE

THE HIGHEST POVERTY

M E R I D I A N

Crossing Aesthetics

Werner Hamacher

Editor

Translated by Adam Kotsko

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THE HIGHEST POVERTY

Monastic Rules and Form-of-Life

Giorgio Agamben

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Translator's Note

Where English translations are available, works are cited according to the page number of the original text, followed by the page number of the translation (where applicable), or else by a standard textual division that is consistent across translations and editions. All translations from the Bible are based on the New Revised Standard Version. Translations have been frequently altered throughout for greater conformity with Agamben's usage. Where no English translation is listed in the bibliography, the translations are my own. Where the main text is a close paraphrase of a Latin quotation or where Agamben's purpose in quoting a Latin text is simply to demonstrate the presence of a particular term or phrase in that text, I have often opted not to provide an English translation in order to avoid redundancy.

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Preface

The object of this study is the attempt—by means of an investigation of the exemplary case of monasticism—to construct a form-of-life, that is to say, a life that is linked so closely to its form that it proves to be inseparable from it. It is from this perspective that the study is confronted first of all with the problem of the relationship between rule and life, which defines the apparatus through which the monks attempted to realize their ideal of a communal form of life. What is at stake is not so much—or not only—the task of investigating the imposing mass of punctilious precepts and ascetic techniques, of cloisters and *horologia*, of solitary temptations and choral liturgies, of fraternal exhortations and ferocious punishments through which cenoby constituted itself as a “regular life” in order to achieve salvation from sin and from the world. Rather, it is first of all a matter of understanding the dialectic that thus comes to be established between the two terms *rule* and *life*. This dialectic is indeed so dense and complex that, in the eyes of modern scholars, it seems to resolve itself at times into a perfect identity: *vita vel regula* (“life or rule”), according to the preamble of the *Rule of the Fathers*, or in the words of Francis’s *Regula non bullata, haec est regula et vita fratrum minorum . . .* (“The rule and life of the Friars Minor is this . . .”). Here it is preferable, however, to leave to the *vel* and the *et* all their semantic ambiguity, in order instead to look at the monastery as a field of forces run through

by two intensities that are opposed and, at the same time, intertwined. In their reciprocal tension something new and unheard-of, that is, a form-of-life, has persistently approached its very realization and has just as persistently missed it. The great novelty of monasticism is not the confusion of life and norm or a new declension of the relationship between fact and right. Rather, it is the identification of a level of consistency that is unthought and perhaps today unthinkable, which the syntagmas *vita vel regula*, *regula et vita*, *forma vivendi*, *forma vitae* sought laboriously to name, and in which both *rule* and *life* lose their familiar meaning in order to point in the direction of a third thing. Our task is precisely to bring this third thing to light.

In the course of this study, however, what has appeared to present an obstacle to the emergence and comprehension of this third thing is not so much the insistence on apparatuses that can appear to be juridical to modern people, like the vow and the profession. Rather, it is a phenomenon that is absolutely central in the history of the Church and opaque for modern people: the liturgy. The great temptation of the monks was not that which paintings of the Quattrocento have fixed in the seminude female figure and in the shapeless monsters that assail Antony in his hermitage, but the will to construct their life as a total and unceasing liturgy or Divine Office. Hence this study, which proposed initially to define form-of-life by means of the analysis of monasticism, has had to contend with the unforeseen and, at least in appearance, misleading and extraneous task of an archeology of duty [*ufficio*] (the results of which are published in a separate volume with the title *Opus Dei: An Archeology of Duty*).

Only a preliminary definition of this paradigm—which is at once ontological and practical, interwoven with being and acting, with the divine and the human, and which the Church has not stopped modeling and articulating in the course of its history, from the first, uncertain prescriptions of the *Apostolic Constitutions* up to the meticulous architecture of the *Rationale divinatorum officiorum* of William Durand of Mende (thirteenth century) and the calculated sobriety of the encyclical *Mediator Dei* (1947)—could

actually allow us to comprehend the experience, at once very near and remote, that was in question in form-of-life.

If the comprehension of the monastic form of life could be achieved only by means of a continuous opposition to the liturgical paradigm, what is perhaps the crucial test of the study could only be found, however, in the analysis of the spiritual movements of the twelfth and thirteenth centuries, which culminate in Franciscanism. Insofar as they situate their central experience no longer on the level of doctrine and law, but on the level of life, they appear from this perspective as the moment that was in every respect decisive in the history of monasticism, in which its strength and its weakness, its successes and its failings reached their greatest tension.

The book closes, therefore, with an interpretation of the message of Francis and of the Franciscan theory of poverty and use. On the one hand, a premature legend and an immense hagiographic literature have covered this theory over with the too-human mask of the *pazzus* and the fool or with the no-longer-human mask of a new Christ. On the other hand, an exegesis more attentive to the facts than to their theoretical implications has enclosed Francis's message in the confines of the history of law and of the Church. In one case as in the other, what remained untouched was perhaps the most precious legacy of Franciscanism, to which the West must return ever anew to contend with it as its undeferrable task: how to think a form-of-life, a human life entirely removed from the grasp of the law and a use of bodies and of the world that would never be substantiated into an appropriation. That is to say again: to think life as that which is never given as property but only as a common use.

Such a task will demand the elaboration of a theory of use—of which Western philosophy lacks even the most elementary principles—and, moving forward from that, a critique of the operative and governmental ontology that continues, under various disguises, to determine the destiny of the human species. This task remains reserved for the final volume of *Homo sacer*.

I. Rule and Life

§ 1 Birth of the Rule

1.1. The fourth and fifth centuries of the Christian era witnessed the birth of a peculiar literature that, at least at first glance, does not seem to have had precedents in the classical world: monastic rules. The set of texts that the tradition classifies under this rubric is, at least as concerns form and presentation, so diverse that the incipit of the manuscripts can only summarize them under very diverse titles: *vitae, vita vel regula, regula, horoi kata platos, peri tēs askēseōs tōn makariōn paterōn, instituta coenobiorum, praecepta, praecepta atque instituta, statuta patrum, ordo monasterii, historiae monachorum, askētikai diataxeis* . . . But even if we keep to the very narrow conception of the term that underlies the *Codex regularum*, in which Benedict of Aniane collected around twenty-five ancient rules at the beginning of the ninth century, the diversity of the texts could not be greater. This diversity appears not only as to dimensions (from the approximately three hundred pages of the *Regula magistri* to the few sheets of the rule of Augustine or of the second *Rule of the Fathers*), but as to presentation (questions and answers—*erotapokriseis*—between monks and master in Basil, an impersonal collection of precepts in Pachomius, verbal proceedings of a gathering of Fathers in the *Rule of the Four Fathers*). Above all, they are diverse in terms of content, which ranges from questions regarding the interpretation of Scripture or the spiritual edification of monks to the dry or meticulous

enunciation of precepts and prohibitions. These are not, at least at first glance, juridical works, even though they claim to regulate, often in fine detail and through precise sanctions, the life of a group of individuals. They are not historical narratives, even though at times they seem to simply transcribe the way of life and habits of the members of a community. They are not hagiographies, even though they are frequently mixed together with the life of the founding saint or Father to such a degree that they present themselves as recording it in the form of an *exemplum* or *forma vitae* (in this sense, Gregory Nazianzus could state that the life of Anthony written by Athanasius was “legislation [*nomothesia*] for the monastic life in narrative form [*en plasmati diēgēseōs*]”; Gregory Nazianzus, *Oration* 21). Although their ultimate goal is doubtless the salvation of the soul according to the precepts of the Gospel and the celebration of the Divine Office, the rules do not belong to ecclesiastical literature or practice, from which they distance themselves—not polemically but nonetheless firmly. They are not, finally, *hypomneumata* or ethical exercises, like those that Michel Foucault has analyzed from the late classical world. And yet their central preoccupation is precisely that of governing the life and customs of men, both singularly and collectively.

The present study intends to show how, in these texts that are at once dissimilar and monotonous, the reading of which seems so difficult to the modern reader, a transformation is carried out. This transformation—to an extent probably more decisive than in the juridical, ethical, ecclesiastical, or historical texts of the same era—collides with law as much as with ethics and politics. It also implies a radical reformulation of the very conceptuality that up until that moment articulated the relationship between human action and norm, “life” and “rule,” and without which the political and ethical-juridical rationality of modernity would be unthinkable. In this sense, the syntagmas *vita vel regula*, *regula et vita*, *regula vitae* are not simple hendiadyses. Rather, in the present study they define a field of historical and hermeneutical tensions which demands a rethinking of both concepts. What is a rule, if it seems to be mixed up with life without

remainder? And what is a human life, if it can no longer be distinguished from the rule?

1.2. The perfect comprehension of a phenomenon is its parody. In 1534, at the end of the *Vie très horrifique du grand Gargantua*, Rabelais recounts how Gargantua, in order to reward the monk with whom he has shared his unedifying undertakings, has an abbey constructed for him which was to be called Thélème. After having described in all the particulars the architectonic structure of the edifice (*en figure exagone, en telle façon que à chascun angle estoit bastie une grosse tour*, “hexagonal in shape in such a way that at each angle was built a stout round tower”; Rabelais, pp. 41/118), the arrangement of the accommodations, the style of the vestments of the Thelemites and their age, Rabelais explains *comment estoient reigléz leur manière de vivre*, “how they were regulated in their way of life,” in a form that is, by all evidence, nothing but a parody of monastic rule. As in every parody, it witnesses a point-by-point inversion of the monastic *cursum*, scrupulously articulated by the rhythm of the *horologia* and the Divine Office, in what seems, at least at first glance, to be an absolute lack of rules:

Et parce que ès religions de ce monde, tout est compassé, limité et reiglé par heures, feut decreté que là ne seroit horloge ny quadrant aulcun, mais selon les occasions et opportunitéz seroient toutes les œuvres dispensées ; car (disoit Gargantua) la plus vraye perte du temps qu’il sceust estoit de compter les heures—quel bien en vient-il?—et la plus grande resverie du monde estoit soy gouverner au son d’une cloche, et non au dicté de bon sens et entendement [And because in the monasteries of this world everything is compassed, limited, and regulated by hours, it was decreed that there should never be any clock or sundial whatever, but all works would be dispensed according to the occasions and opportunities; for, Gargantua used to say, the greatest waste of time he knew of was to count the hours—what good comes of that? And the greatest folly in the world was to govern oneself by the ring of a bell and not at the dictation of good sense and understanding]. (Rabelais, pp. 37/116–17)

Toute leur vie estoit employée non par loix ou reigles, mais selon leur vouloir et franc arbitre. Se levoient due lict quand bon leur sembloit, beuvoient, mangeoient, travailloient, dormoient quand le désir leur venoit ; nul le esveilleoit, nul ne les parforceoit ny à boire ny à manger ny à faire chose aultre quelconque. Ainsi l'avoit estably Gargantua. En leur reigle n'estoit que ceste clause : *FAY CE QUE VOULDRAS* [All their life was laid out not by laws, statues, or rules but according to their will and free choice. They got up out of bed when they saw fit, drank, ate, worked, slept when they came to feel like doing so; no one woke them up, no one forced them either to drink or to eat or to do anything else whatever. Thus Gargantua had established it. In their rule was only this clause: *DO WHAT YOU WILL*]. (Rabelais, pp. 60/127)

It has been said that Thélème “was the antimonastery” (Febvre, pp. 165/158). And yet if we look more closely, it is not simply a matter of an inversion of order into disorder and of rule into anomia. Even if contracted into only one sentence, a rule exists and has an author (*ainsi l'avoit estably Gargantua*, “thus Gargantua has established it”). And the end that it intends is, despite the point-by-point dismissal of every obligation and the unconditional liberty of each, perfectly homogenous with that of the monastic rule: “cenoby” (*koinos bios*, the common life), the perfection of a common life in all and for all (*unianimes in domo cum iocunditate habitare*, “live harmoniously in a house pleasantly,” as an ancient rule has it):

Par ceste liberté entrèrent en louable émulation de faire tous ce que à un seul voyoient plaire. Si quelqu'un ou quelcune disoit : “beuvons,” tous beuvoient; si disoit: “jouons,” tous jouoient; si disoit: “Allons à l'esbat ès champs,” tous y alloient [By this freedom they were all moved by laudable emulation to do what they saw a single one liked. If some man or woman said: “Let's drink,” they all drank; if one said: “Let's go play in the fields,” they all went]. (Rabelais, pp. 61/126)

The abbreviated formulation of the rule is not, however, an invention of Rabelais, but goes back to the author of one of the first monastic rules, and still further, to Augustine, who, in his

commentary on the First Epistle of John (7.4.8), had summarized the precept of the Christian life in the genuinely Gargantuan stipulation: *dilige et quod vis fac*, “love and do what you wish.” Moreover, it corresponds precisely with the way of life of those monks who were, according to a tradition inaugurated by Cassian, pejoratively named “Sarabaites” and whose sole rule was caprice and desire (*pro lege eis est desideriorum voluntas*). The Rabelaisian parody, though comical in appearance, is thus so serious that one can compare the episode of Thélème to the Franciscan foundation of a new type of order (Gilson, pp. 265–66): the common life, by identifying itself with the rule without remainder, abolishes and cancels it.

1.3. In 1785, in his cell in the prison of the Bastille, Donatien Alphonse de Sade, filling a roll of paper twelve meters long with a minute calligraphy in only twenty days, wrote what many consider his masterpiece: *Les 120 journées de Sodome* (*The 120 Days of Sodom*). The narrative frame is well known: on November 1 of an unspecified year at the end of the reign of Louis XIV, four powerful and rich libertines—the duke of Blangis, his brother the bishop, the president of Curval, and the financier Durcet—lock themselves away with forty-two victims in the castle of Silling in order to celebrate an orgy that would be without limits and yet perfectly and obsessively regulated. Here as well, the model is unequivocally the monastic rule. Yet while in Rabelais, the paradigm is evoked directly (Thélème is an abbey) in order to be precisely negated and reversed (no clocks, no divisions of time, no compulsory behavior), at Silling, which is a castle and not an abbey, the time is articulated according to a meticulous ritualism that recalls the unfailing *ordo* of the monastic Office. Immediately after having been locked up (indeed walled up) in the castle, the four friends write and promulgate the *règlements* (“statutes”) that must govern their new common life. Not only is every moment of the “cenoby” fixed beforehand as in the monastery—the sanctioned rhythms of waking and sleeping, the rigidly programmed collective meals and “celebrations”—but even the boys’ and girls’ defecation is subject to meticulous

regulation. *On se lèvera tous les jours à dix heures du matin, demande* the rule, parodying the scansion of the canonical hours, *à onze heures les amis se rendront dans l'appartement des jeune filles . . . de deux à trois heures on servira les deux premières tables . . . en sortant du souper, on passera dans le salon d'assemblée* (this is the *synaxis* or *collecta* or *conventus fratrum* of monastic terminology) *pour la célébration* (the same term that in the rules designates the Divine Offices) *de ce qu'on appelle les orgies . . .* ("the company shall rise every day at ten o'clock in the morning . . . at eleven o'clock, the friends shall repair to the quarters appointed for the little girls . . . from two to three the first two tables shall be served . . . the evening meal concluded, Messieurs shall pass into the salon for the celebration of what are to be called orgies"; pp. 41–43/241–46).

Corresponding to the *lectio* of Holy Scripture (or of the text of the rule itself, as in the *Regula magistri*) that accompanied the meals and the daily occupations of the monks in monasteries, one finds here the ritual narration that the four *historiennes*, la Duclos, la Champville, la Martaine, and la Desgranges, make of their depraved life. Corresponding to the unlimited obedience-unto-death of the monks toward the abbot and their superiors (*oboedientia praeceptum est regulae usque ad mortem*; Fructuosus, *Regula monastica communis*, chap. 5, p. 1115B), there is the absolute malleability of the victims to their masters, including extreme torture (*le moindre rire, ou le moindre manque d'attention ou respect ou de soumission dans les parties de débauche sera une des foutes les plus graves et les plus cruellement punies*, "the least display of mirth, or the least evidence given of disrespect or lack of submission during the debauched activities shall be deemed one of the gravest of faults and shall be one of the most cruelly punished"; Sade pp. 44/248—in the same sense, monastic rules punish laughter during gatherings: *Si vero aliquis depræhensus fuerit in risu . . . iubemus . . . omni flagello humilitatis coherceri*, "if someone is caught laughing or using scurrilous language . . . we order that he be chastised in the name of the Lord by every scourge of humility"; Vogüé 1, 1, pp. 202–4/31).

Here also then, as at Thélème, the cenobitic ideal is parodically maintained (indeed, exaggerated). But while life in the abbey,

making pleasure their rule, ended by abolishing it, at Silling the laws, in being identified at every point with life, can only destroy it. And while the monastic cenoby is conceived as lasting forever, here, after only five months, the four libertines, who have sacrificed the life of their objects of pleasure, hastily abandon the by now half-empty castle to return to Paris.

1.4. It can appear surprising that the monastic ideal, born as an individual and solitary flight from the world, should have given origin to a model of total communitarian life. Nevertheless, as soon as Pachomius resolutely put aside the anchorite model, the term *monasterium* was equivalent in use to cenoby and the etymology that refers to the solitary life was dismissed to such a point that, in the *Rule of the Master*, *monasteriale* can be put forward as a translation of cenobite, and is glossed as *militans sub regula vel abbate* (“serving under a rule and an abbot”; Vogüé 2, 1, pp. 328/105). The rule of Basil was already on guard against the perils and egotism of the solitary life, which “the doctrine of charity does not permit” (*machomenon tōi tēs agapēs nomōi*; Basil, *Regulae fusius tractatae*, chap. 7). “It is impossible, indeed,” adds Basil, “to rejoice with him who receives an honor or to sympathize with him who suffers when, by reason of their being separated from one another, each person cannot, in all likelihood, be kept informed about the affairs of his neighbor” (ibid.). In the community of life (*en tēi tēs zōēs koinoniai*), by contrast, the gift of each becomes common to those who live together with him (*sympoliteuomenōn*) and the activity (*energeia*) of the Holy Spirit in each is communicated to all the others (ibid.). On the contrary, “he who lives alone . . . and has, perhaps, one gift renders it ineffectual through inoperativity (*dia tēs argias*), since it lies buried within him (*katoryxas en eautōi*)” (ibid.). If to advise against solitude, “the desolation of the desert and the terror of various monsters” are invoked at the beginning of the *Rule of the Four Fathers*, immediately afterward cenoby is founded, through scriptural references, in the joy and unanimity of the common life: *volumus ergo fratres unianimes in domo cum iocunditate habitare* (“therefore we desire that

the brothers live harmoniously in a house pleasantly”; Vogüé I, I, pp. 182/17). The temporary suspension of common life (*excommunicatio*; *ibid.*, pp. 202/31) is the punishment par excellence, while leaving the monastery (*ex communione discedere*) is equivalent, in the *Regula Macharii*, to choosing the infernal darkness (*in exteriores ibunt tenebras*; Vogüé I, I, p. 386). Even in Theodore the Studite, cenoby is compared to paradise (*paradeisos tēs koinobiakēs zōēs*), and leaving it is equivalent to the sin of Adam. “My son,” he admonishes a monk who wants to retire to the solitary life, “how has Satan the Evil One driven you out of the paradise of the common life, precisely like Adam who was seduced by the counsel of the serpent?” (*Epistle* I, p. 938).

The theme of the common life had its paradigm in the Book of Acts, where the life of the apostles and of those who “devoted themselves to the apostles’ teaching” (Acts 2:42) is described in terms of “unanimity” and communism: “All who believed were together and had all things in common. . . . Day by day, as they persevered unanimously [*homothymadon*] in the temple, they broke bread at home and ate their food with glad and sincere hearts” (Acts 2:44–46); “the whole group of those who believed were of one heart and one soul, and no one claimed private ownership of any possessions, but everything they owned was held in common” (Acts 4:32). It is in reference to this ideal that Augustine’s rule defines as the first goal of the monastic life “that you dwell in unity in the house, and that you have but one soul and one heart in God” (*primum propter quod in unum estis congregati, ut unanimes habitetis in domo et sit vobis anima una et cor unum in Deo*; Augustine, *Regula ad servos Dei*, pp. 1377/17). And Jerome, who in 404 translated the rule of Pachomius from a Greek version, in an epistle refers explicitly to the Coptic term that, in the original, defined those who lived in community: *coenobitae, quod illi “sauses” gentili lingua vocant, nos “in commune viventes” possumus appellare* (“There are the cenobites, whom they call in their foreign tongue *sauses*; we may describe them as those who live in a community”; *Epistle* 22.34).

At least up to the monastic renewal of the eleventh century, which with Romuald and Peter Damian saw the rekindling of the

“tension between cenoby and hermitage” (Calati, p. 530), the primacy of the communitarian life over that of the hermit is a constant tendency. This culminates in the decision of the Council of Toledo (646), according to which, with a complete inversion of the historical process that had led from the anchorites to the monastery, no one can be admitted to the life of the hermit without having first passed through the cenobitic life. The cenobitic project is literally defined by the *koinos bios*, by the common life from which it draws its name, and without which it cannot be understood at all.

8 The idea of a “common life” seems to have an obvious political meaning. In the *Politics*, Aristotle defines the city as a “perfect community” (*koinonia teleios*; 1252b29) and makes use of the term *syzēn*, “to live together,” to define the political nature of humans (“they desire to live together”; 1278b22). Yet he never speaks of a *koinos bios*. The *polis* is certainly born with view toward living (*tou zēn eneka*; 1252b30), but its reason for existing is “living well” (*to eu zēn*; *ibid.*). In the introduction to the *Cenobitic Institutions*, Cassian mentions as a goal of his book, alongside the “improvement of our behavior,” the exposition of the “perfect life” (Cassian 1, pp. 30/13). The monastery, like the *polis*, is a community that intends to realize the “perfection of the cenobial life” (*perfectionem . . . coenobialis vitae*; *ibid.*, pp. 182/82). In the *Conlationes* (or *Conferences*), Cassian therefore distinguishes the monastery from cenoby, because a monastery “is the name of the residence and does not imply more than the place where the monks live. ‘House of cenobites’ points to the character and the way of life of the profession. The residence of a simple monk can be called a monastery. But a place cannot be termed a house of cenobites unless one means a community of many people living together [*plurimorum cohabitantium . . . unita communiō*]” (Cassian 2, pp. 22/191). Cenoby does not name only a place, but first of all a form of life.

1.5. It is starting from this tension between private and common, between hermitage and cenoby, that the curious threefold or fourfold articulation of *genera monachorum* (“types of monks”) seems to have been elaborated. These are found in Jerome (*Epistle* 22); in Cassian (*Conferences*, 18.4–8); in the long digression at the beginning of the *Rule of the Master*; in Benedict; and, in varied

forms, in Isidore, John Climacus, Peter Damian, and Abelard, up through the texts of the canonists. The sense of this articulation—which, after having distinguished the cenobites, *in commune viventes* (“living in common”), from the anchorites, *qui soli habitant per desertum* (“who live alone in the wilderness”), opposes to these, as a “detestable and filthy” type, the Sarabaites (and, in a fourfold variant, which becomes canonical starting from the *Rule of the Master* and the Benedictine rule, the itinerants)—becomes clear, however, only if one understands that what is in question is not the opposition between solitude and common life, so much as the (so to speak) “political” opposition between order and disorder, governance and anarchy, stability and nomadism. Already in Jerome and Cassian the “third type” (qualified by *teterrimum, deterrimum ac infidele*) is defined by the fact that they live “together by twos or threes, not many more, and live according to their own will and independently [*suo arbitratu ac ditione*]” (Jerome, *Epistle* 22.34) and “do not put up with being governed by the care and power of the abbot” (*abbatis cura atque imperio gubernari*; Cassian 2, pp. 18/186). As the *Rule of the Master* confirms, “they have as their law the willfulness of their own desires” (*pro lege eis est desideriorum voluntas*; Vogüé 2, 1, pp. 330/105), and they live without “having been tested . . . by any rule” (*nulla regula adprobati*; cf. Pricoco, p. 134).

In this “commonplace of monastic homiletics” (Penco, p. 506) that the fourfold division of the *genera monachorum* represents, what is at stake is thus the need to oppose at every point a well-governed community to anomia, a positive political paradigm to a negative one. In this sense, the classification is not, as has been suggested (Capelle, p. 309), entirely devoid of logic. Rather, as is evident in Isidore’s variant in which the types become six, every group has its double or its negative shadow, in such a way that they are organized precisely according to a binary opposition (*tria optima, reliqua vero teterrima*; Isidore, *De ecclesiasticis officiis* 2.16). In an illustration from the *Rule of St. Benedict* preserved in the public library of Mantua, the miniaturist opposes the two paradigms representationally: corresponding to the cenobites

(exemplified by four monks who are praying together devoutly) and the anchorites (represented by an austere solitary monk) are the inferior images of the Sarabaites, who walk in opposite directions turning their backs to each other, and the itinerants, who gulp down food and drink without restraint. Once the anchoritic exception is left to one side, the problem of monasticism will always be more that of constructing and affirming itself as an ordered and well-governed community.

1.6. Communal habitation is the necessary foundation of monasticism. Nevertheless, in the earliest rules, the term *habitatio* seems to indicate not so much a simple fact as, rather, a virtue and a spiritual condition. “The virtue that distinguishes the brothers is habitation and obedience,” proclaims a passage of the *Rule of the Four Fathers* (Pricoco, p. 10). In the same sense, the term *habitare* (frequentative of *habeo*) seems to designate not only a factual situation but a way of life. The *Rule of the Master* can thus establish that the clergy may also stay for a long time as guests (*hospites suscipiantur*) in the monastery, but cannot “inhabit it” (*in monasterio habitare*), that is, assume the monastic condition (Vogüé 2, 2, pp. 342–46).

In the context of the monastic life, the term *habitus*—which originally signified “a way of being or acting” and, among the Stoics, became synonymous with virtue (*habitus appellamus animi aut corporis constantem et absolutam aliqua in re perfectionem*, “By *habitus* we mean a stable and absolute constitution of mind or body”; Cicero, *De inventione* 1.25.36)—seems more and more to designate the way of dressing. It is significant that, when this concrete meaning of the word begins to be affirmed in the post-Augustan age, it is not always easy to distinguish it from the more general sense, all the more so in that *habitus* was closely associated with dress, which was in some way a necessary part of the “way to conduct oneself.” When we read in Cicero *virginali habitu atque vestitu* (“in the shape and attire of maidens”; *Verrine Orations*, 2.4.5), the distinction and, at the same time, the proximity between the two concepts are perfectly clear. Yet it is not as

certain that, in the passage of Quintilian in which *habitus* seems to be identified with dress (*Theopompus Lacedaemonis, cum permutato cum uxore habitu e custodia ut mulier evasit . . .*, “when the Spartan Theopompus changed clothes with his wife and escaped from custody disguised as a woman . . .”; Quintilian 2.17.20), the term cannot refer rather to feminine appearance and conduct as a whole.

Let us now open the first book of Cassian’s *Cenobitic Institutions*, whose title declares: *De habitu monachorum* (On the Habit of Monks). Here, beyond any possible doubt, what is in question is a description of the clothing of the monks, which appears as an integral part of the rule: “As we start to speak of the institutes and rules of monasteries [*de institutis ac regulis monasteriorum*], where could we better begin, with God’s help, than with the very garb or habit of the monks [*ex ipso habitu monachorum*]?” (Cassian I, pp. 39/21). This use of the term is, however, made possible by the fact that the monks’ clothes, which Cassian enumerates and describes in detail, have been submitted to a process of moralization that makes each of them the symbol or allegory of a virtue and a way of life. For this reason, to describe the exterior dress (*exteriorem ornatum*) will be equivalent to revealing an interior way of being (*interiore cultum . . . exponere*; *ibid.*). The habit of the monk does not really bear on the care of the body, but is instead a *morum formula*, “an example of a way of life” (*ibid.*, pp. 42/23). Thus the small hood (*cucullus*) that the monks wear day and night is an admonishment to “hold constantly to the innocence and simplicity of small children” (*ibid.*, pp. 42/23). The short sleeves of their linen tunic (*colobion*) “suggest that they have cut off the deeds and works of this world” (pp. 44/24; we know from Augustine that long sleeves—*tunicae manicatae*—were sought as a sign of elegance). The thin wool ropes that, passing under the armpits, kept the clothes closely fitted to the monks’ bodies, signify that they are ready for all manual labor (*inpigri ad omnes opus expliciti*; pp. 46/24). The small mantle (*palliolus*) or surcoat (*amictus*) with which they covered the collar and shoulders symbolizes humility. The walking stick (*baculus*) reminds them that “they must never

go out unarmed in the midst of the numerous barking dogs of the vices” (pp. 48/25). The sandals (*gallicae*) that they put on their feet signify that “the feet of our soul . . . must always be ready for the spiritual race” (pp. 50/25).

This process of the habit’s moralization reaches its apex in the leather belt (*zona pellicia, cingulus*) that the monk must always wear. This constitutes him as “a soldier of Christ,” ready to fight the devil in every circumstance (*militem Christi in procinctu semper belli positum*), and, in the same moment, inscribes him into a genealogy, already attested in the rule of Basil, that goes back, through the apostles and John the Baptist, all the way to Elijah and Elisha (pp. 37/21). What’s more, the *habitus cinguli* (which obviously cannot mean “clothing of the belt,” but is equivalent to *hexis* and *ethos* and indicates a constant practice) constitutes a kind of *sacramentum*, a sacred sign (perhaps even in the technical sense of an oath: *in ipso habitu cinguli inesse parvum quod a se expetitur sacramentum*; pp. 52/26), which signifies and manifests the “mortification of his members, which contain the seeds of wantonness and lasciviousness” (*ibid.*, pp. 52/26).

Hence the decisive character, in the ancient rules, of the moment when the neophyte takes off his secular clothes to receive the monastic habit. Already Jerome, translating Pachomius, took care to oppose the secular *vestimenta* to the *habitus* of the monk (*tunc nudabunt eum vestimentis saecularibus et induent habitum monachorum*; Bacht, p. 93). In the *Rule of the Master*, the *habitus propositi*, which must not be easily granted to the neophyte (Vogüé 2, 2, pp. 390/264), is certainly much more than an article of clothing: it is the *habitus*—both clothing and way of life—corresponding to the *propositum*, that is to the project to which the neophyte is devoting himself. And when, a little further down, the rule establishes that the convert who decides to abandon the community to return into the world must be *exutus sanctis vestibus vel habitu sacro* (“divested of the holy garments and the sacred habit”; *ibid.*, pp. 394/266), what is at stake here is not, as the editor believes, a “redundancy”—the “sacred habit” is something more than “the holy clothes,” because it expresses the way of life of which they are the symbol.

