

Mario Wimmer

Kantorowicz's Oaths

A Californian Moment in the History of Academic Freedom*

Abstract: This essay is about Ernst Kantorowicz's stance on the anti-communist Loyalty Oath controversy at the University of California in the early years of the Cold War. Kantorowicz, who just had escaped Nazi Germany, found himself caught up in a fight between a group of so-called non-signers and the Regents of the University who tried to enforce a political oath on all faculty. In his pamphlet about the controversy Kantorowicz turned this moment of university politics into a meditation on the "fundamental issues" of academic freedom, the very character of the public office of the university professor, and the character of the university as legal corporation, which resembled his notion of a *Secret Germany* and anticipated aspects of his *The King's Two Bodies*. After a close-reading of Kantorowicz' pamphlet in which I analyze his understanding of the university as an idealized Arcadia of scholarship and a mythistorical reiteration of the medieval *universitas magistrorum et scholarium*, I finally turn to the afterlife of the Loyalty Oath controversy and its implications for our understanding of academic freedom.

Key Words: Historiography; Cold War intellectual History; History of Universities; Ernst Kantorowicz; Edward Tolman; California Loyalty Oath; Academic Freedom; The King's Two Bodies; Emigration

"One day I found in my mail an offprint from a liturgical periodical published by a Benedictine Abbey in the United States, which bore the publisher's imprint: *The Order of St. Benedict, Inc.*" Ernst Kantorowicz was more than surprised when he learned from his Berkeley colleague, the classicist and legal scholar Max Radin¹, that monastic congregations were legally incorporated in the United States. Their conversation took them to questions about the "curious legal fiction" of the *King's Two Bodies*, a problem previously only discussed in Frederick Maitland's famous study.²

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When Kantorowicz was asked to contribute to a festschrift for Radin, he decided to write a chapter on this issue. Though the volume never materialized, Kantorowicz published the paper elsewhere and dedicated it to his friend who had meanwhile become a member of the Institute for Advanced Study in Princeton. Yet Radin died in June 1950, shortly after the end of the “Year of the Oath” at Berkeley. “*Personal affairs such as the exasperating struggle against the Regents of the University of California* as well as other duties prevented me from laying my gift into the hands of my friend,”³ Kantorowicz wrote. Despite what he suggests in this anecdote, I argue here that this issue had also “fundamentally” preoccupied him in writing his pamphlet against the so-called Loyalty Oath.

This article concerns this extended moment in the long history of academic freedom: the months during which Kantorowicz both contemplated the problem of the two bodies and engaged in a controversy that he considered fundamental rather than simply an issue of university politics. Kantorowicz, “a scholar coming from the European continent and not trained in the refinements of Anglo-American legal thinking,”⁴ was baffled to learn that not only venerable communities like the Benedictines but also universities were considered legal corporations – like commercial businesses. It was one of many lessons in American academic culture that he had to learn. The insight, however, deepened his resistance to the existence of the university as a mundane corporation. It led Kantorowicz to profess the fundamentals of the European university that the Nazis had forced him to leave behind. Yet, having arrived at Berkeley, Kantorowicz became involved in a personal fight with the Regents of the University of California centered not only on the anonymity of the rational authority of the American academic system but also the Regents’ attempt to introduce capitalist momentum into the bureaucratic machinery.⁵

Thus the Loyalty Oath first materialized as a matter of paperwork, as standardized letters sent out to all instructors on the Berkeley campus. Kantorowicz was just one of many faculty. Nothing seemed particularly offensive at first glance. Only with a closer look did it turn out to be yet another onslaught in the early history of the new public management of academic institutions. It was a bureaucratic act, an emerging form of management that implied and imposed different university politics. This shift was partly what drove Kantorowicz to refuse to take the Oath. In his book on paperwork Ben Kafka reminds us of IBM’s vision of bureaucracy. The slogan launched by Industrial Business Machines in their 1967 film *The Explosion of Paperwork* – “machines should work, people should think” – demonstrates the wishful thinking involved in this vision of a flawless bureaucratic apparatus poised to co-opt the autonomous self-governance of the university as corporation in a traditional sense. Indeed the bureaucratic machinery made Kantorowicz and his colleagues think: Other than the different bodies of academic self-governance, the

Regents were trustees of a bureaucratic apparatus that had become the institutional organization to manage California's public university. With the implementation of the Regents' decision to require an additional oath, all Berkeley faculty received a reappointment letter. The message came out of the blue. As Hannah Arendt put it, though certainly in different context, in government by bureaucracy "decrees appear in their naked purity as though they were no longer issued by powerful men, but were the incarnation of power itself and the administrator only its accidental agent."⁶ Yet from the perspective of Kantorowicz and others the anonymity of these letters appeared as a provocation against the ways they related to the university. This was in fact a threat to the symbolic office the institution was supposed to guarantee:

"My dear Professor X:

This is to notify you that you have been appointed Professor of

.....

for the period July 1, 1949 to June 30, 1950

with salary at the rate of \$

Salary is subject to such deductions as may be required under the Retiring Annuities System or the State Employees' Retirement Act, and State and Federal tax deductions.

It will be necessary for you to sign and return the enclosed letter of acceptance of the position and salary in the form prescribed by the Regents on April 21, 1950; and subscribe and swear to the enclosed oath before a notary public.

Yours very truly,

George D. Mallory
Assistant Secretary"

Many professors just signed and returned the letter without further ado—the notarized sworn oath enclosed. But it was to this very letter that many members of the faculty reacted with strong opposition, though not all of them were as articulate as Kantorowicz. But the letter made them think about their status, their privileges, and academic freedom more generally. This concern would spread and affect academics across the whole country.⁷ It may be unsurprising that many of those who raised public concern were part of departments where research had not yet taken on the form of industrial or military funded Big Science that unavoidably entailed bureaucracy *avant la lettre*. There is strong evidence that opposition against the Oath was mostly articulated by faculty in the humanities and social sciences.⁸ This has, roughly speaking, two reasons: First, their fields of study often had political implications. Second, research in the sciences and engineering often involved the management of large infrastructure and considerable funds. Some of the most capable scientists on campus, an eye-witness recalled, "took the position [...] that the Commu-

nist Party is a criminal conspiracy, no member of it has the objectivity and freedom of intellect required of a teacher and shouldn't be in a university, and the rest of us had better swear that we're not, so that if any refused to do this, it's right that they be fired."⁹ These circumstances made opposition to public management by trustees and bureaucratic administration more difficult since it was often a prerequisite to running labs and doing Big Science.¹⁰ Contrary to the recent critique of new public management, "the modern university has long been engaged in industrial and governmental research that coexists uneasily with the university's erstwhile mission of open discourse."¹¹ Indubitably, the university had once been created as a space to think without consequences.

The University of California Loyalty Oath controversy was certainly not a transformative moment in History¹², as Hegel had it, but rather a historical moment that allowed for further observations. It falls into two parts: On the one hand, there was a structural conflict between applied research, the institutional environment it creates, and freedom of teaching and learning based on academic inquiry free of restraints surfaced at a moment when the politics of the administration collided with the principles of academic self-governance. These aspects of the controversy have been analyzed and historized in detail. Scholarship on Kantorowicz's work and life mostly agrees that his engagement in the Loyalty Oath controversy was a moment of conversion from a conservative (who did not refrain from flirting with the Nazi ideology) to a good liberal academic citizen of the United States. This view is as true as it is wrong, given the all-too-optimistic teleology of the narrative that frames it. On the other hand, what remains an open question is *how* the claim for academic freedom, relative autonomy, and de-facto sovereignty within the academic territory can be justified. Kantorowicz's pamphlet *The Fundamental Issue* was an attempt at a spontaneous history and philosophy of academic freedom within this particular context. Kantorowicz's thoughts about the Oath are somehow an *Einfall ins Denken* about and along the lines of academic freedom and its traditions. I shall thus focus on *how* he legitimizes what cannot be legitimized but only unconditionally claimed. The limits of academic freedom begin where it interferes with other autonomous social spaces since all forms of freedom "are socially engineered spaces in which parties engaged in specified pursuits enjoy protection from parties who would otherwise naturally seek to interfere in those pursuits."¹³ Academic freedom was and remains vulnerable. For this very reason democratic governments tend to legally protect these forms of relative autonomy.

Kantorowicz's argument, as I will show, comprises two parts: First, his reflections on the Loyalty Oath controversy have a remarkable temporal structure that combines historical and mythical elements at least as far as its fundamental issues are concerned. Second, the controversy was not primarily a debate about the rel-

ative autonomy of the *scientific* but a negotiation over the autonomy of the *academic* field, in other words, the constitution and foundations of academia as a corporation of learning. Kantorowicz did not really distinguish between the university as “real-world” institution and its mythistorical doppelganger. What appeared to be a fundamental issue in Kantorowicz’s understanding turns out to be an issue of the imaginary of the institution and the particular temporal structure of the academic territory. While most of his colleagues in almost any discipline or “academic tribe” were concerned with their existence as local “lords” and “chieftains” (depending on respective sub-cultures),¹⁴ Kantorowicz’s community inhabited an Arcadian landscape rather than the groves of Academe. His “defiance,” observed Martin Jay, “reflected an exalted image of the university as a community – indeed, a kind of sacred body or clerisy.”¹⁵ It is true that Kantorowicz’s “strange mixture of vast erudition and scrupulous scholarship, on the one hand, and obsessive yearning for a redemptive community he could call his own, on the other, produced no real heirs in the narrow sense of a school.”¹⁶ But did it not, in fact, create – what Jay called – a “mythological tradition” within a utopian space of an historical ideal defined by its mythistory? Arguably, it was never his intention to build a school, since he believed himself to be part of a community of scholars that constituted itself beyond the ravages of time, thus he was not interested in academic reproduction.

