The Language of Kingship under Henry III: civilian, canonical, and dictaminal ideas in practice, *c.*1230-*c.*1252.

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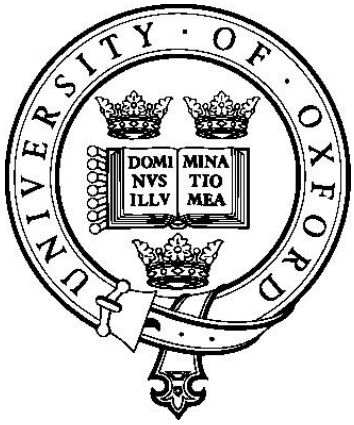

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Abstract

This thesis is a study in how the political culture of the reign of Henry III was conditioned by its engagement with wider continental ideological and administrative developments. Within the shared legal and cultural space of 'Europe', a number of factors contributed to the development of a language of power both secular and spiritual, including the growth of universities, the study of Roman civil and canon law, the development of *dictamen* and the increasing prominence of the mobile curial administrative elite. I propose that these influences were of signal importance for the reign of Henry III in its own right, and also in the longer-term development of later medieval English political culture.

The chapters of the thesis evaluate these influences through three sections: prosopographical, textual and linguistic. Chapter 1 examines the personnel of royal government, exploring both the contributions to royal government made by foreign clerks, and the participation of other royal servants in European cultural networks. Chapter 2 turns to analysis of legal and dictaminal manuscripts, exploring the challenges in reconstructing medieval reading culture. In Chapter 3, the circulation of such manuscripts over the longer thirteenth century is evaluated to demonstrate their influence on royal government. In Chapter 4, the thesis turns to linguistic influence during the period of the personal rule, 1230-1250, exploring the impact of Romano-Canonical legal concepts on the discussion of royal power. Chapter 5 looks at the impact of the same concepts on discussion of the wider political community. The final chapter considers the influence of *dictamen* on the rhetoric of royal government. Bringing these strands together, the thesis shows that a cultivated and cosmopolitan elite, serving Henry III and knowledgeable in the learned laws and rhetoric, adapted that knowledge to their portrayal and implementation of royal government, with lasting significance for this reign and beyond.

Long Abstract

This thesis is a study in the ways in which the political culture of the reign of Henry III, 1216-72, was conditioned by its engagement with wider European ideological and administrative developments. This 'Europe' was more than a geographical construct, rather it referred to the common legal, religious, and cultural space invoked in the expansive vision of Christendom set forth by the thirteenth-century papacy. Within this shared space, a number of factors contributed to the development of a language of power which could be used to express both secular and spiritual authority. These included the rise of the universities, the rediscovery and flourishing of the Roman civil and canon laws, the development of the rhetorical style of *dictamen* and the cultivation of a learned elite who served in assorted courts and chanceries. It is the contention of this thesis that not only is an understanding of these influences for a consideration of the reign of Henry III important in its own right, but it also helps us evaluate the longer-term development of later medieval English political culture.

Chapter One begins by addressing the first of these questions, that of the international character of the staff of Henry III's administration. This starts with a consideration of the role played by foreigners, but goes on to evaluate. Certainly foreigners could and did play an important in English politics at this time. However, in shaping the character of royal government, the part played by an international clerical circle was even more important. The role of such figures as the imperial protonotary Petrus de Vinea, and the Savoyard Canonist Hostiensis has previously been recognised, but this chapter shows that these figures were less aberrant and isolated than they appeared, and that foreign influence was not restricted to these most prominent visitors. Indeed, other figures, including the royal poet master Henry of Avranches, could contribute to the administration over a much longer scale. The second half of this chapter moves beyond the role of foreigners, individually or collectively, to consider the broader cosmopolitanism of Henry III's clerical servants. This draws in part on the understanding that 'national' or 'ethnic' identities were not totally fixed or unambiguous at this time, but rather that accusations of 'foreignness' in this period could refer not just to factional alliance, but more generally

to aspects of and attitudes towards political behaviour. I have then considered the multitude of ways in which 'English' clerks could participate in a more international milieu, through education at the schools, or service abroad, especially in the imperial or papal courts. Finally the chapter addresses the contribution these individuals made to royal government: they were not a separate or distinct 'diplomatic' core, but served and dominated in the key offices of the administration, especially in the chancery and exchequer, where their technical training and international contacts could be deployed to the king's best advantage.

Chapters Two and Three of this thesis stand together in a second section, exploring the textual milieu in which we might expect these agents of royal government to operate and be familiar, with a particular focus on the status of the Roman civil and canon laws and the rhetorical treatises of the *ars dictaminis* within the manuscript evidence. The first chapter engages with the methodological and evidentiary questions framing manuscript studies, focussing in particular on the problems of survival and the identification of ownership and usage, especially in relation to the king's court. The problems of survival affect questions of manuscript circulation in all contexts, but especially for the association of book ownership with royal servants and the government more generally. Although the records give the isolated glimpse of the literary world of the court, such as the unspecified book purchases of William de Kilkenny recorded in the Wardrobe Accounts, for the most part, evidence directly attributable to Henry III's government is scarcer than would be desirable. Evidence of manuscript circulation thus has to consider the English context more generally, and some inferences may be made using examples from subsequent decades, particularly when the evidence concerned included servants of royal government in the reigns of Edward I and Edward II who had similar education and connections in networks of continental administration and the learned law as those who served Henry III. Furthermore, this chapter proposes that by considering manuscripts, even ones whose provenance cannot be directly asserted, their material elements, such as annotation, rubrication and marginalia can be used to make observations about readers and their interactions with the texts.

In Chapter Three these theoretical assumptions are taken and applied to the circulation of canon law, civil law and dictaminal texts. While each of these different 'genres' had their own particular textual development, they shared some significant common factors. The circulation of these texts tended to indicate a close association with the intellectual worlds of the schools, not just in the acquisition of texts with a scholastic character, but in a tendency to keep abreast of significant developments in legal teaching, especially from the Canonists and Civilians of Bologna. However, the reception of these school texts was not a passive and uncritical one: there existed an educated and informed readership with a taste for texts which addressed questions of contemporary interest and practical application. The manuscripts themselves confirm this impression, especially those such as Worcester Cathedral F. 159 in which theoretical treatises were combined with notes on case law and procedure. This interest in the relationship between theory and practice was even clearer in the limited survival and dictaminal treatises, as not only did the majority of texts have a practical bent, but there were increasingly appended with formularies and exemplar material which spoke to this interest in application and practice. The fragmentary evidence for ownership of this material in relation to royal government would certainly seem to appear to display many of these same characteristics, pointing towards an informed and engaged readership concerned with the application of legal theory in practical administration.

In the final section of this thesis, Chapters Four, Five and Six draw together these various strands of influence and transmission in order to demonstrate how learned law traditions, expressed through rhetorical forms, influenced the conception and expression of royal power within the political community in the period of Henry III's personal rule. In Chapter Four, I demonstrate that a selective and critical adoption of terminology drawing on elements of the Roman laws associated with papal and imperial authority tended towards a portrayal of kingship and royal authority which prioritised the king's personal power and individual capacity for intervention in the processes of government. This is shown through the use of legal formulae associated with the papal plenitude of power, especially through dispensation made *non obstante*. Furthermore, there was an increasing

development of the language of the royal dignity and majesty, connected with the articulation of theories of non-alienation, which could and were used in the Henry III's personal rule in order to assert royal authority and control over land-holding disposition of tenure. In Chapter Five, the lens of analysis turns from the king in his person to his status within the broader fabric of political society. From this it is shown that the language of the community which developed at this time was hardly the benevolent 'community of the realm' envisioned by F. M. Powicke. Rather in the application of forms from the learned law, the common interests were increasingly elided with those of the king and his own person. Further to this, the beginnings of the language of representation which started to emerge more consistently during this period tended towards a conception of representation as a service to the king, rather than a right of the people. Finally, in Chapter Six, the influence of dictaminal models and theories of rhetoric is explored. This was probably the most restricted area of influence, in part because of the continuing development of the *ars dictaminis* over the thirteenth century and in part due to the existing forms and norms of English Chancery practice. What the limited evidence does indicate is that the use of rhetoric was not an end in itself, but was most often associated with other forms of discussing language of power and royal authority. The limited deployments from the period under consideration do show beginnings of a royal style that did more than simply meet the normative standards of diplomatic practice, dictaminal styles were associated with the deployment of canonical and civilian vocabularies, and showed a particular concern for the expression, description of portrayal of royal and princely status.

Bringing these strands together, this thesis shows how the deliberative and representative aspects of political language during the reign of Henry III reflected the central importance of continental engagement in the development of royal government and administrative *mentalité* in later medieval England. Transmitted through the cultivation of a learned curial elite, and the circulation of a rich body of manuscript material, conceptions of power were adapted and implemented in the rhetoric of royal government in ways which had and were to continue to have, lasting and significant impact.

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This thesis is dedicated to my parents, for all these years. Don't worry, this doesn't mean you have to read it!

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Abbreviations:

AHR	*American Historical Review*
Ann. Mon.	*Annales Monastici*, ed. H. R. Luard, Rolls Series (5 vols, London, 1864-9)
BIHR / HR	*Bulletin of the Institute of Historical Research / Historical Research*
BL	London, The British Library
Bodl.	Oxford, The Bodleian Library
Chronica Majora	Paris, Matthew, *Chronica Majora*, ed. H. R. Luard, Rolls Series (7 vols, London 1872-83)
Close Rolls	*Close Rolls of the Reign of Henry III, Preserved in the Public Record Office* (14 vols, London, 1902-38)
CLR	*Calendar of the Liberate Rolls Preserved in the Public Record Office, Henry III* (6 vols, London, 1916-64)
CPR	*Calendar of the Patent Rolls Preserved in the Public Record Office, Henry III* (6 vols, London, 1901-13) [nb. the first 2 vols are printed *in extenso*]
CRR	*Curia Regis Rolls…Preserved in the Public Record Office* (20 vols, London, 1922-2006)
EHR	*English Historical Review*
Emden, Oxford	A. B. Emden, *A Biographical Register of the University of Oxford to 1500* (3 vols, Oxford, 1957-9)
Foedera	*Foedera, Conventiones, Litterae, et Cujuscunque Generis Acta Publica, inter Reges Angliae et Alios Quosvis Imperatores, Reges, Pontifices, Principes, vel Communitates*, ed. T. Rymer (4 vols, London, 1816-69)
JBS	*Journal of British Studies*
JEH	*Journal of Ecclesiastical History*
JLH	*Journal of Legal History*
LQR	*Law Quarterly Review*
MIOG	*Mitteilungen des Instituts Fürs Österreichische Geschichstforschung*

ODNB	*Oxford Dictionary of National Biography*, Online Edition [2004], http://www.oxforddnb.com/ - Individual article URLs are listed in the Bibliography, all last visited 9 January 2018
PBA	*Proceedings of the British Academy*
PL	*Patrologia Latina*
Shirley	*Royal and Other Historical Letters Illustrative of the Reign of Henry III*, ed. W. W. Shirley, Rolls Series (2 vols, London, 1862-6)
TCE I	P. R. Coss and S. D. Lloyd (eds.), *Thirteenth Century England I: Proceedings of the Newcastle upon Tyne Conference 1985* (Woodbridge, 1986)
TCE II	P. R. Coss and S. D. Lloyd (eds.), *Thirteenth Century England II: Proceedings of the Newcastle upon Tyne Conference 1987* (Woodbridge, 1988)
TCE IV	P. R. Coss and S. D. Lloyd (eds.), *Thirteenth Century England IV: Proceedings of the Newcastle upon Tyne Conference 1991*
TCE V	P. R. Coss and S. D. Lloyd (eds.), *Thirteenth Century England V: Proceedings of the Newcastle upon Tyne Conference 1993* (Woodbridge, 1995)
TCE VII	M. Prestwich, R. Frame and R. Britnell (eds.), *Thirteenth Century England VII: Proceedings of the Durham Conference 1997* (Woodbridge, 1999)
TCE X	M. Prestwich, R. Frame and R. Britnell (eds.), *Thirteenth Century England X: Proceedings of the Durham Conference 2003* (Woodbridge, 2005)
TCE XI	B. K. U. Weiler, J. Burton and P. Schofield (eds.), *Thirteenth Century England XI: Proceedings of the Gregynog Conference 2005* (Woodbridge, 2007)
TCE XIV	B. K. U. Weiler, J. Burton and P. Schofield (eds.), *Thirteenth Century England XIV: Proceedings of the Aberystwyth and Lampeter Conference 2011* (Woodbridge, 2013)
TCE XV	B. K. U. Weiler, J. Burton and P. Schofield (eds.), *Thirteenth Century England XV. Authority and Resistance in the Age of Magna Carta* (Woodbridge, 2015)

TCE XVI	A. M. Spencer and C. Watkins (eds.), *Thirteenth Century England XVI: Proceedings of the Cambridge Conference, 2015* (Woodbridge, 2017)
TNA	London, The National Archives
TRHS	*Transactions of the Royal Historical Society*

Introduction – From "England in Europe" to the Language of Kingship

On the night of the 17th October 1216, King John died at Newark Castle. Only ten days later his nine-year-old son and heir was crowned in haste at Gloucester. The reign of Henry III had begun. The unusual circumstances of this coronation indicated the state of crisis in which the kingdom of England found itself at this time. English custom required that a new king be crowned at Westminster by the Archbishop of Canterbury, but the young Henry received his anointing at Gloucester cathedral under the supervision of the papal legate Guala Bicchieri.[1] The Archbishop of Canterbury, Stephen Langton, had been summoned to Rome to answer to the pope for his actions against King John, and the invasion of the French prince Louis made it impossible for the boy king to reach Westminster safely.[2] The nullification of Magna Carta by Pope Innocent III in August 1215 had signalled the impossibility of any peaceful negotiation of royal reform and had cast England into a state of civil war in which the rebel barons had invited Prince Louis to come and seize the throne.[3] With more than half the kingdom out of royal control, alongside French invasion and military aggression from both Wales and Scotland, the realm in 1216 was incredibly fragile, and much reduced in size and power.

[1] That the circumstances of the coronation were controversial is attested by the alleged excommunication of the abbot of Westminster and the prior of Christ Church Canterbury by the legate over their claims that it violated the liberties of their churches. A subsequent writ of the legate was issued in November 1218 attesting that the coronation of Henry III in Gloucester was only due to the 'necessitatem temporis' and did not establish any precedent to the prejudice of the rights of Westminster Abbey, *The Letters and Charters of Cardinal Guala Bicchieri, Papal Legate in England, 1216-1218*, ed. N. Vincent, Canterbury and York Society (Woodbridge, 1996), pp. 93-4.

[2] Ultimately, Henry III was to receive a second coronation on 17 May 1220 from Archbishop Langton at Westminster, thus preserving the customary rituals of kingship, D. A. Carpenter, *The Minority of Henry III* (London, 1990), pp. 187-91.

[3] The authoritative summary of the Magna Carta civil war remains J. C. Holt, *Magna Carta*, 3rd Edition (Cambridge, 2015), although Professor Carpenter's recent publication, D. A. Carpenter, *Magna Carta* (London, 2015) provides particularly illuminating additional insights about the charter manuscripts in particular.

From these unstable beginnings, the character of government and the theory of kingship that was to develop in Henry III's personal rule drew strongly on internationalising administrative theories and cultures that persisted despite the diminution of the 'Angevin Empire'. Following the loss of Normandy in 1204, confirmed by the emphatic defeat of combined Anglo-Imperial forces at the Battle of Bouvines in 1214, the young Henry III was a far more English king of a far more English kingdom than any of his post-Conquest antecedents.[4] The opening clauses of Magna Carta, with their focus on the liberties of the English church, and grants to the freemen of the kingdom,[5] attested to a far more performatively 'English' political community, and one which was demonstrably reluctant to commit indefinitely to attempts to reclaim what were increasingly seen as the king's private interests in the French kingdom. Henry himself was a more publicly English king, demonstrating this in particular in his promotion of the cult of Edward the Confessor at Westminster as an integral part of his royal image.[6]

Nonetheless, the politics, and the political culture of Henry III's reign continued to reach beyond the newly restricted borders. The loss of Normandy and the decline of English interests in France was anything but a foregone conclusion and Henry III was to mount repeated, if ultimately unsuccessful campaigns to reclaim his inheritance, a claim which he maintained steadfastly until the 1259 Treaty of Paris.[7] It could be argued that this continuing pursuit of this French inheritance was not even the most significant element of English

[4] J. Gillingham, 'The Fall of the Angevin Empire', in N. Saul (ed.), *England in Europe, 1066-1453* (London, 1994), pp. 88-96, R. Studd, 'England and Gascony, 1216-1337', in Saul, *England in Europe*, pp. 97-107.
[5] Carpenter, *Magna Carta*, p. 38.
[6] D. A. Carpenter, 'King Henry III and Saint Edward the Confessor: The Origins of the Cult', *EHR,* 122 (2007), 865-91.
[7] Henry III campaigned multiple times in France, in Poitou in 1225, then in person in 1230 and again in 1242; for the Treaty of Paris, see P. Chaplais, 'The Making of the Treaty of Paris (1259) and the Royal Style', *EHR,* 67 (1952), 235-53.

engagement with the continent signalled during the royal minority. The young king's coronation under the auspices of the papal legate reflected not only the necessities of a chaotic situation, but also indicated the profound change in Anglo-papal relations signalled by John's submission of his kingdom to Pope Innocent III and subsequent receipt of it as a papal fief.[8] The king's final testament had placed his heir in papal custody, empowering the legate Guala to act as his protector. Letters addressed by Honorius III to Guala's successor as legate, Pandulph Veraccio, emphasised the importance of the papal claim in shaping the royal minority, as the pope asserted that the king was under special protection of the apostolic see, as a 'crusader, ward and orphan'.[9] This assertion not only indicated the prominence of the papacy in the royal minority, but it also signalled how this relationship and the conceptions of kingship it engendered were to be of profound and continuing significance in shaping the politics of Henry III's reign and the understanding of the relationship between the English kingdom and wider Christendom. It was, ultimately, at papal invitation that Henry was to accept the crown of the kingdom of Sicily for his son Edmund, a project which precipitated the greatest challenge to royal authority since Magna Carta with the period of baronial reform and rebellion, 1258-67.

