Plenitude of Power

The Doctrines and Exercise of Authority in the Middle Ages: Essays in Memory of Robert Louis Benson

Edited by

Robert C. Figueira

Church, Faith and Culture in the Medieval West

General Editors: Brenda Bolton with Anne J. Duggan and Michael E. Goodich

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About the volume

'I study power' – so Robert Louis Benson described his work as a scholar of medieval history. This volume unites papers by a number of his students dealing with matters central to Benson's historical interests – ecclesiastical institutions and administration, emperorship and papacy, canon law, and political ideology. Ranging from Late Antiquity to the end of the Middle Ages, the contributors discuss the political uses of hagiography, the suppression of heresy, the juridical authority to bind and loose, church administration of the ordering of society, the territorial limits of jurisdiction, charity and power, natural law theory, and the historiography of political theology. A final chapter presents a reflection on Benson's skills as a historian.

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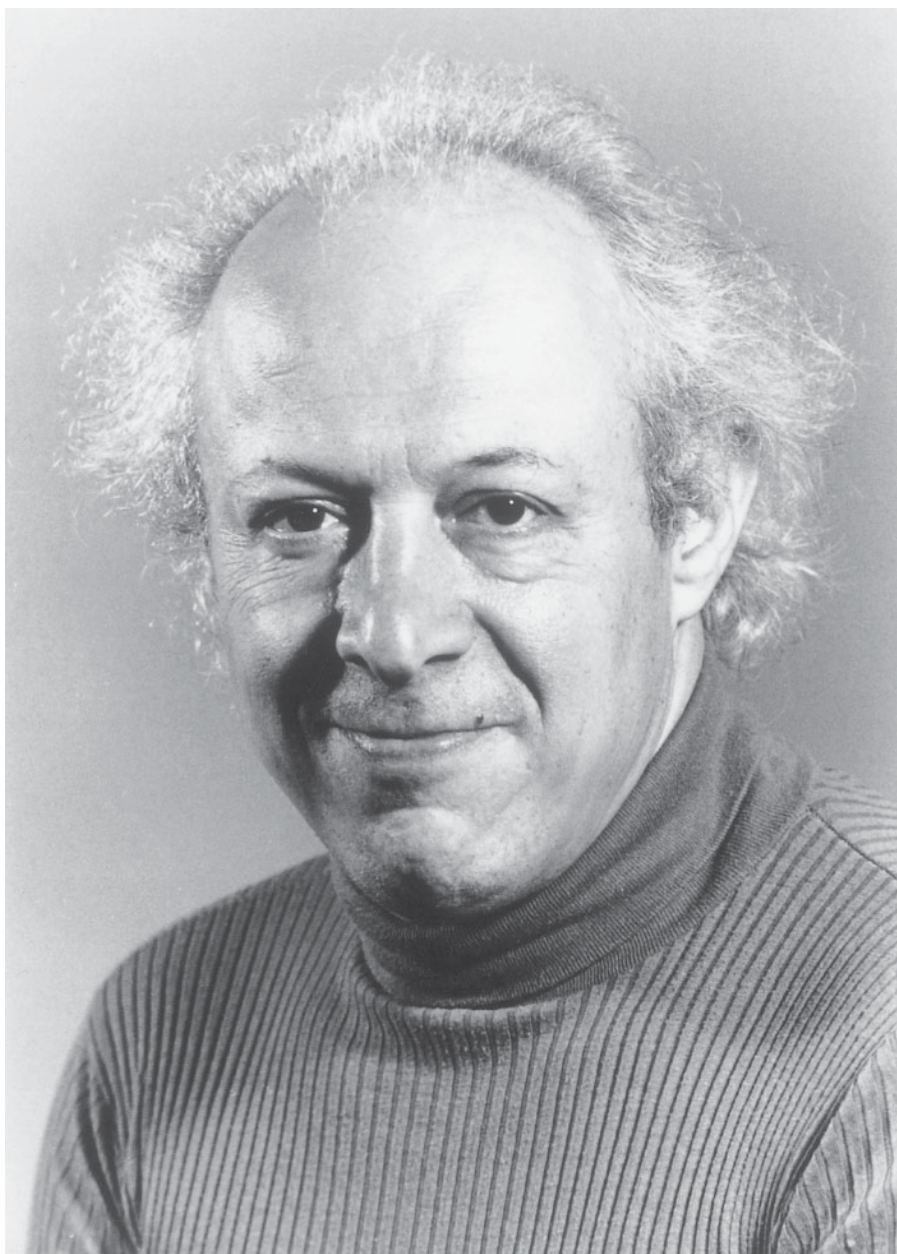Manuscripts and Interpretation of the Latin *Sibylla Tiburtina c.* 1050–1500

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Robert Louis Benson

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Edited by
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Introduction

Robert C. Figueira

During the last half of the twentieth century Robert Louis Benson taught medieval history at several universities in the United States and in Germany. The chapters of this volume – for the most part presented in approximate chronological order of their subject matter – reflect the scholarship of several of his American students regarding matters central to Benson's own teaching and writing about the Middle Ages, namely ecclesiastical institutions and administration, emperorship and papacy, canon law, and political ideology.

Himself a student at Princeton of the noted medievalist Ernst Kantorowicz, Benson spent considerable time as a doctoral student at the Monumenta Germaniae Historica (MGH) in Munich during the mid-1950s. He also became a disciple of Stephan Kuttner, the founder of medieval canon law studies in North America. Benson is best known today for two substantial books: *The Bishop-Elect – A Study of Medieval Ecclesiastical Office* (Princeton, NJ, 1968) and the co-edited (with Giles Constable) volume *Renaissance and Renewal in the Twelfth Century* (Cambridge, MA 1982). The first, a monograph, dealt with the constitutive acts involved in the making of a medieval bishop, and explored both the constitutional doctrine and administrative practices of the medieval Church. The second, a collection of essays by 25 scholars, explicitly aimed not only at updating Charles Homer Haskins's 1927 classic *The Renaissance of the Twelfth Century*, but also at exceeding its remit by treating the related theme of medieval *renovatio* or renewal.

As a teacher and scholar, Robert L. Benson blended together the various streams of his professional experiences in a unique way. The idiosyncratic and wide-ranging *Geistesgeschichte* embodied by his mentor Kantorowicz, the textual editing traditions and German historical interests of the MGH, and the newly rediscovered jurisprudential traditions of the medieval Church all informed his pedagogy and research. To a certain extent this blend can be seen in the various and differing scholarly preoccupations of his students, the collaborators of this volume. But for Benson one theme bound all interests together. As he often noted regarding himself: 'I study power.' And thus in his memory his students have collaborated in assembling this collection of studies based on that theme. We hope that the following chapters will epitomize Benson's distinctive imprint on the historiography of the Middle Ages.

Bruce C. Brasington chronicles how a spurious papal letter attributed to a fifth-century pope taught that when authoritative texts were lacking, the 'authority to bind and loose' (*solvendi ligandique auctoritas*) in a specific ecclesiastical matter could nonetheless be determined by the opinions of 'the elders of the [ecclesiastical] province'. Over time, legal commentary on this text indicated how the early medieval

emphasis on senior consensus withered in the face of a new canonistic insistence on the papacy as supreme legislator and judge in doubtful questions. David A. Warner details how eleventh-century polemical discourse harnessed the rich hagiographical traditions of a late Roman military saint, Maurice, to discuss the exercise of political power by both popes and Ottonian emperors.

During the late twelfth and early thirteenth centuries three Hohenstaufen emperors (Frederick I, Henry VI and Frederick II) were assiduous in the suppression of heresy in their domains. Peter D. Diehl charts how both pious purpose and political pretext animated their exercise of this particular type of authority. The theological and canon law currents that informed Innocent III's administrative practices provide the centerpiece for Shannon M. Williamson's study. She argues that this pope's administration of the Roman church represented a model for the ordering of all Christian society. In the fifth chapter, an updated and improved version of an earlier article (under the same title) that appeared in the journal *Apollinaris* 61 (1988), pp. 817–60, I use medieval papal legation as a case study for the doctrinal formation of the 'territorial principle' in the exercise of political, judicial, legislative, and administrative jurisdiction by the papacy's agents.

Joseph P. Huffman not only explores the issues of power and authority in the charitable institutions of Cologne during the thirteenth and fourteenth centuries, but also illustrates the internecine disputes between these institutions regarding their suitability as recipients of alms. The seventh chapter moves the reader further into the late Middle Ages. A perennial challenge for societies in any epoch concerns the manner whereby political power may be exercised in a manner congruent with the pursuit of justice. James M. Muldoon argues that the current desire for universal standards of governmental conduct in the area of basic human rights represents a break with the doctrine of state-sovereignty enunciated in the sixteenth century by legal theorists such as Hugo Grotius. Instead, the modern predilection actually hearkens back to medieval natural law theory as outlined in summary form during the fifteenth century by Nicholas of Cusa in his masterpiece, *De concordantia catholica*.

As this volume's title suggests, these collected studies explore the medieval 'fullness' or 'plenitude of power' (*plenitudo potestatis*), that is, they reflect the rich variety of current approaches to investigating the doctrines and exercise of authority in the Middle Ages. In his teaching and writing, Robert L. Benson likewise exhibited virtuosity in a variety of historical techniques and historical subjects relating to power and its actuation in this period. Despite its many high-medieval reinventions, *plenitudo potestatis*, as he demonstrated, was coined in Late Antiquity. Benson followed Kantorowicz in examining other intellectual traditions that spanned Antiquity and the Middle Ages, and especially those traditions that pertained to what Kantorowicz and, even earlier, Erik Peterson, had described as 'political theology'. Since this heuristic description hardly established a uniform standard for subsequent historiography, Lester L. Field historicizes this historiography to reveal its own, disparate 'seats of logistic power'. In much the same way, John W.

Bernhardt presents in the book's final chapter an intellectual biography that explores the historical evolution of Benson's thought and assesses his scholarly legacy.

I was a callow 19-year-old freshman when, over three decades ago, I first encountered this volume's dedicatee, and became, in short order, his pupil and undergraduate advisee. Being Benson's student was a very exciting and transforming experience, for he personified to me – more than anything else – the sheer joy and zest of a life spent studying history. Although not my mentor for the completion of graduate degrees, he nevertheless played a crucial role in my choices of *Doktorvater* and of dissertation topic, and thus, ultimately, in the course of my subsequent academic career. In the course of assembling this volume my sometimes flagging spirits were more than once buoyed by a dutiful and heartfelt impulse to commemorate the memory of this remarkably vibrant teacher and friend. I know that my collaborators join me to acknowledge that *sancta pietas discipulorum dat animum*.

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<p style="text-align:center">Chapter 1</p>

Congrega seniores provinciae: A Note on a Hiberno-Latin Canon Concerning the Sources of Authority in Ecclesiastical Law

<p style="text-align:center">Bruce C. Brasington</p>

At D. 20 c.3 of his *Concord of Discordant Canons*, Gratian presents a spurious text attributed to Pope Innocent I (401–17):

> In those cases where no authority for binding or loosing appears in the four Gospels and all the other writings of the Apostles, turn to the Greek sacred Scriptures. If there is nothing there, then turn your hand to Catholic histories of the Catholic Church written by Catholic authors. If there is nothing there, carefully examine the examples of the saints. *And if, having checked all these, the state of the question has not been illuminated, gather the elders of the province and ask them. For something is more easily discovered by asking many elders. For the Lord, the true guarantor, said [Matthew 18:20]: 'If two or three of you gather in my name on earth, whatever they ask in any matter will be done for them by my Father.'*[1]

Here are the authoritative sources of canonical tradition. When all texts have failed, the ecclesiastical superior or judge is advised to summon the *seniores provinciae*, the 'elders of the province'. The following study examines the origins, message, and reception of this text, which first appeared in the eighth-century *Collectio Hibernensis*. This inquiry will question not only the relation between individual and Church, but also the replacement of oral counsel from individuals or elite groups

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1. E. Friedberg, ed., *Corpus iuris canonici*, v. 1, *Decretum magistri Gratiani* (Leipzig, 1979), column 66 (my emphasis): 'De quibus causis nulla soluendi ligandique auctoritas in libris ueteris testamenti, quatuor euangeliorum cum totis scriptis apostolorum apareat, ad diuina recurre scripta greca. Si nec in illis, ad catholicae ecclesiae historias catholicas, a doctoribus catholicis scriptas manum mitte. Si nec in illis, sanctorum exempla perspicaciter recordare. Quod si in his omnibus inspectis huius questionis qualitas non lucide inuestigatur, seniores provincie congrega et eos interroga. Facilius namque inuenitur, quod a pluribus senioribus queritur. Uerus etiam repromissor Dominus ait: "Si duo ex uobis uel tres conueniunt super terram in nomine meo, de omni re, quamcunque petierint, fiet illis a patre meo."' The English translation is from Augustine Thompson, OP and James Gordley, trans, *Gratian: The Treatise on Laws with the Ordinary Gloss*, Studies in Medieval and Early Modern Canon Law 2 (Washington, DC, 1993), p. 86.

by written normative texts. Thereby one can shed light on the development of the 'textual community' gathered around canonical tradition.

The *Seniores Provinciae* of the *Collectio Hibernensis*

> **Sole chapter. Innocent says:** Therefore, concerning these cases where – of the twenty-two books of the Old Testament and of the four gospels (together with all the writings of the Apostles) – no authority appears for binding and loosing, turn to the divine writings which are called 'hagiographic' in Greek. If there is nothing there, then turn your hand to Catholic histories of the Catholic Church written by Catholic authors. If there is nothing there, consult the canons of the Apostolic See. If there is nothing there, carefully examine the established examples of the saints. And if, having checked all these, the state of the question has not been illuminated, gather the elders of the province and ask them. For something is more easily discovered by asking very many judges. Indeed the Lord, the true guarantor, said [Matthew 18:20]: 'If two or three of you gather in my name on earth, whatever they ask in any matter will be done for them.'[2]

The *Collectio Hibernensis* (hereafter *Hibernensis*) was compiled around 700 by the pro-Roman faction in the Irish Church. The collection's sources were diverse and many remain unidentified.[3] Our canon perhaps reflects this pro-Roman orientation, for both *seniores* and *provincia* could indicate a desire to maintain an episcopally based polity in the Irish Church in the face of the abbots' power over their monastic *parruchia*.

Seniores carried a wide range of meanings in early-medieval secular and ecclesiastical Latin.[4] Tertullian (*c.*160–*c.*225) referred to *seniores* as men appointed to serve in the Church. They were chosen on the basis of their good character, not wealth, so that a class of influential patrons could not take root.[5] Later, the term

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2. *Collectio Hibernensis 19*, as found in H. Wasserschleben, ed., *Collectio canonum Hibernensis* (*Die irische Kanonessammlung*), 2nd edn (Leipzig, 1885), pp. 59-60: '**Caput unicum. Innocentius dicit**: De his ergo causis, in quibus solvendi ligandique auctoritas est, xxii librorum veteris testamenti, quatuorque evangeliorum cum totis Apostolorum scriptis, si non appareat, ad divina recurrito scripta, quae graece hagiographa dicuntur; si nec in illis, ad catholicae ecclesiae historias catholicasque a doctoribus catholicis scriptas manum mitte; si nec in his, canones apostolicae sedis intuere; si nec in istis, sanctorum exempla perspicaciter explorata inspice. Quod si his omnibus inspectis huius questionis qualitas non lucide investigatur, seniores provinciae congrega et eos interroga; facilius namque invenitur, quod a plurimis unum sentientibus queritur; verus enim repromissor Dominus ait: si duo vel tres ex vobis convenient super terram in nomine meo, de omni re quacunque petierint fiet illis.' The English translation here relies heavily on the diction found in Thompson-Gordley (see note 1 above).

3. Roger E. Reynolds, 'Unity and Diversity in Carolingian Canon Law Collections: The Case of the *Collectio Hibernensis* and its Derivatives', in Uta-Renate Blumenthal, ed., *Carolingian Essays* (Washington, DC, 1983), pp. 99–136.

4. Isidore, *Etymologiae sive originum libri* XX, ed. W. Lindsay, 2 vols (Oxford, 1911), 11.26. See also the *De ecclesiasticis officis* 2.7.1, with the Old Testament typological explanation of the term, in J.P. Migne, *Patrologia Latina* (hereafter PL) 83:787AB.

5. Alistair Stewart-Sykes, 'Ordination Rites and Patronage Systems in Third Century Africa', available at <http://divinity.library.vanderbilt.edu/burns/chroma/clergy/stewartorders.html> (accessed on

seniores laici came to designate unordained lay representatives at ecclesiastical meetings.[6] As early as Cyprian of Carthage (+258), the term could also mean the episcopate, because bishops had now gained the status of patronage within their communities.[7] Given the well-established connections between the late-antique North African Church and Ireland, texts conveying such usages of *seniores* could have been available to the compilers of the *Hibernensis*.

The *Hibernensis* assumed the necessity of bishops. When in the fifth century Patrick first encountered in Ireland a pastoral world beyond the Roman pale, he appears to have assigned a bishop to each *tuath*, or petty kingdom. He intended the primitive Irish Church to reflect the polity of the Continent. It was this traditional order that the *Hibernensis* intended to defend against the expansion of the monastic confederations, or *parruchiae*, around 700. While *seniores* carried a wide variety of meanings in early Ireland,[8] its usage in the *Hibernensis* may well echo Patrick's plans for the Irish polity.[9]

What did *provincia* mean? It seemed to carry its traditional ecclesiological/political meaning, an assumption reinforced by the material that follows in the *Hibernensis*. Book 20 is, in fact, entitled *De provincia*, a usage which, as Robert Benson demonstrated, echoed earlier Visigothic practice equating an ecclesiastical province with a kingdom: *provincia = regnum*.[10] Here *provincia = tuath*. Thus the

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19 March 2003).

6. W.H.C. Frend, 'The *seniores laici* and the Origins of the Church in North Africa', J*ournal of Theological Studies*, n.s. 12 (1961), 280–84.

7. See Stewart-Sykes, 'Ordination Rites': 'The bishop's office may nonetheless derive from the institution of the *seniores*, as a patron might gain leadership within the patronal class; in this the development is analogous to that which took place elsewhere. We may support this suggestion by observing the manner in which the Lord, in the vision of Saturus, is flanked by *seniores* and see this as representing the manner in which the bishop was seated in the assembly.'

8. See the glossary in Wendy Davies and Paul Fouracre, eds, *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986) for a variety of secular usages, including *seniores populi*. I have found no parallel usage in the complex social hierarchy of early medieval Ireland, on which see Eoin MacNeill, *Ancient Irish Law: The Law of Status or Franchise*, Proceedings of the Royal Irish Academy XXXVI.C.16 (Dublin, 1923).

9. The seventh-century Irish tract on the law of status, *Uraicecht Becc*, sheds some interesting light on our problem, though, unfortunately, nothing directly on the *seniores*. See, for example, its notation concerning ecclesiastical jurisprudence (MacNeil, *Ancient Irish Laws*, 273): '5. Whatever decision (or regulation) of the Church exists is founded on proof and right of Scripture. The decision of a *fili*, however, is founded on rules of law. The decision of a ruler, however, is founded on them all, *on rules of law and maxims and testimonies*' (emphasis mine). As MacNeil explains in n. 2: 'At the time of this text, *fili* was used in its wide sense of a man of Irish learning. The *filid* had all the functions of the earlier Druids except in the care of religion. They were the custodians of law ...'. 'The rules of true nature which the Holy Ghost had spoken though the mouths of the jurists (*brithemon*) and the just *filid* of the men of Ireland' (I.16). One is tempted to associate our *seniores* with these *filid*. Certainly, the role of text and oral counsel noted in this treatise mirrors the jurisprudence of the Irish canon. See also discussion of the 'rule of the *filid*' (p. 277). The treatment of the bishop in the contemporary *Crith Gablach* does not suggest *seniores* (p. 306).

10. Robert L. Benson, 'Provincia = Regnum', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *Prédication et propaganda au Moyen Age: Islam, Byzance, Occident*, Penn-Paris-Dumbarton Oaks Colloquia 3 (Paris, 1983), pp. 41–69.

phrase *seniores provinciae* connoted not only the objectives of the pro-Roman party in the Irish Church, but also the ideal Church-State unified polity advanced earlier by the Visigoths. The call to gather the *seniores* linked a distinctive ecclesiology connecting Spain and Ireland with a charismatic, typologically grounded, oral jurisprudence that assumed the continuing inspiration of the bishops by the Holy Spirit, a circumstance that sufficed even when sacred texts were silent. One almost expects to find Cyprian in the canon's inscription, not Innocent I.[11]

Seniores Episcopi: The Canon and the Audience of the *Decretum Burchardi*

When the canon reappeared in the early eleventh-century *Decretum* of Bishop Burchard of Worms,[12] it seems likely that its audience would have read the *seniores* as 'elder bishops'. *Seniores episcopi* are well attested in the legal and liturgical literature of the Carolingian world. As the tenth-century Romano-German pontifical notes, the Roman order for conducting a general council required their participation: 'Let the metropolitan bishop or one of the elder bishops give the prayer.'[13] As in the late-antique usage from North Africa, we do not find a juridically precise group in these *seniores*, but instead a group enjoying customary deference as the eldest members of the provincial episcopate. Can we determine what jurisprudential and ecclesiological resonance our text and its *seniores* would have had for Burchard's audience?

We find a clue in the exegetical tradition attached to Matthew 18:20, the scriptural passage concluding the canon that justifies the gathering of the *seniores*. Here Christ's call to prayer makes a guarantee that He will be with even the smallest gathering of His disciples. It also immediately follows a reiteration of the temporal power of binding and loosing granted them (Matthew 18:18). By the third century the biblical text had furnished for Cyprian an excellent illustration of perfect Christian unity grounded in the episcopate:[14]

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11. On papal letters from the early Middle Ages, including those by Innocent I, see Detlev Jasper and Horst Fuhrman, *Papal Letters in the Early Middle Ages*, History of Medieval Canon Law 2 (Washington, DC, 2001). To my knowledge, the inscription to Innocent I in this canon remains unexplained.

12. Burchard, *Decretum*, PL 140:698B, 3.128. On Burchard, see in general Hartmut Hoffmann and Rudolf Pokorny, *Das Dekret des Bischofs Burchard von Worms*, Monumenta Germaniae Historica Hilfsmittel 12 (Munich, 1991), and Lotte Kéry, *Canonical Collections in the Early Middle Ages (ca. 400–1400): A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law 1 (Washington, DC, 1999), pp. 133–55.

13. C. Vogel and R. Elze, *Le Pontificale Romano-Germanique du dixeme siècle*, 3 vols, Studi e Testi 226–8 (Rome, 1963-72), 1.270.5: 'Ordo romanus qualiter concilium agatur generale. Et ipse metropolitanus episcopus, aut alius ex senioribus, det orationem.'

14. Cyprian, *De ecclesiae catholicae unitate*, c. 12, in Maurice Bénevot, ed., *De lapsis and De ecclesiae catholicae Unitate*, (Oxford, 1971), p. 76: 'Cum dominus discipulis suis unanimitatem suaderet et pacem: Dico, inquit, uobis quia si duo ex uobis conuenerint in terra, de omni re, quamcumque petieritis, continget uobis a patre meo, qui est in celis. Ubicumque enim duo aut tres fuerint collecti in nomine meo, ego cum eis sum, ostendit non multitudini, sed unanimitati deprecantium plurimum tribui.'

For the Lord counseled unanimity and peace when he said 'I say to you that if two or three of you are gathered together on Earth in my name, whatever you ask will be done for you by my Father in Heaven.' Indeed 'wherever two or three are gathered together in my name' shows that much will be bestowed not on the number of those praying but on their unanimity.

Cyprian appropriated the text to strengthen the bishops' power. Ambrose (*c.*340–97) later amplified this reading, emphasizing that divine power came to priests not through their merits, but because their office had been founded by the Lord:[15]

Since Scripture testifies that at the prayers of Jereboam fire descended from heaven and, again, when Elijah prayed fire was sent and consumed the sacrifices, we must understand that God does not consider the merits of the person but rather the office of the priest. That visible fire was sent so that they might believe; an invisible fire accompanies us who believe. Therefore believe that the Lord Jesus is present at the prayers of priests when he said: 'Where two or three are present, there I will be in their midst.'

In this reading of Matthew 18:20, belief and concord were all that mattered. Numbers did not count when calling on divine assistance.

This exegetical tradition calling for charismatic unity and concord among the bishops must have shaped how Burchard's audience read the Irish canon in his *Decretum*. Indeed, *congrega seniores provinciae* could have carried a quite specific juridical and ecclesiological emphasis. Linked to the accompanying passage from Matthew, it recalled an ideal of the Carolingian Church: the *concilium perfectum*, the call to a perfect council.[16]

Concilium Perfectum

As early as the Council of Antioch (341), the Church had considered the minimum requirements for convocation of a council. Canon 16 concluded that a 'perfect council' required the presence of a metropolitan.[17] Later, Celestine I reassured the ecumenical council of Ephesus (431) that, since the Lord had said that He would be present with two or three gathered in His name, how much more would he attend their gathering, a crowd of bishops (*turba sacerdotum*). The Holy Spirit paid no

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15. Ambrose, *De mysteriis*, 5.26: 'Cum scriptura testetur, quod ad preces Ieroboa ignis descendit de celo, et rursus precante Helia ignis missus est, qui sacrificia consumeret, datur intelligi, quod Deus non merita personarum considerat, sed offitia sacerdotum. Ille ignis visibilis mittebatur, ut crederent: nobis invisibilis operatur, qui credimus. Crede ergo, adesse Dominum Iesum invocatum precibus sacerdotum, qui ait: "Ubi fuerint duo vel tres, ibi sum in medio eorum."' This text is conveniently now available online at: <http://utenti.lycos.it/ortodossia/De_mysteriis.html> (accessed on 19 March 2003).

16. Gerhard Schmitz, '*Concilium perfectum*. Überlegungen zum Konzilsverständnis Hinkmars von Reims (845–882)', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 66 (1979), 27–54.

17. Ibid., pp. 32–3 and n. 21, citing C.H. Turner, ed., *Ecclesiae occidentalis monumenta iuris antiquissima*, 2 vols (London, 1899–1939), 2.2.283.

attention to numbers; but, when possible, the more participants, the better for the sake of the Church.[18] As Gregory the Great (*c.*540–604) eventually put it: 'If He deigns to be present when two or three are gathered, how much more will He be present when many bishops congregate?'[19]

Beginning with the *Libri Carolini*, Carolingian theorists expanded this patristic argument. In the past the Lord had been present at a council of minimum size; He would thus certainly inspire a larger gathering, especially one presided over by a metropolitan.[20] Therefore the wider Church – including Rome and Constantinople – should pay attention to the decisions of the Frankish bishops in any council. As Agobard of Lyons (*c.*779–840) saw it, this principle fully validated the canons of Gallic councils, decrees often despised by Romans. If the Lord were present with two or three, He had certainly been with the illustrious gatherings of holy Gallic bishops, often twenty and thirty in number.[21]

This suited Archbishop Hincmar of Rheims (*c.*806–82), whose ecclesiology rested on a continual defence of his metropolitan rights against those episcopal adversaries who replied with the Pseudo-Isidorian forgeries. He expanded upon previous exegesis of Matthew 18:20 to assert the prerogative of the metropolitan to hold a *concilium perfectum*. We encounter his argument in stages. In an invective against his wearisome nephew Bishop Hincmar of Laon, the archbishop appropriated the definition of a universal council found in an African canon:[22] 'A universal council should not take place except when necessity demands it. Cases that are not common to all should be judged in their provinces.'[23] Thus, only a metropolitan like Hincmar of Rheims might judge the common cases that necessitated a general council. And

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18. Ibid., p. 41 n. 43. See Celestine I's letter in P. Jaffé and F. Kaltenbrunner, *Regesta pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, 2nd edn (Berlin, 1885–88), item 379.

19. Ibid., p. 47 n. 62: 'Si ergo adesse dignatur ubi duo vel tres fuerint, quanto minus non deerit, ubi plures convenerint sacerdotes?'

20. Ibid., p. 45, citing the edition in H. Bastgen, ed., Monumenta Germaniae Historica, Concilia II, Supplementum I, 227.27–30.

21. Agobard of Lyons*, Liber adversus legem Gundobadi*, PL 104:122A–123A: 'Huc accedit aliud quod pia consideratione dignum videtur, de canonibus scilicet Gallicanis, qui quasi superflui aut inutiles a quibusdam respuuntur; eo quod neoterici Romani eos non commendaverint, cum antiqui religiose eos venerati sint; quoniam venerandi et sancti viri eos ediderunt, quorum vitam et sanctitatem crebra miracula commendarunt. Nemo unquam fuit qui tanta sanctorum per Gallias episcoporum audire potuerit, quanta per singula loca litteris mandata et relatu posteris relicta reperta sunt. Et revera, si secundum dictum Dominicum ubi duo vel tres congregati fuerint in nomine eius, ibi est Dominus in medio eorum; quanto magis ubi viginti, aut triginta multo amplius congregati fuerint, non solum in nomine Domini, sed insuper etiam fide praediti, sapientia illustres, vita clari, sanctitate reverendi, signis et prodigiis formidandi?'

22. Schmitz, '*Concilium perfectum*', pp. 51–2, citing Hincmar, *Opuscula*, PL 126:361B: 'Concilium universale non nisi necessitate faciendum. Causae autem, quae communes non sunt, in suis provinciis iudicentur.' See Charles Munier, ed., *Concilia Africae*, Corpus Christianorum, Series latina 149 (Turnhout, 1974), p. 215.

23. Perhaps there is an echo here of the Roman maxim *quod omnes tangit*, on which see Gaines Post, *Studies in Medieval Legal Thought* (Princeton, NJ, 1964), Ch. 4: 'A Romano-Canonical Maxim, *Quod Omnes Tangit*, in Bracton and in Early Parliaments'. Post does not address this text.

wherever an archbishop presided, there was automatically a perfect council, the only place where matters touching all, including unsolved cases dealing with matters of faith and general discipline, could be heard:[24]

> Lord Charles, Emperor Augustus, has ordered us to be summoned to the synod for those matters, just as the ecclesiastical rules command, which perhaps provincial councils have been unable to resolve, especially in the matter of faith or general religion, as we have read in the decretals of the Apostolic See and the letters of the emperors. Whereas, we have read in the ecclesiastical histories and the letters of the Apostolic See that general synods have been called by imperial authority.

This perfect council could take radical measures to solve these cases. As Hincmar noted in his *De ecclesiis et capellis*:[25]

> … if the holy canons are not found that consider events that have happened in our region, then, with the precedent of the Council of Antioch, to provide fitting remedies and suitable answers to necessities the bishops of the province, with the counsel of the metropolitan, and the metropolitan with the counsel of his fellow bishops – all illuminated with the Holy Spirit – may validly temper more strict and severe decrees among those things constituted, so that they may not deviate from those things constituted in any way.

Hincmar's interpretation of Matthew 18:20 made an important jurisprudential innovation. The Holy Spirit is present in even the smallest council. Clearly He is present at the *concilium perfectum*, the gathering led by the metropolitan. Here was the forum where even the strict decrees of tradition can be shaped to fit new, seemingly unsolvable questions that touch the heart of doctrine and discipline.

Burchard's audience may well have had this tradition in mind when it read the Hibernian canon on the sources of law included in his *Decretum*. When the texts of tradition fail, divine inspiration – guaranteed by Matthew 18.20 – can lead the bishops and their metropolitan, that is, the *seniores,* to a solution. The Hiberno-Latin canon not only reflected the consensus politics and vision of tradition that inspired Carolingian theorists[26] and continued to work in the imperial Church system of Burchard's day, but it also established a type of conciliarism at the apex of canonical jurisprudence. What could not be solved by sacred texts truly touched all. Such common concern demanded the perfect council, the supreme ecclesiological expression of the divine guarantee in Matthew 18:20. In our Hiberno-Latin canon we find a text relevant to

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24. Hincmar, *De iure metropolitanum*, PL 126:205A: 'preceptio domni nostri Caroli imperatoris Augusti nos ad synodum, sicut praecipiunt regulae vocare decrevit pro talibus quae forte provinciali nequiverint examine diffiniri, maxime in causa fidei vel generalis religionis, sicut in apostolicae sedis pontificum, et in epistolis legimus Apostolorum. Quoniam imperatorum auctoritate convocatas generales synodos, et in historiis ecclesiasticis et in epistolis apostolicae sedis pontificum reperimus.'

25. Hincmar, *De ecclesiis et capellis*, ed. Wilhelm Grundlach, 'Zwei Schriften des Erzbischofs Hinkmar von Reims', *Zeitschrift für Kirchengeschichte* 10 (1889), 92–145 at 104.

26. Janet Nelson, 'Legislation and Consensus in the Reign of Charles the Bald', in Patrick Wormald, ed., *Ideal and Reality in Frankish and Anglo-Saxon Society* (Oxford, 1983), pp. 202–22 at 218–19.

the world of 1000, a text powerfully supporting the jurisprudential power of the episcopate.

The *Seniores* and the Textual Community of Medieval Canon Law

Brian Stock comments that: '… canon law emerged not only as the standard-bearer of the law of persons but of written legal traditions in general'.[27] Canon law plays a significant role in Stock's argument for the emergence of 'textual communities' in the eleventh century. To Stock, only canon law had retained over the centuries sufficient fidelity to texts in order to act as an adhesive surface on which jurisprudence, and by extension literary culture in general, could stick and develop.[28] Let us examine this assertion, as well as canonistic evidence for the persistence of an oral element in this supposedly supremely text-driven branch of legal culture. In other words, is there any reality behind the call to the *seniores*?

Clearly the Pseudo-Innocentian canon emphasizes the primacy of the text. The *seniores* come at the end of the list; oral counsel is the last resort. There is, however, scattered evidence – some of it connected with *seniores* – that an oral element was never entirely absent from canon law in the eleventh century, proof that bishops took counsel from people as well as books.

Undoubtedly oral advice always had played an informal role in canon law, though we are usually forced to rely on circumstantial evidence of its presence. Once the bishop's court, the *audientia episcopalis*, became legitimate in the early fourth century, bishops were continually forced to seek advice. An example of this appears in one of the recently discovered Augustinian letters, where the bishop writes a local lawyer for advice concerning the imperial penalties against slave-traders who kidnap free people.[29] This *ad hoc* advice was probably most often oral. Seeking such counsel outside the canons played an important, generally anonymous, role in the bishop's decisions.

Even in the eleventh century, the 'transformative' period for the development of textual community as defined by Brian Stock, we have scattered evidence of oral consultation. In 1036 Archbishop Poppo of Trier consulted his episcopal colleagues on a question of marriage law.[30] R.C. van Caenegem provides an interesting English example in the case of a property dispute between Ramsey and Thorney abbeys dating from the mid-century.[31] To resolve a disagreement over a nearby fen, five

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27. Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton, NJ, 1983), p. 54.

28. Ibid., p. 55.

29. Johannes Divjak, ed. and trans., *Ouevres de Saint Augustin: Lettres 1*–29**, Etudes augustiniennes (Paris, 1987), 46B. See Henry Chadwick, 'New Letters of Saint Augustine', *Journal of Theological Studies*, n.s. 34 (1983), 425–52 at 433, and letter *24 for a similar situation.

30. Heinrich Beyer, ed., *Urkundenbuch zur Geschichte der...mittelrheinischen Territorien*, 2 vols (Koblenz, 1860), 1.359–60. I thank Dr Timothy Reuter for this reference.

31. R.C. van Caenegem, *The Birth of the English Common Law*, 2nd edn (Cambridge, 1988), pp. 77–8.

old men from the district were asked for their verdict. Finally, Lanfranc appealed to the advice of *seniores*, once again probably bishops, in order to solve the knotty problem of seating order at the 1075 Council of London.[32] Thus, in judgments strictly belonging to canon law or in the domain of property relations, where canon law and custom blurred, ecclesiastics could sometimes seek oral counsel when texts apparently had failed. Learning and law-finding were not absolutely confined to texts, even in canon law.

Like the ordeal, the advice of the *seniores* did not survive the appearance of university jurisprudence in the twelfth century. There is only limited reception of our canon in the collections of the Investiture Contest, in Ivo of Chartres's *Decretum* and also in the Pseudo-Ivonian *Tripartita*.[33] There is no reference to the *seniores provinciae* in the voluminous controversial and theoretical literature of the Investiture Contest. Only in Gratian would it surface again and, by then, it was as a relic of archaic jurisprudence. By 1140, divine guidance did not provide guidance through ordeal or elders; Bologna shaped the decisions that came from Rome.

The canon appears for a last time as a passing reference in a letter of John of Salisbury. In March 1167, he wrote to Reginald, archdeacon in the diocese of Salisbury, concerning the latter's ongoing dispute with Becket.[34] John announces that 'the day of calamity is at hand for those who shall be caught in lying' – a cry as much against the wider conflict between archbishop and King as the ongoing troubles at Salisbury. He then notes:[35]

> But if my advice is asked in the meantime, then before God, whom I call as witness of what I have to say at the last judgment, in full liberty of the spirit and in good faith promised and owed to him as to a father I reply that in all cases of stubborn doubt one

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32. Helen Clover and Margaret Gibson, ed. and trans., *The Letters of Lanfranc, Archbishop of Canterbury* (Oxford, 1979), 74:19–33: '… De qua re interrogat sunt senes et aetate prouecti, quid uel ipsi uidissent uel a maioribus atque antiquioribus ueraciter ac probabiliter accepissent.'

33. Ivo, *Decretum* 4.170 and the *Tripartita* 3.3.3 and 3.73, as indicated on the *Kanones* CD-ROM provided by Linda Fowler-Magerl.

34. W.J. Millor and C.N.L. Brooke, eds and trans, *The Letters of John of Salisbury*, v. 2 (Oxford, 1979), ep. 217, pp. 364–6. The letter is cited, along with the passage concerning the sources of law, by Peter von Moos, 'The Use of *Exempla* in the *Policraticus* of John of Salisbury', in Michael Wilks, ed., *The World of John of Salisbury*, Studies in Church History, Subsidia 3 (Oxford, 1984), pp. 207–63 at 207. The possible origins of the excerpt are not discussed. On Reginald of Salisbury, see Frank Barlow, *Thomas Becket* (Berkeley, CA and Los Angeles, CA, 1986), pp. 78, 107.

35. The translation, slightly altered, is from Millor and Brooke, *The Letters of John of Salisbury*: 'Quod si meum consilium interim quaeritur, ecce coram Deo, quem huius uerbi in extremo examine testem inuoco, tota spiritus libertate et in fide illi tanquam patri promissa et debita respondeo quod in omni ardua dubietate censeo faciendum scilicet, ut primo omnium quaeramus et sequamur quid super hoc lex diuina praescripserit; quae si nichil certum exprimit, recurratur ad canones et exempla sanctorum ubi, si nichil certum occurrit, tandem explorentur ingenia et consilia sapientum in timore Domini illique, seu pauciores seu plures sint, ceteris preferantur qui honorem Dei commodis omnibus anteponunt.' See Maximilian Kerner, 'Johannes von Salisbury und das gelehrte Recht', in Peter Landau and Jörg Müller, eds, *Proceedings of the Ninth International Congress of Medieval Canon Law*, Monumenta Iuris Canonici, Series C., Subsidia 10 (Vatican City, 1997), pp. 503–22, who notes this letter as an example of John's legal knowledge. He does not, however, suggest D. 20 c. 3 as its potential source.

should act as follows. First let us inquire and follow the prescriptions of divine law on the matter; if this gives no certain solution, one should go back to the canons and examples of the saints; if nothing sure meets one there, one should finally investigate the mind and counsel of men wise in the fear of the Lord; and those should be preferred (be they few or many) who place God's honor before any personal convenience.

While John fails to reproduce every level in the hierarchy of sources listed in Gratian's version of the Pseudo-Innocentian canon, and does not refer directly to the *seniores* or the text from Matthew, enough is present to argue for a reminiscence.[36] Like the *Hibernensis* canon, it concludes with an appeal – almost plaintive in this letter – to oral counsel, for wise men 'should be preferred (be they few or many) who place God's honor before personal convenience'. John's wisdom, like most advice, good and bad, in these troubled years, fell on deaf ears.

Thus, Brian Stock's comment on power's relation to the control of normative texts is perfectly reflected by the history of our canon from the *Hibernensis*:

> Texts, textuality, and textual culture immediately raise the issue of power in society. If a new means of communication makes its appearance, who are its patrons? If new knowledge is produced, who controls it and for what ends.[37]

In the early medieval Church, texts were pre-eminent, but not exclusive, sources of legitimate authority. The power to judge rested on a charismatic authority that, under certain conditions, could be supported by the spoken word. Oral counsel in law had counted in the world of the *Hibernensis*, for bishops had ruled the polity. The judgment of the bishop still mattered in the world of Hincmar – who called for the *concilium perfectum* to solve the most difficult problems of law – based on Christ's assurance that He would be with even the smallest gathering of his disciples, above all those bishops led by their metropolitan. To Burchard, the bishop still guarded the canons. He remained the living voice of tradition that could be consulted by gathering the *seniores*.

By the 1160s, however, the Church would pay no more heed to the gathered bishops than to the proffered advice of John of Salisbury. The authoritative interpretation of canon law no longer belonged solely to the bishops, *seniores* or otherwise. As Charles Homer Haskins so eloquently remarked years ago, 'For good or ill, the lawyer had come as an active element in the world's government, and he had come to stay.'[38] After his arrival, the *seniores* were no longer necessarily required.

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36. Compare to Gratian, D. 20 c.3: 'De quibus causis nulla … auctoritas in libris ueteris testamenti, quatuor euangeliorum … apareat … ad catholicae ecclesiae historias catholicas … manum mitte. Si nec in illis sanctorum exempla … recordare … seniores prouinciae congrega et eos interroga …'.

37. Stock, *Implications of Literacy*, p. 10.

38. Charles Homer Haskins, *The Renaissance of the Twelfth Century* (1927, repr. Cambridge, MA, 1957), p. 222.

Saints, Pagans, War and Rulership in Ottonian Germany

David A. Warner

Introduction

Behind the following essay stands the same assumption that Robert L. Benson cited as the foundation of his classic study, *The Bishop-Elect*: 'Like most societies (including our own), medieval Latin Christendom devised an elaborate network of ideas to justify and control the exercise of power.'[1] In these ideas one can read, as Benson suggested, 'the conception of a right social and even cosmic order', but also, and more concretely, the different ways in which medieval society conceived the highest governing offices and the authority exercised by them. This chapter is concerned generally with medieval ideas regarding the just war and relations between Christians and non-believers, and especially with the questions such ideas raised for the practice of rulership.[2] According to the prevailing view, the discussion of nearly all medieval political ideas achieved an intellectual highpoint, from the twelfth century on, in the works of professional jurists, 'clever men trained together in shared methods of reasoning', who brought an unprecedented degree of precision to virtually every political or legal issue.[3] And yet, one might argue, clever men and women can be found in any era; the issues in question, to the extent that they rested on traditional sources and methods, such as biblical exegesis, had the potential to flare up whenever the course of human events offered sufficient incentive. Such an incentive arose in the early eleventh century, when the Ottonian Emperor Henry II (1002–24) chose to make war on the Christian prince of Poland, Boleslav Chrobry, in alliance with the Liutizi, a confederacy of mostly Slavic peoples. In more recent times, the state of German relations with Poland and east-central Europe has attracted

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1. Robert L. Benson, *The Bishop Elect: A Study in Medieval Ecclesiastical Office* (Princeton, NJ, 1968), vii.

2. On the just war, the fundamental study remains Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge, 1975). For a more recent overview, see Philippe Contamine, 'Just War', *Encyclopedia of the Middle Ages*, 2 vols (Paris, 2000), 1:794; Adriano Cavanna, 'Bellum iustum', *Lexikon des Mittelalters* (Munich, 1980), 1:1849–51. On the debate regarding Christian relations with the infidel, see James Muldoon, *Popes, Lawyers, and Infidels* (Philadelphia, PA, 1979) esp. pp. 3–28.

3. See note 2 above. The quotation is from Susan Reynolds, 'Medieval Law', in Peter Linehan and Janet L. Nelson, eds, *The Medieval World* (London, 2001), pp. 485–502 at 492.

vigorous debate and controversy, not all of it particularly high-minded.[4] In the Middle Ages those relations could sometimes have a similar impact, but for reasons having less to do with modern national ideals than with medieval Christian ones. Although precedent existed for a Christian king's waging war against his brothers in the faith, even in alliance with non-Christians, such behaviour contrasted with the ideal portrait of an office that, as the Ottonian coronation *ordo* decreed, had the task of 'oppressing rebels and pagan nations'.[5] In the case of the Liutizi either description would have been appropriate; since some, at least, had once accepted baptism, the charge of apostasy might also have been added.[6]

This essay is also about saints. It is not concerned with Ottonian views regarding the elements of sanctity, however, or the possibility that a specifically royal or dynastic sanctity may have arisen, inspired by the Ottonian house or its supporters.[7] Rather, it is concerned with the use of saints and hagiographic motifs within the context of Ottonian political thought and, more specifically, with the efforts of an Ottonian cleric, Brun of Querfurt (*c*.974–1009), to address the questions raised by Henry's war by reference to a saint, Maurice of Agaunum (Valais, Switzerland).[8] St Maurice, a third-century military martyr and commander of a Roman legionary detachment known as the Thebans, enjoyed widespread veneration throughout Latin Christendom.[9] According to common scholarly opinion, he also had a specifically

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4. See, for example, Gerd Althoff, 'Die Beurteilung der mittelalterlichen Ostpolitik als Paradigma für zeitgebundene Geschichtsbewertung', in Gerd Althoff, ed., *Die Deutschen und ihr Mittelalter. Themen und Funktionen moderner Geschichtsbilder vom Mittelalter* (Darmstadt, 1992), pp. 147–64, esp. 156–9.

5. Ordo 14, no. 14, in Cyrille Vogel, ed., *Le pontifical Romano-Germanique du dixième siècle*, 3 vols, Studi e Testi, 226, 227, 269 (Vatican City, 1963–72), 1:253. For examples of medieval Christian kings allying with pagans, see Gerd Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, trans. Timothy Reuter (Cambridge, 1993), pp. 4–5.

6. The importance of the charge of apostasy has been emphasized, for example, by Han-Dietrich Kahl, '*Compellere intrare*: Die Wendenpolitik Bruns von Querfurt im Lichte hochmittelalterlichen Missions- und Völkerrechts', *Zeitschrift für Ostforschung* 4 (1955), Part 1:161–93; Part 2:360–401, esp. 184–95.

7. These topics have been examined in great detail by Patrick Corbet, *Les saints ottoniens: sainteté dynastique, sainteté royale et sainteté féminine autour de l'an Mil*, Beihefte der Francia, 15 (Sigmaringen, 1986). Although the present essay focuses on a earlier period, I have consulted and benefited from (though generally not cited) the series of essays published in Jürgen Petersohn, ed., *Politik und Heiligenverehrung im Hochmittelalter*, Vorträge und Forschungen, 42 (Sigmaringen, 1994).

8. As such, this essay continues a line of thought that I have addressed in two previous studies, but ultimately it rests on research carried out under the supervision of Robert L. Benson. See David A. Warner, 'Henry II at Magdeburg: Kingship, Ritual and the Cult of Saints', *Early Medieval Europe* 4 (1994), 135–66, and idem, 'Saints and Politics in Ottonian Germany', in N. Van Deusen, ed., *Medieval Germany: Associations and Delineations*, Claremont Cultural Studies, 5 (Ottawa, 2000), pp. 7–28.

9. For a general overview of the saint's cult, consult: Maurice Zufferey, *Die Abtei Saint-Maurice d'Agaune im Hochmittelalter (830–1258)*, Veröffentlichungen des Max-Planck-Instituts für Geschichte, 88 (Göttingen, 1988), pp. 23–37, and idem, 'Der Mauritiuskult im Früh- und Hochmittelalter', *Historisches Jahrbuch* 106 (1986), 23–58. Neither work entirely supplants the older but more far-ranging study by Adalbert Herzberg, *Der Heilige Mauritius: Ein Beitrag zur Geschichte der deutschen Mauritius-Verehrung*, Forschungen zur Volkskunde, 25/26 (Düsseldorf, 1936).

political character as patron of the Ottonian dynasty.[10] Among other questions, this study will ask whether the saint's political connections provide sufficient explanation for Brun's interest.

Like his celebrated contemporary and relative, Thietmar of Merseburg, Brun descended from an east Saxon noble house and acquired an education in the cathedral school at Magdeburg.[11] If we follow Stephen Jaeger, the school's curriculum would have focused heavily on the study of the classics, with a stress on moral character and statecraft.[12] Still, the course of Brun's career would suggest that he was by no means averse to the more traditional values of asceticism. In 997 Brun took service in Otto III's royal chapel, a step that would have brought him close to the centre of royal power and held out the prospect of a bishop's mitre. Apparently, his ambitions lay elsewhere. Abandoning the royal service in mid-career, he took up the vocation of a hermit, missionary and martyr, in that order.

In spite of his strenuous manner of life, Brun managed to produce a substantial body of literary work that includes a biography of Bishop Adalbert of Prague (1004), a second and shorter version of that biography (1008), and the so-called *Life of the Five Brothers* (*c.*1008).[13] In each of his literary works, the reader encounters

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10. Modern scholars have identified St. Maurice, among other things, as dynastic or royal patron, patron of Ottonian expansion in the East, and bestower of victory on Ottonian armies. See Albert Brackmann, 'Die politische Bedeutung der Mauritius-Verehrung im frühen Mittelalter', *Sitzungsberichte der Preußischen Akademie der Wissenschaften, Phil.-hist. Klasse*, 30 (1937), 3–29, at 24–6; Dietrich Claude, *Geschichte des Erzbistums Magdeburg bis in das 12. Jahrhundert*, Mitteldeutsche Forschungen, 67.1–2, 2 vols (Cologne/Vienna, 1972/75), 1:246–7; Stefan Weinfurter, *Heinrich II. Herrscher am Ende der Zeiten* (Regensburg, 1999), pp. 216, 224. Maurice has been given partial credit for Otto I's victory at the Lechfeld (Beumann), but also has been characterized as a battlefield saint who failed to make the grade as a national saint (Graus). Helmut Beumann, 'Laurentius und Mauritius. Zu den missions-politischen Folgen des Ungarnsieges Ottos des Großen', in Helmut Beumann, ed., *Festschrift für Walter Schlesinger*, Mitteldeutsche Forschungen, 72, 2 vols (Cologne, 1974), 2:238–75, at 274–5; Frantisek Graus, *Lebendige Vergangenheit. Überlieferung im Mittelalter und in den Vorstellungen vom Mittelalter* (Cologne, 1975), pp. 180–81, and idem, 'Der Heilige als Schlachtenhelfer – zur Nationalisierung einer Wunderzählung in mittelalterlichen Chronik', in Kurt-Ulrich Jäschke and Reinhard Wenskus, eds, *Festschrift für Helmut Beumann* zum *65. Geburtstag* (Sigmaringen, 1977), pp. 330–48 at 340–41. Another more temperate assessment places Maurice within an ensemble of royal saints whose members assumed leading roles, respectively, at different times. See Karl Heinrich Krüger, 'Dionysius and Vitus als frühottonische Königsheilige. Zu Widukind 1,33', *Frühmittelalterliche Studien* 8 (1974), 131–54 at 153.

11. On Brun's life and career, see Ian Wood, *The Missionary Life: Saints and the Evangelisation of Europe, 400–1050* (Harlow, 2001), pp. 231–3; Frederick Lotter, 'Brun von Querfurt', *Lexikon des Mittelalters* (Munich, 1980), 2:755–6, and the still useful overview in D.H.G. Voight, *Brun von Querfurt: Mönch, Eremit, Erzbischof der Heiden und Martyrer* (Stuttgart, 1907), *passim*.

12. C. Stephen Jaeger, *The Origins of Courtliness: Civilizing Trends and the Formation of Courtly Ideals, 939–1210* (Philadelphia, PA, 1985), pp. 19–40, and *The Envy of Angels: Cathedral Schools and Social Ideals in Medieval Europe, 950–1200* (Philadelphia, PA, 1994), pp. 36–52; but see also the discussion in David A. Warner, 'Thietmar of Merseburg: The Image of the Ottonian Bishop', in Michael Frassetto, ed., *The Year 1000: Religion and Social Responses to the Turning of the First Millennium* (New York, 2002), pp. 85–110 at 97–9.

13. Brun of Querfurt, *Passio sancti Adelberti episcopi et martyris (redactio longior)*, ed. Jadwiga Karwasinska, Monumenta Poloniae Historica, n.s. 4.2 (Warsaw, 1969), pp. 3–41; (*redactio brevior*), pp. 45–69; idem, *Vita quinque fratrum eremitarum*, ed. Jadwiga Karwasinska, Monumenta Poloniae Historica,

the same radical asceticism and missionary zeal that defined the author's own life. Adalbert (+997), scion of a noble Bohemian lineage and, like Brun, Magdeburg-educated, abandoned his see to pursue missionary work. He achieved martyrdom while preaching among the Prussians.[14] The Five Brothers, missionaries to Poland and martyrs, included the hermits Benedict and John (from the circle associated with Romuald of Ravenna), two indigenous recruits, and their cook.[15] They were murdered by Christian thieves who had learned of a sizeable amount of silver bestowed upon the community by Duke Boleslav Chrobry, depicted here, as so often in Brun's writings, as a friend to missionaries and saints. Although the shorter life of Adalbert is silent on the matter, perhaps because Brun intended it for a Polish audience, the longer *vita* of the saint and the *Life of the Five Brothers* each touch directly or indirectly on the issues raised by Henry's war.[16] I will give some consideration to both of these works, but chiefly focus on another text, a letter addressed by Brun to Emperor Henry II in 1008.[17] Brun's letter is relatively well known, among other things, because its provocative use of Luke 14:23 ('Compel them to come in') appears to foreshadow an idea later associated with the Crusades, but the letter offers the modern reader other points of entry as well.[18] A recent study characterizes it as 'a piece of political justification', an 'exhortation to peace', an 'encouragement … to support evangelisation', as well as a work of autobiography.[19] It will concern us chiefly because it both represents the fullest expression of the author's ideas regarding Henry II's war and because it contains the aforementioned reference to St Maurice.

Saints and Political Discourse

More generally, this study will also explore the impact of the cult of saints on the mental habits of an intellectual and political elite, the clergy of the Ottonian royal/imperial Church. Although their ranks included no professional jurists comparable to those of the high and late Middle Ages, among them there were individuals learned in scripture, patristics, and canonical precedent. Like Brun, some of the clergy were

n.s. 4.3 (Warsaw, 1973), pp. 27–84. In assigning dates to these works, I have followed Frederick Lotter, 'Christliche Völkergemeinschaft und Heidenmission: Das Weltbild Bruns von Querfurt', in Przemyslaw Urbanczyk, ed., *Early Christianity in Central and East Europe* (Warsaw, 1997), pp. 163–74 at 165. For a more detailed and slightly different assessment, see Knut Görich, *Otto III: Romanus Saxonicus et Italicus. Kaiserliche Rompolitik und sächsische Historiographie*, Historische Forschungen, 18 (Sigmaringen, 1993), pp. 18–20.

14. Wood, *The Missionary Life*, pp. 207–12.
15. Ibid., pp. 233–6.
16. Lotter, 'Christliche Völkergemeinschaft', pp. 170–71; Görich, 'Otto III', pp. 33–8.
17. Brun of Querfurt, *Epistola ad Henricum regem*, ed. Jadwiga Karwasinska, Monumenta Poloniae Historica, n.s. 4.3 (Warsaw, 1973), pp. 97–106.
18. Carl Erdmann, *The Origin of the Idea of the Crusade*, trans. Marshall W. Baldwin and Walter Goffart (Princeton, NJ, 1977), pp. 107–8.
19. Wood, *The Missionary Life*, p. 238.

products of German cathedral schools that not only trained them for ecclesiastical careers, but also socialized them into something like a clerical 'old boys' network'.[20] A smaller number produced the literary sources that have largely shaped modern impressions of Ottonian life and thought. Whatever their relationship to one another, however, the clergy as whole enjoyed a close relationship with the Ottonian monarchy, which relied upon them to provide competent, reasonably loyal agents of royal government and rewarded them with benefits and privileges. Reflecting the dualism enunciated by Pope Gelasius I (492–96), albeit with a significant shift in emphasis, the monarchs and clergy of the Ottonian *Reich* were thought to rule in concert over an *ecclesia* encompassing the whole of society and each of its members.[21] The inclusion of secular rulers within the *ecclesia*, contrary to Gelasius's original intentions, did not mean, however, that a sense of the differing responsibilities and rights of king and clergy was lost. Indeed, the Ottonian clergy's remarkably close relationship with the ruling house ensured that the former had both an opportunity and an incentive to scrutinize royal policies and deeds. Nor were their judgments always favourable. Undercurrents of dissent focused, for example, on royal intervention in the Church's constitutional life, on offences against specific ecclesiastical corporations, or on the corrupting influence of the court and of secular politics.[22] Even seemingly beneficial acts, such as the founding of a bishopric, could stimulate opposition and debate.[23]

Simply put, an Ottonian churchman and a professional jurist of the high or late Middle Ages would likely have approached conflicts between Church and monarchy, such as those noted above, in significantly different ways. This is not to say that the latter necessarily possessed a superior intellect, but merely that he disposed of different tools. Rather than imposing anachronistic standards based on historical hindsight, therefore, it might be more useful to examine how the Ottonian clergy worked within the constraints imposed upon them by the resources at hand, and how they sometimes turned apparent shortcomings into advantages. Those constraints, shortcomings, and potential advantages are nowhere more evident than in the realm of political vocabulary. Here, in the absence of a precise and stable body of political and legal concepts, terminology derived from classical Latin could be stretched to encompass a wide variety of medieval institutions and practices, a circumstance that testifies both to the flexibility of the language and also to its decline in clarity. When the terms *urbs* or *civitas* could connote anything from a bustling commercial

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20. Brian P. McGuire, 'Friendship and Scholarship in Medieval Germany', in Van Deusen, *Medieval Germany*, pp. 49–62 at 30–33, 42, 48.

21. Ian S. Robinson, 'Church and Papacy', in J.H. Burns, ed., *Cambridge History of Medieval Political Thought* (Cambridge, 1988), pp. 252–305 at 288–300, and in general, Robert L. Benson, 'The Gelasian Doctrine: Uses and Transformations', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *La notion d'autorité au Moyen Age: Islam, Byzance, Occident* (Paris, 1982), pp. 13–44.

22. Warner, 'Saints and Politics', pp. 14–16.

23. See, for example, Thietmar's account of the debate surrounding Henry II's foundation of the bishopric of Bamberg: Thietmar of Merseburg, *Chronicon*, ed. Robert Holtzmann, Monumenta Germaniae Historica, Scriptores rerum Germanicarum, n.s. 9 (Berlin, 1935), 6.30–32, pp. 310–14.

center to a fortress with nothing more than a temporary garrison, and *regnum* could designate a kingdom, a duchy or Heaven itself, any effort at a more refined political thought faced formidable obstacles.[24] Still, in their efforts 'to justify and control the exercise of power' (Le Goff) and especially to define the power of kings (the model for all other kinds of rulership), the Ottonian learned elite did not turn solely to the heritage of antique political vocabulary, they also exploited symbolic modes of communication, namely the gestures, rituals and images that were a ubiquitous feature of this 'pre-Gregorian world' (Reuter).[25]

Common to all forms of symbolic communication, whether medieval or modern, is an inherent tendency toward multivalency, which is to say that a symbol has the capacity to convey more than one message at the same time. As a modern writer and critic has put it, a symbol is 'always in general' and permits 'no word-for-word translation'.[26] Multivalency clearly did not prevent Ottonian clerics from engaging in a vigorous symbolic discourse focused on the office of king and, indeed, they may have appreciated the advantage it offered in allowing related ideas to be layered one upon another and synthesized.[27] The extensive and much studied body of Ottonian *Staatssymbolik* testifies both to the success of that discourse and to its inherent potential for ambiguity. Still, as modern scholars have discovered, even a pre-eminently royal symbol, such as a crown, had the potential to say many different things.[28] Contemporaries could find symbols confusing as well. Thus, when Thietmar of Merseburg reported that Henry II had been escorted to his imperial coronation by twelve Roman 'senators', six shaved and six with full beards, all he could say was the escort's appearance represented 'some mysterious custom'.[29] Overall, one might argue that the significance attached to Ottonian *Staatsymbolik* owes a great deal to modern preoccupations with the origins of the state, a matter of long-standing concern, in particular, within the context of modern German historiography.[30] It may also reflect the general sense that the symbolic aspects of rulership served as agents

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24. Warner, 'Saints and Politics', p. 8.

25. On the exemplary character of the royal office, see Jacques Le Goff, 'Le Roi dans l'occident médiéval: caracteres originaux', in Anne J. Duggan, ed., *Kings and Kingship in Medieval Europe* (London, 1993), pp. 1–40 at 8–12. The defining characteristics of the 'Pre-Gregorian World' are noted by Timothy Reuter, 'Pre-Gregorian Mentalities', *The Journal of Ecclesiastical History* 45 (1994), 465–74 at 470.

26. Albert Camus, *Le mythe de Sisyphe: essai sur l'absurde* (Paris, 1942), p. 171.

27. Here, by analogy with the explication of scripture. See David d'Avray, 'Symbolism and Medieval Religious Thought', in Linehan and Nelson, *The Medieval World*, pp. 267–78 at 268–9.

28. See, for example, the discussion of the crowned figures in the Aachen gospels in Johannes Fried, *Otto III. und Boleslav Chrobry: Das Widmungsbild des Aachener Evangeliars, der 'Akt von Gnesen' und das frühe polnische und ungarische Königtum*, Frankfurter Historische Abhandlungen, 30 (Stuttgart, 1989), pp. 39–68.

29. Thietmar, *Chronicon*, 7.1, p. 396.

30. See the discussion in Harry Liebersohn, 'German Historical Writing from Ranke to Weber: The Primacy of Politics', in Lloyd Kramer and Sarah Maza, eds, *A Companion to Western Historical Thought* (Oxford, 2002), pp. 166–84 at 167; Hans-Werner Goetz, *Moderne Mediavistik: Stand und Perspektiven der Mittelalterforschung* (Darmstadt, 1999), pp. 180–85.

of political unity, compensating thereby for the formal institutions so obviously lacking in early medieval polities.[31]

It appears that these concerns have been transferred to the saints. If crowns, coronation rituals, and images of kings in majesty could promote political unity, is there any reason to think that saints could not do the same, especially as they already performed that service for other types of communities?[32] In fact, the issue may be more complicated than the question suggests. The veneration of saints 'lay at the core of the practice of medieval Christianity' (Head), and the Ottonian clergy, like their counterparts throughout the Middle Ages, were constantly exposed to its literary and ritual traditions.[33] They would probably have known the *vitae* of some saints by heart, and would certainly have possessed a basic familiarity with a broad range of hagiographic motifs and *topoi*. They could also draw on a well-established tradition of incorporating political themes into hagiographic literature and treating encounters between saints and rulers, in effect, as commentaries on rulership itself.[34]

Thus the Saxon chronicler Widukind of Corvey (fl. 940–73) turned to St Vitus in attempting to explain the apparent shift in political predominance from the Western Franks and their Carolingian ruling house to Saxony and the Ottonians, the former ducal lineage now become a line of kings and emperors.[35] Rather than associating this event exclusively with the election of the first Ottonian king (919), Widukind argued that it began much earlier, in 836, with the translation of Vitus's relics from the west Frankish monastery of St. Denis to his own monastery of Corvey. Widukind described a meeting between the first Ottonian ruler, King Henry I (919–36), and an envoy of the West Frankish king, Charles 'the Simple' (898–923, +929). The envoy presents Henry with a relic, the hand of St Denis, and remarks that it is the last consolation remaining to the Franks since St Vitus left them. Then, expounding upon the effects of the second event rather than of the first, Widukind had the envoy remark that the translation of Vitus's relics had brought perpetual peace to the Saxons, who now possessed them, while the Franks had endured warfare and civil disorder. In another edition of his history, Widukind added a supplement to his account in which he claimed that the translation of St Vitus had inaugurated the decline of the Franks, the rise of the Saxons, and the establishment of a great empire under Otto I. Once servile and tributary, *Saxonia* had become not only free, but a 'mistress of many people'. Widukind's intentions in his chronicle revolved around the twin focal points of his *gens* and the deeds of the Ottonian house, and in his initial chapter he declared

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31. Philippe Buc, 'Political Ritual: Medieval and Modern Interpretations', in Hans-Werner Goetz, ed., *Die Aktualität des Mittelalters* (Bochum, 2000), pp. 255–72 at 262, 264.

32. The current state of scholarship on this topic is surveyed by Jan-Marco Sawilla, 'Heiligenverehrung und Politik im Spiegel aktueller Forschungsinteressen', in Goetz, *Moderne Mediävistik*, pp. 218–24.

33. Thomas Head, 'Introduction', in Thomas Head, ed., *Medieval Hagiography: An Anthology* (New York, 2000), xiii–xxxviii at xiv, and Warner, 'Saints and Politics in Ottonian Germany', pp. 11–12.

34. On the following, see Warner, 'Saints and Politics', pp. 12–13.

35. Widukind, *Rerum gestarum Saxonicarum libri tres*, eds Hans-Eberhard Lohmann and Paul Hirsch, Monumenta Germaniae Historica, Scriptores rerum Germanicarum, 60, 5th edn (Hanover, 1935), 1.33–4, pp. 45–8.

and justified his turning from the deeds of the saints to those of the leading men of the Saxons.[36] He was no stranger to the genre of hagiography, however, and his remarks regarding Vitus lay firmly within its boundaries.[37] Appropriately enough, the subsequent chapter provides an abbreviated account of the saint's *vita*, detailing his sufferings and death at Rome under Diocletian, and the subsequent discovery and translation of his relics to St Denis.[38]

Although Widukind's claims were unique, as he formulated them, they clearly had roots in hagiographic motifs associated with the translation of relics, an event typically accompanied by demonstrations of divine favor for the relics' new residence, and by some suggestion of negative implications for the community that surrendered or lost them.[39] He could also have found inspiration within the existing hagiographic tradition at Corvey, specifically, in an anonymous, near contemporary account of Vitus's translation that appears to associate the beneficial effects of that event not just with the monastery itself, but also with the homeland and people of the Saxons.[40] Hagiographic literature produced at other Saxon religious communities for other saints provides analogues for Widukind's claims. At Hildesheim, for example, a report of the translation of St Epiphanius (962) characterized this saint as the duchy's defender who surpassed all other patrons venerated in Saxony.[41] At the Saxon convent of Essen, a sermon for the feast of St Marsus, whose relics arrived there in 864, invited *Saxonia* to rejoice that it had such a patron.[42] Nor was there any lack among Widukind's contemporaries of attempts to associate the success of the Ottonian dynasty with one or another church's saint.[43] Behind such claims one can detect the same partisan spirit that has led one modern expert to define hagiography as 'a species of conscious propaganda literature'.[44] Indeed, Widukind hoped that his community of Corvey would derive concrete benefits from Vitus's heightened importance. He suggested that princess Mathilda, the abbess of Quedlinburg to whom he dedicated the work, should act as the monastery's advocate with her

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36. Widukind, *Rerum gestarum Saxonicarum*, 1.1, p. 4.

37. A twelfth-century source notes that Widukind compiled poetic lives of Thecla the Virgin and Paul the Hermit. See Helmut Beumann, *Widukind von Korvei: Untersuchungen zur Geschichtsschreibung und Ideengeschichte des 10. Jahrhunderts* (Weimar, 1950), p. 2.

38. Widukind, *Rerum gestarum Saxonicarum*, 1.34, p. 48.

39. Martin Heinzelmann, *Translationsberichte und andere Quellen des Reliquienkultes*, Typologie des Sources du Moyen Age Occidental, 33 (Brepols, 1979), pp. 63–6.

40. Irene (Schmale-)Ott, ed., *Translatio sancti Viti*. Fontes minores, 1 (Münster, 1979), for example pp. 46–8, 58–60. On the date of the text, see pp. 1–9.

41. Georg Pertz, ed., *Translatio Epiphanii*, Monumenta Germaniae Historica, Scriptores, 4 (Hanover, 1841), pp. 248–51 at 249.

42. *Sermo in festivitate Marsi*, in Klemens Honselmann, 'Eine essener Predigt zum Feste des hl. Marsus aus dem 9. Jahrhundert', *Westfälische Zeitschrift* 110 (1960), 199–212 at 212.

43. See, for example, Thietmar, *Chronicon*, in note 46 below.

44. Frantisek Graus, *Volk, Herrscher und Heiliger im Reich der Merowinger: Studien zur Hagiographie der Merowingerzeit* (Prague, 1965), p. 442. On the pragmatic intentions of hagiographic literature, see also Anne-Marie Helvétius, 'Les saints et l'histoire: L'apport de l'hagiology à la médiévistique d'aujourd'hui', in Goetz, *Die Aktualität des Mittelalters*, pp. 135–64 at 150–54.

father Otto I and brother Otto II. In return, she would have a saintly intercessor with God.[45] Apparently, Widukind's intentions were not lost on his readers. Thietmar of Merseburg omitted any reference to Vitus in his version of the meeting between the kings, although he otherwise depended heavily on Widukind in constructing his narrative.[46] Presumably, Thietmar's reticence stemmed from his interest in emphasizing the Ottonian debt to St Lawrence, patron at Merseburg and, so he claimed, the saint responsible for Otto I's victory at the Lechfeld.[47]

If one must concede that Widukind's enthusiasm for St Vitus owes a great deal to his corporate patriotism, one should still give him credit for employing hagiographic motifs to address broader themes in medieval historical and political thought, namely the rise and fall of kingdoms and peoples and the transfer of governing power.[48] Ottonian rulers found saints equally useful, including them among the symbolic and ritual elements through which they demonstrated the character of their office, and even according some a higher profile than others.[49] What ought modern researchers to make of this? First, we should be careful to draw a clear distinction between the theory of rulership and its actual practice. Whereas the former tended to emphasize the divine origins of the monarch's authority and the resulting obligation of mortals to obedience, the latter had a far more pragmatic character. The Ottonian *Reich* functioned as a 'political collective in which the ruler played an important part, but not the only part'.[50] Statecraft depended less on a divine right to command than on a continuous process of negotiation, persuasion, and outright bribery with patronage – in the form of gifts, privileges and marks of honour – as the lubricant. In the aristocratic society of Ottonian Germany, honour in particular had a palpable quality, and religious corporations pursued it as eagerly as individual aristocrats and their lineages. To the extent that a monarch's veneration of the saints conferred honour on churches or monasteries associated with them, it too could figure as an aspect of royal patronage. From this perspective, however, one might argue that neither piety nor pragmatism would seem to have offered any compelling reason to assign an exclusive role as patron to one particular saint. Similarly, given the competitive nature of relations between ecclesiastical corporations, one might suggest that the likelihood of any one community's saint acquiring widespread recognition as patron of the *Reich*, or some portion of it, would likely have been limited by the strength of his or her association with a specific community.

As commonly formulated, the concept of the political patron saint also raises methodological difficulties similar to those associated with the interpretation of

45. Widukind, *Rerum gestarum Saxonicarum*, 1.34, p. 48.

46. Thietmar, *Chronicon*, 4.70, pp. 210–12.

47. Ibid., 2.10, pp. 48–9.

48. Werner Goez, *Translatio Imperii: Ein Beitrag zur Geschichte des Geschichtsdenkens und der politischen Theorien im Mittelalter und in der frühen Neuzeit* (Tübingen, 1958), esp. pp. 5–17.

49. Aside from Maurice, Vitus and Lawrence, the patrons of the Ottonian dynasty are said to have included the Virgin Mary. For example, see Ernst-Dieter Hehl, 'Maria und das ottonisch-salische Königtum. Urkunden, Liturgie, Bilder', *Historisches Jahrbuch* 117 (1997), 271–310, esp. 273–94.

50. Timothy Reuter*, Germany in the Early Middle Ages* (London, 1991), p. 191.

rituals. Like rituals, saints had the capacity to express a variety of different messages, depending upon which of their attributes an audience chose to recognize and respond to, or alternatively, upon the audience's inclination to add new attributes. St Denis, the pre-eminent political saint of France, for example, began his career as the martyr-bishop of Paris, was then identified as a student of St Peter, and finally equated with Dionysius the Areopagite.[51] In the middle of the eleventh century, the monks of St Emmeram in Regensburg added yet another attribute when they publicly asserted that Denis's relics no longer resided in the saint's eponymous church outside Paris, but rather in their own monastic church.[52] The monastery's claims played out against the background of their ongoing effort, bolstered in part by forged documents, to assert their status as a royal monastery and hence their independence of the bishops of Regensburg. Attempts to address the issue by asserting the royal status of St Emmeram himself had already been undertaken by the monastery's provost, Arnold (+1050), and perhaps by the anonymous artist who depicted the saint supporting Henry II's arm in the dedication portrait of the *Regensburg Sacramentary*.[53] A ruler could have expressed veneration for St Denis at any number of churches throughout Latin Christendom, but his behaviour would have had a more specific and different impact if he did so, respectively, before an audience at Paris or Regensburg. Nevertheless, even to speak of an 'audience' for a ruler's encounter with a saint is somewhat misleading since we, as modern observers, have access to such moments only through their literary afterlife, which is to say through the memories, imagination, and interpretations of clerical writers who recorded them for posterity.[54] In effect, our 'audience' chiefly consists of writers such as Widukind and the anonymous author of the two *inventiones* of St Denis at Regensburg. It might also include artists who, exploiting the multivalent character of saints, could layer secondary messages of more particular intent beneath the general images of Christian rulership typical of Ottonian royal portraits. Under the circumstances, the question of whether or not a particular saint acted as patron of the Ottonian *Reich*, or of any other political entity, may be less significant than the question of who said so, and why.[55]

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51. Joachim Ehlers, 'Politik und Heiligenverehrung in Frankreich', in Petersohn, *Politik und Heiligenverehrung*, pp. 149–75 at 150–56; Gabrielle M. Spiegel, 'The Cult of Saint Denis and Capetian Kingship', in idem, *The Past as Text: The Theory and Practice of Medieval Historiography* (Baltimore, MD, 1997), pp. 138–62 at 139–46. This study previously appeared in the *Journal of Medieval History* 1 (1975), 43–69.

52. Christine Rädlinger-Prömper, *Sankt Emmeram in Regensburg: Struktur- und Funktionswandel eines bayerischen Klosters im früheren Mittelalter*, Thurn und Taxis-Studien, 16 (Kallmünz, 1987), pp. 203–8.

53. Munich, Bayerische Staatsbibliothek, Ms. clm 4456, fol. 11. For a more detailed discussion, see Warner, 'Saints and Politics', pp. 22–7.

54. On the problem of audience, though in a somewhat different context, see David A. Warner, 'Ritual and Memory in the Ottonian *Reich*: The Ceremony of Adventus', *Speculum* 76 (2001), 255–83 at 258–60.

55. Indeed, a recent study suggests that modern impressions of the political character of Ottonian *Königs-* or *Reichsheiliger* chiefly reflect the agendas of our key literary witnesses. See Mathias Becher,

St Maurice and His Cult

In light of what we have observed to this point, let us propose the following. Rather than thinking of the political character of saints in static terms, we should think in terms of an ongoing discussion to which various parties contributed, each augmenting or manipulating the identity of the saint to support an agenda or point of view. Such an approach could take cognizance of a saint's association with rulers and rulership, but would not exclude the possibility of subsidiary or competing messages. It is within such a discussion that we should situate St Maurice. Clearly, part of the discussion regarding Maurice involved the saint's association with the Ottonians, as an impressive trail of evidence would tend to suggest. One might cite, for example, the much reproduced ivory panel from the so-called 'Magdeburg Antependium' in which Maurice presents Emperor Otto I (holding a church) to an enthroned figure of Christ, as St Peter and the heavenly host look on.[56] In another equally familiar ivory panel, Maurice joins the Virgin Mary in interceding with Christ for the imperial family.[57] Perhaps the most dramatic evidence of Ottonian veneration for St Maurice occurred in 937, however, when Otto I established a monastery at Magdeburg because 'he desired to share in the patronage of the holy martyrs, Maurice, Innocent, and their companions', and have 'the services due them undertaken there'.[58] There is also no lack of evidence for Henry II's veneration of the saint. During one of his royal visits to Magdeburg (1004), for example, he is said to have translated some of Maurice's relics by personally carrying them to the cathedral through the snow-covered streets.[59] On another occasion, he issued a diploma for Archbishop Tagino of Magdeburg, a long-time associate and client of the Bavarian branch of the Ottonian house (the branch from which Henry himself descended), in which he both declared that Maurice had sustained him from childhood, and indicated his desire to enter the saint's service.[60] We might add that Maurice was sometimes associated with the Holy Lance, a symbol of Ottonian rulership that Henry II appears to grasp in the dedication portrait from the *Regensburg Sacramentary*.[61]

'Vitus von Corvey und Mauritius von Magdeburg: Zwei sächsische Heiligen in Konkurrenz', *Westfälische Zeitschrift* 147 (1997), 235–49, esp. 249.

56. New York, Metropolitan Museum, 41 100157. On this frequently reproduced image, see, for example, Percy Ernst Schramm, *Die deutschen Kaiser und Könige in Bildern ihrer Zeit*, ed. Florentine Mütherich (Munich, 1983), pp. 188–9, pl. 85, and idem, *Denkmale der deutschen Könige und Kaiser: Ein Beitrag zur Herrschergeschichte von Karl dem Großen bis Friedrich II.*, 2. vols (Munich, 1962), 1:141–2, pl. 68.

57. Milan, Castello Sforzesco, A.15. Schramm, *Die deutschen Kaiser und Könige*, p. 195, pl. 93; idem*, Denkmale der deutschen Könige und Kaiser*, pp. 144–5, pl. 75.