Kantorowicz’s faith in an academic community spanning the “time of scholarship,”¹⁷ an eternal co-presence of genius minds, followed the model of a “Secret Germany” (*Geheimes Deutschland*), an idealized constellation of synchronic heroic historical figures, a nation without a territory, a global tribe of scholarship and learning. Their genealogy is not to be understood as worldly history but as a mythic history of gods. Keeping Alain Boureau’s observation in mind that Kantorowicz was “a patriot without a country,”¹⁸ I want to suggest that in his pamphlet on the Loyalty Oath he argued for an imaginary space defined by “mythistorical”¹⁹ ideals of academia rather than for an institutional space of academic territory. The Arcadia of scholarship was about to become Kantorowicz’s new home. Nevertheless, this mythistory masks a conflict between the university as a mundane institution and its ideal as an Arcadia of scholarship. An Academic Arcadia, of course, can only exist as an idealized place, a mythopoetic territory. Mythistory is to be understood as some sort of ligature between history and myth by insisting that one can observe the “persistence of myth in history”²⁰ as well as in historiography. While this notion acknowledges the difference between the two concepts, it emphasizes its interconnectedness on different levels. Thus in his book on mythistory Joseph Mali proposed to recognize “myth for what it is: a story that has passed into and become history. The critical task of this historiography, or *mythistory*, is to reappraise these stories as inevitable, and ultimately valuable, histories of personal and communal identity.”²¹ In the case at hand,

Kantorowicz was not actually interested in the history of institutions but used fiction and myth as starting points for a theoretical analysis based on the assumption that political institutions are grounded on mythical and poetic figures that constitute a third sphere of symbolic exchange. He would read texts isolated from their historical contexts by pointing to how they speak to each other beyond the limitations of chronology in a universe of great minds. The French legal theorist Pierre Legendre has argued that a chronological reading of Kantorowicz and the texts he cites does not allow for an appropriate understanding of his work. Kantorowicz, he claimed, even aimed at an anthropological level of analysis, for instance when thinking about notions like *humanitas* or *arcana imperii* which he used as universal trajectories for a history of humankind. I will return to this point later on. Before we engage with Kantorowicz's vision of 20th century California as a permutation of the myth of the medieval university, I shall give a brief account of the events of the long "Year of the Oath."²²

1. Brief Account of the Loyalty Oath Controversy

So many versions of this story exist in oral²³ and written²⁴ form that it hardly makes sense to add yet another. But as a way of giving some historical background for the reader I cannot but give a very brief account of what happened during the Year of the Oath. Here is the Cold War pre-history of the heated controversy that would later throw a long shadow over all of the University of California's campuses.²⁵

In early 1949 Republican California State senator Jack Tenney introduced thirteen bills to hunt down communists in government and administration. As chair of California's committee on "un-American activities" he made a reputation as a foe of communism through a combination of merciless politics and infamous polemic. His politics motivated the administration of California's public universities to implement an equivalent to the loyalty oaths that he had helped to introduce to the State's legislation. There is strong evidence that he tried to prevent legislative extortion by the Californian government by making sure that the faculty was lily-white and free of communism. Though as with any other form of propaganda there must always be someone in the anonymous audience willing to listen.

In the United States the tradition of loyalty oaths dates back to the American Civil War, when political prisoners could be released upon taking an "oath of allegiance." Lincoln offered Presidential pardon to those who would "faithfully support, protect and defend the Constitution of the United States." During World War II loyalty oaths were common, even school children marched in support of Roosevelt's National Recovery Administration: "I will buy only where the Blue Eagle flies." In

the aftermath of the war, a politically instrumentalized “fear” of the “Red” haunted the country. Already in the 1930s, anticommunism had become a “mainstream concern” based on an ideology that the communist party was “not a regular political party, but rather a conspiracy.”²⁶ With the rise of Joseph McCarthy, the “Red Scare” became viral. In March 1947 President Truman instituted his anti-communist “Doctrine” that included loyalty oaths from every individual suspected of membership in a so-called anti-democratic organization, ultimately aiming at the communist party. The eradication of communism had become an official political ideology.

At the University of California, the Regents had already established an anti-communist policy in 1940.²⁷ Even though the Committee on Academic Freedom and Tenure of the American Association of University Professors considered affiliations with the Communist Party not to be a breach of professional standards as long as the party was legal in the United States, the Regents continued to exclude communists and communist sympathizers from the faculty.²⁸ What was new about this new wave of “zealotry” in American higher education was that university administrations were no longer hunting individual dissenters but aiming at an entire group of academics associated with the communist party and their radical political activities.²⁹ The Soviet Union’s detonation of its first atomic bomb in early 1949 triggered a series of investigations against potential communist spies in the United States, which, in turn, escalated public paranoia and sweeping accusations against American communists. Since Berkeley’s physicist Robert Oppenheimer directed the civilian side of the Manhattan Project, the investigations included the University of California and thereby raised concerns among its administrators.³⁰ The situation at the University of California was not unique: “During the Cold War, institutions of higher learning typically sacrificed faculty in the face of political pressure.”³¹

Against this background it was hardly surprising that administrators grew concerned when the British economist and Labour Party activist Harold Laski was invited to talk at the Los Angeles campus in the spring of 1949. Students had also asked for a debate between Laski and Herbert Phillips on whether communists could act as free and impartial scholars. Phillips was a member of the American communist party and had just been fired by the University of Washington. This was a delicate decision to make considering the University of California’s policy prohibiting political activities on the campuses. The debate was granted under the condition that only graduate students could attend the debate, which inevitably led to protests by undergraduates. An invitation of Laski to Berkeley was turned down by president Sproul who was concerned about the bad publicity of such an event and the possible reaction by the Regents.

For the majority of university professors, the thought of communists entering the system of public education threatened the very idea of a free America. “The

Communist party, U.S.A., was adjudged by many to be a fifth column within the body politic, and as a people in fear is no more discerning than a people in anger, the nation lashed out to secure domestically what seemingly eluded it internationally. [...] America was disquieted and the uneasiness of the times could not help but penetrate the consciousness of the trustees of California's state university."³² In fact the University of California was of course at no point in danger of being taken over by lefties – not even ten years later during the heyday of the Free Speech Movement or, even later, when prominent radical European academics like Michel Foucault, Jacques Derrida, or Étienne Balibar were regular visitors on the University's campuses. The majority of the faculty always seemed to be pragmatic progressive liberals rather than political radicals. Bob Blauner characterized Berkeley at the time of the Oath as, in fact, a "conservative institution, despite its façade of enlightened liberalism."³³ On the other hand, as William Dennes has claimed, a large part of the faculty tended to say, "Those of us who aren't Communists, we ought to be proud to swear."³⁴ To give just one of the many examples of the attitude of those who sympathized with the opposition against the Oath I cite Kantorowicz's colleague in the history department, the Americanist John D. Hicks: "You remember, I trust, that I was one of the first to sign the Anti-Communist oath, and that my only objection, [...] was the way in which, by requiring annual repetitions, it completely vitiates any legal claim to tenure rights on the part of the faculty. My interest in this case stems in no way from sympathy with Communists or Communism. No one on this faculty or on the Board of Regents, has fought these wreckers any harder than I have. If any member of the thirty-nine non-signers were tainted with Communism, I would be against him. But the integrity of these men has been abundantly proved. The matter before us has nothing to do with Communism. The question is merely one of good faith. Will the Regents keep their implied pledge, or will they flout it?"³⁵

The structurally paranoid Cold War discourse about the dangers of communism introduced a new form of politics to the academic territory. What used to be a relatively autonomous political sphere of academic self-governance was questioned by a new policy of hyperbolic "loyalty" to the State. Since 1942 every faculty member had already been sworn into a constitutional oath of allegiance when they were invested with a public office: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of my office according to the best of my ability."³⁶

In early 1950 the majority of the members of the Academic Senate at the University of California at Berkeley and Los Angeles voted in favor of removing communists from their positions. Unsurprisingly, administrators at Berkeley and other campuses had been discussing the university's standpoint towards communism. The

Regents were increasingly “concerned” with communists and communist sympathizers within the university. One of several options was to introduce an anti-communist oath for the faculty. President Sproul proposed that all faculty had to, in addition to the existing constitutional oath, swear a new anti-communist oath. The fact that all employees of the university were supposed to swear this oath seems to never have been considered problematic. These discussions and the following decision happened in chambers and did not involve faculty in any way. During their March meeting, the Board of Regents approved Sproul’s proposal, and thus introduced the new policy. In doing so, they questioned the principles of academic integrity, i.e. an ethics of Truths, and replaced it with a normative moralo-political discourse of subjugation to the Regents of the University. Every faculty member would have to sign the Oath, as finally passed by the Regents March 25, 1949.

The policy first became public in early 1949 in a short note in Berkeley’s *Faculty Bulletin*. The Secretary of the Regents wrote:

The Regents of the University have directed me to include in acceptance letters when 1949–50 appointments are made an oath of allegiance in the form to be set forth therein, and that all faculty and employees must take the oath as part of the acceptance. This procedure is about to go into effect for new appointees for the remainder of this fiscal year, but persons taking the oath of allegiance now will not be required to do so again on next annual appointments. Salary checks cannot be released until acceptance letters have been returned to this office properly signed before a Notary Public.³⁷

This note raised concerns among faculty members on all the University of California campuses, even though there was a broad, almost unanimous, consent that there should be no communists on the faculty. Many were concerned about their privileges of tenure and academic freedom. In this way the institution that had performed the academic ritual of the faculty’s investiture to symbolic office was now threatening its members with the possibility of revoking tenure. At this time, a university professor could assume certain privileges that guaranteed relative autonomy of academic freedom and the usucaptional right to tenure. Therefore it came as a surprise when every instructor at Berkeley and other campuses of the University of California should receive a new contract that would not only, though implicitly, deny the right for tenure by granting the salary only on a year-to-year renewable basis but also required all of them to take an oath denying their membership or belief in organizations advocating the overthrow of the United States government – obviously aiming at the exclusion of communists from the faculty. This overall situation became public with an unusual publication by Berkeley’s professor of English, George Stewart, who had assembled materials in order to document the atmosphere

during the year of the Oath at Berkeley.³⁸ The book was a first, strong sign of sympathy and solidarity with those who would resist the new Oath.

In June of the same year the Northern Section of the Academic Senate met in Berkeley and, after a heated debate, decided to request the revision or removal of the Oath. Already at the Senate meeting of June 14, Kantorowicz, among others, first articulated some of the concerns that he would later flesh out in his pamphlet on *The Fundamental Issue*. In short, there were three issues at stake for those who publicly opposed the Oath: First, the exclusion of communists from the faculty. The majority of the faculty would have agreed on that except they rejected the exclusion of a particular group in principle. Second, the new contract questioned the right for tenure as the new *reappointment* letter made continuation of the appointment on a year-to-year basis contingent on the signing of the special oath. Third, the imposition of an additional anti-communist oath *forced* by the Regents (and not legitimized by the self-governance of the academic bodies) together with the impeachment of tenure raised serious concerns about academic freedom at large.

