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Mysticism, when transposed from the warm twilight of myth and fiction to the cold searchlight of fact and reason, has usually little left to recommend itself. Its language, unless resounding within its own magic or mystic circle, will often appear poor and even slightly foolish, and its most baffling metaphors and highflew images, when deprived of their iridescent wings, may easily resemble the pathetic and pitiful sight of Baudelaire’s Albatross. Political mysticism in particular is exposed to the danger of losing its spell or becoming quite meaningless when taken out of its native surroundings, its time and its space.

The mystic fiction of the “King’s Two Bodies,” as divulged by English jurists of the Tudor period and the times thereafter, does not form an exception to this rule. It has been mercilessly plucked by Maitland in a highly stimulating and amusing study on “The Crown as Corporation.”¹ With a strong touch of sarcasm and irony, the great English historian of law has disclosed the follies which the fiction of the king as a “Corporation sole” could, and did, lead to, and has shown at the same time what havoc the theory of a two-bodied king and a twinned kingship was bound to work in bureaucratic logic. Wittily Maitland puns about the king being “parsonified” and styles the theory of the King’s Two Bodies “a marvelous display of metaphysical—or we might say metaphysiological—nonsense.”

From his admirably stocked garner of juridical exempla Maitland was able to produce case after case illustrating the absurdity of that doctrine. He tells us the story about King George III who had to go to Parliament for permission to hold some land as a man and not as a king, “since rights not denied to any of His Majesty’s subjects were denied to him.” He adds that other delightful case concerning the tenants of one of the traitors of the rebellion of 1715 whose barony had been confiscated and handed over to the king: the tenants were jubilant at this change of lordship, for owing to the fact that the barony now was “vested in His Majesty, his heirs and successors in his politick capacity, which in consideration of law never dies,” they believed that henceforth

¹ F. W. Maitland, Selected Essays (Cambridge, 1936), 104-127, reprint from Law Quarterly Review, xvii (1901), 131-146.
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they were freed from paying the customary relief on the death of their (hitherto simply mortal) lord. Parliament, however, disappointed them by making the surprising decision that in this case the king was considered a private person who could die, and therefore the tenants continued to pay their taxes as before. And Maitland was even able to bring evidence to show that Louis XIV's famous if apocryphal l'état c'est moi—or, for that matter, the scholastic papa qui potest dici ecclesia—was officially recognized also in England: a Statute of 1887 decreed that "the expressions 'permanent civil service of the State,' 'permanent civil service of Her Majesty,' and 'permanent civil service of the Crown' are hereby declared to have the same meaning"—which, so Maitland remarks, "is a mess."

The challenge to ridicule the theory of the King's Two Bodies is indeed great when you read, without being prepared for it, the at once fantastic and subtle description of the king's superbody or body politic rendered by Blackstone in a chapter of his Commentaries which conveniently summarizes the achievements of several centuries of political thought and legal speculation. From his pages there rises the spectre of an absolutism exercised, not by an abstract "State," as in modern times, or by an abstract "Law," as in the High Middle Ages, but by an abstract physiological fiction which in secular thought remains probably without parallel. That the king is immortal because legally he can never die, or that he is legally never under age, are familiar stage properties. But it goes further than expected when we are told that the king "is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness." Moreover, that king is invisible and, though

\footnote{Ibid., 117. That such "mess" was not restricted to England was of course not unknown to Maitland, since Otto von Gierke, Deutsches Genossenschaftsrecht (Berlin, 1891), III, 394 n. 148, quotes a striking parallel. Antonius de Butrio, a 14th-century canon lawyer, claims that it made no difference concerning the ownership of ecclesiastical property "sive dicas Christum, sive praetatum, sive ecclesiam universalem, sive particularam possidere, sive episcopum, sive alium praelatum, sive Papam vicarium Christi."}

\footnote{Sir William Blackstone, Commentaries on the Laws of England, i, 57 (first published in 1765), 287 ff.}

\footnote{Ibid., 1,246.}

\footnote{The king's invisibility is not mentioned directly by Blackstone, but it belongs to the standard definitions of the body politic; see below, Ch. i, n. s, for Plowden: "... the Body politic is a Body that cannot be seen or handled"; or Calvin's Case
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he may never judge despite being the "Fountain of Justice," he
yet has legal ubiquity: "His Majesty in the eye of the law is always
present in all his courts, though he cannot personally distribute
justice."* The state of superhuman "absolute perfection" of this
royal persona ficta is, so to speak, the result of a fiction within a
fiction: it is inseparable from a peculiar aspect of corporational
concepts, the corporation sole. Blackstone gives credit entirely to
the Romans for having invented the idea of corporations—"but
our laws have considerably refined and improved upon the inven-
tion, according to the usual genius of the English nation: particu-
larly with regard to sole corporations, consisting of one person
only, of which the Roman lawyers had no notion.""

That kind of man-made irreality—indeed, that strange construc-
tion of a human mind which finally becomes slave to its own
fictions—we are normally more ready to find in the religious
sphere than in the allegedly sober and realistic realms of law,
politics, and constitution; and therefore Maitland's often caustic
criticisms are understandable and appear fully justified. However,
the seemingly ludicrous, and in many respects awkward, concept
of the King's Two Bodies has not only those physiologically amus-
ing traits. Maitland himself was fully aware that this theorem, to
say the least, provided an important heuristic fiction which served
the lawyers at a certain time "to harmonize modern with ancient
law," or to bring into agreement the personal with the more
impersonal concepts of government.* Great mediaevalist that
Maitland was, he knew perfectly well that the curious fiction of
"twin-born majesty" had a very long tradition and complex his-
tory which "would take us deep into the legal and political
thoughts of the Middle Ages.""*

This history, alas, has not been written by Maitland, even

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(1608), in Sir Edward Coke, The Reports, ed. George Wilson (London, 1777), vii,
10-10a: "... for the politic capacity is invisible and immortal" (cf. 12a).
* Blackstone, Comm., 1:270.
† Ibid., 1:18, 469; Maitland, Sel.Ess., 75.
‡ See Maitland's remarks in: Pollock and Maitland, The History of English Law
(2nd ed., Cambridge, 1898 and 1925), 1:512, also 495, and Sel. Ess., 105ff; further
his study "The Corporation Sole," Sel. Ess., 73-103, with (p. 264) a valuable list of
Year Book cases (reprint from LQR, xvi [1900], 335-354), in which Maitland with
his unique mastership, discloses the effects of the early mediaeval Eigenkirchenrecht
on later conditions, including the concept of the corporation sole.
§ Maitland, Sel. Ess., 105.

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though he may have dropped more than one valuable hint in that respect. Nor will the writing of that history, especially with regard to the crucial fifteenth century, cease to remain an interesting and promising task for one of the many learned investigators of legal and constitutional development in England, for the present studies do not pretend to fill the gap. They merely propose to outline the historical problem as such, to sketch in an all too perfunctory, casual, and incomplete fashion the general historical background of the "King's Two Bodies," and to place this concept, if possible, in its proper setting of mediaeval thought and political theory.