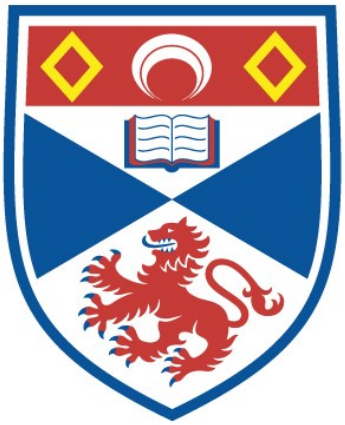
John of Salisbury and law

Maxine Esser

A thesis submitted for the degree of PhD
at the
University of St Andrews



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Acknowledgements

The completion of this thesis would have been impossible without the help of many people. Thanks go to my supervisor, Professor John Hudson, who has been supportive throughout my St Andrews career. I first took an undergraduate Honours course with him over a decade ago, and soon became aware of his immense enthusiasm for and knowledge of medieval legal history. Throughout my undergraduate, M.Litt and PhD journey with John as my supervisor I have been encouraged, reassured and chivvied. I am constantly amazed by his efficiency and indebted to him for his advice and support.

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The British Library, the Cambridge University Library and the library at Gonville and Caius, Cambridge, allowed me access to a number of their manuscripts; the library at the University of East Anglia and the Bodleian Libraries and Radcliffe Camera kindly granted access to their printed collections.

My fellow medieval historians at the University of St Andrews, both staff and students, have provided an encouraging and lively atmosphere which made for a close social unit. Most importantly, there are three people without whom this endeavour would never have come to fruition, Dad, Mum and Andy, to whom this is dedicated with love and gratitude, for everything, always.

Abstract

The aim of this thesis is to consider the knowledge and use of law by John of Salisbury, evaluating what he thought law should be, whence it originated and how it related to aspects of society, for example the institutions of the monarch and the church. For this purpose, the main evidence used will be *Historia Pontificalis*, *Policraticus* and the large corpus of letters. Chapter One is entitled Types of Law and gives an outline of the main types of law as John saw them. Chapter Two is entitled Canon Law. This chapter is devoted entirely to the study of John's knowledge and use of canon law. In this chapter, consideration will be made to what canon law John appears to have known and how John used this knowledge within his written work. Chapter Three, entitled King and Law, focuses upon John of Salisbury's opinion of the relationship between the monarch and the law. Chapter Four, Theory of Law: Church and King considers John's ideas on the relationship between church and monarch. Attention will also be paid to how he conveyed his ideas during the papal schism and the Becket dispute as well as John's ideas on judges. Chapter Five is entitled Law in Practice: Church and King, whereby analysis will be made of how John sees the monarch's involvement in issues such as church elections.

Contents

Contents

Abbreviations

A Companion *A Companion to John of Salisbury*, eds. Christophe Grellard and Frédérique Lachaud, Leiden, 2015.

Dickinson *The Statesman's Book of John of Salisbury*, tr. John Dickinson, New York, 1963.

EL *The Letters of John of Salisbury, Volume One, The Early Letters, (1153-1161)*, eds. W. J. Millor and H. E. Butler, Oxford, 1986.

Entheticus *John of Salisbury's Entheticus Maior and Minor,* ed. Jan van Laarhoven, three volumes, Leiden, 1987.

HP *Historia Pontificalis: Ioannis Saresberiensis*, ed. and tr., Marjorie Chibnall Oxford, 1956.

LL *The Letters of John of Salisbury, Volume Two, The Later Letters (1163-1180)*, eds. W. J. Millor and C. N. L. Brooke, Oxford, 1979.

Keats-Rohan *Policraticus I-IV*, ed. K. S. B. Keats-Rohan, Turnhout, 1993.

McGarry *The Metalogicon of John of Salisbury, A Twelfth-Century Defense of the Verbal and Logical Arts of the Trivium*, tr. Daniel D. McGarry, Berkeley, 1955.

Metalogicon *Ioannis Saresberiensis Metalogicon*, ed. J. B. Hall, Turnhout, 1991.

Metalogicon, tr.

John of Salisbury, Metalogicon, translation and notes by J. B. Hall, Introduction by J. P. Haseldine, Turnhout, 2013.

MTB *Materials for the History of Thomas Becket, Archbishop of Canterbury,* ed. James Craigie Robertson, seven volumes, London, 1875-1885.

Nederman *Policraticus, Of the frivolities of Courtiers and the Footprints of Philosophers*, ed. and tr. Cary J. Nederman, Cambridge, 1990.

ODNB *Oxford Dictionary of National Bibliography*.

Pike *Frivolities of courtiers and footprints of philosophers: being a translation of the First, Second, and Third Books and Selections from the Seventh and Eighth Books of the Policraticus of John of* Salisbury, ed. and tr. J. B. Pike, London, 1938.

PL *Patrologiae Latinae Cursus Completus,* ed. J.-P. Migne, 221 vols., Paris, 1844-1864.

VTEG Edward Grim, *Vita S. Thomae, Cantuariensis archiepiscopi et martyis, auctore Edwardo Grim*, in *Materials for the History of Thomas Becket, Archbishop of Canterbury,* ed. James Craigie Robertson, vol. ii, 353-450.

VTHB Herbert of Bosham, *Vita S. Thomae Cantuariensis archiepiscopi et martyris, auctore Herberto de Boseham* in *Materials for the History of Thomas Becket, Archbishop of Canterbury,* ed. James Craigie Robertson, vol. iii, 155-534.

VTJS John of Salisbury, *Vita et passio S. Thomae martyris, auctore Johanne Saresberiensi*, in *Materials for the History of Thomas Becket, Archbishop of Canterbury,* ed. James Craigie Robertson, vol. ii, 302-322.

VTRP Roger of Pontigny, *Vita sancti Thomae Cantuariensis archiepiscopi et martyris, sub Rogerii Pontiniacensis monachi nomine olim edita* in

	Materials for the History of Thomas Becket, Archbishop of Canterbury, ed. James Craigie Robertson, vol. iv, 1-79.
VTWC	William of Canterbury, *Vita et passio S. Thomae, auctore Willelmo, monacho Cantuariensi* in *Materials for the History of Thomas Becket, Archbishop of Canterbury,* ed. James Craigie Robertson, vol. i, 1-136.
Webb	*Ioannis Saresberiensis Episcopi Carnotensis 'Policratici' sive 'De nugis curialium' et vestigiis philosophorvm libri VIII / recognovit et prolegomenis, apparatu critico, commentario, indicibus instruxit Clemens C.I.* Webb, Clemens C. I. Webb, , two volumes, Oxford, 1909.
The World	*The World of John of Salisbury,* ed. Michael Wilks, Oxford, 1984.

Introduction

The aim of this introductory chapter is to provide an outline of the thesis and describe the setting and context in which John of Salisbury was working. A summary will provide John's biography, including the education he received as outlined in his *Metalogicon*, and his time spent in the curia of Archbishop Theobald of Canterbury. A summary will be given of the teaching and scholarship of Roman and canon law in the twelfth century. Background to John's writing will also be given.

A. Aims of the thesis

The aim of this thesis is to consider the knowledge and the use of law by John of Salisbury whilst evaluating what he thought law should be, whence it originated and how it related to aspects of society such as the institutions of the monarch and of the church. For this purpose, the main evidence used will be *Policraticus*, the *Metalogicon*, the *Historia Pontificalis* and, significantly, the large corpus of letters, which has been somewhat overlooked by historians. Chapter One is entitled Types of Law, and gives an outline of the main types of law as John saw them. Chapter Two is entitled Canon Law and considers John's knowledge and use of canon law. Chapter Three is entitled Law and King and focuses upon the relationship with the monarch and the law, as John of Salisbury saw it. Chapter Four is entitled Theory of Law: King and Church. Consideration will be given to John's ideas of the relationship between church and monarch. Attention will also be paid to how he conveyed his ideas during the papal schism and the Becket dispute, as well as John's ideas on judges. Chapter Five

concerns the subject of church and king in practice, where analysis will be made of how John sees the monarch's involvement in issues such as church elections.

There is little reference to the manuscripts of John's work within this survey.[1] The works used chiefly for this study exist in modern and thorough editions. This thesis is concerned with the textual and thematic content of John's work rather than with manuscript tradition or palaeographical matters. As such, no further manuscript surveys were deemed necessary. The analysis of John's text has therefore for the vast majority been undertaken using the modern editions of his work. For the *Historia Pontificalis* both the R. L. Poole Latin edition of 1927 and the Chibnall Oxford Medieval Texts editions have been used. For *Policraticus* the Keats-Rohan Latin edition of Books I–IV and the Webb two-volume Oxford edition of 1909 have been used, as well as Pike's *Frivolities of Courtiers and Footprints of Philosophers* and Dickinson's *The Statesman's Book of John of Salisbury*. For the letters, the two Oxford Medieval Texts editions have been used, the first of which is edited by Millor, Butler and Brooke, the second is edited by Millor and Brooke.

Significantly, the scholarly literature on the subject of John of Salisbury has, for the most part, utilised and interpreted the evidence from his philosophical and political works. In this study, these two letter collections will provide a vital and novel viewpoint through which to consider John's work, as the letters have arguably not fully been taken into account by other historians. Here, John's discursive philosophical

[1] The following manuscripts were checked: *Later Letters*, MS BL Add. 11506; *Policraticus*, MS BL Royal 13 DIV; and *Policraticus* and *Early Letters*, MS Cambridge University Library Ii.2.31; Ivo of Chartres, *Decretum*, MS BL Harley 3090; and Ivo of Chartres, *Tripartita*, MS Gonville and Caius 455/393.

works, such as *Policraticus*, will be used to complement the particular focus upon evidence contained within John's two letter collections, highlighting a previous gap in John of Salisbury studies. This concentration upon John's use of and opinions on law within his letters will enable an expansion in knowledge and uncover a new focus for interpretation.

Letters are vital pieces of evidence for driving forward our understanding of the twelfth century; they demonstrate the increasing levels of literacy, they can give a sense of communication networks and relationships, and they can illustrate the dissemination of ideas, as they span the gap between formal teaching taking place in the schools and the developing world of administration.[2] Recent studies on the subject of letter-writers and their correspondence have been undertaken, for example studies on Peter of Blois and Arnulf of Lisieux have added to the scholarship.[3]

Due to constraints of time and space in this thesis, a detailed study of comparison between the letters of John of Salisbury and other twelfth-century letter writers is not feasible here. It is, however, very interesting to note the striking similarities between the content and style of the letters collected by John, Peter and Arnulf. All three

[2] John D. Cotts, *The Clerical Dilemma: Peter of Blois and Literate Culture in the Twelfth Century*, Washington DC, 2009, 50-53.

[3] See, for example, John D. Cotts, *The Clerical Dilemma: Peter of Blois and Literate Culture in the Twelfth Century*, Washington DC, 2009; for letters of Peter of Blois, see also, for example, *The Later Letters of Peter of Blois*, Elizabeth Revell, Oxford, 1993; *Pierre de Blois : ambitions et remords sous les Plantegenêts*, ed. Egbert Türk, Turnhout, 2006; Stephen Hanaphy, 'Ovidian Exile in the Letters of Peter of Blois', *Viator*, 40:1 (2009), 93-106; Maïté Billoré, 'Idéologie chrétienne et éthique politique à travers le dialogue entre le roi Henri II et l'abbé de Bonneval de Pierre de Blois', in *Convaincre et persuader: Communication et propagande aux XIIe et XIIIe siècles*, ed. Martin Aurell, Poitiers, 2007; Neil Cartlidge, 'An intruder at the feast? Anxiety and debate in the letters of Peter of Blois', in *Writers of the Reign of Henry II: Twelve Essays*, ed. Ruth Kennedy and Simon Meecham-Jones, Basingstoke, 2006; Ethel Cardwell Higonnet, 'Spiritual Ideas in the Letters of Peter of Blois', *Speculum*, 50:2 (1975), 218-244. For Arnulf of Lisieux see, for example, *The Letters Collections of Arnulf of Lisieux*, tr. Carolyn Poling Schriber, Lewiston, New York, 1997; also Schriber, *The Dilemma of Arnulf of Lisieux: new ideas versus old ideals*, Bloomington, 1990; Frank Barlow, ed., *The Letters of Arnulf of Lisieux*, London, 1939.

described the conflict of interest between the demands of the church and of the king, to which they found themselves inflicted, as very difficult to manage or comprehend. Arguably, John found it easiest to reconcile the conflict – he believed that there should be no interference by the monarch in church matters, whereas Peter and Arnfulf felt far more torn; Arnulf, for example, was desirous of compromise from both sides during the Becket dispute, which ultimately put him at odds with Becket and his supporters.[4] All three use Biblical, patristic and Classical quotations and allusions throughout their works, and all three edited, redacted and collated their letters together.

Southern highlighted the importance of the letters of Peter of Blois as models of writing, observing that Peter rearranged, edited and sometimes expanded upon his collated letters in further recensions after his initial collection.[5] More recently, John D. Cotts, in his study of Peter's letters, has shown that during the twelfth century it was not unusual for letters written by clerics to be edited, arranged and collated together as a demonstration of compositional prowess and political standpoint;[6] indeed, Cotts

[4] See, for example, Letter 2.08 following on from the collapse of talks between Becket, Henry II and the papal delegates in September, 1169: "The freedom or dignity of the church was in no way overshadowed by the dignity of the kingdom. The honour of the church promotes royal honour more than it takes that honour away and royal honour has been more accustomed to preserve the church than to remove its liberties", in *The Letter Collections of Arnulf of Lisieux*, tr. Schriber, 132-133; see also, Scriber, *The Dilemma of Arnulf of Lisieux: new ideas versus old ideals*, Bloomington, 1990, 101-102 and Introduction; for Peter of Blois, see also, for example letter 10 in Revell's edition, whereby Peter complains of earthly princes uniting against God, closely mirroring Psalms, 2.2.

[5] R. W. Southern, 'Peter of Blois: A Twelfth-Century Humanist?', in *idem*, *Medieval Humanism and Other Studies*, Oxford, 1970, 116-122.

[6] John D. Cotts, *The Clerical Dilemma: Peter of Blois and Literate Culture in the Twelfth Century*, Washington DC, 2009; for letters of Peter of Blois, see also, for example, *The Later Letters of Peter of Blois*, Elizabeth Revell, Oxford, 1993; *Pierre de Blois : ambitions et remords sous les Plantegenêts*, ed. Egbert Türk, Turnhout, 2006; Stephen Hanaphy, 'Ovidian Exile in the Letters of Peter of Blois', *Viator*, 40:1 (2009), 93-106; Maïté Billoré, 'Idéologie chrétienne et éthique politique à travers le dialogue entre le roi Henri II et l'abbé de Bonneval de Pierre de Blois', in *Convaincre et persuader: Communication et propagande aux XIIe et XIIIe siècles*, ed. Martin Aurell, Poitiers, 2007; Neil Cartlidge, 'An intruder at the feast? Anxiety and debate in the letters of Peter of Blois', in *Writers of the Reign of Henry II: Twelve Essays*, ed. Ruth Kennedy and Simon Meecham-Jones, Basingstoke, 2006; Ethel Cardwell Higonnet, 'Spiritual Ideas in the Letters of Peter of Blois', *Speculum*, 50:2 (1975), 218-244.

has argued that "Peter's writings show how a trained and sensitive observer could participate in the institutional, spiritual and intellectual dynamism of the High Middle Ages".[7] It has been argued that John of Salisbury's letters may have been compiled as a model (see below). By considering John of Salisbury's letter collections, this thesis can advance understanding of the intellectual blossoming taking place in the twelfth century, such as the increasing sophistication demonstrated in letter-writing, and highlight John's importance within his era.

By using both the discursive, theoretical works, such as *Policraticus*, and the letters, which show John's thoughts often in a more practical and mundane context, the sense that John believed in the all-encompassing nature of the law is brought to the fore. This notion has not been explored by previous scholarship. For John, law governed all aspects of daily life and all strata of society; no one was above the law. Fundamentally, for John, all types of law originated from God, including positive law – indeed, law was not legitimate if it ran counter to the law of God. Civil law and justice were designed to be administered by the armed hand of the commonwealth, that is the monarch, in order to ensure the peace and smooth-running of society, as the enacting of justice was not an appropriate role for the church. In order to convey the absolute nature of law emanating from God, John used the civil law, Classical authors and, most importantly, the Bible to justify the foundations of his views. Quotations from the Bible are so prolific in John's writing that whatever opposing beliefs other contemporary scholars and clerics held to John, it would be impossible for them to

[7] *Ibid*, 4.

dispute these parts of John's argument, as to do so would be to be seen to dispute the word of God.

Such is the prevalence of law throughout John's writing, it is clear that he demonstrated a natural flair for legal work, as Theobald entrusted him to use his skills in the capacity of legal advisor, for example answering letters to churchmen with specific questions concerning interpretation of canon law, and by composing letters to senior members of the clergy to outline legal cases. John must have displayed an aptitude for being able to locate and interpret relevant, and at times conflicting, canons in order to provide solutions to problems, as well as being able to extract salient points from court cases and convey these clearly in correspondence. Yet, nowhere in John's writing does he expressly state that he has had legal training (see below). If John had received formal legal education, it seems almost impossible that he would not have recorded this, especially as he outlined his education in some detail in his *Metalogicon*. It is therefore more realistic, and more helpful, to think of John not as a trained lawyer, but rather as someone who learnt 'on the job' and who had built up a technical legal knowledge and expertise which enabled him to, among other things, advise churchmen on canon law, and to write up legal cases such as the Anstey case, therefore he can be considered as someone with notarial or scribal expertise.[8]

It is evident that John was familiar with and able to interpret canon law, and Chapter Two of this thesis concentrates on this topic. The argument in this thesis argues that

[8] Brundage has argued that not a single notary is known to have practised in England until the second half of the thirteenth century. His description of a notary, however, as someone who was skilled and able to prepare original documents which accurately describe fairly complex transactions, who therefore needed some knowledge of law but had not usually been trained in a university law faculty could be said to describe John of Salisbury to a certain extent; see James A. Brundage, *The Medieval Origins of the Legal Profession, Canonists, Civilians and Courts*, Chicago, 2008, 395-402, see also 211-214.

John may have used canonical collections other than the *Decretum* of Gratian. While not being able to prove this definitively, it seems impossible to argue with certainty that John used Gratian exclusively. Just as undergraduate students today use earlier editions of text books when the latest versions are unavailable in a university library, John may also have referred to older collections on occasions when there was no access to Gratian. Furthermore, despite their somewhat orderly nature, canon law collections were complex and acquaintance with the structure and organisation of an older collection may have enabled a more efficient gathering of required information.[9] It is highly likely, therefore, that John would have used older canonical collections, in particular those traditionally described as having been compiled by Ivo of Chartres. The in-depth consideration of John's possible use of Ivonian collections complements assertions made by Sassier, who argued that it is difficult to state with certainty that John used Gratian.[10] Barrau came to a similar conclusion regarding Thomas Becket's possible use of Ivo, as she refutes Duggan's assertion that after the production of Gratian's collection no other collections were used by Becket.[11] Sassier's study on John of Salisbury and law, Barrau's study on Becket and this thesis have all independently arrived at comparable conclusions regarding the use of canonical collections in the mid-twelfth century; this study therefore advances and adds to the debate on the development of canon law study, and argues that older collections, in

[9] Furthermore, Brundage has suggested that the arrangement of material in Gratian was fundamentally inappropriate for use by practitioners, who needed to locate rather it appeared to be the product of, and therefore of use for, classroom teaching, see Brundage, *Medieval Origins*, 102-103.

[10] Yves Sassier, 'John of Salisbury and Law', in *A Companion*, 237.

[11] Julie Barrau, *Bible, lettres et politique, L'Écriture au service des hommes à l'époque de Thomas Becket*, Paris, 2013, 356.

particular those ascribed to Ivo of Chartres, were not simply superseded by Gratian's collection when it was produced, but rather Ivo's collections remained vital and well-used by those studying and using canon law on a regular basis.

By considering the evidence of use of law and discussion on the subject of law contained within these texts composed by John of Salisbury, it is possible to improve upon the understanding of issues which John considered to be of vital importance, and which have been overlooked by scholars working on John and the broader aspects of the twelfth century thus far. The knowledge of the scale of use of law within John's texts and our appraisal of what he thought law should be can thus be expanded.

B. Background and Career

"Writing a biography in the modern sense of most medieval figures, even prominent ones, is an impossibility."[12] John of Salisbury is no exception. He was born in Old Sarum in *c.*1115-1120 and died in Chartres in October 1180. About John's family, in terms of status and number, evidence is scant,[13] though letters from John to his brother Richard and to his half-brother Robert survive.[14] In the 1140s or 1150s John's family moved from Salisbury to Exeter.[15]

[12] Christof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge, 2010, 5.
[13] For John's family, see Frank Barlow, 'John of Salisbury and his Brothers', *Journal of Ecclesiastical History*, Vol. 46, No. 1 (1995), 95-109.
[14] *LL*, ep. 145-148, 164, 169 and 172.
[15] Christopher Brooke, 'John of Salisbury and his world', in *The World*, 3; Brooke suggested that this could support his conjecture that John's father was a canon – the family may have had to move as a result of a new position.

Most likely, John was initially educated at the cathedral school of Old Sarum.[16] Nederman suggested that John probably proceeded on to more advanced studies at Exeter; John maintained an association with the cathedral into the 1170s. Additionally, many of his friends and associates had Exeter connections.[17] Often overlooked as a place of continued learning and teaching, Exeter would have offered instruction in theology and canon law.[18] Brett noted that the chapter was a centre of intellectual activity in the 1150s and 1160s, nurtured by Bishop Bartholomew,[19] with whom John maintained a friendship.[20]

John's *Metalogicon* gave an account his advanced studies, undertaken in France,[21] which has been debated by historians. According to *Metalogicon*, Book II, Chapter 10, John began studying in 1136 at Mont Sainte-Geneviève, as a pupil of Abelard and then Master Alberic.[22] He studied dialectic there for two years, under Alberic and Robert

[16] For background to the school at Old Sarum, see Nicholas Orme, *Education in the West of England, 1066-1548*, Exeter, 1976, 65-78.
[17] Cary J. Nederman, *John of Salisbury*, Tempe, 2005, 3. See also Yoko Hirata, 'John of Salisbury and the clergy of Exeter', in Hirata, *Collected Papers on John of Salisbury and his Correspondents*, Tokyo, 1996, 157-181.
[18] Orme, *Education*, 23. For background to Exeter, see *ibid*, 42-57.
[19] Bartholomew was learned in both the canon and civil law, and wrote a penitential. Martin Brett, 'English law and centres of law studies', in *Archbishop Eystein as Legislator: the European Connection*, ed. Tore Iversen, Trondheim, 2011, 97. Many thanks to Dr Brett for providing me with a proof copy of this article.
[20] See e.g. *LL*, ep. 168, 174. Although no direct evidence linked John with continued formal study at Salisbury, he may have undertaken more there than has previously been suggested: Cédric Giraud and Constant Mews, 'John of Salisbury and the Schools of the 12th Century', in *A Companion*, 34. The cathedral at Salisbury was a centre of energetic scribal and scholarly activities, and Teresa Webber highlighted its importance for manuscript production, suggesting it was one of the most important cultural centres in England after the Norman Conquest: Webber, *Scribes and Scholars at Salisbury Cathedral, c.1075-c.1125*, Oxford, 1992, 1.
[21] See Olga Weijers, 'The Chronology of John of Salisbury's Studies in France (*Metalogicon*, II, 10)', *The World*, 109-110; see also K. S. B. Keats-Rohan, 'John of Salisbury and Education in Twelfth-Century Paris from the account of his *Metalogicon*', *History of Universities*, 6 (1986), 1–45; for recent discussion of the debate see J. P. Haseldine, 'Introduction' *Metalogicon*, tr., 34-43; and Giraud and Mews, 'John of Salisbury', in *A Companion*, 32-47.
[22] On Abelard see D. E. Luscombe, *The School of Peter Abelard, The Influence of Abelard's Thought in the Early Scholastic Period*, Cambridge, 1969; Luscombe, 'Peter Abelard', in *A History of Twelfth-Century Western Philosophy*, ed. P. Dronke, Cambridge, 1988, 279-307; C. J. Mews, *Abelard and His Legacy*,

Melun.[23] He then studied with the grammarian William of Conches.[24] It is unclear where he studied with William – Southern argued it was not at Chartres, whereas Dronke believed it was at Chartres, citing the lack of evidence linking William to Paris.[25] While debate continues about the importance of Chartres and the masters there, the generally-held view is that all of John's studies took place in and around Paris, since his own account in *Metalogicon* offered no evidence that he studied at Chartres. After working under William of Conches and Thierry of Chartres, John studied with Richard Episcopus, who later became the Bishop of Avranches, 1170-1182,[26] and Peter Helias, with a fellow English student, Adam du Petit Pont.[27] In Paris John also learnt from Gilbert of Poitiers, Robert Pullen and Simon of Poissy, up to *c.*1146/1147, at which point he returned to Mont Sainte-Geneviève.[28] It was likely that John also undertook

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Aldershot, 2001; for a recent bibliography of Abelard study see J. M. Ziolkowski, *Letters of Peter Abelard: Beyond the Personal*, Washington D.C., 2008. On Alberic see L. M. de Rijk, 'Some new evidence on twelfth century logic: Alberic and the School of Mont Ste Geneviève (Montani)', *Vivarium*, 4 (1966), 1-57.

[23] McGarry, 2.10, 95-6. For Robert of Melun see *ODNB*, http://www.oxforddnb.com/view/article/23727, accessed 23rd October 2014; see also 'Robert of Melun', L. Smith, *The Glossa Ordinaria: The Making of a Medieval Bible Commentary*, Leiden, 2009, 205-208.

[24] See Dorothy Elford, 'William of Conches', in *History,* ed. Dronke, 308-327; see also P. Dronke, 'William of Conches and the 'New Aristotle'', *Studi Medievali*, 3rd series, 43 (2002), 157-163.

[25] See R. W. Southern, 'Humanism and the School of Chartres', Southern, *Medieval Humanism and Other Studies*, Oxford, 1970; Southern, 'The Schools of Paris and the School of Chartres', in *Renaissance and Renewal in the Twelfth Century*, eds. R. L. Benson and G. Constable, Toronto, 1991; Southern, *Scholastic Humanism and the Unification of Europe, Volume 1: Foundations*, Oxford, 1995, 58-101 and 214-221; Peter Dronke, 'New Approaches to the School of Chartres', *Anuario de estudios medievales*, 6 (1969), 121-123; also Keats-Rohan, 'Education', 1–45; see also the critique of Southern's argument in John Marenbon's review of *Scholastic Humanism and the Unification of Europe, Volume 1: Foundations*, 'Humanism, Scholasticism and the School of Chartres', *International Journal of the Classical Tradition*, Vol. 6, No. 4 (2000), 569-577. For the development of the university at Paris, see S. C. Ferruolo, *The Origins of the University: The Schools of Paris and their critics, 1100-1215*, Stanford, CA, 1985; I. P. Wei, *Intellectual Culture in Medieval Paris: Theologians and the University, c.1100-1330*, Cambridge, 2012; see Giraud and Mews, *A Companion*, 39-45.

[26] See Luscombe, *The School of Peter Abelard*, 70.

[27] On Peter see *History*, ed. Dronke, 454; on Adam see *ibid*, 443.

[28] *Metalogicon*, II, 10; Weijers, 'The Chronology', *The World*, 109-110. On Gilbert see John Marenbon, 'Gilbert of Poitiers', *History*, ed. Dronke, 328-352; on Robert see *ODNB*, http://www.oxforddnb.com/view/article/22877?docPos=3, accessed 23rd October, 2014; little is known about Simon: see Giraud and Mews, in *A Companion*, 119.

some teaching of his own when funds ran low. In order to prepare for such a task, he perhaps received informal teaching from Adam du Petit Pont.[29]

Evidence from a number of sources suggests that John left Paris in 1147, taking up residence, and possibly employment, with his close friend Peter of Celle.[30] Letters exist between Peter and John, identifying Peter as an abbot and John as 'his clerk'.[31] One of John's letters referred to Peter providing him food when he was poor and lacking parental love.[32] In 1147 it is thought that John joined the household of Theobald,[33] having been recommended for the position by Bernard of Clairvaux. Bernard described John as "the friend of my friends" and someone with a "good reputation."[34] Nederman proposed that Peter of Celle engineered a meeting between Bernard and John, which led to this recommendation.[35] In a letter to Peter, John expressed his gratitude: "it is thanks to you that I have made acquaintance with the

[29] *Metalogicon*, tr., II, 10, 200; probably this was at some point between 1138 and 1141, see Nederman, *John of Salisbury*, 9.
[30] Barlow, 'Brothers', 101.
[31] John D. Cotts, 'Monks and Clerks in Search of the *beata scholar*: Peter of Celle's Warning to John of Salisbury Reconsidered', in *Teaching and Learning in Northern Europe, 1000-1200*, eds. Sally N. Vaughn and Jay Rubenstein, Turnhout, 2006, 271; see *Letters of Peter of Celle*, ep. 65 and 170.
[32] *EL,* Ep. 33, 55; *Ep*. 65 of Peter made reference to John of Salisbury being with him, but this did not give proof of dating: "here you often sat, slept and were present with me"; "hic tu mecum frequenter sedisti, dormisti, fuisti"; *The Letters of Pete of Celle*, ed. Julian Haseldine, Oxford, 2001, 310-311.
[33] According to R. L. Poole, John entered papal service in 1146/1147, and did not join Theobald's household until 1154; see Poole, *Studies in Chronology and History*, Oxford, 1934, 248-258. John was, however, witness to two of the archbishop's charters before 1154, and so Poole's dating has been rejected. Saltman has demonstrated that John must have been in Theobald's household by 1148, as he witnessed a charter of Theobald's confirmation to the canons of Leeds of the church of Easling, Kent, addressed to Bishop Ascelin of Rochester, †24 Jan 1148; Avrom Saltman, *Theobald Archbishop of Canterbury*, London, 1956, 170. See *Metalogicon*, tr., 43-47 and J. P. Haseldine, 'Monastic Patronage and the Beginning of John of Salisbury's Career, with a revised chronology for 1147-1148', *Monastic Research Bulletin*, 18 (2012), 30-35.
[34] Ep. 389, *The Letters of St Bernard of Clairvaux*, tr. Bruno Scott James, London, 1953, 459.
[35] Nederman, 13.

great, and have won the favour and the friendship of many; it is thanks to you that I seem to flourish in my own country."[36]

Whilst in the employment of Theobald, John travelled as envoy to the papal court. In his *Historia Pontificalis*, he recounted events and legal hearings that he witnessed there.[37] As well diplomatic functions, John undertook secretarial duties for Theobald.[38] Although John held no official title within the curia at Canterbury, in five of the extant fourteen charters which he witnessed he was described as '*magister*'.[39] Theobald appeared to have talent for recognising the administrative strengths and flexibility of his staff, and as such they often held no singular or limiting title. Cheney, however, observed that titles in twelfth-century chanceries revealed little about the functions performed.[40] John's lack of title is therefore not necessarily unusual or significant. Furthermore, as Barrau has observed, despite legal matters becoming increasingly central to court life, and legal experts becoming increasingly important at court, church administration at this time had not yet become the business of specialists.[41]

John's years spent close to the papal curia on diplomatic missions for Canterbury confirmed his intellectual and social position, but it was also probably this close contact with the papacy that damaged John's position in the eyes of Henry II.[42] John travelled in 1155 to Benevento, where the papacy was residing, partly in order to gain for Henry II a grant of the hereditary fee of Ireland from Pope Adrian IV. This would

[36] *EL*, Ep. 33, 55: "uestrum munus est quod principum uirorum assecutus sum notitiam, familiaritatem gratiamque multorum; uestrum munus est quod florere in patria uideor."
[37] It was accounts such as these, which led Poole to suggest that John was employed directly at the papal curia.
[38] See *EL*, xxix.
[39] Charter nos. 16, 83, 95, 125, and 263 in Saltman, *Theobald*; see Appendix below.
[40] C. R. Cheney, *English Bishops' Chanceries, 1100-1250*, Manchester, 1950, 28-32.
[41] Julie Barrau, 'John of Salisbury as Ecclesiastical Administrator', in *A Companion*, 111.
[42] Christophe Grellard and Frédérique Lachaud, 'Introduction', in *A Companion*, 9.

have been welcomed by Theobald.[43] Warren argued that the archbishop was pursuing the English church's claim over Ireland,[44] and that John appeared intent upon furthering the position of Canterbury, whilst at the same time complying with the Pope's plans. This behaviour was most likely reported back to Henry II by Arnulf of Lisieux, an ally of the king at the time, who had also been at Benevento.[45] John feared for his safety, and wrote to Peter of Celle: "After I returned from the Church of Rome, Fortune piled on me such a load of bitter troubles ... The indignation of our serene lord, our all-powerful king, our most unconquerable prince, has grown hot against me in full force."[46] This attack on John is likely to have been Henry II's method of criticising Theobald and the English church.[47] This suggests that John was seen by the royal contingent to have been acting in the interests of Canterbury at the expense of the English crown.[48] The mission resulted in John suffering Henry II's wrath, and exile the following year.[49] It is likely that at this point that John began to compose his *Policraticus*.[50]

Upon learning that Henry's anger had subsided, John returned to England in 1157, and continued to act as close advisor to Theobald until the archbishop's death in 1161.

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[43] Saltman, *Theobald*, 95.
[44] W. L. Warren, *Henry II*, New Haven, 1977, 195.
[45] Giles Constable, 'The Alleged Disgrace of John of Salisbury in 1159', *English Historical Review*, 69 (Jan. 1954), 75.
[46] *EL*, Ep. 19, 31: "Postquam ab ecclesia Rom(ana) reuersus sum, tot acerbitatis suae molestias in me fortuna congessit ... Serenissimi domini, potentissimi regis, inuictissimi principis nostri tota in me incanduit indignatio".
[47] See quote in Conclusion, 235.
[48] Grellard and Lachaud, in *A Companion*, 10.
[49] See Constable, 'Alleged Disgrace', 67-76; also Lynsey Robertson, 'Exile in the Life and Correspondence of John of Salisbury', in *Exile in the Middle Ages, Selected Proceedings from the International Medieval Congress, University of Leeds, 8-11 July 2002*, ed. Laura Napran and Elisabeth van Houts, Turnhout, 2004.

[50] Max Kerner, *Johannes von Salisbury und die Logische Struktur seines* Policraticus, Wiesbaden, 1977, 114-116.

John remained in the service of Canterbury after Thomas Becket became primate there. The nature of John's position within Becket's household has been debated; he was no longer one of the leading lights at the curia.[51] John was a vocal supporter of Becket and closely associated with the promotion of his cult and martyrdom,[52] but his attitude toward Becket on a personal level is more difficult to define.[53] John was a member of the delegation who set out to collect Becket's pallium from the pope in July 1162. As the quarrel between king and archbishop intensified, John travelled to France to prepare the way for the possible exile of Becket.[54] From 1164 John was exiled again, although the details surrounding his expulsion remain unclear. In a letter from John to Becket after John had reached France, he wrote that he was under the king's disfavour.[55] William FitzStephen in his *vita* of Becket wrote that Henry II banished John in order to prevent him from providing counsel and support to the archbishop through the crisis,[56] while the tone of John's *Policraticus* had most likely already made him *persona non grata* with the king.[57] The letters which John wrote during this second time of exile reflected his desire to return to England, yet he refused to give up support

[51] Haseldine noted that John began in the archiepiscopate of Thomas as one of the most senior figures in the household, as many of his colleagues moved on to other positions, see *Metalogicon*, tr., 28; Brooke noted that John was the only substantial figure from Theobald's circle to remain with Becket, see *LL*, pp. xxi-xxii; Duggan noted that the position was not so straightforward; John was overlooked for the role of chancellor but the household did not comprise the old guard, see Anne J. Duggan, 'John of Salisbury and Thomas Becket', in *The World*, 428.

[52] Duggan, 'Salisbury and Becket', in *The World*, 428.

[53] See Beryl Smalley, *The Becket Conflict and the Schools, A Study of Intellectuals in Politics*, Oxford, 1973, where John's personal attitude to Thomas was described as ambivalent, 103; see also Duggan, 'Salisbury and Becket', in *The World*, 427-438; see also Michael Staunton, *Thomas Becket and his Biographers*, Woodbridge, 2006; Karen Bollermann and Cary J. Nederman, suggested that John was critical or at least wary of Becket: Bollermann and Nederman, 'John of Salisbury and Thomas Becket', in *A Companion*, 71.

[54] This was probably between October 1163 and January 1164, see *LL*, ep. 136, and xxii-xxiii.

[55] *LL*, Ep. 136, 1164, 12-13.

[56] *MTB*, iii, 46.

[57] Duggan, 'Salisbury and Becket', in *The World*, 430.

for Becket's cause. He maintained contact with the chapter of Exeter cathedral, where his brother Richard, along with their mother and half-brother Robert, lived under the protection of Bishop Bartholomew.[58] John stayed as a guest of Peter of Celle at Reims through the 1160s, while Becket and his entourage took refuge at the abbey of Pontigny and later at Sens. There is no evidence to suggest that John and Becket were together in exile for any significant length of time. Bollermann and Nederman speculated that the geographical distance between the two may have been indicative of their relationship – John was a servant of Canterbury and not a personal aide to Becket.[59] John attended the meeting of Henry II and Louis VII at Angers in 1166,[60] desiring the procurement of peace and a return to England for the exiles. (See Chapter Four.) This was far from the case, however, and John remained at Reims until 1170, when Becket and his supporters returned to Canterbury.[61] John was present in the cathedral at Canterbury in December when Becket's attackers came. He fled the scene of the murder and his account of the events can be found in one of his letters.[62]

The details of John's later life are vague.[63] His close connections with Exeter led to him becoming treasurer there in 1173. John also witnessed judge-delegate decisions

[58] It is possible that John was a canon of Exeter by 1160, see *EL*, ep. 118, 195, n. 8; he was certainly a canon of Salisbury by 1163, see *MTB*, iii, 46.
[59] Bollermann and Nederman, in *A Companion*, 76.
[60] *LL*, ep. 167, early June, 1166, 98-99.
[61] See *LL*, xix-xlvii; see John McLoughlin, 'The Language of Persecution: John of Salisbury and the Early Phase of the Becket Dispute', in *Persecution and Toleration*, ed. W. J Sheils, Oxford, 1984, 73-87.
[62] *LL*, ep. 305, 724-739. Although this account of the murder was not the most detailed, owing to John having fled the scene, it was key in promoting the case for Becket's martyrdom, see Hirata, *Collected Papers*, 123-124.
[63] For a reassessment of John's time as bishop of Chartres, see Barrau, in *A Companion*, 118 ff; see also Karen Bollermann and Cary J. Nederman, '"The Sunset Years": John of Salisbury as Bishop of Chartres and the emergent cult of St Thomas Becket in France', *Viator*, Vol. 45, No. 2 (2014), 55-76.

of Bartholomew of Exeter and of Richard of Canterbury between 1171 and 1176.[64] The relationships which he built upon during his exile in the 1160s no doubt contributed to his election as bishop of Chartres in 1176, being chosen by his predecessor, William 'White Hands' and King Louis VII, as well as the cathedral chapter who chose him in honour of Thomas Becket.[65] Little is known about John's time as bishop, as the archival resources from Chartres were destroyed in the cathedral treasury fire of 1194 and bombing in 1944.[66] Peter of Celle's letters contained reports of complaints against John brought to Peter by dissatisfied plaintiffs,[67] although in one letter Peter wrote that he had heard good reports of the state of affairs at Chartres.[68] John remained at Chartres until his death in 1180.

C. Study of Law in the twelfth century

The twelfth century was a period of great activity in the study of law.[69] The study of canon law developed as a distinct subject in its own right at schools across western Europe, and there was a revival of the study of Roman law. Bologna was a central institution in this field, as were Pavia, Montpellier, Orleans, Chartres and Liège.[70]

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[64] *English Episcopal Acta XI-XII: Exeter, 1046-1257*, ed. Frank Barlow, Oxford, 1995, see for example no. 73, regarding the tithes of Smisby, and no. 130 regarding the restitution of a church to Tavistock Abbey; *Metalogicon*, tr., 32; see also Barlow, 'Brothers', 104.

[65] Nederman, *John of Salisbury*, 37.

[66] Barrau, in *A Companion*, 119; Barrau demonstrated, however, that more than twenty different acts of John from Chartres have been uncovered, which demonstrate John's activity as bishop, see *ibid*, 129 ff.

[67] *Letters of Peter of Celle*, ep. 176.

[68] *Letters of Peter of Celle*, ep. 177.

[69] For background to medieval universities, see H. Rashdall, *The Universities of Europe in the Middle Ages*, 3 vols., London, 1936; Helene Wieruszowski, *The medieval university: masters, students, learning*, Princeton, 1966; also Peter Classen, *Studium und Gesellschaft im Mittelalter*, Stuttgart, 1983; *The Medieval Church: universities, heresy and the religious life: essays in honour of Gordon Leff*, eds. Peter Biller and Barrie Dobson, Woodbridge, 1999.

[70] It is difficult to discern precisely when teaching of Roman law began at Montpellier, but André Gouron dated it to the second half of the twelfth century; see Gouron, 'Les premiers canonistes de l'école

C. i. Roman Law

Roman law refers to the legal system developed during the early Roman Republic which remained in use throughout the Roman Empire. After the collapse of imperial authority in the western part of the Roman Empire in the later fifth century, invading groups established independent kingdoms. They considered their own Germanic laws to be applicable only to themselves and continued to apply (vulgar) Roman law to their Romanised subjects. In places, the law continued to be written, for example the *Lex Romana Visigothorum* was enacted in 506 by Alaric II, king of the Visigoths in Spain and south-western Gaul.[71]

In the sixth century the emperor Justinian I undertook a comprehensive codification and revision of the Roman law, in order to bring the mid fifth-century Theodosian Code up to date. This vast undertaking resulted in the *Corpus Iuris Civilis*, as it became known after the invention of printing.[72] The *Corpus* began life as three separate books, the *Code*, *Digest* and *Institutes*, which were bound together with the later *Novels* in the early modern period into one or two volumes, to become the *Corpus Iuris Civilis*. The *Code* consisted of twelve books of imperial constitutions in chronological order, arranged into sub-sections or titles. The *Digest* was an anthology of extracts of writings of well-known jurists; approximately one-third of the *Digest* was taken up with extracts of the jurist Ulpian (AD 193-235).[73] The citations within the *Digest* were subdivided into titles, each devoted to a particular topic, and arranged into fifty books.

montpelliéraine', *Mélanges offerts à Jean Dauvillier*, Toulouse, 1979, 361-368; also Gouron, *Les juristes de l'école de Montpellier*, Mediolani, 1970, 3f.

[71] Peter Stein, 'Roman Law', in *The Cambridge History of Medieval Political Thought c.350–c.1450*, ed. J. H. Burns, Cambridge, 1988, 41.

[72] What follows is a summary description of the content and reception of the *Corpus Iuris Civilis*, taken from Peter Stein, *Roman Law in European History*, Cambridge, 1999, 33-45.

[73] Tony Honoré, *Ulpian, Pioneer of Human Rights*, 2nd ed., Oxford, 2002, 1.

Within each title, the extracts were organised in a somewhat disorderly manner. As the *Code* and the *Digest* were seen to be too complicated for students at the beginning of their studies, Justinian ordered the writing of the *Institutes*, a new and updated version based on the *Institutes* of Gaius, which dated from the mid-second century. In 533 the *Digest* and the *Institutes* became law, followed by a revised *Code* in 534. After this time Justinian continued to issue constitutions. After his death in 565, these *leges*, many of which had been written in Greek, were gathered together. This group of *leges* became known as the *Novels*. They were not part of Justinian's original programme of revision, but they were added to the *Digest*, *Code* and *Institutes* to make up the body of law known as the *Corpus Iuris Civilis*.

Although Roman law did survive in the east, it only survived in fragments in the west. In the eighth century, an edict issued by Lombard King Luitprand made reference to Roman law. The edict stated that documents which were written before Roman notaries had to follow the rules of Roman law, and documents made before Lombard notaries had to conform to Lombard law.[74] The *Digest* was not mentioned in sources from the last known reference made by Pope Gregory I in 603 until the next reference made in a document issued at Marturi in Tuscany in 1076. In *c.*1093/94 Ivo of Chartres included sections of the *Digest* in his canon law collections (See below for Ivo.), while the surviving glosses of Irnerius, who was teaching at Bologna 1112-1125, demonstrate that he was familiar with all parts of the *Digest* (books 1-50).[75] The recovery of the whole of the *Corpus*, bringing about the revival in Roman law study,

[74] Stein, *Roman Law*, 39-40.
[75] Wolfgang P. Müller, 'The Recovery of Justinian's Digest in the Middle Ages', *Bulletin of Medieval Canon Law*, new series, Vol. 20 (1990), 1-2.

was a gradual process, and extended over much of the twelfth century.[76] Eventually the complete *Digest* could be added to the *Institutes* and the first nine books of the *Code*. Later the last three books of Justinian's *Code* (the *tres libri*) were discovered but were kept separate from the rest of the *Code*. Another version of the *Novels*, the *Authenticum* became available.[77]

By 1127–1130 a law school in the diocese of Die in the Rhone valley, associated with the Augustinian canons of St Rufus, produced a *summa* on the *Institutes*, which also cited the *Digestum vetus*. This Rhone valley school attracted the likes of Nicholas Breakspeare, who later became Pope Adrian IV, to study there and the glossator Rogerius, who had studied and taught at Bologna.[78]

The rebirth of Roman law study in the twelfth century has aroused much interest from historians. One debate has centred on the point at which Bologna became a focus for increased study. This uncertainty persists due to a number of factors. Firstly, very few Roman law manuscripts are extant from the period *c.*1075-1130; secondly, extant manuscripts rarely have signatures, and those which do are difficult to attribute to a particular individual; and thirdly, texts became obsolete so quickly that there was little point in copying and circulating them once more up-to-date texts were available.[79] The traditional view, originating in the thirteenth century with the lecturer Odofredus, was that Pepo began his teaching in *c.*1075 and that Irnerius continued

[76] The *Digest* became available in three parts, known as *Vetus*, books 1–24.2, *Infortiatum* books 24.3–38 and *Novum*, books 39–50.
[77] Stein, *Roman Law*, 43-44.
[78] Stein, *Roman Law*, 55.
[79] Kenneth Pennington, 'The "Big Bang": Roman Law in the Early Twelfth-Century', *Rivisto Internazionale di dritto commune*, 18 (2007), 43.

until *c.*1125, followed by the Four Doctors.[80] Due to the paucity of evidence, however, some modern scholars questioned this take on events. Lange outlined his acceptance of the traditional view,[81] while Winroth argued that no secure evidence places any substantial part of Bulgarus's teaching before 1140, and has suggested that he was a younger contemporary of Gratian.[82] Gouron has in turn rejected Winroth's theory.[83] Radding and Ciaralli proposed that a Roman law revival took place in northern Italy, in particular Ravenna and Pavia, perhaps as early as the 1020s, when they suggest the *Institutes* were being studied, followed by study of the *Novels* and *Code* "by the 1040s if not earlier,"[84] but these findings have not generally been accepted.[85]

C. ii. Canon Law

Canon Law refers to the body of rules which defined the rights, duties and obligations of the church, and regulated virtually all aspects of Christian life. Canon law was made

[80] Pennington, '"Big Bang"', 43; the limited evidence for Pepo is assessed in Hermann Kantorowicz, 'An English Theologian's View of Roman Law: Pepo, Irnerius, Ralph Niger', reprinted in *Rechtshistorische Schriften. By Hermann Kantorowicz*, eds. Helmut Coing and Gerhard Immel, Karlsruhe, 1970, 231-244.
[81] Hermann Lange, *Römisches Recht im Mittelalter I: Die Glossatoren*, Munich, 1997, 323-334.
[82] Anders Winroth, *The Making of Gratian's* Decretum, Cambridge, 2000, 162.
[83] A. Gouron, 'Sur un moine bénédictin en avance ou en retard sur son temps', *Revue historiques de droit français et étranger*, 85 (2007), 315-322, and Gouron, 'Le droit romain a-t-il été la 'servante' du droit canonique?', *Initium: Revista catalana d'història del dret*, 12 (2007), 231-243.
[84] Charles M. Radding and Antonio Ciaralli, *The* Corpus Iuris Civilis *in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival*, Leiden, 2007, 84. They believe that only the *Digest* was unstudied before the eleventh century. They conceded that their evidential basis is "meagre."
[85] Müller saw Radding's argument as "rhetorical rather than scholarly", with philological evidence being kept from view: Müller, 'Charles M. Radding and Antonio Ciaralli, *The "Corpus iuris civilis" in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival*. (Brill's Studies in Intellectual History, 147.) Leiden and Boston: Brill, 2007, Book Review', *Speculum*, Vol. 83, No. 4 (Oct., 2008), 1026-1027; Gouron found their case unconvincing: Gouron, 'Charles M. Radding and Antonio Ciaralli, *The "Corpus iuris civilis" in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival*. (Brill's Studies in Intellectual History, 147.) Leiden and Boston: Brill, 2007, Book Review' in *The Legal History Review*, Vol. 76 (2008), 183-186; while Pennington also saw their "alternative universe" as "bereft of almost any evidence": Pennington, '"Big Bang"', 43.

up from various sources: the Bible, being seen as the very fount of Christian life;[86] church councils and synods which promulgated canons; as well as the teachings of Church Fathers such as St Augustine, Origen and St Jerome, saints' lives, monastic Rules and Roman law.

It was impractical for clergy to search through such a large body of works, and so collections of canons were collated for reference. Furthermore, the scholarly reader was interested in abbreviations and extracts, not discursive texts.[87] Important early collections included, *Dionysiana*, originating in Rome in *c.*500,[88] and *Collectio Hispana*, from Spain, *c*.633.[89] By the end of the 1140s Gratian's *Decretum* was widely received as the principal collection of canon law (see below). When applied in the diocese, however, its shortcomings and contradictions were revealed, and bishops referred to the papal curia for advice. This in turn produced *responsa* and *decretales* which sometimes made the basis of local legislation.[90]

In general terms, papal decretals were formal answers to questions which had come before a pope. A decretal letter was a rescript, a written answer to an enquiry by an

[86] Walter Ullmann, *Law and Politics in the Middle Ages, An Introduction to the Sources of Medieval Political Ideas*, London, 1975, 42-43; Ullmann noted that the Old Testament in particular was thoroughly permeated with legalism.
[87] Bruce C. Brasington, 'Collections of Bishops' Letters as Legal Florilegia', in *Law before Gratian, Law in Western Europe c.500-1100, Proceedings of the Third Carlsberg Academy Conference on Medieval Legal History 2006*, ed. Per Andersen, Mia Münster-Swendsen and Helle Vogt, Copenhagen, 2007, 85.
[88] See Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca.400-1140), A Bibliographical Guide to the Manuscripts and Literature*, Washington D.C. 1999, 9-13; also P. Fournier and G. Le Bras, *Histoire des collections canoniques en Occident depuis les Fausses Décrétales justq'au Décret de Gratian*, Paris, 1931-1932, vol. i, 24-26, 36-37 and 94-98.
[89] Dating and authorship have been subject to debate; see Kéry, *Canonical Collections*, 61-67; also G. Martínez Díez, *La colección canónica Hispana*, vol. 1, Madrid, 1966; also Fournier and Le Bras, i, 68-71 and 100-106.
[90] Anne J. Duggan 'Making Law or Not? The Function of Papal Decretals in the Twelfth Century' in *Proceedings of the Thirteenth Congress of Medieval Canon Law, Esztergom 2008*, ed. P Erdö and S. A. Szuromi, Città del Vaticano, 2010, 64.

official or private individual.[91] As such, it might have been intended to answer a very specific question. Decretals might also have contained an authoritative statement on the law more generally, for example in response to a bishop who was uncertain about a point of law.[92] Duggan noted that decretal collections were put together by bishops with the deliberate intention of building up local dossiers of new authorities, augmenting or clarifying the written law already available to the bishops and their staff. Collections such as the *Wigornensis altera*, which was put together by Bishop Roger of Worcester in the 1170s and contained *responsa* to episcopal or archiepiscopal consultations, were the result of something more than a random arrangement of papal letters or the recording of judicial commissions.[93]

Appellate jurisdiction

The tradition of appellate jurisdiction dates back to the fourth century. The right of a bishop who had been deposed by his own provincial synod to appeal to the pope was decreed for the first time by the Council of Serdica (Sofia) in 342-343.[94] In 385 Pope Siricius sent a series of *responsa* to Himerius of Tarragona addressing questions relating to the sacraments and to discipline.[95] The tradition was well-established by

[91] See Stephan Kuttner, 'The revival of jurisprudence', in Kuttner, *Studies in the History of Medieval Canon Law*, Aldershot, 1990, 317.
[92] R. H. Helmholz, *The Oxford History of the Laws of England, Volume I The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*, Oxford, 2004, 92. See also Charles Duggan, *Twelfth-century Decretal Collections and their importance in English history*, London, 1963.
[93] Duggan, 'Making Law or Not?', 56.
[94] Council of Serdica, canon 7. This canon was found in a number of collections, including Gratian, *Decretum*, C. 2 q. 6 c. 36 and Ivo, *Decretum*, V, 27.
[95] Siricius, *Epistolae*, I. 385, *PL*, xiii, 1131–1146 no. 1. See Antonio Padoa-Schioppa, 'Hierarchy and Jurisdiction in Medieval Canon Law', *Legislation and Justice*, ed. Padoa-Schioppa, Oxford, 1997, 3; see also Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages*, Washington D.C., 2001, especially 7-41.

the time of Leo I who defended it strongly.[96] The Pseudo-Isidorian Decretals asserted and reiterated the right of bishops, priests and the laity to appeal to the pope and papal justice, by way of inclusion of bogus documents attributed to early popes, such as Sixtus I and Victor I.[97] Appellate jurisdiction was further promoted by later canon law collections, including the *Decretum* of Burchard of Worms and the *Panormia* of Ivo of Chartres.[98]

Canonical Collections[99]

It has been suggested that the Pseudo-Isidorian decretals were a forgery produced between 847 and 852 by an adversary of Archbishop Hincmar of Reims, in order to increase the authority of bishops against both secular authorities and metropolitans.[100] Over one hundred manuscript copies of Pseudo-Isidore survive, demonstrating its importance despite its dubious authenticity. It was seen as authentic by some popes, for example Nicholas I (858-867), and some of the decretals from within were included

[96] For example in his *Sermo*, 4. 2-3 in *PL*, liv, cols. 149, 151.

[97] See for example Jasper and Fuhrmann, *Papal Letters*, 7ff.

[98] Padoa-Schioppa, 'Hierarchy and Jurisdiction', 5-6.

[99] Usually canonists compiling collections did not work through each individual 'material source', such as the Bible and church councils, as this would have been extremely time consuming; rather they used existing canonical collections and extracted the canons they desired. The collection which acted as a source is known as the "formal source." Canonists did not reference explicitly from which formal sources their collection had been gleaned. Burchard of Worms, for example, in the Preface to his *Decretum* wrote that he had taken from a "core of canons," including for example some from Spanish councils and some from sayings of Augustine; Burchard of Worms, *Decretorum Libri XX: Ex Consiliis Et Orthodoxorum Patrum Decretis, Tum Etiam Diversarum Nationum Synodis Seu Loci Communes Congesti*, eds. G. Fransen and Theo Kölzer, Cologne, 1548, reprinted Aalen, 1992, 49; see Robert Somerville and Bruce Brasington, eds. and trans. *Prefaces to Canon Law Collections in Latin Christianity: Selected Translations, 500-1245*, New Haven, 1998, 104.

[100] Antonio Padoa-Schioppa, 'Hierarchy and Jurisdiction', 5-7. See Kéry, *Canonical Collections*, 100-117; also Fournier and Le Bras, i, 127-233; also H. Fuhrmann, 'Pseudoisidorische Fälschungen', *Handwörterbuch zur Deutschen Rechtsgeschichte*, 4 (1990), 80-85 and Fuhrmann, 'Pseudoisidorische Dekretalen, *Lexicon des Mittelalters*, 7 (1994), 307-309.

in other, later collections, including the *Decretum* of Burchard of Worms, the *Panormia* of Ivo of Chartres and the *Decretum* of Gratian.[101]

The collection of Burchard or Worms was an important eleventh-century collection, becoming a popular reference work for many ecclesiastical libraries.[102] It was dated to 1012 x 1023. Evidence shows it to have been in existence before the council of Seligenstadt in 1023, as canons from this council appeared as late additions in the earliest *Decretum* manuscripts.[103] It was arranged topically into twenty books, included 1,785 canons, and has been described as a canonical and theological encyclopaedia.[104] Burchard's *Decretum* was somewhat easier to use than previous collections as it was set out in a clear and organised manner, making it a compact guide to principles of action.[105] Related topics were generally grouped together, in four broad areas: the organisation and structure of the Church; the nature and administration of the sacraments; the nature of morality as applied to behaviour of the laity; and the church's rights with regard to secular rulers.[106] It had, in part, been compiled as a teaching tool, and Burchard's practical experience of church law as a

[101] See for example Gratian's *Decretum*, C. 3, q. I, whereby Gratian discussed the case of a bishop who had been forced to leave his see. The question was whether the bishop should be restored to the see before he could be tried for a crime. Gratian used papal letters, for example from Popes Gaius and Fabian, which were texts taken from Pseudo-Isidore and which supported the right of clerics to be reinstated. Other sources which Gratian used include Burchard, *Decretum*, I, 129 and Ivo, *Decretum*, V, 229; see Winroth, *The Making of Gratian's* Decretum, 148.

[102] The authorship of Burchard's *Decretum* has been subject to scrutiny. For background to Burchard and his collection, see Great Austin, *Shaping Church Law around the year 1000: The* Decretum *of Burchard of Worms*, Farnham, 2009; for background to the debate surrounding authorship, see *ibid*., 16-19; see also Kéry, *Canonical Collections*, pp. 133-155; and Fournier and Le Bras, i, 364-421.

[103] Austin, *Shaping Church Law*, 20.

[104] James A. Brundage, *Medieval Canon Law*, London, 1995, 32.

[105] Martin Brett, 'Canon Law and Litigation: the century before Gratian', in *Medieval Ecclesiastical Studies in Honour of Dorothy M. Owen*, eds. M. J. Franklin and Christopher Harper-Bill, Woodbridge, 1995, 23.

[106] Austin, *Shaping Church Law*, 15.

bishop must have shaped his desire to create a harmonious collection of canon law,[107] as he strove to make the canons he included consistent with each other.[108] Austin has argued that until the creation of the *Panormia* attributed to Ivo of Chartres, the *Decretum* of Burchard was the most popular canon law collection in western Europe, surviving in seventy-seven complete manuscripts.[109]

Following the *Decretum* of Burchard, the three works attributed to Ivo of Chartres, *Tripartita*, *Decretum* and *Panormia*, were significant for the history of canon law, as well as of the intellectual and political history of the period.[110] The authorship of these three canonical collections must be treated with caution.[111] So far, none has been positively identified as having been written by Ivo himself, yet none have been wholly rejected as non-Ivonian.[112] Sigebert of Gembloux wrote in Ivo's lifetime that Ivo had compiled one canonical collection and in accounts from the Chronicle of Tours and the Chronicle of Robert of Auxerre, the '*decreta Iuonis*' was described; this could refer to the *Decretum* or *Panormia*.[113] Fournier concluded that all three of the works could be attributed to Ivo or his immediate circle.[114] Brett suggested this unlikely: the *Panormia*, *Tripartita* and *Decretum* appear to occupy themselves with distinct

[107] Austin, *Shaping Church Law*, 66; Burchard took a practical interest in ensuring that those under his authority conformed their behaviour to God's law; he saw the importance of instituting a regular way of life and of educating canons and monks; see *ibid*, 64-65.
[108] Austin, *Shaping Church Law*, 138.
[109] Also surviving are 10 abridged versions of the *Decretum*, five manuscripts with one or more *Decretum* books and 24 known manuscript single leaves; Austin, *Shaping Church Law*, 24; see Kéry, *Canonical Collections*, 134-148.
[110] Rolker, *Canon Law*, 24.
[111] Some scholars have considered the Tripartite Collection to be an Ivonian compilation, but that view is under scrutiny, Somerville and Brasington, *Prefaces*, 112; see Martin Brett, 'Urban II and the Collections Attributed to Ivo of Chartres, Proceedings of the Eighth International Congress of Medieval Canon Law, ed. Stanley Chodorow, Vatican City, 1992, 27-46.
[112] Rolker, *Canon Law*, 25.
[113] Rolker, *Canon Law*, 27.
[114] Fournier and Le Bras, ii, 99-105.

concerns and the interrelation of the material contained therein would have made it almost impossible for the three to have been collated in the short period and narrow circle which Fournier proposed.[115] Here the terms 'Ivo' or 'Ivonian' will be used to refer to those works which have been traditionally associated with Ivo of Chartres.