2. Kantorowicz's Appeal: Pretext to *The Fundamental Issue*

In this special meeting of the Northern Section of the Academic Senate a majority of the faculty present were willing to take the required constitutional oath. After all they were "good citizens." Still many objected to take an additional oath that seemed to them to be a "political test". Kantorowicz considered this situation a personal insult against him as a professor and stateless academic citizen, and thus an affront to the caste of university teachers. In a letter to president Sproul, he entertained playing the role of the bad citizen, writing, "Dante, quoting Aristotle, has remarked that 'every oblique action of government turns good men into bad citizens.' I deeply deplore that under the impact of the recent events I feel compelled to reckon myself perhaps self-righteously among the 'bad academic citizens,' since I cannot conform to the demands of the Board of Regents to sign a political oath."³⁹ When the renowned psychologist Edward C. Tolman stated, "I cannot and will not sign the oath in its present form," at the meeting he was intimidated by the huge audience. He refrained from lecturing but preferred to teach small graduate seminars.⁴⁰ His colleague Kantorowicz, a brilliant orator, followed by reading a statement that did not even become part of the official minutes of the meeting, although some present considered it to be the turning point in the debate. "Until Kantorowicz spoke," remembered his young colleague, the historian and political activist Gordon Griffiths, "it would have been possible to dismiss the controversy as a local matter, a dispute between various parties at a California university."⁴¹ But by discussing the Oath as a funda-

mental issue of academic freedom on a world historical scale, Kantorowicz involved his colleagues in “universal questions” not only of academic but of “human freedom.”

As in his lectures, Kantorowicz had prepared a crisp and polished paper in elegant English. The historian’s formal grandeur was well suited to Berkeley’s largest lecture hall. According to another eyewitness he delivered his statement “in strange rhythmical incantation, high-pitched with fervor, his foreign accent now and then making his words scarcely intelligible.”⁴² In his opening remarks he emphasized that he was speaking “[a]s a historian;”⁴³ as a historian *and* humanist he felt competent to speak to “the grave dangers”⁴⁴ of introducing an *enforced* oath. And it was from a “human point of view,”⁴⁵ he insisted, that history could still teach us a lesson – at least for the occasion he was confident that *historia* both as history and experience was a *magistra vitae*.⁴⁶ He did not speak about the history of oaths itself but about the historical implications that a discursive event such as the legal formula of the Oath could have. The formula, he argued, though seemingly harmless, would have unforeseeable consequences. He raised his voice not only to speak as a historian and world-renowned medievalist but as a German Jew who had to flee the Nazis and found his new home in California. “Eka lamented and cursed about the nonsense and the waste of time during this episode,” his friend Marion Dönhoff recalled, “but I believe that on the other hand he kind of enjoyed taking revenge on the American pseudo-Nazis for what the actual Nazis had done to him.”⁴⁷ In a letter to his Berkeley colleague Raymond Sontag, he would explain that “You may find that it makes little difference whether a man is Christian or not so long as he bears in his heart an image of *humanitas* which is unshakable and uncompromising, and which may justify the mention of the name of God even in a Senate Meeting of a State University. You may include me with those you have castigated for scholarly pride, or you may call my ‘idealism’ Jewish or German. But I am, or try to be, both as Jew and as German also an ‘eternal anti-Barbarus,’ no matter whether the Barbarianism be brown or black or red and emerges in the ugliness of Mr. Stalin, Mr. Hitler, or Mr.⁴⁸ Neylan *et consortes*.”⁴⁹ Obviously, to compare Neylan and other regents of the University of California to dictators was out of proportion. In that sense the comparison reveals Kantorowicz’s outrage about the situation. There he stood in front of his American colleagues using his scholarly authority to make both an historical and political argument:

“All oaths in history that I know of, have undergone changes. A new word will be added. A short phrase, seemingly insignificant, will be smuggled in. The next step may be an inconspicuous change in the tense, from present to past, or from past to future.”⁵⁰

He was aware of the contingency of historical processes.⁵¹ The Loyalty Oath would have, as with other legal *formulae* “its own autonomous life,”⁵² as it implied a historical potential that could unfold in unpredictable ways. It was certainly unpredictable to both sides. Neither the Regents nor those who would affirm the Oath by taking it would be able to interfere with its fate. Even worse than the Oath’s wording, he added, were the circumstances of its imposition and implementation. The Regents did not have the legitimate authority to enforce a political oath. It was not only a violation of academic freedom, as Kantorowicz and others argued, but also a confusion of two different fields: the political and the academic.

The historian’s voice changed accordingly. “Mussolini Italy of 1931, Hitler [sic] Germany of 1933, are terrifying and warning examples for the harmless bit-by-bit procedure in connection with political enforced oaths.”⁵³ As a German Jew he was denied and doubtless would have refused to take the oath of loyalty to Hitler that was required by civil servants beginning in the summer of 1934. As a consequence, Kantorowicz had asked for his retirement, and emigrated to the United States. Yet for the historian of medieval oaths the fact that the Oath had to be taken under duress made it invalid. Yet Kantorowicz, who refused to understand the structural violence in the politics of medieval lordship, invoked dramatic language once his own privileges as a professor were endangered. He called the Regents’ politics “tyranny” – the black-and-white imposition of an oath upon the faculty where the main alternative to signing was dismissal. One might argue that for a stateless exile like Kantorowicz the academic territory had become the ultimate sanctuary he could not but defend with all his might.

The good academic citizen and “scholar sworn to truth” found himself in a double-bind, a “conflict of conscience.” What Kantorowicz considered to be a question of “human dignity,” was, in fact, a question about the status of the professor. The controversy around the Loyalty Oath was only the surface phenomenon of a deeper structural conflict. For the medievalist Kantorowicz scholars, priests, and judges were the three authorities entitled to wear a gown. He, moreover, viewed the professor not only as a scholar who follows the “call” of the institution⁵⁴ but one who also listens to an inner “vocation,” as Max Weber had it.⁵⁵ In a famous lecture of 1917, with which Kantorowicz was familiar, Weber had distinguished between the “plutocratic” German and the “bureaucratic” American academic systems.

American colleagues joined Weber in his critique of the American university system. Thorstein Veblen in his *Higher Learning in America* and Upton Sinclair’s *The Goose Step: A Study in American Higher Education* were both polemical reactions to contemporaries’ attempts to introduce business principles to the academic territory such as Frederick W. Taylor’s infamous suggestions for more corporate efficiency in academic institutions.⁵⁶ As we can conclude from Weber’s account, one could

observe how the German academic system developed “in the direction of the American.”⁵⁷ What was characteristic, according to Weber, was that large research universities such as Berkeley were “‘state capitalist’ enterprises,” which could not be “managed without very considerable funds” and the means of new public management.⁵⁸ One of the consequences of this “Americanization” was, as Weber put it in Marxist terms, the “‘separation of the worker from his means of production.’ The worker, that is, the assistant, is dependent upon the implements that the state puts at his disposal; hence he is just as dependent upon the head of the institute as is the employee in a factory upon the management.”⁵⁹

Although Weber’s observations did not necessarily include the humanities (private research libraries were still very common and sufficient by the time, and travel funds could become available through other sources), and may have even been factually inaccurate for the sciences, he, nevertheless, touched on an issue that became important in discussions surrounding the Loyalty Oath. Kantorowicz had dwelt on the issue ever since his conversation with Radin: While the garmented professor may be something between a priest and a judge in his right to wear a gown, and while he might consider himself part of an intellectual aristocracy beyond the democratic logic of representation, in the eyes of American legal system, he was merely part of a corporation. In *The Fundamental Issue* Kantorowicz would return to this point in order to reply to regent Sidney M. Ehrman’s claim that university professors would be employees of the university, “not officers, in any sense of the word.”⁶⁰ The university could do without an institution framework or a place, he thought, but it could not do without professors, who were willing to share knowledge with their students in a space that was created for thinking without a particular purpose.

From the very beginning, Kantorowicz, among many others, considered this step taken by the Regents of the University as a violation of the principles of shared governance, academic freedom, and tenure. According to Kantorowicz, the reason why this moment in the history of academic freedom turned into a fundamental issue was the impossibility of exchange between the “temporary or temporal advantages” of political small change and “permanent of eternal values.”⁶¹ This step taken by the Regents, he insisted, was “a shameful and undignified action” and “an affront and a violation of both human sovereignty and professional dignity.”⁶² They had “dared to bully the bearer of this gown into a situation in which – under the pressure of a bewildering economic coercion – he is compelled to give up either his tenure or, together with his freedom of judgment, his human dignity and his responsible sovereignty as a scholar.”⁶³

And in a final appeal Kantorowicz reminded his colleagues of the direct responsibility to their scholarly conscience. It pointed to the inner sovereignty of the pro-

fessor, who should be the very last to allow himself to act under duress and yield to pressure.

3. Splendid Isolation

Let us now consider Kantorowicz's situation at the time he was speaking to the large crowd of faculty at the special Senate meeting. In some ways, Kantorowicz was still enjoying his splendid isolation, full of "Eucalyptus trees," with a "tremendous view over the bay," as Karl Löwith wrote on his way to Berkeley: "I am going to E. Kantorowicz, who has now secularized his George universe."⁶⁴ Having arrived on the other side of the Atlantic, Kantorowicz was fighting what he could not accept as inevitable: the "Americanization" of the academic territory as I sketched earlier. Back in Heidelberg he had written against the progressive Americanization of Germany.⁶⁵ In that sense, "Berkeley, must have appeared to him as one of the few strongholds of corporate order and lawful unity which were left. It therefore makes sense that he acted with total commitment in the famous controversy over the Loyalty Oath. There could be but one inseparable loyalty."⁶⁶ After he was forced to retire from his chair in medieval history at Frankfurt, Kantorowicz traded an initial appointment at John's Hopkins that had earned him a visa for the position at Berkeley,⁶⁷ a precarious and "quasi-proletarian"⁶⁸ position, to borrow Weber's words, that came without tenure and was granted to most professors who had fled Nazi Germany. However he received a pension from the University of Frankfurt even when teaching at Berkeley. This was relevant for Kantorowicz's position during the Loyalty Oath controversy as the issue of tenure was typically an institutional prerequisite for academic freedom.