It is with the period between these most dramatic episodes that this thesis is concerned, exploring in particular the language of kingship that developed during Henry III's personal rule. The chronology of this analysis begins approximately with the fall of Hubert de Burgh, and the de facto end of the royal minority, and concludes in the early-1250s, breaking off before the 'Sicilian endeavour' overwhelmed much else of English political life and culture.

[8] C. Egger, 'Henry III's England and the Curia', in. B. K. U. Weiler and I. Rowlands (eds.), *England and Europe in the Reign of Henry III* (Aldershot, 2002), pp. 215-32.
[9] Shirley, *i*, p. 535.

These years saw the functioning (and dis-functioning) of Henrician government under the king's direction and towards the king's interests. These were truly the years of the 'reign of Henry III', which were to underpin the later conflicts of the period of baronial reform and rebellion, as well as the broader significance of the reign in the development of the English polity. The developments of the political language of this period saw the adoption and adaptation of ideas and techniques of government drawn from the civil and canon laws, as well the *ars dictaminis*. These belonged to a broader history of ideas of governance which was being articulated across the Latin West at this time. In this way, the theories of kingship which were in play during the reign of Henry III depended on a cosmopolitan rather than insular society. Thus the evaluation of Henry III's kingship is best pursued by considering the plurality of connections between England and the Continent at this time, and the way these shaped not only Henry's immediate commitments abroad, but also how they were to have a profound impact upon the internal dynamics and priorities of English kingship.

Henry III and the Historians

Successive commentators, from the thirteenth century to the present day, have tended to impute to Henry III a character unsuited to the office of kingship that he held.[10] Whatever the king's personal failings, it has long been recognised that his reign was an important transitional period in the development of the ideas and practices of the medieval English state; but where the accounts of various historians have tended to diverge in their consideration of this reign has been in their understanding of the primary motive forces

[10] The St Alban's chronicler Matthew Paris described him as being possessed of 'supine simplicty', *Chronica Majora*, *v*, p. 676, a view that has been supported as recently as in the work of David Carpenter, *The Struggle for Mastery, Britain 1062-1284* (London, 2004), p. 347.

underpinning English politics and political history. Until the second half of the twentieth century, approaches to the historiography of the reign of Henry III have tended to position this sixty-year reign into a grand narrative vision of the *longue durée* development of English political history. Before articulating the approach to be taken in this study, it is worth considering the ways in which the historiography of the reign has developed and the ways in which the following research engages with the existing scholarly landscape.[11]

For the Whig historians of the nineteenth century, pre-eminent among whom was Bishop Stubbs, their vision of English history was driven by a teleological account of the rise of modern liberal government. According to this model, the reign of Henry III formed part of the continuum of the development of the rule of law and the rise of parliament; the loss of Normandy was an important milestone in Anglo-European relationships, as it marked the removal of continental 'dead weight' and allowed 'truly' English politics to develop.[12] For the generation of administrative historians who followed, the greatest of whom was T. F. Tout, the development of royal administration rather than legislation was the fundamental concern in the development of the modern state.[13] Reacting against the perceived bureaucratic sterility of Tout's administrative history, Maurice Powicke articulated a far broader vision of the socio-political fabric of thirteenth century England in which the 'constitutional' make-up of England was understood through the lens of the 'community of the realm'.[14] This community was a corporation of all the inhabitants of the kingdom, which the king ruled as

[11] One of the most thoughtful surveys of approaches to thirteenth-century historiography is M. T. Clanchy, 'Inventing Thirteenth-Century England: Stubbs, Tout, Powicke – Now What?', in *TCE V*, pp. 1-20.
[12] W. M. Stubbs, *The Constitutional History of England in its Origin and Development* (3 vols, Oxford, 1873-8) *i*, pp. 518-39; H. Butterfield, *The Whig Interpretation of History* (London, 1965), p. 41,
[13] T. F. Tout, *Chapters in the administrative history of mediaeval England: the Wardrobe, the Chamber and the small seals* (6 vols, Manchester, 1920-33), *i,* pp. 4-5.
[14] F. M. Powicke, *Henry III and the Lord Edward: the community of the realm in the thirteenth century* (2 vols, Oxford, 1947); Clanchy, 'Inventing Thirteenth-Century England', p. 14.

the head of a harmonious community. While for Powicke, Edward I was the great hero of this form of political organisation, Henry III's weakness and vacillation threatened, if they did not destroy, this due state of harmony.[15] In the seventy years since the publication of Powicke's ambitious work, the field of scholarship on the reign of Henry III and thirteenth-century England more generally has continued to flourish, but the organising principle of a grand historical narrative has been pushed into the background.

In the place of these grand narratives, the attention of much subsequent scholarship has tended to focus on analysis, not on the constitutional development, but of the politics of the period and the reign. This is in part representative of a broader shift towards the crystallisation of political history exemplified in the work of K. B. McFarlane.[16] For the political history of the reign of Henry III, the individual figures of the king has tended to loom large in characterising the period. Diverging historiographical accounts have been based upon varying understandings of the king's character and motivations. Thus a variety of different interpretations have been proposed. Michael Clanchy has presented the king as an informed ideologue pursuing a purposeful policy of government which brought him into conflict with other participants in the political community. In contrast to the weak and vacillating king who wavered his way through the pages of Powicke's *Henry III and the Lord Edward*, Clanchy presented an active ruler pursuing a policy of expansive royal authority, bolstered by an exalted depiction of kingship enhanced by religious veneration and learned law.[17] Simon Lloyd has similarly identified Henry's pursuit of policy as underlying the troubles of his reign,

[15] F. M. Powicke, *The Thirteenth Century, 1216-1307* (Oxford, 1953), pp. 129-34.
[16] K. B. McFarlane, *The Nobility of Later Medieval England: the Ford lectures for 1953 and related studies* (Oxford, 1973), pp. 2-3.
[17] M. T. Clanchy, 'Did Henry III have a Policy?', *History*, 53 (1968), 207-19; *idem*, *England and its Rulers, 1066-1307*, 4th edition (Chichester, 2014), pp. 224-47.

emphasising the king's desire to fulfil his crusading oath and participate in Mediterranean politics as a driving factor throughout, and one which underpinned his commitment to claim the throne of the kingdom of Sicily for his son Edmund, a project undertaken in contract with the papacy from 1255 onwards. [18] In contrast to Clanchy, David Carpenter has argued against a confrontation of political ideals in this period, presenting the king instead as an easy-going figure who prioritised the maintenance of the peace. According to this view, the political disputes that plagued Henry's personal rule, from the fall of Hubert de Burgh in 1232 and the subsequent rebellion of Richard Marshall which precipitated the overthrow of Peter de Roches, bishop of Winchester in 1234, up until the great crisis of 1258 and the upheavals of the period of baronial reform and rebellion (1258-67), were due more to the king's incapacity than his policy. [19] Another approach which has tended to centralise the role of court politics in the analysis has been that taken by Huw Ridgeway, who focussed on Henry III's problems of patronage as sitting at the root of the conflicts of the reign, with particular focus on his excessive favour to and promotion of aliens.[20] All these schemes have offered important insights into the functioning and dynamics of English politics, but have not reconciled the position of the reign into a larger framework of the development of the English polity.

[18] S. D. Lloyd, 'King Henry III, the Crusade and the Mediterranean', in M. Jones and M. Vale (eds.), *England and her Neighbours, 1066-1453: Essays in Honour of Pierre Chaplais* (London, 1989), pp. 97-119; *idem, English Society and the Crusade, 1216-1307* (Oxford, 1988).

[19] D. A. Carpenter, 'Kings, Magnates and society: The Personal Rule of King Henry III, 1234-1258', *Speculum,* 60 (1985), 39-70, reprinted in his *Reign of Henry III* (London, 1996), pp. 75-106; *idem*, 'The fall of Hubert de Burgh', *JBS*, 19 (1980), 1-17, reprinted in his *Reign of Henry III*, pp. 45-60; *idem*, 'What happened in 1258?' in J. Gillingham and J. C. Holt (eds.), *War and Government in the Middle Ages: essays in honour of J. O. Prestwich* (Woodbridge, 1984), pp. 106-19, reprinted in his *Reign of Henry III*, pp. 183-98.

[20] H. W. Ridgeway, 'King Henry III and the "Aliens", 1236-1272', in *TCE II*, pp. 81-92; *idem*, 'Foreign Favourites and Henry III's Problems of Patronage, 1247-1258'', *EHR*, 104 (1989), 590-610; *idem*, 'The Politics of the English Royal Court 1247-65, with Special Reference to the Role of Aliens', (DPhil thesis, University of Oxford, 1983); for a critique of the role of 'aliens' during this period and the construction of ethnic or national identities, see L. Hennings, 'Simon de Montfort and the Ambiguity of Ethnicity in Thirteenth-Century Politics', in *TCE XVI*, pp. 137-46.

Despite this strong turn towards political history, highly compelling arguments have been made for the continuing value of a constitutional approach to English history, independent from the much-denigrated legacy of nineteenth-century constitutionalism. As early as 1964, R. F. Treharne argued for the continuing importance of ideals to politics, distinguishing between the teleological priorities of nineteenth-century liberalism and what he perceived as a post-war disenchantment with any belief in either ideals or idealists.[21] If 'constitutional' history is understood to go beyond the Whiggish narrative, then it should be, as Rees Davies noted, understood not just as the development of structures or institutions, but also in the context of its actors and their often messy and personal politics.[22] However, for the reign of Henry III, this reconciliation of administrative and personal facets of political development has not, for the most part, fully manifested. A number of incredibly valuable contributions have been made in the fields of constitutional and administrative history, with a particular flourishing in sub-disciplines and specialist methodologies, first and foremost in legal history. This scholarship is indeed so extensive that it would be impossible to do it full justice here, but a few outline comments may be made. English legal history may be roughly subdivided into two distinct but interrelated fields of inquiry: the history of the law, and the history of the legal system. For the history of law, and the English Common Law especially, the works of Paul Brand, John Baker and John Hudson stand in the forefront. In this research, the thirteenth century has been clearly identified as a period of expansion and consolidation

[21] R. F. Treharne, *Simon de Montfort and Baronial Rebellion: Thirteenth Century Essays*, ed. E. Fryde (London, 1986), p. 83; *idem*, 'The Constitutional Problem in Thirteenth-Century England', in T. Sandquist and M. Powicke (eds.), *Essays in Medieval History Presented to Bertie Wilkinson* (Toronto, 1969), pp. 46-78. See also, E. Powell, 'After "After McFarlane": The Poverty of Patronage and the Case for Constitutional History', in D. J. Clayton, R. Davies and P. McNiven (eds.), *Trade, Devotion and Governance: Papers in Later Medieval History* (Stroud, 1994), pp. 1-16; C. Carpenter, 'Political and Constitutional History: Before and After McFarlane', in R. Britnell and A. Pollard (eds.) *The McFarlane Legacy: Studies in Late Medieval Politics and Society* (Stroud, 1995), pp. 175-206.

[22] R. R. Davies, 'Review: J. Maddicott, *Thomas of Lancaster*,' *Welsh History Review*, 6 (1972), 201-10.

for the Common Law. While also recognising continued continental influences, and authors of such treatises as Bracton could write according to deliberately Romanising scheme, the increasingly distinctive and professional character of English law during this period was indisputable. [23] Work on the English legal system has also produced a flourishing of rich literature, partially focussed on the origins, training and experience of the agents of that system, and in part addressing broader concerns about the relationship of the king to the apparatus of justice. This latter theme in particular has become intensely intertwined with questions regarding judicial reform and the failure of Henry III's government to guarantee the stability of justice, as has been shown in the work of Tony Moore in particular.[24] In this latter work, the discipline of legal history has been positioned within the framework of a larger account of political and constitutional development.

[23] P. Brand, *The Making of the Common Law* (London, 1992); *idem*, 'The Age of Bracton', in J. Hudson (ed.), *The History of the English Law: Centenary Essays on 'Pollock and Maitland'* (Oxford, 1996), pp. 65-89; see also S. Jenks, J. Rose and C. Whittick (eds.), *Law, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden, 2012), esp. D. Ibbetson, 'Civilian and Canonist influence on the writ *Cessavit per Biennium*', pp. 87-100, for the relationship of the common law with continental learned law. See also J. Hudson, *The Formation of the English Common Law* (London, 1986), pp. 220-39; *idem*, *The Oxford History of the Laws of England Volume II 871-1216* (Oxford University Press 2012); J. Baker, *The Common Law Tradition: Lawyers, Books and the Law Tradition* (London, 2000). For the influence of Roman law on the treatise known as Bracton, see J. Barton, *Roman Law in England*, Ius Romanum Medii Aevii *pars* V, 13a (Milan, 1971), pp. 13-24; B. Tierney, 'Bracton on Government', *Speculum*, 38 (1963), 295-317; G. Post, *Studies in Medieval Legal Thought. Public Law and the State, 1100-1322* (Princeton NJ, 1964), pp. 189-238; F. Schulz, 'Bracton and Raymond de Peñafort', *LQR,* 61 (1945), 376-84.

[24] For works on the origins and training of English justices, see P. Brand, *The Origins of the English Legal Profession* (Oxford, 1992); *idem*, *Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England* (Cambridge, 2003); for the involvement of the king in royal justice, see R. Turner, *The King and his Courts: The Role of John of Henry III in the Administration of Justice, 1199-1240* (Ithaca, 1968). For the place of the justice system and judicial reform in the period 1258-67, see A. Hershey, 'Justice and Bureaucracy: The English Royal Writ and "1258"', *EHR,* 113 (1998), 829-51; *idem*, 'Success or Failure? Hugh Bigod and Judicial Reform during the Baronial Movement, June 1258-February 1259', in *TCE IV,* pp. 65-87; R. Hogg, 'Henry III, the Justiciarship, and the Court *Coram Rege* in 1261', *American Journal of Legal History,* 30 (1986), 59-78; T. Moore, ''If I do you wrong, who will do you right?' Justice and Politics during the Personal Rule of Henry III', in B. Thompson and J. L. Watts (eds.), *Political Society in Later Medieval England: A Festschrift for Christine Carpenter* (Cambridge, 2015), pp. 15-37; *idem*, 'The fine rolls as evidence for the expansion of royal justice during the reign of Henry III,' in D. Crook and L. J. Wilkinson (eds.), *The Growth of Royal Government under Henry III* (Woodbridge, 2015), pp. 55-71.

Nor is legal history the only area in which contributions have been made to a broader account of constitutional and administrative histories. Gerald Harriss explored the development of public finance as a central impetus behind medieval English government and the emergence of the crown as a corporate body; this financial analysis has been pursued further in the reign of Henry III in the work of Robert Stacey.[25] Another area in which *longue durée* explorations of constitutional and administrative developments have experienced something of a resurgence is in the history of parliament, with the recently published Ford Lectures of John Maddicott providing a sweeping account of the growth of what was both an institution and a more informal discursive sphere. [26] Further to this, the work of Michel Hébert has positioned the history of the English parliament within a comparative continental context.[27] Overall, more recent histories of parliament have tended to emphasise the polyvalency of the institution and its integration with the social and personal dynamics of English government, a history of institutions which can be integrated within the wider fabric of political history.

While these reinvigorated branches of scholarship have done much to develop the fields of administrative and constitutional history, the position of the reign of Henry III within these narratives remains somewhat ambiguous. The literature on this period remains somewhat diffuse, lacking the kind of synthesis into a larger account of polity development which has been undertaken elsewhere. These studies of constitutional developments have not yet been brought together in a rounded way with the political narratives laid out in the

[25] G. L. Harriss, *King, Parliament, and Public Finance in Medieal England to 1369* (Oxford, 1975); R. C. Stacey, *Politics, Policy and Finance under Henry III, 1216-1245* (Oxford, 1987).
[26] J. R. Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford, 2010).
[27] M. Hébert, *Parlementer. Assemblées représentatives et échange politique en Europe occidentale à la fin du Moyen Age* (Paris, 2014).

work of scholars such as David Carpenter and Nicholas Vincent.[28] This diffusion is particularly evident in comparison with the recent works of Andrew Spencer and Caroline Burt on the reign of Edward I, as well as that of Alice Taylor on the contemporaneous development of Scottish politics.[29] These scholars have drawn in their research on the question of 'political culture' as a sphere for analysis. This approach has presented a model for a more integrated account of medieval polities, considering institutional frameworks, intellectual developments and personal politics as forming the broader fabric of political society.[30] Significant recent approaches of this kind have been undertaken for the thirteenth century, including the reign of Henry III, in the work of John Sabapathy on office-holding and accountability, and Sophie Ambler of the role of bishops in political reform.[31] These works have shown how any survey on the politics of thirteenth-century England must seek to engage with the range of factors, personal, ideological, intellectual and institutional, which shaped and contextualised individual and collective behaviour in the public life of the medieval state. In considering this broader context, they have also demonstrated the importance of considering parallel developments and intellectual trends that went beyond the confines of the English Channel, or even the Angevin Empire.