To inhabit together thus meant for the monks to share, not simply a place or a style of dress, but first of all a *habitus*. The monk is in this sense a man who lives in the mode of “inhabiting,” according to a rule and a form of life. It is certain, nevertheless, that cenoby represents the attempt to make habit and form of life coincide in an absolute and total *habitus*, in which it would not be possible to distinguish between dress and way of life. The distance that separates the two meanings of the term *habitus* will never completely disappear, however, and will durably mark the definition of the monastic condition with its ambiguity.

✠ The noncorrespondence between *habitus* as clothing and *habitus* as the monk’s form of life is already censured by the canonists with respect to the clergy: *Ut clerici, qui se fingunt habitu et nomine monachos esse, et non sunt, omnimode corrigantur atque emendentur, ut vel veri monachi sint vel clerici* (“May clergy who pretend in habit and name to be monks but are not, be in every way corrected and emended, so that they may be either true monks or true clergy”; Ivo of Chartres, *Decretum*, pt. 7, chap. 31, p. 553). The ambiguity will become proverbial in the adage according to which “the habit does not make the monk” (or, on the contrary, in German circles, where *Kleiden machen Leute*, “Clothes make the man”).

1.7. Monastic rules (in particular the first chapter of Cassian’s *Institutions*) are the first texts of Christian culture in which clothes acquire a completely moral meaning. And this is all the more significant, if one considers that this happens in a moment in which the cleric is not yet distinguished by his dress from the other members of the community. We possess a letter of Celestine I of 428, in which the pontiff admonishes the clergy of the Gallo-Roman church not to introduce distinctions in wardrobe, in particular by means of the belt (*lumbos praecinti*, which can make one think of a monastic influence that the pope intends to oppose). Not only is this contrary to the ecclesiastical tradition (*contra ecclesiasticum morem faciunt*), but the pope recalls that the bishops must be distinguished from the people “not by clothing, but by doctrine; not by habit, but by way of life; not by elegance,

but by purity of mind” (*discernendi a plebe vel ceteris sumus doctrina, non veste; conversatione, non habitu; mentis puritate, non cultu*; 35.1). It is only after monasticism had transformed clothing into a *habitus*, rendering it indiscernible from a way of life, that the Church (starting from the Council of Macon in 581) began the process that would lead to the clear differentiation between clerical habit and secular habit.

Naturally in every epoch wardrobe has had a moral significance and, in Christian circles, the narrative of Genesis linked the very origin of clothing to the fall of Adam and Eve (at the moment when he expelled them from Eden, God made them put on clothes of skins—*tunicae pelliciae*—a symbol of sin). But it is only with monasticism that one witnesses a total moralization of every single element of dress. To find an equivalent to the chapter *de habitu monachorum* of Cassian’s *Institutes*, it will be necessary to wait for the great liturgical treatises of Amalarius, Innocent III, and William Durand of Mende (and in secular circles, Constantine VI Porfirogenito’s *Book of Ceremonies*). Indeed, if we open William’s *Rationale divinatorum officiorum*, right after the treatment of the Church and its ministries, we see that the third book is dedicated to an analysis of the “garments and equipment of the priests.” Exactly as in Cassian, it explains the symbolic meaning of every single element of priestly dress, of which it is often possible to indicate the equivalent in the monastic sphere. Before meticulously describing each garment, William summarizes the clothing of the priest:

When the bishop is about to celebrate, he discards his daily clothing and puts on clean and sacred garments. And first, he puts on sandals, so that he will be mindful of the Lord’s incarnation. Second, he puts on the *amicitus*, so that he might restrain his emotions and thoughts, his throat and his tongue, so that his heart will be clean, and he can receive in his innermost parts, the righteous spirit that renews him. Third, he puts on the long *alba* so that he can be steadfast in preserving purity of the flesh. Fourth, the belt, so that he can curb the impulse towards illicit behavior. Fifth, the stole, as a sign of obedience. Sixth, a hyacinth-colored tunic, which symbolizes the celestial abode. Seventh, he puts the dalmatic on top, which is holy religion

and the mortification of the flesh. Eighth, the gloves (*cirotybecae*) so that he will avoid vainglory. Ninth, the ring, so that he will love his spouse [the Church] as he loves himself. Tenth, the chasuble [*casula*], which is charity. Eleventh, the *sudarium*, so that on account of whatever frailty or ignorance through which he sins, penance will cleanse him. Twelfth, he places the pallium on top, so that he might show himself to be an imitator of Christ, who bore our grief. Thirteenth, the miter, so that in doing this, he might merit receiving an eternal crown. Fourteenth, the pastoral staff (*baculus*), which is the authority of his power and teaching. (William Durand, pp. 178/132–33)

In another glimpse, priestly garments are listed, according to the military metaphor that is dear to the monks, as a panoply of arms in the fight against spiritual evil:

First, the priest has the sandals as leg-coverings lest some attachment to the world—that is, a stain or dust—clings to him. Second, the *amictus*, which covers his head like a helmet. Third, the *alba*, which covers the whole body like a breastplate. Fourth, he puts on the belt (*cingulum*), which is like a bow, and the cord [*subcingulum*], which is like a quiver; and this cord hangs down from the belt, and the stole of the pontiff and his belt are held together in it. Fifth, he wraps the stole around his neck, like a lance that he brandishes against the enemy. Sixth, the maniple, which he uses like a mace. Seventh, the chasuble, which he uses like a shield; his is armed with the Gospel book, as if it were a sword. (William Durand, pp. 179/134)

The prescriptions of the rules on the *habitus monachorum*, in their poverty and sobriety, are the courier announcing the glorious codification of the liturgical vestments. Both are joined by the fact of being signs and sacraments of a spiritual reality: “the priest must studiously apply himself, so that each will not bear a sign without embodying what it signifies; that is, wearing a vestment without its virtue, lest they appear to be a whitened sepulcher on the outside, while filled with filth on the inside.” (William Durand, pp. 179/134–35)

1.8. We are accustomed to associate the chronometric scansion of human time with modernity and the division of labor in the

factory. Foucault has shown that at the threshold of the industrial revolution, the disciplinary apparatuses (schools, barracks, colleges, the first real factories) had begun to divide periods of time into successive or parallel segments already from the end of the seventeenth century, in order then to obtain a more efficient complex result through the combination of the individual chronological series. Although Foucault mentions monastic precedents, it is rarely noticed that almost fifteen centuries earlier, monasticism had realized, in its cenoby, for exclusively moral and religious ends, a temporal scansion of the existence of the monks. The rigor of this scansion not only had no precedents in the classical world, but in its strict absoluteness it has perhaps never been equaled in any institution of modernity, not even the factory of Taylor.

In the oriental tradition, *horologium* ("clock") is, significantly, the name that designates the book that contains the order of the canonical Offices according to the hours of the day and night. In its originary form, it goes back to Palestinian and Syriac monastic ascesis between the seventh and eighth century. The Offices of prayer and psalmody were there ordered as a "clock" that marked the rhythm of the prayers for daybreak (*orthros*), the daylight hours (first, third, sixth, and ninth), evening (*lychnikon*), and midnight (which, on certain occasions, lasted all night: *pannychis*). This attention to articulating life according to hours, to constituting the existence of the monk as a *horologium vitae* ("clock of life"), is much more surprising if one considers not only the primitiveness of the instruments they had at their disposal, but also the approximate and variable character of the very division of the hours. The day and night were divided into twelve parts (*horae*), from sunset to dawn. The hours thus did not have, like today, a fixed duration of sixty minutes. Except for the equinoxes, they varied according to the seasons, and these hours were longer in the summer (in the solstice they reached eighty minutes) and shorter in the winter. The day of prayer and labor was thus twice as long in the summer as in the winter. Furthermore, solar clocks, which were the rule in this era, function only during the day and under clear skies—for the rest of the time the sundial was "blind."

All the more will the monk have to keep unflinchingly to the execution of his Office: “On a cloudy day,” one reads in the *Rule of the Master*, “when the sun hides its rays from earth, let the brothers, whether in the monastery or on the road or in the field, estimate elapsed time by careful calculation of the hours (*perpensatione horarum*), and no matter what time it may be, the usual Office is to be said. And whether the regular Hour of the Office is said before or after the exact time, in no case may the Work of God (*opus Dei*) be left out but it is to be performed, because the lack of the light caused by the clouds, with the sundial blind because of the sun’s absence, serves as to excuse those who are performing the Office” (Vogüé 2, 2, pp. 266/222). Cassiodorus (sixth century) informs his monks that he has had a water clock installed in the cenobium, so as to be able to calculate the hours even during the night: “I have not allowed you to be ignorant in any way of the measurement of time (*horarum modulus*) that was invented for the great use of the human race. I have, therefore, provided a clock for you that the light of the sun makes, and another, a water clock (*aquatile*) that continually indicates the number of the hours by day and night” (*De institutione divinarum litterarum*, pp. 1146a–b/165). And four centuries later, Peter Damian invites the monks to transform themselves into living clocks, measuring the hours with the length of their psalmody: “And let him acquire the habit of reciting the Psalter, if he wishes to have a daily method of telling the time; so that when he cannot see the brightness of the sun or the movement of the stars because of a thick cloud, he will act as a sort of clock (*quoddam horologium*), with the regular duration of the Psalms” (Damian, chap. 17).

In any case, certain monks are specially entrusted, under the guidance of the abbot, with providing for the scansion of the rhythm of the hours (Peter Damian calls them *significatores horarum*; Cassian and the *Rule of the Master* simply *compulsores* and *excitantes*). Their importance cannot be exaggerated: “The bell-ringer must realize that no one in the monastery should avoid forgetfulness more surely than he. If any hour of the Divine Office is not said at the proper time, either because it is too early

or because it is too late, it is clear that the whole order of the hours to come will be upset” (ibid.).

The two monks who, in the *Rule of the Master*, have the duty of waking up the brothers (and first of all the abbot, by pulling him by the feet—*mox pulsantes pedes*; Vogüé 2, 2, pp. 172/194) carry out a function so essential that, to honor them, the rule calls them *vigigalli*, roosters who are always awake (“For with the Lord there is great reward for those who do the waking for the Divine Office, and it is to their honor that the Rule has called them vigilant roosters [*vigigallos*]”; ibid., pp. 170/193). They must prepare clocks in such a way as to mark the hours even in the absence of the sun, because the rule informs us that it is their task to watch the clock (*horolegium*, according to the medieval etymology; *quod ibi horas legamus*) at night no less than during the day (*in nocte et in die*; ibid.).

1.9. Whatever the instruments for measuring the hours were, it is certain that the whole life of the monk is modeled according to an implacable and incessant temporal articulation. In charge of the Stoudion monastery in Constantinople, Theodore the Studite describes the beginning of the monastic day in these words:

It should be known that after the second or third watch of the night has passed, that is when the signal of the water clock strikes [píptei tou hydrologiou to syssemon] at the sixth hour at the point where the seventh hour is beginning, at this signal the waker [*aphypnistes*] is roused. He goes around to the bed chambers with a lantern summoning the brothers to raise up the morning doxology. Immediately, the wooden semantra sound up and down the monastery. While all the brothers assemble in the narthex of the main church and pray silently, the priest takes the censer in his hands and censes first the holy sanctuary . . . (Theodore the Studite, *Descriptio constitutionis monasterii Studi*, pp. 1703/98)

The cenobite is, in this sense, first of all a total hourly scansion of existence, in which every moment has its corresponding Office or duty [*ufficio*], either of prayer and reading or manual labor. Certainly, the early Church had already elaborated a liturgy of hours, and in continuity with the tradition of the synagogue, the

Didache required the faithful to meet for prayer three times a day. The *Apostolic Tradition*, attributed to Hippolytus (third century), developed and articulated this custom by linking the hours of prayer to the episodes of the life of Christ. To the prayer of the third hour (“at that hour Christ was displayed nailed to the tree”; Hippolytus, pp. 90/165), the sixth, and the ninth (“at that hour Christ, pierced in the side, poured forth water and blood”), Hippolytus adds the prayer of midnight (“if you have a wife . . . [and] if she is not yet among the faithful,” specifies the text, “take yourself into another room and pray”; pp. 92/165), and at the cry of the rooster (“And likewise pray, getting up around cock-crow. For at the hour when the cock crew the sons of Israel denied Christ”; pp. 96/166).

The novelty of cenoby is that, by taking literally the Pauline prescription of unceasing prayer (*adialeiptōs proseuchesthe*; 1 Thess. 5:17), it transforms the whole of life into an Office by way of temporal scansion. Confronted with this apostolic precept, the patristic tradition had drawn the consequence from it that Origen sums up in his *De oratione*, namely, that the only possible way to understand this precept is that “the entire life of the saint taken as a whole is a single great prayer, [and] prayer in the ordinary sense ought to be made no less than three times each day” (Origen, *De oratione* 12.1). The monastic interpretation is entirely different. Cassian, describing the institutions of the Egyptian Fathers, writes:

The Offices that we are obliged to render to the Lord at different hours and at intervals of time [*per distinctiones horarum et temporis intervalla*], at the call of the summoner, are celebrated continuously [*iugiter*] and spontaneously throughout the course of the whole day. For they are constantly doing manual labor [*operatio manuum*] alone in their cells in such a way that they almost never omit meditating on the psalms and on other parts of Scripture, and to this they add entreaties and prayers at every moment, taking up the whole day in Offices that we celebrate at fixed times [*statuto tempore celebramus*]. (Cassian 1, pp. 92/59)

Even clearer is the dictation of the “conference” that he dedicates to prayer, in which the continuity of prayer defines the monastic

condition itself: “the whole purpose of the monk and indeed the perfection of his heart amount to this—total and uninterrupted dedication to prayer” (Cassian 2, pp. 40/101), and the “sublime discipline” of the cenobite is that which “teaches us to cling to God without interruption [*Deo iugiter inhaerere*]” (ibid., pp. 83/130–31). In the *Rule of the Master*, the “holy art” that the monk learns must be exercised “continuously day and night” (*die noctuque incessanter adinpleta*; Vogüé 2, 1, pp. 372/117).

One could not more clearly express the fact that the monastic ideal is that of a total mobilization of existence through time. While the ecclesiastical liturgy divides the celebration of the Divine Office from labor and rest, the monastic rule, as is evident in the passage cited from Cassian’s *Institutions*, considers the work of the hands as an indiscernible part of the *opus Dei*. Already Basil interprets the phrase of the apostle (“whether you eat or drink, or whatever you do, do everything for the glory of God”; 1 Cor. 10:31) as implying a spiritualization of the monk’s every activity. Not only is the whole life of the monk in this way presented as the execution of a “divine work,” but Basil takes care to multiply examples drawn from manual labor: like the blacksmith, while he is hammering the metal, has in mind the will of the customer, so the monk carries out “his every action, great or small” (*pasan energeian kai mikran kai meizona*) with care, because he is conscious in every instant of doing the will of God (921–23/244). Even in the passage of the *Rule of the Master* in which the Divine Offices are clearly distinguished from manual labor (*opera corporalis*; Vogüé 2, 2, pp. 224/209), this latter must nevertheless be carried out with the same attention with which one carries out the former: while the brother carries out manual labor, he must fix his attention on the work and occupy his mind (*dum oculis in laboris opere figit, inde sensum occupat*, “he fixes his eyes on his work and thereby occupies his attention with what he is doing”; ibid., pp. 222/209). It is not surprising, then, that the *exercitia actuum*, which alternate with the Divine Office, are defined a little further down as a “spiritual labor” (*spirituale opus*; pp. 224/209). The spiritualization of the work of the hands that is accomplished in this way can be

seen as a significant precursor of the Protestant ascesis of labor, of which capitalism, according to Max Weber, represents the secularization. And if the Christian liturgy, which culminates in the creation of the liturgical year and the *cursus horarum*, has been effectively defined as a “sanctification of time,” in which every day and every hour is constituted as a “memorial of the works of God and the mysteries of Christ” (Righetti, p. 1), the cenobitic project can on the contrary be defined more precisely as a sanctification of life by means of time.

The continuation of the temporal scansion, interiorized in the form of a *perpensatio horarum*, a mental articulation of the passing of the hours, here becomes the element that permits it to act on the life of the individual and the community with an incomparably greater efficacy than the Stoic and Epicurean care of the self could achieve. And if we are perfectly accustomed to articulate our existence according to times and hours and to consider even our interior life as a linear and homogeneous course of time and not as an alternation of discrete and heterogeneous unities to be measured according to ethical criteria and rites of passage, we must not forget that it is in the cenobitic *horologium vitae* that time and life were for the first time intimately superimposed to the point of nearly coinciding.

1.10. In the monastic literature, the technical term for this mixture and near hybridization between manual labor and prayer, between life and time, is *meditatio*. Bacht has demonstrated that this term does not signify meditation in the modern sense, but rather designates originally the (solitary or communal) recitation by memory of the Scriptures, as distinct from reading (*lectio*). In the life of Pachomius, the abbot Palamon, to whom the future founder of cenoby had turned himself over in order to be initiated into monasticism, mentions constant meditation as a fundamental duty, like fasting: “I spend half the night in prayer and in meditation on the word of God” (Bacht, p. 250). In the rules of Pachomius’s successor, Horsiesius, meditation is defined as “a rich store of memorized texts” (ibid., p. 249) and, if one has not

meditated sufficiently during the night, the “meditation” of at least ten psalms is prescribed (*ibid.*).

It is well known how, beginning from the fourth century, the practice of silent reading was spread, which Augustine observes with amazement in his master Ambrose: “When he read,” writes Augustine (*Confessions*, 6.3), “his eyes scanned the page and his heart explored the meaning, but his voice was silent and his tongue was still.” *Meditatio* is the continuation of this practice without any further need for *lectio*, because by this point the text is available in the memory for an uninterrupted and in any case solitary recitation, which can thus accompany and temporally articulate from the inside the entire day of the monk and become inseparable from his every gesture and his every activity. “While they work [*operantes*],” reads the rule of Pachomius, “may they say nothing profane, but meditate on the holy words and keep silent” (Bacht, p. 98). “As soon as the signal of the trumpet that calls them to the *collecta* sounds, he immediately comes out of his cell, meditating on some passage of Scripture [*de scripturis aliquid meditans*] until he reaches the door of the meeting room” (*ibid.*, p. 82). In the above-cited passage of Cassian, manual labor is never separated from “*meditatio* on the Psalms and the other Scriptures” (Cassian 1, pp. 92/59). In the same sense, the rules of Horsiesius specify that “when the monk leaves the *collecta*, he must meditate while he walks to his habitation, even if he is doing something that concerns the convent,” and adds that only in this way will “the vital precepts” be observed (Bacht, p. 249).

The *perpensatio horarum* and the *meditatio* are the two apparatuses through which—well before the Kantian discovery—time in fact became the form of the internal sense: corresponding to the meticulous chronological regulation of every exterior act is a temporal scansion of the interior discourse that is just as punctilious.

I.II. The expression “vital precepts,” which is found for the first time in Jerome’s translation of the rule of Pachomius (*haec sunt praecepta vitalia nobis a maioribus tradita*, “these are the vital

precepts passed down to us by our superiors"; *ibid.*, p. 83), acquires its most pregnant sense only if it is understood that it refers to the rule insofar as—through the practice of meditation, temporal scansion, and incessant prayer—it can coincide, not only with the observance of individual precepts, but with the monk's entire life (in this sense, it is tacitly opposed to the *praecepta legalia* of Judaism). Meditation, which can accompany any activity, is in this sense perhaps the apparatus that permits the accomplishment of the totalitarian demands of the monastic institution.

It is decisive, however, that the rule enters in this way into a zone of undecidability with respect to life. A norm that does not refer to single acts and events, but to the entire existence of an individual, to his *forma vivendi*, is no longer easily recognizable as a law, just as a life that is founded in its totality in the form of a rule is no longer truly life. About eight centuries later, Stephen of Tournay can thus again take up and in some way paraphrase the Pachomian formula *praecepta vitalia*. He writes that from the moment that the "little book" (*libellus*) that contains Granmontani's constitution "is not called by them a rule, but a life [*non regula appellatur ab eis, sed vita*]," the monks would therefore have to be called "vital" (*vitales*) to differentiate themselves from those who, insofar as they observe the rule, call themselves "regular" (*Epistle 71*, p. 368). Just as precepts that are no longer separable from the monk's life cease to be "legal," so the monks themselves are no longer "regular," but "vital."

8 In the *Scala claustralium* of Bernard, the ladder "by which [monks] are lifted up from earth to heaven" involves four steps: reading (*lectio*), which "as it were puts whole food into the mouth"; meditation, which "chews it and breaks it up" (*masticat et frangit*); prayer (*oratio*), which "extracts its flavor"; and contemplation, which "is the sweetness itself which gladdens and refreshes" (chap. 1, pp. 475/208–9).

Günter Bader has shown how, at the beginnings of monasticism, reading appears as the remedy par excellence for a terrible sickness that afflicts monks and anchorites: *acedia*. With a curious circularity, this sort of anthropological catastrophe that menaced the *homines religiosi* at every instant was nevertheless also presented as that which rendered

reading impossible. "When he reads," declares the *De octo spiritibus malitiae* of St. Niles (*Acedia* §15), "the one afflicted with acedia yawns a lot and readily drifts off into sleep; he rubs his eyes and stretches his arms; turning his eyes away from the book, he stares at the wall and again goes back to reading for awhile; leafing through the pages, he looks curiously for the end of the texts, he counts the folios and calculates the number of gatherings. Later, he closes the book and puts it under his head and falls asleep, but not a very deep sleep."

In the anecdote of Antony reported by Evagrius, the overcoming of sloth is presented as a stage in which nature itself appears as a book and the life of the monk as a condition of absolute and uninterrupted legibility: "A sage came to visit Antony and said, 'Father, how can you do without the comfort of books?' He answered, 'My book, O philosopher, is the nature of things, and this is available to me whenever I want to read the words of God'" (qtd. in Bader, pp. 14–15). The perfect life coincides with the legibility of the world, sin with the impossibility of reading (with its becoming illegible).

§ 2 Rule and Law

2.1. It is even more urgent, at this point, to pose the problem of the more or less juridical nature of the monastic rules. Already the jurists and canonists, who would also seem to take account of the precepts of the monastic life in their collections, had asked themselves, in certain cases, if the law could be applied to such a peculiar phenomenon. Thus, in his *Liber minoritarum*, Bartolo, referring to the Franciscans—in the same gesture in which he recognizes that the *sacri canones* have taken an interest in them (*circa eos multa senserunt*, but the Venetian edition of 1575 has *sanxerunt*, “sanctioned, legitimated”)—states without reserve that “so great is the novelty of their life [*cuius vitae tanta est novitas*] that the *corpus iuris civilis* does not seem capable of being applied to it [*quod de ea in corpore iuris civilis non reperitur autoritas*]” (Bartolo, p. 190 verso). In the same sense, the *Summa aurea* of Hostiensis evokes the difficulty that the law has in including the monks’ *status vitae* in its own circle of application (*non posset de facili status vitae ipsorum a iure comprehendendi*). Even if the reasons for discomfort are different in the two cases—for Bartolo, it is the Franciscan refusal of every right to property, for Hostiensis, the multiplicity and variety of rules (*diversas habent institutiones*)—the embarrassment of the jurists betrays a difficulty that concerns the peculiarity of the monastic life in its vocation to confuse itself with the rule.

Yan Thomas has shown that, in the tradition of Roman law, the juridical norm never refers immediately to life as a complex biographical reality, but always to the juridical person as an abstract center of imputation of individual acts and events. The juridical personality “serves to mask concrete individuality beyond an abstract identity, two modalities of the subject whose moments cannot be confused, since the first is biographical and the second is statutory” (Thomas, p. 136). The blossoming of monastic rules beginning from the fifth century, with their meticulous regulation of every detail of existence, which tends toward an undecidability of *regula* and *vita*, constitutes, according to Thomas, a phenomenon that is substantially alien to the Roman juridical tradition and to law tout court: “‘*Vita vel regula*,’ life or rule, that is to say, life as rule. Such is the register—and assuredly it is not that of law—where the legality of life as incorporated law can be thought” (ibid.). Developing Thomas’s intuition in the opposite direction, others have believed they saw in the monastic rules the elaboration of a normative technique that permitted the constitution of life as such as a juridical object (Coccia, p. 110).

2.2. An examination of the text of the rules shows that they present a no less contradictory attitude toward the sphere of law. On the one hand, they not only firmly enunciate genuine precepts of behavior, but often also contain a detailed list of penalties incurred by the monks who transgress them. On the other hand, they urge the monks not to consider the rules as a legal apparatus. “The Lord grant,” reads the conclusion of the rule of Augustine, “that you observe all these things with joy . . . not as slaves under the law, but as those who have been set free by grace [*ut observetis haec omnia cum dilectione . . . non sicut servi sub lege, sed sicut liberi sub gratia constituti*]” (*Regula ad servos Dei*, pp. 1377/132). To a monk who asked him how he should behave with his disciples, Palamon, the legendary master of Pachomius, responds: “be their example [*typos*], not their legislator [*nomothētēs*]” (*Apo-phthegmata patrum*, pp. 563/191). In the same sense, Mar Abraham, upon laying out the rule of his monastery, recalls that we must not

consider ourselves “legislators, neither for ourselves nor for others” (*non enim legislatores sumus, neque nobis neque aliis*; cf. Mazon, p. 174).

The ambiguity is evident in the Pachomian *Praecepta atque iudicia*, which begins with the resolutely antilegalistic statement *plenitudo legis caritas* (“love is the fulfillment of the law”), only to enunciate immediately afterward a series of matters of an exclusively penal character (Bacht, p. 255). Casuistic surveys of this type are encountered very often in the rules, either in the same context as the precepts or collected in sections internal to the rule (chaps. 13 and 14 of the *Rule of the Master*, or 23–30 in the *Rule of St. Benedict*) or else separately (as in the above-cited *Praecepta atque iudicia* or in the *Poenae monasteriales* of Theodore the Studite).

A vision of the whole of what can be defined as the monastic penal system can be inferred from chapters 30–37 of the *Concordia regularum*, in which Benedict of Aniane organized the ancient rules by topic. The penalty par excellence is *excommunicatio*, the total or partial exclusion from the common life for a period that is longer or shorter according to the gravity of the sin. “If a brother is found guilty of lighter faults,” reads the Benedictine rule, “let him be excluded from the common table [*a mensae participatione privetur*]. . . . In the oratory he shall intone neither Psalm nor antiphon nor shall he recite a lesson until he has made satisfaction; in the refectory he shall take his food alone after the community meal . . . until by suitable satisfaction he obtains pardon” (chap. 24; Pricoco, p. 188). To graver sins there would correspond the exclusion of all contact with the brothers, who would ignore his presence: “He shall not be blessed by anyone passing by, nor shall the food that is given him be blessed. . . . If a brother presumes without an order from the abbot to associate in any way with an excommunicated brother, or to speak with him, or to send him a message, let him incur a similar punishment of excommunication” (chaps. 25–26; Pricoco, p. 191). In the case of recidivism, one would proceed to the application of corporal punishments and, in the extreme case, to expulsion from the monastery: “But if the excommunicated brothers show themselves so arrogant that

they persist in the pride of their heart and refuse to make satisfaction to the abbot by the ninth hour of the third day, they are to be confined and whipped with rods to the point of death and, if the abbot so please, be expelled from the monastery” (Vogüé 2, 2, pp. 47/153). In some monasteries, a place even seems to have been provided to be used as a prison (*carcer*), in which those who had incurred the gravest sins were isolated: “The monk who molests children or adolescents,” reads the rule of Fructuosus, “constrained by iron chains, shall be punished with six months in prison [*carcerali sex mensibus angustia maceretur*]” (Ohm, p. 149).

And yet not only is punishment not a sufficient proof of the juridical character of the precept, but the rules themselves, in an epoch when punishments had an essentially afflictive character, seem to suggest that the punishment of the monks had an essentially moral and amendatory meaning, comparable to therapy prescribed by a doctor. When establishing the penalty of excommunication, the *Rule of St. Benedict* specifies that the abbot must have a particular care for excommunicated brothers:

Let the Abbot be most solicitous in his concern for delinquent brethren, for “it is not the healthy but the sick who need a physician.” And therefore he ought to use every means that a wise physician would use. Let him send “senpectae,” that is, brethren of mature years and wisdom, who may as it were secretly console the wavering brother and induce him to make humble satisfaction; comforting him that he may not “be overwhelmed by excessive grief.” (chap. 27; Pricoco, p. 193)

The counterpart of this medical metaphor in Basil is the inscription of the obligation of obedience, not within the prospect of a legal system, but within the more neutral one of the rules of an *ars* or technique. “Even in the case of the arts,” we read in chapter 41 of the rule, dedicated to “authority and obedience,”

the individual ought not be permitted to follow the one he is skilled in or the one he wishes to learn, but that for which he may be judged suited. He who denies himself and completely sets aside his own wishes does not do what he wills but what he is directed to

do. . . . One who is master of an art that is in no way objectionable to the community ought not abandon it, however, for to deem of no account that which is at one's immediate disposal is the sign of a fickle mind and an unstable will. And if a man is unskilled, he should not of himself take up a trade, but should accept the one approved by his superiors, so as to safeguard obedience in all things." (Basil, *Regulae fusiis tractatae*, chap. 41)

In the *Rule of the Master*, what in Basil was an analogy referring above all to the manual labor of the monks becomes the metaphor that defines the whole monastic life and discipline, conceived, surprisingly enough, as the learning and exercise of an *ars sancta*. After having listed all the spiritual precepts that the abbot must teach, the rule concludes: "Behold, this is the holy art which we must exercise with spiritual instruments" (*ecce haec est ars sancta, quam ferramentis debemus spiritualibus operari*; Vogüé 2, 1, pp. 372/117). All the terminology of the rule is in this technical register, which recalls the vocabulary of the schools and workshops of late antiquity and the Middle Ages. The monastery is defined as *officina divinae artis*: "The workshop is the monastery, where the instruments of the heart are kept in the enclosure of the body, and the work of the divine art can be accomplished" (*ibid.*, pp. 380/119). The abbot is the *artifex* of an art, "not attributing the performance of it to himself but to the Lord" (pp. 362/114). The very term *magister*, which designates the one who speaks in the text, is likely meant to refer to the master of an *ars*. It could not be more clearly said that the precepts that the monk must observe are to be assimilated to the rules of an art rather than to a legal apparatus.