The punch card of Kantorowicz's personnel file in the Berkeley university archive tracks his employment history. On the very top, right it indicates his status: "Alien." His initial appointment as "Professor of Medieval of History (one year only)" was followed by an appointment as Research Associate, Lecturer, Lecturer and Research Associate (all in History, 1940–1943); in 1943 his appointment was obviously arranged through the contacts he had established with friends and colleagues of the *Colloquium Orientalicum* since he was appointed "Lecturer, Foreign Language and Area, Far Eastern (A.S.T.P.)" for 1943–44. In 1944–45 he was again Lecturer in History, and finally appointed as "Professor in History," 1945–46 with annual reappointments until 1949, when his official status was "on Sabbatical leave, in residence," enjoying his full salary during the year of the Oath; in fact he was reappointed with an adjusted salary for 1950–51 on July 21, 1950, and "Dismissed for refusal to sign non-communist declaration, July 1, 1950" in August of 1950 after his case had been discussed in meetings of the Regents on June 23, and July 21 of the same year.

Despite the infaust conditions of his appointment, Kantorowicz saw Berkeley as his final destiny. He enjoyed his splendid isolation on campus and the poetic views of the Bay available from his new home close to the university's North Gate. He famously enjoyed sitting on his deck in bright sunlight while eating strawberries and thinking about the dark and secret Germany he had left behind. For years the permanent appointment of one of the most famous historians of the past century was not, in other words, a pressing matter for president Sproul. Only later did the Regents discover whom they were about to let go.⁶⁹ Although the administration was happy to have Kantorowicz around, it repeatedly put off creating a permanent position for him. In a letter to the chair of the history department, president Sproul welcomed an "arrangement which would keep Dr. Ernst Kantorowicz on the campus" but only if the money came from somewhere "other than our general funds."⁷⁰ So-called friends of the university had already once before helped out in this situation. Sproul would only agree to an appointment "provided he understands fully that we are not incurring an obligation, either legal or moral, by retaining him."⁷¹ We can assume that Kantorowicz was aware of the administration's position since parts of the correspondence are found in his personal archive. This, and the fact that he was not a naturalized American citizen, also kept him from the obligation to sign even the original oath of allegiance of the State of California. The emigrant, who had not yet fully arrived, lacked political rights but enjoyed the freedom of statelessness. After ten years of this limbo, he was finally granted a permanent position in the history department. He never wanted to leave his house on Euclid Avenue ever again.

By the time he had "became a one-man humanities department for a coterie of brilliant poets, writers, linguists, economists, artists and law students who crowded the tiny classroom to audit his incredible courses in the 13th Century, the Renaissance, and English Constitutional History."⁷² He had managed to build a community around his passion for the aesthetic of history. Yet he was still not the type of scholar that is called a "good citizen" on campuses in the United States: He was not interested in serving on committees or being involved in other kinds of university politics. Joining the faculty at the University of Frankfurt as an academic outsider, he had even ridiculed what he called a "spiritual circumcision," that is, his arrival to the academic territory with his assumption of the office of professor.⁷³ He spent most of his time at Berkeley with a hand full of friends and groups of different students, who would pick him up after class and take him from one coffee shop to another, fascinated by the charming and charismatic European scholar whose classy appearance must have been a spectacle. As a former member of the *George-Kreis*, he had, of course, cultivated his scholarly self-fashioning, and became something of an academic dandy who liked to plan elaborate dinners with sophisticated menus that created a stimulating atmosphere for intellectual conversation.

In the very same meeting in which Kantorowicz had delivered his statement, a Senate Committee on Academic Freedom was appointed to negotiate with president Sproul. Over the next few months, all attempts to abrogate or introduce an alternative failed.⁷⁴ Yet those negotiations raised a broad range of concerns and resulted in slight revisions to the Oath's wording that some considered an adequate compromise. The Regents voted unanimously in its favor. However, neither the question of communism nor the impeachment of tenure was changed.

By the end of June about sixty faculty members gathered at Berkeley's *Faculty Club* to organize against the Oath, becoming a partisan *Group for Academic Freedom*. This group of so-called "non-signers" and their sympathizers formally organized in November. Its chairman was the previously mentioned renowned psychologist Tolman. For their constitution they adopted an open letter to president Sproul demonstrating their "conviction that the University must uphold the personal freedom and integrity of the scholar and the individual and must maintain the operating autonomy of the Faculty and of the President in matters of Faculty appointment and dismissal."⁷⁵ Among the twenty-two signers of the letter was also the name of Ernst Kantorowicz, who had joined the group, even though he usually kept himself out of this kind of business. Already during his time in Frankfurt he had maintained a distant relationship to academic politics. Therefore, it was only consistent that he continued to flirt with being an outsider on the Berkeley campus. And he even insisted on being alone although he was formally a member of the Group for Academic Freedom. Unsurprisingly Kantorowicz replied with an inimitably short letter when the non-signers were offered placements in other institutions: "No. Eka"⁷⁶

4. Academic Freedom

Only a month later, and long before the deadline of October 1, half of the faculty signed the Oath, and thereby agreed, although implicitly, to a new regime of corporate governance by putting their usucapted tenure rights on the line without further ado. The Committee on Academic Freedom together with a group of distinguished faculty communicated to the president that opposition to the Oath persisted. It became clear that there was no longer controversy over the presence of communist faculty. In an attempt to compromise, the senate brought forward two resolutions. One prohibited the employment of anyone "whose commitments or obligations to any organization, Communist or other, prejudice impartial scholarship and the free pursuit of truth"; the other, suggested making signature of only the Californian constitutional oath necessary. After ongoing negotiations between the different university bodies and the Regents, the latter agreed to release appointment letters for the

academic year to all faculty who had not yet signed the Oath.⁷⁷ This pragmatic intervention was meant to continue the academic business, since no university could afford to lose half of its faculty overnight, if only for practical reasons. Yet, both the Northern and Southern sections of the Academic Senate passed resolutions of concern and opposition against the Oath and the enduring position of the Regents on the matter.⁷⁸ There were two main issues at stake, the right for tenure as well as, more importantly, the corporate autonomy of the faculty and their academic freedom.

Certainly most academics agree to the principle of academic freedom. Yet, however that freedom is defined, we must admit that it is the university where such questions are raised and discussed. While I unconditionally agree to the necessity of academic freedom, as a historian, I can see no justification for academic freedom in principle. I would further argue that there is no continuous tradition of academic freedom ever since its emergence within the medieval university system, but rather a long discontinuous fight for it. Academics must, therefore, claim their territory and the sovereignty to define its rules. Pierre Bourdieu once demanded that the sociologist was a lawgiver; he was to define and determine the laws of social life independent from the rules of what he called other social fields. In other words, the academic territory was not to be confused with a political arena or a market place. It *had to* follow its own rules per definition and without concessions; otherwise, it would forfeit its integrity.

As important as the principle of academic sovereignty is, it does not have any philosophical or other presuppositions for its support. The pragmatist philosopher Richard Rorty has taken a similar position: “A number of contemporary philosophers, including myself, do their best to complicate the traditional distinctions between the objective and the subjective, reason and passion, knowledge and opinion, science and politics. We offer contentious reinterpretations of these distinctions, draw them in non-traditional ways. [...] So we are often accused of endangering the traditions and practices which people have in mind when they speak of ‘academic freedom’ or ‘scientific integrity’ or ‘scholarly standards.’”⁷⁹ In defending his position against a dogmatic realist understanding of Western rationality⁸⁰ and truth he took a pluralist view by insisting on the necessity of rationality and truth for an understanding of academic freedom. For him it does not matter which notion of academic freedom we choose as long as we can agree on its indispensability. Certainly, the “effective defense of universities requires political will,” as David Hollinger emphasized, “and a certain amount of solidarity across disciplines and schools.”⁸¹

It is, nevertheless, both possible to disagree with those pragmatist positions as well as necessary to oppose to them, as they tend to create some sort of double-bind. As a result academic freedom can only be claimed by an institutional commitment. Yet we can only understand the conditions and the very character of this agreement

if we accept that it is not self-evident. We may assume the ideal of an “unconditional university,” as Jacques Derrida has put it. This ideal formulation of academic freedom makes both it as well as the university as its institutional place vulnerable: If this “unconditionality, in principle and *de jure*, makes for the invincible force of the university, it has never been in effect. By reason of this abstract and hyperbolic invincibility, and by its very impossibility, this unconditionality also exposes the weakness or the vulnerability of the university.”⁸² This exposition and the exposure to vulnerability allows us to rethink the very notion of academic freedom in principle. Derrida presumes here, in some respects similar to Kantorowicz, that the university’s claim goes in principle and unconditionally beyond what could ever be realized institutionally. He insists on the ideal of “*unconditional* freedom” against what is to be assumed as a democratic right of “academic freedom” within the limits of the right of free speech. In many European countries, say Germany and France, academic freedom is granted by constitutional rights. In the United States, a claim for academic freedom can be made on a legal basis only as a private pronouncement. Only since the Supreme Court decision of 1967 in *Keyishian v. Board of Regents* did the justices rule that academic freedom was of “transcendent value to all of us and not merely to the teachers concerned,” and would, therefore, be a special concern of the first constitutional amendment.⁸³ In Derrida’s universe of thought these forms of legitimizing the right for academic freedom come to an unacceptable prize: With his investiture into office, the individual scholar became indebted to the institution that would guarantee his privilege and safeguard his academic freedom.