The earliest collection was the *Tripartita*,[116] and was mainly made up of decretal letters and synodal decrees. The papal letters, from Clement I to Urban II, were arranged in chronological order, and were mostly gathered from Pseudo-Isidore and the *Collectio Britannica*.[117] The second collection attributed to Ivo was the *Decretum*, and has been described as Ivo's magnum opus.[118] This collection was systematically arranged, organised into seventeen books, and contained 3,750 canons. Burchard's *Decretum* acted as the most important formal source and the model of organisation; almost all of the canons from Burchard were added to the *Decretum* of Ivo. Canons from the Ivonian *Tripartita* A and the canons from the *Collectio Britannica* were also incorporated, as was Roman law from the *Code*, *Institutes* and *Digest* as well as patristic texts and a small collection on the Eucharist.[119] A considerable amount of new material was added, including decretals from Popes Nicholas I, John VIII and Urban II.[120]

[115] Brett, 'Urban II', 30.
[116] For background to the *Tripartita*, see Kéry, *Canonical Collections*, 244-250; also Fournier and Le Bras, ii, 244-250; L. Fowler-Magerl, *Clavis canonum: selected canon law collections before 1140: access with data processing*, Munich, 2005, 187-190. For the two collections of the *Tripartita*, known as A and B, see Rolker, *Canon Law*, 100-107.
[117] For background see Kéry, *Canonical Collections*, 237-239; also Rolker, *Canon Law*, 92-100; and Fowler-Magerl, *Clavis canonum*, 184-187.
[118] Rolker, *Canon Law*, 107; for background to Ivo's *Decretum*, see Kéry, *Canonical Collections*, 250-253; see also Fournier and Le Bras, ii, 67-85 and 99-114.
[119] Rolker, *Canon Law*, 107-9.
[120] Rolker, *Canon Law*, 107-8.

A further canonical collection which may have been assembled by Ivo, containing *c*.1,200 canons and arranged into eight books, is known as the *Panormia*. This was widely disseminated through western Europe.[121] The sources for the *Panormia* included the Ivonian *Decretum*, a version of the *Collection in Four Books*,[122] and the second Arsenal collection.[123] A number of the manuscripts of the *Panormia* and *Decretum* contained a Prologue, which laid down a methodology for interpretation of canons in a systematic manner. This was crucial to the development of canon law and was fundamental to the work of later canonists, including Gratian.[124] Ivo advised those who were faced with a discrepancy or contradiction between canons to look at the context in which they had originally been adopted. This could lead to the discovery that the canons were in fact addressing different aspects of a problem, or even different problems, and were thus not contradictory at all. Furthermore, Ivo declared that hierarchy of laws must be taken into account when interpreting the canons, for example the canons from a general council took precedence over the canons from a local synod.[125] The Prologue was further significant as it was composed by a man who had practical involvement in pastoral care in his role as bishop; as Somerville and Brasington have noted, "his jurisprudence reflects the necessary union of theory and

[121] See Kéry, *Canonical Collections*, 253-260; also Fournier and Le Bras, ii, 85-105.
[122] See Rolker, *Canon Law*, pp. 82-84; Kéry, *Canonical collections*, 210-213; Fowler-Magerl, *Clavis canonum*, 119-121.
[123] See Rolker, *Canon Law*, 107 and 124; see Martin Brett, 'The sources and influence of Paris, Bibliothèque de l'Arsenal 713', *Proceedings of the Ninth International Congress of Medieval Canon Law: Munich, 13-18 July, 1992*, Vatican City, 1997, 149-167.
[124] See Bruce C. Brasington, 'The Prologue of Ivo of Chartres, a fresh consideration from the manuscripts', *Proceedings of the Eighth International Congress of Medieval Canon Law*, Vatican City, 1992, 3-22.
[125] Brundage, *Canon Law*, 39.

practice in the episcopate."[126] When faced with challenges of application of canon law, Ivo often looked to the quality of mercy, and believed that charity linked theory with practice.[127]

Another important collection was that of Alger of Liège,[128] who rose through the ranks of the clergy to become school master of St Lambert at Liège, and secretary to Bishop Otbert, for whom he was responsible for the official correspondence of his post.[129] Between 1095 and 1121 Alger wrote his *Liber de misericordia et iustitia*. It was a first attempt to establish a canonical concordance, employing a dialectical technique of organisation.[130] This was an important step in reconciling discordant canons.[131] Like Gratian after him, Alger attempted to harmonise the canons by means of interspersed interpretative comments, that is, *dicta*.[132] Alger was concerned with the issue of whether more recent authorities had less binding power than earlier ones, as older ones had been recognised for a longer period of time, and to prove this point, Alger cited Isidore of Seville.[133]

In the 1140s, the canonical collection created by Gratian came into circulation.[134] This was the *Concordia discordantium canonum*, commonly known as the *Decretum*. It soon became the primary source of canon law. It was widely read (over 600 medieval

[126] Somerville and Brasington, *Prefaces*, 115.
[127] Somerville and Brasington, *Prefaces*, 115.
[128] For bibliography, see Kéry, *Canonical collections*, 272-275.
[129] Somerville and Brasington, *Prefaces*, 117.
[130] Kéry, *Canonical collections*, 272.
[131] Somerville and Brasington, *Prefaces*, 117.
[132] Somerville and Brasington, *Prefaces*, 118.
[133] Greta Austin, 'Authority and the Canons in Burchard's Decretum and Ivo's Decretum', in *Readers, Texts and Compilers in the Earlier Middle Ages, Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, eds. Martin Brett and Kathleen G. Cushing, Farnham, 2009, 36-38; 'that however often a discordant ruling is found in the acts of the councils, let the ruling of that council rather be held whose authority stands as older and stronger', Somerville and Brasington, *Prefaces*, 168, citing Isidore of Seville, Ep. 4, c. 13 to Bishop Massona of Mérida, in *PL* lxxxiii. 901D-02A.
[134] The dating and authorship of Gratian's *Decretum* have been debated. See below.

manuscript copies survive). It came to be studied across western Europe as it was both analytical and systematic in its approach, and contained material which was relevant to the whole of the western church.[135] Although it became an important legal collection, it had no official standing and was far from being an incontrovertible legal textbook.[136]

The texts assembled by Gratian in his *Decretum* showed a varied and conflicting body of ecclesiastical opinion which had developed over time, just as previous collections of canon law had done.[137] Burchard of Worms lamented the uncertainty which resulted from discrepancies between canons. Ivo of Chartres saw the contradictions as expressions of diverse but equally valid traditions.[138] Gratian saw that the material presented had to be interpreted, certain texts required explanation, while others had to be explored and developed. Gratian discussed the texts through his *dicta* (see below), analysing the contradicting canons side by side and bringing them into concordance.[139] Although Gratian relied on Isidore's *Etymologiae* to set out a hierarchy of laws,[140] and although the authorities were arranged systematically, there were still contradictions and inconsistencies. The material in itself did not provide answers to all questions. In a practical sense, if a definitive answer to a

[135] James A. Brundage, *Medieval Origins of the Legal Profession: canonists, civilians and courts*, Chicago, 2008, 105.
[136] Anne J. Duggan, 'Master of the Decretals: A Reassessment of Alexander III's Contribution to Canon Law', in *Pope Alexander III (1159-81), The Art of Survival*, eds. Peter D Clarke and Anne J. Duggan, Farnham, Surrey, 2012, 367.
[137] For discussion of the sources used in Gratian's *Decretum*, see Jean Gaudemet, 'Les Sources du Décret de Gratian', *Revue de Droit Canonique*, 48 (1990), 247-261.
[138] Rolker, *Canon Law*, 301.
[139] Peter Landau, 'Gratian and the *Decretum Gratiani*', in *The History of Medieval Canon Law in the Classical Period, 1140-1234, From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfred Hartmann and Kenneth Pennington, Washington D.C., 2008, 22.
[140] Gratian cited Isidore by name at the beginning of the *Decretum* in Distinctions 1-3 and also in part of Distinction 4.

problem could not be found within canonical collection, advice was sought from the papal curia, and this resulted in *responsa* and *decretales* which sometimes became the basis for local legislation.[141] (See below.)

The *Decretum* was divided into three parts. The first was made up of 101 *distinctiones*, or distinctions, which concerned the sources of law, the hierarchy of the church and church discipline.[142] The distinctions were subdivided into chapters, each chapter containing an authoritative statement on the subject examined in that distinction. Typically, Gratian presented one or two chapters outlining one interpretation of the subject in question, followed by one or two chapters providing a different view. Often these examination chapters were separated by a *dictum* in which Gratian summed up preceding chapters and gave an introductory outline of the different views. Commonly a further *dictum* was included towards the end of a distinction, acting as a conclusion, in which Gratian defined his views and the reasons for them.[143] By adding his own discussion and conclusions Gratian attempted to reconcile the differences between the texts he cited. The second part of the *Decretum* was made up of thirty-six cases, or *causae*, which were sub-divided into questions, or *questiones*. Each case commenced with a statement or problem, often in the format of a brief story. Questions considering the legal implications of the scenario followed, and in turn each question was discussed. As with Part I, Gratian set out a *dictum* on the subject of each question, in which he explored the legal problems and offered

[141] Anne J. Duggan, 'Making Law or Not? The Function of Papal Decretals in the Twelfth Century', *Proceedings of the Thirteenth Congress of Medieval Canon Law, Esztergom 2008*, ed. P Erdö and S. A. Szuromi, Vatican City, 2010, 64.
[142] Winroth, *The Making of Gratian's* Decretum, 5.
[143] James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, Chicago, 1987, 231.

solutions including authoritative sources to support his conclusions. This second section of the *Decretum* discussed issues such as penance, marriage, tithes, heresy and simony.[144] The third and final part of the *Decretum* was made up of five distinctions. This part is usually referred to as the *de consecratione* and dealt with the remaining sacraments,[145] as well as the religious calendar and issues surrounding liturgy.

Landau and Fransen have demonstrated that Gratian used a relatively small number of formal sources when compiling his *Decretum*. The majority of canons found in Gratian were derived from the collections of Alger of Liège and Anselm of Lucca, the *Tripartita* and the *Panormia* of Ivo of Chartres, the *Polycarpus* of Gregory of St Grisogono, and the *Collection in Three Books*. In specific sections of the *Decretum* Gratian also used the *Etymologiae* of Isidore of Seville and the *Sententiae magistri A*.[146] Gratian also incorporated Roman law into his *Decretum*, mostly adopting Roman law rules for appeals within canon law, which showed his "tacit assumption that Roman law contained norms that could be accepted into canon law."[147] Canonists believed that Roman law could solve practical questions of canon law for example, the length of time litigants were granted to appeal a court decision, and therefore Roman law could contribute to canonical jurisprudence.[148]

[144] See Brundage, *Law, Sex*, 231-232.
[145] Winroth, *The Making of Gratian's* Decretum, 5.
[146] Peter Landau, 'Neue Forschungen zu vorgratianischen Kanonessammiungen und den Quellen des gratianischen Dekrets', *Ius commune*, 11 (1984), 1-29; see Gérard Fransen, *Les collections canoniques*, Turnhout, 1973, 27.
[147] Pennington, '"Big Bang"', 47.
[148] Pennington, '"Big Bang"', 47-48.

The dating and authorship of the *Decretum* have been subject to debate, with scholars unable to reach agreement.[149] Anders Winroth's *The Making of Gratian's* Decretum has arguably transformed Gratian studies. In his monograph, Winroth argued that the *Decretum* was produced by two authors, in two steps, which he called recensions one and two.[150] Winroth argued that the first recension dated from 1139, due to an apparent citation of c. 28 of the Second Lateran Council (1139) in D. 63, *dictum* post c. 34, and belief that the study of Roman law was not established in Bologna before the 1130s.[151] This redating of the study of Roman law has been rejected by both Gouron and Pennington.[152] Winroth suggested that the second recension would have been known in Paris by 1158, and perhaps as early as the autumn of 1156,[153] and suggested that owing to the addition of canons from the Second Lateran Council of 1139, it was most likely composed in the 1140s.[154] Nardi argued that the second recension was known by 1150, evident from a Siennese court decision from that date.[155] Landau accepted the two recensions theory of Winroth,

[149] For an overview of recent work on Gratian studies, see Anders Winroth, 'Recent Work on the Making of Gratian's Decretum', *Bulletin of Medieval Canon Law*, 26, (2004-2006), 1–29.
[150] Winroth, *The Making of Gratian's* Decretum, 122; for further exploration of the two authors hypothesis, see Winroth, 'Material Consent in Gratian's *Decretum*', in Brett and Cushing, eds., *Readers, Texts*, 111-121. See also Melodie H. Eichbauer, 'From the First to the Second Recension: The Progression Evolution of the *Decretum*', *Bulletin of Medieval Canon Law*, new series, Vol. 119 (2011-2012), 119-167.
[151] See Winroth, *The Making of Gratian's* Decretum, 142-144.
[152] See Gouron, 'Sur un moine', 315-322; Gouron, 'Le droit romaine', 231-243; see K. Pennington, 'The birth of the *ius commune*: King Roger II's Legislation', *Revista Internazionale*, 17 (2006), 59. Pennington argued that Winroth too easily discounted the evidence of the glosses in the early *Code* manuscripts, believing these provide proof of teaching activity in the first decades of the twelfth century; Pennington, '"Big Bang"', p. 69, n. 104.
[153] Winroth, *The Making of Gratian's* Decretum, 142-4.
[154] Winroth, 'Recent Work', 1-29; see also Winroth, 'The two recensions of Gratian' in *Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte, kanonistische Abteilung*, 1997, and Winroth, *The Making of Gratian's* Decretum, especially 142-144.
[155] Paolo Nardi, 'Fonti canoniche in una sentenza senese del 1150', in *Life, Law and Letters: Historical Studies in Honour of Antonio Garcia y Garcia*, ed. Peter Linehan Rome, 1998, 661-670.

but dated them at 1139 and *c*.1145.[156] Pennington argued that the manuscript St Gall, Stiftsbibliothek 673 was the earliest version of the *Decretum* and was compiled in the 1120s.[157] He suggested that a Florentine manuscript was the next earliest version, having been compiled in the 1130s.[158] He also suggested that the second recension was finished shortly after 1140, acknowledging that not all scholars agree with this chronology.[159]

C. iii. The Study of Law in England

The study of canon and Roman law in England evolved gradually. The traces of Roman law before the twelfth century were found in canon law books brought from the Continent by early missionaries, such as Augustine, and later by those who sought to further the position of the Church, such as Lanfranc.[160]

In the eleventh century, Canterbury was the focus for the study of law, largely thanks to the legal background of Archbishop Lanfranc of Bec.[161] He brought his

[156] Peter Landau, 'Gratian and the Decretum Gratiani', 24-5 and 38-41.
[157] Pennington, '"Big Bang"', 45-6; see also Pennington, 'Gratian, Causa 19, and the Birth of Canonical Jurisprudence', in *La cultura giuridico-canonica medioevale : Premesse per un dialogo ecumenico*, eds. Enrique de León and Nicolàs Àlvarez, Milan, 2003, 215-236.
[158] Florence, Biblioteca Nazionale Centrale, Conventi soppressi A.1.402.
[159] Pennington, '"Big Bang"', 45-6. Spanish scholars have argued that the *Decretum* evolved in seven or eight stages, see for example C. Larrainzar, 'La formacion del Decreto de Gracian por etapes', *Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte, kanonistische Abteilung*, 87 (2001), 67-83; Larrainzar, 'La investigacion actual sobre el Decreto de Graciano, *Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte, kanonistische Abteilung*, 90 (2004), 27-59; J. M. Viejo-Ximénez, 'La composizione del decreto di Graziano', in *Medieval Canon law Collections and European ius commune*, ed. S A Szuromi, Budapest, 2006, 97-169.
[160] Brundage, *Medieval Origins*, 92.
[161] Patrick Wormald argued that the importance of Lanfranc for the bringing of a juristic training to the development of English law from the Continent is a suspicion which is hard to slough off, however sparse the concrete evidence: Wormald, *The Making of English Law: King Alfred to the Twelfth Century, Volume I Legislation and its Limits*, Oxford, 2001, 470.

Collectio Lanfranci to England,[162] according to an inscription on the penultimate folio, when he became archbishop in 1070.[163] The bulk of the material contained within this codex was an abbreviated and rearranged version of the Pseudo-Isidorian decrees. Also included were Pope Nicholas II's decrees from the Lateran Council of 1060, as well as letters to Lanfranc from Popes Nicholas II and Alexander II.[164] The text of the Pseudo-Isidore contained within the *Collectio Lanfranci* was divided into two parts, whereas most manuscripts of the Pseudo-Isidore were divided into three.[165] Subdivisions appear to have been added, and there were omissions and abbreviations, but there is no evidence of intent to change the doctrinal or ecclesiological content of Pseudo-Isidore. Cowdrey argued that the purpose of the compiler seems to have been to pare away repetition and produce a more manageable codex for consultation.[166]

Canterbury became the centre for the dissemination of the *Collectio Lanfranci* and nine copies are extant, from the Cathedrals of Durham, Hereford, Lincoln, Salisbury and Worcester, and the abbey of Gloucester. There are twenty-three extant manuscripts which were part-copies, for example, three twelfth-century copies of the

[162] Trinity College Cambridge, MS B.16.44.
[163] For background to the *Collectio Lanfranci*, see Kéry, *Canonical Collections*, 239-243; Fournier and Le Bras, ii, 227-230; Martin Brett, 'The *Collectio Lanfranci* and its Competitors', in *Intellectual Life in the Middle Ages: Essays presented to Margaret Gibson*, eds. Lesley Smith and Benedicta Ward, London, 1992, 157-174; Michael Gullick, 'Lanfranc and the Oldest Manuscript of the *Collectio Lanfranci*', in *Bishops, Texts and the Use of Canon Law around 1100, Essays in Honour of Martin Brett*, eds. Bruce C. Brasington and Kathleen G. Cushing, Aldershot, 2008, 79-89.
[164] H. E. J. Cowdrey, *Lanfranc, Scholar, Monk and Archbishop*, Oxford, 2003, 139, n. 105.
[165] Most texts of the Pseudo-Isidore in three parts contained papal decretals from Clement to Melchiades (311-314), councils from Nicaea (325) to Seville II (619) and papal decretals from Silvester I (314-335) to Gregory II (715-731). The two parts of the *Collectio Lanfranci* were made up of papal decretals consecutively from Clement to Gregory II, with much abbreviation and omission in the first half, and councils with very much less curtailment in the second part, see Cowdrey, *Lanfranc*, 139.
[166] Cowdrey, *Lanfranc*, 139-140.

decretals only and one containing the councils only.[167] Until the arrival of Gratian's *Decretum*, the *Collectio Lanfranci* was the principle code of canon law in England.[168] However, there were English copies of each of Ivo's canon collections from, at the latest, the mid-twelfth century. Rochester's library, for example, had a set of Ivo's letters by the early 1120s,[169] and by *c.*1123 possessed a canonical collection of Ivo, most likely the *Decretum*.[170]

From the second half of the twelfth century, Roman and canon law were being taught in England. Evidence exists, mainly from chronicles and letters, suggesting legal study at the cathedral schools of Lincoln, Exeter and Hereford. Evidence also suggests that by the 1190s both types of law were being taught at Oxford.[171] Of great importance the study of Roman law in England was Master Vacarius, who studied at Bologna, probably with Martinus who in turn was a pupil of Irnerius. (See below.)

The twelfth century was a time of importance for the development of legal study and teaching. Men of legal learning were required by rulers, both secular and ecclesiastical, to advise on specific situations and to fight for the upholding of customs of one power over the other. The rediscovery of the *Digest* was central to the expansion of legal study, as were the canon law texts of Burchard of Worms, Ivo of

[167] Z. N. Brooke, *The English Church and the Papacy, from the Conquest to the Reign of John*, Cambridge, 1989, 64 and 231-232.
[168] Cowdrey, *Lanfranc*, 141.
[169] This manuscript is extant, London, BL Royal 6.B.vi (Ln).
[170] Rolker, *Canon Law*, 265. Ivo had perhaps been a pupil of Lanfranc's at Bec, and he corresponded with a number of Bec alumni and other English prelates. Wormald, *The Making of English Law*, i, 472; for the Ivo of Chartres and Bec connection, see Lynn K. Barker, ''Ivo of Chartres and the Anglo-Norman Cultural Tradition', *Anglo-Norman Studies*, XIII (1990), 15-33; see also Rolker, *Canon Law*, 90-1.
[171] Francis de Zulueta and Peter Stein, *The Teaching of Roman Law in England around 1200*, London, 1990, xxii.

Chartres and especially Gratian. In this advancement of knowledge, the schools of Bologna, Montpellier, Paris and later Oxford were crucial.

C. iv. John's legal learning

The question of where John of Salisbury gained his legal knowledge is difficult to answer with certainty, as no direct evidence shows where, if at all, John formally gained his knowledge of law. His *Metalogicon* provided no proof that it was at Paris.[172] Whilst the form of *Metalogicon* allowed John to omit details, it would be expected that if he had been taught law, he would have described it during these ten years of education. During John's early schooling at Exeter he would have received rudimentary instruction in theology and canon law.[173] Grammar and rhetoric would also have equipped him with some basic legal training, but no account exists of any didactic training in law. While these tasters of instruction in law would no doubt have whetted John's appetite, it is reasonable to assume that this cannot have been the only legal learning undertaken by him, since he displayed technical expertise in his writing. It is therefore more credible that John learned the law either at the papal court or once in the employment of Archbishop Theobald. Brundage has pointed out that trained lawyers were relatively plentiful in Italian ecclesiastical courts, especially the papal court of the 1120s and onwards.[174] John could therefore have learned from jurists, their treatises and copies of legal compilations, while at the curia. He would also have had access to manuscripts of legal collections and may have observed legal

[172] Nederman, *John of Salisbury*, 14.
[173] Nederman, *John of Salisbury*, 3-4. See Introduction for more on John's education.

[174] Brundage, *Medieval Origins*, 171.

cases in action, undertaken informal instruction from colleagues with formal teaching and engaged other members of the curia in conversation on points of law and legalese, which might have taken the form of informal disputations.

John was not explicit about his role at the papal court; helping colleagues on an ad hoc basis was most likely. In his *Metalogicon*, John chronicled that between 1139 and 1159 he:

> repeatedly handled business affairs with the Roman Church for my superiors and friends. I have, also, on numerous occasions, travelled about not only England but also Gaul, in connection with various situations [*causis*][175] which have arisen. A host of business concerns, numerous responsibilities, and the pressure of work that had to be done have consumed all my attention, and have left me no time for learning.[176]

John's use of the word *causa* is interesting; it implies he was championing his friends' causes and undertaking business for them, but it could also be interpreted that he was offering legal advice and possibly legal representation, as the word can also be translated as legal case. John wrote that practical business kept him busy, and it might be conjectured he considered study to be part of the process. If John assisted his friends in legal cases, he needed to be familiar with pertinent aspects of the law in order to do so effectively. The lack of reference to his formalised legal education does not exclude the possibility that it was undertaken informally or formally.

A number of John's friends studied law, and it seems likely that he obtained information from them, whilst working at the courts of Theobald and then Becket. One such friend, Philip de Calne, was clerk to both Theobald and Becket. He had

[175] *Causa* can also mean legal case.
[176] McGarry, 142; *Metalogicon*, 101: "dominorum et amicorum negotia in ecclesia Romana saepius gessi, et emergentibus uariis causis, non modo Angliam, sed et Gallias multotiens circuiui. Ad haec cura rei familiaris, sollicitudinum concursus, gerendorum instantia, litteris dare operam non sinebant."

studied at Tours and went on to teach law in the town of Reims. Gilbert de Glanville, also a member of Thomas Becket's household, went on to teach law at some unspecified school.[177] Another, Gerard Pucelle, had studied with John in Paris,[178] and a number of John's letters were addressed to him.[179] Gerard taught canon law at Paris in the 1150s, 1160s, and possibly into the 1170s, as well as at Cologne. His teaching would have been based on Gratian's *Decretum*, modified by relevant papal decisions.[180] In a letter to Gerard, John described his friend thus: "I speak to one who knows and teaches the law ... [and] is skilled in both laws,"[181] that is, canon and Roman law, as well as someone who was distinguished in political and learned circles, counting the French king as his friend.[182] Among his students were Master Richard, a relative of John's, Ralph Niger and Walter Map.[183] Gerald received orders from Archbishop Thomas Becket, and during Becket's exile he was considered a member of his *familia*.

Although John's position was not stated explicitly in extant records from the household, the breadth and depth of law contained within the early letters of John's work illuminate his position as the archbishop's legal advisor and legal secretary; Haseldine described John as a "legal expert."[184] The only known evidence of John having been acknowledged by any title was found in discrete charters, where he was

[177] Kuttner and Rathbone, 'Anglo-Norman Canonists', 289.
[178] For biography see *ODNB* online: http://www.oxforddnb.com/view/article/49666?docPos=1, accessed April 2014.
[179] E.g. *LL* ep. 158, 184 and 277.
[180] Anne J. Duggan, 'De consultationibus : The Role of Episcopal Consultations in the Shaping of Canon Law in the Twelfth Century', in *Bishops, Texts*, 202.
[181] *LL*, ep. 184, *c*.October, 1166, 214-221: "scienti etenim et docenti legem loquor… in utroque iure peritum."
[182] *LL*, ep. 184, *c*.October, 1166, 220-1.
[183] Kuttner and Rathbone, 'Anglo-Norman Canonists', 297.
[184] Haseldine, 'Introduction' in *Metalogicon*, tr., 26.

referred to as *Magister*, or Master, although this title need not refer to legal learning. The title presented John as a learned member of the court or 'clerical teacher,'[185] but it does not offer enlightenment about John's specific role. Of the surviving 311 charters from Theobald's archbishopric collated in Saltman's edition, John was named as a witness to fourteen.[186] It is thought that many more charters were produced by the archbishop and subsequently lost or destroyed over time; so the known numbers may not accurately represent how many charters John witnessed during his time at the court.[187] The title 'Magister' was used to describe John in five surviving charters, while in nine no title was used.

Other witnesses named in Theobald's charters included Hilary of Chichester, Bartholomew of Exeter and Vacarius, all of whom were learned in the law. Hilary had enjoyed a position of prominence as an advocate at the papal curia, acted as clerk to Henry, Bishop of Winchester, and gained his own bishopric in 1147.[188] Bartholomew may have studied and taught at Paris between June 1140 and April 1142; in a poem naming the contemporary masters of Paris, a Bartholomew was mentioned.[189] Bartholomew was in the employ of Theobald at Canterbury and continued to provide services even becoming archdeacon of Exeter in 1155. In 1161 he became Bishop of Exeter, following support for his cause from Archbishop Theobald, recommending him

[185] F. Liebermann, 'Magister Vacarius', *The English Historical Review*, Vol. 11, No. 42 (1896), 305.
[186] John witnessed charter number 84, a variant of number 83, so I have only classed this as one charter.
[187] See appendix for details of charters witnessed by John.
[188] Henry Mayr-Harting, 'Hilary, Bishop of Chichester (1147-1169) and Henry II' in *Religion and Society in the Medieval West, 600-1200, Selected Papers*, Farnham, 2010, 209.

[189] This is the *Metamorphosis Goliae Episcopi*, published online in the Library of Latin Texts, Series A by Brepols: http://clt.brepolis.net.ezproxy.st-andrews.ac.uk/llta/pages/Toc.aspx?ctx=1463983; also printed in *Latin poems commonly attributed to Walter Mapes*, ed. Thomas Wright, London, 1841.

for the see.[190] Bartholomew and John were friends and John sent letters of encouragement during the time of Bartholomew's election.[191] Bartholomew acted as papal judge-delegate and it is thought that he received up to seventy commissions from the pope, perhaps more than any other bishop in England.[192] In six of the decretals sent from Pope Alexander III to Bartholomew, it appeared that Bartholomew had been chosen by one of the parties in the case.[193] Bartholomew acted as papal judge-delegate on cases including the investigation and deposition of the abbot-elect of St Augustine's, Canterbury, Clarembald.[194]

John of Salisbury and Vacarius were members of the archiepiscopal household simultaneously and appeared together as witnesses to two extant charters of Theobald.[195] It is not entirely clear when Vacarius was first brought to Canterbury by Theobald. Robert of Torigny recorded that he came in 1149,[196] while Gervase of Canterbury noted that Theobald requested the appointment of Vacarius as apostolic legate by Pope Celestine II, to give advice and assistance in the dispute with Henry of Blois, which began in 1144.[197] This dating lead Stein to suggest that he came to

[190] See *EL*, ep. 128.
[191] For example, *EL*, ep. 133.
[192] Dom Adrian Morey, *Bartholomew of Exeter, Bishop and Canonist, A Study in the Twelfth Century*, Cambridge, 1937, 44-45.
[193] Morey, *Bartholomew*, 48. One method of delegating papal authority was the practice of delegating jurisdiction to an individual for the purpose of judging a specific case. Direct appeal to the papacy from one of the parties involved in the case was necessary; the pope would then issue of re-script appointing judges-delegate to try the case in the home country of the individual. A party in the case could request the judges whom he wished to try the case. The pope could overrule this and choose other bishops, but according to Morey, it was likely that if names submitted were suitable they would be chosen; Morey, *Bartholomew*, 47-48.
[194] Morey, *Bartholomew*, 61; see 54 ff for further details of Bartholomew's commissions.
[195] See Appendix. Charter numbers 10 and 263 in Saltman, *Theobald*, 242 and 495-496 respectively.
[196] *The Chronicle of Robert of Torigny* in *Chronicles of the Reigns of Stephen, Henry II and Richard I*, vol. iv, ed. Richard Howlett, London, 1889, 158-159; See also Southern, 'Master Vacarius', 275-279.
[197] Gervasius, *Acta pontificum Cantuariensium* in *The Historical works of Gervase of Canterbury*, ed. William Stubbs, vol. ii, London, 1879-1880, 384 ff. It should be noted that Gervase wrote his *Acta* after

Canterbury in *c.*1143.[198] In the late 1150s Vacarius moved to the court of the Archbishop of York, Roger de Pont l'Évêque, and remained there until his death in *c.*1200.[199]

Whilst Vacarius was primarily a civil lawyer, most famous for his student book the *Liber pauperum*, he would have had proficient knowledge of canon law. His treatise on marriage, the *Summa de matrimonio*, was concerned with defining the moment when a marriage comes into being; in it he questioned whether a marriage is made with physical consummation, as proposed by Gratian, or the exchange of present promises, promulgated by Peter Lombard.[200] Whilst he discussed it in light of civil law, this was of course largely a canonical issue. It is also likely that Vacarius brought with him texts from Bologna which he could have lent to or left with Theobald's curia, and he would have played an important role at the court of Theobald.

Vacarius brought with him to England a deep understanding of Roman law, and his production of the *Liber Pauperum* was central in the teaching of civil law in England. The *Liber* featured an introduction to Roman law, and provided extracts from the *Digest* and the *Code*, with explanatory glosses. It was brief and the selected passages were chosen as the most practical. It was designed to be a small and cheap handbook,

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1205 and so the reliability of his source has been questioned, for example, R. W. Southern, 'Master Vacarius and the beginning of an English Academic Tradition', in *Medieval Learning and Literature: Essays Presented to Richard William Hunt*, eds. J. J. G. Alexander M. T. Gibson, Oxford, 1976, 281.

[198] *ODNB* online entry for Vacarius, http://www.oxforddnb.com/view/article/28048?docPos=1, accessed February 2011.

[199] *ODNB* online entry for Vacarius. Vacarius was given a prebend in 1166 in the diocese of York, see *The Great Roll of the Pipe for the thirteenth year of the reign of King Henry II, A.D. 1166-1167*, London, 1889, p. 138. For Vacarius's links with Lincoln, see de Zulueta and Stein, *The Teaching of Roman Law*, xxxvi.

[200] Peter Stein, *ODNB* online entry for Vacarius, http://www.oxforddnb.com/view/article/28048?docPos=1

which could be afforded by less wealthy students – hence its title.[201] The date of creation of the *Liber* has been subject to debate; it has been suggested that there was no known reference to the existence of the *Liber* before 1180 and no manuscripts until later,[202] and thus a date of composition in the 1180s was thought plausible.[203] Boyle argued that the first 'secure record' of the *Liber pauperum* was based on the Prologue of the *Liber* and was taken from an addition by Robert of Torigny († 1186) which was to be inserted into a revised edition of his chronicle:[204] "Master Vacarius, after he had taught Roman law in England from 1149 and had attracted many students, both rich and poor, to his lectures, composed, at the suggestion of the poor students, nine books of excerpts from the *Code* and the *Digest.*"[205] Boyle therefore dated it as being written between 1175 and 1186.[206]

Irrespective of the exact date of composition of the *Liber*, it is evident that Vacarius played a key role in the transmission of Roman law in England, demonstrated by a reference contained within *Policraticus*. In a section considered unusual in that it refers to (near) contemporary events, John wrote that:

> In the time of King Stephen the Roman laws were ordered out of the kingdom, whereof the knowledge had been received into Britain through the household of the venerable father Theobald, the primate of Britain. By royal edict it was forbidden even to keep the books, and silence was enjoined upon our Vacarius; but by the power of God the virtue of the

[201] F. de Zulueta, *The* Liber Pauperum *of Vacarius*, London, 1972, xliv-xlv.
[202] *NB*, the first manuscripts of the *Leges Henrici Primi* are from the 1190s, even though the text probably comes from the 1110s.
[203] J. Taliadoros, *Law and Theology in Twelfth-Century England, The Works of Master Vacarius, c.1115/1120-c. 1200*, Turnhout, 2006, 33. See also Peter Landau 'The Origins of Legal Science in England in the Twelfth Century: Lincoln, Oxford and the Career of Vacarius', in *Readers, Texts*, Brett and Cushing, 165-182.
[204] Leonard Boyle, 'The Beginnings of Legal Study at Oxford', *Viator*, Vol. 14 (1983), 119.
[205] *The Chronicle of Robert of Torigny*, 158-159.
[206] Boyle, 'Beginnings', 107-131.

> law was strengthened more by the efforts of impiety to weaken it.[207]

The weakness of royal power in the reign of Stephen allowed the church to become more autonomous and to gain more power. It has been suggested that Stephen banned the teaching of Roman law as a result of concerns it was strengthening the position of Theobald.[208] Ullmann, however, argued that this passage was metaphorical, as John saw Stephen as lawlessness personified.[209]

Whilst Vacarius was primarily a civil lawyer, having trained at Bologna, he had also proficient knowledge of canon law. In 1157-1159 he wrote his *Summa de matrimonio*, dedicated to a canonical problem with a Roman influenced answer: the question of at what point a marriage became legally binding;[210] with physical consummation, or the exchange of consent.[211] (See below for discussion of marriage.) In addition to the treatises which he composed, it is likely that Vacarius brought with him treatises by other writers and collections of texts from Bologna which he could have lent to or left with Theobald's curia.

John could almost certainly have learned from Vacarius informally and / or discussed legal conundrums or legal theory with him. Sassier has suggested that as well as debating points of Roman law with Vacarius, John may also have gained knowledge from the manuscripts which the master had at his disposal, 'not to mention Vacarius's

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[207] 8.22, Dickinson, 396-397; Webb, ii, 398-399: "Tempore regis Stephani a regno iussae sunt leges Romanae, quas in Britanniam domus uenerabilis patris Theodbaldi Britanniarum primatis asciuerat. Ne quis etiam libros retineret edicto regio prohibitum est et Vacario nostro indictum silentium ; sed, Deo faciente, eo magis uirtus legis inualuit quo eam amplius nitebatur impietas infirmare."
[208] Ralph Turner, *Judges, Administrators and The Common Law in Angevin England*, London, 1994, 50.
[209] Walter Ullmann, 'John of Salisbury's *Policraticus* in the Later Middle Ages', in *Geschichtsschreibung und geistiges Leben im Mittelalter: Festschrift für Heinz Löwe zum 65 Geburtstag*, eds. K. Hauck and H. Mordek, Cologne and Vienna, 1978, 353.
[210] Taliadoros, *Law and Theology*, 60-61.
[211] *ODNB* online entry for Vacarius.

own annotations'.[212] Such was Vacarius's knowledge of law that Maitland raised the possibility of his involvement in the Anstey case (see Chapter Two), either in an advisory capacity or as counsel for the defence.[213] Moreover, Landau noted that Vacarius must have been proficient in canon law as he acted as a papal judge delegate for Pope Alexander III. Seven decretals, mostly dated between 1175 and 1181 suggest that Vacarius "must have been both well versed in canon law and practising it at that time."[214] Landau's case for the abilities of Vacarius as a canon lawyer supports the hypothesis that John learned canon law from him during their interactions in England.[215]

John of Salisbury would also have gained his knowledge from his friends who studied law and from his time at Paris. The discussions he had with masters and fellow students and friends would have been the basis for the informal formation of his legal and political thinking that would form the arguments that make up his *Policraticus*. Vacarius, Hilary of Chichester and Bartholomew of Exeter, were learned in the law. That they acted as witnesses to some of the same charters as John of Salisbury demonstrates that they were contemporaneous with John in Theobald's household. These meetings, even if transient, would have provided John with opportunity to expand his legal knowledge through the sharing of resources and ideas. Without John

[212] Yves Sassier, 'John of Salisbury and Law', in *A Companion*, 236.

[213] F. W. Maitland, 'Magistri Vacarii Summa de Matrimonio', *Law Quarterly Review*, Vol. 13 (1897), 141.

[214] Landau 'The Origins', 174; Landau gives details of the decretals here. See also the list of decretals related to Vacarius's activity as papal judge delegate found in the appendix of the article by Southern, 'Master Vacarius', 285.

[215] Haseldine supports this hypothesis, see Haseldine, in *Metalogicon*, *tr.,* 26. Walter Ullmann argued that it is by no means clear that John of Salisbury and Vacarius were resident at Canterbury simultaneously for any length of time. He did acknowledge that the notion of John receiving instruction from Vacarius is an attractive one. He also acknowledged that there is no evidence for this. See Ullmann, 'John of Salisbury's *Policraticus*', 530, n. 83. Definitive evidence to resolve this debate may never come to light.

having made a record of any legal education, however, such hypothesis remains conjecture.

D. John's Writing

John's writing spans from the mid-1150s (or perhaps earlier[216]) until 1177-1179 (the date of his last known letter). For the purpose of this study, the most significant works are his *Policraticus* and his letter collections. The *Policraticus*[217] was written between 1156-1157 and 1159. It is the most famous of John's works, though its popularity came later than its composition.[218] John suggested that *Policraticus* was to act as a handbook for courtiers and a mirror for princes. He set out to advise courtiers of the pitfalls one might face at court, as well as instructing on how to act in a moral manner - ethics and scholarship thus merging in the functioning of the learned clerk.[219] John's period of exile in the 1150s played a part in the tone of *Policraticus* and through the treatise he expressed dislike of trivial courtly politics.[220] John did not want the treatise

[216] John, in his *Entheticus*, made reference to writing first drafts while studying.

[217] Clement C. J. Webb, ed., *Policraticus sive de nugis curialium et vestigiis philosophorum*, 2 volumes, Oxford, 1909; K. S. B. Keats-Rohan, ed., *Policraticus I-IV*, Turnhout, 1993; John Dickinson, tr., *The Statesman's Book of John of Salisbury*, [Books IV, V, VI and selections from VII and VIII] New York, 1963; Joseph Pike, tr., *Frivolities of Courtiers and Footprints of Philosophers*, [Books I, I, III and selections from VII and VIII] New York, 1972; M. Markland, tr., *Policraticus*, [selections] New York, 1979; Cary J., Nederman, tr., *Policraticus*, *Of the frivolities of Courtiers and the Footprints of Philosophers,* [selections] Cambridge, 1990.

[218] See for example Amnon Linder who argued that it was little known until the second half of the thirteenth century, 'John of Salisbury's *Policraticus* in Thirteenth-Century England: The Evidence of MS Cambridge Corpus Christi College 469', *Journal of Warburg and Courtauld Institutes*, Vol. 40 (1977), 276-282; cf. Frédérique Lachaud, 'Filiation and Context, The Afterlife of the *Policraticus*', in *A Companion*, 373-438.

[219] Cotts, 'Monks and Clerks', 275.

[220] See Nederman, *John of Salisbury*, 20-22.

to cause upset, however, and sent a copy to Peter of Celle to ask him to remove any passages which might have made enemies at court.[221]

The *Policraticus* was a theoretical political treatise, which could also be seen as a work of moral philosophy; Nederman described it as a "philosophical memoir,"[222] while Massey called it a didactic "princely manual," and argued that it may have been written to remind Henry II that tyrants would ultimately be subject to the wrath of God.[223] Forhan suggested that *Policraticus* was ultimately about "the nature and purpose of man, and the highest good that he can achieve." The treatise was an attempt to reconcile theological theory and political practice, and as such the work "reveals itself as thoroughly political."[224] Kneepkens argued that John aimed to show: "that the court of any Christian ruler ... must be dominated by true philosophy and wisdom in order to create for every member of the state a good and happy life on earth as a preamble to eternal beatitude."[225]

The *Policraticus* was organised into eight books, each divided into chapters. The first three books covered the frivolities of courtiers. Book I addressed the activities which one may come across at court, such as hunting, as well as topics such as magic and omens. Book II discussed nature, portents, dreams, astrology and other such subjects. John held a sceptical view of necromancy; in his youth he had been trained by a priest who practiced such divination. John had been unable to see figures in the basin and

[221] *EL*, ep. 111, 182
[222] Nederman, *John of Salisbury*, 51.
[223] Hector J. Massey, 'John of Salisbury: Some Aspects if his Political Philosophy', *Classica et Mediaevalia*, 28 (1967), 369.
[224] Kate Langdon Forhan, 'A Twelfth-Century "bureaucrat" and the life of the mind: the political thought of John of Salisbury', *Proceedings of the Patristic, Medieval and Renaissance Conference*, Vol. 10 (1985), 67.
[225] C. H Kneepkens, 'John of Salisbury', in *A Companion to Philosophy in the Middle Ages*, eds. Jorge J. E. Gracia and Timothy B. Noone, Oxford, 2003, 393.

was adjudged to be "useless" for such purposes; John found this to be horrible and sacrilegious.[226] Book III expounded on the subjects of virtue and flattery and John warned against the flatterers who could be encountered at court. In Chapter 15 of Book III John raised the topic of the tyrant, explaining that "it is not merely lawful to slay a tyrant but even right and just." (See Chapter Three.) Book IV concerned the interactions of the prince and the law, exploring differences between a prince and a tyrant, how the prince was inferior to the priests. Book V discussed the commonwealth, including a section on the body politic. (See Chapter Four.) Book VI was on the subject of the armed hand of the commonwealth, the military; examining topics such as the oath which soldiers had to take, the importance of discipline within the military, privileges which soldiers could enjoy. (See Chapter One.) Book VII concerned John's reasons for preference for the Academic school. In this section he discussed the derivation of the word "academic" and outlined major philosophical teachings. Book VIII explored vice and included several chapters on the subject of banqueting. This book also contained a number of chapters on the subject of tyranny and tyrannicide. (See Chapter Three.)

Within *Policraticus* John relied on citations from other writers to support his argument.[227] Martin pointed out that the use of exemplar by John stemmed from the medieval literary trope of using stories to evidence a point, as writers believed that history could provide valuable lessons, "both as offering instructive instances of

[226] 2.28, Pike, 147; Keats-Rohan, 167-168, "inutilis".

[227] Barrau's analysis demonstrated that of John's citations, 41% were taken from pagan authors, 33% from the Bible, 14% from the Church Fathers and 12% from other medieval writers; Julie Barrau, *Bible, lettres et politique, L'Écriture au service des hommes à l'époque de Thomas Becket*, Paris, 2013, p. 144.

behaviour and as revealing God's providence."[228] The more eminent the authority used within the exemplar, the more weight the argument carried.[229] Although John appeared very well read, his knowledge in particular of pagan authors, such as Frontinus and Seutonius, was likely to have come from *florilegia*.[230]

The letters of John of Salisbury formed two distinct collections; the *Early Letters* were written between 1153 and 1161,[231] while the second group, the *Later Letters*, dated from 1163 to 1180. The two collections were discrete and are not known to be combined in any manuscript. The *Early Letters* were composed while John was in the household of Archbishop Theobald of Canterbury. They were 135 in number, including the will of Theobald. Excluding the will, and a single letter which could have been written either personally from John or in the name of the archbishop,[232] the vast majority were written on formal business in the name of the archbishop, some ninety-seven, while the remainder of the letters, thirty-six, were personal correspondence to friends like Peter of Celle, Ralph of Sarre and Pope Adrian IV. These letters offer a valuable insight into the workings of the archiepiscopal court in the mid-twelfth century, showing the issues to be resolved and John's involvement in the process. The collection was made up primarily of correspondence which concerned the theme of law. This was true for both those letters written by John in the name of Theobald, and the personal correspondence. The topics ranged from marriage, between members of

[228] Janet Martin, 'Uses of Tradition: Gellius, Petronius, and John of Salisbury', *Viator*, 10 (1979), 61.
[229] Nederman, xix.
[230] See in particular Martin: 'Uses of Tradition', 57-76 and Martin, 'John of Salisbury's Manuscripts of Frontinus and Gellius', *Journal of the Warburg and Courtauld Institutes*, Vol. 10 (1977), 1-26.
[231] Anne Duggan has suggested that (of the strictly speaking *apostoli* letters,) some may be earlier still; perhaps at least as many as nine may have been issued 1147/8-1154, and there are seven more which have no dating clue; Duggan, 'Henry II, the English Church and the Papacy, 1154-1176, in *Henry II, New Interpretations*, eds. Christopher Harper-Bill and Nicholas Vincent, Woodbridge, Suffolk, 2007, 159-160.
[232] This is ep. 91, see *EL*, 140.

the clergy and the complicated Anstey case,[233] (See Chapter Two.) to land-holding cases, some of which proceeded to the papal court as the result of an appeal.[234]

It is impossible to state conclusively that the letters which exist today were the only ones written by John. That he took the time to collate these collections may suggest that he displayed ambitions to retain all of his correspondence, yet equally those which remain may represent a cherry-picking of the letters he was most happy to preserve. It is also difficult to discern the extent to which John had autonomy of action to compose the letters written in Theobald's name. Dictating to a scribe was the most efficient way of committing words to writing. The skill of writing a letter in proper form was the art of dictation, a branch of rhetoric. Writing was distinguished from composition because putting a pen to parchment was an art in itself.[235] For the physical writing of letters it is likely John used a secretary; in a letter written from John to Peter of Celle, reference is made to his secretary being moved to laughter by the salutation. However, this does not help clarify the extent to which John was responsible for the content of letters written in Theobald's name.

The *Early Letters* remain extant in three manuscripts. The first, P, is Paris, Bibliothèque Nationale, MS Latin 8625. This manuscript was collated in the seventeenth century, and folios 1-32 formed the letter collection, written in a late twelfth- or early thirteenth-century hand. The second manuscript, C, is Cambridge University Library, MS Ii 2.31, a fourteenth-century collection of unknown provenance, consisting of the *Metalogicon*, *Entheticus* and *Policraticus*, followed by seventy-five

[233] *EL*, ep. 131.
[234] For example *EL*, ep. 23.
[235] M. T. Clanchy, *From Memory to Written Record, England 1066-1307*, Oxford, 1993, 125-126.

complete letters, and part of one more, on folios 119-131. Vatican Library, MS Vatican Latin 6024 is a thirteenth-century volume, and appears to be a very close copy of P.[236] It is possible that this early collection may have been used as some sort of formulary, as a model for style and composition, or for legal precedents in future court cases.[237] This hypothesis was proposed by Poole's observation that in the Cambridge manuscript, C, proper names are often represented by *N*.[238] This is a fourteenth-century manuscript of unknown provenance, and therefore it is difficult to tell whether this was copied with the intention of use as a formulary, or whether it was copied from an earlier formulary. If the early letter collection were intended to act as a formulary, why did it not remain at Canterbury? After the monastery was dissolved in 1540, there was a gradual dispersal of manuscripts, and during the civil war the library building was destroyed. It is possible, therefore, that a formulary manuscript was originally held at Canterbury but did not survive. Furthermore, John collated his first collection for the benefit of his friend Peter of Celle, and as such it is possible that if it were intended for use as a formulary it might have been used at Montier-la-Celle and not Canterbury. Barrau, however, noted that it is difficult to establish whether such collections were letters actually sent, or whether they were unsent and used as models,[239] and of course, such a late manuscript cannot reliably be used as evidence of intent. Clanchy observed that the finest letters in the twelfth century were composed and kept as examples of style and were not necessarily delivered to their addressees. It is

[236] *EL*, lvii-lxii.
[237] Cheney, *English Bishops' Chanceries*, 23-24.

[238] Poole, *Studies in Chronology and History*, 259.
[239] Barrau, *Bible, lettres*, 158; For discussion of letters as formularies see *ibid*, 156-161. Clanchy observed that the best letters were kept as stylistic exemplar and were not necessarily sent to their addressees: Clanchy, *From Memory*, 90.

therefore often difficult to discern whether letter anthologies are authentic missives, propaganda pieces or literary essays.[240]

Duggan observed that John was most interested in the literary composition of his correspondence, rather than the historical content, as there was an absence of fully explicit headings, and generally of protocols in the extant letters.[241] For example, in the early letters, only eight protocols were preserved.[242] When the *notarius* made the initial copy, there was no need to be particularly explicit: *Domino pape* meant the current pope, and the usage *Domino pape A* would have been comprehensible at the time of dictation or transcription.[243] The lack of names and protocols might suggest that John was uninterested in preserving the historical context in which the letters were written. John collated his collections for the enjoyment of others, but that was not, it seems, dependent upon contextual understanding.[244]

Poole noted that letters written in Theobald's name used first person plural, which can be distinguished from those written in John's name, which used first person singular. Furthermore, when the letter mentioned a bishop as *venerabilis frater*, it was beyond doubt written in the name of the archbishop, who only occasionally in familiar letters to prelates descended to the singular.[245] For the most part, this distinction is satisfactory, but for some of the letters it is difficult to discern in whose name the letter was written, for example in letters 61 and 76 there was a mixture of singular and

[240] Clanchy, *From Memory*, 90.
[241] Anne J. Duggan, 'Authorship and Authenticity in the Becket Correspondence', *Vom Nutzen des Edierens. Akten des internationalen Kongresses zum 150-jahrigen Bestehen des Instituts fur Osterreichische Geschichtsforschung*, Vienna and Munich, 2005, 25.

[242] *EL*, ep. 7, 27, 95, 105, 106, 124, 130, 133; the protocols of 99, 134 and 135 survive in archival copies.
[243] Duggan, 'Authorship', 25-26.
[244] Duggan, 'Authorship', 27.
[245] Poole, *Studies in Chronology and History*, 260.

plural.[246] There were instances, however, where the lack of protocols and names made it unclear in whose name certain letters were written and as such the content and vocabulary of the letters needs to be considered. As general rules, the following conditions can be applied to distinguish between the letters written in the name of Theobald and those written in John's name. The letters written in Theobald's name were more business-like with a distant and more commanding tone. The letters written in Theobald's name were stylistically less verbose than those written in John's. The letters written in Theobald's name did not contain the "piled-on references, digressions and private jokes" which were a feature of John's personal correspondence.[247] The letters written in John's name, to friends and acquaintances, were more impassioned in their tone than those written from Theobald.

From this earlier collection, the letters written in John's name were either addressed to a friend to discuss people or events; to someone in power e.g. the pope, with whom John may have been familiar and whose ear he used to ask for a good turn; to someone he knew, to informally discuss legal matters, for example Hilary of Chichester, with whom he shared knowledge and discussed matters such as how a case could have been improved on; or official archiepiscopal household business. This last group was interesting, and small in number, just two or three. Letter 118 raised interesting questions: for example, whether it was a letter written in Theobald's name with a transcription error occurring during the preservation of the letters; or whether owing to John's familiarity with the recipient, the archbishop delegated the task of

[246] *EL*, xi, n.2: There is a handful of letters – routine testimonials etc. – which cannot be proved on internal evidence to be either from John or Theobald; sometimes Theobald's authorship is only proved by a chance phrase e.g. *frater nostra episcopus*.
[247] Barrau, in *A Companion*, 112.

writing the official letter to John. The tone of this letter was less formal in its latter part as it was addressed to the chapter of Exeter with whom John was very familiar. Of course, caution must be exercised against reading too much into emotion expressed within letters. Constable asserted that there was no clear boundary separating public and official "documents" and unofficial and private "letters."[248] He also pointed out that in the Middle Ages letters were for the most part self-conscious, quasi-public literary documents, often written with an awareness of future collection and publication. Consequently they were designed to be correct and elegant rather than original and spontaneous.[249] As Morey and Brooke observed, formality of language did not prove formality of feeling, and the situation of subjective judgement could be misleading.[250]

The *Later Letters* of John of Salisbury dated from 1163 to 1180 and numbered 199 in total. The overall tone was quite different from the early collection; they were written personally by John to friends and allies and contained ideas about the importance of law and the primacy of the law of God. They should be considered in the context of

[248] Giles Constable, *Letters and Letter Collections*, Turnhout, 1976, 22-23.

[249] Constable, *Letters and Letter Collections*, 11. Skinner argued that "it will never in fact be possible simply to study what any given classic writer has said (especially in an alien culture) without bringing to bear some of one's own expectations about what he must have been saying." That is to say that in order to understand, we classify the unfamiliar in terms of the familiar; Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory*, Vol. 8, No. 1 (1969), 6. Moreover, Skinner noted that care must be taken to avoid the supposition that we can ever hope to arrive at the "correct reading" of a text, so that any rival readings can be ruled out; idem, 'Motives, Intentions and the Interpretation of Texts', *New Literary History*, Vol. 3, No. 2, On Interpretation: I (Winter, 1972), 393. As Pocock pointed out, "in complex normative systems, when facts, values and roles are intricately and ambiguously related the conveying of information may have complex normative and political consequences"; J.G.A. Pocock, 'The Reconstruction of Discourse: Towards the Historiography of Political Thought', *MLN*, Vol. 96, No. 5, Comparative Literature (Dec., 1981), 962.

[250] Dom Adrian Morey and C. N. L. Brooke, *Gilbert Foliot and His Letters*, Cambridge, 1965, 13.

the dispute between Thomas Becket and Henry II, and the collection as a whole was in honour of Becket's memory.[251]

These letters are not known to exist in any original or contemporary single-sheet copy. Knowledge of the letters came from a collection probably made by John himself, and also from a collection of letters and documents, collated by Alan of Tewksbury, prior of Canterbury from 1179-1186, relating to the Becket controversy.[252] A few letters are known from other sources. Manuscript Q, Paris, Bibliothèque Nationale, Latin 8562, was written in a late-twelfth or very early-thirteenth-century hand. This is the best-preserved copy of the later letters, and appears to have contained 179 letters, nine from other writers. Its origin was most likely the abbey of le Breuil-BenoÎt in Évreux. Manuscript A, London, British Library, Additional 11506, written in a hand of probably the late twelfth century, is an incomplete copy of a manuscript similar to Q, which breaks off in the 119th letter.[253]

The *Historia Pontificalis*[254] was a chronicle of events which took place at the papal court between 1148 and 1152. Composition commenced in *c*.1163, during John's second exile, and represented John's memoir of his time at the papal court. It purported to offer an eye-witness account to a number of the events recorded, such as the council of Reims.[255] It offered insight into the issues faced by the papacy, but more significantly, it showed what John considered worthy of report, and therefore where

[251] *EL*, xi.
[252] *LL*, xlvii.
[253] *LL*, xlvii-xlviii.
[254] *Historia Pontificalis*, ed. and tr., Marjorie Chibnall, Oxford, 1986; see Christopher Brooke, 'Aspects of John of Salisbury's *Historia Pontificalis*' in *Intellectual Life*, eds. Smith and Ward, 185-195.
[255] John cannot have been an eye witness at all of the events described, however; for example he described Archbishop Theobald's return to England in 1148, as well as the journey by Pope Eugenius III to Clairvaux in the same month; *HP*, xxii.

his personal interests lay. For example, John recorded the canons promulgated at the Council of Reims;[256] Archbishop Theobald of Canterbury's harsh treatment at the hands of King Stephen;[257] and King Roger II of Sicily's disregard for the laws of the church.[258] It is therefore clear that John had a keen interest in the drawing up and carrying out of laws and in the behaviour of rulers and their relationship with churchmen. The narrative came to an abrupt end for 1152 and the text broke off mid-sentence. As the *Historia* only survives in one manuscript, with a thirteenth-century provenance, it is impossible to discern whether the original terminated in such a sudden manner.[259]

The *Entheticus*[260] has been shown by van Laarhoven to have a *terminus ad quem* of 1162, while the *terminus a quo* might be as early as the early 1140s, as John made reference to writing first drafts of the text while studying.[261] The poem is difficult to categorise, but van Laarhoven has described it as a "storehouse of warnings, admonitions, and exhortations, in the forms of satire, didactical exposés, and polemic diatribes."[262] It offered instruction on the sources of philosophical wisdom and virtue, and the relationship between human reason and divine truth.[263] Part I warned of the

[256] *HP*, 8-10.
[257] *HP*, 42.
[258] *HP*, 65-69; see Helen Wieruszowski, 'Roger II of Sicily, Rex-Tyrannus, in Twelfth-Century Political Thought', *Speculum*, 38, No. 1 (1963), 46-78.
[259] This manuscript came from the monastery of Fleury, and is now in the town library of Berne, where it is MS 367.
[260] D. J. Sheerin, ed., *John of Salisbury's* Entheticus de dogmate philosophorum*, Critical Text with English Introduction and Notes*, Chapel Hill,1969; Ronald E. Pepin, 'The Entheticus of John of Salisbury, a Critical Text, *Traditio*, 31 (1975), 127-193; Jan van Laarhoven, ed. and tr. *Entheticus maoir and minor*, 3 volumes, Leiden, 1987.
[261] *Entheticus*, 15.
[262] *Entheticus*, 24; Rodney Thomson suggested that it was perhaps unfinished, see Thomson, 'What is the *Entheticus*?' in *The World*, 300.
[263] Nederman, *John of Salisbury*, 44; for a most recent discussion of *Entheticus* see Ronald E. Pepin, 'John of Salisbury as a Writer', in *A Companion*, 151-156 and 159-160.

dangers of empty talk from those educated in the schools, who were considered eloquent but with little to say of substance. Even masters at the schools were guilty at times of passing off the teachings of great philosophers as their own, with little acknowledgement of their predecessors.[264] John was clear that there was no substitute for hard work and careful studying.[265] Part II was written as a critique of the major doctrines of Classical philosophy. Part III warned of the dangers one could face from dishonest courtiers, and offered instruction on how an honest and honourable courtier could help steer a tyrant away from tyrannical policies.[266] In Part IV John recapped the central ideas from his poem – keep wise counsel, seek advice from the ancient philosophers, and accept individual responsibility. The *Entheticus* was little concerned with law. It can, however, be of some use for the purposes of this study as it illustrated John's viewpoint on the teachings of some ancient schools of philosophy, as he argued that without faith reason would fail: a true philosopher must lead a Christian life, guided by Holy Scriptures. He also highlighted the importance of true favour (*gratia*), faith (*fides*), good morals (*boni mores*) and the negative consequences for society when these were neglected by the king, his court, the judges and the ecclesiastical hierarchy.[267]

The *Metalogicon*[268] was written in 1158-1159 and has been described as a defence of logic in its broadest sense,[269] and in particular a defence of dialectic. The

[264] *Entheticus*, I, B, Par. 4.
[265] *Entheticus*, I, F, Par. 25,
[266] *Entheticus*, III, U, Par. 95 – 99.
[267] Kneepkens, 'John of Salisbury', 392-393.

[268] A translation of the *Metalogicon* by J. B. Hall has recently been published, with a thorough Introduction by J. P. Haseldine, *John of Salisbury, Metalogicon*, Turnhout, 2013, this is a companion to Hall's edition of 1991, for which Hall was assisted by K. S. B. Keats-Rohan, *Metalogicon*, Turnhout, 1991; an edition of the *Metalogicon* by C. C. J Webb was published in 1929, and an English translation by D.