58. T. Sickel, ed., *Monumenta Germaniae Historica, Diplomata regum et imperatorum Germaniae 1: Conradii I., Heinrici I. et Ottonis I. diplomata* (Hanover, 1879–84, repr. Munich, 1980), no. 14.

59. Warner, 'Henry II at Magdeburg', pp. 144–5.

60. Harry Bresslau et al., eds, *Monumenta Germaniae Historica, Diplomata regum et imperatorum Germaniae 3: Heinrici II. et Arduini Diplomata* (Hanover, 1909), no. 111.

61. Weinfurter, *Heinrich II*, pp. 42–6.

However suggestive the evidence of Ottonian veneration for Maurice may appear, we should also recognize, as Ottonian clerics would have, that Maurice had a much longer history that transcended his association with the royal house. A cult centred on the site of his martyrdom had emerged in the fourth century, and in the fifth century had received a powerful impetus for growth with the establishment of a monastery there. Within the territory of what would become the Ottonian *Reich*, early evidence of the saint's cult is visible at the Carolingian royal monastery of Prüm, which received relics of the saint from Pepin III in 762.[62] Bavaria had an early centre of Maurice's cult at the monastery of Niederaltaich, founded in 741, and there is additional evidence linking the saint to Reichenau, Fulda and St Gall. In visual representations Maurice is consistently depicted as a martyr and warrior, and he also tends to appear among the saints invoked in the Carolingian *Laudes regiae*.[63]

Above all, however, Maurice's identity appears to have been firmly tied to his literary tradition. A *passio* was compiled in the fifth century by Eucherius of Lyon (d. 449), who, like Brun, was a member of his society's governing elite with a pronounced interest in asceticism.[64] According to Eucherius, St Maurice was martyred during the reign of the Emperor Diocletian, a time of persecution when the 'people of the martyrs were being mutilated or murdered throughout the provinces'.[65] Maximian, one of the emperor's colleagues, was leading an army over the Alps to persecute Christians in Gaul. His army included a Christian detachment commanded by Maurice, the so-called Theban Legion.[66] When Maurice and the Thebans realized the nature of their mission, they stopped midway through the Great St Bernard pass and refused to go any farther.[67] As a result, Maximian twice ordered that they suffer the penalty of decimation, the execution of every tenth legionary. When the Thebans continued to resist, Maximian had the remainder of the unit slaughtered to the last man.[68] Maurice's literary tradition also includes an alternative and equally popular version of the *passio*, the date of which remains subject to debate but may be nearly as old as Eucherius's text.[69] This version differs in two ways. First, it asserts

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62. Engelbert Mühlbacher, ed., *Monumenta Germaniae Historica, Diplomata Karolinorum 1: Pippini, Carlomanni, Caroli Magni diplomata* (Berlin, 1906), Diplomata Pippini III., no. 16.

63. Gude Suckale-Redlefsen, *Mauritius: Der heilige Mohr/The Black Saint* (Munich, 1986), pp. 18–36; Bernard Opfermann, *Die liturgischen Herrscherakklamation im Sacrum Imperium des Mittelalters* (Weimar, 1953), I, 2, 5, 7, 8, pp. 102, 107, 109, 111, 113; III, 1, 6, 7, 10, 13, pp. 125, 133, 139, 145.

64. Eucherius of Lyon, *Passio Acaunensium martyrum*, ed. Bruno Krusch, Monumenta Germaniae Historica, Scriptores rerum Merovingicarum, 3 (Hanover, 1896), pp. 20–41. On Eucherius, see S. Pricoco, 'Eucherius of Lyon', in *Encyclopedia of the Early Church*, 2 vols (New York, 1992), 1:295.

65. Eucherius, *Passio*, c.2, p. 33.

66. Ibid., c.3, p. 33.

67. Ibid., c.4, p. 34.

68. Ibid., c.10, p. 37.

69. A critical edition of the text has been published by Eric Chevalley, 'La Passion anonyme de Saint Maurice d'Agaune', *Vallesia* 45 (1990), 37–120. This replaces the older edition by Louis Dupraz, *Les passions de S. Maurice d'Agaune: essai sur l'historicité de la tradition et contribution a l'étude de l'armée pré-Dioclétienne (260–286) et des canonisations tardives de la fin du ive siécle*, Studia Friburgensia, n.s. 27 (Fribourg, 1961), III, 13*.

that Maximian's aim in crossing the Alps was to suppress a civil rebellion by the Bagaudae rather than to persecute Christians. Second, in this version the Thebans revolt because the entire army has been ordered to sacrifice to the pagan gods, and not because of the mission itself. Together, Eucherius and the anonymous version of the *passio* provided a constant reference point and inspiration for the large number of medieval writers who reworked or commented on Maurice's martyrdom. It is among these authors that we should place Brun and his letter.

Given the popularity of Maurice's cult and its long history, it might be useful and incur less risk of anachronism if we approached the narrower issue of the saint's political significance from a somewhat different perspective. Rather than proceeding deductively from the general principle of Maurice's significance for the Ottonians to an examination of specific references to the saint, it might better reflect the actual state of medieval piety, and for that matter, the practice of rulership, if we were to proceed inductively from the references themselves, with an eye to situating them within the larger debate to which we have already referred. With specific regard to Brun of Querfurt's letter, what I hope to suggest is that his argument rested on a more subtle and multivalent understanding of Maurice's significance. In other words, it was not so much a matter of invoking the saint's status within the heady world of Ottonian *Staatssymbolik*, but rather of applying to the problem of rulership existing motifs within his literary tradition. Apparently, this tradition inspired some readers, at least, to contemplate one of the more enduring issues in medieval political thought, namely the conflicted character of the Christian's dual loyalty to secular and spiritual authority. As we shall see, this was an issue of some relevance to Henry's war as well. Before discussing this theme any further, however, we will need to consider the concrete issue that inspired it.

The Polish War and Brun's Response

Henry II and the Liutizi forged their alliance in 1003 during the monarch's Easter celebrations at Quedlinburg. Although the details are unknown, it appears that the Liutizi agreed to render military support and that Henry agreed to forgo any efforts at converting them to Christianity.[70] In each respect, the pact departed from the policies of Henry's predecessors who had campaigned vigorously to subject the Slavs to German overlordship and impose upon them the institutions of the Church.[71] For all intents and purposes, the great Slavic uprising of 983 had brought this traditional strategy to an end, though without creating a stable frontier.[72] Henry's pact with the Liutizi also transformed the monarchy's long-standing and relatively amicable

70. Wolfgang Brüske, *Untersuchungen zur Geschichte des Lutizenbundes: Deutsch-wendische Beziehungen des 10–12. Jahrhunderts*, Mitteldeutsche Forschungen, 3 (Münster, 1955), p. 58.

71. Gerd Althoff, 'Saxony and the Elbe Slavs in the Tenth Century', in Timothy Reuter, ed., *New Cambridge Medieval History*, Vol. 3 (Cambridge, 1995), pp. 267–92.

72. Brüske, *Untersuchungen*, pp. 39–45.

relationship with the Polish ducal house, the Piasts.[73] Boleslav's predecessor, Miesco I (*c.*960–92), had supported Ottonian military campaigns and paid tribute for at least some of his territories. In 966 he converted to Christianity, and in 991 placed his lands under the formal suzerainty of the pope, thereby setting the stage, among other things, for the creation of an independent Polish Church.[74] Co-operation between the Piasts and the Ottonians reached a high point in the year 1000 at Gniezno, where Emperor Otto III and Boleslav Chrobry presided together over the foundation of the first Polish archbishopric. This event substantially elevated the duke's status, and the emperor may have even granted him the title of king (though this point is hotly debated).[75] During these same years the Piasts went about the business of state formation: they used their ducal rights to demand revenue and services from their subjects, and they expanded their territory.[76] The latter activity, in particular, incited the enmity of their neighbours, the Liutizi. In summary, Ottonians and Piasts were allies during the reign of Otto III, as together they confronted their mutual enemy, the Liutizi. With Otto III's death and the succession of Henry II, this *amicitia* quickly dissolved. Perhaps the change reflected the traditional pattern of alliances and enmities of the Bavarian ducal house from which Henry descended.[77] Thietmar, our chief witness, thought it was precipitated by a misunderstanding, namely that Boleslav wrongly attributed to the king the responsibility for an ambush.[78] In any case, the result was the same – a state of hostility that endured, with brief interruptions, for some fifteen years (1004–19).

There is evidence to suggest that Henry's war against the Poles was unpopular, at least among the clergy of eastern Saxony. Thietmar, who had no love for Boleslav Chrobry, but even less for the Liutizi, complained that the latter '… once our servants, now free because of our wickedness, came with their gods for the purpose of supporting the king'. He advised his readers to avoid both their society and their cult.[79] He also made veiled references to unequal leaders and dissimilar bands when

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73. In general, see Jerzy Strzelczyk, 'Bohemia and Poland: Two Examples of Successful Slavonic State-Formation', in Timothy Reuter, ed., *New Cambridge Medieval History*, Vol. 3 (Cambridge, 1995), pp. 514–35 at 524; Christian Lübke, 'Ottonen und Slaven', in Cornelia Kessler, ed., *Auf den Spuren der Ottonen*, Beiträge zur Regional- und Landeskultur Sachsens-Anhalts, 13 (Halle, 1999), pp. 25–36 at 29–34; Knut Görich, 'Eine Wende im Osten: Heinrich II. und Boleslaw Chrobry', in Bernd Schneidmüller and Stefan Weinfurter, eds, *Otto III. und Heinrich II.: Eine Wende*, Mittelalter-Forschungen, 1 (Sigmaringen, 1997), pp. 95–169 at 101–4.

74. Charlotte Warnke, 'Ursachen und Voraussetzungen der Schenkung Polens an den Heiligen Petrus', in Klaus-Detlev Grothusen and Klaus Zernack, eds, *Europa Slavica – Europa Orientalis*, *Festschrift für Herbert Ludat zum 70. Geburtstag* (Berlin, 1980), pp. 127–77.

75. See, János Bak, 'Some Recent Thoughts of Historians about Central Europe in 1000 A.D.', *Hortus Artium Medievalium* 6 (2000), 65–71 at 66–8; Reuter, *Germany*, p. 259.

76. In addition to Strzelczyk (se note 73 above), see also Paul Knoll, 'Economic and Political Institutions on the Polish-German Frontier in the Middle Ages: Action, Reaction, Interaction', in Robert Bartlett and Angus Mackay, eds, *Medieval Frontier Societies* (Oxford, 1989), pp. 151–74 at 154–5.

77. Görich, 'Eine Wende im Osten', pp. 99–112.

78. Thietmar, *Chronicon*, 5.18, pp. 241–3.

79. Ibid., 6.25, p. 304.

describing a joint campaign of German and Liutizi troops.[80] An anecdote in which a German *miles* outraged the Liutizi by throwing a stone at one of their sacred images, thereby forcing Henry II to pay them compensation, may have been intended to make the same point.[81] The Quedlinburg Annalist makes no reference to Henry II's alliance with the Liutizi, but frequently remarks on his lack of military success against the Polish duke.[82] Still, whatever undercurrent of dissent may be represented in the works of Thietmar and the Annalist, it scarcely compares with Brun's more cogent and forceful critique. After complaining in the longer biography of Adalbert that the 'wild' Liutizi had rejected the yoke of Christianity (that is, in 983), he proceeded to list the 'many evils' associated with the reign of Otto II.[83] A disastrous attack on Duke Miesco I of Poland (which actually occurred under Otto I) had humbled the greatness of the Germans. With equally negative results, the monarch had ignored the bonds of Christian fraternity and turned his army on the 'Carolingian Franks'. Finally, defeat had laid low 'the purple flower of the homeland, the adornment of blond Germany' as Otto battled the 'naked Saracens' in Calabria. The venture was tainted from the start, so Brun concluded, because the monarch had his own interests in mind rather than those of the Church. Brun found the root cause of these misfortunes in the suppression of the diocese of Merseburg (981), an act by which Otto violated canon law and offended St Lawrence, Merseburg's patron saint. Brun's assessment of his own era suggests that he intended for the reader to draw a parallel between Otto II's misfortunes and those that presumably awaited an unrepentant Henry II:

> Alas, our wretched age! No king has the zeal to convert the pagan, as God orders from Heaven! O Christ, they love their honor, not your interest. Since [the time of] the holy and great emperor, Constantine, since Charles, the greatest example of piety, few receive the name and substance of glory, before God and men, of having converted pagans to Christ. And, alas, because of [our] sin, there is someone who persecutes the Christian, but almost no secular lord who compels the pagan to enter the church (cf. Luke 14: 23).

In the *Life of the Five Brothers*, Brun appeared to draw similar parallels between the reign of Otto II's son and successor, Otto III, and that of Henry II.[84] He argued, for example, that Otto III's plans to attack the city of Rome, an act of vengeance directed at the populace, would have meant waging an unjust war against God and St Peter. Once again, contemporary readers of Brun's text would have made the connection between Otto's unjust war and Henry's. His favourable assessment of Boleslav Chrobry and comments regarding the duke's contribution to missionary efforts among the Slavs might have made a similar, if contrasting, impression.

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80. Ibid., 6.26, p. 304.

81. Ibid., 7.64, p. 478.

82. For example, see Georg Pertz, ed., *Annales Quedlinburgensis*, Monumenta Germaniae Historica, Scriptores 3 (Hanover, 1839), pp. 22–90 at p. 79 (anno 1007).

83. Brun of Querfurt, *Vita Adalberti* (see note 13 above), c.10, pp. 9–10.

84. Brun of Querfurt, *Vita quinque fratrum* (see note 13 above), c. 9., pp. 48–9.

Finally, however, in an unmistakable reference to Henry II, he offered yet another negative assessment of his own era:

> After the emperor's [Otto III's] death, the Christian world turned against its own viscera and, as never before, boiled over with battles and rumors of battles, like the sea in a storm. All of this occurred because of our sins. Meanwhile, though all the pagans were living together in peace and attacking Christians with impunity, the Christian realms began to fight among themselves with unjust hatred in warfare at once savage and untiring.[85]

Behind Brun's criticism one may detect not only the spirit of Isidore's dictum that only kings who rule justly rule legitimately, but also, and more specifically, the influence of Augustine's definition of the just war, namely that a war was just if waged for a valid cause (restoring peace or justice, for example), and in the absence of greed or cruelty.[86] That criticism re-emerges, in a more developed form, in his letter to Henry II.

Brun's letter, a real *tour de force* of medieval persuasive techniques, begins by establishing personal rapport with the recipient, noting both Brun's concern for Henry's salvation and honour, and the ruler's concern for the former's health.[87] Evidence of Brun's previous success as a missionary is introduced, along with an example of a model ruler, the Prince of Kiev, whose co-operation had allowed him to successfully preach the faith among the Petchenegs and arrange a truce between them and the Kievans, their former enemies.[88] Protestations of loyalty to the emperor addressed the problem of Brun's close relationship with Boleslav Chrobry, presumably with the intention of mollifying Henry's suspicions.[89] In regard to the main issue, Henry's war, Brun follows more or less the same argument as in his other works. He emphasizes the shame of Christians persecuting brothers in the faith while maintaining friendly relations with the infidel, and he decried the sacrifice of Christian lives under demonic banners.[90] He notes the king's duty to bring the Liutizi back to the fold, by force if necessary, and raises the prospect of both heavenly and earthly rewards.[91] In Brun's view, Boleslav emerges as the victim of Henry II's

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85. For slightly different readings of this meaningful (but murky) passage, readers should consult Voigt, *Brun*, p. 398, and Thomas Matus, *The Mystery of Romuald and the Five Brothers: Stories from the Benedictines and Camaldolese* (Trabuco Canyon, CA, 1994), pp. 114–15.

86. On the influence of Isidore's dictum, see P.D. King, 'The Barbarian Kingdoms', in J.H. Burns, ed., *Cambridge History of Medieval Political Thought* (Cambridge, 1988), pp. 123–53 at 142; Eugen Ewig, 'Zum christlichen Königsgedanken im Frühmittelalter', in Theodor Meyer, ed., *Das Königtum: Seine geistigen und rechtlichen Grundlagen*, Vorträge und Forschungen, 3 (Sigmaringen, 1973), pp. 7–73 at 32. On Augustine, see works cited in note 2 above: Russell, *The Just War*, pp. 16–39; Philippe Contamine, 'Just War', *Encyclopedia of the Middle Ages*, 1:794; Cavanna, '*Bellum iustum*', *Lexikon des Mittelalters*, 1:1849–51, and also Philippe Contamine, *War in the Middle Ages*, trans. M. Jones (Oxford, 1984), pp. 263–5.

87. Brun of Querfurt, *Epistola* (see note 17 above), p. 97.

88. Ibid., pp. 98–9.

89. Ibid., p. 101.

90. Ibid., pp. 101, 102.

91. Ibid., p. 104.

cruelty and persecution, his innocence documented by the support of Peter, Adalbert, and the Five Brothers. With Boleslav's loyal support, in contrast, Henry would receive tribute 'and make of a pagan people a consecrated, most Christian one'. For our purposes, however, one of Brun's most compelling arguments emerges in a series of rhetorical questions:

> Is it good to persecute a Christian people and to ally with a pagan one? What agreement can there be between Christ and Belial? What comparison of light with darkness? How do the demon Zuarasiz and the leader of the saints, your and my Maurice, meet? On what front do the Holy Lance and the diabolical banners, nourished with human blood, advance together?[92]

Belial traditionally refers to Satan, and once the reader recognizes that Zuarasiz is one of the chief gods of the Liutizi, it becomes clear that Brun is proposing a relatively straightforward juxtaposition of a hierarchy of good (Christ, Maurice and the Holy Lance) and a hierarchy of evil (Satan, Zuarasiz and, presumably, the 'sacred' battle standards of the Liutizi). But there is no reason to stop here. Recent studies of the history of reading have emphasized the need to understand how a text was read as a precondition for understanding what it meant.[93] To understand what Brun was getting at in this passage, one needs to read it as he would have, which is to say, from the perspective of an individual thoroughly familiar with Christian scripture and predisposed to look for the deeper meaning of texts. This model reader of ours would have recognized the dichotomy between Christ and Belial and between light and darkness as an allusion to Paul's second letter to the Corinthians (6:14–15). Paul argues that Christians should not marry pagans because, after all:

> What fellowship can justice have with iniquity? What partnership can light have with darkness? What covenant has Christ with Belial? What part has a believer with an infidel?

Brun was certainly not the first to employ this allusion to Second Corinthians. In the fifth century, John Cassian used it to bolster his contention that an unclean soul could never acquire spiritual knowledge, no matter how hard it laboured at the reading of the scriptures.[94] Tertullian (*c.*160–*c.*225) employed it to condemn the service of Christians in the Roman army. There could be no agreement, he explained, between the divine and human sacrament, between the standard of Christ and the standard of the Devil, or between the camp of light and the camp of darkness.[95] St Jerome (*c.*342– 420), wrestling with the issue of whether or not classical literature and Christianity

92. Ibid., pp. 101–2.

93. Robert Darnton, 'History of Reading', in P. Burke, ed., *New Perspectives on Historical Writing,* 2nd edn (University Park, PA, 2001), pp. 157–86 at 158, 175. See also relevant comments in my forthcoming publication, 'Thietmar of Merseburg: The Image of the Ottonian Bishop'.

94. John Cassian, *Conférences*, ed. E. Eugene Pichery, 3 vols, Sources Chrétiennes, 42, 54, 64 (Paris, 1955–59), Vol. 2, c.14, p. 202.

95. Tertullian, *De idolatria*, Corpus Christianorum, 2 (Turnhout, 1954), 19.2, p. 1120.

were compatible, added a rejoinder to Paul's text: 'What has Horace to do with the Psalter? Virgil to do with the gospels? Cicero with the Apostle?'[96] Gregory of Tours (*c.*540–94) cites the case of a certain archdeacon who, having experienced the restoration of his sight at the tomb of St Martin, proceeded to consult with a Jew in the hope of improving upon the result. Instead, he was struck blind again. In this case, Paul's text drove home the point of the anecdote, namely that beneficiaries of divine miracles should not seek to improve on the results through recourse to secular medicine.[97]

If we move closer to Brun's own era, Atto of Vercelli (*c.*885–961) in his commentary on the Pauline text argues for a strict separation between Christians and the infidel. Just as justice, represented by the law, could have nothing to do with evil, the light of truth could not mix with the darkness of error, and Belial, the Devil, could have nothing to do with Christ, the light which expelled him from the hearts of the faithful.[98] A letter in an eleventh-century collection from Worms cites the passage from Second Corinthians in commenting on the gap between Christian and pagan knowledge. There might be no agreement between Christ and Belial or between the temple of the Lord and idols, but the 'words of the pagans were not false'.[99] Hence, in discoursing on the subject of friendship, the writer felt justified in citing not only the words of the evangelist John, but also those of Cicero. Around the same time, Lambert of Deutz employed the passage while expressing astonishment that two holy men, Archbishop Heribert of Cologne and Emperor Henry II, could disagree; he compared them to Paul and Barnabas in Acts 15. In contrast, lack of concord between the perverse and the just was not surprising, since there could be no agreement between Christ and Belial, and so on.[100]

However their intentions may have differed, each of the texts considered here employed an allusion to Second Corinthians to establish the incompatibility of two distinct patterns of life. Brun's use of the passage basically agreed with this tradition, but also reflected a more general and well-established practice of employing biblical exegesis as a vehicle for political commentary.[101] Some medieval rulers seem to

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96. Jerome, *Epistola ad Eustochium*, ed. Isidore Hilberg, Corpus Scriptorum Ecclesiasticorum Latinorum, 54 (Vienna 1910), ep. 22. c. 29, pp. 188–9.

97. Gregory of Tours, *Historiarum libri decem/Zehn Bücher Geschichte*, ed. and trans. Rudolf Buchner, 2 vols (Berlin, 1955), 5.6, pp. 290–92.

98. *Expositio in epistolas Pauli: In epistolam secundam ad Corinthios*, J.P. Migne, Patrologia Latina, 134:412–49 at 449–50.

99. Atto of Vercelli, *Die Ältere Wormser Briefsammlung*, ed. Walter Bulst, Monumenta Germaniae Historica, Die Briefe der deutschen Kaiserzeit, 3 (Weimar, 1949), no. 61, p. 103. See also Brian P. McGuire, 'Friendship and Scholarship in Medieval Germany', in Van Deusen, *Medieval Germany*, pp. 29–48 at 37.

100. Lambert of Deutz, *Vita Heriberti archiepiscopi Coloniensis*, Monumenta Germaniae Historica, Scriptores, 4 (Hanover, 1841), pp. 739–53 at c.11, p. 750.

101. For a useful discussion of political exegesis (albeit in a later era), see Philippe Buc, '*Principes gentium dominantur eorum*: Princely Power Between Legitimacy and Illegitimacy in Twelfth-Century Exegesis', in Thomas Bisson, ed., *Cultures of Power: Lordship, Status, and Process in Twelfth Century Europe* (Philadelphia, PA, 1995), pp. 310–28, esp. p. 318.

have taken an interest in biblical exegesis as well, and Henry II would be a likely candidate to include among them.[102] Originally headed for a career in the Church, he had studied in the cathedral school at Hildesheim, not far from Magdeburg, where he would have acquired at least a passing knowledge of rhetoric, grammar, theology and canon law.[103] Indeed, so accomplished was his mastery of Latin that he could dictate his own *diplomata* and play practical jokes on members of the clergy whose linguistic skills were of a distinctly lesser order.[104] He was said to have been an admirer of St Ambrose and was familiar with Gregory the Great's *Moralia*.[105] If one would hesitate to say that Henry II and Brun were intellectual kin, one at least might argue that the monarch would have gotten the sense of Brun's reference to Second Corinthians. Might we not make a similar assumption regarding the reference to St Maurice, especially if we take seriously a report that Henry was an avid reader of saints' lives?[106] What deeper sense might he have found? To answer this question, we will need to examine more closely the saint's literary tradition.

Maurice and the Thebans

Although the martyrdom of the Theban Legion is set in the third century during the age of persecution, Eucherius compiled it at a point when Christian anxiety regarding military service had mostly dissipated.[107] The army of the persecutors had become an army of the faithful, and the main problem was heretical or ungodly emperors, not pagan ones.[108] Correspondingly, the moral justification for disobedience, always an ambiguous topic for churchmen, now appeared even less clear-cut.[109] Augustine, who was Eucherius's contemporary, preferred to absolve soldiers of any blame

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102. For example, see Mayke de Jong, 'The Empire as *ecclesia*: Hrabanus Maurus and Biblical *historia* for Rulers', in Ytzhak Hen and Matthew Innes, eds, *The Uses of the Past in the Early Middle Ages* (Cambridge, 2000), pp. 191–226 at 201, 206, 226.

103. Weinfurter, *Heinrich II*, pp. 25–6; Hartmut Hoffmann, *Mönchskönig und rex idota: Studien zur Kirchenpolitik Heinrichs II. und Konrads II.*, Monumenta Germaniae Historica, Studien und Texte, 8 (Hanover, 1993), pp. 117–20.

104. Hartmut Hoffmann, 'Eigendiktat in den Urkunden Ottos III. und Heinrichs II.', *Deutsches Archiv* 44 (1988), pp. 390–423 at 402–10; Reuter, *Germany*, p. 248.

105. See note 104 above.

106. 'Cum multis sit notum vos scientia disciplinaque artium diversarum preditum plurima perlegisse volumina sanctorum vitam patrum in se continentia, quorum exemplis vestra venerabilis conversatio bene potest informari et ad altiora transvehi …', *Vita Mathildis reginae posterior*/*Die Lebensbeschreibungen der Königin Mathilde*, ed. B. Schütte, Monumenta Germaniae Historica, Scriptores rerum Germanicarum, 66 (Hanover, 1994), Preface, p. 145.

107. See the still fundamental study by Adolf Harnack, *Militia Christi: The Christian Religion and the Military in the First Three Centuries*, trans. David M. Gracie (Philadelphia, PA, 1981). The original German edition is: idem, *Militia Christi: Die christliche Religion und der Soldatenstand in den ersten drei Jahrehunderten* (Tübingen, 1905).

108. R.A. Markus, 'The Latin Fathers', in J.H. Burns, ed., *Cambridge History of Medieval Political Thought* (Cambridge, 1988), pp. 92–122 at 94.

109. For example, see Warner, 'Saints and Politics', p. 12.

for their official acts rather than permit them the right to pass judgment on their commanders' orders, assuming that the latter did not violate divine law.[110] Eucherius addressed the issue by having Maurice and the Thebans draw parallels between baptism and initiation into the military, a relatively common technique in patristic literature.[111] By attacking their fellow believers, they would have violated their oath to God and, if an oath of this importance could be broken, then surely their oath to a mere emperor was worthless.[112] Thereafter, the argument continues in a somewhat different vein. The Thebans agree that violating a military oath might be a sacrilege, but counter this by asking whether it might also be sacrilege to kill innocent citizens, especially when there were more pressing matters at hand.[113] While Maximian attacked harmless Christians, the true enemies of the Empire, the barbarians, were allowed to wander unchecked.[114] Through Eucherius's subtle but significant sleight of hand the Thebans now died not only for their Christian faith, but also for daring to point out their ruler's immoral acts and ill-considered policies. Eucherius concluded that the Thebans were both good soldiers and good Christians who would have fulfilled both their spiritual and worldly duties under normal conditions.[115] Nevertheless, a particularly scrupulous reader might have been made uneasy by the fact that the martyrs announced their resistance well before the actual choice between God and Caesar was imminent (that is, while they were still traversing the Alps). To be sure, there is no firm evidence that readers had such a reaction. In the sixth century Venantius Fortunatus merely emphasized their passive acceptance of death and observed that it was 'sweeter to die for the name of Christ'.[116] Alcuin of York, reflecting the warrior ethos of the Carolingian age, spoke of a victorious battle won with the peace of God rather than weapons.[117] Still, the alternative version of the martyrdom seems to address the ambiguity of the situation by making the cause of death more immediate by associating it with a sacrifice to the pagan gods.[118]

There is evidence to suggest that both versions of the Theban legend had a certain currency within the Ottonian Church. Among the miniatures of a troper produced *c*.995 at Prüm (Paris, BN. lat. 9448) are three scenes from the martyrdom of the

110. See Russell, *Just War*, p. 22.

111. Charles Pietri, 'Le serment du soldat Chrétien: les épisodes de la *militia Christi* sur les sarcophages', *Mélanges d'Archéologie et d'Histoire* 74 (1962), pp. 649–64 at 650–51, 662.

112. Eucherius, *Passio*, c. 9, p. 36.

113. Ibid., c. 4, p. 34; c. 6, p. 34. Under Roman military law, refusal of orders was a capital offence and could also be construed as sacrilege because it involved the violation of an oath. See Clarence E. Brand, *Roman Military Law* (Austin, TX, 1968), pp. 91–3.

114. Eucherius, *Passio*, c. 15, p. 38.

115. Ibid., c. 2, p. 33.

116. Venantius Fortunatus, *De sanctis Agaunensibus*, ed. F. Leo, Monumenta Germaniae Historica, Auctores Antiquissimi, 4.1 (Berlin, 1881), pp. 42–3 at 42.

117. Alcuin of York, *Inscriptiones locorum sacrorum*, ed. Ernst Dümmler, Monumenta Germaniae Historiae, Poetae, 1 (Hanover, 1881), c. 9, p. 314.

118. Chevalley, *La Passion anonyme* (see note 69 above), p. 98.

Theban Legion that appear to follow Eucherius (fols 69v–70r).[119] The first miniature (fol. 69v) apparently depicts Maximian ordering a legionary to deliver his ultimatum to Maurice and the Thebans. The two miniatures on the page following (fol. 70r) depict the actual martyrdom. In the upper scene, one of the emperor's men addresses the Thebans. Two figures at the front of the group raise their right hands to indicate rejection of what is being said. The figure closest to the emperor's henchman is identified as Maurice. The lower scene depicts the death of the Thebans. Here, one of the emperor's men (l.) rests his foot on a pile of discarded weapons and prepares to strike one of the Thebans with his sword. The other martyrs, standing with bowed heads, offer their necks to the executioner. Approximately one hundred miles away from Prüm at the monastery of Werden, the alternative version of the martyrdom provided the theme for a mural in the *Westwerk* of the monastic church (*c.*943).[120] The mural (usually dated 943–1040) is located in the arch of the south altar niche in the structure's gallery. It consists of five scenes. The first portrays Maximian giving orders to a group of legionaries. The second depicts the carrying out of the sacrifice ordered by Maximian in the alternative version of the *passio*. A flaming altar, flanked by two figures representing pagan idols, sits at the approximate centre of the scene. Two groups of figures on the left and right margins react in different ways to the event. The figures on the right bow in an attitude of prayer or adoration and direct their attention toward the sacrifice. The figures on the left stand upright, with one at the front raising his left hand to signify his and the group's rejection of that ceremony. In the third scene, the aftermath of the martyrdom, six angels convey the souls of the martyred legionaries to heaven. The fourth scene relates the martyrdom of the veteran Victor, an incident following the martyrdom of the Thebans in both versions of the *Passio*. The fifth scene in the series is no longer extant. Since the painter chose to illustrate the sacrifice, the incident that most directly contributed to the martyrdom

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119. The manuscript and its miniatures have been studied most recently by Claudia Höhl, *Ottonische Buchmalerei in Prüm*, Europäische Hochschulschriften, Reihe 28, Kunstgeschichte, 252 (Frankfurt am Main, 1996). On the dating of the manuscript, see ibid., p. 51. See also Janet T. Marquardt-Cherry, *Illustrations of Troper Texts: The Painted Miniatures in the Pruem Troper-Gradual, Paris, Bibliothèque Nationale, fonds latin MS. 9448* (University of California Ph.D. dissertation, 1986), and idem, 'Ottonian Imperial Saints in the Prüm Troper', *Manuscripta* 33 (1989), 129–36.

120. The *Westwerk* is commonly referred to as the Church of St Peter. Although beginnings of the structure remain uncertain, construction was sufficiently complete in 943 for it to be consecrated. See Walter Stüwer, *Die Reichsabtei Werden an der Ruhr*, Das Erzbistum Köln, 3, Germania Sacra. n.s. 12 (Berlin, 1980), p. 18, and also Friedrich Oswald et al., *Vorromanische Kirchenbauten: Katalog der Denkmäler bis zum Ausgang der Ottonen*, Veröffentlichungen des Zentralinstituts für Kunstgeschichte, 3 (Munich, 1966), pp. 370–71. The mural is described in detail by Paul Clemen, *Die Romanische Monumentmalerei in den Rheinlanden*, Publikationen der Gesellschaft für rheinische Geschichtskunde, 32 (Düsseldorf, 1916), pp. 78–81, 84–5. Apparently the only reproduction of the complete series appears in another work by Clemen, 'Peintures murales du début de l'époque romane à l'église abbatiale de Werden', *Revue de l'art chrétien* 61 (1911), 55–6 at 56. As the cycle's state of preservation is poor, an idea of its content can best be obtained through Clemen's sketch. The sacrifice scene (2) has been frequently reproduced; for example, see A. Herzberg, *Der Heilige Mauritius*, Ill. 1, and Fritz Goldkuhle, 'Zum heutigen Bestand der Wandmalereien in der Peterskirche', in Walther Zimmermann, ed., *Die Kirchen zu Essen-Werden* (Essen, 1959), pp. 261–7 at Pl. 341, p. 262.

of the Thebans, he may well have devoted the fifth scene to the most direct cause of Victor's martyrdom, the revelation of his faith.

Both Prüm and Werden were royal monasteries, which means that a close empathetic relationship with the monarchy played an important role in their corporate identity.[121] Furthermore, each had experienced Henry II's presence in a particularly meaningful way. In the case of Prüm, the monarch had imposed reform, essentially by fiat, by appointing Immo of Gorze as abbot in 1003.[122] Given the currently accepted date of the troper, however, the inclusion of Maurice and his companions among the saints depicted could have nothing to do with Henry or his interest in monastic reform. As for Werden, Thietmar of Merseburg tells us that Henry II celebrated Pentecost there in 1017.[123] One would like to think that Henry viewed the celebration of this important feast from the second-floor balcony of the church's *Westwerk* and, at some point, had the opportunity to see the mural. The latter's uncertain date, of course, makes this questionable as well. One would like to assume at least that the communities at Prüm and Werden were attracted to the cult of St Maurice specifically because of their close association with the Ottonian monarchy. Here, again, given the popularity of the saint's cult and, in particular, the presence at Prüm of his relics, such a proposal must remain within the realm of speculation. I have cited the images from Prüm and Werden to suggest instead a simpler, but nonetheless equally significant conclusion, namely that the saint's literary tradition was familiar to communities in close proximity to the ruler. That tradition, as we have suggested, embodied an implicit commentary on the limits of secular authority by demonstrating clearly the point at which even a soldier sworn to obedience was justified in resisting a ruler's commands. Significantly, however, that resistance assumed the form of martyrdom, which did not call the foundations of rulership itself into question. That distinction, one might argue, would have had particular relevance for Ottonian churchmen who 'fought for Christ' under the leadership of anointed kings, but knew from practical experience that the latter's 'commands' might run contrary to the will of God and the interests of religion. That Ottonian churchmen really viewed the Theban martyrdom in this way is further suggested by the observation that their counterparts, in a somewhat later generation, did so as well.

By all accounts, the generations subsequent to Brun of Querfurt's lifetime witnessed a major shift in the tone and methods of political discourse and a heightening of its intensity. As Robert Benson put it in typically lapidary prose, '… as the papal reform movement and the Investiture Struggle fractured the traditional foundations of medieval government, thinkers of all persuasions began

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121. Werden numbered among the royal monasteries of the Carolingian and then of the Ottonian and Salian dynasties. On the foundation and early history, see Stüwer, *Die Reichsabtei Werden*, pp. 88–90; John W. Bernhardt, *Itinerant Kingship and Royal Monasteries in Early Medieval Germany c.936–1075* (Cambridge, 1993), pp. 102–16.

122. Bernhardt, *Itinerant Kingship*, pp. 121–2; Hartmut Hoffmann, *Mönchskönig und rex idiota* (see note 103 above), pp. 29, 36.

123. Thietmar, *Chronicon*, 7.56, p. 469.

to subject government itself to a new and intense scrutiny, to rational analysis and a thoroughgoing critique'.[124] In pursuit of this endeavour they employed new and formidable intellectual tools, the full corpus of Roman law and Gratian's *Decretum*, for example; but the old tools could be useful as well. Thus, between 1074 and 1078 the pro-imperial writer Sigebert of Gembloux (1030–1112) compiled a poetic version of the alternative *passio* of the Thebans in which the legionaries, faced with the demand for a pagan sacrifice, once again proclaimed their willingness to follow wherever the emperor might lead, conquering or dying with him, and refusing only to fight against the Christian faith.[125] Sigebert does not directly associate the Theban martyrdom with contemporary politics. Nevertheless, the text's implicit argument for the independence of secular authority accords with the opinion, expressed in his more obviously polemical works, that Gregory VII and his successors had usurped the material sword rightly exercised by the king alone.[126] One of Henry IV's sympathizers within the papal *curia*, Cardinal Beno (1058–98), cited the Theban martyrdom explicitly in contesting the pope's right to dissolve the bonds of fealty between emperor and realm. By choosing martyrdom rather than violent resistance, the Thebans had duly recognized both of their oaths, namely their military oath to the emperor and their spiritual oath to God.[127] Gregory VII, whose demands contradicted this principle, revealed himself as the servant of Antichrist or as Antichrist.[128]

From the standpoint of pro-imperial writers, any text that affirmed their essentially Gelasian vision of a secular power that ruled the *ecclesia* in consort with the priesthood, but exercised the material sword in its own right, would seem to have obvious attractions. But the martyrdom of the Thebans could resonate in other ways as well. For Honorius Augustodunensis (*c.*1070–*c.*1140), the limits it seemed to place on the secular authority represented the more telling point.[129] In his *Summa Gloria*, 'a veritable tirade in support of the reform' (Flint), in which he argued, among other things, that emperors should be elected by the pope and clergy, Honorius cited the Thebans' sacrifice to prove not the independence of the secular authority, but rather its dependence on the priesthood and papacy.[130] Although the *sacerdotium*

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124. Robert L. Benson, 'Political *Renovatio*: Two Models from Roman Antiquity', in Robert L. Benson and Giles Constable, eds, with Carol D. Lanham, *Renaissance and Renewal in the Twelfth Century* (Cambridge, MA, 1982), pp. 339–86 at 340.

125. Sigebert of Gembloux, *Passio sanctorum Thebeorum/Sigeberts von Gembloux Passio sanctae Luciae virginis und Passio sanctorum Thebeorum*, ed. Ernst Dümmler (Berlin, 1893), ll. 210–19, pp. 76–7. On the date of composition, see p. 8.

126. On Sigebert's views, see Ian S. Robinson, *Authority and Resistance in the Investiture Contest: The Polemical Literature of the Late Eleventh Century* (New York, 1978), pp. 175–9.

127. Benno, *Contra decretum Hildebrandi*, ed. Kuno Franke, Monumenta Germaniae Historica, Libelli de Lite, 2 (Hanover 1892), pp. 366–422 at 3.4, p. 383, and at 3.8, p. 390.

128. Ibid., p. 383.

129. On the issue of chronology and on all other questions regarding this author, see Valerie I.J. Flint, *Honorius Augustodunensis of Regensburg,* Authors of the Middle Ages, 6 (Aldershot, 1995), esp. pp. 1–16.

130. *Summa gloria* 24, in *Libelli Honorii Augustodunensis presbyteri et scholastici*, ed. I. Dietrich, Monumenta Germaniae Historica, Libelli de Lite, 3 (Hanover, 1897), pp. 63–80 at 74–5; Flint, *Honorius*

transcended by far the *regnum*, so he argued, for the sake of peace and concord, the evangelical and apostolic authority allowed that honour should be rendered to kings in secular matters, and only up to a point. That point, as Honorius saw it, was exemplified by the sacrifice of the Thebans who had aided their emperor in a just war against the enemies of the realm, but had refused to do so when compelled to fight against the Christian faith. As a concluding example, we might turn to Otto of Freising (*c.*1112–58), whose works, according to a recent assessment, represented 'a synthesis of the opposing doctrines of the Investiture Struggle'.[131] In his chronicle *The Two Cities*, Otto cited the martyrdom of the Theban legion as evidence of a more general principle: 'By this [the Thebans' martyrdom] we are reminded that we should be subject to kings in matters of law, but if they order anything against God and the salvation of our souls, we should know to declare, with Peter: "it is proper to obey God rather than men (Acts 5: 29)".'[132] Although half a millennium separates Otto and the authors of the various *Streitschriften* from Eucherius of Lyon and the author of the alternative version of the *passio*, each exhibits remarkable agreement regarding the fundamental principle at stake. In light of this, one might suggest that similar ideas would have occurred to the monks of Werden and Prüm had they, respectively, gazed at the then-bright mural in their *Westwerk* or examined the illuminations preserved in their precious troper. At this point, we might consider whether Henry II might have had a similar reaction to Brun's letter and also what implications that possibility might have for the prevailing view of St Maurice's political character.

Conclusion

It has not been the purpose of this essay to deny St Maurice the political character commonly ascribed to him in his capacity as patron and representative of the Ottonian monarchy, but rather to suggest that this character should be defined more flexibly and with due recognition of its essentially constructed nature. Rather than proceeding from the assumption that a saint's identity was static, we have imagined it as the product of an ongoing discussion involving a variety of participants, each with their own interests and agendas. Such an approach has the advantage of allowing for change and evolution in a saint's identity, but also takes account of a certain multivalent quality that saints shared with rituals and other forms of symbolic discourse. If saints, like symbols, could convey more than one message at the same time, it becomes unnecessary to presume that they conveyed only one message at any particular time. Nor must an association with rulers and rulership

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Augustodunensis, pp. 134–5 at 74.

131. Sverre Bagge, *Kings, Politics, and the Right Order of the World in German Historiography, c.950–1150*, Studies in the History of Christian Thought, 103 (Leiden, 2002), p. 364.

132. Otto of Freising, *Chronica sive historia de duabus civitatibus*, ed. Adolf Hofmeister, Monumenta Germaniae Historica, Scriptores rerum Germanicarum in usum scholarum, 45 (Hanover, 1912), 3.43, p. 176.

necessarily outweigh other elements of a saint's identity. If the former resonated more strongly for certain 'audiences' in certain contexts, one need not assume that it resonated in the same way and with equal strength for all audiences in every context. Placing Brun of Querfurt's reference to St Maurice within a more extensive, ongoing discussion regarding that saint's identity has also permitted us to associate it with a long-standing tradition, anchored in two influential texts, which viewed the Theban martyrdom as a commentary on the rights and limits of secular rulership. Brun's reference to Maurice would have triggered the memory of this tradition even as his allusion to Christ and Belial would have recalled the equally resonant text from Paul's second epistle to the Corinthians. Indeed, Brun belonged to a self-conscious literate elite that treated allusions to scripture and, as we have argued, allusions to saints as its stock in trade. Everything we know about Henry II's education and intellectual demeanor suggests that he would have shared this viewpoint and gotten the point. And it was quite an effective point. If Brun's allusion to Maurice can be tied to an enduring tradition of interpretation, it also gained a certain flavour from the specific situation at hand, namely Henry's conflict with Boleslav Chrobry, a struggle which violated both Augustine's and Brun's own definition of the just war. Specifically, it was a war in which a ruler appeared to imitate Maximian in persecuting innocent Christians whose loyalty in secular matters was unquestioned, and wherein the comfort given to pagans was manifest, irrespective of whether the reader's thoughts turned to Eucherius or the alternative *passio*.

Both the just war and relations with the infidel were issues that would fall within the purview of learned jurisprudence in later generations. It is probably pointless to argue that the essentially exegetical and symbolic discourse represented in the works of Brun of Querfurt could match that subtlety and precision of thought of which professional jurists were so clearly capable. And yet, the influence of the tradition to which Brun appealed seems to have retained its attractiveness. Long after the Middle Ages had ended, the great early modern jurist and compiler of a classic study of the laws of war and peace, Hugo Grotius, turned his attention to the question of whether or not soldiers had the right to refuse a command they deemed unjust. As an appropriate tool for analysing the problem, he turned to a very old exemplar, the martyrdom of St Maurice and the Theban Legion.[133] His conclusion was one with which Brun of Querfurt would most certainly have agreed: resistance cannot justly be made to those who hold sovereign power, but those who resist the ruler's unjust commands by not resisting, as the Thebans did, are declared by Christ truly to have gained their lives, rather than to have lost them.

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133. Hugo Grotius, *De jure belli ac pacis libri tres*, 2nd edn (Amsterdam, 1631), 1. 4, pp. 83–4.

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Henry VI, Heresy and the Extension of Imperial Power in Italy

Peter D. Diehl

Emperor Henry VI's reign, though fairly short, had tremendous consequences for both the empire and the papacy. Henry succeeded Frederick Barbarossa in 1190 and died at the age of 32 in 1197, triggering a disputed succession to the imperial throne. He dedicated much of his reign to rebuilding imperial strength in northern and central Italy and to making good a claim to the kingdom of Sicily through his wife.[1] Henry's Italian ambitions inevitably brought him into conflict with Pope Celestine III. Emperor and pope skirmished over a wide range of issues, including the disposition of the Matildine lands and Henry's encroachments into the Patrimony of St Peter. Neither party wanted a schism, and their contention might be better described as a cold war than a hot one.[2] Both parties made use of propaganda to improve their positions and to put pressure on each other. In early 1195 Henry announced his intention to lead a crusade to the Holy Land.[3] Historians disagree about Henry's motives, some seeing this proclamation as an attempt to put pressure on Celestine, others as a threat to the Byzantine Empire, and still others as the expression of a sincere desire to liberate the Holy Land.[4] It seems quite possible that the measure could have served more than one of these purposes at the same time. Historians have also been puzzled by a letter of 15 May 1196 from Henry to the pope.[5] In this message Henry emphasized his desire to prosecute the crusade and also to work with the pope to extirpate heresy throughout the world. While Catholic monarchs in the

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1. Brian A. Pavlac, 'Emperor Henry VI (1191–1197) and the Papacy: Similarities with Innocent III's Temporal Policies', in John C. Moore, ed., *Pope Innocent III and His World* (Aldershot, 1999), pp. 255–69, provides a useful overview of Henry's policies in Italy. See also Peter Csendes, *Heinrich VI.* (Darmstadt, 1993), and the still useful Theodor Toeche, *Heinrich VI.*, Jahrbücher der deutschen Geschichte 18 (Leipzig, 1867).

2. A war not without acts of outright hostility; as Pavlic, 'Emperor Henry VI', p. 262, notes: 'Pope Celestine was at least tacitly supportive of a murder plot against Henry …'.

3. Hans Eberhard Mayer, *The Crusades*, 2nd edn, trans. John Gillingham (Oxford, 1988), pp. 149–50.

4. Pavlic, 'Emperor Henry VI', pp. 259–60 and nn. 18–21, provides a convenient overview of the various schools of thought. One may note that Henry's father Frederick had evidenced a strong commitment to crusading and had participated in both the Second and Third Crusades.

5. *Monumenta Germaniae Historica, Constitutiones et acta publica imperatorum et regum,* ed. Ludwig Weiland (Hanover, 1893), 1.519, no. 370 (hereafter *MGH Constitutiones*).

Middle Ages traditionally stressed their role as defenders of religious orthodoxy, historians have generally regarded the mention of heresy in Henry's letter as a minor point, and the prosecution of heresy as being of no real interest to him.[6] This study will argue, on the contrary, that Henry made use of the issue of heresy also to enhance his political power in Italy, and that his opposition to heresy may have benefited him in his propaganda contest with the papacy and at the same time may have fulfilled a spiritual need.

In order to understand how Henry would treat the issue of heresy in the mid-1190s, it would be useful to examine the political situation in Italy during the last years of Frederick Barbarossa's reign. Frederick's relations with the papacy remained difficult even after he made peace with Pope Alexander III in 1177. A number of issues were not resolved.[7] Both parties asserted claims on the lands of Matilda of Tuscany, claims that neither would relinquish without a struggle. In addition, Frederick desired that ordinations conferred by schismatic bishops in Germany between 1159 and 1177 be considered valid, a point that Alexander and his successors were reluctant to yield. By the early 1180s, Frederick had also greatly improved his standing in Italy from its low point after his defeat by the Lombard League at Legnano. Meanwhile, the pope's political position grew increasingly precarious. The Peace of Constance in 1183, which definitively ended Frederick's struggle with the cities of the Lombard League, gave the emperor a secure position in Italian affairs, though not as dominant as the one he had enjoyed in the 1160s. On the other hand, Alexander III and his successor, Lucius III, now depended largely on Frederick's military support to maintain themselves in Rome against the wishes of the Romans. After the death of the emperor's lieutenant, Christian of Mainz, in August 1183, Lucius III found his situation in Rome untenable and was forced to withdraw to northern Italy.[8]

The pope appealed to the emperor for assistance. Frederick replied by offering help in the Patrimony and a guarantee of fixed revenues from the Matildine lands, if Lucius yielded possession of the latter to him.[9] Indeed, Frederick's troops already occupied the Matildine lands. Ultimately, Frederick and Lucius III met at Verona

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6. Pavlic, 'Emperor Henry VI', p. 264, regards the mention of heresy as a 'distraction'. He cites Richard Kieckhefer, *Repression of Heresy in Medieval Germany* (Philadelphia, PA, 1979), p. 17, to suggest that the repression of heresy was not of great interest to Henry. Johannes Haller, 'Heinrich VI. und die römische Kirche', *Mitteilungen des Instituts für österreichische Geschichtsforschung* 35 (1914), 385–454, 545–669, reprinted in *Heinrich VI. und die römische Kirche* (Darmstadt, 1962), pp. 134–5 (following the pagination in the reprint), all but ignores the issue of heresy in his discussion of the letter. Gerhard Baaken, 'Die Verhandlungen zwischen Kaiser Heinrich VI. und Papst Coelestin III. in den Jahren 1195–97', *Deutsches Archiv* 27 (1971), 457–513 at 497–8, discusses the letter but omits consideration of heresy. More recent scholarship has likewise not credited Henry with any anti-heretical activity. For example, Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, 2nd edn (Oxford, 1992) never mentions Henry.

7. I.S. Robinson, *The Papacy 1073–1198: Continuity and Innovation* (Cambridge, 1990), pp. 497–503.

8. Daniel Waley, *The Papal State in the Thirteenth Century* (London, 1961), pp. 18–19.

9. Peter Munz, *Frederick Barbarossa: A Study in Medieval Politics* (Ithaca, NY, 1969), pp. 363–6; see also Robinson, *The Papacy*, p. 500.

in November 1184 to discuss these unresolved issues as well as the need for a new crusade to the Holy Land.[10] For the most part, this summit conference was a failure. Frederick and Lucius could come to no agreement on the Matildine lands or the status of ordinations performed by pro-imperial bishops during the recent schism. Frederick did not offer to help Lucius in his disputes with the Romans, and Lucius refused to crown Henry, Frederick's son and heir, as emperor while Frederick lived.

On two matters, however, the pope and emperor were able to agree, and these would have immense consequences for the 1190s. Lucius acquiesced in the betrothal of Henry to Constance, a daughter of King Roger II of Sicily. Henry would later claim the Sicilian throne in his wife's right after the death of her nephew, King William II, in 1189.[11] Secondly, Frederick and Lucius agreed to issue measures against the spread of heresy in Italy. The era of papal–imperial schism (1159–77) had seen the establishment of several heretical movements in Italy. The Cathars probably constituted the single largest heterodox group and seem to have been regarded as the greatest threat to orthodoxy, but several smaller groups also caused concern.[12] Lucius's decretal *Ad abolendam* was promulgated at the meeting, and it specifically anathematized 'the Cathars, Patarines, and those who falsely call themselves Humiliati or Poor Men of Lyons, Passagini, Josepini, and Arnaldistae'.[13] This decretal would help lay the groundwork for the use of inquisitorial procedure against heretics. It appears in canon law collections, most notably Gregory IX's official code, the *Liber extra* of 1234. Frederick also issued some sort of edict against heresy, most probably subjecting heretics to the ban of the empire.[14] The text of Frederick's measure does not survive, but I shall argue that the measure would be remembered a decade later as Henry VI was trying to consolidate his hold on central Italy.

The years immediately following the meeting at Verona saw little improvement in papal–imperial relations. Frederick and Lucius never met again, and they seem to have had no further negotiations of note before the pope's death in November 1185. From 1186 onward, Henry took over active leadership of imperial interests

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10. Peter Diehl, 'Ad abolendam (X 5.7.9) and Imperial Legislation against Heresy', *Bulletin of Medieval Canon Law*, n.s. 19 (1989), 1–11.

11. The most thorough recent study of this betrothal is Gerhardt Baaken, 'Unio regni ad imperium: Die Verhandlungen von Verona und die Eheabredung zwischen König Heinrich VI und Konstanze von Sizilien', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 52 (1972), 219–97.

12. On Catharism in Italy, see Malcolm Lambert, *The Cathars* (Oxford, 1998), pp. 37–9, 49–59.

13. X 5.7.9; the translation is from Edward Peters, *Heresy and Authority in Medieval Europe* (Philadelphia, PA, 1980), p. 171. The term 'Patarinus' was a synonym for Cathar by this date; see Christine Thouzellier, 'Patarins', in her *Hérésie et hérétiques* (Rome, 1969), pp. 205–21. On the Humiliati, see now Frances Andrews, *The Early Humiliati*, Cambridge Studies in Medieval Life and Thought, ser. 4, 43 (Cambridge, 1999). On the Poor Men of Lyons, or Waldensians, in Italy, see Malcolm Lambert, *Medieval Heresy*, pp. 63–5. The Passagini and Josepini were minor Italian sects of limited size and duration (Lambert, *Medieval Heresy*, p. 68). The 'Arnaldistae' were the alleged followers of Arnold of Brescia, by 1184 no longer an organized sect, and likely never were one; see Lambert, *Medieval Heresy*, p. 54, and Arsenio Frugoni, *Arnaldo da Brescia nelle fonti del secolo XII*, Istituto storico italiano per il medio evo, Studi storici 8-9 (Rome, 1954), pp. 175–91.

14. Diehl , 'Ad abolendam', pp. 5–7.

in Italy while his father withdrew to Germany to prepare for the Third Crusade.[15] Pope Lucius's successor, Urban III, came from a leading anti-imperialist family, the Crivelli of Milan. Urban refused to relinquish the office of archbishop of Milan after his election, and he thereby denied Frederick of the profits of the *regalia* that the emperor would have enjoyed while the see was vacant.[16] In January 1186 Frederick responded by holding Henry and Constance's wedding in Milan, but with Urban conspicuously absent. Immediately after this ceremony, the newlyweds were crowned as king and queen of Italy, but by the patriarch of Aquileia, and not, as was traditional, by the archbishop of Milan. Relations between pope and emperor further deteriorated to the point that imperial forces under Henry's command occupied the lands of the Patrimony, while other imperial troops kept the papal *curia* penned in Verona for much of the next year.[17] When Urban died in October 1187, he was on the point of excommunicating the emperor.[18]

Papal–imperial relations improved somewhat in the next few years, though a number of unresolved issues remained. Pope Gregory VIII devoted his brief pontificate (late October to early December 1187) to easing tensions with Frederick and Henry. Clement III, who succeeded him, improved the papal position primarily by reaching an agreement with the commune of Rome in 1188 that brought about the curia's return to the City after five years of exile. In April 1189, Clement also agreed to crown Henry VI as emperor, and Henry in return promised to yield to Clement all lands and cities he had occupied in the Patrimony.[19]

King William II of Sicily died unexpectedly in 1189 and left no offspring. Henry's wife Constance was one of two surviving members of the Hauteville dynasty, and Henry claimed the throne of Sicily in her right. The Sicilians favoured Tancred, Count of Lecce, an illegitimate grandson of Roger II. At their urging, Tancred was crowned in January 1190.[20] Clement III supported Tancred's claim, hoping thereby to stave off encirclement of the papal states by lands subject to Henry. Henry's response was complicated by his father's death in June 1190 while on the Third Crusade. Early in 1191, he mounted from Germany an expedition both to accompany him to Rome for his imperial coronation and to press his claim for the kingdom of Sicily. Clement III died before Henry's arrival in Rome. His successor, the 85-year-old Celestine III, put off his own consecration as pope as long as possible. He thereby also delayed Henry's coronation until 15 April 1191, and thus bought some time for Tancred to organize his defences.[21] Tancred subsequently repulsed Henry's advance, and the latter withdrew to Germany in late 1191.

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15. Waley, *The Papal State*, p. 23.

16. Robinson, *The Papacy*, p. 503.

17. Waley, *The Papal State*, p. 23.

18. Robinson, *The Papacy*, p. 504.

19. Waley, *The Papal State*, pp. 24–5.

20. John Matthew, *The Norman Kingdom of Sicily* (Cambridge, 1992), pp. 286–7.

21. Ibid., p. 287.

Celestine's delaying tactics early in the year set the tone for the remainder of his pontificate, at least as far as Henry was concerned. The pope continued to support Tancred in hope of preventing Henry from surrounding Rome and the Patrimony. Henry's fortunes improved when Richard I of England fell into the power of Duke Leopold of Austria while returning from the Third Crusade in 1193. Henry persuaded Leopold to yield Richard to him, and the emperor quickly collected a huge ransom from Richard's subjects.[22] Tancred died in early 1194, leaving a small child as his heir. Funded by Richard's ransom, Henry prepared a second expedition to Sicily later that year.

The story so far is a well-known one. Henry's motives in claiming the Sicilian inheritance of his wife are obvious enough, and the response of Popes Clement and Celestine require no deep analysis to understand. Historians find it more difficult to divine Henry's plans from 1194 onward, once he had secured the throne of Sicily. He certainly planned to go on crusade in the not-too-distant future, and he took a crusading vow in March 1195.[23] Some have argued that he also had ambitions to conquer Constantinople and reign as monarch of both the eastern and western empires. This study cannot add much to the debate about Henry's ultimate aspirations. Whatever he intended, however, he would require a high degree of control in central Italy to secure his communications and later to solidify his hold on his new domains to the south. In central Italy Henry made use of heresy as grounds to extend his power over several localities and to keep Celestine on the defensive.

In June 1194, Henry led his army south from Piacenza into Tuscany on his second expedition against the kingdom of Sicily.[24] An imperial legate, Bishop Henry of Worms, arrived in Prato, an important town in Tuscany. He sought to take control of the city for the emperor, and he used the extirpation of heresy as his pretext. On 23 June the legate issued a decree that described his actions on arrival: 'Coming to Prato … we caused the goods of the male and female Patarines dwelling there to be confiscated and had their houses pulled down and destroyed.'[25] Bishop Henry also proclaimed the ban of the empire on anybody who sheltered or assisted these heretics in any way. This provision may have recalled the edict issued by Frederick Barbarossa at Verona ten years earlier, since that edict also had subjected heretics and their supporters to the ban of the empire.[26] In addition, the provision could have

22. John Gillingham, *Richard I* (New Haven, CT, 1999), pp. 230–48. The ransom ultimately amounted to 150 000 marks, and Richard was required to acknowledge Henry's claim to Sicily and abandon his ties to Tancred.

23. Waley, *The Papal State*, p. 27; Mayer, *The Crusades*, pp. 149–50.

24. Csendes, *Heinrich VI.*, pp. 147–8; Toeche, *Heinrich VI.*, pp. 332–3. Henry's immediate goal was Pisa, where he and his troops would take ship for southern Italy.

25. The document describing this event was printed by G.B. Lami, *Lezioni di antichità toscane e spezialmente di Firenze*, 2 vols (Florence, 1766), 2.523–4. The passage quoted is on p. 523: 'Venientes Pratum … bona Paterinorum, et Paterinarum, ibi morantium fecimus publicari, et domos eorum fecimus subverti et destrui …'. Toeche, *Heinrich VI.*, p. 431, mentions this incident in passing, but without linking it to Henry's expedition to Sicily.

26. On the edict, see Diehl, 'Ad abolendam', pp. 6–7.

allowed for the punishment of politically inconvenient persons. Another clause of the legate's charter confirms the political purpose of his actions. He orders the commune not to offend the *praepositus* of Prato, 'that is, the chaplain of the Lord Emperor', and to honour the *praepositus* as befits faithful subjects of the emperor.[27] Heresy thus provided a rationale for imperial intervention in this particular commune at a time when Henry VI needed to secure his flanks for his move into the kingdom of Sicily.

Henry's second invasion met with little resistance, and he was crowned King of Sicily in Palermo on Christmas Day.[28] Soon after gaining control of Sicily, Henry VI intervened personally in the political affairs of another Italian city. In 1195 he visited Rimini, a city in the Romagna, and thus part of the Patrimony of St Peter, at least in theory. Henry viewed matters otherwise. He issued a charter in favour of the liberty of the local churches. In so doing, he all but claimed outright lordship over the city.[29] This document took into the emperor's protection all of the churches and monasteries of Rimini and its *contado*. Henry also forbade the *podestà* and commune from ordaining any laws that infringed on the status of the Church, and prohibited persons leasing land from churches from selling the land without permission from ecclesiastical authorities.[30] This charter established Henry as the champion of the interests of local churches, a role that must have had enormous propaganda value during his ongoing struggles with Pope Celestine.

One other clause of the charter merits our particular interest:

> We prescribe, moreover, that every *podestà*, count, or group of consuls of the city of Rimini should take an oath at the time of his entrance [into office] that heretics should be expelled and not received, and that those who shelter them should be punished according to the judgment of the bishop.[31]

Henry's public championing of orthodoxy in this statement is very significant. His rights as emperor to intervene in Rimini were questionable at best. The city had a

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27. Lami, *Lezioni di antichità toscane*, 2.524: 'Addicimus etiam ipsi Communi sub eadem poena [sc. ducentarum marcarum] ut Praepositum Pratensem, qui nunc, est, vel ad tempus ibi fuerit, Cappelanum videlicet D. Imperatoris, et suos fratres in nullo offendere debeat; sed potius honoret et custodiat velut fidelis D. Imperatoris …'.

28. Matthew, *The Norman Kingdom*, p. 290.

29. Luigi Tonini, *Storia civile e sacra riminese*, 5 vols (Rimini, 1848–82), 3.379, exaggerates only slightly when he says that Henry claimed 'l'alto dominio' of the city. In the charter printed by Tonini, 3.600–602, Henry does not overtly claim to be lord of the city, but he does limit the freedom of the communal government to tax or in other ways offend the churches of Rimini. Toeche, *Heinrich VI.*, p. 431, regards Henry's action as an intervention against the popular party in Rimini, and says little about the issue of heresy.

30. Tonini, *Storia civile e sacra riminese*, p. 601. The document includes an exemption of ecclesiastical lands from the Roman law of *praescriptio*, providing that even adverse possession of lands for more than forty years does not abrogate a church's ownership.

31. Ibid.: 'Praecipimus etiam, ut quilibet potestas, comes, consulatus Ariminensi ciuitatis tempore ingressus sui de hereticis expellendis et non recipiendis et puniendis his, qui manutenent eos secundum arbitrium episcopi, faciant iuramentum.' I have expanded the abbreviations in Tonini's transcription and altered his punctuation slightly.

communal government with some pretensions to autonomy, if not independence. Additionally, Rimini lay within the confines of the Patrimony of St Peter and therefore should have fallen under papal authority. Henry could have claimed that he intervened in affairs at Rimini not as lord of the city, but as the servant of the pope in the spirit of the 1184 agreements on heresy at Verona. In any event, there was a history of heresy in Rimini. The commune had adopted a statute requiring the expulsion of heretics soon after the Verona meeting. To judge from the complaint that Lucius III sent to the commune of Rimini on 2 October 1185, however, the law seems almost immediately to have been a dead letter:

> … although a certain edict had recently been established by common consent concerning the expulsion of heretics and … that rectors succeeding in the government of the city each year must swear that they will observe it, the *podestà* who was recently installed omitted this oath at the behest of the people, whence it is said that the leaders of the Patarines, who had earlier been expelled for the most part, have returned.[32]

The history of heresy in Rimini in the intervening decade is unknown, but presumably the Patarine (that is, Cathar) presence did not decline.[33] Henry may have evoked the spirit of Verona, even though Rimini fell in theory under papal jurisdiction. Further, by publicly acting as the defender of ecclesiastical liberty, he implicitly forestalled Pope Celestine's criticisms of his actions.

Tensions between Celestine III and Henry remained high for the remainder of 1195, and indeed for the rest of Henry's life. The issue of heresy entered into exchanges between the emperor and the papal *curia*, usually linked to discussion of Henry's plans for a crusade. Henry took the crusader vow on 31 March 1195, and began to publicize this act in the following month.[34] His motives for doing so were probably mixed. On the one hand, crusading was a family tradition, almost an obligation, perhaps, and there was certainly a need for a new crusade to liberate Jerusalem from the Ayyubids. On the other hand, by publicly taking up the cross Henry could put pressure on Celestine to yield concessions to him. Celestine had so far refused to recognize Henry as King of Sicily, and he would oppose Henry's plans to unite the empire and Sicily permanently.[35] Shortly before taking his crusade vow, Henry appears to have written letters to several of the cardinals wherein he discussed

32. P. Jaffe and S. Loewenfeld, *Regesta pontificum romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, 2nd edn (Berlin, 1885–88), 15461, printed in J. von Pflugk-Harttung, ed. *Acta pontificum Romanorum inedita*, 3 vols (Stuttgart, 1886), 3.317 no. 353: 'quod nuper de fugandis hereticis edictum quoddam communi fuerit deliberatione statutum et … quod succedentes sibi rectores in regimine civitatis se iurare debent annis singulis servaturos, nuper potestas, que ad civitatis regimen est assumpta, iuramentum illud, facient populo, pretermisit, unde iam Paterinorum principes qui prius eiecti fuerant ex magna parte, ut dicitur, redierunt'.

33. Tonini, *Storia civile e sacra riminese*, provides no information on dissenters in Rimini in this decade. Gabriele Zanella, *Itinerari ereticali: Patari e Catari tra Rimini e Verona*, Istituto storico italiano per il Medio Evo, Studi storici 153 (Rome, 1986), likewise has found nothing for this period.

34. Csendes, *Heinrich VI.*, pp. 164–5.

35. Baaken, 'Verhandlungen', p. 482; Robinson, *The Papacy*, pp. 516–17.

the needs of the Holy Land and expressed his desire for peace within Christendom.[36] These letters have not survived, but the response of one of the cardinals has, and it suggests that the extirpation of heresy was an issue in the ongoing polemics between pope and emperor. Lotario dei Conti di Segni, cardinal deacon of SS. Sergius and Bacchus and later Celestine's successor as Pope Innocent III, wrote to encourage Henry to fight on behalf of Christendom, as befitted his imperial status.[37] Lotario wrote of the sufferings of Christ: 'Behold, He now suffers severe harm from the heretics and the pagans, who strive to destroy the Christian name [or name of Christ] everywhere on earth.'[38] After urging Henry to take up arms against the pagans occupying the Holy Land, Lotario also entreated him to take action against heretics: 'And you should invoke the name of the Savior to extirpate heretics, who dispense the poison of their perfidy widely in the golden chalice of Babylon, lest, if perhaps your concern should be lacking, the little foxes, whose tails that mighty Samson bound together, should destroy the vineyard of the Lord of Hosts.'[39] The extant copy of the letter does not preserve a dating clause. Werner Maleczek suggests that it was written in 1195 or 1196. This dating seems plausible; unfortunately, one cannot say whether it preceded or followed Henry's actions in Rimini.

Heresy would remain an element of the ongoing exchanges between pope and emperor. Henry used the issue as a club to bludgeon Celestine rhetorically in a letter of 5 May 1196. At this point, the emperor was attempting to persuade the pope to agree to crown his son Frederick as king (probably King of the Romans rather than of Sicily) and to recognize a union of the empire and the Kingdom of Sicily. He wanted also for the pope to acknowledge that succession to the imperial throne would henceforth be hereditary in the Hohenstaufen dynasty, and he may have offered to recognize the pope as his feudal lord for the empire.[40] The letter

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36. Werner Maleczek, 'Ein Brief des Kardinals Lothar von SS. Sergius und Bacchus (Innocenz III.) an Kaiser Heinrich VI.', *Deutsches Archiv* 38 (1982), pp. 564–76 at 571.

37. Maleczek, 'Ein Brief des Kardinals Lothar', pp. 575–6, prints the text of the letter, which survives only in a thirteenth-century copy long associated with the monastery of Kaiserswerth and now, after the monastery's dissolution, found in the Hauptstaatsarchiv Düsseldorf. This copy preserves the letter's salutation; in keeping with Celestine's policy, Cardinal Lotario addresses Henry as *imperator Romanorum* but not as *rex Sicilie*.

38. Cardinal Lotario, in Maleczek, 'Ein Brief des Kardinals Lotario', p. 576: 'Is inquam ecce nunc gravem patitur iniuriam ab hereticis et paganis, qui nomen christianum desuper terram delere nituntur.'

39. Ibid., 'Et nomen invoces Salvatoris ad extirpandum hereticos, qui virus perfidie late propinant in aureo calice Babilonis, ne, si forte sollicitudo vestra defuerit, vineam domini Sabaoth demolinatur vulpecule, quarum caudas Samson ille fortissimus colligavit.' Maleczek, 'Ein Brief des Kardinals Lotario', pp. 569–70, discusses the complex biblical imagery of this passage. See also Antonio Oliver, *Táctica de propaganda y motivos literarios en las cartas antiheréticas de Innocencio III* (Rome, 1957), *passim*.

40. Csendes, *Heinrich VI.*, pp. 171–8, provides a convenient overview of Henry's *Erbreichsplan*, a proposal to make the imperial title and the Kingdom of Sicily hereditary in the Hohenstaufen dynasty in return for some concessions to the pope. Robinson, *The Papacy*, pp. 518–19, discusses the ambiguous passage in one of Henry's letters to Celestine (*MGH Constitutiones*, 1.525) in which Henry refers to some unspecified, unprecedented offer he had made to the pope. Haller, *Heinrich VI.*, pp. 641–4, suggested that Henry meant by this an offer to become the pope's vassal for the empire in return for approval of the *Erbreichsplan*, and some scholars, including Baaken, 'Verhandlungen', pp. 509–13, have agreed with this

was probably intended for public consumption, and it gave Henry's position on the problems facing Christendom. He identified the liberation of the Holy Land and the elimination of heresy as the two most pressing needs. After expressing a desire for improved co-operation of *regnum* and *sacerdotium* (under whose guidance he did not say), Henry called on the pope to take strong action against heretics:

> We intently ask that, as is your right, you wield the sword of Peter against them fervently and earnestly and direct your learned and zealous nuncios to this end, who by sowing the word of God will entirely nullify and uproot their wickedness and hateful enormity. We will never be absent from you in pursuing this with the material sword, which is our right, following diligently and vigorously while the spiritual sword goes on before.[41]

One may read this statement as a simple expression of Henry's pious horror at the spread of heresy, and some historians have done so.[42] In the context of Italian politics, however, the letter served other purposes. It put Celestine on the defensive, for it implicitly accused him of neglecting his pastoral duty by allowing heresy to spread unchecked. Furthermore, if Celestine took up the spiritual sword, as the authorized wielder of the material sword Henry would thereby gain papal permission to impose his will on more areas in Italy in the course of carrying out his duty of punishing heretics. Even without Celestine's approval, Henry used the suppression of heresy to intervene in the affairs of Fuccecchio, a town near Lucca, late in 1196.[43] By posing as the champion of orthodoxy, Henry also forestalled Celestine's criticism of his seizure of much of the Patrimony and other lands in central Italy.

In conclusion, it is important to note that Henry VI's actions against heresy have received almost no attention from scholars.[44] Though few in number, such deeds surpassed those of his father and of all the popes between Lucius III and Innocent

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view. Robinson does not agree, and points out (p. 519) that Henry refused to render homage and fealty to Celestine for the Kingdom of Sicily in 1196.

41. *MGH Constitutiones*, 1.519, no. 370: 'rogamus attentius quatinus, sicut vestri iuris est, gladium Petri contra eos ferventer et sollicite exercatis vestrosque nuncios discretos et studiosos ad hoc dirigatis, qui verbum Dei seminando eorum nequitiam et detestabilem enormitatem penitus evacuent et extirpent. Nos enim ad id exequendum gladio materiali vobis nullatenus deerimus, id quod nostri iuris est, dum gladius precedat spiritualis, diligenter et strenue prosequentes.'

42. For example, Henri Maisonneuve, *Études sur l'origines de l'Inquisition*, 2nd edn (Paris, 1960), pp. 155–6.

43. Hermann Theloe, *Die Ketzerverfolgungen im 11. und 12. Jahrhundert* (Berlin/Leipzig, 1913), p. 104, citing *Memorie e documenti per servire all'istoria della città e stato di Lucca* (Lucca, 1837), 5.1.487. I have been unable to see this latter work, and unfortunately Theloe does not specify when in 1196 this intervention took place. In his regests of Henry's documents for 1196, Toeche, *Heinrich VI.*, pp. 679–85, indicates that Henry spent the first six months of the year in Germany, travelled through Burgundy in July, and arrived in Turin by 25 July. He reached Milan by 9 August, and spent the next two months in Lombardy before passing south into Tuscany in October. On 1 November 1196, Henry enfeoffed a citizen of Lucca with two churches (Toeche, *Heinrich VI.*, p. 685), presumably bestowing the advocacy of the churches. Perhaps his intervention at Fuccecchio came around this time. By mid-November Henry had moved south to Tivoli, and by December he was in Capua (*MGH Constitutiones*, 1.524–5, no. 376, a letter to the pope proposing a settlement of their disputes).

44. Theloe, *Die Ketzerverfolgungen*, pp. 141–2.

III. No other European monarch of the age did more to check the spread of religious dissent. Henry's actions also indicate more anti-heretical activity in Italy in the period immediately before Innocent III's pontificate than most students of heresy have recognized.[45] The significance of Henry's actions remains uncertain. This study has offered a largely political interpretation of Henry's antiheretical policy. That is, opposition to heresy served as a convenient pretext for favouring pro-imperial rulers in certain Italian cities and for putting the pope on the defensive before Italian and European public opinion. Henry's attacks on heretics distracted attention from his assault on the papal states and his bullying of the pope. Certainly, Henry's assumption of the cross in 1195, a better-known action, had a similar effect.[46] On the other hand, Henry may well have seen himself as a genuinely orthodox champion of the Church, much as David Abulafia has argued for Frederick II.[47] But Henry's devotion to God and the Church, as represented by his opposition to heresy, certainly also served him in this world by increasing his actual political power and prestige in Italy *vis-à-vis* the papacy.

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45. For example, Lambert, *Medieval Heresy*, the best recent survey, never mentions Henry VI. Nor are Henry's statements and actions discussed in any other sources known to me except the brief mentions in Maisonneuve, *Études sur les origines de l'inquisition*, in Toeche, *Heinrich VI.*, and in Theloe, *Die Ketzerverfolgung*. None of these works discusses heresy as an element in the conflict between Henry and Celestine, or Henry's attempts to gain control of Italy.

46. Robinson, *The Papacy*, p. 516.

47. David Abulafia, *Frederick II: A Medieval Emperor* (London, 1988), p. 4 and *passim*. One may note that Frederick would enact laws against heresy both as emperor (at his coronation in 1220) and as King of Sicily (in the *Liber Augustalis* of 1231). Frederick reissued and augmented his imperial laws in 1232 and again in 1239, both times in response to papal accusations that he supported heresy. Frederick's propaganda alleged that not he, but Pope Gregory IX, was soft on heresy. For discussion of Frederick's anti-heretical legislation and papal aspersions on his orthodoxy, see, in addition to Abulafia, Peter D. Diehl, 'The Papacy and the Suppression of Heresy in Italy, 1150–1254' (University of California, Los Angeles Ph.D. dissertation, 1991), pp. 305–12, 340–46, 377–8.

Chapter 4

Pseudo-Dionysius, Gilbert of Limerick and Innocent III: Order, Power and Constitutional Construction

Shannon M.O. Williamson

Introduction

In the epilogue of his great study, *The Bishop-Elect*, Robert Benson writes:

> Characteristically, twelfth-century constitutional thought conceived the Church as a pyramidal hierarchy. In the hyperbole of pope Eugene III, the structure of the Church was even an imitation of the heavenly hierarchy: 'The Catholic Church is constructed on earth according to the image … of the celestial order. For just as some heavenly spirits are superiors …, others are inferiors … and rejoice in and humbly obey the command of their superiors, thus in the Catholic Church some are established as patriarchs or primates, others as archbishops or metropolitans, others as bishops.'[1]

While the enthusiasm of inferiors for their superiors' commands may have been exaggerated, Eugene's essential conception was not. Benson's footnote to this extract of Eugene III is telling: 'Though the origins of this idea need not concern us here, it derived from a tradition of thought influenced by the writings of Pseudo-Dionysius.'[2] He went on to write that the thirteenth century witnessed papal assumption of a metropolitan's right to episcopal confirmations, and that 'in practice as well as in decretal law' this process caused the erosion of the hierarchy about which Eugene had written.[3] While he was my teacher at UCLA, Benson suggested that Pseudo-Dionysius's *Celestial Hierarchy* and *Ecclesiastical Hierarchy* should be examined as roots of a constitutional language of the Church.

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1. Robert Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton, NJ, 1968), pp. 378–9, citing, at p. 68, Eugene III to Archbishop Henry of York (1151), *Papsturkunden in England*, ed. W. Holtzmann (Berlin, 1936), p. 231, no. 66: "Ad instar … celestis ordinis catholica ecclesia est constituta in terris; sicut enim celestium spirituum alii sunt superiores absque elatione et propensius secreta diuina rimantur, alii inferiores sine inuidia et mandatis superiorum letantur et humiliter obsecuntur, ita in ecclesia catholica alii patriarche siue primates, alii archiepiscopi siue metropolitani, alii episcope statuuntur.'

