§ 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 minoriticarum*, 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 authoritas*]" (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 comprehendi*). 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 legel, sed sicut liberi sub gratia costituti*]" (*Regula ad servos Dei*, pp. 1377/32). 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 [*nomothetēs*]" (*Apophthegmata 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 fusius 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.

א 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 monarchorum*, 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 substantials. 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 pronunciation 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 deberemus. . . . 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 peticionem 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]. (Cappele, 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.

א 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.