Metalogicon argued for a thorough study of grammar and logic. John was concerned about the separation of learning from practical matters such as ethics, and he believed in the importance of learning and its application in state or church administration.[270] A working knowledge of the *trivium* was a requirement for those engaged in a range of literate professions, such as law and administration.[271] In this work, John praised the idealised value of Aristotelian logic found within his *Organon*,[272] commending these works as being the best study in logic.[273] This was in fact the first western treatment of the whole *Organon*.[274] John saw logic as the foundation of all knowledge, and as the key to answering questions across other fields,[275] and within the work John gave his critique of the study of universals. John also stressed the importance of truth reflecting the divine majesty: "The truth of anything is directly dependent on the degree in which it faithfully reflects the likeness of God."[276] As well as the importance of the aforementioned works by Aristotle, Horace, Quintilian, Cicero, Augustine, Hugh

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McGarry, based on the Webb edition was published in 1955, *The Metalogicon of John of Salisbury, A Twelfth-Century Defense of the Verbal and Logical Arts of the Trivium*, Berkeley; See J. B. Hall, 'Towards a text of John of Salisbury's Metalogicon, *Studi Medievali*, 3rd series, Vol. 24 (1983), 791-816; see K. S. B Keats-Rohan, 'The Textual Tradition of John of Salisbury's *Metalogicon*, *Revue d'histoire des texts*, Vol. 16 (1986), 229-282.

[269] McGarry, xvi.

[270] Stephen C. Jaeger, *The Envy of Angels, Cathedral Schools and Social Ideals in Medieval Europe, 950-1200*, Philadelphia, 1994, 278-279.

[271] *Metalogicon*, tr., 55.

[272] That is, the six logical treatises of Aristotle, being *Categories*, *On Interpretation*, *Topics*, *Sophistic Refutations*, *Prior Analytics* and *Posterior Analytics*. See *Metalogicon*, tr., 55-64; see Michael Haren, *Medieval Thought: the Western intellectual tradition from Antiquity to the thirteenth century*, London, 1985, 13-16.

[273] See Bernard G. Dod, 'Aristotle latinus' in *The Cambridge History of Later Medieval Philosophy: from the rediscovery of Aristotle to the disintegration of scholasticism, 1100-1600*, eds. Norman Kretzmann, Anthony Kenny, Jan Pinborg and Eleonore Stump, Cambridge, 1997, 46-58.

[274] *Entheticus*, i, 20.

[275] *Metalogicon*, tr., 54; *Metalogicon*, 1.11-12, 2.1-5 and 2.11-15.

[276] McGarry, 4.39, 267.

of St Victor and Boethius were important sources.[277] The *Metalogicon* seems to have had limited transmission in the Middle Ages, with only eight extant manuscripts currently identified, mostly dating from the twelfth century, all but one having an English provenance.[278]

John's *Vita Anselmi* was written in support of Thomas Becket's attempt to have Anselm canonised, and in it John painted a narrative picture of Anselm's life.[279] The work was written before May 1163 and was dependent upon Eadmer's *Vita Anselmi* which was written over half a century earlier.[280] The *Vita et Passio Sancti Thome* was thought to have been written in 1171, and is one of fifteen surviving biographies of Becket from the twelfth century.[281] Both are works of hagiography that offer little of relevance to this thesis.

[277] For detailed index of sources, see *Metalogicon*, tr., 347-361.
[278] *Metalogicon*, tr., 50.
[279] Nederman, *John of Salisbury*, 80.
[280] Ronald E. Pepin, 'John of Salisbury as a Writer', in *A Companion*, 165.
[281] Pepin, in *A Companion*, 169.

Chapter One

Types of Law

Definitions

The definitions provided here are universal definitions.

Law

Law may be defined as the body of rules governing society, enforced by a controlling authority. In the Middle Ages, two words were used for law, *ius* and *lex*. *Ius* had a broad range of meaning and application, with no single equivalent in modern English. Problems in exactitude and definition in its use date from Roman law.[1] *Ius* could mean "what's fair," but also "law" or "right." Isidore of Seville stated that *ius* and *lex* belonged to laws written and handed down in human societies.[2] Moving from *ius* to *lex* can be considered as equivalent to moving from general to particular. Gratian followed Isidore when he included in the *Decretum* the view that ius was a genus of which lex was a species.[3] The characteristic feature of *lex* as a form of *ius* was not only that it formulated the *ius* into a rule, but also that it authoritatively declared that formulation to the public. A *lex* was a definite statement of *ius*, which could no longer be challenged.[4]

[1] See Justinian, *Digest*, 50.16.
[2] Isidore of Seville, *Etymologies*, v, 3.
[3] Gratian *Decretum*, D I. c. 1, from Isidore, *Etymologies*, v, 3. See G. R. Evans, *Law and Theology in the Middle Ages*, London, 2002, 31-33.
[4] Peter Stein, *Regulae iuris: from juristic rules to legal maxims*, Edinburgh, 1966, 13.

Justice

Justice is the quality of being just, impartial or fair. It is the moral idea that law seeks to uphold the protection of rights and the punishment of wrongs; justice is the administration of law.

Right

A right is something to which one has a just claim, such as the title to property. It is also a power, privilege or immunity conferred to a person by law. Right can also be used as an equivalent for "justice."

Custom

Custom, *mos*, is defined as a practice common to any place or institution, conceived of as long-standing good practice. Isidore stated that customary law, *consuetudo*, was a norm or set of norms justified as long-standing good practice that was generally recognised as having the force of law when other law was lacking or absent.[5]

Privilege

Privilege is a right or exemption from duty or liability that is granted as a special benefit or advantage.

[5] Isidore, *Etymologies*, v, 3, 3, tr. Stephen A. Barney, W. J. Lewis, J. A. Beach, Oliver Berghof, Cambridge, 2010.

A. Divine Law

John of Salisbury believed the fundamental characteristic of law was that it emanated from God. This was an unquestionable tenet. The most fundamental laws were those given to Moses on Mount Sinai. This was not a novel point of view; the Laws of King Alfred opened with passages adapted from the book of Exodus, the laws that Moses received from God – the Ten Commandments.[6] Isidore of Seville wrote that: "all laws are either divine or human. Divine laws are based on nature, human law on customs. For this reason human laws may differ, because different laws suit different peoples."[7] Gratian opened his *Decretum* with a passage identifying God as the source of law: "The human race is ruled by two things, namely, natural law and usages. Natural law is what is contained in the Law and the Gospel. By it, each person is commanded to do to others what he wants done to himself and prohibited from inflicting on others what he does not want done to himself."[8]

In Book IV, Chapter 6 of the *Policraticus* John stated that the "first law book" was the Ten Commandments, "inscribed on tablets of stone," whilst Deuteronomy was the "second law book;" "the second is imprinted only on the purer intelligence of the mind. And rightly is the Deuteronomy inscribed in a book in the sense that the prince turns over in his mind the meaning of this law so that its letter never recedes from

[6] Simon Keynes and Michael Lapidge, *Alfred the Great: Asser's* Life of King Alfred *and other contemporary sources*, London, 1983, 163. The Preface to Alfred covers much more than just the Ten Commandments: see John Hudson, *The Oxford History of the Laws of England, vol. II, 871-1216*, Oxford, 2012, 21 ff.
[7] Isidore, *Etymologies*, v, ii, 1.
[8] Gratian, *Decretum*, D 1 ante c. 1. This is the Golden Rule, see Chapter Three.

before his eyes."[9] The book of Deuteronomy was seen as a book of command and instruction, one of the primary biblical sources for understanding the law of God.[10] The word 'Deuteronomy' was a mistranslation of the Hebrew for second law, or repetition of the law, into Greek.[11] The laws contained within Deuteronomy were better developed for situations more likely to arise in a structured community, than the laws which appear in Exodus.[12] Miller pointed out that the Ten Commandments were distinguished from other statutes in Deuteronomy and were given priority. Furthermore, as they were a direct revelation, rather than being taught by a human mediator, they were given greater authority.[13]

John of Salisbury recognised the fundamental importance of Deuteronomy, and stressed the importance of all law conforming to divine law. In Book IV, Chapter 6 of the *Policraticus*, John wrote: "Every censure imposed by law is vain if it does not bear the stamp of divine law; and a statute or ordinance of the prince is a thing of nought if

[9] 4.6, Dickinson, 24; Keats-Rohan, 247: "secunda non imprimitur nisi in puriore intelligentia mentis. Et recte in uolumine Deuteronomium scribitur, quia sic apud se sensum legis princeps reuoluit quod ab oculis eius littera non recedit."

[10] Patrick D. Miller, *Deuteronomy, Interpretation: A Bible Commentary for Teaching and Preaching*, Louisville, 1990, 1.

[11] The opening phrase of Deuteronomy in Hebrew is "Eleh ha-debarim", 'these are the words'; in Hebrew the book is also called *Mishneh Torah*, repetition of the law, of which Deuteronomion is the approximate Greek translation; see *The Jewish Encyclopedia, A descriptive record of the history, religion, literature and customs of the Jewish people from the earliest times to the present day*, 12 volumes, New York, vol. iv, 1903, 538-546; see also *The Standard Jewish Encyclopedia*, 1962, London, 551.

[12] *Jewish Encyclopedia,* vol. iv, 540-546; there is a school of thought which sees Deuteronomy as fundamental in the development of law – the people were made aware of exactly what they had to do, as it was written; the people also knew thenceforth what to expect if they kept the law.

[13] Miller, *Deuteronomy*, 68; in principle Judaism recognises no human mediator or intercessor between God and man. For the people, however, the distance between God and humanity can be too great. Therefore, the prophet is seen as an appropriate person to commune with God. The prophet responsible for receiving the law through angels was Moses, ascribed in Acts, 7:38. (Galatians, 3:19 ascribed Abraham as the prophet responsible for receiving the law.) In rabbinical and Hellenistic literature Moses alone was seen as the mediator between God and the people. See *Jewish Encyclopedia,* vol. viii, 406-409.

not in conformity with the teaching of the Church."[14] The law of God was the ultimate law, just as God was the ultimate judge. No law, whether ecclesiastical or secular in nature, was valid unless it fitted within this divine legal framework. No prince could consider creating an ordinance which did not conform to this.[15] The prince needed to be aware of the importance of the divine sanction of these legal foundations and keep it at the forefront of his mind. John stressed the importance of the prince's knowledge of the law, the importance of the prince being learned, and being surrounded and guided by learned men.[16]

John cited the theories of ancient jurists to support his ideas, when he noted that the "most Christian prince," Justinian, "required of his laws that they should not disdain to imitate the sacred canons."[17] In the same book of *Policraticus*, John explained that:

> Crisippus asserted that the power of the law extends over all things, both divine and human, and that it accordingly presides over all goods and ills ... To which Papinian, a man most learned in the law, and Demosthenes, the great orator, seem to assent, subjecting all men to its obedience because all law is, as it were, a discovery, and a gift from God.[18]

[14] 4.6, Dickinson, 24-25; Keats-Rohan, 248: "Omnium legum inanis est censura si non diuinae legis imaginem gerat, et inutilis est constitutio principis si non est ecclesiasticae disciplinae conformis."
[15] For positive law, see Chapter Three.
[16] 4.6 of *Policraticus* was entitled "That he [the prince] should have the law of God ever before his mind and eyes, and should be learned in letters, and should be guided by the counsel of men of letters".
[17] 4.6, Dickinson, 25; Keats-Rohan, 248: "Quod et Christianissimum non latuit principem, qui legibus suis indixit ne dedignentur sacros canones imitari." Justinian, *Novels*, lxxxiii. 1.
[18] 4.2, Dickinson, 6; Keats-Rohan, 234: "Vnde et eam omnium rerum et diuinarum et humanarum compotem esse Crisippus asseruit, ideoque praestare omnibus bonis et malis ... Cui Papinianus, uir quidem iuris experientissimus, et Demostenes, orator praepotens, uidentur suffragari et omnium hominum subicere obedientiam, eo quod lex omnis inuentio quidem est et donum Dei."

It would appear that John was following the sense of the *Digest* closely for this passage of text,[19] but whether he acquired this passage from the *Digest* directly,[20] or whether he took the reference from a written or spoken source other than Justinian remains unclear. In the *Digest*, a passage from Marcian's *Institutes* was included: "Law is sovereign over all divine and human affairs. It ought to be the controller, ruler and guide of good and bad men alike, and in the way to be a standard of justice and injustice and, for beings political, by nature a prescription of what ought to be done and as a prescription of what ought not to be done."[21] Within the quotation from Marcian was a passage from Demosthenes:[22] "Law is that which all men ought to obey for many reasons, and chiefly because all law is a discovery and a gift of God, and yet at the same time is a resolution of wise men."[23] This was followed in the *Digest* by a quotation from Papinian's *Definitions*: "A statute[24] is a communal directive, a resolution of wise men, a forcible reaction to offences committed either voluntarily or in ignorance, a communal covenant of the state."[25] Within the passage from Book IV, Chapter 2, quoted above, John of Salisbury highlighted the all-encompassing nature of law. It was relevant to all men. It ensured the smooth-running of society, and sought to protect people from crime. All needed to obey the law, for it was a manifestation of God's will.

[19] Justinian, *Digest* 1.3.1 & 2.
[20] Marcian in his *Institutes* quoted Demosthenes in Greek, which is how it appeared in the *Digest*. The Greek sections from the *Digest* were translated by Burgundio of Pisa (*c*.1110-93), but it is not certain precisely when he undertook this translation.
[21] Justinian, *Digest* 1.3.1 & 2.
[22] See n. 20, above.
[23] Justinian, *Digest* 1.3.1 & 2.
[24] *Lex*.
[25] Justinian, *Digest* 1.3.1.

Sassier noted that John took his definitions from the *Digest* as his starting point for this chapter, but changed the words to fuse together human and divine law, and made human law a direct extension of divine law. In this way he freed human law from the autonomous will of the human legislator. Thus the human mediator, in the theological vision of law's origin, became the one to convey the law from God, just as Moses gave the law to the people. The will of the human legislator was therefore, for John, coming directly from God.[26]

John's view also echoed the opinion of Classical writers such as Cicero. Views of Classical writers had in turn influenced the views preserved in the *Digest*. Cicero, in his *De Legibus*, argued that law was essentially divine in origin, and was an expression of the will of God. Cicero's *De legibus* was popular in the twelfth century,[27] and John would certainly have been aware of it. For Cicero: "law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition ... the law is the primal and ultimate mind of God, whose reason directs all things either by compulsion or restraint."[28] John of Salisbury was of the same mind. He believed that a prince was needed to reign over his people and ensure that the law was being adhered to, but God and His law remained the ultimate judge.[29]

[26] Sassier, in *A Companion*, 246.
[27] See, for example, Andrew R. Dick, *A Commentary on Cicero*, Ann Arbor, Mich., 2004, 40-42; P. L. Schmidt, *Die Überlieferung von Ciceros Schrift 'De legibus' im Mittelalter und Renaissance*, Munich, 1974, 201-216.
[28] Cicero, *Laws*, II, iv, 8, *De Re Publica & De Legibus*, tr. Clinton Walker Keyes, Cambridge, Mass., 1966, 381.

[29] See quote on 124, "the will of a true ruler ..."

As well as the *Policraticus*, a number of the letters written in the name of Theobald and personal letters from John contained references to God as the ultimate judge, and to His word being the ultimate law. One phrase from a personal letter exemplified John's thoughts on the matter: "The law is everlasting and cannot be broken."[30] Clearly John believed that God was the source of all law – all law, and by extension all authority, came from God. John thought that secular law was inferior to the law of God. A similar view was expressed by Gratian, quoting Pope Nicholas I in the *Decretum*: "Imperial ordinances are not above the ordinance of God, but below it. Ecclesiastical laws may not be abrogated by an imperial judgement."[31] Within this quotation from Nicholas I a letter from Pope Innocent I to Bishop Alexander of Antioch was referenced:

> 'You wish to know whether two metropolitan sees should be established and two metropolitan bishops named when a province is divided in two by an imperial decree. It does not seem that God's Church should be conformed to unstable worldly needs or adjust itself to offices and divisions that the emperor has established to suit his own needs.'[32]

Further, citation of a letter from Pope Gregory I to Theoctista, a noble lady, on the subject of marriage dissolution was included: "'it should be observed that what human ordinance allows may still be forbidden by divine ordinance.' So you see that ecclesiastical laws may not be abrogated in any way by an imperial decree. And you see that things human ordinance has allowed, divine ordinance has prohibited."[33] In the *Decretum* Gratian also wrote: "Imperial ordinances are not to be followed in any

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[30] *LL*, ep. 235, 436-437: "Lex utique sempiterna est et solui non potest."

[31] Gratian, *Decretum*, D 10 c. 1; cf. Ivo, *Decretum*, IV, 86 and Ivo, *Panormia*, II, 138. Friedberg, n. 1.
[32] Gratian, *Decretum*, D 10 c. 1.
[33] Gratian, *Decretum*, D 10 c. 1.

ecclesiastical dispute, especially since they sometimes contradict an evangelical or canonical sanction".[34] As Gratian stated: "God is over everything."[35]

B. Natural Law

The term *ius naturale*, or laws of nature, or natural law, was an expression with a variety of meanings.[36] However, in a theological context, it was seen as the law implanted in nature by the Creator, which rational creatures could discern by the light of reason. There has been little agreement about its meaning other than that good must be done and evil avoided.[37] On occasion it was used synonymously for the term *ius gentium*, or law of nations. Cicero believed that natural law was part of the *ius gentium*, in that it was a law common to all people.[38] On the other hand, the jurist Ulpian saw the two as quite separate.[39] Sometimes natural law referred to the justice or fairness of a rule. In the *Digest*, Ulpian's definition of natural law was as follows: "*ius naturale* is that which nature has taught to all animals; for it is not a law specific to mankind but is common to all animals."[40]

Natural law and divine law were therefore closely linked with reason. For example, Cicero, in his *Republic*, wrote:

[34] Gratian, *Decretum* p. 33, D 10 c. 1.
[35] Gratian, *Decretum*, D 8 c. 2. Gratian quoted Augustine, *Confessions*. This can also be found in Ivo, *Decretum*, IV, 128.
[36] For an overview of natural law in the Middle Ages, see D. E. Luscombe, 'Natural Morality and Natural Law', in *Cambridge History of Later Medieval Philosophy*, eds. Kretzmann, Kenny and Pinborg, 705-719.
[37] 'Natural law' in *The Concise Oxford Dictionary of the Christian Church*, Oxford, 2006.

[38] Cicero, *De officiis*, 3.23.
[39] *Digest*, 1.1.1.4: "*ius gentium*, the law of nations, is that which all human peoples observe. That is it not co-extensive with natural law can be grasped easily, since this latter is common to all animals whereas *ius gentium* is common only to human beings among themselves".
[40] *Digest*, 1.1.1.3.

> law is the highest reason, implanted in nature, which commands which ought to be done and forbids the opposite. True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting ... one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator and enforcing judge.[41]

It is clear that John of Salisbury also believed in the close relationship between law and reason: "Since our reason is ennobled by a divine origin and exercises its power on matters divine, the precept that it be cultivated above all things has been sanctioned by decree passed by the whole of philosophy ... Nothing that agrees with reason is out of harmony with God's plan."[42]

In his *Historia Pontificalis*, John argued that God "is not subject to the laws of nature, from whom every nature derives its law ... He is all everywhere, at one and the same time present in the heavens and the earth and the uttermost part of the sea."[43] John believed that the laws of nature stemmed from God's will and were thus a form of divine law. However, although God made the laws of nature, he was not subject to them. John continued to explore this idea, using St Ambrose's *De Fide* to illustrate his thoughts on the issue.[44]

In Book II of the *Policraticus* John recounted situations when nature defied its own laws. In Chapter 11 he discussed occurrences of a supernatural manner that violated

[41] Cicero, *The Republic*, III, xxii, 33, tr. Keyes, 211.

[42] *Metalogicon*, 4.17, 155: "Cum ergo ratio origine diuina nobilitetur et diuino polleat exercitio, eam super omnia colendam esse totius philosophiae decreto sancitum est ... nihil sit quod ordinationi diuinae repugnet."

[43] *HP*, 30: "Non subiacet nature legibus a quo legem omnis natura sortitur … ubique totus, eodemque tempore uel in celis uel in terris uel in nouissimo maris presens."

[44] *HP*, 30-31: Ambrose, *De Fide*, 1.6.

the laws of nature,[45] for example the lunar eclipse at the time of the crucifixion of Jesus: "the eclipse could not have been a natural one," this being contrary to the law of nature as "it was not the period of their conjunction."[46] The eclipse of the sun that took place during the crucifixion occurred at the time of the full moon. It was physically impossible for a solar eclipse and a full moon to coincide. This was well-known in the Middle Ages:[47] in his *Etymologies*, Isidore had described the physical attributes of both solar and lunar eclipses.[48] Therefore, this eclipse at the crucifixion involved a suspension of the laws of nature and demonstrated that God was not bound by these laws, even though He had created them.

John outlined the way nature will behave in the approach to Judgement Day, and the signs which will foretell it: "those signs also which it is said will foretell for fifteen days the Day of Judgement, if indeed they are to be, for they have no foundation in canonical writing, will not be subject to the laws of nature."[49] In Chapter 12 of Book II he wrote: "if we agree with Plato, who asserts that nature is the will of God, as a matter of course none of the above-mentioned occurrences violate the laws of nature, since all things have occurred in accordance with His will."[50] Instances such as the

[45] The word *supernaturalis* was scarcely known in the mid-twelfth century, and only in the thirteenth century did it become a 'significant tool for organising thought'. See Robert Bartlett, *The Natural and the Supernatural in the Middle Ages,* Cambridge, 2008, 12.
[46] 2.11, Pike, 71-72; Keats-Rohan, 90: "Non enim erat coitus tempus."
[47] Bartlett, *The Natural*, 68-69.
[48] Isidore of Seville, *Etymologiae* (as in note 11) III, 53, 58 and 59.
[49] 2.11, Pike, 72; Keats-Rohan, 90-91: "Illa quoque quae diem iudicii praeuenire dicuntur per dies quindecim, si tamen futura sunt, quoniam de scriptura canonica firmamentum non habent."
[50] 2.12, Pike, 73; Keats-Rohan, 91: "Si uero Platonem sequimur qui asserit naturam esse Dei uoluntatem, profecto nichil istorum euenit contra naturam, cum ille omnia quaecumque uoluit fecerit." Plato, *Phaedo*, 99. It is most likely that John knew Plato's *Timaeus*, through the Latin translation and commentary by Chalcidius, with at least seventy remaining extant manuscripts from the eleventh and twelfth centuries; see E. Jeaneau, L'héritage de la philosophie antique durant le haut Moyen Age', in *La cultura antica nell' occidente latino dal VII all' XI secolo*, Spoleto, 1975; M. Gibson, 'The Study of the 'Timaeus' in the eleventh and twelfth centuries', *Pensiamento*, 25 (1969) 184-194.

eclipse at a time when it would have been impossible seemed to violate the laws of nature. The laws of nature were, however, of God and controlled by Him. Therefore something happening by God's will could not be said to be against the laws of nature. If He chose for nature to behave in an abnormal way, then a miracle was said to have occurred.

Augustine believed that all creation was miraculous and that all natural things were therefore filled with the miraculous.[51] For Augustine, miracles were wonderful acts of God shown as events in this world, not in opposition to nature, but rather demonstrated the hidden workings of God within nature. Humanity had become so accustomed to the daily miracles of rainfall, human birth, flight of birds and so on, that there was the need to provoke reverence by unusual manifestations of God's power.[52] In his *De civitate Dei*, Augustine wrote: "how can an event be contrary to nature when it happened by the will of God, since the will of the great creator assuredly is the nature of every created thing? A portent therefore does not occur contrary to nature but contrary to what is known of nature."[53] The early scholastics considered how to define these types of events and drew up firmer divisions between these categories. Bartlett has demonstrated that, over the course of the period 1050-1215, a harder line was drawn between the natural and the supernatural, but also, within the supernatural, between the miraculous and the sacramental. Thus three orders of event came into being: natural, miraculous and sacramental. A miracle was a free act

[51] Augustine, Epistle 102, *PL* 372.
[52] See Augustine, *De civitate Dei*, 21.7-8; see Benedicta Ward, *Miracles and the Medieval Mind, Theory, Record and Event, 1000-1215*, London, 1982, 3-19.
[53] Augustine, *De civitate Dei*, 21.8.

of God.[54] In a letter to John of Canterbury, Bishop of Poitiers, John of Salisbury described miracles taking place in Canterbury cathedral after the death of Thomas Becket: "the blind see, the deaf hear, the dumb speak ... the lepers are cleansed ... I should not have dreamt of writing such words on any account had not my eyes been witness to the certainty of this."[55]

C. Law of Nations

In Roman law, the law of nations, or *ius gentium*, was the law of the peoples, being the law that all nations observed.[56] Rome did not assert her legal systems over her imperial subjects when they were carrying out legal transactions among themselves. The law of nations was applied to all cases brought before the Roman court in which one or more of the parties were non-Roman, regardless of their origin. It most likely grew out of the need for a legal construct to cover commercial dealings with those who were not citizens of Rome and who could not use the *ius civile*. It became a framework of general rules, reflecting the attitudes to law of all peoples and communities.[57] A definition from the *Digest* stated: "that law which natural reason has established among all human beings is among all observed in equal measure and is

[54] Bartlett, *Trial by Fire and Water*, 87-88.
[55] This letter was incorporated into John's *Life of St Thomas*; *LL*, 305, 736-737: "caeci uident, surdi audiunt, loquuntur muti … leprosi mundantur ... quae profecto nulla ratione scribere praesumpsissem, nisi me super his fides oculata certissimum reddidisset."
[56] For background on the law of nations, see, for example, Laurens Winkel's article 'Ius gentium' in *The Encyclopedia of Ancient History*, online edition: http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13129/full; M. Kaser, *Ius gentium*, Vienna, 1993; Lloyd L. Weinreb, *Natural Law and Justice*, Cambridge, MA., 1987; Brian Tierney, *The Idea of Natural Rights, Natural Law and Church Law, 1150-1625*, Grand Rapids, Mich., 2001.
[57] *The Digest*, Watson, i, xxxiii.

called *ius gentium*, as being the law which all nations observe."[58] Also included within the *Digest* was the opinion of Ulpian, distinguishing between the law of nations and natural law: "*ius gentium*, the law of nations, is that which all human peoples observe. That it is not co-extensive with natural law can be grasped easily, since this is common to all animals whereas *ius gentium* is common only to human beings among themselves."[59]

Gratian described the law of nations, taking his definition from Isidore's *Etymologies*, as dealing with: "the occupation of habitations, with building, fortification, war, captivity, servitude, postliminy, treaties, armistices, truces, the obligation of not harming ambassadors, and the prohibition of marriage with aliens. This law is called the law of nations because almost all nations make use of it."[60] John of Salisbury referred to the law of nations in a less practical manner than Gratian, taking a rather more philosophical approach. In *Policraticus* John wrote:

> Now there are certain precepts of the law which have a perpetual necessity, having the force of law among all nations and which absolutely cannot be broken with impunity. Before the law, under the law, and still under the new covenant of grace, there is one law which is binding upon all men alike: 'What thou wouldst not should be done unto thee, do thou not unto another'; and 'what thou wouldst should be done unto thee, do that unto others.'[61]

[58] *Digest*, 1.1.9.
[59] *Digest*, 1.1.1.4; another opinion of Ulpian, found in *Digest*, 1.1.1.3 is "*ius naturale* is that which nature has taught to all animals; for it is not a law specific to mankind but is common to all animals," from Ulpian, *Institutes*, book 1.
[60] Gratian, *Decretum*, D 1 c. 9. This is from Isidore's *Etymologies*, v, 6.
[61] This is the Golden Rule, see Chapter Three. Luke, 6:31: "and as ye would that men should do to you, do ye also to them likewise"; Matthew, 7:12 "therefore all things whatsoever ye would that men should do to you, do ye even so to them; for this is the law and the prophets"; 4.7, Dickinson, 33; Keats-Rohan, 255: "Sunt autem praecepta quaedam perpetuam habentia necessitatem, apud omnes gentes legitima, et quae omnino impune solui non possunt. Ante legem, sub lege, sub gratia, omnes lex una constringit. Quod tibi non uis fieri, alii ne feceris; et: quod tibi uis fieri faciendum, hoc facias alii."

D. Canon Law

For background to canon law, including sources of law and canonical collections, see Introduction. For discussion of John of Salisbury's knowledge of canon law, and the way in which he employed it in his writing, see Chapter Two.

E. Roman Law

John of Salisbury included within his writing references to Roman law, and used this, like Biblical allusion, to support his arguments. It could also be said that he used these allusions to demonstrate he was learned and well-educated in various aspects of the laws. John's writing demonstrated familiarity with the contents of the *Digest* and the *Code* and he referred to these within his work; in particular he used the *Code* to explore the relationship between the prince and law. (See below, Chapter Three.) It is not clear whether he had his own copy of Justinian's work or access to one for reference.

Dickinson suggested that John, in line with contemporary views on the subject, believed that the *Corpus Iuris Civilis* was a publication and exposition of the divine law, and that Justinian was proclaiming the sacred laws and making them known to all men.[62] In *Policraticus*, Book IV, Chapter 6 John explained that the most Christian princes, such as Leo and Justinian, "took especial pains to the end that the most sacred laws, which are binding upon the lives of all, should be known and kept by all, and that

[62] Dickinson, xxxiv.

none should be ignorant thereof."[63] John continued: "What manner of men Justinian and Leo were is clear from the fact that by disclosing and proclaiming the most sacred laws, they sought to consecrate the whole world as a temple of justice."[64] This was the ideal which a prince should try to emulate – a ruler who realised their role was appointed by God to carry out justice, and one who observed and disseminated the divine law throughout the land, understanding their responsibilities to ensure none were ignorant of the need for compliance.

In addition to using the *Corpus* of Justinian to explore and support his ideas of the position of princes and the law, John used the body of Roman law to discuss the more pragmatic and quotidian aspects of the law. In Book V, Chapter 13 of the *Policraticus*, John outlined how a law-suit should proceed.[65] John used the *Novels* and the *Code* to explain the importance of oath-taking, how long a case could last, fees payable to the advocate, and other practical matters. John used Justinian's *Corpus* both in his discussion of the rationale of proofs and to support his ideas and discussions on the duty of judges. As the *Policraticus* was to a large extent John's picture of an idealised society, his discussion on judges can be viewed as a description of an alternative Classical model scenario for his own day.[66]

[63] 4.6, Dickinson, 26; Keats-Rohan, 249: "In eo namque praecipuam operam dabant ut sacratissimae leges quae constringunt omnium uitas scirentur et tenerentur ab omnibus, nec illarum esset quisquam ignarus nisi."; see Justinian, *Code*, i. 14 § 9.

[64] 4.6, Dickinson, 27; Keats-Rohan, 250: "Iustinianus et Leo qui fuerint ex eo claret quod totum orbem sacratissimis legibus enucleatis quasi quoddam templum iustitiae sacrare studuerunt." See Justinian's *Code*, 1.17 § 5. The fifty books of the *Digest* were described by Justinian in his *Composition of the Digest* as the "most holy temple of justice".

[65] 5.13, Dickinson, 136-139; in this chapter of the *Policraticus*, John of Salisbury alluded to the following sections of the *Corpus Iuris Civilis*: *Code*, 2.58.2, *Novels*, 124.1; *Code*, 3.1.14; *Code*, 3.1.13; *Code* 2.6.5-7; *Code*, 2.9; *Digest*, 48.16.1 and *Digest*, 3.2.1, see Webb, i, 339-342.

[66] See Chapter Four for discussion of judges.

F. Custom and Privilege

In the *Digest* it was written: "this law of ours exists either in written or unwritten form; as the Greeks put it, 'of laws some are written, others unwritten.'"[67] Custom was unwritten law.[68] Custom was viewed as a legitimate source of law. Isidore saw that custom was based on human law,[69] but as no law could run counter to faith or reason, custom too had to conform with divine law.[70] In the *Digest* custom was praised, for it had such weight as a source of law that there was no requirement to write it down: "this kind of law is held to be of particularly great authority, because approval of it has been so great that it has never been necessary to reduce it to writing."[71] In the *Digest* can also be found the opinion of the jurist Julian, that custom "is the kind of law which is said to be established by use and wont. For given that statutes themselves are binding upon us for no other reason than that they have been accepted by the judgement of the populace, certainly it is fitting that what the populace has approved without any writing shall be binding upon everyone."[72] Included in the *Institutes* was the statement: "unwritten law is that which usage has approved. For long-practiced customs endorsed by the acquiescence of those who observe them take on the mantle of law."[73]

[67] *Digest*, 1.1.6.1, from Ulpian's *Institutes*, book 1.
[68] According to Christopher Wickham, Lombard King Rothari (636-652), like Germanic legislators elsewhere, was setting down custom (and sometimes updating it); unlike most others, though, he made an attempt to set down all of it, in 388 chapters; Wickham, *Early Medieval Italy, Central Power and Local Society, 400-1000*, London, 1981, 124.
[69] See above, definition of Custom.
[70] See Cicero quotation, Chapter Three, 136.
[71] *Digest*, 1.3.36.
[72] *Digest* 1.3.32.1. This is from book 84 of the *Digest* of Julian.
[73] *Institutes*, 1.2.9, this distinction between written and unwritten law is not found in the *Institutes* of Gaius, see *The Institutes of Justinian*, *Text, Translation and Commentary*, J. A. C. Thomas, Oxford, 1975, 7.

Although custom was an accepted source of law for the jurists, the Romans did not develop an exacting formulation or framework of what constituted a custom. At no point was specification given for the length of time needed to pass in order for something to be deemed a custom. In a text preserved in the *Digest*, the jurist Hermogenian stated vaguely: "we also keep to those rules which have been sanctioned by long custom and observed over very many years."[74]

Gratian argued that human laws were made up of customs. Yet, as the Roman jurists had done before him, Gratian stated that custom could only be treated as a law if certain criteria were met. He wrote that "the authority of longstanding custom and practice is not insignificant; but its power is certainly not of such moment as to prevail over either reason or ordinance."[75] Gratian also stated that: "custom that does not encroach on the faith is laudable. We praise custom when, however, it is known not to impinge on the Catholic faith."[76] But just as for the Roman jurists, likewise for canon lawyers, the acceptance of custom, and how it related to other types of law, was not straight-forward.[77] As Helmholz indicated, a valid custom had to be of relatively widespread use among those affected, of sufficient duration to meet the requirement of the law of prescription and to have been uninterrupted by divergent practice. A custom also had to correspond with divine and natural law, not run counter to truth or

[74] *Digest* 1.3.35, from Hermogenian's *Epitome of Law.*
[75] Gratian, *Decretum*, D 11 c. 4, taken from Justinian, *Code*, 7.2. It can also be found in Ivo, *Decretum*, IV, 202 and Ivo, *Panormia*, II, 163.
[76] Gratian, *Decretum*, D 11 c. 6. This can be found in the Burchard, *Decretum*, III, 124, Ivo, *Panormia*, II, 157 and Ivo, *Decretum*, IV, 66.
[77] See for example Emanuele Conte, 'Roman Law vs Custom in a Changing Society: Italy in the Twelfth and Thirteen Centuries', in *Custom: The Development and Use of a Legal Concept in the Middle Ages, Proceedings of the Fifth Carlsberg Academy Conference on Medieval Legal History, 2008*, eds. Per Andersen and Mia Münster-Swendsen, Copenhagen, 2009, 33-49; also Brundage, *Medieval Canon Law*, 156.

reason and not in itself be unreasonable. This was not well-defined.[78] The decretist Rufinus, writing in the 1150s and 1160s,[79] made the case that in order for a custom to become legally binding it had to be known and tolerated by those who had the power to abrogate it. Linked with this, a custom had to be used in a community for a sufficient time in order for it to gain legal standing.[80] Much like the Roman lawyers before him, Rufinus made no quantification of how many years would represent 'sufficient time'.

Although John of Salisbury referred to custom, he did not provide a framework for, nor discuss the intricacies of, what made a custom – for example, the length of time it took for something to become custom. In his *Historia Pontificalis* John suggested that: "the records of chronicles are valuable for establishing or abolishing customs, for strengthening or destroying privileges; and that nothing, after the grace and law of God, teaches the living more surely and soundly than the knowledge of the deeds of the departed."[81] As customs were laws unwritten it was a challenge to provide evidence documenting their existence. John saw that chronicles could be used to discern whether a practice was customary. Customs' inclusion in historical texts could demonstrate that they had been practised over time, but again, this did not define a required duration.

[78] Helmholz, *History of the Laws of England*, 171.

[79] Rufinus finished his *Summa Decretorum* sometime around 1164, see André Gouron, 'Sur les sources civilistes et la datation des Sommes de Rufin et d'Etienne de Tournai', *Bulletin of Medieval Canon Law*, 16 (1986), 55-70.

[80] Rufinus, *Summa Decretorum*, D. 4 c. 4.

[81] *HP*, 3-4: "Valet etiam noticia cronicorum ad statuendas uel euacuandas prescriptiones et priuilegia roboranda uel infirmanda; nichilque post gratiam et legem Dei uiuentes rectius et ualidius instruit quam si gesta cognouerint decessorum."

Alongside customs, medieval canonists treated privilege as a further source of law. Gratian explained that a privilege was a variation from the law as it granted an additional right to something or immunity from certain laws.[82] John of Salisbury in his *Historia Pontificalis* recounted instances when privileges were scrutinised. John related the story of the new abbot of St Denis from 1151, Odo of Deuil, who drove out the family of the deceased abbot, Suger. No one was willing to protect the family, as Suger's nephew Simon had angered the king. Simon appealed to Pope Eugenius III who gave him letters of protection, which Poole has argued were of unprecedented amplitude:[83]

> he was granted letters of protection containing, apart from the common form, a privilege – exempting him from answering any charge except in the presence of the pope himself ... he was received into favour: though the bishops were gravely perturbed at the form of this privilege, which seemed to confirm sinners in their misdeeds, and encourage many men guilty of crimes to seek similar privileges.[84]

John was critical of Eugenius for granting such privileges to Simon. That Simon was only answerable to the pope meant that he had been afforded the utmost protection. It seemed that whilst a privilege was good for ameliorating the position of certain members of society, this was at the cost of alienating wider society. John presented this case in order to highlight the concern of the bishops that this privilege could allow criminals undeserved protection. This would go against the law, as privileges, dispensations and customs should not run counter to truth or the Catholic faith.

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[82] Gratian, *Decretum*, D. 3, c. 3.
[83] Reginald L. Poole, ed., *Ioannis Saresberiensis, Historia Pontificalis*, Oxford, 1927, xxii.
[84] *HP*, 87-88: "sine exemplo sed non sine admiratione, in litteris protectionis preter formam communem hoc emeruit priuilegium, ut nonnisi in presentia summi pontificis cogi posset super aliquo crimine respondere ... eidem Symoni pax reformata est, episcopis grauiter ferentibus iam dicti priuilegii formam, quod prestare uidetur audaciam delinquendi et criminum conscios ad simile priuilegium animare."

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John did not devote much of his writing to his sense of a hierarchy of law, except in one letter written around March 1167 to Reginald, archdeacon in the diocese of Salisbury, the son of Bishop Jocelin of Salisbury.[85] Jocelin had been suspended from his position by Thomas Becket, for having allowed John of Oxford, an agent of Henry II, election to deanship of Salisbury.[86] The letter from John was somewhat hopeful in tone, suggesting that a way forward could be found, but compelled those involved to follow the law of God:

> First let us enquire 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 honour before any personal convenience.[87]

This section of text offered a clear sense of hierarchy within laws, as John saw it. Furthermore, it shows that John was familiar with the practicalities of law, as well as the pattern of legal authority found in Gratian's *Decretum*, D 20 c. 3, which stated that if no authority appeared in sacred Scripture, then the canons of the Apostolic See should be consulted, then examples of the saints, and then elders should be sought for their advice if nothing else could be found. This passage of text, attributed to Pope

[85] For the Becket dispute, see Chapter Four.
[86] See Anne J. Duggan, ed. and tr., *The Correspondence of Thomas Becket, Archbishop of Canterbury, 1162-1170*, xl-xlv.
[87] *LL*, ep. 217, *c*.March 1167, 366-367: "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 praeferantur qui honorem Dei commodis omnibus anteponunt."

Innocent I, was first found in the eighth-century *Collectio Hibernensis*,[88] though it would seem most likely that John was drawing on Gratian here.

G. Equity

Gratian was interested in exploring the link between law, justice and equity. In his *Decretum* he stated that equity should be used as a measure for a judge to determine an appropriate penalty. Judges were to hold in their hands scales which would balance justice with mercy.[89] Equity represented the principles of fairness that underpinned all law. These principles could be invoked to qualify or override unreasonable ordinances. It was seen as a compliment to justice. An unfair law had no legitimate claim to demand obedience.[90] Landau observed that in his *dicta* Gratian uses the term *aequitas* only four times. Landau noted that when Gratian did use the term in C 32 q 6 pr., alluding to the sentence of Christ in the case of the adulterous woman in the gospel of St John, it was seen as the highest form of justice.[91]

Aristotle had written of equity as a means of correcting general laws which in their nature could not provide for every eventuality; in particular it required written laws to be interpreted according to the intention rather than the letter.[92] The notion of equity

[88] Bruce Brasington, '*Congrega seniores provinciae*: A Note on a Hiberno-Latin Canon Concerning the Source of Authority in Ecclesiastical Law', in *Plenitude of Power, The Doctrine and Exercise of Authority in the Middle Ages: Essays in Memory of Robert Louis Benson*, ed. Robert C Figueria, Aldershot, 2006, 1.
[89] *Decretum* D 45, c. 10. This is taken from Isidore, *Sentences*, III, c. 52, 4. It can also be found in Burchard, *Decretum*, XVI, 25. See Peter Landau, ''Aequitas' in the 'Corpus Iuris Canonici'', *Syracuse Journal of International Law and Commerce*, Vol. 20, 95 (1994), 96.
[90] Gratian, *Decretum*, D. 25 q. 1.
[91] Landau, ''Aequitas'', 98. This is from John 8:1-11
[92] Aristotle, *Nicomachean Ethics*, v, 10; see J. H. Baker, *An Introduction to English Legal History*, 4th ed. Oxford, 2007, 106.

as a means of correcting general laws was well known to medieval lawyers, and Glanville noted this as being a feature of the common law.[93]

For John of Salisbury, equity was also used as an interpreter of the law. In Book IV, Chapter 2 of the *Policraticus* he wrote that the justice of God was everlasting and that His law was equity: "Now equity, as the learned jurists define it, is a certain fitness of things which compares all things rationally, and seeks to apply like rules of right and wrong to like cases, being impartially disposed toward all persons."[94] This was similar to a passage in Cicero's *Topica*, which stated: "equity should prevail, which requires equal laws in equal cases."[95] Sassier has argued that while John's definition of equity closely resembled that of Cicero, John most probably took the definition from that provided by the author of the *Summa Codicis Trecensis*, as it was that author alone who linked equity and justice in the same definition.[96]

There was a need for justice to be even-handed. In a legal case between parties of different social standing, it was essential for the law to protect the weaker party in order for the outcome to be fair and balanced.[97] As it was impossible to legislate for every possible occurrence, so the term *aequitas* implied a sense of fair judgement and a higher concept of justice which could sometimes be impeded by a rigid application of enacted laws.[98]

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[93] Glanvill, Prologue; ii, 7; ii, 12; vii, 1; see Baker, *Introduction to English Legal History*, 106.

[94] 4.2, Dickinson, 6; Keats-Rohan, 234: "Porro aequitas, ut iuris periti asserunt, rerum conuenientia est quae cuncta coaequiparat ratione et imparibus rebus paria iura desiderat, in omnes aequabilis."

[95] Cicero, *Topica*, 4, § 23.

[96] Yves Sassier, 'John of Salisbury and Law', in *A Companion*, 238; see ibid 237-238 for textual analysis.

[97] See G. R. Evans, *Law and Theology in the Middle Ages*, London, 2002, 85-90.

[98] Charles Duggan, 'Equity and Compassion in Papal Marriage Decretals to England', *Love and Marriage in the Twelfth Century*, ed. W. Van Hoecke and A. Welkenhuysen, Leuven, 1981, 86; see also G. R. Evans, *Law and Theology in the Middle Ages*, London, 2002, 85.

The prince was necessary for equity to be of effect. If the prince acted in a godly manner, he would be carrying out justice in an equitable way. In Book IV, Chapter 11 of the *Policraticus*, John wrote: "'Remove ungodliness' says Solomon, 'from the face of a king, and his throne shall be established in justice.'[99] For if ungodliness departs from his countenance, that is to say from his will, all acts of rulership will be guided aright by the rod of equity and by the practice of justice."[100] Equity, then, was necessary for justice to be enacted. Without the law being exercised in an equitable manner, there would be no justice. John referred to a tyrant as being one who spurned equity.[101] John, seeing equity and justice as inextricably linked, would have surely been influenced by Cicero, who wrote "it is evident that the very signification of the word 'law' comprehends the whole essence and energy of justice and equity."[102]

Sassier has noted that John would have been aware of the current debate as to the potential conflict between equity and positive law. In Book II, Chapter 26, John wrote: "when the law says one thing and justice which is concerned with the public welfare, another, the interpretation of the prince is to be sought, for it impartial and indispensible."[103] The principle of equity could oblige the prince to modify or abrogate a legal rule that contradicted that principle. In the name of equity, the prince could change or modify the law. As equity was none other than the cosmic harmony willed by God, however, the will that animated the prince in his function as legislator was a

[99] Proverbs, 25:5.
[100] 4.11, Dickinson, 48; Keats-Rohan, 266: "Aufer, inquit Salomon, impietatem de uultu regis, et firmabitur iustitia thronus eius. Si enim a uultu, id est a uoluntate, recedit impietas, totius regni opera uirga aequitatis et cultu iustitiae diriguntur."
[101] 7.17, Dickinson, 282.
[102] Cicero, *De legibus*, II, 5, 11-12.
[103] 2.26, Pike, 124; Webb, vol. 1, 140.

subordinate one – the sanction of all law did not make sense if it did not assume the image of divine law.[104]

H. Laws of Soldiers

The *Policraticus* contained several chapters discussing the legal position of soldiers and their importance within the makeup of society, citing Classical sources and the Bible in addition to the *Corpus iuris civilis*.[105] John of Salisbury made reference to the oath which men took in order for them to be legally classified as soldiers; without the oath they were not entitled to the privileges nor the legal protection reserved for those in the military. John wrote of the punishments which could be meted out to those who broke their military oath, and one could expect these punishments to be severe. He also made it clear that those within the military were to answer first and foremost to God, as it was He who instituted the role which soldiers were to play within society. John stressed the importance of the prince as the armed hand of the commonwealth as necessary for peace and order within society. His message was political and particularly topical, as he wrote the *Policraticus* a few years after King Stephen's reign. In his view, this period of civil conflict had underlined the importance of the army as society's means of defence, responsible under the ruler for the common good. The

[104] Sassier, in *A Companion*, 247-248.

[105] There has been a considerable amount written on medieval warfare. See for example Maurice Keen, ed., *Medieval Warfare, A History*, Oxford, 1999; Stephen Morillo, W*arfare under the Anglo-Norman Kings, 1066-1135*, Woodbridge, 1994; John Beeler, *Warfare in England 1066-1189*, New York, 1966; Frederick H Russell, *The Just War in the Middle Ages*, Cambridge, 1975; Matthew Strickland, *War and Chivalry, the Conduct and Perception of War in England and Normandy, 1066-1217*, Cambridge, 1996; John D. Hosler, *Henry II, A Medieval Soldier at War, 1147-1189*, Leiden, 2007; for literature specific to John of Salisbury, see J. Flori 'La chevalerie selon Jean de Salisbury: (Nature, Fonction, Idéologie), *Revue D'Histoire Ecclésiastique*, Vol. 77 (1982), 35-77; and the recent publication by John D. Hosler, *John of Salisbury, Military Authority of the Twelfth-Century Renaissance*, Leiden, 2013.

king's duty in this was important. In Book 6 of *Policraticus* the use of armed force was given a special role in the attainment and maintenance of social peace by royal authority. If this plan were to work, the army must be effective and respected.[106]

It has been suggested that through general themes within the *Policraticus*, John offered a framework that followed the main tenets of the just war tradition. John believed that the prince needed to respect the law, to behave with moderation and to protect the people, only shedding blood when necessary to defend the common good.[107] However, as Russell has pointed out, the *Policraticus*, and indeed all of John's other writing, contained no reference to the doctrine of the just war itself. This is despite his familiarity with the works of Cicero, Augustine, Isidore and Gratian.[108] His main source for the section on the military, Vegetius's *De re militari*, was a manual of tactics and strategy, not of ethics.[109] It would appear that John of Salisbury was more concerned with the practical rules of war and laws of military than with just war theory.

John referred predominantly to Classical sources and the Bible in his chapters on soldiers.[110] Flori noted that John's image of the military was tinted with antique colours and resembled the Roman army.[111] John made use of both the Old and New Testaments in order to support his notion that the military was a divinely-appointed

[106] Christopher Allmand, *The De re militari of Vegetius, the reception, transmission and legacy of a Roman text in the Middle Ages*, Cambridge, 2011, 89. See, especially, *Policraticus*, 6.14 & 15.
[107] 'John of Salisbury (ca.1120-1180): The Challenge of Tyranny', in *The Ethics of War, Classic and Contemporary Readings*, eds. Gregory M. Reichberg, Henrik Syse and Endre Begby, Oxford, 2006, 126-127.
[108] Russell, *Just War*, 257.
[109] Strickland, *War and Chivalry*, 38.
[110] There are a handful of Gratian citations, for example C 11, q 3, c. 63 was used by John regarding a soldier losing his privilege if he abused his power.
[111] Jean Flori, *L'essor de la chevalerie, XIe-XIIe siècles*, Geneva, 1986, 282.

institution and that loyalty must have ultimately been owed to God. John described how Moses selected those trained in war when faced with battle, and made use of other Old Testament books, such as Psalms and Samuel, as well as New Testament Books, such as Matthew and Luke.[112] In Book VI, Chapter 8, John followed closely Psalm 149 to demonstrate that the role of the military was to maintain peace and execute justice: "what is the office of the duly ordained soldiery? To defend the Church, to assail infidelity, to venerate the priesthood, to protect the poor from injuries, to pacify the province ... the high praises of God are in their throat, and two-edged swords are in their hands to execute punishment on the nations and rebuke the peoples."[113]

Throughout his discussion of the military, John of Salisbury used examples from Classical authors to illustrate his ideas. One can find evidence of the writings of Cicero,[114] Virgil,[115] Ovid,[116] Terence,[117] Frontinus,[118] Persius,[119] Lucan[120] and Juvenal.[121] The predominant Classical authority used by John for this portion of the *Policraticus*

[112] Discussing the military, John used the following books from the Bible: Proverbs, Job, Joel, Judges, Psalms, Samuel, Kings, Matthew and Luke.
[113] 6.8, Dickinson, 199 ; Webb, ii, 600: "Sed quis est usus militiae ordinatae? Tueri Ecclesiam, perfidiam impugnare, sacerdotium venerari, pauperum propulsare iniurias, pacere prouinciam ... exultataiones Dei in gutture eorum et gladii anticipates, in manibus eorum ad faciendam uindictam in nationibus."
[114] R. W. Hunt suggested that John of Salisbury had his own copy of Cicero's *De oratore* and *De officiis*. Hunt, 'The Deposit of Latin Classics in the Twelfth-Century Renaissance' in *Classical Influences on European Culture A.D. 500-1500: Proceedings of an International Conference held at King's College Cambridge, April 1969*, ed. R.R. Bolger, Cambridge University Press, Cambridge, 1971, 52.

[115] Quotations from Virgil, *Aeneid* can be found in *Policraticus*, 6.14.
[116] Quotations from Ovid, *Heroides* can be found in *Policraticus* 6.3, and *Fasti* in 6.14.
[117] In 6.3 of *Policraticus* John of Salisbury included reference to a character from the *Eunuchus* of Terene.
[118] See 6.4 and 6.12 of *Policraticus* for Frontinus, *Strategemata*.
[119] Quotations from Persius, *Saturae* can be found in *Policraticus*, 6.2, 6.4 and 6.18.
[120] Quotations from Lucan, *Pharsalia* can be found in *Policraticus*, 6.12, 6.14 and 6.19.
[121] Quotations from Juvenal, *Satires* can be found in *Policraticus*, 6.6.

was Vegetius, and his *De re militari*.[122] Book VI, Chapter 2 of the *Policraticus* followed closely Book 1, chapters 1-3 of Vegetius's work.

John could have had access to a number of manuscripts of the *De re militari*, as copies of the treatise were not rare in the Middle Ages.[123] It is difficult to say precisely how influential the *De re militari* was before the twelfth century.[124] There are thought to have been ninety-nine manuscripts from the eleventh to the fifteenth centuries.[125] Of these, there are now thought to be thirty-two extant manuscripts from the twelfth century and before, thirteen of which date from the twelfth century alone.[126] A number of these manuscripts would have been accessible to John of Salisbury. MS Ann Arbor, University of Michigan Library, Hubert S. Smith 1 contains a copy of Vegetius from the twelfth century and has an English or Northern French provenance. MS Cambridge, Clare College, 18 contains a Vegetius which dates from the twelfth century and was composed in a hand similar to those used at Christ Church, Canterbury. MS London, British Library, Harley 3859 has a twelfth-century copy of the

[122] Little is known about Vegetius Renatus. He was most likely born in the mid-fourth century. He became a member of the bureaucratic elite at the imperial court. Although familiar with the language of the army, it is unlikely that he ever served as a soldier or had practical military experience. It is likely, however, that he had experience of recruitment, administration and provisioning of the army, as this takes up most of his text. There has been debate amongst historians as to the dating of the composition of the *De re militari*. It is thought that it was composed at some point between 383 and 450, and the majority opinion favours a date in the late 380s. See Allmand, *De re militari*, 1.

[123] Note that one manuscript of the *Policraticus* also contains the *De re militari* of Vegetius – this is Vatican, Vat. Lat 4497; a further manuscript, The Hague, Konink. 78 F. 4, which was copied in the fifteenth century, also includes a copy of the *De re militari* and Frontinus's *Strategemata*. All three texts have been written in the same hand. See Allmand, *De re militari*, 60.

[124] One early English use of Vegetius was Bede, who quoted the *De re militaris* in his *De temporum ratione* and his *Historia ecclesiastica gentis Anglorum*. Bede did not reference the Classical author by name and it has been suggested that he might not have known the name of the author whom he was quoting; see Charles W. Jones, 'Bede and Vegetius', *The Classical Review*, Vol. 46, No. 6 (1932), 248-249.

[125] J. A Wisman, '*L'Epitoma rei militaris* de Végèce et sa fortune au Moyen Age', *Le Moyen Age, Revue d'Histoire et de Philologie*, 4e serie, 85 (1979), 13-31.

[126] Charles R. Shrader, 'A handlist of extant manuscripts containing the *De re militaris* of Flavius Vegetius Renatus', *Scriptorium, International Review of Manuscript Studies*, Vol. 33, No. 1 (1979), 282.

De re militari which may have originated at St Augustine's Abbey, Canterbury. MS Oxford, Lincoln College, Lat. 100, f. 4-34 also contains a twelfth-century copy of Vegetius, which may have originated from Lincoln.[127] This manuscript is of particular interest as it also contains a version of the *Strategemata* of Frontinus,[128] which was used by John of Salisbury as a Classical source for the *Policraticus*. Thomas Becket also donated Vegetius to Christ Church, Canterbury.[129]

H. i. Army as protector of commonwealth

Throughout the *Policraticus* John argued that a prince should demonstrate authority, yet avoid abuse of power. A strong military could stop a prince becoming a tyrant, while a strong prince could use the military to good effect and avoid tyranny. Considering the chaos of King Stephen's reign as a background to the composition of the *Policraticus*, the return to powerful kingship provided by Henry II would have been welcome. A strong military led by a strong king, carrying out his duty to God and the commonwealth was an ideal which John presented in the *Policraticus*. As Allmand has argued, just as the law was an instrument intended to create justice and harmony in society, so an army, recruited from the community and placed under the command of the ruler, came to be seen as an institution whose *raison d'etre* was the defence of that law.[130]

[127] Shrader, 'A handlist', 282-293.
[128] Martin, 'John of Salisbury's Manuscripts of Frontinus and Gellius', 2.

[129] Anne J. Duggan, 'Classical Quotations and Allusions in the Correspondence of Thomas Becket: An Investigation of their Sources', *Viator*, Vol. 32 (2001), 2, n. 11.
[130] Allmand, *De re militari*, 291.

By making reference to Vegetius, John of Salisbury may have been appealing directly to the strong, warrior king, Henry II, who would have been familiar with the *De re militari*. Allmand argued that the references to Vegetius's treatise within the *Policraticus* were not simply stylistic. Rather, the importance placed by Vegetius upon the necessity of training soldiers to be disciplined and efficient was in turn expounded by John as an appeal for an expulsion of mercenaries and the creation of professional soldiers at the expense of the powerful aristocracy.[131] John too deemed that an army should play a key role in establishing and maintaining royal authority; keeping the peace was an essential remit of royal government.[132] By loyally serving the king, the soldier could fulfil his duty to God and be an effective guardian of the commonwealth. By including tales of the downfall of apostate princes,[133] John reminded Henry II, and other leaders, of the need to act within the constraints of the law, and the importance of protecting Christian ideals. John was therefore presenting an alternative Classical model.

In Book VI, Chapter 7 John stated: "Read both the ecclesiastical and secular books which treat of military matters; and you will find it clear that there are two things which make a soldier, to wit selection and the soldier's oath."[134] Presumably John was here referring to the *De re militari* of Vegetius. It is not clear precisely which "ecclesiastical books" John was referring to, and Webb's edition of the *Policraticus*

[131] Allmand, *De re militari*, 89-90. John gave detail of how the soldiers should be trained, for example the importance of running and leaping can be found in *Policraticus* 6.4, borrowing from Vegetius 3.4, 1.10, 1.6 and 1.9, while the importance of the arts of retreat and of attack were highlighted in the same chapter of *Policraticus*, borrowing from Vegetius, 1.11.

[132] *Policraticus*, 6.5; Vegetius, 1.7.
[133] *Policraticus*, 8.21.
[134] 6.5, Dickinson, 190; Webb, ii, 16: "Lege libros tam ecclesiasticos quam mundanos quibus agitur de re militari; et manifeste inuenies duo esse quae militem faciunt, electionem scilicet et sacramentum."

gives no indication. John made it clear that unless the oath of allegiance had been taken, one was not legally permitted to take part in battle, nor be entitled to any of the privileges to which a soldier had access. John stated that: "By ancient law no one was presented with the soldier's belt without the binding sacrament of an oath ... And so the rule obtains that a soldier is made such by selection and by oath in the sense that without selection no one is enlisted or can take the oath, and without the oath no one is entitled to the name or official standing of a soldier."[135]

John explained that the outline of the oath was as follows, on the testimony of Vegetius Renatus, and he highlighted the importance of upholding the word of God:

> The soldiers swear by God and His Christ and by the Holy Ghost and by the prince's majesty, which according to God's commandment is to be loved and worshipped by the human race ... They swear, I say, that they will do to the best of their ability all things which the prince shall enjoin upon them; that they will never desert from military service nor refuse to die for the commonwealth, of which they are enlisted soldiers.[136]

As well as a promise not to desert, it is likely that the oath contained reference to a code of behaviour. In his *Historia Pontificalis* John described the French army as having a total lack of discipline, no concept of justice and no idea of ordered strategy: "But from that moment the French army, which even before had had neither military discipline nor a strong hand to dispense justice and correct faults, lost all hope of

[135] 6.7, Dickinson, 196-197; Webb, ii, 20-1: "Verumtamen citra religionem sacramenti ex antiqua lege nemo militiae cingulo donabatur ... Adeoque optinuit ut electio et sacramentum militem facerent, ut sine electione nemo conscriberetur aut iuraret, sine iuramento nemo nomen militis aut officium sortiretur."