From a historical perspective we should consider American notions of academic freedom as well as the University of California’s understanding of it *before* the Loyalty Oath controversy.⁸⁴ Academic freedom in the United States is based on the *Declaration of Principles* of the American Association of University Professors (AAUP). In 1915, the year of the association’s foundation, it defined fundamental professional principles and values of the academic profession. The understanding of academic freedom in this founding document was based on the assumption that education was a contribution to the public good, an understanding that historically dates back to the emergence of the first American colleges in the early 17th century when their purpose was to graduate “men of cloth” and “lettered gentlemen.”⁸⁵ Among the authors of the 1915 *Declaration* were renowned scholars like Arthur O. Lovejoy and John Dewey.⁸⁶

In his 1902 essay on *Academic Freedom* the latter had defended institutions of higher education against the influence donors and donor interests. He considered the gift of a great teacher to be more important for the history of a university than any amount of money given to it. This position was based on belief in the university’s truth-function within society. “The one thing that is inherent and essential [to the

idea of the university] is the idea of truth.”⁸⁷ For Dewey, however, the basis of Academic Freedom was civil rights and the state’s ability to defend them. On the other hand, the “social function” of American colleges was “to help students see that the national narrative around which their socialization has centered is an open-ended one.”⁸⁸ In their 1915 declaration, the AAUP discussed cases of professors teaching “in ways objectionable to the trustees,” and did not hesitate to defend the university as a “contagious center of intellectual enthusiasm,” where it was better for students to “think about heresies than not to think at all.”⁸⁹

Members of the faculty were considered to be “self-regulating, independent ‘appointees’” whose mission was the production of knowledge and the pursuit of scientific truth independent from any intervention by its trustees.⁹⁰ In that sense they “embody the function of the university and so warrant the protection of academic freedom.”⁹¹ Following a series of conferences in which American professors discussed questions of academic freedom, the association released *Principles on Academic Freedom and Tenure* in 1940. It was a restatement of the 1915 document reformulating some basic ideas about the very character of the academic territory. More than 200 scholarly and educational groups in the country endorsed it. Its purpose was “to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities” since academic institutions would contribute to the common good through the “free search for truth and its free exposition.”⁹² Academic freedom was considered essential for both research and teaching. Tenure was understood as “a means to certain ends”: to allow for “freedom of teaching and research” independent of economic pressure.⁹³ This freedom would be “indispensable to the success of an institution in fulfilling its obligations to its students and to society.” Professors should be “entitled to freedom in the classroom in discussing their subject” – still, they had to be “careful” not to introduce “controversial matter.”⁹⁴ This understanding of academic freedom “rested on the assumption that knowledge and power were separable; the pursuit of truth ought to have nothing to do with public conflicts of interest.”⁹⁵ Thus the university was concerned with its truth-finding function while the trustees were supposed to protect it. Professors considered themselves as academic citizens, as “members of a learned profession, and officers of an educational institution” who should be entitled to permanent or continuous tenure.⁹⁶

The AAUP’s statement points to one of the problems of the American civil university: it was and still is considered a “deeply moral enterprise” and was granted a privileged position for this reason alone. This situation may also to some extent explain why Kantorowicz felt at home on the Berkeley campus: it resembled a monastery in many respects. It was not like Paris, the prototype of the European medieval university, an urban space engaged with public life.⁹⁷ It was not a playground

for intellectuals who got involved in public or even political debate. But rather it was and is a sacred, though secular, space of scholarship.⁹⁸

5. The Garmented Profession

Kantorowicz did not consider *The Fundamental Issue* to be a scholarly piece in the strict sense of the word. Although he was speaking as an historian, he was obviously not restricting himself to professional standards. He did not include the essay in his list of publications that he had to update regularly so as to document his track record for the university administration.⁹⁹ It was instead an exercise in the Californian episode of a longer mythistory of academic freedom. The pattern of argumentation in *The Fundamental Issue* is similar to earlier writings of Kantorowicz: it was once again a *Mythenschau*¹⁰⁰ of, this time, the medieval academic culture, yet again based on erudite scholarship that Kantorowicz consciously left aside. As the medievalist Bernhard Jussen implicitly suggests when talking about the *King's Two Bodies's* "unacceptable empirical strategy," the "empirical validity" of Kantorowicz's work still remains to be confirmed or questioned.¹⁰¹ Neither his major work on *Frederick II*, which he infamously published without footnotes,¹⁰² nor his most famous work on the semantics of medieval constitutional history, *The King's Two Bodies*, inspired the argumentative strategy of Kantorowicz's pamphlet on the Oath. He started instead with an unpublished lecture entitled *The Secret Germany*. What all of these works, nevertheless, shared with *The Fundamental Issue* was the fabrication of a "new Middle Ages."¹⁰³

The Secret Germany was a remarkable lecture, both concealing and unveiling. It was a text written in an unparalleled moment of radical political transformation. We can view it in different ways as a blueprint for the argumentative structure that Kantorowicz adopted in *The Fundamental Issue*. Kantorowicz had delivered this lecture as a second inaugural lecture at the beginning of his last semester at Frankfurt University, before he left Nazi Germany for the last time. I will analyze his use of mythic and timeless figures and show how they allowed him to write a history that values aesthetics and mythical dimensions at least as much as empirical accuracy in establishing an ethically normative discourse. While Kantorowicz explicitly claims that truth is regulative for scholarly discourse, he does not in fact pay much attention to it.

Kantorowicz dedicated the first lecture of his course in medieval history, which he taught after being reinstated following a recess in 1933, to *The Secret Germany*. Karl Wolfskehl, another member of the infamous George circle, had earlier introduced the concept.¹⁰⁴ According to him there was a sphere of dormant forces, in

which the “future sublime being of the Nation had preformed and embodied itself.”¹⁰⁵ It was his final tribute to a conservative, if not proto-Nazi, Germany.¹⁰⁶ This secret Germany was “a realm of mystery and myth”¹⁰⁷. It was steeped in mythistory, which maybe was the source of Kantorowicz’s fascination with the past. In his inimitable style he wrote:

“Aber wer Augen hat zu sehen und Ohren zu hören, der weiss, dass fast zu allen Zeiten, seit es ein “Deutsches” *im emphatischen Sinne des Worts* gab, bis zum heutigen Tag *unabhängig von dem jeweiligen Zustand, der jeweiligen Verfassung des Reichs* immer noch ein andres Deutschland gewesen ist, welchem jenseits des öffentlichen sichtbaren Deutschland Wesen und Leben beschieden war. Es ist ein *Seelenreich*, in welchem immerdar die gleichen deutschen Kaiser eigensten Ranges und eigenster Artung herrschen und thronen, unter deren Zepter sich zwar noch niemals die ganze Nation aus innerster Inbrunst gebeugt hat, deren Herrentum aber dennoch *immerwährend* und *ewig* ist und in tiefster Verborgenheit gegen das jeweilige Aussen lebt und dafür für das ewige Deutschland.”¹⁰⁸

According to this mythistorical understanding there existed an undying eternal realm of emphatic, genuine German-ness, secretly hidden in its ahistorical truth. It was a country without a territory, an association among the heroes of German history and culture. A realm of the foremost souls of every generation united in an exaggerated historical-a-historical Reich of myth (*Mythenreich*) that “is present and absent at the very same time, together temporal and eternal.”¹⁰⁹ It informed the best man of an ever-evolving ideal Empire that could become identical with the actual Reich.

5.1 The Professor With an Attitude

Kantorowicz understood the academic territory as a *universitas magistrorum et scholarium*, which he envisioned as the idealized model of an eternal realm of scholarship. This mythistory of the academic territory was perhaps a necessary historical fiction driven by wishful thinking about academia’s past as it both embraced and embodied Émile Durkheim’s idea of history as the true unconscious of the university as an institution. Kantorowicz used history here in a peculiar way in order to bring the Californian moment in the fight for academic freedom into conversation with a discontinuous history that he imagined as a never-changing ideal realm. The issue of academic jurisdiction, nevertheless, “remained difficult to define and was a source of continual conflict.”¹¹⁰ It was a realm defined by the ideals of constant ethical values like *Humanitas* and *Bildung*. Yet the actual constitution of the ter-

ritory was only incidental to the fundamental issue at stake. This was true for both the secret Germany and the idealized Arcadia of Scholarship. Kantorowicz understood Humanism along the lines of the “Third Humanism” of Weimar Germany, a defense of *Bildung* and the virtues of a humanist tradition.¹¹¹ In this way the poetic tradition was more important to him than scholarly virtues. Mali thus suggests that “it was Dante, not Frederick, who was the real hero” of Kantorowicz’s contentious first book.¹¹² From his own point of view, the *Fundamental Issue* was the defense of *Humanitas* herself. Whenever she was involved, he claimed, “I cannot keep silent. I prefer to fight.”¹¹³ His final chapter of *The King’s Two Bodies* would describe the humanist baptism of Dante, crowned by Virgil, as an act of becoming a member of the “*corpus mysticum Adae quod est humanitas*.”¹¹⁴ This attitude informs not only this pamphlet but also Kantorowicz’s scholarly work at large. Kantorowicz understood the historical discipline as *Gesinnungswissenschaft*.¹¹⁵ As a consequence, when speaking “as a historian,” he would speak about the history of academic freedom with an attitude – to say the least. He would place value, once again, upon the mythical elements of the past as facts of a medieval imaginary without feeling the need to attend equally to *res gestae*.

The rhetoric of Kantorowicz’s pamphlet was remarkable in avoiding the immediate legal or institutional context of the Loyalty Oath. This was a political fight Kantorowicz left to his colleagues, in particular to other members of the Group for Academic freedom, that is, first and foremost, Tolman. The group had hired a conservative lawyer and appealed through him against the implementation of the Oath in court in various instances.¹¹⁶ While Kantorowicz preferred to keep a low profile in the political ground combat, he, nevertheless, published his thoughts in a short, ironic, and cardinal essay on academic freedom, an essay on the attitude about academic freedom and its fundamental, unchanging medieval form.

As mentioned earlier, the essay was framed as a mythistory of the medieval tradition of academic freedom. What appears to be a continuous medieval tradition in Kantorowicz’s terms was more likely a discontinuous history in a struggle for an academic ideal. In the autumn of the Middle Ages, Jacques Le Goff insists, “that the foundations of academic specificity and dignity, as defined from Abelard to Siger of Brabant, had either crumbled or been undermined.”¹¹⁷ Certainly, by the 13th century, the new caste of scholars had become aware not only of their “existence as a body”¹¹⁸ but also of the need to defend the social field they had come to inhabit against hostile enemies. There was hardly a moment in this long history that was free of the struggle for academic freedom.

It was and remains problematic when universities become subjected to public management. Kantorowicz and the many critics before and after him seem rightfully concerned by the exposure of educational institutions to the adverse logics of accel-

eration, efficiency, or simple measurement of impact. The trustees of a university should doubtless act to safeguard the university's autonomy and protect it against outside influences and anti-intellectual resentments. Yet ever since the Middle Ages the professor was also involved in the trade of words: "Besides differentiating itself from the monastic world, this new social group of scholars more generally asserted that to live in any way other than by its special profession and its own type of labor was impossible and repellent."¹¹⁹ This was exactly about making a difference between the scholar or professor and similar social groups. During the formative phase of the profession, the cleric had to choose between intellectual and manual labor. Le Goff argues that it was scholars' commitment to a new form of work – not only their status – that made them solely interested in trading on its knowledge.