[28] For the work of David Carpenter, see above, p. 13ff; N. Vincent, *Peter des Roches: an alien in English Politics, 1205-1238* (Cambridge, 1996).
[29] A. Spencer, *Nobility and Kingship in Medieval England. The Earls and Edward I, 1272-1307* (Cambridge, 2014); *idem*, 'Dealing with Inadequate Kingship: Uncertain Responses from Magna Carta to Deposition, 1199-1327', in *TCE XVI*, pp. 71-87; C. Burt, *Edward I and the Governance of England, 1272-1307* (Cambridge, 2013); A. Taylor, *The Shape of the State in Medieval Scotland, 1124-1290* (Oxford, 2016).
[30] Powell, 'After "After McFarlane"'; C. Carpenter, 'Introduction,' in C. Carpenter and L. Clark (eds.), *Political Culture in Late Medieval* Britain (Woodbridge, 2004), pp. 1-20; J. Watts, 'Ideas, Principles and Politics,' in A. J. Pollard (ed.), *The Wars of the Roses* (Basingstoke, 1995), pp. 110-33; *idem*, *The Making of Polities. Europe 1300-1500* (Cambridge, 2009), pp. 1-42; for a recent comparative treatment of political culture, see C. Fletcher, J.-P. Genet and J. Watts (eds.), *Government and Political Life in England and France, c.1300-c.1500* (Cambridge, 2015). For a theoretical approach to 'political culture' in history more broadly, see R. P. Formisano, 'The Concept of Political Culture', *Journal of Interdisciplinary History*, 31 (2001), 393-426.
[31] J. Sabapathy, *Officers and Accountability in Medieval England, 1170-1300* (Oxford, 2014); S. Ambler, *Bishops in the Political Community of England (1213-1272)* (Oxford, 2017).

It is from this broader contextualisation that this thesis seeks to address the original question of the character and significance of the reign of Henry III. While recent works on political culture have responded to the challenges of considering the relationship between political, intellectual, and institutional developments, and have opened up important new areas for consideration, their focus has not been that under consideration here, so they have added to, rather than resolved, the diversity of factors influencing our understanding of this period. It is the proposition of this thesis that this not only requires an integration of personal and constitutional politics, but more fundamentally that the character of this period should be better understood if the question of Anglo-European relations be given a central position in what have often been insular debates. Indeed, as has long been recognised (but not extensively explored), particularly in the work of Michael Clanchy, Henry's reign was a period of important developments in the ideology and discourse of government, drawing upon wider European intellectual developments and transmitted at least in part through the agency of prominent foreigners who came into the king's service.[32] Although they were to become far more effective and extensive from the reign of Edward I onwards, these advances first began to crystallise during his father's time as king, especially in the all-important decades of the 1230s to the 1250s, the period of Henry III's personal rule. These developments were linked to contemporary advances in the scholarship of Roman and Canon Law, and the methods for the communication and presentation of royal power found in the international language of public address known as *dictamen*. In this respect, our understanding of Henry III's reign, and the developments of ideas of governance belonged to a far broader picture of the history of political cultures in the medieval Latin West.

[32] Clanchy, 'Did Henry III have a Policy?'.

Political Culture and 'England in Europe'

It is with these ideological and discursive developments that this thesis is primarily concerned; it seeks to identify them and then to explore and explain how they gained traction in England at this time, through what methods of transmission and in what kinds of reception. Following from that this thesis then seeks to indicate the results of this kind of influence, both in the immediate context of the reign of Henry III and in a longer term contextualising of this period within the growth of the medieval English polity. In order to take this analysis forward, we need to move to centre stage something that has generally been seen as peripheral in the historiography of the reign, namely, the position of the government in relation to the main strands of European cultural and intellectual development. As stated from the outset, this is to attempt to use the lens of political culture analysis to reconcile previously diffuse historiographical strands: to articulate the ways in which England's continuing engagement with the political and intellectual contexts of the continent more broadly was inextricable from the development of English politics at this time and the longer-term development of English governance.

To call these developments 'European' is to a certain extent problematic. References to Christendom (*Christianitas*) were far more common than such geographical terminology. This invoked unity of religion, fundamentally bound in mutual obedience to the Roman papacy.[33] As a papal fief following the submission of King John, the developments in papal government and theory of governance had an inescapable significance for thirteenth-century England. The years of Henry III's reign, from the conclusion of the pontificate of Innocent III,

[33] R. Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change, 950-1350* (London, 1993), p. 288; C. Brooke, *From Alfred to Henry III, 871-1272* (Edinburgh, 1961), p. 23.

to that of Celestine IV (1265-8), this was a period of papal history that saw an expansionist growth of papal government. One of Innocent III's most substantive achievements was the consolidation and recognition of the Papal States in Italy, and the thirteenth century was witness to increasing claims of papal authority in relation to secular sovereignty.[34] In opposition to this growth of papal government, the middle decades of the thirteenth century were to see a major challenge to the authority of Rome in the extended conflict between the papacy and the Staufen Empire of Frederick II.[35] Both the expansive papal claims to power and their vigorous contestation by the Hohenstaufen were features of a dispute supreme political and spiritual authority over a broader political space in which power was communicated through common mechanisms and institutions of rule and cultural hegemony.[36]

This conflict was almost unquestionably the dominant determinant factor underlying court culture and rhetoric across the majority of the Latin West throughout this period. The thirteenth century has been referred to as the age of the lawyer popes, and in the course of this conflict, both the papal and imperial courts made full use of the arguments respecting sovereignty that were at that time increasingly emerging from the study of and commentary upon the *ius commune*, the Roman Civil and Canon Laws.[37] This longer term intellectual

[34] J. E. Sayers, *Innocent III: Leader of Europe 1198-1216* (London, 1994); W. Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (London, 1955); D. Waley, *The Papal State in the Thirteenth Century* (London, 1961), p. 43; G. Barraclough, *The Medieval Papacy* (London, 1968), p. 118; C. Morris, *The Papal Monarchy: The Western Church from 1050 to 1250* (Oxford, 1989), pp. 420-50; P. Partner, *The Lands of St Peter: The Papal State in the Middle Ages and the Early Renaissance* (London, 1972), pp. 231-57; S. Carocci, 'Popes as Princes? The Papal States (1000-1300)', in K. Sisson and A. A. Larson (eds.), *A Companion to the Medieval Papacy: Growth of an Ideology and Institution* (Leiden, 2016), pp. 68-78; D. J. Smith, *Innocent III and the crown of Aragon: the Limits of Papal Authority* (Aldershot, 2004); J. A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists* (New York, 1965).

[35] D. Abulafia, *Frederick II: A Medieval Emperor* (London, 1988).

[36] Bartlett, *Making of Europe*, pp. 269-91.

[37] B. Tierney, *The Crisis of Church and State, 1050-1300* (Toronto, 1988), p. 97; A. A. Larson, 'Popes and Canon Law,' in Sisson and Larson, *A Companion to the Medieval Papacy*, p. 146.

development was by no means limited to the immediate context of the papal-Staufen conflict, indeed, it formed one of the most significant strands of European intellectual culture from the early twelfth century to the Renaissance.[38] What the papal-imperial disputes demonstrated in particular was the ways in which jurisprudential arguments could be used to inform and shape debates around authority, sovereignty and subjecthood. Beyond this immediate conflict, the development of the *ius commune*, and its application to debates of this kind, fostered an explicitly universalising body of public law which was to have immense importance in framing the developments of the language of kingship, as has been emphasised in the writings of Ernst Kantorowicz and Gaines Post, and more recently in the work of such scholars as Jacques Krynen.[39] The conflict between the Papacy and the Staufen, not only contributed to the stimulation of the development of ideas of governance articulated in terms of the learned law, but also presented their arguments in the rhetorical persuasive style of the art of letter writing, the *ars dictaminis*, which was developed and articulated in the *cursus* of the papal curia, and the flowerings of the imperial chancery.[40] Both the study of the *ius*

[38] M. Bellomo, *The Common Legal Past of Europe, 1000-1800*, trans. L. G. Cochrane (Washington DC, 1995), p. *xi*; J. A. Brundage, *Medieval Canon Law* (London, 1995), esp. pp. 3 (for canon law as an international system), 175-7 (for the relation of learned to secular politics); H. J. Berman, *Law and Revolution: The formation of the Western Legal Tradition* (Cambridge Mass, 1983); N. M. Haring, 'The Interaction between Canon Law and Sacramental Theology in the Twelfth Century', in S. Kuttner (ed.), *Proceedings of the Fourth International Congress on Medieval Canon Law: Toronto, 21-25 August 1972* (Vatican City, 1976), pp. 483-93; S. Kuttner, *Harmony from Dissonance: An interpretation of Medieval Canon Law* (Latrobe PA, 1960); *idem*, *History of Ideas and Doctrines of Canon Law in the Middle Ages* (London, 1992).

[39] Post, *Public Law and the State;* E. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*, with a new introduction by C. Leyser (Princeton, 2016); *idem*, 'Kingship under the Impact of Scientific jurisprudence', in his *Selected Studies* (Locust Valley, 1965), pp. 151-66; J.P. Canning, `Ideas of the State in Thirteenth and Fourteenth-Century Commentators on the Roman Law', *TRHS*, 5th series, 33 (1983), 1-27; F.L. Cheyette, `The Invention of the State', in B. Lackner and R. Philp (eds.), *Essays on Medieval Civilisation* (Austin, 1978), pp. 143-78, J. Krynen, *L'empire du roi: idées et croyances politiques en France, XIIIe-XVe siècle* (Paris, 1993).

[40] O. Vehse, *Die Amtliche Propaganda in der Staatskunst Kaiser Friedrichs II* (Munich, 1929); P. Herde, 'Literary Activities of the Imperial and Papal Chanceries during the Struggle between Frederick II and the Papacy', in W. Tronzo (ed.), *Intellectual Life at the Court of Frederick II Hohenstaufen* (Washington DC, 1994), pp. 227-39; F. Di Capua, 'Lo stile della Curia romana e il 'cursus' nelle epistole di Pier della Vigna e nei documenti della Cancelleria sveva', *Giornale Italiano di Filologia*, 2 (1949), 97–166; L. Shepard, *Courting Power. Persuasion and Politics in the Early Thirteenth Century* (London, 1999), pp. 23-4.

commune and the development and spread of the *ars dictaminis* were trends in intellectual history not dependent upon the immediate political circumstances of the thirteenth century, but this was a period in which the jurisprudential approaches and rhetorical forms gained a particular prominence in the communication of debates regarding the nature of sovereign power and authority. As a close ally of Frederick II and a ward and feudal subject of the papacy, these were arguments which Henry III's England could not escape or ignore.

In addition to the immediate contexts which necessitated the communication of intellectual ideas in political arguments, the thirteenth century also bore witness to developments across Western Europe which expedited the processes and media of transmission between curial and intellectual nodes. Fundamental to this period was the establishment and formalisation of universities across Europe. In contrast to the preceding monastic *studia*, the universities and the cathedral schools from the late twelfth century onwards were much more explicitly outward looking. These institutions not only enhanced the study of the disciplines of learned law and rhetoric, but they also produced a trained and cosmopolitan elite, who effectively communicated these ideas across a broad geographical range in their careers in the royal, ecclesiastical and princely courts of Western Europe.[41] These networks of increasingly peripatetic learned clerks, invested in discussions of secular authority, law and governance were to play a fundamental role in the development of polities across a wide geographical range. A particularly important strand in the development in intellectual communication was the emergence of the friars and their preaching networks,

[41] J. W. Baldwin, *Masters, Princes and Merchants. The Social Views of Peter the Chanter & His Circle* (2 vols, Princeton, 1970); J. Le Goff, 'How did the Medieval University Conceive of Itself', in his, *Time, Work and Culture in the Middle Ages* (Chicago, 1980), pp. 122-34; for the Cathedral schools, see C. S. Jaeger, *The Envy of Angels. Cathedral Schools and Social Ideals in Medieval Europe, 950-1200* (Philadelphia PA, 1994); *idem*, 'Cathedral Schools and Humanist Learning, 950-1150', *Deutsche Vierteljahsschrift, 61* (Stuttgart, 1987), pp. 569-616.

which explicitly sought to enhance the transmission of ideas relating to secular as well as spiritual authority.[42]

Of course, the study of learned law and its application to discussions of lay rule was in no way the totality of the intellectual currents in thirteenth-century Europe, or even those which shaped ideas of government.[43] Theology continued to be the 'queen' of disciplines and played an indispensable role in the narratives of papal, imperial and royal authority.[44] In the latter half of the thirteenth century in particular, the reception of Aristotle and the Christianisation of his works in the writings of Thomas Aquinas presented both new frameworks and epistemological challenges for intellectual inquiry in general and the discussion of the state in particular.[45] However, given their increasing prominence in this period, their deliberately universalising approach, and their application and applicability to discussions of secular power, the development of the *ius commune* and its rhetorical transmission in the works of the *dictatores* remained not only an highly significant element of

[42] D. L. d'Avray, *The Preaching of the Friars. Sermons Diffused from Paris before 1300*, (Oxford, 1985); A. Power, *Roger Bacon and the Defence of Christendom* (Cambridge, 2013).

[43] Ronald Witt has argued that legal culture was one of 'two Latin cultures' which shaped the development of late medieval and Renaissance Italy – the cultures of the document on one hand and the book on the other, R. G. Witt, *The Two Latin Cultures and the Foundation of Renaissance Humanism in Medieval Italy* (Cambridge, 2012), pp. 3-4. Whilst Witt's polarisation of these two forms is highly problematic, and does not take into account the relationship between these 'book' and 'document' strands of thought, it is nonetheless important to recognise this diversity of intellectual cultures. Indeed, even Jacques Krynen, whose work has been highly influential in developing our understanding of the role of learned law in shaping political thought, has argued for a distinction between legal and political contributions to discussions of the state, A. Boureau, 'Intellectuals in the Middle Ages', in M. Rubin (ed.), *The Work of Jacques Le Goff and the Challenges of Medieval History* (Woodbridge, 1997), pp. 145-55, at p. 149.

[44] A. Boureau, *La Religion de L'État. La construction de la République étatique dans le discours théologique de l'Occident médiéval (1250-1350)* (Paris, 2006), p. 14; P. Buc, '*Principes gentium dominantur eorum*: Princely Power Between Legitimacy and Illegitimacy in Twelfth-Century Exegesis', in T. N. Bisson (ed.), *Cultures of Power. Lordship, Status, and Process in Twelfth-Century Europe*, (Philadelphia, 1995), pp. 310-28; P. Byrne, '*Non est misericordia vera nisi sit ordinata*: Pastoral Theology and the Practice of English Justice, c.1100-c.1250' (DPhil Thesis, University of Oxford, 2013).

[45] R. W. Southern, *Scholastic Humanism and the Unification of Europe*, ed. L. Smith and B. Ward (2 vols, Oxford, 1995); M. A. Pernoud, 'The Theory of the *Potentia Dei* according to Aquinas, Scotus and Ockham', *Antonianum,* 47 (1972), 69-95; C. F. Briggs, *Giles of Rome's* De Regimine Principum. *Reading and Writing Politics at Court and University, c.1275-c.1525* (Cambridge, 1999), p. 10.

European intellectual and cultural thinking at this time, but also one which played a fundamental role in any narrative of governance and polity formation. It is in this context that this thesis seeks to demonstrate the influence of this European culture upon ideas and practices of government during the reign of Henry III.

In much of the historiography of this reign connections with European intellectual history more broadly have been considered separately from the political engagements of the royal government with the continent, the latter literature having tended to be focussed upon foreign policy and diplomatic accounts rather than providing an integrative picture of English political culture within a continental matrix. Scholars addressing this period have not ignored the Continent, but they have focused mainly on diplomatic relations or other aspects of courtly and chivalric culture. They have not tended to address the kings of legal and discursive changes which are proposed here as being central to political and governmental innovations.[46] As mentioned above, scholars such as John Sabapathy and Sophie Ambler, who have taken a far more ambitious approach to political culture within a broader geographical and intellectual context, have not tended to focus so much on the formation and evolution of

[46] The range of literature on England and the continent is an extensive one which cannot be surveyed in entirety here. Essays on a number of topics have edited in several collections, including B. K. U. Weiler and I. W. Rowlands (eds.), *England and Europe in the Reign of Henry III (1216-1272)* (Aldershot, 2002); M. C. E. Jones and M. G. A. Vale (eds.), *England and her neighbours, 1066-1453: essays in honour of Pierre Chaplais* (London, 1989); and N. Saul (ed.), *England in Europe, 1066-1453* (London, 1994). Studies of contacts between the Staufen Empire and Germany include J. P. Huffman, *The Social Politics of Medieval Diplomacy: Anglo-German Relations (1066-1307)*; B. K. U Weiler, *Henry III of England and the Staufen Empire, 1216-1272* (Woodbridge, 2006). Papal relations, both ecclesiastical and secular have also received substantial attention, esp. C. R. Cheney, *The Papacy and England, 12th-14th Centuries: Historical and Legal Studies* (London, 1982); William Lunt explored their financial dynamics in particular, W. E. Lunt, *Financial Relations of the Papacy with England to 1327* (Cambridge MA., 1939), while the work of Jane Sayers has been highly significant in exploring the dynamics of government and governance, J. E. Sayers, *Papal Government and England during the Pontificate of Honorius III (1216-1227)* (Cambridge, 1984). In recent years, scholarship has also started to develop more on the exploration of Anglo-Iberian relations, see the collected essays in M. Bullon-Fernández (ed.), *England and Iberia in the Middle Ages, 12th-15th Century: Cultural, Literary and Political Exchanges* (Basingstoke, 2007). Studies that have used a diplomatic approach include F. L. Ganshof, *The Middle Ages: A History of International Relations* (New York, 1970); and P. Chaplais, *English Diplomatic Practice in the Middle Ages* (London, 2003).