[136] 6.7, Dickinson, 196-197; Webb, ii, 20-1: "Iurant equidem milites per Deum et Christum eius et Spiritum sanctum et per maiestatem principis quae secundum Deum humano generi diligenda est et colenda … Iurant, inquam, se strenue facturos omnia quae praeceperit princeps, numquam deserturos militiam uel mortem recusaturos pro re publica cuius sunt conscripti militiae." This is from Vegetius, *De re*, ii.5

previous training."[137] It can be surmised that the oath made reference to protecting the vulnerable. John did not explicitly state this, but in Book VI, Chapter 13 of the *Policraticus*, he referred to the *Code* of Justinian, and how soldiers could be stripped of their position if they were found guilty of sacrilege.[138] In this excerpt John explained that soldiers were not permitted to rob people or places, and they could be punished if it were found that they had attacked "those whom their oath obliged them to defend."[139] John made it clear that if a soldier were found guilty of such a crime, it would be an indictment of that individual rather than the military as a whole. In Book VI, Chapter 10, John used a quotation from the gospel of St Luke in order to demonstrate how soldiers ought to have behaved: "'extort from no man by violence, neither accuse anyone wrongfully, and be content with your wages'. A faithful saying and worthy of all acceptance."[140]

The question of whether the soldier's oath was commonplace when John wrote the *Policraticus* is difficult to answer. John described soldiers thus: "though some of them do not regard themselves as bound to the Church by a solemn oath, because today by general custom no such oath is actually taken, yet there is none who is not in fact under an obligation to the Church by virtue of a tacit oath if not an express one."[141] This passage is somewhat confusing in relation to the rest of his dialogue on the position of soldiers and their oath, as it suggests very much that the oath was not

[137] *HP*, 54: "Sed cum Francorum exercitus antea militari disciplina et iusticie rigore et peccatorum correctione caruerit, exinde nec spem habuit discipline."
[138] 6.13, Dickinson; Justinian, *Code*, i, I, 4.
[139] 6.13, Dickinson, 216; Webb, ii, 35: "quos sacramento militiae susceperant defendendos."
[140] 6.10, Dickinson, 204; Webb, ii, 25-26: "Neminem concutiatis neque calumpniam faciatas; et contenti estote stipendiis uestris. Fidelis sermo et omni acceptione dignus" ; Luke 3:14.
[141] 6.10, Dickinson, 203; Webb, ii, 25: "Licet autem sint qui sibi non teneri uidentur Ecclesiae ex sacramento solenni, quia iam ex consuetudine plerumque non praestatur, nullus tamen est qui sacramento tacito uel expresso Ecclesiae non teneatur obnoxius."

commonplace in the late 1150s. Strickland has noted that it is hard to separate John's use of Classical models from possible reference to contemporary practice.[142] John gave no indication that soldiers in twelfth-century England were made to swear the oath. Hosler has concluded that military service in itself suggested acceptance of the strictures of the traditional oath described by John of Salisbury.[143]

With the obligations facing a soldier came privileges and immunity from certain laws, including, in certain circumstances, ignorance of the law. John made reference to the *Digest* and *Code* and explained that "soldiers are rightly allowed many privileges of broad and generous scope by the ancient law ... they are likewise permitted to plead ignorance of the law."[144] Whilst soldiers were permitted to claim ignorance of some laws due to their position, the prince had no such freedom, as he: "is not permitted, on the pretext that his duties are military, to be ignorant of the law of God."[145]

In addition to the privilege of ignorance of the law, John referred to the privilege which entitled a soldier to write a will in order to pass on money earned whilst in service. Book II, Title XI of the *Institutes* of Justinian outlined law on soldiers' wills, including an imperial rescript. The wills of military men did not need to conform to the standard rules, owing to the soldiers' ignorance of the law. Soldiers were thus able to disregard the need for a requisite number of witnesses and other such formalities, provided they were engaged on a campaign. Book 29 of the *Digest* also concerned the issue of the legality of the soldier's will. John made only a passing reference to this

[142] Professor Matthew Strickland, email message to author, 31st May 2010.
[143] Hosler, *John of Salisbury*, 46.
[144] 6.10, Dickinson, 203; Webb, ii, 24: "recte uero militantium priuilegia multa sunt, quae de iure antiquo latius patent … iura quoque licenter ignorant." ; *Digest*, 50.5.10.2; *Code*, 10.47.12.
[145] 4.6, Dickinson, 24; Keats-Rohan, 247: "licet multis priuilegiis gaudeat, nec militiae praetextu legem Domini permittitur ignorare".

subject, but it suggested that he was at least aware of the content of the relevant sections in the *Institutes* and *Digest*. It is difficult to discern to what extent John had access to manuscripts of the complete *Corpus* of Justinian, or sections thereof.[146]

Regarding other privileges granted to the military, John was vague. He wrote that soldiers had many other privileges, but that they would be too long to enumerate in detail.[147] The fact that John chose not to elaborate on these privileges further could suggest that he felt this was unnecessary detail, or would be uninteresting to include. The *Policraticus* is not a work of brevity, however, and it is thus possible that John was unaware of the details of these privileges, and he was disguising his lack of knowledge by making vague reference only.

In Book VI, Chapter 11 of the *Policraticus* John stated clearly the caveats in place to soldiers being ignorant of the law, by explaining the circumstances under which punishment could be expected. Given the privileged position of the soldier, if there were a breach of the oath, or a serious breaking of the law, harsh penalties could be expected. Soldiers who abused the power placed on them, by not doing what they ought, or doing what they ought not, could expect to lose their privileges.[148] If the soldier:

> falls into theft and rapine, he must be punished with the greater severity which is met for one who has always handled a sword and dealt in harshness ... For as soldiers enjoy many immunities and privileges beyond other men, so they must be subjected to sharper penalties if convicted of having shown themselves to be unworthy of their privileges. Nor can they take advantage on this point of ignorance of the law, since

[146] J. L Barton, 'The Study of Civil Law before 1380', in *The History of the University of Oxford, vol. i, The Early Oxford Schools*, ed. J. I. Catto, Oxford, 1984, 519-530.
[147] 6.10, Dickinson, 203.
[148] 6.13, Dickinson, 218 ; Webb, ii, 36; this is taken from Gratian, *Decretum*, pars 2, C 11, q 3 c. 63.

> while they have the privilege of being ignorant of the general public laws,[149] they are not, however, permitted to be ignorant of their own duty.[150]

John qualified this position in the following chapter: "various kinds of punishment were meted out to those who did not obey the precept of their commander or of the law."[151] If one were seen to have been acting in a cowardly manner, for example in breaking the oath and deserting, one could expect severe penalties; John used Virgil in this instance, suggesting that: "military law visits the cowardly with its greatest severities."[152] This may reflect contemporary practice; Richard of Devizes wrote in his chronicle that before the attack by the English troops on Messina, Richard I urged: "let the law be observed without any exceptions. Whoever runs away on foot shall lose a foot. A soldier shall be stripped of his belt."[153] It is not clear whether this was realistic; in theory this might have worked well as a deterrent but in practice a deserter would need to be found in order to be punished.

John briefly discussed the situation of those who acted like soldiers without having been admitted to the army. John explained that Moses understood the necessity to select men "who were brave and well-trained to war"[154] when the need arose for a fighting force.[155] However, those who selected to take up the sword with rashness

[149] Justinian, *Code*, i, 18, i.
[150] 6.11, Dickinson, 205; Webb, ii, 26: "in furta dilabitur et rapinas, durius castigandus est ut qui semper ferrum duraque tractauit … Sicut enim multis immunitatibus et eminentioribus priuilegiis militia gaudet, ita acerbioribus penis subdenda est, si sua demeruisse priuilegia conuincatur. Nec in ea sibi parte prodest ignorantia iuris, cum etsi iura publica permittatur, suum tamen officium non liceat ignorare."
[151] 6.12, Dickinson, 209; Webb, ii, 29: "In eos uero qui ducis aut legis non obtemperabant arbitrio uaria animaduersio procedebat." John follows this with references to Frontinus, *Strategemata*, iv, I, §§ 22-25.
[152] 6.14, Dickinson, 221; Webb, ii, 38: "Timidos namque grauissime lex militaris percellit."; Virgil, Aeneid, ii, 354.
[153] *The Chronicle of Richard of Devizes of the time of King Richard the First*, ed. John T. Appleby, London, 1963, 22.
[154] 6.8, Dickinson, 198; Webb, ii, 22: "eligebant uiros fortes et ad bella doctissimos."
[155] Exodus, 17:9.

were to be considered dangerous and as acting outside the law. John explained that clearly such men were to be called not soldiers, but assassins: "for in the writings of the ancients, men are called assassins and brigands who follow the profession of arms without a commission from the law. For the arms which the law does not itself use, can only be used against the law."[156] John suggested that Marcus Cato warned his son in a letter not to go into battle as he had not been legally confirmed as a soldier: "he says that it is not lawful for a man who is not a soldier to fight the enemy. Behold then, how a man of the greatest wisdom did not consider a man to be a soldier unless he was consecrated to military service by an oath."[157]

H. ii. Duty – serving God

A clear theme running through John's discussion was the allegiance owed first and foremost to God. By performing their duty as soldiers, men were directly serving God.[158] John made it clear in a number of passages that the oath of allegiance included loyalty to God. Hosler has argued that the obedience to serve the church was implicit with being a soldier and therefore taking an oath of loyalty to God was

[156] 6.8, Dickinson, 199; Webb, ii, 22: "Nam in ueterum scriptis sicarii dicuntur et latrones quicumque lege non praecipiente arma tractant. Arma namque, quibus lex non utitur, legem impugnant." Cf. Cicero, *Orations against Catiline*, i, 10 § 27; cf. Justinian, *Digest*, 50.16.118, Pomponius, *Quintus Mucius*, Book 2: "'enemies' are those who have publicly declared war on us or on whom we have publicly declared war; others are 'brigands' or 'pirates.'"

[157] 6.7, Dickinson, 197; Webb, ii, 20: "negat enim ius esse cum hoste pugnare qui miles non sit. Ecce quia uir sapientissimus militem non credebat nisi eum qui sacramento ad militiam consecratur." Cicero, *De officiis*, I, xi, § 36-37: "When Popilius decided to disband one of his legions, he discharged also young Cato, who was serving in that same legion. But when the young man, out of love for the service stayed on in the field, his father wrote to Popilius to say that if he let him stay in the army, he should swear him into service with a new oath of allegiance, for in view of the voidance of his former oath he could not legally fight the foe. So extremely scrupulous was the observance of the laws in regard to the conduct of war. There is extant, too, a letter of the older Marcus Cato to his son Marcus ... He warns him therefore to be careful not to go into battle; for, he says, the man who is not legally a soldier has no right to be fighting the foe."

[158] See below for discussion of military orders.

unnecessary.[159] In Book VI, Chapter 5 of the *Policraticus*, John asserted that the military profession was divinely created and should not be criticised without strong justification, for "the profession is as praiseworthy as it is necessary and no one can abuse it while preserving his reverence for God who instituted it. Go through the narrative of the Old Testament and you will find that it is as I say."[160] John argued that: "you will find that the soldiery of arms not less than spiritual soldiery is bound by the requirements of its official duties to the sacred service and worship of God; for they owe obedience to the prince and ever-watchful service to the commonwealth, loyally and according to God."[161]

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Military orders had been established to offer protection to those travelling on pilgrimage to the Holy Land and to provide charitable work in hospitals along the route.[162] Many knights had flocked to the Crusades at the promise of a "meritorious" outlet for their violent tendencies. The reward was plenary indulgence – the removal of all confessed sins.[163] Sometimes, however, it was not easy for knights to renounce their violent ways after returning home from crusade. Military orders, such as the

[159] Hosler, *John of Salisbury*, 46.

[160] 6.5, Dickinson, 190; Webb, ii, 16: "Professio namque tam laudabilis est quam necessaria, et quam nemo uituperare potest salua reuerentia Dei a quo est instituta. Veteris Instrumenti reuolue seriem et inuenies ita esse ut dico."

[161] 6.8, Dickinson, 198; Webb, ii, 21: "inuenies armatam militiam non minus quam spiritualem ex necessitate officii ad religionem et Dei cultum artari, cum fideliter et secundum Deum principi debeatur obsequium et rei publicae peruigil famulatus."

[162] For what follows, see Nicholas Morton, *The Medieval Military Orders: 1120-1314*, Harlow, 2013, 14-16; also Nikolas Jaspert, *The Crusades*, tr. Phyllis G. Jestice, New York, 2006, 145-146; see Giles Constable, *Crusaders and Crusading the in twelfth century: collected studies*, Aldershot, 2008 and A. J. Forey, 'The Emergence of the Military Order in the Twelfth Century', *Journal of Ecclesiastical History*, Vol. 36, No. 2 (1985), 175-195.

[163] For an overview of the history of the Crusades, see Marcus Bull, 'Crusade and Conquest', in *The Cambridge History of Christianity vol. iv*, eds. Miri Rubin and Walter Simons, Cambridge, 2009, 340-352; also *Writing the early Crusades, Text, Transmission and Memory*, eds. Marcus Bull and Damien Kempf, Woodbridge, Suffolk, 2014; see Jaspert, *The Crusades*.

Templars, offered knights an alternative way of life, as their energy could be diverted from sinful behaviour and used to provide protection for people travelling to the Holy Land. At the Council of Troyes in 1129 Pope Honorius II gave his support for the Templars and their Rule was officially created. What began as band of warriors patrolling the road to Jerusalem was now presented as a new form of Christian knighthood, fighting both earthly and spiritual evils. At some point before 1136, Bernard of Clairvaux wrote his *De laude novae militiae* in support of the order. It was a call to arms, describing the struggle to hold Jerusalem as a war of good against evil. Through his treatise, Bernard stressed that, as churchmen, the Templars were able to fight evil in person, and spiritually through prayer. He contrasted these with contemporary knights, whom he portrayed as vain and proud, and argued that these vices would lead them to Hell. To emphasise his ideas he drew parallels between the Templars and warriors of the Old Testament such as the Israelites and the Maccabees. Bernard argued that: "if the combatant's cause was good, the outcome of the fight cannot be bad."[164] He also believed that the Templars wielded their sword for God, in order to avenge evil: "obviously when he kills an evil-doer, he does not commit a homicide, but rather, as one might say, a malicide, and clearly is considered the avenger of Christ against those that do evil and a defender of Christians. When, however, he is killed it is recognised that he has gone to Heaven."[165]

John did not seem to approve of the blending of military and ecclesiastical functions. In the *Policraticus* he wrote that the Templars: "enjoy the right to preside over

[164] Bernard of Clairvaux, *De laude novae militiae,* 1130s, tr. in Nicholas Morton, *The Medieval Military Orders: 1120-1314*, Harlow, 2013, 145.
[165] Bernard of Clairvaux, *De laude*, tr. Morton, 145-146.

churches, hold benefices through vicars and thus in a manner of speaking, presume to administer the blood of Christ to the faithful, although they are men whose profession is chiefly to shed human blood."[166]

H. iii. Loyalty to the prince

When one took the oath to become a soldier, a pledge of loyalty to the prince was made. This demonstrated the importance of fealty to one's overlord, and the importance of being faithful to one's sovereign. Service to the prince was important, but John believed that allegiance was owed firstly to God. John argued that whilst a soldier by way of his oath pledged loyalty to the prince and to the commonwealth, if there were a conflict of interest, for example when a prince became a tyrant, then the soldier was to act ultimately for God:

> this rule must be enjoined upon and fulfilled by every soldier, namely, that he shall keep inviolate the faith which he owes first to God and afterwards to the prince and to the commonwealth. And greater things always take precedence over lesser, so that the faith is not to be kept to the commonwealth nor to the prince contrary to God, but according to God, as the formula of the military oath itself puts it.[167]

John thus intimated that if a prince acted against God, his soldiers were not obliged to obey, as their loyalty lay primarily with God. However, in the same chapter John wrote

[166] 7.21, Dickinson, 319; Webb, ii, 198: "Milites namque Templi sui fauore ecclesiasrum dispositionem uendicant, occupant personatus et quodammodo sanguinem Christi fidelibus ministrare praesumunt quorum fere professio est humanum sanguinem fundere."
[167] 6.9, Dickinson, 201; Webb, ii, 24: "Haec autem omni militiae formula praescribenda est et implenda ut Deo primum fides debita, deinde principi et rei publicae seruetur incolumis. Et semper maiora praeiudicabunt minoribus, quia nec rei publicae nec principi fides seruanda est contra Deum sed secundum Deum, sicut habet ipsa conceptio militaris sacramenti."

that soldiers were able to follow an apostate prince, providing the soldier's own faith was not compromised:

> it makes no difference whether a soldier serves one of the faithful or an infidel, so long as he serves without impairing or violating his own faith. For we read that men of the faith served Diocletian and Julian and other godless rulers as soldiers, and gave them loyalty and reverence as being princes engaged in the defence of the commonwealth. They fought against the enemies of the empire, but they kept the commandments of God; and if ever they were bidden to disobey the law, they preferred God before man.[168]

This ambiguity makes it difficult to discern John's true feelings, and indicates that he grappled with the scenario. Augustine wrote in his *Expositions of the Psalms* that when soldiers serving under Julian were asked to perform the duties of a soldier, such as forming battle lines, they obeyed. When they were asked to go against God, for example to worship idols, they put God before the emperor and declined.[169] It would seem that John proposed something similar – that soldiers could follow an apostate prince when it was in the interests of the common good, for example marching against an enemy, yet when the apostate prince ordered them to do something which went against the law of God, they must decline.

In Book VIII, Chapter 21 of the *Policraticus*, on the downfall of tyrants, John wrote about the death of Julian the apostate, after he had acted against the laws of God. John did not, however, explain whether Julian's soldiers were following him or rebelled against him: "The emperor Julian, the vile and filthy apostate, persecuted the

[168] 6.9, Dickinson, 201; Webb, ii, 23-4: "Nec refert fideli quis militet an infideli, dum tantum militet fide incolumi. Diocletiano et Iuliano et aliis impiis leguntur militasse fideles et eis in defensione rei publicae tamquam principibus fidem exhibuisse et reuerentiam. Impugnabant enim hostes imperii, sed mandata Dei seruabant; si uero praecipiebantur temerare legem, Deum homini praeferebant."
[169] Augustine, *Expositions on the Book of Psalms*, 124:7.

Christians rather by guile than the open use of force, yet he did not refrain from force. For under him arose the most grievous persecution of the Christians, and he sought by his impious attempt to blot out the very name of the Galilean, as he called Him."[170] John continued to recount the tale of God taking pity on those being persecuted: "the martyr Mercurius, who, at the command of the Blessed Virgin, pierced the tyrant in his camp with a lance, and compelled the impious wretch as he was dying to confess that the Galilean, namely Christ, whom he persecuted, was the victor and had triumphed over him."[171] This was a warning to military leaders, such as Henry II, and a reminder that the law of God had to be adhered, even within a military scenario.

John's discussion of the military has been largely neglected by historians, despite raising interesting topics for debate.[172] He made it clear that the role of the soldier was important, and a strong king leading a well-trained army could maintain the common good of society; consequently soldiers were afforded privileges and special status within the law. His use of Classical sources and of Justinian as means of supporting his argument and demonstrating his wide-ranging knowledge was common throughout the *Policraticus* and his collections of letters. His notion that soldiers owed allegiance first and foremost to God was in line with the supremacy of God and his law

[170] 8.21, Dickinson, 377; Webb, ii, 381: "Iulianus uilis aposta et sordidus imperator dolo potius quam uiribus persecutus est Christum nec tamen uiribus temperauit. Nam sub eo grauissima Christianorum exorta est persecutio, dum Galilei, quem dicebat, conatu impio nomen moliebatur extinguere."

[171] 8.21, Dickinson, 377-378; Webb, ii, 381: "Mercuriumque martirem destinauit qui tirannum in castris mandato beatae Virginis lancea perforauit morientemque coegit impium confiteri Galileum Christum scilicet, quem persequebatur, esse uictorem et de se triumphasse."

[172] The recent publication by Hosler, *John of Salisbury, Military Authority of the Twelfth-Century Renaissance*, Leiden, 2013, is an important addition to the literature on John of Salisbury. It has generally been favourably received. See John Gillingham's review, *War in History*, Vol. 21, No. 2 (2014), 252-254 and Michael Prestwich's review, *Journal of Military History*, Vol. 78, No. 1 (2014), 347-348.

found underpinning all of John's writing. His use of both the Old and New Testaments highlighted the supremacy of the word of God, and in particular its importance within the creation of legal parameters for all parts of society, the military being no exception. His use of Justinian served a similar purpose. His reference to an oath no longer taken was fleeting. It would seem that in his discussion of the military John was intentionally vague about the contemporary situation. Rather, he was arguing in terms of an idealised picture of society, which he suggested was in existence at the time of the Classical authors, whom he referenced and perhaps revered. John's examination of the role of the army was largely a consideration of the laws which surround the military, how soldiers were controlled by the laws specific to them, how they could gain privilege from laws applicable to most of the population, and how their allegiance was ultimately to God. From his discussion of the military, it can be concluded that consideration of law was fundamental to John, as he saw it as relevant to all aspects of society, including those that existed outside of conventional societal frameworks.

By considering John's knowledge of and familiarity with types of law, and by looking in detail at John's discussion of the military, it can be seen that law, its application, and its influence over all aspects of society was of utmost importance to him. Law was the guiding principle of life and fundamental to the smooth-running and peace of the commonwealth; this was not open to negotiation as it was John's belief that all law emanated from God. John used quotations from the Bible on a regular basis to support his ideas and to use exemplars with which his readers would have been familiar. John was especially fond of quoting from the Old Testament, in particular

Deuteronomy, and from the Gospels. Quotations from these sections of the Bible gave his argument strong foundation and left little room for difference of opinion from contemporaries. In addition to using the Bible, John lavished his writing with Roman law references and quotations, many of which endorsed the divine origin of law; it is clear that John was well versed in both canon law and Roman law and was very familiar with the key works in the transmission of these laws.

Whilst much of the existing scholarship on John of Salisbury has focused upon his political thought, the exploration here of law as a fundamental basis to everything is somewhat novel. Sassier's recent study on John of Salisbury and law has clearly added to our knowledge,[173] but arguably it failed to highlight the elemental importance of law to John and its influence upon all aspects of society and life, and, like other scholars, it somewhat neglected to draw upon the wealth of evidence to support this notion contained within John's letters. By considering here the whole corpus of John's writing,[174] including the largely-overlooked letters, it is possible to take a more holistic view of John's beliefs and thereby expand our understanding of his ideas and of the time in which he was writing.

[173] See Sassier in *A Companion*.
[174] Save his historiography.

Chapter Two

Canon Law

When reading the early letter collection and *Historia Pontificalis* of John of Salisbury, it is clear that he had a working knowledge of canon law. This is of note since formal legal education was apparently absent from John's years of study in the Schools; nowhere in his writing did he mention that he had been taught law. Traditionally, John's scholarship of canon law has been overlooked, perhaps because no "single gloss on Roman or canon law has been attributed to him."[1] Upon examination of the letters written by John in the name of Theobald, Archbishop of Canterbury, it can be seen that detailed knowledge of canon law was demonstrated. This supports the notion that John had a role as chief legal advisor to Theobald. He advised on appeals to the papal curia, composed letters offering technical advice to bishops who had written to the curia, and advised his friend Bishop Bartholomew of Exeter in the early 1170s. This chapter explores the evidence of John's use of canon law in his writing and compares him with his contemporaries.

A. John and Canon Law Manuscripts

Whilst John was acting as legal secretary at the court of Theobald he would have required access to collections of canon law. John's use of the *Decretum* of Gratian has been convincingly argued, and it is clear from a number of his letters that he had

[1] Brooke, 'John of Salisbury and his world', 7.

access to a copy to facilitate their composition.[2] Brett had suggested that John might have owned a personal copy (see below). After the production of Gratian's collection, there was little need to use other canonical collections: Gratian had produced an extremely thorough compilation, organised in a more convenient structure than its predecessors. And yet, although Gratian was disseminated quickly throughout Europe, older canonical collections would still have been used, either because a library lacked a copy of the *Decretum* of Gratian, or as a result of a working familiarity with an older collection, the familiar was preferentially used. It is possible, therefore, that John used an older collection in addition to a copy of Gratian's *Decretum*.[3] This could have simply been for reasons of practical necessity, such as another library user consulting Gratian at the time when John needed access to it, or that the answer to a particular question was not found in Gratian.

The current debate then concerns whether Gratian was the only source used by John. Sassier noted that as John modified his extracts and included extra prepositions it is difficult to recognise with certainty which source he used.[4] Barrau has also raised the question of whether Thomas Becket, while composing his letters, used as a source for canonical citations, older, wide-spread collections such as the *Panormia* of Ivo or the *Decretum* of Burchard, in spite of the incontrovertible identification of Gratian citations by Duggan. Barrau noted that the *Panormia* continued to be copied into the thirteenth century, demonstrating that Gratian's *Decretum* did not totally supplant

[2] See for example, *EL*, ep. 99, 100.
[3] That older collections were still be used after the dissemination of Gratian's *Decretum* is in line with the thinking of other scholars, for example Julie Barrau and Danica Summerlin.
[4] Yves Sassier, 'John of Salisbury and Law', in *A Companion*, 237; Sassier argued that although John may have had access to the *Decretum*, "it is difficult to be so positive. John never mentions Gratian by name and circulation of the *Decretum* remained very limited in the 1150s" – Yves Sassier, 'John of Salisbury and Law', in *A Companion*, 235.

older collections.[5] John's use of Ivonian or even older collections cannot therefore be discounted. It is therefore worthwhile considering which other manuscripts John was able to access.

A manuscript of the *Collectio Lanfranci*, which contained an abbreviated and rearranged version of the False Decretals, was brought to Canterbury by Archbishop Lanfranc in 1070.[6] John could have had access to this manuscript, as well as a manuscript of the *Decretum* of Burchard of Worms from England, written in the second half of the eleventh century. This manuscript possibly originated in Canterbury and is now, British Library, Cotton Claudius C. VI.[7] Manuscript H of the *Decretum* of Ivo, British Library MS Harley 3090 folios 1v-133v., may have a Canterbury provenance. The hand is thought to be mid-twelfth-century French, but it does seem similar to some of the hands of Christ Church, Canterbury, and some of the decorations are thought to be rather English in style.[8] Manuscript C of Ivo's *Decretum*, Cambridge Corpus Christi College 19, was written at Christ Church, Canterbury, probably between 1127 and 1130.[9] Manuscript Co, Columbia, University of Missouri, Ellis Library Special Collections, Fragmenta manuscripta 23, of the *Decretum* of Ivo was identified in the library catalogue as being French in origin and dating from the twelfth century. Webber and Gullick, however, independently assign this fragment to an English scriptorium from *c.*1150.[10] It is possible that there is a Canterbury connection with

[5] Barrau, *Bible, lettres*, 356; for manuscripts of the *Panormia*, see Kéry, *Canonical collections*, 254-258.
[6] See Kéry, *Canonical Collections*, 239-243.
[7] Kéry, *Canonical collections*, 137.
[8] Medieval Canon Law Virtual Library: http://project.knowledgeforge.net/ivo/decretum/idecforw_1p4.pdf, p. 4, accessed March 2011.
[9] Kéry, *Canonical Collections*, 251.
[10] Medieval Canon Law Virtual Library: http://project.knowledgeforge.net/ivo/decretum/idecforw_1p4.pdf, 2, accessed March 2011.

manuscript G of the first version of the Ivonian *Tripartita* and it is therefore conceivable that this manuscript was available to John of Salisbury.[11] This is Cambridge, Gonville and Caius College 455 (393). This manuscript was written in an Anglo-Norman hand, 1120 x 1160, as suggested by Webber in 2007.[12] Manuscript O of the Ivonian *Tripartita*, Oxford, Bodleian D'Orville 46 (SC 16924), was also written in an Anglo-Norman hand, and is thought to be from the mid-twelfth century. It is possible that all of the above canonical collections would have been available to John at the library of Canterbury. While it cannot be said with certainty from the surviving evidence that he made use of these, if they were present at Canterbury, it is reasonable to consider that he would have used them as works of reference.

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Passages in a number of John's letters resembled sections from Gratian's *Decretum*, for example letters 100 and 131 from the early letter collection, and John must have had regular access to this collection. In the appendix of Winroth's monograph there is a table containing the contents of the first recension of the *Decretum*. The sections of John's text which closely follow Gratian's *Decretum* do not appear in Winroth's table. Therefore it is apparent that John would have used a manuscript of the second recension of Gratian.[13] John may have even possessed his own manuscript copy. Barlow pointed out that among the books bequeathed to the priory of Plympton by

[11] The hand of this manuscript is similar to the hand found in manuscripts with a known Canterbury provenance.
[12] Medieval Canon Law Virtual Library:
http://project.knowledgeforge.net/ivo/tripartita/trip_a_pref_1p4.pdf, 2, accessed March 2011.
[13] Winroth, *The Making of Gratian's* Decretum, 197-227.

John's half-brother Robert fitzGille, was a copy of Gratian's *Decretum*.[14] Martin Brett has observed that, as far as the evidence suggests, the earliest copy of Gratian's *Decretum* that can be shown to have arrived in England, but is now lost, was a copy given to Lincoln cathedral by Archdeacon Hugh Barre of Leicester. Archdeacon Hugh was in office perhaps as early as 1148/9 and vanished from the record in 1158/9. Around the same time John of Salisbury wrote a letter for Theobald containing many references from Gratian.[15] Although it cannot be demonstrated beyond reasonable doubt, it is highly likely that John of Salisbury acquired access to this copy of the *Decretum*. It is possible there existed other manuscripts, no longer extant, of the collection available to John at Canterbury.[16] Certainly John would have needed a copy of the canonical collection before him to compose his letters.[17] The sections of his letters concerning the subject of married clergy which closely followed the *Decretum*, contained sections from many different parts of the *Decretum.* This supports the notion that John had an intact and complete copy.

B. How John of Salisbury Used Canon Law

John of Salisbury employed canon law in relation to specific questions, for example on the subject of women dwelling in houses of clergy and marriage of members of the

[14] Barlow, 'Brothers', 100.

[15] *EL*, ep. 99; Brett, 'English law and centres', 89. *Giraldi Cambrensis opera*, vol. vii, ed. James S. Dimock , London, 1877, 170; *Fasti ecclesiae Anglicanae 1066-1300, 3, Lincoln*, John Le Neve, compiled Diana Greenway, London, 1977, 33. Letter 99 in the modern edition has been shown by Southern to have been originally two letters, which have been labelled 99 and 99a by Millor, Butler and Brooke. For the purposes of this discussion, only letter 99 is of concern; there are no canonical references within 99a. See *EL*, 297-298.

[16] Brett has pointed out that there is still much to be done on the subject of the reception of Gratian in England and palaeographical assessment of those manuscripts which do survive. Brett, 'English law and centres', 89.

[17] For example, *EL*, ep. 99, 1158-1160, 153-156; ep. 100, 157-160.

priesthood. Canon law most frequently appeared in the letters written by John in the name of Theobald, owing to the need for use of canon law in his position as legal secretary. In these letters, sections of the wording closely corresponded with sections of text found in canon law collections, using canon law to support and confirm his ideas.

In letter 100 from the early collection, John wrote a letter in Theobald's name to the Archdeacon of Lincoln; contained within were a number of passages taken from Gratian.[18] The letter imparted advice to the addressee on the subject of clerical chastity, and more specifically the matter of female cohabitants.[19] In this matter a priest was living with a woman thought to be his concubine. The Archdeacon of Lincoln had written to the archbishop to seek guidance. John acknowledged the humility of the archdeacon in asking for advice on the matter, and informed him that: "your wisdom is such that you cannot be ignorant of the rules laid down by the canons concerning the chastity of the clergy."[20] John outlined a number of councils which produced rules on the subject, such as the synod of Nicaea[21] and the Council of Carthage.[22] He explained clearly that:

[18] The canon law quotations found in this letter can be found in Gratian's *Decretum* D. 81, cc. 24-31. These are quotations from church councils and synods. Some of the text from these quotations can be found in earlier canonical collections. For example D 81 c. 24 can be found in Ivo, *Decretum*, VI, 81; D 81 c. 25 can be found in Ivo, *Decretum*, VI, 77.

[19] Manuscript C, Cambridge University Library, MS Ii. 2.31, states that the letter was addressed to Hilary of Chichester, but Millor, Butler and Brooke have argued that an expert lawyer such as he would not have needed to ask advice on a matter like the one outlined here. Rather they have advocated that the mention of Lincoln in the letter suggests that John was in fact writing to the archdeacon thereof. Within the letter Theobald addresses the recipient as '*filius*', which further indicates that the letter was to an archdeacon rather than a bishop; *EL*, 157-160.

[20] *EL*, ep. 100, unknown date, 157: "tua discretio non ignorat quid sacri canones statuant de continentia clericorum."

[21] *Decretum*, D. 81, c. 31. This is a quotation from Pope Siricius, see quotation on 102.

[22] *Decretum*, D. 81, c. 27. This is from canon 17 of the third Council of Carthage.

> although many canons refuse to cast suspicion on a mother, sister, grandmother, aunt (paternal or maternal), nieces and members of the family household and persons commended by affinity in the first degree, nevertheless the blessed Augustine refused to allow a clerk to dwell under the same roof with his sister, because sisters sometimes have attendants.[23]

John also noted that "Pope Siricius does not allow any women to dwell in the house of the clergy 'save only those whom the synod of Nicaea has permitted to dwell with them in the case of necessity.'"[24] John continued:

> It is easy to infer from the decrees of Symmachus[25] as well as from the Council of Carthage[26] and various enactments of the Roman pontiffs that only those women are fit to be admitted who are exempted from the slur of sinister rumour either by nature or the respect due to their character or some honourable reason such as pity for the afflicted and infirm.[27]

John did not outline exactly who these women were, but the addressee would have understood his meaning; any woman who was not named in the Nicaean decree could be treated with suspicion. John explored the archdeacon's predicament further; he stressed the importance of the priest being given opportunity to disprove the accusations, and pointed out that co-habitation did not indicate that fornication was being committed. He did make clear, however, that if the priest were found guilty it

[23] *EL*, ep. 100, 158: "Et licet plerique canones matrem, sororem, auiam, amitam, materteram, neptes domesticamque familiam et personas quas conciliat primi gradus affinitas ex cohabitatione nolint esse suspectas, beatus tamen Aug(ustinus) nec cum sorore clericum habitare consensit, eo quod cum sororibus interdum cohabitent non sorores ubi." *Decretum*, D. 81, c. 25, citing Possidius' life of St Augustine, c. 26, via a letter of Gregory I.

[24] *EL*, ep. 100, 157: "Siricius papa alias in domo clericorum esse non patitur 'nisi eas tantum quas propter solas necessitudinum causas habitare cum eisdem sinodus Nicaena permisit'." *Decretum*, D 81, c. 31. Text from this quotation by Gratian was taken from Pope Siricius. This can also be found in Burchard's *Decretum*, II, 100 and Ivo *Decretum*, VI, 52. 187.

[25] *Decretum*, D. 81, c. 24. This is also found in Ivo, *Decretum*, VI, 81.

[26] *Decretum*, D. 81, c. 27.

[27] *EL*, ep. 100, 157-158: "Eas autem tam ex decretis Simachi quam ex concilio Cartaginensi uariisque sanctionibus Romanorum pontificum facile est colligere, ut hae solac uideantur admitti a quibus aut natura aut reuerentia morum aut honesta causa, qualis est miseratio in afflictis et corpore debilitatis, omnem sinistrae opinionis maculam demit."

was the responsibility of the archdeacon to deprive him of the administration of his office until penance had been done. John wrote that canon law urged the archdeacon to act in this way as his position demanded it: "we instruct you to rebuke him with your canonical authority so that by the punishment of one man the errors of many may be corrected."[28] John supported this with Biblical allusion,[29] and reminded him that as one of God's disciples he had a responsibility to carry out his duty.

Another letter written in Theobald's name making use of the *Decretum* of Gratian, including the use of words from Gratian's headings, was addressed to Alfred, Bishop of Worcester, also concerning the matter of clerical continence.[30] The format of the letter was similarly structured: John cited specific councils and papal decrees, and reinforced his suggestions with Biblical references.[31] The letter concerned a clerk and his wife. The wife claimed to have been deserted by her husband, the clerk, as he travelled abroad, so she married another man with whom she had children. While the clerk was abroad he gained promotion to the priesthood. The concerns of the Bishop of Worcester, therefore, were the second marriage of the wife and the continence of the clerk since he had become a priest, as he claimed to have been subdeacon at the time of his marriage. John wrote that:

> It is well established, especially from the second council of Toledo, that those who reach the grade of subdeacon must profess continence.[32] Again from the council of Arles it is clear

[28] *EL*, ep. 100, 159: "praecipimus, ut eum seueritate canonica corripias ut in poena unius multorum corrigantur errores."
[29] Romans, 5:20-21; Numbers, 15:18.
[30] *EL*, ep. 99.

[31] John used Corinthians, books 6 and 7; for use of the Bible in this period, see Barrau, *Bible, lettres*.

[32] Gratian, *Decretum*, D. 28, c. 5, the words 'continentiam profiteri' are taken from Gratian's heading. This is a quotation from canon 1 of the Second Council of Toledo.

> that 'no married man should be admitted to the priesthood unless the adoption of the religious life is promised.'[33] Unless, therefore, the wife first choose continence, which she is ready to vow, she should without doubt be restored to her former husband; while he should be debarred from ministering as a priest and should concede to his wife power over his body in accordance with the words of the holy Apostle.[34]

The knowledge and consent of a wife was important in this situation. John made reference to a pronouncement by Pope Eugenius II which stated that the man who became a priest needed his wife's agreement regarding continence.[35] John further reminded the subdeacon of the decree of Augustine which stated: "'if you abstain without your wife's consent, you give her leave to commit fornication, and that sin will be attributed to your abstinence.'"[36] John emphasised the fact that once a man had entered the priesthood, his vow of continence could not be ignored:

> since such a vow, expressed or tacit, is in accordance with the decree of Pope Martin attached even to the ordination of deacons; for he says 'He who is chosen deacon, if he be challenged about matrimony and says that he cannot remain in chastity, let him not receive ordination. But if he keep silent at his ordination and is ordained, and afterwards desire matrimony, let him be banished from the ministry and cease to be a clerk'.[37] With this agrees Leo,[38] the heavenly trumpet,

[33] *Decretum*, D. 28, c. 6. This is canon 2 from the Second Council of Arles.

[34] *EL*, ep. 99, 1158-1160, 153-154: "Siquidem constat cum ex multis tum ex secundo concilio Toletano quod eos qui ad subdiaconatum accedunt oportet continentiam profiteri. Itemque ex concilio Arelatensi liquet quia 'assumi aliquem coniugatorum ad sacerdotium non oportet nisi fuerit promissa conuersio' ; unde nisi uxor continentiam quam uouere uult praeeligeret, proculdubio priori uiro restituenda esset ipseque sacerdotii administratione priuatus, corporis sui potestatem iuxta sanctum apostolum indulgeret uxori."

[35] cf. *Decretum*, C. 27, q. 2, c. 23 which is a quotation from canon 36 of the Roman synod of Eugenius II. The text in Gratian is similar to Ivo, *Decretum* VIII, 127 and Ivo, *Panormia*, VI, 76. Also cf. Gratian *Decretum* C 27, q 2, cc. 21-6.

[36] *EL*, ep. 99, 1158-1160, 155: "'Si tu abstines sine uxoris uoluntate, tribuis ei fornicandi licentiam, et peccatum illius tuae imputabitur abstinentiae.'" Gratian, *Decretum*, C. 27, q. 2, c. 24. This was falsely attributed to St Augustine.

[37] *Decretum*, D. 27, c. 1.

[38] cf. *Decretum*, D. 32, c. 1. The text here is similar to Burchard's *Decretum*, I, 5, Ivo, *Decretum*, V, 59 and Ivo, *Panormia*, III, 100.

> forbidding carnal wedlock to subdeacons and imposing the most faithful observance of chastity upon all who are in Holy Orders.[39]

Another letter written in the name of Theobald concerned the Anstey case.[40] This well-known case offers a fascinating insight into medieval law and its intricacies, and this letter to Pope Alexander III illustrates well the complexities. In it John set out both sides of the case and catalogued the events and arguments given in the hearing to date. One of the parties, Richard of Anstey, had appealed to the papal court, and case background was therefore required. This was provided by John of Salisbury in a letter, dated *c.*October–November, 1160.[41]

The case concerned an inheritance dispute between Richard and Mabel de Francheville following the death of William de Sackville, Richard's uncle and Mabel's father. William was betrothed to Albereda de Tresgoz, but the marriage was delayed, perhaps, it is speculated, as she was underage.[42] During this delay, William met Adelicia de Vere. Albereda's father agreed that the betrothal could be called off, took back the dowry and attended the feast to celebrate William's marriage to Adelicia.

[39] *EL*, ep. 99, 1158-1160, 154: "cum illud aut expressum aut tacitum etiam diaconorum ordinationi ex decreto Martini papae doceatur insertum. Ait enim 'Diaconus qui eligitur, si contestatus fuerit pro accipiendo matrimonio et se dixerit in castitate manere non posse, hic non ordinetur. Quod si in ordinatione tacuerit et ordinatus fuerit et postea matrimonium desiderauerit, sit alienus a ministerio et uacet a clero'. Consonat huic et Leo, tuba caelestis, qui subdiaconibus carnale interdicit conubium et omnibus sacris ordinibus sincerissimam castimoniae indicit puritatem."

[40] The diary of Richard of Anstey is published in *English Law Suits from William I to Richard I, vol. II William I to Stephen*, ed. R. C. van Caenegem, London, 1991, 397-404. For background to and discussion of the case, see Patricia M. Barnes, 'The Anstey Case', in *A Medieval Miscellany for Doris Mary Stenton*, eds. Patricia Mary Barnes and C. F. Slade, , London, 1962, 1-14; Charlotte Newman Goldy, '"The shiftiness of a woman": narratizing the Anstey case', *Historical Reflections*, Vol. 30, No. 1 (2004), 89-107; also Paul A. Brand, 'New Light on the Anstey Case', *Essex Archaeology and History*, Vol. 15 (1983), 68-83. See also John Hudson, 'From the *Leges* to *Glanvill*: Legal Expertise and Legal Reasoning', in *English Law Before Magna Carta, Felix Liebermann and* Die Gesetze der Angelsachsen, eds. Stefan Jurasinski, Lisi Oliver and Andrew Rabin, Leiden, 2010, 232-234. For Richard of Anstey, see 'Anstey, Richard of', *ODNB*.

[41] *EL*, ep.131.

[42] Goldy, '"The shiftiness"', 91.

Albereda had not consented to quitting of the betrothal and, according to Richard's account, she had tried to protest against William's new wife at the feast, but was not heard. William and Adelicia consummated their marriage and Adelicia gave birth to Mabel. Albereda appealed against the breaking of her betrothal to William and took the case to the church courts in order to discern which marriage was legitimate. From the court of the Archdeacon of London the dilemma required the judgement of Pope Innocent II who annulled the marriage between William and Adelicia, allowing William to return to Albereda. Richard claimed that he had been named as the rightful heir to the inheritance of his uncle's lands, being the eldest son of William's sister, Agnes.[43] Mabel claimed that she was the rightful heir, being William's only child, and suggested that she had been accepted as heiress by the various lords from whom William had held lands. The problem centred on the fact that Mabel was William's daughter from a marriage which had been annulled, leading Richard to claim her illegitimacy. The case had begun in the secular court in 1158 and moved to the ecclesiastical court the following year, "where the question of marriage might be duly determined in accordance with canon law, which the clergy know, whereas the common people do not."[44] Richard appealed to the papal court in October 1160, having travelled abroad to get the king's writ to do so. The letter from John of Salisbury to the pope announced the appeal and set out the case so far. The case was referred to papal judges-delegate for a hearing in April 1161 and decided in Richard's favour. Mabel

[43] Paul Brand, *The Origins of the English Legal Profession*, Oxford, 1992, 1.
[44] *EL*, ep. 131, 228: "ubi de iure canonum, quos clerus nouit, uulgus ignorat, quaestio matrimonii finem debitum sortiretur".

appealed but lost, and the case was finally settled in favour of Richard at the king's court in 1163.

Richard of Anstey wrote up a diary of his activities and expenditure surrounding the case. From this record it is seen that he spent approximately £350 on the lawsuit, which included paying for expert advice from three canon lawyers, Master Ambrose, Master Peter of Melide and Stephen of Binham.[45] They acted as Richard's advocates for the ecclesiastical court sections of the case. He paid for their advice about the drafting of letters from the archbishop and the judges delegate to the pope about the litigation.[46] From the evidence in the diary it can be seen that a litigant who was able and willing to pay for one or more *legisperitus* to give expert legal advice could receive this assistance. These professionally trained lawyers interpreted the law from Gratian, as well as up-to-date decretals and decrees, enabling them to advise, represent and defend their clients.[47]

It might appear that for the Anstey letter, John of Salisbury, for the main part, acted as a scribe, outlining the court case in his report for the pope, and recounting legal arguments as they were constructed by the professional advocates. Yet, to consider

[45] Peter de Melide was a member of the household of the Bishop of Lincoln and was a papal judge-delegate in cases settled in 1179 and 1181, see W. Thorne, in *Historiae Anglicanae scriptores decem*, R. Twysden, col. 1831 and *Early Yorkshire charters*, vol. viii, eds. W. Farrer and C. T. Clay, 1949, 164. Melide was also commissioned for a case, along with the bishops of Hereford and Worcester, concerning possible forged documents used by St Augustine's, Canterbury; see Charles Duggan, 'Improba pestis falsitatis, Forgeries and the problem of forgery in twelfth-century decretal collections' in Duggan, *Decretals and the Creation of the 'New Law' in the Twelfth Century*, Aldershot, 1998, 324-325 and 345-348. Master Ambrose was in the service of the abbey of St Alban's and has been described by Pollock and Maitland as 'in every sense one of the first lawyers in England', F. Pollock and F. W. Maitland, *The History of English Law before the time of Edward I*, vol. i, Cambridge, 1898, 214. Little is known of Stephen of Binham.

[46] Diary of Richard of Anstey, *English Law Suits*, 400. These lawyers advised Richard for the aspects of the case which took part in the ecclesiastical court. Brand observed that for the elements which took place in the king's court, it seems that there was no comparable involvement of lawyers. See Brand, *The Origins*, 2. Or it could be that there is no extant record of this.

[47] Duggan, '*De consultationibus*', 201.

John as mere scribe for the entirety of this letter may be to underestimate his contribution. Goldy has argued that John did place his own stamp on the account: by presenting the material in the manner in which he did, he was constructing his narrative and creating the case himself.[48] This should not be surprising; in his role as legal secretary for Archbishop Theobald he would have been given some autonomy in letter composition. Towards the end of the letter John described how both sides had delayed matters. It is perhaps significant that he did not specify the reasons for delays by Richard (perhaps they were genuinely unknown) but he did explain that Mabel sent representatives on her behalf as a result of her being "in childbed or suffering some other infirmity, or owing to the just absence of her husband, as she said."[49] Furthermore, the final passage of the letter stated that Richard had been forced to appeal to the papal court as he believed that he had been cheated out of his rightful inheritance by the evasion of a woman.[50]

The legal arguments which were presented by Richard are striking in their clarity when compared with those of Mabel. This has led Barnes to suggest that the legal team of Mabel did not review the letter, for some unknown reason.[51] Maitland surmised it was possible that Vacarius acted as counsel for the defence, or at least as an advisor to the case if he were still present in the archiepiscopal household.[52] If Mabel had such learned counsel, or indeed any competent legal team, why did they not review the letter? This has led Goldy to propose that the lack of apparent review

[48] Goldy, '"The shiftiness"', 98.
[49] *EL*, ep. 131, 237: "puerperio aliaue infirmitate, aut ex iusta, ut dicebatur, mariti absentia".
[50] Goldy, '"The shiftiness"', 103.
[51] Barnes, 'Anstey Case', 10.
[52] Maitland, 'Magistri Vacarii', 141.

and the incoherence of Mabel's argument was evidence of John's 'spin' on the case, that his presentation of arguments was his judgement on the merits of the case,[53] although this cannot be demonstrated with certainty.

The central dispute of the Anstey case, the point at which a marriage became valid, was a topic of debate amongst lawyers and theologians in the mid-twelfth century, with particular focus upon the issues of consent and consummation.[54] In Anglo-Norman England, betrothal remained a key stage in creating a marriage; those betrothed were not free to marry others. There was also continuing concern with consummation.[55]

The idea of consent had its basis in Roman law.[56] Marriage as outlined in Roman law was defined by Modestinus, and mutual consent of man and woman was implied.[57] Consent was the only essential condition for marriage: "it is consent, not sleeping together, which makes a marriage."[58] For the marriage to take place, consent from all parties involved was needed, that is, the man and woman and "those in whose power they are."[59]

[53] Goldy, '"The shiftiness"', 103.
[54] See Anne J. Duggan, 'The Effect of Alexander III's 'Rules on the Formation of Marriage' in Angevin England', *Anglo-Norman Studies*, XXXIII, 2011, 1-22; Charles Donahue Jr., 'The Policy of Alexander the Third's Consent Theory of Marriage', in *Proceedings of the Fourth International Congress of Medieval Canon Law, Toronto, 21-25 August 1972*, ed. S. Kuttner, Vatican, 1976, 251-281. For background to marriage, love and family in the Middle Ages, see Georges Duby, *Love and Marriage in the Middle Ages*, tr. Jane Dunnett, Oxford, 1994. For an in-depth and chronologically-broad survey of sex, love and social structures, including marriage, see James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, Chicago, 1987.
[55] Hudson, *Oxford History of the Laws of England*, 437.
[56] For background to Roman marriage law, see Brundage, *Law, Sex*, 32-39; see also Susan Treggiari, *Roman Marriage: Iusti coniuges from the time of Cicero to Ulpian*, Oxford, 1991.
[57] *Institutes*, 1.9.1; *Digest* 23.2.1.
[58] *Digest*, 35.1.15, Ulpian, *Sabines*, book 35.
[59] *Digest*, 23.2.2.

Canonists such as Ivo of Chartres utilised the definition that consent made a marriage.[60] In order to demonstrate this, in his collections he used a letter of Pope Leo I, which stated that a marriage was valid between a couple whether it had been consummated or not.[61] Anselm of Lucca and the author of the *Collection in Seventy-Four Titles* included within their collections the consent of parents as a requirement for a valid marriage,[62] perhaps as a way of protecting against marriage by abduction.[63]

Canonists were also considering the role that consummation played in the formation of a marriage. The theory that consummation completed a marriage had been proposed by Archbishop Hincmar of Reims in *c.*860, and had received some support from theological writers of the late-eleventh and early-twelfth centuries, but had generally been opposed.[64] Support for the consummation theory came with the production of the *Decretum* of Gratian, when he proposed that consummation as well as consent made a valid marriage. In the *Decretum*, he included the following passage: "since the social bond of marriage was instituted from the beginning in such a way that without sexual intercourse marriages would not contain the symbol of the union of Christ and the Church, there is no doubt that a woman whom we learn to have been

[60] Ivo, *Decretum* 8.1 – this text is the same as Ivo, *Panormia* 6.1 which cited Justinian's *Institutes*, 1.9.1; and Ivo, *Decretum* 8.17 – this text is the same as Ivo, *Panormia* 6.107, citing Pope Nicholas I's letter to the Bulgarians.

[61] Pope Leo I, *Epistola*, 167.4 in PL 54:1204-1205, cited in Ivo, *Decretum* 8.74 – this text is the same as Ivo, *Panormia* 6.23 – and Ivo, *Decretum* 8.139 – this is the same text as Ivo, *Panormia* 6.35. The text can also be found in Burchard of Worms, *Decretum*, 9.1.

[62] Anselm of Lucca, 10.2; *Collection in Seventy Four Titles*, 62.271.

[63] Brundage, *Law, Sex*, 188.

[64] Support for a version of the coital theory came mainly from the School of Laon; Brundage, *Law, Sex*, 188. In the ninth century, Archbishop Hincmar of Reims was asked to intervene in a case concerning marriage. A certain Stephen of Auvergne had taken part in a marriage ceremony with a woman when he had had sexual intercourse with a close relative of hers. If he were to then have sexual intercourse with his wife, he would have been committing a sin. Hincmar was of the opinion that unless a marriage had been consummated, it was not a valid marriage. He therefore declared that as the marriage between Stephen and his wife could not be consummated morally, it could be dissolved; D. L. D'Avray, *Medieval Marriage, Symbolism and Society*, Oxford, 2005, 178.

without the nuptial mystery does not pertain to marriage."[65] Gratian distinguished between the initiation of marriage – the point at which both parties exchanged words to signify consent – and the completion of a marriage through consummation.[66] Both steps were necessary as, according to Gratian, marriage was both a spiritual union, achieved through the exchange of consent, and a physical union achieved through sexual intercourse;[67] one without the other did not constitute a marriage.[68]

The early decretists found the consent and consummation theory of Gratian unacceptable as, in their opinion, too much emphasis had been placed upon sexual intercourse.[69] Three distinct approaches emerged as they devised alternative models. One attempted to reconcile the differences between Gratian's coital theory and the consent theory. This was adopted in varying degrees by the Bolognese decretists, such as Rolandus, Rufinus and Paucapalea. Another approach rejected the theory of Gratian and supported the theory of consent. This was largely adopted by Parisian decretists, such as Peter Lombard (*c.*1095-1160). In his *Sentences* Peter stipulated that consent had to be expressed in words and that consent was for the present; future consent did not constitute marriage, rather this constituted a betrothal, which could in turn become a marriage when future consent was followed by intercourse.[70] Huguccio completely rejected Gratian's theory and adopted the theory of Peter Lombard, when

[65] Gratian, *Decretum*, C. 27, q. 2, c. 17. Note the intellectual ancestry of Hincmar of Reims – D'Avray, *Medieval Marriage*, 179. The translation is from D'Avray.
[66] See Gratian, *Decretum*, C 27, q. 2 c. 3 for the difference between *sponsalia* and marriage.
[67] Brundage, *Law, Sex*, 235-236.
[68] Gratian, *Decretum*, C. 27 q. 2 d. p. c. 34. Winroth noted that the combining of two methods of validating a marriage, consent and consummation, was typical of Gratian, who usually tried to find some middle ground when faced with contradictory laws; Winroth, 'Material Consent in Gratian's Decretum', in *Readers, Texts*, 113.
[69] For what follows see Brundage, *Law, Sex*, 262 ff.
[70] Peter Lombard, *Sententia*, 4.27. Conor McCarthy, *Marriage in Medieval England, Law, Literature and Practice*, Woodbridge, 2004, 23.

he proposed that present consent alone created a marriage, so long as the consent had been given freely.[71] The third approach rejected the coital and the consent theories and instead saw that marriage took place with the delivery, or *traditio*, of a woman to her husband. This was adopted by the Rhineland school and the lawyer Vacarius. In his *Summa de matrimonio*, 1166x1170,[72] Vacarius rejected Gratian's theory.[73] It was Vacarius's notion that marriage rested on the *traditio*, in much the same way as in Roman law a transfer of property revolved on the delivery of an object from one party to another. The issue of what constituted a marriage was made less ambiguous from the late 1180s onwards when consent in the present tense was almost totally accepted by canonists as the defining point of whether a marriage had been created.[74]

This period of flux in marriage theory was reflected in the Anstey case, and different doctrines of what constituted a marriage were echoed in the case letter. The letter's addressee, Pope Alexander III, had accepted at one point or another during his career several different marriage theories.[75] Donahue, and later Brundage, have used the marriage decretals sent from Alexander III, some 150 or so which entered the legal tradition, in order to argue that Alexander undertook a conscious attempt to use canon law to influence social development, by seeking to free marriage from the control of parents and feudal overlords, and instead to give parties their own choice of

[71] Huguccio, *Summa* to C. 27 q. 2 pr.
[72] See Taliadoros, *Law and Theology*, 58.
[73] He did not comment on the idea of consent proposed by Peter Lombard as they were writing at a similar time.
[74] Brundage, *Law, Sex*, 268-269.
[75] *EL*, 268.

marriage partner.[76] These findings have been disputed.[77] Duggan demonstrated that Alexander's decretals should be considered in their original context – responses to specific cases or specific questions about marriage cases rather than as decrees or general directives: "when the local episcopal or archiepiscopal court had failed to make a determination which satisfied the parties, or where there was doubt about the canon law or its applicability to the question or questions at issue."[78] Furthermore, Alexander's decretals did not represent conscious law-making. None of his decretals "carried an instruction to copy, retain, promulgate, or circulate the letter."[79] Moreover, during Alexander's pontificate there was no legislation on marriage at either the Council of Tours (1163) or the Third Lateran Council (1179).[80]

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In addition to being familiar with canon law compilations, John of Salisbury had thorough knowledge of canons that were being produced during his lifetime. He discussed and explained a number of the decrees of the Council of Reims in 1148 in his *Historia Pontificalis*.[81] For example, in Chapter III he mentioned that "Finally the decretals were promulgated with their interpretation and explanations, and approved by general consent, with one exception. This concerned the banning of multi-coloured

[76] Donahue, 'The Policy of Alexander', 251-281, in particular 253 and Brundage, *Law, Sex*, 332-333. Donahue does modify his views in his *Law, Marriage and Society in the Later Middle Ages: Arguments About Marriage in Five Courts*, Cambridge, 2007.

[77] Duggan, 'The Effect', 1-22.
[78] Duggan, 'The Effect', 2.
[79] Duggan, 'The Effect', 3.
[80] Duggan, 'The Effect', 3.
[81] *HP*, 8-10.

cloaks for the clergy."[82] John explained that although most who were present at the council gave their approval to the ban, Reynold of Hildesheim believed that the decree would prove unpopular. John further explained that canon 7 met with some incredulity, as it seemed to be stating the obvious. He wrote:

> I have thought it worthwhile to add explanations and interpretations of a few [decretals] that might otherwise seem to give rise to doubt or derision. For instance one canon forbade bishops, abbots, priests, deacons, sub-deacons, regular canons, monks, lay-brethren, novices, even nuns to contract marriages, and ordered any contracted by them to be dissolved, since the marriage of such persons is null and void; and this decree seemed unnecessary and even ludicrous to some. For who does not know that it is unlawful? ... I recall that after the prelate of Capua consecrated by Peter Leonis had been deposed by Pope Innocent he married a wife in Rome and practiced medicine; and many others have done likewise.[83]

John wrote about canon 13 from the council, explaining that the exact meaning of the decree was not clear:

> There was also some doubt about the precise application of the canon that anyone who laid violent hands on the clerks, monks, lay-brethren or nuns must go to the pope for absolution. But the pope made his intention clear by saying that this canon was not to be applied to those who had committed such violence in the performance of their just duty ... [for example] if by chance a doorkeeper, trying to hold back a crowd of clerks from rushing through a door, accidently struck one with his staff ... Again the canon would not apply if a master in the schools struck his pupil, or one pupil another, or one monk another ... Thus the pope interpreted this canon, declaring that the

[82] Council of Reims, Canon 2, *HP*, 8: "Decreta demum promulgata sunt cum interpretationibus et causis suis, et assensu publico roborata, uno tamen excepto. Nam cum usus uariarum pellium clericis interdiceretur."

[83] *HP*, 8-9: "De quorundum tamen interpretationibus et causis pauca censui subnectenda, eo quod de hiis quibusdam risus nascitur, aliis questio. Nam cum inhiberetur ne episcopi, abbates, presbiteri, diaconi, sub diaconi, canonici regulares, monachi, conuersi, professi, item ne moniales, coniugia contrahant, et si contraxerint ab inuicem separentur, quia talium personarum nullum est matrimonium, res friuola et risu digna nonnullis acta esse uidetur. Quis enim hoc nescit esse illicitum? … Meminimus quod Capuanus quem Petrus Leonis consecrauerat, postquam a domino Innocentio depositus est, Rome duxit uxorem et exercuit medicinam; multique alii similia commiserunt."

> bishops and all the faithful ought to apply these interpretations, for he had promulgated it with that intention.[84]

In chapter XVI of the *Historia Pontificalis*, John demonstrated that canon law was sometimes open to debate, and it was common for people to appeal against decisions which were made using the canons. He wrote:

> for although the pope seemed to lend a favourable ear to their [i.e. members of the Cistercian order] appeals, he always referred the matter to the cardinals; and they maintained that no concession could be made on account of the constitution of Pope Innocent condemning in perpetuity all who had received ordination from Peter Leonis,[85] and the decree of Eugenius himself just promulgated in the council of Reims.[86]

It is clear that John was able to write with knowledge and confidence about specific canons. It is likely that he would have had access to the decrees of the Council of Reims while he was at the papal court, and he chose to include discussion surrounding these particular canons in order to richly illustrate his work. This demonstrated that John was happy to cite canonical decrees in his writing, as well as understanding that sometimes canons could be open to interpretation due to their complexity. It also demonstrated that John was concerned with the promulgation of canons and the practicalities of canon law.