✠ The paradigm of the *ars* exercised an influence that is not to be overlooked on the world in which the monks conceived not only their rules, assimilated to the rules of an *ars*, but also their activity. Cassian, in the *Conlationes*, analogizes the profession of the monastic life to learning an art: "My sons, when a man wishes to acquire the skills of a particular art," he writes of those who want to embrace the monastic life, "he needs to devote all his possible care and attention to the

activities characteristic of his chosen profession. He must observe the precepts and, indeed, the advice of the most successful practitioners of this work or of this way of knowledge. Otherwise he is dealing in empty dreams. One does not come to resemble those whose hard work and whose zeal one declines to imitate” (Cassian 2, pp. 12/184).

We have shown elsewhere that an analogous comparison with the model of the arts (with both the *artes in effectu*, which are realized in a work, and the *artes actuosae*, like dance and theater, that have their end in themselves) was important in theology for determining the status of the liturgical action (cf. Agamben 1, chap. 2, §8).

In this sense, the monastery is perhaps the first place in which life itself—and not only the ascetic techniques that form and regulate it—was presented as an art. This analogy must not be understood, however, in the sense of an aestheticization of existence, but rather in the sense that Michel Foucault seemed to have in mind in his last writings, namely a definition of life itself in relation to a never-ending practice.

2.3. The entirely peculiar character of the monastic precepts and their transgression emerges forcefully in an anecdote from the life of Pachomius, contained in the manuscript *Vaticanus Graecus 2091*. Vogüé, who has drawn attention to this text, contends that it goes back to a more ancient version of the biography of Pachomius, evidence of the beginnings of eastern cenoby. The anecdote relates that, in the course of a quarrel, a brother struck another, who responded to the violence with an equal blow. Pachomius summoned the two monks into the presence of the whole community and, after having interrogated them and obtained their confession, expelled the one who had struck first and excommunicated the other for a week. “While the first monk was being led out of the monastery,” the anecdote relates,

a venerable old man named Gnositheos, eighty years of age—and in fact, as his name indicated, he had knowledge of God—came forward and cried out from among the monks: “I, too, am a sinner and I am leaving with him. If anyone is without sin, let him remain here.” And the whole crowd of brothers, as though they were one man, followed the old man, saying, “We are also sinners and we are going with him.” Seeing them all leaving, the blessed Pachomius ran out in front of

them, threw himself on the ground with his face in the dirt, covered his head with earth, and asked forgiveness of them all.

After the return of all the brothers, including the guilty one, Pachomius, returning into himself, thought: “If murderers, magicians, adulterers, and those who are guilty of whatever other sin take refuge in the monastery to work out their salvation there by penance, who am I to drive a brother from the monastery?” (Vogüé 3, pp. 93–94). And not only is an analogous episode attributed in the *Apophthegmata patrum* to the abbot Bessarion (141b), but the *Rule of Isidore* (*Regula monachorum*, chap. 15) confirms that the delinquent monk must not be expelled from the monastery, “because the one who could be amended through a diligent penance, once expelled, should not be devoured by the devil.”

The analogy between the judgment of the abbot and a penal process, though plausible at first glance, loses all credibility.

2.4. Cándido Mazon has dedicated a monograph to the problem of the juridical nature of monastic rules. The conclusion that he reaches after a full examination of the text of both Eastern and Western rules is that they “are not truly laws or precepts in the strict sense of the term,” and that, nevertheless, neither are they reducible to “mere advice that leaves the monks at liberty to follow it or not” (Mazon, p. 171). It was a matter, according to Mazon, of norms of an “eminently directive character,” whose goal was not so much to “impose” obligations as to “declare and show to the monks the obligations they had agreed to, given the kind of life they had professed” (ibid.).

The solution is so unsatisfying that the author, not taking the risk of taking sides between those who maintain the juridical nature of the rules and those who reduce them to simple advice, ends by considering them as a kind of hybrid, “something that goes beyond advice, but does not reach the point of being law in the proper sense” (ibid., p. 312).

In stating this thesis, which is certainly not clear, the author is doing nothing but trying to find a compromise solution to a

question that had divided the scholastics between the twelfth and fifteenth century. This is not the place to reconstruct the history of this debate, which involved, among others, Bernard of Clairvaux, Humbert of Romanis, Henry of Ghent, Thomas Aquinas, and Suárez, and in which what was at stake was the problem of the obligatory character of the rules. We will linger over three moments in which the problem emerged into the light according to different modalities and found each time a solution that focused on a significant aspect of the problem.

The first moment is Humbert Romanis's commentary on the *Rule of St. Augustine*, and specifically on the phrase *haec igitur sunt quae ut observetis praecipimus in monasterio constituti* ("these are the things which we command you who are assembled in the monastery to observe"), with which Augustine introduces his prescriptions. The problem, which Humbert initially lays out in the traditional form of a *quaestio*, is "if everything that is contained in the rule is *in praecepto*" (that is to say, is obligatory; Romanis, p. 10). The problem is thus one of the relation between *regula* and *praeceptum*. If this relation is conceived as total identity, then everything that is in the rule is a precept: this is the position of those who, in Humbert's words, hold that in Augustine's phrase, the demonstrative pronoun *haec* "indicates everything that is in the rule" (*demonstrat omnia quae sunt in regula*; *ibid.*). To this rigorist thesis—which will find its champion in Henry of Ghent—Humbert opposes the position of those who maintain the noncoincidence of rule and precept, either in the sense that the obligation refers to the observance of the rule in general and not to the individual precepts (*observantia regulae est in praecepto, sed non singula quas continentur in regula*) or—and this is the thesis that he professes—that the intention of the saint was to make obligatory the observance of the three essential precepts of obedience, chastity, and humility, and not of everything that pertains to the monk's perfection. Indeed, in the Gospel one must distinguish among precepts that have both the form and intention of a precept (*modum et intentionem praecepti*), like the commandment of reciprocal love; others that are precepts in intention, but not

in form (like the precept not to steal); and others, finally, that are such in form but not in intention. So also one must think that a wise man like Augustine, “even if he has spoken in the mode of a precept, did not intend to put everything under the precept, providing in this way an occasion of damnation to those who had come to the rule to find salvation” (p. 13). In another text, Humbert refers to the three obligatory precepts (obedience, chastity, humility) as the *tria substantialia*, and in this abbreviated formula his thesis imposed itself on the majority of theologians and canonists. In his commentary on the third book of the *Decretals*, Hostiensis formulates it in this way: “The rule is in precept, but that which talks about the observance of the rule must be understood as referring indistinctly to the three substantialia. Everything else that is contained in the rule we do not keep as if it were in precept; otherwise scarcely one monk in four could be saved” (Mazon, p. 198).

2.5. Another way of putting the problem of the obligatoriness of the rule does not concern the relation between rule and precept, but the very nature of obligation, which can be *ad culpam*, in the sense that transgression produces a mortal sin, or only *ad poenam*, in the sense that transgression implies a penalty but not a mortal sin. It is in this context that the problem assumes the technical form of the juridical or nonjuridical (or more exactly: legal) form of the rules.

The first to thematically formulate the problem of the existence of purely penal laws is Henry of Ghent. He does it in the canonical form of a *quaestio* that asks “if it is possible to transgress penal precepts without committing a sin, provided that one pays the penalty established for his transgression” (Mazon, p. 247). The example evoked is that of a monastic rule that prohibits speaking after compline. The formulation of the duty can occur in two ways: either first establishing the legal duty (*nullus loquatur post Completorium*, “no one may speak after compline”), then causing it to be followed by a penal sanction (*si aliquis post Completorium loquatur, dicat septem Psalmos poenitentiales*, “if anyone speaks

after compline, let him say seven penitential psalms”); or formulating the observance and the penalty together (*quicumque loquatur post Completorium dicet septem Psalmos poenitentiales*, “whoever speaks after compline says seven penitential psalms”). Only in the second case—and if it is ascertained that the intention of the legislator was not to exclude every possibility of transgressions, but only to make sure that the transgression did not occur without a rational motive—can one speak of a transgression without fault and, consequently, of a merely penal law.

It is significant that only in later scholasticism, starting from the sixteenth, is this problem, which is merely evoked in Henry of Ghent, transformed into that of the legal nature of religious rules. The field was divided between those who, like Peter of Aragon, state that since a law must obligate both *ad culpam* and *ad poenam*, the rules of the religious are not truly laws, but rather admonitions or advice (*proprie loquendo non sunt leges, sed potius quaedam decreta hominum prudentum, habentia vim magis consilii quam legis*; *ibid.*, p. 269), and those who, like Suárez, maintain that, since laws can also obligate only as to penalty, rules are not advice, but actually laws (*item quia sunt actus iurisdictionis et superioris imponenti necessitatem aliquam sic operandi, ergo excedunt rationem consilii*; p. 282).

2.6. The problem of the relationship between the rules and the law is complicated by the fact that beginning at a certain point, the profession of the monastic life was associated with the pledge of a vow. The vow is an institution that, like the oath, most likely belongs to that more archaic sphere in which it is impossible to distinguish between law and religion, which Gernet improperly called “pre-law.” Their essential characteristics are known to us through Roman testimonies, in the context of which it appears as a form of consecration to the gods (*sacratio*), whose prototype is in the *devotio* through which the consul Decio Mure, on the eve of battle, decided to consecrate his life to the infernal gods to obtain victory. An object of consecration can also be a sacrificial victim, which is immolated on condition of obtaining the fulfillment of a desire. As Benveniste writes:

in Roman religious law the “vow” was the subject of strict rules. First there had to be a *nuncupatio*, the solemn enunciation of the vows for the “devotion” to be accepted by the representatives of the State and religion in the proper set terms. Then the vow had to be formulated, *votum concipere*, which meant conforming to a given model. This formula, in which the priest took the initiative, had to be repeated exactly by the person making the vow. Finally, it was necessary for the authorities to receive this vow, and to sanction it by an official authorization: this was *votum suscipere*. Once the vow was accepted, the moment came when the interested party had to put his promise into execution in return for what he had asked for: *votum solvere*. Finally, as with every operation of this kind, sanctions were provided in case that the obligation was not carried out. The man who did not fulfill what he had promised was *voti reus* and prosecuted as such and condemned: *voti damnatus*. (Benveniste, pp. 237/ 492–93)

More exactly, the one who pronounces the vow, more than being obligated or condemned to execution, becomes, at least in the extreme case of the *devotio* of the consul, a *homo sacer*. His life, insofar as it belongs to the infernal gods, is no longer such, but rather he dwells in the threshold between life and death and can therefore be killed by anyone with impunity.

One would search in vain for a similar formalism and a similar radicality in the monastic rules of the early centuries. The monograph that Catherine Capelle dedicated to the vow, in 1959, shows that precisely on the question of the meaning, nature, and very existence of the monastic vows, both in the most ancient sources and in modern authors, the greatest possible confusion reigns. This confusion is first of all terminological, whether through the multiplicity of vocabulary (*professio, votum, propositum, sacramentum, homologia, synthēkē*), through the inconsistency of their meaning, which varies from “conduct” to “solemn declaration,” from “prayer” and “oath” to “desire” (Capelle, pp. 26–32). Neither Basil nor Pachomius nor Augustine seem to want to link the monastic condition to a formal act of a character that is in any way juridical. “ *Homologia* means, in Basil, now the proclamation of faith, now a sort of promise, an obligation or the adhesion to a mode of life. There is an obligation, certainly, but indirectly and

only because there is a consecration. We are here on the cultic level, not the moral or even less the juridical level” (ibid., 43–44). As to obedience, “its function is first of all ascetic; it is a matter of reproducing the model that Christ was. . . . It is neither the object of a religious obligation, nor the consequence of a determinate juridical situation” (p. 47). Analogously in Pachomius, even if the necessity of obedience to the abbot is emphasized, it remains one virtue among others. “It seems that what is in question here is only the ascetic aspect of obedience, and not a juridical form consequent to the bond of the vow. If the Latin translation seems to suggest, if not in Pachomius then at least in his successors, the existence of a profession . . . the context shows clearly that it is not a matter of a juridical obligation, but simply of the resolution to serve God through the perfection of the action itself” (p. 35).

A reading of chapters 1–10 of book 4 of Cassian’s *Institutes*, dedicated to the admonition of the postulants in the monastery, shows that even here there is no trace of vows or juridical obligations. The one who asks to be admitted into the monastery is subjected to humiliations and insults for ten days to put the seriousness and constancy of their intention to the test: “Embracing the knees of all the brothers passing by, he has been purposely rebuked and disdained by everyone, as if he wished to enter the monastery not out of devotion but out of necessity” (Cassian 1, pp. 124/79). Once they have put up with these tests with patience and humility, particular emphasis is placed on the removal of the old clothes and the assumption of the monastic habit. But even this is not sufficient to admit him to full status among the brothers, and for an entire year he must dwell near the entrance of the monastery under the guidance of an older monk. Admission to the status of monk depends on the tenacity of the novice and his capacity to observe the *regula oboedientiae* (“rule of obedience”; ibid., pp. 132/83), and not on the pronouncement of a vow. “Vows do not exist in Cassian, because he transmits Egyptian monasticism, which is ignorant of them, to the West: no commitment can obligate one for his entire life, nor bind one to a specific monastery” (Capelle, p. 54).

As for Augustine, none of the three texts that hand down his rule to us (whether or not they are his works) makes the least allusion to anything like a ceremony of initiation or the pronunciation of a vow.

2.7. One may assert that the situation begins to change with the *Rule of the Master* and the Benedictine rule, which seem to presuppose a true and proper juridical promise on the part of the novice. Let us read, however, chapter 88 of the *Rule of the Master*, which bears the significant title *Quomodo debeat frater novus in monasterio suum firmare introitum* (“How a new brother must confirm his entry into the monastery”). After a testing period of two months, at the end of which the future monk generically promises resoluteness in the observance of the rule that he has read several times (*repromissa lectae regulae firmitate*; Vogüé 2, 2, pp. 370–72/258), a sort of ceremonial dialogue unfolds between the abbot and the novice, which the novice, humbly tugging at the hem of the abbot’s clothing (*humiliter adpraehenso eius vestimento*), is to request urgently with this singular formula: “I have something to propose [*est quod suggeram*], first to God and this holy oratory, then to you and the community” (*ibid.*, pp. 372/258). Asked to say what is the matter, the novice declares: “I wish to serve God in your monastery through the discipline of the Rule read to me [*volo Deo servire per disciplinam regulae mihi lectae in monasterio tuo*].” “And this is your pleasure?” asks the abbot. “First it is God’s,” responds the novice, “so then also mine.” At this point, the abbot enunciates, with a precautionary formula, which has at times been interpreted as a genuine vow:

Mark well, brother, you are not promising anything to me, but to God and to this oratory and to this holy altar. If in all things you obey the divine precepts and my admonitions, on the day of judgment you will receive the crown of your good deeds, and I myself shall gain some remission of my sins for having encouraged you to conquer the devil along with the world. But if you refuse to obey me in anything at all, see, I am calling the Lord to witness, and this community will also give testimony in my favor on the day of

judgment that, as I said before, if you do not obey me in anything at all, I shall go free in the judgment of God and you will have to answer for your soul and for your contempt. (pp. 372–74/258–59)

Not only is it not the novice who pronounces the promise of obedience, but the formula that he “proposes” (“I want to serve God . . .”) is by all indications a generic ascetic profession and not a legal commitment. A definitely juridical act happens soon after: the irrevocable donation of the novice’s goods to the monastery (or, rather, its confirmation, because the donation had already taken place at the moment of the request for admission). But in the monastic tradition, this donation is consistently interpreted as the proof of the seriousness of the future monk’s ascetic intention.

The situation in the Benedictine rule seems to be different. Here not only is the testing period lengthened to ten months, punctuated by repeated readings of the rule, which is by now only a written document, but at the moment of the profession, the novice “shall make a promise before all in the oratory of his stability and of the reformation of his life and of obedience. This promise shall he make before God and his Saints” (*coram omnibus promittat de stabilitate sua et conversatione morum suorum et oboedientiam coram deo et sanctis eius*; chap. 58; Pricoco, p. 242). The promise is afterward reinforced by the drawing up of a document called a *petitio* (by hand, if he knows how to write, but in any case signed by him), which the novice places on the altar (*de qua promissione faciat petitionem ad nomen sanctorum . . . quam petitionem manu sua scribat . . . et manu sua eam super altare ponat*; *ibid.*, p. 244).

According to some scholars, the Benedictine profession must be interpreted as a veritable contract, modeled on the paradigm of the Roman *stipulatio* (Zeiger, p. 168). And since the *stipulatio*, as oral contract, unfolded through a question-and-answer format (of the type: *Spondesne? Spondeo*), the same scholars have privileged those documents (like a manuscript from Alba from the ninth century) in which the novice’s promise has precisely the form of a dialogue (“*Promittis de stabilitate tua et conversatione*

morum tuorum et oboedientia coram Deo et sanctis eius?” “*Iuxta Dei auditium et meam intelligentiam et possibilitatem promitto*,” “Do you promise your stability and the conversion of your morals and obedience before God and his saints?” “In the hearing of God I promise to the extent of my intelligence and possibility”; *ibid.*, p. 169). Older documents show, however, that the most common form of the profession was that of a unilateral declaration, and not of a contract. The same *petitio* appears, in the surviving documents, as a simple confirmation (*roboratio*) of the promise, whose content does not, as in a *stipulatio*, concern specific acts, but the monk’s very form of life. The formulary of a *petitio monachorum* from Flavigny (seventh or eighth century) reads as follows:

Domino venerabili in Christo patre illo abate de monasterio illo. . . . Petivimus ergo beatitudinem caritatis, ut nos in ordine congregacionis vestrae digni sitis recipere, ut ibidem diebus vitae nostrae sub regula beati Benedicti vivere et conversare debemus. . . . Habrenunciamus ergo omnes voluntates nostrae pravas, ut dei sola voluntas fiat in nobis, et omnis rebus quae possideums, sicut evangelica et regularis tradicio edocit . . . obeodientiam vobis, in quantum vires nostrae subpetunt et Dominus adderit nobis adiutorium, conservare promittimus. . . . Manu nostrae subscripcionis ad honorem Domni et patronis nostri sancti hanc petitionem volumus roborare [O venerable Lord in Christ, father and abbot of this monastery. . . . We therefore beg the blessing of charity, that you may receive us into the order of your worthy congregation, so that here on this day we will have to live and conduct our lives under the rule of blessed Benedict. . . . We therefore renounce all our depraved wills, so that God’s will alone may be done in us, and everything that we own, as evangelical and regular tradition teaches. . . . We promise to observe obedience to you, as far as our strength extends and God gives us help. . . . With the signature of our hand to the honor of God we wish to make firm this petition to our holy patron]. (Capele, p. 235)

The monk does not obligate himself here so much to individual acts, but rather to cause the will of God to live in him. Moreover,

the obedience is promised in proportion to his own strength and under the condition of God's help.

Smaragdus's commentary on the Benedictine rule (ninth century) suggests considerations that are perhaps most instructive from this perspective. Not only does it transmit to us the text of a *petitio* that seems to lack every juridical characteristic, but it contains a definition of the *professio* that situates it in its proper context: *Ista ergo regularis professio si usque ad calcem vitae in monasterio operibus impleatur, recte servitium sanctus vocatur, quia per istam sanctus effectus monachus, sancto Domino sociatur* ("And so if this regular profession is fulfilled in deeds in the monastery up to the end of one's life, it is rightly called a holy service, because having become holy through it, the monk is joined to the holy Lord"; chap. 5, pp. 796/250). The term *servitium*, exactly like *officium*, indicates the very life and activity of the monk and the priest, insofar as it is modeled on the life and "service" performed by Christ as high priest and "*leitourgos* of the sanctuary and the true tabernacle" (Heb. 8:2). What is clearly expressed here is the tendency to consider the monk's life as an uninterrupted Office and liturgy, which we have already mentioned and to which we will have occasion to return.

⌘ How should the *petitio* in the Benedictine rule be understood? In Roman law one speaks of a *petitio* in the trial (*actio de iure petendi*) and for candidacy for public office (*petitio facta pro candidato*). In religious law, it indicated a request directed toward the gods in the form of a prayer. This last meaning, in which one can make out a precursor of the vow, is common in the Christian authors of the early centuries (as in Tertullian, *Oration* 1, 6: *orationis officia . . . vel venerationem Dei aut hominum petitionem*, "the offices or our prayer are either the veneration of God or the petitions of human beings"). However, we possess documents (like the formulary of Flavigny cited above) that show unequivocally that the meaning of the term in Benedictine monastic practice was neither that of Roman law nor that of a vow, but was understood as a simple written confirmation of the request for admission to the monastic life.

2.8. In the course of time and particularly starting from the Carolingian age, the Benedictine rule, supported by the bishops and the Roman Curia, is progressively imposed on cenobites, until it becomes between the ninth and the eleventh centuries the rule par excellence that new orders must adopt or to whose model their own organization must conform. It is probable, in this sense, that it is precisely the tendential juridicization of the monastic profession that we see occurring in the rule that had contributed to its primacy and its diffusion in an epoch in which the Church (and, with it, the emperor) were seeking to establish a discrete but firm control over the monastic communities. A series of decrees from the *serenissimus et christianissimus imperator*, which culminated in the 802 edict *Capitula canonum et regula*, thus prescribed the Benedictine rule—in which the chapters on obedience and the profession were expressly highlighted—to the monks.

In the era that followed the Benedictine rule and up to the formation of the first collections of canon law, both the term *votum* and the verb *voveo* (or *devoveo*—*se Deo vovere, voventes*) appear with increasing frequency in the sources. And yet even at this time a definite theory of the monastic vow, as will be developed in the scholasticism of Thomas and Suárez, seems to be lacking in the canonists.

Let us open book 7 of the *Decretal* of Ivo of Chartres, the theme of which is declared to be *De monachorum et monacharum singularitate et quiete, et de revocatione et poenitentia eorum qui continentiae propositum transgrediuntur* (“On the singularity and peace of monks and nuns, and the withdrawal and penance of those who transgress the promise of continence”), or the section *De vita clericorum* (“On the life of clergy”) of the same author’s *Panormia*. Although the text essentially consists of a heterogeneous collage of passages from Augustine, Ambrose, Jerome, and extracts from conciliar canons or letters of the popes or imperial constitutions, the approach to the problem essentially has the form of a casuistry. A slave cannot become a monk without the knowledge of his master (*praeter scientiam domini sui; Decretum*, chap. 45, p. 555), and consequently, the early testing period for the

novice's acceptance is viewed from the perspective of verifying his juridical condition as free man or slave, in order to permit the master to recover his fugitive slave within three years (*ibid.*, chap. 153, 582). If children who have taken the vow of chastity without being compelled by their parents later get married, they are culpable even if they had not yet been consecrated (chap. 20, p. 549). Virgins who get married after consecration are impure (*incestae*; *Panormia*, p. 1175). If a monk leaves the monastery after his profession, his goods remain the property of the monastery—indeed, “the monk's *propositum*, freely undertaken, cannot be abandoned without sin” (p. 1173).

The same holds for Gratian. If a child has received the tonsure and the habit without his consent, his profession cannot be definitive and can in any case be annulled (*Decretum*, q. 2–3); if the monk wants to pronounce a vow, he must be authorized by the abbot (*Decretum*, q. 4). The question of whether the *voventes* can enter into matrimony receives, in the same sense, a full treatment. In question each time are the precise juridical implications of the profession, not a theory of the profession insofar as it is normatively constitutive of the monastic life as such.

2.9. The considerations developed up to now must have rendered obvious the sense in which it is almost impossible to pose the problem of the juridical or nonjuridical nature of the monastic rules without falling into anachronism. Even granting that something like our term *juridical* has always existed (which is no less dubious), it is certain, in any case, that it means one thing in Roman law, another in the early centuries of Christianity, another still starting from the Carolingian age, and another, finally, in the modern age, when the State begins to assume the monopoly over law. Furthermore, the debates that we have analyzed over the “legal” or “advisory” character of the rules, which seem to approach the terms of our problem, become intelligible only if one does not forget that they are superimposed over the theological problem of the relation between the two *diathēkai*, the Mosaic law and the New Testament.

In this sense, the problem ceases to be anachronistic only if it is restored to its proper theological context, which is that of the relationship between *evangelium* and *lex* (that is, first of all, the Hebraic law). The theory of this relationship was elaborated in the Pauline letters and culminates in the declaration that Christ as messiah is *telos nomou*, end and fulfillment of the law (Rom. 10:4). Even if in the same letter this radical messianic thesis—and the opposition that it implies between *pistis* and *nomos*—is complicated to the point of giving rise to a series of aporias (as in 3:31: “Do we then render the law inoperative by this faith? By no means! On the contrary, we uphold the law”), it is nonetheless certain that the Christian life is no longer “under the law” and cannot in any case be conceived in juridical terms. The Christian, like Paul, is “dead to the law” (*nomōi apethanon*; Gal. 2:19), and lives in the freedom of the spirit. Even when the Gospel is counterposed to the Mosaic law as a “law of faith” (Rom. 3:27), or later as a *nova lex* to the *vetus*, it remains the case that neither its form nor its content are homogeneous to those of the *nomos*. “The difference between the law and the Gospel,” one reads in Isidore’s *Liber differentiarum* (chap. 31), “is this: in the law there is the letter, in the Gospel grace . . . the first was given for transgression, the second for justification; the law shows sin to the one who does not know it, grace helps him to avoid it . . . in the law the commandments are observed, in the fullness of the Gospel the promises are consummated.”

It is in this theological context that one must situate the monastic rules. Basil and Pachomius, to whom we owe, so to speak, the archetypes of the rules, are perfectly conscious of the irreducibility of the Christian form of life to the law. Basil, in his treatise on baptism, explicitly confirms the Pauline principle according to which the Christian dies to the law (*apothanein tōi nomōi*), and as we have seen, Pachomius’s *Praecepta atque iudicia* opens with the statement that love is the fulfillment of the law (*plenitudo legis caritas*). The rule, whose model is the Gospel, cannot therefore have the form of law, and it is probable that the very choice of the term *regula* implied an opposition to the sphere of the legal

commandment. It is in this sense that a passage from Tertullian seems to oppose the term *rule* to the “form of the [Mosaic] law”: “Once the form of the old law was dissolved [*veteris legis forma soluta*], this is the first rule which the apostles, on the authority of the Holy Spirit, sent out to those who were already beginning to be gathered to their side out of the nations” (Tertullian 3, 12). The *nova lex* cannot have the form of law, but as *regula*, it approaches the very form of life, which it guides and orients (*regula dicta quod recte ducit*, recalls an etymology from Isidore, *Etymologiarum* 6.16).

The problem of the juridical nature of the monastic rules here finds both its specific context and its proper limits. Certainly the Church will progressively construct a system of norms that will culminate in the twelfth century in the system of canon law that Gratian compiles in his *Decretum*. But if Christian life doubtless can readily encounter the sphere of law, it is just as certain that the Christian *forma vivendi* itself—which is what the rule has in view—cannot be exhausted in the observance of a precept, which is to say that it cannot have a legal nature.

§ 3 Flight from the World and Constitution

3.1. There is, however, an aspect of the rules according to which they can be considered as juridical acts; it does not concern civil or penal law, but public law. It is possible, that is to say, to consider the rules as constituent acts, which bear on the formation of those “political” communities that cenobies and convents undoubtedly are, even if in a peculiar sense. At the foundation of this jurispublic nature of the rules stands the doctrine of the *fuga saeculi* as a so-to-speak constituent process of the community of believers, which was elaborated by Philo and picked up and developed by Ambrose.

Let us first consider Philo’s *De fuga et inventione* (On Flight and Finding). Here the flight of Jacob is motivated first of all by the fact that Laban has abandoned all care for the law, in such a way that the “ascetic powers” that drive Jacob to flee act in order to reclaim an inheritance that has been unjustly taken from them. And the places of refuge and exile (*phygadeutēria*; *phygē*, in Greek, means in the first place exile) are here—on the basis of a midrash on Numbers 35:11–14, with regard to the places where those guilty of involuntary homicide could find refuge—genuine cities that each symbolize, however, a divine power. There are six of them: the first, the mother-city (*mētropolis*), is the divine word (*logos*), the first place in which it is useful to seek refuge. The other five, which are “colonies” (*apoikiaî*) with respect to the first, are described as follows:

their leader being creative [*poietikē*] power, in the exercise of which the Creator produced the universe by a word; second in order is the royal [*basilikē*] power, in virtue of which he that has made it governs [*archēi*] that which has come into being; third stands the gracious [*hileōs*] power, in the exercise of which the Great Artificer takes pity and compassion on his own work; fourth is the legislative power, by which he prescribes duties incumbent on us; and fifth that division of legislation, by which he prohibits those things which should not be done. (17, 95)

Flight is thus conceived as a process that carries the fugitive or the exile through six cities that are so many constitutive “political” powers: the divine word (identified with the great/high priest), creation, kingdom, governance, positive and negative legislation.

The cities are, moreover, Levitical cities, because the Levites are themselves in a certain way also fugitives and exiles (*phygades*), who have abandoned parents, children, and brothers in order to please God. To the Levites and priests are entrusted the care of the temple and the *leitourgia* (that is, the public function of the cult). In the same way, even the fugitives who have been rendered guilty of an involuntary fault “are also engaged in a service [*leitourgousi*]” (17, 93). In this dense midrash, which was to have a long posterity in Christianity, exile is seen paradoxically as a “liturgy,” a public service by which the exiled are assimilated to priests.

It is well known that Ambrose’s *De fuga saeculi* (Flight from the World) depends heavily on Philo’s text and that, in this sense, it certainly does not sparkle with originality. Yet the very fact that he had decided to insert Philo’s midrash into one of the foundational works of Christian asceticism inscribes the theme of the flight from the world within a peculiar perspective, in which renunciation and asceticism are linked closely to the exercise of the priesthood, that is to a public practice. Not only does chapter 2 take up once again, almost literally, Philo’s exegesis of the cities of refuge, but with a development that is pregnant with significance, the high priest, whom Philo already assimilated to the divine *logos*, is identified without reserve with the Son.