English royal government and ideas of kingship.[47] This thesis thus aims to provide a more multi-faceted account of the kingship of Henry III and the development of conceptions of government and authority by refocussing on the wider continental contexts of English political culture. This focusses in particular on modes of cultural transmission and the subsequent reception and reproduction of concepts and constructs for the discussion and expression of power. Then it considers how these were communicated into the ideals and practices of royal government to emphasise the importance of this period in a longer-term understanding of English kingdom and state formation.

Structure of the Thesis

Given the synthetic approach to political culture that underpins this thesis, and the desire to integrate the content, transmission and reception of ideals and practices of government this thesis consists of three discrete parts, each utilising a distinct if overlapping chronological framework. Given these separate sections, the particular source bases vary throughout the thesis, and the discussion of these, and their theoretical and methodological implications are incorporated into each relevant portion. Chapter One presents a prosopographical survey of the personnel of English royal government, with a particular emphasis on engagement with continental networks, both through the role of foreign clerks and the advancement of English servants engaged in such contacts. Moving from personnel networks to textual ones, Chapter Two considers the circulation, use and reception in England of manuscripts of Roman civil and canon law, along with the *ars dictaminis* over the broader course of the long thirteenth century, ranging from c.1200-c.1330. This section seeks to explore not only the range and

[47] See above, p. 17.

availability of learned law texts, but also evaluate the ways in which these texts were interpreted and deployed. The third and final section builds upon the two preceding ones, and presents a model for interpreting the impact of these continental engagements upon Henry III's practice of kingship in particular, and the broader development of England politics in the thirteenth century in general. The assessment of this impact uses political language as a mode of analysis, and concentrates on the products of the royal chancery in the period of Henry III's personal rule up until the commencement of the Sicilian project and the escalation towards the events of 1258-67, thus covering a period of approximately twenty years between c.1230-c.1252. Chapter Three explores how the influence of learned laws shaped the vocabulary of kingship and the exercise of royal power in this period, while Chapter Four explores the expression of royal rhetoric regarding the broader political community and its relationship with kingship. Chapter Five contextualises the adoption and adaptation of this political vocabulary within the wider framework of performative language and persuasive rhetoric. It explores the ways in which these continental influences shaped not only the content of political language, but the structures of rhetorical strategy in which it was presented through the engagement with the styles and forms of the *ars dictaminis*. The thesis ends with a conclusion drawing together the threads of the analysis and indicating their implications for the political and constitutional history of Henry III's reign.

One: The Personnel of Royal Government

Chapter One - The King's Clerks: Henry III's Administration in its Continental Context

Introduction

> In the seventeenth year of his reign, Henry, the king of England, held his Christmas court at Worcester, where, as it is said, following the advice of Peter, Bishop of Winchester, he removed all the natural ministers of his court from their offices, and appointed as ministers in their place foreign Poitevins.[1]

This entry from the *Chronica Majora* of Matthew Paris, monk of St Albans, describes how, around Christmas 1232, at the instigation of Peter des Roches, bishop of Winchester, Henry III removed all his "natural" servants from office, and replaced them in his administration with alien servants, in this case, Poitevins. Michael Clanchy has emphasised the significance of this period of 'Poitevin government', developing increasingly authoritarian concepts of royal authority informed by wider European trends towards Roman Law kingship; a conceptual sequel perhaps to the 'Angevin kinship' so eruditely described by J. E. A. Jolliffe.[2] The significance of Clanchy's analysis lies in his appreciation of the importance of England's continental context for political development during Henry III's reign, and in particular the role played by an internationalising elite of clerical personal in royal government as underpinning these developments. In Clanchy's analysis, the problems of Henry III's reign were not those of an English king clinging on to anachronistic continental interests against the tide of political progress, but were instead European problems, related to more universal concepts of authority.[3]

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[1] *Chronica Majora*, *iii*, p. 240.
[2] Clanchy, *England and its Rulers, 1066-1307*, pp. 178-182; *idem*, 'Did Henry III have a Policy?'; J. Jolliffe, *Angevin Kinsghip* (London, 1955); for the connection between these two analyses, see Vincent, *Peter des Roches*, p. 8.
[3] Clanchy, 'Did Henry III have a Policy?'.

Clanchy's emphasis on the role of those men who devised and implemented the royal policies remains crucial to the analysis of Henry's reign, not for identification with a particular geographical location (Poitou)[4], but in emphasising how cross-channel and broader European patterns of communication and transmission of political ideas operated during this period. The cosmopolitan profile of the administrative elite promoted by the king not only demonstrated the monarch's own policies and interests, but also highlighted the extent to which such continuing continental orientation was fundamental to an understanding of this period of English politics. This chapter explores the extent to which the personnel of royal government was composed of continental clerks, how and why they were promoted within the offices of government, and what particular training, expertise or wider engagement in international curial networks they brought to Henry III's administration.

Behind any analysis of the contribution of "aliens" to Henry III's government lies a fundamental question about what it meant to be foreign in thirteenth-century England. It has often been asserted that the thirteenth-century was a period of growing insularity and xenophobia, related to what David Carpenter has described as a growing sense of national identity and sentiment, with hostility towards foreigners often taking the form of overt violence.[5] Certainly there were a number of prominent moments of opposition to foreigners, whether in their domination of ecclesiastical benefices and subsequent absenteeism, or in their excessive share in the fruits of royal favour and patronage, up to and including a confidence in their immunity from royal justice.[6] However, it is difficult to deduce from these

[4] Substantive doubts have been raised about how many of Henry III's so-called 'Poitevins' were actually from Poitou, with Vincent emphasising the Norman origins of des Roches and his *familiares*, Vincent, *Peter des Roches*, pp. 27-8.
[5] D. A. Carpenter, 'King Henry III's "Statute" against Aliens: July 1263', *EHR,* 107 (1992), 925-44.
[6] H. Mackenzie, 'The Anti-Foreign Movement in England, 1231-1232', in C. T. Taylor and J. L. LaMonte (eds.), *Anniversary Essays in Mediaeval History by Students of Charles Homer* Haskins (Boston, 1929), pp. 183-203; M. Ray, 'Three Alien Royal Stewards in Thirteenth-Century England: The Careers and Legacy of Mathias Bezill,

individual crises a particularly clear understanding of any one theory of national identity or racial difference; rather the continuing associations with moments of crisis and political disagreement would seem to suggest the attribution of 'foreignness' was more closely linked with a particular set of political values or behaviours.[7] Hence, individuals of foreign origin could live and work for many years in England without inspiring any particular grievance, but could suddenly become targets of acrimony when alien identity became more highly politicised. Equally, the Norman bishop Peter des Roches could be called a Poitevin, while Simon de Montfort, the son of a French Lord who had been denied his English inheritance after the loss of Normandy, could be renowned as 'the shield and defender of the kingdom of the English.'[8]

Given these contextual factors, the structure of this chapter explores the contribution made by continental clerks without being restricted to the activities of those who can definitively be proven to be 'foreign'. It will first address the role played by these foreigners, and in particular those who acted as communicators of ideas and practices of the learned law and *dictamen*. However, moving beyond these often transitory and isolated visitors, this survey will then consider those 'native' servants of royal government who could plausibly be described as continental, or at least 'continentalist', exploring the variety of ways in which English clerics could participate in the wider sphere of European political culture. First is the role of the universities, both English and continental, in training a cosmopolitan elite for ecclesiastical and secular administration (two branches of governance that continued to be

Imbert Pugeys and Peter de Champvent', *TCE,* pp. 51-67; Ridgeway, 'King Henry III and the "Aliens"'; *idem*, 'Foreign Favourites and Henry III's Problems of Patronage'; *idem*, 'The Politics of the English Royal Court 1247-65'.

[7] For a more detailed exploration of these issues, and the political construction of identity, see Hennings, 'Simon de Montfort and the Ambiguity of Ethnicity'.

[8] *Chronica de Mailros e Codico Unico in Bibliotheca Cottoniana Servato*, ed. J. Stevenson (Edinburgh, 1835), p. 195.

closely interpenetrating in terms of personnel and recruitment at this time). Second is the exploration of other ways in which royal servants could participate in broader international clerical networks. Finally this chapter will consider the influence of these clerks, both individually and collectively, in the offices of royal government, as well as through more informal means.

Sources: From Royal Records to Royal Government

In order to engage with a range of degrees of engagement and influence, the source base for this chapter is varied. An identification of those who were active in royal government, particularly at the highest level, can be partially reconstructed from the 'official' records of the administration. Charter witness lists have frequently been used as evidence not only for the identification of figures in court, but also those who were particularly close to or favoured by the king, and their social networks and affiliations. There have been decades of substantial debate about the accuracy and reliability of witness lists of all kinds, and certainly caution should be maintained about assuming the physical presence of a witness purely from their inclusion.[9] Beyond this debate, the charter lists are limited in what they can reveal about the broader spectrum of royal government and its day-to-day administration. Presence at court attested by such sources cannot reveal much about the extent of an individual's participation in the offices of government, especially as the lists were often heavily inclined towards the inclusion of those who had a specific interest in the matter concerned, and tended not to include the more humble agents of the government. These other agents can on occasion be

[9] A highly useful survey of the state of the literature can be found in D. Broun, 'The Presence of Witnesses and the Writing of Charters', in D. Broun (ed.), *The Reality Behind Charter Diplomatic in Anglo-Norman Britain* (Glasgow, 2011), pp. 235-90; for the particular discussion regarding English royal charters in the thirteenth century, see, *The Royal Charter Witness Lists of Henry III (1226-1272): From the Charter Rolls in the Public Record Office*, ed. M. Morris (2 vols, Kew, 2001), *i,* p. viii.

identified from other official records, such as the chancery products found in the royal letters close and patent, as well as exchequer sources such as the fine rolls, rolls of the remembrancer, and the liberate rolls. In addition to identifying a broader spectrum of the agents of royal government, reviewing this further material makes it possible to explore in more detail the activities in the administration undertaken by its servants.

However, in order to assess continental connections and participation in a variety of formal and informal social networks, it is necessary to supplement these formal documents with a wider array of sources. Relationships can be further explored from contemporary correspondence collections and epistolary formularies, which could provide direct evidence for the careers of individuals outside and beyond the royal government, as well as illustrating the mechanisms of patronage and clientage through which the administration was staffed. Chronicles could also provide narrative accounts of the affairs of court, including biographical detail; for the reign of Henry III, the most prominent account was the *Chronica Majora* of the St Alban's monk Matthew Paris. Despite his frequently snide and aggrieved tone, Paris's work still has a great deal of utility for a historian of the reign, not the least because of its comprehensive nature, historical method, and consistent approach to authority, but also due to the richness of its source base, drawing on a wide range of personal associations including figures at the apex of government.[10] Furthermore, Paris's vitriol also provides indications of the reception and perception of the kingship of Henry III. It is through using a broad range of sources in a complementary fashion that this study can make qualitative assertions about the role of continental networks in contributing to the personnel of royal government and its development. Beyond this wide array of primary sources, this chapter also draws upon the

[10] A. Gransden, *Historical Writing in England, c.550-c.1307* (London, 1974), pp. 356-60.

invaluable work done by generations of previous scholars, working on areas both individual and collective biography.

The Presence and Activities of Foreign Clerks in England

Despite the potential degree of animus that they might face, foreigners from various backgrounds seeking various forms of employment were frequent visitors to England at this time. Henry III was a European ruler performing his kingship on a continental stage, and as such the employment and patronage of aliens in royal service was not only desirable but in some contexts essential. Diplomatic practice in particular required constant engagement on the part of the English royal administration with the styles and models of wider European practice. Study of the *ars dictaminis*, the art of letter writing which dominated the diplomatic style of the Mediterranean world, was not well developed in England, as these systems were not compatible with the developing English Common law, and those texts of the *artes dictandi* which circulated in England at this time were imported ones.[11] The presence of continental clerks and notaries, whether permanent or occasional, from the papal or imperial courts, was significant in transmitting not only these texts but the dictaminal models and styles of government into England. Martin Camargo has recognised the instrumental role of the visits of foreign notaries in promoting dictaminal practices, as he perceived that the obstacles against the Italian style in England could only be overcome by external stimulus, and the necessities of diplomatic correspondence increasingly required knowledge of the forms found acceptable by foreign rulers. This was particularly needful when the king desired to put

[11] J. J. Murphy, *Rhetoric in the Middle Ages: A History of Rhetorical Theory from Saint Augustine to the Renaissance* (Berkeley, 1974), p. 239. See below, pp. 133-42.

forward his legal claims convincingly within the wider European context, as Camargo saw to be the case during the Sicilian project of the 1250s, when Henry III, on papal invitation, claimed the throne of the kingdom of Sicily for his son Edmund.[12] But while political commitments such as the Sicilian endeavour, or the earlier marriage between Emperor Frederick II and the king's sister Isabella in 1235 perhaps encouraged a heightened awareness of the activities of foreign clerks in England, their presence within the kingdom and their contribution to its governance was by no means limited to these exceptional circumstances.

Who were these foreigners and what did they do in England? Certainly the experiences of alien clerics in England was by no means homogenous and the extent of their service to the English crown could vary a great deal. The term king's clerks, *clerici regis*, indicated some degree of association with royal service, but did not necessarily imply any activity within England, as Geoffrey Barraclough demonstrated in the case of the application of this title to officials of the Roman Curia. Although the term is employed without distinction, Barraclough argues that in some cases it may have been an honorific only, and that other royal clerks may have been retained primarily on the continent.[13] Similarly, Jane Sayers has shown that in the mid-thirteenth century, English petitioners chose their proctors based on their knowledge of the curial system, rather than any particular national association or sympathy.[14] Proctors retained at Rome to represent English royal interests could easily have done so without ever setting foot within the kingdom. Even those beneficed in England should not be assumed to have resided in their benefices, as their receipt of their livings functioned

[12] *Medieval Rhetorics of Prose Composition. Fives English* Artes Dictandi *and their Tradition*, ed. M. Camargo (Binghamton, 1995), p. 12; Chaplais, *English Diplomatic Practice in the Middle Ages*, p. 72.
[13] G. Barraclough, 'The English Royal Chancery and the Papal Chancery in the Reign of Henry III', *MIOG,* 52 (1954), 365-78, at 369.
[14] J. E. Sayers, 'Proctors Representing British Interests at the Papal Court, 1198-1415', in S. Kuttner (ed.), *Proceedings of the Third International Congress of Medieval Canon Law, Strasbourg 3-6 September 1968* (Vatican City, 1971), pp. 143-63, at p. 163.

more as a reward for royal service, in Rome or in other diplomatic context, than as indicative of expectation of pastoral career in England, or a continuing role in royal government.

Representatives could be employed to take possession of a benefice in the place of its nominal recipient. Indeed, these proxies could be themselves foreigners, and act in a representative capacity for multiple clients. In 1236 Thomas, a canon of Fulginia, near Perugia, took physical possession of the church of Denton in the diocese of Lincoln, on behalf of a cleric Paul, the son of a Roman citizen, who was himself presented to the church by Benedict, a papal chaplain and canon of Salisbury. Two years later, that same Thomas, now described as the *procurator domini Benedicti domini Pape capellani, canonici Sarum*, was recorded as presenting and instituting Maurice, a cleric of St. Celsus in Rome, to the church of great Panton in the same diocese.[15] Nor was the diocese of Lincoln exceptional in this use of intermediaries. The Register of Walter Gray, archbishop of York (1215-55), shows a similar function being served in the archdiocese by a J. Romanus, who was himself sub-dean of York. Romanus had some royal connection, as in March 1230 it is stated that he was presented to the chapel of Hampsthwaite at the king's presentation, and when certain tithes from that chapel were assigned to a Roger of Essex, who subsequently leased them to the same Romanus, this had to be done with the king's consent. In addition to this connection to the crown, Romanus acted as an in-person representative for other Italians with interests in the archdiocese of York, as in 1229 the papal 'scriptor' Cozoni was presented by the abbot and convent of St. Mary, York, on papal provision, to the church of Lastingham, and was admitted to the possession of this church in the person of the same sub-dean.[16] In this way a variety of

[15] *Rotuli Roberti Grosseteste, Episcopi Lincolniensis, 1235-1254*, ed. F. N. Davis, Canterbury and York Society (London, 1913), pp. 6, 30.
[16] *The Register, or Rolls, of Walter Gray, Lord Archbishop of York, with Appendices of Illustrative Documents*, ed. J. Raine, Publications of the Surtees Society (Durham, 1872), pp. 28, 33.

Italian interests and connections to English benefices could be mediated through the physical presence of a far smaller number of proctors in England.[17]

Certainly there was an awareness of the variation in residency status among those foreign clerics beneficed in England, almost to an extent that it might be assumed that residence in England was notable or unusual.[18] That this was the case may be indicated by the entry in the register of Pope Gregory IX of May 1236, in which a Master Trasmund, canon of Ferentino, was mandated to provide an English benefice valued 20 marks to Deodatus, nephew of the papal subdeacon and chaplain G. de Prefectis. This mandate, when referring to Master Trasmund, specifically described him as 'living in England'; although this may have served to indicate the perception that Master Trasmund was more likely to be able to effect such a provision due to his location, it also reflected an awareness that those papal servants who had a notional association with England but were not in residence there possessed less tangible and persuasive connections to English political and religious hierarchies.[19] That the papal registers distinguished between those clerks with English connections resident in England and those who were not is shown by the recurrent use of this formula in cases where residence in England was perceived to be an asset in advancing the business of other parties in England. Thus in August 1243 a mandate of Innocent IV was sent to a Master Peter de Arci,

[17] Not all proctors' with foreign interests were themselves foreign in origin, although those with existing connections to the continent, and particularly the papal curia, were likely to be favoured, such as the papal subdeacon Andrew of St David's, who acted as proctor to Berengar de Montecuto, son of Jordanus de Montecuto. In October 1237, the said Andrew was instituted in the place of Berengar to the church of Middleham in the archdiocese of York, *The Register of Walter Gray*, p. 78.