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[84] *HP*, 9-10: "Queritur autem quatenus protendi debeat ut excommunicati mittantur ad dominum papam absoluendi, qui in clericos, monachos, conuersos, et moniales uiolentas iniecerint manus. Sed dominus papa mentem suam interpretatus est dicens eos hoc canone non teneri, qui ex necessitate iusti officii tale quid commisisse noscuntur … Item si doctor in scolis discipulum uel condiscipulus alium, uel claustrensis claustralem … hoc canone non tendetur … Hoc ita dominus papa interpretatus est, asserens omnes episcopos et fideles ecclesie debere sequi prescriptas interpretationes, quia sub hac intentione promulgauit canones."

[85] Reference to Second Lateran Council of 1139, canon 30.

[86] *HP*, 43: "Nam quamuis eis aures quasi propicias apperiret, negocium tamen reiciebat in cardinales. Illi uero, hoc impossibile esse dicentes, opponebant constitutionem domini Innocentii de perpetua dampnatione eorum qui ordinati fuerant a Petro Leonis, et ipsius Eugenii decretum quod in concilio Remensi nuper fuerat promulgatum." Canon 17.

C. '*Secundum Canones'*

In a number of his letters, John of Salisbury used general phrases such as "secundum canones," "according to the canons," or wrote about "canonical discipline." In such cases he stated that the punishment should be meted out according to canonical discipline. Perhaps degrees of canonical discipline were so well known by those to whom he was writing that he felt no need to give specific details, as the phrases were common ones. When John used the phrase "according to the canons," for the most part it was with reference to situations that clearly came under canon law. For example, in letter 109 in the early letter collection it was explained that a new abbot would be found for the monks at Evesham. John wrote that the Archbishop of Canterbury would "in accordance with the precept of the sacred canons, set over you a worthy shepherd;"[87] Walter, Bishop of Coventry, Alfred, Bishop of Worcester, Reginald, Abbot of Pershore and Gervase, Abbot of Winchcombe[88] were being sent to the abbey so that they could supervise the election. This suggested that Theobald was asserting his authority and controlling the election of the new abbot. (For Theobald's involvement in elections, see Chapter Five.)

Letter 124 of the early letters included another instance of John using the statement "according to the canons." This passage encapsulated John's view of how the relations between church and monarch should exist. He wrote: "freest of all should be the

[87] *EL*, ep. 109, May–June 1159, 173: "ut secundum institutionem sacrorum canonum pastorem idoneum uobis praeficere ualeamus."
[88] The abbots of Pershore and Winchcombe are not named in person. Millor, Butler and Brooke have demonstrated that it would have been Reginald and Gervase respectively; see *EL*, 80 and 174.

judgement of the church and in accordance of the sacred canons."[89] This freedom of ecclesiastic elections was a fundamental tenet of the church at the time. There were numerous canons which decreed it so, and John may therefore have felt that he did not need to include reference to them.

In the *Historia Pontificalis*, John made reference to "canonical discipline," when he reported on another episode which had occurred in the long-standing dispute between the cathedral at Canterbury and the monks at St Augustine's, Canterbury.[90] The prior Silvester and the sacristan William had to appear before the archbishop in order to confess and receive absolution:

> With peace now having been restored to the church of Canterbury, the aforesaid excommunicated [people] were gathered up, Prior Silvester and William the sacristan were to present themselves to the Archbishop with papal letters, to confess their guilt, to promise reparation, that they may be entitled to absolution. With this done, they were absolved at Northfleet, indeed first having been whipped at the front door of the church according to the discipline of the canons.[91]

[89] *EL*, ep. 124, June-July 1160, 208: "Porro ecclesiastica debent esse liberrima, et de sacrorum canonum sanctione."

[90] The dispute between the abbey of St Augustine's and Canterbury cathedral was a long-standing one, which began under Lanfranc. Lanfranc attempted to claim the loyalty of the monks at St Augustine's and to control the succession of abbots, particularly as the abbey was prominent and wealthy. On the death of Abbot Scotland in 1087, Lanfranc installed his own choice of abbot, Guy, from another community, consecrating him at Canterbury. Lanfranc subsequently took Guy to St Augustine's instructing the monks to obey him. The monks refused. Many of the monks quit the monastery after they were ordered to accept Guy or leave. Most returned in time, but those who did not were sent to other monasteries by Lanfranc, until those who remained all professed obedience. It is evident that the dispute had showed no sign of abating by the time of Theobald's archiepiscopate. See *Acta Lanfranci*, in the A-text of the *Anglo-Saxon Chronicle*. MS A of the Anglo-Saxon Chronicle has been edited by Janet Bately, *The Anglo-Saxon Chronicle, A Collaborative Edition, vol. iii, MS A*, Cambridge, 1986; also Cowdrey, *Lanfranc*, 167-172; for a background history to the cathedral, see Patrick Collinson, Nigel Ramsey and Margaret Sparks, eds., *A History of Canterbury Cathedral*, Oxford, 1995.

[91] *HP*, 51-52: "iam Cantuariensis ecclesie pace composita, coacti sunt predicti excommunicati, Siluester prior et Willelmus sacrista, sese cum litteris apostolicis archiepiscopo presentare, confiteri culpam, promittere satisfactionem, ut mererentur absolui. Quo facto absoluti sunt apud Norfletam, uerberati quidem prius ad ostium ecclesie secundum canonum disciplinam."

(See Chapter Five for further discussion of St Augustine's and Silvester.)

By using *secundum canononesi*, John was actually reflecting canon law. In the Preface to the *Decretum* of Burchard of Worms, it was written: "the canons do not prescribe for each and every offense the gravity of the sin and the amount of time for doing penance carefully, clearly and fully enough in order to tell for individual cases how each sin should be corrected, but rather, they state that it ought to be left to the judgement of an understanding priest."[92] This passage suggested that an element of discretion could be used when something was being done 'according to the canons'. Furthermore, it was for those meting out punishment to determine the severity thereof, according to the circumstance, thus '*secundum canones*', whereby justice could be carried out appropriately.

D. Comparison with others' use of canon law

John's use of vague canonical references was not novel. Mark Philpott observed that this style was used by Anselm and Lanfranc. Philpott explained that in letter 65 of Anselm's letters a certain Abbot William put question to him while he was abbot of Bec.[93] At this time Anselm held no position that would make him an obvious source of advice, suggesting that the two must have been friends, and that William believed

[92] Burchard of Worms, Preface to *Decretum*, tr. from Robert Somerville and Bruce C. Brasington, *Prefaces to Canon Law Books in Latin Christianity, Selected Translations, 500-1245*, New Haven, 1998, 100.

[93] Mark Philpott, ''In primis ... omnis humanae prudentiae inscius et expers putaretur': St Anselm's knowledge of canon law' in *Anselm: Aosta, Bec and Canterbury, Papers in Commemoration of the Nine-Hundredth Anniversary of Anselm's Enthronement as Archbishop, 25 September 1093*, eds. D. E. Luscombe and G. R. Evans, Sheffield, 1996, 94-95.

Anselm would be able to offer advice. Anselm's response was clear, and in accordance with the canons. He also urged enforcement of the rules on the matter of whether an unchaste priest should be allowed to carry on his ministry after confession.[94] Philpott asserted that Anselm's letter was similar to those of his contemporaries, noting that Southern has pointed out that Anselm "argued from general principles."[95] A number of Lanfranc's letters were similar. For example, in a letter to Bishop Herfast of Thetford, in *c*.1076-1086, Lanfranc stated that it was "divina fultus auctoritate."[96]

The letters of Gilbert Foliot can also be compared with those of John. It should be noted that while Gilbert did refer to the *Decretum* of Gratian and alluded to canons in the same manner as John of Salisbury, he did not do so as frequently as John. Much like John, Gilbert did not regularly quote Gratian nor other canon law sources verbatim; rather he used phrasings very similar to the *Decretum*. This could indicate that Gilbert did not have direct access to a manuscript of the *Decretum*. Alternatively it could also suggest that it was not common practice to quote word for word from canonical collections, but rather to express the argument in one's own fashion.

Considering the evidence within Gilbert's letter 237,[97] it is clear that he was using Gratian's *Decretum* when he advised how to proceed when a wife was found guilty of adultery. Gilbert's words were very similar to the passage in the *Decretum*, C 2 q. 5 c. 21.[98] Similarly, letter 66 to Archbishop Theobald, mirrored the section in the

[94] Philpott, ''In primis'', 95.
[95] R. W. Southern, *Saint Anselm, A Portrait in a Landscape*, Cambridge, 1990, 256.
[96] Lanfranc, ep. 43, *Letters of Lanfranc, Archbishop of Canterbury*, eds. Helen Clover and Margaret Gibson Oxford, 1979, 138-139; see Philpott, ''In primis'', 95
[97] Ep. 237, *The Letters and Charters of Gilbert Foliot*, eds. Dom Adrian Morey and C. N. L. Brooke, Cambridge, 1967.
[98] Adrian Morey and C. N. L. Brooke, *Gilbert Foliot and his Letters*, Cambridge, 1965, 241.

Decretum, C 16 q. 3 c. 15.[99] In letter 155 to Pope Alexander III Gilbert wrote: "Non enim est dubium seueritati detrahendum fore, cum strages imminet populorum," which was similar to Gratian's *Decretum*, C 23 q. 4 c. 24.[100]

In letter 170 to Archbishop Becket, Gilbert wrote: "et illud Gelasii pape ad Elpidium episcopum ... 'cum canones euidenter precipiant nullum omnino pontificum nisi nobis ante uisis aut consultis, ad comitatum debere contendere?'" This closely followed Gratian's *Decretum*, C 23 q. 8 c. 26:[101] "cum canones euidenter precipiant nullum omnino pontificum, nisi nobis ante uisis atque consultis ad comitatum debere contendere?"[102] In the same letter Gilbert wrote: "Ludouico Augusto sic scribens: 'Nos, si incompetenter aliquid egimus, et in subditis iuste legis tramitem non conseruauimus, uestro aut missorum uestrorum cuncta uolumus emendari iudicio.'" This was in turn similar to Gratian's *Decretum*, C 2 q. 7 c. 41.[103]

On occasion Gilbert merely alluded to the sacred canons, much as John did with his phrase 'secundum canones'. For example, in letter 148 from Gilbert to Archbishop Becket he wrote: "...unde sibi audientiam preberi supplicat ut Baldricum ab intentione hac sacra legum et canonum auctoritate repellat."[104]

The letters of Pope Innocent III to England demonstrate a similar structure. Innocent did not make reference to specific decretals and canons. For example, in letter 3, to

[99] Ep. 66, *The Letters and Charters of Gilbert Foliot*, eds. Morey and Brooke, 101: "parrochialia iura tam in spiritualibus quam in temporalibus continue et quiete triginta et eo amplius annis habuisse".
[100] Gratian wrote: "detrahendum est aliquid seueritati"; Ep. 155, *Letters and Charters of Gilbert Foliot,* eds. Morey and Brooke, 206.
[101] Ep. 170, *Letters and Charters of Gilbert Foliot*, eds. Morey and Brooke, 236.
[102] This was quoted from Pope Gelasius.
[103] Gratian wrote: "Nos, si inconpetenter aliquid egimus, et in subditis iustae legis tramitem non conseruauimus, uestro ac missorum uestrorum cuncta uolumus emendare iudicio"; Ep. 170, *Letters and Charters of Gilbert Foliot*, eds. Morey and Brooke, 236.

[104] Ep. 148, *Letters and Charters of Gilbert Foliot*, eds. Morey and Brooke, 194.

the Bishop of Worcester, regarding the matter of simony it was written: "therefore, venerable brother in Christ, we assent to your entreaties and by apostolic authority we grant to you discretionary power to punish canonically, not withstanding any appeal to frustrate justice, any persons whose guilt in this sin you shall have established."[105] In letter 6, to Hubert, Archbishop of Canterbury, possibly from 1200, the pope wrote: "On reviewing the canons, we have found some that forbid the elevation to pastoral office of men not born in wedlock."[106] In letter 9, which was sent from the pope to Hubert, Archbishop of Canterbury, and the Bishops of London and Ely, it was written: "The petition of our beloved sons the prior and monks of St Andrew, Northampton, which has been laid before us, states that ... they possess canonically all the churches of that town ...".[107] Similarly, letter 38 to the chapter of Exeter, written in 1209, stated that: "there are definite times fixed beyond which churches left without pastors should not remain vacant."[108] This letter alluded to the three months regarded as the time limit within which election and / or consecration of a bishop should take place.[109] This was stated at the Second Lateran Council, canon 28, and was confirmed at the Fourth Lateran Council, canon 23.[110] The pope on occasion did make remarks regarding a

[105] C. R. Cheney and W. H. Semple eds., *Selected Letters of Pope Innocent III, concerning England (1198-1216)*, London, 1953, 9: "Eapropter, venerabilis in Christo frater, tuis precibus annuentes, eos quos tibi constiterit reos esse criminis memorati, appellatione frustratoria non obstante, canonice puniendi liberam tibi concedimus auctoritate apostolica facultatem."
[106] Cheney and Semple, *Selected Letters*, 17: "relectis canonibus, quosdam invenimus qui non legitime genitos promoveri vetant ad officium pastorale".
[107] Cheney and Semple, *Selected Letters*, 25: "Exposita nobis dilectorum filiorum ... prioris et monachorum sancti Andree de Norhant' petitio continebat quod cum omnes ecclesias eiusdem ville canonice possideant".
[108] Cheney and Semple, *Selected Letters*, 115: "certa sint tempora constituta ultra que non debent ecclesie pastoribus destitute vacare".
[109] See also Gratian, *Decretum*, D 75, c. 2, Friedberg suggested this was from the Council of Chalcedon, 451.
[110] Cheney and Semple, *Selected Letters*, 115.

particular council, but the canon number was not cited and no specific details given. For example in letter 6 to Hubert, Archbishop of Canterbury, in 1200, Innocent stated:

> But there is a canon of the Lateran Council, issued in general synod by our predecessor Alexander of happy memory ... 'Lest action taken in individual cases to meet the necessities of the time should be interpreted as a precedent by posterity, no one is to be elected bishop except a man born in lawful wedlock' ... This canon was issued, in a council of many canon lawyers, not by a man without knowledge of the ancient canons, but by one fully acquainted with canonical sanctions, and it was affirmed by the council's approval.[111]

It is significant that Pope Innocent III used canon law in a similar way to John of Salisbury. Innocent was learned in the law; the traditional view is that he received an education in canon law at Bologna, though Pennington has questioned this [112] Despite the uncertainties of Innocent's legal education, when he was pope he would have been advised by trained canonists.[113]

It can be seen, therefore, that John wrote of '*secundum canones*' in a recognised manner, which was used by others who were writing before and after him. Indeed, the Preface to the *Decretum* of Ivo made it a principle of canon law that the circumstances and personality of the malefactor would determine the appropriate canonical actions.[114] Therefore, by using vague phrases like '*secundum canones*', John

[111] Cheney and Semple, *Selected Letters*, 18-19: "Verum quia canon concilii Lateranensis a bone memorie Alexandro predecessore nostro editus in synodo generali ... Ne videlicet quod de quibusdam pro necessitatibus temporis factum est in exemplum trahatur a posteris, nullus in episcopum eligatur nisi qui de legitimo matrimonio sit natus … sane predictus canon, qui non per eum qui canones non nosset antiquos sed per illum qui plene noverat canonicas sanctiones in concilio multorum iurisperitorum est editus et ipsius approbatione concilii roboratus".

[112] K. Pennington, 'The legal education of Pope Innocent III', *Bulletin of Medieval Canon Law*, ns, Vol. 4 (1974), 70-77.

[113] Peter D. Clarke, 'Innocent III, The Interdict and Medieval Theories of Popular Resistance', in *Pope, Church and City, Essays in Honour of Brenda D. Bolton*, eds. Frances Andrews, Christoph Egger and Constance M. Rousseau, Leiden, 2004, 82.

[114] Ivo of Chartres, *Decretum*, Preface; see Philpott, ''In primis', 96.

was in fact following canonical practice. Those to whom he wrote would have recognised this.

Conclusion

Whilst it is evident that John used Gratian as a source of canon law while writing some of the letters, there is no categorical evidence to support the premise that John used Gratian exclusively. Based on the evidence currently available this matter cannot be definitively resolved. It is therefore reasonable to conclude that other texts were used by John, perhaps for reasons of logistical convenience based on analysis of content and style with reference to other learned canonists of the time. It is clear that whichever canonical sources he used, John was competent in discoursing matters of a legal nature. He was familiar with canons on issues for which clerics sought advice from the archbishop. He was knowledgeable on new canons which had been propounded and this demonstrated his interest in matters relating to the law of the church.

Chapter Three

King and Law

This chapter explores John of Salisbury's thoughts on the king's position in relation to the law. John saw that the monarch was necessary for the punishment of crime, as this role was unworthy for members of the church to undertake. In John's view, it was vital that the king acted within the constraints of the law; law was applicable to all people. If the king went against the law, he was no longer the king, but had become a tyrant. John's discussion of tyrants within the *Policraticus* was complex and at times inconsistent, and this will be considered here.

A. Lawful King

A. i The King Under Law

In Book VIII, Chapter 22 of the *Policraticus* John of Salisbury wrote:

> the will of a true ruler depends upon the law of God and does not prejudice liberty. But the will of a tyrant is a slave to his desire, and rebelling against the law, which cherishes liberty, strives to impose upon his fellow-slaves the yoke of slavery. This the Scripture teaches, which it is not lawful to contradict. "All the men of Israel said unto Gideon: 'Rule thou over us ...'. And Gideon said unto them, 'I will not rule over you, neither shall my son rule over you, but the Lord shall rule over you.'"[1] ... [Gideon] here seems to point out in express words the duty and office of a prince.[2]

[1] Judges, 8:22-23.

[2] 8.22, Dickinson, 394; Webb, ii, 397: "Voluntas enim regentis de lege Dei pendet et non praeiudicat libertati. At tiranni uoluntas concupiscentiae seruit et legi reluctans, quae libertatem fouet, conseruis iugum seruitutis conatur imponere. Docet haec Scriptura, cui contraire non licet. Dixerunt omnes uiri Israelis ad Gedeon : Dominare nostri … Quibus ille ait : Non dominabor uestri, nec dominabitur in uos filius meus, sed dominabitur Dominus … Gedeon … nomine et uerbis uidetur principis officium indicare."

In Judges, 8:22-23, cited by John, Gideon delivered the Israelites from oppression by the neighbouring Madianites, but refused their request for him to rule over them, claiming only God was capable of such a thing. By using the example of Gideon, John presented a humble prince, willing to protect the people whilst recognising the superordination of God's power and law. The prince was not to question the requirement to obey the law and will of God; only a tyrant would behave in such a manner. (See below.)

In Book IV, Chapter 6 of the *Policraticus* John demonstrated that Jesus Christ placed Himself under the law: "not of necessity but of His own free will."[3] From Israel David, Ezechias and Josias were provided as examples of kings who placed themselves and their people under the divine law.[4] To add weight to the notion of the prince being under the law of God, and to demonstrate the binding injunctions placed upon the ruler, John quoted at length from book 17 of Deuteronomy, in Book IV, Chapter 4 of the *Policraticus*. John wrote:

> That you may not, then, be of the opinion that the prince is wholly absolved from the laws, hear the law which is enjoined upon princes by the Great King who is terrible over all the earth and who takes away the breath of princes: "When thou art come" He says, "into the land which the Lord thy God shall give to thee, and shalt possess it and shalt dwell therein and shalt say, 'I will set over me a king such as all the nations that are round about me have over them'; thou shalt appoint him king over thee whom the Lord thy God shall choose from the number of thy brethren" ... Need I ask whether one whom this law binds is restrained by no law? Surely this law is divine and cannot be broken with impunity.[5]

[3] 4.6, Dickinson, 25; Keats-Rohan, 248: "non necessitate sed uoluntate."
[4] 4.6, Dickinson, 26; Keats-Rohan, 249: "Dei quaerentes gloriam, se et subditos diuinae legis nexibus innodarent."
[5] 4.4, Dickinson, 15-16: Keats-Rohan, 241: "At, ne ipsum principem usquequaque solutum legibus opineris, audi quam legem imponat principibus Rex magnus super omnem terram terribilis et qui aufert

John emphasised not only the subordination of the prince to God, but also stressed the importance of the prince reading the law of God, keeping the law of God, and thus learning to fear and love the Lord. In this way, limitations were placed upon the power of the prince. That John chose Deuteronomy as his source is significant: this law of God was not to be questioned, and the constraints upon the prince were to be accepted completely. Dickinson suggested that John of Salisbury, whilst using Deuteronomy to highlight the prince's position under the law of God, would have seen the entirety of the Bible as having a similar obligatory force.[6]

In Book IV, Chapter 2 of the *Policraticus* John cited Roman law suggesting that a prince was not bound by law, contradicting an earlier statement about the Book of Deuteronomy. John argued that what was pleasing to the prince had the force of law: "because his decision may not be at variance with the intention of equity."[7] This was found in Justinian's *Digest*, and was taken from Ulpian's *Institutes*, Book 1: "whatever the emperor has determined by a letter over his signature or has decreed on judicial investigation or has pronounced an interlocutory matter or has prescribed by an edict is undoubtedly a law."[8] John continued: "the prince accordingly is the minister of the common interest and the bond-servant of equity, and he bears the public person in

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spiritum principum. Cum, inquit, ingressus fueris terram quam Dominus Deus dabit tibi et possederis eam habitauerisque in illa et dixeris 'constituam super me regem, sicut habent omnes per circuitum nationes', eum constitues quem Dominus Deus tuus elegerit de numero fratrum tuorum … Numquid, quaeso, nulla lege artatur quem lex ista constringit ? Haec utique diuina est et impune solui non potest."

[6] Dickinson, xxxiii.

[7] 4.2, Dickinson, 7; Keats-Rohan, 235: "eo quod ab aequitatis mente eius sententia non discordet."

[8] Justinian, *Digest*, 1.4.1.1.

the sense that he punishes the wrongs and injuries of all, and all crimes, with even-handed equity."[9] This chapter was entitled "What the Law is; and that although the prince is not bound by the law, he is nevertheless the servant of the law and of equity, and bears the public person, and sheds blood blamelessly."[10]

This was an echo of a passage in the *Digest*, which stated that: "the prince is not bound by the law."[11] Other texts within the *Digest* also reinforced the absolute power of monarch; Ulpian wrote that "what pleases the prince has the force of law."[12] Kantorowicz argued that this chapter title summarises well John's thoughts on where the prince fitted in with law. John did suggest that the prince was free from the restraint of the law, but that did not mean that he was then able to do wrong.[13] The passages within Justinian's corpus were the opinions of jurists which could be pitted against each other. As Pennington pointed out, the *Corpus* was contradictory regarding this issue of the prince's position within the law.[14] By including these expressions from Roman law, John was pre-empting the views of those who believed in the supreme power of the monarch. John was acknowledging that there were those who thought these ideas should hold sway both in the past and at the time of his writing. John, however, showed that such statements were true, but only insofar as the prince was exercising his free will in choosing to carry out justice as his position

[9] 4.2, Dickinson, 7; Keats-Rohan, 235: "Publicae ergo utilitatis minister et aequitatis seruus est princeps, et in eo personam publicam gerit quod omnium iniurias et damna sed et crimina omnia aequitate media punit."
[10] 4.2, Dickinson, 6; Webb, i. 237: "Quid lex; et quod princeps, licet sit legis nexibus absolutus, legis tamen seruus est et aequitatis, geritque personam publicam, et innocenter sanguinem fundit."
[11] *Digest*, 1.3.31.
[12] *Digest*, 1.4.1.
[13] Ernst H. Kantorowicz, *The King's Two Bodies*, *A Study in Medieval Political Theology*, Princeton, Chichester, 1997, 95.
[14] K. Pennington, 'Law, Legislative Authority and Theories of Government, 1150-1300', in *Cambridge History of Medieval Political Thought,* 424-426.

demanded and to act for the common good. John wrote that: "it is said that the prince is absolved from the obligations of the law, but this is not true in the sense that it is lawful for him to do unjust acts, but only in the sense that his character should be such as to cause him to practise equity not through fear of the penalties of the law but through the love of justice."[15]

John also stated that: "the authority of the prince depends upon the authority of justice and law; and truly it is a greater thing than imperial power for the prince to place his government under the laws, so as to deem himself entitled to do nought which is at variance with the equity of justice."[16] John was arguing that the prince was not bound by the law, but that he acted within the constraints of the law by his very position of being a self-motivated and righteous individual, aware of his subordinate status, whose actions were governed by nothing more than his love of justice. In this sense he was simultaneously unbound and yet subject to the law, as his subjection was voluntary and not coerced.[17]

A. ii. King knowing law

John recommended that the prince had to be knowledgeable in the law. He suggested that the prince should read the law daily, and have advisors to clarify sections of the law which were unclear. In *Policraticus*, Chapter 6 of Book IV, John wrote:

[15] 4.2, Dickinson, 7; Webb, i, 238: "Princeps tamen legis nexibus dicitur absolutus, non quia ei iniqua liceant, sed quia is esse debet, qui non timore penae sed amore iustitiae aequitatem colat."
[16] 4.1, Dickinson, 5; Keats-Rohan, 233: "de iuris auctoritate principis pendet auctoritas, et reuera maius imperio est submittere legibus principatum, ut nichil sibi princeps licere opinetur quod a iustitiae aequitate discordet."
[17] R. W. Dyson, *Normative theories of society and government in five medieval thinkers: St Augustine, John of Salisbury, Giles of Rome, St Thomas Aquinas and Marsilius of Padua*, New York, 2003, 133.

> Observe how great should be the diligence of the prince in keeping the law of God. He is enjoined always to have it, read it, and turn it over in his mind, even as the King of kings, born of woman, born under the law, fulfilled the whole justice of the law, though He was subject to it not of necessity but of His own free will; because His will was embodied in the law, and on the law of God He meditated day and night.[18]

This is very similar to a passage in Deuteronomy itself, chapter 17, verses 18-19. John continued to explain that the prince must read the law every day in order to maintain proficiency and knowledge: "It is of little profit to have the law in one's wallet if it is not faithfully treasured in the soul."[19] Furthermore, the importance of respect for and trust in the law was paramount, in order that justice could be achieved. All those involved with the process of law and the dispensation of justice were to respect the law fully, and to accept that their position was not to be taken lightly nor abused. (See Chapter Four.)

In Book IV, chapter 2 John wrote: "Princes should not deem that it detracts from their princely dignity to believe that the enactments of their own justice are not to be preferred to the justice of God, whose justice is an everlasting justice, and His law is equity."[20] John was reminding the prince that the justice and law of God were superior to and preferable over the law of man. The prince's role was the carrying out of God's justice.

[18] 4.6, Dickinson, 25-26; Keats-Rohan, 248-249: "Attende quanta debeat esse diligentia principis in lege Domini custodienda, qui eam semper habere, legere praecipitur et reuoluere, sicut Rex regum, factus ex muliere factus sub lege, omnem impleuit iustitiam legis, ei non necessitate sed uoluntate subiectus; quia in lege uoluntas eius, et in lege Domini meditatus est die ac nocte."

[19] 4.6, Dickinson, 27; Keats-Rohan, 250-251: "Legem siquidem habere in mantica parum prodest, nisi fideliter custodiatur in anima."

[20] 4.2, Dickinson, 6; Keats-Rohan, 234: "Nec in eo sibi principes detrahi arbitrentur, nisi iustitiae suae statuta praeferenda crediderint iustitiae Dei, cuius iustitia iustitia in aeuum est et lex eius aequitas."

A. iii. King keeping law

In Chapter 8 of Book IV of the *Policraticus* John wrote: "For while justice is one thing and godliness another, still both are so necessary to the prince ... Therefore he must ceaselessly meditate wisdom, that by its aid he may do it justice, without the law of mercy being ever absent from his tongue: and so temper mercy with the strictness of justice that his tongue speaks nought save judgment."[21] John demonstrated the importance of mercy within the administration of the law. One of the earliest senses of the word mercy in Old French was that of pity, grace and discretionary judgement. Furthermore, the sense of the word suggested compassion and forgiveness by God to sinful humanity.[22] Being merciful was of course not the same as being just. Equity for John might have had this sense of merciful law. (See Chapter One.) One of the themes of the letters of Ivo and of his *Prologus* was mercy and justice; this was key to the saving of one's soul, and thus for Ivo the guiding principle of canon law.[23]

To offer examples of how the prince should behave, John praised specific emperors for their love of justice:

> What manner of men Justinian and Leo[24] were is clear from the fact that by disclosing and proclaiming the most sacred laws, they sought to consecrate the whole world as a temple of justice. What shall I say of Theodosius, whom these emperors regarded as a model of virtue, and whom the Church of God has revered not only as an emperor but as a high priest?[25]

[21] 4.8, Dickinson, 40; Keats-Rohan, 261: "Alterum namque iustitiae, alterum pietatis est, quae adeo principi necessariae sunt ... Meditatur ergo iugiter sapientiam et de ea sic iustitiam operatur quod lex clementiae semper est in lingua eius. Et sic clementiam temperat rigore iustitiae quod lingua eius iudicium loquitur."
[22] See J. P. Collas, ed. and tr., *Year Book 12 Edward II*, vol. 81 Selden Society, 1964.
[23] Rolker, *Canon Law*, 168.
[24] Byzantine emperor, d. 474, notable for legislating in Greek, rather than Latin.
[25] 4.6, Dickinson, 27; Keats-Rohan, 250: "Iustinianus et Leo qui fuerint ex eo claret quod totum orbem sacratissimis legibus enucleatis quasi quoddam templum iustitiae sacrare studuerunt. Nam de

These emperors were model secular rulers; they saw the importance of justice and the importance of their role in enacting this. Justinian and Leo were proponents of divine law and sought its promulgation throughout their realms, while Theodosius humbled himself next to priests, understanding the superiority of the spiritual over the secular.

These model emperors also saw the importance of liberty and virtue. A just prince would not quash liberty, which, John argued, was the motivating factor for good princes. Those who interpreted the law knew that good laws had been created for the sake of liberty. Liberty for John was being able to judge all things freely and in accordance with good morals and was closely associated with virtue. He believed that good laws were introduced for the sake of liberty.[26] Conversely, it was this liberty which allowed man to sin, and which resulted in the need for the prince to execute punishment: "the liberty to commit crimes is what preserves the power of kings, hated though they may be, and the measure of the sword, sufficiently applied."[27]

Although the prince was needed to enact punishment of crimes, John argued that the prince would not rule over the people; rather God would, with the prince carrying out justice using the governance of the law.[28] In Chapter 2 of Book IV of the *Policraticus* John painted a clear and vivid picture of the just prince enforcing the law:

> For as the law pursues guilt without any hatred of persons, so the prince most justly punishes offenders from no motive of wrath but at the behest, and in accordance with the decision, of the passionless law. For although we see the prince has lictors of his own, we must yet think of him as in reality himself

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Theodosio quid dicam, quem isti uirtutis habuerunt exemplar, et ecclesia Dei, ob religionis et iustitiae uenerabilem?"

[26] 7.25, Dickinson, 323-324.

[27] 8.17, Dickinson, 337; Webb, ii, 347: "Libertas scelerum est quae regna inuisa tuetur, sublatusque modus gladii." John was quoting Lucan, *Pharsalia*, viii, 484-495.

[28] 8.20-22.

> the sole or chief lictor, whom it is granted by the law the privilege of striking by a subordinate hand."[29]

The law was without emotion, punishing crimes through the medium of the prince. The prince could not carry out this task with anger, nor hatred; rather he had to implement it through his duty as the just prince. John explained that one who was in a position to administer the law had to do so with a clear head, and with the goal of justice; individuals were not to be victimised; simply, if a law were broken, punishment would follow.

The role of the prince carrying out justice through a passionless law was essential for the greater good, in order to punish sinners for their non-Christian ways. The *populus* had to act in a law-abiding manner or accept the consequence of punishment. Through a love of the greater good and a love of justice, the prince had to overlook the short-term pain of punishing criminals in favour of the long-term aim of a peaceful commonwealth.[30] The internal disposition of the prince was important: he had to ensure that his intentions were benevolent and not driven by unjust motives.[31] His function was vital to ensure that sinners were restrained by force or the threat of force.[32] The prince was required to carry out this task as he was the guardian of the temporal sword, held on behalf of the church as such behaviour was unworthy of

[29] 4.2, Dickinson, 8; Keats-Rohan, 235-236: "Nam sicut lex culpas persequitur sine odio personarum, ita et princeps delinquentes rectissime punit, non aliquo iracundiae motu sed mansuetae legis arbitrio. Nam etsi suos princeps uideatur habere lictores, ipse aut solus aut praecipuus credendus est lictor, cui ferire licitum est per subpositam manum."
[30] J. Ebel, 'Christianity and violence', in *The Blackwell Companion to Religion and Violence*, ed. Andrew R. Murphy, Oxford, 2011, 155.
[31] Ebel, 'Christianity', 158.
[32] See, for example, Augustine, *De civitate Dei*, 21.15, and 19.17. P. Weithman, 'Augustine's political philosophy', in *The Cambridge Companion to Augustine*, eds. David Vincent Meconi and Eleonore Stump, Cambridge, 2014, 238.

those in the priesthood.[33] This idea had been explored by the Church Fathers. Origen, writing in the third century, argued that certain sayings of Jesus forbade killing and fighting and so He had taught a prohibition of violence for Christians.[34] For Origen, Christians were the worshippers of the one True God and had to keep their hands undefiled.[35] Furthermore, to partake of the Eucharist was to partake of the body of Christ, and it was unbecoming of those who shared the table with Christ to commit violence against each other.[36]

John of Salisbury believed that the prince held the temporal sword, having received from the sacerdotal hands the power to wield it, whilst the overriding authority remained with the priesthood. The prince was therefore the "executioner" and the suppressor and punisher of evil on behalf of the priesthood. John saw the prince as the minister, servant or attendant of the church: "the prince is then, as it were, a minister of the priestly power, and one who exercises that side of the sacred offices which seems unworthy of the hands of the priesthood" and: "that is inferior which consists in punishing crimes."[37] Kuehn has argued that although John saw the Church as superior to the temporal power, it was too secure in its dignity to be bothered by the "indignity" of secular rule. Therefore, while John presented a hierocratic view in

[33] For discussion of the 'two swords' theory, see Chapter Four.
[34] Origen took this to mean that Christians could not serve in the army, see Origen, *Contra Celsum*, 3.7; 7.26.
[35] Origen, *Contra Celsum*, 8.73.
[36] See Origen, *Homilies on the Psalms*, 37 2.6.46-48 and *Series of Commentaries on Matthew*, 82.F. Ledegang, 'Eucharist' in *The Westminster Handbook to Origen*, ed. John Anthony McGuckin, Louisville, Ky., 2004, 97. Tertullian, in *De Idolatria*, condemned both the waging of war and serving in a peace-time army; Tertullian, *De Idololatria*. 18.8; 19.1 ff.

[37] 4.3, Dickinson, 9; Webb, i, 239: "Est ergo princeps sacerdotii quidem minister et qui sacrorum officiorum illam partem exercet quae sacerdotii manibus uidetur indigna" and "illud tamen inferius, quod in penis criminum exercetur ".

theory, in reality, on a practical level, the relationship was more balanced, more or less Gelasian.[38]

Dyson argued that for John it was the willing subordination of personal acts to the sovereignty of the law which made it legitimate for the prince to punish crimes himself and perform what would otherwise be acts of criminal violence. The prince was therefore able to shed blood innocently, and wield the sword without anger or passion.[39] In *Policraticus* Book IV, Chapter 2, John wrote of the position of the prince: "not without reason he bears a sword, with which blood is shed innocently without becoming thereby a man of blood, so that he may frequently put men to death and not incur the accusation of murder or crime."[40]

A. iv. King as protector

The monarch acted as the public executioner through the love of justice, and the love of God. According to Augustine, princes were needed to rule over both those who sinned and those who did not in order to maintain peace and goodness.[41] John agreed with Augustine that the prince was vital for maintaining peace. In the *Entheticus Minor* John noted that the prince "fosters laws, he upholds peace, he establishes calm, / he quells the vaunting enemies with heart and hand; / but whether the laws call him, or

[38] Evan F. Kuehn, 'Melchizedek as Exemplar for Kingship in Twelfth-Century Political Thought', *History of Political Thought*, Vol. 31, No. 4 (2010), 568.
[39] Dyson, *Normative theories*, 134.

[40] 4.2, Dickinson, 8; Webb, i, 238: "Non ergo sine causa gladium portat, quo innocentur sanguinem fundit, ut tamen uir sanguinum non sit, et homines frequenter occidat, ut non incurrat nomen homicidii uel reatum".
[41] Augustine, *De civitate Dei*, 4.33.

his sword gleam against enemies, / he does nothing but holy things, he approves nothing but holy things."[42]

The Golden Rule was an important tenet in maintaining the peace and stability of any society. This was a fundamental teaching of the church. It would have acted as a deterrent to immoral behaviour and revolt. John highlighted the importance of the Golden Rule in Book IV, chapter 7 of the *Policraticus*. This was absolute, the natural law. The Golden Rule of "do unto others what you would have done unto you" was a teaching of Jesus Christ and found in the Gospels of Matthew, 7:12, and Luke, 6:31. This can also be found in the Old Testament teaching of "love thy neighbour as thyself", in Leviticus 19:18. This is repeated in the New Testament in Romans 13:9 and Galatians 5:14. Note then, the importance of both the Old and the New Testaments for the dissemination of this view. No one could ignore this Golden Rule, and no one could claim ignorance of its existence or importance. This was linked with the *lex Christi*, and the idea that one had to love as Christ loved, and that love was the fulfilment of the law. The ideas of the *lex Christi*, such as 'turn the other cheek', combined with the ideas of the Golden Rule compelled members of society to behave in a morally-acceptable manner, and to work together for the purpose of the common good.

[42] *Entheticus*, 234-235: "Iura colit, pacem statuit, fundatque quietem, / et tumidos hostes mente manuque domat; / sed seu iura vocent seu fulminet ensis in hostes, / non nisi sancta gerit, non nisi sancta probat."

A. v. Positive law

Obedience to the prince was in the interest of public safety and societal stability; civil unrest was dangerous. Furthermore, it was a Christian's duty to submit to government as it was God's will; Augustine believed that the people should submit even to the cruel and wicked ruler.[43] Therefore, laws which were promulgated by the prince had to be obeyed by all citizens. Conflict arose, however, when this positive law ran counter to divine law, custom and natural law.[44] Cicero had written in the *Republic* that the true law was "right reason," which was in accordance with nature and which was applicable to all men, it was unchangeable and it was eternal. This law was a guiding force for people performing their duty for the common good and it prevented them from committing wrong. Cicero wrote that: "it is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish entirely. We cannot be freed from its obligations by senate or people."[45]

Although Augustine believed in the duty to follow a cruel ruler, he was also of the opinion that there could be no law which was not just.[46] Laws which were unjust were a contradiction in terms; they went against the law of God, were impious and

[43] Dyson, *Normative theories*, 41-44; See Augustine *Expositio quarumdam propositionum ex epistula ad Romanos*, 72.

[44] According to John Austin: "Every positive law or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme. Or it is set by a monarch, or sovereign number, to a person or persons in a state of subjection to its author". *The province of jurisprudence determined, and The uses of the study of jurisprudence***,** London, 1954, 9, 132, 193, 253-254, 350. Austin does not directly say here that positive law is imposed by sovereigns on the subjects, but that seems to be his intent – see James Bernard Murphy, *The Philosophy of Positive Law, Foundations of Jurisprudence*, New Haven, 2005, 173-174.

[45] Cicero, *Republic*, iii, 33, xxii, tr. Keyes, 211. For a discussion of the moral obligation to obey positive laws which are not underwritten by natural law see Richard A. Posner, *The Problems of Jurisprudence*, Cambridge, Mass., 1990, 234 ff.

[46] Augustine, *De libero arbitrio*, I. v. 1.

Christians had to resist them, and were justified in such disobedience.[47] Just as the obligation to obey the prince was a matter of religious duty, so the obligation to disobedience in such cases was equally binding.[48] Unlawful commands could therefore be ignored.[49] Augustine also suggested that if the prince commanded worship of false gods this must not be obeyed, not for a lack of acknowledgement of his authority (God's appointment of ruler should not be questioned), but because both the people and the prince were bound to acknowledge an authority higher than his.[50]

According to Ullmann, John of Salisbury advocated that when law was created by the prince, the priesthood needed to be given a hearing, because they alone were qualified to pronounce upon the essential ingredient of the law. For John, law could be none other than a rule of conduct based upon the Christian faith, and thus only the priesthood was qualified to say whether a proposed legal measure was in consonance with the faith or not.[51] In *Policraticus* Book IV, Chapter 2, John wrote that the prince did not have free will except when it was prompted by law or equity or in order to bring about judgements for the common good.[52] John was of the opinion that the entire purpose of the law was religious and godly. As the prince was subject to the law of God of his own volition, by logical extension, this meant that the prince could not create legislation which went against His divine law. In *Policraticus* Book IV, chapter 4,

[47] See Dyson, *Normative theories*, 41-44.
[48] Austin argued that if human commands conflict with divine law, the command enforced by the less powerful sanction ought to be disobeyed; see Austin, *Province of Jurisprudence*, 184. See also Murphy, *Philosophy of Positive Law*, 200f. Kelsen argued that: "the coexistence of a natural and a positive law as two different systems of norms is logically excluded ... If the norms of positive law contradict the norms of natural law, the former must be considered unjust." Hans Kelsen, *General Theory of Law and State*, tr. Anders Wedberg, New York, 1961, 411-412.
[49] Dyson, *Normative theories*, 41-44. Augustine, *Sermo* 62:5:8-10:15.

[50] Augustine, *Sermo*, 62:13.
[51] Ullmann, *A History of Political Thought*, 122.
[52] 4.2, Dickinson, 7; Webb, i, 238.

John wrote that the prince had to "keep His words," which were "prescribed in the law."[53] John also included "words of the great Theodosius": "if thou [the prince] dost bid and decree that aught is to be commonly observed, first obey thy decree thyself."[54] If the prince had to obey the law of God, and he had to obey his own laws, then it is certain that John of Salisbury would have thought that any legislation which went against the divine law was not a valid law.

John may have been influenced in his thinking by Gratian. In the *Decretum*, it was written that natural law was God's law, canon law was divine law, and therefore divine laws were consonant with nature;

> Clearly, then, whatever is contrary to the divine will or canonical scripture is also found to be opposed to natural law. Whence, whatever is shown to be subordinate to the divine will, or canonical scripture, or divine laws, then it is subordinate to natural law too. So both ecclesiastical and secular enactments are to be rejected entirely if they are contrary to natural law.[55]

John, in the *Policraticus*, wrote: "all censures of law are void if they do not bear the image of the divine law; and the ordinance of the prince is useless if it does not conform to the ecclesiastical discipline."[56]

For John of Salisbury, if the prince were to disregard the law of God, he would no longer be considered a prince, but rather, a tyrant. In the *Entheticus*, John wrote: "divine law is the only mistress of life for good men, / not the rites of the ancients which are wanting in reason. / may you endeavour, ever watchful, to observe this with

[53] 4.4, Dickinson, 16; Webb, i, 245: "custodire uerba" and "in lege praecepta sunt".
[54] 4.4, Dickinson, 18; Webb, i, 246: "In commune iubes si quid censesue tenendum, primus iussa subi". This was taken from Claudian, *De IV Consulatu Honorii*, 296-302.
[55] Gratian, *Decretum*, D. 9, c. 11.
[56] 4. 6, Dickinson, 24-25; Keats-Rohan, 248: "Omnium legum inanis est censura si non diuinae legis imaginem gerat, et inutilis est constitutio principis si non est ecclesiasticae disciplinae conformis."

constant care, / for itself also serves its observers. / Human law, if it is contrary to God's law, / condemns its author. It perishes, while he perishes."[57]

B. Lawless King

John's discussion of tyranny has attracted the attention of historians. Webb, for example, saw that John's doctrine of tyrannicide was the natural end point of the republican rhetoric found in Classical writing.[58] Liebeschütz argued that John was reflecting on the recent events of the Anarchy of King Stephen's reign, when nobles, mercenaries and the king himself had at times ignored the rule of law for their own aggrandisement.[59]

John believed that a tyrant was a ruler who exercised power in an oppressive, cruel or unjust manner. A tyrannical king has been described as the perversion of a Christian king, being one who ruled in the opposite fashion in which a Christian king was meant to govern.[60] John of Salisbury believed that anyone who held temporal or ecclesiastical power and did not respect justice was a tyrant as their authority and power was being misused.[61] The distinction between a prince and a tyrant came from Isidore,[62] coming to him from Augustine, in turn coming from Cicero. Augustine argued that when a king was unjust, he was a tyrant.[63] In *The Republic* Cicero wrote

[57] *Entheticus*, part iii, section u, par. 98 : "Lex divina bonis vivendi sola magistra, / non veterum ritus, qui ratione carent. / Pervigil hanc studeas cura servare perenni. / nam servatores servant et ipsa suos. / Lex humana, Dei si sit contraria legi, / auctorem damnat, quo pereunte perit."
[58] C. C. J. Webb, *John of Salisbury*, London, 1932, 66.
[59] Hans Liebeschütz, *Medieval Humanism in the Life and Writings of John of Salisbury*, Nendeln, 1968, 52f.
[60] Ullmann, *A History of Political Thought*, 123.
[61] 8.17, Dickinson, 338. Webb, ii, 347.
[62] Isidore, *Etymologies*, ix, iii, 19.
[63] Augustine, *De civitate Dei*, 2.21.

that: "when the king begins to be unjust, that form of government is immediately at an end, and the king has become a tyrant."[64] Cicero observed that the origin of the tyrant lay in the description given by the Greeks to an unjust king.[65]

John wrote that "A tyrant, then ... is one who oppresses the people by rulership based upon force, while he who rules in accordance with the laws is a prince."[66] John argued that if law were assailed by force or undermined by wiles, then it would be as though God Himself was being challenged. A prince was supportive of the laws and protected his people through the power of law. A tyrant, on the other hand, acted in subversion to the law, without adherence to the law and enslaved his people through transgression.

By subverting and oppressing laws, the tyrant undermined the coercive power of law as a means of guiding individuals towards the common good. Moreover, a tyrant was one who acted unjustly against the common good of the *res publica* in order to achieve his own self-interest.[67] In Book IV, Chapter 1 of the *Policraticus* John wrote: "Between a tyrant and a prince, there is this single or chief difference, that the latter obeys the law and rules the people by its dictates, accounting himself as but their servant. It is by virtue of the law that he makes good his claim to the foremost and chief place in the management of the affairs of the commonwealth and in the bearing of its burdens."[68]

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[64] Cicero, *Republic*, I. xlii, 65, tr. Keyes, 97.

[65] Cicero, *Republic*, II. xxvii, 49.

[66] 8.17, Dickinson, 335-336; Webb, ii, 345: "Est ergo tirannus … qui uiolenta dominatione populum premit, sicut qui legibus regit princeps est."

[67] See also Thomas Aquinas, *De regimine principum*, I.3; also Giles of Rome, who argued that self interest was the position of the tyrant, *De regimine principum*, I.i.3.

[68] 4.1, Dickinson, 3; Keats-Rohan, 231-232: "Est ergo tiranni et principis haec differentia sola uel maxima quod hic legi obtemperat et eius arbitrio populum regit cuius se credit ministrum, et in rei publicae muneribus exercendis et oneribus subeundis legis beneficio sibi primum uendicat locum."

John supported his portrait of a tyrant by referencing Justinian: "To quote the words of the Emperor, 'it is indeed a saying worthy of the majesty of royalty that the prince acknowledges himself bound by the Laws'.[69] For the authority of the prince depends on the authority of justice and law."[70] John saw that the law was a gift of God, the model of equity and a standard of justice;[71] this was the traditional view for a Christian political theorist.

B. ii. Lawless Lord

John's definition of a tyrant as one who abused his position of power by disregarding the law was not limited to the prince; it could apply to anyone in a position of authority over another. In Book VIII, Chapter 17 of the *Policraticus*, John stated that a private lord could be a tyrant: "it is not only kings who practice tyranny; among private men there are a host of tyrants, since the power which they have, they turn to some forbidden object."[72] This was related to the idea of the common good, and, as Gratian had included in his *Decretum*, the common good was superior to that of the individual: "the benefit of several people should be preferred to the benefit or the will of a single person."[73]

Tyranny was not only the preserve of private lords, in the *Historia Pontificalis*, John described the pope acting in the manner of a tyrant, when he discussed Arnold of

[69] Justinian, *Code*, I, 14, § 4.
[70] 4.1, Dickinson, 5; Keats-Rohan, 233: "Digna siquidem uox est, ut ait Imperator, maiestate regnantis se legibus alligatum principem profiteri, quia de iuris auctoritate principis pendet auctoritas."
[71] 8.17.
[72] 8.17, Dickinson, 336; Webb, ii, 346: "Et quidem non soli reges tirannidem exercent; priuatorum plurimi tiranni sunt, dum id uirium quod habent in uetitum efferunt."
[73] Gratian, *Decretum*, C 7, q 1, c. 35.

Brescia's views on Pope Eugenius III.[74] Arnold was an outspoken rebel and a critic of the wealth, corruption and abuse of power of the papacy. His denunciation of Eugenius quoted by John was probably a result of the pope's attack on Rome in 1149. Arnold did not directly use the word 'tyrant', but he did suggest that the actions of the pontiff oppressed the innocent and that he sought his own material gratification. John included the account of the pope's behaviour:

> The pope himself was not what he professed to be – an apostolic man and shepherd of souls – but a man of blood who maintained his authority by fire and sword, a tormentor of churches and oppressor of the innocent, who did nothing in the world save gratify his flesh and empty other men's coffers to fill his own ... wherefore neither obedience nor reverence was due to him.[75]

It might appear that by including this account, John was questioning ideas of papal infallibility. It would seem more likely, however, that he was giving a critique of papal authority. Through the *Historia Pontificalis* John gave a balanced view of Eugenius III, at times illustrating the pope's spiritual devotion and his sincerity, while also demonstrating his obstinacy, his suspicious nature and his reliance upon his own judgement.[76] John was critical of the papacy's failed attack on Rome in 1149, when Eugenius used Sicilian troops with the papal militia. John wrote that: "the fighting was unsuccessful. The church merely incurred in the heaviest expenses to little or no

[74] For Arnold of Brescia see G. W. Greenaway, *Arnold of Brescia*, New York, 1978; see also Preface to the *Historia Pontificalis* by R. L. Poole.
[75] *HP*, 65: "Ipsum papam non esse quod profitetur, apostolicum uirum et animarum pastorem, sed uirum sanguinum qui incendiis et homicidiis prestat auctoritatem, tortorem ecclesiarum, innocentie concussorem, qui nichil aliud facit in mundo quam carnem pascere et suos replere loculos et exhaurire alienos ... ideo ei obedientiam aut reuerentiam non deberi."
[76] E.g. *HP*, xli, 80-82 and xxi, 50-51.

purpose."[77] John's inclusion of this account addressed the possibility that any person in a position of power could become a tyrant.

B. iii. To Kill a Tyrant?

The question of how to deal with a tyrant vexed John of Salisbury. He appeared to propose within the *Policraticus* that it might be necessary to kill a tyrant, while placing caveats on such a course of action, and stressing that it was necessary to suffer tyranny and trust that God would protect the people. John thought that anyone who used his office to harass individuals, or who acted contrary to his position must be punished harshly for it. In Book VI, Chapter 1 of the *Policraticus* John wrote: "who is more unjust than one who with the words of justice condemns justice, and with the weapons of innocence despoils, wounds, and slays the innocent? By law he utterly annihilates the law, and while he impels others to keep the law, he is himself an outlaw."[78] A person in a position of authority within the law would not necessarily be afraid of that law in the same way as, say, a would-be thief who might be dissuaded from stealing for fear of being punished. Those in authority could be tempted into using their standing to abuse their position and debase the law. This raises the question of whether it is better for a ruler to be loved or feared. God is both loved and feared. This is essential if law is to be observed; John wrote, quoting from the Book of Malachi: "'If I am Lord, where is my fear? If I am father, where is my love?' Also the

[77] *HP*, xxvii, 60.
[78] 6.1, Dickinson, 174-175; Webb, ii, 4: "Quis eo iniquior, qui uerbis iustitiae iustitiam dampnat, et armis innocentiae spoliat, uulnerat, occidit innocentes? Lege utique legem perimit et, dum alios urget ad legem, exlex est."

words of the law are to be kept."[79] All had to obey the law of God, or face the consequences. Coercion and force are essential if law is to be effective. When discussing the prince as the one through whom justice was enacted, John wrote: "the prince is feared by each of those over whom he is set as an object of fear. And this I do not think could be except as a result of the will of God. For all power is from the Lord."

In *Entheticus Maior* John explained that under a tyrant, "The laws are void, abuse subverts the sacred laws, / they decree that their will should take the place of law."[80] By acting tyrannically, a prince was acting not only outside but also against the law. John argued that such abuse of power and subversion of the law should be opposed. Book VIII, Chapter 17 of *Policraticus* stated that: "The prince, as the likeness of the Deity, is to be loved, worshipped and cherished; the tyrant, the likeness of wickedness, is generally even to be killed. The origin of tyranny is iniquity and springing from a poisonous root, it is a tree which grows and sprouts into a baleful pestilent growth, and to which the axe must by all means be laid."[81] It would appear that John was proposing that the correct course of action for those who found themselves living under a tyrant was to commit tyrannicide. Of the necessity to kill a tyrant, John wrote:

> it is lawful to flatter him whom it is lawful to slay. Further it is not merely lawful to slay a tyrant but even right and just. He that taketh the sword is worthy of perishing with the sword ... Especially is he who receives his power from God the slave of the laws and the servant of right and justice; but he who usurps power oppresses justice, and makes the laws slaves to his own will. Therefore it is fitting that justice arm herself against him

[79] 4.7, Dickinson, 33; Webb, i, 258: "Si ego, inquit, dominus sum, ubi est timor meus? si pater sum, ubi est amor meus? Verba quoque legis custodienda sunt"; Malachi, 1:6.
[80] *Entheticus*, Part III, 192-193: "Iura vacant, sacras leges evertit abusus, / velle suum statuunt iuris habere locum."
[81] 8.17, Dickinson, 336; Webb, ii, 345-346: "Imago deitatis, princeps amandus uenerandus est et colendus; tirannus, prauitatis imago, plerumque etiam occidendus. Origo tiranni iniquitas est et de radice toxicata mala et pestifera germinat et pullulat arbor securi qualibet succidenda."

> who disarms the laws, and that the power of the commonwealth treat him with severity who strives to palsy the hand of the state. Though treason takes many forms there is none more deadly than that which is aimed against the body of justice. The whole commonwealth has a case against tyrants, and were it possible, even more than the whole state.[82]

John therefore argued that not only was it lawful to kill a tyrant, but it was the right and just thing to do for the good of the commonwealth. Cicero in *De officiis* wrote that it was not only lawful to slay a tyrant, but right and just, owing to the fact that the people have no ties of fellowship to the tyrant, and that such an abomination should be exterminated.[83] It is most likely that John took this idea directly from *De officiis*, as it is known that he possessed a copy of the treatise, which he bequeathed to the library at Chartres, and which Hermand-Schebat has argued was a work that doubtless constituted his principle source of access to Cicero's philosophy.[84]

Although John had argued for tyrannicide, in practical terms, however, things were more complicated:

> The histories teach, however, that none should undertake the death of a tyrant who is bound to him by an oath or by the obligation of fealty ... But as for the use of poison, although I see it sometimes wrongfully adopted by infidels, I do not read that it is ever permitted by any law.[85] Not that I do not believe

[82] 3.15, Pike, 211-212; Keats-Rohan, 230: "Ei namque licet adulari quem licet occidere. Porro tirannum occidere non modo licitum est sed aequum et iustum. Qui enim gladium accipit, gladio dignus est interire … Vtique qui a Deo potestatem accipit, legibus seruit et iustitiae et iuris famulus est. Qui uero eam usurpat, iura deprimit et uoluntati suae leges submittit. In eum ergo merito armantur iura qui leges exarmat, et publica potestas saeuit in eum qui euacuare nititur publicam manum. Et cum multa sint crimina maiestatis, nullum grauius est eo quod aduersus ipsum corpus iustitiae exercetur. Tirannis ergo non modo publicum crimen sed, si fieri posset, plus quam publicum est."

[83] Cicero, *De officiis*, III, vi, 32. In the *Republic*, I, xlii, Cicero wrote that if a king has become a tyrant, then this is the worst sort of government and it is usually overthrown.

[84] Laure Hermand-Schebat, 'John of Salisbury and Classical Antiquity', in *A Companion*, 197; see Frederique Lachaud, *L'Ethique du pouvoir au Moyen Age. L'office dans la culture politique (Angleterre, vers 1150-vers 1330)*, Paris, 2012, 179-186.

[85] That John described poisoning as not permissible by any law he had read is of interest. It could suggest that John had read through texts trying to find mention of law to support his case, but he did

> that tyrants ought to be removed from our midst, but it should be done without loss of religion or honour.[86]

The laws against poison were ancient; the administering of poison was seen as closely related to witchcraft and killing by poison had been treated by the Romans as a special kind of murder, at least as far back as Sulla's *Lex de sicariis et veneficis*, from *c.*81 BC.[87] That no one who was bound by an oath to the tyrant could kill him was as a result of such pledges being private covenants vouchsafed before God Himself and did not depend upon other considerations for their performance. One was as bound to keep a promise to a good man as to a bad man. This was a principle promise consistent with justice.[88]

If the one who committed tyrannicide could not do so via the medium of poison, nor could they act if bound by an oath of fealty to the tyrant, then tyrannicide became a difficult prospect. Strickland has pointed out, however, that the high incidence of revolt in the eleventh and twelfth centuries demonstrated that there were many who did not scruple to violate the bonds of homage and fealty.[89] Pollock and Maitland believed that until the Statue of Treason, 1352, levying arms against the king did not constitute treason because homage was both contractual and revocable by the

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not mention which works he had contemplated. Equally, it could have simply been a turn of phrase, suggesting John had never encountered this in anything he had read.

[86] 8.20, Dickinson, 372-373; Webb, ii, 377-378: "Hoc tamen cauendum docent historiae, ne quis illius moliatur interitum cui fidei aut sacramenti religione tenetur astrictus … Sed nec ueneni, licet uideam ab infidelibus aliquando usurpatam, ullo umquam iure indultam lego licentiam. Non quod tirannos de medio tollendos esse non credam sed sine religionis honestatisque dispendio."

[87] O. F. Robinson, 'Unpardonable Crimes: Fourth Century Attitudes', in *Critical Studies in Ancient Law, Comparative Law and Legal History: Essays in Honour of Alan Watson*, eds. John Cairns and Olivia Robinson, Oxford, 2001, 123.

[88] Cary J. Nederman, 'John of Salisbury's Political Theory', in *A Companion*, 286.

[89] Matthew Strickland, 'Against the Lord's anointed: aspects of warfare and baronial rebellion in England and Normandy, 1075-1265', in *Law and Government in Medieval England and Normandy, Essays in honour of Sir James Holt*, eds. George Garnett and John Hudson, Cambridge, 1994, 71.

defiance, or *diffidatio*.[90] Gillingham, on the other hand, argued that rebellion was always treason.[91] Joseph Canning has concluded that John of Salisbury's discussion of tyrannicide was so full of caveats that it is difficult to see that he was actually purporting it to be a potential course of action.[92] Thus, tyrannicide was, arguably, not a practical option.

The title of Chapter 20, Book VIII, is "That by the authority of the divine page it is a lawful and glorious act to slay public tyrants, provided that the slayer is not bound by fealty to the tyrant, or does not for some other reason sacrifice justice and honour thereby."[93] This title contained the key contradictions which make it impossible for anybody to lawfully kill a tyrant, in spite of the opening words about it being lawful. Jan van Laarhoven has observed that in this chapter John described how David had many chances to kill the tyrant Saul but chose not to.[94] Rather, John suggested that: "surely the method of destroying tyrants which is the most useful and the safest, is for those who are oppressed to take refuge humbly in the protection of God's mercy."[95]

B. iv. To Endure a Tyrant?

It was perhaps, then, more practical to endure a tyrant. John believed that moderation was the essence of virtue, whereas excess was a fault always to be

[90] Frederick Pollock and Frederic William Maitland, *The History of English Law before the time of Edward I*, vol. ii, 2nd edition, Cambridge, 1898, 505.
[91] John Gillingham, '1066 and the introduction of chivalry into England', in *Law and Government*, eds. Garnett and Hudson, Cambridge, 1994, 47; see Strickland, *War and Chivalry*, 231-240.
[92] Joseph Canning, *A History of Medieval Political Thought, 300-1450*, London, 1996, 113.