2. Benson, *The Bishop-Elect*, p. 379 n. 10.

3. Ibid., p. 380.

This study begins to address that idea by positing links between Pseudo-Dionysius, Gilbert of Limerick and Innocent III. Gilbert's work reflected the same sorts of hierarchical ideas present in Eugene's statement. As will be shown below, Innocent's work also contained some of these ideas. While Innocent sought the supremacy of the bishop of Rome along Pseudo-Dionysian lines, his success as pope in this regard, ironically, contributed to his inability to complete this process outside the ecclesiastical realm. Thus Innocent also played a role in this hierarchical 'erosion' mentioned above. For this reason Innocent III's pontificate provides a logical stopping point for this inquiry. The connections between Gilbert of Limerick, Pseudo-Dionysius and Innocent appeared to me only later, long after I had lost the opportunity to share them with Benson.

It is a rule of organic bodies that organization contributes to power. The ability to accomplish goals and achieve greater levels of function rests on the efficiency of the organism's internal arrangement. While the Church functions as a corporate body, a comparison of it to an organic body also works because the Church is a corporation in the body of Christ. Innocent saw ecclesiastical hierarchical relationships as eternal, instituted by the Giver of Life Himself. The essence of that power is rooted in a constitutive ideal that took the form of interconnected hierarchies and sub-hierarchies. Under Innocent, we might say that these ideas took the form of an administrative ideal, for his motivations, as we shall see, were neither purely theological nor legal.

This idea of administration, when used to describe the medieval Church, was for a variety of reasons not a popular notion. Medieval churchmen themselves were concerned to limit the growth of what we now call bureaucratic machinery. Bernard of Clairvaux's *Five Books on Consideration* was a prime example. With his extensive legal training, Innocent IV provided a parallel example of a more secular pope concerned with temporal issues rather than spiritual ones. In the same way that Bernard had counselled Eugene to avoid the press of legal matters that seemed to occupy all of his time, so too did Innocent IV later appear a less spiritually motivated pope because of the juristic controversies of his pontificate. But there can be no doubt that neither of these popes could have enforced the power of the papal see by neglecting the spiritual for the legal, or vice versa. In these examples bureaucratic or administrative developments equate with the growth of the *curia*.

Modern observers have been shy about ascribing such terminology to the medieval papacy. Max Weber initially conceived of administrative development to describe capitalist societies.[4] The designation 'bureaucratic' itself is one reason for the lack of scholarly interest in the subject hitherto. The concept of bureaucracy has a negative connotation. As much as specialists in modern history find the medieval

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4. See H.H. Gerth and C. Wright Mills, eds, *Max Weber: Essays in Sociology* (New York, 1946), p. 214: 'When fully developed, bureaucracy also stands in a specific sense under the principle of *sine ira ac studio*. Its specific nature, which is welcomed by capitalism, develops the more perfectly the more bureaucracy is 'dehumanized,' the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation. This is the specific nature of bureaucracy and its specific virtue.'

Church incapable of having developed a bureaucracy, either conceptually or in reality, medievalists themselves shun the idea that medieval churchmen could have conceived such an amoral form of rulership. Indeed, one need only reflect on Weber's characterization of the zenith of a bureaucracy as a dehumanized machine. Despite arguments by eminent historians,[5] several medievalists continue to resist the idea that one can see the seeds of capitalism even in the Middle Ages.[6] In this way it seems that medieval historians as a group have accepted Weber's assertion that personal authority and the concept of the modern State cannot co-exist in any meaningful way, at least in so far as the Church is concerned. But while legal development surely brought the papacy, and Innocent III in particular, an increase in one type of power, we should not confine ourselves to describing the increase in power in purely legal or bureaucratic terms. Nor, on the other hand, should we describe Innocent III's achievement in centralizing the administration of the Church in purely spiritual terms. We should look instead for the motivating forces that served as a foundation for legal or theological actions.

Innocent III's pontificate marked a turning point for the papacy in a number of ways. Articulations of papal legal prerogative, spiritual considerations regarding heretics and crusaders, and the realization of a truly centralized papal administration constitute but a few of the accomplishments with which historians credit him. Many scholars have spent their careers debating whether Innocent's motivations derived largely from juristic or theological considerations. While the determination seems settled regarding which of these considerations inspired Innocent,[7] his letters and other writings hint at another motivation beyond either of these.

An inquiry into this motivation, though it culminates in conclusions about the influences of an administrative ideal within Innocent's thought, begins not with Innocent, but with a brief consideration of Pseudo-Dionysius and some of his letters. I shall follow this with a discussion of Gilbert of Limerick, his treatise *Concerning the Status of the Church* (*De statu ecclesiae*), and some pictorial images bearing a

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5. See, for example, James A. Brundage, *Medieval Canon Law* (London/New York, 1995), p. 80.

6. Pierangelo Schiera, 'Legitimacy, Discipline and Institutions: Three Necessary Conditions for the Birth of the Modern State', *The Journal of Modern History* 67 (1995) (Issue Supplement: *The Origins of the State in Italy 1300–1600*), Supplement 11-33. Schiera essentially dismisses the role of the Church and locates nascent statehood activity in the communes. While the confines of the volume in which he published obviously do not apply to the period I discuss, he is nevertheless only too ready to acknowledge implicitly – see his subtitle – that the Church actually met the conditions for statehood, though he does not say so in so many words. The problem with the Church as a State, as he sees it, is a trend toward 'at the temporal level, the universalistic dream' (Supplement 28). In the next breath, however, he notes that 'papal government was never reduced to theoretical claims' (Supplement 29). He quotes here P.J. Jones, 'The Vicariate of the Malatesta of Rimini', *English Historical Review* 264 (1952), 321.

7. Kenneth Pennington, 'The Legal Education of Pope Innocent III', *Bulletin of Medieval Canon Law*, n.s. 4 (1974), 70–77. See also his 'Further Thoughts on Pope Innocent III's Knowledge of Law', *Popes, Canonists and Texts*, (Aldershot, 1993), Selection II; this originally appeared as a book review in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 72 (1986), 417–28. Pennington established that Innocent – given his very limited legal training – could not have been a legal scholar or, indeed, have had a truly extensive legal knowledge.

relationship to the treatise. Then, before moving on to Innocent, I shall return briefly to examine Pseudo-Dionysius's *Ecclesiastical Hierarchy*. Familiarity with the works of these two theologians (especially of Pseudo-Dionysius) permeated Innocent's intellectual world while a student at Paris.[8] At the end of the chapter we shall be able to assess the influence they wrought on Innocent's work and thought. What we will learn about Innocent, the intellectual legacies of Gilbert and Pseudo-Dionysius, and the papal administrative ideal will contribute to a broader estimation regarding the constitutional language that the papacy developed for itself and the Church as a whole. If we seek to answer the question of why Innocent's idea of papal monarchy failed, we must first discern what his organizing principle was. Theological and legal objectives (whichever were pre-eminent among Innocent's goals) were the products of an organizational practice. My contention is that Gilbert of Limerick and Pseudo-Dionysius provided the underpinnings of an organizational practice that sought the inclusion within its purview not merely of Christianity, but of all humanity.

Pseudo-Dionysius (1)

Pseudo-Dionysius championed the sense of sight above all others. In the first place, sight was the means by which darkness became light.[9] The senses, of course, are a production of the body. In the second place, light was a metaphor for nourishment. Thus one's being was fed from what the eyes, as it were, ingested. Pseudo-Dionysius's letters provide an important introduction to sight and light and how they function in his treatise, the *Ecclesiastical Hierarchy*. Reading his letters, one learns about light and sight in proportion to the rank of the hierarchy to which each letter is addressed. They are addressed, respectively, to a monk, a deacon, a priest and a hierarch, and they clearly progress in order from least to (eventually) greatest spiritual rank.[10] The last letter is addressed to 'John the theologian, apostle and evangelist, an exile of the island of Patmos'.[11]

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8. John Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols (Princeton, NJ, 1972), *passim*.

9. Paul Rorem, *Pseudo-Dionysius: A Commentary on the Texts and an Introduction to Their Influence* (New York, 1993), p. 78. See also, for an example, *Pseudo-Dionysius. The Complete Works*, trans Colm Luibheid and Paul Rorem (New York, 1987). Citations to Pseudo-Dionysius's letters and *Ecclesiastical Hierarchy* (hereafter P-D) will be from Luibheid's translation of the Greek text in J.P. Migne, *Patrologia cursus completus, Series Graeca*, 3, which in turn is from Corderius's edition of the text. Subsequent citations include the page reference to Luibheid's English text and the reference to the proper portions of *Patrologia Graeca*.

10. Rorem, *Pseudo-Dionysius*, p. 6. Pseudo-Dionysius inserted a letter to a monk between the letters addressed to the hierarchs. The purpose of this, notes Rorem, is to re-emphasize the importance and necessity of observing the hierarchy and the knowledge of spiritual matters appropriate to each level of the hierarchy.

11. Throughout his book Rorem discusses Pseudo-Dionysius's efforts to make himself appear a first-century writer; one of the pieces of evidence for this strategy is the allusion to John.

The first letter begins:

> Darkness [or shadow] disappears in the light, the more so as there is more light. Knowledge makes unknowing disappear, the more so as there is more knowledge.[12]

This letter casts knowledge and the lack of knowledge in terms of light and lack of light. But too much light received too quickly can be as detrimental as not enough light. The darkness is still necessary to keep one from being over-taxed.[13] This can be seen as parallel to the problem of 'trying to run before one can walk'. As a means for growth, the beneficial or harmful effects of light can be interpreted as too little or too much food. But Pseudo-Dionysius makes it clear that this food of light cannot simply be had by opening one's eyes, and here our author introduces what we might recognize as the modern notion of 'too much of a good thing' at once. Pseudo-Dionysius wrote: 'And this quite positively complete unknowing is knowledge of him who is above everything that is known.'[14]

In Letter five, to Dorotheus the deacon, the theme of light and dark continues:

> The divine darkness is that 'unapproachable light' where God is said to live. And if it is invisible because of a superabundant clarity, if it cannot be approached because of the outpouring of its transcendent gift of light, yet it is here that is found everyone worthy to know God and to look upon him. And such a one, precisely because he neither sees him nor knows him, truly arrives at that which is beyond all seeing and all knowledge.[15]

This letter begins to remind us a bit more of the concept of the eye of God. God exists at the top of the source of the light. Dorotheus, however, still does not know enough to exist in that true light of God. We the readers now know that we have to go through the darkness as an introduction to the light.

The sixth letter (to the priest) does not speak to the question of light and sight, but letter seven (to the hierarch) progresses to a much higher level and discusses the light of the sun (the ultimate in self-generating light of light), the light of the moon and the light of darkness. Nearly the entire letter focuses on the power of the sun and the moon as the apex of God's power:

> Why does he not marvel at him because of that power which is the cause of everything and which is beyond all description? Because of this, the sun and moon, following the most amazing capacity to cease movement, came to a complete halt and everything stood for one whole day under the one sign so that – and this is still more astonishing – the higher spheres which take in the others completed their full revolution without having the lower spheres follow them in their circular movement.[16]

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12. P-D 263,1065A.
13. Rorem, *Pseudo-Dionysius*, p. 8.
14. P-D 263, 1065B.
15. P-D 265, 1073A.
16. P-D 267, 1080C.

Notice that only the higher, more perfect spheres could continue into the light during this eclipse. While this passage may seem a bit cryptic to the reader, it becomes clear in the next paragraph.

'What have you to say about the solar eclipse which occurred when the Savior was put on the cross?' At that time the two of us were in Heliopolis and we both witnessed the extraordinary phenomenon of the moon hiding the sun at a time that was out of season for their coming together, and from the ninth hour until the evening it was supernaturally positioned in the middle of the sun … We saw the moon begin to hide the sun from the east, travel across to the other side, and return on its path so that hiding and the restoration of the light did not take place in the same direction but rather in diametrically opposite directions. Those were the amazing things which happened at that time, possible only to Christ the cause of all, 'who does great and marvelous things without number'.[17]

Pseudo-Dionysius notes that these events 'portend changes in the doings of God'.[18] While the putative purpose of the letter is to aid the hierarch Polycarp in returning one Apollophanes (and here it cannot be simple coincidence that the wayward son's name contains the name of the Greek god of the sun) to the fold, it is the power of the light and the dark, both of which function to highlight the power of God, to initiate Apollophanes into the mysteries of God. Of all the letters Pseudo-Dionysius has written to this point, this one contains the longest discussion of the power and function of light and dark. Because Polycarp is so much closer to the top of the hierarchy, he is closer to the top of the cone (or pyramid) that is the image of the eye of God, in which all things exist. Apollophanes knows these things, but has rejected them for some reason. Polycarp, by virtue of his status and the accompanying knowledge, can bring Apollophanes back.

At this point a letter to the monk Demophilus interrupts the epistolary cycle[19] in order to ask why it is improper for a monk (a member of the laity in the ecclesiastical hierarchy) to question the doings of a priest (a member of the clergy in the ecclesiastical hierarchy).[20] To make his point, Pseudo-Dionysius wrote that Moses 'earned the sight of God because of his great meekness. And if they say that occasionally he lost the sight of God, it was because he had first of all lost his own meekness'.[21] And to make this connection between sight and light absolutely clear, he counsels Demophilus to 'quietly receive the beneficent rays of the truly good, the transcendently good Christ and let us be led by their light toward his divinely good deeds'.[22]

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17. P-D 268–9, 1081A–B.

18. P-D 269, 1081C.

19. Rorem, *Pseudo-Dionysius*, p. 18. The basis of his discussion is that this interruption more or less functions as rhetorical technique to emphasize the importance of hierarchy.

20. See below the discussion surrounding notes 25–6 for a summary diagram of hierarchical relationships in Pseudo-Dionysius.

21. P-D 269, 1084B.

22. P-D 271, 1084C.

With each passing letter and increasing rank in the hierarchy, Pseudo-Dionysius explored the power of light and sight further. In the letter to Demophilus, he provided an example of what happens when one tries to walk before one can run. The import is clear: to know more, to see more, to be able to sustain the power of the light, as it is described above in letter five to Dorotheus, one must progress higher up the scale. One must climb the pyramid of God's eye. One modern commentator, Paul Rorem, explicitly describes this hierarchy as a pyramid.[23] Pseudo-Dionysius certainly emphasized the progressive nature of this process quite nicely in another passage:

> Do not the sacred symbols shout this? Not every participant is simply removed from the Holy of Holies. No. First to approach is the rank of sacred initiators [the hierarchs]. Then come the priests and then the deacons. The monks have their rightful place at the doors of the inner sanctuary … The position [of the clergy] at the divine altar symbolizes the rank they hold … To the obedient monks, to the sacred people, to the orders being purified, they make known, according to merit, those divine things which were safe from all contamination …[24]

This is the essence of what this letter to Demophilus makes clear: the hierarchy cannot be circumvented. Pseudo-Dionysius represented the ecclesiastical hierarchy – 'hierarch' and 'hierarchy' being terms that he himself created[25] – as follows:

- **Sacraments**
    - consecration (*myron*)
    - communion (*synaxis*)
    - baptism
- **Clergy**
    - hierarch (perfecting)
    - priest (illuminating)
    - deacon (purifying)
- **Laity**
    - monks (perfected)
    - communicants (contemplative-illuminated)
    - those being perfected (catechumens, penitents, possessed).[26]

In these letters Pseudo-Dionysius constructed a clear statement of relationships of power. If knowledge is power, then one gains more power as one gains greater knowledge. In Pseudo-Dionysian terms one gains greater knowledge with greater illumination. In this series of letters, the hierarch's position receives the most extended discussion of light's powers. The hierarch appears to be the one functionary

23. Rorem, *Pseudo-Dionysius*, p. 20.

24. P-D 272–3, 1088D–1089A, as excerpted in Rorem, *Pseudo-Dionysius*, p. 20.

25. Rorem, *Pseudo-Dionysius*, p. 19.

26. Ibid., p. 21.

with the power to return someone to the light. If the hierarch performs the function of returning someone to the light, he presumably also would be the only one to mete out punishment for infractions. The letter to Demophilus makes this clear. The point of this hierarchical discussion is not simply to speculate on the progression from furthest to closest to God. Pseudo-Dionysius intended to put some force into the conduct of these relationships. Finally, while only the initiated are permitted to progress beyond the most basic levels, Pseudo-Dionysius gives us no indication that the uninitiated, penitent or possessed should be refused. The world does not only include those initiated into the mysteries of God, as the lowest order of the laity indicates. Gilbert of Limerick's *pyramidus* also reflected this hierarchical arrangement, as the following discussion will demonstrate.

Gilbert of Limerick[27]

Robert Benson placed Gilbert of Limerick's *De statu ecclesiae* at the centre of his graduate seminar on the Irish Church. I wondered then, from my limited and inexperienced point of view as a first-year graduate student, how I and my fellow students could spend an entire ten-week period on such a short treatise. Little did we know what a treasure trove Gilbert's work would prove to be! Benson considered this short treatise especially valuable for its concise and novel formulation of ideas with a precision and sophistication unusual in twelfth-century Europe. Especially noteworthy were Gilbert's formulation of papal supremacy and his portrayal of episcopal power (a subject especially close to Benson's heart).

The Pseudo-Dionysian corpus was known in the West as early as the sixth century, when Gregory the Great included a passage from the *Celestial Hierarchy* in his homily on Luke 15:1–10.[28] About a hundred years after John Scotus Eriugina's translation (*c.*860–62), the complete corpus was known in southern Italy when British Library Addit. 18231, dated 971/972, was copied in Calabria. At the beginning of the eleventh century this manuscript was brought to the abbey at Grottaferrata, and then to Rome.[29] Given that the first important translation of the corpus was completed by

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27. For information on Gilbert of Limerick, I have drawn heavily on John Fleming's new study, *Gille of Limerick (c. 1070–1145); Architect of a Medieval Church* (Dublin, 2001). While I think that some of his conclusions have not been pushed as far they could be, this monograph is a very valuable piece of scholarship on a subject who should receive more attention than he has hitherto.

28. Gregory the Great, in J.P. Migne, *Patrologia cursus completus, Series Latina* (hereafter PL), 76:1254C: 'Fertur vero Dionysius Areopagita, antiquus videlicet et venerabilis Pater, dicere quod ex minoribus angelorum agminibus foras ad explendum ministerium vel visibiliter vel invisibiliter mittuntur, scilicet quia ad humana solatia ut angeli aut archangeli veniunt. Nam superiora illa agmina ab intimis nunquam recedunt, quoniam ea quae praeeminent usum exterioris ministerii nequaquam habent. Cui rei illud videtur esse contrarium quod Isaias dicit: *Et volavit ad me unus de seraphim, et in manu ejus calculus, quem forcipe tulerat de altari, et tetigit os meum* (Isaiah 6:6–7). Sed in hac prophetae sententia vult intelligi quia ii spiritus qui mittuntur eorum vocabulum percipient quorum officium gerunt.' This text references Chapters 7, 9 and 13 of the *Celestial Hierarchy.*

29. Jean Irigoin, 'Les Manuscrits Grecs de Denys l'Aréopagita en Occident, les empereurs Byzantins et l'abbaye royale de Saint-Denis en France', in Ysabel de Andia, ed., *Denys l'Aréopagite et sa postérité*

another Irishman, it is not inconceivable that Gilbert of Limerick could have known the Latin translation. Hugh of Saint-Victor also completed his commentary on the *Celestial Hierarchy* around 1137, around the time that Gilbert completed his own treatise.

As a general centre of theological studies during the twelfth century, France influenced Innocent in more ways than one. In the first half of the twelfth century the schools of the city had also been Gilbert of Limerick's scholarly home. He had also studied at Laon, a centre for Neoplatonist thought.[30] Experiences in Laon and Paris still resonated in later circumstances when Anselm of Bec and Gilbert became bishops, respectively, at Canterbury and Limerick.[31] Important also for a connection between Gilbert and Innocent is the fact that the school at Laon influenced Peter the Chanter and his associates as well, again through Anselm.[32] Innocent III, Aquinas, Bonaventure, and Boniface VIII were all subsequently influenced by this school.[33] Ample evidence demonstrates a commonly shared pool of ideas percolating in northern France. Still, in and of itself this proves nothing about an intellectual relationship between Gilbert and Innocent.

Gilbert wrote *De statu ecclesiae* sometime between 1110 and 1139, a time span that is significant for two reasons. First, it appeared shortly before Gratian's *Decretum*. If Gratian's central concern was the importance of the priesthood,[34] then he and Gilbert – who arguably focused on the episcopacy – seem of a piece. Gilbert may have indeed had the importance of the episcopal pastoral obligation in mind when he wrote *De statu ecclesiae*,[35] though I do not think that this is by any means the main reason he wrote it. He also wrote his treatise shortly after the so-called Norman Anonymous published his tracts. We can view Gilbert's treatise as something of a response to (or even a reaction against) the ideas expressed by the Anonymous. There are several reasons for this. Any concern about episcopal duties, I would argue, reflects the emphasis of the *Collectio Canonum Hibernensis*, which is far more concerned with the power of the prince or the abbot than that of the bishop. Certainly, that collection of laws gives the abbot greater power than the bishop. Gilbert's concern with the bishop, however, does not preclude a concern with the supremacy of the pope over that of the emperor. The ideas that Gilbert's work espouses stand in complete opposition to the Anonymous's. In fact, it would be difficult to locate an image (textual or graphic) that refuted the Anonymous's arguments more effectively than Gilbert's position. In these regards Gratian and

en Orient et en Occident: Actes du Colloque International, Paris 21–24 Septembre 1994 (Paris, 1997), p. 22. Irigoin continues that these manuscripts probably did not have influence beyond Rome.

    30. Fleming, *Gille of Limerick*, p. 76.

    31. Correspondence between the two is edited in ibid., pp. 164–9.

    32. Baldwin, *Masters*, 1:151.

    33. Ibid.

    34. See Fleming, Gille of Limerick, p. 83, who seems to want to argue that Gratian's concern with the priesthood has some bearing on Gilbert's concern with the episcopacy.

    35. Ibid., p. 84.

Gilbert do not seem to bear on each other that much. The timing of the Anonymous's work makes it a more appropriate point of comparison than Gratian's *Decretum*.

We need not produce evidence that Gilbert read or even knew the Anonymous's work. It is enough to know that the ideas that the Anonymous supported harkened back to the issues of the Investiture Controversy.[36] Of particular importance here is the Anonymous's assertion that only a king is the true imitator of Christ, the *christomimetes*. Bishops act only as placeholders and in imitation of the apostles.[37] Thus their role as imitators of Christ is only evidenced through their connection to the apostles. Even the pope, as the first among bishops, only shares in this indirect relationship to Christ. Certainly Gilbert's intentions were to demonstrate a different arrangement of society, with the pope and, by extension, the bishops positioned firmly at the top. But this involved more than merely a discussion of the orders of society. Indeed, this represented the recognition of the demise of Christ-centred kingship, and the relocation of true *christomimesis* in the papacy.[38] Furthermore, the argument that Gilbert's arrangement of society in the shape of a pyramid (*pyramidus*) merely reflects the 'natural tendency' of the medieval mind to order society in such a way[39] represents instead the confusion of trinitarian relationships with three-dimensional pyramidal ones. If we reflect on the excerpt from Eugene III at the beginning of the chapter, we see that the idea of a 'pyramidal hierarchy' differs substantially from a trinity. Eugene omitted referring to the lay orders not because they did not exist within the hierarchy, but because in this context he was discussing bishops. I would argue that another explanation besides a 'natural tendency' could provide us with a deeper understanding of Gilbert's intentions.

The key to the problem is Gilbert's choice of pyramid to describe his image of society:

> The general image of the church, as noted above, contains the first letters of the names for the names themselves because there is not room for writing the whole name. Nevertheless the last line delineates these three entire words: monastics,[40] canons, and the general population. This particular image simulates the form of a pyramid …[41]

Two extant images based on the text of *De statu ecclesiae* exist. One is found in Cambridge University Ff. I. 27 (fol. 238). The other comes from Durham Cathedral library, MS B.II.35 (fols 36v–38r). The Cambridge image beautifully and cleverly reproduces pictorially a textual description of an ordering of society. The artist-

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36. Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, NJ, 1957), pp. 44–5. Notice the Christ-centred kingship being taken over by the papacy.

37. Kantorowicz, *The King's Two Bodies*, p. 43 n. 13: 'interpositia vice et imitatione apostolorum'.

38. Ibid., pp. 47-48.

39. Fleming, *Gille of Limerick*, pp. 74–9.

40. The text could also be translated as nuns.

41. Fleming, *Gille of Limerick*, p. 146: 'Imago generalis ecclesiae supra notata primas nominum litteras pro ipsis nominibus idcirco continent quia spatium scribendi ipsa nomina tota non habet. Infima tamen linea tria haec tota vocabula describit, moniales, canonicales, vel universales. Et tota quidem imago piramidis …'.

philosopher placed the order within the frame of a church window. Around the outside of the window's upper edges one may see an outer world portrayed in nondescript buildings.[42] Our artist housed Christ and the pope together in the window's topmost section. On the left and right respectively, flanking Christ and the pope, we find the emperor and Noah, who was frequently identified with prelates or rectors. The inner panes of the window house the three orders of society: those who pray (*oratores*), those who plough (*aratores*) and those who fight (*bellatores*), indicated with the initials O, A and B, respectively. While Christ, the pope, the emperor and Noah appear above the three societal orders, they certainly do not exist outside the framework of the window, and thus, not outside the world. The flanking alignment of Noah (= clerics and/or prelates) and the emperor outside the pane of glass containing Christ and the pope made a clear statement: Christ and the pope belong together. Somehow they complement one another. Other clerics (= Noah) and the emperor exist alongside them, but not exactly with them.[43]

The Durham manuscript contains a very similar image. It has been described as more 'primitive'.[44] Certainly, it is not as elaborate as the Cambridge manuscript image. Whether this image was based on the Cambridge image or vice versa remains

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42. Fleming (*Gille of Limerick*, p. 129) argues that these images resemble buildings found in illustrations accompanying Psalm 43 of Eadwine Psalter and the Canterbury Psalter from the mid- to late twelfth century.

43. Inscribed on the doors of the new church built at Saint-Denis during Suger's tenure is the following verse, which certainly invokes Pseudo-Dionysian ideas, but also provides a nice parallel to the theme of Gilbert's work with regard to its presentation within a church window frame:

'Whoever thou art, if thou seekest to extol the glory of the doors,
Marvel not at the gold and the expense, but at the craftsmanship of the work.
Bright is the noble work; but, being nobly bright, the work
Should brighten the minds, so that they may travel through the true lights
To the true light where Christ is the true door.
In what manner it be inherent in this world the golden door defines:
The dull mind rises to truth through that which is material
And, seeing this light, is resurrected from its former submersion.'
'Portarum quisque attollere quaeris honorem,
Aurum nec sumptus, operis mirare laborem.
Nobile claret opus, sed opus quod nobile claret
Clarificet mentes, ut eant per lumina vera.
Ad verum, ubi Christus janua vera.
Quale sit intus in his determinat aurea porta:
Mens hebes ad verum per materialia surgit,
Et demersa prius hac visa luce resurgit.'

Abbot Suger of Saint-Denis, *On the Abbey Church of St.-Denis and Its Art Treasures*, ed. and trans. Erwin Panofsky (Princeton, NJ, 1946), p. 23. Like the window in which we find the pyramid of the ray of light that is the eye of God, these doors supply their own light, and in this way accomplish the same effect as Gilbert's window.

44. Fleming, *Gille of Limerick*, p. 123, citing R. Mynors, *Durham Cathedral Manuscripts to the End of the Twelfth Century* (Oxford, 1939), p. 42.

open to question.[45] In any event, the Durham image appears more 'stripped-down', and thus we can easily understand why scholars have long argued that it provided the model for the Cambridge manuscript. This Durham image is organized in the same way as the Cambridge image. One notable difference, however, appears in the uppermost triangle, the tip of the pyramid. In this triangle, the pope, Noah, and the emperor share the same space. John Fleming, the author of a recently published study of Gilbert, does not notice this. This detail might provide a clue for solving the question of which image provided a model for the other. Indeed, Fleming notes that the texts from the Durham manuscript have been dated with some accuracy, and the commonly accepted view has been to place the Durham image in the late twelfth century and the Cambridge manuscript in the thirteenth century.[46] Splitting Noah (that is, the clergy) and the emperor off from the pope and positioning them slightly lower down the pyramid in relation to the pope (as in the Cambridge manuscript) conveys a different message than their conjunction (as seen in the Durham manuscript). This difference also bears on the developing ideas of papal supremacy in relation to other priests and to the emperor, ideas which the eleventh-century papacy had advanced and which were slow to develop, achieving their full import only in the thirteenth century. In other respects, the Durham image resembles that from Cambridge manuscript.

But we need also to comment briefly about the texts of the manuscripts. Cambridge 27 is the only one of the three extant manuscripts of Gilbert's works that contains the main text of *De statu ecclesiae*, the prologue to the main text, and the image based on the text. The image in this manuscript has been variously dated to the thirteenth or fourteenth centuries, but Fleming cites evidence to date the image to the second half of the twelfth century.[47] The inscription around the edges of the image was, as Fleming notes, added possibly in the sixteenth century,[48] and runs as follows:

> The arch has within it the image of the world. For there were three arches. In the highest were birds as in the heavens. In the middle were men, namely Noah and his family, as in this world. In the lowest arch there are animals and reptiles like the animals in hell.[49]

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45. Fleming *Gille of Limerick*, pp. 123–5, where he provides a nice summary of the debate, though his argument that the Durham followed from the Cambridge manuscript proves a difficult position to sustain, as Fleming himself notes on p. 125.

46. Ibid., p. 123.

47. Ibid., p. 129.

48. Ibid., p. 128.

49. Ibid*.,* discussion of the text around the outer edge of the Cambridge University Library manuscript*:* 'Arca figuram mundi habuit. Fuit enim triam arcata. In superiori erant aves tanquam in caelo. In medio erant homines scilicet Noe et familia eius tamquam in hoc mundo. Animalia et reptila tanquam animae in inferno.'

This caption refers only loosely to the image. Instead, it is reminiscent of Hugh of St Victor's *De Arcae Noe Morali*.[50] How unfortunate it is, then, that we cannot establish firm dates for either Gilbert's or Hugh's treatises.

But still, why the choice of a pyramid? I propose that Gilbert's idea was to frame society, literally, within the sight of God. Through a variety of readily available and authoritative sources, the human eye was thought to operate on the theory of extramission. That is, sight was the product of the eye's active emission of a ray of light. Supporters of this idea included Galen (whose works had been translated from the Arabic into Latin by Constantine the African at Monte Cassino in the eleventh century), Euclid, Ptolemy, St Augustine and Hunain.[51] While Augustine himself does not refer to the ray of light that the eyes emits as a *pyramidus*, Arab medical writers commonly did, and it is not inconceivable that such a formulation had occurred to other people when they thought about human anatomy and the means by which ideas infiltrate the mind. By transference, then, the ray of light from the human eye, a *pyramidus*, could just as easily refer to the ray of sight of God's eye.[52] In this way, the power of the pope for Gilbert takes on a completely new meaning, and one to which Innocent later gave primacy of place in his work. The conception of hierarchy as a pyramid is a somewhat different discussion of an order of society.[53] Orders of society do just that: they bring order to society, but the whys and wherefores of these orders are not always clear.[54] While discussions of orders of society served to label and characterize members of the orders, Gilbert's discussion went beyond this. He also established rules governing the relations between these groups:

> All the above mentioned pertain to an archbishop. In addition, he wears the pallium of honour since, assisted by all the bishops of his province, he himself ordains a bishop. If,

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50. In that text, Hugh employs the word 'pyramid' only one time, and there he does not write that his intended form is a pyramid, but rather that it looks like a pyramid. PL 176:633A: 'Quod autem forma arcae desuper ad similtudinem curtae pyramidis …'". The rest of that sentence goes on, in Pseudo-Dionysian fashion, to discuss to whom entrance to this short pyramid-shaped arch is allowed, and why or why not.

51. Richard Kay, 'Dante's Empyrean and the Eye of God', *Speculum* 78 (2000), 37–65 at 41.

52. Indeed, that is part of the argument that Kay makes so well in his article about Dante.

53. See Giles Constable, *Three Studies in Medieval Religious and Social Thought* (Cambridge, 1995), pp. 251–66, for an introduction to the subject, especially pp. 254–5, quoting Gerhart B. Ladner: 'The idea of order extended from the celestial and terrestrial liturgy and from the regulated life of the monks and the hierarchical organization of the clergy to the harmonizing of all Christian people and institutions within the ecclesiastical-political framework of the Middle Ages in accordance with their various vocations and functions and ranks.' Ladner's comments originally appeared in 'Greatness in Medieval History', reprinted in *Images and Ideas in the Middle Ages: Selected Studies in History and Art* (Rome, 1983), pp. 887–8. See also Constable, *Three Studies*, pp. 308–12 on the difference of opinion regarding ranking the orders in the twelfth century, particularly p. 312; there he quotes Innocent III, in a sermon in honour of Saints Peter and Paul: 'There are three orders of faithful in the church, Noah, Daniel, and Job, that is, the prelates, continent, and married, whom Ezekiel in his vision saw and saved and whom the prelate should feed by word, example and sacrament: by the word of doctrine, the example of life, [and] the sacrament of the eucharist.'

54. Constable, *Three Studies*, p. 251.

however, an archbishop cannot be present at their ordination, in his letter excusing himself he confirms his assent to those who are to be ordained through his legate. The primate is himself an archbishop. However, he does not ordain an archbishop by himself; for both the primate and the archbishop ought to be ordained by the Apostolic See in Rome or the pallium ought to be brought to them from the pope in Rome and he ought to be elevated by his co-bishops. This permission is given only if reasons of infirmity or war or any other necessity should intervene. The primate alone, therefore, is superior to an archbishop because when there are many archbishops in the same region only one of them consecrates the ruler and crowns him with a three-fold solemnity. He holds the primacy over them himself and he approves of the *acta* of councils.[55]

Gilbert not only divided the masses into orders, but the orders into their own sub-orders. He then instructed them regarding how they might act in relation to one another.

Gilbert's image is also easily divisible, horizontally, into three portions. While the fact is worth noting, it is not necessarily connected to Gilbert's choice of pyramidal structure. Indeed, we can identify a whole class of tripartite images that work down from the top. That is, while a number of other images contained representations of various orders of society, the images discussed below unequivocally indicate to the viewer the person or persons at the very top of society. In this way the images are all designed to communicate an idea of power. In all of these images, 'the picture's language is theological, not jurisprudential …'.[56] Among the images to be mentioned are the miniature in the Aachen Gospels of Otto II (dated 973), the image of Henry II preceding the Gospel of John in the Gospel book donated to Monte Cassino in 1022 or 1023,[57] the Durham and Cambridge images based on Gilbert's text already noted above, and the separate yet connected portions of Vat. lat. 9820, the *Exultet* roll made (and then, as it were, re-made) some time in the twelfth century for Saint Paul's Outside-the-Walls.[58]

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55. English translation and Latin text from Fleming, *Gille of Limerick*, pp. 162–3: 'Archiepiscopo omnia supradicta convenient. Insuper pallio honoris induitus quia ipse adjutus tamen ab omnibus dioecesis suae episcopis ordinat episcopum. Si quis enim ipsorum ordinationi adesse non posit litteris suis se excusans atque legatis assensum suum in ordinandis facere confirmat. Primas quoque et ipse archiepicopus est nec ipse archiepiscopum ordinat. Utrumque enim archiepiscopum et primatem opportet Romae ab Apostolico ordinari aut a Roma eis a Papa pallium afferri qua coepiscopis sublimari quae tunc tantum datur licentia si forte infirmitatis vel belli aut aliqua alia causa necessaria intercessit. Eo tantum ergo praeest primas archiepiscopo quod cum multi sint in eadem regione archiepiscopi solus ex eis qui regem ordinat et in tribus sollemnitatibus coronat et apud quem concilia pro veritate peraguntur ipse eorum primatum tenet.'

56. As Kantorowicz (*The King's Two Bodies*, pp. 114–15) notes in another context.

57. Both the Aachen and Monte Cassino images are discussed in great detail by Kantorowicz, both with reference to the order of society they prescribe and for whose benefit they ascribe power. See Kantorowicz, *The King's Two Bodies*, pp. 61–78 and 113–15. The image of Henry II, being an expression of regal power, functions as a statement regarding an ordering of society in only a very strict sense, as it does not clearly provide representations of the other non-royal orders of society. The inscriptions around the various images, however, demonstrate the latter.

58. The Roman *Exultet* Roll employs the Franco-Roman text rewritten from the Beneventan text (some time in the twelfth century) while still following the Beneventan illustration cycle, albeit somewhat

Of all of these images, Vat. lat. 9820 most closely parallels Gilbert's description. In that scroll, the images roll forwards, showing first a pope, then a bishop and the rest of the clergy, followed by an emperor and his army. This roll has a tangled but extremely tantalizing history in light of the present discussion. Very little is known about its original construction except that it is a copy of a roll made for Archbishop Landulf of Benevento (969–82). By its nature as a liturgical text, it necessarily placed the clergy before the laity. That fact, however, should not prompt us to dismiss it as a statement of an ordering of society, or an indication of who should be at the top of that order. The images on the scroll, arranged upside down with respect to the words of the liturgy written on the scroll, pass down the front of the pulpit as the deacon sings the service. Towards the end of the liturgy the deacons sings prayers as follows:

> We pray you therefore, Lord, for us your servants, all the clergy and the very devout people together with our most blessed pope N. and our bishop N. and our father N. with all the congregation in his charge, that, granted peace in this life you will deign to keep us in these Paschal joys. Remember also, Lord, your servant our emperor N., as well as your servant our prince N, and grant them celestial victory with all their army.[59]

In contrast to the Aachen Gospel image of Otto II, the image of Tellus (Earth) in this scroll supports Christ enthroned rather than an earthly prince. This *Exultet* scroll thus demonstrates that the question of who received their power more directly from Christ was controversial in the tenth century when the original of this scroll was crafted, and it was certainly still pertinent when the scroll was copied in the twelfth century.

These images demonstrate that the ecclesiastical princes were gaining ground in the ongoing debate regarding whether Christ spoke directly to them or to an earthly prince. Such images do not merely present snapshots, as it were, of the differing segments of society. They present the segments in a clear, top-down order. From these images Innocent would later choose Gilbert's pyramid formation not only because it placed the pope in proximate relation to Christ, but because it clearly removed the earthly prince from the same relationship. But the pyramid concept also appealed to Innocent, as we shall see, because it provided the pictorial representation of Pseudo-Dionysian motifs that Innocent would employ in his writings.

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altered for the Franco-Roman text. The images were situated upright with the Beneventan text, but then were reversed when altered to the Franco-Roman text. One interesting facet of this particular roll is that while most other rolls have a frontispiece which shows scenes from the life of Christ, it shows a bishop handing the roll to the deacon.

59. Thomas Forrest Kelly, *The Exultet in South Italy* (New York, 1996), p. 39. This is the text from the preface of the Franco-Roman liturgy, which was used when the manuscript was re-written in the twelfth century. The text of the Beneventan preface is essentially the same. In that liturgy the prayers are the very last portion of the text, and there is no separation between prayers for the clerical and lay classes and those for the royal and military classes. A comparison of the liturgies is found in Kelly's Table 2, pp. 32–40.

The familiar duality of 'Innocent-as-jurist' or 'Innocent-as-theologian' has not provided an adequate explanation for Innocent's achievements or his failures. Some other motivation contributed to Innocent's impulse toward centralization. Gilbert's formulations of episcopal and papal power echo in Innocent's work and suggest administrative concepts as much as juristic or theological ones. The singular place of the pope within a hierarchy conceived in three groups of three found the same strength of expression in Innocent's work as they did in Gilbert's. Gilbert of Limerick's ideas thus provided Innocent with a succinct formulation of papal prerogative.

Pseudo-Dionysius (2)

In the *Celestial Hierarchy* there are three ranks of three angels that parallel the three ranks of three achievements or positions in the *Ecclesiastical Hierarchy*. As Paul Rorem points out, the author of these letters made this triadic arrangement clear in them. The presence of the sacraments as the highest rank of what is essentially the ecclesiastical hierarchy is noteworthy for two reasons. First, the sacraments represent the only three occasions on which Pseudo-Dionysius employed the Greek term *telete* for 'sacrament'. He used this word for 'mysteries' frequently, but these three particular instances are of singular importance.[60] Second, these sacraments provide the means by which the human members of the ecclesiastical hierarchy may proceed to the greater mysteries of the celestial hierarchy.[61]

From the foregoing discussion we can at last see a connection between Pseudo-Dionysius and Gilbert of Limerick. Gilbert's image contains pyramids within a pyramid, threes within threes. We should note that it is precisely because Gilbert discussed sets of three within the same triadic structure that he employed the concept of a pyramid. One set of three implies only a triad, a triangle. The addition of other triad within the same context provides the necessary depth to call the arrangement properly a pyramid. Each triad is a block in the structure. John Fleming misses this when discussing Gilbert's treatise. He notes that Gilbert chose 'a three-sided figure',[62] but this is not the same thing as a pyramid. Triangular shapes do not imply the three-dimensionality that a pyramid certainly does. In fact, if we were to be absolutely correct about the matter, a pyramid has four sides and a base that constitutes a fifth side. It is the inclusion of threes within a three that gives us, textually, that three-dimensional *sine qua non* of a pyramid. Fleming would seem to deny that Pseudo-Dionysius had split the *Ecclesiastical Hierarchy* into three groups of three[63] as a balance to the *Celestial Hierarchy*.[64]

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60. Rorem, *Pseudo-Dionysius*, p. 97.

61. See arrangement of orders above on p. 10.

62. Fleming, *Gille of Limerick*, p. 77.

63. Ibid., p. 79.

64. We should not be concerned here that a triangle has three sides, whereas a pyramid has five. That is not the point. Gilbert used the term *pyramidus* to designate groups of threes that built upon each other as opposed to a trinity or an order of society. His *pyramidus* thus describes groups of three arranged both

Since Gilbert was discussing hierarchy, it is hard to imagine that he would not be emulating Pseudo-Dionysius, who not only invented the word, but also discussed his vision of existence, both spiritual and temporal, in terms of three of threes. Indeed, at this point it is worth quoting Rorem in full about the prospect of using Pseudo-Dionysius's ideas as support for papal supremacy: 'arguments for papal power and primacy could find support in some of the general comments about hierarchical authority in Dionysius, but only if there these comments were transferred from their original context of a single parish to the larger sphere of the whole church'.[65] Gilbert represents such transference. While Rorem locates this transfer first in the works of Bonaventure,[66] I would argue that we can see this in Gilbert's and Innocent's work. Gilbert himself transferred Pseudo-Dionysius's ideas to a larger scale, a fact which can be seen in the indications P, E, M and D, the largest categories, abbreviated at the bottom of the image that accompanies his text.[67] Innocent then expanded this not only to encompass all of Christianity, but all of humanity. A selection of his theological writings composed before he became pope and some of his letters demonstrate the connection between Innocent's ideas and those of Pseudo-Dionysius and Gilbert of Limerick.

Innocent III's Concept of Administration: The Marriage of Pseudo-Dionysius and Gilbert

Writing about Innocent III proves a difficult task. Completely aside from the 'Innocent-as-theologian' and 'Innocent-as-jurist' emphases so long prevalent in

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hierarchically within themselves and in relation to one another. The term also fits within the context of a point reaching higher to the eye of God, culminating in an area much smaller than the base, such that only one entity occupies the space closest to Christ. Aside from the Pseudo-Dionysian proximity to light from an eye, no other term fulfills in textual terms the requirements Gilbert had to describe the structure he conceived.

65. Rorem, *Pseudo-Dionysius*, p. 31.

66. Ibid.

67. See the discussion in the text above, preceding note 43. The initials P, E, M and D represent categories along the base of the pyramid. They are placed, alternating, either below a section of glass or one of the interior, pillar-like separators that break up the whole window into its various sections. So, the first P sits below glass, E below a pillar, M below glass and D below a pillar. The sequence then begins anew. There are seven complete repetitions. The last repetition is incomplete, ending with an M under a section of glass. Gilbert identifies three of the four initials fairly clearly: P for *paruchia*, E for *episcopus*, M for *monasterium*. Fleming identifies D for diocese (p. 121). He neglects the E, which seems curious as it is clearly present in both the Cambridge and Durham images. The D could also represent the diaconate. Of the lesser orders, Gilbert does spend a particular amount of time discussing the deacon's role as well as the requirements to carry it out properly (see pp. 152–5 of the edition and translation). This is a direct parallel with Pseudo-Dionysius's writings. Below this line is another that serves to encompass the entire window, comprising both the lay and ecclesiastical orders. In roughly alternating order these letters spell out *canonicales*, *universales*, and *moniales* (the last of which Fleming misses). Between the '*i*' of *moniales* and the '*u*' of *universales* a scribe seems to have accidentally included an extra '*L*'. At the end of *moniales*, the word *canonicales* begins again, getting as far as *cano* before it reaches the end of the window.

Innocentian scholarship, one could identify at least a dozen further ways of analysing Innocent's pontificate,[68] if not more. These newer methods of analysis reflect the fact that the theology–law dichotomy has proven to be a false one. Furthermore, debates over his originality, or lack thereof, also continue.[69] This is a dynamic

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68. Beginning with the 'Innocent-as-jurist' and 'Innocent-as-theologian' debate, scholars have moved on to a variety of interesting and fruitful methods. Among the important studies by scholars of the 'jurist' camp is Sidney R. Packard, *Europe and the Church under Innocent III* (New York, 1927). Here see, for example, pp. 11–12, at which point the author discusses what we now know to be an overestimation of his legal knowledge: 'The organizing and centralizing tendencies of the Roman Law entered even more forcibly into the Church under Innocent III than ever before.' Three other pertinent studies from the 'jurist' camp are: R.W. Carlyle and A.J. Carlyle, *A History of Mediaeval Political Thought in the West* (Edinburgh/London/New York, 1903–36), 2:215ff.; C.H. McIlwain, *The Growth of Political Thought in the West: From the Greeks to the End of the Middle Ages* (New York, 1932), pp. 231–2, and Friedrich Kempf, *Papsttum und Kaisertum bei Innocenz III.: Die geistigen und rechtlichen Grundlagen seiner Thronstreitpolitik* (Rome, 1954), *passim*, and particularly Parts Two and Three. The penultimate chapter of Part Three is the only one in which Kempf discusses Innocent's theological and spiritual ideas. In the theology or theologically grounded camp are such studies as Michele Maccarone, *Studi su Innocenzo III* (Padova, 1972), which addresses just about anything other than Innocent's legal training or use of law during his pontificate. See particularly 'Riforme e innovazioni di Innocenzo III nella vita religiosa'. Also in this group are Joseph Canning, 'Power and Pastor: A Reassessment of Innocent III's Contribution to Political Ideas', in John C. Moore, ed., *Pope Innocent III and His World* (Brookfield, VT, 1999), pp. 245–53, and Peter D. Clarke, 'Peter the Chanter, Innocent III and Theological Views on Collective Guilt and Punishment', *The Journal of Ecclesiastical History* 52 (2001), pp. 1–20, and 'Innocent III, Canon Law and the Punishment of the Guiltless', in idem, *Pope Innocent III*, pp. 271–85. Helene Tillmann, *Pope Innocent III*, trans. Walter Sax (Amsterdam/New York/Oxford, 1980), appears to have feet in both camps; she asserts the importance of jurisprudence in Innocent's actions (pp. 4–5), but at other points notes the importance of Innocent's theological background, as her discussions of his use of *ratione peccati* demonstrate (pp. 25-26). Kenneth Pennington first questioned whether Innocent studied at Bologna long enough to know much law and subsequently demonstrated that Innocent, while learned in some aspects of law, still did not always evaluate legal concepts very professionally; see note 7 above. Edward Peters reminds us that we must try to keep in mind as much as possible Innocent's experiences as Lotharius, since they are one and the same though we have frequently forgotten that fact; see 'Lotario dei Conti di Segni becomes Pope Innocent III: The Man and the Pope', in Moore, *Pope Innocent III*, pp. 3–24. Peter D. Clarke has explored the same question from both legal and theological angles, noting that neither is mutually exclusive. Corrine J. Vause, in her dissertation and soon-to-be-published book, examines Innocent's sermons with regard to their rhetorical power and content; see 'The Sermons of Innocent III: A Rhetorical Analysis' (University of California, Santa Barbara Ph.D. dissertation, 1984). In his recent dissertation, Keith Kendall reconstructs Innocent's sermon collection and uses the historical facts of the time in which these sermons were composed to highlight themes and ideas of import to Innocent; see 'Innocent III: Theology Becoming Papal Policy' (Syracuse University Ph.D. dissertation, 2002). This selection represents a minimum of available material. The beauty of the bulk of this recent work is that scholars have recognized the need to integrate these two sides of Innocent – and many have – rather than pursuing the bifurcation of his aims and goals.

69. In *Innocent III: Leader of Europe 1198–1216* (New York, 1994), Jane Sayers notes citations from Peter Lombard's *Sentences*, Peter of Poitiers's *Sentences*, Ovid's *Ars Amatoria* (possibly through Peter the Chanter), Lucan, Claudian, Horace, Josephus, and Pope Gregory the Great's *Dialogues*. But, she claims, '[t]here is little evidence of originality' (p. 19). Further on, she writes: 'It was not that what he said was startlingly new, for it was based on a long tradition, but his particular talent and novelty was that he managed to combine biblical exegesis with growing papal ideology, to induce the texts to mean something of relevance to his leadership of society' (p. 21). While downplaying Innocent's legal training and grounding in favour of greater examination of Innocent's theological works, Kenneth

field. But, for readers expecting any direct and incontrovertible evidence that either Gilbert or Pseudo-Dionysius lay at the root of Innocent's thinking, this study will probably be something of a disappointment. Indeed, the 'hardest' evidence we have of influences on Innocent's thought point to the Bible and Innocent's own prior writings. For instance, Innocent's sermon *Qui habet sponsam* contains a lengthy passage from his own work *On the Fourfold Species of Marriage* (*De quadripartite species nuptiarum*).[70] We find this same sort of overlap again between another of his theological works, *Concerning the Mysteries of the Mass* (*De missarum mysteriis*), and the sermons *Ecce veniet*.[71] He clearly liked to recycle his work, but he also cites other writers from time to time, and we can identify passages from other theologians.[72] What follows below is simply another attempt to bring us closer to glimpsing his thought process.

This section contains a discussion of some parallels between portions of some of Innocent's works and an analysis of his sermon *Qui putas est fidelis*. Several examples serve to demonstrate some basic affinity between Pseudo-Dionysius and Innocent. The analysis of the sermon demonstrates how Innocent hoped to implement ideas he had adapted from Pseudo-Dionysius using Gilbertine imagery. Grouped in three groups of three, the various themes of the sermon essentially describe Innocent's role as a spiritual homemaker and administrator, and provide thereby a link between himself and the other two subjects of this study, Pseudo-Dionysius and Gilbert of Limerick.

The first example I shall address comes from a theological piece Innocent wrote before he became pope. The treatise *Concerning the Mystery of the Altar* (*De sacro altaris mysterio*) opens with a discussion of the three components of ecclesiastical law (commands, promises, and sacraments[73]) that closely parallel the opening of Pseudo-Dionysius's *Ecclesiastical Hierarchy*: '[m]ost sacred of sacred sons: Our hierarchy consists of an inspired, divine and divinely worked understanding, activity, and perfection.'[74] Innocent then notes that 'In the command is the service,

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Pennington notes that 'His theological speculations are hardly breathtaking; in fact, if one examines his sources closely, it is difficult to find an idea which is uniquely Innocent's.' See 'Pope Innocent's Views on Church and State: A Gloss to *Per Venerabilem*', in Kenneth Pennington and Robert Somerville, eds, *Law, Church and Society: Essays in Honor of Stephan Kuttner* (Philadelphia, PA, 1977), pp. 51–2. Kendall's dissertation (see note 68 above) paints a much more interesting portrait of Innocent's sources. His Chapter 3 (pp. 42–66) discusses thirteenth-century preaching, Innocent's place within that world, and the sources Innocent had at his disposal when writing. And finally, Christoph Egger, 'The Theologian at Work: Some Remarks on Methods and Sources in Innocent III's Writings', in Moore, *Pope Innocent III*, briefly examines excerpts of Innocent's work, demonstrating that he was quite familiar with the 'contemporary scholastic methods and discussions' (p .28).

70. Kendall, 'Innocent III', p. 227.

71. Ibid., p. 160.

72. No matter what the ultimate interpretation about Innocent's motivations may be, he surely was a theologian.

73. PL 217:773B: 'Tria sunt, in quibus praecipue divina lex consistit: mandata, promissa et sacramenta.'

74. P-D 195, 372A.

in the promise the reward, and in the sacrament is the aid.'[75] Here we could equate commands, service, and understanding; or sacrament, aid, and activity; or, finally, promise, reward, and perfection. As an example, Chapter 5 ('Concerning the clerical orders, powers, activities, and consecrations') from *Ecclesiastical Hierarchy* demonstrates the closeness of the connection here between Pseudo-Dionysius's activity and Innocent's concepts of sacrament and aid:

> The first godlike power of the most holy work of the sacraments is the sacred purification of the uninitiated. Its middle power is to illuminate and to initiate those whom it has purified. Its final power, embracing all that went before, is to bring about in the initiates a more perfect understanding of that to which they have been initiated.[76] Here, there is nothing but sacramental aid and activity.

Innocent appears also to follow Pseudo-Dionysius's suggested method of explaining the mysteries of God to mere mortals. Consider what Pseudo-Dionysius wrote regarding physical objects as aids to understanding the sacred:

> So, then, forms, even those drawn from the lowliest matter, can be used, not unfittingly, with regard to heavenly beings. Matter, after all, owes its subsistence to absolute beauty and keeps, throughout its earthly ranks, some echo of intelligible beauty. Using matter, one may be lifted up to the immaterial archetypes. Of course one must be careful to use the similarities as dissimilarities, as discussed, to avoid one-to-one correspondences, to make the appropriate adjustments as one remembers the great divide between the intelligible and the perceptible.[77]

Pseudo-Dionysius here called for the application of objects or metaphors that appeared almost entirely opposite from what they were to highlight as a means of distilling the sublimity of the original archetype. The variety of dissimilarities includes forms of lowliness as a metaphor for superiority, or earthly societal roles as metaphors for sacred roles.

An example illustrating this point comes from Innocent III's sermon *Qui putas est fidelis*, in which he refers to himself as the servant of the family. As a servant, he claimed lesser greatness for himself, which in turn transformed him into a greater person by way of the heavy burdens of taking care of the family.

> And therefore, I lay claim to this ministry for myself, but I do not come to usurp the dominion: by the example of that first and principal predecessor who said, '[Be] not as if dominating the clergy but rather be a spiritual example to your flock (1 Peter 5)' and also [by the example] of him who said, 'Are they the ministers of Christ? (I speak as one less wise). I am more (2 Corinthians 11).' Greater is the honor since I am set above the family,

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75. PL 217:773B: 'In mandatis est meritum, promissa est praemium, in sacramentis est adjutorium.'
76. P-D 235, 504A.
77. P-D 152, 144C.

but heavy is the duty because I am the servant of the entire family: 'I am in the service of the wise as well as the foolish (Romans 1).'[78]

Here, Innocent lowers himself in order to place himself above the rest of the Church.

This sermon deserves some careful commentary that recapitulates many of the ideas I have discussed above. The arrangement of the sermon does not exactly parallel the structure of Pseudo-Dionysius's writings, but there is no reason to expect this. Innocent also writes about things in a three-fold manner, as was popular in the twelfth and thirteenth centuries. But this sermon exhibits some traits in common with Pseudo-Dionysius that cannot simply be equated with Neoplatonic tendencies, Innocent's Parisian training, or the popularity of describing society in groups of three. Innocent began this sermon with Matthew 24:45: 'Who then is the faithful servant, whom his master has set over his household, to give them their food at the proper time?'[79] He later continued in the same vein as verses 45–51:

> Fully a servant, certainly the servant of the servants. Oh, not one of those of whom the Scripture says, 'Who does sin is the slave of sin (John 8:34).' Of whom it said, 'Worthless slave, I forgave all your debt (Matthew 18:32),' and again, 'The servant, knowing the will of his lord and not doing it, shall be flogged with many stripes (Luke 12:47).' But one of those to whom the Lord says, 'When you will have done all things well, say that you are unworthy servants (Luke 17:11).' I confess myself servant, not Lord …[80]

The sermon begins with one over-arching theme: the servant of the household. Then, in the first portion, Innocent lays out for his listeners three sets of three, the structure of the sermon. The first triad addresses specific questions regarding who the servant is: Of what sort ought he to be? Who is appointed over the household? In what manner ought he to be appointed?[81] The second triad discusses the actions of the appointer: Who appointed the servant? Whom does the appointer choose? In what manner does the appointer choose him?[82] The third triad discusses, more or less, the specific details of the appointee's duties: Over what is he appointed? Why is he

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78. PL 217:655: 'Et ideo ministerium mihi vindico, dominium non usurpo: illius primi et praecipui praedecessoris exemplo, qui ait: "Non quasi dominantes in clero sed forma facti gregis ex animo (I Petr. V);" ejus quoque, qui dixit: "Ministri Christi sunt (ut minus sapiens dicam), plus ego (II Cor. XI)." Grandis honor, quia sum super familiam constitutus: sed grave onus, quia totius sum servus familiae. "Sapientibus et insipientibus debitor sum (Rom. I)."'

79. This story also appears in Luke 12:42–8, in essentially the same wording.

80. PL 217:655: 'Plane servus, et utique servus servorum, utinam non unus ex illis, de quibus inquit Scriptura: Qui fecerit peccatum, servus est peccati (Joan. VIII). De quo dicitur: Serve nequam, omne debitum dimisi tibi (Matth. XVIII). Rursumque: Servus sciens voluntatem domini sui et non faciens, vapulabit multis (Luc. XII); sed unus eorum, quibus Dominus ait: Cum omnia bene feceritis, dicite, quia servi inutiles sumus (Luc. XVII). Servum me fateor, et non dominum …'.

81. PL 217:653: 'Qualis debeat esse, qui super familiam constituitur et qualiter debeat super illam constitui …'.

82. Ibid., 'qui constituit; quem constituit; qualem constituit …'.

appointed? When, or in what season, is he appointed?[83] Innocent begins to construct his pyramid.

After this, he briefly discusses why the Apostolic See is at the helm of the Church. While the foundation of papal power stems from God, Innocent did not forget that Christ is God. Adapting the imagery of Christ that is so clearly demonstrated in Gilbert's text, Innocent pointed out that Christ laid the foundation for papal supremacy. In fact, throughout the second portion of the sermon, Christ (God the Son) is the partner of the Church. Indeed, regarding the papal office, Innocent writes that 'this appointment is not from man but from God, or rather more truly, since the appointment is from the God-man ...'.[84] To a certain extent, some of this emphasis on Christ is connected to the debate occasioned by Berengar of Tours and the decision to proclaim the Real Presence in the Eucharist. But more than that, Innocent links the supremacy of the papacy to Christ's supremacy in much the same way that emperors like Otto II and Henry II had done nearly three centuries before. Innocent's formulations also remind us of Gilbert's triadic images according to the *De statu ecclesiae*. Innocent's pyramid begins to take shape.

In this discussion regarding papal supremacy, we have the answers to the questions posed in the first triad: What sort of servant ought one be? Who is appointed over the household? In what manner is the servant to be appointed? At the end of this section, Innocent tells the congregation quite plainly, 'For I am that servant, whom God appointed over his household, (to be) faithful and prudent that I might give them food in season!'[85] This reflects not just the dissimilarities or dichotomies suggested by Pseudo-Dionysius, but Gilbert's triadic images as well. God, seeing all, appointed Innocent, who is aided and in some ways commanded by Christ, to serve (and thus be the shepherd of) His flock. At this point Innocent lists the characteristics of the servant, again employing the dichotomies so often used by Pseudo-Dionysius. In this way, his listeners learn very clearly 'of what sort (the servant) ought to be'. Indeed, the bulk of the sermon is given over to discussing the first and second triads. They are so skilfully intertwined that it is sometimes difficult to tease them apart, but they are there.[86]

However, the third triad, which discusses the servant's duties, stands quite by itself. Furthermore, it contains within itself yet another triad. The first element of this subsumed (fourth) triad discusses the theology of the laity, and in essence considers the importance of the faith-works dynamic of the *aratores* and *bellatores*. 'Faith without works is dead. That faith lives, however, which works through love, since the just man lives from faith.'[87] This will find many echoes in Innocent's letters. His

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83. Ibid., 'super quid constituit; quare constituit; quando, in tempore suo …'.

84. PL 217:655: …Quia igitur constitutio haec, non est ab homine, sed a Deo; imo verius, quia haec constitutio est ab homine Deo …'.

85. Ibid., 'Ego namque sum servus ille, quem Deus constituit super familiam suam sed utinam fidelis et prudens, ut dem ei cibum in tempore!'

86. Discussing these elements fully requires more space than the present study can accommodate.

87. PL 217:656C: '"Fides sine operibus mortua est (James 2:20)." Vivit autem fides illa, quae per dilectionem operator quia Justus ex fide vivit (Hebrews 10:38?) …'.

consilium to the crusaders diverted to Zara on behalf of the Venetians, for example, has its basis in part in the idea that the crusaders' faith and continued commitment to their work – that is, to the crusade – will keep them in God's sight even as they are constrained to accomplish their work by way of an unsanctioned expedition.[88] The second element of this subsumed (fourth) triad encompasses the priestly orders, the *oratores*:

> Therefore it is necessary that I be prudent, in order that my service may be rational (Romans 12:1), in order that my left hand may not know what my right hand does (Matthew 6:3), that I may be able to discern between what is leprous and what is not leprous (Deuteronomy 17:8), between good and evil, between light and darkness, between sacred and profane, lest I call the evil good, or the good evil; lest I consider darkness light or light darkness (Isaiah 5:20); lest I kill the soul that is not dying or give life to the soul that does not live (Ezechiel 12:19).[89]

Innocent comes at last to the duties of the pope, which are similar to episcopal duties in light of the pope's position as the bishop of Rome. But Innocent underscores the inherent contrast when he notes the difference between Christ's commands to all the apostles and his commands to Peter alone.[90] In this way, Innocent encapsulates all of society under himself and Christ, including not simply the orders of society, but all the nations as well:

> But each and every one who are of the household of the Lord are placed under his [the pope's] care, for He has not distinguished between this and that household, nor is it said in plural, over the households, as if many. But it is said in the singular, over the household, as if one, so that there may be one fold and one shepherd (John 10:16). 'One,' He said, 'is my dove, my perfect one' (Canticles 6:8), and one also the seamless tunic which is not divided (John 19:23). For one ark He established in which were (those) of whatever

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88. Othmar Hageneder, John C. Moore and Andrea Sommerlechner, eds, *Die Register Innocenz III. 6 Pontifikatsjahr, 1203/1204*, 6 (Vienna, 1995), no. 102, pp. 165–8.

89. In this note and note 91, references to the Vulgate are from the standard edition of Weber (Stuttgart, 1969) with page and volume citations. In some places Innocent quoted directly from the text. In others he loosely paraphrased it. I have tried to make this clear below by explanation, equating the appearance of the pertinent portions of the text with the citation, or by using quotation marks as appropriate. PL 217:657: 'O quam necessaria est mihi prudentia, ut *rationabile* sit *obsequium* meum (loosely Romans 12:1, 2:1764), ut "nesciat sinistra mea quid faciat dextra mea' (Matthew 6:3, 2:1533): ut sic dicernam inter "lepram et non lepram" (Deuteronomy 17:8, 1:259), inter bonum et malum, inter lucem et tenebras, inter sanctum et profanum: ne dicam "malum bonum, vel bonum malum": ne ponam "tenebras lucem, vel lucem tenebras" (Isaiah 5:20 2:1101–2): ne "mortificem animas quae non moriuntur, vel vivificem animas quae non vivunt" (Ezekiel 13:19, 2:1281; Migne cites this as Ezekiel 12).' For the allusion to Deuteronomy, there is a difference between Migne's citation and Weber's edition. Migne places this citation after *vel bonum malum*, though it would seem that the portion from my note to *vel bonum malum* is Innocent's work based on the either/or construction of Deuteronomy and Isaiah at these points.

90. PL 217:657D-58B.

kind, they were gathered under one leader, saved in the cataclysm. However, all who were found outside it perished in the flood (Genesis 6:17–21).[91]

This particular selection also brings to the fore the question of whether Innocent thought that only those who were members of Christ's Church were saved. In the sermon, he does not define what he meant by 'household', a term which could mean any number of different collections of people. But it seems clear that Innocent meant to include in his household all the orders of society, as did Gilbert's work. In any event, as with Gilbert's pyramid and the interlocking hierarchies that Pseudo-Dionysius outlined, Innocent's pyramid here cannot function if any portion of it is removed.

Concluding Observations

This article can only begin to touch on Pseudo-Dionysius's influence on the medieval Church's definition of itself. The ultimate goal, the identification of a constitutional language of the Church, entails a much more intense study. But we might here be able to see the outlines of the idea in these connections I have drawn between Pseudo-Dionysius, Gilbert of Limerick and Innocent III. Pseudo-Dionysius's emphasis on light and God, Gilbert's use of the pyramid as the eye of God in which to encapsulate all of humanity, and Innocent's pyramid structure as a means to encompass all humanity[92] mark stopping points in the development of this theory of a constitutional language of the Church.

The pyramid as a concept was very popular. A search of the CETEDOC and *Patrologia Latina* databases netted roughly 150 citations for the various forms of pyramid (including 'i' for 'y'). Not surprisingly, many of the citations come from texts discussing various landmarks or geometrical discussions. But a significant number of them belong to discussions of pyramids as a concept for ecclesiastical hierarchy. While Pseudo-Dionysius did not use the term 'pyramid', he did coin the term 'hierarchy', and the three-dimensional implications of his hierarchical formulations cannot be denied. Thus, Gilbert's use of 'pyramid' remains something

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91. PL 217:658: 'At omnes omnino qui sunt de familia Domini, sub ejus cura constituti sunt; non enim distinguit inter hanc atque illam familiam, nec pluraliter dicitur: Super familias, tanquam multas: sed singulariter dicitur: *Super familiam,* tanquam unam, ut sit "unum ovile et unus pastor" (John. 10:16; cf. John 10:1–11, 2:1677). "Una est, inquit, columba mea, perfecta mea" (Canticles 6:8, 2:1000); una quoque "tunica inconsutilis", *quae divisa non fuit* (John 19:23, directly as well as summarily; 2:1693). "Una tantum exstitit arca, intra quam quicunque fuerunt, sub uno rectore leguntur in cataclysmo salvati. Qui autem extra ipsam inventi sunt, omnes in diluvio perierunt" (Genesis 6:17–21, summarily).'

92. Indeed, the history and importance of preaching to Christianity makes it impossible that Innocent should not have been speaking about all of humanity. See James J. Murphy, *Rhetoric in the Middle Ages: A History of Rhetorical Theory from Saint Augustine to the Renaissance* (Berkeley, CA, 1974), pp. 269–84, which discusses the roots of preaching in Christianity as well as what was novel in Christian preaching, namely Christ's world-wide mission, his dual method of using parables or teaching directly (depending on his audience, and in a manner different from the classical rules for talking to different audiences), and the terrestrial plane as a paradigm for the celestial.

of a mystery unless we simply assume that he knew any of the abundant geometry or travel texts. In any event, his motivation for equating hierarchy with a three-dimensional schema does not surprise, since each of his components relies on another to function properly.

Innocent III saw this need for an integrated, functioning and rigid hierarchy. The sermon *Qui putas est fidelis*, with its complicated discussion of the servant's position, demonstrates Innocent's thinking in this regard. It is not so much his use of the motif of the servant as master, but rather the emphasis on interlocking hierarchies – with discussion of papal duties placed in the ultimate hierarchy – that builds suspense in the same way that Gilbert builds his pyramid from the bottom to the top. From Pseudo-Dionysius come not only the complicated and overlapping descriptions of each hierarchy's responsibility, but also the need for teamwork while simultaneously maintaining a strict ordering between the clerical and lay orders. How this constitutional ideal developed and subsequently began to breakdown under Innocent III forms the meat of the larger study, of which this chapter is only the outline.

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The Medieval Papal Legate and His Province: Geographical Limits of Jurisdiction

Robert C. Figueira

Introduction

Two important elements in political organization are interpersonal bonds and the territorial principle. The former element can exist between kinsmen, between members of the same tribe, people or nation, between patrons and clients, between chieftains and warriors, and within a community of faith. The latter element can be found, to some discernable degree, in the political and social structures of all non-nomadic peoples. These elements are sometimes antagonistic, sometimes complementary; they can exist in equilibrium, or one can be more important than the other. Yet neither element can be totally absent, for political society presupposes interaction among individuals, and the political activity of settled populations possesses some spatial character. Boundaries – the means of limiting space – express the limits within which political authority can act, and beyond which it is normally restrained from acting. In other words, political authority has an areal impress, and with sufficient data one may observe areal patterns in the efficacy of political coercion and in the presence of submission to political demands. To be sure, such delimitations often cannot be charted with great exactitude, for the intensity of coercion and obedience may vary imperceptibly between polities or within polities.[1]

The late Roman Empire possessed readily discernable external and internal boundaries. Beyond the frontier were areas inhabited by barbarians or under the control of Rome's only acknowledged imperial rival, the Persian Empire. Internal boundaries provided the matrix for political, financial, and legal administration. However, not only did many of these boundaries disappear after the dissolution of the empire in the West, but indeed the practice or concept of clearly delineated political boundaries also atrophied. For the early Middle Ages the more important

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1. S.B. Jones, 'Boundary concepts in the setting of place and time', *Annals of the Association of American Geographers* 49 (1959), 241–55; L.D. Kristoff, 'The nature of frontiers and boundaries', *Annals of the Association of American Geographers* 49 (1959), 269–82; Eric Fischer, 'On Boundaries', *World Politics* 1 (1949), 196–222; Mark Blacksell, 'Boundary', in R.J. Johnston, ed., *Dictionary of Human Geography* (New York, 1981), pp. 23–4; Herbert Adams Gibbons, 'Boundaries', in Edwin R.A. Seligman and Alvin Johnson, eds, *Encyclopedia of the Social Sciences*, (New York, 1930), 2:649.

element of secular political organization was the interpersonal bond. The Church, on the other hand, retained in many areas a system of diocesan organization patterned on Roman civil administration.

Nonetheless, not until the high Middle Ages would the West witness the resurgence of the territorial element as an important political factor in the construction of coherent nation-states and in the centralization under papal headship of Europe's sole 'superpolity', the Western Church. The story of this historical development – the renewed importance of the territorial concept in the politics of the medieval West – coincided with other processes of political import, among which figured the development of new legal systems, the growth of new political ideologies, the refinement of financial and administrative institutions, the acquisition by rulers of increased physical resources, developments in technology, and the steady recovery of antiquity's intellectual heritage. However, the study that follows will focus on the role of the territorial principle in the exercise of jurisdiction within the medieval Church by a single type of official – the papal legate, *alter ego* of the pope.

The legate was an agent in the fullest sense of the term. He often dressed in the papal purple; he invariably exercised powers and claimed prerogatives reserved to the pope alone. He made the pope's will manifest in the furthest corners of the Western Church. He served as the pope's ambassador; he kept his master informed of local conditions, circumstances, and events; he performed the majestic or modest tasks of ceremony and administration that the pope neither had the occasion nor inclination to perform. Legation was a means whereby the papacy could intervene effectively in the affairs of local churches on a regular basis.[2]

Such an important institution was naturally the object of legal definition, both by the popes who utilized it and by the canonists who described it. Papal pronouncements of legal import – so-called decretals – multiplied from the mid-twelfth century onward. Contemporary canonists in the schools and in law courts collected and commented on these texts; by the early thirteenth century some of these collections were compiled at papal behest and published under papal approbation. This study will focus mainly on the decretals embodied in the most important official collection of this period, the *Liber Extra*, and also on its major attendant commentaries. The *Liber Extra* was a massive compilation prepared by Raymond of Penyafort at Pope Gregory IX's command and published in 1234.[3] This collection officially superseded all previous

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2. For a bibliography of secondary works concerning medieval papal legation, see Robert C. Figueira, 'The Canon Law of Medieval Papal Legation' (Cornell University Ph.D. dissertation, 1980), pp. 550–63.

3. See Johann Friedrich von Schulte, *Geschichte der Quellen und Literatur des kanonischen Rechts von Gratian bis auf die Gegenwart* (Stuttgart, 1875–80), 2:3–25 (hereafter von Schulte); A. van Hove, *Prolegomena*, Commentarium Lovaniense in Codicem Iuris Canonici I, 1 (Mechelen/Rome, 1945), pp. 357–61 (hereafter van Hove); R. Naz, ed., *Dictionnaire de droit canonique* (Paris, 1935–65), 4:627–32 (hereafter DDC); James A. Brundage, *Medieval Canon Law* (London/New York, 1995), pp. 54–5 (hereafter Brundage); Eltjo J.H. Schrage, *Utrumque Ius: Eine Einführung in das Studium der Quellen des mittelalterlichen gelehrten Rechts* (Berlin, 1992), pp. 98–103 (hereafter Schrage); Péter Erdö, *Introductio in historiam scientiae canonicae: Praenotanda ad Codicem* (Rome, 1990), pp. 24–5, 79–80 (hereafter Erdö). Citations from the *Liber Extra* are from *Corpus iuris canonici*, ed. Emil Friedberg, 2 (Leipzig, 1879; repr. Graz, 1959), and will be noted by the abbreviation X.

decretal collections and was intended to supplement Gratian's *Decretum*, the most important twelfth-century compendium of canon law.[4] The commentators of these decretals – the decretalists – included many of the most prominent thirteenth-century practitioners of this science: Johannes Teutonicus,[5] Goffredus of Trani,[6] Pope Innocent IV,[7] Abbas antiquus (Bernard of Montmirat),[8] Bernard of Parma,[9] Hostiensis (Henry of Susa)[10] and Guilelmus Durantis.[11]

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4. For Gratian see von Schulte, 1:46–56; van Hove, pp. 338–48; DDC 4:611–27, Brundage, pp. 47–9, 212; Schrage, pp. 89–95, Erdö, pp. 24–5, 42–5, 47–8. The *Decretum* was compiled *c.*1140; a modern edition is found in v. 1 of Friedberg's *Corpus* (see note 3 above). Citations from this work in Part One are according to D[istinctio], c[apitulum]; in Part Two according to C[ausa], q[uaestio], c[apitulum]. Citations to Roman law can be found in Paul Krueger and Theodor Mommsen , eds, *Digesta* (Berlin, 1882) (hereafter Dig.); in Paul Krueger, ed., *Codex Iustinianus* (Berlin, 1884) (hereafter Cod.), and in Rudolf Schoell and Wilhelm Kroll, eds, *Novellae* (Berlin, 1895) (hereafter Nov.).

5. Johannes was the author of the ordinary gloss to Gratian's *Decretum*, as well as the compiler of an unofficial decretal collection of Innocent III's later decretals (the *Compilatio quarta*). He produced glosses on this compilation, on the canons of the Fourth Lateran Council, and on the *Compilatio tertia*. This last-named collection comprised decretals from the first twelve years of Innocent III's pontificate, and had been compiled at that pope's request by Petrus Beneventanus. Johannes's gloss on *Compilatio tertia* was completed *c.*1216. See von Schulte, 1:171–2; van Hove, pp. 356–7, 431–2; DDC 6:120–22; Brundage, pp. 195, 201, 219–20; Schrage, pp. 95, 100, 103, 117, 120; Erdö, pp. 51–2, 63, 66–7. Kenneth J. Pennington's dissertation, 'A Study of Johannes Teutonicus' Theories of Church Government and of the Relationship between Church and State, with an Edition of his Apparatus to Compilatio Tertia' (Cornell University Ph.D. dissertation, 1972), included a diplomatic edition of Admont, Stiftsbibliothek 22. Pennington began publishing a critical edition of Johannes's gloss based on an extensive survey of the manuscripts; the first portion (Books One and Two of the gloss) appeared in: *Johannis Teutonici Apparatus glossarum in Compilationem tertiam*, Vol. I (Vatican City, 1981). Where possible, I cite readings from this edition (hereafter *Glossa* ad Comp. III). Otherwise, I cite from the dissertation version (hereafter dissertation version). See also Pennington, 'Johannes Teutonicus and Papal Legates', *Archivum Historiae Pontificiae* 21 (1983), 183–94, for a discussion of some of this canonist's views regarding legates.

6. Goffredus Tranensis, *Summa super titulis decretalium* (Lyons, 1519; repr. Aalen, 1968); written before 1245; see von Schulte, 2:88–91; van Hove, p. 473; DDC 5:952; Brundage, pp. 57, 211–12; Schrage, pp. 104, 121; Erdö, p. 90 (hereafter Goffredus).

7. Innocentius IV, *Apparatus super V libris decretalium* (Lyons, 1535); written *c.*1250–51; see von Schulte, 2:91–3; van Hove, p. 477; DDC 6:1031; Brundage, pp. 55, 57, 225–6; Schrage, pp. 104, 121; Erdö, pp. 80, 82, 85, 88 (hereafter Innocent IV ad X).

8. *Lectura aurea domini abbatis antiqui super quinque libris Decretalium* (Strasbourg, 1510); written circa 1259-66; see von Schulte, 2:130-2; van Hove, p. 478; DDC 1:1-2; Brian Tierney, *Foundations of the Conciliar Theory* (Cambridge, 1955), p. 256 (hereafter: Tierney); P. Legendre's article in *The New Catholic Encyclopedia* (Washington D.C., 1967), 2:340-1; Brundage, pp. 209-10; Schrage, pp. 104, 106; Erdö, p. 88; hereafter: Abbas antiquus ad X.