[18] This factor in itself formed a significant element of reformist opposition to these 'foreigners', and was in many respects more significant in this debate than any 'national' objection. Criticisms of this form of absenteeism, and the employment of English benefices as sources of revenue rather than appointments for the cure of souls were particularly prominent in the arguments of the Bishop of Lincoln, Robert Grosseteste. It should however be noted that Grosseteste was similarly critical of English clerics who acted in the same way or were otherwise unsuited for their position; Robert Grosseteste, *Epistolae*, ed. H. R. Luard, Rolls Series (London, 1861), pp. 442-4, 50-54.

[19] *Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland, Papal Letters, Vol. 1. A.D. 1198-1304*, ed. W. H. Bliss (London, 1893), p. 154.

canon of St. Angelo, Ferentino 'living in England', to protect the molested interests of the proctor of the archdeacon of Bologna.[20] Subsequently in September of the same year, a mandate was issued jointly to the dean of London, Henry de Cornhill, and a Master Silvester, canon of St. John's, Anagni, who was again referred to as 'living in England', respecting the rights of Arnulf, papal chaplain and nephew to Gregory IX.[21] As with the proctors themselves, these individuals, through their presence in England, could mediate a far broader range of foreign interests and connections. Grants of benefices to Italians reflected a variety of interests, from rewarding service on the king's behalf at the papal curia to supporting favoured kinsmen and clients of popes and cardinals. Given the issues with absenteeism, the number of benefices did not necessarily correlate directly with the presence of their beneficiaries in the realm, however the use of proctors, both foreign and domestic, emphasises the forms of networking by which connections with the continental and the papal court in particular could engage with a variety of further individuals in different degrees.

Beyond the broader sphere of beneficing of foreigners, and the personal or mediated relationships with England that were established in this way, there were also a significant minority of foreign agents both present in England and with an active connection with the royal household and administration. Even a visit of relatively short duration could carry with it meaningful connections and influences, particularly when that undertaking included service or representation at the king's court. The visits of the Savoyard canonist Henry of Susa, later known as Hostiensis, and the imperial judge and proto-notary Petrus de Vinea, did not by any means imply permanent residence, but have been identified by Michael Clanchy as having a

[20] *Ibid*. p. 199.
[21] *Ibid*. p. 199.

significant impact on the development of Henry III's own political ideas.[22] Of the two visits, that of Petrus de Vinea has been better studied, but still deserves brief consideration here, not the least because Martin Camargo has identified Ernst Kantorowicz's discussion of his visit to England as a model for future analyses of the communication of governmental and political ideas through the exchange of personnel.[23]

Peter de Vinea, leading imperial judge and chancellor of the emperor Frederick II, was first sent to England as an Imperial ambassador and factor in the negotiations for the marriage of Henry III's sister Isabella to the emperor in 1234, and was to be identified as an Imperial servant and messenger in royal letters of 1235 and 1236.[24] However, de Vinea was later to find himself employment in the service of the king, to the extent that he was mandated in 1243 to advance the king's cause to the emperor.[25] For this de Vinea was granted 40 marks a year at the exchequer, a sum which was still being paid in 1248, the year before his death.[26] De Vinea also gained support and advancement for his relatives, as his nephew, also called Peter, was granted 20 marks by the king to support him in his studies at Paris in August 1243.[27] At the same time that de Vinea received royal patronage as a messenger to the emperor, his compatriot and co-ambassador the imperial notary Master Walter de Ocra, was also granted 40 marks a year at the Exchequer in 1244.[28] This may simply mark a period of particularly close association between England and the empire, as Matthew Paris was to accuse Ocra of attempting to ally Henry with the Emperor against the pope, but it nonetheless resulted in an

[22] Clanchy, 'Did Henry III Have a Policy?' pp. 210-11.
[23] Camargo, *Medieval Rhetorics of Prose Composition,* p. 12; E. Kantorowicz, 'Petrus de Vinea in England,' *MIOG*, 42 (1954), 43-88.
[24] *Foedera*, *i,* pp. 221, 225.
[25] *CPR, iii*, p. 399.
[26] TNA, C 60/40A m.2, http://www.finerollshenry3.org.uk/content/fimages/C60_40a/m02.html [last accessed 8th December 2017]; *CPR, iv,* p. 26.
[27] *Rôles Gasçons*, ed. F. Michel and C. Bémont (4 vols, Paris, 1885), *i,* p. 146.
[28] *CPR, iii,* p. 415.

accretion of such trained notaries in English service, and this period of close political interchange would itself necessitate increased diplomatic expertise.[29] Although de Vinea did not remain resident in England outside his imperial missions he was subsequently to write to Henry III requesting that he be granted English citizenship and promising his fidelity of service.[30] Although it is not possible to identify the king's response to this letter, it is clear that Henry continued to value the services that de Vinea provided for him, especially at the imperial court. In a series of letters sent between autumn 1242 and the early months of 1243, the English king sought to gain the support of the emperor for his French campaigns, and wrote complaining of the betrayals he had suffered on his recent expeditions in Poitou. One of these letters was directed to de Vinea, referring to the letters sent to the emperor and asking him to promote Henry's cause, on account of the fidelity he had to the king.[31] There was evidently on both sides a continuing relationship of service.

De Vinea's prestige and influence should not be underestimated, and he certainly had a tangible impact on Henry III's administration; during the reigns of Edward I and II the royal chancery employed a collection of his letters as a model for their own letters, but his stylistic influence began to influence English practice from his earliest visit in the mid-1230s, as is discussed below in Chapter Five.[32] De Vinea's influence, particularly upon the Emperor Frederick II was perceived to be more than stylistic, and this perception was one which was long-lasting, as his appearance in Canto XIII of Dante's *Inferno* shows, where de Vinea appears as 'the one who guarded both the keys of Frederick's heart and turned them'.[33] But it was not

[29] *Chronica Majora*, *iv,* p. 575; Weiler, *Henry III of England and the Staufen Empire,* pp. 71, 99.
[30] *Vie et Correspondance de Pierre de la Vigne, Ministre de L'Empereur Frédéric II, avec une étude sur le Mouvement Réformiste au XIIIe Siècle*, ed. A. Huillard-Bréholles (Paris, 1865), p. 303; for more on this letter and its significance, see below, pp. 227-8.
[31] *Foedera*, *i,* p. 250.
[32] Kantorowicz, 'Petrus de Vinea in England', 43-48.
[33] Dante Alighieri, *The Divine Comedy*, ed. and trans. A. Mandelbaum (London, 1995), p. 60.

only Frederick who felt de Vinea's influence, William Stephany explored the way in which Dante engaged with the imperial messianism of de Vinea's *Eulogy* for Frederick II, which text Kantorowicz identified as a model for the Prologue to *Fleta*, indicating the enduring legacy of the Vinean school upon English administrative and legal culture.[34] Petrus de Vinea was a leading member of the Imperial court and his English connections indicate not only the importance placed by Frederick II on his marriage negotiations with England, but also the desire of the English crown to cultivate and continue that association. The fertility of the seeds of influence that de Vinea left in his wake can be seen by the enduring legacy of his work upon the highest levels of English administrative and intellectual life.[35]

The canonist Hostiensis similarly found in England an audience receptive to his talents and skills. Hostiensis likely came to England c.1236 as part of the entourage of Henry III's Savoyard kinsman William, bishop-elect of Valence, an affiliation that was to bring him into conflict with the circle around Peter des Roches.[36] Despite this conflict with the undeniably influential bishop of Winchester, Hostiensis was to find the English royal administration a receptive employer and he migrated from the service of bishop William into that of Henry III; by 1243 he was recognised as a royal clerk in a papal grant, and, along with other royal clerks active in administration, received a Christmas gift of robes from the king later the same year.[37] It is clear that the royal generosity of which Hostiensis was a beneficiary was motivated by appreciation for his legal expertise as a canonist. In 1240, he was appointed the king's proctor

[34] W. Stephany, 'Pier Della Vigna's Self-Fulfilling Prophecies: the "Eulogy" of Frederick II and "Inferno" 13', *Traditio*, 38 (1982), 193-212, at 211; E. Kantorowicz, 'The Prologue to *Fleta* and the School of Petrus de Vinea', *Speculum*, 32 (1957), 231-49; *Fleta* survives in only one manuscript, suggesting limited circulation, but has been considered a model for the far more popular Anglo-Norman treatise *Britton*, D. J. Seipp, 'Fleta (*fl*.1290-1300)', *ODNB*.

[35] See below, pp. 274-88.

[36] N. Didier, 'Henri de Suse en Angleterre (1236?-1244)', in *Studi in Onore di Vincenzo Arangio-Ruiz* (4 Vols, Naples, 1953), *ii*, pp. 333-41, at p. 335.

[37] Bliss, *Papal Letters 1198-1304*, p. 202; *Close Rolls, v*, p. 146.

in the court of Otto Cardinal Deacon of St. Nicholas *in Carcere Tulliano*, at that time legate in England, in all matters concerning English clerks.[38] In March 1242, Hostiensis was appointed as one of the king's proctors in the court of Rome, particularly in matters touching the cathedrals of Canterbury and Winchester, for which business he received repeated commissions and confirmations over the subsequent two years, with grants of up to 1000 marks to promote the king's interests being confirmed in 1243 and 1244.[39] With the election of Boniface of Savoy to the see of Canterbury, Hostiensis was charged with his confirmation in that election and his translation from the diocese of Belley, a suffragan see of the archdiocese of Lyons, in 1244.[40] The involvement of Hostiensis in the Canterbury election received particular attention from contemporaries, and the canonist was to receive particular criticism in the writings of Matthew Paris, who accused him of diverting the monies sent to him at the Curia by the king for his own purposes.[41] Certainly English interests were not Hostiensis's only concern. Henry III was by no means the only master of his Savoyard servant, who was also a papal chaplain, and as much as his connections at the papal curia could be exploited for the interests of the English crown, his English connections could also be profitably employed to benefit papal interests, as in January 1244 Innocent IV instructed Hostiensis to promote his cause in the churches of Winchester, Norwich and Bath.[42]

Despite the existence of these multiple patterns of service, it is plain that the time spent by Hostiensis in England was to have substantial impact. The canonists' influence on Henry III in particular has been recognised as significant, in particular in his role as an

[38] *CPR, iii,* p. 241.
[39] *Ibid,* pp. 274, 375, 417.
[40] *Rôles Gasçons*, *i,* p. 127.
[41] *Flores Historiarum*, ed. H. R. Luard (3 vols, London, 1890), *ii,* pp. 274-275.
[42] *Foedera*, *i,* p. 256.

opponent to William Raleigh, distinguished royal justice turned bishop of Norwich, in his disputed election to the see of Winchester. According to Noel Didier, Hostiensis was instrumental in turning Henry III against his former servant, a dispute in which the canonist was to articulate on the king's behalf some detailed legalistic comment on the nature of absolute power and dispensatory authority.[43] Similarly both Ralph Turner and Michael Clanchy have emphasised the importance of Hostiensis's visit in the development of Henry's own increasingly 'absolutist' views of royal authority.[44] Master Henry de Susa may not have spent the majority of his career in England, or in service to the English crown, nonetheless his influence in England was substantial.[45] While the bonds connected by service were mutual and reciprocal, that did not mean they were, or had to be, equal, or that service had to be of equivalent significance to both parties - Henry of Susa may have had more than one master, but Henry III also had more servants than Hostiensis alone.

Petrus de Vinea and Hostiensis were perhaps among the most prestigious foreign clerks to be retained in the service of Henry III, but they were by no means unique, nor were they the first of their kind. Before discussing further those other foreign clerks to be retained by the government of Henry III and his ministers during the minority, the importance of foreign clerical administrators in the royal minority should be discussed. For the first half decade of Henry's reign, the power that was wielded in his name was wielded in large part by the two successive papal legates, Guala and Pandulph. In his final testament, Henry's father,

[43] Didier, 'Henri de Suse en Angleterre,' p. 341, see below, pp. 186-91.
[44] R. Turner, *The English Judiciary in the Age of Glanvill and Bracton, c.1176-1239* (Cambridge, 1985), p. 233; Clanchy, 'Did Henry III have a Policy?', 210.
[45] Hostiensis himself seemed to maintain a longer term recognition of the importance to his time in England to his own career, as in his testament of 1271 he left a bequest of five assorted works on canon law to the hospital of the Holy Cross in Winchester, *I testamenti dei cardinali del Duecento*, ed. A. Paravicini Bagliani (Rome, 1980), p. *cxxvi*; for the titles included in the bequest, see the entry on the *Medieval Libraries of Great Britain* project: http://mlgb3.bodleian.ox.ac.uk/authortitle/medieval_catalogues/SH116/ [accessed online 30 November 2017].

King John, confirmed the submission of his kingdom and heir to the pope, which he had made in 1213, and further empowered the legate Guala as his son's guardian and protector.[46] Treatment of these two legations has been somewhat ambiguous, as, although their key role in the English administration has been recognized, their influence in shaping the ideology of English government has been questioned. The work of Fred A. Cazel Jr. has argued that the success of these legates in guiding English government at this time was due to their co-option into the domestic ruling elite, with what he described as 'grandiose notions of papal lordship' being of far less significance.[47] In contrast, Jane Sayers has argued compellingly that such distinguished churchmen as Guala and Pandulph remained very much engaged with the culture and procedures of the papal curia, and it implausible to suggest that they compartmentalised this acculturation from their activities in English administration.[48]

Although the precise nature of the role and influence of the papal legates in the minority government has clearly been the subject of considerable debate, what is plain is that the activities of these and subsequent papal legates in England played a substantial factor in facilitating the influx of Italian personnel into royal administration. The legates brought with them their own households and associates, and work on the bishopric of Norwich during the episcopate of Pandulph, even in the years subsequent to his legation, has demonstrated that there was considerable overlap and permeability between Pandulph's legatine household and his diocesan officials.[49] Certainly the Italian clerks who accompanied the legate to England can to be seen to have been active in the diocese of Norwich, as a letter of Pandulph issued in April 1221 makes reference to a certain 'Iacobum quondam clericum nostrum', a papal

[46] S. D. Church, 'King John's Testament and the Last Days of his Reign', *EHR*, 125 (2010), 505-28.
[47] F. A. Cazel Jr., 'The Legates Guala and Pandulph', in *TCE II,* pp. 15-21.
[48] Sayers, *Papal Government and England during the Pontificate of Honorius III,* p. 21.
[49] *English Episcopal Acta 21: Norwich, 1215-1243*, ed. C. Harper-Bill (Oxford, 2000), p. *li*.

scribe and *familiaris*, who was deprived of Castle Acre priory in favour of another Italian clerk of Pandulph's *familia*, John de Iudice.[50] Although service in diocesan administration was a common pathway to royal government, the prominent role played by the legates gave members of their households privileged access to employment in the royal administration.[51]

Subsequent legatine households also provided advancement in royal service. The appointment of Otto da Tonengo, Cardinal Deacon of St. Nicholas in *carcere Tulliano* in 1237 was another point of particularly close contact between papal and royal curial personnel.[52] Master Atte of Parma came to England in the service of the legate in 1238, when he was provided to a prebend in the church of Norton in the bishopric of Durham by the king. By February 1241 he was referred to as one of the *clerici regis*, acting on the king's behalf in the court of Rome, along with the veteran royal servants John de Lexington and Master John de Dya, and he remained in royal service at the curia until his death early in 1243.[53] Although Master Atte's time in England was limited, with his services for the crown mainly performed in Rome, his provision to a living in the bishopric of Durham is particularly significant for its association with Legate Otto's activities in England. As legate *a latere* by papal appointment, Otto had authority over England, Ireland and Scotland, and was commissioned to negotiate peace between the kings of England and Scotland. In this context, the provision of Master Atte to a living in the bishopric of Durham may reflect not only opportunism, but the specific context of the legation, with a desire to strengthen royal and papal agency in the northern counties. Furthermore, not all those of the legate's associates departed England when he left

[50] Harper-Bill, *Episcopal Acta: Norwich*, pp. 8-9.
[51] *The Letters and Charters of Cardinal Guala Bicchieri, Papal Legate in England, 1216-1218*, ed. N. Vincent, *The Canterbury and York Society* 83 (Woodbridge, 1996) p. *lxvii.*
[52] A. Davies, 'The Appointment of Cardinal-deacon Otto as Legate in Britain (1237),' *Thirteenth Century England XI: Proceedings of the Gregynog Conference, 2005*, ed. B. Weiler, J. Burton & P. Schofield (Woodbridge, 2007) pp. 147-158.
[53] *CPR, iii*, pp. 208,244, 366.

in 1241. Master Peter Rubeus, papal clerk and kinsman dispatched by Gregory IX in 1240 to assist the legate in gathering monies, is noted by Matthew Paris to have remained in England after the departure of the legate along with another papal clerk, Peter de Supino, although for Paris this was ill fortune, as Master Rubeus acted imperiously and continued to exact money from the English church.[54]

In addition to these legations, another period of particularly intense interchange of personnel between England and the papal curia was the period of Henry III's Sicilian project in the 1250s, as Martin Camargo was undoubtedly correct to emphasise.[55] There was certainly an intensification in the appearance of foreign clerks in England at this time, although not all of them were in the king's immediate service. Such Italian clerks as Master Philip de Aletro, clerk of Cardinal Octavian, Bartholomew Senerole, serjeant of Rolland, papal vice-chancellor, Master Roger de Cermineto, nephew of the pope, Master Paul, proctor of the said Master Roger, Stephen de Ponte, nephew of Cardinal Richard Hanibaud, and Robert of Apulia, proctor of Francis of Naples, all received advancement in the English church at this time, although they do not appear to be in direct service to the king or the Sicilian project.[56] This increased number of Italians active in England, if not in royal service, nonetheless indicates a greater perceived association between papal and English interests, so that the promotion of Italian clerics, even if they did not specificly serve the king, could still appear to be in service of the Anglo-papal project.