[93] 8.20, Dickinson, 367; Webb, ii, 372: "Quod auctoritate diuinae paginae licitum et gloriosum est publicos tirannos occidere, si tamen fidelitate non sit tiranno obnoxius interfector aut alias iustituam aut honestatem non amittat".
[94] Jan van Laarhoven, 'Thou shalt NOT slay a tyrant!', in *The World*, 326.
[95] 8.20, Dickinson, 373; Webb, ii, 378: "Et hic quidem modus delendi tirannos utilissimus et tutissimus est, si qui premuntur ad patrocinium clementiae Dei humiliati confugiant".

avoided. This policy of moderation reflected his overall philosophy.[96] (See Chapter Four.) With his outlook of restraint, it was unlikely that John would have advocated tyrannicide in practice. Enduring a tyrant and trusting in God was not a viewpoint novel to John of Salisbury. Isidore saw that the constraint upon a prince to act with the right behaviour, and therefore to act within the law, was solely a moral one and that a tyrant was to be endured.[97] Gregory of Catino, writing *c.*1111 in the name of the monks of Farfa, suggested that royal or imperial authority could not be condemned nor overthrown by any man; rather the authority of both the Old and New Testaments showed that rulers had to be endured rather than condemned. Gregory stated that the Bible was the authority which could not be ignored.[98] John of Salisbury's analysis was however more complex than what had gone before.

In Book VIII, Chapter 18 of the *Policraticus* John had stressed that despite tyrannical behaviour and the abuse of power which was entrusted to man by God, nevertheless a tyrant did hold that power from God, no matter how tenuously. John wrote: "I do not, however, deny that tyrants are the ministers of God."[99] In the same chapter John continued:

> all power is good since it is from Him from whom alone are all things and from whom cometh only good.[100] But at times it may not be good, but rather evil, to the particular individual who exercises it or to him on whom it is exercised, though it is good from the universal standpoint, being the act of Him who uses our ills for His own good purposes ... Therefore even the

[96] Rouse and Rouse, 'Doctrine of tyrannicide', 697.
[97] P. D. King, 'The barbarian kingdoms', in *Cambridge History of Medieval Political Thought*, 143; Isidore, *Sententiae*, III, 48, 10-11.
[98] Gregory of Catino, 'Orthodoxa defensio imperialis', 7: "Sanctorum habemus auctoritates plurimorum et in testamento veteri et in nova gratia evangelii, qui magis huiusmodi sufferentes portarunt quam condemnare presumpserunt."
[99] 8.18, Dickinson, 350; Webb, ii, 358: "Ministros Dei tamen tirannos esse non abnego".
[100] Cf. Romans, 13.

> rule of a tyrant, too, is good, although nothing is worse than tyranny.[101]

In Chapter 25 of Book VI John wrote:

> For myself, I am satisfied and persuaded that loyal shoulders should uphold the power of the ruler; and not only do I submit to his power patiently, but with pleasure, so long as it is exercised in subjection to God and follows His ordinances. But on the other hand, if it resists and opposes the divine commandments [i.e. law], and wishes to make me share in the war against God; then with unrestrained voice I answer back that God must be preferred before any man on earth.[102]

John was at this point within the treatise advocating a policy of restraint and non-violence. By enduring a tyrant and not taking their own action, the people would be following the path to the lesser evil – deposing and killing a tyrant could endanger stability and thus result in greater danger to life than would the tyranny itself. Furthermore, such radical action could endanger obedience to authority in general and set a precedent for private resort to violence of a sort that would be highly detrimental to peace and the common good.[103] John also gave the example of the tyrant Dionisius who was a greater tyrant that the one who had been slain before him, who in turn was worse than the previous tyrant who had been slain before him.[104] This was surely a cautionary note warning that a tyrant who was deposed could be succeeded by one who was worse.

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[101] 8.18, Dickinson, 351; Webb, ii, 359: "Omnis autem potestas bona, quoniam ab eo est a quo solo omnia et sola sunt bona. Vtenti tamen interdum bona non est aut patienti sed mala, licet quod ad uniuersitatem sit bona, illo faciente qui bene utitur malis nostris … Ergo et tiranni potestas bona quidem est, tirannide tamen nichil est peius."

[102] 6.25, Dickinson, 258; Webb, ii, 73: "Michi uero satisfactum est et persuasus sum deuotos humeros supponere potestati; nec modo fero eam sed grata est dum Deo subiecta est et illius ordinem sequitur. Alioquin, si diuinis reluctetur mandatis et me theomachiae suae uelit esse participem, libera uoce respondeo Deum cuiuis homini praeferendum."

[103] 'John of Salisbury, (*ca*.1120-1180) The Challenge of Tyranny', *The Ethics of War, Classic and Contemporary Readings*, eds. Gregory M. Reichberg, Henrik Syse and Endre Begby, Oxford, 2006, 382.

Not only was there a risk of a worse tyrant following a tyrannicide, but the people needed a ruler to offer guidance. In Book V, Chapter 7 of the *Policraticus*, John wrote: "For it is written 'Where there is no ruler, the people will fall'".[105] John believed that a ruler was necessary for the people to be kept in line with the law. Considering this statement within the context of John discussing tyrants, it would seem that despite theoretical notions of tyrannicide, it might be preferable to be ruled by a tyrant rather than no ruler at all. Even though a tyrant would abuse the law for his own ends and enslave his subjects, it did not necessarily follow that the subjects would themselves break the law. Conversely, if there were no ruler, the people would succumb to breaking the law.

Not only was it safer to endure a tyrant to maintain public order, but a tyrannical ruler was seen as part of God's plan for the universe. God's subjection of the people to tyranny might have been determined by Him as a punishment for the wrong-doings of the citizens: "for it is not the ruler's own act when his will is turned to cruelty against his subjects, but it is rather the dispensation of God for His good pleasure to punish or chasten them."[106] John used the well-known figure of Attila the Hun to illustrate that a tyrant could have been sent as the *flagellum Dei*, the scourge of God. Augustine argued that such a scourge was sent to teach people patient suffering, and was a form of penitence.[107] As a consequence, the tyrant had to be met with submission and acceptance; John wrote, taking a quotation from St Paul's epistle to the Romans:

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[104] 7.25, Dickinson, 329; Webb, ii, 223.
[105] Cf. Proverbs, 11:14.
[106] 4.1, Dickinson, 4; Webb, i, 236: "Neque enim potentis est, cum uult seuire in subditosm sed diuinae dispensationis pro beneplacito suo punire uel exercere subiectos".
[107] Augustine, *De civitate Dei*, 1.8.

"'Who, therefore, resists the ruling power, resists the ordinance of God'[108] in whose hand is the authority of conferring that power, and when He so desires, of withdrawing it again, or diminishing it."[109] God alone was able to decide when and how a tyrant should be quashed.[110] He might, for example, choose to use the forces of nature, to strike a tyrant by a storm or shipwreck. He might choose to send disease,[111] or He might use the agent of a human hand.[112] John used the example of the emperor Julian who persecuted and slaughtered the Christians and who was killed by a lance thrown by Mercurius "at the command of the Blessed Virgin."[113] John also gave the example of David:

> For David, the best of all kings that I have read of, and who, save in the incident of Urias Etheus, walked blamelessly in all things, although he had to endure the most grievous tyrant, and although he often had an opportunity of destroying him, yet preferred to spare him, trusting in the mercy of God, within whose power it was to set him free without sin. He therefore determined to abide in patience until the tyrant should either suffer a change of heart and be visited by God with return of charity, or else should fall in battle, or otherwise meet his end by the just judgment of God.[114]

[108] Romans, 13:2.
[109] 4.1, Dickinson, 4; Webb, i, 236: "Qui ergo resistit potestati, Dei ordinatione resistit, penes quem est auctoritas confederendi eam et, cum uult, auferendi uel minuendi eam".
[110] Bracton took his definition of a tyrant from John of Salisbury. Bracton did not follow John's advice of resistance and regicide, rather Bracton suggested that subjects must trust in God, who would punish the tyrant and annihilate his rule; see F. Schulz, 'Bracton on Kingship', *English Historical Review*, Vol. 60, No. 237 (May, 1945), 153.
[111] 8.18, See Dickinson, 355-366; Webb, ii, 363 f.
[112] The death of King William II of England by an arrow through the heart in a hunting accident may have acted as a warning to tyrants as a possible example of death by a human agent.
[113] 8.21, Dickinson, 377-393; Webb, ii, 381 f.: "mandato beatae Virginis". Strickland wondered whether there may have been a sense in which the immediacy and enormity of physical assault on the king's person was somehow distanced by the use of missile weapons, see Strickland, 'Against the Lord's anointed', 73.
[114] 8.20, Dickinson, 373; Webb, ii, 377-378: "Nam et Dauid, regum quos legerim optimus, et qui excepto sermone Vriae Ethei in omnibus inculpatus incessit, licet tirannum grauissimum sustineret et eum perdendi saepe nactus fuerit occasionem, ei tamen parcere maluit, confisus de misericordia Dei, qui eum sine peccato poterat liberare. Decreuit ergo expectare patienter ut ille uisitaretur a Domino reddita caritate aut in praelio caderet aut alias iusto Dei iudicio moreretur."

David chose to endure the tyrant, for fear of what might replace him, and understanding the tyrants were part of God's plan. God would choose as and when a tyrant would be punished, and this could be through the hand of a human agent chosen by Him. Rouse and Rouse have argued that when John argued for tyrannicide in this manner, that is, through human agency as a result of the will of God, his principle of tyrannicide was at its most convincing. They reasoned that when the doctrine was seen in this perspective, John's self-contradictory position became obvious. Citizens were not empowered to slay tyrants at their own discretion; that power was God's.[115]

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It can be seen, then, that John's discussion of tyranny was complex and contradictory. He used the traditional Classical view when he outlined his portrait of a tyrant in his *Policraticus*. The idea of tyrannicide, however, was not commonplace in political theory in the twelfth century. Not only was his treatment of such a person unusual, there were also inconsistencies in the logic of his stance on how such an individual should be treated. In certain parts of his debate he concluded that a tyrant should be killed, while at other times he proposed that the population had to endure a tyrannical ruler, listing a number of caveats which might prevent a tyrant being killed.

Furthermore, there are some complex questions which John did not answer, for example, who could judge that a prince had become a tyrant? Could a tyrannical pope or bishop declare that a prince had become a tyrant? Was tyrannicide free from the

[115] Rouse and Rouse, 'Doctrine of tyrannicide', 703.

charge of murder?[116] The omission of discussion of these important points has led Massey to conclude that John's case for tyrannicide was not to propound a new dogma but to proclaim a deterrent, particularly as the case was scattered throughout the *Policraticus* rather than developed systematically.[117] Certainly this would fit with the idea of the *Policraticus* being a didactic manual for princes, produced perhaps with the intention of influencing Henry II and warning him that tyrants were subject to the wrath of God.[118] Laarhoven was of a similar view, and argued that John's discussion of tyranny was to act as a deterrent by demonstrating that all tyrants are eventually punished by God, rather than proposing tyrannicide as a desired outcome.[119]

Forhan argued that the *Policraticus* had a 'spiralling' or symphonic structure, which reflected a conscious awareness of the moral and intellectual development of John's audience. She argued that although the treatise may not seem so to modern readers, it was an inherently coherent work, and John's understanding of complex political life was reflected in the fact that there was not necessarily a uniform solution to issues such as tyranny.[120] When John wrote "it is lawful to flatter only him whom it is lawful to slay,"[121] he was using a rhetorical device for the moral advancement of his audience. Flattery helped with the creation of tyrants,[122] because courtiers could choose to flatter a prince in order for self-promotion as well as protection for the prince's ego from unpopular public opinion. Justice was absent where flattery was

[116] Massey, 'John of Salisbury', 367.
[117] Massey, 'John of Salisbury', 368.
[118] Massey, 'John of Salisbury', 369.
[119] Laarhoven, 'Thou shalt NOT', 328 ff.
[120] Kate Langdon Forhan, 'Salisburian stakes: the uses of 'tyranny' in John of Salisbury's *Policraticus*', *History of Political Thought*, Vol. 11, No. 3, 1990, 399.
[121] This is the title of 3.15.
[122] This echoes Aristotle who noted that tyrants associated with flatterers, *Politics*, V, xi.

lawful.[123] Therefore, this section was didactic for courtiers and their role in the development of a just society. John's discourse on tyrants and tyranny was also didactic in stressing the importance of rulers acting within the bounds of the law, and demonstrating that it was the responsibility of all interdependent members of society to ensure that was observed. The *Policraticus* recognised that tyranny was something which happened when a society was not ruled polycratically. Tyrannicide was a consequence of the abuse of authority. If members of the body acted virtuously, and pursued wisdom, justice in the kingdom was the result. There would be no tyrannicide because there was no tyranny.[124] The prince who became the tyrant lost God's protection. Tyrannicide was punishment by God, whose ways are beyond human understanding, and therefore, there was no way of knowing who would be chosen to execute God's justice.[125] It is important to understand that this would have led John to be intentionally vague on who should carry out tyrannicide. He suggested that it was the right or duty of the commonwealth to remove a tyrant, and gave Biblical examples, but as any human agent would be chosen by God, he could be no more specific.[126] When John argued that the *populus* would fail without a ruler, it overlooked the possibility that those prepared to commit tyrannicide had an alternative ruler in mind. This might have been a case of subtlety on John's part – the possibility of tyrannicide was raised, but he was being very careful to be sure that he was not advocating it as a viable course of action. Essentially, the *Policraticus* upheld the notion of tyrannicide,

[123] Forhan, 'Salisburian stakes', 400-401.
[124] Forhan, 'Salisburian stakes', 406-407.
[125] Forhan, 'Salisburian stakes', 405.
[126] See *Policraticus* 8.20, Dickinson, 367 ff.; Webb, ii, 372 ff.

implying right or duty, while not necessarily advocating it, therefore removing the moral implications.[127]

[127] Forhan, 'Salisburian stakes', 405.

Chapter Four

Theory of Law: Church and King

This chapter concentrates upon the ideas which John discussed on the subject of the relationship between the monarch and the church. Consideration will be given to John's body politic analogy as well as his thoughts on moderation. The idea of the monarch's relationship with the church is considered, with attention being paid to the concept of the two swords. John's thoughts on the subject of the papal schism of 1159 as well as the dispute between Henry II and Thomas Becket will be considered.

John of Salisbury's philosophy

Books V and VI of John of Salisbury's *Policraticus* detailed the structure of society and the role individual members played within the commonwealth. To illustrate this John used the metaphor of the human body, which he claimed was based on an extant letter from Plutarch to the emperor Trajan.[1] Whether the letter ever existed has been the subject of debate.[2] John could have fabricated its existence to add Classical weight to his argument. The letter itself is only known through the *Policraticus* and later works that in turn used *Policraticus* as a source; as such it has been impossible to discern its origin.[3]

[1] See Prologue and 5.1 of *Policraticus*.
[2] See for example Hans Liebeschütz, 'John of Salisbury and Pseudo-Plutarch', *Journal of the Warburg and Courtauld Institutes*, Vol. 6 (1943), 33-39 and Janet Martin, 'Uses of Tradition: Gellius, Petronius, and John of Salisbury', *Viator*, 10 (1979), 57-76.
[3] Marianne Pade, 'The Reception of Plutarch from Antiquity to the Italian Renaissance', in *A Companion to Plutarch*, ed. Mark Beck, Hoboken, N.J., 2014, 537.

In John's metaphor, the prince was represented by the head, the church by the soul, the senate by the heart, soldiers were the hands, those concerned with finance were the stomach, judges and provincial governors were the eyes, ears and tongue, and peasants were the feet which supported the weight of the rest of the body.[4] John described the duties of each member continuing his organic analogy, concluding that if the body was to remain healthy, each member had to perform their duty and not usurp functions of the other members.[5] Central to the cohesive functioning of the body was the notion that the head, that is the prince, and all the other sections of the commonwealth, of the body, had to be subject to the soul, that is the church. He wrote: "those who preside over the practice of religion should be looked up to and venerated as the soul of the body ... [and] preside over the entire body."[6] The prince was subject to "God and to those who exercise His office and represent Him on earth,"[7] just as the head was governed by the soul within the human body.

John also used the body metaphor to propound the importance of law as the regulator of society, and the need for that law to be based upon faith. Ullmann suggested this explained why John was so passionate about the law being the force that kept the Christian commonwealth together and able to stress the church's ultimate responsibility for the prince.[8] Ullmann has furthermore suggested that the soul in John's metaphor was the idea of right and law, representing the Christian ideal way of living. All law was to embody the idea of justice, and owing to the central role

[4] 5.2, Dickinson, pp. 64-66; Webb, i, 282-284. Cf. Shakespeare, *Henry V*, Act I, Scene II, when parallels are drawn between society, and a hive of bees, each with their role to play, with the key as their head.
[5] Martin, 'Uses of Tradition', 62.
[6] 5.2, Dickinson, 64; Webb, i, 282: "qui religionis cultui praesunt quasi animam corporis suspicere et uenarari oportet ... toti corpori praesunt."
[7] 5.2, Dickinson, 65; Webb, i, 283: "Deo et his qui uices illius agunt in terris".
[8] Ullmann, *A History of Political Thought*, 122.

of justice in Christian faith, John's soul analogy was equivalent to the Christian idea of justice. This was the notion of the supremacy of the rule of law, fundamental for the smooth-running of society and through which the body of the faithful could achieve its end.[9] The law was to be used as a medium through which authoritative guidance could be given to the commonwealth from government.

John did not separate politics from religion, nor indeed philosophy. His treatise *Metalogicon* argued that logic could and should provide a basis for understanding morality and politics. In *Metalogicon*, he proposed an educational system of practical utility, one whose intellectual coherence and rigour should underpin political morality and rational governance.[10] A working knowledge of the *trivium* – grammar, logic and rhetoric – was, John believed, a practical necessity for those in literate professions, such as administration and law. He argued that logic was the foundation of all knowledge and could provide a method of resolving questions in any field of knowledge.[11]

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The *Metalogicon* also addressed an important philosophical question of the Middle Ages: to what extent and in what sense could universals be said to exist.[12] If it is held

[9] Ullmann, *A History of Political Thought*, 101.
[10] *Metalogicon*, tr., 14.
[11] *Metalogicon*, tr., 54-55; see *Metalogicon*, i. 11-12 and ii. 1-5.
[12] What follows is taken from Haseldine's 'Introduction', *Metalogicon*, tr., 60 f. Haseldine offers a simple and succinct outline to the complex issue of universals. See also Ian P. Wei, *Intellectual Culture in Medieval Paris: Theologians and the University, c.1100-1330*, Cambridge, 2012, 17 ff.; Haren, *Medieval Thought*, pp. 90-94; Klaus Jacobi 'Logic: the later twelfth century' in *A History*, ed. Dronke, pp. 227-251; for a more in-depth view of John of Salisbury's discussion of universals, see Tamara A. Goeglein, 'The problem of monsters and universals in *The Owl and The Nightingale* and John of Salisbury's *Metalogicon*', *Journal of English and Germanic Philology*, Vol. 94, No. 5 (1995), 190-206; see also Cédric Giraud and Constant Mews, 'John of Salisbury and the Schools of the 12th Century', in *A Companion*, 53-59; for the position of Augustine, see William J. Courtenay, 'Augustine and nominalism', in Edward B.

that the name of any individual object or person identifies only that unique item or person, then what is being referred to by a generic or common term, describing a group or class of individual things? For example, the name 'Socrates' refers to an individual, but the generic term 'man' will include Socrates albeit not exclusively. So if 'man' does not exist individually in the way 'Socrates' exists, as a discrete entity in time and space, what is the nature of its 'existence'? There were two schools of thought on the matter. The 'nominalists', argued that universal terms did not reflect actual universal or eternal phenomena but were names applied by the mind to express common features perceived to be held by separate individuals or objects. Whereas, the 'realists', argued that universal terms referred to real things which existed outside of normal experience, invisibly or in heaven, as perfect forms, or 'ideas'. Thus a perfect, ideal and eternal form of 'man' existed whose characteristic was shared by all individual men.

Goeglein argued that John of Salisbury's solution to the problem of universals centred on the crucial recognition that all language, and in particular the formal language of the trivial arts, was a verbal construction based on the conceptualising habits of a mind rooted in sensible reality. As a sign system that approximately imitated the sensible reality, language was an art whose significations were not exclusively of the realm of nature but were best understood to occupy a middle ground between extreme realism and nominalism: genera and species did not exactly exist (realism) but neither were they entirely mind-made (nominalism).[13]

King and Jacqueline T. Schaefer, eds., *Saint Augustine and his Influence in the Middle Ages*, Sewanee, Tennessee, 1988.

[13] Goeglein, 'The problem', 199.

A considerable portion of the discussion of the *Metalogicon* concerned the subject of universals. In chapter 2.17 John critiqued various opinions on the matter, but never allied himself to the views of any particular master.[14] He saw that universals were more than mere words, but he did not believe that they were entities in themselves. The proportion of the *Metalogicon* dedicated to discussion of universals was not insignificant, but despite this, in *Policraticus* John was scathing of those who devoted their time to debating the existence of universals, describing such practice as a waste of time and money. John might have considered the pursuit of this philosophy as superfluous because from his perspective true philosophy was a Christian way of life,[15] and so the pursuit of this was more important. He wrote of those who dedicated their time to the subject of universals: "they have discovered neither this nor anything else ... to spend one's life on these points is equivalent to accomplishing nothing and wasting one's efforts."[16] John was concerned how theory could be applied in practice, and it would seem that he did not feel that time spent on the theory of universals was of considerable benefit. John's adoption of the middle ground between the two extremes in the debate demonstrates his moderate outlook, and this is linked to his ideas about law and politics. For example, even though John propounded autonomy of church administration, he realised the need for protection of the church form the monarch. When all aspects of society, as seen in his body politic analogy, knew their role and performed it without impinging upon the independence of others, society ran

[14] Giraud and Mews, 'John of Salisbury', 56.
[15] *Entheticus*, ii, 281.

[16] 7.12, Pike, 261; Webb, ii, 141: "tandem nec istud nec iliud inuenirent ... in his etatem terere nichil agentis et frustra laborantis est".

smoothly and John was able to follow his moderate path. It was only when the monarch overstepped the boundaries, for example when Henry II tried to enforce the Constitutions of Clarendon (see below) that John was compelled to exercise less moderation.

Linked also to this idea of John adopting the middle ground between nominalism and realism was the importance of the Golden Mean, which Nederman emphasises.[17] The Golden Mean was the desirable middle between two extremes. This to a certain extent underpins much of John's work and his philosophical outlook.[18] Haseldine demonstrated that the mutual relationship between abstract philosophy and practical ethics explained John's educational theory but also gave unity of purpose to all of his works. The *Metalogicon* was the key to understanding the philosophical and ethical principles underpinning John's work as a whole, especially the *Policraticus*.[19]

Nederman argued that as a source for his ideas for the *Metalogicon* John owed his greatest debt to Aristotle who was its most widely cited author, outnumbering Augustine by more than two to one.[20] Furthermore, it was the influence of Aristotle which was strongest on John's notion of the Golden Mean – that no lesson was rightly learned which was not in accordance with the virtuous mean between excess and deficiency.[21] The middle way as the best path to follow, originated with Aristotle;

[17] See Cary J. Nederman, 'Knowledge, virtue and the path to wisdom: the unexamined Aristotelianism of John of Salisbury's *Metalogicon*', *Medieval Studies*, Vol. 51 (1989), 268-286.

[18] Sigbjørn Sønnesyn has observed that neither John of Salisbury, nor his presumed model Aristotle provides a doctrine of determining the mean – in order to know this, one must already be virtuous. See idem, '*Qui Recta Quae Docet Sequitur, Uere Philosophus Est*, The Ethics of John of Salisbury', in *A Companion*, pp. 307-338, especially 310-311.

[19] *Metalogicon*, tr., 81-82.

[20] Nederman, 'Knowledge', 269.

[21] Nederman, 'Knowledge', 270.

much of the text of his *Nicomachean Ethics* supports this principle.[22] While we have no evidence to suggest this treatise was available to the Latin west before 1200, the argument was available through Cicero's *De officiis* where moderation was emphasised, reflecting the popularity of Aristotle's doctrine in Latin antiquity.[23] Cicero saw that for man to live in ethical rectitude, it was good to follow the Golden Mean.[24] He also explained that this Golden Mean had a definite source – the Peripatetics, i.e. he directly attributed it to Aristotle. John would have known, therefore, that this idea was of Aristotle.[25]

King and Church

Whilst John understood the necessity of the role of the king playing a role in protecting the interests of the church, he thought involvement of the monarch in church matters was to be minimised. Independence for the daily activity of the church, and separation of ecclesiastical and civil powers was not a novel concept, and was referred to as the 'two swords' theory, propounded by Pope Gelasius I (492-496).

The concept of two 'swords', one temporal, one spiritual, originates from Luke's Gospel with the events leading up to the arrest and trial of Christ. In Luke, at the Last Supper, Jesus was told that there were two swords, and He said that this was enough.[26] In the Book of John, after the Last Supper in the Garden of Gethsemane as Christ was arrested, the disciple Peter struck the ear of a servant of the high priest

[22] For example 2.7 and 2.6.
[23] Nederman, 'Knowledge', 279-280.
[24] Cicero, *De officiis*, I, v, 17.
[25] Nederman, 'Knowledge', 281.
[26] Luke 22:38.

Malchus.[27] Peter was rebuked by Christ and was told to sheath the sword. This was interpreted as a demonstration that the church was not to use the "sword of blood," and that Peter had to relinquish one of the swords to secular rulers for them to wield on behalf of the church in matters deemed too unsavoury for the church to administer. These powers were bestowed to the prince through the church; although the powers were ordained from God, they did not pass to the prince directly from God.[28]

When Gelasius I propounded the two swords doctrine, stating that there was a clear institutional distinction between the spiritual and temporal powers, he did so in an attempt to stop each authority encroaching upon the other. Gelasius wrote a letter to the Emperor Anastasius I, in which he stated: "The world is chiefly governed by these two: the sacred authority of bishops and the royal power. Of these the burden of the priests is greater in so far as they will answer to the Lord for the kings of men themselves at the divine judgement."[29] Interpretation of the original meaning of the letter remains a matter of dispute among scholars. The letter might have provided a statement of balanced dualism; it recommended the need for two ruling powers. Yet in a hierarchy of authoritative power, the clerical was said to be superior to the temporal. The priesthood was seen as bearing a heavier responsibility, as they had to render an account before God for the kings of men.[30] Priestly affairs were seen as superior just as the affairs of God were superior to the affairs of the world.

[27] John 18:10; in the book of Matthew, 26:51, the scene was depicted, but the disciple who struck the servant was not named.
[28] Dyson, *Normative theories*, 125.
[29] Gelasius I, ep. 12, *Epistolae Romanorum pontificum genuinae et quae ad eos scriptae sunt, a S. Hilario usque ad Pelagius II*, ed. Andreas Thiel, 1868, 350.
[30] Janet Coleman, *A History of Political Thought, From the Middle Ages to the Renaissance*, Oxford, 2000, 24.

In the eleventh century the two swords theory was developed by Pope Gregory VII during the investiture controversy.[31] Robinson observed that only kings had the power to eradicate simony and clerical marriage before this time. Gregory believed that kings were failing in this task and so took an active role in the politics of this area; simony therefore became a catalyst for the return of the two swords debate.[32] Gregory wrote: "since there is no prince who troubles himself about such things, we must protect the lives of religious men."[33] Gregory chose to build upon the ideas of Gelasius. In the first two years of his pontificate Gregory tried to limit royal control within the church in Germany and Italy by ensuring that Emperor Henry IV abandoned the custom of investing bishops, who were often royal supporters and allies, with the symbols of their office.[34] Gregory wished to restore the church to its original liberty by freeing it from the will of impious men,[35] and he pronounced that kings and emperors were no more than lay members of the church with a duty to help the church provide for the spiritual well-being of their subjects. Bishops and popes were deemed singly able to judge the suitability of such men. An unsuitable lay governor could be both excommunicated from the church and his subjects freed from their oaths of loyalty to

[31] On this, see Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the ninth to the twelfth century*, Philadelphia, 1988; I. S Robinson, *The Papal Reform of the eleventh century: lives of Pope Leo IX and Pope Gregory VII*, Manchester, 2004; H. E. J. Cowdrey, *Pope Gregory VII, 1073-1085*, Oxford, 1998.

[32] Clerical reform would have been impossible without lay support, and even before Gregory brought the issue to the fore, there had been concern from the laity about abuses like simony. In 1014 Duke William V of Aquitaine presiding over the Council of Poitiers took steps to eradicate simony as did Henry II of Germany at the synod at Ravenna in the same year; see Kathleen G. Cushing, *Reform and the Papacy in the eleventh century: spirituality and social change*, Manchester, 2005, 97; see also Blumenthal, *The Investiture Controversy*.

[33] Gregory VII, *Registrum*, II, 49; I. S. Robinson, *The Papacy, 1073-1198, continuity and innovation*, Cambridge, 1990, 295-296.

[34] I. S. Robinson, *Authority and Resistance in the Investiture Contest: the Polemical Literature of the Late Eleventh Century*, Manchester, 1978, 4.

[35] Robinson, *Authority and Resistance*, 5.

him. In this hierarchy of world governance the king was placed below the lowest orders of the clergy. The church was now understood to be autonomous from any secular governance.[36]

Such ideas did not gain universal support. Some chose to promote the position of the monarch, such as The Anonymous of York, who wrote his political tractates in *c*.1100, in which he expressed his "passionately anti-Gregorian and vigorously royalist sentiments." [37] Anselm, on the other hand, desired co-operation between ecclesiastical and secular ruling powers. Southern suggested that rather than assuming authority over the king, Anselm saw it as his duty to co-operate with the king in order to bring about better discipline and order over the English Church. The most effective way in which this could be delivered was by ecclesiastical councils held with royal support, much like those Lanfranc had held in the 1070s and 1080s. This tradition carried no threat to royal authority; rather it was seen as a way of upholding it.[38] The Anselmian concept of liberty was concerned with the willing subordination of the individual to God; the Gregorian concept of liberty was concerned with giving a centrally organised clerical church complete independence from secular control under papal direction. Its chief purpose was to ensure independence for the entire

[36] Coleman, *A History*, 25.
[37] Kantorowicz, *The King's Two Bodies*, 1997, 42; the majority of the Tractates of the Norman Anonymous have been published in Heinrich Böhmer, *Kirche und Staat in England und in der Normandie im XI. und XII. Jahrundert: eine historische Studie*, Aalen, 1968; see also George Huntston Williams, *The Norman Anonymous of 1100 AD: toward the identification and evaluation of the so-called Anonymous of York*, New York, 1969.
[38] Southern, *Saint Anselm, A Portrait*, 237. While this may have been the case, had the king not given his support for such councils, Anselm might have held them regardless.

ecclesiastical organisation in relation to all other social organisations.[39] This latter view was the standpoint taken by John of Salisbury.

Hugh of St Victor († 1141), a scholar and theologian at the abbey of St Victor in Paris, wrote in his *De Sacramentis Christianae Fidei* that the spiritual power was superior to the worldly power, just as the spiritual life was more worthy than the earthly life, as was the spirit to the body. He believed that: "it is established beyond all doubt that the earthly power, which receives benediction from the spiritual, is rightfully regarded as inferior to it."[40] This was echoed in John's own writing, and it is likely that Hugh was an influence upon John's thought on this matter. It is clear that John was aware of Hugh writing. In his *Metalogicon* John referenced Hugh,[41] and also in the *Historia Pontificalis* – Master Hugh: "related the order of events from the beginning of the world up to the time of Pope Innocent II and Louis."[42] It is not known from John's writing whether he knew or had been educated by Hugh, though his reference to him as "Master Hugh" might suggest familiarity. John also bequeathed a copy of Hugh's commentary on the Book of Lamentations and his gloss on the Book of Kings to Chartres's library.

A. God and King

In Book IV, Chapter 7 of the *Policraticus*, John wrote: "let the king fear God, and by

[39] Southern, *Saint Anselm*, 277.
[40] Hugh of St Victor, *De Sacramentis Christianae Fidei*, (*c*.1134) *PL*, 1854, col. 417-8; see also Tierney, *Crisis of Church and State*, 94-95.
[41] For example, from Hugh's *Summa sententiarum* in *Metalogicon* iv, 14 and the *Didascalion* in I, 10.
[42] *HP*, Prologue, 2: "ab inicio nascentis seculi usque ad tempus domini Innocentii pape secundi et … Ludouici."

prompt humility of mind and pious display of works show himself His servant."[43] The prince at all times had to act within the remit of law; if he failed to do so, he would be considered a tyrant. (See Chapter Three.)

> Beyond doubt a large share of the divine power is shown to be in princes by the fact that at their nod men bow their necks and for the most part offer up their heads to the axe to be struck off ... And this I do not think could be, except as a result of the will of God ... The power which the prince has is therefore from God ... but He merely exercises it through a subordinate hand, making all things teach His mercy or justice. 'Who, therefore, resists the ruling power, resists the ordinance of God',[44] in whose hand is the authority of conferring that power, and when He so desires, of withdrawing it again, or diminishing it.[45]

The prince wielded divine power as a result of the will of God. The prince was in fact a medium through which God asserted his power, the prince being the subordinate hand of God. For this reason the prince had to be obeyed, just as God had to be obeyed, which the quotation from Romans demonstrates. John explained that if a prince was unjust or harshly treated his subjects, his own personal will was being expressed, rather than the will of God. The prince had the ability to act upon his own free will – whilst he was divinely appointed – he was not simply a puppet of the Lord. It would seem that in this instance John used the term 'power' to describe something within the prince which gave him the ability to control his dominion, granting him command and political rule. Authority, on the other hand, was that which originated from God,

[43] 4.7, Dickinson, 32; Keats-Rohan, 254: "Timeat ergo princeps Dominum et se prompta humilitate mentis et pia exhibitione operis seruum profiteatur."
[44] Romans, 13:2.
[45] 4.1, Dickinson, 4; Keats-Rohan, 232-233: "Procul dubio magnum quid diuinae uirtutis declaratur inesse principibus, dum homines nutibus eorum colla submittunt et securi plerumque feriendas praebent ceruices ... Quod fieri posse non arbitror nisi nutu faciente diuino … Quod igitur princeps potest ita a Deo est ... sed ea utitur per subpositam manum, in omnibus doctrinam faciens clementiae aut iustitiae suae. Qui ergo resistit potestati, Dei ordinationi resistit, penes quem est auctoritas conferendi eam et, cum uult, auferendi uel minuendi eam."

and it allowed Him the ability to enforce obedience and supremacy, giving Him the ultimate judgement.

The prince had to be humble, and understand that he was enacting God's will as the armed hand of the commonwealth [*res publica*] (see below). In Chapter 7 of Book IV, John wrote: "let the prince fear God, and by prompt humility of mind and pious display of works show himself His servant. For a lord is the lord of a servant. And the prince is the Lord's servant, and performs his service by serving faithfully his fellow-servants, namely his subjects."[46] John stressed the notion of the prince acting as a servant of God, and also serving the people on God's behalf. He used the word 'servant', *seruus*, a number of times in this short section. Here, the sense of 'servant' was one under obligation to render services and duty and to obey the orders of a superior. 'Office' meant a task, post, and the duty attached to that person's station. In the twelfth century, there was a stronger sense of moral obligation than perhaps we understand today; to hold an office was to hold a position with a form of divine service. Thus the idea of being a servant and having office came with a sense of duty and moral responsibility, including to God.

In Chapter 2 of Book V John wrote that the prince as the head of the body of the commonwealth was "subject only to God and to those who exercise His office and represent Him on earth."[47] In this way, John defended his notion that the spiritual arm of the commonwealth was superior to the secular arm. The king was subject to God, as are all who inhabit the earth. John believed that all law came from God, therefore

[46] 4.7, Dickinson, 32-33; Keats-Rohan, 254-255: "Timeat ergo princeps Dominium et se prompta humilitate mentis et pia exhibitione operis seruum profiteatur. Dominus etenim serui dominus est. Seruit itaque Domino princeps dum conseruis suis, subditis scilicet sibi, fideliter seruit."
[47] 5.2, Dickinson, 65; Webb, i, 283: "uni subiectus Deo et his qui uices illius agunt in terris."

all people were subject to the laws of God, in turn making all subject to God. Here, John further explained that not only was the king subject to God, but also to those in His ministry; the king was subject to all those with ecclesiastical office and so the king must obey the Church.

John further explored this notion. Chapter 3 of Book IV is entitled 'That the Prince is the Minister of the Priests and inferior to them'. John wrote that the power of the sword was given to the prince by the church, and that the church had this power, which was used on the church's behalf by the prince:

> The prince is, then, as it were, a minister of the priestly power and one who exercises that side of the sacred offices which seems unworthy of the hands of the priesthood. For every office existing under, and concerned with the execution of, the sacred laws is really a religious office, but that is inferior which consists in punishing crimes, and which is therefore typified in the person of the hangman.[48]

John regarded the power of the prince as circumscribed. The prince was acting on behalf of the church, protecting it with the sword, but also carrying out the tasks which were unsuitable for those in religious offices. (See Chapter Three) Furthermore, the office of the prince was inferior to the office a priest. It should be noted again that John paired the themes of power and authority. John gave the example of the emperor Constantine as evidence of how a prince should behave: "when he [Constantine] had convoked the council of priests at Nicaea, he neither dared to take the chief place for himself nor even to sit among the presbyters, but chose the hindmost seat. Moreover, the decrees which he heard approved by them he

[48] 4.3, Dickinson, 9; Keats-Rohan, 236: "Est ergo princeps sacerdotii quidem minister et qui sacrorum officiorum illam partem exercet quae sacerdotii manibus uidentur indigna. Sacrarum namque legum omne officium religiosum et pium est, illud tamen inferius quod in poenis criminum exercetur et quandam carnificii repraesentare uidetur imaginem."

venerated as if he had seen them emanate from the judgment-seat of the divine majesty."[49] This was similar to the notion expressed in the Book of Deuteronomy which placed limitations on the actions and power of the monarch.

John believed that as divine law transcended human law, those who ministered in divine things were superior to those who ministered in earthly things. John wrote:

> God's ministers are they that have been called by the divine governance to procure the salvation of themselves and others by rooting out and correcting vices, or by implanting and increasing virtues. But those who minister to Him in the sphere of human law are as much inferior to those who minister in divine law as things human are below things divine.[50]

John's belief in the superiority of all things divine over all things secular was commonplace, at least among churchmen. In Gratian's *Decretum* a rubric, taken from a letter of Gregory VII of 1081, asserted that "Priests are considered the fathers and masters of kings and princes."[51] This could be taken to indicate priestly superiority. Gratian wrote: "There are two persons by whom this world is ruled, namely the royal and the priestly. Just as kings are preeminent in the affairs of the world, so priests are preeminent in the affairs of God."[52] This was an echo of Gelasius I (496), and was a familiar motif (see above).

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[49] 4.3, Dickinson, 9; Keats-Rohan, 236-237: "cum sacerdotum concilium Nicaeam conuocasset, nec primum locum tenere ausus est nec se presbiterorum immiscere consessibus sed sedem nouissimam occupauit. Sententias uero quas ab eis approbatas audiuit, ita ueneratus est ac si eas de diuinae maiestatis sensisset emanasse iudicio."

[50] 5.4, Dickinson, 79; Webb, i, 295: "Ministri uero sunt quos dispositio diuina uocauit ut corripiendo et corrigendo uitia aut uirtutes inserendo aut propagando suam et aliorum procurent salutem. Qui uero ei in iure humano ministrant, tanto inferiores sunt his qui ministrant in diuino quantum diuinis humana cedunt."

[51] Gratian, *Decretum*, D. 96 c 9 – 10; c. 2 q. 7.

[52] Gratian, *Decretum*, D 66 c 10 : "Duo sunt quippe inperator auguste quibus principaliter hic mundus regitur: auctoritas sacra Pontificum, et regalis potestas. In quibus tanto grauius est pondus sacerdotum, quanto etiam pro ipsis regibus hominum in diuino sunt reddituri examine rationem"; Robinson, *The Papacy*, 482.

In Book VII Chapter 20, of the *Policraticus*, John used a quotation from Justinian and wrote that both the priesthood and the prince were to take responsibility for their own remits and in that way, the commonwealth could be run harmoniously in benefit of the common good: "Says the emperor Justinian: 'Greatest among the gifts bestowed by the supreme mercy of God are the priestly power and the power of the emperor, the one ministering in things divine, the other presiding over and displaying its diligence in human affairs; both proceed from one and the same source to improve the life of men."[53] John asserted that both the prince and the clergy originated from God for the purpose of enhancing life of those on earth. The prince should desire that members of the clergy be pure of mind and spirit as they are responsible for the prayers offered to God on his behalf. John was of the opinion that harmony would follow when the prince and the church were responsible for their separate administrations.

B. Judges

Throughout the *Policraticus* there are a number of discussions of judges and how they should behave. John highlighted their great importance within law-abiding society. According to John, judges existed to ensure that laws were adhered to and that societies ran smoothly: "the earliest fathers and patriarchs followed nature, the best guide of life. They were succeeded by leaders, beginning with Moses, who followed the law, and judges who ruled by the authority of the law; and we read that the latter

[53] 7.20, Dickinson, 302; Webb, ii, 182: "Ait ergo imperator Iustinianus: Maxima in omnibus sunt dona Dei a superna collata clementia sacerdotium et imperium, illud quidem diuinis ministrans, hoc autem in humanis praesidens ac diligentiam exhibens; ex uno eodemque principio utraque procedentia humanam exornant uitam." Justinian, *Novels*, vi, preface.

were priests."[54] These were judges in Israel, and it was as a result of their failings that lead God to appoint kings to rules over the people. It was therefore God's will that kings, both good and bad, were set over the people by God.[55] John would not have disputed that rule by kingship was better than rule by judges as this was the path chosen by God.

To ensure that judges acted within the law, it was necessary, John believed, for judges to take an oath. John wrote that "Judges should be bound to the law by an oath since they are always to dispense judgment in accordance with truth and in obedience to the laws."[56] In Chapter 11 of the same book John made reference to a judge taking an oath in order to ensure they acted as their position demanded. He also used a Biblical reference in this section in order to further support his assertions: "he [the judge] ought to be bound by oath to the law so that he may know it is entirely forbidden to him to turn away from its integrity. For the Book of Wisdom teaches about his wisdom, 'A wise judge judges his people and the rule of a prudent man will be steady.'"[57] This discussion of judges taking an oath was paralleled in John's discussion on the military. He believed that giving one's word to do one's duty was paramount in positions of responsibility. By taking an oath, a binding verbal contract was made which could not be broken without repercussions. Once again John used

[54] 8.18, Dickinson, 350; Webb, ii, 358: "Siquidem primi patres et patriarchae uiuendi ducem optimam naturam secuti sunt. Successerunt duces a Moyse sequentes legem, et iudices qui legis auctoritate regebant populum; et eosdem fuisse legimus sacerdotes."

[55] This can be seen in Deuteronomy, 17:14-15 as well as 1 Samuel, 10:19-24.

[56] 5.12, Dickinson, 129; Webb, i, 334: "Et quidem iudices sacramento legibus alligantur iurati, quia omni modo iudicium cum ueritate et legum obseruatione disponent." Cf. Justinian, *Code*, iii, I, 14.

[57] 5.11, Dickinson, 123-124; Webb, i, 330-331: "et sacramento debeat esse legibus obligatus ut sibi omnino illicitum nouerit ab earum sinceritate diuertere. Nam de sapientia eius Sapientia docet. Iudex, inquit sapiens iudicauit populum suum et principatus sensati stabilis erit." The quotation is from Ecclesiasticus, 10:1.

Biblical reference to support his argument with an authoritative source. Those who were in a position to debate the law and to decide how it was to be executed must be wise and have the authority to ensure their rulings were observed.

On a number of occasions John suggested that a judge must be accessible, but should beware of giving his time and advice too readily so that his position could be called into question. In Book V, Chapter 15 he stated: "every man whose task is to administer justice should take care to be easy of access but not in such a way as to bring himself into contempt ... In hearing cases he ought not to burst out in anger against those whom he thinks wrong-doers, nor on the other hand be brought to tears by the petitions of the unfortunate."[58]

In Chapter Three of this thesis it was seen that the monarch had to punish impassively those who committed crimes. It was important not to let emotions override the law. In Book IV, Chapter 7 of the *Policraticus* John similarly observed that: "the Roman law cautions those who administer justice to make themselves easy of access but not to bring themselves into contempt."[59]

It was made clear by John in Book V, Chapter 11 that a corrupt judge, or one who did not himself follow the law, could not be trusted to administer justice:

> an ill tree cannot bring forth good fruits, for the power of nature follows the principle that like produces like. Further, since we have premised that the case of governors and other judges is the same, they are alike minsters of equity and the public peace, who ought to be the more circumspect and

[58] 5.15, Dickinson, 143-144; Webb, i, 344-345: "Omni uero ius reddenti obseruandum est ut in adeundo quidem facilem se praebeat sed contempni non patiatur … Sed et in cognoscendo nec excandescere aduersus eos quos malos putat, nec precibus calamitosorum illacrimari oportet."

[59] 4.7, Dickinson, 35 ; Keats-Rohan, 257: "Vnde et in iure Romano cautum est ut, qui ius reddit, se quidem in adeundo facilem praebeat, contemni tamen non patiatur."

> cautious, and take greater care, since they must expect to be weighed in the balance of Him whose foresight cannot be circumvented nor His justice corrupted.[60]

Within this excerpt John made clear that anyone who was corrupt could not be an effective administrator of the law; only further corruption could stem from corruption. Judges had a duty to enact God's law, to carry out their tasks equitably and by doing this they would ensure peace within the population. God could not be deceived, and thus a judge who was not carrying out law and justice appropriately will face punishment on the Day of Judgement. John further asserted that judges acting inappropriately should be brought to answer, and that the public had a role to play in ousting such a man, quoting from the *Code*:[61] "'if anyone can prove that a judge is corrupt for any reason, let the person having such knowledge make the fact public either during the administration of the judge or after he has laid down his office.'"[62] By using this reference from Roman law, John ensured that his argument was not open to criticism or debate, for that would be to criticise the law itself.

It might be the case that John was referring particularly to itinerant judges who had earned a reputation for avarice.[63] John was aware that there were corrupt judges in positions of authority and in *Policraticus* he wrote of his own personal experience:

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[60] 5.11, Dickinson, 127-128; Webb, i, 333-334: "Non enim potest arbor mala fructus bonos facere, cum in eo uis naturae consistat, ut similia ex similibus procreentur. Ceterum, quia praesidum et aliorum iudicium communem esse inspectionem praemisimus, aequitatis et publicae quietis ministri sunt, quos tanto circumspectiores et cautiores oportet esse magisque sollicitos."

[61] *Code*, ix, 27, 1-4.

[62] 5.16, Dickinson, 149; Webb, i, 350: "si quis postremo quacumque de causa improbum iudicem potuerit approbare, is uel administrante eo uel post administrationem depositam in publicum prodeat."

[63] See also *Policraticus* 5.15 – John here suggested that the wandering judges wandered from equity and plundered the land. This was a view shared by others, see e.g. Roger Howden, *Chronica*, ed. W. Stubbs, 4 volumes, London, 1868-1871, iv, 62. For itinerant judges see John Hudson, *The Formation of the English Common Law*, London, 1996, chapters 5-8.

> And in my own time, I have seen nought more lamentable than judges ignorant of the knowledge of law and devoid of good-will, as is proved by their love of gifts and rewards, exercising the power which they have in the service of avarice or ostentation or advancing the fortunes of their own flesh and blood, and exempted from the necessity of swearing obedience to the laws.[64]

John also noted that if judges were unfamiliar with the law, or, worse, took bribes to influence the outcome of a case, then ultimately it was the prince who was to take responsibility. The itinerant judges were hearing pleas of the crown, and the king would have been responsible for their outcomes. John would have seen this as part of the *officium* of the prince. In this sense, John confirmed his belief that the prince needed to be driven by a desire for justice, and take an interest in those administering the law, leading by example with his love of the law. It was written in the Book of Deuteronomy that "Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee, throughout thy tribes; and they shall judge the people with just judgment. Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and pervert the words of the righteous."[65] This section of Deuteronomy was alluded to in the *Policraticus*. By supporting his own ideas with those from the Bible, and specifically Deuteronomy, John was asserting that his words were the truth and indisputable, just as the Bible was not to be questioned.

[64] 5.11, Dickinson, 125; Webb, i, 331-332: "Et meo quidem tempore nichil miserabilius uidi quam iudices scientiae legis ignaros, bonae uoluntatis inanes, quod conuincit amor munerum et retributionum, id uirium quod habent in obsequio auaritiae iactantiae aut carnis et sanguinis exercentes et a necessitate sacramenti legitimi absolutos."
[65] Deuteronomy, 16:18-19.

In Book V, Chapter 11 he expanded these ideas and clarified his strength of feeling on this subject. Those holding the office of judge: "should in all things obey justice, and none of the things which it is their duty to do should be done for a price. For if a thing is unjust it is unlawful to the degree that it must not even be done as the price of this temporal life itself. On the other hand, what is just does not need the addition of a price ... To sell justice is therefore iniquity."[66] John made it clear that justice could never be sold. If a case had to be 'bought' then its outcome would be unlawful. Those who were responsible for the carrying out of justice had a duty to ensure that this was achieved; they would be committing a crime if they were to accept a bribe to alter the ruling of a case.

Judges could receive fees for their work, as any professional would receive payment for services rendered or goods supplied. John made a distinction between reasonable fees that those learned in the law could charge and inappropriate exploitation of their position: "though an advocate can sell his proper services and a jurist his good advice, it is never lawful to sell justice."[67] Likewise, money could change hands in legal cases, as compensation, fines or payment for services performed, and this was right and proper. John highlighted this in Book VI, Chapter 1:

> the unarmed is that which administers justice and, keeping holiday from arms, is enlisted in the service of the law ... in truth the unarmed hand is to be curbed the more tightly for the reason that while the soldiery of arms are enjoined to abstain from extortion and rapine, the unarmed hand is debarred even

[66] 5.11, Dickinson, 125; Webb, i, 332: "Est itaque primum quod ex necessitate officii utrisque indicitur, ut iustitiae in omnibus pareatur et nichil eorum quae facienda sunt, fiat ad pretium. Nam quod iniustum est, usquequaque non licet ut nec pro temporali uita fieri liceat. Quod uero iustum est, mercedis interuentu non indiget ... Iustitiam ergo undere iniquitas est."

[67] 5.15, Dickinson, 146; Webb, i, 346: "Licet enim patrocinium iustum possit uendere aduocatus et peritus iuris sanum consilium, iudicium uendere omnino non licet."

> from taking gifts. But if a lawful penalty is demanded of anyone ... whatever it is, it cannot properly be called an exaction; nor does it fall into the class of gifts which officials are forbidden to receive.[68]

In Book V he stated: "it is impossible to seek justice and money at one and the same time; either a man will cleave the one and despise the other, or else will be perverted by the worse and lose the better."[69] He used strong words to demonstrate how he felt about the matter: "I cannot easily say which is worse, the seller or the buyer of justice, although the seller colours his wickedness with a more deceitful dye ... for every magistrate is but the slave of justice."[70] Criticism of money-making skills, like the law and medicine, became a common topos of moralising preachers, as it was for John of Salisbury.[71] John also used the Bible as a source of reference to support his notion that money should not change hands inappropriately between a judge and someone involved in a legal case. In Book V, Chapter 10 he explained: "the gifts of unjust men should not be accepted, since a man will be ungrateful if he does not return kindness for kindness, and the Lord Himself says that it is unjust to give judgment in favour of a wrong-doer in return for gifts."[72]

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[68] 6.1, Dickinson, 173-174; Webb, ii, 2-3: "inermis quae iustitiam expedit et ab armis feriando iuris militiae seruit … Et quidem artius est compescenda inermis, eo quod cum armati praecipiantur abstinere ab exactionibus et rapinis, inermis etiam a muneribus arcetur. Si tamen pena alicui irrogatur legitima, … Hoc enim quicquid sit exactionis nomen non recipit; neque cadit in muneris rationem quod officiales accipere prohibentur."

[69] 5.9, Dickinson, 112-113; Webb, i, 322: "Impossibilie siquidem est quemquam iustitiam et pecuniam sequi; aut enim uni istorum quilibet adherebit et alterum contempnet, aut torquebitur altero melioris expers."

[70] 5.11, Dickinson, 126; Webb, i, 332-333: "Non facile dixerim utrum sit nequius, licet uenditor aequitatis malitiam fuco fallaciori coloret … omnis etenim magistratus iustitiae famulus est."

[71] Giraud and Mews, 'John of Salisbury', 49; on moralistic preaching see Stephen F. Ferruolo, *The origins of the university: the schools of Paris and their critics, 1100-1215*, Stanford, 1985, 184-277.

[72] 5.10, Dickinson, 117-118; Webb, i, 326: "Munus uero iustae reprehensionis non habet notam quod deuotio liberalitatis obtulit, non improbitas deprecantis extorsit; ita tamen ut iniquorum munera non acceptet, cum ingrati hominis sit uotis non fouere beneficium et impium pro muneribus iustificare dicente Domino sit iniquum." Isaiah, 5:23.

Brundage observed that legislators and legal writers wrestled with the problem of the point at which polite offerings to judges became bribery. Canon law had censured bribery as an attempt to perpetrate a fraud against God.[73] John of Salisbury wrote that a judge should be an eminently religious man, in which case, there would be no acceptance of bribes, as a religious man would not offend God in such a way. John would not have considered monks or regular canons to be appropriate as judges, however, as there was a ban on these two groups studying the law in return for monetary gain,[74] and judges could receive an acceptable amount of payment for service performed. It would seem that John simply meant that someone who was respectful of law as a gift from God would make the best judge.

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Consideration will next be paid to two specific events about which John wrote which demonstrated his ideas about how the relationship between monarch and church should exist. Contextually these writings sit somewhere between his theoretical writing, conveying his ideals, and his more practical writings, which documented happenings on a day-to-day basis. Firstly, the papal schism of 1160 will be considered, and then focus will centre upon the dispute between Henry II and Archbishop Thomas Becket in the 1160s. These two events concentrated John's thoughts and he was able to put his theoretical ideas into practice as he discussed these episodes.

[73] Brundage, *Medieval Origins*, 389; see Isidore of Seville, *Sentences*, III, 54; Gratian, *Decretum*, C 1 q. 1 c. 8; C 11 q. 3 c. 66.
[74] Lateran Council II (1139), c. 9. This was not always observed, however, see Brundage, *Medieval Origins*, p. 180 for Stephen of Tournai and Thomas of Marlborough.

C. Papal Schism

In 1159 Pope Adrian IV died. The majority of cardinals supported the election of Pope Alexander III as his successor, but a small group selected an anti-pope, Victor IV. Frederick I, Barbarossa, who had become emperor in 1152, and who had taken control of Lombardy and Milan in 1158, called a synod at Pavia in 1160 to assess the merits of both 'popes'. Alexander III refused to attend the meeting and excommunicated Frederick. The emperor subsequently offered his support to Victor IV.[75] By late 1160 Alexander had been recognised as Pope by the main western monarchies, led by England and France.[76]

One of the letters written in the name of Theobald reminded the King, in early 1160, that the church and the monarch worked best when they both recognised and acted within their own spheres of activity:

> When the members of the Church are united in loyalty and love, when princes show due reverence to priests, and priests render faithful service to princes, then do kingdoms enjoy that true peace and tranquillity that must always be the goal of our desire ... since according to the word of the Most High, 'a kingdom divided against itself is laid waste'. We have always been vigilant in the promotion and preservation of unity.[77]

John continued by stating that "now we are plunged in more grievous toil and danger."[78] The letter demonstrated that Theobald desired, at least outwardly, co-

[75] J. Derek Holmes and Bernard W. Bickers, *A Short History of the Catholic Church*, London, 2002, 78.
[76] Anne J. Duggan, '*Alexander ille meus*: The Papacy of Alexander III', in *Pope Alexander III*, eds., Clarke and Duggan, 21-22; this was at Bauvais, in July 1160, see M. G. Cheney, 'The Recognition of Pope Alexander III: Some Neglected Evidence', *English Historical Review*, 84 (1969), 474-497.
[77] *EL*, ep. 116, early 1160, 190-191: "Illa est regnorum uera pax et semper optanda tranquillitas, cum in fide et dilectione sibi cohaerent membra ecclesiae, et sacerdotibus debitam reuerentiam principes et principibus plenae fidelitatis obsequium exhibent sacerdotes ... quia iuxta uocem Altissimi, 'in se diuisum regnum quodlibet desolatur'. Nos autem semper, sed maxime temporibus uestris, huic unitati conciliandae et seruandae inuigilauimus."
[78] *EL*, ep. 116, 190-191: "sed modo uersamur in labore et periculo grauiori."

operation with the king so that king and church could come to a mutual decision about the schism:

> While the matter is in suspense, we think that it is unlawful in your realm to accept either of them, save with your approval. It is far from desirable that the English Church should be torn asunder after the example of the Church of Rome, and so by doing give occasion for a conflict of Church and worldly government ... For it is the head of your entire realm, and for yourself and your entire realm it is the mother of the faith in Christ.[79]

The letter urged mutual respect between the church and monarch; any dispute between the church and the king would have a negative effect on both sides and as such was to be avoided. The letter contained a passage similar to one found in the Books of Matthew and Luke, stating that a kingdom divided is a kingdom ruined.[80] By using a Biblical reference, John was supporting his statement while reminding the king that he was obliged to protect the church, and that the clergy had been appointed by God to have authority over the monarch. In the closing sentence of this extract, the king was reminded that the church was the head of his realm, and that for all in the kingdom, the church was the protector of the faith. The monarch had a duty to therefore protect the church and to play his part in avoiding conflict between church and the worldly governance of the nation; such a conflict would be displeasing to God.

Duggan argued that this letter suggested deteriorating relations between Theobald and the king before Theobald's death, and that the archbishop was very anxious to

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[79] *EL*, ep. 116, 190-191: "Sed nec aliquem recipere, nisi consilio uestro, dum res in pendulo est, in regno uestro licitum esse credimus; nec expedit aliquo modo ut ecclesia Anglorum Romanae ecclesiae scindatur exemplo, et regno et sacerdotio praestet materiam contendendi ... Ipsa est enim caput regni uestri, et uobis et toti regno fidei parens in Christo."

[80] Cf. Luke 11:17 and Matthew, 12:25.

prevent any serious rift. Although most of England's bishops (except Hugh of Durham) were in favour of supporting Alexander III, no action could be taken without the king's permission, and Theobald took no steps to challenge that.[81]

Another letter written in the name of Theobald to Henry II regarding the papal schism invited co-operation between the king and the church when he asked the king for guidance of his people in the challenging times. Theobald was aware of the need for discussion of this matter whilst reminding the king that the will of God was more desirable than the will of man. Theobald requested of the king that he returned to England in order to guide the people personally in the matter. Theobald was concerned that Henry might have been swayed in the wrong direction: "there is a rumour that the Emperor is striving though the agency of his chancellor to win your favour for his candidate for the papal throne, however weak his case may be. But thanks to God, the guardian of your soul, you will prefer God to any man."[82] Theobald made clear that he wanted discussion of the matter with the king and he suggested to Henry that this was what God desired also. He reminded the king that members of the church had been praying to the Lord for the protection of the king, and that he should have therefore respected their wishes of a joint decision on this key issue. For the laity to decide on the outcome of an ecclesiastical election, even one of such magnitude as the election of a pope, was contrary to canon law; in Distinction 63 of the *Decretum*, Gratian set out the articles of canon law which ruled on this matter. By suggesting to Henry that he was to prefer God to man, he was reminding the king of this aspect of

[81] Duggan, 'Henry II', 168.

[82] *EL*, ep. 121, May-June 1160, 199-200: "Praeterea fama est quod inperator per cancellarium suum uos in apostolicum suum, qualiscumque sit causa eius, nititur inclinare; sed Deo protegente animum uestrum Deum cuilibet homini praeferetis."

canon law, and urged the importance of a joint decision made by the king and the church on this important issue, rather than Henry disregarding the canons and naming his choice of candidate.