9. The gloss to the *Liber Extra* as found in the Turin 1670 and Lyons 1671 editions of the *Corpus iuris canonici*; written between 1241-77; see von Schulte, 2:130-1; van Hove, p. 473; DDC 2:781-2; Tierney, p. 257; Brundage, pp. 57, 201, 210, 228; Schrage, pp. 104, 121-22; Erdö, p. 84; hereafter: *Glossa ordinaria* ad X.

10. Because this canonist ultimately became cardinal-bishop of Ostia, he was known to contemporaries and posterity as Hostiensis: *In libros decretalium commentaria* (Venice, 1581; repr. Turin, 1965); *Summa aurea* (Venice, 1579; repr. Turin, 1963). The latter was written 1250-1; Hostiensis worked on the former (also called *Lectura*) until his death in 1271; see von Schulte, 2:123-7; van Hove, p. 476; DDC 5:1211- 27; Tierney, p. 259; Brundage, pp. 58, 201, 214; Schrage, pp. 104, 106, 110, 121; Erdö, pp. 88-91; hereafter: Hostiensis, *Summa*; and Hostiensis, *Commentaria*.

11. *Speculum iuris* (Venice, 1585), the portion *de legato*, *pars prima*, ch. 2 in v. 1; written during the 1270s and 1280s in several recensions; see von Schulte, 2:144-52; van Hove, pp. 491-2; DDC 5:1014- 30, 1034-52;

The Depiction of Legatine Provinces in the *Liber Extra* and in Decretalist Glosses: Some General Observations

During the thirteenth century, canon lawyers defined legatine jurisdiction in part by geographic considerations. The decretalists called the territorial unit within which a legate performed most of his activities his 'province' (*provincia*) or 'legation' (*legatio*), terms which they occasionally found in decretals, especially when a pope wished to make some theoretical point concerning the legatine office.[12] This study will use the former term – province – exactly as the decretalists did: to denote that geographical area assigned to a legate and within which he could employ all of the powers pertaining to him by virtue of his office. Another type of province – the sphere of an archbishop's jurisdiction – will be designated as a 'metropolitan province' to avoid confusion. As we shall see, decretalists often relied merely on context to distinguish between these types in their glosses.

The descriptions of legatine provinces occurring in the decretals of the *Liber Extra* and in decretalist glosses utilized various modes of expression denoting political, ecclesiastical, purely geographical boundaries, or even combinations of these criteria. Sometimes a legate was empowered to act within the confines of an established political unit, such as the kingdom of Sicily, or the less well-defined areas under Latin control in the former Byzantine Empire after the Fourth Crusade.[13] This type of designation shaded almost imperceptibly into more purely geographical expressions, such as 'in German parts' or similar (and more awkwardly translated) appellations denoting the 'parts' surrounding such cities as Limoges and Toulouse.[14] There was even a reference in the ordinary gloss of the *Liber Extra* to a cardinal who 'was once a legate in Spain'.[15] As we shall see below, other legates were dispatched to care for specific groupings of metropolitan provinces, or for a single metropolitan province.

Several decretals discussed in detail the restrictions imposed on legates when they were outside of their provinces. A decretal of Innocent III (*Novit ille*, X 1.30.7) concerned the imposition of an interdict on France in 1199 by Cardinal-Legate Peter of Capua; this action was necessitated by Philip Augustus's refusal to take back his wife, Ingeborg of Denmark.[16] Among other objections, King Philip had asserted

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Brundage, pp. 58-59, 228-29; Schrage, p. 83; Erdö, pp. 92-94; my citations will note paragraph, section, and page numbers; hereafter: Guilelmus Durantis.

12. X 1.30.7, 9, and 10.

13. X 1.30.4: 'in regno Siciliae generalis sit tibi commissa legatio'; X 5.40.31: 'legatus in partibus Romaniae'.

14. X 1.4.7: 'in partibus Alemaniae legationis officio fungerentur'; X 5.27.8: 'in partibus illis apostolicae sedis legationis fungente officio'; restated by the *Glossa ordinaria* ad X 5.27.8: 'CASUS. Episcopus Tusculanus erat legatus in partibus Lemovicensibus …'; ibid., ad X 5.40.26: 'CASUS. Quidam legatus Apostolicae sedis exercens legationis officium in partibus Tholosanis …'.

15. *Glossa ordinaria* ad X 2.28.19: 'CASUS … I. diaconus Cardinalis olim in Hispania legatus …'. Cardinal Hyacinth later became Pope Celestine III; see Werner Maleczek, *Papst und Kardinalskolleg von 1191 bis 1216: Die Kardinäle unter Coelestin III. und Innocenz III.* (Vienna, 1984), pp. 69–70.

16. For a discussion of Cardinal Peter's legation, see Heinrich Zimmermann, *Die päpstliche Legation*

that Peter had imposed an interdict on France from a point outside the kingdom; thus, as legate *to* France, Peter's action from beyond the borders was allegedly void. Innocent III responded that his legate's interdict was nonetheless valid, since Peter's commission included not only areas within the French kingdom, but also the metropolitan provinces of Vienne, Besançon, and Lyons, all of which included territory officially under the political control of the empire.[17]

Provincial boundaries were a determining factor of another particular legatine activity, namely the capability to absolve persons excommunicated for crimes of violence against clergymen. A decretal of Gregory IX on this subject (*Excommunicatis*, X 1.30.9), together with the aforementioned decretal of Innocent III to Philip Augustus (*Novit ille*, X 1.30.7), provoked decretalists into extensive discussion regarding legatine provinces. In X 1.30.9 Gregory specified that a specific class of legate – those 'who are not sent *de latere*' – neither could absolve such excommunicates when the legates themselves were outside their provinces, nor could absolve such miscreants who entered their provinces from somewhere else. Furthermore, the pope continued, another class of legate – those 'by pretext of their churches' – could not absolve such excommunicates at all, even if the legates were within their provinces and the excommunicates were their subjects.[18]

Before we investigate in detail the canonists' comments regarding these two particular decretals, it would be well to assess several general observations made by decretalists concerning the nature of legatine provincial jurisdiction. Bernard of Pavia's characterization of the papal legate in terms of his province became a commonplace in canonistic discussion: 'a legate is said to be one to whom the

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in der ersten Hälfte des 13. Jahrhunderts: Vom Regierungsantritt Innocenz' III. bis zum Tode Gregors IX. (1198–1241) (Paderborn, 1913), pp. 23–4; Maleczek, *Papst und Kardinalskolleg*, pp. 119–20 and idem, *Petrus Capuanus: Kardinal, Legat am vierten Kreuzzug, Theologe (+1214)* (Vienna, 1988), pp. 95–116.

17. X 1.30.7: 'Ex parte tua querimoniam accepimus … quod … legatus … extra fines regni Francorum in terram tuam interdicti sententiam promulgavit … Tuae magnificentiae respondemus, quod etsi fines regni Francorum exierat, nondum tamen fuerat terminos suae legationis egressus, quum non solum in regno Francorum, sed in Viennensi, Lugdunensi et Bisuntinensi provincis iniunctam sibi a nobis legationis solicitudinem suscepisset.' This same matter was broached in another of Innocent's decretals (X 1.5.1), where he justified his refusal of a request by the clergy of Sens that he postulate (that is., transfer) the bishop of Auxerre to this archiepiscopal see. Innocent castigated the bishop for non-observance of Peter's interdict. While refuting in detail each of the bishop's excuses, the pope referred to the objection that the legate had not been in French territory when he had acted. Innocent repeated practically the same reply that he had made to Philip Augustus. In X 1.5.1, the relevant passage was *in parte decisa* of the *Liber Extra* as printed by Friedberg, and perhaps on this account was not discussed *in extenso* by decretalists. Innocent IV seemed, however, to have realized something of this passage's intent; see note 50 below.

18. X 1.30.9: 'Excommunicatis pro iniectione manuum violenta ecclesiae Romanae legati, qui de ipsius latere non mittuntur, extra provinciam sibi commissam, vel ibidem, si huiusmodi manuum iniectores illuc contingat aliunde accedere, et qui ecclesiarum suarum praetextu legationis sibi vendicant dignitatem, etiam subditis, quamvis in provincia sua existentes, beneficium absolutionis impertiri non possunt, nisi de speciali gratia illis et istis amplius a sede apostolica concedatur.' This decretal played a major role in decretalist classifications of legate-types; see Robert C. Figueira, 'The Classification of Medieval Papal Legates in the *Liber Extra*', *Archivum Historiae Pontificiae* 21 (1983), 211–28.

rule over a country (*patria*) is committed'.[19] Goffredus and Hostiensis repeated this assertion in near identical terms,[20] while both the latter canonist and Durantis stressed the legate's central role as provincial ruler through similar expressions: the legate could take cognizance of all provincial cases; bishops and all other provincials were subordinate to the legate and must obey him; there was nothing within the province that the legate could not do; the legate had greater power in his province than all other persons save the prince: that is, the pope. All of these statements were based largely on concepts of Roman government, as supporting citations attested.[21]

Yet, as we saw from some of the objections voiced in the above-mentioned decretals regarding extra-provincial legatine actions, the power of a legate could vary according to where he was. As Goffredus noted, a legate's office *before* he first entered the province assigned him differed both from his legation *in* the province and his capabilities *after* he had left for the return trip home or to the *curia*. That is, prior to entrance his jurisdiction was voluntary, consisting (according to Roman law) of judicial actions not requiring a contest between parties-at-law. Translated into ecclesiastical terms by Goffredus, such permissible actions would include preaching and the absolution of persons excommunicated for violence against clergy. In the latter regard he cited X 1.30.4 (a decretal of Innocent III that did not, however, distinguish what types of legates could absolve under what circumstances), X 5.39.20 (where Celestine III accorded this capability expressly to legates *de latere*), and most importantly, *Excommunicatis* (X 1.30.9), which Goffredus interpreted in a thoroughly interesting manner. The canonist inferred from the last-named text that legates *de latere* outside of their provinces could absolve such miscreants, much as the Roman proconsul could wear his insignia and exercise voluntary jurisdiction

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19. Bernard of Pavia, *Summa decretalium*, ed. E.A.T. Laspeyres (Regensburg, 1860; repr. Graz, 1956), p. 17: '*Legatus dicitur, cui aliqua patria vel provincia regenda committitur …*'. Bernard composed this work some time during 1191–98; for a discussion of this work and its author, see von Schulte, 2:175–82, 228–30; van Hove, pp. 447–50; DDC 2:785; Tierney, p. 257; Brundage, pp. 54, 194, 210–11; Schrage, pp. 100, 117; Erdö, pp. 63, 65, 68, 70–71.

20. Goffredus, 52r: '*Legatus* est is cui certa patria vel provincia gubernanda committitur ut infra de appellationibus novit [X 2.28.43].' Hostiensis, *Summa*, p. 317: '*Quis sit legatus* … hic tamen specialiter tractatur de legatis Apostolicae sedis quibus aliqua terra, seu provincia regenda committitur infra eodem c. i et c. novit et sequente [X 1.30.1,7,8].'

21. Hostiensis, *Commentaria* ad X 2.27.18: '*Legatus*. ideo potest causas totius provinciae audire, et aliis delegare …'; Guilelmus Durantis, para. 4, sect. 38, 38a: '*Superest* videre quid ad legati pertineat officium … Praeterea apparet eum ordinarium esse, quia universae causae criminales et civiles totius provinciae sibi decretae deferuntur ad eum: ut extra de officio legati c. i [X 1.30.1].' Para. 4, sect. 42, 38b, same rubric: 'Item provinciae, episcopi, et omnes alii legato subsunt, et sibi obedire tenentur …'; para. 6, sect. 53, 52a: '*Nunc* … Legatus...maius imperium habet in provincia sibi decreta omnibus aliis post principem, ut *ff* eodem et ideo [Dig. 1.16.8] et *ff* de officio praesidis l. 4 [Dig. 1.18.4]. nec quicquam est in ea provincia, quod per ipsum non expediatur ut *ff* de officio proconsulis nec quicquam [Dig. 1.16.9] in principio.' For an inquiry into the role of Roman law in the canonists' analysis of medieval papal legation, see Robert C. Figueira, 'Decretalists, Medieval Papal Legation, and the Roman Law of Offices and Jurisdiction', *Res Publica Litterarum* 9 (1986), 119–35, also published in *Studi Umanistici Piceni* 6 (1986), 119–35.

even before he entered his proconsular province.[22] And the comparison of a legatine province with a proconsular province did not end there for Goffredus. Just like the Roman magistrate, so too should a legate send to the province a notification of when he would cross its borders, and also should enter at the geographical point where it was customary to do so.[23]

Hostiensis repeated most of Goffredus's assertions[24] and further elaborated on the scope of jurisdiction of a legate who has left his province. If recalled by the pope, or if he departed from his province in any other manner with no intention to return, then the legation was finished. Otherwise, if the legate has left the province with the intention of returning to it, then his legation was merely suspended.[25] In the former case, the legate retained during the return trip his power (*imperium*), even though his legation was finished and he himself was outside his province. This power lapsed only when he re-entered the pope's city of residence. What the legate did not possess during the return trip was the personal exercise of this power.[26]

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22. Goffredus, 52r: '*Legatus* … Officium legati aliud est ante ingressum in provinciam sibi decretam. aliud post ingressum. et aliud post egressum. Officium legati ante ingressum provincie in voluntaria iurisdictione consistit scilicet in predicando. et in absolvendo excommunicatos propter manus iniectionem in clericos monachos et conversos. ut infra de sententia excommunicationis ad eminentiam [X 5.39.20]. *Circa* … Nam legati qui de latere domini pape mittuntur possunt absolvere homines sue provincie et alterius cuiuscunque in provincia et extra provinciam … Tertii generis legati qui ecclesiarum suarum pretextu legatione funguntur … excommunicatos huiusmodi non absolvunt ut infra eodem titulo excommunicatis [X 1.30.9]. Primis igitur legatis ex ipso legationis officio iam hoc licere incepit. ut in decretale quod translationem [X 1.30.4] sic et proconsul* antequam* ingrediatur provinciam utitur proconsularibus insigniis et voluntariam iurisdictionem non contentiosam exercet ut *ff* de officio proconsulis l. i et ii [Dig. 1.16.1,2].' The emendation marked by asterisks is taken from the Cologne 1481 edition, in place of the phrase 'proconsulente quam' of the Lyons 1519 edition.

23. Ibid.: '*Circa* … Recte autem legatus faciet in premissa denunciatione et per eam partem provincie intret. per quam alii ingredi consueverunt ad instar proconsulis ut *ff* de officio proconsulis l. observare in ver. recte [Dig. 1.16.4.4] et in autentica de administratoribus §illud autem colla. vii [Nov. 95.1.2].'

24. Hostiensis, *Summa*, p. 328: '*Quando suam iurisdictionem exercet* … Et etiam in introitu civitatis debet servare mores provincialium ut in l. observare [Dig. 1.16.4], et l. si in aliquam celebrem [Dig. 1.16.7]. et in authentica de administrantibus §illud autem coll. 7 [Nov. 95.1.2] … *Et in quo loco* … Item ea quae sunt voluntariae iurisdictionis, exercere potest extra provinciam. *ff* de officio proconsulis l. 2 [Dig. 1.16.2] ideo absolvere potest primum genus, etiam extra provinciam. infra de sententia excommunicationis ad eminentiam [X 5.39.20]. secus de aliis. infra eodem excommunicatis [X 1.30.9].'

25. Ibid., pp. 328–9: '*Et qualiter finiatur* … Secundo, revocatione, ex quo provinciam revocatus, vel alio modo egreditur non reversurus. *ff* de officio presidis l. 3 resp. i [Dig. 1.18.3]. sed si aliter exit, suspenditur. secundum hoc intellige *ff* de officio praefecti urbi l. ult. [Dig. 1.12.3]. infra eodem c. ult. et c. excommunicatis [X 1.30.10,9], nec enim videtur egressus, qui statim reversus est. *ff* de divortiis divortium [Dig. 24.2.3] *ff* de in rem verso, si pro patre §versum [Dig. 15.3.10.6] … Quamcito enim portam Romae ingreditur, imperium deponit, nec tamen imperare potest nisi in provincia sibi decreta, quantum ad exercitium. *ff* de officio proconsulis l. i et l. fi. [Dig. 1.16.1,16].'

26. Under certain circumstances a legate outside of his province could subdelegate to others the exercise of his power; see the discussion below. On legatine subdelegation in general, see also Robert C. Figueira, 'Subdelegation by Papal Legates in Thirteenth-Century Canon Law: Powers and Limitations', in Steven Bowman and Blanche Cody, eds, *In Iure Veritas: Studies in Canon Law in Memory of Schafer Williams* (Cincinnati, OH, 1991), pp. 56–79.

A certain tension evidently existed in Goffredus's and Hostiensis's analyses of these matters. On the one hand, certain Roman laws prescribed rather clear-cut rules governing the exercise of jurisdiction by magistrates outside and within their districts. On the other hand, customary ecclesiastical usage (later enshrined in decretals) confronted canonists with exceptions to these rules, such as a legate *de latere*'s ability to absolve a certain type of excommunicate anywhere. Thus, the resulting situation in decretalist writings sometimes verged on contradiction. It would perhaps be best for the subsequent discussion to keep in mind Goffredus's dictum concerning the various stages of legation. The greatest scope and intensity of legatine jurisdiction occurred quite naturally when the legate (of any type) was within his province. At other times, such as before his arrival or after his departure (whether final or involving only a temporary absence), his jurisdiction might lessen in intensity, but did not entirely disappear until the actual arrival of the legate at his return destination.

Decretalist Discussion of *Novit ille* (X 1.30.7)

Much of the decretalist discussion concerning legatine provinces occurred within the context of the aforementioned decretal of Innocent III to Philip II of France concerning the legatine interdict, and Johannes Teutonicus set the tone here. This canonist first investigated the extent of a legate's power before his initial entrance into the province. We have already noted how later canonists (such as Goffredus and Hostiensis) characterized this pre-entrance jurisdiction as 'voluntary', such as preaching, or (for the legate *de latere*) as the capability to absolve a certain type of excommunicate. Johannes, however, probed deeper into this question by distinguishing between an older and a newer view. Formerly, he said, the 'legate of a prince' (*legatus principis*) could not mandate or subdelegate his jurisdiction to any other person before his arrival, except in cases of necessity. But in his own day, Johannes conceded, a legate (we assume a papal legate, as in the glossed decretal) could subdelegate jurisdiction for the solution of a specific complaint before his arrival, so long as the ensuing case did not involve capital punishment or loss of limbs.[27] Indeed, Johannes lifted this last proviso directly out of the *Novels* (128.20).[28] Yet this canonist made no attempt to tailor these rather explicit punishments from Roman law to the ecclesiastical law of his day, according to which no legate, even when within his 'province', could exercise capital punishment over anyone under

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27. *Glossa* ad Comp. III 1.19.5 (= X 1.30.7), p. 132: '*fines regni*: Olim non poterat legatus principis mandare iurisdictionem antequam esset ingressus provinciam, nisi necessariam haberet moram, ut *ff*. de officio proconsulis Aliquando et l. precedenti [Dig. 1.16.5,4]. Hodie potest, sententia sibi reservata, ut in authentica coll. ix. de coll. §Antequam vero [Nov. 128.20], preter novissimum supplicium vel membri abscisionem, ut ibi dicitur. johannes.'

28. In Nov. 128.20 Justinian forbade the delegation by civil and military judges posted to provinces of cases involving such penalties before their arrival: 'Antequam vero in provinciis veniant iudices, damus licentiam eis vices agentes suos instituere, qui omnia debeant usque ad sui praesentiam agere quae possint ipsi iudices facere, citra tamen novissimum supplicium aut membri incisionem.'

any circumstances. Such power was indeed foreign to medieval ecclesiastical jurisprudence.[29] As we shall soon see, the problem incurred by Johannes's literalism was solved by subsequent decretalists.

Johannes next asked whether a legate who went beyond the boundaries of his province could excommunicate, absolve, or subdelegate cases.[30] Several arguments would deny such capabilities: (1) Judges with ordinary jurisdiction could not adjudicate outside the areas under their jurisdiction (Dig. 1.18.3 for a Roman *praeses provinciae*, Dig. 2.1.20 for a Roman judge). (2) Excommunication pertained *not* to voluntary jurisdiction, but instead involved a 'cognizance of the case' (*causae cognitio*[31]) that required a judge to 'sit in tribunal' (*sedens pro tribunali*). No bishop could thus 'sit' in another bishop's diocese, but normally had jurisdiction solely in his own, and hence, if he could not excommunicate when outside the diocese, he also could not absolve there.

However, Johannes immediately listed two counter-arguments attributed to other unidentified canonists that supported a legate's power to excommunicate when outside his diocese.[32] First, under certain circumstances a bishop outside his diocese could excommunicate someone. The text cited here was a canon of the council of Sardica (343), which, in the form used by Gratian in the *Decretum* (C.11q.3c.4), permitted the bishops of neighboring dioceses to inquire into the conflict between

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29. Hubert Jedin et al., eds, *Conciliorum Oecumenicorum Decreta* (Bologna, 1973), p. 244; canon 18 of the Fourth Lateran Council (1215): 'Sententiam sanguinis nullus clericus dictet aut proferat, sed nec sanguinis vindictam exerceat aut ubi exercetur intersit.' This text also appeared as X 3.50.9. Condemned heretics suffered capital punishment at the hand of secular authorities after having been surrendered by ecclesiastical authorities.

30. *Glossa* ad Comp. III 1.19.5 (= X 1.30.7), pp. 132–3: '*terminos sue*: Ex hoc videtur quod si legatus excessit provinciam ad quam destinatus est, quod a modo nec excommunicare nec absolvere nec causas delegare possit in illa provincia; et idem de aliis iudicibus ordinariis videtur, ut *ff*. de officio presidis l.iii. [Dig. 1.18.3] *ff*. de iurisdictione omnium judicum l.ult. [Dig. 2.1.20]. Videtur tamen quod posset absolvere aliquos dum est extra provinciam quia ea que spectant ad voluntariam iurisdictionem exequitur extra provinciam, *ff*. de officio proconsulis l.ii. [Dig. 1.16.2]. Ad hoc dico quod nullus iudex potest excommunicare vel absolvere extra suam provinciam, nam excommunicatio fit cum cause cognitione, ut ii. q.i. Nemo [C.2q.1c.11]; set ea que cause cognitionem desiderant fiunt iudice sedente pro tribunali, ut ii. q.iii. §Abolitio [C.2q.3 dict. post c.8§8], set in aliena diocesi non potest sedere pro tribunali, nec aliquid ibi disponere, ut ix. q.ii. Episcopum [C.9q.2c.7]. Item nec absolvere potest, quia si posset absolvere, per consequens et excommunicare, ut xxi. di. Denique [D.21c.6]. Quod tantum in sua diocesi habeat iurisdictionem est arg. xi. q.i. Si quisquam [C.11q.1c.16] et xcii. di. Si quis episcopus [D.92c.8]. *ff*. de rebus auctoritate iudicis possidendis Cum unus §penult. [Dig. 42.5.12.1].' For information on the *praeses provinciae*, see Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Transactions of the American Philosophical Society, n.s., 43, pt. 2 (Philadelphia, PA, 1953), p. 646.

31. 'The judicial examination of the case, particularly of its factual background in the course of the proceedings …'; Berger, *Encyclopedic Dictionary*, p. 383. See also pp. 393–4, and the articles by M. Wlassak and Kleinfeller in Pauly-Wissowa, *Real-Encyclopädie der classischen Altertumswissenschaft* (Stuttgart, 1894–), 4:206–12, 218–20, and by Theo Mayer-Maly, *Der kleine Pauly Lexikon der Antike* (Stuttgart, 1964), 1:1241–2.

32. *Glossa* ad Comp. III 1.19.5 (= X 1.30.7), p. 133: 'Dicunt quidam quod possit extra diocesim excommunicare, arg. xi. q.iii. Si episcopus [C.11q.3c.4], sicut Paulus excommunicavit Corinthium absentem, ut ix. q.iii. §ult. [C.9q.3 dict. post c.21].'

a bishop and his excommunicated priest or deacon if the excommunicated cleric should approach them. If the bishops should meet together to hold such an inquiry (at least all but one of them would have to be outside their dioceses), and if they should find against the accused, they could presumably confirm the excommunication.[33] The biblical example (1 Corinthians 5:3) of St Paul anathematizing any Corinthian Christian guilty of fornication provided the second counter-argument. This example was also recorded in a *Decretum* text, a statement or *dictum* by Gratian himself (C.9q.3 dict. post c.21).

This second counter-argument nonetheless provided several problems on its own account. First, Paul was by no means acting in the capacity of a spiritual judge for any specific area, but rather as 'Apostle to the Gentiles'. Thus the comparison of this particular situation with both episcopal diocesan and legatine provincial jurisdiction seemed somewhat strained. Second, even the diction of the biblical passage did not match that of Johannes Teutonicus – Paul referred to himself as being absent, while Johannes described the punished Corinthian as absent, even though the latter presumably remained in his home city.[34] Third, in the *dictum* text referred to by Johannes, Gratian took pains to assert both that a metropolitan bishop could interfere in the jurisdiction of his suffragan when the latter oppressed his subjects, and that this same metropolitan ought nonetheless support the just disciplinary actions of a righteous suffragan bishop. Gratian equated Paul's action with the first situation, while the second situation had its analogue in the Apostle John's approbation of the correction of miscreant Christians in Ephesus by responsible superiors.[35] Gratian's *dictum* was double-edged, supporting both a justification for and denial of legatine intervention.

To sum up thus far: after listing arguments pro and contra Johannes left undecided the general question whether a legate could excommunicate and absolve when outside his province. Nevertheless, this canonist did assert that a legate outside of his

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33. C.11q.3c.4: 'Et ideo habeat potestatem is [presbiter vel diaconus], qui abiectus est, ut episcopos finitimos interpellet, et causa eius audiatur ac diligentius tractetur. Ille vero episcopus, qui iuste vel iniuste eum abiecit, patienter accipiat, ut negotium discutiatur, vel probetur eius sententia a pluribus, vel emendetur.' For a discussion of this canon in its conciliar setting, see Hamilton Hess, *The Canons of the Council of Sardica* (Oxford, 1958), pp. 126–7.

34. Ironically, Johannes's misreading further weakened his argument, for a correct reading of the biblical text would more closely approximate his intended point. A. Colunga and L. Turrado, eds, *Biblia Sacra iuxta Vulgatam Clementinam*, Biblioteca de Autores Cristianos (Madrid 1965), I Cor. 5:3–5: 'Ego quidem absens corpore, praesens autem spiritu, iam iudicavi ut praesens eum, qui sic operatus est...tradere huiusmodi Sathanae in interitum carnis …'.

35. C.9q.3 dict. post c.21: 'Cum suffraganei archiepiscoporum subditis suis ad malum favere ceperint, atque circa eorum correctionem negligentes extiterint, tunc licet metropolitanis preter illorum voluntatem et ligandos dampnare, et reconciliandos absolvere. Cum vero episcopi zelo divinae karitatis accensi bonos verbo et exemplo edificant, malorum vicia aspera increpatione redarguunt, absque talium consilio non licet metropolitanis in eorum parrochia aliquid agere vel disponere … Sic et apostolus, quia Corinthios vidit negligentes circa correctionem fornicatoris, sua auctoritate illum dampnavit. Iohannes vero, quia episcopum Ephesiorum vidit paratum ad corrigenda vicia subditorum, sine eius auctoritate illos corrigere noluit, sed illum tantum de eorum correctione admonuit.' I assume that the reference to John the Apostle concerned his laudatory remarks to the Ephesians in Rev. 2:1–7.

province could indeed subdelegate the hearing of cases inside the province to others, especially in cases of necessary absence. Here, his models were the Roman proconsul and urban prefect, and his support the fact that the act of subdelegation itself required no 'cognition of the case' (*causae cognitio*).[36] Johannes even maintained that a legate outside his province could confer stipends or prebends (*stipendia*) to others, so long as this action likewise required no 'cognition of the case'; here, he cited as authority a decretal of Innocent III (X 3.8.7).[37]

Johannes's reliance on this particular text, which recounted the conflict between two clerics concerning the filling of a vacant archdeaconry, was indeed problematical. The cathedral chapter of York had refused to recognize their archbishop's first nominee, and claimed that the right of conferral had devolved unto them. Their candidate alleged that the archbishop, while in Normandy, had both accepted his own nominee's renunciation of the post and had himself collated the archdeaconry to him, thus accepting the chapter's wishes. It remains unclear whether Johannes meant to refer to the archbishop's original collation of the dignity, or to the fact that the archbishop was outside of his diocese at the time when he allegedly acquiesced in his chapter's choice.[38] The decretal also made no mention anywhere of 'cognition of the case'. On balance, then, Johannes's allegation that a legate could confer stipends or prebends even when he was outside the legatine province remained an assertion without conclusive support.

Goffredus repeated Johannes's distinction between the old and new theories regarding legatine jurisdiction before initial entry into the province. The reader

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36. *Glossa* ad Comp. III 1.19.5 (= X 1.30.7), p. 133: 'Hoc tamen concedo quod extra provinciam existens possit delegare causas in provincia, ut *ff*. de officio prefecti urbi l.ult. [Dig. 1.12.3] maxime si habet causam necessariam absentie, ut *ff*. de officio proconsulis l. Aliquando [Dig. 1.16.5]. Talis enim delegatio fit sine cause cognitione, licet qui delegat, imperet, ut supra titulo proximo, Pastoralis [X 1.29.28].'

37. Ibid.: 'Item et extra diocesim suam confert stipendia, licet illud fiat sine cause cognitione, ut infra de concessione praebendae Post electionem [X 3.8.7].' At this point in his commentary, Johannes broadened the range of his remarks to speak not only of legates, but also of ordinary judges in general, especially bishops within their dioceses; his terminology varied, for he shifted in quick succession between *legatus*, *provincia*, *iudex ordinarii*, *iudex*, and *diocesis*. On the related question regarding legatine reservations of benefices, see the discussion below surrounding notes 74–6.

38. Innocent decided in favour of the archbishop's original conferral. Bernard of Parma merely observed: 'Vacante archidiaconatu Richemundiae, Archiepiscopus Eboracensis in remotis agens, hoc audito, archidiaconatum ipsum contulit magistro H …' (*Glossa ordinaria* ad X 3.8.7: 'CASUS'). *In parte decisa* of the decretal, Innocent noted that the archbishop of York had initiated litigation in Normandy. Legates were also mentioned twice *in parte decisa*: once the legate-archbishop of Canterbury (probably Hubert Walter) nullified a sentence of excommunication, and at another time the archbishop of York litigated against his adversaries by virtue of papal letters and by a mandate of authorization from a cardinal-legate (probably Peter of Capua). In neither instance did the legates play any crucial role in the conferral of the dignity. Hubert had been Celestine III's legate; see Helene Tillmann, *Die päpstliche Legaten in England bis zur Beendigung der Legation Gualas (1218)* (Bonn, 1926), p. 34; C.R. Cheney, *Hubert Walter* (London, 1967), pp. 119–22. Peter had been on legation to France during 1198–1200 and was a cardinal-priest at the time that Innocent composed the decretal; see Maleczek, *Papst und Kardinalskolleg*, pp. 19–20, and *Petrus Capuanus*, pp. 112–13. Hostiensis was aware of portions of this decretal's text *in parte decisa*; see notes. 41 and 58 below.

should remember that Johannes ultimately permitted the yet-to-arrive legate the power to subdelegate to a deputy within the province all cases not involving capital punishment or loss of limbs, both penalties utterly foreign to ecclesiastical law and hence irrelevant even to medieval papal legation. Goffredus observed, however, that such penalties were to be understood in the context of Church discipline, not Roman criminal law. In other words, 'loss of limbs' should be interpreted to mean deposition from office, while capital punishment (the literal import of *ultimum supplicium* in Nov. 128.20) presumably should be softened to 'final penalty', that is, some type of permanent disciplinary judgment. Furthermore, Goffredus also justified legatine pre-arrival subdelegation by analogy, remarking that confirmed bishops-elect and even recently consecrated bishops likewise could delegate before their arrival in their dioceses.[39]

In his *Summa*, Hostiensis not only dutifully repeated Goffredus's additions to Johannes Teutonicus's remarks (together with his distinction between the old and new opinions regarding pre-arrival subdelegation),[40] but also attempted to deal with the broader question of legatine extra-provincial jurisdiction in a more compact and organized manner than heretofore.[41] Within the province, a legate could exercise his contentious or determinative jurisdiction, that is, act as a judge presiding over a case between disputing parties or promulgating some judicial order to a party-at-law. When outside his province he could subdelegate a case, presumably also according to the restrictions drawn from Johannes and Goffredus concerning pre-arrival subdelegation.[42] The legate could even judge in another province when he had

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39. Goffredus, 52r: '*Circa* … Item legatus antequam intret provinciam non potest iurisdictionem suam in provinciam demandare nisi necessitatis causa ut si moram necessariam in itinere patiatur. ut *ff* de officio proconsulis et legati l. observare §post hic et §sed si ante [Dig. 1.14.4.6] et l. aliquando [Dig. 1.16.5]. hodie tamen semper et indistincte hoc licere videtur ut in autentica de collatoribus §antequam vero colla. ix [Nov. 128.20]. et idem dici potest in prelato confirmato et maxime consecrato ad ecclesiam transmisso antequam diocesim ingrediatur. In hac tamen iurisdictionis demandatione excipiuntur ultimum supplicium. et membri abscisio. et eodem modo dici posset legatum non posse committere causam depositionis. vel perpetue amotionis. Nam amotus dicitur abscindi ut infra de excessibus prelatorum gravem [X 5.31.15] cetera posse antequam ingrediatur ut dictum est.' The dedicatee of this volume wrote the standard study of pre-consecration episcopal jurisdiction: Robert L. Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton, NJ, 1968).

40. Hostiensis, *Summa*, p. 328: 'Quando suam iurisdictionem exercet'.

41. Ibid.: '*Et in quo loco* [iurisdictionem exercet]. Intra territorium suum, non extra, quantum ad cognitionem causae vel determinationem. *ff* de iustitia et iure l. penultima [Dig. 1.1.11] et de iurisdictione omnium iudicum l. fi. [Dig. 2.1.20] infra eodem novit [X 1.30.7] potest tamen causam delegare extra provinciam. *ff* de officio praefecti urbi l. fi. [Dig. 1.12.3]. Item potest iudicare in aliena provincia, arg. infra de fideiussoribus constitutus [X 3.22.3] in fine. et supra de usu pallii ex tuarum [X 1.8.5] in fine. 9 q. 3 [C.9q.3] per totum. Item extra potest conferre beneficia. infra de concessione prebendarum post electionem [X 3.8.7]. secundum Joannem. sed non puto, quod sit alleganda pro iure, quamvis ad instructionem hoc fieri possit …'. Note that Hostiensis interpreted Johannes's citation of X 3.8.7 to pertain specifically to the legatine mandate and/or legatine nullification sentence, both of which occur *in parte decisa* of the decretal in Friedberg's edition; see note 38 above and note 58 below.

42. The texts cited by Hostiensis in support of this assertion did not conclusively support it. In X 3.22.3, Lucius III outlined for the archbishop of Canterbury possible methods for solving a case between the archbishop's chancellor and another cleric over debts incurred with Bolognese creditors at the Third

permission from the proper judge of that other province. Yet Hostiensis explicitly disputed Johannes's assertion that a legate could confer benefices (*beneficia*) when outside his province. 'But I do not think that this should be alleged as law, although mention can be made for the sake of instruction.'[43] Unfortunately, he neither explained further this rather opaque denial nor advanced any appreciable support for it. In addition, Hostiensis posed the question whether a legate could excommunicate when outside of his province, repeating Johannes's arguments pro and contra in shortened form. Unlike Johannes, however, he did render judgment personally in this matter, firmly prohibiting such action by a legate. Yet once again he provided no further argumentation justifying his prohibition.[44]

Innocent IV's gloss on *Novit ille*, which was roughly contemporaneous with Hostiensis's *Summa*, provided both new answers to old questions and posed new queries concerning the legate and his province. Hostiensis's broad assertion that a legate could only exercise contentious jurisdiction within his province became narrower in scope for this pope-canonist, who merely forbade contentious jurisdiction to a legate prior to his first entrance into the province. This revised prohibition was coupled with observations regarding heretofore unmentioned situations. A legate who has left his province (1) could not absolve a person whom he had excommunicated while within his province, (2) nor could he finish a case that had been begun before his departure – this should be left for his successor as legate or for the pope to complete.[45] The first observation was received later into the *Glossa ordinaria* of Bernard of Parma, and both observations ultimately appeared in Hostiensis's *Commentaria* as well, the first one, however, with the proviso that it did not pertain to legates temporarily absent who nonetheless subsequently returned.[46]

Lateran Council. Since the cleric could not easily bring witnesses for his part from Italy to England, the pope allowed the archbishop (as judge of the case) to permit Bolognese judges to hear these witnesses' testimony and to relay written depositions to him in England. In X 1.8.5, Innocent III allowed the archbishop of Compostela as a special privilege to wear his *pallium* outside his metropolitan province if necessity forced him to ordain priests or consecrate suffragans there. C.9q.3 contained texts regulating the relations between archbishops and suffragans within a metropolitan province.

43. See note 41 above.

44. Hostiensis, *Summa*, p. 328: '*Et in quo loco* … Sed an possit excommunicare extra provinciam? Quidam dicunt, quod non, quia causa cognitionem desiderat, unde debet fieri iudice sedente pro tribunali. 2 q.3 §notandum. ver. si quis [C.2q.3c.8§7]. 3 q.3 §spacium. ver. a iudice [C.3q.3c.4§3]. 9 q.2 Episcopum [C.9q.2c.7]. 21 dist. denique [D.21c.6]. *ff* de bonis authoritate iudicis possidendis ca. unius [*sic!*] §penu. [Dig. 42.5.12.1]. alii contra 11 q.3 si episcopus [C.11q.3c.4] 9 q.2 §fin. [C.9q.2c.10?]. non credo quod possit.'

45. Innocent IV ad X 1.30.7: '*promulgatum*. egressus provinciam non potest absolvere ab excommunicatione quam tulit existens in ea *ff* de officio presidis l. iii [Dig.1.18.3] … sed antequam ingrediatur provinciam non potest exercere contentiosam iurisdictionem. *ff* de officio proconsulis observare [Dig. 1.16.4]. Causam autem quam inchoavit legatus non perficiet post suum egressum: licet alius legatus qui succedet ei vel dominus papa qui intelligitur ei succedere ex quo alium non dat. *ff* de officio iudi. [*sic!*] mortuo [Dig. 5.1.60]. C. de iudicis properandum §sin autem in metu [Cod. 3.1.13.8a] …'.

46. *Glossa ordinaria* ad X 1.30.7: '*terminos* … Item potest quaeri, si excommunicavit aliquem dum erat in provincia, utrum possit eum absolvere postquam egressus est provinciam? Dicendum est quod

At this point Innocent's remarks could seem somewhat confusing to the unwary reader; after a passage in which he compared the jurisdiction of legates and papal judges-delegate as regards a topic unrelated to this discussion, he began to make statements concerning a 'province delegated to him' and 'delegation'. Upon proceeding further with his gloss, however, the reader quickly realizes that Innocent was actually discussing some of the same issues originally raised by Johannes Teutonicus concerning legatine provinces. Before Innocent was through, he was back (without any noticable break in continuity) to speaking explicitly concerning legates. This makes it highly probable that he was referring to papal legation all along.[47] He reformulated Johannes's distinction between the old and new views on pre-arrival jurisdiction; but he applied the distinction to legatine jurisdiction in general, and saw the new view's prime characteristic in any legate's ability to subdelegate cases not involving 'cognition of the case', even if the delay in arrival was due to the legate's own whim and not caused strictly by necessity. Like Hostiensis's *Summa*, Innocent's *Commentaria* also posed new questions. Could a legate exercise any jurisdiction after he left his province to return to the curia or home? Innocent answered in the negative; it would have been interesting to learn how he would have squared this statement with a legate *de latere*'s acknowledged capability to absolve certain excommunicates anywhere. Could a legate who had left his province with the intention of returning to it still excommunicate? No, answered Innocent, for that would involve 'sitting as a judge', which he could not do outside of his province unless he should have the permission of the local diocesan. This conclusion was

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non: quia exeundo provinciam privatus est dignitate *ff* de officio praesidis l. iii [Dig. 1.18.3] et statim expirat iurisdictio. infra eodem capitulo ultimo [X 1.30.10].' See Hostiensis, *Commentaria* ad X 1.30.7, '*terminus*', for direct copying of the above statement and attribution to Bernard, with the following proviso: 'Supradicta intelligas, quando exit provinciam revocatus, in quo casu omnino privatus factus est, ita quod nec subdelegare potest, secus si non revocatus exeat, ut *ff* de officio praefecti urbi l. fi. [Dig. 1.12.3]. Nec enim videtur divertisse, qui in brevi est reversus, ut ar. *ff* de divortiis l. iii [Dig. 24.2.3].' See note 59 below; Hostiensis's rendering of Innocent's second observation read as follows, loc. cit.: 'Sed quid de causis a legato revocato inceptis sed non diffinitis, vel diffinitis, sed non mandatis executioni? Dixit dominus noster [Innocentius IV] quod recurrendum est ad Papam, vel ad alium legatum successorem. *ff* de iudiciis mortuo iudice [Dig. 5.1.60]. C. de iudiciis properandum §sin autem in medio trienii [Cod. 3.1.13].'

47. Innocent IV ad X 1.30.7: '*promulgatum* … hic autem postquam desierit provinciam sibi deputatam vel delegatam nullam iurisdictionem habet. Quid si exierit provinciam non animo deserendi delegationem sed iterum reversurus nunquid poterit extra provinciam excommunicare. et videtur quod non: quia excommunicatio requirit cognitionem cause. ii q. i nemo [C.2q.7c.11]. sed de causa non potest recognoscere nisi sedendo pro tribunali. ii q. iii abolitio [C.2q.3c.8§8]. sed hoc in alia provincia facere non potest. ix q. ii episcopum [C.9q.2c.7] et in pluribus capitulis eiusdem, idem vero fatemur nisi habeat licentiam episcopi diocesae. ut in eisdem capitulis dicitur. crederem tamen quod posset absolvere ubi suum errorem recognoscit sine cause cognitione propter periculum excommunicationis. arg. infra de sententia excommunicationis sacro [X 5.39.48] circa finem. supra eodem c. ii [X 1.30.2]. delegare autem causas potest extra provinciam cum non eam deseruerit. quia hoc non exigit cause cognitionem *ff* de officio proconsulis aliquando [Dig. 1.16.5]. et hoc olim tamen quando necessariam moram faciebat extra provinciam. hodie autem delegare potest si solam voluntariam moram trahat authentica de collatoribus §antequam in verso in provincia [Nov. 128.20]. credimus etiam quod possit dare prebendas extra provinciam. arg. infra de appellationibus qua fronte [X 2.28.25].'

again a slight adaptation of an assertion found in Hostiensis's *Summa*, where the legate's intention to return was not specified. On the other hand, a legate outside of his province could absolve a person whom he had excommunicated by mistake, for the dangers inherent in this penalty and the necessity of absolving the innocent involved actions requiring no formal "cognition of the case."

Innocent also upheld Johannes's assertion that a legate outside of his province could grant a prebend, and even advanced a new text to prove this – a decretal of Alexander III to Archbishop Ralph of Canterbury (X 2.28.25). Here, Innocent clearly employed a forced interpretation, for in this decretal Alexander supported no such assertion, but rather the opposite tendency. Alexander actually castigated Ralph for allowing episcopal elections to be confirmed not in the proper place – namely the cathedral – but rather in King Henry II's own lodgings![48] Not only did the decretal itself fail to support Innocent's case for allowing a legate to grant prebends under such conditions, but his own gloss on it further weakened his case. There he lamely suggested that such archiepiscopal confirmations (which his gloss for *Novit ille* implicitly equated with legatine grants of prebends) performed in such an execrable manner (that is, in the improper place) were surely ill-advised, yet nonetheless valid so long as they were performed while 'sitting as a judge' or 'with cognition of the case', both requirements that decretalists (Innocent among them) firmly denied to the jurisdiction of a legate situated outside of his province.[49]

As noted previously, Innocent returned to much firmer ground when he made his final remarks concerning *Novit ille*. He once again explicitly referred to papal legates, and not delegates. According to the diction of the decretal itself, he reminded his reader both that a legatine province could comprise several metropolitan provinces, and that a legate's normal powers were diffused throughout these metropolitan provinces but within his legatine province.[50]

Bernard of Parma was thoroughly derivative in his gloss on *Novit ille*, repeating this final assertion from Innocent IV as well as this same pope's prohibition of absolution by a legate outside his province of persons excommunicated by him when he was within his province. Furthermore, Bernard repeated literally much of Johannes Teutonicus's gloss, and even acknowledged his debt.[51] On the other hand, another canonist – Abbas antiquus – was neither solely repetitive nor uninventive in his remarks concerning this same decretal. Besides repeating Innocent's differentiation

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48. X 2.28.25: 'Qua fronte nos … consulere valeas, non videmus, quum...dicaris ordinem iuris pervertere.... Iam enim non in ecclesia, sicut est canonicum et honestum, non etiam in palatio, non in camera tua, sed in … camera regis, contra debitum iuris et...pontificalis officii dignitatem episcoporum electiones diceris confirmare.'

49. Innocent IV ad X 2.28.25: '*debitum* ad minus pro tribunali sedere debet … et licet facere in domo regis sit malum propter sequelam factum, tamen tenere credo, dummodo fiat cum causae cognitione, vel alio modo legitimo, alioquin erit nulla, si omnino fiat contra iuris debitum'.

50. Innocent IV ad X 1.30.7: '*promulgatum* … et habes hic expressum quod si quis est legatus in pluribus provinciis, facta unius provincie potest in alia exercere. supra de postulatione ad hoc [X 1.5.1] in fine'.

51. See note 46 above, and *Glossa ordinaria* ad X 1.30.7: '*terminus*'.

of the legatine province from several metropolitan provinces included in it,[52] Abbas antiquus also characterized a legate's power as diffused throughout his province, much as a bishop's jurisdiction operated both within his episcopal city and in the surrounding diocesan countryside. Specifically, he related that when the bishop of Embrun had summoned citizens of that city to a point outside it yet still within the diocese of Embrun, an appeal by these citizens against the summons was rejected as invalid, for all action took place within the ambit of the bishop's jurisdiction. This canonist further cited a *Decretum* text (C.11q.1c.16) upholding episcopal jurisdiction 'in the city as well as [its surrounding] territory' (*episcoporum iudicium in ... civitate vel territorio*).[53] Finally, Abbas antiquus specifically maintained that if the legate in *Novit ille* had promulgated the interdict outside his legatine province, then it would have been invalid.[54] Previous commentators had been content merely to imply this concept rather than assert it explicitly.

Hostiensis's gloss on *Novit ille* in the *Commentaria* sometimes resembled a more nuanced version of Johannes Teutonicus's gloss, even to the extreme of directly contradicting an assertion already made in his *Summa*. At other times he incorporated his own earlier work, Bernard of Parma's observations, or Innocent IV's remarks. Occasionally, Hostiensis investigated heretofore unexplored legal situations ensuing from the discussion of legatine provinces. First, Hostiensis rephrased Johannes's distinction between the old and new rules concerning pre-arrival legatine jurisdiction: formerly, a legate could neither exercise nor subdelegate contentious jurisdiction; but Hostiensis maintained that in his day a legate could subdelegate to others 'his place' (*vices suas*).[55] The canonist left unclear, however, what specific types of jurisdiction these subdelegates could perform. Did he equate 'contentious jurisdiction' with the ability to inflict the ecclesiastical equivalent to Roman capital punishment?

Another matter drawn by Hostiensis from Johannes's gloss was the argumentation pro and contra concerning a legate's inability to excommunicate or absolve when outside his province. Innocent IV, as we saw, had spoken in this connection regarding the absent legate's general cognizance over cases. For Hostiensis likewise the power to excommunicate required 'cognition of the case', while the power to absolve, though pertaining to voluntary jurisdiction, nonetheless required 'sitting as a judge'. Since a bishop could not act in such a manner outside his diocese, neither could a

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52. Abbas antiquus ad X 1.30.7: '*in viennensi*. nota legatum datum ad plures provincias facta unius provincie in alia exercere posse'.

53. Ibid.: '*Casus*. In quolibet loco sue legationis potest legatus iurisdictionem exercere. et nota ex hoc opere ar. ad questionem ebruduensem qui citabat homines ebruduense[s] extra civitatem suam: et tamen in diocesa ebruduense et homines appellaverunt: ex hoc non valet appellatio: quia sicut legatus a quolibet loco sue legationis: sic episcopus in quolibet loco sue diocesis potest iurisdictionem suam exercere: et canon hic allegatus xi q.i si quisquam [C.11q.1c.16] idem dicit.'

54. Ibid.: '*fuerat*. ergo a contrario si egressus fuisset: sententia non teneret. et hoc dicit glossa'.

55. Hostiensis, *Commentaria* ad X 1.30.7: '*terminos* ... Tu dicas, quod legatus antequam intraverit provinciam sibi decretam, iurisdictionem non habet contentiosam, nec debet committere iurisdictionem, quam non habet ... Quinimo et hodie etiam antequam intret provinciam, potest alii committere vices suas, ut in Authentica de collatoribus. in penultima collatione in fine §prohibemus ad haec [Nov. 128.20] et seq. usque §iubemus col. [Nov. 128.21].'

legate act similarly outside his province. Like Johannes, Hostiensis alluded to St Paul's excommunication of the erring Corinthian as an example in favour of legatine extra-provincial powers, and added that in notorious cases one would expect that a legate outside his province could excommunicate. Yet, curiously enough, Hostiensis likewise refused to settle these questions definitively, in spite of his explicit refusal in the *Summa* to accord to a legate the ability to excommunicate when outside his province.[56] He offered instead, in another portion of the *Commentaria*, solutions to two closely related matters posed by him for the first time. First, anyone excommunicated *latae sententiae* – that is, automatically as a result of violating a statute – could be absolved by a legate when the latter was outside his province. This was not the case if the excommunicate had suffered this penalty by a judge's sentence. The canonist's main proof here was *Excommunicatis* (X 1.30.9), which accorded such a power only to legates *de latere*, a distinction conveniently omitted by Hostiensis. Second, although the legate absent from his province could not *pronounce* definitively a sentence of excommunication on some evildoer in his capacity as judge, he could *denounce* as an excommunicate someone who had violated a statute bearing that penalty.[57] Equally noteworthy was Hostiensis's repetition of Johannes's and Innocent IV's claims that a legate could confer benefices when outside his province, disregarding his opposition to this assertion in the *Summa*.[58]

Hostiensis's discussion of other related questions in the *Commentaria* did not run into such difficulties. For example, he repeated Bernard's dictum that a legate who had left his province permanently could not absolve someone whom he had excommunicated previously; yet he added that the legate could absolve upon return

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56. Ibid.: 'Ex hoc videtur, quod ex quo legatus exivit provinciam, ad quam destinatus est, amodo nec excommunicare, nec absolvere, nec causas delegare potest in illa provincia. Et idem de aliis iudicibus ordinariis. ex quo sunt extra terminos territorii sui *ff* de officio presidis l. iii [Dig. 1.18.3]. *ff* de iurisdictione omnium iudicum l. fi. [Dig. 2.1.20]. Videtur tamen, quod idem possit absolvere, cum absolutio sit de voluntaria iurisdictione, ar. *ff* de officio proconsulis l. i [Dig. 1.16.1]. quod verum est, si possit fieri sine cognitione, quae cessionem tribunalis non requirat, alioquin contra. unde nec excommunicare poterit, quia non est excommunicandus quis sine cause cognitione. xi q.i nemo [C.11q.1c.1]. Et per consequens locus requiritur, in quo possint pro tribunali sedere, cum hoc de plano expediri non possit. ii q.iii §notandum. ver. abolitio [C.2q.3c.8] et iii q.iii §spacium. ver. a iudice [C.3q.3c.4§3].'

57. Ibid.: 'Quid ergo si quis sit excommunicatus a canone? Talem poterit absolvere, ut infra eodem excommunicatis [X 1.30.9]. secus si a iudice. et sic mitius agitur cum lege, quam cum ministro legis *ff* de arbitris Celsus [Dig. 4.8.23]. Item excommunicatum denunciare potest: quia per denunciationem aliquis amplius non ligatur infra de appellationibus pastoralis [X 2.28.53]. et quia denunciator, ut supra de electione venerabilem *ff* obiectioni [X 1.6.34].' Nonetheless, Hostiensis also provided some arguments contra: 'et ar. contra *ff* de testamentis haeredes [Dig. 28.1.21] in fine secundum Ia[cobum]. infra de testibus cogendis praeterea §fi. [X 2.21.7].' I identify this 'Ia.' as Iacobus de Balduinis, Hostiensis's teacher in Roman law; see Thomas Diplovatatius, *De claris iuris consultis*, in *Studia Gratiana* 10 (1968), 102–3; Schrage, pp. 42–3, 66. The texts cited contra did not appreciably refute the earlier positive statement, and Hostiensis turned immediately to a discussion of pre-arrival legatine jurisdiction. The force of the texts affirming the proposition, however, seemed to indicate that he leaned in this direction.

58. Ibid.: 'Item extra diocesim potest conferre beneficia infra de concessione praebendae post electionem [X 3.8.7] in parte decisa. secundum Ioannem. et idem dicit dominus noster ar. infra de appellationibus qua fronte [X 2.28.25].'

if he had been absent only for a short time.[59] Furthermore, in a case wherein a legatine province comprised several metropolitan provinces, a legate's powers were normally affected by the boundaries of the legatine province, which were set at the pope's pleasure, and not by the limits of metropolitan provinces.[60] From his own *Summa*, Hostiensis repeated and elaborated on Innocent's belief that a legate outside his province could judge a case if the proper judge of that district (be it province, diocese or other territorial unit) assented; with such permission, the legate could not only 'sit as on a tribunal' for his own provincial subjects, but for the other judge's subjects as well. He justified this assertion with the following arguments:

1. The commission of a bishop's office pertained more to his flock than to the territory within which they normally dwelt; hence,
2. Since Bishop A. could concede to Bishop B. the permission necessary to judge the A.'s diocesan subjects, if they happened to be in the B.'s diocese,
3. Then Bishop A. could also concede to Bishop B. permission to judge B.'s diocesan subjects, if they should be in A.'s diocese.
4. Thus Bishop A. could concede to Bishop B. permission to judge A.'s diocesan subjects in A.'s diocese, much as A. could commission an ordinary person, such as his official (*officialis*, a representative of the bishop in judicial matters) to do the same.[61]

Hostiensis also repeated his earlier assertion that a legate who had been recalled or left the province with no intention of return lost the exercise of his office but not

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59. Ibid.: 'Item quaeritur, si legatus excommunicavit aliquem, dum erat in provincia, utrum ipsum absolvere possit egressus provinciam? Et est dicendum, quod non, quia postquam egressus est, privatus factus est. *ff* de officio praesidis l. iii [Dig. 1.18.3]. infra eodem c. fi. [X 1.30.10] secundum Bernardum. Supradicta intelligas, quando exit provinciam revocatus, in quo casu omnino privatus factus est, ita quod nec subdelegare potest, secus si non revocatus exeat, ut *ff* de officio praefecti urbi l. fi. [Dig. 1.12.3]. Nec enim videtur divertisse, qui in brevi est reversus, ut ar. *ff* de divortiis l. iii [Dig. 24.2.3].' The reference to the *Digest* is from the title on divorces and repudiations: if a woman declares in anger that she is divorcing her husband, but nevertheless returns to him shortly afterward, her declaration has no legal effect.

60. Ibid.: '*In Viennense, Lugdunense et Bisuntina.* Quod dicit de Viennense et Bisuntinense proprie ponit: quia omnino extra Regnum Francie sunt, in Regno scilicet Viennense et Arelatense constitutae. Lugdunensis vero provincia est tota in Regno Francie, et magna pars diocesis, secundum quosdam, aliqua pars civitatis … Item habes hic expressum, quod si quis est legatus in pluribus provinciis, facta unius potest in alia expedire, secundum dominum nostrum. Quid ni? nam respectu legationis et legati censentur omnes una tamen provincia, non diversae: quia non diversae quia considerantur limites provinciarum, sed et hoc voluit notare litera superior. ibi, nondum tamen fuerat suae legationis terminos etc. quos Papa limitare potest, prout placet, ut patet infra de excessibus praelatorum sicut unire [X 5.31.8]. C. de officio praefecti praetorio in nomine domino §pro limitaneis [Cod. 1.27.2.8] …'. Here, Hostiensis reminded his reader that while the suffragan sees of the metropolitan province of Lyons (Mâcon, Chalons-sur-Saone, Autun, Langres) and a large portion of the archdiocese of Lyons were within the French kingdom, there was uncertainty whether a part of the city was likewise included. At the very least, the major portion of the metropolis itself was just across the border in imperial territory during Innocent III's and his own day; see the article by Georges Goyau in *The Catholic Encyclopedia* (New York, 1907–14), 9:473–4.

61. Hostiensis, *Commentaria* ad X 1.30.7: '*terminos* … quinimmo et de consensu illius, ad cuius se transferret territorium, poterit ibidem pro tribunali sedere, ut ix q.ii c.i et ii [C.9q.2c.1,2]. et in hoc concordat

the *imperium* pertaining to that office. This *imperium* was given up only upon entry into the pope's city of residence. Citing Innocent IV explicitly, Hostiensis added that if the legate intended nonetheless to return to his province, then his absence did not prohibit him from subdelegating cases, especially in situations where necessity compelled his absence. Yet at the same time he could not personally take cognizance of a case or excommunicate (the latter act required the former situation). The legate *de latere*'s power to absolve violent excommunicates anywhere was implicitly excepted from these rules.[62]

Finally, Hostiensis even admitted that one could explain the full import of *Novit ille* without recourse to a discussion of legatine provinces. One must merely consider that Cardinal Peter, as executor or special delegate and not as legate, could have 'published' the sentence of interdict anywhere.[63] This argument, although it was

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dominus noster nec mireris de hoc. Si enim aliquis episcopus potest concedere mihi, quod subditos suos in mea diocesi iudicem, nemini est dubium, quare non posset mihi concedere, quod subditos meos in sua diocesi iudicarem: nam maior est commissio personae, quam loci. xii q.i praecipimus [C.12q.1c.24]. *ff* de redibitione act. [*sic!*] aediles [Dig. 21.1.38]. Et qui potest quod maius est, et quod minus. infra qui filii sint legitimi per venerabilem respon. i [X 4.17.13]. Item si potest mihi concedere, quod in diocesi sua et subditos suos iudicem, ut ix q. ii et iii [C.9q.2,3] per totum, quare non posset concedere, quod subditos meos in sua diocesi iudicarem? nam qui potest utrumque, potest et partem, ut supra titulo i pastoralis §i [X 1.29.28] *ff* de rei vendicatione quae de tota [Dig. 6.1.76]: quinimmo cum possit privato hanc potestatem dare ipsum etiam officialem suum constituendo, extravagantes domini nostri Romana respon. i liber vi [*Liber Sextus* 1.16.1]. infra de institutionibus c. iii [X 3.7.3]. quare hanc potestatem non posset dare extraneo episcopo ad suam diocesim venienti? Ratio reddi non potest, ergo idem ius …'. The *Liber Sextus* appears in v. 2 of Friedberg's edition of *Corpus iuris canonici*. For medieval episcopal officials, see Hans Erich Feine, *Kirchliche Rechtsgeschichte. Die Katholische Kirche*, 5th edn (Cologne, 1972), pp. 370–71; Paul Fournier, *Les Officialités au Moyen Age* (Paris, 1880), pp. 1–31 (with special focus on France); Brian Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952); Norma Adams and Charles Donahue Jr, *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c.1200–1301* (London, 1981); DDC 6:1 105–6.

62. Hostiensis, *Commentaria*, *loc. cit.*: 'Egressus autem provinciam, et revocatus per papam, privatus est quoad exercitium imperii *ff* de officio praesidis l. iii [Dig. 1.18.3]. quousque autem portam urbis ingreditur, imperium non deponit *ff* de officio proconsulis l. fi. [Dig. 1.16.16]. alias autem voluntate propria egrediens non animo deserendi legationem, sed iterum reversus, secundum dominum nostrum potest causas delegare *ff* de officio praefecti urbi l. fi. [Dig. 1.12.3]. maxime si imminet causa necessaria absentiae. *ff* de officio proconsulis aliquando et l. solent [Dig. 1.16.5,6]. quia delegatio fit sine causae cognitione, quamvis ex imperio procedat. supra titulo i pastoralis [X 1.29.28]....per se tamen non potest cognoscere, nec cum cognitione causae excommunicare, ut *ff* de iurisdictione omnium iudicum l. fi. [Dig. 2.1.20]. *ff* de bonis authoritate iudicis possidendis cum unus §pen. [Dig. 42.5.12]. *ff* de officio proconsulis l. i [Dig. 1.16.1]. sed absolvere potest iniectorem manuum, sicut est consuetum. supra eodem quod translationem [X 1.30.3] infra c. excommunicatis [X 1.30.9].' For Innocent IV's remarks regarding subdelegation, see note 47 above.

63. Ibid.: '*Nondum tamen.* subaudi, maxime. Nam et idem et si fuisset egressus, cum in hoc facto non tanquam legatus, sed tanquam delegatus specialis, imo merus executor de speciali mandato apostolico processisset, ut infra de appellationibus novit [X 2.28.43]. Et arg. supra de electione venerabilem §obiectionem respon. i et versic i [X 1.6.34]. Nam et delegatus specialis Papae, cui non est commissa provincia, ubique sedere potest secundum ea, quae notatur supra titulo i P. et G. [X 1.29.40].' Perhaps Hostiensis realized that Innocent III had made a similar comment *in parte decisa* of his decretal (X 1.5.1) to French clergy regarding this same interdict: 'Praeter[e]a dictam interdicti sententiam ipse non edidit, sed potius publicavit, nec fuit dictator ipsius, sed verius exsecutor.' See note 17 above.

presented early in the gloss on *Novit ille*, nonetheless did not deter Hostiensis (as we have seen) from treating in detail the subject of legatine provincial jurisdiction in this decretal.

Decretalist Discussion of *Excommunicatis* (X 1.30.9)

Gregory IX's decretal concerning the varying legatine capabilities for absolving persons excommunicated for acts of violence against clerics has already received some attention in this study. However, other unexplored aspects of decretalist commentary on this text pertaining to legatine provinces remain to be discussed. The decretal itself, we will remember, merely specified whether and under what circumstances a legate 'not sent from the pope's side' or a legate 'by pretext of his church' could absolve such malefactors. Goffredus, however, expressed directly what the decretal had only implied, namely that a legate *de latere* both inside and outside of his province could absolve such excommunicates.[64] Abbas antiquus and Innocent IV did likewise.[65] Both Hostiensis and Bernard of Parma in addition characterized the legate *de latere*'s prerogative as a power that was possessed from the time he left the pope's city of residence until his return there, much as the Roman proconsul bore his insignia from time of departure to time of return. In the legate *de latere*'s case, this capability to absolve was intended to help save souls in danger.[66]

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64. Goffredus, 52r: '*Circa* … Nam legati qui de latere domini papae mittuntur possunt absolvere homines sue provincie et alterius cuiuscunque in provincia et extra provinciam.'

65. Innocent IV ad X 1.30.9: '*Excommunicatis*. Pro latere … et hi scilicet cardinales extra provinciam homines alterius provincie absolvere possunt.' Abbas antiquus ad X 1.30.9: 'ergo a contrario si mittantur a latere et sint de latere: ut cardinales tam in sua quam in aliena provincia possunt absolvere et subditos et non subditos. et est verum infra de sentencia excommunicationis ad eminentiam [X 5.39.20]'.

66. *Glossa ordinaria* ad X 1.30.9: '*mittuntur*. ergo a contrario sensu, si missus sit a latere domini papae, potest absolvere omnes: sive de sua legatione sive non: quod verum est et in eundo et in redeundo secundum quosdam ex officio enim legationis licet legatis de latere domini papae missis excommunicatos pro violenta manuum iniectione in ecclesiasticas personas, absolvere. supra eodem quod translationem [X 1.30.4]. et infra de sentencia excommunicationis ad eminentiam [X 5.39.20]. Tales enim legati postquam egrediuntur urbem, quousque in urbem revertantur, beneficium absolutionis impendunt, et ita observant de facto: et hoc introductum est in favorem animarum: ut periculum morae vitetur. Arg. infra de sentencia excommunicationis sacro [X 5.39.48]. et sic proconsularis ubique insignia proconsularia habet, licet potestatem suam egressus urbem non exerceat nisi in ea provincia quae ei directa est. *ff* de officio proconsulis l. i [Dig. 1.16.1] et habent iurisdictionem, licet non contentiosam. *ff* eodem l. ii [Dig. 1.16.2]. Bernardus.' See also Bernard's gloss ad X 5.39.20: '*pro tempore*'. Hostiensis, *Commentaria* ad X 1.30.9: '*De ipsius latere* … Tales ergo a contrario, si missi sunt a latere absolvere possunt omnes, sive sint de sua legatione, sive non. hoc enim eis hodie competit de consuetudine approbata. supra eodem quod translationem [X 1.30.4]. Sed et venientes ad se aliunde, et ibi dum veniunt ad provinciam sibi commissam, et dum ab ea redeunt occurrentes absolvunt, et sic extra provinciam existentes, ut infra de sentencia excommunicationis ea noscitur §i et cap. ad eminentiam et cap. quamvis §i [X 5.39.13,20,58]. Sic et proconsul ubique insigniis proconsularibus utitur, et voluntariam iurisdictionem exercet, ex quo urbem egressus est, quamvis contentiosa alibi, que in sibi decreta provincia non utatur. *ff* de officio proconsulis l. i et ii [Dig. 1.16.1,2].' See also Hostiensis's comments ad X 1.8.5: '*Utantur*'.

The decretal itself restricted the absolving power of legates 'who are not sent' literally only for those excommunicates within their provinces, so long as these persons did not enter the province expressly for the purpose of seeking absolution.[67] Decretalists presented a variety of different interpretations of this restriction. Goffredus, Innocent IV, and Bernard of Parma took it to mean that this type of legate could only absolve 'provincials' – persons residing in the province.[68] Such an interpretation was not completely satisfying, for it did not specify whether an excommunicated provincial subject returning to the province from elsewhere could receive absolution. Abbas antiquus maintained that in this case a legate 'who is not sent' from the pope's side could not absolve for two reasons. First, if an inhabitant of Lyons committed some violent assault for which he could be absolved by his local bishop, but instead travelled to another diocese, he still could not be absolved by another bishop. Second, if an already excommunicated regular cleric (canon, monk or friar) went away to Paris or some other place to hear lectures in law, and while in another diocese attempted to receive absolution, he nevertheless could not be absolved by the bishop of that other diocese. For Abbas antiquus, the locus of the misdeed was paramount – the legate 'who is not sent' could not absolve even his own subjects when they committed an offence somewhere outside his province and yet returned seeking absolution. Nonetheless, this canonist continued, a legate of this type could impose a penance on such a malefactor for his violence, since this would involve the internal forum and not contentious jurisdiction. The power to absolve, a form of contentious jurisdiction, still pertained to the judge in whose jurisdiction the offence was committed and punished.[69]

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67. See note 18 above.

68. Goffredus, 52r: '*Circa* … Legati qui ex ipsius latere non mittuntur … talis non absolvit nisi provinciales et in provincia constitutos.' Innocent IV ad X 1.30.9: '*Aliunde*. ergo a contrario sensu suis comprovincialibus possunt munus absolutionis impendere legati qui non sunt de latere et qui non sibi vendicant ex privilegio.' *Glossa ordinaria* ad X 1.30.9: '*commissam* … isti enim de quibus praemittit, non possunt absolvere excommunicatos propter sacrilegam manuum iniectionem in ecclesiasticas personas: vel aliunde venientes: vel extra suam provinciam existentes … sed illos de sua provincia absolvere possunt dum sunt in provincia.' However, Bernard neglected the nuances of X 1.30.9 when glossing another decretal; there he ascribed generally to all legates the power of absolving all types of excommunicates anywhere whether they were provincials or not. Ad X 5.40.31: '*legatus* … voluntariam tamen quandoque exercet in homines non suae provinciae *ff* de adoptionibus emancipari [Dig. 1.7.36]. *ff* de officio proconsulis l. ii [Dig. 1.16.2]. unde absolvit excommunicatos in quacunque provincia. supra de officio legati quod translationem [X 1.30.4]. et supra titulo proximo ad eminentiam [X 5.39.20]. et c. ea noscitur [X 5.39.13] et capitulo quod de his [X 5.39.36] et c. quamvis [X 5.39.58].'

69. Abbas antiquus ad X 1.30.9: '*aliunde*. Pone: aliquis lugdunensis percussit clericum in casu in quo posset ibi absolvi ab ordinario. venit ad aliam diocesim causa standi. nunquid ab illo episcopo absolvetur? Respondeo non. Item aliquis regularis audivit leges Parisius vel alibi. postea declinat ad aliam diocesim: nunquid ibi absolvi poterit? Respondeo non. sicut enim legatus non absolvit alibi delinquentes subditos: ita nec ordinarius istos. non obstat quod hic iniungere poterat penitentiam de delicto alibi commisso: quia propter hoc non preiudicatur suo iudici. Ratio est: cum hic fiat secrete: set in his que tangunt forum contentiosum secus: quia publice fiunt.' It is not altogether clear what type of law study Abbas meant to include in *leges*. The term itself during this period normally referred to Roman law, yet the study of this discipline at Paris had been strictly forbidden in 1219 by Honorius III; see *Chartularium universitatis Parisiensis* (Paris, 1889), 1:92, no. 32; Hastings Rashdall, *The Universities of Europe in the Middle Ages*,

Hostiensis dealt with this identical problem in the *Summa* at roughly the same time as Abbas antiquus did, and for his part noted that a legate 'who is not sent' *de latere* could neither absolve his subjects when they were outside the province nor when they entered the province from outside. 'Certain men of great authority', Hostiensis reported, had asserted the contrary, namely that this type of legate could indeed absolve a subject who had committed his offence and been punished outside the legatine province. Yet Hostiensis remained unconvinced, for this opinion seemed to contradict the intent (as he saw it) of *Excommunicatis*, namely that a legate 'who is not sent' should not interfere in cases belonging to other judges by reason of the delict having been committed in their area of jurisdiction.[70]

> This appears more clearly when you assume that two legates of this same type exist, and a subject of one commits a delict within the province of the other. For it cannot indeed be doubted that the legate in whose province the delict is committed can absolve the delinquent; but according to these aforementioned experts one legate could absolve by reason of the delict, the other by reason of [the delinquent's] domicile. But I do not think that this is the intention of the pope [Gregory IX], because, if so, then the boundaries of provinces would be confounded, which ought not occur … In the same way it seems in this case that one legate cannot absolve without the other.[71]

In the *Commentaria* gloss on *Excommunicatis*, Hostiensis repeated the same argument in a slightly different form but with the identical result. At first he related two arguments which favoured allowing a legate 'who is not sent' *de latere* to absolve subjects who have transgressed outside the province and were justly excommunicated there: (1) the fact that the excommunicate was the legate's subject; (2) the fact that the legate and subject were both within the province when absolution was sought. Neither reason, however, could overturn the maxim that absolution must be sought normally in that place where the fault was committed. Thus Hostiensis finally suggested that the delinquent should return there and atone for his misdeed,

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eds F.M. Powicke and A.B. Emden (Oxford, 1936), 1:322–3. If one is to take the identification of Paris literally, the Abbas must have meant the study of canon law.

70. Hostiensis, *Summa*, p. 328: 'Et in quo loco … Illud quoque quaeri potest, utrum legatus cui committitur, nec emanat, possit absolvere subditos, qui extra fines provinciae delinquant, cum non possit absolvere subditos existentes extra provinciam, nec aliunde venientes intra provinciam. infra eodem excommunicatis [X 1.30.9]. certe viri magnae authoritatis mihi dixerunt, quod sic, quod non placet; quia iam potest iudicare aliunde veniens cum ratione delicti factus sit de foro alterius. quod dic, ut notatur infra de foro competenti §quibus ex causis. versi. Item ratione delicti.' *Summa* (Lyons 1537 edn), 74v: '*Quibus ex causis* sortiatur quis forum … Item ratione delicti. nam ubi quis deliquit ibi puniendus est cessante omni privilegio …'.

71. Hostiensis, *Summa*, p. 328: 'Et in quo loco … hoc evidentius apparet, si ponas duos legatos eiusdem generis, et subditus unius in provinciam alterius delinquat. non enim dubium, quin is, intra cuius provinciam delinquit, absolvere possit: ergo secundum primos absolvere poterit unus ratione domicilii, alius ratione delicti: sed non puto quod haec sit mens Apostolici, quia si confunderentur fines provinciarum: quod non debet esse. infra de parochiis super eodem [*sic!* – X 3.29.4]. videtur tamen in hoc casu, quod unus sine reliquo absolvere non possit. argu. infra de sententia excommunicationis cum illorum [X 5.39.32].'

and that the reader should consult those passages in the *Summa* already dealt with above.[72]

Hostiensis also asked a more general question concerning the power of absolution possessed by a legate 'who is not sent' *de latere*: could he nonetheless absolve his own subjects outside of his province if the ordinary judge of that other province or diocese consented? 'As is noted above regarding *Novit ille*, it would seem that this is both tolerable and reasonable, but since this text [*Excommunicatis*] is a privilege conceded and thus restricted by the pope, I dare not make this interpretation.' Hostiensis thereupon bolstered his disinclination by reference to several decretals wherein popes resisted attempts by other persons to tamper with or to modify their privileges. In summation, Hostiensis admonished the legate 'who is not sent' *de latere* to be content with the boundaries of his own province, quoting Proverbs 22:28: 'Pass not beyond those ancient bounds which thy fathers have set.'[73]

Other Decretalist Comments Pertaining to Legatine Provinces

In their glosses on *Novit ille* and *Excommunicatis* decretalists ranged through legatine activities such as pre-arrival and post-departure jurisdiction, interdict, subdelegation of cases, conferral of benefices, excommunication, and absolution. In their glosses to other decretals they also commented regarding legatine provincial jurisdiction. Johannes Teutonicus cited a situation first proposed by his fellow canonist, Vincentius Hispanus. Suppose that a legate had reserved to his own nomination the next vacant

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72. Hostiensis, *Commentaria* ad X 1.30.9: '*Aliunde* … Quid ergo si subditus hoc commiserit extra provinciam sibi decretam, et postea revertens in provinciam ibidem petat a talibus legatis beneficium absolutionis impartiri? Videtur, quod sit audiendus: quia subditus est, et hoc petit a legato infra suam provinciam existente, ergo pro ipso faciunt verba huius capituli. Sed contra: quia respectu delicti aliunde venit, ratione cuius sortitus est forum alterius, a quo potuit propter hoc iuste excommunicari, arg. infra de sententia excommunicationis cum pro causa [X 5.39.27]. nec a legato debet recipi, quousque ad locum in quo deliquit redierit, et omnia emendaverit. infra de raptoribus cap. i [X 5.17.1]. ergo talem absolvere non debet, argu. infra de sententia excommunicationis officii [X 5.39.42]. Et hoc teneas et iunge, quod super hac questione notatur in summa eodem titulo §et quo loco. versic. illud quoque [see notes 70 and 71 above]. et hoc intelligas quoad legatos, qui non mittuntur de latere, de quibus hic loquitur.'

73. Ibid.: '*Extra provinciam* … Sed nunquid de consensu ordinarii, ad cuius provinciam, seu diocesi[am] declinarent, hoc facere possent? Videtur, quod sic, quia de consensu eiusdem possunt ibidem iurisdictionem contentiosam exercere, ut notatur supra eodem novit [X 1.30.7]. De subditis suis satis hoc videtur rationabile et tolerabile, sed cum hoc sit privilegium a Papa concessum, et sic limitatum non audeo hanc interpretationem facere, arg. supra de usu pallii c. ii [X 1.8.2]. et infra de privilegiis sane [X 5.33.9]. et de sententia excommunicationis inter alia [X 5.39.31]. sit ergo contentus suis terminis. infra de sepulturis c. i §fin. [X 3.28.1].' X 3.28.1: '… authoritate Domini nostri Iesu Christi, qui per Prophetam locutus est, dicens: "Ne transgrediaris terminos antiquos, quos posuerunt patres tui" …'. In this decretal, Leo III quoted the psalm in question while reserving to a parish church its canonical portion of the moveable property of intestate deceased parishioners. The English translation is from the Douay version. C.9.q.2c.1, a spurious decretal attributed to Calixtus II, quotes the psalm to justify the normal inviolability of a diocese from an alien bishop's jurisdiction, especially the power to excommunicate; see Paul Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig, 1863; repr. Aalen, 1963), pp. 138–9. See also Deuteronomy 19:14 and Psalm 103:9.

benefice in a certain archdeaconry and had ordered the archdeacon to institute his nominee upon vacancy. Afterwards, the legate left his province, and a benefice subsequently became vacant. Could the archdeacon ignore the legate's order and confer the benefice as he saw fit, considering the legation finished and the legate's wish of no value, just as if the departed legate were dead?[74] It seemed so to Vincentius and Johannes, because the legate's reservation did not represent 'matters already begun' (*negotia inchoata*), for at the time of the legate's departure the benefice had not yet become vacant.[75] Here these two canonists relied on a decretal (X 1.29.20) which maintained that the jurisdiction of a delegate judge continued after the death of his delegator only if the delegate had begun his jurisdiction in the assigned case, that is, had at least cited the parties to appear. Hence the archdeacon in the suggested scenario should be considered the legate's subdelegate. Bernard of Parma repeated this argumentation in abbreviated form, with one additional proviso: the archdeacon could not ignore the departed legate's reservation if the legate had reserved the next vacant benefice for the pope's nomination. The presumable reason for this must have been that such a reservation would have transferred the entire matter from legatine to papal jurisdiction. Thus a legate's departure would not have affected in the slightest the pope's prerogative in this matter.[76]

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74. This proposed situation arose from a discussion of X 3.38.28, a decretal of Innocent III issued in 1206 to conclude an extremely complicated dispute regarding possession of a benefice in the diocese of Chartres. One point in dispute centered on the reservation of this benefice by Cardinal-legate Octavian for the predecessor of the litigating incumbent. The legate's reservation was eventually respected by the archdeacon of Chartres, but it is unclear whether this occurred with or without resistance, or whether the legate's action was based on true or perjured testimony regarding the status of the benefice. The decretal is also unhelpful in providing evidence as to the legate's whereabouts after the reservation was pronounced. Be that as it may, the dispute became more involved as other persons intervened at various later stages, and the basis upon which Innocent ultimately decided the case did not involve any discussion of geographical limits to legatine jurisdiction. For further details on this case and some remarks regarding legatine conferral of benefices and prebends, see Pennington, 'Johannes Teutonicus and Papal Legates', pp. 189–93. Octavian was legate in France on several occasions on behalf of three popes: Urban III, Celestine III and Innocent III; see Maleczek, *Papst und Kardinalskolleg*, pp. 81–3; Zimmermann, *Die päpstliche Legation*, pp. 31–2; Tillmann, *Die päpstliche Legaten in England*, pp. 81, 90. For details on Vincentius, see von Schulte, 1:191–3; van Hove, pp. 429, 444, 473; DDC 7:1 507–8; Tierney, pp. 262–3 Brundage, pp. 201, 228; Schrage, pp. 104, 119; Erdö, pp. 66–7, 84. For details regarding the early history of papal reservation of benefices, see DDC 7:635–8; Feine, *Kirchliche Rechtsgeschichte*, pp. 303–5. The standard study of papal provision to lesser benefices remains Geoffrey Barraclough, *Papal Provisions* (Oxford, 1935).