Kantorowicz's anxiety that the Regents would commit a revolutionary act of turning teaching into a "trade" was not only an historical misunderstanding but also a misinterpretation of the profession's conditions of possibility. But was it really the Regents of the University of California in the mid-20th century who took this revolutionary step? Or was it, to follow Le Goff, not the professors in the 12th century who for the first time entered the trade of words in order to create the academic freedom Kantorowicz was envisioning? Scholarly life is a trade: "negotia scholaria." Intellectual autonomy only comes as the prize of a certain income secured by the institution.¹²⁰ If it was still true that the professor was all too close to the judge and the priest, was it not the task of the university teacher – and the historian in particular – to emphasize the differences between the garmented professions rather than sing the praises to their collective exceptional status? If the robe was what they had in common, then what was it that distinguished them from each other?

5.2 The Janitor is not a Professor

Kantorowicz chose to pick a curious comparison for his argument against the Regents. For him it was more important to distinguish the professor from the janitor than to elaborate on the differences between the professor and the other garmented professions. But what was the difference between janitors and professors? According to regent Ehrman there was none, since both were "employees of the Regents."¹²¹ They could be hired and fired at the will of the trustees. But the janitors, Kantorowicz contended, are at least unionized but there was no union of university professors, except, one could have reminded him, for the American Association of University Professors, which had been founded on the principles of academic freedom and tenure.

Kantorowicz's answer was simple: They cannot form a union "because the professors together with the students *are* the University," they are, following a medieval tradition, the *universitas magistrorum et scholarium*.¹²² According to this ideal they together form a corporate body of students and masters. The professors built a corporation that coincided with the corporate body they served. This constitution of the discontinuous medieval tradition of the University had been translated into an American Republican version based on the claim of academic freedom and tenure guaranteed through democratic principles of civil rights and free speech. "Teachers and students," Kantorowicz went on, "together *are* the University regardless of the existence of gardens and buildings, or care-takers of gardens and buildings."¹²³ Once again, Kantorowicz did not care for the actual institutional context but was dreaming of an ideal university that in fact had never materialized but remained the wishful thinking of academics even in medieval times.

In this way Kantorowicz revealed in a mythopoetic vision of a university without buildings, classrooms, laboratories, libraries, or janitors for that matter. He dreamed of the university's essence as no more than "the body of teachers and students."¹²⁴ Such an academic utopia could only exist in the realm of mythistory. While professors had "certain vested rights in the institution, which they both serve and constitute,"¹²⁵ they were irreducible to those vestments. The professor, therefore, had both a physical and a social body. But was it not Kantorowicz who had taught us that there is always more than one body? Such an idealized version of the university could never truly materialize. What was the corporate body of the university without its flesh?

5.3 The Professor as a Lab Rat

Following Kantorowicz's traces in the collections of the Bancroft library, Randolph Starn once made a striking and lucid observation: "Yet at the same time as these soaring declarations actual history and memory, the repressed and, ghostlike, actual bodies return in archival traces, and we find ourselves in a scenario where history is not transcended." Kantorowicz, he argued, the "cultivated erudite, the enemy of censorship, and defender of academic principle" would be, even or in particular in the archive, "still caught up in an unmastered past, his own and his century's."¹²⁶ Kantorowicz was indeed enmeshed in an unmastered past, but perhaps because he had tried to transcend history in writing a quasi-sacred, venerable history of academic freedom that sought to reestablish the foundations of the academic territory and elevate the caste of the professor beyond tribal boondoggle. Following Kantorowicz's argument about the Oath, one comes to understand why Durkheim in his study of

secondary education in France had insisted that it was “history which is the true unconscious,”¹²⁷ the true unconscious of an institution that actually was not identical with the historical fiction of a *universitas magistrorum et scholarium*. The American campus university was part of a nostalgic New World reminiscence on a European past, a 19th-century renaissance of an idealized tradition, an academic heterotopia that presented itself as the territory for a novel form of academic freedom.

After the *Group for Academic Freedom* won their law suit *Tolman et al. v. Regents* there is one last entry: “Resignation accepted,” on October of 1953 when Kantorowicz had already accepted an appointment as permanent member of the Institute for Advanced Study in Princeton, New Jersey, yet another, though quite different, academic territory. It was perhaps closer to Kantorowicz’s personal ideal; not at all a *universitas magistrorum et scholarium* but an academic institution where one was paid not to work but to exist, as he wrote to his friend.¹²⁸

Kantorowicz obviously left Berkeley in anger, bridges burnt. There is no letter of farewell to one of Berkeley’s most distinguished scholars of the 20th century. It was a different for Tolman, Kantorowicz’s equally distinguished colleague in psychology, who had led the *Group for Academic Freedom* to success. In a remarkable letter to Tolman president Sproul, the originator of the oath in denial of its authorship, expressed his gratitude for Tolman’s 36 years of service to the university. “The impress of your genius” Tolman had left upon the department of psychology “long before the *recent unhappy break* in continuity that *deprived us of more than two years of your services*, and this fame had spread with your own wherever the social sciences are known.”¹²⁹ And he continues in surprisingly open self-criticism that these words were nothing but an “encomium from *an ignorant administrator* [Sproul about Sproul!].”¹³⁰ Tolman’s reply to Sproul is friendly; but only at a first glance. “It is good of you,” he wrote, “to have said all the kind things that you did about my relations with the University and with this Department.” He accepted “with pleasure” to stay affiliated with his department and hoped to continue his work for several years.¹³¹ But he could not refrain from enclosing an offprint of his address at a special convocation at McGill University he had given in June of 1954.

“Again,” he writes with irony, “I have used rats to point to a human moral.”¹³² Indeed, Tolman’s paper was about the truth-seeking professor-as-a-rat. Tolman had spent most of his professional career experimenting on rats, and now spoke about his research in the form of a fable about academic freedom and truth. In a more than obvious allusion to the recent issue of tenure at his home institution he writes: “It has been found, for example, that non hungry rats learn best the ‘truth’ that there is food in a given alley of a maze if they are not at the same time too thirsty or too frightened or too something else.”¹³³ After going on for some paragraphs about the rat in search

of truth, he draws “some human parallels,” and speaks about himself, the hypothetical professor-as-rat.

“Suppose that, in addition to having a need to write a good speech, he is also driven by two other strong practical needs – a need to support his family and a need not to be rejected by his fellows. Suppose, in short, that he has a strong fear that his family may starve and a strong fear that what he says will lead him into conflict with the current climate of opinion. What will happen? Such strong fear needs will also decrease his pure cognitive appraisal of the ideas to be put into his speech. He will write a cautious, timid speech.”¹³⁴

What he was saying was “that any teacher, if he is to be what our liberal society ‘says’ it wants him to be – namely, an open-minded, objective proponent of, and searcher for, truth – must then not be subjected to too strong economic fears or too strong social attacks.”¹³⁵ As an academic he was embracing that society granted him “this somewhat specially privileged position,” which, in turn, he “ must take care not to abuse.”¹³⁶

“Even rats will learn (and sometimes faster) how to get to food when there are fearful electric shocks along the way. Hence, if our need as human beings for a liberal society be passionate enough, if our demands for freedom, for fair play, for honesty, for open minds, and for simple human decency really be overwhelming (and basically I believe they are), then whatever our fears and distorting mechanisms we men will continue to seek the truth.”¹³⁷

Today, there is a curious invisible monument to the non-signers on the Berkeley Campus. While it does not, in fact, exist, people keep talking about it. And if you ask someone about it, they are not certain if they have seen it. This may be true necessarily for other sub-urban legends but in this case it reiterates two aspects of Kantorowicz’s interpretation of the Loyalty Oath and its afterlife on the Berkeley campus.

This invisible, yet imaginary, monument is supposed to be a plaque inside the Sather Tower, Berkeley’s landmark campus building, with the names of all non-signers of the Oath. Installing a plaque like this would have been a remarkable gesture viewing the non-signers as martyrs in a fight for academic freedom. This was, as I have tried to show, very much Kantorowicz’s understanding of his engagement in a political issue that he implied had world historical dimensions. He fashioned himself as a scholar rising above the low lands of the academic territory, as one of those few academics whose work and very existence should be regarded as exemplary of true dedication and commitment to academia. His way of speaking about the Oath

elevated a local incident to the level of a mythistorical moment in the history of academic freedom.

It was years after both Tolman's and Kantorowicz's death when the University of California decided to commission a monument for free speech and academic freedom. This again was an invisible monument of some sort. In 1989, the Berkeley Art Project held a public competition to create a monument to commemorate the 25th anniversary of the Free Speech Movement that ever since 1964 had contributed to Berkeley's reputation as not just another elite university campus but as a place of true commitment and scholarship. "[A]t the time the university did not want to commemorate the Free Speech Movement in any way, shape, or form." The administration was not happy about this gift by a "bunch of professors, ex-professors,"¹³⁸ or was it rats? In fact, "they hated this piece in particular,"¹³⁹ claimed the artist.

Mark Brest van Kempen, a then-graduate student at the San Francisco Art Institute, had designed a sculpture called "Column of Earth and Air" that created an invisible space. It played with the idea of "laws and politics as kind of material to work with."¹⁴⁰ A granite plate on the very plaza that was named after former president Sproul encloses a six-inch circle of soil and space above it. The inscription on the granite reads: "This soil and the air space extending above it shall not be a part of any nation and shall not be subject to any entity's jurisdiction." This echoes the opening sentences of the speech Tolman had given at McGill and sent to president Sproul: "An occasion such as this, a Convocation of a Great University in a great and intellectually free country, where scholars have gathered from many lands – testifies once again to the fact that science, reason, and the life of the mind are, and shall remain, international."¹⁴¹ There were no boundaries, he insisted, "national or otherwise, which can separate truth from truth."¹⁴² It was Kantorowicz who had tried to create a similar space of academic freedom beyond the ravages of time and outside national boundaries or academic territories yet not by artistic but mythistorical means.