Later in the same year, and with the papal schism having divided the church further, Theobald was concerned about England becoming split if the king were to support one party against the wishes of the church. The letter was written to the king in the name of Theobald as follows:

> But more grievous to my soul than any sickness is the storm of discord which by the Lord's permission has rent the church in twain ... God forbid that in an hour of such peril to the Church you should do anything for the love or honour of a man, unless you believe that it will be pleasing to God ... And if it please you, in a time of such peril to the whole Church of God, your majesty should take counsel with your realm and decide nothing to its prejudice without the advice of your clergy.[83]

Theobald invited the king to return from the Continent in order to undertake discussion and for them both to reach a unanimous decision about whom to support to become the next pope. It would seem from this letter that the Emperor had chosen to support the papal candidate whom the English church found to be the less appealing of the two. Theobald did not want Henry II to be swayed by this and so he appealed to him that this candidate did not have the blessing of God. Theobald wanted the English church and the English king to be united in their joint support for the right candidate. It was contrary to canon law for such an election to be decided by

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[83] *EL*, ep. 122, May-June 1160, 201-202: "Veruntamen omni infirmitate grauior est animae nostrae procella discordiae quae, Domino permittente, scidit ecclesiam … Sed absit ut in tanto periculo ecclesiae pro amore uel honore hominis faciatis nisi quod credideritis Deo placiturum ... Et, si uobis placet, in tanto periculo totius ecclesiae Dei utendum est uobis consilio regni uestri, nichilque in praeiudicium eius statuendum est sine consilio cleri uestri."

the laity, so it had to follow that while Henry and Theobald could discuss their respective suggestions for the new pope, ultimately the decision had to rest with the church. Furthermore, it was the duty of the king to protect his people and to protect the church.

In this letter it can be seen that Theobald was pragmatic and saw that co-operation was key. He wanted the church and the king to work alongside each other, but to keep their separate spheres. On this matter there is a difference between the attitudes of John and Theobald. Theobald saw that the best way for the two to exist harmoniously was for co-operation and mutual support. John would rather the church and monarch were independent of each other; he was an idealist who believed that autonomy of governance for the church was the only right way for the church to exist. He was clear in his understanding that the monarch was necessary in order to protect the church. This was not a job the clergy should perform. John was also of the opinion that the monarch was subject to the laws of God and subject to influence from the church, whilst concurrently believing that there should be no involvement from the monarch in the organisation and the running of the church. This extended from the daily life of the clergy through to church governance and key areas such as episcopal elections. Compared to John, Theobald was more of a realist as he understood that politically, economically and strategically the church and the monarchy relied upon each other for support and status. The archbishop was a proponent of independent governance of the church as far as he believed that this could be realised. But unlike John, he recognised the benefits that a strong monarch interested in church matters could bring. He appreciated that with mutual respect, a co-operative relationship between

the church and the monarch could lead to a strengthened position for both. After the more *laissez-faire* attitude demonstrated by King Stephen, and the problems it caused, Theobald was probably encouraged by Henry II's interest and engagement with complex ecclesiastical situations. In order to encourage and foster a harmonious working-relationship, Theobald is seen to placate the king on occasion and allow him more contribution than Becket later afforded him.

A further letter was written in Theobald's name to the king, prompting him that a king must remember his position as a servant of the Lord, and that the church and the king should be united by this mutual love of God. In June to July of 1160 the archbishop wrote:

> The glory of a Christian prince is most vigorous and most effective, if he renders pious service to God from whom all princedoms come ... Discord between people beyond all doubt brings ruin upon kingdoms, feeds the fire of schism foredoomed by God, and bodes the fall of princely power ... we have, God being our witness and our judge, framed our advice, which the faithful prudence of his subjects would have been in duty bound to offer to their king, even if it was not asked of them.[84]

Theobald was respectful of the king, in acknowledging that for such an important decision as to which papal candidate to support, the king had asked for advice from both his lay and his ecclesiastical magnates. Theobald did not presume to lobby the king with the church's choice of its candidate. He instead demonstrated how the

[84] *EL*, ep. 125, June-July 1160, 215-217: "In eo maxime uiget et proficit gloria principis Christiani si pium Deo a quo omnis principatus est impendit famulatum … Collisio siquidem populorum indubitata regnorum subuersio est et fomes scismatis est praedampnati a Domino et iam labentis indicium principatus … consilium, Deo teste et iudice, formatum est quod fidelis prudentia subditorum uero principi dictare debuerat non rogata."

church had formulated its judgement of the right candidate and that they would offer this to the king, as he had requested the advice.

By late 1160, Alexander III had been recognised as pope by the main western monarchies. When this decision had been reached, Theobald wrote to all the bishops and the faithful of England informing them that Alexander had been chosen, and that church and monarch were united in their support for him: "That man [the new pope] is the lord Alexander, whom the Churches of England and France have, with the assent of our princes, received as their father and their shepherd."[85] This would have been deemed acceptable to God, as it was in line with canon law. While canonically, the laity was to have no part in ecclesiastical elections, it was common sense to elect a new pope of whom princes had a high opinion, and who would be obeyed, as was right.

The letters regarding the papal schism demonstrated that Theobald was pragmatic, desiring co-operation between the king and the church on the critical issue of the papal election. Each of the letters considered here reminded the king that church elections were by law, church business. They also reminded Henry II of his duty to protect the church and to ensure peace within his realm. Whilst the letters called for co-operation, the superiority of the spiritual body was asserted over the worldly governance.

[85] *EL*, ep. 130, late 1160, 226: "Is est dominus Alexander quem in patrem et pastorem, assensu principum nostrorum, Anglicana et Gallicana recepit ecclesia et."

D. Archbishop Becket and the Clarendon Dispute

In an entry in the *Historia Pontificalis* for the year 1148, John made reference to King Stephen's treatment of Archbishop Theobald, bearing some striking resemblance to the later situation with Archbishop Becket and Henry II. John wrote that messengers of the king met Archbishop Theobald when he returned to England, "warning him to leave the country with all speed, since he had dared to attend the council in defiance of the king's prohibition."[86] It is clear that John understood Theobald's position was a dangerous one. Theobald had ignored Stephen's command to disobey the wishes of the papacy if it clashed with the desires of the monarch. John then explains that the archbishop felt the 'miseries' and 'pains' of the situation:

> And he [the pope] commanded, as they were bound to obedience, that if the king did not comply with their admonitions they were at once, without allowing any appeal, to place his land under an interdict and warn him that the lord pope would excommunicate him personally ... But almost all the bishops proved 'a deceitful bow', for they were at the king's mercy, and the clergy preferred peace to duty.[87]

John was a vocal supporter of church rights and freedom from all external power, including royal power, and this excerpt revealed his frustration, although his exasperation could be seen to be somewhat rhetorical. John was of the opinion that all members of the church had a duty to defend its rights. The authority of the church was superior to that of the worldly ruler, and so members of the church were bound to follow the rule of the church and the rule of their pope. The wrath of a king was

[86] *HP*, 42: "denunciantes ei ut festinanter egrederetur de terra, quia contra prohibitionem regis ad concilium uenire presumpserat."
[87] *HP*, 45-46: "Et nisi obtemperaret monitis, in uirtute obediencie precepit ut incontinenti et cessante omni appellatione terram eius sub interdicto concluderent, eique denunciarent quod dominus papa ipsum erat excommunicaturus ex nomine in proximo … Sed episcopi fere omnes facti sunt ei in arcum prauum qui erant in regis potestate, et clerus obedientie quietem pretulit."

merely a danger to contend with on earth; the wrath of the Lord is eternal. Furthermore, the church was responsible for the spiritual welfare of the king and had been appointed by God to carry out this task.

When Thomas Becket succeeded Theobald, the new archbishop shared John's enthusiasm for the rights of the church, and he refused to kowtow to the demands of Henry II who sought a more active role in the business of the church, culminating in his issuing the Constitutions of Clarendon. The background to the Becket controversy is as follows. There were a number of judicial cases in the early 1160s in which Becket had refused to allow clerics to be tried in secular courts angering Henry II.[88] Conflict over and tension between clerical and secular jurisdiction was not new, but since Henry had reason to see Thomas Becket as an ally who would allow increased secular control in this area, he would have been disappointed to be proved wrong. At the Council of Westminster in October 1163, Henry II proposed that clerics found guilty in ecclesiastical court should be disowned by the church and subsequently sentenced in a secular court. The bishops and abbots present at the council were concerned at such a proposition; consequently, the bishops and Archbishop Becket unanimously resisted.[89] After failing to gain acceptance of his new procedure, the king demanded recognition of what he called his royal customs. Becket, after consulting with the bishops, agreed that they would observe them, *saving their order*. Each bishop was then asked individually to repeat his undertaking, each gave the same response, excepting Hilary of Chichester, who substituted *in good faith*. The king was not satisfied and

[88] See Anne Duggan, *Thomas Becket*, London, 2004, 34-40 for specific details.
[89] W. L. Warren, *Henry II*, London, 1973, 97.

demanded, but did not get, an unreserved acknowledgement.[90] The king then approached individually some of the bishops in an attempt to break down their unity; Gilbert of London, Hilary of Chichester, Roger of York and Robert of Lincoln were seen by the king to be more open to persuasion than others.[91] Henry was intent, however, on pushing through his demands in spite of episcopal opposition, and so pressed for papal acceptance. The position of the pope was insecure following the papal schism. Henry's loyalty was therefore crucial to Pope Alexander III to maintain his position and therefore the King's bargaining position was strong.[92] Consequently, between October and December 1163, Arnulf of Lisieux and Richard of Ilchester crossed the Channel three times in a vain attempt to persuade the pope to agree to Henry's Westminster proposals.[93] Hilary of Chichester tried to persuade Thomas Becket to accept the constitutions, and in December 1163, Alexander III sent Robert of Melun, the bishop-elect of Hereford, the Cistercian, Philip of l'Aumône and Count John of Vendôme to press Becket to find a solution to the problem. It was under this pressure that Becket agreed at Woodstock, around Christmas 1163, to give an oral acceptance of the 'customs of the realm'.[94]

Henry II then called a great council of nobles and bishops to attend at Clarendon, on about 25 January, 1164. At this council the bishops were required to give their formal adhesion to the 'customs of the realm' in the presence of the baronial council. Becket initially refused. The bishops conferred for two days while pressure was applied to

[90] Duggan, *Becket*, 40; *VTCHB*, 266.
[91] Duggan, *Becket*, 40; *VTRP*, 29-31.
[92] Duggan, *Becket*, 41.
[93] For further information on Richard, see Charles Duggan, 'Richard of Ilchester, Royal Servant and Bishop', *Transactions for the Royal Historical Society*, Fifth Series, Vol. 16 (1966), 1-21.
[94] Duggan, *Becket*, 43-44; *VTWC*, 14-15; *VTEG*, 378-379; *VTRP*, 30-33.

them through an atmosphere of threat and intimidation. The bishops' unanimity started to fracture; Jocelin of Salisbury and William of Norwich were especially fearful of Henry II. The Earls of Cornwall and Leicester warned of terrible retribution if the bishops continued to resist; two Templar knights, Richard of Hastings and Hostes of Saint Omer, also threatened an equally bleak picture for the clergy if the king were further provoked.[95] Under the threats of violence Becket relented somewhat and promised to accept the customs *in the word of truth*, and ordered the bishops to do the same. This was not an oath, but rather a promise, on their honour as bishops, to abide by the customs. The king desired that the customs be recorded in writing. A chirograph was produced, containing not only the sixteen clauses of what became the Constitutions of Clarendon, but also a preamble which declared acknowledgment by the fourteen named members of the episcopate who had promised, in the word of truth, to keep them in good faith, in the presence of thirty-eight witnesses.[96] Becket accepted one of the three copies as proof of their content, but refused to append his seal.[97] This refusal compounded the situation. The Bishop of Evreux attempted to act as a mediator between archbishop and king. Henry, however, said that the only way forward was to petition the pope for confirmation of the constitutions.[98] The pope

[95] *VTWC*, 16-17; *VTEG*, 381-382; *VTRP*, 34-35; *VTHB*, 279 (Herbert confused Winchester with Norwich); Duggan, *Becket*, 44.
[96] Dugan, *Becket*, 44; W. Stubbs, *Select Charters*, 9th edition, Oxford 1913, reprinted 1960, 163-167; *English Historical Documents, vol. ii (1042-1189)*, eds. D. C. Douglas and G. W. Greenaway, London, 1953, 718-722.
[97] *VTWC*, 15-23; *VTEG*, 379-383; *VTJS*, 312; *VTRP*, 33-37; *VTHB*, 278-289; Dugan, *Becket*, 44.
[98] *VTRP*, 37-38; Duggan, *Becket*, 45.

refused to give his approval; rather, he commanded in February 1164, that Becket and the bishops revoke whatever promises they had made.[99]

Henry II had claimed that the demands of the constitutions were ancient 'customs' and rights that had been exercised by his grandfather, Henry I. It is not clear whether they were indeed "ancient customs."[100] Not all of the constitutions were disadvantageous to the church, and clauses 2, 6, 11, 13, 14 and 16 were tolerated by Alexander III. The remainder, however, were serious impingements upon ecclesiastical rights;[101] they were contrary to canons and the liberty of the church.[102] The *Decretum* of Gratian highlighted that only when a custom was contradictory to neither reason, nor the canons, nor the Catholic faith, could it be recognised as law.[103] It is clear that aspects of the Constitutions could not, therefore, become law. There were also major objections to the way in which the constitutions were promulgated; there had been no inclusion of the bishops at their formulation and their recognition implied full compliance. There were two clauses in particular which were especially problematic for the church – clause 3, relating to trial and punishment of 'criminous clerks', and clause 8, on appeals within the ecclesiastical system.[104]

Duggan described the Constitutions of Clarendon as an audacious attempt to turn occasional royal interventions in ecclesiastical affairs into unchallengeable legal

[99] *The Correspondence of Thomas Becket, Archbishop of Canterbury 1162-1170*, ed. and tr. A. J. Duggan, 2 vols, Oxford, 2000, i, ep. 25, 78-79; Duggan, *Becket*, 45.
[100] Duggan, *Becket*, 47.
[101] Duggan, *Becket*, 46.
[102] Helmholz, *History of the Laws of England*, 114.
[103] Gratian, *Decretum*, D 11 c. 4 and c. 6. Cf. Gratian, *Decretum*, D 20 c. 3.
[104] Duggan, *Becket*, 48.

process.[105] Warren observed that by having the customs written down, Henry II departed from the policy of his grandfather, Henry I. By such an action, malleable custom acquired the rigidity of law.[106] That Henry II failed to achieve his objectives was the result of trying to force through his radical programme by threat and bad luck (the murder of Becket by members of his court). Finding the pope immovable in the face of his demands, Henry took steps that compelled Pope Alexander III to authorise an interdict. Henry, trying to avoid the interdict in effect formalised a local schism, when he issued the 1169 decrees, his supplement to the Constitutions.[107]

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John of Salisbury sided with Becket in the dispute and was steadfast in his devotion to the liberty of the church and opposition to Henry's desire for increased control. At the beginning of 1164 (or the end of 1163) John was believed abroad, either voluntarily, on the instruction of Becket, or in fact as a result of exile by Henry II.[108] During the first phase of John's exile, he appeared somewhat moderate, observing his philosophy of the Golden Mean, calling for moderation from Becket and attempting to broker peace with Henry II. Laarhoven has described how John tried to maintain his position as defender of ecclesiastical rights, acting as advisor, mediator, conciliator accepting nothing which infringed the claims of honesty and equity whilst trying to find solutions in an atmosphere of peace and calm.[109] In a letter to Humphrey Bos, John explained that he had stood by Becket, calming his tendency for excess: "If he [Becket] ever

[105] Duggan, 'Henry II', 174.
[106] Warren, *Henry II*, 476.
[107] Duggan, 'Henry II', 174; *Councils and Synods and other documents relating to the English Church, vol. i, part 2: 1066-1204*, eds. D. Whitelock, M. Brett and C. N. L. Brooke, Oxford, 1981, 930-936.
[108] *Entheticus*, i, 7.
[109] *Entheticus*, i, 8.

seemed to detour from justice or exceed the mean, I stood up to him to his face."[110] John also wrote to Becket: "let your moderation, as is particularly expedient, be known to all."[111] This could also be explained as John disapproving of Becket's character and behaviour; "John's belief in the primacy of the spiritual and commitment to the immunity of the clergy were as total as Becket's."[112]

Early in 1166 Becket had been prepared to excommunicate Henry II,[113] but changed his mind when he discovered that the king was very ill. At Easter meetings were held between King Louis VII and Henry II, and later between the English king and Becket's clerics, at which John was present. Neither meeting achieved peace between the king and Becket.[114] Whilst John had initially propounded moderation, and then viewed the dispute as a personal quarrel between Henry II and Becket,[115] following his meeting with the king at Easter John appeared to have hardened his view of the position of the king becoming vehement in his opposition to the Constitutions of Clarendon. This is characterised by references to the passion of Christ and the repression of the early Church by the Romans.[116] Not only was John's advice sought on matters of policy, he also attended all peace negotiations between 1167 and 1169. Even more significantly, he began to write important letters in Becket's name.[117]

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[110] *LL*, ep. 139, probably 1164-1165, 20-23: "Sicubi uero aut exorbitare a iustitia aut modum excedere uidebatur, restiti ei in faciem".
[111] LL, ep. 176, probably late July 1166, 16-169: "modestia uestra, quod plurimum expedit, omnibus innotscat". Cf. Philippians, 4:5.
[112] Duggan, ' Salisbury and Becket', in *The World*, 428-429; see also Beryl Smalley, *The Becket Conflict and the Schools*, Oxford, 1973, 103; also McLoughlin, 'The language of Persecution' in ed. Sheils, *Persecution and Toleration*, 73-87.
[113] See *LL*, ep. 157, 64-67.
[114] *LL*, xxvii-xxix.
[115] Nederman, *John of Salisbury*, 30.
[116] See McLoughlin, 'The Language of Persecution', in *Persecution and Toleration*, ed. Sheils, 73-87.
[117] Duggan, 'Authorship', 38.

Throughout the dispute between the king and Becket, John's opinion was that, morally, each man had to make his own choice in the split between the church and the king. He believed, however, that there was in fact no choice to be made, since all men of the church had a duty to follow divine law and canon law and support the church in this matter. John was therefore critical of members of the church who appeared to neglect this duty. (It is perhaps more likely that some members of the church were afraid to resist agreeing to the Constitutions.[118]) John wrote to Master Raymond, chancellor of Poitiers cathedral, in June 1166, enquiring how any man of the church could accept the Constitutions of Clarendon, when they were in opposition to God's law. He wrote: "Who would take his oath to keep wicked customs and laws never heard of before or repugnant to God's law?"[119] In June 1166, whilst on pilgrimage in Vézelay, Becket decided against excommunicating the king after hearing of his illness, but Thomas did publically denounce the king's proceedings, excommunicating a number of the king's officials, such as the justiciar Richard de Luci, and summoning the king to repent.[120]

In July 1166, John wrote to Bartholomew, Bishop of Exeter. Becket's position had been bolstered by the fact that he had been appointed papal legate to England, but it was also weakened by the appeal organised by Gilbert Foliot against Thomas's position as legate and his pronouncements at Vézelay. John wrote: "I would that these who are

[118] See above for examples of bishops being threatened into accepting the constitutions.
[119] *LL*, ep. 167, June 1166, 96-97: " Sed et de consuetudinibus reprobis et legibus ignotis aut repugnantibus legi Dei seruandis quis sacramentum praestat?"
[120] *MTB*, iii, 391; *LL*, ep. 168, 113.

now complaining and murmuring would follow the law of the Lord."[121] If God's law was followed, it would become clear that the king's position was one of wickedness and as such, this should have been openly rejected and challenged. The law of God was the ultimate law, not just for those within the church, but for all mankind. To follow anything which went against this was in itself unlawful. In a letter written very soon after, John stated:

> If it is only the customs which are due to him [Henry II] which he requires ... he ought to have been duly satisfied with those customs which are not at war with the laws of God, not contrary to sound morals, do not dishonour the clergy, do not carry with them peril to souls, do not take her freedom from the Church his mother – from whose hand he received the sword to protect her and to ward off her wrongs.[122]

John could not comprehend that the bishops would agree to the king's demands, when John believed him to be acting like a tyrant, riding roughshod over the church's rights and liberties. In John's view the king should not have wished to remove the church's freedoms, as he seemed to be intent on doing, and the king should remember he received his position from the church in order to protect it. Such letters were, of course, rhetorical constructs allowing the expression of such the strong opinion.

In 1166-1167, John wrote to Hugh, Abbot of Bury St Edmunds appealing that the law of the church was in great danger of being eroded by the king's insistence on the Constitutions of Clarendon. John informed his friend that "The text of both Testaments asserts, and the doctors of our mother the Church preach with a united

[121] *LL*, ep. 171, July 1166, 126-127: "Et utinam hi qui modo queruntur et murmurant Domini sequantur legem."
[122] *LL*, ep. 174, July 1166, 138-143: "Si uero non nisi debitas exigit consuetudines ... illis profecto debuerat esse contentus quae non sunt diuinis legibus inimicae, quae bonis moribus non aduersantur, quae sacerdocium non dehonestant, quae periculum non ingerunt animarum, quae matris ecclesiae, de cuius manu suscepit gladium ad ipsam tuendam et iniurias propulsandas, non subruunt libertatem."

voice, that the things which are dishonourable and base endanger salvation and can in no wise be useful, for 'What will it profit a man if he gains the whole world, and procures the loss of his soul?'"[123] John was of the view that the king was considering only his own advancement by further increasing his power in pushing forward the Constitutions. John made it clear that church law did not support the actions of the king and his demands that jeopardised the salvation of souls, including that of the king, could not be accepted. It was as John saw it, the responsibility of the clerics to aid the king at this time of weakness and demonstrate to him that in desire for control over the church he was imperilling his own soul.

Around January 1167, John addressed to Pope Alexander III his concerns about the apparent lack of control which the church held over the king. Rumours of the papal legation, believed, correctly, to be made up of William of Pavia and Otto, cardinal-deacon of St Nicholas in Carcere Tulliano were commonplace. William had been a monk at Clairvaux then archdeacon of Pavia, and cardinal-deacon of St Mary in Via Lata. By 1160 he had become cardinal-priest of St Peter-ad-Vincula and became Bishop of Porto in 1170.[124] The rumour of William's appointment as legate was concerning to the Becket party as he was seen to be an ally of Henry, requested by the king himself.[125] John wrote: "He [Henry II] may make new laws, cancel old; yet he cannot change those which have permanent validity from the word of God in the Gospel and the Law ... it is said that the English king has been exempted, by a new

[123] *LL*, ep. 192, 1166-7, 264-265: "Hoc utriusque Testamenti astruit pagina; hoc consona uoce matris ecclesiae doctores praedicant, quoniam quae inhonesta et turpia sunt dispendium quidem salutis ingerunt et nulla ratione possunt esse utilia. Quid enim proderit homini, si mundum lucretur uniuersum, et animae suae detrimenta conquirat?"; Cf. Matthew 16:26, Mark 8:36.
[124] Frank Barlow, *Thomas Becket*, London, 1986, 163.
[125] See *The correspondence of Thomas Becket,* ep. 123.

privilege, from the jurisdiction of all the bishops."[126] John was concerned by the rumours he had heard, and dismayed that the king had managed to achieve the upper hand with such ease. He therefore sent the letter of complaint to the pope.

In another letter to the pope, John questioned why the pontiff had given his support to parts of the Constitutions of Clarendon. John wrote: "If the king by your authority won the confirmation or tolerance of the customs which he seeks, what would any prince from now on fear to demand against the Church? One thing I know, that with safety to his profession and without injury to God's law no bishop, nor any Christian man, can keep these customs."[127] This letter was written on behalf of Becket's entire circle in exile. It congratulated the pope on the Emperor's losses while voicing suspicion of the legates, William of Pavia and Otto of St Nicholas, who had evidently not yet arrived.[128] John made clear that he believed if the pope were to accept the Constitutions, then any prince in the future would feel that they could make even more stringent demands upon the church. He believed that the monarch must have some restriction on his power, to avoid the risk of him becoming an absolute ruler. Whilst the king was a representative of God upon earth, this could, on occasion, be forgotten, especially when a monarch was poorly guided by power-hungry advisors. It was therefore the task of the church, and particularly the pope, to ensure that the king was acting in an appropriate manner.

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[126] *LL*, ep. 213, *c*.January 1167, 348-351: "Liceat ei noua iura condere, uetera abrogare, dum tamen illa, quae a Dei uerbo in euangelio uel lege perpetuam causam habent, mutare non possit ... dicitur quod rex Angl(orum) omnium episcoporum iurisdictioni subtractus est priuilegio nouo."

[127] *LL*, ep. 219, *c*.September–October 1167, 374-377: "Si rex auctoritate uestra confirmationem uel dissimulationem consuetudinum quas petit optineret, quid uereretur amodo princeps aliquis contra ecclesiam postulare? Vnum scio, quod salua professione et citra diuinae legis iniuriam eas non modo episcopus, sed nec Christianus poterit conseruare."

[128] *LL*, xxxv.

By February 1167, it was confirmed that William was papal legate. This displeased Becket greatly. In *c*.October 1167, John wrote to William of Pavia and explained the difficult situation in which he found himself, not able to support the stance of Henry II as it was an affront to the freedom of the church and therefore to God.. According to a letter from John to the Bishop of Poitiers, it would seem that Becket had written directly to William, against John's advice, rejecting his intervention.[129] John must have felt compelled to intervene and wrote his own conciliatory letter to William:

> I cannot believe that any man, however great, can have power to effect what is beyond the limit set to the authority of the Prince of the Apostles. To be sure one should defer as much as one can to the king as to a prince of the highest glory; this I admit, but only in so far as there is no ... offence to God ... I remain an outlaw and an exile, and shall remain in exile willingly as long as God would have it so.[130]

John felt that he was one of the few who had managed to follow this position rigidly, while others had accepted to swear fealty to the king, and to agree to observe the Constitutions of Clarendon.

In a letter to Baldwin, archdeacon of Totnes in *c*.1168-1170, John explored the conflict and used strong language again to highlight his concerns: "The Church defends, the king destroys her liberty ... But it is far more tolerable to fall into men's hands than to desert the law of God ... no doubt should exist where divine law lays down our course. For it is never wise to depart even from the least of God's commands ... to preserve one's earthly life, still less for worldly chattels or empty

[129] *LL*, ep. 227.
[130] *LL*, ep. 229, *c*.October 1167, 404-405: "Vbi autem principis apostolorum cohibetur auctoritas, nulla ratione crediderim conualescere posse cuiuscumque hominis potestatem. Fateor autem et uerum est domino regi, utpote gloriosissimo principi, quamplurimum deferendum, sed ita ut Deus nec in minimo offendatur ... proscriptus exulo, et exulabo libenter dum Deo placuerit."

quiet."[131] John demonstrated that there were dangers "on every side", suggesting that as the church had been manipulated and its members duped by the king and there was little room for manoeuvre. John wrote of the church having her liberties destroyed by the tyrant, Henry II. John was firm in his faith that Christ would restore the freedom of the church fairer and stronger than it had been before.

In *c*.November, 1169 in a letter to Master Herbert, a clerk of Henry of Blois, the Bishop of Winchester, John wrote: "there was none to aid the Church in her travail against the deeds performed under the pretext of established law, and customs that are elderly and indeed ripe for retirement. Those who at that time aimed, more than others, to do what was pleasing in the sight of men, or rather madmen, were put to confusion."[132] By the time this letter was written Henry II had refused to grant the kiss of peace to Becket. Henry was also arranging for the English bishops to swear to constitutions supplementary to those of Clarendon, the 1169 decrees.[133] The Bishop of Winchester had publically stood out against the king on this matter, and the letter congratulated the bishop: "I felicitate my lord the bishop of Winchester with all possible readiness of mind, since he has given an answer worthy of Christ."[134]

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[131] *LL*, ep. 281, 1168-1170, 614-617: "nam quam rex perimit, illa uendicat libertatem ... quia longe tolerabilius est incidere in manus hominum quam derelinquere legem Dei … nec debet esse ambiguum quod gerendum praescribit lex diuina; nam nec minimum de mandatis Dei ... pro temporali uita, nedum pro mundana suppellectili uel uana quiete, consiliose deseritur."

[132] *LL*, ep. 296, *c*.November 1169, 682-683: "ecclesiam laborantem contra ea, quae sub praetextu iuris inueterati et antiquarum uel antiquandarum consuetudinum praesumpta sunt, non erat qui adiuuaret? Sed profecto qui tunc prae ceteris placere hominibus, immo furentibus affectabant, confusi sunt."

[133] See M. D. Knowles, Anne J. Duggan and C. N. L. Brooke, 'Henry II's Supplement to the Constitutions of Clarendon', *The English Historical Review*, Vol. 87, No. 345 (Oct., 1972), 757-771.

[134] *LL*, ep. 296, *c*.November, 1169, 682-685: "domino meo episcopo Wintoniensi quanta possum mentis alacritate congratulor ... Christo dignum responsum dedit". See also *MTB*, ep. 650: Becket's letter confirmed that the bishop of Winchester had refused the demand to swear an oath on the decrees of 1169.

In a letter sent to Peter, Abbot of Saint-Rémi, Reims in December 1170, John described the imminent return of Becket to Canterbury from exile. There was a sense that peace might be achieved, but after years of protracted disagreement, both sides were suspicious of each other. John described how the Archbishop of York, the Bishop of London and their allies advised the king not to allow the return of Becket unless he renounced the office of papal legate and "promised to keep the kingdom's law inviolate, and so could be cornered into observing the customs under such a guarantee."[135] John showed that those at York and at London, notably Gilbert Foliot, though he is not mentioned by name, were the chief opponents of Becket and therefore of the liberty of the church. The steps which these adversaries wished the archbishop to take before he could return to England were, as far as John could see, tantamount to handing over control of the church and accepting defeat at the hands of royal power, desecrating the law of God.

E. Conclusion

John of Salisbury wished for the church and the king to maintain independent remits of authority. He was adamant that the supremacy of God's law was absolute. Judges must know the law and ensure it was enacted for the sake of justice. Judges were not to take bribes; by knowing the law, they would know that this was forbidden. The king was ultimately responsible for the actions of the judge as part of his duty and office. In some of these ideas, John was in opposition to other writers. He was so sure of the need for separation of church and royal power that his views contrast earlier writings.

[135] *LL*, ep. 304, December 1170, 716-719: "repromitteret se regni iura inuiolabiliter seruaturum, ut sub optentu cautionis huius ad obseruantiam consuetudinum artaretur."

For example, Anselm was of the opinion that there should be co-operation between the prince and the church. John's ideas were not totally novel, however they did echo those of Hugh of St Victor. During the papal schism John was concerned about the infringements he saw Henry II making upon the rights of the church when the king's support for a papal candidate without discussion with the church seemed likely. John believed that the king should not be involved in the papal election, but Theobald was more pragmatic, and the letters written in his name showed a desire for co-operation on the key appointment. With regard to the split between church and monarch over the Constitutions of Clarendon, John was vociferous in his belief that Henry's behaviour was abhorrent. Whilst some churchmen accepted the king's position on these issues, John vehemently opposed any such augmentation of lay control over the church. John made clear that the demands of the Constitutions were in opposition to canon law and to fundamental liberties of the church, and asserted the superiority of the church of the temporal ruler.

Chapter Five

Church and King in Practice

Chapters Three and Four considered how John of Salisbury thought about the relationship between the church and the monarch. John was a proponent of limited royal involvement in ecclesiastical affairs. The monarch was needed to protect the church and the realm, as members of the clergy should not to be polluted by the shedding of blood, but should take no part in the administration of church matters, for example in elections and in disputes concerning church affairs. John supported his ideas with frequent references to canon law and the Bible. This chapter will consider how the relationship between the church and the monarch operated. For this purpose, the letters written by John which provide the best insights, while further particulars can be gleaned from the *Historia Pontificalis*.

A. God as the ultimate judge

A trope which appeared throughout John's writing was of God as the ultimate judge. In a case of conflicted interests between spiritual and temporal powers, one's loyalty to God and the church must take precedence. A section of John's writing which encapsulated this view can be found in one of the early letters:

> 'no man can serve two masters,'[1] so that it is clear that this man cannot both watch over the interests of the brethren and serve the satellites of the court to win their favour ... If you act rightly and defend the liberty of the Church, the authority of

[1] Matthew 6:24 and Luke 16:13.

> the king bars the way; whereas if you act ill, the authority of the law of God cries out against you on every side.[2]

The passage represented John's fundamental view on the relationship between church and king. He expressed his anger at the king's opposition to those who acted in the interest of the church. He explained that it was impossible for anyone to act for the good of the church as well as for the purposes of serving the king's court. John would not have wished to serve at court, but he appeared to have sympathy for those church loyalists who did and found themselves torn between two conflicting authorities. He reminded the recipient of the letter, however, that to act against the church for the benefit of the king's court was to go against the law of the church. John understood that going against the king in order to protect the liberty of the church had its worldly consequences, but this was preferable to going against God.

A similar passage can be found in another letter,[3] written to Baldwin, archdeacon of Totnes in 1166. This letter was written the year after John of Oxford had been sent by Henry II to Rome to present the king's case. John of Oxford had suffered papal displeasure for accepting the deanery of Salisbury, but had managed to gain absolution and had arranged the legation made up of William of Pavia and Otto of St Nicholas, who were not viewed favourably by Becket and his supporters. (See Chapter Four.) John wrote: "so also in the Gospel, Truth Himself teaches us that one cannot serve God and Mammon, and that he who wishes to be the world's friend has set himself to be

[2] *EL*, ep. 94, unknown date, 144: "'Nemo potest duobus dominis seruire,' ut liquidum sit istum non posse et profectui fratrum inuigilare utiliter et satellitibus curiae ad gratiam famulari ... Bene ergo agenti et tuenti ecclesiasticam libertatem apud uos obstat regis, sed male agenti reclamat ubique auctoritas legis Dei."
[3] *LL*, ep. 187.

God's enemy."[4] This was an echo of passages found in the New Testament books of Matthew 6:24, Luke, 16:13 and James 4:4. John also added a quotation from Paul's epistle to the Galatians: "if I should wish to serve men, I should not be the servant of Christ."[5] John criticised those who had turned their back on the church to support the cause of the king in the dispute about the Constitutions of Clarendon; this criticism was presumably directed at John of Oxford.

In one of the letters written in the name of Archbishop Theobald, the tone was somewhat more conciliatory; Theobald wished to remind the king of his role as protector of the church.[6] This was the last known letter from Theobald to Henry in John's collection and was written in *c*.April 1161. It is possible that it was written to the king while the archbishop was dying; the language used and the timid, almost sorrowful tone of the letter suggest that this was the case: "I think there is no need for me to express in words with what devotion I have served you ... of my faithfulness I have witnesses in heaven ... And do you, if it so please you, defend it from the assault of evil men ... I promise you, that if you faithfully watch over His cause He will watch over yours and give you great blessings."[7] The letter gave the sense that the archbishop wanted to depart from this world on good terms with the king. Letters had been sent in the name of Theobald to Henry in 1160, with requests for the king to

[4] *LL*, ep. 187, late 1166, 232-233: "Vnde etiam in euangelio ueritas docet Deo et mammonae simul seruiri non posse, et quod qui amicus saeculi esse desiderat Dei se constituit inimicum."
[5] *LL*, ep. 187, late 1166, 232: "'si hominibus placere uellum, Christi seruus non essem'".
[6] *EL*, ep. 135.
[7] *EL*, ep. 135, *c*.April 1161, 249-250: "Qua deuotione uobis seruierim uerbis enarrare superfluum duco ... et fidei meae testis in caelo sit ... ut eam, si placet, ab incursu prauorum hominum tueamini ... quia ego pro eo spondeo uobis quod, si causam eius fideliter procuraueritis, et ipse uestras utilissime promouebit."

return from the continent to speak with Theobald in person.[8] The king had declined these requests. The letter made it clear that the protection of God's cause would be the protection of the king's cause also, as the relationship was a reciprocal one. The letter also reminded Henry that it was through the church of Canterbury and through the archbishop that the king received his position as monarch. In this way, the letter was urging co-operation, whilst reinforcing the idea that the king was inferior to the church, and that the law of God and the law of the church were superior to any law which the king could create. This letter demonstrated that Theobald believed it was time for the king to be reminded of his position. It may be the case that Theobald was concerned about Henry attempting to augment his power over the church in the future, which ultimately took place, and demonstrates that the debate about the sources of authority was still very much alive.

B. Specific Roles of Church and King

John understood that the prince had a specific role to perform – the protection of his people and the punishment of crimes. (See Chapter Three.) He presumed that the church and temporal government, whilst both divinely ordained, were institutions with their own special purpose and tools. Their aims and methods were intricately linked, however, and the actions of one would affect the condition of the other.[9] A letter written by John, 1164-1169, demonstrated his belief that the religious and the lay were to have their own sphere of duty and were employed by the Lord for a specific

[8] *EL*, ep. 121 and 127.

[9] Cary J. Nederman and Catherine Campbell, 'Priests, kings and tyrants: spiritual and temporal power in John of Salisbury's *Policraticus*', *Speculum,* 66:3 (1991), 576.

purpose. He made an interesting observation about the parallels between the governance of the church and secular governance. He explained to the recipient of the letter, Nicholas Decanus, the sheriff of Essex that:

> Bishops are called by the Pope to exercise pastoral care and wield the spiritual sword; in a similar way *comites* are summoned by the king into the fellowship of the temporal sword, as it were as bishops of the law of the world. Those who perform this kind of office in the palace are by this right counts palatine; those who perform it in the provinces are provincial counts. Both carry the sword, not to carry out the bloody sentences of the tyrants of old, but in obedience to the divine law to serve the public good according to its rule, to the punishment of evil-doers and the praise of good men. You act *vice* the provincial *comites*, as your title, combining office and shire, indicates: and I pray you may carry out what the king demands in such a way that He be not offended who takes away the spirit of kings and is to be feared among the kings of the earth, whose spouse the Church is.[10]

John suggested that the worldly political organisation was an inferior parallel of ecclesiastical organisation.[11] He was describing the work of the earls as being similar to that of the bishops, the latter acting for the spiritual enhancement of the world, following direction from the pope, and the former acting for the secular good of all, following direction from the king. Both were working for the greater good and the good of the public, in obedience to divine law. He saw the sheriffs as deputies of the

[10] *LL*, ep. 269, 1164-9, 542-545: "Nam sicut alii praesules in partem sollicitudinis a summo pontifice euocantur ut spiritualem exerceant gladium, sic a principe in ensis materialis communionem comites quasi quidam mundani iuris praesules asciscuntur. Et quidem qui hoc officii gerunt in palatio iuris auctoritate, palatini sunt; qui in prouinciis, prouinciales. Vtrique uero gladium portant, non utique quo carnificinas expleant ueterum tirannorum, sed ut diuinae pareant legi et ad normam eius utilitati publicae seruiant ad uindictam malefactorum, laudem uero bonorum. Tu ergo quia prouincialium uices agis, prout loci et nominis index est titulus, utinam sic exequaris quod exigit princeps, ne offendatur is qui aufert spiritum principum, terribilis apud reges terrae, cuius ecclesia sponsa est."

[11] In her recent thesis, 'Nugae Curialium Reconsidered: John of Salisbury's Court Criticism in the Context of his Political Theory', Ayşegül Keskin Çolak argues that John of Salisbury does not support a hierocratic system, but rather separates the executive mechanisms of spiritual and temporal power; MPhil, University of Birmingham, 2011.

earls, just as he saw the bishops as deputies of the archbishops. He saw the bishops as God's reeves. By demonstrating to the sheriff that these parallel positions were similar yet different, John had provided a model for harmonious existence between the church and the worldly political organisation. The sheriffs and earls were necessary for society, in order to maintain stability, to act as a deterrent to criminal behaviour and to carry out punishments when crimes were committed. All aspects of both organisations worked together for the glory of God and the concordance of society. It was clear that the spiritual aspect was superior to the secular aspect, as no one could vocalise doubt that God existed, and that all law emanated from him. If those who were responsible for the worldly advancement of society, for the carrying out of justice, for the punishment of crimes, and for the protection of all, were to accept their task with good grace, and not ignore the law and become tyrants, then those responsible for the spiritual improvement could do their job most effectively. By acting together, in unity, with a common goal of the betterment of humanity in this life and in the afterlife, society could prosper.

C. Criticism of King's behaviour or his advisors

A number of John's letters contained condemnation of royal actions. In order to avoid potential accusations of disloyalty to the monarch, however, this was done in a circumspect way. It would be dangerous to criticise the king directly, and so a strategy to avoid this danger this whilst making one's feelings known was to denounce those close to the king, such as advisors, or at least their policy and actions. In one letter written in the name of Theobald to Henry II, the king was advised that he was being

led astray by poor advisors. This may have been a way of criticising the king's poor policy, and rebuking the king indirectly. Theobald may also have wanted to see good in the king – he was a representative of the Lord after all – and any bad decisions he made could be attributed to misguided or corrupt counsel. "The sons of this world counsel you to lessen the authority of the Church that your royal power may be increased. But assuredly they wrong your majesty ... It is He that has increased your territories, He that has advanced your glory."[12] Theobald warned the king that if he were to follow the guidance of his advisors, and to take more control over the church, then God would punish them.

The will of the archbishop forms part of the collection of early letters, and was included within the bundle of correspondence collated by John. It is unclear to what extent this text was composed by John. As it concerned such a personal matter, it might be that John transcribed what the archbishop had dictated. The fact that it forms part of the early collection, however, suggests that John played some part in the preparation of the will and his ideas may have been intrinsic to its composition. In the will, Theobald forbade certain actions by officers of the king, but did not extend these prohibitions to the king himself. Theobald was trying to prevent the depredations commonly associated with vacancies.

> On behalf of Almighty God and on pain of anathema we forbid any officer of our lord the king to presume to lay rash hands on any property that is dedicated for the sole use of the monks of the church of Canterbury ... Further under threat of the same ban we forbid the alienation of any of the lands belonging to the archbishop, and prohibit all cutting down and damage to

[12] *EL*, ep. 127, June-July 1160, 219-220: "Suggerunt uobis filii saeculi huius ut ecclesiae minuatis auctoritatem ut uobis regia dignitas augeatur. Certe uestram inpugnant maiestatem … Ipse est qui dilatauit terminos uestros, ipse qui uestram prouexit gloriam."

> the woods until our successor be appointed, save only for some essential purpose of the church, or if the king command it with his own lips.[13]

In this way, Theobald acknowledged that he was unable to forbid the king to carry out these actions and he thus had limited control over the monarch. This is interesting. The allowance for woods to be cut down in cases of necessity of the church made sense. That the king could override Theobald's banning of alienation if he so desired would surely have been contrary to canon law. In Chapter Four, the point was made about the deterioration of relations between Theobald and Henry, and Duggan's suggestion that the archbishop was anxious to avoid a rift was highlighted.[14] The wording of the archbishop's will certainly suggested that Theobald was wary of offending the king, so much so that he effectively capitulated that Henry could do what he desired with the Canterbury lands.

Whilst the letters written in the name of Theobald were tentative in giving criticism, the tone of letters written personally by John were more openly hostile towards the king, his advisors and officials. John wrote to Master Ralph Niger in the summer of 1166, complaining of his harsh treatment at the hands of the king's officials, and how despite his attendance at the king's court to make peace, it was denied him. The letter referred to Becket having excommunicated members of Henry's entourage whilst at Vézelay. (See Chapter Four.) Ralph Niger was a firm supporter of the Becket cause,

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[13] *EL*, ep. 134, 1158-61, 246-247: "ex parte omnipotentis Dei et sub anathemate interdicimus, ne quis officialium domini regis ad res, quae propriis monachorum Cant(uariensis) ecclesiae usibus dicatae sunt, temerariam manum praesumat extendere … Ad haec sub eodem anathemate, terrarum quae ad archiepiscopum pertinent omnem alienationem fieri prohibemus, et excidia et dampna nemorum, donec nobis successor subrogetur, nisi quantum necessarius ecclesiae exegerit usus, uel dominus rex proprio ore praeceperit."

[14] Duggan, 'Henry II', 168.

and would have been receptive to John's criticism of the king's stance. John wrote: "when I came to the king's court, offering in all humility whatever satisfaction the laws would allow or his will might suggest to me, consistent with my honour, was I not excluded from the form for peace ... ?"[15] He continued to explain that he was at odds with the king for refusing to accept the customs within the Constitutions of Clarendon which were in opposition to the law of God. In the letter John did not accuse the king, but rather the king's officials of cruelly taking his possessions and casting him out, who had claimed to be following the king's will in this matter. John was therefore making a clear statement that he did not approve of the actions of those whom the king had given leave to act in this manner. John was criticising the king through criticism of his officers.

In a letter written to Albert, cardinal priest of San Lorenzo in Lucina, in late 1167, there is evidence of direct criticism of the king. By this point it was evident that the legates sent, William and Otto, were ineffective, even though the negotiations had not yet broken down. John wrote: "the Church is so ground down by the power of the king of England and so utterly enslaved that the mere mention of freedom seems to incur a charge of *laesae maiestatis.*"[16] John was clearly frustrated by the situation, in particular the choice of legates, and took the opportunity to vent his aggravation. He was still in exile, and living with his friend Peter of Celle in Reims; he may have felt that there was little chance that his comments would reach Henry II and his situation could

[15] *LL*, ep. 181, *c*.summer 1166, 198-199: "Nonne cum ad domini regis curiam accessissem, in omni humilitate offerens quamcumque satisfactionem iura permitterent uel uoluntas sua michi indiceret honestate incolumi, exclusus sum a forma pacis ... ?"

[16] *LL*, ep. 234, late 1167, 428-429: "Haec in potestate regis Anglorum colliditur et tanta premitur seruitute, ut etiam mentionem fecisse libertatis laesae maiestatis uideatur esse reatus."

not be much worse. Presumably, John felt safe and far enough away from England that he was prepared to commit such a statement to writing, or his actions had already made obvious his conflict with the king, to whom he was *persona non grata*.

D. Royal involvement in church issues

In some of the letters it is evident that on occasion there was a conflict of interest between the church and the monarch, for example if a layman claimed possession over church land, or when a religious house asked the king for assistance. One of the letters written by John in the name of Theobald was addressed to the pope and concerned a case which had come to the archbishop's court by appeal from Walter, Bishop of Chester-Coventry. The case was between Richard, a clerk, and Ralph Mansel, and concerned the church of Prestbury. Bishop Walter was preparing to settle the dispute "as was just and right," but there was an interruption. The letter proceeded as follows: "seven witnesses were brought forward who, as the bishop informs us, declared an oath that Richard had been canonically instituted in the church and ejected without any process of law. But by request of our lord king, before any sentence could be passed, the matter was postponed."[17] Richard then appealed to the archbishop's court and emphasised his unlawful ejection from the church: when he had been removed from the church at Prestbury it was without any process of law. Ralph argued that he had been absent from court when the bishop had accepted the

[17] *EL*, ep. 53, *c*.1154-1159, 91: "Producti sunt itaque septem testes qui, sicut ex testimonio episcopi praefati accepimus, Ricardum in praefata ecclesia canonice institutum et sine iudicio eiectum iureiurando firmauerunt. Interuenientibus uero precibus domini regis, causa, antequam sententia ferretur, sortita est dilationem."

evidence of Richard, and that this was contrary to sound procedure.[18] When the king interceded it was likely that he was invited to do so by Ralph Mansel, and the case was postponed at his request. It would seem likely that Ralph Mansel used his royal connections to gain the ear of the king, and as a result the king intervened on his behalf.[19] According to the letter, it was only at the request of the king that the case was postponed, not at his command. In theory, then, there was no necessity for the case to be adjourned. That there was postponement after the king's request suggested that the bishop's court had not wanted to incur the displeasure of the king. The fact that the monarch had become involved with the case was apparently enough to bring proceedings to a pause. Richard appealed to the archbishop as he felt that Ralph had unfairly gained advantage by involving the monarch. The case was then taken before the archbishop's court, where witnesses for Richard were produced. Ralph objected to the evidence being accepted in the bishop's court, while he had been granted an adjournment. Ralph also suggested that two of the witnesses were criminals, thus he asked for a postponement to prove these charges. He was offered canonical and legitimate delay, but he wanted more, so appealed to the pope, and this letter gave an outline of the case so far. This case may suggest that the court system remained open to abuse, as Ralph's behaviour demonstrated he was aware of techniques to cause delay and postponement.

In letter number 104 in the early letter collection, the king had been asked to intervene in a case between the convent of Lilleshall and the bishop of Coventry. The

[18] This argument was probably sound.
[19] It has not been possible to discern whether Ralph had any direct connection through which to gain the king's ear.

king had written to the archbishop's court to complain that William the abbot had been treated harshly by Walter, the Bishop of Coventry. The case, at the request of the king, was to be moved to the court of the archbishop. A letter was sent in the name of Theobald to Bishop Walter, in which the bishop was advised: "unless you acquiesce, he [the king] will not allow you to have anything further to do with the convent."[20] Theobald's court was going to hear the case, as requested in order that: "the parties will be able to get justice without trouble ... in this way you will be able to retain the king's favour, which is most necessary."[21] The abbot of the convent presumably wrote to the king either directly or via an intermediary, complaining of the harshness of the bishop towards them. In this letter, as in the one previously discussed, it was reported that the king had requested, rather than demanded, that the case be moved to the archbishop's court, but again Theobald complied with the request. Theobald in his letter to the bishop explained that he needed to understand what had occurred and in order to do this his court would have to take statements from both sides. This demonstrated that the archbishop was not necessarily influenced by the king's complaint of harsh treatment of Lilleshall, and despite the king claiming that he would deny the bishop future contact with the convent if there were no co-operation, Theobald does not appear to have assumed guilt on the part of Walter. He advised the bishop to follow his counsel or risk making an enemy of the king. Theobald was keen to ensure justice was done, while placating the king by hearing the case.

[20] EL, ep. 104, 165: "nisi uelitis adquiescere, non patietur quod in iam dicta ecclesia aliquid amodo habeatis."
[21] *EL*, ep. 104, 165-166: "poteruntque partes sine uexatione iustitiam consequi … Et hoc modo regium, qui pernecessarius est, poteritis retinere fauorem."

A letter written in the name of Theobald to the abbess of Amesbury demonstrated involvement of the queen in the process of law.[22] The queen was to act as regent on behalf of the king while he was on the Continent. Theobald said:

> the authority of the king compels me to punish a wrong done to the holy Roman Church and an affront to the king's majesty, not to say ourselves ... And if our lady the queen corrects your breach of the king's edict by condign punishment, we shall ratify it, since on the authority of the canons, when law is treated with such contempt military force must be called in for the repression of malice.[23]

In this letter, and the previous letter in John's collection, it was apparent that the Benedictine house at Amesbury had a very poor reputation, and in 1177 the house was reformed and reconstructed with nuns from Fontevrault by Henry II.[24] Nothing is known of the abbess to whom Theobald wrote, but it was clear that the abbey had gained a poor reputation. As a result of failure to correct bad behaviour, the queen had intervened acting as an agent of the king. Theobald had written to the abbess instructing her to hand the church of Froyle back to Jordan the treasurer, who had been in possession of the church, and who had been confirmed in this position by a privilege from the pope and by an edict from the king. This letter is interesting as it highlights an instance of the lay *potestas* supporting the church.

[22] See, for example, *Letters of the queens of England, 1100-1547*, ed. Anne Crawford, Sutton, 1997 and *Eleanor of Aquitaine, Lord and Lady*, eds. Bonnie Wheeler and John C. Parsons, New York, 2002.
[23] *EL*, ep. 115, before 22 August 1160, 189: "Regia nos impellit auctoritas ut sanctae Romanae ecclesiae uindicemus iniuriam et, ut de nostro taceamus, contemptum regiae maiestatis … Et si domina regina quod in edictum regis commisistis condigna correctione emendauerit, nos illud ratum habebimus, quoniam ex auctoritate canonum, ubi iura taliter contempnuntur, ad reprimendam malitiam manus adhibenda est militaris." See for example Gratian, *Decretum*, C 23 q. 5 c. 20: "Principes seculi nonnumquam intra ecclesiam potestatis adeptae culmina tenent, ut per eandem potestatem disciplinam ecclesiasticam muniant." From Isidore, *De summo bono*, c. 53.
[24] *EL*, 187.

Another of the letters which John wrote on behalf of Theobald demonstrated co-operation and lay *potestas* on behalf of the church.[25] In the letter the pope, the archbishop, the king and the queen were unified in desiring the same outcome for a case involving Alfred, Bishop of Worcester. The bishop had been told how to proceed with a case by the pope, but he had not heeded this advice. Theobald wrote to the bishop, explaining that "the churches concerned in the transaction of Godfrey and William should go to Master Solomon"[26] as the king wished. The pope and the archbishop were in agreement with this, so either pressure was being exerted by the king, or, more likely, this outcome would be the just outcome, and in keeping with canon law.

One letter written in the name of Theobald to Henry II invited the king to involve himself with a situation regarding the monastery of St Mary of York. It is not entirely clear why the king had been asked to intervene. One of the monks there had sought a privilege allowing him to sin against the rule of St Benedict. The monks had agreed to forgive their fellow monk, but he would only acquiesce if the rules of the order were relaxed. The letter read as follows:

> never does the virtue of princes shine forth by any clearer sign than when their majesty brings peace to the people, quiet to the Church and to religion increase that is pleasing to God ... We therefore beseech your excellency to give kindly audience to the abbot and the religious, his brethren, and to refuse a hearing to him who strives to hinder the brethren who pray without ceasing on your behalf. Moreover, prostrate at the

[25] *EL*, ep. 98.
[26] *EL*, ep. 98, 1158-1160, 151-152: "magistro Salomoni cedant ecclesiae, quae in transactionem Godefridi et Willelmi uenisse noscuntur."

> feet of your mercy, we earnestly commend to you the cause of the whole Church.[27]

It was part of the role of the king to punish crime, but to use mercy and compassion while doing so. By prostrating himself at the feet of the king's mercy, Theobald implored the king to punish the monastery of St Mary, but to do so in a merciful and equitable manner. (See Chapter Three.) As with the situation with the abbess of Amesbury (see above), the king's *potestas* could be used to threaten members of the church into behaviour which they had previously resisted.

In letter 6 of John's early letter collection, written at some point after 1139 (Lateran II was referred to in the letter) and before March 1155 (as this is when the addressee died), the addressee, probably Robert Warelwast, the Bishop of Exeter, claimed hereditary possession over some church property.[28] This was against the law of the church. With regard specifically to the situation in England, in 1102 Archbishop Anselm's council at Westminster ruled (clause 8) that the sons of priests should not be heirs of their fathers' churches. Objections arose partly out of the campaign for a celibate clergy and partly because it placed appointments beyond the control of the diocesan.[29] The strongly-worded letter expressed Theobald's disbelief that a claim of hereditary possession had occurred: "who, save one utterly profane, could patiently hear of such a thing, much less seek it, which the sacred canons so manifestly forbid,

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[27] *EL*, ep. 123, *c*.May-June 1160, 203-204: "Virtus principum nullo clarius elucet indicio quam si maiestate eius pacem populus, ecclesia quietem et religio gratum Deo recipiet incrementum ... Vestrae itaque excellentiae supplicamus ut abbatem et religiosos loci fratres benigne audiatis et illi negetis auditum qui fratres pro uobis iugiter orantes nititur impedire. Ad haec causam uniuersalis ecclesiae ante pedes misericordiae uestrae prouoluti uobis attentius commendamus."

[28] *EL*, ep. 6, 9.

[29] C. R. Cheney, *From Becket to Langton, English Church Government 1170-1213, The Ford Lectures delivered in the university of Oxford in Hilary term, 1955*, Manchester, 1956, p. 126; see also Margaret Deanesly, *A History of The Medieval Church, 590 – 1500*, London, 1969, p. 103.

and the authority of the Testaments so expressly condemns?"[30] Indeed, the letter drew the bishop's attention to this fact and tells him: "turn over the canons where this very topic occupies a large space, and you will see clearly that the claims of those who seek these things are rejected, and those who listen to such claimants are to be severely punished for their assent."[31] He pointed out to the bishop that: "it is impossible for us to ignore this, since in the Lateran Council at which both we and you, my brother bishop, were present, Pope Innocent presiding, we heard such desires condemned by a canon formally published."[32] The fact that the bishop was present at the council was used to emphasise that he would have known the canon; the bishop would have promulgated the canons which he had heard in person once he returned to his see. Canon 16 from this council made it clear that:

> It is beyond doubt that ecclesiastical honours are bestowed not in consideration of blood relationship but of merit, and the Church of God does not look for any successor with hereditary rights ... in virtue of our Apostolic authority we forbid that anyone appropriate or presume to demand on the plea of hereditary right churches, prebends, deaneries, chaplaincies, or any ecclesiastical offices.[33]

It appears that the king, probably Stephen, may have had a hand in the bishop's actions, as the letter stated: "it is possible that you feel the pressure of the king's

[30] EL, ep. 6, after 1139, before March 1155, 9-10: "Quis nisis prophanus patienter audiat, nedum petat, quod tam manifeste sacri canones inhibent, quod utriusque testamenti tam expresse condempnat auctoritas ?"

[31] *EL*, ep. 6, 9-10: "Reuoluite canones, quoniam in hac parte latissime patent, et plane uidebitis petentium talia inprobatam esse petitionem, et eorum qui tales audiunt durissime plectendum esse assensum." In Gratian's *Decretum*, C. I, q. 5 discussed whether a person who was simoniacally ordained could remain in sacred orders; canons against simony can be found in Anselm of Lucca, *Collectio canonum*, 6.73; Ivo of Chartres, *Decretum*, 2.84, 5.112.

[32] *EL*, ep. 6, p. 10: "Non est relictus nobis dissimulandi locus, quia in concilio Lateranensi cui nos et uos, frater episcope, interfuimus, domino Innocentio praesidente audiuimus uota talia promulgato canone condempnari"; Second Lateran Council, c. 16; see also Council of Nimes, 1096, canon 1.

[33] Second Lateran Council, Canon 16, http://www.fordham.edu/halsall/basis/lateran2.asp; accessed January 2013.

authority; you would be right to do so, did you not know that God is to be preferred to man."[34] The letter reminded the bishop of his position and demanded he follow the law: "the sum of my counsel is this: that you should obey the law of God and the sacred canons in accordance with your profession and, whenever you are faced by such difficulties, should remember that it is safer to fall into the hands of men than into the hands of the living God."[35] The recipient was reminded that God's law was superior to any worldly requirement, and that God should not be ignored for worldly gain.[36]

These letters show the king being invited to intervene in court cases. The king, or on occasion queen acting as the king's agent, was a powerful ally, who was hard to ignore. At times he was asked to intervene in a case as a potential supporter, at times to lend his weight to enforce something when the archbishop's had failed. It was understandable that the church might want the monarch to maintain a certain amount of interest in church affairs. If there were a dispute which resulted in deadlock the monarch could resolve the issue.

E. Ecclesiastical Elections

John of Salisbury was concerned with the overlapping of lay and secular power and this seemed especially problematic in the election of key church offices; John knew that secular interference in such elections from a lay lord, including the king, was contrary

[34] *EL*, ep. 6, 10: "forte regia uos urget auctoritas, recte quidem, nisi sciretis Deum homini praeferendum." Cf. Acts 5: 29.
[35] *EL*, ep. 6, 10: "Summa ergo consilii nostri haec est, ut legi Dei et sacris canonibus iuxta professionem uestram obtemperetis, et quotiens uos tales angustiae presserint, incidere in manus hominum quam Dei uiuentis tutius iudecetis."
[36] See quotations from Gratian, Chapter One, 61.

to canon law. His letters suggested that lay involvement in the ecclesiastical election process was not uncommon. Kings may have felt that they were engaging with all aspects of the realm, and could have argued that such engagement was in the church's interest, to ensure the king's protection and maintain his knowledge of the day-to-day workings of the church. While Theobald seemed to welcome some input from the monarch, to John of Salisbury it seemed, however noble the king's intentions, this was interference and against canon law. Many dioceses were very valuable, and John would have understood the financial gains to the royal pocket from these events.

In addition to lay interference with ecclesiastical elections, in his *Policraticus*, Book VII, Chapter 7 John observed that simony was a significant problem, despite there being many canonical decrees against the practice.[37] Canonical objection to lay involvement in these elections was closely related to the issue of simony. John described how if the rights and benefits of ecclesiastical holdings were covertly bought alongside such items which could legally be paid for, for example property, then such behaviour might pass unnoticed. John further suggested that the canons were in practice often relaxed for those who were rich, noble, powerful or who held positions at court.[38] John was suggesting here that there was one law for the rich and powerful, and another law for everyone else.