75. *Glossa* ad Comp. III 3.30.3 (= X 3.38.28), dissertation version: '*Eidem archidiacono*. Set quid si exiret provinciam et vacaret? Credo quod archidiaconus posset dare sicut si legatus esset mortuus, quia egrediendo provinciam finitur legati legatio. supra de offitio legati Novit [X 1.30.7]. Nisi in negotiis inchoatis. supra de offitio delegati Gratum, lib. i [X 1.29.20]. Hic autem, non dicitur inchoatum, quia nondum ecclesia vacabat, arg. supra de praebendis Dilectus, lib. eodem [X 3.5.19]. Vincentius.'

76. *Glossa ordinaria* ad X 3.38.28: '*reservandam*. Sed quid si exiret provinciam et vacaret? Credo quod archidiaconus tunc illam posset conferre: quia egrediendo provinciam finitur legatio. super de officio legati novit [X 1.30.7]. et c. ultimo [X 1.30.10]. sed si reservasset donationi papae: tunc non credo quod possit illam conferre. secus in negotiis iam coeptis antequam egrediatur provinciam. supra de officio legati c. ultimo [X 1.30.10].'

In X 1.30.10, Gregory IX ordained that legatine statutes (*statuta*) retain perpetual validity even after the legate departed from his province.[77] The pope described these statutes as 'promulgated in the province', a formulation which nonetheless left unanswered the question whether such statutes had validity beyond the province's borders. Innocent IV maintained that the legate must take counsel with other local provincial prelates before promulgating legislation, and thus inferred that a legatine statute had validity only within the legate's province.[78] Abbas antiquus implied this same conclusion in a different manner – the promulgation of statutes derived from the legate's status as an ordinary judge, to whom 'all of the province's cases are deferred'.[79] It was not until Hostiensis's *Commentaria* and Bernard of Parma's *Glossa ordinaria* that the geographic limits of legatine statutes were explicitly drawn. Legates made statutes 'throughout the provinces committed unto them' which only bound provincials. 'He cannot make general statutes, for he has no power over persons not of his province'; yet the pope's constitutions bound all men, for all Christendom was in a certain sense the pope's 'province'.[80]

A scattering of other comments in decretalist glosses prior to Guilelmus Durantis's *Speculum iuris* also had a direct bearing on the subject of legatine provinces. Both Hostiensis and Bernard of Parma stressed that at all times legates possessed voluntary (that is, not contentious) jurisdiction over all persons who were not their provincials, and not merely before their arrival (as was noted above).[81] Hostiensis also reminded his reader that legates in transit to their province through other areas nonetheless

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77. X 1.30.10: 'Nemini dubium esse volumus, quin legatorum sedis apostolicae statuta edita in provincia sibi commissa durent tanquam perpetua, licet eandem postmodum sint egressi …'.

78. Innocent IV ad X 1.30.10: '*statuta* … Et credo quod in condendo talia statuta debet requirere consilium prelatorum provincie. ix q. iii [C.9q.3] per totum et maxime in capitulis i iii iiii et v [C.9q.3c.1,3,4,5].'

79. Abbas antiquus ad X 1.30.10: '*statuta* … nam cum legatus sit ordinarius: quia universe cause provincie deferantur ad eum. supra eodem capitulo i [X 1.30.1]'.

80. *Glossa ordinaria* ad X 5.40.31: '*legatus*. Ex hoc patet quod legatus potest facere constitutionem in sua provincia … generalem constitutionem facere non potest: quia non habet potestatem in homines non sue provinciae. *ff* de officio proconsulis l. i [Dig. 1.16.1]. *ff* de iurisdictione omnium iudicum l. ultima [Dig. 2.1.20] et supra de officio legati novit [X 1.30.7].' Hostiensis, *Commentaria* ad X 1.30.10: '*Commissa*. illos enim tantum de provincia constringunt, *ff* de iurisdictione omnium iudicum l. finale [Dig. 2.1.20]. Sed constitutio Papae omnes. supra de constitutionibus cap. fin. [X 1.2.13]. est enim tota Christianitas sua provincia …'. Ad X 5.40.31: '*Constitutionis cuiusdam*. Ex hoc patet, quod legatus potest facere constitutionem in sua provincia … generalem tamen constitutionem facere non possunt, et ideo extraneos, in quibus iurisdictionem non habet, non astringit. *ff* de officio proconsulis l. i [Dig. 1.16.1] *ff* de iurisdictione omnium iudicum l. fi. [Dig. 2.1.20]. supra de officio legati novit [X 1.30.7].' See *Glossa ordinaria* ad X 1.30.10: 'CASUS … *statuta* …', and Hostiensis, *Commentaria* ad X 1.30.10, '*statute*', for mere rephrasings of the decretal's own words. In X 5.40.31, Honorius III interpreted for the Latin clergy of Constantinople the meaning of a legatine statute.

81. Hostiensis, *Commentaria* ad X 5.40.31: '*Constitutionis cuiusdam* … voluntariam vero iurisdictionem quandoque exercet in homines non suae provinciae *ff* de adoptionibus emancipari [Dig. 1.7.36]. *ff* de officio proconsulis l. ii [Dig. 1.16.2].' *Glossa ordinaria* ad X 5.40.31: '*legatus*'.

could exact and receive procurations (support for food and lodging) in those other areas.[82]

Guilelmus Durantis

The *Speculum iuris* of Guilelmus Durantis provided an encyclopaedic summary of legatine provincial and extra-provincial jurisdiction in an entire section of text: 'Now we will say when and where a legate can exercise his jurisdiction or power.'[83] The great bulk of this material was drawn from earlier decretalists, and the argumentation and formulations found in the *Summa* and *Commentaria* of Hostiensis were especially favoured.[84] The immediate objects of concern here will *only* be Guilelmus Durantis's – the Speculator's – additions, new assertions, and newly-suggested situations regarding the geographic limits of legatine jurisdiction.

First, the Speculator repeated Hostiensis's distinction between the possession of legatine jurisdiction and the exercise of that jurisdiction. Normally speaking, upon exit from his province a legate lost exercise of his jurisdiction, yet retained the jurisdiction itself. His exercise could be resumed if he returned to his province shortly thereafter. But what if he did not intend to return or was actually recalled by the pope, and yet learned of the pope's death during his return journey – could he return to his province to care for his flock if he so wished? Guilelmus replied that he could not. Both a revocation and a departure without intention of return would have militated against it.[85]

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82. In the *Summa,* Hostiensis limited such a prerogative solely to legates *de latere*, while in the *Commentaria* he allowed all legates and nuncios to receive procurations even when travelling in areas outside their provinces. *Summa*, p. 317: '*Quot species legatorum* sint seu genera. Tria sunt enim quidam legati, qui emanent ex latere domini Papae, et his debetur procuratio extra provinciam, si forte contingat ipsos aliquo transitum facere, sed aliis non, nisi speciale mandatum habeant, infra de censibus cum instantia [X 3.39.17]. infra de iureiurando ego [X 2.24.4] …'. *Commentaria* ad X 3.39.17: '*Quicunque*. etiam in provincia, in qua non est legatus in eundo, et redeundo. supra de iureiurando ego [X 2.24.4]. supra de praescriptis accedentes [X 2.26.11].' Both X 3.39.17 and X 2.26.11 allowed procurations for nuncios also. In X 2.24.4, every bishop immediately subject to the pope was held to swear support for the necessities of all legates.

83. Guilelmus Durantis, para. 7, 53a: '*Nunc* dicamus, quando et ubi suam iurisdictionem seu potestatem legatus valeat exercere.'

84. A detailed investigation of each statement made by the Speculator in his largely derivative discussion would expand this study to unmanageable proportions. A precis of this material can be found in Figueira, 'The Canon Law of Medieval Papal Legation', pp. 544–8, an abbreviated transcription of para. 7, sect. 1–16, 53a–56a: '*Nunc*'.

85. Guilelmus Durantis, para. 8, sect. 1, 56b: '*Finitur* autem legati iurisdictio quatuor modis principaliter … secundo revocatione ex quo videlicet revocatus, vel alio modo provinciam egreditur non reversus … ar. tamen quod etiam egressus retinet iurisdictionem licet eam exercere non possit … sed si egreditur: ut statim revertatur, iurisdictio intermittitur, non finitur … Quid ergo si legatus revocatus forte, vel ob aliam causam provinciam egreditur animo non redeundi: sed audita morte Papae potius vult in loco pascuae manere, quam ad sedem Apostolicam redire: nunquid poterit ad provinciam redire, et ibi legationis officium reassumere? Responsio patet ex premissis, quod non: nam egrediendo illam animo

Another adaptation of earlier decretalist inquiry appeared in the Speculator's recapitulation of the proper method whereby a legate should enter his province. Goffredus and Hostiensis both stressed Roman models here. Guilelmus repeated their citations and added Christian imagery. A legate should send on ahead notification of his arrival, just as Christ had had His precursor in John the Baptist, who had prepared the hearts of men for His coming. Furthermore, the legate should not yearn on this occasion for vain earthly pomp, honours and offerings, but should act humbly, much as Christ had done when entering Jerusalem seated humbly on an ass.[86]

Guilelmus also posed completely new questions. If a legate *de latere* should leave one of the metropolitan provinces within his legatine province and enter another metropolitan province subordinated to his legation, could a legate of lesser rank based within the first metropolitan province resume his own lapsed legatine jurisdiction? No, replied the Speculator, because the legate *de latere* could still deal with matters in the first metropolitan province from anywhere within his entire legatine province.[87] What jurisdiction could the lesser legate exercise if the legate *de latere* left the legatine province altogether with the intention to return? None, answered Guilelmus, for this absence should be considered temporary, and the legate *de latere* could still subdelegate cases within his entire province during his sojourn outside it.[88] But if the legate *de latere* took ship to leave his province without intending to return, then the lesser legate could resume his jurisdiction in all cases save where either the legate *de latere* or the latter's subdelegates had begun cognizance of a case.[89] At this point the Speculator introduced Vincentius Hispanus's wrinkle to this situation: if adverse

non redeundi. privatus est dignitate et exercitio iurisdictionis …'. Durantis used the terms *imperium* and *exercitium imperii* to denote the same distinction mentioned above, para. 7, sect. 2, 53b: '*Nunc*'.

86. Ibid., para. 7, sect. 1–, 53b: '*Nunc* … In ipso quoque provinciae, et cuiuslibet civitatis introitu, debet legatus provincialium mores servare … Recte autem faciet legatus, si prius quam sibi decretam ingrediatur provinciam, edictum de suo adventu praemittat, significans quando ingressurus sit: exemplo Christi, qui Ioannem suum precursorem praemisit, ut corda hominum praepararet: Non tamen imprudenter appetat populares cursus, et mundanos honores: sed nec ultro oblatos respuat iuxta decentiam sui status: quia et Christus super asinam taliter voluit honorari: et praemissa denunciatione per eam partem provinciae ingrediatur, per quam alii legati consueverunt ad instar proconsulis.'

87. Ibid., para. 4, sect. 59, 40b: '*Superest* videre quid ad legati pertineat officium … Item, quid si iste de latere se transfert ad aliam provinciam similiter commissam, in qua primus [legatus] non est legatus: nunquid primus poterit resumere officii executionem et legationis, dum sic ille abest. Et videtur quod sic … Sed dic contra. nam legatus potest negocia unius provinciae in aliam tractare: ut extra eodem novit [X 1.30.7].'

88. Ibid., para. 4, sect. 60, 40b–41a, same rubric: 'Sed quid secundus [= a legate *de latere*] egreditur provinciam animo redeundi ad illam? Dic quod primus nequit uti iure suspenso: quia ille pro praesenti habetur: licet enim extra provinciam iudicare non possit, tamen inde causas committere potest, et iubere sicut praeses, qui provinciam egreditur.... Videtur tamen de mentis [*sic!*] iuris, quod huiusmodi egressus non debet esse longe …'.

89. Ibid., para. 4, sect. 61, 41a, same rubric: 'Quid si legatus de latere animo non redeundi mare intrat? Respondeo alius poterit immediate iure suo resumere exercitium suae legationis, exceptis causis inchoatis per delegatos a Cardinali. Quid de causis coeptis coram ipso Cardinali, vel coram auditoribus curiae? Respondeo dici potest quod etiam illas finiet secundus.' Note that Guilelmus did not elaborate on how a legate *de latere* outside his province could solve these cases himself. Compare his remarks here with those of Innocent IV; see note 45 above.

winds blew the legate *de latere* back into port, should the lesser legate receive him again as legate and superior? If this unforeseen return followed quickly upon the aforesaid departure, then the legate *de latere* should be readmitted to his position. If some time had elapsed between the abortive departure and forced return, then there was no necessity for the lesser legate to yield. But what if, in this last situation, the lesser legate wished nonetheless to yield to the legate *de latere* out of profound reverence for the Apostolic See that had sent the latter? It would seem at first that he could not yield, for whence would the legate *de latere* possess his jurisdiction, if his legation had ended? However, Vincentius argued subsequently that the legate *de latere*'s jurisdiction could be considered to have never expired, and to have been 'revived' by his permitted readmittance. Here, the distinction was between actually 'having left' and 'to have wanted to leave'. Since the legate *de latere* still possessed his *imperium* while on board ship, its exercise became once again operative if the lesser legate wished to yield to him.[90]

Regarding another matter, Guilelmus seemed to assert a potentially controversial opinion – he denied to legates the capacity to interfere with or revoke judicial sentences given by subordinate provincial judges, even if the legate attempted this 'by cognition of the case, and according to the paths of law'. He further forbade such meddling when the legate was outside his province.[91] The second statement was quite reasonable, as we have often noted above that decretalists normally denied to legates the personal exercise of their jurisdiction outside their provinces. The first statement, however, would seem to run counter both to the legate's capability to hear all provincial cases either by appeal or original complaint, and to the frequent decretalist exaltations of legatine intra-provincial power, often buttressed by analogy to various Roman magistrates. The Speculator's three supporting texts, all decretals of Innocent III, did not specifically prohibit legatine action *vis-à-vis* subordinate judges, but stressed instead the importance of due process in cases of excommunication and absolution involving bishops, archbishops and papal judges-delegate. The pope carefully noted the circumstances under which one judge could or could not absolve someone excommunicated by another judge. Perhaps Guilelmus wished to

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90. Ibid, para. 4, sect. 62, 41a, same rubric: 'Sed pone quod aura adversa iterum reducat illum ad portum: nunquid primus tenetur ei cedere? Dixit Vincentius quod si in brevi rediit, debet illum admittere... quia in ingressu Romae deponitur Imperium … Si autem longo tempore post rediit, finito legationis officio per longum exitum ad provinciam, non videtur ex necessitate admittendus … Sed an hoc casu primus potest ei cedere, si vult ob reverentiam Apostolicae sedis? Et videtur quod non … Unde enim haberet iste iurisdictionem, si finita sit … Vincentius contra et dicit quod reviviscit ex eo, quod recipitur: fingitur enim non recessisse, sed voluisse recedere: sicut quandoque quis non petiit, sed voluit petere: ut *f f* rem ratam haberi amplius [Dig. 46.8.15]. Praeterea in ingressu Romae dicitur Imperium deponere … et ita ante ingressum id habet, licet non habeat executionem, cum non sit in provincia … sicut et primus legatus, qui ibi erat. praesente isto habuit imperium, sed non executionem: si ergo admittitur, poterit exercere.'

91. Ibid., para. 7, sect. 6, 54a: '*Nunc* … Nam de sententiis ordinariorum suae provinciae se non potest intromittere, nec illas revocare causae cognitione, et secundum tramites iuris. extra de sententia excommunicationis per tuas [X 5.39.40] de officio ordinati ad reprimendam [X 1.31.8] de officio delegati cum contingat [X 1.29.36]. sed nec extra fines suae legationis, ut infra.'

assert that a legate could not overturn a sentence without first having received a formal appeal as superior judge. But even this more restricted interpretation of the canonist's intent would have been remarkable, for it both ran counter to the legate's admitted character as provincial ordinary (as in X 1.30.1), and was unsupported by any other decretalist.[92]

Finally, the Speculator even allowed a legate outside of his province the capability to absolve all persons excommunicated *ipso facto* for transgressing a statute bearing that penalty.[93] This assertion was implicitly amended by Guilelmus's recognition that *Excommunicatis* had prescribed the conditions whereby certain types of legates could absolve excommunicated assaulters of clergy (whose penalty was statutory) under certain circumstances. On the other hand, Durantis also explicitly widened the scope for legatine action to a larger group of excommunicates.

Conclusion

The decretalist discussion of geographic constraints on legatine power presented a highly detailed and complex picture, a picture made less tractable by the common canonistic practice of posing similar legal situations which nonetheless differed in subordinate, and often highly important details. The modern observer can, however, discern broad areas of majority agreement on several fundamental legal points. At other times one must be satisfied merely with reporting the outlines of major disagreement or of idiosyncratic opinion:

1. Generally speaking, all medieval legates possessed voluntary jurisdiction over their provincial subjects before entrance into their provinces; during this time they could also subdelegate matters requiring settlement to other persons within the province, so long as these commissions involved neither 'cognition of the case' nor severe penalties.
2. When outside his province after his initial entrance, a legate could subdelegate to other persons all matters not requiring 'cognition of the case'.
3. A legate outside his province could settle matters (concerning whom or what was uncertain) requiring 'cognition of the case' if he possessed permission

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92. The passage – as it stands in the Venice 1585 edition – is syntactically puzzling: note that the negatives (*non*, *nec*) of the first two clauses are followed by a contrasting conjunction (*sed*) as well as another negative (*nec*). One would normally expect 'and' (*et*) instead of 'but'. This suggests that an emendation of the passage might be required.

93. Guilelmus Durantis, *loc. cit.*: 'dicam quod intellige de sententiis contra certam personam prolatis: secus autem est de sententiis in forma constitutionis in genere promulgatis: puta, statuimus quod quicunque falsaverit* chartam, vel luserit ad taxillos, vel furtum fecerit, et huiusmodi, sit excommunicatus. Cum enim talis sententia potius iuri, quam hominis censenda: sit arg. 24 q. 1 c. 2 [C.24q.1c.2] extra de sententia excommunicationis a nobis i [X 5.39.21] et de appellationis reprehensibilis. respon. i [X 2.28.26]. legati a talibus sententiis passim absolvunt: ex quo eis specialiter non inhibetur, extra de sententia excommunicationis nuper [X 5.39.29].' Note that Guilelmus explicitly excepted any matters not already forbidden to a legate from this broadly-phrased permission to absolve. The asterisk marks my emendation for 'salvaverit'.

from the local ordinary judge.

4. A legate always and everywhere could exercise voluntary jurisdiction over non-provincials.

5. Legates in transit to and from their provinces could exact procurations for their daily needs from non-provincials.

6. A legate within his province could exercise throughout that province contentious jurisdiction in all matters requiring 'cognition of the case'.

7. A legate *de latere* within his province pre-empted the exercise of jurisdiction by any subordinate legate within the province, no matter what the boundaries of the latter's province were; if a legate *de latere* returned to his province after a short sojourn outside it, he again pre-empted the lesser legate's exercise of jurisdiction.

8. Legatine statutes bound only provincial subjects.

9. When a legate left his province with no intention of return, he lost the exercise of his *imperium*, but not the *imperium* itself; if he left with intent to return, then his *imperium* was likewise retained, but its exercise was suspended until his return.

10. An exception to this previous item and to items (12) and (14) below was the legate *de latere'*s prerogative to absolve persons excommunicated for acts of violence against clerics; this prerogative could be exercised anywhere and at any time from the legate's departure from the pope's city of residence until his return to it.

11. A legate not 'sent' from the pope's side could not perform similar absolutions outside his province even if he had the permission of the local ordinary judge; yet the decretalists differed as to the circumstances under which this type of legate could perform such absolutions within his province: either they were forbidden to do this for any non-provincial, or for non-provincials as well as for all persons who had committed their delict and had been punished outside the province.

12. It was nonetheless moot whether any legate outside his province could excommunicate or even absolve in cases of excommunication not involving assaulters of clergy; Johannes Teutonicus was undecided, as was Hostiensis in his *Commentaria*; in the *Summa*, however, the latter canonist rejected such prerogatives.

13. According to Innocent IV, however, a legate outside his province could absolve a person whom he had excommunicated while within if he recognized that his previous penalty had been in error.

14. Innocent IV denied to a legate outside his province both the power to absolve persons whom they excommunicated while inside, and the power to finish hearing a case begun within the province; Hostiensis added, however, that such absolution was permissible if the legate returned to his province after a short absence.

15. According to Hostiensis, a legate outside of his province could denounce as excommunicates those persons who had transgressed a statute which inflicted

that penalty automatically.

16. Any interdict proclaimed by a legate outside his province was invalid.

17. Some canonists (Johannes Teutonicus, Innocent IV) permitted a legate to grant benefices when outside his province; Hostiensis alternately rejected this opinion in the *Summa* and approved it in the *Commentaria*.

18. However, if a legate reserved to his own nominee a benefice not yet vacant, and subsequently departed permanently from his province before the benefice became vacant, then his reservation could be ignored; this was not so if he has reserved the benefice for the pope's own nomination.

This inquiry into decretalist texts regarding medieval papal legates and their provinces illustrated the geographic limitations bounding their authority. Decretalist glosses also reflected the emergence of the legatine province as a new concept in ecclesiastical geography, a concept utilizing terminology connoting political, ecclesiastical, urban, regional, and even nascent 'national' territorial units. Likewise, this concept underscored the inherent flexibility of papal legation. Just as medieval law cases, problems of government, and administrative activities spilled over conventional boundaries, the temporary and 'floating' jurisdiction of a legate could act effectively to perform extraordinary tasks and solve extraordinary problems without, it was hoped, unduly disturbing time-hallowed and traditional local jurisdictions and processes. In fact, the decretals in the *Liber Extra* and their attendant canonistic commentary would tend to suggest the occurrence of some complaints and litigation by local ecclesiastical authorities against legates that were based in part on geographic limitations. If this tendency should be borne out by historical research into other records (court records, letters, chronicles), such complaints and litigation would in themselves indicate in part the strength of local particularism in the Church during the thirteenth century.

The decretalist discussion of geographic limitations on legatine jurisdiction represented an eclectic mix of rules and maxims derived from canon law and the Roman law of offices and jurisdiction,[94] and reflected two operative trends. First, legatine power in ecclesiastical affairs within the province was superior to all jurisdictions save that of the pope or of a legate of higher rank. Second, the intensity of a legate's power diminished when he was absent from the province, depending on the type of activity, the status of activity (whether action has begun or not), and the duration and nature of his absence. Elaboration of this second trend involved the canonists in elaborate casuistry, and also highlighted the interplay among subordinate legates, the legate's own subdelegates, and local ecclesiastical officials.

Finally, this same decretalist discussion took place within a larger political context. The thirteenth century would witness both the sometime successful attempts by secular rulers to build cohesive nation-states, and the steady institutional

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94. For a discussion of the decretalists' reliance on Roman law in their analysis of papal legation, see Figueira, 'Decretalists, Medieval Papal Legation, and the Roman Law of Offices and Jurisdiction', *passim*.

and bureaucratic centralization of the Western Church under papal headship. Primitive Germanic kingship had rested initially on ties of actual or feigned tribal relationships between ruler and ruled, and on the bond between war chieftain and warrior. Political considerations of a strictly geographic nature had been far less important. Such personalized relationships persisted during the early middle ages in the protocol of royal titles: King of the Franks, of the Lombards, of the Visigoths. To be sure, full-blown classical feudalism in Western Europe, despite its roots in the intensely personal lord–vassal bond of homage and fealty, eventually territorialized this relationship in the fief, most commonly a complex of lands and attendant rights or privileges. The geographic shape of feudal holdings became mosaic, or more accurately, kaleidoscopic, subject to frequent alterations through inheritance, conquest, exchange, forfeiture, escheat, and subinfeudation. Rights and privileges overlapped in a Gordian knot: occasionally a lord and vassal would exchange roles; often, a vassal had simultaneous obligations to several lords.

Indeed, much of the political history of the Church during the early Middle Ages was conditioned by this same 'personalizing' character of feudalism. On the one hand, one can note the attempts by powerful laymen to treat churches, church property, and churchmen in a proprietary fashion – *Eigenkirchenwesen*. On the other hand, one can also observe the growing reformist trend in certain monastic circles, and eventually within the Roman *curia*, to free the Church from lay proprietary control and influence.

For its part, the Church had had from its early history its own territorial units, derived from like units of the Late Empire: the parish and diocese. To these were added other administrative subdivisions of the diocese such as the archdeaconry and archpresbytery/rural deanery.[95] Such units of ecclesiastical government were of

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95. Access to the vast literature regarding these various subdivisions of ecclesiastical jurisdiction and their officers can be gained through reference to various dictionaries, encyclopaedias and lexica: Charles Du Cange, *Glossarium mediae et infimae latinitatis* (Niort, 1883–87), 1:364–5 ('archidiaconus'), 1:369 ('archipresbyteri'), 3:20 ('decanus'), 3:121–2 ('dioceses'), 6:178–9, 181 ('parochial', 'parrochia'), 6:546 ('provincial'); J.F. Niermeyer, *Mediae Latinitatis Lexicon Minus* (Leiden, 1976), pp. 56 ('archidiaconus'), 57 ('archipresbyter'), 305 ('decanus'), 334–5 ('dioceses'), 764–5 ('parochial'), 867 ('provincial'); *The Catholic Encyclopedia* (New York, 1907–14), 1:693–4, 697–8 (J.P. Kirsch, 'archdeacon' and 'archpriest'), 4:659–60 (D. Dunford, 'dean'), 5:1–2 (A. Van Hove, 'diocese'), 11:501 (A. Boudinhon, 'parish'); *Oxford Dictionary of the Christian Church*, 2nd edn (London, 1983), p. 81 ('archdeacon', 'archpriest'), p. 382–3 ('dean'), p. 404 ('diocese'); *New Catholic Encyclopedia* (Washington, DC, 1967), 1:745 (B. Forshaw, 'Archdeacon'), 1:773 (P. Renold, 'Archpriest'), 4:871–2 (H.G. Bowen, 'Diocese – Eparchy'), 10:1017–19 (C. Riepe, 'Parish'); *Dictionary of the Middle Ages* (New York, 1982), 4:191 (J.R. Strayer, 'Diocese, Ecclesiastical'); Paul Hinschius, *Das Kirchenrecht der Katholiken und Protestanten in Deutschland* (Berlin, 1869–97, repr. Graz, 1959), 2:38–46, 183–205, 261–84; *Realencyklopädie für protestantische Theologie und Kirche* (Leipzig, 1896–1913), 15:239–48 (Ulrich Stutz, 'Pfarre, Pfarrer'); *Reallexikon für Antike und Christentum* (Stuttgart, 1950–), 3:1053–62 (A. Scheuermann, 'Diözese – Diokesis'); Willibald Ploechl, *Geschichte des Kirchenrechts* (Vienna, 1953), 2:131–6; *Lexikon für Theologie und Kirche* (Freiburg, 1957–67), 3:202–3 (A. Heintz, 'Dekan'), 3:414–5 (A. Scheuermann, 'Diözese'), 3:1082 (K. Weinzierl, 'Erzpriester'), 8:398–403 (E. Isele, 'Pfarrei'); *Dictionnaire d'archeologie chretienne et de liturgie* (Paris, 1924–29), 4:1 212–19 (H. Leclercq, 'Divisions administratives et ecclesiastiques'), *Dictionnaire de theologie catholique* (Paris, 1930–50), 4:1 362–3 (P. Fourneret, 'Diocèse'); DDC 1:948–

small or moderate size, and the bishop, parish priest, archdeacon and archpriest/rural dean could not serve the papacy as suitable agents of governmental centralization.[96] The tensions within a single metropolitan province among archbishop and suffragans counteracted, in part, the popes' policy of binding metropolitans more closely to the Apostolic See. And larger groups of dioceses or of metropolitan provinces organized along secular political lines during the thirteenth century – such as the *ecclesia Anglicana* or *ecclesia Scoticana* – possessed their greatest vigour in outlying areas of Latin Christendom, often serving purposes far removed from the papacy's centralizing policy.[97]

The erection of a national monarchy or a papal monarchy in the thirteenth century would require, among other things: the concept of a large fixed territory over which king or pope would rule, the recognition that discernable internal boundaries separated substantial and contiguous geographic subunits of territory, and the realization that the monarch's agents exercised royal or papal jurisdiction within the boundaries of such subunits, but not normally beyond them. This same century witnessed the increasingly effective utilization by the French and English kings of novel officials (such as the royal *baillis*, seneschals, and itinerant justices) with relatively fixed districts or circuits within each respective kingdom. Internal boundaries both defined and controlled the exercise of power commissioned to subordinates. The geographic limits to papal legation provided an early example of how contemporary medieval popes and lawyers, starting from a foundation of Roman jurisprudence and administrative practice, fashioned a new type of territorial unit – the legatine province – as the cockpit of action for the increasingly invaluable agent of a papacy bent on realizing its universalist claims to leadership of the Church.

1026 (A. Amanieu, 'Archidiacre', 'Archiprêtre'), 4:1257–61 (F. Claeys Bouuaert, 'Diocèse'), 6:1236–7 and 7:397–8 (R. Naz, 'Paroisse', 'Province ecclésiastique'). See also: Geoffry Hill, *English Dioceses: A History of their Limits from the Earliest Times to the Present Day* (London, 1900); A. Hamilton Thompson, 'Diocesan Organization in the Middle Ages – Archdeacons and Rural Deans', *Proceedings of the British Academy* 29 (1943), 153–94, and *The English Clergy and their Organization in the Later Middle Ages* (Oxford, 1947), pp. 40–71; John R.H. Moorman, *Church Life in England in the Thirteenth Century* (Cambridge, 1945), pp. 1–67, 138–53, 197–209; Brian Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952); Paul R. Hyams, 'Deans and their doings: The Norwich inquiry of 1286', *Proceedings of the Sixth International Congress of Medieval Canon Law*, eds Stephan Kuttner and Kenneth Pennington (Vatican City, 1985), pp. 619–46; R.A. Fletcher, *The Episcopate in the Kingdom of Leon in the Twelfth Century* (Oxford, 1978), pp. 150–58.

96. For one thing, none of them derived their sacramental and jurisdictional powers directly from the pope. The legate, on the other hand, was the pope's own creation.

97. For a partial outline of the relationship between the papacy and the *ecclesia Scoticana* in the twelfth and thirteenth centuries, see Paul C. Ferguson, *Medieval Papal Representatives in Scotland: Legates, Nuncios, and Judges-Delegate, 1125–1286* (Edinburgh, 1997).

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Potens et Pauper: Charity and Authority in Jurisdictional Disputes over the Poor in Medieval Cologne

Joseph P. Huffman

Much of the historiography on medieval poverty and charity has focused either on religious attitudes toward poverty[1] or on the economics of poverty and poor relief.[2] But little is known about how the poor themselves were specifically affected by the political and social conflicts of the wider community, or about how the administration

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1. As examples of a voluminous literature see: Michael Casey, 'The Meaning of Poverty for Bernard of Clairvaux', *Cistercian Studies Quarterly* 33, no. 4 (1998), 427–38; David Flood, *Poverty in the Middle Ages*, Franziskanische Forschungen 27 (Paderborn, 1975); Bronislaw Geremek, *Poverty: A History* (Oxford, 1994); Lester Little, *Religious Poverty and the Profit Economy in Medieval Europe* (Ithaca, NY, 1978); Michel Mollat, *The Poor in the Middle Ages: An Essay in Social History* (New Haven, CT, 1986); Alexander Murray, 'Religion Among the Poor in Thirteenth-century France: The Testimony of Humbert de Romans', *Traditio: Studies in Ancient and Medieval History, Thought, and Religion* 30 (1974), 289–90; Rosemary Horrox, 'The Poor', in Rosemary Horrox, ed., *Fifteenth-century Attitudes: Perceptions of Society in Late Medieval England* (Cambridge, 1994), pp. 169–82; Brian Tierney, 'The Decretists and the "Deserving Poor"', *Comparative Studies in Society and History* 1 (1959), 360–73, and *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (Berkeley, CA, 1959).

2. As only a sample of the vast number of studies, see: James Brodman, *Charity and Welfare: Hospitals and the Poor in Medieval Catalonia* (Philadelphia, PA, 1998); Donald Critchlow, *Always with Us: A History of Private Charity and Public Welfare* (Lanham, MD, 1998); Patricia Cullum, *Cremetts and Corrodies: Care of the Poor and Sick at St. Leonard's Hospital, York, in the Middle Ages* (York, 1991); Christopher Dyer, *Standards of Living in the Later Middle Ages. Social Change in England c. 1200–1520* (Cambridge, 1989); Timothy Fehler, *Poor Relief and Protestantism: The Evolution of Social Welfare in Sixteenth-century Emden* (Aldershot, 1999); W. Fischer, *Armut in der Geschichte: Erscheinungsformen und Lösungsversuche der 'Sozialen Frage' in Europa seit dem Mittelalter* (Göttingen, 1982); John Henderson, *Piety and Charity in Late Medieval Florence* (Oxford, 1994); Merritt Ierley, *With Charity for All: Welfare and Society, Ancient Times to the Present* (New York, 1984); E.M. Leonard, *The Early History of English Poor Relief*, 2nd edn (London, 1965); Uta Lindgren, 'Europas Armut. Probleme, Methoden, Ergebnisse einer Untersuchungsserie', *Saeculum* 28 (1977), 396–418; Brian Pullan, *Poverty and Charity: Europe, Italy, Venice, 1400–1700* (Aldershot, 1994); Elizabeth Rothfauff, 'Charity in a Medieval Community: Politics, Piety and Poor-Relief in Pisa 1257–1312' (University of California, Berkeley Ph.D. dissertation, 1994); Miri Rubin, *Charity and Community in Medieval Cambridge* (Cambridge, 1987); M.J. Tits-Dieuaide, 'Les tables des pauvres dans les anciennes principautés belges au moyen âge', *Tijdschrift voor Geschiedenis* 88 (1975), 562–83; Richard Trexler, 'Charity and Defense of Urban Elites in the Italian Communes', in Frederic Cople Jaher, ed., *The Rich, the Well Born and the Powerful: Elites and Upper Classes in History* (Urbana, IL, 1973), pp. 64–109.

of charitable institutions affected relations among the powerful elites who founded and wielded authority over them.

The most effective way to gain insight into how the poor, a vulnerable and dependent segment of the community, were affected by relations among the powerful members of medieval society would be to consider the moments when institutions providing poor relief became involved in power struggles among the governing classes. What one finds at these points is a striking articulation and continual reinforcement of a social order in which the poor were considered the jurisdictional wards of the powerful. Indeed, the poor were most often directly affected by the powerful of society whenever disputes among the powerful arose over the jurisdictional boundaries of poor relief; and the poor were rarely beneficiaries of such disputes.

Evidence survives of several jurisdictional conflicts in medieval Cologne between charitable institutions regarding just who had the right to receive alms donated for the sustenance of the poor. These institutions included monasteries, hospitals, a leper colony and collegiate churches. There is also evidence of the use of violence and arson against hospitals during regional political disputes, actions that were clearly intended as ritual challenges to the authority and power of the hospitals' benefactors rather than the result of any animosity toward the residents themselves. In sum, what emerges is a social structure wherein authority over poor relief (and thereby over the poor) was a sign of socio-political power and prestige.

Such a social order of patronage and dependence, therefore, was not characteristic of feudal and manorial societies alone, but was also replicated in urban settings of the central Middle Ages. We are reminded of this when reading those Carolingian authors who originally used the term *pauper* (as an adjective rather than a noun) to identify the powerless in society in contrast to the powerful, the *potentes*.[3] Hence there were poor warriors (*pauperes milites*) and poor clerics (*pauperes clerici*) as well as poor serfs (*pauperes servi*) or poor women (*pauperes mulieres*). Yet by the thirteenth century the advent of an urban, commercial economy transformed the ethos of poverty,[4] and *pauper* increasingly became used as a noun to indicate the economic status of individuals. We must, however, never lose sight of the fact that the essential powerlessness and dependency of the new urban *pauperes* remained the same, whether or not described more narrowly in economic terms.[5]

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3. Karl Bosl, '*Potens* und *Pauper*: Begriffsgeschichtliche Studien zur gesellschaftlichen Differenzierung im frühen Mittelalter und zum "Pauperismus" des Hochmittelalters'*,* in Karl Bosl, *Frühformen der Gesellschaft im mittelalterlichen Europa: Ausgewählte Beiträge zu einer Strukturanalyse der mittelalterlichen Welt* (Munich/Vienna, 1964), pp. 106–34. See also Otto Gerhard Oexle, '*Potens et Pauper* im Frühmittelalter', in Wolfgang Harms and Klaus Speckenbach, eds, *Bildhafte Rede im Mittelalter und früher Neuzeit: Probleme ihrer Legitimation und ihrer Funktion* (Tübingen, 1992), pp. 131–49.

4. See generally Lester Little, *Religious Poverty*.

5. Monks continued to describe themselves as the true *pauperes Christi* to emphasize their acts of voluntary poverty and renunciation of power; however, the collective institutional power of monasteries was often strengthened in the new economy of the central Middle Ages. In reaction to this, several protest movements like the Patarini emerged in an effort to redefine the poor of Christ. See Ernst Werner, *Pauperes*

The powerlessness of economic poverty assured a restricted participation by the poor in legal proceedings not unlike the legal liabilities of serfdom. In 1282 the knight Wenemar of Gemenich was locked in a dispute with the deacon and chapter of Kerpen (near Aachen) over rights in a forest chapel. Wenemar had established this chapel without the approval of the parish priest, and the offerings made to the chapel had the potential to siphon off parish income. For his initiative the knight was duly excommunicated in order to compel him to appear before a clerical tribunal. Several locals were also summoned to the hearing to testify, but a number of them were summarily dismissed by the judges (the deacon of Maria ad Gradus and a canon of St George, both collegiate churches in Cologne) for the following reason:

> … because before and after the time of his deposition he was and is a poor man of unstable reputation and has nothing in material goods and wanders begging door-to-door in Kerpen and elsewhere.[6]

This was the judgment passed on Leo the Butcher (*carnifex*), and the same was concluded about Werner the Bellringer (*campanarius*), Herman son of Lisbold, and John *de foro piscatoris*. Such surnames suggest men of 'working-poor' status rather than vagrant strangers, and it is ironic that such local paupers were denied, by the very fact of their poverty, a voice in a case ostensibly about which clergy should received alms in their name. This would not be the last time that the poor were poorly served in such jurisdictional disputes.

Authority over chapels was a common cause of disputes between parochial clergy and laymen. Such chapels, especially when attached to a hospital, could draw alms away from the parish church and its clergy, thereby putting into question both the source of revenue as well as jurisdictional authority over local poor relief. City magistrates found this a thorny problem when attempting to patronize public institutions of poor relief.

In 1218 a wealthy Cologne citizen named Henry Halverogge founded a hospital in St Severin's parish as an act of charitable piety. Leading civic officials joined him by donating land (*fundus*) and materials to build an adjoining chapel (*oratorium*) – no doubt in an effort to create a funding base for the institution. To make matters more complicated, however, they then handed over administration of both hospital and chapel to the Teutonic Knights 'in honour of the most pious Virgin Mary, Mother of God, and of the renowned martyr Catherine'.[7] This meant not only that the chapel

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Christi: Studien zu sozial-religiösen Bewegungen im Zeitalter des Reformpapsttums (Leipzig, 1956). The Franciscans also went through a similar struggle as a result of the success of their mendicant movement: see David Burr, 'The *Correctorium* Controversy and the Origins of the *Usus pauper* Controversy', *Speculum* 60, no. 2 (1985), 331–42.

6. Cologne, Stadtarchiv, St. Georg Stift Urkunden 3/27 (16 or 17 March 1282): 'Item dictis Leonis carnificis non est standum nec aliqua fides adhibenda eo quod tempore sue depositionis ante et post fuit et est pauper levis opinionis et nichil habens in bonis et mendicans hostiatim apud Carpenam et alibi.'

7. Cologne, Stadtarchiv, St. Katherinen Urkunden 2/6 (1218): 'ad honorem piissime genetricis dei virginis Marie ac inclite Katerine martiris'. The document is published in Johann Heinrich Hennes, *Codex diplomaticus ordinis s. Mariae Theutonicorum: Urkundenbuch des Deutschen Ordens* (Mainz, 1861),

priest himself was installed by the order and administered the sacraments without the consent of the parish priest (in this case the deacon of the collegiate church of St Severin), but also that the order could receive bequests and alms in the chapel in return for memorial masses. And given the prestige of the Teutonic Knights, endowment support was soon forthcoming: perhaps even as the hospital was being built, Count Adolf of Berg bequeathed to the hospital an entire manor in Dieteren.[8]

As one might expect, the deacon and entire chapter of St Severin forbade the celebration of the divine office and the burial of the dead 'because the said hospital with its adjoining chapel, are situated in the parish that pertains to them'. Furthermore, they claimed that the real estate that the city officials had donated for the chapel was liable to the collegiate church for land rent (*census*). In an effort to settle this jurisdictional dispute, the civic officials offered an indemnity of 20 marks with which to buy 'other fields in recompense of the damage' (*alios agros ad recompensationem dampni*). The deacon and chapter at first accepted this compromise and received the first 12 marks in exchange for the hospital's exemption from parochial authority. Yet they subsequently reneged on the deal and refused to accept the remaining 8 marks, choosing rather to seek redress in an ecclesiastical court. Although the agreed-upon payment had resolved their financial concerns about the property, it seems that nothing had been done to address the perceived infringement on their ecclesiastical jurisdiction within the parish.

Since this conflict engaged competing clerical authorities as well as local civic government, adjudication required a higher authority. The entire civic administration therefore wrote directly to Pope Honorius III about this conflict, asking for his intervention; indeed, they asked the pope to take the hospital into his own patronage as a guarantee of immunity.[9] We do not have a papal response letter at hand, yet a second letter by the city magistrates in the following year indicates that the pope assigned the case to Abbot Bruno of Rommersdorf and his adjutants, *cantor* Theoderich of St Florin and *custos* Gerlach of St Castor.[10] The Teutonic Knights had

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2:8–9, no. 9; Theodor Josef Lacomblet, *Urkundenbuch für die Geschichte des Niederrheins* (Düsseldorf, 1846), 2:40–41, no. 74; Leonard Ennen and Gottfried Eckertz, *Quellen zur Geschichte der Stadt Köln* (Cologne, 1863), 2:73–4, no. 60. Dedication of the hospital to the order's patron saints, the Virgin Mary and St Catherine of Alexandria, indicate the Teutonic Knights' involvement in the early stages of the building process. It may also indicate the impetus for Henry Halverogge's decision to build the hospital: his eldest son entered the Benedictine monastery of Groß St. Martin in Cologne, and his youngest son made his way to the Holy Land – apparently as a crusader; see Wolfgang Peters, 'Zur Gründung des St. Katherinen-Hospitals in Köln Anfang des 13. Jahrhunderts', *Jahrbuch des Kölnischen Geschichtsvereins* 61 (1990), 64–5.

8. Lacomblet, *Urkundenbuch*, 2:39, no. 72 (15 June 1218): 'Ego Adolphus dictus comes de monte notum facio tam presentibus quam futuris, quod pro salute anime mee et progenitorum meorum curtim meam in Diderin contuli hospitali s. Marie domus theutonicorum in iherusalem cum omnibus attinentiis in perpetuum possidendam.'

9. See note 7 above. The letter is addressed to Honorius III by the 'Judices, Scabini, universique magistrates Coloniensis'.

10. Cologne, Stadtarchiv, St. Katherinen Urkunden 2/5 (1219), published in Hennes, *Codex diplomaticus*, 2:9–10, no. 10.

already established a presence in Koblenz, where lay the abbey of Rommersdorf and the canonries of St Castor and St Florin, the latter of which had already transferred its St Nicholas hospital in Koblenz to the care of the Teutonic Knights in 1216.[11] So it would seem that the assignment of these arbitrators boded well for the order. Furthermore, Ludwig, a master of the Teutonic Knights, had now taken a leading role in the litigation against St Severin. Thus the Cologne magistrates wrote a second letter in support of Ludwig to the papal judges-delegate requesting a suitable resolution to the conflict.

Their request was granted, as the abbot and his fellow arbitrators promulgated a charter on 25 January 1220 containing the details of the compromise reached.[12] The following arrangement was decreed at the church of St Florin in the presence of master Ludwig and the deacon of St Severin. The chapel priest was allowed to say mass and offer the sacraments, but only to the hospital's residents, and he could only bury the dead who had been residents of the hospital (unless the chapter of St Severin had approved in advance such a request). Thereafter, the chaplain was not allowed to celebrate any anniversary, trental or obituary masses for the dead, their spouses, or their children. Furthermore, so as not to compete with the parish church for alms in other ways, the chaplain was to ring a small bell only once to call the hospital residents to mass, vespers, matins and funerals. Nor was the priest to process publicly in sacerdotal garb on Mondays (which were dedicated to an indulgence procession into St Severin's Church); rather, he was to offer prayers before the door of the chapel so as not to confuse the penitent as to their proper source of indulgences. Finally, the 20 mark indemnity was maintained and the Teutonic Knights were to obtain a confirmation charter of this agreement from the archbishop of Cologne at their own expense.[13] In exchange, the chapel was allowed to function with a priest of the order's choosing, and further purchases of land in the parish would not be disputed by the canons.

This was a case in which rights to care for the poor and sick were disputed as the result of the foundation of a new charitable institution. Because care for the vulnerable in society was intimately attached to charitable offerings by those with wealth and power, clear jurisdictional lines of access to such philanthropy were delineated and maintained. Therefore, the pious impulse to build and endow an urban hospital often proved to be a threat to traditional parochial rights to alms and charity. Bequests that would normally have gone to the parish church were now

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11. A. Diederich, *Das Stift St. Florin zu Koblenz. Studien zur Germania sacra 6*, Veröffentlichungen des Max-Planck-Instituts für Geschichte 16 (Göttingen, 1967), p. 204. Canons of St Castor were also often involved in resolving conflicts in the Cologne church: see A. Schmidt, *Quellen zur Geschichte des St. Kastorstifts in Koblenz*, Publikationen der Gesellschaft für Rheinische Geschichtskunde 53 (Bonn, 1954).

12. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/4 (25 January 1220), published in Hennes, *Codex diplomaticus*, 2:11–12, no. 11.

13. This they did on the same day, though the archbishop himself was not present at the proceedings. Cologne, Stadtarchiv, St. Katherinnen Urkunden 1/4a (25 January 1220), published in Hennes, *Codex diplomaticus*, 2:12–14, no. 12, and Ennen, *Quellen*, 2:80–81, no. 67.

diverted increasingly to these new foundations. Indeed, in spite of the restrictions originally placed on the hospital of St Catherine regarding the use of memorial masses in exchange for bequests, the Teutonic Knights did receive such bequests by wealthy patrician families and were soon involved in the buying and selling of real estate properties in the city that had been willed to the hospital.[14]

Involvement in bequests could get hospital administrators into disputes with family members of the deceased benefactors over inheritance rights, as the Teutonic Knights soon learned. In 1242 Sibert and Gisela *de Dulkene* (Dülken), citizens of the town of Neuß located just north of Cologne, offered upon their deaths all moveable and immoveable goods they possessed either within the town of Neuß or in the adjoining countryside (these amounted to allods and lands held in fief from the Neuß church) because they decided that 'they ought to construct a hospital for the needs of the poor of Neuß'. The charter makes quite clear that 'they granted everything for the needs of the hospital and the poor'.[15]

The hospital was built shortly thereafter, and the Archbishop of Cologne, Conrad of Hochstaden (1238–61), confirmed the bequests of Sibert and Gisela to the hospital while also assuring that the land upon which the hospital buildings stood was to be free from taxes or feudal obligations.[16] But things got complicated in 1245, when, as had happened at St Catherine's in Cologne, Sibert and Gisela handed the hospital's administration over to the Teutonic Knights with the proviso that the endowment be used solely for the hospital and not to fund the overseas ventures of the order.[17]

The Knights and their master, Bertolph of Dannenrode, moved swiftly to reinforce this arrangement: by August they had obtained not only a virtually identical charter from the municipal magistrates (*scabini*) of Neuß, who added an additional clause forbidding relatives or heirs of Sibert and Gisela from interfering

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14. Here we provide only a couple of transactions typical of the endowment management practices of such hospitals in Cologne. Stadtarchiv, Schreinsbuch 42 (St Brigida parish), fol. 3r (dated 1237): 'Notum sit tam futuris quam presentibus quod Guderadis relicta Hartmanni Gir pro remedio animarum ipsorum tradidit et remisit libere et absolute hospitali sancta Katerine prope ecclesiam sancti Johannis unam marcam redditum annuatim recipiendam de domo Herimanni Clippingi que sita est in foro piscium sancte Brigide prope domum Theoderici de Erenporzen, sicut in sua possidebit proprietate. Ita quod predictum hospitale iure et sine contradictione obtinebit. Actum anno Domini 1237.' Schreinsbuch 311 (Airsbach district), fol. 15r (dated 1248): 'Notum sit quod Ilfridus et uxor eius Hardrunis emerunt sibi duas tertias partes dimidietatis duarum arearum sitarum in Spilmansgassen iacentium et utraque parte domus Franconis Sporchin erga conventum sancte Marie in Andernacho et unam tertiam dimidietatis earum arearum erga conventum hospitalis sancte Katerine domus Theutonice …'.

15. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/10 (1242): 'hospitale ad usus pauperum Nussie construere debeant' and 'omnia cedant ad usus hospitalis predicti et ad usus pauperum'. The document is published in Lacomblet, *Urkundenbuch*, 2:141–2, no. 273.

16. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/16 (22 July 1244), published in Hennes, *Codex diplomaticus*, 2:65, no. 63.

17. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/17 and 1/18 (June 1245), published in Hennes, *Codex diplomaticus*, 2:66, no. 64. This is a charter issued again by Archbishop Conrad of Cologne to confirm the handing over of the hospital to the Teutonic Knights.

with the arrangement,[18] but also a papal confirmation from Innocent IV in September 1245.[19] Since it was not uncommon for family members to administer as procurators (*procuratores*) hospitals founded by their predecessors, it may well have been that this transfer to the Teutonic Knights impelled the relatives of Sibert and Gisela to dispute the endowment upon the latter's deaths. The inquiry demanded by family members eventually reached the archiepiscopal court, and Archbishop Conrad once again had to intervene and sanction a final settlement. The fact that multiple and sizeable copies of his charter survive suggests that this was a major decision, and the charter itself contains strong language by the archbishop, with warning of forfeiture of property and excommunication against those who would violate it, so as to assure a lasting resolution to the dispute.[20]

Conrad circumvented the claims of the relatives by asserting his feudal and ecclesiastical lordship over lands held of the church in the patrimony of Sibert and Gisela. While conceding to the relatives the house built to serve as the hospital along with three adjoining buildings – likely because he had earlier released the property from feudal authority[21] – the archbishop required that 4 marks of income from the family members be given to the order. Furthermore, he reserved the remaining moveable and immoveable properties within or outside Neuß (*mobilia vel immobilia extra vel intra oppidum Nussiense sita*) to be distributed at his own discretion based on the most expedient use. Then the archbishop directly reissued them all to the Teutonic Knights (including the ancestral house of Sibert and Gisela) except one feudal manor *in Bruke* with appurtenant newly plowed fields (*solam curtem … ad nos devolutam cum novalibus eidem attinentibus nobis reservantes*).

The subsequent history of the original hospital seems to have been rather brief. In the final settlement the archbishop released the Teutonic Knights from any responsibility to help the family maintain the hospital, with the following proviso:

> Moreover, lest the aforesaid brothers should be compelled by anyone to care for the hospital in Neuß, especially if because of the division of goods of the testators they are not adequate for that hospital, we allow them and generously concede that they may more copiously receive the infirm and provide for them at St Catherine's [hospital] in Cologne in the name of the hospital of Neuß from the goods which we assigned to them

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18. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/19 (August 1245), published in Hennes, *Codex diplomaticus*, 2:66–8, no. 65.

19. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/20 (27 September 1245), published in Hennes, *Codex diplomaticus*, 2:68, no. 69.

20. Cologne, Stadtarchiv, St. Katherinen Urkunden 2/24, 2/25, 3/23 and Domstift Urkunden 2/216 (April 1250), published in Hennes, *Codex diplomaticus*, 2:84–7, no. 83, and Lacomblet, *Urkundenbuch*, 2:189, no. 358.

21. Ibid., '… ordinavimus, ut parentes et propinqui domum que ad hospitale constructa fuerat cum tribus domibus coniunctis ante et retro in eadem area sitam Nussie pro sua parte habeant quiete libere et absolute'.

out of the aforementioned arbitration, wishing all these things to be observed inviolate in perpetuity.[22]

The Knights immediately signed a ten-year lease on the home of Sibert and Gisela to a Neuß citizen in return for a yearly rent of 8½ marks,[23] and seem to have removed themselves completely from Neuß. Although there is one reference to a bequest by the knight Albert of Are in 1275,[24] in 1283 a later archbishop, Siegfried of Westerburg (1274–97), confirmed the founding of a convent of Franciscan nuns (*monasterium sanctimonialium ordinis sancte Clare*) in a new house of the hospital of Neuß with indulgences for benefactors.[25] Mention was made here of the earlier conflict, and the archbishop granted the Poor Clares the rights that the Cologne church was believed to have had in the hospital after the dispute had been settled. Clearly there was some confusion about the by then thirty-three-year-old settlement; however, the Clares took up residence in the original hospital and turned it into their own cloister. By 1322 there is reference to a 'new hospital in Neuß' that replaced the earlier, by now defunct hospital.[26]

This second case of a pious foundation for the poor had an even more misdirected conclusion than the first case of involvement with the Teutonic Knights. Here the order, after having received a substantial endowment to support the hospital, wound up abandoning the institution altogether. Yet the endowment, which was intended to fund a hospital for the poor of Neuß, was ultimately converted into funding the order in contradiction to the express wishes of the original benefactors. The feudal and ecclesiastical power of the archbishop served as the means of redirecting charity from the poor of the town to the religious orders of the Teutonic Knights and the Poor Clares. Once again we find that public charity intended by lay benefactors for the vulnerable in society was ultimately siphoned off for the private use of religious orders.

Concerted effort by civic authority could on occasion succeed in maintaining the original charitable intentions of lay benefactors, as we find in a dispute between

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22. Ibid., 'Insuper ne predicti fratres ab aliquibus possint ad curam hospitalis in Nussia compelli, maxime cum propter divisionem bonorum eidem hospitali legatorum non sufficient, indulsimus eisdem et liberaliter concessimus, ut apud sanctam Katerinam in Colonia de bonis que ipsis assignavimus ex arbitrio memorato infirmos uberius recipiant et eisdem provideant nomine hospitalis Nussiensis; volentes hec omnia perpertuo inviolabiliter observari.'

23. Cologne, Stadtarchiv, St. Katherinen Urkunden 1/26 (27 April 1250), published in Hennes, *Codex diplomaticus*, 2:87, no. 84. The lessee also agreed to produce 20 marks for future improvements to the property, after which he would pay a higher rent of 10 marks a year.

24. Cologne, Stadtarchiv, St. Katherinen Urkunden K75 (19 April 1275): testament of 'Albertus de Are, miles', in which he bequeathes properties to the Neuß hospital. This is published in Hennes, *Codex diplomaticus*, 2:194, no. 223, and Lacomblet, *Urkundenbuch*, 2:388, no. 660.

25. Cologne, Stadtarchiv, Domstift Urkunden 1/440 (16 October 1283), published in Lacomblet, *Urkundenbuch* 2:460–61, no. 784.

26. Cologne, Stadtarchiv, Klara Stift Urkunden 1/18 (10 February 1322): before the *scabini* of Neuß a house was sold for 100 marks in Brabantine pennies 'que quidem domus sita est super vico iuxta novum hospitale Nuss. ex una parte et domum Conradi de Heyge … ex altera'.

the municipal officials of St Brigida parish and the Benedictine abbey of Groß St Martin.[27] Medieval Cologne was divided into administrative units that generally corresponded to the Church's parish boundaries; hence it is worth remembering that there were not only parochial clerical authorities but also civic lay officials in the parishes.[28]

In 1142 the Abbot of Groß St Martin's gave to the lay burgesses of St Brigida parish (*laici fratres videlicet burgenses*) land at the Old Market (*Alter Markt*), where, at their own expense, the latter built a hospital for the poor and sick of the parish.[29] The co-operative nature of this venture was further reinforced when it came to endowing the hospital: the monks agreed to pay a tithe on their incomes, and the parish laity agreed to provide a tithe from their combined property 'for the aid of Christ's poor' (*ad opus pauperum Christi*). Soon, however, a dispute arose between the parish officials and the abbot as to which authority had the right to administer the hospital in the name of the poor.[30] The abbot claimed superior authority, since the land on which the hospital was built lay under his jurisdiction, whereas the burghers considered the administrative duties theirs because they had built the facility at their own expense and contributed significant funds for its endowment. Behind these claims lay the issue of the hospital's ultimate function: would it become a refuge for the Benedictine monks and other religious orders, or would it serve the parish's poor, sick, and elderly laypeople?

The archbishop (Arnold I, 1138–51) was called upon to settle the dispute, and he did so with an interesting sort of compromise. Although conceding that 'order and reason' (*ordo et ratio*) seemed to demand that a monk preside over the hospital, he convinced the abbot and monks to accept a layman out of respect for the pious efforts of the parish on behalf of the hospital. The lay administrator (*provisor*), however, was to be chosen in consultation with the abbot, who thereafter would make regular visitations to the hospital to assure that the layman remained 'useful and suitable' (*utilis et ydoneus*). And should the abbot conclude that said provisor was negligent in his duties, the parish officials were to reprimand him, and then dismiss him if he did not take correction. Should things come to such extremes, officials were then obliged

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27. The abbey and its church were and are referred to as Groß St Martin (located in St Brigida parish) to distinguish it from Klein St Martin, the parochial church of St Martin's parish.

28. For the role of parish-based institutions in civic government, see Franz-Reiner Erkens, 'Köln im 11. Jahrhundert: Eine Sozial- und Verfassungshistorische Skizze', *Geschichte in Köln. Zeitschrift für Stadt- und Regionalgeschichte* 42 (1997), 5–20; Paul Strait, *Cologne in the Twelfth Century* (Gainesville, FL, 1974), and Manfred Groten, *Köln im 13. Jahrhundert: Gesellschaftlicher Wandel und Verfassungsentwicklung*, Städteforschung. Veröffentlichungen des Instituts für Vergleichende Städtegeschichte in Münster, Reihe A: Darstellungen 36, 2nd edn (Cologne, 1998).

29. Cologne, Stadtarchiv, Groß St. Martin Repertorium und Handschriften 3, fol. 82r–v (1142), published in Lacomblet, *Urkundenbuch*, 1:247, no. 360, and Ennen, *Quellen*, 1:525–7, no. 58. Lacomblet and Ennen date this charter *c.*1144–47. See Richard Knipping, ed., *Die Regesten der Erzbischöfe von Köln im Mittelalter* (Bonn, 1901), 2:68, no. 408, for the 1142 dating.

30. The issue under dispute was 'utrum congruentius dispensationis ministrationem et curam pauperum gereret sub abbate monachus aut laicus'. For a history of the abbey itself, see Peter Opladen, *Gross St. Martin: Geschichte einer stadkölnische Abtei* (Düsseldorf, 1954).

to elect a new provisor with the consent of the abbot. Hence, lay involvement in the hospital's administration remained intact while the abbot's veto power and authority of ecclesiastical oversight were also preserved. Furthermore, the equal share of tithes for the hospital's endowment continued as well, and subsequent pious bequests of immoveable property to the hospital's endowment became the property of the abbey, while right of usufruct was held by the hospital. Any moveable goods were given directly to the hospital. Therefore, ultimate control over the hospital's endowment also lay in the abbot's hands.

With regard to the inhabitants of the hospital, however, the laity succeeded in keeping the facility for the parish's needs. Individual lay brothers of the hospital who sought domicile in the hospital were not to be turned out, but were given 'private rooms' (*private camere*) to live out their remaining days, with all social and physical distinctions among the residents maintained.[31] This latter clause confirms the expectation that many *potentes* among the parish officials would spend their last days in the hospital along with the *pauperes* of the parish. A clear distinction between charity in the lay hospital and the monastic abbey was reinforced in two further aspects. First, the hospital's care for the monks was limited only to providing the abbey with mats and rushes at set times during the year. And second, the hospital was to receive all pilgrims and poor persons who arrived at its doors on foot, while anyone arriving on horseback was to be cared for by the abbot.[32] Hence the age-old custom of monastic charity was extended by the hospital, with the *potentes* served in the abbey, while the *pauperes* were shown hospitality at the hospital.

But this archiepiscopal-brokered compromise proved not to be the end of the administrative debate. The hospital was apparently burned in the great city fire of 1150, and thereafter the lay brotherhood that had developed to maintain the hospital attempted to restore it. They seemed to have borne the burden of these costs themselves, however, because after having rebuilt the hospital two times the brotherhood finally handed the run-down facility over to the abbey some time between 1155 and 1157 – apparently because resources for maintaining the institution had been exhausted. The monks themselves then subsidized the building of another hospital under the abbey portico by building small apartments in the dilapidated hospital and using the yearly rents to pay for the new hospital.[33]

The abbey worked straight away to limit lay influence over the hospital by obtaining archiepiscopal confirmation of the property handover[34] and by obtaining

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31. See note 29 above. 'Sint etiam private camere seorsum huiusmodi deputate ubi quiete et sine offensione ceterorum tales maneant et ubi secundum hoc quod facultas suppetit et expedit. Qui fuit honoratior et mollior in seculo, honoratius et accuratius tractetur, et prout illi competit, necessarius victus et vestitus tribuatur.'

32. Ibid.: 'Ipse etiam hospites peregrinos et pauperes, qui pedites veniunt, recipiet, equites abbatis cure dimittet.'

33. Ibid.: '… monachi diruta eius reficientes mansiunculis illud instituerunt, ex quibus census annue collectus alterius hospitalis in porticu prememorate ecclesie usibus applicaretur'.

34. Cologne, Stadtarchiv, Haupturkundenarchiv (herafter HUA) 2/19a (1155), published in Ennen, *Quellen* 1:545-46, no. 70 (dated 1157). For the 1155 date, see Knipping, *Die Regesten der Erzbischöfe*

papal confirmation from Adrian IV shortly thereafter. The pope's charter makes it quite clear who owned the hospital; listed among the properties confirmed as belonging to the abbey is 'the hospital building in the Old Market that the city burgesses reasonably granted to you by unanimous consent and the impulse of piety'.[35] Here, the hospital property is treated as a pious bequest, like others listed from deceased benefactors.

The new hospital remained in monastic hands until 1807.[36] During the remainder of the Middle Ages, it supported around forty inhabitants,[37] with a small yet well-to-do community of beguines living on the top floor.[38] The needs of this modest population hardly consumed the abundance of wealth in the hospital's rich endowment as a result of continual bequests in subsequent years 'for the needs of the poor' (*ad usus pauperum*), though no doubt there were distributions made at the abbey church to beggars. Even so, the hospital certainly brought more charitable revenue to the abbey than the charitable expenses it incurred, and the monks were to be the beneficiaries of the overflow of benevolence. In any case, the hospital ceased serving the entire parish of St Brigida as parish officials had originally envisioned.

Thereafter, the hospital was headed by an abbey monk, as we learn from a provision to rebuild the hospital yet another time after a fire in 1333.[39] Nevertheless, a role remained for lay provisors of the hospital in the area of endowment fund-raising. They appear constantly in the municipal records of bequests to the hospital as representatives who received charity in the name of the hospital. And in fact it seems that even officials of St Brigida parish served in this capacity; it may well have been that from some legacy of earlier administrative oversight parish officials continued to serve in a brotherhood of provisors for the hospital.[40] As a sign of this history of varied cooperation between lay parish officials and monks in jointly maintaining a hospital, the name of the hospital itself varied in public documents from St Brigida to St Martin, the former indicative of a parish identity and the latter

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von Köln, 2:99, no. 607.

35. Ennen, *Quellen*, 1:548–50, no. 72 (19 March 1158): 'Domum hospitalem in veteri foro sitam, quam cives eiusdem civitatis unanimi consensu vobis intuitu pietatis rationabiliter contulerunt.'

36. Opladen, *Groß St. Martin*, p. 124. In that year, city officials bought it and moved some fifteen female conventuals to houses owned by the *Allerheiligenkonvent* on Maximinenstraße in order to make room for municipal residents.

37. Cologne, Stadtarchiv, Schreinsbuch 50 (St Brigida parish), fol. 12v (dated 1331): 'quadraginta pauperibus in hospitali predicto existensibus'.

38. Cologne, Stadtarchiv, Schreinsbuch 223 (Holy Apostles parish) fol. 7v (dated *c*.1250), published in Hans Planitz and Thea Buyken, *Die Kölner Schreinsbücher des 13. und 14. Jahrhunderts*, Publikationen der Gesellschaft für Rheinische Geschichtskunde 46 (Weimar, 1927), p. 59, no. 261: '… dominabus super hospitale manentibus …'.

39. Cologne, Stadtarchiv, Groß St. Martin Urkunden 1/51 (24 March 1333). Here a 'religiosus vir Godescalcus dictus Cleingedanc nostri monasterii commonachus et hospitalarius' is mentioned.

40. For example, throughout Schreinsbuch 55 (St Brigida parish), which dates from the mid-thirteenth century, there is mention of 'Officiales parrochie sancte Brigide' who transacted endowment-related business 'nomine hospitalis' (for example, fol. 6r, dated 1253).

of an abbey identity.[41] As we have noted, however, by the end of the Middle Ages the hospital itself had ceased to serve the civic community and was wholly a dwelling for members of religious orders.

Conflicts between *potentes* over jurisdiction and authority not only resulted in the loss of financial resources and residences for the sick and the destitute of the city. They could also result in violence directed against the *pauperes* themselves. The leprosarium of Cologne, named Melaten, served as a focal point of such belligerence several times as a result of feuds.

Melaten was situated west of Cologne, about two kilometres from the *Hahnenpforte* ('Rooster Gate') on the much-travelled highway leading to Aachen. Far from isolating the lepers, this location on a major road just outside the city walls was superb for seeking alms from merchants and pilgrims, and we know of gardens and fields in this region that the lepers tended themselves.[42] The name Melaten (or Malaten) comes from the Gallic *malade*,[43] and was in use as early as the 1180s or 1190s.[44] Since Aachen also had a leprosarium named Melaten, the transmission of the name could easily have travelled along the well-worn thoroughfare between the cities.[45]

Violence came to Melaten near Cologne and its residents for the first time in 1242 as a result of political conflicts involving the archbishop, the emperor and the Rhenish princes. In 1239 Conrad of Hochstaden, then the new Archbishop of Cologne, had abandoned Emperor Frederick II and joined Pope Gregory IX's party in the final great conflict between this Hohenstaufen ruler and papacy. The Rhenish princes, however, remained on the side of the emperor.[46] These pro-Hohenstaufen forces, led

41. The hospital's name ranged from 'domus hospitalis sancte Brigide apud Sanctum Martinum' (Schreinsbuch 261 [Niederich district], fol. 30v, dated 1322) to 'hospitalis parrochie sancte Brigide' (Schreinsbuch 217 [Holy Apostles parish], fol. 18v, dated 1269), or even '… officiales sancte Brigide et … provisores hospitalis Martini' (Schreinsbuch 223 [Holy Apostles parish], fol. 7r, dated 1250) and 'hospitali infirmorum ad sanctum Martinum in antiquo foro' (Schreinsbuch 261 [Niederich district], fol. 84v, dated 1350). Perhaps the most accurate description was 'hospitali quod situm in parrochia sancte Brigide ante porticum sancti Martini' (Cologne Stadtarchiv, Schreinskarten St. Brigida 4 III 1, dated *c.*1231–52).

42. Franz Irsigler and Arnold Lassotta, *Bettler und Gaukler, Dirnen und Henker: Außenseiter in einer mittelalterlichen Stadt: Köln 1300–1600* (Cologne, 1984), p. 71.

43. Ibid., p. 69. They conclude that the French *malade* ultimately derived from the Latin *male habitus*, while Johannes Asen suggested in his published dissertation, *Das Leprosenhaus Melaten bei Köln* (Bonn, 1908), pp. 22–3, that the original Latin was *male aptus*.

44. Cologne, Stadtarchiv, Schreinsurkunden St Columba parish 2 II 15 (*c.*1187–1200): 'Notum sit quod Bruno Rufus contradidit pro anima sua ad maladin domum illam que est in vico scutorum Petro filio suo et omnibus pueris suis abrenunciantibus.' This is published in Robert Hoeniger, *Die Kölner Schreinsurkunden des 12. Jahrhunderts*, Publikationen der Gesellschaft für Rheinische Geschichtskunde 1 (Bonn, 1884), 1:360.

45. Christian Quix, *Die Kapelle zu Melaten* (Aachen, 1843). This district in southwest Aachen continues to bear the name Melaten, and is home to the Rheinisch-Westfälische Technische Hochschule Aachen.

46. J. Huffman, *The Social Politics of Medieval Diplomacy. Anglo-German Relations 1066–1307* (Ann Arbor, MI, 2000), pp. 268–76.

by Count William of Jülich and including the Duke of Limburg, the Counts of Berg and Los, and the Lord of Heinsberg, initiated a feud with the archbishop in February 1242. In typical feuding fashion, the princes destroyed a great number of villages and farm buildings in the Cologne-Brühl-Lechenich region – all territories under Conrad's lordship – in order to pressure him to rejoin the emperor's camp. Melaten was completely destroyed in the midst of this conflagration, and its primary patron, the archbishop himself, was captured and incarcerated in the Count of Jülich's prison until the autumn.

The destruction of Melaten was an obvious strike against the patron and not the lepers themselves, but of course they suffered severely as a result. The leper's colony was restored only when the archbishop's fortunes began to improve and Frederick II's declined. In December 1244, on the eve of the Council of Lyon (where the new Pope Innocent IV would excommunicate the emperor a second time and depose him), Archbishop Conrad made a hasty trip with Archbishop Siegfried of Mainz to see the exiled pope in Lyon. While there, they secured papal support for the emperor's impending excommunication with their promise to elect a new monarch, and Conrad returned home ready to reassert his lordship over the Cologne region. As a sign of his renewed vigour, the archbishop rebuilt Melaten and moved to re-establish its endowment. On 6 June 1245 Conrad entered the rebuilt leper colony (now also called St Lazarus) and dedicated a chapel to the Holy Trinity, the Virgin Mary and St Dionysius. Melaten finally had access to income from bequests in exchange for masses and anniversaries, a welcome addition to traditional alms begging.[47] In order to give incentives to lay benefactors the archbishop issued indulgences of forty days: 'for polluted sins, broken vows, [and] offences of fathers and mothers without acts of violence'. He then appointed clergy (*nuncii*) to pass through the entire archdiocese and offer masses and indulgences in exchange for donations; indeed, they were even given authority to hold private masses in areas under interdict as long as excommunicates were not present.[48] The system of roving clergy made the chapel itself a portable indulgence centre and greatly increased the charitable revenues of the leper colony.

The archbishop's political co-operation with the papacy also paid dividends for Melaten. In August and September 1247, Innocent IV issued from Lyon no less than six papal bulls regarding Melaten. The pope specifically referred to the war with Frederick II as the cause for the leprosarium's suffering and promised the same forty-day indulgence for penitent laypeople who helped to endow the community of lepers.[49] Furthermore, he issued a charter of privilege directly to the lay provisors

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47. Cologne, Stadtarchiv, HUA 1/135A and 2/135B (6 June 1245), published in Ennen, *Quellen*, 2:242–3, no. 241.

48. Cologne, Stadtarchiv, HUA 1/136 (27 June 1245), published in Ennen, *Quellen*, 2:241–2, no. 240.

49. Cologne, Stadtarchiv, HUA 1/146 (23 August 1247), published in Ennen, *Quellen*, 2:260–61, no. 259: 'propter discordiam et guerram, que est inter Fredericum quondam imperatorem et sanctam ecclesiam quantum ad bona sua, unde ipsi fratres et pauperes ibidem commorantes debuissent sustentari, multa dampna et detrimenta passi fuerint …'.

of Melaten that freed them from answering to any legal official other than the cathedral subdeacon.[50] Three days later, he took the leper's house and all its goods into his special protection.[51] The subdeacon soon received a papal letter charging him to defend the lepers and their provisors from 'disturbers' (*molestatores*) and 'legal summonses' (*citationes*) 'by means of ecclesiastical censure' (*per censuram ecclesiasticam*).[52]

These charters were soon followed by another that not only confirmed the right of Melaten's emissaries to hold private masses in areas under interdict, but also granted the leprosarium the right to bury benefactors on its premises, so long as the latter were not excommunicates or usurers. No doubt these steps shored up the fundraising capacity of the leper colony. But the pope then added a remarkable privilege: any confessed felon who had received the death penalty for homicide and banditry (that is, *homicidium* and *latrocinium*) could request burial at Melaten.[53] These exceptional uses of the lepers' graveyard were the foundation for the subsequent modern use of the facility as a municipal cemetery.[54] Finally, Innocent IV issued a charter to the provisors of Melaten specifically granting them authority to send 'petitioners and preachers' (*petitiores et predicatores*) throughout the archdiocese in search of alms, with the right to celebrate mass once a year in areas under interdict.[55]

Such archiepiscopal and papal intervention in local clerical affairs was clearly not well received in the archdiocese, as Archbishop Conrad was soon obliged to command his diocesan clergy to co-operate with Melaten's petitioners and preachers.[56] On a diocesan scale this replicated the same problem we saw occur at the parish level, when new charitable organizations infringed upon parochial authority and the income stream of the local priest from alms and bequests. Such incursions into the parish charity structure were seen by parochial priests as undue influence and illegitimate exercise of authority by outside organizations.

Thus, as the fortunes of patrons go, so go the fortunes of the *pauperes*. Should the *potens* find himself in prison, the charitable institution he supports is destroyed; yet when the *potens* is fully exercising his power, the *pauperes* prosper in institutional

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50. Cologne, Stadtarchiv, HUA 1/147 (26 August 1247), published in Ennen, *Quellen*, 2:261–2, no. 260.

51. Cologne, Stadtarchiv, HUA 1/147a (29 August 1247), published in Ennen, *Quellen*, 2:262–3, no. 261.

52. Cologne, Stadtarchiv, HUA 1/150 (2 September 1247), published in Ennen, *Quellen*, 2:264, no. 263.

53. Cologne, Stadtarchiv, HUA 1/148 (30 August 1247), published in Ennen, *Quellen*, 2:263, no. 262.

54. Josef Abt, J. Ralf Beines, and Celia Körber-Leupold, *Melaten: Kölner Gräber und Geschichte* (Cologne, 1997).

55. Cologne, Stadtarchiv HUA 1/149 (2 September 1247), published in Ennen, *Quellen*, 2:264–5, no. 264.

56. Cologne, Stadtarchiv HUA 1/158 (19 February 1248), published in Ennen, *Quellen*, 2:274–5, no. 274; and 2/155 (5 December 1247), published in Ennen, *Quellen*, 2:268–9, no. 269.

wealth and in the extension of their charity-collecting activities.[57] As this later charter indicates, by 1247 Melaten housed at that time almost one hundred residents, including monks, clergy and laypeople of both sexes.[58] This is a far cry from the destruction of only five years before. Hence we learn a very important lesson: the fate of the *pauperes* serves as an accurate barometer of the political power and authority exercised by their patrons.[59]

Pursuing feud through attacks against the *pauperes* dependent on your enemy was behaviour not reserved solely for the aristocracy; burghers could at times employ the same tactic. Archbishop Conrad of Hochstaden successfully defeated the secular forces supporting Frederick II, operated thereafter as kingmaker of the subsequent post-Hohenstaufen German monarchs (that is, Henry Raspe in 1246, William of Holland in 1247, and Richard of Cornwall in 1258), and even began in 1248 the enormous building project of the gothic Cologne Cathedral. Yet one goal still eluded him, namely regaining control of the cathedral city itself, which had developed a tradition of independent governance during the many decades when its archbishops focused on wider imperial politics.