Other Italian clerics active in England in the 1250s appear to have had a more direct connection with the English crown. This period saw an influx of Italian clergy being received

[54] *Chronica Majora, iv,* pp. 35, 137.
[55] Camargo, *Medieval Rhetorics of Prose Composition,* pp. 11-12.
[56] *CPR, iv*, pp. 186, 473, 585, 621, 628, 643.

into royal service and rewarded with not inconsiderable annuities. In October 1254, Master Jordan, a papal notary, was granted 30 marks a year at the exchequer, with the condition of more ample provision in the future, this grant being raised to 40 marks a year in November 1255 for the notary's service to the king at the Roman curia.[57] Despite Master Jordan's return to Rome, his clerk and servant Bartholomew remained in England, granted three years' simple protection for himself and all Master Jordan's retainers and assets in February 1256.[58] Master Jordan's association with royal service was to last beyond his departure from the kingdom, as letters of 1257 continue to refer to him as a *clericus regis*.[59] An even more explicit link to rewards for assumption into service is made in the case of Master Albert, papal chaplain and Chancellor of Milan, whom the king is said to have taken to be his clerk and member of household in May 1256.[60] The entry of Albert into the household is of particular importance, as it indicates the desire of the king not only to cultivate the service of papal clerks abroad, but to employ them in the English royal administrative framework. The Gascon cleric Master Peter de Ranconio, canon of Limoges also entered into household service at this time, receiving similar guarantee of the future provision of benefices, while a Master Siniciacus, clerk of the pope's chamber, was received into similar service with promises of future rewards in June 1257.[61] The association of this reward for royal service with the Sicilian project is made particularly clear in the annuity granted to Matthias Hanibaud, citizen and proconsul of Rome. On 24 June 1255, Matthias was granted the considerable sum of 100 marks annually, with additional clauses that the cash grant was to be superseded by the grant of lands, wards and escheats of the same value, and that the king's son Edward would be bound to the same

[57] *Ibid,* iv pp. 343, 449.
[58] *Ibid, iv* p. 473.
[59] *Close Rolls, x*, p. 116.
[60] *CPR, iv*, p. 474.
[61] *Ibid, iv,* pp. 474, 566.

terms. The connection to the Sicilian project was made explicit by subsequent letters issued on the same day in which the king confirmed additional grants made in the name of his son Edmund as king of Sicily.[62] Advancing the Sicilian endeavour could certainly be very profitable, as was unquestionably the case for Master Rostand, the papal chaplain who acted as primary representative to the king and factor for the Sicilian project. Master Rostand received extensive royal rewards for his service and was in such a position of favour to be able to transmit the benefits of royal patronage that he enjoyed onto his own clerks and associates.[63] That these grants were made in cash with the condition of future reward in land or benefices indicates a desire to maintain a more long-term connection with England, encouraging the recipients not only to feel gratitude for beneficence, but to stimulate a lengthier commitment to English lands and policies.

Many of the foreign clerks who were received into royal service came to England in association with a particular political or diplomatic agenda. Further to this, the dominance in this group of notaries, clerks and members of the papal chapel indicates that those foreigners who were accepted into the household tended to be those with administrative or legal skills, although it is not easy to assess the extent or nature of their subsequent activities on the king's behalf. The acceptance of these individuals into the household was in itself significant, as it suggested a desire for a continuing relationship with the papal curia or the imperial chancery than went beyond a particular moment or negotiation. However it is not always clear the extent to which such clerks, either singularly or collectively, integrated with the broader personnel of royal government. A consideration of the cultural influence that could be made by foreigners in the employ of Henry III can do more to illustrate the nature of

[62] *Ibid, iv,* p. 414.
[63] *Ibid, iv,* pp. 461, 517, 566, 620; *CLR, iv*, p. 458.

possible contributions, as well as the participation in more informal social networks of friendship and patronage. This breadth of communication can be best illustrated in the career of Master Henry of Avranches, the prominent court poet.

Master Henry was born to a Norman family of Avranches, and it is through these connections that he came into the service of the Bishop of Winchester, Peter des Roches.[64] But however important these Norman connections were for bringing Master Henry into contact with the bishop, they were by no means his only associations, and it is the breadth of his experience that made him a desirable servant to the bishop and his royal masters. Despite the family connections with Avranches, Master Henry was himself born and raised in Cologne, and potentially first came to England as an envoy of Otto IV to the court of King John. The connection with Cologne continued throughout Henry's life, and presented another axis of engagement with England. Cologne played a significant role in Anglo-German relations in the early years of Henry III's reign, and this closeness was indicated by the interest given to English affairs in the Cologne chronicle, as well as the prominence of events in Cologne in the writings of Matthew Paris.[65] When Master Henry left England temporarily after the fall of Peter des Roches in 1227, he spent much of the 1230s either in Germany or the papal curia, and may well have spent a period of time teaching the *ars dictandi* at the University of Oxford.[66]

On his return to England, Master Henry was employed as *versificator regis* from 1244 until his death in 1262. Precisely what this role involved is not entirely clear, and although he received a regular royal salary, the level this was granted at - 3d a day, going up to 6d a day

[64] Vincent, *Peter des Roches,* p. 36; P. Binkley, 'Avranches, Henry d' (*d*. 1262/3),' *ODNB*.
[65] J. Russell, 'Master Henry of Avranches as an International Poet', *Speculum,* 3 (1928), 34-63; *Chronica Regia Coloniensis*, ed. G. Waitz, Monumenta Germaniae Historica (Hannover, 1880), pp. 195, 255, 266, 279; Huffman, *The Social Politics of Medieval Diplomacy,* p. 132; *Chronica Majora, iii,* pp. 14-15.
[66] Emden, *Oxford*, *i,* pp. 80-81.

for life in September 1256 - is vastly inferior to the sums of 40 marks annually received by such prominent visitors as Peter de Vinea of Walter de Ocra.[67] However, this income was supplemented with frequent, and often generous, royal gifts, not only of wine and livery, but also cash payments. These payments could often constitute a doubling of the annual income, as on 21 May 1256 Master Henry was granted 40s, almost half a year's wages, following on from grants of 60s in January and 25s in February of the same year.[68] What these additional payments and gifts indicate is that Henry of Avranches's connection to the English court was more than merely nominal, and the services he performed at court were ones that merited not only a regular salary, but these frequent and generous additions. Even during his absence from England, Henry's poetry could be mustered to meet the political needs of the English crown, as in August 1232 he addressed a poem to Gregory IX in favour of the election of John Blund as archbishop of Canterbury, for which he received royal reward.[69] Furthermore, the activities that Henry undertook were not only poetic, even when his poetry could be mustered for such political ends. Henry's patrons were mostly clerical and curial, indicating his continued engagement with the legal and administrative culture informed by his grammatical and dictaminal training. Indeed, in a poem addressed to Richard Marsh, Bishop of Durham, the poet refers to pleading on the bishop's behalf in the court at Winchester.[70] Many of Henry's patrons, including John Mansel, Robert Passelewe, Eustace de Falconberg, William of Raleigh, and, most prominently, Peter des Roches, were individuals highly influential in Henry III's administration, and their cultivation of this poet suggests at the very least that the appearance of familiarity with such grammatical and rhetorical poetry was desirable to this

[67] *CLR, iv,* p. 321.
[68] *Ibid, iv,* pp. 267, 274, 296.
[69] Henry of Avranches, *The Shorter Latin Poems of Master Henry of Avranches Relating to England*, ed. J. C. Russell and J. P. Heironimus (Cambridge MA, 1935), p. 131; *Chronica Majora*, *iii,* p. 223.
[70] Henry of Avranches, *Shorter Latin Poems,* p. 93.

administrative elite and that, as the poet was active in these circles, he may have been present, if not directly active, in the workings of the royal administrative offices. Scholar, poet, courtier, servant to emperors, kings and popes, the career of master Henry of Avranches reflects the international character of Medieval Latin culture in the thirteenth century, and his successful and extensive career in the court of Henry III suggests that this may have been a milieu receptive to such continental influences.

However, while it is tempting to emphasise the influence of these visiting foreign clerks as part of an international elite of highly mobile and highly educated curialists patronised at royal and ecclesiastical courts around Europe, the attraction of this model should not conceal its limitations. That Henry III chose to cultivate trained Italian clerks for his business in the Roman Curia is not particularly surprising, nor does it necessarily follow that the personnel patronised by the king to advance his European diplomacy had any substantial impact upon domestic policy and governance. Foreign ambassadors and nuncios rarely remained in England long enough to have more than a superficial impact, and during periods of political unrest, especially in the tumultuous years between 1258 and 1267, such foreign clerks were virtually invisible in the official records. Furthermore, the very internationalism of the careers of such foreign clerks that made them desirable servants to English masters also served to limit their impact on English life and administration. Not only were such conflicted loyalties deeply suspicious to such commentators as Matthew Paris, but the intermittent and sporadic nature of these men's presence in England and their commitment to English affairs meant that the influence they had upon English governance was seldom their primary, let alone sole, motivation. However, it was not only through foreigners that continental influences could reach English government; English clerks too could travel overseas and form

contacts. Henry III's promotion of such servants within his government may also demonstrate the European character of royal administration at this time, their training and careers revealing the broader role of these continental clerical networks and the participation of English clerics within them.

The Continental Networks of Henry III's English Clerks

The Role of *Magistri* in the Government of Henry III

In analysing the cosmopolitanism of those English clerics patronised by Henry III, the increasing prominence of university-trained masters in royal administration at this time is of fundamental importance. Kings of England from Henry I onwards had been prodigious in their recruitment and employment of university-trained personnel, a factor to which John Baldwin attributed the administrative sophistication of Plantagenet royal government, especially in comparison to the levels of recruitment in Capetian France.[71] Michael Clanchy has argued that schoolmen may have been 'useful, or prestigious, or a combination of both', to their royal masters, highlighting the field of law as one in which the employment of university-trained *magistri* could be particularly desirable.[72] The thirteenth century in particular was a period of increasing professionalization and specialisation between the chancery and the exchequer with the emergence of a more well-established professional judiciary and increasingly

[71] J. W. Baldwin, '*Studium et Regnum*: The Penetration of University Personnel into French and English Administration at the Turn of the Twelfth and Thirteenth Centuries', *Revue des Études Islamiques*, 44 (1976), 199-215, at 210.
[72] M. T. Clanchy, '*Moderni* in Education and Government in England,' *Speculum,* 50 (1975), 671-88, at 682.

complex royal finances demanding officials trained in the disciplines of mathematics, logic and rhetoric.[73]

The performance of beneficent kingship on the European stage in the thirteenth century encouraged the patronage and protection of the universities, and Henry III certainly conformed to this model. During the temporary dispersal of the university of Paris in 1229, royal letters patent were issued on 16th July, addressed to the masters and scholars of that university, extending an open invitation for them to come to England, promising them the ability to work with all manner of freedom and peace, 'omnimoda libertate et tranquilitate'.[74] Certainly historians of the medieval university of Oxford have noted how the university effectively extricated itself from the local diocesan authority by the end of the thirteenth century, in part due to what C. H. Lawrence described as the 'constant cosseting' it received from the king.[75] Nor did royal protections serve only to advance the king's patronage of one particular university. The 1229 invitation did not explicitly name Oxford as a destination for French scholars seeking migration, and royal protections could also be issued for those studying abroad. On 16 October 1242 the king issued letters addressed to the barons of the Cinque Ports granting and confirming protections to any clerk from within the kingdom studying at the universities of Paris or Orléans, despite the fact that the kingdom was at that time in a state of war, as Henry III campaigned in Gascony.[76]

[73] Brand, *Origins of the English Legal Profession*, p. 27; R. V. Turner, '"Who was the Author of *Glanvill*?" Reflections on the Education of Henry II's Common Lawyers', *Law and History Review*, 8 (1990), 97-127, reprinted in his *Judges, Administrators and the Common Law in Angevin England* (London, 1994), pp. 71-102, at p. 80.
[74] *Foedera*, *i,* p. 195.
[75] C. H. Lawrence, 'The University in State and Church', in J. I. Catto (ed.), *The History of the University of Oxford: Volume 1 - The Early Oxford Schools* (Oxford, 1984), pp. 97-150, at p. 125.
[76] *Rôles Gasçons*, *i,* p. 146.

It is this emphasis upon travel and mobility within the emerging university system that illuminates why the universities played a crucial role as nodes within the networks of a cosmopolitan administrative elite. The universities developing in the thirteenth century came into existence before the corporate framework that was to direct their later reality was fully formed. The universities did not yet possess a monopoly on higher education at this time, and in England in particular, cathedral schools continued to provide a flourishing source of clerical education.[77] What distinguished the future universities from these cathedral schools was the dependence of the definition of a *studium generale* on its ability to attract students from outside its locality.[78] English cathedral canons had more freedom to study abroad than their German counterparts, and the possession of this mobility was essential to acquiring a university education.[79] This meant that even by the mid-twelfth century Englishmen were travelling as far as Bologna in pursuit of the rewards accrued by an advanced legal education.[80] Even for those who could not travel as far as Bologna, the schools of both Paris and Orléans were popular destinations for English students, with the latter having a particularly strong reputation in law and rhetoric.[81] Within England, the teaching of civil and canon law at Oxford had developed a sufficient international profile by the 1190s to attract

[77] N. Orme, 'Salisbury Cathedral and Education, 1091-1547', *The Wiltshire Archaeological and Natural History Magazine*, 104 (2011), 142-51.
[78] R. W. Southern, 'From Schools to University' in Catto and Evans, *The Early Oxford Schools*, pp. 1-36; P. Zutshi, 'When did Cambridge become a *Studium Generale*?', in K. Pennington and M. H. Eichbauer (eds.), *Law as Profession and Practice in Medieval Europe: Essays in Honour of James A. Brundage*, (Farnham, 2011), pp. 153-71.
[79] J. Barrow, 'Education and the Recruitment of Cathedral Canons in England and Germany, 1100-1225', *Viator*, 20 (1989), 117-38, at 132-4.
[80] R. V. Turner, 'Roman Law in England before the Time of Bracton', *JBS*, 15 (1975), 1-25, reprinted in his, *Judges, Administrators and the Common Law in Angevin England* (London, 1994), pp. 45-69, at p. 53.
[81] A. L. Gabriel, *Garlandia: Studies in the History of the Medieval University* (Notre Dame, 1969), pp. 1-25; C. Coppens, 'The Teaching of Law in the University of Paris in the First Quarter of the 13th Century', *Rivista internazionale di diritto commune,* 10 (1999), 139-73; J. O. Ward, 'Rhetoric in the Faculty of Arts at the Universities of Paris and Oxford in the Middle Ages; A Summary of the Evidence', in *Bulletin du Cange: Archivum Latinitatis Medii Aevi, Consociatarum Academiarum Auspiciis Conditum,* 54 (1996), 159-232, at 167-8; *Two Medieval Satires on the University of Paris: La Bataille de VII Ars of Henri D'Andeli and the Morale Scolarium of John of Garland*, ed. and trans. L. J. Paetow (Berkeley, 1927), p. 37.

foreign students, even one from distant Hungary.[82] In this way the universities formed part of the cosmopolitan networks of thirteenth-century clerical culture, so Englishmen who acquired university educations could also facilitate the communication of European ideas and techniques of governance to the English royal administration.

An account of the career of Cardinal Robert of Somercotes can be used an example of the capacity of foreign university-trained English clerics to be elevated to the highest levels of European ecclesiastical power, while continuing to participate in royal service and reap the fruits thereof. Robert de Somercotes first emerged in the service of Archbishop Stephen Langton, himself a graduate of the Paris schools and associate of Innocent III. Somercotes himself was to attend not only the schools of Paris, but also Bologna, where he may well have attained the status of Doctor of Canon Law. By his time in Bologna, which may be dated to before 1232, the Lincolnshire cleric had already come to papal attention, as he was provided by papal authority to the church of Castor in Northamptonshire during his studies.[83] This increasing profile at the Roman Curia made Somercotes a valuable agent for English royal interests, and royal letters of April 6 1235 indicate that the schoolman, described as *clericum nostrum*, had set out for Rome to undertake the business of both Henry III and Simon Langton, archdeacon of Canterbury and brother to Somercotes's then deceased patron Stephen Langton.[84] Once at the curia, Somercotes's star continued to wax, as by 1236 he had become a papal subdeacon, an appointment often connected with notarial duties.[85] By March 1238 Master Robert had become a papal *auditor litterarum contradictarum*, a role that emphasises

[82] J. A. Brundage, *The Medieval Origins of the Legal Profession. Canonists, Civilians, and Courts.* (London, 2008), p. 113.
[83] J. E. Sayers, 'Somercotes, Robert of (*d*. 1241)', *ODNB*; Emden, *Oxford*, *iii,* p. 2216.
[84] Shirley, *i,* p. 463.
[85] Bliss, *Papal Letters,* p. 154; Sayers, *Papal Government and England during the Pontificate of Honorius III*, p. 30.

the particular value of his legal ability, as this court, controlling the issues of papal mandates and the appointment of local judges-delegate, was an innovation of the reign of Innocent III and although nominally under the charge of the papal vice-chancellor, the *auditor* himself acted in the capacity of leading judge.[86] Robert remained in service of the crown as a royal proctor until 1237, and may well have been sought out as a representative for English business even subsequently.[87] When elevated to the College of Cardinals in 1239 he was created a cardinal-deacon, whose duties by the twelfth century had ceased to have any local function, but belonged to the immediate counsellors and assistants of the Pope. Until his death in September 1241 Cardinal Robert continued to act as papal *auditor* and both his legal expertise and close association with Gregory IX would have made him a desirable agent for English petitioners; the continuing role of his kinsman Laurence of Somercotes in English royal government would certainly make the proposal of ongoing connection more plausible.[88] Robert of Somercotes' career was overwhelmingly curial, and his service on behalf of the English crown reflects not a particular engagement on his part with English administration, but the desire of the royal administration to cultivate powerful allies within the hierarchy of papal government.