Who is this chief priest but the Son of God, the Word of God? We enjoy his advocacy in our behalf before the Father, for he is free from every offense, both willed and unintentional, and in him subsist all things which are on earth and which are in heaven. For all things have been bound by the bond of the Word and are held together by his power and subsist in him, because in him they have been created and in him all God's fullness dwells. And so all things endure, because he does not allow what things he has bound to be loosened, since they subsist by his will. Indeed, as long as he wills, he keeps all things in check by his command and rules and binds them by a harmony of nature. (Ambrose, pp. 85/291)

At the suggestion of Philo and the Pauline letter to the Hebrews, the Word is immediately associated with the great priest of Psalm 109:4:

Be satisfied now that he is the great high priest. The Father swore an oath in his regard, saying, "You are a priest forever." . . . This is the Word of God, in whom there inheres the high priesthood. In the account of the clothing of the high priest, Moses describes the garments symbolically, because the Word put on the world by his own power and is resplendent among all men as if he were clothed with it. . . . Christ is the head of all, and from him the whole body extends and is joined by a mutual joining of its parts to one another, while receiving its increase in the building up of itself in love. (ibid., pp. 88–90/293–94)

Here the theme of the flight from the world, so constitutive of monasticism, is united with the exercise of an ecclesial practice in which the fugitive appears as a true minister of the community: "the minister of God's holy altar is one who is in flight from his own" (*fugitans igitur est suorum sacri altaris eius minister*; pp. 78/285). And it is on this basis that monastic exile from the world could be conceived as the foundation of a new community and a new public sphere.

✠ By making exile a constitutive political principle, Philo was in reality referring to a tradition established in Greek philosophy, which made

use of exile as a metaphor of the perfect life of the philosopher. In the celebrated passage of the *Theatatus* (176a–b), in which assimilation to God appears as a *phygē* (*phygēē de homoiōsis theōi kata ton dynaton*), it is necessary to restore to *phygē* its originary meaning of exile (“assimilation to God is virtually an exile”). And it is in perfect analogy with the Platonic metaphor that in the *Politics* (1324a 15–16) Aristotle can define the form of the philosopher’s life as “alien” (*xenikos bios*). And centuries later, when Plotinus at the end of the *Enneads* will define the life of “divine and happy” men (that is, of philosophers) as a *phygē monou pros monon*, the passage becomes fully intelligible only if the political character of the image is not lost: “exile in solitude to the solitary” (*Ennead* 6.9.11). “Exile from the world” is first of all a political gesture that in Philo and Ambrose is equivalent to the constitution of a new community.

3.2. In 1907 Ildefons Herwegen, the initiator of the liturgical movement in the Benedictine abbey of Maria Laach, called attention to an exceptional document that casts new light on the rules and monastic professions and, in particular, allows one to situate them in a jurisprudential perspective. The text in question is the so-called *Pactum*, which is found at the end of St. Fructuosus of Braga’s *Regula communis*. The interest of this document, from a little before 670, is that it is presented as an accord or contract between two parties, the group of monks on the one hand (designated with the generic term *nos omnes*) and the abbot on the other (defined as *tu dominus*), in which they found and regulate the community through decreeing reciprocal obligations:

Thus, fired with divine ardor, lo, all of us whose names are subscribed below entrust our souls to God and to you, our master and our father, that we may live in one monastery under Christ’s guidance and your teaching according to the edict of the apostles and the Rule, and as sanctioned by the authority of the fathers in the past. Whatever you desire for the safety of our souls to pronounce, teach, perform, reprimand, excommunicate, or correct in accordance with the Rule [*annuntiare, docere, agere, increpare, imperare, excommunicare, secundum regulam emendare*], we shall completely carry out with humble heart, all arrogance aside, with mind intent, with burning

zeal, with the aid of divine grace, without making excuses [*inexcusabiliter*], and with the Lord's favor. If any of us shall be complaining, obstinate, disobedient, or slandering against the Rule and against your command [*contra regulam et tuum praeceptum murmurans, contumax, inobediens vel calumniator*], then, you may have the power to bring all into an assembly and to read the Rule in the presence of all and to correct our guilt publicly, and each one who is guilty shall receive his due, the lash or ban of excommunication, with due consideration for his misconduct. If anyone shall secretly intrigue with his parents, brothers, sons, relatives, or neighbors, or especially with a fellow brother in the absence of the above-mentioned father, you may have the power over each one who has attempted such a crime to have him put under ban of excommunication and confined to a dark cell for six months on bread and water alone, wearing a penitential tunic or sackcloth, without cincture and without shoes. If a monk is unwilling to undertake such a penance with full consent, he is to be stretched out naked and given 72 blows with a lash and to be deprived of the clothing of the monastery and to be expelled from the institution in conspicuous disgrace. (Fructuosus, "Pact," p. 208; cf. Herwegen, pp. 2–3)

Opposite this subjection of the monks to the sovereignty of the abbot stands, however, the obligation of the abbot to govern with justice and equity:

We remind you, our master, that if you should treat any of us unjustly—which it is unreasonable to believe and which may God not allow to happen—if you should treat any of us with pride or anger, or should love one and show hatred and rancor for another, or should dominate one but revere another, as people often do, then we shall have the right also granted to us by God to take our complaint without pride and without anger through the dean to the prior, and the prior shall humbly kiss the foot of you our lord and lay before you the details of our complaint, and you must be willing to listen patiently and to bend your neck humbly to the common rule and correct and reform yourself. If you are not willing to correct yourself, then we may also have the power of consulting another monastery, or else a bishop who lives under the Rule, or a Catholic count who is a defender of the Church, and of inviting them to meet with us, that,

in their presence, you may correct yourself and fulfill the tenets of the Rule. (Fructuosus, "Pact," p. 209; cf. Herwegen, pp. 3–4)

Herwegen, who lingers on the juridical meaning of the document, renders an account of the constitutional character of the pact with respect to the convent community, but without drawing all its consequences. "This formula," he writes, "is the expression of a juridical negotiation through which a multiplicity is united for a common cloistered life. A superior power, under the reservation of certain rules, is conferred on an abbot defined as 'lord and father,' in the form of a monastic profession. The agreement is presented here as the foundation of a convent, connected with the subjection of the monks to the abbot" (Herwegen, p. 4). From this perspective, he seeks to demonstrate the possible influence on the *pactum*, on the one hand, of the oaths of subjection between subjects and sovereign contained in the *lex Visigothorum* and, on the other, of the Roman legionnaire's oath of obedience. It is all the more surprising, then, that Herwegen, exclusively preoccupied with relating the *pactum* to its Visigothic context and distinguishing it from the monastic profession in the strict sense, does not notice that the *pactum* constitutes, perhaps, the first and only example of a social contract in which human beings in a group subject themselves unconditionally to the authority of a *dominus*, attributing to him the power to direct the life of the community that is thus founded in all its aspects. With respect to the Hobbesian covenant or Rousseau's social contract, in which the authority of the sovereign knows no limits, to the monks' obligation of subjection there corresponds the obligation to govern with justice on the part of the abbot. In any case, however, what is decisive is that the *pactum* is not in any way assimilable to a private contract and that by abstracting the question from the discussion—which is, all things considered, sterile—of the contractual or votive character of the monastic profession, it allows us in some way to consider the rules in their integrity as true and proper constituting documents (*constitutiones*, as they are after all often designated) of the cloistered community.

3.3. In reality, what is decisive here is not so much the problem of the more or less juridical nature of the rules, which cannot be proposed for the earliest rules, but more generally that of the peculiar relation between life and norm that comes to be established in the rule. What is in question is thus not what in the rule is precept and what is advice, nor the degree of obligation that it implies, but rather a new way of conceiving the relation between life and law, which again calls into question the very concepts of observance and application, of transgression and fulfillment.

Already in the earliest rules, the penal apparatuses often refer not to individual actions, but to something like a vice or a spiritual condition of the monk. *Qui facilis est ad detrahendum, si in hoc peccato fuerit deprehensus . . . iracundus et furiosus si frequenter irascitur* ("The one who is quick to slander, if he is caught in this sin . . . if an irascible and raging person frequently becomes angry"), one reads in Pachomius's *Praecepta atque iudicia. Si quis frater contumax aut superbus aut murmurans aut inoboediens . . .* ("If any brother is stubborn or proud or given to complaining or disobedient . . ."), begins the chapter *De excommunicatione culparum* (About Excommunication for Faults) in the *Rule of the Master* (Vogüé 2, 2, pp. 33/149). And in the rule of Isidore, the index that enumerates the most serious offences is more similar to a catalog of vices than to the outline of culpable offences: *si temulentus quisquam sit, si discors, si turpiloquus, si feminarum familiaris, si seminans discordias, si iracundus . . .* ("if anyone is drunk, disagreeable, foul-speaking, friendly with women, a sower of discord, irascible . . ."; *Regula monachorum*, p. 886).

This holds even more so for the monk's positive obligations. A passage from Bernard of Clairvaux's *De praecepto et dispensatione* (On Precept and Dispensation) is particularly significant from this perspective. Responding in an imaginary dialogue to a monk who, having professed the rule, laments not being able to fulfill his vow in the monastery where he is, Bernard writes:

But truly, I say, neither of these complaints is just. He who thinks it perjury not to observe the rule in its purity [*ad purum*], has I think paid scant attention to what he actually promised. No one

at profession [*cum profitetur*] really promises “the Rule” [*spondet regulam*], but specifically, that he will act “according to the rule” [*secundum regulam*] from the moment of his conversion and in his form-of-life [*conversionem suamque . . . conversationem dirigere*]. This sort of profession formula has, in our day, been adopted by almost all monks. However, God is served in many diverse ways in the various monasteries. So long as one carefully observes the good customs of his house he is beyond any doubt living according to the rule, for the rule admits of variations in local customs. (Bernard of Clairvaux, *De praecepto et dispensatione*, pp. 250–52/140–41)

As the opposition between a technical legal term (*spondere*, to obligate oneself personally to something) and an expression drawn from ascetic language (to lead the proper form of life) shows clearly, the passage testifies to a transformation that affects the way we understand the relationship between norm and life. The one who promises does not obligate himself, as happens in the law, to the fulfillment of the individual acts expected in the rule, but puts into question his way of living, which is not identified with a series of actions or exhausted in them. As Bernard adds immediately after, “those who undertake to live according to the Rule [*secundum regulam vivere*], even if they do not keep it completely in every detail [*ad unguem*], and even if they change or omit certain details according to the customs of their house, as long as they are faithful to what is locally accepted as a ‘sober, just, and pious life’ [*sobrie et iuste et pie vivere*], they are truly living the Rule” (ibid., pp. 286/141).

It is most likely in reference to this passage that Thomas can write that “he who professes a rule does not vow to observe all the things contained in the rule [*non votet observare omnia quae sunt in regula*], but he vows the regular life [*votet regularam vitam*] which consists essentially in the three aforesaid things [poverty, continence, and humility]. Hence in certain religious orders precaution is taken to profess, not the rule, but to live according to the rule [*profitentur non quidem regulam, sed vivere secundum regulam*]” (*Summa theologica*, 2a 2ae, q. 186, art. 9). Even if Thomas seems to reduce the problem to that of the difference between precept and

rule, the decisive point, which the authors have difficulty putting in focus, is the transformation that is in question in the passage from “promising the rule” to “promising to live according to the rule” (promising life). The object of the promise is here no longer a legal text to observe or a certain action or a series of determinate behaviors, but the subject’s very *forma vivendi*.

3.4. In Suárez, this special character of the monastic profession assumes the paradoxical form of an obligation that doesn’t have a certain human act as its object, but the obligation itself. He begins first of all by distinguishing two meanings of the term *votum*: in the first, the word designates “the obligation and the bond that remains in one who has pronounced the vow” (*pro obligatione et vinculo quod manet in homine habente votum*), in the second, “the act by which the obligation immediately comes about” (*pro actu illo a quo immediate nascitur obligatio*; Suárez, p. 804). “I say,” he continues, “that the vow properly so-called, insofar as it signifies that act by means of which a person obliges himself with respect to God, cannot have for its object any human act other than the obligation itself, that is the bond that is realized through the act of vowing oneself” (*non habere pro obiecto alium actum humanum sed obligationem ipsam, seu vinculum efficiendum per actum votendi*; *ibid.*).

The vow, insofar as it “is nothing other than the obligation, by which someone is bound spontaneously to God [*se spontanee obligat deo*],” does not obligate one, like the law, simply to fulfill determinate acts and keep away from others, but produces in the will a “permanent and, as it were, habitual bond” (*vinculum permanens et quasi in habitu*; *ibid.*). Here the vow is a “vow of the vow” (*habet pro obiecto votum*), in the sense that it does not refer immediately to a certain action or a certain series of acts, but first of all to the bond that is itself to be produced in the will:

And this will, through which the human being obliges himself with respect to God, has for its object the very obligation to God and thus has for its object the vow or the promise, to the extent to which this signifies the bond itself that is to be realized through the vow, and

not to the extent in which it signifies the acts to be vowed or promised [*habet pro obiecto votum vel promissionem, quatenus haec significat vinculum ipsum efficiendum per votum, non quatenus significat actum votendi aut promittendi*]. (ibid.)

What Suárez here tries laboriously to conceptualize by multiplying his distinctions is the paradox of an obligation whose primary content is not a certain behavior, but the very form of the will of the one who, by promising the vow, has been bound to God. The vow has, that is, the form of law, but not its content, and like the Kantian imperative, it has no immediate object except the very will of the one vowing. For this reason, in the next chapter, Suárez takes care to distinguish the *votum* in the proper sense, which is realized only through the promise (*per solam promissionem*), from the *tradio*, which is added to it in the case of the solemn vow of chastity, in which the one vowing “consigns and consecrates his body to God as chaste in perpetuity” (ibid., p. 805). In distinction from the pagan *devotio*, in which the *devotus* consigned to the gods his body and his biological life, the Christian vow is, so to speak, objectively vowed and has no other content than the production of a *habitus* in the will, whose ultimate result will be a certain form of common life (or, from the liturgical perspective, the realization of a certain *officium* or a certain *religio*).

Once more, the decisive core of the monastic condition is not a substance or content, but a *habitus* or a form. Understanding that condition will require us to turn toward the task of confronting of the problem of “habit” and form of life.

§ In our archeology of duty (Agamben I, §4, chap. 8), we showed that *religio* is the name that theologians give to that singular relation between norm and life, which configures a sort of juridical duty in the form of a virtue or a *habitus*.

In order to understand the new figure of the relation between norm and life that here starts to be delineated, it is necessary to refer to juridical situations which find their technical form only later in administrative law—that is, in that branch of modern law that had its gestation in the sphere of the practices of Church administration. It is here that one

encounters norms (called instrumental) that provide veritable outlines of behavior, linked to the definition of a “competence-duty,” that is, to an obligation or a legitimation to act that derives from a determinate situation (for example, the assumption of an office). The “duties of office” that result from it configure a type or a normative outline of a practice that is not exhausted in an individual action, but defines a definite conduct of life, whose objective element and subjective element tend to coincide and which recalls, in this sense, the monk’s *vivere secundum regulam* and *religio*.

3.5. What is decisive in any case is that the form of life that is in question in the rules is a *koinos bios*, a common life. Every interpretation of the monastic rules must first of all situate them in this context, from which they cannot be separated. When we ask ourselves about the relation between monks and rules, it is necessary not to forget Wittgenstein’s observation according to which it is not possible to follow a rule privately, because referring to a rule necessarily implies a community and a set of habits. Even for the monk the principle holds according to which “it is not possible that there should have been only one occasion on which only one person followed a rule. . . . To follow a rule, to make a report, to give an order, to play a game of chess, are *customs* (usages, institutions)” and “‘following a rule’ is a practice. And to *think* one is following a rule is not to follow a rule. And that’s why it’s not possible to follow a rule ‘privately’” (Wittgenstein 1, pp. 381–82/87–88).

It is important to specify, therefore, that the common life is not the object that the rule must constitute and govern. On the contrary—as both the claim of a “power conceded to us by God” in the “Pact” of St. Fructuosus and the insistence on the distinction between “promising the rule” and “promising life” in Bernard and Thomas testify—it is the rule that seems to be born from “cenoby,” that (to use the language of modern public law) seems to be placed with respect to cenoby like constituent power with respect to the text of the constitution. If the ideal of a “common life” obviously has a political character, cenoby is perhaps the place in which the community of life as such is claimed without

reserve as the element that is in every sense constitutive. What is in question, in the life of cenoby, is thus a transformation of the very canon of human practice, which has been so determinate for the ethics and politics of Western society that perhaps still today we cannot fully grasp its nature and implications.

Threshold

As we will see, it is only with the Franciscans that this transformation reaches full consciousness, and consequently can be claimed as such, calling into question the very substance of the rule as a set of norms separate from life.

In Hugh of Digne's commentary on the Franciscan rule, the difference between *promittere regulam* and *promittere vivere secundum regulam* is taken up—not to distinguish between precepts and advice or, as in Humbert of Romanis, between the three substantial vows (obedience, poverty, and chastity) and the rest of the rule, but to leave room for an absolute undecidability between *forma regulae* and *forma vivendi*. The one who promises to observe the life and the rule of the blessed Francis, writes Hugh, promises according to the formula of the rule (*secundum formam regulae profitetur*) and therefore is not obligated to observe either the individual norms or the three principle vows, but all of them indistinctly (*omnia indistincte*), in such a way that the monk's very form of life (*forma vivendi*) falls *sub voti efficacia* ("under the efficacy of the vow"; Hugh of Digne, 1, p. 178). Not unlike how Suárez will try to think this through three centuries later in his treatise on the vow, what is promised solely according to the form of the law is the monk's very form of life. Through the concept of "form," rule (*forma regulae*) and life (*forma vivendi*) enter into a threshold of indistinction in the monk's practice.

For this reason the Franciscan promise is neither a promising of the rule nor a promising to life according to the rule, but an unconditional and indivisible promise of the rule and of life (*regulae vitaeque*): *Promittere quidem non regulam, sed vivere secundum regulam, minus ad singula regulae dicitur obligare; sed hic plena regulae vitaeque promissio ponitur, nec additur “vivendo in obedientia, sine proprio et castitate”* (“To promise not this rule, but to live according to the rule, is said to obligate one less to individual rules, but this lays down a full promise of the rule and life, nor is there added ‘living in obedience, without property, and in chastity’”; *ibid.*, p. 177).

Commenting on this expression from the rule (“living in obedience”), Peter John Olivi writes: “Note that it makes more sense to say ‘living in obedience’ than to say ‘observing obedience’ or ‘obeying’: one says, in fact, that someone lives in a certain state or in a certain work only if his whole life has been applied to it [*cum tota sua vita est sic applicatus ad illud*], in which case he is rightly said to be and live and dwell [*esse et vivere et conversari*] in it” (Olivi I, p. 119). The traditional juridical idea of the observance of a precept is here reversed. Not only is it the case that the Friar Minor does not obey the rule, but live it—with an even more extreme reversal, it is life that is to be applied to the norm and not the norm to life.

What is in question in the monastic rules is thus a transformation that seems to bear on the very way in which human action is conceived, so that one shifts from the level of practice and acting to that of form of life and living. This dis-location of ethics and politics from the sphere of action to that of form of life represents the most demanding legacy of monasticism, which modernity has failed to recognize. How should one understand this figure of a living and a life that—while affirming itself as “form-of-life”—cannot be brought back to either law or morals, to a precept or advice, to labor or contemplation, and that nonetheless appears explicitly as the canon of a perfect community? Whatever answer is given to this question, it is certain that the paradigm of human action that is at stake in it has progressively extended its efficacy

beyond monasticism and Church liturgy in the strict sense, penetrating into the profane sphere and enduringly influencing both the ethics and the politics of the West. If it is defined, as we have seen, as a tendential threshold of indistinction between rule and life, it is this threshold that we must investigate if we wish to comprehend its nature.

II. Liturgy and Rule

§ 1 Regula Vitae

1.1. Historians and theologians who have worked on monastic rules usually refer in a perfunctory way to the semantic history of the term *regula* and normally limit themselves to providing its meanings within the *corpus* in question. Naturally they all know (or should know) that beginning from the second century A.D., the Fathers often made use of the syntagmas *regula fidei* (as Rufinus translates *kanon pisteōs* in the text of Origen), *regula veritatis*, *regula traditionis*, *regula scripturarum*, *regula pietatis*. Nonetheless, their relation with the syntagma *regula vitae* (or *regula vivendi*), which is found in the text of monastic rules, has not been analyzed in an exhaustive way. On the other hand, outside the theological context, the importance of the *regula iuris* in the tradition of Roman jurisprudence is well known. What is less known, however, is that this tradition must have been familiar to the Fathers, if Rufinus can refer to the monastic rules and constitutions themselves as jurisprudential responses (*sancti cuiusdam iuris responsa*; Frank, p. 67).

Peter Stein, to whom we owe a thorough study of the *regulae iuris*, has shown that the term derives from the debate over analogy (that is, regularity) and anomaly (namely, custom and use) that divided Greek and Roman grammarians starting already in the second century A.D. (Stein, pp. 53ff.). This means that even grammatical expressions like *regula loquendi* or *regula artis grammaticae* could not have been foreign to the redactors of the

monastic rules, who as we have already seen often made use of the metaphor of the *ars*. A passage from Varro on the relation between rule and use (which he extends, significantly, even beyond the linguistic sphere) indeed shows beyond any doubt how grammatical questions can be valuable for understanding the same problem in the monastic sphere. "But if we must follow regularity [*si analogia sequenda est nobis*]," Varro writes (8.33), "either we must observe that regularity which is present in ordinary usage, or we must observe also that which is not found there. If we must follow that which is present, there is no need of rules, because when we follow usage, regularity attends us [*praeceptis nihil opus est, quod, cum consuetudinem sequemur, ea nos sequetur*]."

If it is true, as Spitzer's studies on the semantic history of the European lexicon have shown, that it is not possible to understand the meaning of a term if one ignores its relations with its linguistic context as a whole, an investigation of the semantics of the term *regula* in the theological sphere as well as in law and grammar (and in the *artes* in general) still remains to be done. We will limit ourselves here to some preliminary considerations of a general hermeneutical character.

First of all, as we have seen, the term *regula* tends to be put together in a syntagma with another term in the genitive (*regula fidei, regula iuris, regula loquendi*, etc.). Is this a matter of a subjective genitive (in which *ius* is the subject) or an objective genitive (in which *ius* is the object)? In the case of the syntagma *regula iuris*, we can provide a reliable answer to the question. The digest notably attributes to Paul this concise definition: *Regula est quae rem quae est breviter enarrat. Non ex regula ius sumatur, sed ex iure quod est regula fiat* ("A rule is a statement, in a few words, of the course to be followed in the matter under discussion. The law, however, is not derived from the rule, but the rule is established by the law"; *Digest*, 50, 17, 1). It is a subjective genitive, then, even if in a special sense: the rule is produced (or must be produced: *fiat*) out of the existent law (*ex iure quod est*).

1.2. An initial survey of the patristic texts of the early centuries shows that what is in question in the syntagmas *regula fidei* and *regula veritatis* is precisely a subjective genitive of this type. Tertullian, who is among the first to make use of it in a technical sense, uses a juridical metaphor when in the *De virginibus velandis* (*On the Veiling of Virgins*) he affirms the primacy of truth, which no statute can invalidate (*cui nemo praescribere potest*), over custom. If truth cannot, as on the contrary happens for the law, be proscribed or altered by custom, this is because in the case of faith, the truth is Christ himself (*Christus veritatem se, non consuetudinem, cognominavit*; “Christ has surnamed himself Truth, not Custom”; Tertullian I, 1.1). Only at this point can he enunciate the *regula fidei, sola immobilis et irreformabilis, credendi scilicet in unicum deum omnipotentem, mundi creatorem, et Filium eius, natum ex virgine Maria, crucifixum sub Pontio Pilato, tertia die resuscitatum a mortuis, receptum i caelis, venturum iudicare vivos et mortuos per carnis etiam resurrectionis* (“The rule of faith, indeed, is altogether one, alone immovable and irreformable; the rule, to wit, of believing in one only God omnipotent, the Creator of the universe, and His Son Jesus Christ, born of the Virgin Mary, crucified under Pontius Pilate, raised again the third day from the dead, received in the heavens, destined to come to judge the living and the dead through the resurrection of the flesh”; *ibid.* 1.4). The creed—or rather the *regula fidei*—that we see here in the process of its progressive elaboration, has not yet assumed the dogmatic form that it will receive in the councils. As Augustine pointedly observes, commenting on the Pauline and Gospel formula *credere in Christum*, it is not yet an external norm that gives faith and truth its content, as it will be in dogma. Rather it is faith *in* Christ that is to furnish the *regula* with its only truth, which is essentially of a pragmatic order and implies the immediate and total adhesion to the presence and action of Christ (“*ut credatis in eum,*” *non ut credatis ei . . . quid est ergo “credere in eum”? Credendo amare, credendo diligere, credendo in eum ire, et eius membris incorporari,* “That ye believe in him,’ not, that you believe him . . . What

then is ‘to believe in him’? By believing to love him, by believing to esteem highly, by believing to go into him and to be incorporated in His members”; Augustine, *In Evangelium Johannis*, 29.6; *hoc est credere in Deum, quod utique plus est quam credere Deo . . . credendo adhaerere ad bene cooperandum bona operanti Deo*; “For this is to believe in God: which is surely more than to believe God. . . . To believe in God therefore is this, in believing to cleave unto God who works good works, in order to work with Him well”; Augustine, *Enarrationes in Psalmos*, 78.8).

This is evident in Rufinus’s *Commentarius in Symbolum Apostolorum* (*Commentary on the Apostles’ Creed*): what the Fathers formulate (*componunt*, put together) as *regula* is drawn from the experience of faith and from the truth of each of them (*conferendo in unum quod sentiebat unusquisque*). The *symbolon* that results from it is however only an *indicium*, a common sign and testimony of their faith (*symbolon enim Graece et indicium dici potest et conlatio, hoc est quod plures in unum conferunt*; §2). To paraphrase the definition of the *Digest*, he can also say here that *non ex regula fides sumatur, sed ex fide quae est regula fiat* (“faith, however, is not derived from the rule, but the rule is established by faith”).

In Augustine’s *De doctrina christiana* (*On Christian Doctrine*), *regula fidei* and *regula veritatis* often refer to the interpretation of Scripture, whose reading they have a share in guiding. But even here, the rule that will be used to clarify the obscurities of the Scripture derives first of all from Scripture itself (“if, . . . it shall appear to be uncertain in what way it ought to be punctuated or pronounced, let the reader consult the *regula fidei* which he has gathered from the plainer passages of Scripture [*consultat regulam fidei, quam de scripturam planioribus locis . . . percepit*]”; 3.2.2). Augustine’s model here is Tyconius, to whose *Book of Rules*, which can be considered in a certain way the archetype of treatises on textual hermeneutics, he dedicates a good portion of the third book of the work. At the beginning of his treatise, Tyconius specifies that the “mystical rules” that he intends to prepare as “keys and lights” for the sacred Scripture are found in the text

itself, of which they occupy the most internal and hidden part (*quae universae legis recessus obtinent*). It is only after their *ratio* has been revealed that “whatever is closed will be opened and whatever is dark will be illumined” (Tyconius, p. 3). Once more the criteria for the interpretation of the text (*regulae scripturarum*) are not exterior to it, but derive from it: the genitive is not objective, but subjective.

1.3. If we now turn to the syntagma *regula vitae*—which we encounter, for example, in the prologue of the *Rule of the Four Fathers* (*qualiter conversationem vel regulam vitae ordinare possumus*)—it is appropriate to ask if even here, as in the texts we have just examined, it is not precisely a matter of a subjective genitive. Just as in the syntagmas *regula iuris* and *regula fidei*, law and faith are not directed by the rule or derived from it, but vice versa, in the same way it is possible that in the syntagma *regula vitae* it is not so much the form of life that is to be derived from the rule as the rule from the form of life. Or perhaps it should rather be said that the movement goes in both directions and that, in the incessant tension toward the realization of a threshold of indifference, the rule is made life to the same extent that life is made rule.

In his treatise *On the “Prescription” of the Heretics*, Tertullian explains the expression *regula fidei* with an instructive formula: the rule of faith is that “by means of which our belief is affirmed” (*Regula est autem fidei . . . illa scilicet qua creditur*; Tertullian 2, 13). In the same sense, it could thus be said that the *regula vitae* is that *by means of which* one lives, which corresponds perfectly to the expression *regula vivificans* that will define the Franciscan rule in Angelo Clareno. The rule is not applied to life, but produces it and at the same time is produced in it. What type of texts are the rules, then, if they seem to performatively realize the life that they must regulate? And what is a life that can no longer be distinguished from the rule?

✠ The impossibility of easily distinguishing between rule and life appears clearly in the lives of the Fathers of the monasteries of Jura, the incipit of which reads *Vita vel regula sanctorum patrum Romani, Lupicini et Eugendi, monasteriorum iurensium abbatum*. The editor of the most recent edition (*Jura*, p. 240) supposes there is an important gap in the third life, where immediately after the biographical narration we should, according to him, have found the enunciation of the rule. The supposition has no material foundation in the manuscript, but derives solely from the fact that, according to the editor, the author had promised in a passage of Romano's biography to explain the rule in the third book, that is in the life of Eugendo. When we arrive at the end of the third biography, however, instead of enunciating the rule, it concludes with the narration of the abbot's death. Hence the hypothesis of a gap, whose length must, according to the editor, be equal to that of the biography itself.

In reality we are presented here with an exemplary case of an emendation (a negative one, in this case) introduced into the manuscript only because the editor has not understood the text. If the author had promised to explain the rule, he argues, he cannot limit himself to a biographical narration. This means he has not understood the peculiar relationship of indetermination that in the text and with particular clarity in the incipit (*vita vel regula*, life or rule) links the two terms *life* and *rule*. At the beginning of the first biography, the author declares in fact that he wants to "reproduce faithfully [*fideliter replicare*] in the name of Christ—according to what I saw there with my own eyes or received from the tradition of the elders—the deeds, the way of life, and the Rule [*actus vitamque ac regulam*] of the esteemed fathers of the Jura Mountains" (*ibid.*, pp. 242/101). *Actus vitamque ac regulam* (as underlined by the enclitic—*que* and the conjunction *ac*, which coordinate the words more closely than *et*) is one sole concept in three words, and it refers to something (the Fathers' form of life) that can be expressed adequately only by means of three indivisible terms.