Archbishop Conrad's attempts to restrict the independent governing habits of the city's patrician families only resulted in the great feud of 1257–58.[60] Conrad blockaded the city in September 1257, an action that the burgher militia countered by sorties against episcopal troops. The first skirmish proved a success, as the burghers returned home from Frechen with 30 captured knights; yet four leading patricians had also been captured by the archbishop's army. In October, Conrad called upon the aid of his vassals, Count Adolf of Berg, his brother, Duke Walram of Limburg, and Count William of Jülich. Such former rebels easily joined the archbishop when it came to bourgeois rebellion, and the situation became quite bleak for the burghers.

As the siege of the city tightened during October 1257, the parochial district leadership (that is, not the city-wide patrician rulers) planned a daring unarmed foraging expedition eastward across the Rhine to gather desperately needed firewood.[61] This led them into the county of Berg, where they were discovered by

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57. In late 1247 Conrad of Hochstaden was at his height of political power, having just gotten the antiking William of Holland elected (3 October 1247).

58. Cologne, Stadtarchiv, HUA 2/155. The archbishop strengthened his appeal for charity by describing the lepers as martyrs: '… videlicet martyres Iesu Christi leprosi iuxta Coloniam siti in domo, que dicitur beati Lazari, quorum numerus tam monachorum quam clericorum seu utriusque sexus fidelium laicorum fere existit centenarius, qui sunt plebis abiectio propter carentiam membrorum et deformitatem corporum'.

59. Melaten would be destroyed two more times: in 1474, when the Cologne citizens razed the facility to deny Charles the Bold's forces any buildings near the imposing walls of the city during a siege in the Neuß War; the establishment was rebuilt thereafter, but destroyed for unclear reasons in 1499; and during the sixteenth century it suffered during the plundering raids that accompanied the Netherlands' war of independence from the Spanish Hapsburg Empire. During the Thirty Years' War, Hessian troops continually plundered Melaten as well.

60. For details on this dispute, see Groten, *Köln im 13. Jahrhundert*, pp. 180–93.

61. Thedor Ilgen, 'Die Landzölle im Herzogtum Berg', *Zeitschrift des Bergischen Geschichtsvereins* 38 (1905), 234.

Count Adolf and his force of about four hundred men. The count's army killed an estimated fifty Cologners, and this violence against unarmed civilians launched a wave of patrician vengeance. As Adolf's troops withdrew to Bensberg in the face this counter-attack, the patrician militia set ablaze the Benedictine Abbey of Deutz along with the hospital.

The Abbey of Deutz had managed to endow its hospital securely by the early thirteenth century. Shortly before his death in 1208, Archbishop Bruno IV (1205–1208) gave the abbey the parishes of Zudendorp, Deutz, Wald and Eschweiler to support the hospital and the poor who dwelt therein. His successor, Dietrich I (1208–12), confirmed the grant upon his accession.[62] The abbey was able to obtain papal confirmation of these possessions in 1227.[63] Given that the abbey and its hospital were not only under the Count of Berg's feudal jurisdiction, but also under the ecclesiastical protection of the archbishop of Cologne and the pope, it will come as no surprise to the reader that the Cologne citizens were immediately excommunicated for their 1257 incendiary attack.[64]

This act of arson functioned like the destruction of Melaten in the 1242 feud between the archbishop and his Rhenish vassals. There is no documentation that the citizens of Cologne ever endowed the hospital of Deutz until at least the 1290s,[65] but neither is there evidence before 1257 of any conflict between the city and the abbey that would explain why the Cologners chose to burn it. This was an act of ritual violence, designed to exact justice for the count of Berg's killing of foraging Cologners. And it is clear that the count got the point: he concluded a truce with the city for the duration of its feud with Archbishop Conrad.[66]

Since arson was a felony worthy of excommunication and capital punishment (as we saw in Melaten's burial regulations), the citizens of Cologne were obliged to seek reconciliation. In the following March the ritual necessities were agreed upon: those citizens who had participated in the violence had to walk barefoot in penitential woolen clothing from Severin's Gate to the archiepiscopal court to ask the archbishop there for his grace and to make amends to the cathedral prior and

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62. Cologne, Stadtarchiv, Deutz Abtei Repertorium und Handschriften 1, fol. 17v (31 March 1208 from Rome), published in Ennen, *Quellen*, 2:31, no. 26. Dietrich I's confirmation: Deutz Abtei Repertorium und Handschriften 1, fols 19r–20r (1 January 1209): '… ecclesiam de Zudendorp, ecclesiam de Tuitio, ecclesiam de Walde et ecclesiam de Eswilere vobis et per vos monasterio vestro ad vestram pauperum et hospitum sustentationem in elemosynam duximus perpetuo concedendas …'.

63. Cologne, Stadtarchiv, Abtei Deutz Repertorium und Handschriften 1, fols 18r–v (25 August 1227) by Pope Gregory IV.

64. Ennen, *Quellen*, 2:423–4, no. 406.

65. The Deutz hospital was included in bequests made to multiple hospitals in Cologne, which indicates that the Cologne citizens thought of it as a member of the charitable system of the city by this time: Cologne, Stadtarchiv, Schreinsbuch 32 (St Martin's parish), fol. 17v (*c.*1290s) and 253 (Niederich district), fols 6r–v (1306). Bequests to the Deutz hospital apart from other hospitals appear first in 1309: Schreinsbuch 261 (Niederich district), fol. 15v.

66. Cologne. Stadtarchiv, HUA 1/229, published in Ennen, *Quellen*, 2:402, no. 387, and Lacomblet, *Urkundenbuch*, 2:241–2, no. 444. This was the first municipal charter that was written entirely in German.

chapter. All parties thereafter forswore violent acts, whereupon the citizens renewed their oaths of homage to the archbishop; in return he promised to be a merciful lord of the city and protect it.[67] This ritual, which humiliated the patrician leadership and offered absolution to the citizens of the city, certainly reinforced Archbishop Conrad's status as lord of Cologne, and restored the legal relationship that the feud and the subsequent arson had breached. The patricians had also conceded half of the tax revenue from municipal beer sales (*Bierpfennig*) to Conrad for the next ten years.

But the Cologne patriciate was not left empty-handed. From this public act of contrition and reconciliation came the Great Arbitration of June 1258, in which the on-going dispute between patriciate and archbishop concerning governing authority in the city was finally to be resolved. No less an authority than Albertus Magnus was employed to research the constitutional issues of the dispute and determine a proper settlement to this significant jurisdictional dispute. As a part of the wider negotiations, the city also had to repair its relationship with Deutz Abbey and its hospital. Albertus Magnus did not effect a reconciliation between the two until March 1260, when the city was finally obliged under threat of excommunication to rebuild part of the dormitories and make major repairs to the church. But strangely enough, the citizens were absolved of the responsibility to rebuild the hospital and its chapel.[68]

A 1286 papal charter, which granted a forty-day indulgence to benefactors of the Deutz hospital, makes distinct reference to the plunder and fire that destroyed the previous hospital during the feud.[69] And charters of the abbey as late as 1313 describe the earlier destruction of the hospital.[70] One wonders whether Deutz Abbey had much of a functioning hospital for some time after the attack of 1257. At the very least, the *pauperes* of the hospital bore the brunt of the feud between the *potentes*, and penitent processions did little to redeem the violence done to them.

We have seen the sorts of administrative conflicts that arose over jurisdiction to collect and distribute urban charity. The right to exercise this critical mediating role, which brought the powerful and the powerless of medieval society together through an intermingling of philanthropy and self-interest, was jealously guarded by the leaders of charitable institutions and even extended wherever possible. Like any patronage network, be it feudal, manorial or patrician, the medieval system of urban poor relief tended to reify the dependency status of the *pauperes* and enhance the

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67. Cologne, Stadtarchiv, HUA 1/233 and Hauptstaatsarchiv Düsseldorf, Kurköln Urkunden 79 (18 March 1258), published in Ennen, *Quellen*, 2:378–9, no. 382, and Lacomblet, *Urkundenbuch*, 2:235–6, no. 434.

68. Ennen, *Quellen*, 2:424–6, no. 407 (1 March 1260): 'Pronuncio etiam arbitrando quod cives Colonienses capellam sancti Laurentii et hospitale et quecumque alia sunt edificia confracta intra emunitatem claustri vel extra sita reedificare non teneantur'.

69. Cologne, Stadtarchiv, HUA 3/482a (31 August 1286).

70. Cologne, Stadtarchiv, Deutz Abtei Repertorium und Handschriften 1, fols 55r–56v (13 January 1313), published in Bruno Hirschfeld, *Quellen zur Rechts- und Wirtschaftsgeschichte der Rheinischen Städte*, Publikationen der Gesellschaft für Rheinische Geschichtskunde 29 (Bonn, 1911), 2:173–4, no. 15.

social and political status of the *potentes*. And as for any client, the relative security or vulnerability of the poor at any given time served as an accurate barometer of their patron's social and political fortunes. It is also clear that charitable fundraising through memorial masses and indulgences, though done ostensibly on behalf of the poor and for spiritual ends, was a rich source of income for an institution's endowment. This explains why the establishment of a hospital chapel was so controversial, and no doubt endowment building became an end in itself – especially when the provisors made arrangements for future hospital residence by themselves and their families. The *potentes* were careful to plan for the day when they too became at least poor in health.

We have seen that the *pauperes* could also serve as the focus of violence directed against their patron. Successfully attacking the clients of a patron was a public humiliation of the *potens* and a sign of his impotence – indeed, of his impoverished power to protect. Equally so, such an attack served the ritual function of retribution in feuds. It would have been political suicide to kill the kin of a powerful prince or patrician when feuding, but to destroy the hospital he built or patronized made the same point without attacking the *potens* himself.

As David Nirenberg has deftly discovered in the persecution of religious and ethnic minorities in Aragon and southern France,[71] medieval German *pauperes* were also sometimes exposed to similar ritual violence as part of a complex discourse of subversive power in society. Relations between *potentes* and *pauperes* in medieval Cologne, therefore, were always a tightly woven fabric of care, co-operation and coercion.

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71. David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, NJ, 1996).

Chapter 7

Auctoritas, Potestas and World Order

James Muldoon

Some of the most tiresome of clichés deal with the wide gulf between theory and practice. In everyday life, this is summed up in the trite phrase: 'Do as I say, not as I do.' At another level, there is the advice often given to recent graduates of training programmes upon taking their first jobs: 'Forget what you learned in class, this is the real world out here.' Perhaps the most painful of such experiences is that of the theoretician of politics who then enters into the daily operations of a government. Plato's unhappy experience with Dionysius, the ruler of Syracuse, is the paradigmatic tale of the intellectual in politics, an experience reflected in the ever-darker tone of Plato's later political writings.[1]

In the history of medieval political thought, the distinction between theory and practice might be illustrated by the difference between *auctoritas* – moral authority – and *potestas* – physical force. As Walter Ullmann once noted: '*Auctoritas* is the faculty of shaping things creatively and in a binding manner, whilst *potestas* is the power to execute what the *auctoritas* has laid down.'[2] In the history of medieval canon law, these terms first appeared in a letter of Pope Gelasius (492–96) to the Emperor Anastasius I (491–518): 'Two there are, august emperor, by which this world is chiefly ruled, the sacred authority [*auctoritas*] of the priesthood and the royal power [*potestas*].'[3] The representatives of the secular power should act at the behest of the representatives of the spiritual power. Pope Innocent III (1198–1215) clarified the precise nature of the relationship between the two powers when he ordered that during his coronation ceremony, the emperor be anointed on the right arm, indicating that as the arm obeys the head, so the emperor, and all other secular rulers, should obey the head of the Church, that is, the ecclesiastical hierarchy.[4] In the long run, according to the popes and the canonists, the creation and maintenance of a Christian political and social order relied upon the close co-operation of the two powers, just as the functioning of the body depends upon the co-ordination of the various parts of the body. This organic representation of the political order was a staple of medieval

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1. Ernest Barker, *Greek Political Theory: Plato and his Predecessors* (London, 1918; repr. 1960), pp. 130–34.

2. Walter Ullmann, *The Growth of Papal Government in the Middle Ages*, 2nd edn (London, 1962), p. 21.

3. Brian Tierney, *The Crisis of Church & State 1050–1300* (Englewood Cliffs, NJ, 1964), pp. 13–14 at 13.

4. Fritz Kern, *Kingship and Law in the Middle Ages*, trans. S. B. Chrimes (Oxford, 1939; repr. New York, 1970), p. 55 n. 34.

political thought, reflecting the reality that preaching and good example alone would not bring all men to the baptismal font nor would it keep the baptised from sinning. Sometimes force would have to be employed. *Auctoritas* without *potestas* would be reduced to mere words, while *potestas* without *auctoritas* would be tyranny. A just political order could only be achieved when these two powers function as God intended them to function, namely in hierarchical co-operation with each other.

Generally speaking, the discussion of *auctoritas* and *potestas* is linked to the Church–State conflict within medieval Europe. It can be extended, however, to wherever Christian society takes root. During the fifteenth century, as the Portuguese and the Castilians moved out into the Atlantic and down the west coast of Africa, the relationship between *auctoritas* and *potestas* took on a new significance, foreshadowing the great debate about the legitimacy of the conquest of the New World. What would be the relationship between Christians and non-Christians, and between the Church and the secular powers involved in the conquest? How did traditional conceptions of the right order of the Christian world, developed in connection with the creation of medieval Christian Europe, apply to the newly discovered lands? One way to answer these questions is to examine the writings of one of the great fifteenth-century theorists of the Christian order, Nicholas of Cusa (1401–64), and then examine some of the papal bulls that accompanied Iberian overseas expansion.

As a young man, Nicholas of Cusa wrote the *De concordantia catholica* (1433), a book that presented a picture of a Christian society within which all of the conflicting tensions that plagued contemporary European Christian society, orthodoxy and schism, pope and council, Church and State, rulers and ruled, were reconciled within an orderly Christian order. Writing after the Council of Constance (1414–17) had resolved the Great Schism, Cusa reconciled the tensions generated by conflicting visions of the Church's structure before the Protestant Reformation would shatter the medieval vision of a unified Christian society. His work reflected the optimism of an Indian summer, a brief respite before the advent of a long, cold winter that destroyed all illusions about Christian unity. His later career involved service as a papal legate responsible for reforming several dioceses in Germany, where he faced 'very formidable opposition' from those who did not wish to be reformed. Such experiences must have caused him to reconsider his earlier belief in the ease with which social opposites could be reconciled.[5]

Furthermore, during the fifteenth century, at the same time Cusa was serving the papacy in various roles and was hoping to achieve the 'reconciliation of opposites' within the Church, he was also in a position to observe how the Church leadership was attempting to develop policies for dealing with the newly encountered peoples of Africa and the Atlantic islands, policies that were to flourish after 1492. These policies were designed to reconcile the interests of the various European powers involved in overseas expansion within a framework that would also respect both the

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5. Paul Sigmund, *Nicholas of Cusa and Medieval Political Thought* (Cambridge, MA, 1963), pp. 282–3.

rights of the peoples encountered and the responsibility of the Church to preach the Gospel everywhere. In other words, the kind of reconciliation of opposites within Christian society that Cusa's work stressed was also to be found in the policies of the papacy, but on a larger scale. Where Cusa sought a *concordantia catholica*, the papacy sought a *concordantia mundi*. The two approaches to *concordantia* differed, however, on the means that would achieve the desired end. Where Cusa initially saw reason alone as bringing the conflicting interests into accord peacefully, the papal position recognized that force might have to be employed on a significant scale in order to do so.

Cusa's work built on two fundamental intellectual traditions that underlay much medieval thought. In the first place, there was the neo-platonic tradition derived from Dionysius the Areopagite that, as Paul Sigmund noted, generated a belief in 'an ordered harmonious universe' that was 'hierarchical and triadic'. This approach assumed 'the basic underlying harmony and rationality of the universe' and that the task of human beings was to bring all aspects of human existence into the harmonious relationship that was their proper state. This proper order was hierarchical, not egalitarian, and assumed that each member of this order would accept his place within the hierarchy once he was presented with the complete picture of the right order of the world. Furthermore, this vision was triadic, that is, each element of the rightly ordered world was itself sub-divided into three parts. 'The clergy, in turn, was divided into bishops, priests and deacons, and the people into monks, the faithful, and catechumens.' [6] The rightly ordered world thus consisted of a hierarchically arranged series of tripartite units ultimately under the headship of the pope.

The second aspect of Cusa's intellectual framework was the scholastic practice of reconciling conflicting points of view into a harmonious whole. This practice was most famously described by Gratian (*c*.1140) when he subtitled the first volume of the universal canon law as the *Concordance of Discordant Canons*; as Stephen Kuttner elegantly phrased it, Gratian wished to create harmony from dissonance.[7] Nicholas of Cusa set for himself a similar task in the *De concordantia catholica*, that is, he wished to reconcile the discordant elements of the Christian world into a harmonious whole.

Cusa appears to assume that the harmonious ordering of the world will be achieved once the leaders of the world understand their role in the process. He does not envision that the right ordering of the world will require the use of force. In effect, Cusa was a proponent of a vision of a peaceful world order based on Christian principles that, once explained, should cause men to accept their place within that order. Seen in that light, Nicholas of Cusa deserves a place in the history of international law and relations.

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6. Nicholas of Cusa, *The Catholic Concordance*, trans. Paul E. Sigmund (Cambridge, 1991), xx–xxi (hereafter Cusa). Dante's *Divine Comedy* reflected this same use of the number 3 in its structure.

7. Stephan Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Latrobe, PA, 1960).

The scholarly world does not pay much attention to medieval theories of international order. Any study of the development of theories of international law and international relations will, of course, make some passing reference to the medieval experience and then move on to the work of Hugo Grotius (1583–1645), the generally accepted Father of International Law.[8] Scholars identify theories of international, or world, order with the end of medieval Christendom, the Protestant Reformation, and the rise of the modern sovereign nation-state. To the extent that there is some interest in medieval ideas of world order, there will be vague references to Christendom, perhaps to Pierre Dubois's *De recuperatione Terre Sancte*, and of course, Dante's *De Monarchia*. However, these works are seen as too theoretical, too removed from reality, to be of much interest to anyone seriously interested in world order. Furthermore, medieval notions of world order seem too moralistic to the modern secular thinker who takes what some like to call the realist position on international relations. The concept of an ecclesiastically-structured world order headed by the pope, based on some kind of natural law principles and reflecting some innate natural order and harmony, borders on the fantastic to the modern eye.

Specialists in Cusanus studies might well wonder why Cusa's name should be mentioned in a discussion of world order at all. They might point out that Cusa's name is deservedly missing from discussion of world order because he never wrote on that topic. That, of course, is not entirely accurate. After all, his *De concordantia catholica* outlined a Christian political order that could eventually embrace the entire world, because the Church was obliged to preach the Gospel to all mankind and, if successful, would create some kind of universal Christian world order. While it is too much to say that Cusa was an important theorist of world order, it is not too much to say that his work does reflect some of the themes of a Catholic conception of world order current in his day. In that sense, it is useful to look at his work as an element of late medieval thinking on the problem of world order, an issue that was to become very important within thirty years of his death.

We can place Cusa within the context of thinking on world order for some very specific reasons. In the first place, he was deeply concerned with the problem of war and conflict within Christian Europe, the central issue of modern international law. His goal was the orderly articulation of the political units that composed Christendom so that conflict was eliminated. In the second place, he had a strong interest in the conversion of Muslims, a process that, if successful, would end the crusades and also end the threat that Muslim expansion posed to Christian Europe by incorporating them within the orderly concordance that he envisioned. In the third place, at the same time as he was composing the *De concordantia catholica*, the Portuguese and Castilians were moving out into the Atlantic, discovering the Canaries, the Azores and the other island chains, and colonizing them. These efforts, which could not have escaped his attention, generated a number of papal bulls based on the theory of papal

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8. For a survey of the literature dealing with the origins of international law, see James Muldoon, 'The Contribution of the Medieval Canon Lawyers to the Formation of International Law', *Traditio* 28 (1972), 483–97.

jurisdiction over all mankind that canon lawyers had developed in the thirteenth century. They authorized the Portuguese and the Castilians to take possession of the newly discovered islands in an orderly fashion and to support missionary efforts among the native population of these islands. The goal of these bulls, as we shall see, was to ensure that European overseas expansion proceeded in an orderly fashion, taking into account the various interests of the parties involved. In this way, the papal bulls reflected the practical application of the theoretical principles of order and reconciliation of tensions that Cusa envisioned. As a canonist, Cusa had to be aware of these rudimentary elements of international law found in canonistic thinking on relations between the Christian and the non-Christian worlds. Thus his work formed not only a *concordantia catholica*, but also a kind of *concordantia mundi* based on legal and constitutional principles, a theoretical version of the world order that the popes intended to achieve.

Underlying Cusa's understanding of world order and of the relation of Christian society to non-Christian ones was the conception of the pope as 'the shepherd of mankind', not just of Christians. As Christ instructed, the responsibility of every pope was to '"Feed my sheep."'[9] This phrase, though obviously a missionary cliché, was also found in the canon law. Pope Innocent IV (1243–54) had employed it in an important discussion of the jurisdiction of the pope over those who were not members of the Church. Innocent IV had argued that the pope judged Christians by canon law, Jews by the Law of Moses, and all others by the natural law; in effect, he organized mankind into three legal communities, and placed the pope over each. This was a common medieval way of identifying a community, and reflected the tripartite hierarchical order that Cusa was to articulate.[10] In a sense, this conception of mankind as a series of distinct legal cultures brought together nevertheless under the headship of the pope was a way of bringing distinct cultures with histories of adversarial relations into accord with one another under papal headship.[11]

Cusa's discussion of natural law in the *De concordantia catholica* reflected the traditional canonistic conception of legal order. Citing Aristotle, Plato, and Cicero as his authorities, Cusa argued that 'Natural laws precede all human considerations and provide the principles for them all.' Furthermore, men have 'reason which distinguishes them from animals', and 'by natural instinct they have joined together and built villages and cities in which to live together'.[12] Consequently, all mankind should develop orderly, settled and agriculturally based societies as part of their natural development toward the best form of existence for human beings. In saying this, Cusa was simply following the position that Aristotle had staked out in his *Politics* almost two millennia previously.[13]

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9. Cusa, p. 130.

10. Robert Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change 950–1350* (Princeton, NJ, 1993), pp. 204–11.

11. It also happened to reflect the tripartite structure that Cusa and others employed.

12. Cusa, p. 205.

13. Aristotle, *The Politics and the Constitution of Athens*, I:1–2, ed. Stephen Everson (Cambridge, 1996), pp. 11–14.

But what of those who had not so developed, those who continued to live at a primitive level of existence? The inhabitants of the Canary Islands provided a contemporary example of a society that had not developed from its primitive origins. Cusa suggested that 'God has assigned a certain natural servitude to the ignorant and stupid so that they readily trust the wise to help them to preserve themselves.'[14] At this point, he drew upon the story of Noah and his sons to illustrate his point. Having laughed at his father lying naked and drunk, Ham was cursed by the aroused Noah, who ordered that he be a slave to his brothers. Slavery was to be 'a remedy for his ignorance because the foolish man can not control himself and unless he had someone to direct him he would fail in his efforts'. In effect, Noah put 'a yoke on the foolish one as if he were a wild animal'.[15] By the way, we should note here that social behaviour, not skin colour, was the standard for judging other people when the story of Ham was employed.[16] Here, Cusa was discussing governance within Christian Europe, but the principle was capable of extension to all mankind: the Canarians, for example. That is, any people that appeared incapable of rational self-government, such as those whose behaviour suggested a lack of self-control or who lived more like animals than men, could thus legitimately be brought under the control of the wise and civilized: that is, under European Christian control.

At the same time, Cusa was careful to restrict responsibility for the well-being of all mankind to the pope. He rejected any claim to universal secular jurisdiction, that is, the claim found in Roman law that the Roman emperor was the *dominus mundi*, the Lord of the World. He did, however, recognize that the Empire had a special role to play in the right ordering of the Christian world. According to Cusa: 'there is one lord over the world who rules over the others in fullness of power. He [the emperor] is normally said to be the equivalent in the temporal hierarchy of the Roman pontiff in the priestly hierarchy ...'.[17] At first glance, this would suggest that pope and emperor were co-equal partners in the direction of the Christian world order. Subsequently, however, Cusa went on to limit the emperor's power to 'the territorial limits of the empire under him'. The Roman law statement about the emperor as the *dominus mundi* was an exaggeration based on the fact, as Cusa understood matters, that the Roman Empire was universal 'because the nations subject to it include the majority of mankind'. Legitimate rule, however, requires 'the elective agreement of the subjects', so that 'the emperor is lord of that part of the world over which he exercises effective authority'.[18] Kingdoms that lay outside of the Roman emperor's effective – that is, his *de facto* – control were not in any way *de iure* subject to his jurisdiction. Thus the emperor's jurisdiction in practice

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14. Cusa, p. 206. This was Aristotle's position in the *Politics*, I:5–6, pp. 16–19, where he discussed the possibility of natural slaves.

15. Cusa, p. 207.

16. On the story of Ham and the identification of skin colour with slavery, see Benjamin Braude, 'The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods', *William and Mary Quarterly* 54 (1997), 103–42, esp. 120–23, 138–42.

17. Cusa, p. 216.

18. Ibid., p. 236.

did not parallel that of the pope: that is, it was not truly universal. The emperor was 'the vicar of Christ, the King of kings and Lord of lords', and 'the Christian empire is higher than all other governments because it is the one closest to God', but it is not universal.[19]

The way in which the emperor does have a kind of universal jurisdiction is as the agent of the Church. As the 'protector [*advocatus*] of the universal Church', the emperor is the 'guardian of the orthodox faith for the protection of [Church] laws':

> For as the teaching responsibility to define and legislate on what pertains to the orthodox universal Christian faith is entrusted to the priesthood by God, so to govern, to confirm, and preserve what is commanded by God through the priesthood is entrusted to the holy empire.[20]

Thus, whatever imperial universal jurisdiction exists is not a quality intrinsic to the imperial office, but the product of the spiritual responsibilities of the office and subject to ecclesiastical supervision. The popes and the canonists had long recognized that physical force might have to be employed by the Church in the achievement of its divinely ordained mission. They reconciled the use of physical force to the teachings of the Church by insisting that it must be used in conformity with the ends for which the Church existed.

Cusa then moved to consider the nature of secular power beyond the boundaries of Christendom. The legitimacy of such power was an issue that canonists had discussed since the mid-thirteenth century, and were to discuss at even greater length following the discovery of the Americas. For Cusa, the legitimacy of such rule was judged according to the degree of conformity of the laws of a people with the laws of God:

> … we believe that there are gradations in excellence according to [the ruler's] closeness to, or distance from God, and that the one who in his public rule resembles God least is least worthy while the one who resembles him most is the greatest. Thus a king of the Tartars is the least worthy because he governs through laws least in agreement with those divinely instituted; a king who belongs to the Mohammedan sect is greater since he venerates the laws of the Old Testament and certain of those of the New Testament; and a Christian king is the greatest because he accepts both the laws of nature and those of the Old and New Testaments and the orthodox faith. And according to the standard of holiness of rule, I maintain that the authority of the empire is greatest.[21]

Here again, Cusa employed the tripartite structure, echoing the words of Innocent IV, but replacing the Jews and Mosaic Law with the Tartars and their primitive law. The rule of infidel, Muslim and other kings is therefore inferior to that of Christian rulers, but not illegitimate in itself. One might even say that even as they stand, such

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19. Ibid., p. 234.
20. Ibid., p. 238.
21. Ibid., p. 237.

rulers are already on the path to conformity with the right order of the world and, with Christian guidance, will complete the process.

Cusa's interest in non-Christian societies was not limited to the possibility of a Christian invasion. He was also quite interested in the conversion of the Muslims, an important, if generally unsuccessful, aspect of medieval missionary endeavour. Some years ago, James Biechler took up R.W. Southern's suggestion that Cusa's approach to the Muslims was greatly superior to that of earlier generations.[22] Like some other medieval intellectuals, Cusa believed that Muslims could be reached through rational argument and attempted to develop such arguments. Assume for a moment that the Muslim world did accept Christianity as a result of dialogue and debate among the intellectual leaders of both faiths; what would be the political consequences? One consequence would be the inclusion of a large number of new Christians, Christians already organized in highly structured communities, into the fold. Assuming also that their now Christian rulers would govern in a manner suitable for Christian rulers, there would be no need to replace them with new rulers, because they would automatically fit into the harmonious structure that Cusa envisioned.

Cusa's vision of a hierarchically constructed world order that reconciled apparent contradictions and conflicts reflected his neo-platonic and scholastic intellectual formation. What it did not do was to consider the role of force in the achievement of this vision. The legal tradition and a series of papal bulls issued in the fourteenth and fifteenth century, both rooted in the same hierarchical intellectual tradition as Nicholas of Cusa, did consider that force might be necessary in order to create the proper world order, because the conflicting forces might be unwilling to yield their own interests in the process of creating the proper world order. One of the most important aspects of the canonistic tradition in this regard was the reconciliation of conflicting rights.

The issue of conflicting rights emerged specifically with regard to non-Christians. As we have already seen, Cusa arranged rulers hierarchically according to their conformity to the laws of God. This argument has some echoes of Innocent IV's theory that the pope is the judge of all mankind according to the law proper to each society, that is, the canon law, the Law of Moses or the natural law. The latter two laws are incomplete or imperfect reflections of the ultimate law for mankind. The failure of a ruler to adhere to the standards of the law proper to his society could be a justification for the pope requesting a Christian ruler to interfere not only in another Christian society, but in an infidel one as well in order to insure adherence to the applicable law. For example, the pope or a council might even authorize the emperor to act, that is, to enter into a non-Christian society in order to punish some egregious violation of the law proper to that society. During the thirteenth century, various popes, including Innocent IV, authorized the seizure and burning of copies of the Talmud on the grounds that it contained material not in keeping with the teachings of

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22. James E. Biechler, 'A New Face Toward Islam: Nicholas of Cusa and John of Segovia', in Gerald Christianson and Thomas M. Izbicki, eds, *Nicholas of Cusa in Search of God and Wisdom* (Leiden, 1991), pp. 185–202 at 187.

the Mosaic Law.[23] If the leaders of the Jewish community would not see to the purity of their own tradition, the pope would do it for them.

Innocent IV also wrote a commentary on a letter of his predecessor, Innocent III (1198–1216), that dealt with the rights of those outside the Church. In brief, he argued that all human beings, Christians and non-Christians alike, possessed a natural right to own property and to govern themselves: that is, they possessed *dominium*. As long as the non-Christians did not violate the natural law, Christians had no right to interfere with them. The pope could authorize a Christian ruler to invade the lands of a non-Christian ruler who prevented Christian missionaries from entering his country, or if they entered, did not ensure their physical safety, because all men had the right to travel freely in peace. In other words, the natural right of a people to self-rule was subordinate to the pope's responsibility to see that the Gospel was preached everywhere. Likewise, if the society or its leaders engaged in unspecified violations of the natural law, the pope could authorize a Christian ruler to occupy that country in order to correct the evils that had been identified.[24]

Innocent IV's discussion of the rights of non-Christians and the responsibility of the pope provided the basis for the extensive debate about the legitimacy of *dominium* in the hands of infidel rulers that took place at the Council of Constance (1414–17). That debate involved the Holy Roman Emperor, the Teutonic Knights and the King of Poland-Lithuania, and dealt with the extent of papal jurisdiction over infidel societies and with the legitimacy of the *dominium* of infidel rulers. That is, did non-Christians legitimately possess their lands and goods, or could Christians legitimately seize them? The debate centred on German claims to lands in eastern Europe taken from the Lithuanians on the grounds that they had been infidels when the Teutonic Knights had seized their lands. The debate attracted a good deal of attention and generated an extensive literature. A leading Polish canonist, Paulus Vladimiri (d. 1434), wrote an extensive treatise defending the legitimacy of Polish possession of the lands in question.[25] As had been the case in Innocent IV's discussion of the natural right to *dominium*, the debate at the Council of Constance about Lithuania centred on reconciling several rights and interests, including the right of the pope to authorize the conquest of lands held by infidels. Although the debate generated an extensive literature and attracted a good deal of attention at the council, neither 'council nor pope rendered … judgment in the Polish dispute; that was eventually settled on the battlefield rather than in court …'.[26]

23. James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World 1250– 1550* (Philadelphia, PA, 1979), pp. 10–11, 30–31, 45.

24. Ibid., pp. 11–12. On the early history of theories of human rights, see Brian Tierney, *The Idea of Natural Rights* (Atlanta, GA, 1997).

25. Vladimiri's basic texts are in Stanislaus Belch, *Paulus Vladimiri and His Doctrine Concerning International Law and Politics*, 2 vols (The Hague, 1965).

26. Frederick H. Russell, 'Paulus Vladimiri's Attack on the Just War: A Case Study in Legal Polemics', in Brian Tierney and Peter Linehan, eds, *Authority and Power: Studies on Medieval Law and Government* (Cambridge, 1980), pp. 237–54 at 251.

The legal conflict between the rulers of Germany and Poland over Lithuanian lands capped off a lengthy period of German expansion eastward, expansion that had begun in the twelfth century. It was the end rather than the beginning, both of a particular process of expansion and of consideration of the legitimacy of that expansion. At about the same time, however, the papacy was becoming involved at the opposite end of the Continent in reconciling the conflicting interests of Christian kingdoms on the one hand, and Christian and non-Christian societies on the other, and thus was beginning a new phase of papal involvement in the creation of a peaceful world order. This happened as the Portuguese and the Castilians expanded into the Atlantic in the fifteenth century, first into the islands off West Africa, the Canaries, Azores, Madeira and Cape Verde, then into the Caribbean, and finally, into the American mainland. In the course of the fifteenth century, legal treatises and more than a hundred papal bulls issued in connection with this expansion articulated a papal vision of the right order of the world that combined Cusa's concept of reconciliation of opposites with the use of force to achieve that goal when reason failed.[27]

Rulers involved in this expansion sought papal authorization for their expansion into these new lands. In 1433, for example, King Edward I (1433–38) of Portugal wrote to Pope Eugenius IV (1431–47) requesting permission to enter and occupy the Canary Islands. A previous pope had banned such activity, but the king argued that the interests of the Church and of the Canarians themselves would be better served if the Portuguese ruled these islands. The Church would benefit from the opportunity to preach the Gospel to these infidels, an activity blocked by the violent efforts of the people to prevent missionaries from living among them. In addition, the Canarians would benefit not only from becoming Christians, but becoming civilized as well. The king's letter to the pope described the Canarians as living at a very primitive level, little better than the animals of the fields, a situation that the Portuguese would remedy. The Portuguese would also benefit from possessing a papal license to occupy these islands, because the king and his subjects would be given a monopoly of Christian access to the Canary Islands. This would prevent other Christians, for example the Castilians, with whom the Portuguese were regularly at war during the fifteenth century, from occupying these islands. This monopoly would serve the best interests of the Canarians, the Portuguese and the Church, because it would eliminate conflict among Christian rulers for control of the islands and enable the Portuguese to focus their energies on the spiritual and material well-being of the Canarians.

King Edward's letter generated two legal treatises on the respective rights of the Canarians and the Portuguese that provided a basis for Pope Eugenius's bull authorizing the Portuguese to occupy these islands. Here again, the problem was to reconcile the conflicting rights of the parties involved. Echoing the language of Innocent IV, the pope asserted that the Canarians had the right to self-government,

27. Charles-Martial de Witte, 'Les bulles pontificales et l'expansion portugaise au XVe siècle', *Revue d'histoire ecclésiastique* 48 (1953), 683–718; 49 (1954), 438–61; 51 (1956), 413–53, 809–36; 53 (1958), 5–46, 443–71.

but the missionaries had a right to travel peacefully anywhere. In turn, the Portuguese had the right to protect missionaries from interference by the Canarians. The papacy possessed the right to limit Christian access to the lands of the infidels and to assign to a suitable Christian ruler the responsibility for preaching the Gospel to them. Inasmuch as the inhabitants of the Canary Islands lived at a primitive level, one that would not support the institutional structure that the Church required, the pope also had the obligation to encourage the transformation of Canarian society from a hunter-gatherer way of life to a settled agricultural way.[28] In spite of the pope's intentions, however, the Spanish conquest of the Canary Islands led to the extermination of the native population, the Guanches, by the middle of the sixteenth century. This outcome foreshadowed the situation in the New World, as European diseases to which the native population had no immunity devastated indigenous societies.

Two decades later, Pope Nicholas V (1447–55) issued yet another bull, *Romanus pontifex* (1455), containing a strong statement of the rights and responsibilities of the pope in the newly encountered regions.[29] The bull began with a statement of the pope's universal role.

> The Roman pontiff, successor of the key-bearer of the heavenly kingdom and vicar of Jesus Christ, contemplating with a father's mind all the several climes of the world and the characteristics of all the nations dwelling in them and seeking and desiring the salvation of all, wholesomely ordains and disposes upon careful deliberation those things which he sees will be agreeable to the Divine Majesty and by which he may bring the sheep entrusted to him by God into the single divine fold …

The Portuguese were the instrument by means of which this work was being accomplished in Africa and the islands of the Atlantic. They had restrained 'the savage excesses of the Saracens and of other infidels, enemies of the Christian name', and had engaged in 'the defence and increase of the faith …'. They had also 'peopled with orthodox Christians certain solitary islands in the ocean sea', and have encouraged the baptism of many of those living in these newly discovered lands.[30]

Having devoted much time, effort, and money to the work of defending Christendom and advancing its boundaries, the Portuguese deserved a reward. The pope not only authorized them to seize the lands and goods, even the persons, of these known enemies of Christians, he also ordered that no Christians enter the regions controlled by the Portuguese to engage in trade or fishing without 'an express license

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28. James Muldoon, 'A Fifteenth-Century Application of the Canonistic Theory of the Just War', *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephan Kuttner (Vatican City, 1976), pp. 467–80 at 477–80.

29. It is worth noting that Eugenius IV had nominated Nicholas of Cusa to the College of Cardinals, and that Nicholas V actually appointed him. Morimichi Watanabe, 'Authority and Consent in Church Government: Panormitanus, Aeneas Sylvius, Cusanus', *Journal of the History of Ideas* 33 (1972), 217–36 at 221–2.

30. Frances Gardiner Davenport, *European Treaties bearing on the History of the United States and its Dependencies to 1648* (Washington, DC, 1917; repr. Gloucester, MA, 1967), pp. 9–26 at 20–21.

previously obtained' from the Portuguese authorities.[31] This monopoly of trade with the newly discovered lands would thus repay the Portuguese for the costs of the conquest and for the continuing costs of maintaining their rule, providing funds for the support of missionaries, and regulating the entry of Christians into these lands.

Romanus Pontifex and similar bulls emphasized the role of the pope as the supreme judge of the Christian world, the mediator of disputes between Christian rulers, and the regulator of relations between Christian society and the non-Christian world. In effect, the aim of these bulls was to regulate European overseas expansion in such a way as to reduce the potential for conflict between Portugal and Castile by identifying regions within which each monarch would be responsible for the defence of Christendom and for the support of missionaries. Neither nation would impinge on the sphere entrusted to the other, and no other Christian monarch could authorize his subjects to enter these regions without the permission of the Iberian ruler entrusted with that region. Furthermore, relations between European Christian society and the peoples of the newly discovered lands would be handled by the Portuguese and the Castilians according to the papal vision of the right order of the world. No other Christians had the right to do so. The pope recognized that 'persons of other kingdoms or nations, led by envy, malice, or covetousness, might presume, contrary to the prohibition aforesaid, without license and payment of such tribute, to go to the said provinces … to sail, trade, and fish …'. If they did so, 'very many hatreds, rancors, dissensions, wars, and scandals, to the highest offense of God and danger of souls, probably might and would ensue …'.[32] Therefore, the pope reasserted the legitimacy of the Portuguese claim to specific areas of the African coast.

The fullest discussion of the papal role in the right ordering of the international order appeared fifty years later in three bulls that Pope Alexander VI (1492–1503) issued in response to the discoveries that Columbus made on his first voyage.[33] Rather than being some novel and bizarre papal claim to universal jurisdiction, as is sometimes said, Alexander VI was simply articulating a claim to jurisdiction that popes and canon lawyers had been articulating for two centuries and had been fully developed in the series of bulls that fifteenth-century popes had issued. *Inter caetera* began with a paean of praise for the Spanish monarchs who had recently completed the recovery of Spain from Muslim hands. The voyage upon which Columbus had embarked was of a piece with the monarchs' intention of seeing 'that barbarous nations be overthrown and brought to the faith itself'.[34] At the same time, these bulls continued the practice of stressing the pope's role in maintaining peace and

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31. Ibid., p. 22.

32. Ibid., p. 23.

33. Although, as a rule, reference is made only to the bull *Inter caetera* issued 3 May 1493, there is also the bull *Eximiae devotionis* of the same date and a second *Inter caetera* dated 4 May 1493. The texts of these bulls and translations are in Davenport, *European Treaties*, pp. 56–78. 'Taken together the two later bulls cover the same ground as the bull *Inter caetera* of May 3, for which they form a substitute' (ibid., p. 71). Unless otherwise indicated, references will be to the first *Inter caetera*.

34. Davenport, *European Treaties*, p. 61.

order among Christian nations as they advanced into the New World. The second version of *Inter caetera* contained the famous line of demarcation from pole to pole 'one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde'.[35] By doing so, Alexander VI clearly defined the two distinct zones of jurisdiction entrusted to the rulers of Portugal and Castile, thus forestalling a continuation of the wars that these two kingdoms had fought during the fifteenth century as each expanded into the lands of the Atlantic. He also added a point of clarification, however. While the Iberian monarchs could claim possession of lands occupied by the enemies of the Church, they could not claim newly encountered lands that 'have been in the actual temporal possession of any Christian owner', presumably a reference to lands ruled by Christians in Asia that the explorers were expected to reach at some point.[36]

In addition, Columbus had encountered something unexpected. He met 'very many peoples living in peace, and, as reported, going unclothed, and not eating flesh'.[37] This described primitive, uncivilized peoples, hunter-gatherers for example, people who not only should receive Christian missionaries for the good of their souls, but who should be brought to a civilized mode of existence as well. The Iberian monarchs were obliged to 'appoint to the aforesaid countries and islands worthy and God-fearing, learned, skilled, and experienced men to instruct the aforesaid inhabitants and residents in the Catholic faith, and to train them in good morals'.[38] In effect, the monarchs were to oversee the process whereby the primitive peoples whom Columbus had encountered were to become not only Christians, but members of a civilized society as well. To become Christian had not only a spiritual consequence, it also had political and social consequences for converts.

The outcome of the Spanish discovery of the Americas is well known. While the Spanish and the Portuguese did adhere to the division of zones of responsibility that *Inter caetera* authorized, other European rulers did not. Protestant rulers were not the only ones who failed to heed the papal regulations for European entry into the New World. The Catholic King of France, Francis I (1515–47), mused aloud that before accepting the terms of *Inter caetera* he would like to see the terms of Adam's will that granted such power to the pope.[39] As a way of regulating European overseas expansion in such a way as to reconcile the various conflicting interests involved, the papal policies articulated in various bulls failed to achieve their stated goals. Even the Portuguese and the Spanish, who gained the most by these bulls and had the greatest interest in their application, only adhered to their terms when it was useful

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35. Ibid., p. 77.

36. Ibid., pp. 62, 77. The later version of the letter is worded slightly differently: 'in the actual possession of any Christian king or prince'. Europeans knew of Christians in Asia, and there were rumours of Christian kingdoms such as that of Prester John; see Vsevolod Slessarev, *Prester John: The Letter and the Legend* (Minneapolis, MN, 1959).

37. Davenport, *European Treaties*, p. 62.

38. Ibid., p. 63.

39. Samuel Eliot Morison, *The European Discovery of America: The Northern Voyages A.D. 500–1600* (New York, 1971), p. 435.

and convenient. In the final analysis, the papal court did not succeed in becoming the recognized tribunal for the resolution of conflicts between Christian states, although from time to time it had acted in such a capacity.[40] Modern international law dispensed with an established court and sitting judge. Instead, from Hugo Grotius (1583–1645) onward, the rulers of the sovereign states of Europe negotiated among themselves to settle conflicts.[41] The order of the world that Nicholas of Cusa, the canonists and the pope they served envisioned never took flesh, and has been relegated to an occasional footnote in books on the history of international law and relations.

The argument made here is not that Nicholas of Cusa is one of the founders of a theory of international relations, nor that he was making an important contribution to ideas about international relations. He was not. His primary interest was the constitutional structure of the Church in Europe, but his constitutional thought, however, had implications for the larger world, whether or not he realized the fact. Indeed, he probably did realize the implications of his thought for the world at large. The writings of the medieval canonists and the bulls of the fifteenth-century popes did play a role in the shaping of early modern international law, even though their writings were often used subsequently to demonstrate the failure of the approach that they had taken in the effort to regulate international affairs. From the modern perspective, these writings were too abstract, too general, too reliant on *auctoritas* and insufficiently reliant upon *potestas*.

The subsequent sixteenth-century debate about the legitimacy of the Spanish conquest of the Americas developed from this body of legal thought, although the importance of the medieval contribution to this debate has often been overlooked. *Inter caetera* and the other papal bulls aimed at reconciling a variety of conflicting interests, Christian and non-Christian, in the search for a stable world order. Seen in this perspective, Nicholas of Cusa's *De Concordantia catholica* and his interest in converting the Muslims, placed within the larger context of the debate about the legitimacy of power in the hands of infidel rulers, take on a broader meaning. As mentioned earlier, it suggests at least a *concordantia mundi*, a reconciliation of all the societies of the world within a Christian and natural law context under the supervision of the pope.

The conception of a peaceful world order directed by the pope and operating along lines determined by the natural order of the universe was obviously at odds with the realities of the world within which Cusa lived. Even the reconciliation of conflicting forces within the Church that the Council of Constance appeared to have resolved had not really occurred. The reformation in root and branch that fifteenth-century reformers had demanded only took place in the sixteenth century, and in a way that the earlier reformers had not intended.

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40. Walter Ullmann, 'The Medieval Papal Court as an International Tribunal', *Virginia Journal of International Law* 11 (1971), 356–71.

41. Hedley Bull, 'The Importance of Grotius in the Study of International Relations', in Hedley Bull, Benedict Kingsbury and Adam Roberts, eds, *Hugo Grotius and International Relations* (Oxford, 1990), pp. 65–93 at 71–3.

The expansion of European Christian kingdoms overseas that began in the fifteenth century illustrated another weakness in Cusa's conception of world order. From the beginning, this expansion involved the use of force. The peoples whom Europeans encountered inhabiting the Atlantic islands and then the islands and mainland of the New World did not immediately accept the Christian conception of an orderly world. As the canonists and popes recognized, armed force might be necessary in order to protect the missionaries who were attempting to fulfil the injunction to preach to all nations. The papacy did not have its own forces, however, and had to rely on the arms of secular rulers. Furthermore, the papacy did not have the power to enforce its decisions. All of the papal bulls that dealt with expansion depended upon the willingness of the parties involved to adhere to the terms of the bulls. If one of the parties chose not to adhere to the terms or if another Christian ruler decided to enter a region administered by the Portuguese or the Spanish without first gaining permission to do so, there was little the pope could do except to condemn such rulers spiritually. The papal attempt to regulate world order by means of legal decisions, but without the power to enforce such decisions, calls to mind the observation attributed to President Andrew Jackson when he heard about a decision written by Chief Justice John Marshall: 'John Marshall has made his decision: – *now let him enforce it!*'[42]

As a rule, modern political realists have tended to scorn this admittedly rudimentary medieval ecclesiastical conception of a world order as too vague and too moralistic to be of any use in the real world. Furthermore, there is a long history of rejecting any notion of a universal order governed by natural law. Likewise, modern theory denied existence of a universal authority empowered to enforce the standards of natural law. The centrepiece of modern international law has been, after all, the sovereign nation-state, a political unit subject to no external jurisdiction. That said, it is rather startling to see at the beginning of the twenty-first century the assertion that there are universal standards of human behaviour that forces operating with the permission of recognized international authorities can impose upon sovereign nations whose rulers refuse to adhere to them. There is now an International Criminal Court that claims jurisdiction over officials who commit grave crimes that violate international standards of justice. It remains to be seen, however, whether the *auctoritas* of this court will always have the *potestas* of governments at its disposal. The ghosts of Cusa and of the other late medieval canonists who discussed the universal responsibility of the pope might be smiling at this turn of events.

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42. Albert J. Beveridge, *The Life of John Marshall*, 4 vols (Boston, MA, 1916–19), 4:551. By coincidence, the decision that generated this observation involved the expulsion of Indians from Georgia. Marshall's decision would have protected the Indians' right to the lands that they occupied. There is some question as to whether Jackson actually uttered these words, but his position was clearly in accord with them.

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Christendom before Europe? A Historiographical Analysis of 'Political Theology' in Late Antiquity[1]

Lester L. Field Jr

Understanding the meaning, expression, and exercise of authority in Late Antiquity and the Middle Ages hardly just pertains to pre-modern relationships between language, ideology and power. Present understandings of such past usage and significance, after all, derive from present perspectives, which shape current awareness of all historical realities. Just as the periods of Late Antiquity and the Middle Ages owe their very existence to modern historiographical invention, so do modern historiography and contemporary conventions that still influence its expression also influence present interpretations of all political power, even as exercised or legitimized in the past. In this respect, the modern analytical category, 'political theology', conceptually rejoined what previous modern notions of 'politics' and 'theology' or 'Christendom' and 'Christianity' had separated.

By linguistic conventions reaching back to the Middle Ages, for example, both 'Christianity' and 'Christendom' properly translate *Christianitas*. Historically and etymologically, both English terms derived from this, the same, Latin word. Despite their common origins, however, subsequent historical usage has tempered both English terms, so that their meanings can differ significantly from one another. As in the Middle Ages, 'Christendom' still often connotes a Christian commonwealth, and such political connotations frequently stand in marked contrast to modern denotations of Christianity as a 'religion'. By the same token, within equally modern contexts of separate Church and State, religion does not seem properly political.[2]

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1. I have already published small portions of this article in my book *Liberty, Dominion, and the Two Swords: On the Origins of Western Political Theology (180–398)*, Publications in Medieval Studies 28, ed. John Van Engen (Notre Dame, IN/London, 1998). I would therefore like to thank the University of Notre Dame Press for allowing me to publish them again without customary citation.

2. On Christendom's faith, see two studies by John Van Engen: 'The Christian Middle Ages as an Historiographical Problem', *American Historical Review* 91 (1986), 519–52, esp. 520, 526, 532–4, 539–41, and 'Faith as Concept of Order in Medieval Christendom', in Thomas Kselman, ed., *Belief in History: Innovative Approaches to European and American Religion* (Notre Dame, IN/London, 1991), pp. 19–67.

Christendom and Europe: Distinguishing Modern Concepts from Pre-modern Self-understandings

By modern conventions that continue to shape these still popular perceptions, the origins of Christian political identity seem medieval.[3] Now, however, thanks largely to the work of Robert Benson's mentor, Ernst H. Kantorowicz, and Kantorowicz's close friend, Gerhart B. Ladner, Benson's predecessor at UCLA, professional historians regard the origins of Christendom as ancient. After all, late fourth-century Latin writers coined the term *Christianitas* as a way of distinguishing the Church from other institutions. *Christianitas* also referred to the Roman emperors' faith, and so included the civil order as part of Christianity's institutional expression. Constantine even referred to himself as 'bishop of those outside' the Church.[4] Christianity informed, and was subject to, public policy.

As both cause and effect, such conceptual insights correspond to current re-evaluations of periodicity. Whatever misgivings accompanied the reception of the so-called 'Pirenne thesis', the period called 'Late Antiquity' historiographically re-inscribed and generally reorganized much that had formerly pertained to other periods of modern invention, namely 'Classical Antiquity' and the 'Middle Ages'. Thanks largely to the work of Peter Brown, in whose company Benson delighted, Gibbonesque notions of the 'Decline and Fall of the Roman Empire' have given way to studies of the slow transformation of the Mediterranean world. Far more than the fifth- and sixth-century 'German invasions', the later Arab conquests disrupted the cultural and political coherence of Mediterranean Antiquity.[5]

The seventh- and eighth-century Muslim conquests not only severed the southern Mediterranean from the Christian world, but also affected relations between what was left of the Christian East and West. What remained of Latin Christianity not only expanded into northern areas beyond the old Roman frontiers, but also increasingly distinguished itself from the Christian empire (βασιλεία) centred since Constantine's

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3. Cf., for example, Henri Xavier Arquillière, 'Origines de la théorie des deux glaives', *Studi gregoriani* 1 (1947), 501–21 at 502–3.

4. Eusebius, *De vita Constantini* 4.24, ed. Friedhelm Winkelmann, *Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, *Eusebius Werke* 1.1² (Berlin, 1975), p. 128; Field, *Liberty*, pp. 142–7. Cf. Francesco Amarelli, ''Επίσκοπος τῶν Ἐκτός: Una singolare autodesigazione trasmessaci dalla "De vita Constantini"', in Domingo J. Andrés Gutiérrez, ed., *Il processo di designazione dei vescovi: Storia, legislazione, prassi: Atti del X symposium canonistico-romanistico 24–28 aprile 1995*, Utrumque ius 27 (Vatican City, 1996), pp. 75–80.

5. See, for example, Peter Brown, '*Mohammed and Charlemagne* by Henri Pirenne', *Society and the Holy in Late Antiquity* (Berkeley, CA, 1982), pp. 63–79; Cristina La Rocca, 'La trasformazione del territorio in Occidente', *Morfologie sociali e culturali in Europa fra tarda antichità e alto medioevo, 3–9 aprile 1997, 1*, Settimane di studio del Centro italiano di studi sull'alto medioevo 45 (Spoleto, 1998), pp. 258–90; Domenico Vera, 'Le forme del lavoro rurale: Aspetti della trasformazione dell' Europa romana fra tarda antichità e alto medioevo', *Morfologie*, pp. 293–338; Averil Cameron, 'The Perception of Crisis', *Morfologie*, pp. 9–34.

reign at Constantinople. The Christian West defined its particular position by the very term – *Christianitas* – which could no longer be confined to the empire.[6]

Europe itself emerged as a culturally and politically meaningful expression, rather than a vaguely defined land mass, precisely because it had become religiously meaningful – by 797 as *imperium Christianum*, and after 800 as *imperium Romanum*. Contemporary sources recognized Charlemagne as *pater Europae* and emperor precisely because they regarded him as leader of the Christian people (*rector populi christiani*).[7] Conversely, however influential in the 'making of Europe', the 'rise of Western Christendom', as Brown notes, pertained to antiquity. Accounting for such cultural and political contexts, patrologist Jacques Fontaine even reminds his readers that 'Christianity is also Antiquity.'[8]

Centuries before Charlemagne – centuries before Constantine – Christianity had received definition in, by and against the empire.[9] After all, *Christianitas* translated Χριστιανισμός, a Greek term coined at the beginning of the second century by martyrs resisting the idolatrous *imperium*, which had itself coined and criminalized the 'Christian name'.[10]

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6. Claudia Barsanti, 'Costantinopoli: Testimonianze archeologiche di età costantiniana', in Giorgio Bonamente and Franca Fusco, eds, *Costantino il Grande: Dall'antichità all'umanesimo: Colloquio sul cristianesimo nel mondo antico, Maccerata 18–19 Dicembre 1990*, Università degli studi di Macerata, Facoltà de lettere e filiosofia, Atti 21, 2 vols (Macerata, 1992–93), 1:115–50; Thomas Grünewald, '"Constantinus Novus": Zum Constantin-Bild des Mittelalters', *Costantino il Grande*, 1:461–85; Eugenio La Rocca, 'La fondazione di Costantinopoli', *Costantino il Grande*, 2:553–83; Paul Magdalino, 'The History of the Future and Its Uses: Prophecy, Policy, and Propaganda', in Roderick Beaton and Charlotte Roueché, eds, *The Making of Byzantine History: Studies Dedicated to Donald Nicol*, Centre for Hellenic Studies, King's College London, Publications 1 (Aldershot, 1993), pp. 3–34; Gilbert Dagron, *Naissance d'une capitale: Constantinople et ses institutions de 330 à 451*, Bibliothèque byzantine, Études 7, 2nd edn (Paris, 1984).

7. Peter Classen, 'Karl der Grosse, Das Papsttum und Byzanz: Die Begründung des karolingischen Kaisertums', in Wolf Braunfels, ed., *Karl der Grosse: Lebenswerk und Nachleben*, 5 vols (Düsseldorf, 1965–68), 1:537–608; idem, 'Romanum gubernans imperium: Zur Vorgeschichte der Kaisertitulatur Karls des Grossen', *Deutsches Archiv für Erforschung des Mittelalters* 9 (1951–52), 103–21; Alan Ducellier, 'La notion d'Europe à Byzance dès origine au XIIIème siècle: Quelques réflexions', *Byzantinoslavica* 55 (1994), 1–7; Gerd Tellenbach, *Römischer und christlicher Reichsgedanke in der Liturgie des frühen Mittelalters*, Sitzungberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse 25, Jahrgang 1934/35, 1. Abhandlung (Heidelberg, 1934).

8. Peter Brown, *The Rise of Western Christendom: Triumph and Diversity, AD 200–1000*, 2nd edn, The Making of Europe (Oxford, 2003); idem, 'Eastern and Western Christendom in Late Antiquity: A Parting of the Ways', in Derek Baker, ed., *The Orthodox Churches and the West*, Studies in Church History 13 (Oxford, 1976), pp. 1–24; Jacques Fontaine, 'Christentum ist auch Antike: Einige Überlegungen zu Bildung und Literatur in der lateinischen Spätantike', *Jahrbuch für Antike und Christentum* 25 (1982), 5–21.

9. See, for example, Hervé Inglebert, 'Les causes de l'existence de l'Empire romain selon les auteurs chrétiens des IIIᵉ–Vᵉ siècles', *Latomus* 54 (1995), 18–50; Herbert Nesselhauf, *Der Ursprung des Problems 'Staat und Kirche',* Konstanzer Universitätsreden 14 (Constance, 1975); Jean-Michel Hornus, 'Études sur la pensée politique de Tertullien', *Revue d'histoire et philosophie religieuse* 38 (1958), 1–38.

10. Ernst Dassmann, 'Kirche, geistliches Amt und Gemeindeverständnis zwischen antikem Erbe und christlichen Impulsen', in Carsten Colpe, Ludger Honnefelder and Matthias Lutz-Bachmann , eds, *Spätantike und Christentum: Beiträge zur Religions- und Geistesgeschichte der griechisch-römischen*

'Political Theology' as an Analytical Category

Inasmuch as religion is collective and historical, it now seems inherently political. Yet this seeming inherence derives from scholarly consensus that only emerged with clarity in the twentieth century: Erik Peterson and Kantorowicz legitimated 'political theology', so that it now belongs to the common discourse of historians. All the more noteworthy for its popularity outside professional circles, the creative work of Elaine Pagels provides a current gauge of 'the politics of monotheism'.[11]

As an analytical category, 'political theology' responded to the modern dissociation of 'theology' and 'politics', or more specifically, to its anachronism *vis-à-vis* pre-modern societies.[12] Even when applied to modernity itself, the methodological failure of this dissociation seems most pronounced when it privatizes religion or renders it an epiphenomenal expression of an underlying 'historical reality'.[13] Conversely

Kultur und Zivilisation der Kaiserzeit (Berlin, 1992), pp. 249–69 at 264–9; Justin Taylor, 'Why Were the Disciples First Called "Christians" in Antioch? (Acts 11,26)', *Revue biblique* 101 (1994), 75–94; Charles Munier, 'Où en est la question d'Ignace d'Antioche? Bilan d'un siècle de recherches 1870–1988', *Aufstieg und Niedergang der römischen Welt* 27.1 (Berlin/New York, 1993), pp. 359–484; Jan N. Bremmer, '"Christianus sum": The Early Christian Martyrs and Christ', in G.J.M. Bartelink, A. Hilhorst and C.H. Kneepkens, eds, *Eulogia: Mélanges offerts à Antoon A.R. Bastiaensen à l'occasion de son soixante-cinquième anniversaire*, Instrumenta patristica 24 (Steenbrugge, 1991), pp. 11–20; Friedrich Vittinghoff, '"Christianus sum" – Das "Verbrechen" von Außseitern der römischen Gesellschaft', *Historia* 33 (1984), 331–57; Erik Peterson, *Frühkirche, Judentum, Gnosis: Studien und Untersuchungen* (Rome, 1959), pp. 64–87.

11. Erik Peterson, *Der Monotheismus als politisches Problem: Ein Beitrag zur Geschichte der politischen Theologie im Imperium romanum* (Leipzig, 1935); Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ, 1957); Gerhart B. Ladner, *The Idea of Reform: Its Impact on Christian Thought and Action in the Age of the Fathers* (Cambridge, MA, 1959); see Elaine Pagels, *The Gnostic Gospels* (New York, 1979), pp. 28–47, on the 'politics of monotheism', the subtitle of her second chapter. See also Pagels, *Beyond Belief: The Secret Gospel of Thomas* (New York, 2003), pp. 33, 168–85; eadem, *The Origin of Satan* (New York, 1995); Enrico dal Covolo, 'Il "capovolgimento" dei rapporti tra la chiesa e l'impero nel secolo di Eusebio di Vercelli', in Attilio Mastino et al., eds, *La Sardegna paleocristiana tra Eusebio e Gregorio Magno: Atti del Convegno Nazionale di Studi, Cagliari 10–12 ottobre 1996*, Studi e ricerche di cultura religiosa, Nuova serie, 1 (Cagliari, 1999), pp. 137–52, esp. 138; Francis Oakley, *Politics and Eternity: Studies in the History of Medieval and Early-Modern Political Thought*, Studies in the History of Christian Thought 92, ed. Heiko A. Oberman (Leiden/Boston, MA/Cologne, 1999), pp. 249–75.

12. Michel de Certeau, *The Writing of History*, trans. Tom Conley (New York, 1988), pp. 212–23. See also Michael Gertges, 'Statistik der Begriffe "politisch/theologisch"', in Alfred Schindler, ed., *Monotheismus als politisches Problem? Erik Peterson und die Kritik der politischen Theologie*, Studien zur evangelischen Ethik 14, eds Trutz Rentorff et al. (Gütersloh, 1978), pp. 222–6.

13. See, for example, Giuseppe Fornasari, 'La Bibbia e le teorie politiche', in Giuseppe Cremascoli and Claudio Leonardi, eds, *La Bibbia nel medioevo*, La Bibbia nella storia 16 (Bologna, 1996), 327–40; Claudio Finzi, 'Il pensiero politico dell'età eusebiana', *La Sardegna*, 153–67 at 154–5; Vasiliki Limberis, '"Religion" as the Cipher for Identity: The Cases of Emperor Julian, Libanius, and Gregory Nazianzus', *Harvard Theological Review* 93 (2000), 373–400; Gilbert Vincent, 'Ecclésiologie protestante et habitus politique: Les solidaristes protestants et l'idée d'une "Republique coopérative"', in Marie-Anne Vannier, Otto Wermelinger and Gregor Wurst, eds, *Anthropos laïkos: Mélanges Alexandre Faivre à l'occasion de ses 30 ans d'enseignement*, Paradosis 44 (Fribourg, 2000), pp. 348–60; Oakley, *Politics and Eternity*, 71, 249–75; Van Engen, 'Faith as Concept'; Bruno Latour, *We Have Never Been Modern*, trans. Catherine

– even as dissociated by the Enlightenment, positivistic historicism, Eurocentric anthropology, modern constitutions and popular imagination – theology and politics still shape one another.

Paradoxically, then, the work of Peterson and Pagels not only suggests ways in which ancient politics and religion intruded on one another, but also measures the religio-political identities of both Christianity and the Roman Empire differently. Peterson's work has even seemed 'exquisitely theological'. Since baptism, a pact that Christians made with God and with one another, seemed the prototype of their polity, theological defence of any other polity seemed profanation.[14] Despite the ancient Christian designation of Church as 'political assembly' (ἐκκλησία), Pagels emerges as even more of an anti-political theologian. In ways that parallel Max Weber's popular perception of the earliest Christianity as 'depoliticized',[15] her studies so often portray 'political language' as an addition to Christian theology that political identity seems initially and properly alien to it.[16]

These differences and similarities suggest a problem – the problem examined here – namely, how historians now measure the 'political' in early Christian thought. To say that their determinations involve a changing sense of the political or a contemporary politics of interpretation is to say too little. 'Faced with the dissolution of geographical and chronological markers,' Averil Cameron notes, 'recent research can be seen to have been searching for its own moments of change.' With studies of Byzantine iconoclasm pushing Late Antiquity well beyond Charlemagne's coronation, the chronological boundary once separating Late Antiquity and early Middle Ages has all but disappeared.

Mutatis mutandis, the cultural boundary once separating Greek East from Latin West now seems far more porous. The changed map affects or parallels new boundaries of modernity as well. Even as the general boundary between the medieval and the modern has generally faded, the specific border between the early-modern and late-modern has become increasingly pronounced.[17] More importantly, at least

Porter (Cambridge, MA, 1993), esp. pp. 32–43, 127–8, 139–42; Joachim Mehlhausen, 'Kirchenpolitik: Erwägungen zu einem undeutlichen Wort', *Zeitschrift für Theologie und Kirche* 85 (1988), 275–302.

14. See Salvatore Calderone, 'Il pensiero politico di Eusebio di Cesarea', in Giorgio Bonamente and Aldo Nestori, eds, *I cristiani e l'impero nel IV secolo: Colloquio su cristianesimo nel mondo antico*, Pubblicazioni della Facoltà di Lettere e Filosofia 47, Atti di convegni 9 (Macerata, 1988), pp. 45–54, esp. 45–50. See also Gilbert Dagron, *Empereur et prêtre: Études sur le 'césaropapisme' byzantin* (Paris, 1996), pp. 290–322.

15. Cf. Gedaliahu Guy Strousma, 'Le radicalisme religieux du premier christianisme: Contexte et implications', in Évelyne Patagean and Alain Le Boulluec, eds, *Les retours aux écritures: Fondamentalismes présents et passés*, Bibliothèque de l'école des hautes études, Section des sciences religieuses 99 (Paris, 1993), pp. 357-81. On the similar inadequacy of Geertzian anthropology, see Limberis, 'Religion', esp. pp. 374–5, 397.

16. Cf. Elaine Pagels, *Adam, Eve, and the Serpent* (New York, 1988), esp. p. 110. Cf. also eadem, *Beyond Belief*, esp. pp. 33, 165–85; eadem, *Origin*; Margaret R. Miles, 'Patriarchy as Political Theology: The Establishment of North African Christianity', in Leroy S. Rouner, ed., *Civil Religion and Political Theology* (Notre Dame, IN, 1986), pp. 169–86.

17, Cameron, 'Perception', p. 25; Sergio Bertelli, *The King's Body: Sacred Rituals of Power in Medieval and Early Modern Europe*, trans. R. Burr Litchfield (University Park, PA, 2001), esp. pp. xv–7;

with respect to the present study, the new geography and periodicity have a distinctly religio-political definition, marked on the one side by coronation and iconoclasm, and on the other side by the Reformation and Counter-Reformation. After early modernity, secular modernity emerges as 'hard' modernity.

Since the need to historicize historiography, to reveal its 'seats of logistic power', transcends interest in Late Antiquity,[18] historians now generally seek 'to preserve some sense of the social world by and through which historiographical discourse itself, both past and present, is generated.'[19] Neither history nor historiography seem meaningful or possible without the other. While hermeneutics forge this relationship, they also complicate it. On the one hand, they have a twentieth-century past to which the invention of both 'Late Antiquity' and 'political theology' variously belonged. On the other hand, hermeneutics have a twenty-first-century present that defines or divides all historiography.

The Obsolescence of Essence: The Hermeneutical Divide Between Matter and Language

In a way that often masks the historical and etymological fact that 'reality' (*realitas* or 'realness') originated as an abstraction of the real – that is, as an intellectual apprehension of the metaphysical substance underlying accidents perceived by the senses – current philosophical consensus generally excludes such essentialist notions of 'reality'. By this consensus, 'essence' does not exist in itself. In current terms, then, two kinds of 'reality' remain. One is material. The other 'is "always already" constructed *in* language'.[20] This philosophical bifurcation now affects all 'sciences', including history, and often renders hard and fast distinctions between them obsolete.[21]

Oakley, *Politics and Eternity*, pp. 1–3; J.H. Burns, 'Introduction', *The Cambridge History of Medieval Political Thought, c. 350–c. 1450* (Cambridge, 1988), pp. 1–8.

18. Michel de Certeau, *Heterologies: Discourse on the Other*, trans. Brian Massumi, Theory and History of Literature 17 (Minneapolis, MN/London, 1986), esp. pp. 215–16 for quotation. See also idem, *La culture au pluriel*, ed. Luce Giad, 4th edn (Paris, 1993); Massimo Mastrogregori, 'Historiographie et tradition historique des souvenirs: Histoire "scientifique" des études historiques et histoire "global" du rapport avec le passé', in Carlos Barros, ed., *Historia a debate: Actas del Congreso Internacional 'A historia a debate' celebrado el 7–11 de julio de 1993 en Santiago de Compostella*, 3 vols (Santiago de Compostela, 1995), 1:269–78; Julio Antonio Vaquero Iglesias, 'Mentalidades e ideologías', *Historia a debate*, 2:25–35.

19. Gabrielle M. Spiegel, *The Past as Text: The Theory and Practice of Medieval Historiography* (Baltimore, MD/London, 1997), pp. xviii, 3–29.

20. Gabrielle M. Spiegel, 'History, Historicism, and the Social Logic of the Text in the Middle Ages', *Speculum* 65 (1990), 59–86, esp. 60–61; Jacques Derrida, *De la grammatologie* (Paris, 1967), p. 16.

21. See, for example, Hubert Kiesewetter, 'Geschichtswissenschaften und Erkenntnistheorie', *Zeitschrift für Geschichtswissenschaft* 43 (1994), 581–613; María Gloria Núñez Pérez, 'Historia, ciencia y complejidad en los finales del siglo XX', *Historia a debate*, 1.159–68; Gregory Ulmer, *Applied Grammatology: Post(e)-Pedagogy from Jacques Derrida to Joseph Beuys* (Baltimore, MD, 1985); idem, 'Op Writing: Derrida's Solicitation of *Theoria*', in Mark Krupnick, ed., *Displacement: Derrida and After*

Although the current terms defining the bifurcation are hardly the only ones, the stark choice between 'matter' and 'language' forced most positivistic historians to turn to language. In the last three decades of the twentieth century, this choice – postmodern in its current formulation – had a dramatic, even traumatic, effect on Anglo-American historiography. Its positivism had, by self-definition, assumed the existence of an essential, objective and empirical 'reality' somehow underlying the mere 'representations' of the primary sources. Since this historicism lacked the strong philological traditions of Continental Europe – traditions such as those employed by Peterson, Kantorowicz and Ladner – many historians who wrote in English now had to confront, or succumb to, the Continent's new hermeneutics.

Already ambivalent about materialism, or cognizant of 'past matter' as an oxymoron, even English-speaking positivists conceded that nothing verifiable exists 'behind' the sources' language. In this respect, historicistic 'empiricism' even turned on itself. The past survives textually, because 'behind' texts, in Hayden White's words, 'is a place of fantasy'.[22] Historians who had already rejected the materialist 'reality' recognized that any non-linguistic place 'behind' the sources had to be metaphysical. As the old philologies and the new hermeneutics penetrated the English-speaking world, they therefore exposed non-materialistic positivism as just another kind of essentialism.

For positivists who had to confront the pervasive religious language of Late Antiquity, this Continental challenge also presented great opportunities.[23] As Averil Cameron puts it:

> Even if not postmodernism itself, then certainly cultural pluralism is a dominant influence on current historical thinking. Accustomed in our society to the idea, and even, increasingly, to the political correctness of such an approach, it is natural to bring the same thoughts to bear on late antiquity … I was still a student in 1962, and brought up in a highly positivist tradition of ancient history. Thirty five years later, those methods I learned so well in the Oxford school of ancient history will no longer serve any of us.[24]

In the 1960s, as Alan Cameron laments, Oxford classical scholars still had to choose between literature and history. Those who chose history necessarily also chose its

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(Bloomington, IN, 1983), pp. 29–58; Wlad Godzich, 'Foreword: The Further Possibility of Knowledge', in Certeau, *Heterologies*, pp. vii–xxi at x–xii; Certeau, *Heterologies*, esp. pp. 179–81, 199–221; Arthur C. Danto, *Narration and Knowledge* (New York, 1985), pp. ix–xvii.

22. White's interview in Ewa Domańska, *Encounters: Philosophy of History after Postmodernism* (Charlottesville, VA/London, 1998), pp. 13–38 at 16; Dominick LaCapra, *Soundings in Critical Theory* (Ithaca, NY/London, 1989), esp. pp. 10, 13–17, 133–81; Edith Wyschogrod, 'Memory, History, Revelation: Writing the Dead Other', in Michael A. Signer, ed., *Memory and History in Christianity and Judaism* (Notre Dame, IN/London, 2001), pp. 19–34, esp. 20–25; Mary Gerhart, 'Space, Time, and Memory', *Memory and History in Christianity and Judaism*, pp. 35–40.

23. See, for example, Averil Cameron, 'Christianity and Communication in the Fourth Century: The Problem of Diffusion', in H.W. Pleket and A.M.F.W. Verhoogt, eds, *Aspects of the Fourth Century A.D.: Proceedings of the Symposium 'Power and Possession: State, Society and Church in the Fourth Century A.D.'* (Leiden, 1997), pp. 23–42 at 39–41.

24. Cameron, 'Perception', esp. pp. 11–12, 28.

naïve 'empirical' approach. 'Like my compatriots in the 60s,' he writes, 'I was utterly innocent of theory. I had not even heard the word methodology.'[25]

As he now realizes, neither 'history' nor 'literary criticism' are pure or static; neither can lay exclusive claim to science or esthetics; neither can fully explain or neatly distinguish real power and authoritative principles.[26] For over two millennia, after all, *historia* and *theoria* derived their meanings from one another.[27] With an eye on Foucault, whose hermeneutics still exercise the critical imagination of Church historians,[28] Averil Cameron notes that Christianity developed a 'totalizing discourse' that made 'politics' in its original Greek sense both irrelevant and impossible.[29] To say that the Camerons and their Oxonian contemporary, Peter Brown, eventually lost their innocence of theory understates their well-known and evolving sophistication.

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25. Alan Cameron, 'Claudian Revisited', in Franca Ela Consolino, ed., *Letteratura e propaganda nell'Occidentale latino da Augusto ai regni romanobarbarici: Atti del Convegno Internazionale, Arcavacata di Rende, 25–26 maggio 1998*, Saggi di storia antica 15 (Rome, 2000), pp. 127–44 at 128–9.

26. Domańska, *Encounters*, esp. pp. 3–4, 8, 13–38, 168–87; Spiegel, *The Past as Text*, esp. pp. xvii–ix; Jacques Derrida, *Force et loi: Le 'Fondement mystique de l'autorité'* (Paris, 1994), esp. pp. 16–21, 46–59; Roland Barthes, 'The Discourse of History', in E.S. Shaffer, ed., *Comparative Criticism: A Yearbook*, 3 (Cambridge/London/New York, 1981), pp. 7–20; Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore, MD, 1978), esp. p. 43.

27. See, for example, Bernard Sesboüé, *Saint Basile et la Trinité: Un acte théologique au IVe siècle. Le rôle de Basile de Césarée dans l'élaboration de la doctrine et du langage trinitaires* (Paris, 1998), pp. 76–86; Mario Girardi, *Basilio di Cesarea interprete della Scrittura: Lessico, principi ermeneutici, prassi*, Quaderni di 'Vetera Christianorum' 26, ed. Marcello Marin (Bari, 1998), esp. pp. 21–3, 36–8, 116–19, 133–43; Antonio Garzya, 'Una testimonianza fra due mondi: Sinesio di Cirene', in Franca Ela Consolino, ed., *Pagani e cristiani de Giuliano l'Apostata al sacco di Roma: Atti del Convegno Internazionale di Studi (Rende, 12/13 novembre 1993)*, Studi di Filologia Antica e Moderna 1 (Soveria Mannelli/Messina, 1995), pp. 141–8; Gabriel Bunge, 'Praktike, Physike und Theologike als Stufen der Erkenntniss bei Evagrios Pontikos', in Michael Schneider and Walter Berschin, eds, *Ab oriente et occidente (Mt 8,11): Kirche aus Ost und West. Gedenkschrift für Wilhelm Nyssen* (St Ottilien, 1996), pp. 59–72 at 67–71; Fornasari, 'La Bibbia'; Isabella Gualandri, 'Il lessico di Ambrogio: Problemi e prospettive di ricerca', in Luigi F. Pizzolato and Marco Rizzi, eds, *Nec timeo mori: Atti del Congresso internazionale di studi ambrosiani nel XVI centenario della morte di sant'Ambrogio, Milano, 4-11 Aprile 1997*, Studia patristica mediolanensia 21 (Milan, 1998), pp. 267–311 at 271–5; LaCapra, *Soundings in Critical Theory*, esp. pp. 208–9.

28. See, for example, Peter Brown, *A Life of Learning*, Charles Homer Haskins Lecture for 2003, ACLS Occasional Paper 55 (New York, 2003), pp. 2–3; Judith Perkins, *The Suffering Self: Pain and Narrative Representation in the Early Christian Era* (London/New York, 1995), esp. pp. 4–13; Bernhard Teubner, 'Chair, ascèse et allégorie sur la génealogie chrétienne du subjet désirant selon Michel Foucault', *Vigiliae Christianae* 48 (1994), 367–84; Margaret R. Miles, *Carnal Knowing: Female Nakedness and Religious Meaning in the Christian West* (Boston, MA, 1989), pp. 30–31; Averil Cameron, 'Redrawing the Map: Early Christian Territory After Foucault', *Journal of Roman Studies* 76 (1986), 266–71.