Moving beyond the anecdotal and atypical account of the career of Cardinal Robert of Somercotes, it is possible to make some more general analysis about the careers of leading

[86] Bliss, *Papal Letters*, p. 168; J. E. Sayers, 'The Procedure of the Courts of the Judges Delegate,' in her*, Law and Records in Medieval England - Studies on the Medieval Papacy, Monasteries and Records*, Variorum Reprints (London, 1988), pp.42-99, at p. 55; *eadem,* 'Canterbury Proctors at the Court of *Audientia Litterarum Contradictarum*,' *Traditio* 22 (1966), pp. 311-45; P. Herde, 'Papal Formularies for Letters of Justice (13th-16th Centuries): Their Development and Significance for Medieval Canon Law,' in his*, Diplomatik, Kanonistik, Paläographie: Studien zu den Historischen Grundwissenschaften* (Stuttgart, 2008), pp. 123-49, at pp. 127-8.
[87] Sayers, 'Somercotes, Robert of'.
[88] W. E. Addis, T. Arnold & T. B. Scannell, *A Catholic Dictionary: Containing Some Account of the Doctrine, Discipline, Rites, Ceremonies, Councils, and Religious Orders of the Catholic Church*, 6th Edition (London, 1903) p. 130; Sayers, 'Somercotes, Robert of'; for the career of Laurence of Somercotes, see below, p. 112.

university-trained clerics in royal administration during the reign of Henry III. One of the best ways to overview this question is by considering the careers and origins of English bishops over this period. The episcopate has been particularly identified as an area in which they was a growing prominence of schoolmen in from the thirteenth century onwards. From 1216 to 1499, 67% of English bishops were educated at either Oxford or Cambridge, with the percentage increasing over the centuries; in the reign of Henry III, the figure was 51%, compared to 91% in the fifteenth century.[89] If we break down these figures further it is possible to draw out some more detailed observations about episcopal careers, university education and royal service during this period. Of the around 80 bishops who were in office during the reign of Henry III, eight (10%) were from purely monastic backgrounds, with no particular experience in either royal or ecclesiastical governance.[90] However, at least four of these were elected to their sees either before Henry's accession to the throne, or during the period of his minority.[91] Of all the English bishops over this period, 28 were appointed before the beginning of Henry's reign, or during his minority. While these included some figures who would highly influential in the politics of the reign, not least Peter des Roches, their election cannot be argued to reflect any episcopal policy of the king. Those who were to have subsequent significance in royal government, including Ralph Neville, Eustace Fauconberg and Walter Malclerc were to gain the significance because of their continuing service to king,

[89] P. Moraw, 'Careers of Graduates,' in H. de Ridder-Symoens (ed.), *A History of the University in Europe. Volume 1. Universities in the Middle Ages* (Cambridge, 1992), pp. 244-79, at p. 259.

[90] These were Silvester of Evesham, bishop of Worcester 1216-18, Ralph Wareham, bishop of Chichester 1218-22, Hugh of Beaulieu, bishop of Carlisle 1219-23, John of Fountains, bishop of Ely 1220-25, Hugh Northwold, bishop of Ely, 1229-1254, Hugh Belsham, bishop of Ely, 1257-86, Robert Stichill, bishop of Durham 1261-74, and Robert Skerning, 1266-78. The list of bishops used as a starting point for this analysis is that found in M. Gibbs and L. Jane, *Bishops and reform, 1215-1272: with special reference to the Lateran Council of 1215* (London, 1962) pp. 185-99, this list contains a number of omissions, but can provide a rough outline of episcopal appointments during this period.

[91] It is arguable as to whether Hugh Northwold should be included in this number, as in 1229 Henry was nominally of age, but the control of government still rested firmly in the hands of Justiciar, Hubert de Burgh.

rather than gaining their bishoprics due to their careers in Henry III's administration. Excluding these figures from our numbers, only 3 of the 51 bishops appointed during Henry's majority (5.8%) had neither university training, nor experience in royal or ecclesiastical government and administration.[92] Out of this smaller group of bishops, 33 out of 51 are known to have identified associations with the schools, this gives a proportion of 64.7% of the bishops appointed during Henry's majority, and the remaining 29.4% were otherwise experienced in royal and/or ecclesiastical government. Thus, breaking down the numbers further in this way, it is possible to say that Henry III supported a higher proportion of schoolmen into the episcopate than has previously been recognised.

Considering the careers of some of these churchmen in the light of these statistics, observations can be made about the kinds of contribution made to royal government by university-trained clerics during the reign of Henry III, and their engagement with a broader continental curial and intellectual elite. Careers in the church could co-exist comfortably with royal service, as advancements within the church provided the king with a convenient means to reward his servants most prominently with promotions to the episcopate.[93] Master Nicholas de Farnham, later to be bishop of Durham, was one of Matthew Paris's *famosi Anglici* who returned to England, and in his case, Oxford, on the temporary dispersal of the University of Paris in 1229.[94] Even before this date, he acted as the royal physician, having reputedly lectured on medicine at Bologna. Master Nicholas's continental connections were of particular importance in his promotion in royal service, as it was the legate Otto who, on his

[92] Of these three, at least one, Robert Stichill was appointed during the period of reform and rebellion during which Henry's ability to enact his was highly circumscribed; if he is excluded from the calculation, then the figure is only 3%.
[93] J. E. Sayers, 'Centre and Locality: Aspects of Papal Administration in England in the Later Thirteenth Century,' in her *Law and Records in Medieval England,* pp.115-26, at p. 125.
[94] *Chronica Majora,* iii, p. 168; on his return to Oxford, after qualifying to teach the natural sciences, Farnham also undertook the study of theology, Gibbs and Jane, *Bishops and Reform*, pp. 194-5.

arrival in England in 1237, encouraged the king to take Nicholas as his confessor as well as his doctor, and he subsequently acted as an important counsellor to the king. The link between confession and counsel is a highly suggestive one, and could have given Farnham the opportunity to influence Henry and his perceptions of government directly. The deference the king gave to his advice was substantial, as in 1241 he helped to reconcile the king with Walter Marshal, and in 1242 he arranged the marriage between Henry's eldest daughter Margaret and Alexander III, king of the Scots.[95] These two interventions can be used to indicate the extent to which roles in royal counsel could incorporate both 'domestic' politics and diplomatic missions; the circle of those who were intimate with, and influential upon, the king were entrusted with a variety of duties on his behalf.

Among those cultivated by royal government, there was a strong tendency to prefer those who had developed diplomatic skills and contacts, especially at the papal curia. Master Alexander de Stainsby, bishop of Coventry and Lichfield, had cultivated connections at the papal curia along with his academic career lecturing at Toulouse and Bologna, being promoted to the rank of chamber clerk by Honorius III before his election as bishop in 1224. With this prestigious continental network, it is not surprising that Henry III utilised Stainsby as one of his most frequent ambassadors to Rome, including a mission in 1229 which earned the attention of Matthew Paris.[96] Another English bishop whose continental connections were leveraged in diplomatic service on the king's behalf was William de Kilkenny, elected bishop of Ely in 1254, first referred to as *clericus regis* when appointed as king's proctor in the Roman Curia in 1234. Subsequently Kilkenny was to serve as Chancellor, although he vacated his

[95] Emden, *Oxford, ii,* pp. 668-9; R. M. Franklin, 'Farnham, Nicholas of (*d*. 1257),' *ODNB*; V. L. Bullough, 'Medical Study at Mediaeval Oxford', *Speculum,* 36 (1961), 600-12, at 601.
[96] N. Vincent, 'Stainsby [Stavensby], Alexander of (*d*. 1238),' *ODNB*; *Chronica Majora, iii,* p. 169.

office on election to the bishopric of Ely. Nonetheless he continued to serve Henry III in a diplomatic capacity, as in July 1256 he was sent on embassy to Alphonso X, king of Castile, upon which mission he died on 21 September the same year.[97]

The time spent by Master de Kilkenny acting as royal chancellor indicates that men experienced in the procedures of the Roman Curia were not valuable solely for their employment as diplomatic agents. This co-operation between diplomatic activity and active work in domestic administration can be seen also in the career of Master Alexander of Swerford, who migrated from the service of William de Cornhull, bishop of Coventry and Lichfield to that of the king, undertaking missions to the Roman Curia in 1228 and 1231, as well as negotiating with the prince of Gwynedd, Llewelyn, in 1231. Swerford's work was not however solely diplomatic and he was an influential figure in English administration, being employed as Sheriff of Berkshire from 14 April 1232. In addition to this appointment in the localities, Swerford followed the tendency identified by Ralph Turner for royal servants to have responsibilities in Westminster as well. Master Alexander was most influential in his work at the Exchequer, and he was appointed a baron of the exchequer on 6 July 1234, and he has been credited with the compilation of the register known as the *Red Book of the Exchequer*.[98]

Other courtier bishops whose work in royal service included both local administration and service in the central halls of government include Master Walter Cantilupe, member of a prominent family in royal administration, and bishop of Worcester 1237-66. Cantilupe first

[97] *CPR, iii,* p. 64; E. Foss, *The Judges of England: with sketches of their lives, and miscellaneous notices connected with the courts at Westminster, from the time of the conquest* (9 vols, London, 1848-64), *ii ,* pp. 375-7; R. C. Stacey, 'Kilkenny, William of (*d*.1256),' *ODNB*; *CPR, iv,* p. 487.
[98] D. Crook, 'Swerford, Alexander of (*b.* 1180, *d*. 1246),' *ODNB*; *Close Rolls*, *ii*, p. 467; R. V. Turner, *Men Raised from the Dust: Administrative Service and Upward Mobility in Angevin England* (Philadelphia, 1988), p. 115.

appeared in the records of royal service in 1223, when he was referred to as 'clericus regis', and he undertook special business for the king in 1227, 1232 and 1235; in addition, in 1232 he served as a justice itinerant in the Midlands.[99] Similarly, Simon de Walton, a royal chaplain and trained canon lawyer who served the king at the Roman Curia and went on to become bishop of Norwich, was also employed as a justice in England, remaining an assiduous servant to the crown.[100] Indeed, so great was Walton's association with the crown that during the period of baronial reform and rebellion the bishop was forced to seek refuge in Bury St. Edmund's abbey for fear of possible reprisals.[101] University-trained bishops were among some of the most cosmopolitan figures in the thirteenth-century English church, especially those who had the opportunity to advance their careers at the papal curia. However, while this expertise made them valuable agents of royal diplomacy, their participation in government was by no means limited to 'foreign affairs'; they could also be highly valued agents of royal administration internally, and their careers could combine diplomatic service, work in central government and also royal administration in the localities.

Bishops were undeniably the clerical elite of medieval England, but they were in no means the only university-trained clerks whose participation in continental networks was exploited in various capacities in royal government. Master John Blund certainly participated in the cosmopolitan culture of the European schools at this time, studying and lecturing at both Oxford and Paris. His intellectual stature was considerable, and he was named by

[99] C. H. Lawrence, 'Cantilupe, Walter de (c.1195-1266),' *ODNB*; *CPR*, *i*, p. 382, *ii*, pp. 148, 447, *iii*, p. 90; *Close Rolls*, *ii,* p. 136.
[100] F. Blomefield, 'The city of Norwich, chapter 38: Of the Bishoprick', in *An Essay Towards A Topographical History of the County of Norfolk: Volume 3, the History of the City and County of Norwich, Part I* (London, 1806), pp. 454-599. *British History Online* http://www.british-history.ac.uk/topographical-hist-norfolk/vol3/pp454-599 [accessed 9 December 2017].
[101] Emden, *Oxford, iii*, pp. 1975-6.

Matthew Paris as another of the *famosi Anglici* who came to Oxford in 1229.[102] Blund's association with the royal administration is not always easy to uncover, as he can be confused with another royal clerk of the same name, who was a canon of Lichfield.[103] He may well have been in royal service since 1227, receiving instructions for a mission on the king's behalf to the Roman curia.[104] Certainly he was the recipient of considerable royal support in his ultimately unsuccessful election to the archbishopric of Canterbury in 1232. His disputed election provides the most detailed information about his life, learning and character, most especially in the lengthy poem addressed to Gregory IX in his favour by the royal *versificator*, Henry of Avranches, and this poem, as well as the commentary on his election in chronicle accounts, placed particular emphasis on Blund's learning as a desirable characteristic for both patronage and archiepiscopal promotion.[105]

The quashing of the Canterbury election did not mark the end of John Blund's career, either in the church or in royal service. Indeed, letters issued by Gregory IX in June 1236 after the cancellation of his election specify that it was not to be considered an obstacle to his election to a bishopric on another occasion.[106] Blund was appointed chancellor of York Cathedral by Walter de Gray by November 1234 and held this position until his death in 1248.[107] He continued to be active within the circuits of the papal judiciary, being appointed judge-delegate in a Yorkshire case in April 1241.[108] During the dispute over his election, Blund was also acting on behalf of the English crown, in 1234 being sent with Peter des Roches,

[102] *Chronica Majora, iii*, p. 168.
[103] C. H. Lawrence, 'Blund, John (c.1175-1248)', *ODNB*.
[104] Emden, *Oxford, i*, p. 206.
[105] *The Shorter Latin Poems of Master Henry of Avranches,* Russell and Heironimus, p. 131; *Chronica Majora, iii,* p. 223.
[106] Bliss, *Papal Letters,* p. 135.
[107] *Close Rolls, iii,* p. 6.
[108] *Registres de Gregoire IX*, ed. L. Auvray (5 vols, 1890-1955), *iii,* no. 6025; *People of Medieval Scotland* Online Database, http://db.poms.ac.uk/record/person/7644/ [accessed online, 15 Jan 2014].

bishop of Winchester, and William Brewer, bishop of Exeter, as envoys for negotiating a treaty with the king of France.[109] This political association with Peter des Roches was of particular importance in John Blund's career: it provided him with connections to the English crown, as well as to the poet Henry of Avranches, but it may also have undermined his election, as it has been suggested that it was papal suspicion of the bishop of Winchester's political ambitions that led to the suppression of the appointment, rather than the somewhat flimsy excuse of unlicensed pluralism alleged in his case.[110] In this way it is plain that the networks of association in which John Blund operated could both help and hinder his career as an ecclesiastic, but made him a desirable candidate for employment as a royal agent. Blund's association with Peter des Roches may have compromised his election and been a significant factor behind his reception into royal service, but his deployment at the papal curia and on diplomatic missions indicates that, even with factors of patronage and association accounted for, there was a desire to deploy the particular legal and curial talents he possessed.

Another cleric whose employment in the service of the crown balanced both cosmopolitan connections and service in domestic administration was William Hardell. Hardell acted on the king's behalf abroad when in 1238 he was sent with money to support the Emperor's campaign against Italian rebels, and the records of the Fine Rolls indicate that around this time Hardell also went to the Roman Curia, where he was royal proctor from December 1239.[111] In his domestic administration, Hardell had been a royal clerk since 1227, going on to be employed as keeper of the king's exchange and mint, experience that likely made him valuable in the Italian mission, and finally becoming controller of the king's

[109] Emden, *Oxford, i*, p. 206.
[110] Lawrence, 'Blund, John'.
[111] *Chronica Majora, iii*, p. 485; TNA C 60/36 m.2, accessed online through the Henry III Fine Rolls Project, http://www.finerollshenry3.org.uk/content/fimages/C60_36/m02.html [9 December 2017], *Foedera, i,* p. 239.

wardrobe until his death in 1249. Hardell's education at the Oxford schools thus gave him not only mathematical and logical skills valuable in his work with royal finances, but also integrated him into the networks of European clerical society, allowing him to work on the king's behalf not only in England, but undertaking complex financial work in Italy also.[112] For the government of Henry III, an education in the schools provided a combination of specialisation and socialisation that could and was deployed in both diplomatic and domestic administration.

The reign of Henry III, and particularly the years of his personal rule, saw a growth in number and prominence of university-men both within clerical orders more broadly, and specifically in the ranks of royal government. This was especially prominent at the highest levels of the episcopate. Beyond the well-known connection between bishops of royal service, the particular preferment of *magistri* demonstrated the importance attributed to men with internationalising training and experience. While their expertise in ecclesiastical business, particularly with the papacy, was obviously highly valued, their employment on behalf of the crown demonstrated a wider engagement with aspects of administration. This included functions within royal justice and shrieval administration, as well as the court itself.