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Notes

- 1 Max Radin (* March 29, 1880 in Kempen; † June 22, Berkeley) was an US legal scholar and professor of Law at the University of California, Berkeley; see Ward W. Briggs, Radin, Max, in: Ward W. Briggs, ed., *Biographical Dictionary of North American Classicists*, Westport, CT, et al. 1994, 514–515.
- 2 Frederick Maitland, *Selected Essays*, Cambridge, UK 1936.
- 3 Ernst H. Kantorowicz, *The Kings Two Bodies. A Study in Mediaeval Political Theology*, xvii. For a discussion of this in different context cf. Joseph Mali's chapter on Kantorowicz in *Mythistory. The Making of Modern Historiography*, Chicago, Ill. 2003.
- 4 Kantorowicz, *The Kings Two Bodies*, xvii.
- 5 For the case of Berkeley see Mary Soo and Cathryn Carson, *Managing the research university: Clark Kerr and the University of California*, in: *Minerva* 42 (2004), 215–236.
- 6 Hannah Arendt, *The Origins of Totalitarianism*, New York 1975, 244. Kantorowicz comments in similar terms on the emergence of early modern Europe in *The King's Two Bodies*, 286f.
- 7 See Blauner's chapter on *How the Oath Changed a University, a Nation, and People's Lives*, in *McCarthyism*, 220–232.
- 8 A look at the list of non-signers supports this claim; only about 25 percent did not teach in the humanities and social sciences. There is also anecdotal evidence to support this, e.g. in the notes of the meetings of the Group for Academic Freedom there is reoccurring reference to "an engineer" or "a scientist" for the list of speakers. The anonymous reference indicates that they were not considered as part of the group.
- 9 William Ray Dennes, *Philosophy and the University Since 1915, An Interview Conducted by Joann Dietz Ariff*, Berkeley 1970, Bancroft Library, University of California, Berkeley, Regional Oral History Office, 102.
- 10 See for the history of Big Science Peter Galison, *Big Science: The Growth of Large Scale Research*, Stanford, CA 1992; Mary Jo Nye, *Before Big Science: The Pursuit of Modern Chemistry and Physics, 1800–1940*, Cambridge, Mass. 1999.
- 11 Donald Alexander Downs, *Restoring Free Speech and Liberty on Campus*, Oakland, CA/Cambridge, UK, xiv.
- 12 The existing scholarship on the history of Academic Freedom is extensive; most remarkable are Alan Charles Kors/Harvey A. Silvergate, *The Shadow University: The Betrayal of Liberty on America's Campuses*, 1998.
- 13 Louis Menand, *The Limits of Academic Freedom*, in: Id., ed., *The Future of Academic Freedom*, Chicago, Ill. 1996, 3–21, 3.
- 14 In many ways Kantorowicz's understanding of the university in its idealized medieval form is the exact opposite of Tony Becher/Paul Trowler, *Academic Tribes and Territories: Intellectual Enquiry and the Culture of Disciplines*, 2nd Ed., Buckingham/Philadelphia, 2001.
- 15 Martin Jay, *Foreword*, in: Alain Boureau, *Kantorowicz: Stories of a Historian*, Baltimore, ML, vii–xii, ix.
- 16 *Ibid.*
- 17 Henning Trüper, *Topography of a Method: François Louis Ganshof and the Writing of History*, Tübingen, 2014.
- 18 Boureau, *Kantorowicz*, 108.
- 19 I use Joseph Mali's notion that he discusses in his brilliant *Mythistory*; for an earlier and slightly different approach see William H. McNeill's presidential address to the American Historical Association: *Mythistory, or Truth, Myth, History, and Historians*, in: *The American Historical Review* 91, No. 1 (1986), 1–10.
- 20 Mali, *Mythistory*, xi.
- 21 *Ibid.*, xii.
- 22 This is certainly not the place to try to give a full historical account of the events. For an extensive bibliography until 1990 see Larry D. Benson, *The Loyalty Oath Controversy: A Bibliography*, Monticello, Ill. 1990. For a full historical approach see most recently Bob Blauner, *Resisting McCarthyism. To Sign or Not to Sign California's Loyalty Oath*, Stanford, CA, 2009; David Gardner, *The California Oath Controversy*, Berkeley/Los Angeles 1967. See also: George R. Stewart, *The Year of the Oath*,

- Garden City, N.Y. 1950; David Lance Goines, *The Year of the Oath*, in: *The Free Speech Movement: Coming of Ages in the 1960s*, Berkeley 1993; Nancy K. Innis, *Lessons from the Controversy of the Loyalty Oath at the University of California*, London 1992. Verne A. Stadtman, *A Test of Loyalty*, in: *The University of California, 1868–1968: A Centennial Publication of the University of California*, New York 1970.
- 23 See for reference the numerous interviews of the Berkeley Oral History Project that often include passages about the year of the oath and its consequences.
 - 24 Most recently the ultimate history of the California oath was written by a Berkeley graduate who later became professor of sociology at Cal Blauner, *Resisting McCarthyism*.
 - 25 For the larger context of the California controversy see e.g. Lionel Stanley Lewis, *Cold War on Campus: A Study of the Politics of Organizational Control*, New Brunswick, N.J. 1988; Sigmund Diamond, *Compromised Campus: The Collaboration of Universities with the Intelligence Community, 1945–1955* New York/Oxford 1992. Ellen Wolf Schrecker, *No Ivory Tower: McCarthyism and the Universities*, New York/Oxford 1986.
 - 26 Neil Hamilton, *Zealotry and Academic Freedom. A legal and historical Perspective*, New Brunswick/London 1995, 17.
 - 27 See Blauner, *McCarthyism*.
 - 28 *Bulletin of the American Association of University Professors*, 1949.
 - 29 Hamilton, *Zealotry*, 19.
 - 30 See Cathryn Carson/David Hollinger, Eds., *Reappraising Oppenheimer: Centennial Studies and Reflections*, Berkeley 2005; Jeff Hughes, *The Manhattan Project: Big Science and the Atom Bomb*, Chicago, Ill. 2003.
 - 31 Lionel S. Lewis, *The Cold War and Academic Governance. The Lattimore Case at Johns Hopkins*, Albany, N.Y. 1993, xi.
 - 32 David Gardner, *The California Oath Controversy*, Berkeley/Los Angeles, CA 1967, 11.
 - 33 Blauner, *McCarthyism*, 7.
 - 34 Dennes, *Philosophy and the University*, Regional Oral History Office, 95.
 - 35 John D. Hicks (non-signer, History) to Stephen D. Bechtel (Chairman, Alumni Council, California Alumni Association), August 3, 1950; here quoted from *To Bring You the Facts*, pamphlet privately printed and distributed by eighteen alumni of the Berkeley campus, August 17, 1950.
 - 36 *Constitution of the State of California*, Article 20, Section 3.
 - 37 *Faculty Bulletin*, Berkeley, May 1949.
 - 38 George R. Stewart, *The Year of the Oath. The Fight for Academic Freedom at the University of California*, New York 1950.
 - 39 Letter from Kantorowicz to Robert G. Sproul, October 4, 1949, reprinted in: Kantorowicz, *Fundamental Issue*, 6.
 - 40 Blauner, *McCarthyism*, 74–76.
 - 41 Gordon Griffiths, *Venturing Outside the Ivory Tower: The Political Autobiography of a College Professor*, 64; here quoted after Blauner, *McCarthyism*, 75; Griffiths had joined the communist party during the 1930s, and was fired as one of the non-signers of the oath. In the 1960s he again got involved in the opposition to the loyalty oath at the University of Washington.
 - 42 Here quoted after Blauner, *McCarthyism*, 75.
 - 43 Ernst H. Kantorowicz, *The Fundamental Issue. Documents and Marginal Notes on the University of California Loyalty Oath*, San Francisco 1950, 4.
 - 44 Kantorowicz, *Fundamental Issue*, 4
 - 45 *Ibid.*
 - 46 For the history of this motive see Reinhart Koselleck, *Historia Magistra Vitae. Über die Auflösung des Topos im Horizont neuzeitlich bewegter Geschichte*, in: *Id., Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten*, Frankfurt am Main 1989, 38–66.
 - 47 Marion Dönhoff, Ernst Kantorowicz, in: Robert Benson/Johannes Fried, Eds., *Ernst Kantorowicz: Erträge der Doppeltagung Institute for Advanced Study, Princeton; Universität Frankfurt am Main*, Stuttgart 1997, 11–13, 13; if not indicated otherwise all translations are by the author.
 - 48 Originally “Mrs.” manually revised to “Mr.”

- 49 Leo Baeck Institute, Ernst Kantorowicz Collection; Pamphlet “The Fundamental Issue”, Documents and Marginal Notes on the U. of Cal., Loyalty Oath by Ernst Kantorowicz; AR 7216 1/17, letter to Raymond Sontag, March 2, 1950; original emphasis.
- 50 Kantorowicz, Fundamental Issue, 4.
- 51 For the historian’s attitude towards contingency see Arnd Hoffmann, *Zufall und Kontingenzt in der Geschichtstheorie. Mit zwei Studien zu Theorie und Praxis der Sozialgeschichte*, Frankfurt am Main, 2005.
- 52 Kantorowicz, Fundamental Issue, 4.
- 53 *Ibid.*, 5.
- 54 For considerations about the call of the academic institution that makes the professor see the chapter on Heidegger in Avital Ronell, *The Telephone Book. Technology – Schizophrenia – Electric Speech*, Lincoln, NE 1989.
- 55 The lecture was first published in German as *Wissenschaft als Beruf*, Berlin/Munich 1919; the English translation, “Science as Vocation,” is based on the 1922 edition of the lecture as part of the *Gesammelte Aufsätze zur Wissenschaftslehre*, Tübingen 1922, 524–555.
- 56 Frederick Winslow Taylor, *The Principles of Scientific Management*, New York, NY/London 1911; see Frank Donoghue, *The Last Professors: The Corporate University and the Fate of the Humanities*, New York, NY 2008.
- 57 Max Weber, *Science as Vocation*, in: *Id.*, *Essays in Sociology*, ed. by H.H. Gerth/C. Wright Mills, Oxford, UK 1946, 129–156, 134.
- 58 *Ibid.*, 133.
- 59 *Ibid.*
- 60 Kantorowicz, Fundamental Issue, 7.
- 61 *Ibid.*, 5.
- 62 *Ibid.*
- 63 *Ibid.*
- 64 Karl Löwith, *Von Rom nach Sendai. Von Japan nach Amerika: Reisetagebuch 1936 und 1941*, ed. by Klaus Stichweh/Ulrich von Bülow, Marbach 2005, cf. 105: “Autofahrt nach Berkeley – Eucalyptusbäume, schönster Blick über die Bay. Ich zu E. Kantorowicz, der sein Georgesches Reich inzwischen säkularisiert hat und ‘irgendwie’ sagt. Likörbatterien in einer grotesken Filmdiva-Wohnung. Huxleys Beschreibung.”
- 65 Grünwald, Kantorowicz und George, 84–85.
- 66 Hans Belting, *Images in History and Images of History*, in: Benson/Fried, Eds., Ernst Kantorowicz: *Erträge*, 94–103, 98.
- 67 See Leo Baeck Institute, Ernst Kantorowicz Collection, AR 7216, 2/7, folder “England–includes letters ref. to emigration from Germany;” and Boureau, Kantorowicz.
- 68 Weber in the German version uses “proletaroid”, Weber, *Wissenschaft*, 3.
- 69 See for instance the different statements of Regent Ehrman during the debates on the oath.
- 70 Archives of the Leo Baeck Institute (LBI Archives), E. Kantorowicz Collection 1908–1982, box 7, folder 2, letter Sproul to , Frederic L. Paxson, March 12, 1942.
- 71 Leo Baeck Institute, E. Kantorowicz Collection 1908–1982, box 7, folder 2, letter Sproul to Paxson, March 12, 1942.
- 72 Grover Sales, *The Scholar and the Loyalty Oath*, in: *San Francisco Chronicle*, Dec. 8 1963.
- 73 Belting, *Images*, 98.
- 74 Gardner, *Oath Controversy*.
- 75 Bancroft Library, University of California Archives, *Papers of the Group for Academic Freedom*, Resolution adopted by the Group for Academic Freedom, July 6, 1950.
- 76 Bancroft Library, University of California, Berkeley, *Papers of the Group for Academic Freedom*, Correspondence, Letter to Kantorowicz, not dated.
- 77 *Minutes of the Academic Senate, Northern Section*, Vol. 8, 125a, Meeting of Nov 7, 1949.
- 78 See *Minutes of the Academic Senate*, *Minutes of Meetings* of October 10, 1949; November 7, 1949; January 16, 1950; March 7, 1950; May 1, 1950; June 6, 1950; see also Gardner, *California Oath*.
- 79 Richard Rorty, *Does Academic Freedom Have Philosophical Presuppositions? Academic Freedom and the Future of the University*, in: *Academe* 80, No. 6 (1994), 52–63, 52.