29. Averil Cameron, *Christianity and the Rhetoric of Empire: The Development of Christian Discourse*, Sather Classical Lectures 55 (Berkeley, CA/Los Angeles, CA/Oxford, 1991), esp. pp. 2–6; Covolo, 'Il "capovolgimento"', esp. p. 143; Finzi, 'Il pensiero', esp. pp. 155–67; Ludger Honnefelder, 'Christliche Theologie als "wahre Philosophie"', *Spätantike und Christentum*, pp. 55–76; Christine Mohrmann, 'L'étude du grec et du latin de l'antiquité chrétienne: Passé, présent, avenir', *Études sur le latin des chrétiens*, 4 vols (Rome, 1961–77), 1², 4:91–110, esp. 103; Burns, 'Introduction'; Henry Chadwick, 'Christian Doctrine', *The Cambridge History of Medieval Political Thought*, pp. 11–20. See also Limberis, 'Religion', pp. 388–90, 396–7. Cf. H.A. Drake, *Constantine and the Bishops: The Politics of Intolerance*, Ancient Society and History (Baltimore, MD/London, 2000), esp. pp. 360, 479.

Not all positivists followed their lead. Almost four decades after his own positivistic training at Oxford, for example, T.D. Barnes still scorns philological and literary critiques of the historical reality or 'the true nature of … history' that his own 'accuracy' purports to find 'behind' the sources.[30] Conversely, even historians who laud his work fault its essentialist '"true–false" attitude' toward history.[31] Not probing 'behind' theologies, but rather reading them seriously – in their own languages and with an awareness of their discursive modes, semantic conventions and cultural alterity – has provided methodologies both more tolerant and more critically rigorous.[32] Even materialists now concede that without language, they cannot know, understand or even express their 'matter'.

Even Marxists – the last best defenders of historical materialism – acknowledge that language does considerably more than 'reflect' a past causality, change and meaning.[33] Language either continually informs realities, or it constitutes them outright. In what has become a *locus classicus*, Derrida observed, '*Il n'y a pas dehors-texte.*' In other words, the historian can neither rightly alter the text nor pretend to look behind or outside it. History is either linguistic, or it is language.[34]

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30. For 'the true nature … of history' and probing 'behind' the sources, cf. Timothy D. Barnes, *Athanasius and Constantius: Theology and Politics in the Constantinian Empire* (Cambridge, MA, 1993), p. ix. For 'accuracy', cf. *Constantine and Eusebius* (Cambridge, MA/London, 1981), p. v–vi; *Tertullian: A Historical and Literary Study* (Oxford, 1971), p. 147. For more on 'accuracy' and separating 'historical reality' from its 'representation', cf. Frederick M. Ahl et al., eds, *Ammianus Marcellinus and the Representation of Historical Reality*, Cornell Studies in Classical Philology 56 (Ithaca, NY/London, 1998), esp. pp. viii, 11–19; 'Was heisst Fälschung?', *Archiv für Kulturgeschichte* 89 (1997), 259–67.

31. Gary A. Bisbee, *Pre-Decian Acts of Martyrs and Commentarii*, Harvard Dissertations in Religion 22, eds Margaret R. Miles and Bernadette J. Brooten (Philadelphia, PA, 1988), p. 6. Others are more critical. See Field, *Liberty*, esp. pp. 146–7, 362–3 n. 53; idem, *My Response to T.D. Barnes: Positivistic Straw Arguments Do Not Review Books* (University, MS, 2002); Averil Cameron, 'On Defining the Holy Man', in James Howard-Johnston and Paul Antony Hayward, eds, *The Cult of Saints in Late Antiquity and the Middle Ages: Essays on the Contribution of Peter Brown* (Oxford, 1999), pp. 27–43 at 42; eadem, 'Christianity and Communication', esp. pp. 23–5, 28–9; Khaled Anatolios, *Athanasius: The Coherence of His Thought* (London/New York, 1998), esp. pp. 26–9, 85–8, 96, 215 nn. 17–18, 228 n. 10, 230 n. 46; Annik Martin, *Athanase d'Alexandrie et l'église d'Égypte au IVᵉ siècle (328–373)*, Collection de l'École française de Rome 216 (Rome, 1996), esp. pp. 2–4; Duane Wade-Hampton Arnold, *The Early Episcopal Career of Athanasius of Alexandria*, Christianity and Judaism in Antiquity 6, ed. Charles Kannengiesser (Notre Dame, IN/London, 1991), esp. pp. 11–99, 164–7, 179, 183; Charles Kannengiesser, 'The Athanasian Decade 1974–84: A Bibliographical Report', *Theological Studies* 46 (1985), 524–41, esp. 527, 532.

32. Cameron, 'Perception', esp. p. 12, 27–8.

33. See, for example, Jörn Rüsen, *Historische Orientierung: Über die Arbeit des Geschichtsbewusstseins, sich in der Zeit zurechtzufinden* (Cologne, 1994), esp. pp. 188–208. Cf. Russel Jacoby, 'A New Intellectual History?', *The American Historical Review* 97 (1992), 405–24.

34. That textuality cannot be parlayed into reference outside the text never entailed the more radical claim that everything is text. See Derrida, *De la grammatologie*, pp. 227–31; idem, 'Living On: Borderlines', *Deconstruction and Criticism*, trans. James Hulbert (New York, 1979), pp. 75–176 at 84; Aline Rousselle, 'Image et texte: Aller et retour', in Sofia Boesch Gajano, ed., *Santità, culti, agiografia: Temi e prospettive. Atti del I Convegno di studio dell'Associazione italiana per lo studio della santità, dei culti e dell'agiografia Roma, 24–26, ottobre 1996* (Rome, 1997), pp. 107–27 esp. 109; Spiegel, *The*

History as Linguistic

Even philologically inclined historians do not reduce history to language, as some postmodernists do. For without human mediation and social agency, language merely responds to and transforms itself, so that the material determinism or positivistic reductionism from which literary criticism rescues history returns in a 'literary' guise. How a text was written, received and transmitted informs its meanings – even its very identity – just as its meanings bespeak its authorship, reception, and transmission.[35] Historiographically, then, 'social history' has traditionally emphasized how texts derived from social-material matrices, while 'intellectual history' has noted how texts marked the boundaries of those matrices.

Among those who have studied political theology, W.H.C. Frend may best represent the socio-materialistic tendency. His studies of martyrdom, persecution, and Donatism show how socio-economic conflict provides a context that gives meaning to texts.[36] By the same token, Gerard E. Caspary's study of the 'two swords' and Pagels's study of 'liberty' in patristic exegeses of Genesis represent more semiotic tendencies, respectively structuralist and poststructuralist.[37] Between these materialistic and the semiotic landmarks, a philological middle ground emerges, and on it stand the studies of Peterson, Kantorowicz and Ladner, whose respective works on 'monotheism as a political problem', the 'king's two bodies' and the 'idea of reform' assiduously weigh and balance the meaning of texts against their known or imagined contexts, linguistic, iconographical, and so also social.

Scholars who now occupy this middle ground have become even more articulate concerning the 'fruitful tension' – rather than the zero-sum game – between different discursive systems (past and present) as products of their own 'social logic'. Although Gabrielle Spiegel places this 'middle ground' between poststructuralism and positivism, positivistic use of socio-economic models complicates this placement.[38] Since German philological and hermeneutical awareness in both practice and theory

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Past as Text, esp. pp. xvii, 29–43, 48–9; Karl F. Morrison, 'Sounding Hermeneutics: Two Recent Works', *Speculum* 73 (1998), 787–98.

35. Oakley, *Politics and Eternity*, pp. 3–24; Cameron, 'Perception', esp. pp. 27–8; Sofia Boesch Gajano, 'L'agiografia', *Morfologie*, 1.797–843, esp. 830–33; Harry Y. Gamble, *Books and Readers in the Early Church: A History of Early Christian Texts* (New Haven, CT/London, 1995), pp. 42–81; Spiegel, 'History'; Dominick LaCapra, 'Intellectual History and Its Ways', *American Historical Review* 97 (1992), 425–39; Bernard McGinn, 'Early Apocalypticism: The Ongoing Debate', in C.A. Patrides and Joseph Wittreich, eds, *The Apocalypse in English Renaissance Thought and Literature* (Manchester, 1984), pp. 2–39 at 12–31.

36. See especially. two books by W.H.C. Frend: *The Donatist Church: A Movement of Protest in Roman North Africa* (Oxford, 1952, repr. 1971, reissued 1985); *Martyrdom and Persecution in the Early Church: A Study in Conflict from the Maccabees to the Donatists* (Garden City, NJ, 1967).

37. Gerard E. Caspary, *Politics and Exegesis: Origen and the Two Swords* (Berkeley, CA/Los Angeles, CA/London, 1979); Elaine Pagels, *Adam, Eve, and the Serpent*.

38. Spiegel, *The Past as Text*, esp. pp. xvii–xix, 3–28, 44–56, 160; Maria del Mar Garrido López, '¿La historia intelectual en crisis? El giro lingüístic y la historia social frente a la historia intelectual', *Historia a debate*, 2:201–12; David F. Lindenfeld, 'On Systems and Embodiments as Categories for Intellectual History', *History and Theory* 27 (1988), 30–50.

preceded the 'linguistic turn' in the English-speaking world by two generations, the philological 'middle ground' likewise antedates the 'linguistic turn'.[39]

Historicizing Theology as Political: Some Initial Consensus

For most historians, accounting for the language that informed Christian self-understandings entails accounting for its social past, its *Sitz im Leben*. 'Generally,' Ladner wrote, 'one might well hold, in accordance with Karl Mannheim's theory of a sociology of knowledge, that "every point of view is particular to a certain definite [sociological] situation".' As Mannheim himself had noted, 'positivism … took great pains to conceal from itself the abyss which lies behind all particularist thought.'[40] In this respect, a sociology of texts or a politics of language defined theological 'truth' historically, that is, as it emerged at a given time and place.

By analysis and synthesis, for example, St Paul's audience gleaned different meanings from his letters. Since his readers also had readers, and so on, 'new' meanings emerged – not the least of which was that Paul had written Scripture, comparable in that respect to the writings associated with the Septuagint.[41] Thus early disciples not only presupposed but also imputed 'Pauline' authority. Even at the beginning of the second century, Christians viewed the older Jewish books as archives (*archeia*) contrasted to the still largely oral traditions of the *euangelion*. Since ancient standards of authorship permitted, some disciples even wrote letters in Paul's name – Titus and 1 and 2 Timothy, for example – while genuine letters to which Paul alluded in 1 Cor. 5:9 and 2 Cor. 7:8 disappeared from history. Yet another allusion (Col. 4:16) belongs to a letter which itself now seems pseudonymous.

The relevant 'Paul' survived. The canonical 'Paul' followed, in various editions. Genuine even by modern standards, Romans 13:1–7 received much exegesis that tended to reduce all earthly governance to a single divine authority ($\dot{\epsilon}\xi o u\sigma\acute{\iota}\alpha$). By exhorting Christians to fear God and honour the king, 1 Peter 2:17 echoed this sentiment or other politically monistic traditions, in much the same way as Titus 3:1. Whether viewed from the standpoint of formative Scripture or normative exegeses, such monistic 'Pauline' traditions hardly precluded dualistic 'Johannine' ones.

By massive scholarly consensus and historiographical traditions that build on the magisterial nineteenth-century work of Wilhelm Bousset, the martyrs' resistance to the Antichrist (Rev. 13–20) set two irreconcilable forces against one another in the

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39. See, for example, Charles R. Bambach, *Heidegger, Dilthey, and the Crisis of Historicism* (Ithaca, NY/London, 1995); Barbara Nichtweiss, *Erik Peterson: Neue Sicht auf Leben und Werk* (Freiburg im Breisgau/Basle/Vienna, 1992).

40. Gamble, *Books and Readers*, esp. pp. 13–16, 30–41, 74–81, 95, 108–43; Cameron, *Christianity and the Rhetoric of Empire*, esp. pp. 2–6; Ladner, *The Idea of Reform*, 467; Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge*, trans Louis Wirth and Edward Shils (New York, 1936), pp. 89–96.

41. See, for example, Manlio Simonetti, 'La sacra scrittura nella chiesa delle origini (I–II secolo): Significato e interpretazioni', in Mario Naldini, ed., *La bibia nei padri della chiesa: L'Antico Testamento*, Letture patristiche 7 (Bologna, 1999), pp. 35–50.

final conflict. Translated politically, this eschatology anticipated the annihilation of the Roman empire (Rev. 18:1–20). Whether by apocalyptic Hebrew or subsequent readings, the Beast's number 666 (Rev. 13:18) emerged as a cryptogram for Nero(n) Caesar. Many readers saw Caesar as Antichrist, Rome as Babylon (cf. 1 Peter 5:13).[42] God would exact the vengeance that the martyrs demanded (Rev. 6:10) when He consigned the whore of Babylon – 'drunk with the saints' blood' (Rev. 17:6) – and the Beast to eternal fire. Waiting as Christ's spotless bride, the Church had to confront the Beast's cult and Satan's temporal throne (Rev. 19:1–10, 13:15–16, 2:13–18).

By noticing such texts, twentieth-century scholarship observed a deep and ancient ambivalence toward the Roman Empire. Even in writings that Christians attributed to apostles, politically monistic and dualistic tendencies existed side by side. Because Paul himself unbridled apocalyptic strains that threatened the Roman world's sudden destruction (1 Thess. 5:1–11, 1 Cor. 3:5–4.5, 15:24; cf. 2 Thess. 1–12), its time (*kairos*) relativized obedience to earthly authority. Conversely, John's gospel sublimated the apocalyptic, so that moral alienation from outside society replaced the desire for its destruction. In both Pauline and Johannine understandings, divine judgment, already axiomatic in Rom. 14:10, held all individuals and communities accountable.[43]

At the end of history, then, its many contingent truths would meet the metahistorical truth. Although what now seems history clearly affected eschatologies, the latter also constructed a 'historical reality' that logically and theologically subsumed history. History made full sense only as it pertained to the final consummation (συντελεία or *consummatio*) of the temporal or political order.[44] Even Daniel's four empires – an apocalyptic topos that postulated the destruction of the last, putatively Roman monarchy – subordinated all to God's universal monarchy.[45]

Using such proof-texts as landmarks, modern historians observe how, for the first two Christian centuries, politically monistic and dualistic tendencies qualified one another. Historians likewise note the end of this rough theological symmetry. By the middle of the third century, language and tradition had so altered the theological

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42. See, for example, Field, *Liberty*, pp. xvi–xvii, 268–9 nn. 13–24; F.J. Leroy, 'L'homélie donatiste ignorée du corpus Escorial (Chrysostomus Latinus, PLS IV, sermon 18)', *Revue bénédictine* 107 (1997), 250–62, esp. 251–2, 261; Gerhart B. Ladner, *God, Cosmos, and Humankind: The World of Early Christian Symbolism*, trans. Thomas Dunlap (Berkeley, CA/Los Angeles, CA/London, 1995), pp. 48–53.

43. See, for example, Norbert Brox, 'Von der apokalyptischen Naherwartung zur christlichen Tugendlehre', *Spätantike und Christentum*, pp. 229–48; Wayne A. Meeks, *The Origins of Christian Morality: The First Two Centuries* (New Haven, CT/London, 1993), pp. 58–65, 115–29, 166–9, 174–88, 206.

44. Magdalino, 'The History of the Future and Its Uses'; Richard W. Burgess, 'Hydatius and the Final Frontier: The Fall of the Roman Empire and the End of the Roman World', in Ralph W. Mathisen and Hagith S. Sivan, eds, *Shifting Frontiers in Late Antiquity* (Aldershot, 1996), pp. 321–32, esp. 324–32; Nichtweiss, *Erik Peterson*, pp. 457–98, 578–90, 617–31.

45. See, for example, Richard Paul Vaggione, *Eunomius of Cyzicus and the Nicene Revolution*, Oxford Early Christian Studies, eds Gillian Clark and Andrew Louth (Oxford/New York, 2000), pp. 362–3; Friedhelm Winkelmann, 'Grundprobleme christlicher historiographie in ihrer Frühphase (Eusebios von Kaisareia und Orosius)', *Jahrbuch der österreichischen Byzantinistik* 42 (1992), 13–27, esp. 18–22.

landscape that the 'apocalyptic dualism' dominated the Latin West, while the 'Pauline monism' prevailed in the Greek East. The West embraced the book of Revelation. After Origen, the East did not fully accept its canonicity until the seventeenth century.[46]

Scholarly Landmarks, Fault Lines and Boundaries

Perhaps the most sweeping explanation of this divergence belongs to Frend: on the one hand, in the Greco-Roman high culture, 'loyalty' to God provided both the warrant and the true measure of one's 'loyalty' to family, fatherland and rulers. As either *eusebeia* or *pietas*, such 'loyalty' meant nothing less than 'piety'. On the other hand, this understanding eluded provincial or rural believers for whom the language of popular culture had limited, or formed another, theological awareness. Isolated from the civilizing holism – and resenting the privileges – of the high culture's education (*paideia*), these provincial or rural believers were correspondingly receptive to an apocalyptic hostility toward the 'powers'.[47]

Religious understanding thus divided along correlative socio-linguistic lines: international high culture against the national popular culture, town against country, rich against poor, and then, by extension and combined momentum, East against West.[48] Since the early Church spread throughout and was nurtured within the Diaspora, Frend suggests that the political fault line not only passed through Judaism and Christianity, but from one to the other. Merging with high Roman culture, 'Hellenistic' attitudes not only opposed 'Palestinian' or 'Aramaic' ones, but also those of (Berber) Numidians and other nations under imperial sway.

Although Frend's social boundaries received some Marxist support,[49] most scholars view them more cautiously. Donatism, for example, now seems a catholic-African or Cyprianic ecclesiology.[50] Recent scholarship redraws many of

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46. See, for example, Field, *Liberty*, pp. xvi–xvii, 268–9 nn. 13–24. Cf. Inglebert, 'Les causes', pp. 23–43.

47. Several studies by Frend: *Martyrdom*; *Donatist*; 'The Church in the Reign of Constantius II (337–361): Mission, Monasticism, Worship', *L'église et l'empire au IVe siècle*, Entretiens sur l'antiquité classique 34, ed. Albrecht Dihle (Geneva, 1989), 73–111 at 93–104; 'Fussala: Augustine's Crisis of Credibility (*Ep.* 20*)', *Les Lettres de Saint Augustin découvertes par Johannes Divjak: Communications présentées au colloque des 20 et 21 Septembre 1982*, Études Augustiniennes (Paris, 1983), pp. 251–65 at 252–3, 264. Cf. Bernhard Schwenk, 'Hellenistische Paideia und christliche Erziehung', *Spätantike und Christentum*, 141–58.

48. While evident, these tendencies seem less pronounced in W.H.C. Frend, *The Rise of the Monophysite Movement: Chapters in the History of the Church in the Fifth and Sixth Centuries* (Cambridge, 1972), esp. pp. vii–xiv, 50–103, 140–41, 355–8.

49. See Theodora Büttner and Ernst Werner, *Circumcellionen und Adamiten: Zwei Formen mittelalterlicher Haeresie* (Berlin, 1959), pp. 1–73. Cf. G.E.M. de Ste. Croix, *The Class Struggle in the Ancient Greek World from the Archaic Age to the Arab Conquests* (Ithaca, NY, 1981), pp. 445–6, 482, 643 n. 15, 651 n. 22.

50. Jean-Paul Brisson, *Autonomisme et christianisme dans l'Afrique romaine de Septime Sévère à l`invasion vandale* (Paris, 1958); A.H.M. Jones, 'Were Ancient Heresies National or Social Movements

Frend's socio-linguistic boundaries. First-century Palestine, for example, seems so profoundly Hellenized that what once passed for 'Hellenistic' now falls under such rubrics as 'gnostic' and 'Jewish'.[51] The initially influential efforts of Jean Daniélou, who made plausible Frend's hints about the Jewish nature of the earliest Western Christianity and the survival of the 'Jewish' apocalyptic in Latin,[52] have likewise fallen on hard times.[53]

in Disguise?', *Journal of Theological Studies* 10 (1959), 280–98; Ladner, *The Idea of Reform*, pp. 463–7; W.H.C. Frend, 'Der Donatismus und die afrikanische Kirche', *Wissenschaftliche Zeitschrift Halle-Wittenberg* 10 (1961), 53-9; R.A. Markus, 'Christianity and Dissent in Roman North Africa: Changing Perspectives in Recent Work', in Derek Baker, ed., *Schism, Heresy and Protest*, Studies in Church History 9 (Cambridge, 1972), pp. 21–36; Emin Tengström, *Donatisten und Katholiken: Soziale, wirtschaftliche und politische Aspekte einer Kirchenspaltung*, Studia Graeca et Latina Gothburgensia 18 (Göteborg, 1964); Ernst Ludwig Grasmück, *Coercitio: Staat und Kirche im Donatistischenstreit*, ed. Max Braubach, Bonner historische Forschungen 22 (Bonn, 1964); Klaus Martin Girardet, *Kaisergericht und Bischofsgericht: Studien zu den Anfängen des Donatistenstreites (313–315) und zum Prozess des Athanasius von Alexandrien (328–346)*, Antiquitas, Reihe 1, Abhandlundlungen zur alten Geschichte 21, ed. Andreas Alföldi (Bonn, 1975), pp. 6–43; Tadeusz Kotula, 'Point de vue sur le christianisme nord-africain à l'epoque du bas-empire', *Les transformations dans la société chrétienne au IVe siècle*, Miscellanea historiae ecclesiasticae 6: Congrès de Varosie 25 juin-1er juillet 1978, Section 1 (Brussels, 1983), pp. 116–20; Alfred Schindler, 'L'histoire du donatisme du point de vue de sa propre théologie', *Les transformations*, pp. 121–5; Bernhard Kriegbaum, *Kirche der Traditoren oder Kirche der Märtyrer? Die Vorgeschichte der Donatismus*, Innsbrucker theologische Studien 16, eds Emerich Coreth et al. (Innsbrück/Vienna, 1986), esp. pp. 9–43, 118–27.

51. G.W. Bowersock, *Martyrdom and Rome* (Cambridge, 1995), esp. pp. 26–8; Robert M. Wilson, 'Jewish Christianity and Gnosticism', in Joseph Moingt, ed., *Judéo-christianisme: Recherches historiques et théologiques offertes en hommage au Cardinal Jean Daniélou* (Paris, 1972), pp. 261–72; James L. Kinneavy, *The Greek Rhetorical Origins of Christian Faith: An Inquiry* (New York/Oxford, 1987), pp. 56–100; A.H.B. Logan and A.J.M. Wedderburn, eds, *The New Testament and Gnosis: Essays in Honour of Robert McL. Wilson* (Edinburgh, 1983); , Jacob Neusner, ed., *Christianity, Judaism, and Other Greco-Roman Cults: Studies for Morton Smith at Sixty*, 4 vols (Leiden, 1975).

52. Cf. works by W.H.C. Frend: 'A Note on Tertullian and the Jews', in F.L. Cross, ed., *Papers presented to the Fifth International Conference on Patristic Studies held in Oxford, 1967*, Studia Patristica 10–11 = Texte und Untersuchungen zur Geschichte der altchristlichen Literatur 107–8, 2 vols (Berlin, 1970–72), 1:291–6; *Martyrdom*, esp. pp. 373–80; 'Jews and Christians in Third Century Carthage', *Paganisme, Judaïsme, Christianisme: Influences et affrontements dans le monde antique: Mélanges offerts à Marcel Simon* (Paris, 1978), pp. 185–94, and 'Blandina and Perpetua: Two Early Christian Heroines', *Les martyrs de Lyon (177)*, Colloques internationaux du Centre national de le recherches scientifique 575 (Paris, 1978), pp. 167–77 at 174–5. See also three studies by Jean Daniélou: *The Development of Early Christian Doctrine before the Council of Nicaea, 1: The Theology of Jewish Christianity*, trans. and ed. John A. Baker (London, 1964); *Études d'exégèse judéo-chrétienne: Le Testimonia* (Paris, 1966); and *A History of Early Christian Doctrine before the Council of Nicaea, 3: The Origins of Latin Christianity*, trans. and ed. David Smith and John Austin Baker (London, 1977), pp. 17–130. Finally, see Gilles Quispel, 'The Discussion of Judaic Christianity', *Vigiliae Christianae* 22 (1968), 81–93.

53. Georg Strecker, 'Le judéo-christianisme entre la synagogue et l'église', trans. Jean-Louis Feiertag, *Orthodoxie et hérésie dans l'église ancienne: Perspectives nouvelles* (Geneva, 1993), pp. 3–20, esp. 4–5; Manlio Simonetti, 'Modelli culturali nella cristianità orientale del II–III secolo', in Louis Holtz and Jean-Claude Fredouille, eds, *De Tertullien aux Mozarabes: Mélanges offerts à Jacques Fontaine, Membre de l'Institut, à l'occasion de son 70ᵉ anniversaire, par ses élèves, amis et collègues*, Collections des Études Augustiniennes, Série Antiquité 132, Série Moyen-âge et Temps Moderne 26, 3 vols (Paris, 1992), 1:381–92, esp. 381–2; Nichtweiss, *Erik Peterson*, pp. 294–5; Carsten Colpe, *Das Spiegel der*

Yet scholarly consensus still recognizes that national languages, regional variants of Latinity and Hellenism, and standing institutional commitments shaped or filtered theologies.[54] In this respect, such studies as those by Peterson, Kantorowicz and Ladner have better survived the test of time. They have found and analysed strands of self-understanding, defined and named in the original sources and marked by *topoi* that demonstrate their linguistic pedigree. Even with special attention to mode of discourse,[55] however, interpreting such self-understandings is far more problematic than noticing them. It entails a methodological dilemma. As Susan R. Garrett and David Brakke put it, there are two ways of understanding Christian 'politics', namely, ' "etic" analysis, "which utilizes the investigator's own analytic categories", and "emic" analysis, which uses native categories in explanation'.[56]

Either the historian analytically dismantles the ancient bridge that connected text and meaning, mapping where and how it connected both, or the historian builds a new bridge. 'Emic' or modern philological approaches chart specific linguistic and textual artifacts within the narrow context of similar or syntactically related artifacts. 'Etic' approaches read the texts within the context of more 'relevant' understandings, whether modern or postmodern. In any case, as Pagels observes, 'the reader's living experience comes to be woven into ancient texts, so that what was "dead letter" again comes to life'.

Propheten: Historische Beziehungen zwischen Judentum, Judenchristentum, Heidentum und frühem Islam, Arbeiten zur neutestamentlichen Theologie 3, ed. Peter von der Osten-Sacken (Berlin, 1990), esp. pp. 38–58; Simon C. Mimouni, 'Pour une définition nouvelle de judéo-christianisme', *New Testament Studies* 38 (1992), 161–8; Joan E. Taylor, 'The Phenomenon of Early Jewish-Christianity: Reality or Scholarly Invention?', *Vigiliae Christianae* 44 (1990), 313–34; Marcel Simon, 'Réflections sur le Judéo-Christianisme', *Christianity, Judaism and Other Greco-Roman Cults*, 3:53–76; Robert A. Kraft, 'In Search of "Jewish Christianity" and Its "Theology"', *Judéo-christianisme*, pp. 81–92; Robert Murray, 'Jews, Hebrews, and Christians: Some Needed Distinctions', *Novum Testamentum* 24.3 (1982), 194–208; Gerald L. Bray, *Holiness and the Will of God: Perspectives on the Theology of Tertullian* (Atlanta, GA, 1979), pp. 132–3.

54. See, for example, the essays in *Morfologie* and *Cristianesimo e specificità regionali nel Mediterraneo latino (sec. IV–VI): XXII Incontro di studiosi dell'antichità cristiana, Roma, 6–8 maggio 1993*, Studia Ephemeridis Augustinianum 46 (Rome, 1994).

55. See, for example, René Braun, 'Les païens juges des chrétiens: Un thème parénétique de Tertullien', *Approches de Tertullien: Vingt-six études sur l'auteur et sur l'oeuvre (1955–1990)*, Collection des Études Augustiniennes, Série Antiquité 134 (Paris, 1992), pp. 119–26; Paolo Siniscalco, 'Argomentazioni escatologiche e pubblico in alcune opere di Tertulliano', *De Tertullien aux Mozarabes*, 1:393–402.

56. Lee Patterson, 'On the Margin: Postmodernism, Ironic History, and Medieval Studies', *Speculum* 65 (1990), 87–108; David Brakke, *Athanasius and the Politics of Asceticism* (Oxford, 1995), p. 15; Susan R. Garrett, 'Sociology of Early Christianity', *Anchor Bible Dictionary* (New York, 1992), 6:89–99 at 91; Oakley, *Politics and Eternity*, pp. 15–24; Christoph Elsas et al., 'Vorwort', in Christoph Elsas et al., eds, *Tradition und Translation: Zum Problem der interkulturellen Übersetzbarkeit religiöser Phänomene. Festschrift für Carsten Colpe zum 65. Geburtstag* (Berlin/New York, 1994), pp. xv–xix, esp. xvii–xviii; Fritz Stolz, 'Gott, Kaiser, Arzt: Konfigurationen religiöser Symbolsysteme', *Tradition und Translation*, pp. 113–30 at 113–14; Thomas Kselman, 'Introduction', *Belief in History*, pp. 1–15, esp. 8–9.

Drawing inspiration from Foucault, she privileges a present 'politics of truth' over its ancient counterpart.[57] By this privilege, John Chrysostom's fourth-century Greek homilies and Augustine's fifth-century Latin polemic seem comparable, so that their contrast seems evidence of change. Yet the theological contrast poses more historical problems than it resolves. It ignores Latin traditions and continuity between John and Augustine, who also gained Greek allies.[58] Perhaps more importantly, the theological contrast ignores the historical evolution of Augustine's own thinking on freedom.[59] Parallel developments in earlier Nicene theologies, even Greek ones,[60] Augustine's reception of Chrysostom's work in Greek or Latin,[61] and Greek reception of Augustine's work likewise remain unmentioned.[62]

57. Pagels, *Adam, Eve, and the Serpent*, pp. xxvii–xxviii. Foucault ostensibly sought the 'other's' politics of truth; see Meaghan Morris and Paul Patton, eds, *Michel Foucault: Power, Truth, Strategy*, 'Working Papers', Collection 2 (Sydney, 1979), pp. 45–6.

58. Vittorino Grossi, 'Sant'Ambrogio e sant'Agostino', *Nec timeo mori*, pp. 405–62; Arnaldo Marcone, 'Il *De Civitate Dei* e il suo pubblico', *Pagani e cristiani*, pp. 267–77; Pier Franco Beatrice, *Tradux peccati: Alle fonti della dottrina agostiniana del peccato originale*, Studia patristica mediolanensia 8, eds Giuseppe Lazzati and Raniero Cantalamessa (Milan, 1978); Gisbert Greshake, *Gnade als konkrete Freiheit: Eine Untersuchung zur Gnadenlehre des Pelagius* (Mainz, 1972); Antoon A.R. Bastiaensen, 'Augustin et ses prédécesseurs latins chrétiens', in J. den Boeft and J. van Oort, eds, *Augustiniana Traiectina: Communications présentées au Colloque International d'Utrecht, 13–14 novembre 1986* (Paris, 1987), pp. 25–57; Jean-Paul Bouhot, 'Une lettre d'Augustin d'Hippone à Cyrille d'Alexandrie (*Epist.* 4*)', *Les Lettres de Saint Augustin découvertes par Johannes Divjak*, pp. 147–53.

59. Hans Jonas, *Augustin und das paulinische Freiheitsproblem: Eine philosophische Studie zum pelagianischen Streit*, 2nd edn (Göttingen, 1965); Volker Henning Drecoll, *Die Entstehung der Gnadenlehre Augustins*, Beiträge zur historischen Theologie 109, ed. Johannes Wallmann (Tübingen, 1999).

60. Susanna Elm, *'Virgins of God': The Making of Asceticism in Late Antiquity* (Oxford/New York, 1994), pp. 375–85; Anatolios, *Athanasius*, pp. 164–204, esp. 172, 204, 238 n. 133.

61. Mathijs Lamberigts, 'Augustine as Translator of Greek Texts: An Example', in A Schoors and P. Van Deun, eds, *Philohistôr: Miscellanea in honorem Caroli Laga septuagenarii*, Orientalia Lovaniensia Analecta 60 (Leuven, 1994), pp. 151–61, esp. 152 and n. 4; idem, 'Augustine, Julian of Aeclanum and E. Pagels' *Adam, Eve, and the Serpent*', *Augustiniana* 39 (1989), 393–435; Eligius Dekkers, 'Les pères grecs et orientaux dans les florilèges patristiques latins', *Philohistôr*, pp. 569–76; George Lawless, 'Augustine of Hippo and His Critics', in Joseph T. Lienhard, Earl C. Muller and Ronald J. Teske, eds, *Augustine: Presbyter Factus Sum* (New York, 1993), pp. 3–28, esp. 17, 26–7 n. 61; Eugene TeSelle, 'Serpent, Eve and Adam: Augustine and the Allegorical Tradition', *Augustine: Presbyter Factus Sum*, pp. 341–61; G.J.M. Bartelink, 'Die Beeinflussung Augustins durch die griechischen Patres', *Augustiniana Traiectina*, pp. 9–24; Charles Kannengiesser, ed., *Jean Chrysostome et Augustin: Actes du colloque de Chantilly, 22–24 septembre 1974*, Théologie historique 35 (Paris, 1975); J.-P. Bouhot, 'Version inédit du sermon "Ad neophytos" de S. Jean Chrysostome, utilisée par S. Augustin', *Revue des études augustiniennes* 17 (1971), 27–41; Pierre Courcelle, *Late Latin Writers and Their Greek Sources*, trans. Harry E. Wedeck (Cambridge, MA., 1969), pp. 146–7, 202–8; Berthold Altaner, 'Altlateinische Übersetzungen von Chrysostomusschriften', *Kleine patristische Schriften*, Texte und Untersuchungen zur Geschichte der altchristlichen Literatur 83 (Berlin, 1967), pp. 416–36.

62. Bouhot, 'Une Lettre'; Gérald Bonner, 'Some remarks on Letters 4* and 6*', *Les Lettres de Saint Augustin découvertes par Johannes Divjak*, pp. 155–64; Berthold Altaner, 'Augustinus in der griechische Kirche bis auf Photius', *Kleine patristische Schriften*, 57–98; E.A. Lowe, 'Greek Symptoms in a Sixth-century Manuscript of St. Augustine and in a Group of Latin Legal Manuscripts', in Sesto Prete, ed., *Didascaliae: Studies in Honor of Anselm M. Albareda* (New York, 1961), pp. 279–89; Eligius Dekkers,

Inextricably linked to Pagels's reading, the cultural structures that filter meaning derive from an idiom immediately accessible to the American reader. Thus ancient exegesis of Genesis becomes 'political language – and specifically the language of sexual politics'. More problematically, however, this language and the criteria that inform it impose present concerns on the past. To the extent that the *topoi* belong to modern English – to the extent that the criteria are modern (Durkheimian or Geertzian) and postmodern (Foucauldian) – examining political theology even merges with doing political theology. A methodological seam remains. On the one hand, Pagels recognizes that theologies cannot be reduced to political agendas and that historical investigation is not religious inquiry. On the other hand, she postulates that Augustine transformed the story of Eden from one about natural freedom into one about natural bondage, which theologically supported 'the totalitarian rule of the later Caesars'. His admirers, then, 'would do well to reassess and qualify' his 'singular dominance in much of Western Christianity'.[63]

Based on evidence overtly abridged to reflect the priorities of the interpreter, as critics note, such efforts to reinvent *augustinisme politique* confront neither historiographical consensus nor original sources in their entirety. Inasmuch as Augustine explictly rejected civil theology, historiographical consensus hardly regards him as a civil theologian.[64] By the same token, whatever political Augustinisms emerged in the Middle Ages and Modernity pertain to selective readings of work that Augustine himself wrote and viewed as a coherent whole. At issue here is not whether his thinking evolved, or whether his hindsight in some ways disadvantaged his view of his own work, or whether historical research is itself in some way selective, but how. What 'we are concerned with here', as Foucault

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'Les traductions grecques des études patristiques latins', *Sacris erudiri* 5 (1953), 193–233 at 207–11; Michael Rackl, 'Die griechischen Augustinusübersetzungen', *Miscellanea Francesco Ehrle: Scritti di storia e paleografia, 1. Per la storia della teologia e della filosofia*, Studi e testi 37 (Rome, 1924), pp. 1–38.

63. Pagels, *Adam, Eve, and the Serpent*, esp. pp. 125–6, 151–4, 169 n. 56 (quotations on pp. 110, 119, 153). As Clark notes, Pagels 'completely ignores Augustine's distinction between *liberum arbitrium* and *libertas*'. Because the former referred to free choice, the latter to eschatological freedom or salvation, 'free choice was not lost'. See Mary T. Clark, *Augustine* (Washington, DC, 1994), esp. pp. 50, 56–7 n. 4; and her review of T. Kermit Scott, *Augustine: His Thought in Context* (New York/Mahwah, NJ, 1995) in *Speculum* 72 (1997), 565–7. Cf. Gustave Combès, *La doctrine politique de saint Augustine* (Paris, 1927); Henri Xavier Arquillière, *L'augustinisme politique: Essai sur la formation des théories politiques du moyen âge*, L'église et l'état au moyen âge 2 (Paris, 1934); Hubert Cancik, 'Augustin als Constantinischer Theologe', in Jacob Taubes, ed., *Der Fürst dieser Welt: Carl Schmitt und die Folgen*, 2nd edn, Religionstheorie und politische Theologie 1 (Munich/Paderborn/Vienna/Zürich, 1985), pp. 136–52.

64. See, for example, Inglebert, 'Les causes', esp. 44–50; Caroline Walker Bynum, *The Resurrection of the Body in Western Christianity, 200–1336*, Lectures on the History of Religions, n.s. 15 (New York, 1995), pp. 108–14; Michael J. Hollerich, 'Augustine as a Civil Theologian?', *Augustine: Presbyter Factus Sum*, pp. 57–69; R.A. Markus, *Saeculum: History and Society in the Theology of Saint Augustine* (Cambridge, 1970); Ladner, *The Idea of Reform*, pp. 130, 153–283; Wilhelm Kamlah, *Christentum und Geschichtlichkeit: Untersuchungen zur Entstehung des Christentums und zu Augustins 'Bürgerschaft Gottes'* (Stuttgart, 1951).

himself wrote, 'is not to neutralize discourse, to make it a sign of something else, and to pierce through its density in order to reach what remains silently anterior to it, but on the contrary to maintain it in its consistency, to make it emerge in its own complexity'.[65]

Hence the disciplinary boundary that once separated history and literary criticism – a boundary now blurred by postmodernizing historians and historicizing semioticians – has hardly prevented methodological rapprochement on two key issues. First, whether viewed as an integral part of a fairly discrete cultural deposit or as the universe to which even the reader belongs, a 'text' cannot be read 'by itself'. Second, no less than 'the literal meaning' – ipso facto unique and fully transparent – 'the historical context', for similar reasons, naïvely presupposes an immaculate perception. Although such crude contextualism does persist among certain positivists, historiographical consensus rejects it as 'cracker-barrel logocentrism'.[66]

No historical contexts exist in themselves. Since personal experience actively confronts and interprets the text, reading out of it (*exegesis*) invariably involves reading into it (*eisegesis*). As Ladner put it, 'the "subjectivity" of historical reflection necessarily adds something to … sociological "objects"', so that 'all historical ideas and concepts including our own not only interpret, but make history'. For Ladner and other thoughtful historians, this 'subjectivity' seemed all the more reason to account for the language that conveyed these 'objects', thus distinguishing – or attempting to distinguish – 'ours' from 'theirs'.[67]

Philological rigour and general interest need not exclude one another. In 1957, the 'relevance' of *The King's Two Bodies* even embarrassed Kantorowicz:

> It would go much too far, however, to assume that the author felt tempted to investigate the emergence of some of the idols of modern political religions merely on account of the horrifying experience of our own time … Admittedly, the author was not unaware of the later aberrations; in fact, he became more conscious of certain ideological gossamers the more he expanded and deepened his knowledge of the early development. It seems necessary, however, to stress the fact that considerations of this kind belonged to

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65. Morrison, 'Sounding', esp. pp. 791–8; Brian Stock, *Augustine the Reader: Meditation, Self-Knowledge, and the Ethics of Interpretation* (Cambridge, MA, 1996); Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. A.M. Sheridan Smith (New York, 1972), p. 47.

66. Dominick LaCapra, *History and Criticism* (Ithaca, NY/London, 1985), pp. 105, 117–34; Oakley, *Politics and Eternity*, pp. 11–24, 188–216, 341; Field, *My Response to T.D. Barnes*, esp. pp. 13–14; Nichtweiss, *Erik Peterson*, pp. 578–83; Garrido López, 'La historia', pp. 204–6; Mark Bevir, 'The Errors of Linguistic Contextualism', *History and Theory* 31 (1992), 276–98. Cf. Barnes, *Ammianus*, p. 14; idem, *Athanasius*, pp. 113, 118, 283 n. 50.

67. See, for example, Pagels, *Adam, Eve, and the Serpent*, p. xxvii; Magdalino, 'History', esp. pp. 3–4, 33; Cameron, 'Perceptions', esp. pp. 27–8; Ladner, *The Idea of Reform*, pp. 425–42, esp. 441–2; Aline Rousselle, 'Jeunesse de l'Antiquité tardive les leçons de lecture de Peter Brown', *Annales, Économies, Sociétés, Civilisations* 40 (1985), pp. 521–7, esp. 523–5; John Behr, 'The Rational Animal: A Rereading of Gregory of Nyssa's *De hominis opificio*', *Journal of Early Christian Studies* 7 (1999), 219–47 at 222–3; Gerd Tellenbach, '"Ungeschehene Geschichte" und ihre heuristische Funktion', *Historische Zeitschrift* 258 (1994), 297–316; Spiegel, *The Past as Text*, pp. xix–xxii, 44–56; Cameron, 'Christianity and Communication', pp. 28–30.

afterthoughts, resulting from the present investigation and not causing it or determining its course.

In 1938, Kantorowicz had fled Germany; in the same year, Ladner fled Europe after the *Anschluss*. Although Kantorowicz hardly seemed religious and although Ladner had converted to Christianity, both were considered Jews, at least by Nazis.[68] The innuendos that Kantorowicz imagined materialized after his death.[69] Since Ladner died in 1993, those who might similarly second-guess his personal motivations – that is, without confronting his scholarship – have not yet emerged. Published posthumously, however, his memoirs shed light on events that profoundly affected his life:

> So in 1933 I became a Catholic. But external circumstances also contributed. After Hitler had seized power in Germany and parliamentary democracy had been destroyed in Austria, I could already foresee the triumph of Nazism and the loss of my country. I then strongly felt the desire for another kind of community, not political, but religious.

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68. Kantorowicz, *The King's Two Bodies*, p. viii; Gerhart B. Ladner, *Erinnerungen*, eds Herwig Wolfram and Walter Pohl, Österreichische Akademie der Wissenschaften, Philosophisch-historische Klasse, Sitzungsberichte 617 (Vienna, 1994), pp. 29–65.

69. Cantor even casts Kantorowicz and Percy Ernst Schramm as 'Nazi twins' whose 'Nazism' also supposedly informed their scholarship, at least before 1938. Richard W. Pfaff observes that the widespread circulation of Cantor's 'mean-spirited and tendentious work is a grievous blow to medieval studies'. Cf. Norman F. Cantor, *Inventing the Middle Ages: The Lives, Works, and Ideas of the Great Medievalists of the Twentieth Century* (New York, 1991), pp. 79–117. See Pfaff's review in *Speculum* 68 (1993), 122–5. Schramm's academic office only joined the Nazis in 1939, and then, significantly, without his name or explicit approbation. See Joist Grolle, *Der Hamburger Percy Ernst Schramm – ein Historiker auf Suche nach der Wirklichkeit* (Hamburg, 1989), p. 34. Thomas F. Mathews imposes a different set of biases on Kantorowicz – now a diehard imperialist or monarchist, and as such, fatally compromised as a scholar of ancient and medieval monarchy. Although Andreas Alföldi and André Grabar are smeared with the same brush, albeit with hues of Hapsburg and Romanov nostalgia, Mathews ultimately attributes to Kantorowicz what Mathews coins and thus dismisses as 'the Emperor Mystique', namely 'the need to interpret Christ as an emperor'. Ignoring important iconographic and literary evidence – most noticeably the commonplace *Christus imperator* – Mathews's separation of 'the imperial and Christ-ly attributes' presupposes intent or rests on the formalistic assumption that images have specific and unchanging import. This iconographic separation of gods and emperors likewise ignores, rather than challenges, broad scholarly consensus, for which the work of Kantorowicz, Grabar and Alföldi remains invaluable. Cf. Thomas F. Mathews, *Clash of Gods: A Reinterpretation of Early Christian Art* (Princeton, NJ, 1993), esp. 16–24, 41–5, 53, 75–7, 179. For reviews, see Peter Brown in *Art Bulletin* 77 (1995), 499–502; W. Eugene Kleinbauer in *Speculum* 70 (1995), 937–41, and Annabel Wharton in *American Historical Review* 100 (1995), 518–19. See also Chiara Frugoni, 'Immagini fra tardo antico e alto medioevo: Qualche appunto', *Morfologie*, 1:703–44 at 709–44; Pierre Dufraigne, *Adventus Augusti, Adventus Christi: Recherche sur l'exploitation idéologique et littéraire d'un cérémonial dans l'antiquité tardive*, Collection des Études Augustinennes, Série Antiquité 141 (Paris, 1994); Ladner, *God, Cosmos, and Humankind*, pp. 53–61, 201–12; Lieselotte Kötzsche, 'Das herrscherliche Christusbild', *Spätantike und Christentum*, pp. 99–124; Johannes G. Deckers, 'Konstantin und Christus: Der Kaiserkult und die Entstehung des Monumentalen Christusbildes in der Apsis', *Costantino il Grande*, 1:357–62; Piero Piccini, 'Ideologia e storia in termini del lessico politico eusebiano: Il tempo eterno della *basileia* di Costantino', *Costantino il Grande*, 2:769–90 at 782–90; Erik Peterson, 'Christus als Imperator', *Theologische Traktate* (Munich, 1951), pp. 149–64.

Known primarily as medievalists, Ladner and Kantorowicz were already close friends before their exile.

Peterson's study of 'monotheism as a political problem' profoundly influenced both, especially in ways that enabled both to see the Middle Ages' correlative political and theological debt to Antiquity. There were also personal parallels and contacts. Like Ladner, Peterson converted to Catholicism (from Protestantism) and endured exile.[70] Though Peterson's work has drawn some scholarly criticism, some critics – like those of Kantorowicz – have also second-guessed his motivations as an historian. How did he relate his own religious and political convictions, and how, if at all, did this relationship affect his historical perspective?[71] How did his conversion and concomitant opposition to Nazism shape his refutation of Carl Schmitt's *politische Theologie* – a notion coined by Schmitt in 1922?[72] Fortunately, the monumental biography of Peterson by Barbara Nichtweiss takes much of the guesswork out of the answers. Although Peterson's political and religious convictions certainly shaped his interests, these convictions hardly governed his study of history or his specific conclusions about it. Given Peterson's unquestioned command of the primary sources, however, the groundbreaking phenomenology of his colleague, Edmund Husserl, and Husserl's students, perhaps most notably Martin Heidegger, demolished positivism and so laid the epistemological and methodological foundations for Peterson's own rejection of the then dominant positivistic historicism.

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70. Ladner, *Erinnerungen*, esp. pp. 11, 47. After the war, Kantorowicz and Peterson became friends. Peterson certainly knew of Ladner and his work in 1938. See Nichtweiss, *Erik Peterson*, pp. 735 n. 119, 872. In the archives of Turin's Biblioteca 'Erik Peterson', I discovered a letter dated 17 November 1952 from Ladner to Peterson. Saluting Peterson as 'Sehr verehrter Professor', Ladner requested and – given the lack of acknowledgment in his *The Idea of Reform* – presumably never received Peterson's reading of the book manuscript.

71. Cf. the following studies in *Monotheismus als politisches Problem?*: Alfred Schindler, 'Einführung', pp. 9–13; Ernst L. Fellechner, 'Methode und These Petersons als Spiegel dogmatischer Entscheidungen', pp. 71–5; idem, 'Zur bibliographischen und theologischen Entwicklung Petersons bis 1935 – eine Skizze', pp. 76–119; Frithard Scholz, 'Zeuge der Wahrheit – ein anderer Kierkegaard', pp. 120–48; idem, 'Bemerkungen zur Funktion der Peterson-These in der neueren Diskussion um eine politische Theologie', pp. 170–201. See also Heinz Hürten, *Verfolgung, Widerstand und Zeugnis: Kirche im Nationalsozialismus. Fragen eines Historikers* (Mainz, 1987), pp. 95–7.

72. Peterson, *Monotheismus*, esp. p. 158 n. 168. Postwar reception accentuated this 'refutation'. See Nichtweiss, *Erik Peterson*, pp. 722–830. See also Dagron, *Empereur*, pp. 39, 290–322; Matthias Lutz-Bachmann, 'Hellenisierung des Christentums?', *Spätantike und Christentum*, pp. 77–98 at 89 n. 47. For Schmitt's atheological, radically decisionistic, pro-Nazi adaptation of Catholic counterrevolutionary thought, see Hans Albert, *Kritik der reinen Hermeneutik: Der Antirealismus und das Problem des Verstehens*, ed. Karl Hofmann, Die Einheit der Gesellschaftswissenschaften 85 (Tübingen, 1994), pp. 164–70; Joël Roman, 'Le christianisme après la chrétienté', in Claude Geffré, ed., *Michel de Certeau ou la différence chrétienne: Actes du colloque 'Michel de Certeau et le christianisme'* (Paris, 1991), pp. 19–35 at 25–9; idem, 'La politique est-elle une théologie sécularisée?', *Esprit* 153 (1989), 109–19; Jacob Taubes, *Die politische Theologie des Paulus: Vorträge, gehalten an der Forschungsstätte der Evangelischen Studiengemeinschaft in Heidelberg, 23.–27. Februar 1987*, eds Aleida and Jan Assmann et al. (Munich, 1993), esp. pp. 86–97, 132–42, 162–4, 168–9, 175–81; Mehlhausen, 'Kirchenpolitik', 291, 297–8; Frithard Scholz, 'Die Theologie Carl Schmitts', *Monotheismus als politisches Problem?*, pp. 149–69.

In any event, Peterson's studies, especially those that linked monotheism to the ancient idea of 'monarchy', proved seminal to generations of scholars. A massive literature, for example, examines the fourth-century political theology of Eusebius of Caesarea, for whom Constantine ordered the world, just as the Word (*Logos*) ordered the universe for God the Father. The Word defeated demons, Constantine vanquished human enemies of the truth. The Word bestowed reason; Constantine urged its use.[73] As Ladner noted, Eusebius had thus politicized Origen's spiritual *Logomimesis*. For just as Origen's *Logomimesis* enabled the spiritual to achieve divinity, so too Eusebius's *Logomimesis* enabled Constantine to share in the image of the divine monarchy.[74] Despite debates about the Middle Platonic and Christian character of this theology,[75] historiographical consensus places it near the center of a deep and enduring matrix of Eastern beliefs.[76]

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73. Covolo, 'Il "capovolgimento"', pp. 143–6; Rudolf Leeb, *Konstantin und Christus: Die Verchristlichung der imperialen Repräsentation unter Konstantin dem Grossen als Spiegel seiner Kirchenpolitik und seines Selbstverständnisses als christlicher Kaiser*, Arbeiten zur Kirchengeschichte 58, eds Kurt Aland et al. (Berlin/New York, 1992), pp. 160–76.

74. Ladner, *The Idea of Reform*, pp. 118–25; Anton Weber, *Arché: Ein Beitrag zur Christologie des Eusebius von Cäsarea* (Rome, 1965), esp. pp. 100–104; Gianna Dareggi, '"Consecratio" e riscontri iconografici: A proposito di un passo di Eusebio di Cesarea', in G. Aurelio Privitera, ed., *Paideia cristiana: Studi in onore di Mario Naldini*, Scritti in onore 2 (Rome, 1994), pp. 429–38; Gerhard Ruhbach, 'Die politische Theologie Eusebs von Caesarea', in Gerhard Ruhbach, ed., *Die Kirche angesichts der konstantinischen Wende*, Wege der Forschung 306 (Darmstadt, 1976), pp. 236–58; Raffaele Farina, *L'impero e l'imperatore cristiano in Eusebio di Cesarea: La prima teologia politica del cristianesimo*, Bibliotheca theologica salesiana, Ser. 1: Fontes 2 (Zürich, 1966); Per Beskow, *Rex Gloriae: The Kingship of Christ in the Early Church* (Stockholm, 1962), pp. 261–75, 313–25; F. Edward Cranz, 'Kingdom and Polity in Eusebius of Caesarea', *Harvard Theological Review* 45 (1952), 47–66.

75. See, for example, François Heim, *La théologie de la victoire de Constantin à Théodose*, Théologie historique 89 (Paris, 1992), pp. 57–105; Winkelmann, 'Grundprobleme'; Francesco Trisoglio, 'Eusebio de Cesarea e l'escatologia', *Augustinianum* 18 (1978), 173–82; Piccini, 'Ideologia'; Giorgio Bonamento, 'Sulla confisca dei beni mobili dei templi in epocha costantiniana', *Costantino il Grande*, 1:171–201 at 180–201; Barnes, *Constantine*, pp. 168, 179–88, 197, 249, 253–5; H.A. Drake, *In Praise of Constantine: A Historical Study and New Translation of Eusebius' Tricennial Orations*, Classical Studies 15 (Berkeley, CA/Los Angeles, CA/London, 1976), pp. 30–45, 57, 75; Salvatore Calderone, 'Teologia politica, successione dinastica e *consecratio* in età costantiniana', in Willem den Boer, ed., *Le culte des souverains dans l'empire romain*, Entretiens sur l'antiquité classique 19 (Geneva, 1973), pp. 213–61; idem, 'Il pensiero', pp. 49–54; Jan Badewien, 'Euseb von Cäsarea', *Monotheismus als politisches Problem?*, pp. 43–9.

76. See, for example, Carmelo Capizzi, 'Il monofisismo di Anastasio e il suo influsso sullo scisma laurenziano', in Giampaolo Mele et al., eds, *Il papato di San Simmaco (498–514): Atti del Convegno Internazionale di studi, Oristano 19–21 novembre 1998*, Studi e ricerche di cultura religiosa, Nuova Serie, 2 (Cagliari, 2000), pp. 79–110, esp. 94–5; Lutz-Bachmann, 'Hellenisierung', esp. p. 89; Cornelia J. de Vogel, 'Der sog. Mittelplatonismus, überwiegend eine Philosophie der Diesseitigkeit?', in Horst-Dieter Blime and Friedhelm Mann, eds, *Platonismus und Christentum: Festschrift für Heinrich Dörrie*, Jahrbuch für Antike und Christentum, Ergänzungsband 10 (Münster, 1983), pp. 277–302; Milton V. Anastos, 'Byzantine Political Theory: Its Classical Precedents and Legal Embodiment', in Speros Vryonis, ed., *The 'Past' in Medieval and Modern Greek Culture*, Byzantina kai Metabyzantina 1 (Malibu, CA, 1978), pp. 13–53 at 23–6; D.M. Nicol, 'Byzantine Political Thought', *The Cambridge History of Political Thought*, pp. 51–82 at 51–3.

Mapping Philologies: Boundaries or Time Zones?

This study has variously placed the 'philological middle' between positivistic and postmodern extremes, which in terms of their own evolution were also variously socio-materialist and semiotic. By the same token, what here passes for the 'philological middle' elsewhere falls under the rubric of the 'old philology', so that some postmodern approaches even seem to constitute the 'new philology'.[77] Whatever the merits of this 'new' description, the philological newness defies hard and fast definitions. Since it pertains as much to philosophical renewal as to novelty, the works of Benedetto Croce, Ferdinand de Saussure, Ludwig Wittgenstein and Martin Heidegger seem, in turn, alternatively transitional, pivotal or foundational.

At any rate, the renewal in philology occurred during the same half-century (1920s to 1970s) when the 'new' or 'modern history' – variously positivist, Marxist and *Annaliste* – turned aside the philological thrust of the 'old'. In practice, then, the 'old philology' proved receptive to the 'new philology' long before the 'linguistic turn' of the 1970s and the 'new new' or 'postmodern history'.[78] Whether 'old' or 'new', philologies wrestle with their own linguistically defined universe in order to come to grips with the 'other'. Since German medievalists fetished such a linguistically defined universe as a historical self-understanding (*Selbstverständnis*) long before postmodern use, the 'old' philology still influences and qualifies the 'new'.[79]

Pushed too far – that is, towards hypostasis – the temporal labels therefore impede rather than facilitate understanding. They fail to account for the porousness of theoretical boundary between the 'two' philologies and the cultural bonds variously connecting them to other historiographical traditions. If neither entirely old nor entirely new, the 'philological middle' is also hardly monolithic. Peterson, Kantorowicz and Ladner, for example, wrote *Geistesgeschichte*. Analogous to the 'history of ideas' and often regarded as such – all the more so since Kantorowicz and Ladner also wrote in English – this kind of historiography hardly monopolizes the discourse of the philological middle.

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77. See, for example, Sigfried Wenzel, 'Reflections on (New) Philology', *Speculum* 65 (1990), 11–18; R. Howard Bloch, 'New Philology and Old French', *Speculum* 65 (1990), 38–58.

78. See, for example, Ignacio Olábarri, '"New" New History: A *Longue Durée* Structure', *History and Theory* 34 (1995), 1–29; Gérard Noiriel, *Sur la 'crise de l'histoire'* (Paris, 1996), esp. pp. 9–46, 81–89, 123–44, 261–86.

79. Michael Borgolte, 'Mittelalterforschung und Postmoderne: Aspekte einer Herausforderung', *Zeitschrift für Geschichtswissenschaft* 43 (1994), 615–27, esp. 621 n. 42. For application to Antiquity, see Jörg Ernesti, *Princeps christianus und Kaiser aller Römer: Theodosius der Grosse im Lichte zeitgenössischen Quellen*, Paderborner theologischen Studien 25, eds Remigius Bäumer et al. (Paderborn/Munich/Vienna/Zürich, 1998), pp. 17–159; Elsas, 'Vorwort', *Tradition und Translation*, pp. xvii–xviii; Ulrich Neymeyr, 'Christlicher Lehrer im 2. Jahrhundert: Ihr Lehrtätigkeit, ihr Selbstverständnis und ihre Geschichte', in Elizabeth A. Livingstone, ed., *Papers presented to the Tenth International Conference on Patristic Studies held in Oxford 1987*, Studia Patristica 21 (Leuven, 1989), pp. 158–62; Vaggione, *Eunomius*, esp. p. 50; Leeb, *Konstantin*; Winkelmann, 'Grundprobleme', esp. 18; Hans Hubert Anton, 'Kaiserliches Selbstverständnis in Religionsgesetzgebung der Spätantike und päpstliche Herrschaftsinterpretation im 5. Jahrhundert', *Zeitschrift für Kirchengeschichte* 88 (1977), 38–84.

Like the history of ideas, *histoire des mentalités* – by analogy and use, also 'cultural history' – concerns itself with patterns of expression that existed in certain societal or group matrices. What 'ideas' are to *Geist*, 'models' are to *mentalités*. In other words, the history of ideas tends to trace the diachronic descent of intellectual patterns, and cultural history tends to trace the synchronic strata that shape them. Yet both kinds of history try to locate and interpret artifacts temporally, that is, where the two lines intersect.[80] Both kinds of history recognize that social explanations entail philological analysis. Both kinds of history have likewise long borne the fruits of cross-pollination.

In this respect, Gilbert Dagron and Pierre Dufraigne – both of whom examine political theologies as *mentalités* – derive much from Kantorowicz, who himself had valued such *Annales* efforts as those of Marc Bloch. Building on Peterson's work, François Heim likewise shows how Christianity diminished the importance of imperial *virtus* while exalting imperial *pietas*.[81] Methodologically, Bloch himself drew inspiration from the work of Henri Pirenne, who, arguably more than any other scholar, laid the groundwork for the emergence of Late Antiquity in twentieth-century historiography.[82] Philological approaches to cultural history still pay special attention to social and material contexts, as did Pirenne, but demonstrate their complexity rather than reduce them to a bipolar class conflict in the manner of Frend.[83]

In the English-speaking world, such well-known cultural historians as Peter Brown and Averil Cameron have recently paid serious attention to ways in which theological language informed political power in Late Antiquity.[84] Again, the theoretical 'position' of 'cultural history' is hardly absolute: in exploring the effects

80. See, for example, Sven Grosse, 'Zum Verhältnis von Mentalitäts- und Theologie-geschichtsschreibung: Methodologische Überlegungen am Beispiel der Frömmigkeitstheologie', *Zeitschrift für Kirchengeschichte* 105 (1994), 178–90; Paul-Albert Février, 'Discours d'Église et réalité historique dans les nouvelles Lettres d'Augustin', *Les Lettres de Saint Augustin découvertes par Johannes Divjak*, pp. 101–15; Kselman, 'Introduction', *Belief in History*, pp. 5–7.

81. Dagron, *Empereur*, esp. pp. 17–29, 84, 257, 274; Dufraigne, *Adventus*; Heim, *La théologie*, esp. pp. 13, 25, 47, 312 n. 93, 323; Kantorowicz, *The King's Two Bodies*, pp. 252–3 n. 184; Marc Bloch, *Les rois thaumaturges* (Strasbourg, 1924). See also Ernesti, *Princeps*, pp. 161–230, 262–97; Bertelli, *The King's Body*, esp. pp. xv–xviii, 4–7; Finzi, 'Il pensiero', pp. 161–7; Kötzsche, 'Das herrscherliche', esp. pp. 112 n. 35; Vera, 'Le forme', pp. 299–317, 331–2.

82. André Burguière, 'Marc Bloch, historien des mentalités', *Marc Bloch, l'historien et la cité*, Collection de la Maison des Sciences de Homme de Strasbourg 22 (Strasbourg, 1997), pp. 43–67, esp. 48–9; Pierre Racine, 'Henri Pirenne et Marc Bloch, un nouveau regard sur l'histoire médiévale', *Marc Bloch, l'historien et la cité*, pp. 79–88; Brown, '*Mohammed and Charlemagne* by Henri Pirenne', *Society and the Holy in Late Antiquity* (Berkeley, CA, 1982), pp. 63–79.

83. See, for example, Filippo Burgarella, 'Pagani e cristiani tra IV e V secolo a Costantinopoli', *Pagani e cristiani*, pp. 181–91; Rita Lizzi, '*Discordia in urbe*: Pagani e cristiani in rivolta', *Pagani e cristiani*, 115–40.

84. See, for example, two books by Peter Brown: *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (Madison, 1992), and *Authority and the Sacred: Aspects of the Christianisation of the Roman World* (Cambridge, 1995).

of political geography and monotheism on one another, Garth Fowden owes as much to Frend as to Peterson.[85] Frend himself was and is a cultural historian.

Cultural historians draw on a vast array of disciplines, including demography, prosopography, cultural anthropology, semiotic (now poststructuralist) hermeneutics and regional history. Much therefore depends on the applicability of other approaches, which themselves remain in a constant state of flux.[86] There are also occupational hazards. Sophisticated sociologies can emerge as 'final causes' that teleologically 'direct' history to the present analytical categories. Put differently, no less than the outdated positivism, such methodologies can rip scientistic 'facts' – now constructed as atemporal generalizations – from their narrative past.

Even Bloch's work has not remained immune from such criticism.[87] For the very reasons that early *Annalistes* saw historical narratives as ideological constructs, and therefore distortions of the 'facts', subsequent cultural histories can also seem 'overlaid or even overburdened by interpretations' to which they are indebted.[88] Similar critiques dog the history of ideas. If cultural history seems weighted by its tools, then the history of ideas seems weighted by its work. Many historians are leery of it. They suspect and frequently find a 'mythology of prolepsis', namely the retrospective or teleological interpretation of texts according to what they came to mean in later times.[89]

Perhaps the most frequently noticed example of such an interpretation belonged to Walter Ullmann, for whom 'the teleological principle', upon 'which any society must needs rest, operates through the principle of functional qualification'. In the fifth century, then, Pope Leo I, 'by virtue of succeeding to the throne of St Peter … claimed that he alone was functionally qualified to rule the universal Church,

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85. Garth Fowden, *Empire to Commonwealth: Consequences of Monotheism in Late Antiquity* (Princeton, NJ, 1993). Inasmuch as geography seems determinant, there is also the debt to the earlier *Annales* effort of Braudel.

86. See, for example, Cameron, 'On Defining'; Francisco Vazquez García, 'Los problemas de la explicación en historia de las mentalidades', *Historia a debate*, 2:37–51; André Burguière, 'L'anthropologie historique e l'École des Annales', *Historia a debate* 3:127–37; Lellia Cracco Ruggini, 'La fisionomia sociale del clero e il consolidarsi delle istituzioni ecclesiastiche nel norditalia (IV–VI secolo)', *Morfologie*, 1:851–901; Christine Delaplace, 'Géographie de l'érémétisme en Gaule: Marches et marges de la christianisation', *Frontières terrestres, frontières célestes dans l'antiquité*, ed. Aline Rousselle (Paris, 1995), pp. 409–34; Rousselle, 'Jeunesse'.

87. See, for example, Paul Veyne, *Comment on écrit l'histoire: Essai d'épistémologie* (Paris, 1971), pp. 124–211.

88. Dominick LaCapra, 'Rethinking Intellectual History and Reading Texts', in Dominic LaCapra and Steven L. Kaplan , eds, *Modern European Intellectual History: Reappraisals and New Perspectives* (Ithaca, NY, 1982), pp. 47–85 at 65.

89. Cf. Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory* 8 (1969), 3–53, esp. 7–10, 22–4. See John Van Engen, 'Images and Ideas: The Achievements of Gerhart Burian Ladner, with a Bibliography of his Published Works', *Viator* 20 (1989), 85–115, esp. 105–6; Oakley, *Politics and Eternity*, pp. 8–24, 341. Skinner criticized Lovejoy's 'history of ideas' or its anachronistic 'focus', which the philological and contextual 'digressions' of *Geistesgeschichte* also avoid.

that is, to rule it on the monarchical principle'.[90] Since everything else seemingly followed logically, Ullmann never veered from his defence of this 'principle', at once teleological and monarchical, ancient and medieval, always real, but often latent, textually disembodied, or existing only in his own textualization.[91] To be sure, Ullmann did find *topoi* and proof-texts that are arguably monarchical. As Robert Benson suggested, however, Ullmann had mixed and matched them as adornments of the 'principle' that he himself had characterized.[92]

With equal zeal, others, including Ullmann's critics, defend and reify the 'principle' of 'political dualism'. So the debate continues,[93] and it generally invokes other modern reifications, 'caesaropapism', for example, as opposed to 'papocaesarism' or 'hierocracy'.[94] Even newer reifications have joined them, so that such 'enduring categorical structures' as 'sociolatry' or 'redeeming politics' and 'clerocracy' seem to race 'ahead of history' and seem 'autonomous with respect to various social and political contexts'.[95] Historians of ideas generally reject such reification. As Karl F. Morrison notes, for example, such static conceptualization 'has not applied the philologists' rule that transmission re-creates ideas as profoundly as it does texts'. Without the 'philologists' rule', such reification separates ideas from the very languages that supposedly carried them.[96]

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90. Walter Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relationship of Clerical to Lay Power*, 3rd edn (London, 1979), esp. p. 2. See also Frend, *The Rise of the Monophysite Movement*, pp. 195–7.

91. See the following studies by Walter Ullmann: *Gelasius I (492–496): Das Papsttum an der Wende der Spätantike zum Mittelalter*, Päpste und Papsttum 18, eds Georg Denzler et al. (Stuttgart, 1981), esp. pp. 1–34; 'Der Grundsatz der Arbeitsteilung bei Gelasius I'., *Historisches Jahrbuch* 97/98 (1978), 41–70; 'Some Remarks on the Significance of the Epistula Clementis in the Pseudo-Clementines', in F.L. Cross, ed., *Papers presented to the Third International Conference on Patristic Studies held at Christ Church in Oxford, 1959*, Studia Patristica 3–6, 4 vols (Berlin, 1961), 2:330–37.

92. See, for example, Fornasari, 'La Bibbia', pp. 328–9, 333; Robert L. Benson, 'The Gelasian Doctrine: Uses and Transformations', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *La notion d'autorité au moyen âge: Islam, Byzance, Occident*, Colloques internationaux de La Napoule (Paris, 1982), pp. 13–44, esp. 14, 38 nn. 6, 7; Friedrich Kempf, 'Die päpstliche Gewalt in der mittelalterlichen Welt: Eine Auseinandersetzung mit Walter Ullmann', *Miscellanea historiae pontificiae* 21 (1959), 117–69. For other teleologies in Ullmann's work, see Oakley, *Politics and Eternity*, pp. 25–72.

93. Cf. Richard Faber, 'Der kaiserlich-päpstliche Dualismus in Hochmittelalter: Zu Entstehung des neuzeitlichen Staates', in Burckhard Gladigow, ed., *Staat und Religion* (Düsseldorf, 1981), pp. 75–95; R.W. and A.J. Carlyle, *A History of Mediaeval Political Theory in the West*, 6 vols (New York, 1903–36), 4:384–95.

94. Dagron, *Empereur*, esp. 290–322. Cf. Covolo, 'Il "capovolgimento"', esp. 138–9; Carmello Capizzi, 'Giustinano: Fu un cesaropapista?', *La civiltà cattolica* 145 (1994), 37–50; Charles Pietri, 'La politique de Constance II: Un premier "césaropapiste" ou *l'imitatio Constantini*', *L'église et l'empire*, pp. 113–72; Jean-Marie Sansterre, 'Eusèbe de Césarée e la naissance de la théorie césaropapiste', *Byzantion* 42 (1972), 554–86.

95. Cf. Peter Iver Kaufman, *Redeeming Politics* (Princeton, NJ, 1990), esp. pp, 5, 28, 171–3.

96. For reviews of Kaufman, *Redeeming Politics*, see R.A. Markus, *Journal of Ecclesiastical History* 43 (1992), 140–41; Karl F. Morrison, *Speculum* 67 (1992), 699–700. See also Morrison's other works: *Rome and the City of God: An Essay on the Constitutional Relationships of Empire and Church in the*

Although philologically oriented histories of ideas generally remain diachronic, Caspary's history of the 'two swords' provides an exception to prove the rule: the study was to have been the first volume of a diachronic history reaching from the third through the twelfth century, but never received another volume. Parting from previous consensus, Caspary attributed the genesis of the 'spiritual sword' and the 'temporal sword' – which became preeminent medieval symbols of Church and monarchy – to the third-century Greek Father, Origen. Yet the structuralism of Lévi-Strauss made the attribution possible, so that both the method and the conclusion became problematic.

Since the 'structure' of the two swords seemed 'primary and self-regarding', it also seemed uncaused in a historical sense. If Origen exegetically implied the structure of the two swords, then when, where, how, and why did they become so politically explicit in the Latin West? Subsequent research has addressed these questions and related questions concerning the political implications of eschatological *libertas* (liberty), for which Christian Latin coined the synonym *salvatio* (salvation). Typologically, as Aline Rousselle suggests, the sword made martyrs. It linked them as sacrifices to their *liberator*, Christ. As other studies have demonstrated, the early fourth-century description of the sword as temporal (*gladius temporalis*) presupposed the eternal 'reality' of the spiritual sword – Tertullian's *machaera spiritalis* or Cyprian's *gladius spiritalis*. Such late fourth-century formulations as the 'material sword' and the 'world's sword' (*gladius materialis* and *gladius saeculi*) similarly emerged in antithesis to the spiritual sword.[97]

Conclusion: Theology as Political History, and Historicism as Political Teleology

Contrary to the positivistic myth of 'the underlying facts themselves', philological approaches regard 'facts' as constructed in the sources, in their own terms, and on their own terms, that is, within their own interpretive frameworks.[98] History written 'as it actually was' – '*wie es eigentlich gewesen*', as Ranke wrote in 1824 – merely begs the question: to whom?[99] Critiquing positivistic historicism, Charles Kannengiesser

Fourth Century, Transactions of the American Philosophical Society 54.1 (Philadelphia, PA, 1964); *Tradition and Authority in the Western Church, 300–1140* (Princeton, NJ, 1969).

97. Caspary, *Politics and Exegesis*, esp. p. 107; Field, *Liberty*; idem, *My Response to T.D. Barnes*, pp. 20–29; Rousselle, 'Image', esp. p. 115; eadem, 'Le glaive d'Abraham', in Patrick Guyomard and Maud Mannoni, eds, *Le Père: Métaphore paternelle et fonctions du père: L'Interdit, la Filiation, la Transmission*, L'espace analytique (Paris, 1989), pp. 481–500, esp. 494–8.

98. Aline Rousselle, 'Frontières terrestres, frontières célestes dans l'antiquité: Présentation', *Frontières*, pp. 7–16, esp. 8; eadem, *La contamination spirituelle: Science, droit et religion dans l'Antiquité* (Paris, 1998), esp. p. 42; Vaggione, *Eunomius*, esp. pp. 48–50, 58–61, 72 nn. 228–9, 96–103, 283–85, 374–81. Cf. Barnes, *Constantine*, p. v.

99. Leopold von Ranke, *Geschichten der romanischen und germanischen Völker von 1494 bis 1514*, Sämmtliche Werke 33, 2nd edn (Leipzig, 1874), p. vii; Karen L. King, 'Translating History: Reframing Gnosticism in Postmodernity', *Tradition und Translation*, pp. 264–77 at 273–7.

notes that 'the logical foundation of Christian identity is of a hermeneutical order'. It radically reinterpreted the Law.[100] Given the determinative role played by Scripture and exegesis, Averil Cameron observes that 'Christianity had a special relationship to textuality', which subverts positivistic distinctions between historical documents and other texts, including theological texts.[101] Even in martyr acts and hagiography, the text emerged as *documentum* for imitation (*ad exemplum sui*).[102]

Rejecting this kind of 'documentary evidence', positivistic and later Marxist historicism embraced a representationalism that conveniently separated 'historical reality' from its textual 'representation'. Without questioning what this 'reality' presupposed as a condition of its own representation, historicists assumed historical motivation and political causation in terms other than those used in theological sources. 'Historical reality' seemed to underlie Christianity's 'ideological plane'.[103] Although such a perspective acknowledged original sources, it rejected their language, the contingencies of that language, and the contingencies of all knowledge as linguistic and historical.[104]

No less than Hegelianism, then, the secularized 'eschatologies' of positivism and Marxism contradicted history as past truth, as cultural truth, as 'other' truth.[105] If Hegel's philosophy of history secularized Christian theodicy, so that *Geist* attained

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100. Charles Kannengiesser, *Le Verbe de Dieu selon Athanase d'Alexandrie*, Collection 'Jésus et Jésus-Christ' 45, ed. Joseph Doré (Paris, 1990), pp. 13–22, esp. 13–14. See also J. Leemans, 'Thirteen Years of Athanasius Research (1985–1998): A Survey and Bibliography', *Sacris erudiri* 39 (2000), 105–217 at 186–96; Guy G. Stroumsa, *Kanon und Kultur: Zwei Studien zur Hermeneutik des antiken Christentums*, Hans-Leitzmann-Vorlesungen 4, ed. Christoph Markschies (Berlin/New York, 1999); Sesboüé, *Saint Basile*, esp. pp. 246–51; Nichtweiss, *Erik Peterson*, pp. 578–90; Brox, 'Von der apokalyptischen', pp. 236–8; Hermann Josef Sieben, 'Herméneutique de l'exégèse dogmatique d'Athanase', in Charles Kannengiesser, ed., *Politique et théologie chez Athanase d'Alexandrie: Actes du Colloque de Chantilly 23–25 septembre 1973*, Théologie historique 27 (Paris, 1974), pp. 195–214.

101. Cameron, *Christianity and the Rhetoric of Empire*, esp. pp. 2–6; eadem, 'Perception', esp. 15–16; eadem, 'On Defining', esp. 42–3; Rousselle, 'Frontières'; Perkins, *Suffering*, esp. 5, 25–6; G.W. Bowersock, *Fiction as History: Nero to Julian*, Sather Classical Lectures 58 (Berkeley, CA/Los Angeles, CA, 1994); Elizabeth DePalma Digeser, *The Making of a Christian Empire: Lactantius and Rome* (Ithaca, NY, 2000), esp. p. ix.

102. Francesco Scorza Barcellona, 'Dal modello ai modelli', in Giulia Barone, Marina Caffiero and Francesco Scorza Barcellona, eds, *Modelli di santità e modelli di comportamento: Contrasti, intersezioni, complementarità* (Turin, 1994), pp. 9–18; Réginald Grégoire, 'Agiografia e storiografia nella "Vita antiqua" di Eusebio di Vercelli', *La Sardegna*, pp. 187–200. Cf. Barnes, 'Was heisst', p. 267.

103. Cf. Ste. Croix, *Class*, esp. pp. 409–52; Barnes, *Athanasius*, esp. pp. ix, 53. See Danto, *Narration*, 298–341, esp. 300–304; Kurt Rudolf, 'Erkenntnis und Heil: Die Gnosis', *Spätantike und Christentum*, pp. 37–54 at 38; Nichtweiss, *Erik Peterson*, pp. 370–82.

104. See, for example, Tamsyn S. Barton, *Power and Knowledge: Astrology, Physiognomics, and Medicine under the Roman Empire*, The Body, in Theory: Histories of Cultural Materialism, eds Dalia Judovitz and James I. Porter (Ann Arbor, MI, 1994), esp. pp. 2–25.