If the author does not transcribe a separate rule, it is because the rule is already perfectly contained in the narration of Eugendo's life. In announcing the exposition of the rule, he had indeed written of reserving it for the third book, *quia rectius hoc in vita beatissimi Eugendi depromitur*. The phrase does not mean, as the editor imprecisely translated, *il est plus normal en effet de vous le donner la*

vie de st. Oyend, but rather, according to the proper meaning of the verb *depromi* (which means “to extract, to deduce”), “because it may be expressed in the most fitting way in the life of the most blessed Eugendo.” An attentive reading of the biography shows, however, that this contains, in particular in paragraphs 170–73, an accurate description of the way in which the abbot has organized the life of the monks. What is in any case essential, however, is that in the text the exposition of the rule is inseparable from that of the life.

1.4. Starting with Wittgenstein, contemporary thought and more recently philosophers of law have sought to define a peculiar type of norms, the norms called constitutive, which do not prescribe a certain act or regulate a preexisting state of things, but themselves bring into being the action or state of things. The examples Wittgenstein uses are chess pieces, which do not exist before the game, but are constituted by the rules of the game (“The pawn *is* the sum of the rules for its moves”; Wittgenstein 2, pp. 325–26/327). It is obvious that the execution of a rule of this type, which does not limit itself to prescribing to an agent a certain conduct but produces this conduct, becomes extremely problematic.

Paraphrasing the scholastic saying *forma dat esse rei* (“form gives being to the thing”), one could state here that *norma dat esse rei* (“norm gives being to the thing”; Conte, p. 526). A form of life would thus be the collection of constitutive rules that define it. But can one say in this sense that the monk, like the pawn in chess, is defined by the sum of the prescriptions according to which he lives? Could one not rather say with greater truth exactly the opposite, that it is the monk’s form of life that creates his rules? Perhaps both theses are true, on the condition that we specify that rules and life enter here into a zone of indifference, in which—as there is no longer the very possibility of distinguishing them—they allow a third thing to appear, which the Franciscans, albeit without succeeding in defining it with precision, will call “use,” as we will see.

In reality, as Wittgenstein seems to suggest, the very idea of a constitutive rule implies that the common representation

according to which the problem of the rule would consist simply in the application of a general principle to an individual case—that is, according to the Kantian model of determinate judgment, in a merely logical operation—is neutralized. The cenobitic project, by shifting the ethical problem from the level of the relation between norm and action to that of form of life, seems to call into question the very dichotomy of rule and life, universal and particular, necessity and liberty, through which we are used to comprehending ethics.

§ 2 Orality and Writing

2.1. It is from this perspective that we will now seek to interrogate the nature of the rules starting from their textual structure, as it appears in the earliest rules and in particular the *Rule of the Master*, a text which has received special attention from scholars due to its influence on the Benedictine rule. It has been observed that in the earliest monastic literature, the often anonymous authors seem to more or less consciously introduce a complex relationship and almost a tension between orality and writing, in light of which one has been able to speak of a “fictitious orality” (Frank, p. 55). Already in the archetype of Basil, the introduction of the *Regulae fusius tractatae* opens by referring to a “gathering” (*synelēlythamen*, “we gathered together”), whose participants, intending to “live according to piety” (*tou biou tou kat’ eusebeian*), propose getting to know what can guide them toward salvation (*mathein ta ton pros sōtērian*; Basil, *Regulae fusius tractatae*, preface). That it is a matter of a veritable staging is proven by the fact that the text proceeds to evoke an indeterminate but opportune place and time, in which it must be supposed that they pronounced (and later put in writing) the questions and answers that make up the rule (“the present is the most opportune time and this place provides quiet and complete freedom from external disturbances”; *ibid.*).

The opening of the *Rule of the Four Fathers* refers in an analogous way to an encounter and conversation among the four

protagonists in order to “determine the manner and the rule of the life of the brothers” (*Sedentibus nobis in unum*—“While we were sitting together”—*qualiter fratrum conversationem vel regulam vitae ordinare possimus*; Vogüé 1, pp. 180/17). And in the second discourse, that of Macarius, the father refers explicitly to the fact that the rule was put into writing while the conversation was unfolding: *quoniam fratrum insignia virtutum . . . superius conscripta praevenierunt* (“since the marks of the brothers’ virtues . . . have already been written down”; *ibid.*, pp. 180/19). With singular artifice and through an expert staging of orality, the text refers to its own writing.

In the *Second Rule of the Fathers*, if the staging seems to be the same (*Residentibus nobis in unum . . .*), the tension between orality and writing changes, since it is now expressly a matter of *conscribere vel ordinare regulam, quae in monasterio teneatur ad profectum fratrum*, “putting in writing and setting in order a rule that might be kept in the monastery for the progress of the brothers” (pp. 274/33). Once the goal of the session is explicitly that of writing down the rule, the possibility is opened of a semantic oscillation that allows us to read the term *regula*, not only in the sense of “way of life” (as it was in the incipit of the *Rule of the Four Fathers*), but also in that of a “written text.”

In the *Third Rule of the Fathers* (which according to Vogüé is the work of a bishop), the passage from orality to writing has already taken place and it is thus a matter not so much of writing the rule but of reading it: “When we convened together with our brothers in the name of the Lord, it seemed good that at the very first the rule and institutes of the Fathers be read in order [*regula et instituta patrum per ordinem legerenter*]” (pp. 532/53). The rule is already a written text that therefore can and must be read, above all to the convert who asks to enter into the monastery (“it seemed appropriate that when someone wants to be converted from the world to the monastery, the rule be read to him when he enters”; *ibid.*).

With the Benedictine rule we arrive at the end of the tension between orality and writing that had animated the rules of the

Fathers, from which it perhaps derives. The rule is already solely a text, which the last chapter designates as *regula descripta* (*regulam hanc descripsimus . . . hanc minimam regulam descriptam . . . perficere*; chap. 73; Pricoco, pp. 270–72). While the *conscribere* of the early rules evoked a text dictated from the living voice of the Fathers and extracted and transcribed from the monks' very life, *describere* is the technical term for the scribe who copies from another text. According to a custom that, as we have seen, first becomes obligatory in the Carolingian era, the rule is always *regula descripta*, in which the tension between orality and writing as much as that between the subjective and objective meanings of the syntagma *regula vitae* is already stifled.

2.2. What is the meaning of this dialectic that, at least up to St. Benedict, the text of the rules establishes between orality and writing? Why do the rules stage their writing as obstinately as their reading? It is not simply a matter of the rhetorical construction of a fictitious orality, nor only of showing (as is almost certainly the case), through the interplay between orality and writing, the rule in the act of being constructed as a text and acquiring its authority by passing from the rule-form of life to the rule-text. What is in question here seems to be the constitution of the special status of the text of the rule, which is not only a written text or simply an oral discourse and whose basis does not coincide with the transcription of a vital practice or, conversely, with the practical execution of a written rule. The rule, that is to say, stages something that is not exhausted in either of these dimensions, but finds its truth precisely and solely in the tension that it installs between them. Neither written word nor living voice, the rule constantly moves between these polarities, in search of an ideal of the perfect common life that is precisely meant to define.

From this perspective, the *Rule of the Master* offers some exemplary cues. Already the prologue, pushing the paradigm of fictitious orality to the point of paroxysm, erases and renders almost indiscernible the boundaries between orality and writing. It opens with an apostrophe, whose structure is perhaps so grammatically

complicated that the interpreters, while also pointing out its peculiarity, have preferred to ignore it:

O homo, primo tibi qui legis, deinde et tibi qui me auscultas discentem, dimitte alia modo quae cogitas et me tibi loquentem et per os meum deum te convenientem cognosce [O man, (I say) first of all to you (the dative *tibi* seems to imply *dico*) who read (me), and then you who are listening to me as I speak, dismiss now other thoughts and realize that I am speaking to you and that through my words God is instructing you].” (Vogüé 2, 1, pp. 288/92)

Who is speaking here? Whether it is a matter, as seems most likely, of the rule itself or, as Vogüé seems to think, of its author, in any case the relation between orality and writing here is truly inextricable. On the one hand, the primordially of writing is beyond question from the moment the text speaks to a reader (*tibi qui legis*) and in the following lines refers deictically to itself as a written document: “You, therefore, who hear me speaking, listen through what is written here [*per hanc scripturam*] to what is being said to you not by my mouth but by God.” On the other hand, however, the written text, which is put in some way *en abîme* within itself, speaks and refers, curiously enough, not only to a reader but also to an auditor (*deinde et tibi qui me auscultas dicentem*). And a little earlier, the one who in speaking had nevertheless presupposed a reader presents himself as the one who will read aloud “what is here written” (*hanc scripturam quam tibi lecturus sum*; *ibid.*, pp. 292/93, evidently referring to the text of the rule).

If the identity of the apostrophizer, divided as it is between writing and speaking, is truly indiscernible, no less problematic is that of the one who is apostrophized as *homo*. He too is split, in fact, into a reader and a listener, apparently finding his unity only as an addressee of “this writing” and “this rule” (*haec regula*; *ibid.*), which he must faithfully observe.

2.3. There is, nonetheless, in the text of the rule, a passage that seems to contain the key to all these enigmas and that, in addition,

permits us to define the proper basis and nature of the rule. I am referring to chapter 24, whose title reads *De ebdomadario lectore ad mensas* (The Weekly Reader in the Refectory). The rule says that in every season, in summer as in winter, “whether the meal is at the sixth or the ninth hour, each of the deans of all the deaneries will do the reading at table for a week at a time” from the text of the rule (*ibid.*, 2, pp. 122/177). As the text specifies further down, it is a matter of a *lectio continua*, that is of a reading that is taken up again every day from the point where it was interrupted: “Every day he [the reader] reads this rule [*regulam hanc*], marking the place to which he reads day after day, so that it is read in daily sequence [*sequenter cottidie*] yet in its entirety, and thus in successive weeks the reading of it can be finished and started over again” (pp. 126/178–79). The rule specifies the way in which the reader will assume his function (“this brother who is to read presents himself by saying aloud: ‘Please, my lords, pray for me because I am entering upon my week of reading at table’”; pp. 124/178), and how he must read, without hurrying (*non urguendo*) and in such a way that the listeners can understand clearly what the rule commands them to do.

One must thus imagine that there will necessarily be a moment when the reader, having reached chapter 24, will read the passage that enjoins him to read the rule every day. What will happen at that moment? In reading the other passages of the rule, the reader executes the precept of the reading, but does not actualize what the text enjoins him to do in that moment. In this case, however, the reading and putting into action of the rule coincide without remainder. By reading the rule that prescribes to him the reading of the rule, the reader performatively executes the rule *ipso facto*. His *lectio* realizes, that is to say, the exemplary instance of an enunciation of the rule that coincides with its execution, of an observance that is rendered indiscernible from the command that it obeys.

The dialectic between orality and writing is perfected here: there is a written text, but in reality it only lives through the reading that is made of it. And the rule suggests as much further

down, when it defines, in a significant interpolation, the daily reading of the rule as an *in usu mittere* (*nam cum cottidie in usu ipsa regula mittitur, ex notitia melius observatur*, “even though the Rule itself is daily put into use, knowledge of it leads to better observance”; pp. 130/180). The rule presupposes a precedence of writing, but what is at stake is a writing that is inert in itself, which must be “put into use” by its reading. This is confirmed some pages later, where it recommends that the traveling monk do the reading and, if he cannot, have recourse to *meditatio*, to recitation from memory, “in order to give the rule its due each day” (*ut cottidie regulae reddat quod suum est*; pp. 268/223). *Lectio* and *meditatio* belong constitutively to the rule and define its status.

§ 3 The Rule as a Liturgical Text

3.1. *Lectio* has been an essential part of the Christian liturgy since its origins. Today it is generally acknowledged that it derives from the practice of the (most likely sung) reading of the Torah (*qeri'at Torah*) in the synagogue. Two of the earliest testimonies to this reading, whose origin the tradition traces back to Moses (Deut. 31:10–11: “Every seventh year, in the scheduled year of remission, during the festival of booths, when all Israel comes to appear before the LORD your God at the place that he will choose, you shall read this law before all Israel in their hearing”), are in the New Testament. The first (Acts 13:15) shows Paul attending the reading of the law (*anagnosis tou nomou*) with his companions in the synagogue of Antioch, where he is later invited to comment on the passage read (“After the reading of the law and the prophets, the officials of the synagogue sent them a message, saying, ‘Brothers, if you have any word of exhortation for the people, give it’”). In the second (Luke 4:16–21), it is Jesus himself who is to perform the reading in the synagogue of Nazareth and comment on it:

He went to the synagogue on the Sabbath day, as was his custom. He stood up to read, and the scroll of the prophet Isaiah was given to him. He unrolled the scroll and found the place where it was written: “The Spirit of the Lord is upon me, because he has anointed me to bring good news to the poor. He has sent me to proclaim release to

the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord's favor." And he rolled up the scroll, gave it back to the attendant, and sat down. The eyes of all in the synagogue were fixed on him. Then he began to say to them, "Today this scripture has been fulfilled in your hearing."

These two testimonies show that the text of the Torah was read in the synagogue already at the time of Jesus, perhaps already divided (as we know from later sources) into *parachot* (pericopes); that beyond the Pentateuch, passages from the prophets (called *haftarot*) were also read; and that the reading was followed by a homiletical commentary (*derashah*), of which Paul and Jesus offer us an example.

The reading of the Torah gradually assumes the form of a *lectio continua*, which in Palestine was articulated according to a triennial cycle that began the first or second Sabbath of the month of Nisan. In Babylon, the length was one year, with a beginning after the Feast of Tabernacles (Werner, p. 89). The reading of the prophets was not continual, however, but consisted each time of an isolated passage chosen to correspond to the passage from the Torah that was read that day.

The Church followed the example of the synagogue by instituting readings of the Old Testament (at first most likely weekly) to which was added, at least starting from the end of the second century, the *lectio* of New Testament texts. Even if we do not know the origin and basis of the readings, the Ambrosian, Mozarabic, and earliest French liturgies preserve a succession of three *lectiones*, one from the Old Testament and two from the New. The dominant principle at the beginning was that of *lectio continua*, but it is probable that in the course of the first three centuries, the bishop was responsible for indicating each time to the deacon and the *lector* the passages to be read. From the end of the fifth century, instead of *lectio continua*, one sees the selection and fixing of a series of pericopes in relationship with the constitution of the liturgical year. This system results in the production of books (called *lectionarii*, *comites*, or *epistolaria*), which assemble the pericopes to be read on each day. One of the oldest lectionaries, the

Mozarabic *Liber comicus de toto circuli anni*, thus presents the pericopes ordered according to the feasts of the liturgical calendar, in the form: *legendum in 1^o dominico de adventu Domini ad missam*, followed by the texts to be read (in this case, two passages from Isaiah and one from the letter to the Romans). The canticle and the psalmody were integral parts of the *lectio*, in the form of the *lectio solemnis*.

3.2. If the liturgical year is, as we have seen, a sort of memorial of the works of God scanned according to the calendar, the reading of the Holy Scriptures is the most noteworthy way that every day and, at the limit, every hour is put in an anamnestic relationship with an event of sacred history. Moreover, according to the deepest intention that defines the Christian liturgy, the reading is not limited to recalling or commemorating past events, but in some way renders present the “word of the Lord,” as if it were newly pronounced in that moment by the living divine voice. *Cum sacrae scripturae in Ecclesia leguntur*, reads the Roman Missal, *Deus ipse ad populum suum loquitur et Christus, praesens in verbo suo, Evangelium annuntiat* (“When the Scriptures are read in the Church, God himself is speaking to his people, and Christ, present in his own word, is proclaiming the Gospel”). Anamnesis is contained in a *lectio* that is “represented” in the etymological sense, that is, it renders performatively present the reality of that which is read.

This performative *character* of the liturgical reading is expressed clearly by Nicholas Cabasilas in his *Commentary on the Divine Liturgy*. In the words read or sung, he reads, “we see [*horōmen*] Christ and the deeds he accomplished and the sufferings he endured for our sakes. Indeed, it is the whole economy of redemption which is signified in the psalms and readings, as in all the actions of the priest throughout the liturgy” (Cabasilas, pp. 60/26). And if “the whole celebration is like an icon of a single body, which is the life of the savior,” the songs and the readings signify and “place before our eyes [*hyp’opsin agousa*]” the various moments of the economy of Christ (ibid., pp. 62/27). The special

efficacy of the *lectio* coincides with its twofold action: the readings at once “sanctify [*hagiazein*] the faithful and symbolize the economy of salvation. . . . Since they are extracts from the Holy Scriptures and other inspired writings, the chants and lessons sanctify those who read and sing them; and because of the selection which has been made and the order in which the passages are arranged they have another power [*dynamis*]: they actualize the signification [*sēmasian*] of the presence [*parousias*] and life of Christ” (pp. 130/53).

Cabasilas clarifies beyond any doubt that the term *sēmasia* here designates much more than a simple linguistic “signification,” specifying that the readings “reveal the manifestation of the Lord [*tēn phanerōsin tou Kyriou dēlousin*]” (pp. 156/62). According to the messianic intention implied in Jesus’ words in the episode of the reading in the synagogue of Nazareth, Scripture is fulfilled in the one who listens to its reading (“Today this scripture has been fulfilled [*peplērōtai*] in your hearing”). And it is on the basis of this peculiar performative efficacy of the words of the *lectio* that, as had already happened in the synagogue, they could acquire a sacramental status and be presented in the canons of the mass as *oblatio rationabilis* and *logikē thysia*, a sacrifice of words.

3.3. If we turn now to the problem of the nature of monastic rules, it is possible then to advance the hypothesis that the *Rule of the Master*, by making the rule the object of a *lectio continua*, in reality decisively affirms its liturgical status. The text of the rule is thus not only a text in which the distinction between writing and reading tends to become blurred, but also one in which writing and life, being and living become properly indiscernible in the form of a total liturgicization of life and a vivification of liturgy that is just as entire. For this reason it does not make sense to isolate in the corpus of a rule, as Vogüé does, a “liturgical section,” emphasizing its thoroughness and meticulousness, which is “unsurpassed . . . by any liturgical document of antiquity prior to the first *Ordines Romani*” (Vogüé 2, 1, pp. 65/34). In the rule, there cannot be a liturgical section, because as we have seen, the whole

life of the monk has been transformed into an Office and the very harshness of the prescriptions concerning prayer and reading articulate just as meticulously every other aspect of life in cenoby. As *meditatio* renders *lectio* potentially continuous, so every gesture of the monk, all the most humble manual activities become a spiritual work and acquire the liturgical status of an *opus Dei*. And precisely this continuous liturgy is the challenge and novelty of monasticism, which the Church was not slow to pick up on, seeking to introduce, albeit within certain limits, the totalitarian demand proper to the monastic cult into cathedral worship as well.

Hence the singular resemblance between the deep structure of the rules and that of liturgical texts in the strict sense: corresponding to the monastic attention to the forms and meanings of the habit there are the ample sections in liturgical texts *de indumentis sacerdotum* (“on the clothing of the priests”); to the prescriptions on the cenobitic profession, the chapters *de ministris* (“on ministry”) and on priestly ordination; to the obsessive and punctilious descriptions of the monks’ daily and nightly Offices, the grandiose articulation of the liturgical year. But hence also the differences and the tensions that remain present in some way in the whole history of the Church. Yet if the Church had extracted a liturgy from life, this had nonetheless been constituted into a separate sphere, whose proprietor was the priest, personifying the priesthood of Christ. The monks do away with the separation and, by making their form of life a liturgy and the liturgy a form of life, institute between the two a threshold of indiscernibility charged with tensions. Hence the predominance of the Office of prayer, reading, and psalmody in the rules over that which is sacramental in the proper sense. The *Rule of the Master*, so meticulous in its description of the former, hardly mentions the mass in connection with the psalmody of feast days (Vogüé 2, 1, p. 208) and, curiously, discusses communion in the section dedicated to the weekly service of the monks in the kitchen (p. 104). Hence also the firm distinction between the monk and the priest, who can be hosted in the convent under the title of a pilgrim (*peregrinorum*

loco), but cannot live there permanently or pretend to any form of power within it (*nihil praesumant aut eis liceat vel aliquid ordinationis aut dominationis aut dispensationis Dei vindicent*; p. 343).

If the liturgy is totally transformed into life, then the fundamental principle of the *opus operatum*—which already, beginning with Augustine, sanctioned the indifference of the priest's moral qualities with regard to the efficacy of his office—cannot hold. While the unworthy priest remains in any case a priest, and the sacramental acts he carries out do not lose their validity, an unworthy monk is simply not a monk.

Despite the progressive extension of the Church's control over the monasteries, which as we have seen were put under the supervision of the bishop from at least the Carolingian era, the tension between the “two liturgies” will never disappear completely, and precisely when the Church seems to have integrated cenoby into its order, the tension returns with Franciscanism and the religious movements between the twelfth and thirteenth century, becoming reactivated to the point of open conflict.

✠ From this perspective, the Protestant Reformation can be seen legitimately as the implacable claim, promoted by Luther (an Augustinian monk), of the monastic liturgy against the Church liturgy. And it is not an accident if from the strictly liturgical point of view, it is defined by the preeminence of prayer, reading, and psalmody (forms proper to the monastic liturgy) and the minimalization of the eucharistic and sacramental Office.

✠ The Greek term *leitourgia* derives from *laos* (“people”) and *ergon* (“work”) and means “public tribute, service for the people.” The term belongs originally to the political lexicon and designates the services that well-to-do citizens owe to the *polis* (organizing public games, arming a trireme, staging a chorus for the city's festivals). Aristotle, in the *Politics* (1309a17), thus cautions against the custom in democracies of “costly but useless liturgies like equipping choruses and torch-races and all other similar services.”

It is significant that the Alexandrian rabbis who were to carry out the translation of the Bible into Greek known as the Septuagint would

choose precisely the verb *leitourgeō* (often combined with *leitourgia*) to translate the Hebrew *sheret* every time this term, which means generically “to serve,” is used in a cultic sense. Just as significant is the fact that in the Letter to the Hebrews, Christ himself is defined as “*leitourgos* of the holy things” (8:2), and it is said of him that he “has obtained a better *leitourgia*” (8:6). In both cases, the ordinary political meaning of the term (service done for the people) is still present. As Peterson was to recall in his *Book on Angels*, “the Church’s earthly liturgy has an original relationship to the political world” (Peterson, pp. 202/112).

Threshold

Monasticism has clearly been perhaps the most extreme and rigorous attempt to achieve the Christian's *forma vitae* and define the figure of the practice in which it is worked out. Just as certain, however, is the fact that this attempt proceeds progressively, even if not exclusively, through assuming the form of a liturgy, if indeed in a sense that does not coincide perfectly with that according to which the Church worked to elaborate the canon of its Divine Office. For this reason, the validity and identity of monasticism depend on the extent to which it succeeds in maintaining its own specificity with respect to Church liturgy, which for its part was being systematized on the model of sacramental effectiveness and of an articulation as well as a disjunction between the subjectivity of the priest and the efficacy *ex opere operato* of his practice.

In this problematic context, cenoby appears as a field of forces run through by two opposing tendencies—at once to resolve life into a liturgy and, pulling in the other direction, to transform liturgy into life. On the one hand, everything is made rule and Office to the point that life seems to disappear. On the other, everything is made life, “legal precepts” are transformed into “vital precepts,” in such a way that the law and even the liturgy itself seem to be abolished. A law that is indeterminated into life has as its counterpart, with a symmetrically inverted gesture, a life that is totally transformed into law.

What is at stake, when we look closely, is two aspects of one same process, in which what is in question is the unheard-of and aporetic figure that human existence assumes upon the fading of the classical world and the beginning of the Christian era, when the categories of ontology and ethics enter into a lasting crisis and trinitary economy and liturgical effectiveness define the new paradigm for both divine and human action. What is in question in both cases, that is to say, is a progressive and symmetrical cancellation of the difference between being and acting and between law (writing) and life, as if the indetermination of being into acting and of life into writing that the Church liturgy operatively achieves functions in the monastic liturgy in an inverted sense, moving from writing (from the law) toward life and from being toward acting.

Naturally, as must happen in these cases, the novelty of the phenomenon cohabits perfectly well with subterranean continuities and abrupt convergences, so that in unforeseen ways Christianity is seen to unite with Stoic ethics and late Platonism, Jewish traditions with pagan cults. Moreover, the monk does not live and act, like the Stoic philosopher, to observe a moral law that is also a cosmic order; nor, like the Roman patricians, to scrupulously follow a juridical prescription and a ritual formalism. He does not fulfill, like the Hebrew, his *mitzwot* by virtue of the fiduciary pact that binds him to his God; and neither does he, like an Athenian citizen, exercise his liberty because he wants to “seek beauty [*philokalein*] without extravagance and wisdom [*philosophein*] without effeminacy” (Thucydides 2.40.1).

It is in this field of historical tension that, close to the liturgy and almost in competition with it, something like a new level of consistency of the human experience slowly begins to clear a path for itself. It is as if the form-of-life into which liturgy has been transformed sought progressively to emancipate itself from liturgy and—while unceasingly collapsing back into it and just as obstinately liberating itself from it—allows us to glimpse another, uncertain dimension of acting and being.

Form-of-life is, in this sense, what must unceasingly be torn away from the separation in which liturgy keeps it. The novelty

of monasticism was not only the coincidence of life and norm in a liturgy, but even and above all in its greatest success, the investigation and identification of something that the syntagmas *vita vel regula, regula et vita, forma vivendi, forma vitae* attempt laboriously to name and that we must now attempt to define.

III. Form-of-Life

§ 1 The Discovery of Life

1.1. Between the eleventh and twelfth centuries complex phenomena arose and spread in Europe—in France and Italy and later in Flanders and Germany—that historians, who have not succeeded in classifying them otherwise, have classified as “religious movements.” From the point of view of Church history, they gave rise to the foundation of monastic orders or to heretical sects, which were persecuted harshly by the Church hierarchy. In 1935 Herbert Grundmann dedicated a now classic monograph to this phenomenon, under the title *Religiöse Bewegungen im Mittelalter* (*Religious Movements in the Middle Ages*). Grundmann proposed, against the tendency of confessional historiography to consider only the monastic orders and the heretical sects that had resulted from them, to restore to them precisely their nature as “movements.” On the other hand, against the opposite tendency of some historians to privilege only the socioeconomic aspects of the phenomena in question, what was at stake for Grundmann was to consider their “original peculiarity” and “religious goals,” above all by posing the problem of which profound events, pressures, and crises had “determined the development of religious movements into the various orders and sects” (Grundmann, pp. 9/3).

If one examines, moreover, the ample material Grundmann takes into consideration, one notices immediately that the sources, both direct and indirect, situate the claims of the movements

on a level which is clearly religious. However, these claims put forward innovations that are not indifferent with respect to the way in which the Church tradition and monasticism had defined and delimited the sphere and the practice of religion. It is possible, nonetheless, to try to consider them in themselves, before or beyond the religious or socioeconomic meaning that undoubtedly belongs to them. Whether one considers Robert of Arbrissel, Waldo, Norbert of Xanten, Bernard Prim, or Francis, and whether their followers define themselves as “Humiliati,” “poor in Christ,” “good men,” “minor brothers,” or “idiots,” in any case what they state and claim does not actually concern theological or dogmatic questions, articles of faith, or problems of scriptural interpretation. Instead, what is at stake is life and the way of living, a *novum vitae genus*, a life that they call “apostolic” (*haeretici qui se dicunt vitam apostolicam ducere . . . ; nos formam apostolicae vitae servamus*) or “evangelical” (*pure evangelica et apostolica vita . . . vivere; vita Vangelii Jesu Christi; vivere secundum formam Sancti Evangelii*). The claim of poverty, which is present in all the movements and which in itself is clearly not new, is only one aspect of this way or form of life, which strikes observers in a special way (*nudipedes incedebant; pecunias non recipiunt; neque peram neque calciamenta neque duas tunicas portabant*, “they walked barefoot, they did not accept money, nor did they carry a wallet or shoes or two tunics”; *ibid.*, p. 74). Moreover, it does not represent an ascetic or mortifying practice to obtain salvation as it did in the monastic tradition, but it is now an inseparable and constitutive part of the “apostolic” or “holy” life, which they profess to practice in perfect joy. It is significant in this sense that Olivi, in a polemic with Thomas’s opinion according to which poverty is only one of the ways of reaching perfection and not perfection itself (*quod paupertas non est perfectio, sed instrumentum perfectionis*), could by contrast state that it coincides essentially and totally with evangelical perfection (*usum pauperum esse de integritate et substantia perfectionis evangelicae*; Ehrle, p. 522).

It goes without saying that from its origins monasticism was inseparable from a certain way of life. But the problem in cenoby

and hermitage was not life as such so much as the ways, norms, and techniques by means of which one succeeded in regulating it in all its aspects. To use the terminology of a Cistercian text, the life of the monk was traditionally conceived as “penitential,” while now it reclaims its “apostolic” character, which is to say “angelic” and “perfect” character (*vita monachorum est apostolica et habitus eorum est angelicus et corona quam habent est perfectionis signum et clericale . . . monachorum vita non sit penitentialis, sed apostolica; Thesaurus*, pp. 1644–49). It is just as obvious that a form of life practiced with rigor by a group of individuals will necessarily have consequences on the doctrinal level, which can bring forth—as they in fact did bring forth—clashes and disagreements with the Church hierarchy. But it is precisely on these disagreements that the attention of historians has mainly been focused, leaving in shadows the fact that perhaps for the first time, what was in question in the movements was not the *rule*, but the *life*, not the ability to profess this or that article of faith, but the ability to live in a certain way, to practice joyfully and openly a certain form of life.

It is well known, for example, that the claim of poverty and *usus pauper* on the part of the Franciscans led, to some degree, to doctrinal clashes without quarter with the Roman Curia, fought by both parties with a wealth of arguments that were not only theological but also juridical. Moreover, as Bartolo had intuited from the beginning, the point was not a dogmatic or exegetical contrast so much as the *novitas* of a form of life, to which civil law appeared applicable only with difficulty. For this reason, when confronted with this “novelty,” the Church’s strategy consisted on the one hand in seeking to order it, regulate it, and conform it so as to divert the movements into a new monastic order or insert them into an already existing one. On the other hand, when this appeared impossible, the Church shifted the conflict from the level of life to that of doctrine, condemning them as heretical. In both cases, what remained unthought was precisely the ordinary aspiration that had led the movements to reclaim a *life* and not a *rule*, a *forma vitae* and not a more or less coherent system of ideas and doctrines—or more precisely, to propose not some new

exegesis of the holy text, but its pure and simple identification with life, as if they did not want to read and interpret the Gospel, but only live it.

