

**POLITICAL
THEORIES OF THE
MIDDLE AGE**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649676484

Political Theories of the Middle Age by Otto Gierke & Frederic William Maitland

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OTTO GIERKE & FREDERIC WILLIAM MAITLAND

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London: C. J. CLAY AND SONS,
CAMBRIDGE UNIVERSITY PRESS WAREHOUSE,
AVE MARIA LANE,
AND
STEVENS AND SONS, LTD,
119 AND 120, CHANCERY LANE.



Glasgow: 50, WELLINGTON STREET.
Leipzig: F. A. BROCKHAUS.
New York: THE MACMILLAN COMPANY.
Bombay: E. SEYMOUR MALE.

POLITICAL THEORIES

OF THE

MIDDLE AGE

BY

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TRANSLATED

WITH AN INTRODUCTION

BY

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IN THE UNIVERSITY OF CAMBRIDGE.

CAMBRIDGE:

AT THE UNIVERSITY PRESS.

1900

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ERRATA.

⁴¹
pp. 44, 46, 66, 67. For *Leopold of Babenberg* read *Leopold of Bebenburg*.

p. 67. The new section should be numbered VIII not VII.

p. 150, note 158. Add to what is said of the opinions of Baldus the following:—

‘But in Rubr. C. 10, 1, nr. 12, he holds that the *camera imperii* may in a secondary sense be said to belong to the Roman people; quia princeps repraesentat illum populum et ille populus imperium etiam, mortuo principe.’

INTRODUCTION.

HAD what is here translated, namely, a brief account of the political theories of the Middle Ages, appeared as a whole book, it would hardly have stood in need of that distorting medium, an English translation. Englishmen who were approaching the study of medieval politics, either from the practical or from the theoretical side, would have known that there was a book which they would do well to master, and many who were not professed students or whose interests lay altogether in modern times would have heard of it and have found it profitable. The elaborate notes would have shewn that its writer had read widely and deeply; they would also have guided explorers into a region where sign-posts are too few. As to the text, the last charge which could be made against it would be that of insufficient courage in generalization, unless indeed it were that of aimless medievalism. The outlines are large, the strokes are firm, and medieval appears as an introduction to modern thought. The ideas that are to possess and divide mankind from the sixteenth until the nineteenth century—Sovereignty, the Sovereign Ruler, the Sovereign People, the Representation of the People, the Social Contract, the Natural Rights of Man, the Divine Rights of Kings, the Positive Law that stands below the State, the Natural Law that stands above the State—these are the ideas whose early history is to be detected, and they are set before us as thoughts which, under the influence of Classical Antiquity, necessarily shaped themselves in the course of medieval debate. And if the thoughts are interesting, so too are the thinkers. In Dr Gierke's list of medieval publicists, beside the divines and schoolmen, stand great popes, great lawyers, great reformers, men who were clothing concrete projects in abstract

vesture, men who fashioned the facts as well as the theories of their time.

Moreover, Englishmen should be especially grateful to a guide who is perhaps at his strongest just where they must needs be weak: that is, among the books of the legists and canonists. An educated Englishman may read and enjoy what Dante or Marsiglio has written. An English scholar may face Aquinas or Ockham or even the repellent Wyclif. But Baldus and Bartolus, Innocentius and Johannes Andreae, them he has never been taught to tackle, and they are not to be tackled by the untaught. And yet they are important people, for political philosophy in its youth is apt to look like a sublimated jurisprudence, and, even when it has grown in vigour and stature, is often compelled or content to work with tools—a social contract for example—which have been sharpened, if not forged, in the legal smithy. In that smithy Dr Gierke is at home. With perfect modesty he could say to a learned German public 'It is not probable that for some time to come anyone will tread exactly the same road that I have trodden in long years of fatiguing toil.'

But then what is here translated is only a small, a twentieth, part of a large and as yet unfinished book bearing a title which can hardly attract many readers in this country and for which an English equivalent cannot easily be found, namely *Das deutsche Genossenschaftsrecht*. Of that work the third volume contains a section entitled *Die publicistische Lehren des Mittelalters*, and that is the section which is here done into English. Now though this section can be detached and still bear a high value, and though the author's permission for its detachment has been graciously given, still it would be untrue to say that this amputating process does no harm. The organism which is a whole with a life of its own, but is also a member of a larger and higher organism whose life it shares, this, so Dr Gierke will teach us, is an idea which we must keep before our minds when we are studying the political thought of the Middle Ages, and it is an idea which we may apply to his and to every good book. The section has a life of its own, but it also shares the life of the whole treatise. Nor only so; it is *membrum de membro*. It is a section in a chapter entitled 'The Medieval Doctrine of State and Corporation,' which stands in a volume entitled 'The Antique and Medieval Doctrine of State and