Evidence of the real concern over the issue of simony can be found in the *Historia Pontificalis*. John was worried about King Stephen's influence over the appointment of

[37] For background on simony see Philippe Depreux, **'**Investitures et rapports de pouvoirs: réflexions sur les symboles de la Querelle en empire', *Revue d'histoire de l'église de France*, 96:236 (2010), 43-69; Timothy Reuter, 'Gifts and Simony', in *Medieval Transformations: Texts, Power and Gifts in Context*, eds. Esther Cohen and Mayke B. de Jong, Leiden, 2001, 157-168 and Joseph H. Lynch, *Simoniacal entry into religious life from 1000 to 1260, a social, economic and legal study*, Columbus, 1976.

[38] 7.17, Dickinson, 285-286.

a new abbot of St Augustine's, Canterbury, following the death of abbot Hugh. He wrote that Silvester's "election gave rise to widespread suspicion of simony, because the king had accepted five hundred marks to allow the monks complete freedom of election and the unimpeded disposal of their goods during the vacancy."[39] John would have certainly welcomed the freedom which was alleged to have been given to the monks to continue with their election in peace, but would have been angered that the king was "paid off" in order for this freedom to be granted. Whilst John did not accuse the king of taking the money in exchange for promotion of his candidate, there may have been more to the situation than can be gleaned from the text. Brundage has shown that simony came to mean not only the exchange of money in return for power or ecclesiastical office, but also any such exchange which threatened to compromise the independence of the church.[40]

The canon law on the position of lay rulers in ecclesiastical elections was clear – there was to be no lay involvement. The issue of lay consent at elections was somewhat less clear and some lay rulers exploited this. Between the seventh and eleventh centuries the selection of a bishop was dominated by the lay ruler, to the extent that the election itself seemed little more than a formality.[41] In 1095 at the Council of Clermont, Urban II prohibited lay investiture, explicitly stating that kings and other princes should not confer ecclesiastical honours.[42] In 1119 at the general council

[39] *HP*, 1151, 86: "electio eius apud multos suspitionem contraxit symonie, eo quod rex quingentas marcas accepit ut abbate defuncto liceret monachis libere quem uellent eligere et ecclesie uacantis bona pro arbitrio dispensare."
[40] Brundage, *Medieval Canon Law*, 35.
[41] Jörg Peltzer, *Canon Law, Careers and Conquest, Episcopal Elections in Normandy and Greater Anjou, c.1140-1230*, Cambridge, 2008, 20.
[42] See Blumenthal, *The Investiture Controversy*, 139.

in Reims, Pope Calixtus II forbade simony and lay investiture of bishoprics and abbeys.[43]

The *Decretum* of Ivo of Chartres contained canons stressing that bishoprics should not be acquired through simony.[44] In Distinction 63 of the *Decretum*, Gratian assembled texts on the participation of a lay ruler at episcopal elections and included decrees from numerous churchmen to confirm that the laity could not involve themselves with ecclesiastical elections, for example Ambrose, Popes Adrian II, Nicholas I and Leo IV.[45] He contrasted canons prohibiting this with those which allowed it and came to the conclusion that the election had to be by clergy alone.

It was, to John of Salisbury's mind, essential that the church was able to elect whomsoever it chose for its own elections. Any influence from outside the church was seen to be interference and in contravention of the canons. A passage of text which appeared to most strikingly illustrate John's views was from a letter on the subject of the papal schism to his friend Master Ralph of Sarre, a fellow member of Theobald's curia, in mid-1160. John offered his viewpoint on the imperial council which had taken place at Pavia in February 1160, at which a decision had been made in favour of the anti-pope Victor IV. The letter was long and full of venomous hyperbole. John wrote:

> decisions ought to be unprejudiced ... thus the election of a shepherd is to be performed in the Church, freely by the clergy and without nomination by secular power, likewise in the Church and by ecclesiastical judges, removed from worldly and terrible people, the election is to be considered freely and

[43] Peltzer, *Canon Law*, 23.
[44] Ivo, *Decretum*, 2.84, 5.112.
[45] Gratian, *Decretum*, D 63.

> according to the rule. Anything presumed to the contrary is to be recalled as void.[46]

John suggested that anyone who tried to overthrow such elections by force deserved to be punished by exile or outlawry by ancient decree. This may have been John alluding to the passage of Matthew 26:52, which said that all those who take up the sword will perish by the sword, though John probably meant this metaphorically.

A section from the *Historia Pontificalis* concerns a monarch involving himself in a church election in 1150. John wrote: "The king [Roger II of Sicily], after the fashion of tyrants, had reduced the church in his kingdom to slavery, and instead of allowing any freedom of election named in advance the candidate to be elected, so disposing of all ecclesiastical offices like palace appointments."[47] A tyrant, by John's definition, was one who rode roughshod over the law (see above, Chapter 3). By naming a candidate and disregarding canon law King Roger II of Sicily paid no heed to the law of the church. When the king put forward his own suggestion for a vacancy, he promoted his own supporters into key positions of ecclesiastical and political importance. John also included in this section of the *Historia Pontificalis* reference to Roger II forbidding any papal legate to travel to his lands without his permission. Both of the issues which John condemned in the *Historia Pontificalis* were alleged customs which Henry II wanted to confirm with his Constitutions of Clarendon. (See Chapter Four.)

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[46] *EL*, ep. 124, June-July 1160, 208-214: "Libera debent esse iudicia … Porro ecclesiastica debent esse liberrima, et de sacrorum canonum sanctione; sicut electio pastoris est in ecclesia a clero libere et sine mundanae potestatis praenominatione celebranda, sic eadem in ecclesia a iudicibus ecclesiasticis, amotis saecularibus terribilibusque personis, libere et secundum regulas ecclesiasticas examinanda est. Quicquid uero contra praesumitur, in irritum deuocatur."

[47] *HP*, 1150, 65-66: "Rex enim aliorum more tirannorum ecclesiam terre sue redegerat in seruitutem, nec alicubi patiebatur electionem libere celebrari, sed prenominabat quem eligi oporteret, et ita de officiis ecclesiasticis sicut de palacii sui muneribus disponebat."

In one of the letters written by John in the name of Theobald, it can be seen that the king took part in the election of an abbot for Evesham, albeit indirectly.[48] The letter was sent to the monks at the abbey of Evesham, to inform them that Theobald had requested from the king permission that the archbishop could intervene and appoint a new abbot over them, in accordance with the canons. In the letter it was written:

> wherefore we with fatherly affection in compassion for your desolation have obtained from our lord the king permission that we may, in accordance with the sacred canons, set over you a worthy shepherd ... Nor let any one of you think that he may fly to our lord the king for refuge; for any delay in your salvation will sorely vex him, and he has appointed us as his vice-regent in the matter that there should be no delay.[49]

In order that the election could proceed smoothly, and so that the new abbot would be "religious, literate and of good report," the archbishop was sending Walter, Bishop of Coventry, Alfred Bishop of Worcester, along with the abbots of Pershore Winchcombe to oversee the election. It seems that Theobald was a pragmatist who wished to keep a smooth relationship with the king, and saw that mutual co-operation was of great benefit to the king and church in their joint aim for the betterment of society. It could be seen that this was an archbishop exercising control over an abbatial election, which the monks would have thought was not the archbishop's business; pragmatically the archbishop may have seen the king as his ally in such situations. This may have been Theobald and Henry uniting in their desire to control local churches.

[48] *EL*, ep. 109.
[49] *EL*, ep. 109, May-June 1159, 173: "Vnde et nos desolationi uestrae paterno compatientes affectu a domino nostro rege obtinuimus, ut secundum institutionem sacrorum canonum pastorem idoneum uobis praeficere ualeamus ... Nec ad dominum regem se credat aliquis uestrum habere confugium, quia ei salutis uestrae dilatio molesta erit, qui nobis, ne differretur, in hac parte commisit uices suas."

In letter number 117, written in the name of Theobald, it was insisted that the chapter of Exeter, who were in the process of electing a new bishop, should gain permission from the king in order that they may proceed unimpeded. Theobald wrote to them: "in order that you may be able to proceed as you ought with the election of a shepherd, we bid you for the preservation of the Church's peace to approach our lord the king ... that he will grant you freedom canonically to elect a shepherd for yourselves."[50] Theobald was to confirm that the election could proceed. As with the previously discussed letter, Theobald was infringing on the chapter's right to their free election. The letter conveyed concern for the souls of the monks without a leader, but the monks might still have felt aggrieved that the archbishop was intervening in their affairs.

The king took an active interest in the election of the bishop of Exeter.[51] Theobald wanted to promote Bartholomew, who was already archdeacon there. The king, however, had accepted a petition from Robert fitzHarding, who was close to the king, and had acted as financier to Henry during the civil war. He received lands and privileges once Henry came to the throne.[52] The king therefore wanted to promote Henry, dean of Mortain, who was Robert's son.[53] In a personal letter written by John to his friend Thomas Becket, who was at the time royal chancellor, John complained of

[50] *EL*, ep. 117, *c*.March-April 1160, 192: "Quo uero, sicut oportet, possitis in prouidendo uobis pastore procedere, praecipimus quatinus ad conseruandam ecclesiae pacem dominum regem … adeatis, preces … ut canonice eligendi uobis pastorem libertatem concedat."
[51] *EL*, ep. 128.
[52] *ODNB* online entry for Robert fitzHarding: http://www.oxforddnb.com/view/article/9597?docPos=1, accessed 30th January 2013.
[53] *ODNB* online entry for Bartholomew, Bishop of Exeter, accessed 29th June, 2014: http://www.oxforddnb.com/view/article/1577?docPos=1

the king having accepted fitzHarding's petition.[54] John explained to Becket that the archbishop had written to the king in order that

> he may obtain the royal assent and authority for the promotion of Master Bartholomew, archdeacon of Exeter ... Seeing that the king would already have given his consent to the petition of Robert fitzHarding on behalf of an illiterate and worthless man, had he not been prevented by the canons of Exeter and other God-fearing men ... and so he seeks a boon which may be canonically granted to himself, but which was previously granted to a rich man in defiance of the canons.[55]

Again, this episode offered evidence of Theobald being actively involved in elections, which the monks might have resented.

In a further letter concerning the election of the bishop of Exeter, in 1161 John wrote to archdeacon Bartholomew, Theobald's chosen candidate: "The plan concerning you [becoming bishop] is acceptable to the Roman Church, to our lord the king, to the archbishop of Canterbury and his fellow bishops, and to all who have heard it, except those who are blinded by ambition, avarice, uncleanness or jealousy."[56] This letter suggested that canon law prevailed, to a certain extent. Henry II was still involved in the process of the election, in that he agreed that Bartholomew was acceptable for promotion into the position as the new bishop. The fact that the king was asked for his endorsement suggested that he disregarded the canon law, and felt it appropriate to petition his own candidate. It could also have been a case of

[54] *EL*, p. 222, n. 3.
[55] *EL*, ep. 128, *c*.September 1160, 222-223: "Hoc autem est ut de promouendo in ecclesia Exoniensi magistro B(artholomaeo) Exon(iensi) archidiacono ... regium consensum et auctoritatem obtineat ... cum Rodbertum filium Hardingi de persona illitterata et inutili pridem audierit, nisi per canonicos Exonienses et alios timentes Deum, consensus ille fuerit impeditus ... ideoque donari sibi petit quod canonice fieri potest, quod contra canones pecunioso pridem indultum est."
[56] *EL*, ep. 133, early 1161, 242: "Verbum autem quod de te motum est, ecclesiae Romanae, domino regi, metropolitano, coepiscopis, sed et omnibus qui illud audierunt placet, exceptis his quos aut ambitio aut auaritia aut inmunditia aut inuidia excaecauit."

Theobald keeping the king on side, and realising the benefit in maintaining good relations with the monarch. Yet it also portrayed Theobald trying to over-rule local church affairs. The outcome possibly satisfied all concerned; Bartholomew was in fact promoted, and decided to give his now vacant former archdeaconry to dean Henry.

Two further letters show that canon law had been contradicted by the indirect involvement of the king. In both cases there was evidence of the king having granted free election to the clergy. Whether or not the king gave permission should have been irrelevant; no member of the laity was to be involved with such appointments. In one of the later letters, believed to date from 1173–1174, there was a free election for the position of archbishop of Canterbury, but it was only free in so far as the king had granted them this freedom. After much deliberation between the king, English bishops and monks at Canterbury, it was decided that Richard, Prior of Dover would succeed Thomas Becket as archbishop. The Young King appealed against and prevented Richard's consecration in June 1173, but eventually in April 1174, the new archbishop was consecrated by Pope Alexander III.[57]

A letter of 1173 from Prior Odo and the monks at Christ Church Canterbury to Pope Alexander III is thought to have been drafted by John. The letter read: "[the] election had been freely solemnised in accordance with the procedure of the holy canons, the king's assent was sought and given (as is the custom)."[58] This letter raised an interesting question about the manner in which the king gave his assent. It could be

[57] The young king Henry, 1155-1183, was the second son of Henry II and was crowned in 1170 as successor to the throne; see *ODNB* entry for Henry, the Young King; see also Matthew Strickland, 'On the Instruction of a Prince: The Upbringing of Henry, the Young King', in *Henry II*, eds. Harper-Bill and Vincent, 184-214.

[58] *LL*, ep. 311, June 1173, 762-763: "Cum ergo libere et secundum institutionem sacrorum canonum fuisset eius electio celebrata, regius (ut mos est) accessit assensus."

that the king was asked to give his consent each time there was such an election and automatically gave his assent as a formality. The question posed was merely a technique used to keep the king abreast of the elections whilst satisfying his wish for involvement. It could alternatively be the case that the king wished to approve every new appointment by confirming whether he considered the new candidate appropriate. Whichever of these was the case, it remained contrary to canon law.

In another letter regarding the consecration of Richard as archbishop, John wrote to William, Archbishop of Sens and asked that he lend his support to the installation of Richard. John told William that: "our lord the English king granted the church the right freely to elect its own archbishop."[59] Despite canon law, in this letter to William John did not complain about the king granting a free election. It seems that John was being pragmatic; the election of an archbishop was an election of a key political player. As such, Henry II would have desired influence over the appointment. Although he was involved by giving his assent to free election, he appeared to be granting the decision to members of the church, which would have been pleasing to John.

F. Forgery

While those in complex suits, such as the Anstey case, relied on understanding the subtleties of law and the skill of learned men to win their case, others appeared to rely on more nefarious means.[60] It is interesting to note, therefore, that a number of John

[59] *LL*, ep. 314, probably June, 1173, 772-773. "Cum enim dominus noster rex Anglorum praefatae ecclesiae ... liberam concessisset eligendi sibi archiepiscopum facultatem."

[60] For an overview of forgery, including discussion of seals, see L. C. Hector, *Palaeography and Forgery*, London, 1959; for a general overview, including case studies and bibliographical detail see Olivier Guyotjeannin, Jacques Pycke and Benoît-Michel Tock, *Diplomatique médiévale*, Turnhout, 1993, 367-

of Salisbury's letters were concerned with and made reference to forgery of letters or other documents. In the early letters the frequency of suspicion of forged items suggests that this was a problem encountered often in the middle and later part of the twelfth century.[61] Paxton argued that forged documents were often created as part of a broad textual effort to use the (often distorted) memory of the Anglo-Saxon past as a means of not just protecting monastic rights and privileges but of solidifying the identity of the monastic community in the present.[62] Chodorow pointed out that the combination of standardised letter forms and the increasing use of the courts for both economic and political business led to greater opportunity for misbehaviour.[63] The amount of forgery being undertaken was a concern for those involved with the law and the carrying out of justice. If people were resorting to the creation of false documents in order to gain advantage in a case, this was both unlawful and immoral. It could further suggest that there was a weakness in the system; the perceived threat

395; on forgery by monastic communities see Jennifer Paxton, 'The Denis Bethell Prize Essay, Forging Communities: Memory and Identity in Post-Conquest England', *The Haskins Society Journal, Studies in Medieval History*, Vol. 10 (2001), 95-109; for the role of forgery and the birth of the English Common Law, see Bruce O'Brien, 'Forgery and the Literacy of the Early Common Law', *Albion*, 27 (1995), 1-18; see also Marjorie Chibnall, 'Forgery in Narrative Charters', *Fälschungen im Mittelalter, Teil IV, Diplomatische Fälschungen (II)*, Hanover, 1988, 331-346; see Giles Constable, 'Forgery and Plagiarism in the Middle Ages', *Archiv für Diplomatik*, 29 (1983), 1-41; on the issue of development of trust in charters, see Marco Mostert, 'Forgery and trust', in *Strategies of Writing: Studies on Text and Trust in the Middle Ages. Papers from "Trust in Writing in the Middle Ages" (Utrecht, 28-29 November 2002)*, eds. Petra Schulte, Marco Mosert and Irene van Renswoude, Turnhout, 2008, 37-59; for analysis of specific forged documents, see Charles Duggan, 'Improba pestis falsitatis, Forgeries and the problem of forgery in twelfth-century decretal collections' in Duggan, *Decretals and the Creation of the 'New Law' in the Twelfth Century*, Aldershot, Hampshire, 1998.

[61] Michael Clanchy suggested forgery for this period was the rule rather than the exception, see Clanchy, *From Memory to Written Record: England 1066-1307*, 2nd ed., Oxford, 1993, 318; Christopher Brooke noted that while forgery was rife during the mid-twelfth century, there had been forgery before the Norman Conquest, and it may even be accidents of survival which lead us to suppose that the twelfth century was a golden age, Brooke, 'Approaches to Medieval Forgery', in Brooke, *Medieval Church and Society, Collected Essays*, London, 1971, 115-117.

[62] Paxton, 'Forging Communities', 96.

[63] Stanley Chodorow 'Dishonest litigation in church courts, 1140-98', in *Law, Church, and Society, Essays in Honour of Stephan Kuttner*, eds. Kenneth Pennington and Robert Somerville, Pennsylvania, 1977, 191.

of punishment for forgery was not enough of a deterrent. In the 1150s and decades following, many letters which were deemed forgeries were said to be so on account of their style and formula. Later, Pope Innocent III drew up rules for detecting forgery, and a number of them were concerned with the authenticity of the seal, as well as erasure. A document which was alleged to have been produced by the papal curia could be sent to Rome and verified against the records. Theoretically, if the document was not in the curial records, it had been forged. The records in the archives, however, were not always up to date, and so this was not a fool-proof method.[64]

In the *Historia Pontificalis*, John reported what he saw as the suspicious circumstances surrounding the election of a new abbot of St Augustine's Canterbury in 1151. John described how Silvester the prior became Abbot of St Augustine's Canterbury after abbot Hugh died. The situation was noteworthy for John, as the prior paid the king to allow the monks complete freedom in their election of the new abbot. No one openly accused Silvester of any wrongdoing and he was consecrated as abbot. Then:

> a dispute arose about the place of consecration, since certain privileges laid down that the abbot of this house should be consecrated in his own monastery and not dragged elsewhere. However the authenticity of these same privileges was questioned, both because they were not drawn up in the style of handwriting always used in the papal curia and because, by comparison of the text and bull, it was evident that they could not have been issued by the popes whose name they bore. Further the custom had never been observed, for it was known that the other abbots of St Augustine's had been consecrated in churches belonging to the archbishop.[65]

[64] *EL*, p. 98.

[65] *HP*, 86-87: "Ipsa tamen priuilegia suspecta habebantur, tum quia concepta non erant in ea scribendi forma quam sequitur ecclesia Romana, tum quia ex collatione scripture et bulle uidebantur non esse pontificum quorum nomina preferebant. Preterea non usi fuerant hac consuetudine, quia abbates alios

The dispute between the abbey of St Augustine's and Canterbury cathedral was a long-standing one, having begun under Archbishop Lanfranc.[66] It is evident that the dispute had showed no sign of abating by the time of Theobald's archiepiscopate. This case highlighted a number of issues. The allegation of abbots being consecrated in their own abbey was brought into question, which gave rise to the possibility of forgery; these privileges could in fact have been concocted by the new abbot against the law, in order to give himself increased autonomy over his abbey. The question of forgery was also raised due to discrepancies between the formula in the text of the material containing the privileges and the recognised formula used by the papal chancery as well as the possibility that the bull was fraudulent.[67]

Sometimes those who were involved in a legal case may have felt the need to forge documents in order to enhance their standing in court. In letter 57, written in the name of Theobald to the pope, 'Robert' was accused of having forged the letters which he had presented as evidence. Robert's reputation for abiding by the law was deficient: "to say nothing of carnal vice, we have heard from a multitude of persons that he is guilty of arson, robbery and all manner of crimes."[68] After being excommunicated by his bishop, Robert made the journey to the papal court to seek favour. He brought back with him letters which he alleged were from the pope, urging expediency in concluding the case between Robert and Nicholas, the Bishop of

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sancti Augustini in ecclesiis archiepiscopi benedictionem recepisse constabat. In annum fere protracta contentio tandem ad dominum Eugenium delata est."

[66] See Chapter Two.

[67] See Hector, *Palaeography and Forgery*, 6.

[68] *EL*, ep. 57, 97: "Vt enim de corporis immunditia taceamus, incendia, rapinas et uarias figuras criminum eius ad nos plurimi perferebant."

Llandaff.[69] The letter written in Theobald's name explained that "these letters were highly suspect to us and our colleagues who were present because of their peculiar style and their erasures, which he seemed to have made of set purpose; so much so, that it seemed good to us to return them for examination by your highness."[70]

Letter 73 in the early collection highlighted another case of suspected forgery. Richard of Ambli claimed that he was wrongfully dispossessed of the church at Wakering by a certain Robert. While Richard was absent, Robert had demanded the church of the monks in whose name Richard held it. When the case was called to a hearing in the archbishop's court, Robert produced two documents, which were thought to be of dubious provenance. As a result, Theobald explained to the pope, "we ordered [the letters] to be detained in our custody, since one of them is marked by clear indications of dishonesty, the other is impugned as a forgery,"[71] and the case was adjourned in order that the authenticity of the documents could be verified. It would seem that in this instance Theobald was to have the provenance of the letters investigated, most likely by a physical examination of the letters. This letter was written as a result of Robert then appealing to the pope as he believed that he had waited long enough for justice to be enacted. Theobald warned the pope that Robert was suspected of not only forging documents, but of concocting false information expressed within the documents, supporting Robert's position with claims which were thought to be questionable.

[69] *EL*, ep. 57, 97: "Apostolicas tamen litteras rettulit."
[70] *EL*, ep. 57, 98: "nobis quidem et fratribus nostris qui aderant ob stili dissimilitudinem et lituras, quas de industria fecisse uisus est, omnino suspectas, et ideo, ut nobis uisum est, ad celsitudinis uestrae examen remittendas."
[71] *EL*, ep. 73, 117: "quae apud nos fecimus detineri, quoniam alterum uitio manifestae turpitudinis praeditum est, alterum falsitatis arguitur."

Falsification of documents was a serious crime, and the archbishop's court felt that punishment was necessary. That the pope wished to be kept abreast of these instances highlights the severity of the issue, but this became time consuming and inefficient. In one letter in the name of Theobald to the pope, John wrote: "we beg you to give us a ruling on the punishment to be inflicted on those who forge your letters; it is difficult for us to wait for your advice on individual cases of this kind every time they arise."[72] To request prescribed punishment was a practical response to the situation. This would make justice more efficient, allowing the courts to act without having to consult the papal curia for each instance of suspected forgery, resulting in fewer delays.

Conclusion

This chapter has considered the involvement of the monarch in ecclesiastical issues. John's letters illustrated how the king regularly played a part in ecclesiastical cases, often by having a vested interest or by being invited to intervene by one party or both. It was evident that the king frequently concerned himself with ecclesiastical elections even though this was contrary to canon law. It was in the monarch's interest to take an active role in these events, as the appointment of allies into positions such as bishoprics would ensure political support from within the church. John was opposed to lay involvement at any level, demonstrating this in his letter to his friend Master Ralph of Sarre when he declared that all judgements of the church should be free from

[72] *EL*, ep. 57, 98: "nobis, si placet, praescribite qua animaduersione feriendi sint corruptores litterarum uestrarum. Difficile enim est ad singula huiusmodo, quae emergunt, maiestatis uestrae consilium expectare".

secular influence.[73] John was concerned with law and the role that it had to play in all aspects of society and in many different circumstances. He was concerned that the monarch was eroding the authority and the autonomy of the church by involvement in what were essentially church concerns by law.

By considering the entirety of John's writing, and in particularly paying close attention to the often-overlooked letter collections, it is possible to increase our understanding of the views of both John and Archbishop Theobald on the relationship between the church and the king, and the divergence of opinion therein. The letters written in the name of the archbishop show Theobald's pragmatism and realism and his understanding that the church and the king relied upon each other for their position. The letters written in John's name, however, are more idealistic, desiring no influence or interference from the monarch in church affairs; John's position became more hard-line as the Becket dispute progressed. In the letters which have been considered in this chapter, the ideas and theories which John held about church and monarch relations, which were considered in Chapter Four, demonstrate that John put these thoughts into practice. He believed that the church should not only be free from royal involvement, but also that God was the ultimate judge and master, and he used the Bible and Classical texts to support this view.

Furthermore, it is clear that John was well versed in the technicalities and practicalities of law. He was aware, for example, that simony went against canon law, and was able to cite relevant canons to support his views. He was aware that the monarch should not involve himself with church elections, despite this occurring on a

[73] *EL*, ep. 124, June–July, 1160, 204-215.

regular basis. He was aware of the manner in which court cases should proceed and the number of his letters which concern themselves with cases is evidence of such knowledge. When considering all of John's work, it can be seen that he not only concerned himself with the philosophical and political notions of law, but also the day to day practicalities of its enactment. This study expands the existing scholarship by reaffirming the fundamental importance of law for John, which has been explored in previous chapters. It highlights that John was also concerned with the interpretation and practical application of law on a daily basis, being conversant and familiar with the minutiae of law, in particular canon law. John quoted canons with ease, in answer to specific questions from members of the clergy, demonstrating that he was able to locate and tease out pertinent canons to offer practical solutions. Furthermore, in the number of letters in which he outlined court cases he was able to summarise complex legal scenarios by drawing out the relevant aspects of cases, thereby revealing his understanding of the most important points and the practicalities of how cases should proceed. With this critical approach of appraising the way in which John used and knew law through the whole of his corpus, this study demonstrates that John was conversant in the intricacies of law and was able to apply this in the practical and everyday context.

Conclusion

John of Salisbury has been described as a "jack of all trades," reflecting the variety of tasks he performed whilst in the household of Theobald, Archbishop of Canterbury.[1] Those employed within Theobald's court were not granted specific titles and needed to be flexible in the types of tasks they undertook. The work carried out by clerks within the curia was not yet the work of specialists, and this was a period when chancery and legal practices were still being developed.[2] For the extant charters from Theobald's court, the witnesses often did not sign with titles or indicate their position within the household. Despite this, and the fact that there is no record of John acknowledging he had received formal legal training, he rose to the position of effective legal advisor and legal expert in the household of Theobald.

In Book V, Chapter 16 of the *Policraticus* he quoted from the *Lex Iulia repetundarum*. Duggan has pointed out that this was not the result of some academic or antiquarian interest by John, as he also quoted from the *Lex Iulia* by name in one of the letters written in the name of Theobald.[3] This letter to the archdeacon of Lincoln relied heavily upon Gratian's *Decretum*. That Roman law was also cited is evidence that John was conversant in both canon and Roman law and was able to refer directly to pertinent aspects of them in his writing when necessary. By the end of the 1150s at

[1] Nederman, *John of Salisbury*, 14.
[2] Barrau, 'John of Salisbury as ecclesiastical administrator', in *A Companion*, 111.
[3] *EL*, ep. 100, 160.

the latest, English *periti* and *advocati* were accustomed to the parallel use of canon and Roman law.[4]

Not only was John the legal advisor, but he was also clearly a trusted member of Theobald's curia. When giving his reasons for ending the *Metalogicon* when he did, John wrote that: "Theobald, archbishop of Canterbury has fallen ill ... No longer able to deal with business in his customary fashion he has imposed on me a heavy duty, nay, an insupportable burden, in making me responsible for all the affairs of the church."[5] This might have been somewhat of an exaggeration on John's part,[6] but it did demonstrate his position as a key member of Theobald's household and that the archbishop trusted him with important affairs of the church.

The question of why John held the position of Theobald's advisor with responsibility for writing the letters in his name remains. He may have achieved this due to his extensive demonstrable knowledge of canon and Roman law, or simply that he was the most eloquent and proficient letter writer in the household. The most likely case is a combination of the two. John was clearly proficient in canon law, especially the *Decretum* of Gratian and quoted regularly from the corpus of Justinian's Roman law. He was a prolific letter-writer, and his extant letters demonstrate this. The letters written in the name of Theobald which contained the most references to canon law were not the earliest letters (which are extant) written by John on behalf of the archbishop.[7] Therefore, it can be argued that John's role as legal advisor developed

[4] Anne J. Duggan, 'Roman, canon and common law in twelfth-century England: the council of Northampton (1164) re-examined', *Historical Research*, Vol. 83, No. 221 (August 2010), 391-392.
[5] *Metalogicon*, iv, 42, 343.
[6] There is an echo of 2 Corinthians, 11:28.
[7] For example, *EL*, ep. 99 is dated 1158-1160, and ep. 131 is from late 1160.

over time. His role may have been intended as chief letter writer due to his talents for composition, and whilst learning 'on the job,' demonstrated his competence in law and so took more responsibility for the legal aspects of each task.

It has been impossible to state the degree of autonomy with which John acted while he was composing the letters written in the name of Theobald. Whilst it would have been pragmatic for Theobald to allow John independence in this task, there appear to have been differences of opinion between the sentiment expressed in the letters written in the name of Theobald, and John's personal letters. This is demonstrated most clearly with regard to the issue of monarchic involvement in the governance of the church.

John was a moderate who believed that the church and the monarch had their individual roles to perform. Each relied upon co-operation with and support from the other – the monarch was responsible for the protection of the church and the commonwealth, while the church had to ensure moral guidance for protection of the monarch's soul. When these tasks were performed, society would be peaceful and could operate smoothly. If the monarch attempted to encroach upon the church's day-to-day activities, however, for example during the Becket dispute, John vehemently expressed his objections. John was a pragmatist though, and whilst composing the letters on behalf of Theobald, it can be seen that the tone was more conciliatory and restrained than the sentiment expressed in his personal letters written to friends and colleagues. While John would have almost certainly preferred the spiritual and temporal remits to be to be ruled as discrete entities, Archbishop

Theobald, and the letters written by John in his name, adopted a more flexible and practicable approach.

Evidence from letter 19 in John's early letter collection suggested that he was happy to make clear his opinions on the matter of royal involvement within the church. He wrote to his friend Peter, Abbot of Celle about how he had lost favour with Henry II. John believed that the king blamed him personally for any church-led resistance. This may suggest that John held, or was perceived as having, great influence over the archbishop and his court. John's discontent with the king's impingement upon the church's rights, such as ecclesiastical elections, was apparently enough to cause the king's displeasure. John's exile can be interpreted as confirmation that John was considered a serious political player and his influence over Theobald was considered dangerous by the king.[8] John wrote: "if any one among us invokes the name of Rome, they say it is my doing. If the English Church ventures to claim even the shadow of liberty in making elections or in the trial of ecclesiastical cases, it is imputed to me, as if I were the only person to instruct the lord archbishop of Canterbury and other bishops what they ought to do."[9] John, perhaps with some amount of hyperbole, expressed his incomprehension at being the only member of the archbishop's circle or indeed the church with the opinion that there must be no lay involvement at the elections. This letter suggests that he was blamed for insisting upon these rights of the church. John was also concerned with the influence that lay lords were held over cases involving

[8] Barrau, in *A Companion*, 113.

[9] *EL*, ep. 19, autumn, 1156, 32: "Quod quis nomen Romanum apud nos inuocat, michi inponunt. Quod in electionibus celebrandis, in causis ecclesiasticis examinandis uel umbram libertatis audet sibi Anglorum ecclesia uendicare, michi inputatur, ac si dominum Cantuariensem et alios episcopos quid facere oporteat solus instruam."

church matters. It is interesting that in 1156 John was concerned with the lack of freedom which the church appeared to have over these issues. These topics were the subject of two of the clauses in the Constitutions of Clarendon that were to cause the most alarm for Becket and his supporters. These were fundamental ecclesiastical rights and any attack on them was an attack on the liberty of the church. John was clearly astute enough to realise that Henry II had set his sights on dominance over the autonomy of the church.

Skinner has pointed out that it is often the case that any given writer, of any kind of text, is not entirely consistent in terms of the views which they express, and that altogether failure to provide any systematic account of their beliefs is commonplace.[10] One could argue that this observation applied to John. It is also perfectly permissible that opinions can change or be modified over time.[11] This might explain why John became more assertive about the need to keep the monarch distant from church affairs in his later collection of personal letters, especially during the latter stages of the Becket dispute,[12] than he appeared in those written in the name of Theobald.

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John's writing provided a source of inspiration for later writers, for example those writing on the law, like Bracton, Glanville, as well as political writers, for example Christine de Pisan. The *Policraticus* in particular offered a perfect source from which later writers could pick and choose exemplars, especially from the Bible and Classical authorities, and ideas to suit their own purposes and add weight to their own

[10] Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory*, Vol. 8, No. 1 (1969), 16.
[11] Skinner, 'Meaning and Understanding', 19.
[12] See Chapter Four.

arguments. Ullmann suggested that two centuries after it was composed, the *Policraticus* remained an indispensible source of information.[13] Investigation of John's influence, and especially of his *Policraticus*, has been undertaken by a number of historians, such as Linder,[14] Ullmann,[15] and very recently Lachaud.[16] Consideration will be paid here, chronologically, to the influence of John upon other writers.

The opening paragraph of the Prologue to *Glanvill* referred to the rod of equity.[17] Glanville explained that the royal power must be furnished with arms to protect itself and the realm, as well as laws which could govern people in peaceful times; the prince's role involved: "crushing the pride of the unbridled and ungovernable with the right hand of strength and tempering justice for the humble and meek with the rod of equity".[18] The evidence for this is not explicit, but it could be considered that John provided influence for Glanville in this excerpt. *Glanvill* was written in praise of strong kingship, and whilst the *Policraticus* advocated similar, John was perhaps more concerned with the tempering of the king's strength by guidance of the church than the notions expressed within *Glanvill*.

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[13] Walter Ullmann, 'The Influence of John of Salisbury on Medieval Italian Jurists', *The English Historical Review*, Vol. 59, No. 235 (Sept., 1944), 384.

[14] See Amnon Linder, 'The knowledge of John of Salisbury in the Late Middle Ages', *Studi Medievali*, 3rd series, Vol. 17, No. 2 (1977), pp. 315-366 and Linder, 'John of Salisbury's *Policraticus* in Thirteenth-Century England: The evidence of MS Cambridge Corpus Christi College 469', *Journal of the Warburg and Courtauld Institutes*, Vol. 40 (1977), pp. 276-282.

[15] See Walter Ullmann, 'The Influence of John of Salisbury on Medieval Italian Jurists', *The English Historical Review*, Vol. 59, No. 235 (Sept., 1944), pp. 384-392 and Ullmann, 'John of Salisbury's *Policraticus* in the later middle ages', in *Geschichtsschreibung und geistiges Leben im Mittelalter: Festschrift für Heinz Löwe zum 65 Geburtstag*, eds. Karl Hauck and Hubert Mordek, Cologne and Vienna, 1978.

[16] Frédérique Lachaud, 'Filiation and Context, The Afterlife of the *Policraticus*', in *A Companion*, 381.

[17] The dating of Glanvill remains uncertain, but it is thought to have been composed before 1189. See, for example, the edition by G. D. G. Hall.

[18] *The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill*, ed., G. D. G. Hall, Oxford, 1965, Prologue, 1.

Writing at a similar time to Glanville was Peter of Blois,[19] who, in his letters, adopted John's style of populating his writing with Classical allusions.[20] From one of Peter's letters, dated 1179, the list of authors which he claimed to have studied is also found in the *Policraticus*, Book 18, Chapter 8.[21] In *Policraticus*, John wrote that Julius Caesar, "is said to have dictated four letters simultaneously"[22] and this allusion is found in a letter of Peter's.[23] Both of Peter's letters which contain borrowings from John of Salisbury were found in Peter's early collection, which shows that the *Policraticus* was being used as early as 1170-1184.[24] As the manuscripts of Peter's correspondence were copied, the transmission of knowledge of John's *Policraticus* increased.[25]

It is clear that Helinand of Froidmont, a Cistercian, thought to have been born in the 1150s and died in the 1220s, was aware of John's writing when he composed his sermon on the Albigensian crusade.[26] Helinand used as his source John's *Policraticus* Book VI, Chapters 5-10, when he wrote about the importance of the soldier's oath, the necessity of selecting a solider well, to defend the *res publica*.[27] In his *Chronicon*, Helinand additionally relied upon the *Policraticus*. For example, Deuteronomy was used as a key source, and his commentary on this book of the Bible was embellished

[19] Peter of Blois, Archdeacon of Bath, probably produced his first collection of letters in 1184, which were chosen from his correspondence from about twenty years of writing, on his own behalf and for his employers; see *The Later Letters of Peter of Blois*, ed. Elizabeth Revell, Oxford, 1993, p. xv.
[20] Amnon Linder, 'The knowledge of John of Salisbury in the Late Middle Ages', *Studi Medievali*, 3rd series, Vol. 17, No. 2 (1977), 321.
[21] See letters Peter of Blois, ep. 101, cf. *Policraticus*, 18.8, Dickinson, 356; Webb, ii, 364.
[22] 6.15, Dickinson, 225; Webb, ii, 41: "quaternas etiam epistolas perhibetur simul dictasse."
[23] Letters of Peter of Blois, ep. 92.
[24] Linder, 'The knowledge of John of Salisbury', 321.
[25] *c*.250 manuscripts of Peter's letters are extant, see Frédérique Lachaud, 'Filiation and Context, The Afterlife of the *Policraticus*', in *A Companion*, 381.
[26] Helinand of Froidmont, *Sermo* 25, *PL* 212, cols 685-692.
[27] Lachaud, 'Filiation and Context', 398.

with quotations from the *Policraticus*.[28] In the *Chronicon*, Helinand gave his commentary on the relationship between the king and law and justice. For this section of his writing, he appeared to rely upon Book V, Chapter 16 of the *Policraticus*. Furthermore, the idea of the prince as the image of equity was highlighted, as well as the notion of the prince being able to shed blood as a means of punishing others without committing sin. In addition, much like in the *Policraticus*, Helinand questioned the argument that what was pleasing to the prince had the force of law.[29] Lachaud has concluded that the amount of reference to and reliance upon the *Policraticus* suggests that Helinand had access to a copy, or a long summary, of John's treatise.[30]

Helinand in turn influenced later writers, and through his work knowledge of the *Policraticus* was disseminated. Vincent of Beauvais, for example, relied heavily upon Helinand's work when he composed his *Speculum historiale* which was completed in 1244. Passages from 11.38 of Helinand's *Chronicon*,[31] which quoted John of Salisbury, were recycled in Vincent's writing, including the *Speculum historiale*, as well as his *Speculum doctrinale* of 1250 and the *De morali principis institutione*.[32]

Helinand and / or Vincent subsequently influenced Guibert of Tournia and his composition of *Eruditio regum*, which took the form of three letters written to Louis IX of France in *c*.1260. Within his tract there was paraphrasing, summarising and copying

[28] For commentary on Deuteronomy 17:15, Helinand mostly used *Policraticus* 4.4 and 4.5 on Deuteronomy 17:18 he used *Policraticus* 4.6 and 5.7 and for Deuteronomy 17:20 he used 4.8 and 5.7.
[29] Lachaud, 'Filiation and Context', 400-401.
[30] Lachaud, 'Filiation and Context', 398; see Helinand of Froidmont *Chronicon*, *PL* 212, 8.71, 10.72 and 13.11.
[31] More than three-quarters of 11.38 of Helinand's *Chronicon* rely on the *Policraticus*, especially Books 4-6; Lachaud, 'Filiation and Context', 401.
[32] Vincent of Beauvais, *De morali principis institutione*, ed. Robert J. Schneider, Turnhout, 1995, 170-171; Lachaud, 'Filiation and Context', 403.

from the *Policraticus*, but there is no evidence to suggest that Guibert knew the name of the real author, or necessarily John's writing first hand.[33]

There appear to be similarities between Bracton and *Policraticus*. Bracton's section on right judgement, for example, bears similarities to sections from the *Policraticus*, such as Book V, Chapter 6 and Book VIII, Chapter 17.[34] The section of Bracton concerned with delegating royal power to righteous persons, is similar to sections of the *Policraticus*, concerning judges.[35] However, Lachaud has pointed out that it is difficult to discern to what extent this was Bracton borrowing from *Policraticus*, or that both works sourced from the same Biblical passages.[36] Linder argued that in his discussion of tyranny, Bracton was strongly influenced by the *Policraticus*.[37] Lachaud, on the other hand, has urged caution regarding attempts in seeking parallels between the two works.[38] She argued that the definition of tyranny in Bracton was comparable with that from *Policraticus*, however, the option of tyrannicide was not advocated in Bracton.[39] Moreover, Lachaud argued that the idea of a tyrant as one who oppressed the people was one which had become commonplace by the time of the composition of Bracton.[40] Clearly, similarities do exist, but the evidence to suggest that *Policraticus* was a source of influence upon Bracton is weak.

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[33] Walter Ullmann, 'John of Salisbury's *Policraticus* in the Later Middle Ages', in *Geschichtsschreibung und geistiges Leben im Mittelalter: Festschrift für Heinz Löwe zum 65 Geburtstag*, eds. K. Hauck and H. Mordek, Cologne and Vienna, 1978, 523.
[34] *Bracton on the Laws and Customs of England*, ed. George E. Woodbine, tr. S. E. Thorne, 4 vols, Cambridge, Mass., 1968-1977, vol. ii, 302-303.
[35] *Bracton*, vol. ii, 306-307, cf. *Policraticus* 4.3 and 5.11 and 5.16.
[36] For example Exodus, 18.
[37] Linder, 'The knowledge of John of Salisbury', 326. Linder suggested that Bracton, iii, c. 8 and *Policraticus*, 4.1 were very similar for example.
[38] Lachaud, 'Filiation and Context', 390.
[39] See Chapter Three, n. 110.
[40] Lachaud, 'Filiation and Context', 390.

Aspects of the discussion within *Policraticus* on the subject of tyranny appear to have influenced the opening section of the work known as *De tyranno et principe*, probably composed between 1265 and 1272.[41] The *De tyranno* painted a picture of the tyrant as one who oppressed the people by force and violence and who wished to destroy the law, in contrast to the prince, who used the laws to govern. This was John's definition of a tyrant, albeit one that could also be found in Cicero, Augustine and Isidore.[42] In the *De tyranno*, the foundation of the tyrant was seen as iniquity and from this poisonous root, the evil tree grew. This is strikingly similar to a passage describing a tree growing from a poisonous root found in *Policraticus* Book VIII, Chapter 18,[43] and it is evidence that John of Salisbury was the source for the passage within the *De tyranno*.[44] The second section of *De tyranno*, which was rubricated *Quod tyranni sunt ministri Dei*, borrowed heavily from *Policraticus* Book VIII, Chapter 18.[45] In both of the texts, the tyrant was painted as the servant of God, sent by Him, as the instrument of punishment for evil sinners, and as a way of chastening the good. Furthermore, both texts reflected the notion that any power, good or bad, came from God. In spite of there being nothing worse than tyranny, it was still seen as being good and of benefit, as, having been sent from God and therefore part of His plan. Lachaud has argued that the clear influence of *Policraticus* upon this work challenges the view

[41] This is manuscript Cambridge, Corpus Christi College 469, folios 158v-166v and is edited by Lachaud, '*De tyranno et principe* (Cambridge, Corpus Christi College ms. 469): un pamphlet 'britannique' contre la tyrannie d'Henri III?' in *Les Îles Britanniques: espaces et identités, Cahiers de Recherche Médiévales et Humanistes. A Journal of Medieval and Humanistic Studies*, 19 (2010), 96-104.
[42] See Chapter Three.
[43] See quotation, Chapter Three, 144.
[44] Lachaud, 'Filiation and Context', 392.
[45] Lachaud, 'Filiation and Context', 392.

proposed by Linder, who suggested that John's treatise only became well-known after the thirteenth century.[46]

Giles of Rome (*c*.1243-1316) writing in his *De ecclesiastica potestate*, arguably used the *Policraticus* as an inspiration when he propounded the hierocratic thesis of government. Giles was a scholar and theologian who taught at the University of Paris, and became Archbishop of Bourges in France in 1295. During the political conflict between Pope Boniface VIII and Philip IV of France, Giles wrote his *De ecclesiastica* in which he was keen to assert the sovereignty of the papacy, including over princes. He also asserted that all power came from the pope who had supreme authority, because his power was from God. Consequently, this power was always good. The pope did not undertake issues of a temporal nature, but rather this was done through the medium of the prince. This execution of power through the hands of the prince could be good or bad, and so the pope needed to direct the prince to the correct use of power.[47]

In his *De Regimine Principum*, Giles explained that the treatise was written as a way of educating princes, so that they could be mighty in rule, in accordance with reason and law. He asserted that not only could it be of educational value to princes and rulers, but that the whole populace could benefit from its teachings.[48] He also included a discussion on the importance of a strong military, claiming to use the *De re militari* of Vegetius to urge that the army was an important way of enhancing the

[46] Lachaud, 'Filiation and Context', 393.
[47] Walter Ullmann, *A History of Political Thought: The Middle Ages*, Harmondsworth, Middlesex, 1965, 124-126.
[48] Dedicatory Prologue from *De Regimine Principum*; Charles F. Briggs, *Giles of Rome's* De Regimine Principum*, Reading and Writing Politics at Court and University,* c*.1275*-c*.1525*, Cambridge, 1999, 20.

efficacy and power of the ruler to enforce peace and stability.[49] Giles argued that the army was necessary for the maintenance of the common good. An efficient army needed to be well-trained. He advocated the need for training to include running, jumping, use of weapons and swimming, as well as the arts of attack and defence. These were all ideas found within *Policraticus*, Book IV, Chapter 4. Giles did not quote from Vegetius directly, rather he said he was following his ideas and concepts, all of which could have come to him through the writing of John of Salisbury.

Ptolemy of Lucca was another who incorporated John's ideas, in particular the concept of the body politic, into his *De regimine principum*. This was a treatise which was originally written by Thomas Aquinas, but which was halted at the death of the King of Cyprus in 1267. In 2.7 of Ptolemy's continuation he referred specifically to the *Policraticus* and to John's body analogy, explaining that a well-run society was like a well laid-out body.[50]

Policraticus had an influence upon professional jurists, although apparently not in England. The polycratic nature of the treatise was recognised and understood by jurists from Naples, Sicily, Bologna, Florence and Paris, who drew on the work as a source. Ullmann suggested that it was treated as a juristic monograph of ancient provenance, filled with reference to Classical authors and law.[51]

Lucas de Penna, a Neapolitan jurist born *c*.1320, chose to use *Policraticus* as a non-legal source in order to illuminate ideas about law. Ullmann's article on the manner in

[49] Allmand, *The De re militari*, 5.

[50] Ptolemy of Lucca, *De regimine principum,* 2.7, tr. James M. Blythe, Philadelphia, 1997; Lachaud, 'Filiation and Context', 406.

[51] Ullmann, '*Policraticus* in the Later Middle Ages', 525-526.

which *Policraticus* acted as a source for the Italians celebrated the similarities between the two writers.[52] Ullmann pointed out that Lucas's discussion of tyrannicide was similar in manner to that which was found in the *Policraticus*, although, interestingly, Lucas did not include the apparent uncertainties about it as a course of action, which John had discussed.[53] In his *Commentaria in Tres Posteriores Libros Codicis Justiniani*, Lucas wrote "About tyrannicide Policraticus himself wrote many things that deserve to be impressed upon the mind".[54] Ullmann thought it clear that Lucas used the treatise as an important source of his own ideas, and he thought that 'Policraticus' was the name of the author.[55] Ullmann highlighted Lucas's use of the organic analogy of society, as well as the importance of law as a gift from God. Ullmann asserted that ideas regarding fundamental concepts, such as law and equity, were faithfully copied from *Policraticus* by Lucas.[56] Although Ullmann conceded that Lucas did not agree with *Policraticus* on all things, such as the relationship between secular and ecclesiastical authority, he did nonetheless state that Lucas was one of the most ardent followers of the *Policraticus*.[57]

Lachaud, however, has urged caution regarding comparisons between John and Lucas, stressing that Ullmann may have placed too much significance upon the similarities. She has shown that while Lucas did quote frequently from the *Policraticus*,

[52] Walter Ullmann, 'The Influence of John of Salisbury on Medieval Italian Jurists', *The English Historical Review*, Vol. 59, No. 235 (Sep., 1944), 384-392.
[53] Walter Ullmann, *Medieval idea of law, as represented by Lucas de Penna, a study in fourteenth-century legal scholarship*, London, 1946, 188-189
[54] Lucas's commentary on C. x. 31, 42, no. 2.
[55] Ullmann, 'The Influence', 386-387; Lachaud, 'Filiation and Context', 413-414.
[56] Ullmann, 'The Influence', 388.
[57] Ullmann, 'The Influence', 385.

in his *Lectura* for example,[58] it was only one of a number of sources that he used; for example, he also quoted from Peter of Blois, Hugh of St. Victor, Richard of St. Victor, Alan of Lille, Giles of Rome, Thomas Aquinas and Petrarch. Lachaud has also observed that at times, Lucas directed the reader to the original text without commenting on it.[59] This may suggest that Lucas was accessing his *Policraticus* references via another author. Furthermore, Lachaud has pointed out that passages from Lucas's work which may appear to have been based upon the *Policraticus*, in fact were commonplace in the moral and political scholarship of western Europe.[60]

One eminent scholar who made use of *Policraticus* was Johannes Calderunis, who became Doctor at Bologna in 1326. Johannes made an index to John's treatise, which could be used as a reference tool by other scholars. In 1359 he resigned from his post at Bologna and became a diplomat.[61]

The *Policraticus* also had influence upon French writers, and this was where its impact was the strongest, Lachaud has argued. In France it was used against the backdrop of civil conflict in which the call to unity as well as the strengthening of military discipline had become strong imperatives. John's work as a consequence reached a new audience who required moral and political advice.[62]

One such French writer was Christine of Pisan. In her *Livre du Corps de Policie*, written 1404-1407, she advocated the need for accord between different parts of

[58] Lucas of Penna, *Lectura*, ed. Lyon, 1557, folio 1.
[59] Lachaud, 'Filiation and Context', 414.
[60] Lachaud, 'Filiation and Context', 414.
[61] Ullmann, '*Policraticus* in the Later Middle Ages', 526.
[62] Lachaud, 'Filiation and Context', 416.

French society. The idea of the body politic,[63] in particular the mutual obligations that groups within society owed each other, and the need to work together for the common good were particularly relevant.[64] Christine saw that it was the role of the prince to ensure that every member of society performed their own task.[65] The strong prince leading a well-trained and strong army was vital for the maintenance of a peaceful and well-ordered society.[66] Christine, discussing the position of soldiers within society, claimed that an oath of loyalty had to be taken by soldiers, as well as have a love of arms and of practising arms. She claimed to have been following Vegetius, but only referenced him five times, and she may have used Book IV of the *Policraticus* as her source.[67]

The work of Frenchman Jean Juvénal des Ursins displayed the influenced by the *Policraticus*. In his epistle *Verba mea auribus percipe, domine*, which was written in 1452 or before and was on the subject of the king and law, he made use of John's treatise.[68] Jean quoted from the text, in particular Book V, Chapter 12 and Book VIII, Chapter 17, but he did not translate it. He used passages from John's work to comment on good government.[69] In Jean's *Loquar in tribulacione* (1440) he included a section on military discipline, in which he claimed to be using Vegetius as his source.[70]

[63] Christine used the 'Pseudo-Plutarch' as her model.
[64] See Christine of Pisan, *The Book of the Body Politic*, 3.1, ed. and tr. Kate Langdon Forhan, Cambridge, 1994; see also Forhan, 'Polycracy, Obligation and Revolt: the Body Politic in John of Salisbury and Christine de Pizan', in *Politics, Gender and Genre. The Political Thought of Christine de Pizan*, ed. Margaret Brabant, Boulder, 1992, 33-52.
[65] *The Book of the Body Politic*, 1.10; Lachaud, 'Filiation and Context', 423.
[66] Allmand, *De re militari*, 127.
[67] Allmand, *De re militari*, 123.
[68] The epistle is edited in *Ecrits politiques de Jean Juvénal des Ursins*, ed. Peter Lewis, 3 vols, Paris, 1978-1992, vol. 2, 298-299.
[69] Lachaud, 'Filiation and Context', 431.
[70] *Ecrits politiques*, vol. 1, 408-409.

Jean was critical of the lack of discipline from the French army, and so he urged that constant training as well as selecting the best to be soldiers was vital.[71] He also conveyed the importance of soldiers being prepared to die for the good of society.[72] Lachaud has demonstrated that Jean was instead following Book VI of the *Policraticus* very closely.[73] Allmand has also shown that when Jean claimed to be following Vegetius, he was doing so through *Policraticus*.[74]

Clearly John was a source of influence and reference for writers who came after him. Ideas about the discipline of the army and the role of soldiers filtered through with writers using Vegetius via John. This in turn was used to convey the message of strong kinship, leading a strong army to protect the realm and ensure peace. Perhaps the most influential aspect of the *Policraticus* was the concept of the body politic. From Helinand of Froidmont onwards writers borrowed the idea, but it was not always expressed in a similar manner to the organic metaphor conveyed in John's writing. For example, the concept was employed by Pierre Choisnet in his *Livre des trois âges*. In Pierre's piece, however, rather than the prince taking the place of the head, as in *Policraticus*, he took the place of the heart.[75] Regardless of which part of the body was occupied by which societal group, the idea of working in harmony towards the common good remained. It is noteworthy, however, that the body politic concept was

[71] *Ecrits politiques*, vol. 2, 237; vol 1, 403.
[72] *Ecrits politiques*, vol. 1, 410-411.

[73] Lachaud, 'Filiation and Context', 430; Lachaud argues that Vegetius, as well as the *Policraticus*, could be the source for the Jean's section on the combatants' oath, *Ecrits politiques*, vol. 1, 409-410, cf. *Policraticus*, 6.7 and Vegetius's *De re*, 2.5. After *Policraticus* 6.14, however, there is no similar passage in Vegetius.
[74] Vegetius i, 7 is demonstrated as being from *Policraticus*, 6.8; Allmand, *De re militari*, 131.

[75] Pierre Choisnet, *Livre des trois âges. Facsimilé du manuscrit Smith-Lesouëf 70, Paris, (Bibliothèque nationale de France)*, ed. Lydwine Scordia, Mon-Saint-Aignon, 2009, 164, ll. 79-85.

easily manipulated so that the whole body was said to be ruled by the prince, in order to strengthen the position of the monarch.[76] This was John's idea turned on its head.

[76] Lachaud, 'Filiation and Context', 435.

Appendix – Table of Witnesses for Archbishop Theobald's charters

Information taken from Avrom Saltman, *Theobald, Archbishop of Canterbury*, London, 1956, 233 – 534.

Charter Number (Saltman edition)	**Date**	**Reason for Issue**	**Witnesses**
10	1150-54	Concerning the dispute over tithes of Dengemarsh, Kent, between Walter the abbot of Battle and William, clerk of Hythe.	Rogero archidiacono Cant', Johanne clerico filio Marie, [Johanne de Sareburia, magistro Vaccario, Johanne de Tileburia, Reginaldo Apostolico, Osberto Bonitas].
16	1156-57	Concerning a dispute over the tithes of demesnes of four parishes between the monks of Thetford and of Belvoir.	The bishops Robertus Lincolniensis, Robertus Excestrensis, Walterus Cestrensis; the abbots Gervasius Westmonasterii, Willelmus de Burgo; the archdeacons Henricus de Huntingdon, Radulfus Londoniensis ecclesie, David de Buccingeham and Jordanus Saleberiensis. Also Magister Johannes Saresberiensis, magister Johannes de Tillebiria, Rogerius Species, Gwillelmus de Albenia brito, Rogerius frater ejus.
34	1150-61	Grant by Theobald	Philippo cancellario

		to his servant Robert de Aquaticis of land of Bishopsbourne, Kent.	et Johanne Sal' et Radulfo Dunnell' et Alano de Well' et Aluredo elemosinario et Petro scriptore et Rogero Speces et Willelmo de Becc' dapifero et Waltero de Wingeham et Nigello filio Godefridi et Gilberto camerario et Willelmo camerario et Roberto pincerna et Willelmo coco et multis aliis apud Cant'
35	1157-61	Grant by Theobald to the Canterbury cathedral priory hundred court of land of John son of Walter de Sartrimo.	Philippo cancellario archidiacono Norwic' et Johanne de Saresberia et Petro scriptore et Rogero Spec[ie] et Osberno clericis archiepiscopi et multis aliis apud Cantuariam
46	1154-60	Grant by Theobald of an acre of marshland at Horfalde, near Canterbury, to the cathedral priory, notified to bishop Walter of Rochester.	Philippo cancellario et Johanne de Sar' et Willelmo de Ver et Johanne de Tileberia et Hugone de Gant et Petro scriptore et Gisleberto camerario et Roberto pincerna et Willelmo dispensatore et multis aliis apud Lamhedam
57	1148-49	Notification by Theobald that he consecrated a	H[ilario] Cycestrensi episcopo, R[ogero] Cantuar'

		cemetery at Faversham for the use of monks there.	archidiacono, Thoma London', Rogero Speres [sic], Johanne de Sar', Petro scriptore et multis aliis
83	1157-61	Notification by Theobald of his ordinance regulating the status of St Martin's priory, Dover.	magistro Bartholomeo Exoniensi archidiacono, Philippo Norwicensi archidiacono, magistro Johanne de Sareb', Ricardo fratre ejus, Hugone de Gant, Eudone notario, Willelmo de Norhall', Osberto de Presteton', Ricardo medico, Alveredo elemosinario, et multis aliis
95	1150-61	Notification by Theobald of an exchange of land between Hugh of Dover and the priory of St Martin's.	Willelmo episcopo Roff', magistro J[ohanne] Sar', magistro J[ohanne] Tylebriensi, Waltero Maminoth, Radulfo filio Geroldi, Jordano Picot, Rogero de Conde, Thoma de sancta Margareta, Reinberto, et multis aliis
125	1150-61	Notification of grant of land to Alfwin, son of Godmar of Pinner to his father's land.	Philippo cancellario et magistro Johanne Sar' et Johanne de Tyleberia et Petro scriptore et Willemo de Norhal' et Aluredo elemosinario et Hugone de Gant et Willelmo Duredent

			et Roberto Halsard et Ricardo de Hida et Willelmo sacerdote de Hese apud Hesam
147	1147	Notification of Theobald having invested canons of Leeds with the church of Easling, Kent.	Waltero archdiacono et magistro Johanne de Pageham et Johanne [sic] de Ponte Episcopi et Thoma de London' et Alano et Malgerio et Johanne de Saresberia et Willelmo Cumin et Hamone filio Rogeri apud Maydstan
176	1150-61	Grant by Theobald of West Malling, Kent to the nuns of Malling.	Philippus cancellarius et Johanne de Sar' et Petrus scriptor et Aluredus elemosinarius et Osbertus clericus et Ricardus de Clara et Ricardus de Cant' et Willilmus de Alinton et Robertus, Rannulfus, Hunfridus, capellani de Mealling et multi alii apud Mealling'
182	1154	Notification by Theobald to Bishop Nicholas of Llandaff of composition between Job the priest, parson of St Leonard's, Newcastle, Glamorgan, and Master Henry Tusard, parson of St James', Kenfig,	R[ogero] Eboracensi electo et Johanne Eboracensi thesaurario et Thoma Londoniensi et J[ohanne] Saresberiensi et Ricardo Castel apud Cantuariam

		Glamorgan.	
240	1154-61	Confirmation by Theobald of grant to monks of St Bertin of the church of Chilham, Kent.	Silvester abbas sancti Augustini, W[illelmus] prior sancti Augustini, Philippus cacellarius, Johannes de Saresburia, Hugo de Raculf, Helias de Chilleham, Sigerus monachus de Faversham et multi alii
263	1150-61	Notification by Theobald to bishop Hilary of Chichester of settlement of dispute between Templars and Pain clerk of Findon, Sussex over rights of chapel of Sompting.	Paris archidiaconus Roffensis, magistri – Vacarius, Johannes Sar', Rogerus Species, Willelmus de Norhall', Osbertus de Prestona, Eudo Manefer', clerici archiepiscopi; Nicholaus Atilleburia, Fabianus de London' et multi alii

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