In the pages that follow we will therefore seek to understand in the exemplary case of Franciscanism not so much or not only the doctrinal, theological, or juridical implications of the form of life claimed by the movements, but rather to interrogate the meaning of the very fact that these claims were put forth essentially on the level of life. We will ask ourselves, therefore, first of all if by these terms *life*, *form of life* (*forma vitae*), *form of living* (*forma vivendi*) they were attempting to name something the sense and novelty of which still remain to be deciphered and which, precisely for this reason, has never ceased to intimately concern us.

1.2. The syntagma *form of life* not only is not, as some scholars seem to maintain, a Franciscan invention, but it is even earlier than the very origin of monasticism and late-ancient biography, from which, according to others (Coccia, p. 135), medieval hagiography had received it. An examination of the *Thesaurus* shows clearly that the expression is found already in Cicero (*nostrae quidem rationis ac vitae quasi quandam formam . . . vides*) and after him, among others, in Seneca (*hanc . . . sanam ac salubrem formam vitae tenete*), and Quintilian (in the variant *certa forma ad quam viveremus*). The semantic value of *forma* that the compilers of the *Thesaurus* note for this case is *imago, exemplar, exemplum, norma rerum*, and as the passage from Quintilian shows, it is likely that precisely the meaning of “example, model” had carried over to the coinage of the syntagma *forma vitae*.

Thus in the *Vetus Latina* (Titus 2:7) and in the Vulgate, *forma* translates *typos* (at times rendered with *exemplum* by the Vulgate): *ut nosmet ipsos formam daremus vobis ad imitandum* (“in order to give you an example to imitate”; 2 Thess. 3:9); *forma esto fidelis* (“set the believers an example”; 1 Tim. 4:12; the Vulgate has: *exemplum esto fidelium*).

It is in this sense that the expression appears in Rufinus (*emendationis vitae formam modumque*, “emending their form and way of life”; *Historia monachorum* 6.410a); in Hilary of Poitiers (*Christus formam se ipsum universis agendi sentiendique constituitens*, “Christ contains in himself the form of all acting and thinking”; *In Evangelium Matthaei Commentarius*, 12.24); in Sulpicius Severus (*esto . . . omnibus vivendi forma, esto exemplum*, “be a form of living for all, be an example”; *Epistle* 2.19); in Ambrose (*cognitio verbi et ad imaginem eius forma vivendi*, “knowledge of the Word and a model of living according to his image”; *De fuga saeculi*, 2.9); and in Augustine, whether in reference to the life of the Christian (*Nam Christianis haec data est forma vivendi, ut diligamus Dominum Deum nostrum ex toto corde*, “to Christians this rule of life is given, that we should love the Lord Our God with all the heart”; *De moribus Ecclesiae* 30.62), or as typological key (*in his . . . valet forma mortis ex Adam, in aeternum autem valebit vitae forma per Christum*, “the pattern of death coming from Adam has power for a time . . . but the pattern of life through Christ will have power over them for eternity”; *Epistle* 157.20—with almost the same words, Ambrosiaster says in his commentary on the first letter to the Corinthians: *Adam enim forma mortis est, causa peccati; Christus vero forma vitae propter iustitiam*, “Adam is the image of death because of his sin, but Christ is the image of life because of his righteousness”; pp. 292/222).

The sense of *forma* here is “example, paradigm,” but the logic of the example is anything but simple and does not coincide with the application of a general law (Agamben 2, pp. 20–24/18–21). *Forma vitae* designates in this sense a way of life that, insofar as it strictly adheres to a form or model from which it cannot be separated, is thus constituted as an example (as in Bernard of Clairvaux, *Contra quaedam capitula errorum Abelardi*, chap. 17: [*Christus*] *ut traderet hominibus formam vitae vivendo*, “that [Christ] might hand down a form of life to humans by living”).

It is strange that the expression’s penetration into the monastic literature is relatively late. It does not appear in the *Rule of the Fathers*, the *Rule of the Master* (where the term *forma* by itself is

found many times in the sense of example), or the Benedictine rule. When spiritual movements forcefully took up this syntagma starting from the eleventh century, the accent fell in equal measure on the two terms that composed it, to mean a perfect coincidence of life and form, example and follower. But it is only with the Franciscans that the syntagma *forma vitae* assumes the character of a genuine technical term of monastic literature, and life as such becomes the question that is in every sense decisive.

13. In 1312, more than eighty years after the death of Francis, Clement V intervened in the dispute between the Spirituals and the Conventuals with the bull *Exivi de Paradiso*. After having compared the order of the Friars Minor to a garden *in quo quieties ac securius vacaretur contemplandis servandisque huiusmodi operibus exemplaris* (“in which one might more quietly and securely be freed from beholding and observing labors of this kind”), the pope evokes the Franciscans’ way of life with these words: *haec est illa coelestis vitae forma et regula, quam descripsit ille confessor Christi eximius sanctus Franciscus* (“that is the heavenly form of life and rule, which that excellent Confessor of Christ Saint Francis wrote down”; §1). The pairing of the syntagma *form of life* with the term *rule* is not new, and one encounters it many times in the Franciscan literature itself. But precisely for this reason it will be useful to ask ourselves first of all if what is at stake is a hendiadys in which the two expressions emerge as synonymous, or if instead their semantic values may be different—and in this case, in what this difference may consist and what the strategic sense of their conjunction might be.

Close scrutiny of the occurrences of the syntagma *form of life* in the Franciscan sources show that it does not appear as such in the writings attributed to Francis. The *Regula non bullata*—after having opened, as we have seen, with the drastic declaration *Haec est vita Evangelii Iesu Christi, quam frater Franciscus petiit a Domino Papa concedi et confirmari sibi* (“This is the life of the Gospel of Christ which Brother Francis asked the Lord Pope to be granted and confirmed for him”)—pairs the two terms *regula* and *vita*

(*regula et vita istorum fratrum haec est, scilicet vivere in oboedientia, in castitate et sin proprio*, “The rule and life of these brothers is this: to live in obedience, in chastity, and without anything of their own”; Francis I, I, pp. 6/108–9). The pairing is repeated in the *Regula bullata* of 1223 (*regula et vita minorum fratrum haec est*, “The rule and life of the Friars Minor is this”; *ibid.*, pp. 108/137). In the Testament, moreover, the term *forma* appears, and it is paired not with *vita* but with *vivere* in the passage in which Francis writes that Christ himself revealed to him *quod deberem vivere secundum formam sancti Vangelii* (“that I must live according to the form of the Holy Gospel”). Since a little earlier Francis defines priests as those “who live according to the form of the holy Roman Church” (*qui vivunt secundum formam sanctae Ecclesiae Romanae*; *ibid.*, pp. 220/154), it is clear that the Testament distinguishes explicitly and firmly between the two forms of life. On the one hand Francis declares that the Lord has given him “such faith” in the priests who live “according to the form of the Roman Church” that even if they were to persecute him (it is significant that this possibility would be contemplated), he would fear, love, and honor them as his lords. On the other hand, he takes care to specify that “after the Lord gave me brothers, no one showed me what I should do [*quid deberem facere*], but the Most High Himself revealed to me that I should live [*quod deberem vivere*] according to the form of the Holy Gospel,” and he immediately adds: “And I had this written down simply and in a few words and the Lord Pope confirmed it for me” (*Et ego paucis verbis et simpliciter feci scribi et dominus papa confirmavit mihi*; *ibid.*, pp. 222/154–55).

The technical opposition between the substantial and content-oriented *quid* (what I must do) and the existential and factual *quod* (that I must live) shows that Francis cannot be concerned with a rule in the proper sense, which establishes precepts and duties (*quid deberem facere*). And the opposition is not only between “what” and “that,” but also between “doing” and “living,” the observation of precepts and norms and the simple fact of living according to a form (we have seen that Hugh of Digne will draw a distinction in this sense between *promittere regulam* and

promittere vivere secundum regulam). As opponents and followers immediately understood, the “form of the holy Gospel” is not in any way reducible to a normative code.

But what does Francis mean, then, when he says that he had that way of life written down simply and with few words? This “writing” (the so-called short Rule of 1210) coincides, according to scholars, with the text of the prologue and the first chapter of the *Regula bullata*, in which the *regula et vita* of the brothers is summarized in “a few words”: *vivere in oboedientia, in castitate et sine proprio*, “to live in obedience, in chastity, and without anything of their own,” followed by four citations from the Gospels (Francis 1, pp. 6/109). The two following rules start from this nucleus—which is essential, generic, and moreover apparently considered exhaustive (the proclamations *haec est vita* and *regula et vita . . . haec est* are peremptory and allow for no doubt in this case)—and only add prescriptions that concern the acceptance of new brothers, the relationship between ministers and the other brothers, corrections, illnesses, special cases like going on horseback, relationships with women, receiving alms, traveling through the world, preaching, and various other questions, with regard to which he limits himself to suggesting indications in homage to the tradition of the monastic rules, without touching on the meaning of “living according to the form of the holy Gospel,” already summarized on a small scale in the introduction.

The original nucleus of the rule consisted, then, in attributing a “normative status to the New Testament narrative” as such (Tarello, p. 318): with respect to this nucleus, the prescriptions and duties that follow (in the modern edition of the *Regula non bullata*, chapters 2–23—the chapter divisions are obviously lacking in the manuscript) only represent glosses in view of a survey that is obviously not exhaustive. By mixing together the Gospel with the rule in this way, the archetypal rule or *Urregel* implied unacceptable consequences for the Curia, which already in the 1230 bull *Quo elongati* introduced a distinction between evangelical example and rule, deciding that the monk was obligated only to those evangelical counsels that had been incorporated into the rule.

8 The Franciscan principle according to which the rule was the very life of Christ is found already enunciated in a text—the *Askētikai diataxeis* or *Ascetic Constitution*—that the tradition attributes to Basil and that must have been very familiar to the Spiritual Franciscans, in particular to Clarence, the Latin translator of the Cappadocian monk. “Every action . . . and every word [*pasa praxis . . . kai pas logos*] of our Savior Jesus Christ,” one reads in this text (chap. 1, *PG*, 31, 1326a–b), “is a rule [*kanon*] of piety and virtue.” A little later we even find articulated the idea of the life of Christ as model and image of life: “The Savior proposes to all those who want to live fully a form and a model of virtue [*typon aretēs kai programma*] . . . and gave to those who want to follow him his own life as image of the best way of life [*eikona politeias aristēs*]” (chap. 4, §4, *ibid.*, 1351d). The Benedictine rule itself opens by asking rhetorically, “What page or what utterance of the divinely inspired books of the Old and New Testaments is not a *rectissima norma vitae humanae*?” (*Rule of St. Benedict*, p. 155). However, as has been noted (Tarello, p. 403), attributing normative value to the Gospel text was not in itself a new thing (Gratian’s *Concordantia* defines natural law as *quod in Lege et Evangelio continetur*). What was new, however, was drawing from the complete and total equation of rule and life of Christ a radical transformation in the way of conceiving both life and rule.

1.4. The fact is, as Francis never tired of mentioning, what is in question in the “rule and life” is not so much a formal teaching, but even and above all a sequence or following (*Domini nostri Iesu Christi . . . vestigia sequi*, “our Lord Jesus Christ, whose footprints we must follow”; Francis 1, pp. 6/127; or, even more forcefully, in the so-called “last will” of St. Clare: *volo sequi vitam et paupertatem altissimi Domini*, “I . . . wish to follow the life and poverty of our most high Lord Jesus Christ”; *ibid.*, pp. 228/46). It is not a matter so much of applying a form (or norm) to life, but of *living* according to that form, that is of a life that, in its sequence, makes itself that very form, coincides with it.

For this reason, tying back to the initial declaration (*haec est vita*), the conclusion of the *Regula non bullata* can refer to things *quae in ista vita scripta sunt*: precisely because what was written here was a life and not a rule, a form of life and not a code of norms and precepts, the text itself can be defined as “life.” And it

is in this sense that one must understand the punctilious repetition of the term *vita* paired with *regula* (even granting that this second term had not been added, as some scholars maintain, at a later time): the evangelical form of life, the *coelestis vitae formae* evoked by Clement V, is never only *regula*, but at the same time *regula et vita* or simply *vita*. For this reason, the *Regula non bullata* can use *vita* where we would expect *regula* (*si quis volens accipere hanc vitam . . . si fuerit firmus accipere vitam nostram*, “If anyone, desiring . . . to accept this life . . . and if he is determined to accept our life”; *ibid.*, pp. 8/110), and, likewise, can refer indifferently to life with terms that usually refer to the rule (*promittentes vitam istam semper et regulam observare*, “promising to observe always our life and rule”; pp. 110/213).

It is clear that Francis has in mind here something that he cannot simply call “life,” but neither can he let it be classified solely as “rule.” Hence the scholars’ difficulty in the face of what seems to be an indistinct use of the two terms (Tabarroni, p. 81, cf. Coccia, p. 112). But it is, in truth, the exact opposite of a useless redundancy: the two words are put in a reciprocal tension, to name something that cannot be named otherwise. If life is indetermined into rule in the same measure in which the rule is indetermined into life, this is possible only because what is in question in both is the *novitas* that Francis calls *vivere secundum formam* (*Sancti Evangelii*) and that we must now try to define.

✠ One encounters an indetermination of life and rule, as we have seen, already in the monastic tradition in the formula *vita vel regula* at the beginning of the *Lives of the Fathers* of Jura (cf. also, in the *Rule of the Four Fathers: qualiter vitam fratrum, vel regulam tenere possit*; Vogüé 1, p. 190). Moreover, the Franciscan *et* does not have the disjunctive value of the *vel* in the formula of the abbey at Lerins. While this implies that life is blurred together with the rule (*la vie ou la règle, c’est-à-dire la vie comme règle*, “life or rule, that is to say, life as rule”; Thomas, p. 136), the *et* is to be understood instead in the sense of a juxtaposition which is at the same time a separation (significant here is the sequence in the *Regula non bullata: haec est vita Evangelii . . . and regula et vita istorum fratrum haec est*—first life by itself, then the juxtaposition of life and

rule). Substituting an *et* for the *vel*, Francis conjoins and at the same time disjoins the two terms, as if the form of life that he has in mind could be situated only in the space of the *et*, in the reciprocal tension between rule and life.

In the Franciscan literature, the proximity and at the same time the distinction between *vita* (*modus vivendi*) and *regula* are always maintained. Thus in Bonaventure: *Ex quibus patenter elucet, quod Fratrum minorum regula non discordat a vita, nec communis ipsorum modus vivendi discordat a regula* ("From this it appears clearly that the Rule of the Friars Minor is not in disharmony with their way of life, nor their way of common life with the Rule"; Bonaventure, *Apologia paupertum*, pp. 376/250). In an even more obvious way, Ubertino of Casale distinguishes *modus vivendi* and *status regularis*, the *forma evangelica in vivendo* given by Christ to the apostles and the *regula*:

[Franciscus] in auditu illius verbi in quo Christus, ut dictum est, formam tribuit apostolis evangelicam in vivendo . . . statum regularem et modum vivendi accepit, predictae norme apostolice per omnia se coactans, et in hoc ordinem suum incepit; et ideo dicitur in principio regule: "Regula et vita minorum fratrum hec est, scilicet Domini nostri Ihesu Christi sanctum evangelium observare," quasi summarie omnia que sunt in regula reducens ad formam evangelicam in vivendo [(Francis), on hearing that word in which Christ, as it is said, shows to the apostles the evangelical form in the way he lived . . . accepted a regular state and mode of living, constraining himself in all things by the apostolic norm that was preached, and in this way he began his order; and indeed it is said at the beginning of the rule: "This is the rule and life of the Friars Minor, that is, to observe the Holy Gospel of our Lord Jesus Christ," as if to serve as a summary leading everything that is in the rule back to the evangelical form in their way of living]. (Ubertino, p. 130)

A little afterward, Ubertino, citing the passage from the rule in which it is said that the brothers "promise to observe this life and the rule" (*promicentes istam vitam et regulam observare*), he puts it in correspondence with the *forma vite et norma quam Christus servavit*, "the form and norm of life that Christ observed; *ibid.*, p. 131). As in Francis, the two paired terms are not identified, but rather put in reciprocal tension.

✠ It is significant that when a companion asks him why he did not intervene to correct the decadence of his order, whose members had abandoned “simplicity and poverty, which are the principle and foundation of our order,” Francis reproached him firmly for wanting to implicate him in questions that did not concern his duty (*vis . . . me implicare in his que non pertinent ad officium meum*). “If I cannot convince them and correct their vices with preaching and example, I do not want to become a persecutor to pursue and frustrate them, like the power of this world [*nolo carnifex fieri ad percutiendum et flagellandum, sicut potestas huius seculi*]” (Francis 1, 2, pp. 472–74). In the tension that Franciscanism installed between rule and life, there is no place for anything like an application of the law to life, according to the paradigm of worldly powers (among whom, in the vocabulary of that era, the Church could also be included more or less directly).

1.5. The other Franciscan sources, which make use of the syntagma *forma vitae* many times, confirm this special character of the “rule” dictated by the founder. The rule of St. Clare, definitively approved by Innocent IV in 1253, imitates in its introduction the definition of the *Regula non bullata*, but substitutes the syntagma *form of life* for the *rule and life* of Francis’s text (“The form of life of the Order of Poor Sisters, which the Blessed Francis established, is this”; Francis 1, 1, pp. 304/211). A little afterward, Clare, reporting the words of Francis, says that “the Blessed Father . . . wrote for us the form for living in this way [*scripsit nobis formam vivendi in hunc modum*]” (*ibid.*, pp. 316/218). The brief text that follows does not, however, contain either precepts or rules. Instead, after having merely indicated that the sisters have chosen to “live according to the perfection of the holy Gospel,” it simply formulates a promise (“I resolve and promise for myself and for my sisters always to have that same loving care and special solicitude for you as I have for them”; *ibid.*). Clare thus calls “form of life” not a code of norms, but something that seems to correspond to what Francis calls “life,” “rule and life,” or in the Testament, “living according to the form of the holy Gospel.”

Scholars have wondered (Marini, pp. 184–85) if a more complete redaction of the *forma vivendi* written by Francis might exist. It is

significant, however, that in the *Angelis gaudium*, in which Gregory IX denies authorization to Agnes of Prague to follow the Franciscan model, the pope defines the text of Francis in a diminutive way as *formula vitae* and opposes to it the constitutions of Ugolino, designated as a “rule” (*ipsae*—the Poor Clares—*formula predicta postposita, eadem regulam . . . observarunt . . . te ac sorores tuas ab observantia predictae formulae de indultae nobis a Domino potestatis plenitudine absolventes volumus et mandamus quatenus eadem regulam tibi sub bull nostra transmissa reverentia filiali suscipias*, “Setting aside their above-mentioned formula, they have observed the same rule. . . . Absolving you and your sisters from observance of the aforementioned formula out of the plenitude of the power granted to us by the Lord, we desire and command that you uphold the same rule transmitted to you under our bull with filial reverence”; cf. Marini, p. 189). Gregory IX explicitly denies to the *formula* of Francis—compared to the *potum lactis* (“milk”) of the newborn and opposed to the *cibum solidum* (“solid food”) of the constitutions—the character of a rule, a sign that *forma vitae* and *regula* were not perceived as synonymous. “To choose to live according to the perfection of the holy Gospel” is a *formula vitae*, not a rule.

A passage from the *Life of St. Francis* (or *Greater Legend*), composed by Bonaventure of Bagnoregio in 1266, contains in this sense a decisive indication. Under the guidance of Francis, writes Bonaventure, “the Church was to be renewed . . . in three ways: by the form of life, the rule, and the doctrine of Christ which he would provide [*secundum datam ab eo formam, regulam et doctrinam Christi triformiter renovanda erat Ecclesia*]” (2.8, pp. 21–22). The tripartition articulated by Bonaventure (who follows a passage from the *Life* of Thomas of Celano: *ad cuius formam, regulam et doctrinam*, “after whose pattern, rule, and teaching . . .”; Francis 2, 2, pp. 90/37) corresponds to the three levels or modes into which the activity of the Church is structured. But it is decisive that the form of life corresponds here neither with a normative system (for the Church, canon law) nor with a corpus of doctrine (the collection of dogmas in

which the Church articulates the Catholic faith). It is a third thing between doctrine and law, between rule and dogma, and it is only from the awareness of this specificity that its definition can become possible.

1.6. Thomas of Celano, who often places life and rule side by side in his biography, shows that he is distinguishing the first term as much from rule as from life in a generic sense. At the point when he narrates the episode of the redaction of the first rule, he puts it in these terms: *scripsit sibi et fratribus suis . . . simpliciter et paucis verbis vitae formam et regulam* (“Blessed Francis . . . wrote down simply and in a few words for himself and his brethren . . . a pattern and rule of life”; Francis 2, pp. 78/31). Since Thomas is obviously paraphrasing and citing here the words of Francis in the Testament, one should suspect that the expression *vitae forma et regula* corresponds to the text’s *vivere secundum formam sancti Evangelii*. Therefore this hendiadys that will return so often in the Franciscan literature is an attempt to explain the *vivere secundum formam* of Francis, juxtaposing the syntagma *form of life* with the term *rule*, as if thus to underline the fact that it could not be established in a series of normative precepts.

Later, after having narrated the miracles of the saint, Thomas writes: “However, since we have not determined to set forth miracles (which do not make holiness but show it), but rather the excellence of St. Francis’s life and the flawless pattern of his conduct [*sed potius excellentiam vitae ac sincerissimam conversationis ipsius formam*]” (pp. 140/120). *Conversatio* means “conduct,” “way of life”: by juxtaposing the term with *forma*, in a sense more or less equivalent to *forma vitae*, Thomas shows that he has in mind not a simple way of life, but an exemplary, qualified way of life that cannot, however, be understood as a rule. In a preceding passage, the level of life (*qualiter denique vita et mores ipsorum . . . forent proximis ad exemplum*, “how their life and behavior might . . . be an example to their neighbors”) is distinct in this sense both from that of observance of a rule (*qualiter regulam quam susceperant possent sincere servare*, “how

they might sincerely observe and unfailingly guard the Rule they had received”) and from direct relation to God (*qualiter in omni sanctitate et religione coram Altissimo ambularent*, “how they should walk in all holiness and religion before the Most High”; pp. 82–84/34). Living according to a form undoubtedly implies, according to a frequent meaning of the term *forma* in medieval Latin, an exemplary relation with others and is moreover not simply synonymous with *exemplum*.

In Bonaventure, the syntagma *forma* (or formula) *vitae*—or even simply *forma* (*Forma igitur praescripta apostolis . . . ; De perfectione evangelica*, p. 157)—appears frequently, both in reference to the rule (*scripsit sibi et fratribus suis simplicis verbis formulam vitae*; *Life of St. Francis* 3.8) and in the meaning of way of life (for example, in the *General Constitutions*, under 4, 1, *de forma interius conversandi*, to which there corresponds, immediately after, the rubric *de modo exterius exeundi*; and in the *Apologia pauperum* [11, 17], *forma vivendi* refers to the way of life of *Virgo et Mater Domini nostri Iesu Christi*).

In any case, the syntagma *form of life* seems to acquire in Franciscanism a technical meaning, and it is important not to let it elude us. As we have already seen for the expression *regula vitae*, the genitive is not only objective, but also subjective. The form is not a norm imposed on life, but a living that in following the life of Christ gives itself and makes itself a form.

1.7. In commentaries on the rule, the specificity of the Franciscan concept of “life,” briefly expressed in the syntagma *forma vitae*, is often confirmed. In Angelo Clareno’s *Expositio regulae*, the text’s incipit thus gives rise to a thorough terminological commentary, in which on the one hand, the term *regula* is abstracted from the juridical sphere in the strict sense and on the other, *vita* is opposed to merely vegetative life and becomes synonymous with a “holy” and “perfect” form of life. Let us read this passage, in which Clareno’s familiarity with the Greek language and monastic tradition and at the same time his perplexity in the face of Francis’s text are evident:

Regula, id est evangelicus canon, sanctificans decretum et lex gratiae et iustitiae Christi humilitatis et forma vivendi secundum exemplar Christi Iesus paupertatis et crucis. [Rule, that is, an evangelical canon, sanctifying decree, and law of the grace and justice of Christ's humility and form of living according to the example of Christ Jesus' poverty and cross.]

Regula, quia recte ducit, et modum recte vivendi sine omni errore docet. Quos enim nostri grammatici declinare in partibus declinabilis orationis dicunt, hoc Graeci regulare et canonizare nuncupant. [Rule, which rightly guides and teaches a mode of living rightly without any error. What our grammarians call declining into the declinable parts of speech, the Greeks call regulating and canonizing.]

Vita vero apud Graecos dicitur *zoī* et pro vita vegetativa et animali imponitur, *vios* vero apud eos pro virtuosa sanctorum conversatione tantum scribitur. Ita et nunc in regula et in omnibus sanctorum historiis hoc nomen vita pro sancta conversatione et perfecta virtutum operatione accipitur. [Life is called among the Greeks *zoē* and this is used for both vegetative and animal life, while among them *bios* is written for the virtuous behavior of the saints. Always and everywhere in the rule and in the histories of all the saints this word life is used to mean holy behavior and the perfect carrying out of the virtues.] (Clareno, p. 140)

Not only is the rule as *evangelicus canon* defined as a “form of living” according to the model of the Gospel, but it is compared to a grammatical rule rather than to a law in the proper sense (“The Greeks call ‘regulating’ and ‘canonizing’ what our grammarians call ‘declining’”). On the other hand, in the opposition—thanks to the Greek distinction between *zoē* and *bios*—of the two meanings of the term “life,” *bios* is considered equivalent to *sancta conversatio*, that is to the perfect form of life. In reality the whole passage testifies to Clareno’s difficulty before the linguistic use of Francis, who holds together in the syntagma *regula et vita* something—the “form of living”—that the commentator cannot succeed in understanding except by distinguishing, on the one hand, between *zoē* and *bios*, and on the other hand, by juxtaposing contradictory terms (*sanctificans decretum, lex gratiae*).

The two terms *rule* and *life* thus brought together are, however, so far from being identified that their duality even remains within the Christological model: Francis, writes Clarenó, who “had accepted the Gospel as rule” (*Evangelium pro regula acciperet*), said for this reason that he had “promised to observe as rule the Gospel of Christ and his life” (*pro regula Evangelium Christi et vitam eius promississe servare*; *ibid.*, p. 186).

Olivi, who is Clarenó’s constant model and reference point, also lingers in his commentary over the Franciscan syntagma *regula et vita*: Francis, he writes, “calling [the rule] not only rule, but also life, intended to clarify the sense of the rule, which is a right law and form of life and a life-giving rule that leads to the life of Christ” (*vocans eam non solum regulam sed et vitam, ut sit sensus quod est regula, id est recta lex et forma vivendi et regula vivifica ad Christi vitam inducens*; Olivi 1, p. 117). Such a rule, he immediately adds, does not consist in a written text (*in charta vel litterae*), but “in the act and the operation of life” (*in actu et opere vitae*) and does not dissolve “into an obligation and profession of vows [*insola obligatione et professione votorum*], but rather consists essentially in an operation of word and life and in the actual exercise . . . of the virtues [*in verbali et vitali opere et in actuali applicatione . . . virtutum*]” (*ibid.*).

One could not say more clearly that if a life (the life of Christ) is to furnish the paradigm of the rule, then the rule is transformed into life, becomes *forma vivendi et regula vivifica*. The Franciscan syntagma *regula et vita* does not signify a confusion of rule and life, but the neutralization and transformation of both into a “form-of-life.”

It is in the oldest commentary on the rule, the *Expositio quatuor magistrorum*, that the difference between rule and form of life is stated with greatest clarity. With regard to the problem of the possibility of departing in case of necessity from the rule that required the brothers to walk in bare feet, the text, after having distinguished the various forms of necessity (according to state, place, time, and office) according to a typically juridical casuistry, states: *Calciari vero dispensationis est regulae in necessitate, non*

calciari est forma vitae (“Wearing shoes depends on a dispensation from the rule in case of necessity; not wearing shoes is the form of life”; *Quatuor mag.*, p. 135). The principle, enunciated in such a lapidary form, opposes the sphere of the rule (with respect to which the state of necessity implies an exception to the norm) and that of the form of life like two planes that are tangential to each other, but do not anywhere coincide. Where what is in question is an evaluation of a juridical character (the possibility of a *dispensatio*), one has a rule. In the face of this, walking barefoot does not involve the observance of a rule (in which case the text would had to say: *non calciari est regula*), but realizes a *forma vitae*.

✠ The fact that the maxim pronounced by the four masters had the value of a veritable principle in the Franciscan tradition is proven by the fact that it is cited textually with particular emphasis in successive commentaries, in particular by Hugh of Digne and Ubertino of Casale. It is interesting to note that while prevalent juridical doctrine conceived the state of necessity as the motive for an exception to the norm, here, in the state of necessity, rule and life separate: the normal state appears not as application of the rule, but as “form of life,” while the exception appears as *dispensatio regulae*.

§ 2 Renouncing Law

What is decisive at this point is to define the relationship between “rule and life” and the Franciscan *forma vivendi* on the one hand and the sphere of law on the other. This is not only because it is this relation that will provide the kindling for the conflict with the Curia, but also and above all because only a clear comprehension will render it possible to fully evaluate both the novelty and the inadequacy of the Franciscan movement—its extraordinary success and its foreseeable failure, which seems to cloud the final years of its founder’s life with such a desperate bitterness.