105. Rousselle, *La contamination*, esp. p. 226; Bambach, *Heidegger*, esp. pp. 1–55; Ralf Konersmann, *Der Schleier des Timanthes: Perspektiven der historischen Semantik* (Frankfurt am Main, 1994), esp. pp. 111–12, 227–32; Salvatore Calderone, 'Letteratura costantiniana e "conversione" di Costantino', *Costantino il Grande*, 1:231–52, esp. 234–9; Nichtweiss, *Erik Peterson*, esp. pp. 105–7, 135–63, 457–98; LaCapra, *Soundings in Critical History*, pp. 155–81.

full self-understanding when it recognized its complete identity with the wholly Other (*das ganz Andere*), then Kant and Marx avoided onto-theological speculation precisely by embracing alternative teleologies:[106] historical truths did not derive from an ulterior perspective but from an ultimate one.[107]

No less than this 'final judgment', the historicistic claim to 'probe behind' sources to discover there the essence of the real entailed a circular argument, for the sources' lack of 'essential veracity' can only be inferred from the very texts that purportedly hide it.[108] Since referents do not exist outside language, historicists not only ignored their own roles as signifiers, even as they resignified the referent as 'real' somewhere 'behind' or 'outside' their text; they also tautologically totalized self-evidence as the self-evident 'reality'.[109]

Ignoring the aporetic impasse created by the conflicting uses of the name 'Athanasius', for example, positivists purged these textual constructions of their ideological *raison d'être*, ripped the referent from hostile narratives, and then confused the amputated referent with the 'real' Athanasius of Alexandria, who died sixteen centuries ago![110] Since no *ex parte* accusation could, by that very fact, formulate a truth to which all sides subscribed,[111] historicism compounded

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106. See three studies in François Dagognet and Pierre Osmo, eds, *Autour de Hegel: Hommage à Bernard Bourgeois* (Paris, 2000): Francis Guibal, 'Histoire et esprit: Le devenir-philosophie du monde selon Hegel', pp. 161–85; Béatrice Longuenesse, 'Sujet/Objet dans l'analytique kantienne du beau', pp. 291–317, and Dominique Janicaud, 'Déraison de l'histoire, impuissance du rationnel?', pp. 227–37; see also David D. Roberts, *Nothing but History: Reconstruction and Extremity after Metaphysics* (Berkeley, CA/Los Angeles, CA, 1995), esp. pp. 1–39; Alexander Demandt, "Kaisertum und Reichsidee in der Spätantike," *Spätantike und Christentum*, pp. 9-22 at 9, 22; Rudolf, 'Erkenntnis', pp. 38, 52; Lutz-Bachmann, 'Hellenisierung', pp. 95–7.

107. Godzich, 'Foreword: The Further Possibility of Knowledge', in Certeau, *Heterologies*, esp. pp. xviii, xix; Limberis, 'Religion', esp. pp. 376–86; Spiegel, *The Past as Text*, esp. pp. xvii–xix, 44–56, 160.

108. Cf. three works by Barnes: *Athanasius*, esp. p. ix; *Ammianus*, pp. 16–17; 'Was heisst', esp. pp. 260, 267.

109. See, for example, Barthes, 'Discourse', esp. pp. 14, 17–18; Elsas, 'Vorwort', *Tradition und Translation*, esp. pp. xvii–xviii; Lester L. Field Jr, *On the Communion of Damasus and Meletius: Fourth-Century Synodal Formulae in the Codex Veronensis LX, with Critical Edition and Translation*, Studies and Texts 145 (Toronto, 2004), esp. p. 126 n. 37 (despite misprints for 'co-opt' and 're-emerge') and pp. 232–3.

110. Cf. Barnes, *Athanasius*, esp. pp. ix, 32–3, 53, 250 n. 52; Richard Klein, *Constantius II. und die christliche Kirche* (Darmstadt, 1977); Otto Seeck, *Geschichte des Untergangs der Antiken Welt*, 6 vols (Stuttgart, 1920–22), esp. 3:208–9, 442; idem, 'Untersuchungen zur Geschichte des Nicänischen Konzils', *Zeitschrift für Kirchengeschichte* 17 (1896/97), 1–71, 319–62, esp. 33–41; Eduard Schwartz, *Zur Geschichte des Athanasius*, Gesammelte Schriften 3 (Berlin, 1959); idem, 'Zur Kirchengeschichte des vierten Jahrhunderts', *Zeitschrift für neutestamentliche Wissenschaft und die Kunde des Urchristentums* 34 (1935), 129–213.

111. See, for example, Arnold, *The Early Episcopal Career*, pp. 62–89, 175–86; Markschies, *Ambrosius*, esp. pp. 65–6; idem, 'Ambrogio teologo trinitario', *La scuola cattolica* 125 (1997), 741–62, esp. 750–51; Girardi, *Basilio*, esp. p. 119; W.H.C. Frend, 'St. Ambrose and other Churches', *Nec timeo mori*, pp. 161–80 at 163; Vaggione, *Eunomius*, esp. pp. 38, 48–50, 59, 81–2, 86–7, 102–5.

the ancient historiographical problem by erecting another ideology, a modern one, against contending theologies of the fourth century.

Since this objectivist ideology seemed to debunk the sources, even such philologists as Otto Seeck and Eduard Schwartz reverted to Rankean historicism when they wrote history.[112] By a kind of 'general law' unknown to the doctrines of the ancient parties, 'true' motivation, finally discovered in modernity, displaced the 'misrepresentations' of the sources.[113] The 'empirical' separation of politics and theology not only precluded the theological authenticity of public resistance to religious policy, but also valorized silent disagreement with it.[114] As a consequence, Athanasius, among others who publicly resisted emperors in matters of faith, emerged as a lying politician rather than an authentic theologian.[115]

Such assumptions or ascriptions of intent now ignore prevailing practice as well as serious theory. Even historians who assume that the sources belie what their authors really thought cannot rightly use this methodological assumption as historical proof. As for 'real' motivation – if it was ever fully known, understood, or reduced to simple motive – Caroline Walker Bynum notes that 'we can never know what an author or an actor "really meant"'.[116] As others observe, Christian 'history' influenced the

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112. Martin, *Athanase*, pp. 2–4; LaCapra, *Soundings in Critical History*, esp. p. 13; King, 'Translating', esp. pp. 272–7. Cf. Barnes, 'Was heisst', pp. 259, 264.

113, Danto, *Narration*, esp. pp. 201-56. Seeck even charged Athanasius with forgery – a charge decisively refuted by Sigismund Rogala, *Die Anfänge des arianischen Streits*, Forschungen zur christlichen Literatur und Dogmengeschichte 7.1, eds A. Ehrhard and J.P. Kirsch (Paderborn, 1907), pp. 8–11, 86–92; Rudolf Seiler, *Athanasius' Apologia contra Arianos (Ihre Entstehung und Datierung)* (Düsseldorf, 1932), pp. 39-40; Norman H. Baynes, 'Athanasiana', *Journal of Egyptian Archaeology* 11 (1925), 58–69, esp. 58–9, 61–5, 69.

114. As Capizzi notes in the fifth-century case of Acacius and Zeno. See Capizzi, 'Il monofisismo', esp. p. 86. Cf. Eduard Schwartz, *Publizistische Sammlungen zum acazianischen Schisma*, Abhandlungen der Bayerischen Akademie der Wissenschaften, Philologisch-historische Abteilung, N.F. 10 (Munich, 1934), pp. 187–212.

115. Cf. Barnes, *Athanasius*, esp. pp. ix, 53; Seeck, *Geschichte*, esp. 3:208–9, 442; idem, 'Untersuchungen', esp. pp. 33–41; Schwartz, *Zur Geschichte*; idem, 'Zur Kirchengeschichte'. Similarly, for Seeck and McLynn on Ambrose of Milan, see Francesco Corsaro, 'Il trono e l'altare: Da Costantino a Teodosio: *De obitu Theodosii* di Ambrogio', *Vescovi e pastori in epoca teodosiana: In occasione del XVI centenario della consecrazione episcopale di S. Agostino, 396–1996. XXV Incontro di studiosi dell'antichità cristiana, Roma, 8–11 maggio 1996*, Studia Ephemeridis Augustinianum 58, 2 vols (Rome, 1997), 2:601–11 at 605 n. 21, 606; Yves-Marie Duval, 'Ambroise e l'arianisme occidental', *L'extirpation de Arianisme en Italie du Nord et en Occident: Rimini (359/60) et Aquilée (381) Hilaire de Poitiers (+367/8) et Ambroise de Milan (+397)* (Aldershot, 1998), pp. 1–39, esp. 6–8; Field, *Liberty*, p. 362 n. 55; Hervé Savon, *Ambroise de Milan* (Paris, 1997), pp. 7–9. Yet McLynn more carefully casts his positivism in terms of what he considers plausible, so that Duval notes the number of times that McLynn uses 'probably', 'perhaps' and 'could be'. Cf. Neil B. McLynn, *Ambrose of Milan: Church and Court in a Christian Capital*, The Transformation of the Classical Heritage 22 (Berkeley, CA/Los Angeles, CA/ London, 1994).

116. See, for example, Bynum, *Fragmentation*, pp. 22–3, 27–78; eadem, *Resurrection*, pp. xv–xx; Nichtweiss, *Erik Peterson*, pp. 302–6; Spiegel, *The Past as Text*, pp. 35–9; Cameron, 'Christianity and Communication', pp. 26–7; Wyschogrod, 'Memory'; Veyne, *Comment on écrit l'histoire*, pp. 212–49; Garrido López, 'Historia', esp. p. 202.

development of pagan 'fiction', which in turn informed hagiographical conventions that claimed a truth greater than history. If theological meaning, expression, and exercise of power in Late Antiquity masked rather than informed historical truths, if theologies themselves seemed elaborate political fictions, then – without the aid of an alternative discourse in the sources – a discourse that could finally articulate this inarticulate and unarticulated 'historical reality' emerged quite suddenly in the nineteenth and early twentieth century. Historically no less amazing than a medieval miracle and discursively no less final than the Last Judgment, this modern eruption of historicistic 'accuracy' and its 'underlying facts' either sincerely derived from yet another metahistorical imperative or rhetorically masked yet another authoritarian move to stifle counter-claims.

Since neither apodictic alternative theoretically excluded the other, twentieth-century historians began to reject both. Thus a different set of methodological options, themselves hardly always mutually exclusive, have increasingly displaced the old totalizing historicisms. Now – for heuristic reasons that account for the obsolete and ideological character of all claims to objectivity – some methodologies overtly apply current hermeneutics to ancient texts, so that a postmodern 'politics of truth' describes or re-inscribes its pre-modern predecessor for the sake of current understanding or relevance. Still other methodologies, more philologically inclined, attempt to discover and analyse the pre-modern truths defined, politically and otherwise, in their own language and by their own 'social logic'. In any event, history, perhaps especially Church history, entails irony, not innocence.[117]

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117. Bowersock, *Fiction*, pp. 110–43; Pascal Bouhoul, *᾿Αναγνώρισμος: La scène de reconnaissance dans l'hagiographie antique et médiévale* (Aix-en-Provence, 1996). Cf. Patterson, 'Margin'. See also my review of *Mystics: Presence and Aporia*, eds Michael Kessler and Christian Sheppard, Religion and Postmodernism (Chicago, IL/London, 2003) in *Medieval Review* 04.07.02 (2004), 1–4.

'I Study Power': The Scholarly Legacy of Robert Louis Benson with a Bibliography of his Published and Unpublished Works[1]

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When I studied with Robert Benson as a graduate student at the University of California, Los Angeles, he once revealed to me, in his characteristic and jovial manner and with a slight twinkle in his eye, a personal anecdote. He told me that he had escorted his wife, an academic recently turned attorney, to a cocktail party that was attended by many lawyers and Hollywood celebrities, and by implication by few scholars and certainly no other medieval historians. While making small talk with one of the guests, Robert was asked, 'And what do you do?' After thinking for a moment – one of his famous pregnant pauses that his friends, colleagues, and students knew all too well – he then answered laconically, and certainly with ironic reference to his situation, 'I study power.' While intended to amuse me, this anecdote yet spoke volumes about the man and the scholar. For Robert L. Benson was fascinated by power, and he spent most of his academic career investigating the acquisition of power, hierarchies of power, the ideology of power, the exercise of power, and the symbolic representations of power in art.

Robert Louis Benson (1925–96) studied at the University of California, Berkeley with the great German emigré historian Ernst H. Kantorowicz, and when Kantorowicz took a position at Institute for Advanced Study in Princeton, New Jersey, Benson followed him to Princeton. Although Kantorowicz remained his mentor or *Doktorvater*, Benson officially finished his doctorate at Princeton University in 1958 with Joseph R. Strayer and Theodor E. Mommsen.[2] While a graduate student, Benson spent two years on a Fulbright Fellowship (1953–55) in Munich, Germany, where

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1. Since Robert L. Benson left a large number of unpublished works, many of which will be published, I will endeavour in my text to give an indication of the main thrust of these articles without, however, providing a detailed summary or review of those works. For additional information on Benson's bibliography, see note 38 placed with it at the end of this piece.

2. In this article I intend to focus primarily on Robert L. Benson's scholarship. For biographical information, see: Richard A. Jackson, 'Robert L. Benson', *Majestas* 5 (1997), 5–22; Giles Constable (Chair), Richard Rouse and Robert Somerville, 'Robert Louis Benson', *Speculum* 71 (1996), 798–9; Horst Fuhrmann, 'Robert L. Benson', *Deutsches Archiv* 52 (1996) 809–11, and in a slightly revised

he conducted research at the Monumenta Germaniae Historica (hereafter MGH), which at that time stood under the presidency of Friedrich Baethgen. These two things, studying with and learning from the great Kantorowicz, and being exposed to the exacting study of the sources and textual editing traditions as practised at the MGH, influenced Benson's scholarship more than anything else.[3] In his subsequent work he pursued a brand of wide-ranging *Geistesgeschichte*, or history of ideas, reminiscent of his mentor, and he examined several Kantorowiczian problems, such as the dualities present in ecclesiastical office [2] and parallel or dual hierarchies [2, 17, 22, 32, 33, 34, 37].[4] Moreover, he anchored his scholarship in an exacting study and use of the sources, he produced stylistically honed studies of great originality, and he spent a great deal of his scholarly career editing both sources and secondary scholarship.[5] In addition to these two defining influences on Robert Benson, one finds in his early writing a strong imprint of the scholarship, learning, and guidance of Stephan Kuttner, the founder of canon law studies in North America.[6]

Robert Benson's early work [6, 7, 8] grew out of problems that he encountered and addressed while researching his doctoral dissertation.[7] He later expanded the dissertation, refined that early work, and examined the problems therein more extensively in his magisterial *magnum opus*, *The Bishop-Elect* [2]. Yet in this book's preface [2:vii], Benson stated:

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version, Horst Fuhrmann, 'Ein Amerikaner in München: Robert L. Benson', in Fuhrmann (with Markus Wesche), *Menschen und Meriten: eine persönliche Portraitsgalerie* (Munich, 2001), pp. 317–26.

3. From the many evaluations written of Kantorowicz, his work, and its influence, see especially: Friedrich Baethgen, 'Ernst H. Kantorowicz (3.5.1895–9.9.1963)', *Deutsches Archiv* 21 (1965), 1–17; Josef Fleckenstein, 'Ernst Kantorowicz zum Gedächtnis', in *Frankfurter Universitätsreden* 34 (Frankfurt, 1964), 11–25, and Robert E. Lerner, 'Ernst H. Kantorowicz (1895–1963)', in Helen Damico and Joseph B. Zavadil, eds, *Medieval Scholarship: Biographical Studies on the Formation of a Discipline 1: History* (New York, 1995), pp. 263–76. On the Monumenta Germaniae Historica and its tradition of scholarship, see Chapter 3 in David Knowles, *Great Historical Enterprises – Problems in Monastic History* (New York, 1963), pp. 61–97.

4. In order to shorten and simplify the notes, I will make all references to Robert L. Benson's works in the body of the text in the following manner. I have assigned numbers to his works, both published and unpublished, in the bibliography that follows this text. Thus the number references to his works will be placed in square brackets. Specific page numbers will follow a colon after the reference number. Thus, [2:7] refers to page 7 of *The Bishop-Elect*, while [16:xvii–xxx] refers to the introduction to *Renaissance and Renewal in the Twelfth Century*. I adopted this strategy from John Van Engen's excellent article on Gerhart Ladner: 'Images and Ideas: The Achievements of Gerhart Burian Ladner, with a Bibliography of his Published Works', *Viator* 20 (1989), 85–115.

5. In addition to the edited works listed in the bibliography of Robert L. Benson at the end of this piece, see Jackson, 'Benson', p. 7, on his varied editing activities, and Constable, et al. 'Benson', p. 798, on his editing project with Peter Landau that remained unfinished at his death.

6. On the scholarship and influence of Stephan Kuttner, see Thomas M. Bisson et al., 'Stephan Kuttner', *Speculum* 73 (1997), 929–31; Horst Fuhrmann, 'Nachruf: Stephan Kuttner', *Deutsches Archiv* 53 (1997), 405–10' and Peter Landau, 'Stephan Kuttners wissenschaftliches Werk', *Rivista Internazionale di Diritto Comune* 7 (1996), 13–20.

7. Robert L. Benson, 'From election to consecration: Studies on the constitutional status of an *electus* in the high middle ages', 2 vols (Princeton University Ph.D. dissertation, 1958).

This study devotes its principal attention to the office of the medieval bishop. In its beginnings, the interest which eventually led to this book had little to do with the episcopate. My original inquiry concerned the juristic doctrines on the office of emperor during the High Middle Ages. As I soon discovered, however, the Church's jurists constructed their theories of the imperial office by borrowing from Roman law, from theology, and above all from the legal definitions of ecclesiastical office. When I could not find a systematic account of those aspects of the Church's administrative law which, in terminology and substance, most deeply affected the theories of the imperial office, I began to explore.

An article [22] addressing this 'original inquiry' has existed since 1955 as part of an unpublished *Festschrift* for Friedrich Baethgen, former president of the MGH, and interested scholars have had access to it in the library of the MGH in Munich. Benson, then a graduate student on a Fulbright Fellowship, was given the honour of placing his article in the *Festschrift* that the *Mitarbeiter* of the MGH presented to their president on his sixty-fifth birthday.[8] This article examined the imperial office and posed the question of when the emperor received his fullness of power (*plenitudo potestatis*). In doing this, it made comparisons to the elevation of the pope into office and his reception of the fullness of power.

In terms of Robert Benson's later work and his historical contribution, this article is very important. It addresses in places many of the major concerns of his research for the next thirty years. He begins with the incident at Besançon to which he returned later in his career [28] in conjunction with his studies dealing with Frederick Barbarossa. He then launches into the canonistic theories of Master Rufinus, on whom he wrote an encyclopaedia article in 1961 [6], and to whom he returned in an expansive way in *The Bishop-Elect* [2:56–89]. In the process of examining Rufinus's attack on the imperial office (possibly in response to the controversy over Besançon) and his attempt to imperialize the papacy, Benson touches on ideas and themes to which he would return later with fuller treatments: problems of bishops and regalia [2, 7]; the development of the concept of *plenitudo potestatis* [8, 23]; canon law, the work of the great canonists, and the problem of the bishop-elect [2]; the uses and transformations of the Gelasian doctrine [14]; the competition between imperial and papal concepts of empire [16, 28, 31], and the importance of coronation as a symbol of royal and imperial office [10, 22, 32, 35]. Moreover, all of these topics have as central issues those themes regarding power (its exercise, hierarchies and ideology) that fascinated Benson and stood in one way or another at the core of his work.

In the process of examining the nature of the imperial office in time [22:26–30], Benson discovered that Master Rufinus, a pivotal figure in canonistic thought, had developed in a *Summa* that he wrote on Gratian's *Decretum* a conception of empire and papacy that amounted to an attack on imperial power and an imperialization of the papacy. In developing his theory, Rufinus extrapolated the relationship between

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8. Fuhrmann, 'Benson', p. 811, claims that Benson's piece was the most extensive of the whole group, and that its inclusion moved Baethgen noticeably. Benson's company was indeed of excellent quality. At least six of the participants became renowned medievalists: Johanna Autenrieth, Horst Fuhrmann, Rudolf M. Kloos, Kurt Reindel, Ferdinand Seibt and Benson himself.

the emperor and the pope from the developing hierarchical structure of the Church, both on the diocesan level, and between the episcopate and the papacy. On this basis, Rufinus theorized that the pope held all essential 'authority', and the emperor was merely an 'administrator of the secular world', like an *oeconomus*[9] under a bishop. Thus, according to Rufinus, the emperor held a secondary authority and was subject ultimately to papal authority. As Benson pointed out, however, Rufinus was a canon lawyer concerned primarily with organizational problems of the church and diocese, thus, 'in his political theory, Rufinus was applying principles taken over from the constitutional law of the Church' [22:8].[10] Next, Benson examined the uses and alterations of Rufinus's ideas by subsequent canonists to show how Rufinus's new political formula became an important element in a growing body of canonistic writings on political thought. In the process, he articulated that the 'vicissitudes in the history' of the formulas *plentitudo potestatis* and the Gelasian *duo sunt* needed further investigation, which he later undertook [8, 14]. Finally, Benson moved to examine how canonists dealt with the problem resulting from the nature of the imperial office in time – that is, could the *rex Romanorum* elected by the German princes exercise the administrative powers of the empire before he was crowned *imperator Romanorum*, or when did the emperor attain his fullness of power? According to Benson, because Rufinus had ecclesiasticized the imperial office, the canonists and curialists now had make a distinction regarding whether the imperial office would resemble that of the pope, who received fullness of power upon election, or that of a bishop, who only received his power to administer after his confirmation. Thus the canonists prepared the ground for conflict in the later Middle Ages over the nature of empire and the relationship between *imperium* and *sacerdotium*. The final thrust of this article led Horst Fuhrmann and his young colleagues at the MGH in the 1950s to expect a book at some time on 'The Emperor-Elect'.[11] If one examines carefully the earlier part of the article, however, one finds that in elucidating how Rufinus derived his political theories from the developing constitutional structure of Church law inherent in the episcopal office, Benson had touched directly on the distinction between episcopal rights of *auctoritas* and those of *administratio* when the element of time has been added. That is, powers of *auctoritas* came only to the bishop after his consecration, but the powers of *administratio* derived directly from the bishop's election, and later his confirmation. Thus, in marking this distinction, Benson ventured into the constitutional problem of the bishop-elect to which he would devote his major monograph, not the emperor-elect.[12]

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9. Benson later devoted an entire appendix [2:391–6] to the significance of this distinction in Rufinus and to the analogy of the emperor as *oeconomus*.

10. Because this article has existed since 1955 in a fully completed form and has been accessible to some, I will cite specific page numbers when I quote it or make exact references to it. With all of the remaining unpublished pieces, which may or may not have a coherent pagination at this time, I will not provide any specific page numbers, only a reference to the piece.

11. Fuhrmann, 'Benson', p. 811.

12. Constable, 'Benson', 798, and Jackson, 'Benson', 17 (possibly following Constable), state that Benson at one time planned to write a book entitled *The Uncrowned Emperor*.

After this formative Munich piece, in a series of articles [6, 7, 8] Benson deepened some areas of inquiry and worked out problems that would appear in their fully formulated state in his monograph [2]. His encyclopaedia article on Master Rufinus [6] remains by far the best short piece on this important canonist. He provides a short biography of Rufinus, followed by a full discussion of his canonical ideas and the innovative methodologies that fixed the form of the decretal commentary for coming generations and virtually made it into a literary genre. Benson then gave a detailed evaluation of the influence of Rufinus's *Summa* on Gratian's *Decretum*, an overview of his minor works, and an examination of his most important concepts in the field of public law. His second article [7] examined how the canonists from Gratian forward dealt with the dual issues of bishops with *regalia* and the bishop's investiture in their canonical writings. Benson showed that, although in the century after the Investiture Controversy canonists were still uncomfortable with the notion of the regalian rights of bishops and all that it entailed, they did make distinctions between bishops holding *regalia* and those who did not. Since the *regalia*, their attendant obligations and aspects of fief-holding did not disappear in the twelfth and early thirteenth centuries, canonists realistically had to yield to political reality and to customary law. Thus, concessions of various kinds were made so that bishops could fulfil the obligations that resulted from their holding of *regalia* from a secular lord. For instance, bishops had to supply troops and be present on campaigns, but were not allowed to fight or shed blood (some canonists imposed the idea of papal permission for military service, but not most); and bishops, as ecclesiastical princes, had to hold court and be judges, but they had to forfeit capital cases, or at least the imposition of blood justice, to a lay advocate. Throughout the entire article, Benson demonstrated that, as the German bishops had already argued in 1111 to Pope Paschal II, giving up the *regalia* would in practice be far too costly for imperial bishops, and thus concessions had to be found even in canon law.

In his next article [8] Benson turned to the problem of *plentitudo potestatis* and how the concept emerged and evolved over time. This is the first of several studies [8, 12, 14, 17] that dealt with the evolution of specific ideas and concepts over time and their transmission through canon law texts, to which I will return later. In this article Benson offered a clear, succinct and yet wide-ranging discussion of the concept of papal plenitude or fullness of power (*plenitudo potestatis*) in all of its meanings, but more specifically he delineated the evolution of the term in the sense of the 'ordinary jurisdiction' of the Roman pontiff over the Church. He demonstrated that the term, which emerged under Leo I with a very specific and confined meaning, in the ninth century was adopted and expanded in its juridical and jurisdictional sense in order to favour the position of the papacy over bishops and metropolitans,

as in a letter of Pope Gregory IV and also in the Pseudo-Isidorian decretals.[13] Leo's and these two ninth-century uses of *plenitudo potestatis* were rediscovered during the ecclesiastical reform movement of the eleventh century with its revival of canon law, and found their way into the *Collection in 74 Titles*, which played a key role in the diffusion of the concept prior to Gratian. Publicists and canonists increasingly began to see the possibilities of using Leo's distinctions between a papal 'fullness of power' and an episcopal 'share of the responsibility' (*pars sollicitudinis*) to expand the papal primacy at the expense of metropolitans. Finally, Benson demonstrated how Gratian made a significant contribution to the evolution of the terminology. For Gratian transmitted all three passages containing the concept in his *Decretum* in such a way that *plenitudo potestatis* could be identified both with the appellate jurisdiction of the pope and with the latter's monopoly over major cases. Most importantly, however, in a discussion of the judicial powers of metropolitans (C. 9 q.3), Gratian seemingly applied the *plenitudo potestatis* model to grant the metropolitan a ubiquitous jurisdiction within his province similar to that of the pope over other prelates. As Benson concluded [8:217]:

> In short, within a single *questio* Gratian constructed the model for the later theory which defined *plenitudo potestatis* as the ubiquitous jurisdiction pertaining to the 'ordinary judge of all', and which characterized the *pars sollicitudinis* as a derivative form of jurisdiction … The substance and the technical language of his argument provided the principle components with which the later decretists would create the later doctrine of papal *plenitudo potestatis*.

All of this previous work led to the publication of Benson's sole, but masterful, monograph [2].[14] From the beginning, the book received high praise and only scattered criticisms from its various reviewers.[15] Let me offer just a few of these remarks. The anonymous reviewer in of the *Times Literary Supplement* stated that 'Professor Benson … would certainly have impressed medieval jurists as "a great clerk, learned

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13. Benson was certainly convinced of the importance of the Pseudo-Isidorian Decretals in transmitting ideas into the canonical tradition. This is not surprising when one considers that his old friend and colleague from his Munich days, Horst Fuhrmann, worked extensively on Pseudo-Isidore since the early 1950s, and later wrote the definitive work on that collection. See Horst Fuhrmann, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen: von ihrem Auftauchen bis in die neuere Zeit*, 3 vols, Schriften der Monumenta Germaniae Historica, Vols 24.1–3 (Stuttgart, 1972–73). This decretal collection appears again and again in Benson's work as a main vehicle of transmission of canonical ideas into the eleventh and twelfth centuries.

14. Although Benson produced only one monograph before he was overtaken suddenly by death, elements of his unpublished materials substantiate that he had been working on at least one, and perhaps two, additional monographs, with the working titles *Frederick Barbarossa and the Twelfth-Century Empire* and *The Two Hierarchies: Structures of Church and Monarchy in Medieval Thought and Action*.

15. Anonymous, *Times Literary Supplement* (7 August 1969), 886; James Fernes, in *Deutsches Archiv* 25 (1969), 602; Walter Ullmann, in *American Historical Review* 74 (1969), 1266; Peter Classen, in *Zeitschrift für Kirchengeschichte* 81 (1970), 407–9; Peter Herde, in *Speculum* 45 (1970), 455–7; Michael Wilks, in *Catholic Historical Review* 56 (1970), 343–5, and Marcel Pacaut, in his review article 'Histoire de l'Eglise au Moyen Age', *Revue historique* 247 (1972), 437–9.

in the law'", and Walter Ullmann opined: 'To say that this is an excellent book is an understatement; it is … an achievement that might well be the envy of writers nearing their retiring age … Within … the twelfth and thirteenth centuries there is no work with which it can profitably be compared in scope, depth, and the perusal of sources … [It] proved to be a major contribution to legal history.' Michael Wilks called it 'an important contribution to ecclesiastical constitutional history and a worthy tribute to the late Ernst Kantorowicz and the work of the Institute of Medieval Canon Law'. Finally, Peter Classen claimed: 'Every further discussion of the ecclesiastical office and the constitution of the imperial church after the investiture contest has to begin with this book.' Criticisms ranged from the observation that the book contained too few examples from outside the empire and needed more examples of practice rather than legal theory (*TLS*), to a call for a more detailed treatment of the principle of inalienability in relation to the bishop-elect and for more analysis of Gregorian themes (Ullmann), to the charge that 'too much originality being claimed for the canonists', and an insufficient distinction had been made between *regalia* – that is, lands, rights and feudal obligations – and *ecclesiastica* – that is, lands and rights pertaining to the episcopal see (Wilks).

As Richard Jackson has indicated,[16] the subtitle of Robert Benson's monograph *A Study in the Medieval Ecclesiastical Office* [2] unfortunately conceals the sheer scope of the book. The monograph is divided almost equally into two halves. Benson himself drew attention to the size of the endeavour and the bifold nature of the book in his preface [2:viii]: 'Specifically, this study focuses on the constitutional status of the bishop-elect, both within the Church and in his relation to the secular monarch.' Thus the first half of the book, 'The Bishop-Elect and His Ecclesiastical Jurisdiction', examines 'the changing constitutional status of the bishop-elect in the twelfth and thirteenth centuries' [2:5], that is, what constitutive acts made a bishop (election, confirmation, investiture, consecration), and when in time and by which of these acts did the bishop-elect attain his administrative, jurisdictional and spiritual powers. In minutely assessing the changes and complexities of these rather technical problems and the contributions of the canonists from Gratian to Innocent III to their solution, Benson mined a vast array of sources, both published and unpublished (43 of them in 36 different manuscripts). Then, in the second half of the book, 'The Bishop-Elect Between Church and Monarchy', Benson turned his attention to the practical consequences of the changes in canon law on the relationship between the emperor and the pope in terms of the *regalia* and investiture. Seen in this light, to quote Richard Jackson, 'the book is a study of the legitimation and transmission of political authority, authority not just of the Church or of ecclesiastical officials like the metropolitan bishops, but also of the emperor and the king, particularly in Germany'.[17]

Benson introduced his book by discussing the dual role of bishops in the Middle Ages and the peculiarities of the bishop-elect, and by providing an overview of

16. Jackson, 'Benson', p. 11.

17. Ibid.

the canonists. He then set up the constitutional background of the problem with an examination of the development of canonical election prior to Gratian's *Decretum* and a full analysis of the *distinctiones* or chapters that Gratian devoted to analysing ecclesiastical elections. With Gratian's positions on election firmly established, Benson began to assess the contributions of the canonists to this problem. He demonstrated how Rufinus, in his commentary on the *Decretum*, fashioned a new theory of election based on the idea that upon election, an *electus* merely received a right to administer his office, but only attained his full episcopal authority upon his consecration. This found a parallel with Rufinus's theory in public law that such a duality (*auctoritas–administratio*) existed also in the relationship between the pope and the emperor. According to Rufinus, the emperor was a subordinate functionary to the pope, who delegated to the emperor his power of jurisdiction. Rufinus designated this supreme power of the pope as *auctoritas*, and the jurisdictional power of the emperor as *administratio*. He saw a similar relationship in ecclesiastical law between the bishop and his *oeconomus* or administrator.[18] Thus Rufinus's hierocratic constitutional theories were based ultimately upon consecration. Stephan of Tournai then introduced the notion that the right of the bishop-elect to administer his office came from confirmation by his ecclesiastical superior, not merely from the election itself. Other canonists strengthened this new idea until Pope Alexander III formally adopted it, and ecclesiastical election thereafter was dependent upon confirmation. Huguccio, however, dissented from this descending notion of power, and attempted with subtle arguments based on Roman law and theology to emphasize an ascending notion of power based on popular consent through the rights of the electors; thereby, this canonist also placed a new emphasis once again on consecration. This new electoral doctrine had great influence, especially since it was adopted partially by Huguccio's greatest student, Lothar of Segni, who in 1198 became Pope Innocent III. Yet in a complex argument, Benson demonstrated that Innocent III made several subtle but significant alterations in Huguccio's theory of election, changes that seemed ultimately to shift the emphasis from confirmation back to consecration, but in fact still retained the requirement of confirmation as the constitutive moment for administration, unless special papal authorization had been given otherwise.

Benson concluded this first part of the book with a chapter addressing both the particular status of the just-elected pope, who in canon law achieved confirmation and full powers of his office through his election and his consent thereto, and the status of the metropolitan-elect, whose right to fullness of his office consisted in the reception of the *pallium*, that is, by confirmation of the pope. This part of the book shows how the canonists and administrators of the twelfth century systematically created the necessary canonical definitions of office in purely ecclesiastical terms; likewise, they established the administrative machinery necessary for a centralization of the Church in the thirteenth century under the papacy holding the *plenitudo potestatis*, that is, the effective jurisdictional primacy. Moreover, Benson noted two trends in

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18. Benson provided an additional appendix [2:391–6] on the '*Oeconomus* and lay patron in the Rufinian tradition'.

the process. First, the significance of the bishop's election weakened in favour of his confirmation as the constitutive moment that gave the bishop-elect his administrative and jurisdictional powers. Second, these same lawyers began to subject the feudal obligations and prerogatives of the bishop to the same canonical criteria.

The second part of the book examines the dual problems of *regalia* and investiture and the relationship between the Church and the emperor in the twelfth and thirteenth centuries, but with new interpretations of the constitutional sources and new insights from the canonist's ideas on these problems. In his 1970 review of Benson's book, Peter Herde stated: 'This is in my opinion the best and most up-to-date account in English of the central issue of the Investiture Contest and the subsequent development of the question after the Concordat of Worms.'[19] In spite of the appearance of several books in English on this topic since 1970,[20] this judgment remains largely valid, for Benson's book has aged well, and deals with many of these questions in a more detailed and nuanced way than those that subsequently have appeared. Of course, these questions were of high constitutional importance. The kings and emperors had lost the right to directly appoint or 'elect' their bishops since the Investiture Contest, and yet these same bishops held vast royal lands and rights (the *regalia*) and owed specific obligations to their royal or imperial lords. Thus kings and emperors wanted to retain control of these 'secular' appurtenances of the bishop by maintaining the right to invest the bishop with his temporal powers as the Concordat of Worms in 1122 had stipulated. Changes in canon law and canonical theory, however, began to challenge this separation between the spiritual and secular appurtenances of the bishop, and thus eroded the influence that kings and emperors still held through control of the *regalia* and the right to invest the bishop with these. Although most kings in the twelfth century, and especially Frederick Barbarossa, insisted on control of the bishop's *regalia*, ultimately kings and emperors lost their control over episcopal elections and *regalia*. These fell to the papacy, which had increased its power so much that episcopal elections became in essence papal appointments, and the *regalia*, *per se*, eventually disappeared. Benson's real achievement in this section consisted of giving new interpretations to constitutional history on the basis of the canonical sources and the canonists' ideas about the *regalia*; this allowed him to present a more nuanced analysis. He concluded his book with an epilogue that drew all of the diverse elements together to show how changes in canon law and canonical theory had led to striking transformations of rulership, a diminished empire and the rise of a papal monarchy in the period that he studied.[21]

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19. Herde, in *Speculum* 45 (1970), p. 456.

20. See, in particular: Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia, PA, 1988), and Gerd Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, trans. Timothy Reuter (Cambridge, 1993).

21. Also in that epilogue [2:376, 385] he gave indications of later concerns of his research: the emergence of the cathedral chapter as the elector of the bishop, and the need for kings and emperors to find a new theoretical basis for their rulership with secular roots and centred in law. One should also note that in the footnotes of his book, as was characteristic of all his shorter pieces as well, Benson indicated at least thirteen further topics that should be addressed by scholars.

Benson maintained an interest in several themes that he had addressed in *The Bishop-Elect*. These include canon law and the constitution and hierarchy of the Church, the evolution and transmission of ideas and concepts through canon law texts (with a special interest in Pseudo-Isidor as a transmitter), and in dualities of all kinds (in concepts, in office and in hierarchies). These interests appear in several of his later studies [9, 12, 14, 17, 21, 23]. In an article [9] written not long after his book's publication, Benson addressed a problem that he mentioned in the epilogue of his book [2:376]: the emergence of the cathedral chapter as the elector of the bishop. He examined the tensions that existed between two fundamentally different concepts of episcopal election: Leo I's earlier concept of an election by all persons directly subordinate to the elect, and the thirteenth-century concept of Innocent IV, which stated that the cathedral chapter had the primary role of election. He traced the historical evolution of both concepts from the primacy of the first in the Gregorian reform period to the primacy of the second in the later Middle Ages, providing an especially detailed look at the literature of the Gregorian reform as well as at the electoral abuses that led to the production of that literature. This article also provides an overview of the process, procedures, and limitations of episcopal election in this period, as well as of the problem of lay participation in episcopal elections, with detailed analyses of the specific peculiarities for England, France and Germany.[22] The striking conclusions that come out of this investigation lay in documenting the sheer persistence of lay influence in episcopal election throughout medieval Europe, regardless of the prohibitions of the Gregorian period and the decretist activity of the twelfth and early thirteenth centuries. Although the cathedral chapters won almost absolute control of episcopal elections, Benson demonstrated that the victory of the cathedral chapters was nevertheless only temporary and soon would be trumped by the rising tide of papal 'plenitude of power'; ultimately, the power of the chapter to elect gave way to papal appointment. Earlier in the article, Benson had indicated that proclamations of Barbarossa concerning imperial power had already anticipated this shift. Thus two major themes of his previous as well as his later work emerge in this piece: his interest in the development of the concept of 'plenitude of power' and his interest in Barbarossa as an imperial figure and a maker of trends in the twelfth century. Likewise, another article [23] brings together in one sustained summary many of the ideas that Benson addressed in laborious detail elsewhere [2, 8, 17].[23] It examines the conception and structure of the episcopal office, discusses the governmental structure of the Church, surveys the emergence of papal monarchy through the notion of *plenitudo potestatis*, and looks at how canonists defined all of these issues. Finally, this study persistently examines one of Benson's key concerns: the existence of twinned or parallel hierarchies ruling in the ecclesiastical and the

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22. One might think that Benson was responding to the criticism of the anonymous reviewer of the *TLS* (see note 15 above), who called for more examples from England and France.

23. This as yet unpublished article does not contain footnote references nor indications thereof. Yet the piece is so lucid that one can easily follow the development of the argument. Without difficulty, one could supply references from the works of Benson that I indicated in the text at this note.

secular world. In short, this article contains an erudite survey of many lines of his thought.

Benson returned to canon law again in a general piece that he wrote [12] and in the review of a book with a canonical topic [21]. In the former study, one that Benson wrote for *First Images of America: The Impact of the New World on the Old* [12], he examined the doctrines of Las Casas on the legitimacy of the Spanish dominion in the New World and Vitoria's theories on the problems created by the Spanish conquest in light of the earlier legal traditions from which both positions arose.[24] He argued that the revival of scientific jurisprudence in Roman and canon law in the twelfth and thirteenth centuries 'created the juristic preconditions for an international law' [12:328] and that problems faced by the European crusaders had similarities to those faced later by the Spanish in the New World. Thus the central questions raised by Las Casas and Vitoria (for example, 'whether the Indians had natural rights to their property … whether the native government of the Indians could be legitimate … and under what circumstances the Spaniards could wage war against them and subjugate them') had been indicated by Innocent III in relation to the crusaders, and commented upon by Innocent IV and by Hostiensis. Two contrary positions emerged. Innocent IV's position – namely, that all rational creatures had the right to own property, exercise dominion, and select rulers, and thus the pope could not deprive non-believers of their property or their rulership – became the common opinion. According to Benson, this tradition 'furnished one crucial part of their spirited and learned defense of the Indians' [12:331]. Thus Vitoria and Las Casas were not original in the sense of creating their arguments, but they made a creative reuse of earlier canonistic arguments lying dormant within Latin culture, and applied them to 'the most burning political, legal, and moral problem of Spain in their generation' [12:331]. Benson then wistfully noted that when later theorists of international law took elements from Las Casas and Vitoria, they largely forgot the real origin of the argument.

From the review that Benson wrote of Stanley Chodorow's book *Christian Political Theory and Church Politics in the Mid-Twelfth Century* [21], one understands how deeply he read, how critical and yet generous he could be, and how much time his exacting style of work consumed. The review ran to nine pages, of which five are written in a smaller typeface. He praised the appearance of a book centred in canonistic law and political thought that provided the 'first systematic analysis of public law in Gratian's *Decretum*'. Then, however, he demonstrated in minute detail and with great erudition why the author's thesis, which was argued vigorously throughout the book, does not stand up to scrutiny on all of its major points. He also called attention to the existence of a major methodological problem, namely that one must trace the transmission and transformation of a particular text through many of the earlier canonical collections before one can draw inferences from its inclusion or exclusion from the *Decretum*. Benson concluded with gracious

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24. In this piece, Benson does not make any claim to originality, only to being a mediator of 'the conclusions of medievalists' [12: 331].

regard, and commented that, although the thesis did not stand up to scrutiny, many aspects of the book still demanded serious attention, and that the author had made some advances.

Benson's interests in the evolution and transmission of ideas and concepts through canon law texts (with a special interest in Pseudo-Isidor as a transmitter[25]), and in dualities of all kinds – in concepts, in office and in hierarchies – also emerge in two later studies [14, 17]. The first [14] focused on the Gelasian dualism and the *duo sunt* formula, which played a great role in Benson's earlier work [22, 2] and also on Gelasius's *Tomus de anathematis vinculo*, in which Gelasius addressed the question of two powers from a theological perspective. Benson did for these two texts what he had admonished the author in his review to do: he traced the transmission and transformation of the texts through many of the earlier canonical collections before drawing inferences about them. The formulation of Pope Gelasius I from 494 expressed the duality between prevailing spheres of power of the pope and emperor in his day, but it re-emerged in the ninth century because it contained within itself broad notions of imperial government and a language of governance. Thus it was refashioned, along with the *Tomus*, to reflect the political thought of the Carolingian period in which two hierarchies ruled jointly, and then it was transmitted largely through the Pseudo-Isidorian decretals to the eleventh century. In the reform era, Pope Gregory VII appropriated the *duo sunt* formula and radically reinterpreted it to provide historical justification for his actions in regard to Henry IV, that is, the excommunications of 1076 and 1080, the removal of the latter's right to rule, and the absolution of Henry IV's subjects from their oaths of loyalty. In the last part of the essay, Benson demonstrated that the various strains of the Gelasian texts and their transformations were transmitted in the newly emergent canon law as well as in the polemical literature of the Investiture Struggle. He also showed how proponents of differing points of view, papal or imperial, drew on the same text to support hierocracy, dualism or even royal theocracy. Thus three different hermeneutical traditions made claims to Gelasian authority and it became 'politically indeterminate'. But this in turn demonstrates the continuing value of an ancient authoritative text that can be reinterpreted and adapted to the ideas and perceptions of a new age. Benson used a similar methodology to trace the idea that the boundaries of the Church's provinces should equate to those of particular states or secular entities, or *provincia = regnum* [17]. Once again, his interests in the duality of *sacerdotium* and *regnum* and its transmission stood in the forefront; he delineated the evolution of a notion that evolved from classical antiquity through Isidore of Seville, and then through conciliar and canonical writings from Visigothic Spain to early medieval Ireland to ninth-century Francia, and from there through the Pseudo-Isidorian forgeries into the canonist thought of the twelfth century. There, it found a home in Gratian's *Decretum* that accounted for the later transmission of the concept. Through this article, Benson demonstrated clearly that the history and evolution of thought and ideas – in this

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25. He had already addressed this phenomenon in his article on *Plenitudo Potestatis* [8].

case, *provincia* = *regnum* – resides largely in the history of the texts (sometimes regardless of their contemporary intent) that transmit the notion.

Benson's interest in the transmission and transformation of texts was not limited only to canon law concepts; he also directed his attention to classical texts of various kinds. His role in conceiving and editing a large volume devoted to the rebirth and renewal of classical ideas and forms in the twelfth century [4], and his own long contribution to this volume [16], stand as monuments to his interest in the transmission and transformation of classical texts. The volume intended to pay homage to the classic work of Charles Homer Haskins.[26] Benson and Giles Constable assessed the goal of the volume in their joint introduction [15:xviii]: 'to assimilate the substantial advances of medieval research in the last 50 years, to deal with topics … which Haskins had to exclude from his account, and to emphasize certain elements … to which Haskins devoted little attention'. In praise of Haskins and in their attempt to assay the continuing vitality of his vision, they state [15: xviii]: 'It is a measure of his [Haskins'] success in opening up a major historical issue that it now takes a conference of scholars to do what a single scholar did fifty years ago.' The volume contains the contributions of 26 scholars and exceeds the boundaries of Haskin's original inquiry by intentionally addressing the topic of renewal or reform (*renovatio*) in diverse areas of society, a process that the editors considered a distinctive characteristic of the twelfth century.

Benson set out a 'modest' goal in his own contribution [16:340]: 'to assay the influence of certain texts and models from Antiquity on twelfth-century conceptions of legitimacy, and to examine some of the ways in which twelfth-century statesmen and thinkers perceived or reconstructed political ideas drawn from Antiquity'. Yet one must ask whether Benson, who was so fond of studying rhetorical *topoi*, might not here have employed the famous 'humility' *topos*. For his piece is a *tour de force* that runs to 47 pages, the longest in the volume, and ranges over all variety of sources in the spirit of his mentor Kantorowicz. The first part of the article focuses on the uses made by the Roman commune in the 1140s and early 1150s of classical models and texts in its attempt to revive the Roman senate and re-create a purely secular empire, to which the Roman people, or commune, had the right to grant the powers of ruling. The commune saw papal control of Rome as a usurpation, and wanted an emperor on the Roman model to resume his rightful place. To this end, the commune drew upon the concepts of renewal of the holy senate and the Roman Empire, upon a claim that the Roman people, not the Church, crowned the emperor, and upon the ancient Roman law text, the *Lex de imperio Vespasiani*, commonly referred to as the *Lex regia*, from which one could infer that power derived from the Roman people. The text *Graphia aureae Urbis Romae*, which expressed the goals of the commune and demonstrated the 'enthusiasm for ancient Rome', appeared in 1155. Benson demonstrated, however, that the commune consciously looked back to the Christian Roman Empire of Constantine and Justinian as its model, not that of the pagan emperors, and that its *renovatio*, although it used a Roman republican

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26. Charles Homer Haskins, *Renaissance of the Twelfth Century* (Cambridge, MA, 1927).

rhetoric and model, was clearly based on an imperial model. Thus the commune's ideas emerged from a fusion of antique, late antique and twelfth-century concepts, and matched the realities not of antiquity, but of the twelfth century.

In the second part of the article, Benson addressed Frederick Barbarossa's attempt at his own *renovatio imperii Romani*, an effort which Benson saw as part of the programme of German kings and emperors in the twelfth century to create a new theory of government in face of the setbacks of the Investiture Contest and of other potential threats to their power. The role played by Roman law in this *renovatio* was of paramount importance, but Benson once again demonstrated that Barbarossa drew on 'sacred' imperial law, German and Italian customary law, and both antique and medieval precedents to reconstruct his royal prerogative. Thus both the Roman commune as well as the (German) Roman Emperor had a common pursuit of *renovatio*, and both appropriated classical forms in that pursuit. But both also had to accommodate those forms to contemporary institutions and realities. They sought legitimacy in antique models, but governing had to be achieved within the current twelfth-century institutions. Finally, Barbarossa simultaneously recognized historical continuity and discontinuity according to his current political circumstance in pursuit of his attempted *renovatio*. Benson saw therein the beginnings in the twelfth century of a concept of modernity – the development of a historical consciousness that could distinguish between more and less different pasts, and contrast them with present time.[27]

Several of Benson's articles combine his interest in the transmission and transformation of classical texts and concepts with other concerns regarding philology, rhetoric and Master Boncompagno [24, 31, 26, 13, 18]. One short piece [24] addresses the adaptation of the classical *topos* (or Latin commonplace) *arma et leges*. Here, he traced the *topos* from Livy through Orosius and Justinian's *Institutes* to the early Franks, and demonstrated how it was taken over into the prologue of the Salic Law. After the papacy had assisted the Carolingian family of the Franks in 751–54 to reconstruct a new monarchy, a revised prologue then emerged in 763–63 to mirror a new conception of rulership. The original *topos* was joined with a panegyric of the Frankish people to emphasize the 'praise of the Franks' over the 'arms and law', and also to prioritize arms over the law. Thus Benson showed that the new prologue documents a gentile consciousness of a conquering people having a new identification with Christianity. In this revised prologue, the Franks, in contrast to the Romans, have become the Christian people *par excellence*, the new 'chosen' people. A related article [34] examined the evolution of Biblical Davidic kingship as a model in the early Middle Ages in terms of the application and reuse of ideas. Whereas earlier the Franks had used the model of Moses to designate themselves as a chosen people in the Salic law prologue, the later Carolingians employed the Davidic model in three essential modes – impersonation, exemplification and legitimization – to

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27. The discovery that the twelfth century had a consciousness of its position in history by Benson and several other contributors of this volume stands as one of the major advances of the endeavour [15:25].

create a Christian ethos for rulership. Benson focused specifically on a rhetorical *topos* once again in a later article [31], in which his interest in philology and rhetoric joined with his examinations of medieval uses of antiquity, his attention to Frederick Barbarossa, and his interest in the monarchization and imperialization of the papacy. He ingeniously began the piece by introducing the *urbs et orbis* (the city and the world) commonplace as it appeared on a contemporary shopping bag from the retailer Grande Maison de Blanc in Beverly Hills (on which it had become somewhat of a contemporary cliché). He gave a general introduction to Latin *topoi* based on Ernst Curtius's great work,[28] and explained that many survived from antiquity into the Middle Ages, Renaissance and the modern world through the means of Latin literature and poetry. He then examined the history of the *urbs et orbis* commonplace from its origins with Varro, Cicero and Ovid, and traced the use and transformation of the *topos* both in Roman antiquity and as an imperial and a papal commonplace in the Middle Ages. Thereby, he not only demonstrated the continuity of the classical tradition, but he revealed 'the innumerable and innovative ways in which classical thought was refracted and transformed within the new contexts which appropriated it' [31] to provide an altered form in medieval Latin culture. All of his examples demonstrate the twelfth century's growing identification with antiquity and the Roman imperial past, and the *topos* emerges as part and parcel of the phenomenon of renaissance and renewal. Benson thus concluded that historians ignore *topoi* at their own peril, for they form a significant form of historical inquiry.

Benson's interest in the classical tradition, rhetoric, and humanism in general come together in a piece that he wrote on Master Boncompagno's treatise on old age [26]. This piece holds great significance because Benson provided as an appendix an edition of Master Boncompagno's *Liber de malo senectutis et senii* with a full *apparatus criticus*. Unlike Francesco Novati's earlier edition of 1892,[29] which is based only on the Venice manuscript, Benson's edition is based on all three extant manuscripts. Boncompagno wrote treatises both on old age and on friendship.[30] Since Cicero wrote treatises on both topics as well, Boncompagno's works provide us with a portal to his ideas on antiquity. In his treatise, Boncompagno rejected Cicero's idealization of old age (and friendship) as well as his 'stilted' and elitist style, but nevertheless the medieval author used many classical allusions. Indeed, Benson demonstrated that in respect to the actual treatise, Cicero and his idealist view of old age became the adversary to Boncompagno's more sobering, even terrible view of the horrors of old age. Benson saw this rejection of antiquity and Cicero as rooted in Boncompagno's specific experience and condition, as well as in his realistic and essentially pessimistic visions of human nature. While both men were 'practical

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28. Ernst Robert Curtius, *European Literature and the Latin Middle Ages*, trans. Willard R. Trask (Princeton, NJ, 1953; repr. 1990).

29. Francesco Novati, 'Il *De Malo Senectutis et Senii* de Boncompagno da Signa', in *Rendiconti della Academia dei Lincei, Classe de scienze morali, storiche, e fililogiche*, series 5, Vol. 1 (Rome, 1892), 49–67.

30. Benson had intended at some time also to include Boncompano's companion piece on friendship, but he did not complete it; thus the old age piece stands by itself.

philosophers', Benson argued that Boncompagno in one way discharged better the philosopher's office than Cicero: Boncompagno told the truth about old age, and for that he claims our respect.

Rhetoric, *ars dictaminis*, and literature also inform two other pieces connected with Boncompagno [13, 18]. In pursuing these themes, Benson's work once again evinces the influence of his mentor Kantorowicz, who maintained an interest throughout his life in the authors of *ars dictaminis* and in the various humanistic and political roles that they played in the Italian communes of the twelfth and thirteenth centuries.[31] Benson, in an article published in a volume on Boccaccio [13], argued that the *ars dictaminis* of thirteenth-century Italy formed the prehistory to Renaissance humanism, because unlike its twelfth-century counterpart, it already contained many characteristics of later humanist values and traits. In arguing this thesis, Benson traced the early history of *ars dictaminis*, delineated the fundamental changes that occurred in the thirteenth century, and discussed the 'humanist' traits of Boncompagno and his fellow thirteenth-century *dictatores*. Finally, he analysed Boncompagno's narrative strategies, especially his use of the sequential epistolary novella, to show how they prefigured similar techniques that Boccaccio developed later. He concluded by posing the question whether Boncompagno and his work might have influenced Boccaccio. In a later article that examined the development and spread of the concept of liberty in the twelfth- and thirteenth-century Italian towns [18], Benson showed how one finds the best examples of the specific Italian concept of *libertas* in the rhetorical writings of Boncompagno, who developed it and created a meaning of *libertas* that was virtually synonymous with sovereignty.

In the last ten years of his life, Robert Benson focused his work primarily in two areas: Frederick Barbarossa's relations with the Church, and the symbolic representation of ideas in art. In fall 1989, he gave the Carlyle Lectures at Oxford University which were to provide much of the material for his planned but never completed book on Frederick Barbarossa and the twelfth-century empire. His work on Barbarossa is diverse, ranging from decisive events in the emperor's relationship to the Church and the Italian towns [18, 27, 28] to his attempts to fashion a new basis and ideology of rulership in the empire [16, 29, 30, 31]. Benson analysed the contents of the Treaty of Constance of 1153 [27] in light of two letters of John of Salisbury (no. 124) and of Arnulf of Lisieux (no. 28), sources that other scholars have not examined in the context of this treaty nor in terms of Barbarossa's ideas early in his reign. Through these two texts, Benson demonstrated that notions of a 'reform of empire' and the 'cooperation of the two powers' in a Gelasian sense were part of Barbarossa's early ideas; Benson further concluded that probably 'Frederick's envoys in the spring of 1152 made proposals which anticipated the Treaty of Constance'. In another piece [28], he offered an important new interpretation of the incident at Besançon based on a philological and historical investigation into the development of constitutional language in the twelfth century. Hadrian IV's famous letter contained

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31. On this aspect of Kantorowicz's work, see Alain Boureau, *Kantorowicz: Stories of a Historian*, trans Stephen G. Nichols and Gabrielle M. Spiegel (Baltimore, MD, 2001), pp. 88–90.

three controversial claims: a grant to Frederick of the *plenitudo dignitatis et honoris*, a bestowal of the *insigne imperialis coronae*, and the desire to give Barbarossa even greater *beneficia*. Benson argued that scholars have concentrated on the word *beneficia*, when the other two claims represented just as great a threat to Barbarossa. Hadrian mentioned these three elements together and did not posit God as their source, and thus at least implied the pope's role in the coronation as constitutive. Thus the clash at Besançon resulted from the existence of two different mentalities of imperial office, namely Frederick's notion of a purely divine *beneficium*, and Hadrian's notion of a papal *beneficium*. Benson also examined certain aspects of the creation of Frederick Barbarossa's rulership ideology in several pieces [16, 29, 30, 31]. He assessed the importance of the imperial assembly of Roncaglia in 1158 and of Roman law in creating Frederick's imperial ideology [16, 30], he evaluated the multiple traditions from which Barbarossa drew his ideas [16, 29, 30], he identified the creators of rulership ideology at court [29, 30, 31], he examined Barbarossa's claims to universality [16, 29, 31], and he provided philological studies documenting the creation of a literary political language for the representation of rulership [30, 31]. Finally, in a piece that combined several of his interests [18], Benson traced the development of the concept *libertas* and identified it as a political ideology that the north Italian communes developed in response to the threat posed to their traditional autonomy by Barbarossa's attempt to reconstruct the royal prerogative in northern Italy through the proclamations made at Roncaglia.

Several pieces written in the years immediately prior to his sudden death show Robert Benson practising methodologies very similar to those of his mentor Ernst Kantorowicz. He began to examine the symbolic representation of ideas and rulership in art [32, 33, 34, 35, 38]. Yet, in examining Benson's earlier work, one already finds hints of this direction. In 1975, he wrote a short piece addressed to a general audience who might read an art historical catalogue [10]. This appears to have been Benson's first effort to synthesize text, narrative and picture in a manner that he practised later. In that work, he stated: 'it is impossible to understand artistic monuments … without appreciating the degree to which major and minor ceremonies of life commonly furnished the subject matter of a particular work as well as the occasion for executing it' [10:241]. This statement can be applied to many, if not all, of Benson's later unpublished works on history and art. Since he devoted the last

page of this article to describing ceremonies of state, in particular, the coronation rite of kings, we see not only his interest in images, but also his later preoccupation with the coronation ritual in fact and in image.[32] Perhaps as a complementary piece to his article examining Davidic kingship [34], Benson traced the depictions of David, and especially of his anointment, in psalters and bibles, and indicated how they evolved [32]. First, one finds some variations regarding the anointment whereby Samuel, due to his closeness to God, is placed in a hierarchically superior position to David; such depictions evince the growing ecclesiastical notion that the one who anoints a monarch is greater than the one anointed. Then Benson discovered that the portrayal of David underwent a 'paradigm shift' in the mid-twelfth century that art historians had barely noticed. Added to the traditional depiction of David's anointment, one begins to see this representation combined with an anachronistic coronation, emphasizing a profound new concept of coronation. Thus the variations in the iconography of David's royal accession reflected completely new conceptions of kingship and governance in the twelfth century.

In another unpublished article [33], Benson addressed one principal question: 'How did symmetrical composition affect, or even determine, the overall political meaning of an image?' He argued that: 'Symmetry reflected or refracted central ideas about monarchy, and about the relations between monarchy and priesthood … [and thus] became itself a sign and symbol of rulership … a *Herrschaftszeichen*.'[33] He distinguished between three kinds of symmetry (conregnal, sacralic and aulic), provided examples of the types found in the Carolingian, Ottonian and Hohenstaufen periods, and showed how 'changes in the use of symmetry mark the transition from one era to another'. Finally, Benson expanded on these former themes – depictions of David, the importance of coronation in the twelfth century, and the uses of symmetrical composition [32, 33] – in an article [35] in which he explicated the iconographical programme of two dominant scenes on the romanesque chalice from Trzemeszno: the crowning of David by Joab, and the designation of Solomon by David. Benson

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32. One already finds germs of Benson's concern with coronation in his first article of 1955 [22]. His interests in ruler worship, coronation and coronation *ordines* were particularly influenced by the work of Kantorowicz, Percy Ernst Schramm and Reinhard Elze; some examples: Ernst H. Kantorowicz, *Laudes Regiae: A Study in Liturgical Acclamations and Medieval Ruler Worship*, University of California Publications in History, Vol. 33 (Berkeley, CA, 1946; repr. 1958); idem, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ, 1958; repr. 1997); Percy E. Schramm, *Kaiser, Könige und Päpste: Gesammelte Aufsätze zur Geschichte des Mittelalters*, 4 vols (in 5) (Stuttgart, 1971), especially Vols 2, 3, 4.1; idem, *A History of the English Coronation*, trans. L.G. Wickham Legg (Oxford, 1937); Reinhard Elze, ed., *Die Ordines für die Weihe und Krönung des Kaisers und der Kaiserin*, Monumenta Germaniae Historica Fontes iuris germanici 9 (Hanover, 1960); Cyrille Vogel and Reinhard Elze, eds, *Le Pontifical Romano-Germanique du Dixième Siècle*, 3 vols, *Studi e Testi* 226, 227, 269 (Vatican City, 1963–72).

33. See Percy E. Schramm, *Herrschaftszeichen und Staatssymbolik: Beiträge zu ihrer Geschichte vom dritten bis zum sechszehnten Jahrhundert*, 3 vols, Schriften der Monumenta Germaniae Historica, Vols 13.1–3 (Stuttgart, 1954–56). On Schramm and his contribution, see: János M. Bak, 'Medieval Symbology of the State: Percy E. Schramm's Contribution', *Viator* 4 (1973), 33–63.

had travelled to Poland in 1993 to see and study the Trzemeszno Chalice,[34] and subsequently he completed his article. He explained that the coronation scene does not depict David becoming King of Israel, but rather his becoming king by conquest of the kingdom of Ammon and being crowned by the general Joab. Both the notion of possession of a crown by right of conquest and the centrality of the coronation had become current in the twelfth century. Thus the scene on this chalice belongs to a tradition where contemporaries had begun to understand the biblical narrative of David's career through the political prism of their own; the imposition of the crown began to replace anointment as the central act in the elevation of the king. Benson argued convincingly on the basis of a set of six elements that the chalice reflects the political thought of Frederick Barbarossa and the special circumstances of his reign. Thus, he concluded, on the basis of circumstantial but strong and cumulative evidence, that there was a high probability that 'someone at the imperial court [of Frederick Barbarossa], or possibly a well informed contemporary with close connections to the court, designed the Trzemeszno chalice for Frederick Barbarossa' [35].

Robert Benson also wrote a few articles that one might call homages to the two great influences on his scholarship, Ernst Kantorowicz and the Monumenta Germaniae Historica. He devoted four works to his mentor [20, 36, 38, 39]. In the early 1990s, Benson rose to the defence of Kantorowicz and wrote a scathing indictment [36] of Chapter 3 ('The Nazi Twins') in Norman Cantor's book *Inventing the Middle Ages*, which treated Kantorowicz and Percy Ernst Schramm. He demonstrated that Cantor's characterization of Kantorowicz as a 'Nazi' was based on much incorrect information and sloppy scholarship; moreover, it was consciously biased and a malicious 'massive libel' against Kantorowicz and his memory.[35] In roughly the same period, he wrote another 'defence' of Kantorowicz, as well as of Andreas Alföldi and André Grabar, against charges of being 'proto-fascists'; in the process, he deftly illuminated the art historical characteristics and contributions of each man's scholarship [38]. Thereafter, Benson wrote and delivered a lecture that examined the 'mythic' concept in scholarship regarding Emperor Frederick II; here, he specifically compared the books by David Abulafia and Kantorowicz on that ruler [39]. He also devoted his last published article to his mentor [20]. It contains many valuable insights into Kantorowicz's mind, character, and the ideas that commanded his constant attention.[36] Here, Benson explored several themes in Kantorowicz's

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34. See Richard Jackson's humorous remarks about Benson on this trip: 'Benson', p. 19.

35. Benson's piece demands to be read by all who have read Cantor's book, for it points out both unsound methods and sloppy scholarship, and suggests the working of bias and of a personal agenda; these permeate the remaining chapters of the work as well. Also referring to Cantor's Chapter 3, William Chester Jordan, in his new preface (1997) to Princeton's reprint of Kantorowicz's *The King's Two Bodies*, writes on p. xi: 'The story of Ernst Hartwig Kantorowicz's life has of late been written and rewritten by intelligent admirers and at least one crank' [that is, Cantor, see Jordan's footnote 18].

36. This article constitutes one of two that Benson gave during the double conferences on Kantorowicz that occurred in December 1993 (Frankfurt) and November 1994 (Princeton). Of Benson's Frankfurt lecture ('Ernst Kantorowicz als Lehrer'), only four pages have been found in his surviving papers.

writing: rulership, the concept of a sovereignty cascading down from God to various participants, and the notion that revolution – one having a spirit of prophecy and messianism within time, space and mind – was an indispensable category to understand historical change. In addition to paying homage to Kantorowicz, Benson also expressed his gratitude to the MGH. In 1955, as discussed earlier, he had contributed an article to the in-house, unpublished *Festschrift* that the scholars working at the MGH presented to their president, Friedrich Baethgen [22]. Forty years later, Benson and Loren Weber, his former student, again paid homage to this great historical institute [19] by evaluating the academic career and the historical methodology of Georg Waitz, one of its great leaders and one of the most important figures in German historical studies during the nineteenth century.

Robert L. Benson was a scholar of great erudition and originality who left behind a manifold legacy in his academic work. Fascinated with power in all of its manifestations, he focused much of his work on the bastions of power in the Middle Ages (bishops, popes, kings and emperors), and he examined both their ceremonies of power (that is, how members of these groups individually came to the fullness of their power) and how the acquisition of power affected their relations with others. Yet his investigations of power had the nuanced edge of an intellectual historian. Rather than the raw exercise of power, Benson studied the many methods that power brokers and their advocates used to advance, solidify or represent their power: from canonical and secular legal theories, to adaptations of language, to the use of classical *topoi* and models, to iconographic representations. In all of these aspects, Benson seemed most interested in the evolution, transmission and adaptation of ideas and models. One might say that his great interest lay in the intellectual side of power, and that he studied the history of thought and feeling about rulership. Benson determined the general direction of his research interests in the early Munich piece of 1955 [22] and in the selection of topics and methods of his early work; one unmistakably sees here the influence of Kantorowicz, Kuttner, and the working methods of the MGH.

Benson, like his mentor, however, was a humanist, both personally and professionally. Thus one finds him expanding his fields of inquiry by the mid-point of his academic career, while not abandoning many of his earlier concerns. He began to practise a similar kind of wide-ranging intellectual history that was characteristic of Kantorowicz. His interests ranged from rhetoric and *ars dictaminis*, to the evolution of classical ideas and *topoi*, to symbolic representation in art, to modern historiography. Yet in all of these endeavours, Benson's scholarship continued to be characterized by his exacting and time-consuming work ethic. While this reduced his overall scholarly production, nevertheless it enabled him to produce well-crafted, highly honed, eloquent and consistently original work. Unlike some scholars, Benson never wrote essentially the same article twice. Moreover, his eloquence and clarity of thought enhanced another aspect of his legacy that I have not heretofore mentioned and upon which I shall conclude.

In addition to his meticulous and erudite scholarship, Robert Benson was gifted in generalizing new or complex ideas and themes and presenting them to broad audiences in written or oral form. Many of his pieces share this characteristic [10,

12, 23, 25, 37, 29]. Since I have already addressed above the three pieces that he intended as written works in various contexts [10, 12, 23], I would like to end by making a few comments on the works intended originally for oral delivery [25, 37, 39]. In a lecture presented in 1987 [25], Benson discussed for a 'lay' audience both the distinct changes in medieval monasticism that occurred in the twelfth century which resulted in the emergence of the 'individual', and the growing tensions between interior and exterior spiritualities that dominated the high and late Middle Ages. To provide an example of interior spirituality, he chose the Carthusians, and introduced the audience to the hermit Guigo and his *Meditations*, one of the earliest examples of autobiography after Augustine. He outlined Guigo's text and his 'threefold programme' – to discover his own interior nature, to see human nature with full realism, and to use the knowledge gained for religious purposes – and he demonstrated how Guigo's conversion to the monastic life, when coupled with his vigorous effort at self discovery, revealed something quite modern: the struggle between two selves. For Guigo is at one and the same time both subject (actor) and object (critical observer) in his own work, and this circumstance created a deep split or inner tension within the individual's consciousness. Finally, two lectures separated by twenty-three years that Benson presented at annual conferences of the American Historical Association [37, 39] address a common question: What criteria does one use to designate a scholarly work as a historical classic? In the earlier piece [37] he examined Fritz Kern's *Gottesgnadentum und Widerstandsrecht im früheren Mittelalter* (Leipzig, 1915; 2nd edn, 1954), and in the latter piece [39] he considered Ernst Kantorowicz's *Kaiser Friedrich der Zweite* (Berlin, 1927; *Ergänzungsband*, 1931). Both lectures reveal several of Benson's greatest attributes: his ability to read and evaluate classic historical accounts with great respect while suggesting new insights, his propensity for original ideas and new formulations, and his gift of combining his talents as a scholar and as a teacher.[37] In the Kern piece, Benson offered fivefold criteria for designating an historical work as a classic, argued against one of the core points in Kern's thesis, and contemplated how Kern might have revised his work in 1971 in light of the scholarly writings bearing on the topic since he wrote. In the lecture on Kantorowicz, he evaluated the 'classic' status of Frederick's biography, and examined the modern historiography concerning the book to assess why after two generations it remains provocative, controversial and highly influential. Within the context of these two public lectures, Benson formulated the basic themes and arguments so succinctly that anyone in the audience could follow his remarks, whether or not he or she had read the books. These short pieces stand as models of originality, and reveal an historian and scholar at work. Regardless of the venue, learned scholarly writing or public presentations of historical ideas, Robert L. Benson excelled at his craft and left a broad, erudite and intellectually stimulating body of work.

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37. Both of these pieces compare well with the articles (especially those of Peter Brown and William J. Bouwsma) that appeared in Vol. 103, no. 1 of *Daedalus*, which examined 'Twentieth-century Classics Revisited', and should be considered in the same light.

Bibliography of Robert Louis Benson[38]

Books: Written and Edited

(1) Ed., *Imperial Lives and Letters of the Eleventh Century*. Trans. Theodor E. Mommsen and Karl F. Morrison (New York, 1962).
(2) *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton, NJ, 1968).
(3) Co-ed. (with Michael J.B. Allen), *First Images of America: The Impact of the New World on the Old*. 2 vols. Ed. Fredi Chiappelli (Berkeley, CA, 1976)
(4) Ed. (with Giles Constable and Carol Lanham), *Renaissance and Renewal in the Twelfth Century* (Cambridge, MA, 1982).
(5) Ed. (with Johannes Fried), *Ernst Kantorowicz: Erträge der Doppeltagung Institute for Advanced Study, Princeton, Johann Wolfgang Goethe-Universität, Frankfurt*. Frankfurter Historische Abhandlungen 39 (Stuttgart, 1997).

Articles: Published

(6) 'Rufin', *Dictionnaire de droit canonique*, ed. Raoul Naz, 7 (Paris, 1961), pp. 779–84.
(7) 'The Obligations of Bishops with *Regalia*: Canonistic Views from Gratian to the Thirteenth Century', in Stephan Kuttner and J. Joseph Ryan, eds, *Proceedings of the Second International Congress of Medieval Canon Law*, Monumenta Iuris Canonici, Series C: Subsidia, Vol. 1 (Vatican City, 1965), pp. 123–37.
(8) '*Plenitudo Potestatis*: Evolution of a Formula from Gregory IV to Gratian', *Studia Gratiana* 14 (1967) [= Collectanea Stephan Kuttner 4], 196–217.
(9) 'Election by Community and Chapter: Reflections on Co-responsibility in the Historical Church', in James A. Coriden, ed., *Who Decides for the Church: Studies in Co-responsibility* (Hartford, CT, 1971), pp. 54–80. (Repr. *The Jurist* 31 (1971), 54–80.)
(10) 'Ceremonies, Secular and Nonsecular', in Jane Hayward and Timothy B. Husband, eds, *The Secular Spirit: Life and Art at the End of the Middle Ages*,

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38. In addition to his published works, Robert L Benson wrote numerous pieces that he never submitted for publication, primarily due to his meticulous and perfectionist nature – his sense that they somehow were not finished to his exacting standards. These articles, lectures and parts of articles, in sum, his scholarly *Nachlass*, remained after his death. I have included in this bibliography, designated as 'unpublished articles and reviews', those pieces that one can consider as essentially complete using very stringent criteria. Moreover, I feel justified in their inclusion because most, if not all, of these pieces are currently being edited for publication in the near future. I have arranged these currently unpublished materials in chronological order as well as it can be determined, and have indicated for each merely the approximate number of pages in typescript. All dates for the unpublished pieces must be considered as approximate.

(New York, 1975), pp. 241–6.

(11) 'A Proposed Computer Thesaurus of Medieval Latin', *Computers and Medieval Data Processing* 5 (1975), 10–14.

(12) 'Medieval Canonistic Origins of the Debate on the Lawfulness of the Spanish Conquest', in Fredi Chiappelli, ed., Michael J.B. Allen and Robert L. Benson, co-eds, *First Images of America: The Impact of the New World on the Old* (Berkeley, CA, 1976), pp. 327–34.

(13) 'Protohumanism and narrative technique in early thirteenth-century Italian *Ars dictaminis*', in Margo Cottino-Jones and Edward Tuttle, eds, *Boccaccio: Secoli di vita* (Ravenna, 1977), pp. 31–50.

(14) 'The Gelasian Doctrine: Use and transformations', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *La notion d'autorité au Moyen Age: Islam, Byzance, Occident,* Colloques internationaux de la Napoule 2 (Paris, 1982), pp 13–44.

(15) (with Giles Constable) 'Introduction', in Robert L. Benson and Giles Constable, eds, *Renaissance and Renewal in the Twelfth Century* (Cambridge, MA, 1982), xvii–xxx.

(16) 'Political *Renovatio*: Two Models from Roman Antiquity', in Robert L. Benson and Giles Constable, eds, *Renaissance and Renewal in the Twelfth Century* (Cambridge, MA, 1982), pp. 339–86.

(17) '*Provincia = Regnum*', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *Prédication et propagande au Moyen Age: Islam, Byzance, Occident*, Penn-Paris-Dumbarton Oaks Colloquia 3 (Paris, 1983), pp. 41–69.

(18) '*Libertas* in Italy (1152–1226)', in George Makdisi, Dominique Sourdel and Janine Sourdel-Thomine, eds, *La notion de liberté au Moyen Age: Islam, Byzance, Occident*, Penn-Paris-Dumbarton Oaks Colloquia 4 (Paris, 1985), pp. 191–213.

(19) (with Loren J. Weber) 'Georg Waitz (1813–1886)', in Helen Damico and † Joseph B. Zavadil, eds, *Medieval Scholarship: Biographical Studies on the Formation of a Discipline 1: History* (New York, 1995), pp. 63–75.

(20) 'Kantorowicz on Continuity and Change in the History of Medieval Rulership', in Robert L. Benson † and Johannes Fried, eds, *Ernst Kantorowicz: Erträge der Doppeltagung Institute for Advanced Study, Princeton, Johann Wolfgang Goethe-Universität, Frankfurt*, Frankfurter Historische Abhandlungen 39 (Stuttgart, 1997), pp. 202–10.

Review: Published

(21) Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's 'Decretum'*, *Speculum*

50 (1975), 97–106.

Articles: Unpublished

(22) '*Imperator oeconomus Ecclesiae*: Notes on a Decretalist Theory of the Imperial Office', *Friedrich Baethgen zu seinem 65. Geburtstag: Festschrift* (typescript) (unpublished *Festschrift* in the MGH, Munich, 1955), 36pp. and appendix (ii).

(23) 'Bishop, Metropolitan and Primate: A Study on the Conceptions of Office and Hierarchy in the Eleventh and Twelfth Centuries', 29pp.

(24) 'In Praise of the Franks: Rhetorical Influences on the Early Germanic Monarchies' (after 1985), 22pp.

(25) 'Self-knowledge and Consciousness of Self: Aspects of Spirituality in the Meditations of Guigo of the Charterhouse' (paper presented to the Friends of the UCLA Center for Medieval and Renaissance Studies at Mount St Mary's College, 13 May 1987), 17pp.

(26) '*Miserrimi miserorum*: Boncompagno on the Evils of Old Age' (after 1988), 55pp.

(27) 'The Treaty of Constance: Prelude and Epilogue' (1988), 22pp.

(28) 'The Clash at Besançon (October 1157)' (July 1989), 61pp.

(29) 'Frederick Barbarossa as Lord of the World' (paper presented in a slightly shorter form at the 25th International Congress on Medieval Studies, The Medieval Institute, Western Michigan University, Kalamazoo, MI, 11 May 1990), 37pp.

(30) 'Barbarossas Rede auf dem Reichstag von Roncaglia (1158)' (early 1990s), 9pp.

(31) '*Urbs et orbis*: An Ancient Roman Topos in Medieval Political Language' (after 1991), 33pp.

(32) 'Images of David in Psalters and Bibles: Medieval Interpretations of Biblical Kingship as Mirrored in Art' (paper presented at a conference on 'The Place of the Psalms in the Intellectual Culture of the Middle Ages', Center for Medieval Studies, California State University, Northridge, 15–16 February 1991), 37pp.

(33) 'The Politics of Symmetry: *Sacerdotium* and *Regnum* in the Mirror of Medieval Art (800–1200)', 28pp.

(34) 'The King as *Novus David*: Political Uses of the Old Testament in the Early Middle Ages' (after 1992), 22pp.

(35) 'Images of Rulership: On a Romanesque Chalice from Trzemeszno' (after 1993), 33pp.

(36) 'Norman Cantor and the Nazi Twins: On "Inventing the Middle Ages"' (enlarged version of a paper presented to the Medieval Studies Program at

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