- 80 His example is, once more, John Searle.
- 81 David Hollinger, *Money and Academic Freedom Fifty Years after McCarthyism: Universities amid the Force Fields of Capital*, in: Peggie G. Hollingsworth, ed., *Unfettered Expression. Freedom in American Intellectual Life*, Ann Arbor, Mich. 2000, 161–184, 164.
- 82 Jacques Derrida, *The Future of the Profession or the University without Condition (Thanks to the “Humanities,” what Could Take Place tomorrow)*, in: Jacques Derrida and the Humanities. *A Critical Reader*, Cambridge, U.K. 2002, 24–57, 26.
- 83 William W. Van Alstyne, *Academic Freedom and the First Amendment in the Supreme Court of the United States: An Unhurried Historical Review*, in: *Law and Contemporary Problems* 53 (1990), 114.
- 84 For an history of the idea of academic freedom in the United States see Richard Hofstadter and Walter Metzger, *The Development of Academic Freedom in the United States*, New York 1955.
- 85 For a full historical account of the US university system since the mid-19th century see Laurence R. Veysey, *The Emergence of the American University*, Chicago, Ill. 1965.
- 86 R.M. O’Neil, *Academic Freedom: Past, Present, and Future beyond September 11*, in: P.G. Altbach/ R.O. Berdahl, et al., Eds., *American Higher Education in the Twenty-First Century: Social, Political, and Economic Challenges*, Baltimore, Maryland 2005.
- 87 John Dewey, *Academic Freedom*, in: *The Middle Works of John Dewey*, vol. 2, Carbondale, Ill. 1976, 55.
- 88 Richard Rorty, *Education as Socialization and as Individualization*, in: Richard Rorty, *Philosophy and Social Hope*, London 1999, 114–126, 123 (with reference to Dewey).
- 89 American Association of University Professors, *Statement of Principles*, 1915, 36.
- 90 AAUP, *Principles*, 1915, 27.
- 91 Joan W. Scott, *Knowledge, Power, and Academic Freedom*, in: *Social Research* 76, No. 2 (2009) 451–480, 456 f.
- 92 AAUP, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretative Comments* URL: <http://www.aaup.org/file/principles-academic-freedom-tenure.pdf>_(last visited March 2, 2014).
- 93 AAUP, *1940 Statement*.
- 94 *Ibid.*
- 95 Scott, *Knowledge*, 457.
- 96 AAUP, *1940 Statement*.
- 97 See Jacques Le Goff, *Intellectuals in the Middle Ages*, Oxford, U.K. 1993.
- 98 For Kantorowicz’s sacralization of the past see Carl Landauer, *Ernst Kantorowicz and the Sacralization of the Past*, in: *Central European History* 27 No. 1 (1994), 1–25.
- 99 Bancroft Library, University of California, Berkeley, personnel file “Kantorowicz, Ernst H.”
- 100 See Mali’s chapter on Kantorowicz in *Mythistory*; as well as his article *Ernst H. Kantorowicz: History as Mythenschau*, in: *History of Political Thought* 18 No. 4 (1997), 579–603. See initially Albert Brackmann, *Kaiser Friedrich II. in ‘mythischer Schau’*, in: *Historische Zeitschrift* 140 (1929), 534–549; Ernst Kantorowicz, *‘Mythenschau’ Eine Erwiderung*, in: *Historische Zeitschrift* 141 (1930), 457–471; Albert Brackmann, *Nachwort. Anmerkung zu Kantorowicz’ Erwiderung*, in: *Historische Zeitschrift* 141 (1930), 472–478.
- 101 Bernhard Jussen, *The King’s Two Bodies Today*, in: *Representations* 106 (2009), 102–117, 103.
- 102 For this aspect see Anthony Grafton, *The Footnote: A Curious History*. Cambridge, MA, 1997.
- 103 Otto G. Oexle, *German Malaise of Modernity: Ernst H. Kantorowicz and his ‘Kaiser Friedrich der Zweite’*, in: Benson/Fried, Eds., *Ernst Kantorowicz: Erträge*, 33–56, 37.
- 104 See Eckhart Grünewald, *Ernst Kantorowicz und Stefan George. Beiträge zur Biographie des Historikers bis zum Jahre 1938 und zu seinem Jugendwerk Kaiser Friedrich der Zweite*, Wiesbaden 1982.
- 105 Kantorowicz, *Das Geheime Deutschland*, 2.
- 106 See Ulrich Raulff, *Kreis Ohne Meister: Stefan Georges Nachleben*, München 2009; Thomas Karlauf, *Stefan George. Die Entdeckung des Charisma*, München 2007; Robert E. Norton, *Secret Germany: Stefan George and his Circle*, Ithaca, NY 2002; in particular Grünewald, *Ernst Kantorowicz und Stefan George*.
- 107 Ernst H. Kantorowicz, *Das Geheime Deutschland*, here quoted from the typescript in the archives of the Leo Baeck Institute, <http://www.archive.org/stream/ernstkantorowicz00reel02p.6>.

- 108 Kantorowicz, *Das Geheime Deutschland*, 4; emphasis added.
- 109 *Ibid.* 21.
- 110 Le Goff, *Time*, 136.
- 111 See Arthur R., Jr Evans, ed., *On Four Modern Humanists: Hofmannsthal, Gundolf, Curtius, Kantorowicz*, Princeton, NJ 1970; Kay Schiller, *Gelehrte Gegenwelten. Über humanistische Leitbilder im 20. Jahrhundert*, Frankfurt am Main 2000.
- 112 Mali, *Mythistory*, 204.
- 113 Kantorowicz, *Fundamental Issue*, 2.
- 114 Kantorowicz, *The King's Two Bodies*, 494.
- 115 Kantorowicz to Kehr, June 6, 1933, *Geheimes Staatsarchiv Preußischer Kulturbesitz*, Rep 92 (HA I), Nachlaß Paul F. Kehr, AI 6 Lit., ka-ke, fasc. Prof Dr. Ernst Kantorowicz, Blatt 111; here quoted according to the edition in Peter Th. Walther and Wolfgang Ernst, Ernst H. Kantorowicz. Eine archäo-biographische Skizze, in: Wolfgang Ernst/Cornelia Vismann, Eds., *Geschichtskörper. Zur Aktualität von Ernst H. Kantorowicz*, München 2002, 207–231, 216.
- 116 For the history of the law suit see Gardner, *California Oath*, and Blauner, *McCarthyism*.
- 117 Jacques Le Goff, *Time, Work, and Culture in the Middle Ages*, Chicago/London 1980, 131. I should mention that Jacques Le Goff (as many other French intellectuals, including Michel Foucault) admired the work of Kantorowicz, in particular *The King's Two Bodies*.
- 118 *Ibid.*, 127.
- 119 *Ibid.*, 125.
- 120 *Ibid.*
- 121 Kantorowicz, *Fundamental Issue*, 15.
- 122 *Ibid.*, 16.
- 123 *Ibid.*
- 124 *Ibid.*
- 125 *Ibid.*, 17.
- 126 Randolph S. Starn, *Kantorowicz in the Archives*, Berkeley, CA 1991, unpublished Ms., 3.
- 127 Émile Durkheim, *The Evolution of Educational Thought*, London and Boston 1977 (French 1938).
- 128 Dönhoff, *Kantorowicz*.
- 129 Bancroft Library, University of California, Berkeley, University Archives, CU-5.2, 91:76, personnel file “Tolman, Edward C.,” letter of Robert G. Sproul to Edward C. Tolman, August 12, 1954; emphasis added.
- 130 Bancroft Library, University of California, Berkeley, University Archives, CU-5.2, 91:76, personnel file “Tolman, Edward C.,” letter of Robert G. Sproul to Edward C. Tolman, August 12, 1954.
- 131 Bancroft Library, University of California, Berkeley, University Archives, CU-5.2, 91:76, personnel file “Tolman, Edward C.,” letter of Tolman to Sproul, November 1, 1954.
- 132 Bancroft Library, University of California, Berkeley, University Archives, CU-5.2, 91:76, personnel file “Tolman, Edward C.,” letter of Edward C. Tolman to Robert G. Sproul, November 1, 1954.
- 133 Edward C. Tolman, *Freedom and the Cognitive Mind*, in: *American Psychologist* 9 (1954), 536–538, 536.
- 134 *Ibid.*, 537.
- 135 *Ibid.*, 538.
- 136 *Ibid.*
- 137 *Ibid.*
- 138 Interview with the artist by Erica Mu, “99% invisible: Berkeley’s invisible monument to free speech,” June 2011, http://kalwnews.org/audio/2011/06/06/99-invisible-berkeley%E2%80%99s-invisible-monument-free-speech_1024815.html.
- 139 *Ibid.*
- 140 *Ibid.*
- 141 Tolman, *Freedom and the Cognitive Mind*, 536.
- 142 *Ibid.*, 536.