It will thus be necessary first of all to examine the entire question of poverty in this light. The *altissima paupertas* (“highest poverty”), with which the founder had intended to define the life of the Friars Minor, is in actuality the place where the fate of Franciscanism is decided, both within the order (with the conflict between the Conventuals and Spirituals) and in its relationships with the secular clergy and the Curia, which reached the point of rupture under the pontificate of John XXII. Historians have reconstructed the events of this controversy in its particulars, from the 1279 bull *Exiit qui seminat*—with which Nicholas III, accepting the theses of Bonaventure, sanctioned the principle that the Franciscans, having abdicated every right of both ownership and of use (*quod proprietatem usus et rei cuiusque dominium a se abdicasse videtur*), maintain however the simple

de facto use over things (*simplex facti usus*; Mäkinen, p. 97)—to the 1322 bull *Ad conditorem canonum*, in which John XXII, abrogating the decision of his predecessor, affirms the inseparability of use from ownership and attributes to the order the common ownership of the goods of which they make use (*nec ius utendi, nec usus facti, separata a rei proprietate seu dominio, possunt constitui vel haberi*; *ibid.*, p. 165).

The attention of the scholars has nevertheless been focused to such a degree on the history of the order and its tormented relationship with the Curia that they rarely attempt to analyze what was at stake in these conflicts at the level of theory. Beyond the diversity of the positions and the subtlety of the theological and juridical arguments of the Franciscans who intervene in the controversy (in addition to Bonaventure, it is necessary to cite at least Olivi, Michael of Cesena, Bonagratia of Bergamo, Richard of Conington, Francis of Ascoli, William of Ockham, and John Peckham), the principle that remains immutable and nonnegotiable for them from beginning to end can be summarized in these terms: what is in question, for the order as for its founder, is the *abdication omnis iuris* (“abdication of every right”), that is, the possibility of a human existence beyond the law. What the Franciscans never tire of confirming—a point on which even the minister general of the order, Michael of Cesena, who had just collaborated with John XXII in the condemnation of the Spirituals, is not prepared to compromise—is the lawfulness for the brothers of making use of goods without having any right to them (neither of property nor of use). In the words of Bonagratia, *sicut equus habet usus facti*, “as the horse has de facto use but not property rights over the oats that it eats, so the religious who has abdicated all property has the simple de facto use [*usum simplicem facti*] of bread, wine, and clothes” (Bonagratia, p. 511). From the perspective that is of interest to us here, Franciscanism can be defined—and in this consists its novelty, even today unthought, and in the present conditions of society, totally unthinkable—as *the attempt to realize a human life and practice absolutely outside the determinations of the law*. If we

call this life that is unattainable by law “form of life,” then we can say that the syntagma *forma vitae* expresses the most proper intention of Franciscanism.

8 The assimilation of the Franciscan form of life to an animal life in Bonagratia and Richard of Conington corresponds faithfully to the special importance that animals had in the biography of Francis (preaching to animals, the liberation of the sheep and the two lambs, his love for worms: *circa vermiculos nimio flagrabat amore*, “Even toward little worms he glowed with exceeding love”; Francis 2, 2, pp. 156/78). If on the one hand animals are humanized and become “brothers” (“he called all creatures by the name of brother”; pp. 156/79), conversely, the brothers are equated with animals from the point of view of the law.

2.2. It is worth analyzing the modalities and the arguments through which the Franciscans actualize this neutralization of law with respect to life. First of all, the very term “Friars *Minor*” had properly juridical implications, which modern scholars, while duly noting them, have curiously left in the shadows in favor of the moral implications, that is, humility and spiritual subjection. Hugh of Digne, in his commentary on the rule, shows himself to be perfectly conscious of this: *fratris autem minoris est iuxta nomen suum, quod minor est, semper attendere* (“it is in keeping with his name always to attend to the minor brother, because he is a minor”; Hugh of Digne 1, pp. 162–63). As “minors,” the Franciscans are, from the juridical point of view, technically *alieni iuris*, equated with the *filiusfamilias* and the *pupillus* subjected to the tutelage of an adult *sui iuris*. In the *Apologia pauperum* (*Defense of the Mendicants*), Bonaventure develops this argument with precision by making reference to Roman law. If all Christians, he argues, are according to common law children of the supreme pontiff, and as such submitted to his authority, but as emancipated children, capable of disposing of ecclesiastical goods, the Franciscans are on the contrary “like little children and sons-in-power entirely subject to the rule of the Supreme Pontiff” (*tamquam parvuli et filiifamilias totaliter*

ipsius regimini deputati). They are like those, moreover, who are according to the Digest juridically incapable of possessing anything, because property belongs solely to the father and they can only use things (*propterea, sicut lege cavetur, quod "filiusfamilias nec retinere nec recuperare posse possessionem rei peculiaris videtur"* [Digest 50.17, *De regulis iuris*], *sed patri per eum quaeritur; sic et in his pauperibus intelligendum est, quod rerum eisdem collatarum et sustentationem ipsorum patri pauperum deputetur dominium, illis vero usus*; "As the law cautions: 'It seems that a son-in-power cannot retain or obtain possession of a particular thing.' Rather it is sought through the son-in-power for his father. So also in the case of these poor it should be understood that the dominion over things they receive for their sustenance is delegated to the Father of the Poor, while their use is conceded to them"; Bonaventure, *Apologia pauperum*, pp. 368/309–10). For the same reason (and the insistence with which Francis qualifies himself not only as *parvulus*, but even as *pazzus* is to be considered from this perspective), they can be compared to the *furiosus*, who cannot acquire by usurpation the ownership of any good, even if it is found in their possession: *Propter quod et iuriconsultus Paulus ait: "furiosus et pupillus sine tutoris auctoritate non possunt incipere possidere, quia affectionem tenendi non habent, licet res suo corpore contingant, sicut si dormienti aliquid in manu ponatur"* ("For this reason Judge Paul states: 'A madman and a minor cannot begin to own without the authorization of a tutor, for they lack the disposition to possess, even though they may be in physical contact with the object as would be the case if something were placed in the hand of a sleeping man'; *ibid.*, pp. 370/311–12).

2.3. In an important study, Tarello has shown how the premise of the Franciscan strategy on the question of poverty is to be sought in the patristic and canonistic reception of the doctrine of the originary communion of goods (Tarello, p. 428). According to this doctrine, approved in Gratian's *Decretum*, in the state of innocence "for natural law all things are everyone's"

(*iure naturali sunt omnia omnibus*); property and all human law begin with the Fall and the construction of a city on the part of Cain. It is on this basis that Bonagratia, developing the theses of Bonaventure, can state that just as in the state of innocence human beings had the use of things but not ownership, so also the Franciscans, following the example of Christ and the apostles, can renounce all property rights while maintaining, however, the de facto use of things (*apostoli et fratres minores potuerunt a se abdicare dominium et proprietatem omnium rerum . . . et sibi in omnibus rebus tantummodo usum facti retinere*, “the apostles and Friars Minor could abdicate from themselves dominion and ownership over all things . . . and retain to themselves at the same time the de facto use of all things”; Bonagratia, p. 505). In the same sense, Hugh of Digne’s treatise *De finibus paupertatis* (On the Ends of Poverty), which defines poverty as *spontanea propter Dominum abdicatio proprietatis* (“the free abdication of ownership for God’s sake”), founds the lawfulness of this abjuration and of the separation between property and use that results from it in natural law, which demands that each can conserve his or her own nature (Hugh of Digne 2, pp. 288–89).

The *abdicatio iuris* (with the return that it implies to the state of nature preceding the Fall) and the separation of ownership from use constitute the essential apparatus that the Franciscans use to technically define the peculiar condition that they call “poverty.”

8 It is significant that the Franciscan theorists obstinately aspire to configure the renunciation of the law in juridical terms. Thus Hugh of Digne, who had written in the treatise *De finibus paupertatis* that the Friars Minor “have only this to call their own, not having anything of their own in transient things” (Hugh of Digne 2, p. 289), again takes up the same formulation in his commentary on the rule, adding however that they “have only this right, not to have any rights” (*Hoc autem est fratrum minorum proprium: nihil sub coelo proprium possidere. Hoc ius: nullum in his que transeunt ius habere*; Hugh of Digne 1, p. 161).

2.4. Along with the *abdication iuris*, the other argument the Franciscans used in the polemic with the Curia is an ingenious generalization and at the same time inversion of the paradigm of the state of necessity. Let us follow the argumentation of Ockham in the work that he declares that he has “completed in ninety days, although hastily and in a completely undecorated style, yet with much labor” (*hoc opus nonaginta dierum, quomvis cursim et sermone nullatenus falerato, multo tamen complevi labore*; Ockham, 2, pp. 857/848) and that, despite its apparent impartiality, is in reality a punctilious and savage critique of the bull *Quia vir reprobus*, with which John XXII had responded in 1329 to the *Appellatio* and Michael of Cesena’s retreat.

Ockham, as Bonagratia had already done, begins from the principle already present in Roman law (the *lex Rodia de iactu*), according to which in case of extreme necessity (*pro tempore necessitatis extremae*), each has by natural right the faculty of using the things of others. Against the pope, who states that there is no difference between *ius* and *licentia* (“right” and “permission”) and that therefore there cannot be for the Franciscans a *licentia utendi* separate from the *ius utendi*, Ockham begins by distinguishing between the *ius utendi naturale*, which concerns all human beings and holds only in case of necessity, and the *ius utendi positivum* (“positive right of use”), which derives *ex constitutione aliqua vel humana pactione* (“from a certain human constitution or pact”). The Friars Minor, Ockham states, though having no positive right to the things they use, nevertheless have over them a natural right limited to the case of extreme necessity (Ockham, 1, pp. 561/419). “From these points it is clear that a permission to use is not a right of using [*quod licentia utendi non est ius utendi*].” For the Brothers have permission to use things for a time other than a time of extreme necessity [*pro alio tempore quam pro tempore necessitatis extremae*], but they do not have any right of using at all except for the time of extreme necessity; therefore a permission to use is not a right of using” (ibid.). They have renounced all property and every faculty of appropriating, but not the natural right of use, which is, insofar

as it is a natural right, unrenounceable (*proprietati et potestati appropriandi licet renuntiare, sed iuri utendi naturali nulli renuntiare licet*; *ibid.*, pp. 562/419).

It is necessary not to allow the subtlety of Ockham's strategy with respect to the law to escape us: it is a matter, so to speak, of holding oneself both outside and before the law, of forcefully reaffirming the principle of the *abdcatio iuris* sanctioned by *Exit qui seminat*. At the same time, against John XXII, he must not deprive the Franciscans of recourse to natural law, but limit it to the case of extreme necessity. On closer view, this means that the Friars Minor work a reversal and at the same time an absolutization of the state of exception. In the normal state, in which positive law applies to human beings, they have no right, but only a license to use. In the state of extreme necessity, they recover a relationship with the law (natural, not positive).

It also becomes clearer, from this perspective, what the meaning of the maxim cited from the *Expositio quattuor magistrum* is, according to which *calciari vero dispensationis est regulae in necessitate, non calciari est forma vitae* ("Wearing shoes depends on a dispensation from the rule in case of necessity; not wearing shoes is the form of life"). Necessity, which gives the Friars Minor a dispensation from the rule, restores (natural) law to them; outside the state of necessity, they have no relationship with the law. What for others is normal thus becomes the exception for them; what for others is an exception becomes for them a form of life.

2.5. Emanuele Coccia, in an exemplary study dedicated to the analysis of the monastic rules from the legal point of view, defined the novelty and, at the same time, the aporia of Franciscanism in the form of a "juridical paradox." If what is proper to monasticism in general is the attempt to constitute as an object of law not so much the relationships among subjects or between subjects and things, but rather life itself in its relation to its own form, the specificity of Franciscanism would consist in making out of a juridical apparatus, which the rule is according to

Coccia, the operator of a “juridical void” (Coccia, p. 140), of a radical subtraction of life from the sphere of law.

We have seen how the Franciscans operate in their unreserved claim of a life outside the law. It is not the rule so much as the state of necessity that is the apparatus through which they seek to neutralize law and at the same time to assure themselves an extreme relationship with it (in the form of *ius naturale*). But just as the rule is not a juridical apparatus, neither can the state of exception be properly defined as such. It is instead the threshold in which the Franciscan form of life touches on the law. At the end of his commentary, Olivi compares the Franciscan rule to a sphere, which has Christ as its center and which touches the level of earthly goods only at the “point of simple and necessary use” (*haec regula tanquam vere sphaerica non tangit planitiem terrenorum nisi in puncto simplicis et necessarij usus*; Olivi I, p. 194). The state of necessity is the other tangent point, in which the Franciscan form of life (the rule-life) touches on (natural, not positive) law. It is between these two tangent points, the *punctum usus* and the *tempus necessitatis*, that we must situate the sphere of the Minors’ rule-life that, in the words that immediately follow, “is entirely reflected in a circle around Christ and his Gospel as its own center and, in accordance with the form of a circle, it ends where it begins (*totaque se reflectit circa Christum circulariter et Evangelium eius tanquam circa suum intimum centrum, sicut instar circuli, unde exordium sumpsit, in idipsum finit*; *ibid.*). Use and the state of necessity are the two extremes that define the Franciscan form of life.

2.6. The moment has perhaps come, then, to again take up our analysis of the monastic rules from where we interrupted it in order to examine their relation with liturgy. Cenoby had appeared from this perspective as a field of forces charged by two opposed tensions, one bent on transforming life into liturgy and the other tending toward making a life out of liturgy. It is not possible, however, to fully understand the sense of these tensions if one does not consider them in their relation—at once

antithetical and tightly entangled—with the paradigm of the priestly Office which the Church had been progressively elaborating. If the life of the priest is here presented as an *officium*, and if the *officium* institutes, as we have seen, a threshold of indifference between life and norm and between being and practice, the Church at the same time decisively affirms the sharp distinction between life and liturgy, between individual and function, that will culminate in the doctrine of the *opus operatum* and the sacramental effectiveness of the *opus Dei*. Not only is the sacramental practice of the priest valid and efficacious *ex opere operato* (“from the work done”) independently of the unworthiness of his life, but as is implied in the doctrine of the *character indelebile*, the unworthy priest remains a priest despite his unworthiness.

To a life that receives its sense and its standing from the Office, monasticism opposes the idea of an *officium* that has sense only if it becomes life. *To the liturgicization of life, there corresponds here a total vivification of liturgy.* The monk is in this sense a being who is defined solely by his form of life, so that at the limit, the idea of an unworthy monk seems to imply a contradiction in terms.

If the monastic condition is thus defined through its specific differences with respect to the priestly Office (that is, with respect to a practice whose efficacy is independent of form of life), it is thus clear that it is precisely in the articulation of the dialectic between these two figures of the relation life-*officium* that the historical fate of monasticism must be decided. The softening of this difference will correspond to the progressive clericalization of monks and their increasing integration into the Church, while its accentuation will correspond to tensions and conflicts between the orders and the Curia.

The explosion of religious movements between the twelfth and the thirteenth century is the moment when these tensions reach their critical point. It is significant that it is precisely the principle of the separation between *opus operans* and *opus operatum* that the movements intended above all to call into question.

Thus the Waldensians' objection to the Church is not only the inefficacy of sacraments administered by an unworthy priest, but even more radically, the principle according to which the law of binding and loosing, of consecrating and blessing and or administering the sacraments do not derive from *ordo* and *officium* but from merit. It is, that is to say, a question not of right and hierarchical succession, but of imitation of the apostolic life. In the words of Alan of Lille:

Aiunt predicti heretici, quod magis operantur meritum ad consecrandum vel benedicendum, ligandum et solvendum quam ordo et officium. . . . Dicunt etiam se posse consecrare, ligare et solvere, quia meritum dat potestatem, non officium et ideo qui se dicunt apostolorum vicarios, per merita debent habere eorum officia [The heretics say in their preaching that merit works more toward consecrating and blessing, binding and loosing than order and office. . . . They also say they can consecrate, bind, and loose themselves, since merit gives them that power, not office, and indeed those who call themselves vicars of the apostles must have their offices through merit.]; *De fide contra hereticos*, PL, 210, 358; qtd. in Grundmann, pp. 93/42)

The principle according to which it is not office that is to confer priestly power, but the *meritum vitae*, is stated also by the jurist Hugh of Speroni, to which the *magister* Vacarius objects in the name of the Church that "the priesthood is a matter of law" (*Sacerdotium res juris est*) and that office has nothing in common with religion and love (*quid enim commune habet officium administrationis, qui est in rebus ipsis, ad meritum religionis et caritatis, quae est in mente ipsius hominis*; Grundmann, p. 515).

What in both cases is stigmatized as heresy is not, in truth, a doctrinal principle, but only the necessary consequence of a spiritual attitude that makes form of life and not office the decisive question.

✠ Grundmann recalls that it is precisely to confront this heresy that Innocent III makes reference to the principle of the distinction

between *opus operans* and *opus operatum*: *In sacramento corporis Christi nihil a bono maius, nihil a malo minus perficitur sacerdote . . . quia non in mente sacerdotis, sed in verbo conficitur creatoris. . . . Quamvis igitur opus operans aliquando sit immundum, semper tamen opus operatum est mundum* (“In the sacrament of the body of Christ nothing more is accomplished by a good priest, and nothing less by a bad priest . . . because it is confectioned not through the merit of the priest, but through the word of the Creator. . . . Therefore, although the one doing the work is sometimes unclean, nevertheless the work done is always clean”; *De sacro altaris mysterio*, PL, 217, 844; qtd. in Grundmann, pp. 519). The separation between life and office could not be expressed in clearer terms.

2.7. Franciscanism represents the moment when the tension between *forma vitae* and *officium* is released, not because life is absorbed into liturgy, but on the contrary, because life and Divine Office reach their maximum disjunction. In Francis, there cannot be any claim of *meritum vitae* against *ordo* as in the religious movements contemporary with him, nor as in the origins of monasticism, a transformation of life into liturgy and incessant prayer, because the life of the Friars Minor is not defined by *officium* but solely by poverty. Naturally both the Rule and the Testament and letters mention the Office, but it is evidently only the point in which “living according to the form of the holy Gospel” intersects with “living according to the form of the holy Roman Church.” It is significant that the Testament, after having distinguished the two forms of life and defined poverty, recalls without any emphasis and almost fleetingly that *officium dicebamus clerici sicut alios clericos, laici dicebant pater noster* (“the clergy say the Office like other clergy, and the lay brothers say the Our Father”). And the *Regula bullata* can soberly pronounce: “The clerical brothers shall celebrate the Divine Office according to the rite of the holy Roman Church. . . . The lay brothers, however, shall pray twenty-four Our Fathers . . .” (Francis I, I, p. 139). For the clerics, “who live rightly according to the form of the Roman Church [*qui vivunt recte secundum formam Ecclesiae*

Romanae]” (Francis 1, 1, pp. 100/35), it is a matter of observing an ecclesiastical precept, for lay people of reciting the prayer that Francis preferred above all others—but in no case does the Divine Office define Franciscan identity (supposing that it would make sense to speak of identity for a life that refuses any property). For this reason, Francis’s gesture knows none of the “anticlericalism” that is so characteristic of many spiritual movements that are contemporary with him. He can always give to the Church what is the Church’s without polemic, namely the administration of the *officium* that belongs to it. “No one is to judge [the priests] even if they are sinners” (Francis 1, 100/35), reads one admonition; and even if Francis, faithful in this respect to the monastic tradition, can remind the clerics in the *Letter to the Whole Order* that they should say the Office with devotion, “so that the voice may blend with the mind” (*ibid.*, pp. 208/60), both the Testament and the admonitions confirm that the ministry of the “most holy Body and Blood of our Lord Jesus Christ” belongs solely to priests (pp. 222/53).

The distinction between the two forms of life which come into contact in the Office was, however, so sharp that in the first “form of life or rule,” written *paucis verbis et simpliciter* (“simply and in a few words”), the Office was not mentioned at all. The first life of Thomas Celano relates, in the same sense, that the brothers who assembled around Francis at Rivortorto “did not yet know the Office” and he “insistently told them for this reason that he was teaching them to pray” (Francis 2, 78/44).

✠ The importance of the clear distinction between the two forms of life in the Testament of Francis (“living according to the form of the holy Roman Church” and “living according to the form of the holy Gospel”) has escaped scholars and commentators, and yet it is only starting from this distinction that Francis’s strategy with respect to the Church becomes fully understandable.

Even if Francis affirms many times the unconditional subjection of the Friars Minor to the clergy, this is possible and acquires its sense

only on the basis of the radical heterogeneity of the two forms of life. And it is significant that when Francis composes for the brothers an Office for the passion, he chooses to begin with the verse of the Psalms (55:8) that rings out: *Deus vitam meam annuntiavi tibi*, "I have declared to you my life" (Francis I, 1, pp. 130/81).

2.8. An analogous disjunction occurs, as we have seen, between life and law. Franciscanism, more radically than other contemporary religious movements and more than any other monastic order, can be defined as the invention of a "form of life," that is, of a life that remains inseparable from its form. This is not because it is constituted as an *officium* and a liturgy, nor because the law has for its object the relation between a life and its form, but precisely by virtue of its radical extraneousness to law and liturgy. Certainly monasticism is from the beginning the invention of a way of life, but this was essentially a *regula vitae*, an unprecedented intensification of prayer and *officium*, which (in having become coextensive with life) was to exercise a decisive influence on the elaboration of Church liturgy. Precisely for this reason, however, it was to fatally clash with the problem of a growing integration into the sphere of the Church, which made of liturgy and the Divine Office its practice par excellence. The religious movements contemporary with Franciscanism, on the other hand, certainly decisively placed their claims, including their claims to poverty, on the level of life, but precisely insofar as they did not succeed in identifying in form of life an element that was radically heterogeneous to institutions and law, they were to end by putting themselves forward as the true Church and entering into conflict with the Church hierarchy.

If Franciscanism succeeded in avoiding the decisive conflict with the Church for almost a century after the death of its founder, this is due to the foresight of Francis, who in distinguishing *forma vitae* and *officium*, "living according to the form of the holy Gospel" and "living according to the form of the holy Roman Church," had succeeded in making of the Minors' life not an unceasing liturgy, but an element whose *novitas*

seemed completely extraneous to both civil and canon law. Life according to the form of the holy Gospel is situated on a level that is so distinct from that of the life according to the form of the holy Roman Church that it cannot enter into conflict with it. *Altissima paupertas*, “highest poverty,” is the name that the *Regula bullata* gives to this extraneousness to the law (Francis 1, 2, pp. 114/182), but the technical term that defines the practice in which it is actualized in the Franciscan literature is *usus* (*simplex usus, usus facti, usus pauper*).

§ 3 Highest Poverty and Use

3.1. The introduction of the concept of *usus* to characterize the Franciscan life comes from Hugh of Digne and Bonaventure. Hugh of Digne's *De finibus paupertatis* (On the Ends of Poverty) appears to be a brief treatise that is, at least in appearance, juridical, which aims to define poverty with respect to ownership. The definition of poverty is purely negative: it is *spontanea propter Dominum abdicatio proprietatis* ("the voluntary abdication of ownership for the Lord's sake"), while property is defined technically as *ius dominii, quo quis rei dominus dicitur esse, quo iure res ipsa dicitur esse sua, id est domini propria* ("the right of dominion, by which someone is said to be lord of some thing, by which right the thing itself is said to be his, that is proper to the lord"; Hugh of Digne 2, p. 283). There follow the definitions of the two ways in which property is acquired according to Roman law: occupation (distinguished according as it refers to someone's goods of property or to things *que in nullis sunt bonis*) and obligation (which can be *mutata* or *non mutata*).

The concept of use is introduced a few pages later, in response to the objection that since natural law prescribes that every person should preserve his or her own nature, one cannot renounce those goods without which this conservation would be impossible. Natural law, Hugh responds, prescribes that everyone have use of the things necessary to their conservation, but does not obligate them in any way to ownership (*Haec siquidem, ut earum habeatur usus,*

sine quibus non conservatur esse nature, sed ut proprietates habeatur, nullatenus compellit; *ibid.*, pp. 288–89). “Conserving one’s nature does not in fact represent ownership of food and clothing, but use; moreover it is possible always and everywhere to renounce ownership, but to renounce use never and nowhere [*proprietati ubique et semper renunciari potest, usui vero nunquam et nusquam*]. The use of things is, therefore, not only lawful, but also necessary” (*ibid.*).

Use, being opposed in this way to the right of ownership, is not, however, in any way defined. It is not surprising, moreover, that as we have seen, Hugh can present the Franciscan condition, even if perhaps ironically, in juridical terms, as the right to have no rights.

In the *Apologia pauperum* (*Defense of the Mendicants*), written in 1269 in response to the attack of the secular masters in Paris against the mendicant orders, Bonaventure distinguishes four possible relations to temporal things: ownership, possession, usufruct, and simple use (*cum circa res temporales quatuor sit considerare, scilicet proprietatem, possessionem, usumfructum et simplicem usum*, “four matters must be considered in dealing with temporal goods, namely, ownership, possession, usufruct, and simple use”; Bonaventure, *Apologia pauperum*, pp. 366/307–8). Of these, only use is absolutely necessary to human life and, as such, unrenounceable (*et primis quidem tribus vita mortalium possit carere, ultimo vero tanquam necessario egeat: nulla prorsus potest esse professio omnino temporalium rerum abdicans usum*; *ibid.*). The Friars Minor, who have devoted themselves to following Christ in extreme poverty, had consequently renounced any right of ownership, while preserving, however, the use of things that others concede to them. The treatment of use that follows is always developed in strict relationship to law. Bonaventure knows (this was one of the secular masters’ objections) that in consumable things ownership cannot be separated from use, but finds in Gregory IX’s bull *Quo elongati* the juridical basis for their separation. Establishing that “property may be possessed neither individually nor in common” by the Friars Minor, but that “the brotherhood

may have use [*usum habeat*] of equipment or books and such other moveable property as it is permitted, and that individual brothers may use these things [*his utantur*],” the pope, whose *auctoritas* is superior to any other, “distinguishes between ownership and use [*proprietas separavit ab usu*], retaining the former for himself and the Church, while conceding the latter for the needs of the friars” (ibid., pp. 368/308). Even more than in Hugh of Digne, the argumentation here is essentially juridical: just as in Roman law the *filiusfamilias* can receive from his father a *peculium*, of which he has use but not ownership, so the Friars Minor are *parvuli et filiifamilias* of the pope, to whom the ownership of the things that they use is due (ibid.). And as one cannot acquire the ownership of a good if one does not have the *animus acquirendi* or *possidendi* (“will to acquire” or “possess”), in the same way the Friars Minor, who by definition lack such *animus* and indeed have the contrary will, “cannot retain or obtain possession of a particular thing” (pp. 370/310).

The claim of use against the right of ownership is taken to such a point, at least in appearance, on the level of law that scholars have been able to ask themselves if *simplex usus* is not something like a royal law for Bonaventure (Tarello, p. 354), or if it is not the law itself that is to produce a juridical void within itself (Coccia, p. 140). If it is nevertheless certain that the juridical argumentation is here bent on opening a space outside the law, it is just as certain that the deactivation of law is carried out not by law itself but through a practice—the *abdication iuris* and use—that law does not produce but recognizes as external to itself.

3.2. The bull *Exiit qui seminat* (He Who Sows Went Forth), promulgated by Nicholas III in 1279 to put an end to the dispute between secular masters and mendicant orders, accomplishes a further step in the definition of use, but always in relation to law. As has been noted (Mäkinen, p. 96), the pope, who seems to know and approve the theses of Bonaventure (at times almost literally), nonetheless introduces two important variations into Bonaventure’s series of four possible relations to *res temporales*

(“temporal things”). On the one hand, along with ownership, possession, and usufruct, a fourth juridical figure is introduced, the *ius utendi* (“right of use”). On the other, Bonaventure’s *simplex usus* (“simple use”) appears here as *simplex facti usus* (“simple de facto use”). The meaning of this specification is defined a little later: it is a matter of a use that is “not the *usus iuris* but the *usus facti* inasmuch as having the name of ‘facti’ it offers however in the using no right to those so using” (*usus non iuris sed facti tantummodo nomen habens, quod facti est tantum, in utendo praebet utentibus nihil iuris; Exiit, §9*).

The specification is important not only because, in this way, the conceptual opposition no longer runs between *dominium* and *usus*, but within use itself, between *ius utendi* (“the right of using”) and *simplex usus facti* (“simple de facto use”; Lamberini, p. 176). What is decisive is, rather, the opposition between law and fact, *quid iuris* and *quid facti*, which as such was well known to jurists, not only in a general way but precisely with respect to use. In this sense, Azzo’s *Summa institutionum* distinguished, precisely with respect to consumable things, a use that is right (*ius*) or servitude (*servitus*) from a “use that is a fact or consists in a fact, like drinking and eating [*qui est factum vel in facto consistit, ut bibendo et comedendo*]” (qtd. in Mäkinen, p. 98). It is interesting to note that here the distinction *quid iuris*–*quid facti* does not serve, as in the juridical tradition, to identify the situation of fact corresponding to a certain juridical case. Instead, as we will see later in the Franciscans’ arguments against John XXII, drinking and eating are presented as paradigms of purely factual human practice lacking any juridical implication.

The apparatus on which the bull is founded is, as already in Bonaventure, the separation of ownership and use. It is, however, with perfect consistency that Nicholas III can declare that the ownership of all the goods of which the Franciscans have use pertains to the pope and the Church (*proprietatem et dominum . . . in Nos et Romanam Ecclesiam apostolica auctoritate recepimus; ibid., §11*).

3.3. The dispute between Conventuals and Spirituals, which caught fire after the proclamation of *Exiit qui seminat*, even if it did not yield a new definition of use, fixes some of its characteristics and formulates demands that it is useful to register. From the perspective that interests us here, the stakes in the dispute can be gathered adequately from the objections of Ubertino of Casale to the *Declaratio communitatis*, in which the Conventuals had laid out their theses. According to the *Declaratio*, the *usus facti* in which Franciscan poverty is manifested is identified without remainder with the renunciation of ownership and not, as the Spirituals wished, with an intrinsic characteristic of use itself, the *usus pauper* (poor use): “The perfection of the rule consists in the renunciation of ownership and not in the scarcity of use” (*abdicatio autem domini et non usus paucitas est illa in qua consistit perfectio regulae*; Ubertino, p. 119). To get around the purely negative character of this definition, the declaration specifies that, like any *preceptum negativum*, this prescribes in truth two positive acts: “wanting to have nothing of one’s own as the interior act, and using the thing as not one’s own as the exterior act” (*velle non habere proprium quantum ad actum interiorem et uti re ut non sua quantum ad actum exteriorem*; *ibid.*, pp. 119–20). Once more, the exterior aspect of the *abdicatio proprietatis* is defined with a simple reversal of the formula that, in Roman law, defined the *animus possidendi*: to use the thing as one’s own (*ut re ut sua*). And precisely insofar as the Friars Minor always use the thing as not their own, continues the *Declaratio*, “one and the same act can be both poor and rich use [*potest esse aliquando idem actus vel usus pauperis et divitis*], as is evident in the case when the poor person eats in the house of a rich person the same food as the latter” (p. 119).

It is this purely negative and indeterminate definition that Ubertino intends to refute:

The act and its object are correlative and the reason for one is included in that of the other. . . . Since then negative precepts imply that there is not only an interior positive act, but also an external one . . . when one says that the exterior act of poverty is to use the thing as not one’s own, I object: the expression “as not one’s own”

does not designate the act or the formal reason of an exterior act, but is identified with the very renunciation of ownership on one's own part; it is necessary, however, that just as those who pronounce the vow of obedience also vow an extrinsic act determined according to the time and place, even if in obeying they use their own will as not their own, so also those who vow themselves to poverty vow the poor use [*usum pauperem*] as well, even if in any case they use things as not their own. (p. 166)

The demand of the Spirituals here is that use not be defined only negatively with respect to the law (*uti re ut non sua*), but that it would have its own formal justification and be worked out in an objectively determined operation. For this reason, mobilizing philosophical conceptuality, Ubertino defines the relationship of poor use and renunciation to poverty in terms of the relation between form and material (*abdicationem enim proprietas omnium se habet ad pauperem seu moderatum usum, sicut perfectibile ad suam perfectionem et quasi sicut materia ad suam formam*; p. 147), or, invoking the authority of Aristotle, as a relation of operation and habit (*sicut operatio ad habitum comparatur*; p. 148). Olivi had already gone down this road, writing that "poor use is to the renunciation of every right as form is to material" (*sicut forma se habet ad materiam, sic usus pauper se habet ad abdicationem omnis iuris*), and that, however, without *usus pauper*, the renunciation of the right of ownership remains "void and vain" (*unde sicut materia sine forma est informis et confusa, instabilis, fluxibilis et vacua seu vana et infructuosa, sic abdicationem omnis iuris sine paupere usu se habet*, "hence just as material without form is formless and confused, unstable, fluctuating, vacant or void, and fruitless, so is the abdication of every right without poor use"; Ehrle, p. 508).

In truth, more than in the pauperistic arguments of the Spirituals, it is in the Conventuals' apparently more indeterminate arguments that it is possible to gather the elements of a definition of use with respect to ownership, which does not insist only on their juridical aspects, but also and above all on their subjective aspects. In one of the treatises published by Delorme, the *uti re ut sua* (using the thing as one's own) as defining characteristic of

ownership is radicalized in psychological terms, to the point of rendering ownership and use incompatible in the exemplary case of the miser and *amator divitiarum*:

The goal of riches is twofold: one intrinsic and primary, which is the use of things as one's own, and another extrinsic and less primary, by means of which each one uses things either for his own pleasure, as the intemperate one does, or for the welfare and perfect sustenance of nature, as the temperate one does, or for the necessary sustenance of life, as the evangelically poor does, as is appropriate to their condition. That using something for one's own pleasure [*ad delectationem*] does not constitute, in itself, the goal of the one who loves riches is evident in the case of the miser, who loves riches above all, yet does not use them for his own pleasure and in fact almost doesn't dare to eat, and the more the love of riches grows in him the more the use he makes of them diminishes, because he does not want to use them, but to keep them and amass them as his own [*quia eis non vult uti, sed conservare ut proprias et congregare*]. . . . Using things for pleasure thus is not the goal toward which ownership is oriented in itself and, consequently, the one who renounces ownership does not necessarily also renounce this second use. (Delorme, p. 48)

Even if the argumentation here is directed against Ubertino's thesis according to which "one seeks riches in view of use and the one who refuses the first must therefore refuse the second as well to the degree in which it is superfluous," use (in particular insofar as it concerns the pleasure that it brings along with it) is here restored to a concreteness that is generally lacking in Franciscan treatises on poverty.

3.4. The critical moment in the history of Franciscanism is when John XXII's bull *Ad conditorem canonum* once again calls into question the possibility of separating ownership and use and in this way cancels the very presupposition on which Minorite *paupertas* was founded.

The argument of the pope, who had an undoubted competence in both canon and civil law, rests on the identification of a sphere (consumable things such food, drink, clothes, and the

like, essential to the life of the Friars Minor) in which the separation of ownership from use is impossible. Already according to Roman law, usufruct referred only to those goods that could be used without destroying their substance (*salva rerum substantia*). Consumable things, however, with respect to which one speaks not of usufruct but of quasi-usufruct, become property of the one to whom they are left in use. Even Thomas, whose canonization John XXII prepared, had stated that in things “the use of which consists in their consumption . . . the use of the thing must not be reckoned apart from the thing itself, and whoever is granted the use of the thing, is granted the thing itself [*cuicumque conceditur usus, ex hoc ipso conceditur res*]” (*Summa theologica*, 2a, 2ae, q. 78, art. 1).

Founding itself on this tradition, the bull *Ad conditorem canonum* confirms that in consumable things it is impossible to constitute or have a *ius utendi* or a *usus facti*, if one claims to separate them from ownership of the thing (*nec ius utendi nec usus facti separata a rei proprietate seu dominio possunt constitui vel haberi*; qtd. in Mäkinen, p. 165). The difference between *ius utendi* and *usus facti*, on which the theses of Bonaventure and Nicholas III rested, is thus neutralized. And to exclude the very possibility of claiming a de facto use or an *actus utendi sine iure aliquo*, the bull denies that such a use, insofar as it coincides with the destruction of the thing (*abusus*), can be possessed (*haberi*) or even exist as such *in rerum natura*.

Here the bull’s argument shows all its subtlety, not only juridical but also philosophical. The purely ontological problem is whether a use that consists only in abuse (that is, in destruction) can exist and be possessed other than as a right of ownership (common law defined ownership precisely as *ius utendi et abutendi*). In use, argues the pope, one must distinguish three elements, a personal servitude devoted to the usuary, a *ius personale*, and the *actus utendi*, which is neither servitude nor right but only a certain practice and use (*tantum actus quidam et usus*). “For if such a use can be had,” continues the pope, “it would be had either before the act itself, or in the act itself, or after the

completed act of this sort. But that this cannot happen appears from this: what does not exist cannot be had. Now it is clear that the act itself, before it is performed, or even while it is being performed, or after it has been finished, is not in reality; from this it follows that it cannot at all be had [*actus ipse, antequam exercetur, aut etiam dum exercetur, aut postquam perfectus est, in rerum natura non est: ex quo sequitur, quod haberi minime potest*]” (§6). An act in becoming (*in fieri*), insofar as a part of it has already passed and another is still to come, does not exist properly in nature, but only in memory or expectation (*non est in rerum natura, sed in memoria vel apprehensione tantum*): it is an instantaneous being, which as such can be thought, but not possessed (*quod autem fit instantaneum est, quod magis intellectu quam sensu perpendi potest*; *ibid.*).

✠ By radically opposing use and consumption, John XXII, in an unconscious prophecy, furnishes the paradigm of an impossibility of using that was to find its full realization many centuries later in consumer society. A use that it is never possible to have and an abuse that always implies a right of ownership and is moreover always one’s own indeed define the very canon of mass consumption. In this way, however, perhaps without taking account of it, the pope also lays bare the very nature of ownership, which is affirmed with the maximum intensity precisely at the point where it coincides with the consumption of the thing.

3.5. The responses of the Franciscan theorists assembled around Minister General Michael of Cesena to the decretal of John XXII insist obstinately on the possibility and legitimacy of the separation of *usus facti* from ownership. It is in the attempt to prove this separability that they moreover reach the point of affirming a genuine primordially and heterogeneity of use with respect to dominion. Already the *declaratio* of the Franciscans, which had provoked the papal decretal, maintained that in the life of the apostles, what was common was not ownership, but only use (“the air and the sunlight are common to all in the sense that they are common only according to common use [*solum secundum usum communem*]”; Mäkinen, p. 160). In his *Tractatus de paupertate*,

Bonagratia develops this thesis by stating that in the state of paradise, the divine commandment to eat from the trees of the garden (save one) implied not only that their use was unrenounceable but that, according to natural and divine law, what was originally common was not ownership but use (*de iure nature et divino communis usus omnium rerum que sunt in hoc mundo omnibus hominibus esse debuit. . . . ergo usus rerum que per usu consumuntur non habet necessarium annexum meum et tuum*; Bonagratia, p. 504). The common use of things also genealogically precedes common or divided ownership of things, which derives only from human law.

Particularly interesting from a philosophical point of view are Francis of Ascoli's objections to John XXII's argument, according to which the de facto use of consumable goods does not exist in nature and thus cannot belong to anyone. To justify in this case as well the possibility of use, Francis elaborates a true and proper ontology of use, in which being and becoming, existence and time seem to coincide.

The use of consumable goods (which, with a significant term, he also calls *usus corporeus*) belongs to the "successive" kind of things, which one cannot have in a simultaneous and permanent way (*simul et permanenter*). As consumable goods exist in becoming (*in fieri*), so also is their use in becoming and successive (Francis of Ascoli, p. 118). "In that whose being coincides with becoming [*cuius esse est eius fieri*]," he argues with extraordinary philosophical subtlety,

being signifies becoming; but the being of a successive thing is its becoming and, conversely, its becoming is its being [*suum fieri est suum esse*]: so the being of actual use signifies its becoming and, conversely, its becoming signifies its use. It is thus false that actual de facto use [*usus actualis facti*] never exists in nature, otherwise for the same reason one would have to say that a de facto use never happens [*fieret*] in nature, since its being is its becoming, and that which is its becoming, if it never is in nature, never happens in nature [*si numquam est in rerum natura, numquam fit in rerum natura*], which is absurd and erroneous.

Use appears here as a being that is made of time, whose thinkability and existence coincide with that of time: "If use, because it is not, can never be possessed, for the same reason therefore neither can time, which no longer is insofar as it is de facto use, be possessed. But then what is written in Ecclesiastes (3:1) would be false: 'For everything there is a time'" (ibid.). In a different way than in Bonagratia, the heterogeneity and priority of use with respect to law is defined by Ockham in terms of the essential difference between the simple act of using (*actus utendi*) and the right to use (*ius utendi*). At the beginning of the *Opus nonaginta dierum* (*Work of Ninety Days*), after having distinguished four meanings of the term *usus* (use as opposed to *fructio*, use in the sense of custom, use as the act of using an external thing—*actus utendi re aliqua exteriore*—and use in the juridical sense, namely the right to use someone else's things, save their substance), he resolutely identifies the Franciscan *usus facti* with the simple act of using something: "they (the Franciscans) say that de facto use is the act of using some external thing—for example, an act of living in, eating, drinking, riding, wearing clothes, and the like" (*actus utendi re aliqua exteriori, sicut inhabitare, comedere, bibere, equitare, vestem induere et huiusmodi*; Ockham, 1, pp. 300/58). In the same sense, Richard of Conington distinguishes from law the *applicatio actio utendi ad rem*, which in itself is "a purely natural thing" and, as such, is neither just nor unjust: "In fact the horse applies the *actus utendi* to the thing, and thus its act is neither just nor unjust" (Richard of Conington, p. 361).

The difference between *usus facti* and *usus iuris* coincides in Ockham with that between the pure factual exercise of a vital practice and the right to use, which is instead always "a certain determinate positive right, established by human ordinance, by which one has the licit power and authority to use things belonging to another, preserving their substance" (*quoddam ius positivum determinatum, institutum ex ordinatione humana, quo quis habet licitam potestatem et auctoritatem uti rebus alienis, salva rerum substantia*; Ockham, 1, pp. 301/60). There is, in this sense, a radical heterogeneity between right and act: "In whatever way *usus iuris*

is taken, therefore, it is always a right and not an act of using. Thus anyone who rents a house to live in has *usus iuris* in the house even while he is outside the house and not currently living in it. *Iuris* is added to distinguish it from *usus facti*, which is a certain act performed in relation to an external thing” (ibid., pp. 302/60–61).

✠ It is from this sharp separation of ownership and use that scholars like Michel Villey and Paolo Grossi have been able to locate the foundations of a modern theory of subjective law and a pure theory of ownership understood as *actus voluntatis* precisely in the Franciscan masters. It is necessary, however, not to forget that the definition of the right of ownership as *potestas* in Ockham and that of ownership as *uti re ut sua* and will for dominion in both the treatises published by Delorme and in Richard of Conington and Bonagratia were formulated only to found the separability and autonomy of use and to legitimate poverty and the renunciation of any right. The theory of subjective law and *dominium* was elaborated by the Franciscans in order to deny or rather to limit the power of positive law, and not, as Villey and Grossi seem to think, to found its absoluteness and sovereignty. Moreover, precisely for this reason, it is just as certain that they had to define its proper characteristics and its autonomy.

3.6. Perhaps nowhere does the ambiguity of the Franciscan gesture with respect to law appear with greater evidence than in Olivi’s question: *Quid ponat ius vel dominium?* Since what is at stake for Olivi is the need to respond to the question of whether ownership or royal or priestly jurisdiction add something real (*aliquid realiter addant*) to the person who exercises them or to the things or persons over whom they are exercised, and furthermore whether signification in act adds something real to the substance of signs or the things signified, one can say that the *quaestio* contains nothing less than an ontology of right and of signs (including those peculiar efficacious signs that the sacraments are).

The connection of the sphere of law and that of signs is not fortuitous, because it shows that what is in question is the mode of existence and the proper efficacy of those beings (law, command,

signs) on which the powers that regulate and rule human society are founded (including those special societies that the monastic orders are). The treatment of the problem unfolds by opposing seven positive arguments (which prove that rights and signs *aliquid realiter addant*, add something real) and the same number of negative arguments (which argue that they *nihil realiter addant*, add nothing real).

Grossi has read this text as the first work in the history of law in which “being proprietary, *proprietas*, was the object of a theoretical construction that raised it to the status of a genuinely distinct sociological type, a type constructed on solid theological presuppositions” (Grossi, p. 335). If it is true that Olivi proposes in the *quaestio*, as we have seen, an ontology of law and of signs, one nonetheless risks allowing the essential thing to escape if one does not specify the modality in which this ontology is articulated. Let us consider Olivi’s conclusion with respect to the opposing arguments: “Regarding the understanding of these arguments and without prejudice to a better opinion, it seems that one can affirm with probability that the above-mentioned customs (ownership, royal jurisdiction, etc.) truly set down something real, but do not, however, add any different essence that really informs the subjects of which and in which they are said” (*vere ponunt aliquid reale, non tamen addunt aliquam diversam essentiam realiter informantem illa subiecta, quorum et in quibus dicuntur*; Olivi 2, p. 323). In the terms of medieval philosophy, this means that the realities in question are not situated on the level of *essence* or of the *quid est*, but only in that of *existence* or of the *quod est*; they are thus, as Heidegger will write many centuries later, purely *existential* and not *essential*.

The importance of this *quaestio* from the point of view of the history of philosophy is, thus, that in it we see articulated, according to an intention that undoubtedly characterized Franciscan thought, an ontology that is so to speak existentialist and not essentialist. This means that in the very moment in which one admits a real efficacy to right and signs (*ponunt aliquid reale*), they are demoted from the level of essences and made to hold

as pure effectualities that depend solely on a command of the human or divine will.

This is particularly evident in the case of signs: “Insofar as you can consider them with subtlety and clarity,” writes Olivi,

you will find that signification does not add to the real essence of the thing that is used as a sign anything other than the mental intention of those who have instituted it and accepted its validity and of those who accept it in action in order to signify and of those who hear it or receive it as a sign. But in the voice or gesture that are produced by the command of this intention [*ab imperio talis intentionis*], signification adds to the intention of the one signifying and to the essence of the thing that functions as a sign the habit of commanded effect [*habitudinem effectus imperati*] and the command produced by the intention of the one who signifies. (ibid., p. 324)

In the case of those special signs that the sacraments are and in the case of royal authority, the foundation of their efficacy is to be sought in the last analysis in the divine will, yet this does not take anything away from the fact that even here we have to do with a pure and absolutely inessential command. The sphere of human practice, with its rights and its signs, is real and efficacious, but it produces nothing essential, nor does it generate any new essence beyond its own effects. The ontology that is in question here is thus purely operative and effectual. The conflict with law—or rather, the attempt to deactivate it and render it inoperative through use—is situated on the same purely existential level on which the operativity of law and liturgy acts. Form of life is the purely existential reality that must be liberated from the signature of law and office or duty (*ufficio*).

3.7. We will attempt to pull together, albeit only provisionally, the conclusions of our analysis of poverty as use in the Franciscan theorists. It is necessary first of all not to forget that this doctrine was elaborated within a defensive strategy against attacks first from the secular masters of Paris and then from the Avignon Curia, which called into question the

Franciscan refusal of any form of ownership. The concept of *usus facti* and the idea of a separability of use from ownership undoubtedly represented an effective instrument from this perspective, which permitted them to give consistency and legitimacy to the generic *vivere sine proprio* ("living without property") of the Franciscan rule, and even secured, at least early on with the bull *Exiit qui seminat*, a perhaps unexpected victory against the secular masters. However, as often tends to happen, this doctrine, precisely insofar as it essentially proposed to define poverty with respect to the law, revealed itself to be a double-edged sword, which had opened the path to the decisive attack carried out by John XXII precisely in the name of the law. Once the status of poverty was defined with purely negative arguments with respect to the law and according to modalities that presupposed the collaboration of the Curia, which reserved for itself the ownership of the goods of which the Franciscans had the use, it was clear that the doctrine of the *usus facti* represented for the Friars Minor a very fragile shield against the heavy artillery of the Curial jurists. It is possible, in fact, that in accepting Bonaventure's doctrine on the separability of use from ownership in *Exiit qui seminat*, Nicholas III was conscious of the usefulness of defining a form of life that presented itself as otherwise unassimilable for the ecclesiastical order in juridical terms in this way, even if purely negative ones.

One can say that from this point of view, Francis was more prescient than his successors, in that he refused to articulate his *vivere sine proprio* in a juridical conceptuality and left it completely indeterminate. But it is also true that the *novitas vitae* that could be tolerated in a small group of young monks (since such were the Franciscans at first) could hardly be accepted for a large and powerful religious order.

One can say that the arguments of the Franciscan theorists are the fruit simultaneously of an overvaluation and an undervaluation of law. On the one hand, they use its conceptuality and never call into question its validity or foundations, while on the other,

they think they can secure with juridical arguments the possibility, through abdicating the law, of pursuing an existence outside the law.

Thus the doctrine of *usus facti*: it is obviously founded on the possibility of distinguishing de facto and de jure use and, more generally, *quid iuris* and *quid facti* (what pertains to law and what pertains to fact). The force of the argument is in laying bare the nature of ownership, which is thus revealed to have a reality that is only psychological (*uti re ut sua*, intention to possess the thing as one's own) and procedural (power to claim in court). However, instead of insisting on these aspects, which would have called into question the very ground of property law (which, as we have seen in Olivi, loses all essentiality, presenting itself as a mere signature, even if an effective one), the Franciscans prefer to take refuge in the doctrine of the juridical validity of the separation of de facto use and right.

However, this amounts to disregarding the very structure of law, which is constitutively articulated on the possibility of distinguishing *factum* and *ius* by instituting between them a threshold of indifference, by means of which the fact is included in the law. Thus, with respect to ownership, Roman law knew figures, like the *detentio* or *possessio*, which are solely states of fact (having a thing factually in one's own possession, independently of a juridical title, as happened precisely in the Franciscans' de facto use), but that as such could have juridical consequences. Dedicating an already classic work to this theme, Savigny thus wrote that "possession in itself, according to the original notion of it, is a simple fact [*ein blosses Factum ist*]; it is just as certain that legal consequences are bound up with it. Therefore, it is at the same time both a right and a fact [*Factum und Recht zugleich*], namely, fact according to its nature, and equivalent to a right in respect of the consequences by which it is followed" (Savigny, pp. 43/17). Accordingly, Savigny could define possession as "the condition of fact [*factische Zustand*], corresponding to property as the condition of law [*rechlichen Zustand*]" (ibid., pp. 27/3). The *factum* of possession forms a system, in this sense, with the right of ownership.

In the same way, in Roman law things that are not the property of anyone, like shells abandoned on the seashore or wild animals, are called *res nullius*. But since the first one who collects or captures them becomes ipso facto their owner, they are only the presupposition of the act of appropriation that sanctions their ownership. The factual character of use is not in itself sufficient to guarantee an exteriority with respect to the law, because any fact can be transformed into a right, just as any right can imply a factual aspect.

For this reason, the Franciscans must insist on the “expropriative” character of poverty (*paupertas altissima . . . est expropriativa, ita quod nichil nec in communi nec in speciali possint sibi appropriare, nec aliquis frater nec totus ordo*, “highest poverty . . . is expropriative, because it can appropriate nothing either in common or individually, neither to any brother nor to the whole order”; Ehrle, p. 522), and on the refusal of any *animus possidendi* on the part of the Friars Minor, who make use of things *ut non suae* (as not their own) but in this way entangle themselves more and more in a juridical conceptuality by which they will finally be overwhelmed and defeated.

3.8. What is lacking in the Franciscan literature is a definition of use in itself and not only in opposition to law. The preoccupation with constructing a justification of use in juridical terms prevented them from collecting the hints of a theory of use present in the Pauline letters, in particular in 1 Corinthians 7:20–31, in which using the world as not using it or not abusing it (*et qui utuntur hoc mundo, tamquam non utantur*; the original Greek *hōs mē katachromenoi* means “as not abusing”) defined the Christian’s form of life. This could have furnished a useful argument against John XXII’s theses on the use of consumable things as *abusus*. In the same sense, the conception of poverty as “expropriative” on the part of the Spirituales could have been generalized beyond law to the whole existence of the Friars Minor, connecting it to an important passage from the *Admonitiones*, in which Francis identified original sin with the appropriation of the will (*ille enim*

comedit de ligno scientiae boni, qui sibi suam voluntatem appropriat; Francis 1, 1, p. 83). Precisely at the point in the elaboration of scholastic theology when the will had become the apparatus that permitted the definition of liberty and the responsibility of the human being as *dominus sui actus*, in the words of Francis the *forma vivendi* of the Friars Minor is, by contrast, that life which maintains itself in relation, not only to things, but even to itself in the mode of inappropriability and of the refusal of the very idea of a will of one's own (which radically gives the lie to the theses of historians of law who, as we have seen, perceive in Franciscanism the foundation of subjective law).

The exclusive concentration on attacks (first of the secular masters and then of the Curia), which imprisoned use within a defensive strategy, prevented the Franciscan theologians from putting it in relation with the form of life of the Friars Minor in all its aspects. And yet the conception of *usus facti* as a successive being that is always *in fieri* in Francis of Ascoli and its consequent connection with time could have furnished the hint for a development of the concept of use in the sense of *habitus* and *habitus*. This is exactly the contrary of that put forth by Ockham and Richard of Conington, who in defining *usus facti* once again by opposing it to law, as *actus utendi*, break with the monastic tradition that privileged the establishment of *habitus* and (with an obvious reference to the Aristotelian doctrine of use as *energeia*) seem to conceive the life of the Friars Minor as a series of acts that are never constituted in a habit or custom—that is, in a form of life.

Holding firm to this conception of use as act and *energeia* ended up blockading the Franciscan doctrine of use within the totally sterile conflict between the Conventuals, who underlined its nature as an *actus intrinsecus*, and the Spirituals, who demanded that this be translated into an *actus extrinsecus*. Instead of confining use on the level of a pure practice, as a fictitious series of acts of renouncing the law, it would have been more fruitful to try to think its relation with the form of life of the Friars Minor, asking how these acts could be constituted in a *vivere secundum formam* and in a habit.

Use, from this perspective, could have been configured as a *tertium* with respect to law and life, potential and act, and could have defined—not only negatively—the monks' vital practice itself, their form-of-life.

8 Beginning in the twelfth century, we see alongside the rule in Augustinian, Benedictine, and Cistercian convents the birth of texts called *consuetudines* and at times *usus* (*usus conversorum*), which reach their greatest development later in the *devotio moderna*. The interpretation of these texts—which on the surface simply describe the monk's habitual restrictions, often in the first person (*Suscitatus statim volo surgere et incipere cogitare de materia preparando me studendo et habere sensus meos apud me in unum collectos . . . facto prandio et hymno dicto sub silentio, calefacio me si frigus est*, “Having arisen I immediately wish to get up and begin to think about the materials to be prepared while studying myself and have my feelings before me collected into one. . . . Having eaten and said a hymn silently, I warm myself, if it is cold”; *Consuetudines*, pp. 1–2)—as complements or completions of the rules is misleading. In reality it is a matter of a restoration of the rules to their originary nature as transcriptions of the monks' *conversatio* or way of life. The rule that, while arising out of habit and custom, had been progressively constituted as a Divine Office and liturgy returns now to presenting itself in the humble garb of use and life. The *Consuetudines*, that is to say, are to be read in the context of the process that, beginning in the thirteenth century, shifts the center of gravity of spirituality from the level of rule and doctrine to that of life and *forma vivendi*. But it is significant that form of life is attested in these writings only in the form of *consuetudo*, as if the actions of the monk acquired their own sense only by being constituted as use.

3.9. From this perspective, Olivi's statement according to which *usus pauper* is to *abdicationem iuris* as form is to material acquires a new and decisive significance. *Abdicationem iuris* and life outside the law are here only the material that, being determined by means of *usus pauper*, must be made a form of life: *Sicut autem forma ad sui existentiam preexigit materiam tanquam sue existentie fundamentum, sic professio pauperis usus preexigit abdicationem omnis iuris tanquam sue grandissime existentie et ambitus capacissimam*

materiam, “Just as form requires for its existence material as a foundation by which it has existence, so the profession of poor use requires the abdication of every right as the most capacious material by which it will have the greatest existence and scope” (Ehrle, p. 508). *Usus* here no longer means the pure and simple renunciation of the law, but that which establishes this renunciation as a form and as a way of life.

And it is precisely in a text of Olivi that this decisive relevance of the level of form of life reaches full theoretical consciousness and therefore also and for the first time an explicit justification in eschatological terms. In the eighth question *De perfectione evangelica*, Olivi accepts Joachim of Flora’s theses on the six ages of the world, divided according to three *status*: the Father (the Old Testament), the Son (the New Testament), the Spirit (end and fulfillment of the law), to which he adds eternity as the seventh period. However, according to Olivi, what defines the excellence of the sixth and seventh periods is the appearance not simply of the “person” of Christ, but of his “life”:

The sixth and seventh period could not constitute the end of the preceding periods, if in them the life of Christ did not appear in a special and unique way [*nisi in eis vita Christi singulariter appareret*] and if, through the spirit of Christ, there was not given to the world the special peace of the love of Christ and of his contemplation. As indeed the person of Christ is the end of the Old Testament and of all persons, so the life of Christ is the end of the New Testament and, so to speak, of all lives [*sic vita Christi finis est Novi Testamenti et, ut ita dicam, omnium vitarum*]. (Olivi 3, p. 150)

Let us reflect on the theology of history that is implied in these theses. The advent of the age of the Spirit coincides, that is to say, not with the advent of the *persona* of Christ (which defined the second stage), but with that of his *vita*, which constitutes the end and fulfillment not only of the new law, but even of all lives (the “so to speak”—*ut ita dicam*—shows that Olivi is perfectly conscious of the novelty of his statement). Certainly the life of Christ had also appeared in the preceding epoch, according to a

principle of epochal dispensation of “modes of life” in the history of the Church (“it is certain that the life of Christ is one and better than any other, but in the five preceding stages of the Church there have appeared successively many lives and many ways of life [*multae vitae et multi modi vivendi successive apparuerunt*]”; *ibid.*, p. 157). Nevertheless it is only at the end of times (*in fine temporum*) that it can be manifested “according to full conformity to its unicity and its form” (*secundum plenam conformitatem suae unitati et speciei*; *ibid.*). And just as at the moment of Christ’s first advent, John the Baptist had been elected “as a prophet and more than a prophet,” so also in the last time, Francis was chosen “to introduce and renew the life of Christ in the world” (*ad introducendam et renovandam Christi vitam in mundo*; *ibid.*).

The specific eschatological character of the Franciscan message is not expressed in a new doctrine, but in a form of life through which the very life of Christ is made newly present in the world to bring to completion, not the historical meaning of the “person” in the economy of salvation, so much as his life as such. The Franciscan form of life is, in this sense, the end of all lives (*finis omnium vitarum*), the final *modus*, after which the manifold historical dispensation of *modi vivendi* is no longer possible. The “highest poverty,” with its use of things, is the form-of-life that begins when all the West’s forms of life have reached their historical consummation.

Threshold

What was lacking in the Franciscan doctrine of use is precisely the connection with the idea of form of life that Olivi's text seems to implicitly demand. It is as if the *altissima paupertas*, which according to the founder was to define the Franciscan form of life as a perfect life (and that in other texts, like the *Sacrum commercium Sancti Francisci cum Domina Paupertate*, effectively has this function), lost its centrality once it was linked to the concept of *usus facti* and ended up being characterized only negatively with respect to the law. Certainly, thanks to the doctrine of use, the Franciscan life could be affirmed unreservedly as that existence which is situated outside the law, which must abdicate the law in order to exist—and this is certainly the legacy that modernity has shown itself to be incapable of facing and that our time does not seem to be at all in a position to think. But what is a life outside the law, if it is defined as that form of life which makes use of things without ever appropriating them? And what is use, if one ceases to define it solely negatively with respect to ownership?

It is the problem of the essential connection between use and form of life that is becoming undeferrable at this point. How can use—that is, a relation to the world insofar as it is inappropriable—be translated into an ethos and a form of life? And what ontology and which ethics would correspond to a life that, in use, is constituted as inseparable from its form? The attempt to respond to these questions will necessarily demand a confrontation with

the operative ontological paradigm into whose mold liturgy, by means of a secular process, has ended up forcing the ethics and politics of the West. Use and form of life are the two apparatuses through which the Franciscans tried, certainly in an insufficient way, to break this mold and confront that paradigm. But it is clear that only by taking up the confrontation again from a new perspective will we perhaps be able to decide whether and to what extent that which appears in Olivi as the extreme form of life of the Christian West has any meaning for it—or whether, on the contrary, the planetary dominion of the paradigm of operativity demands that the decisive confrontation be shifted to another terrain.

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