Other Continental Networks for English clerks

However, this valuable combination of technical ability and continental connections was not only to be found in university education. The schools were not the only source of advanced training, nor were they the only centres where training or experience could be gathered in European modes of administration. A business school along Italian lines may have

[112] Emden, *Oxford, ii*, pp. 869-70.

existed at Oxford since the time of King John, attendance at which did not require clerical orders, and a practical apprenticeship remained the most common path into administration or justice in thirteenth-century England.[113] The papal curia itself operated as a training school in many ways, providing, like the universities, an opportunity not only to learn the techniques of papal administration and the basics of *dictamen*, but also to develop a network of influential contacts and associates, connections which could have a transformative effect upon an administrative career.[114]

Perhaps the best example of the transformative value of this experience at the curia may be shown in the career and interests of John Mansel, the bastard son of a renegade deacon who would come to be regarded as one of Henry III's most influential counsellors. Mansel had experience in ecclesiastical administration before entering royal service, as he left the household of Ralph de Neville, bishop of Chichester and royal chancellor, to become a household clerk of the king in 1234.[115] With this experience, Mansel served in the capacity of receiver of the king's wines, and, in 1236, along with another clerk Thomas de Leche, received the keeping of the vacant bishopric of Worcester.[116] This financial experience in England made Mansel a good candidate for service abroad that was to bring him to the Roman Curia, with a catalytic effect upon his career. In 1238, Mansel formed part of William Hardell's mission to finance the Emperor's Italian campaign, and like Hardell, he was also active in the Roman Curia on the king's business.[117] After this service in Italy, Mansel began to accumulate the first of the royal provisions which would make him one of the most notorious English

[113] H. G. Richardson, 'Business Training in Medieval Oxford', *AHR,* 46 (1941), 259-80, at 276; Turner, *Men Raised from the Dust,* p. 125, *idem*, *The English Judiciary,* p. 213.
[114] Brundage, *Origins of the Legal Profession*, p. 346.
[115] R. Stacey, 'Mansel, John (*d.*1265)', *ODNB*; H. Liu, 'Matthew Paris and John Mansel', in *TCE XI,* pp. 159-73.
[116] TNA C 60/35 m.5, accessed online through the Henry III Fine Rolls Project, http://www.finerollshenry3.org.uk/content/fimages/C60_35/m05.html, [9 December 2017].
[117] *CPR, iii*, p. 222.

pluralists of the time, bringing him into direct conflict with the arch-reformer Robert Grosseteste, bishop of Lincoln.[118] These rewards were both fiscal and legal, as in September 1240 the sheriff of Essex was ordered to place in respite all demands he would make of John Mansel as long as he was in the king's service abroad. That same year, Mansel, along with Bertram de Criol, was appointed keeper of the archbishopric of Canterbury.[119] Mansel's experience in Italy also qualified him in military service, and he was an active participant in Henry III's campaign against Navarre in 1242-3, being first granted custody of Gascony in 1243 and then becoming seneschal.[120]

Although Mansel's military career came to an end after he was wounded in the leg at the battle of Verines in 1243, he continued to thrive in royal service, accumulating increasing rewards and responsibilities.[121] In 1247 he received custody of the king's seal and began to act as vice-chancellor, ascending to such heights in royal government as to be described as being the king's greatest councillor, 'summus regis conciliarius'.[122] Mansel's continental experience certainly made him a valuable diplomat, with the apogee of his diplomatic career coming in his instrumental role in procuring the marriage of the Lord Edward to Eleanor of Castile in 1254.[123] Mansel maintained his connections with the papal curia, being identified as a papal chaplain in 1253. This continuing connection with the curia was significant in advancing Mansel's prestige in England, and Henry III's favour to him can be seen in his efforts

[118] *Close Rolls, iv*, p. 115; J. Baylen, 'John Maunsell and Robert Grosseteste, Bishop of Lincoln', *Historical Magazine of the Protestant Episcopal Church,* 23 (1954), 202-7.
[119] TNA E 371/7 m.5, accessed online through the Henry III Fine Rolls Project, http://www.finerollshenry3.org.uk/content/fimages/E371_7/m05.html, [9 December 2017]; TNA E 371/8A m. 16, http://www.finerollshenry3.org.uk/content/fimages/C60_37/m16.html, [9 December 2017].
[120] *Roles Gasçons, i*, pp. 88, 601.
[121] J. Weever, *Antient Funeral Monuments, of Great-Britain, Ireland, and the Islands Adjacent* (London, 1767), pp. 70-1.
[122] *Chronica Majora, iv*, p. 601; *Ann. Mon., iv,* p. 135.
[123] J. Baylen, 'John Maunsell and the Castilian Treaty of 1254: A Study of the Clerical Diplomat', *Traditio,* 17 (1961), 428-91.

to protect Mansel's reputation at the curia, demonstrated in letters sent by the king to the pope and cardinals in 1262, defending his favoured minister against attempts to defame him.[124]

Mansel's participation in European clerical life was not limited to immediate political projects, he was also a member of an active and vibrant cultural sphere. Although there is no direct evidence that Mansel himself encountered Petrus de Vinea, it is possible to impute some connection between the two men. On 8 August 1243 the king issued letters commanding that the imperial judge's nephew John de Vinea, studying at Paris, was to receive 20 marks. After these letters were issued, they were returned and cancelled *Quia Johannes Maunsel Liberavit ei xx. marcas*. John Mansel was then granted 20 marks from the issues of the vacant bishopric of Winchester to recompense this expense.[125] The precise narrative behind the issuing of this payment, whether Mansel made it of his own volition or at royal command, is hard to prove one way or the other, however in itself this transaction opens up the possibility for connections between him and de Vinea. This payment to John de Vinea was not Mansel's only connection to the university of Paris, as his own nephew and namesake Master John Mansel studied at both Oxford and Paris, and at the latter university showed a particular interest in the study of grammar and rhetoric, as he may well have been a patron of the noted grammarian, rhetorician and dictaminal scholar John of Garland.[126] Mansel's connections with university culture were not only mediated through his nephew, he was a patron and associate of the court poet and schoolman Henry of Avranches, who wrote in 1243 a poem dedicated to his leg, broken at the battle of Verines, in which the degree of sympathy

[124] Bliss, *Papal Letters,* p. 283; *Foedera*, *i,* p. 414.
[125] *Roles Gasçons, i*, p. 146; TNA C 60/40A m.3, accessed online through the Henry III Fine Rolls Project, http://www.finerollshenry3.org.uk/content/fimages/C60_40a/m03.html, [9 December 2017].
[126] *The Shorter Latin Poems of Henry of Avranches,* Heironimus and Russell, p. 138.

and humour displayed have been suggested to indicate a sincere affection between the poet and his subject.[127] John Mansel's career was enhanced by his continental experience and contacts, and he was clearly integrated into the network of European clerical culture.

John Mansel should not be viewed as anomalous as a cosmopolitan clerk highly successful in the service of Henry III who did not himself possess university education. The noted justice William Bonquer was employed by the king in 1256 on a mission to the Papal Curia concerning the election of Prince Edmund to the crown of Sicily, and the royal letters commissioning him to do this placed particular emphasis on his circumspection, prudence and diligence on the king's behalf.[128] After his service in Rome in the 1250s, Bonquer was to continue in diplomatic postings, including negotiations with France, but he was also to serve in a number of judicial posts, including justice of the Jews, King's Bench, the common pleas, and justice in eyre.[129] Robert Passelewe was another leading royal administrator whose career was enhanced by his participation in continental clerical culture. Although primarily serving under the patronage of Peter des Roches, bishop of Winchester, Passelewe also found employment in the service of the legate Guala, which service brought him frequently to Rome on missions to deliver instalments of Guala's English pension.[130] Although Passelewe's English career suffered setbacks with the fall of des Roches, he nonetheless continued to act for the king in various capacities. Passelewe attracted particularly acrimonious criticisms for his work as a justice of the forest, as in 1244 he advised the king to undertake a strenuous inquisition regarding transgressions of forest law in order to generate further income.[131] Passelewe was

[127] *Ibid.* p. 138; Russell, 'Henry of Avranches as an International Poet', 43.
[128] *Foedera*, *i,* p. 337; Foss, *Judges of England, ii*, pp. 247-8.
[129] C. A. F. Meekings, *Studies in Thirteenth Century Justice and Administration* (London, 1981), pp. 54-6.
[130] R. C. Stacey, 'Passelewe, Robert (*d*. 1252)', *ODNB.*
[131] *Chronica Majora, iv*, pp. 400, 426-7.

another patron of Henry of Avranches, who addressed poems to him during his lifetime, and also composed poems in his honour upon his death in 1252.[132]

Another royal servant whose contacts with the continent were first effected through service to the legate Guala, and who also formed part of the circle around Peter des Roches, was the royal justice Stephen de Segrave.[133] Segrave's origins are unclear and he was described by Matthew Paris as *miles et literatus*, indicating at the very least that his advancement was not perceived to have followed the normal patterns of clerical career development. This confusion about the *miles literatus* is also found in Paris's description of Paulin Piper and reflects an awareness that men were serving the royal government with skills thought to be reserved to the clergy, yet attained by men with non-traditional career trajectories.[134] It should be added that this advancement, although clearly profitable for men like Segrave and Piper, also generated uncertainty about motivations and interests, similar to the antipathy demonstrated towards influential foreigners acting in England; Matthew Paris, when describing Segrave, in addition to commenting on his ambiguous position as *miles literatus*, also called him a 'vir subtilis, sui non reipublicae amator', a subtle man and not a lover of the republic.[135]

Despite this criticism, and however ambiguous the perception of their position in English government may have been, the careers of men such as Mansel and Segrave demonstrated the ways in which not university-trained men could nonetheless participate in internationalising curial networks in a similar way to their colleagues from the schools, and

[132] *The Shorter Latin Poems of Henry of Avranches*, Heironimus and Russell, pp. 96, 146-8.
[133] Turner, *Men Raised from the Dust*, p. 125.
[134] R. V. Turner, 'The *Miles Literatus* in Twelfth and Thirteenth-Century England: How Rare a Phenomenon?' *AHR*, 83 (1978), 928-45, reprinted in his, *Judges, Administrators and the Common Law*, pp. 119-36, at p. 122.
[135] Matthew Paris, *Historia Anglorum,* ed. F. Madden, Rolls Series (3 vols, London, 1866-9), *ii*, p. 316.

could deploy the same combination of specialisation and socialisation to advance their career in royal government. In this way, our consideration of the contribution made by 'foreign' clerks in the administration of Henry III must be positioned within these broader networks. Beyond the patronage of specific foreigners, 'English' clerks could also be highly integrated within a wider continental administrative milieu. This thus opens up continental influences on English kingship and government beyond a numerically restricted and often isolated group of foreign visitors.

The Significance of Continental Networks to the Administration of Henry III

As stated above, recognising a network-based mode of engagement with continental administrative practices and ideals, it is possible to track these influences in royal government beyond a consideration of often isolated and problematized foreigners. Furthermore, this chapter has argued that the influence of continental style and practices of government was not restricted to the activities of foreigners alone: Englishmen could and did participate in the very same networks of cosmopolitan clerical culture. With this broader and more nuanced understanding of continentally connected servants to the English crown, it remains to be established what significance these influences had for royal administration. It should first be asserted that numerical dominance was not necessarily required in order for these continental networks to be of political and administrative significance. Henry III was easily influenced by the strongest charismatic characters around him, and thus privileged access to the king played a more important role in determining influence than numerical proportion.

The Exchequer was, as has been asserted above, an arm of royal government in which there was increasing demand for the technical expertise of mathematical and logical training, due to the growing complexity of royal finances. Of the seven individuals known to serve as Treasurer of the Exchequer from Henry III's accession to the throne until the disruption in royal administration caused by the period of reform and rebellion, five can be said to have had some greater or lesser degree involvement in continental networks. William de Haverhill, who served as treasurer from March 1240 until August 1252 was clearly favoured by the king, who referred to him as his 'beloved and faithful', and he held the valuable custody of archbishopric of Canterbury in 1233.[136] However, Haverhill came from a wealthy Suffolk family and his career indicated no particular links with continent. Similarly, Hugh of Pateshall, who served as treasurer between 1234 and 1236 cannot be proved to have had any definite connections international connections, coming instead from a native administrative family, being son to the celebrated royal justice Simon of Pateshall.[137]

The five other known treasurers, Eustace de Fauconberg, Walter Malclerc, Peter of Rivaux, Robert Passelewe and Philip Luvel, can all be shown to have participated in these continental networks, although Luvel's participation was more associative and tenuous.[138] Peter of Rivaux, or de Rivallis, was himself a foreigner, being described by Matthew Paris as *alienigena alienigenae*.[139] Both Walter Malclerc and Eustace de Fauconberg belonged to the cosmopolitan networks of the universities. Eustace de Fauconberg, whose surname was derived from Fauquembergues in Flanders, although his father was lord of Rise in Holderness,

[136] TNA C 60/36 m.3, accessed online through the Henry III Fine Rolls Project, http://www.finerollshenry3.org.uk/content/fimages/C60_36/m03.html, [9 December 2017]; TNA C 60/33 m.9, http://www.finerollshenry3.org.uk/content/fimages/C60_33/m09.html, [9 December 2017].
[137] M. J. Franklin, 'Patishall [Pateshull], Hugh of (*d*. 1241)', *ODNB*.
[138] Tout, *Chapters in the Administrative History of Medieval England, vi* pp. 18-19.
[139] *Chronica Majora, v*, p. 655.

was frequently styled as *magister*, and sometimes even employed the title *don*, a style preferred by graduates of the schools of Bologna. During the minority period, Malclerc's rise in royal government was related to his association with the *familiares* of Peter des Roches.[140] Although Malclerc did not employ the title of *magister*, Emden nonetheless associates him with the University of Oxford, and, as bishop of Carlisle, this assumption of higher education is not implausible.[141] Robert Passelewe's foreign connections have been explored above,[142] and while Philip Luvel did not himself have immediate connections to the continent, he belonged to the circle of associates cultivated by John Mansel, who is said to have procured his appointment as treasurer.[143] Even if Luvel's connection is excluded, that still leaves 4 out of 7 treasurers with definite links to the Continent, almost 60%. The thirteenth century was a crucial period in the development of the exchequer and the employment of these cosmopolitan clerks in this office of royal government gave them not only control over the mechanisms of royal finance, but also indicated their activity in shaping the form of this burgeoning department of royal administration.[144]

Moving away from the Exchequer, David Carpenter has argued that the thirteenth-century chancery was central to the king's personal rule, and thus its officers can be seen among those of the most significant influence upon the king.[145] From the same period of 1216 to 1258 as investigated above for the Exchequer, thirteen individuals can be shown to have been known to act either as chancellor, or to be in keeping of the Great Seal. Of these thirteen,

[140] F. A. Cazel Jr., 'Fauconberg, Eustace de (c.1170-1228)', *ODNB.*
[141] Emden, *Oxford*, *ii,* p.1243
[142] See pp. 67-8.
[143] *Chronica Majora, v*, p. 320.
[144] For the development of the Exchequer as an independent arm of royal bureaucracy, see N. Vincent, 'The Origins of the Chancellorship of the Exchequer,' *EHR,* 108 (1993), 105-21; V. H. Galbraith, *Studies in the Public Records* (London, 1948), p. 77; Harriss, *King, Parliament, and Public Finance,* pp. 193, 200-201.
[145] Carpenter, 'The English Royal Chancery in the Thirteenth Century'. p. 50.

only the abbot of Evesham, Richard le Gras, cannot be said to have some direct contact with the continent, although, as with the treasurers of the Exchequer, not all of these contacts were extensive or meaningful.[146]

The activities of Brother Geoffrey of the Temple, who acted as the keeper of the king's wardrobe and king's Almoner are little known, but as a Templar, he belonged to an order with inherently continental contacts.[147] Three of these individuals were themselves foreigners, one of whom, Peter of Rivaux, has been discussed in relation to his service in the Exchequer.[148] Peter Chaceporc, who kept the seal for William of Kilkenny in 1251, was Poitevin by birth and was frequently employed as a royal messenger abroad.[149] Simon Ételan, or Simon the Norman, was, evidently, of Norman birth, but also had experience serving the king at the papal curia.[150] This Simon was also one of five of these leading chancery figures who was styled as *magister*, indicating training at the schools. Richard Marsh, bishop of Durham, John of Laxton and William of Kilkenny all also had established history in higher education. The fifth putative schoolman was Ralph de Neville, bishop of Chichester; he was only sometimes styled as *magister*, perhaps in attempts to flatter him, but he certainly cultivated an association with the schools, as he maintained a lecturer in theology at his cathedral and sponsored the education of three students at Lincoln, Oxford and Douai.[151]

[146] Tout, *Chapters in Administrative History, vi,* pp. 8-9; L. B. Dibben, 'Chancellor and Keeper of the Seal under Henry III', *EHR*, 27 (1912), 39-51.
[147] A. Sandys, 'The Financial and Administrative Importance of the London Temple in the Thirteenth Century', in A. G. Little and F. M. Powicke (eds.), *Essays in Medieval History Presented to Thomas Frederick Tout* (Manchester, 1925), pp. 147-62, at p. 150.
[148] See above, p. 70.
[149] R. C. Stacey, 'Chaceporc, Peter (*d*. 1254)', *ODNB.*
[150] H. Summerson, 'Etelan, Simon de (*d.* 1249)', *ODNB.*
[151] F. A. Cazel Jr. 'Neville, Ralph de (*d.* 1244)', *ODNB.*

The other three chancellors and keepers of the Great Seal over this period also had demonstrably continental careers, although only one, John Mansel, had extensive and meaningful connections with curial culture. The continental dynamics of the career of John Mansel have been explored in detail above, and he was employed as chancellor or keeper of the seal on multiple occasions, from 1238 to 1242, 1246 to 1247 and 1248 to 1249.[152] Silvester of Everdon, archdeacon of Chester and subsequently bishop of Carlisle, was associated with the Thrupp family of Everdon of Northamptonshire. He acted as leading figure in the chancery in 1242 and again from November 1244 to November 1246, first serving as keeper of the seal in Gascony, and was subsequently to undertake pilgrimage to Santiago de Compostella.[153] Finally, Henry Wingham, who kept the seal from January 1255 until October 1260, also served the king in Gascony from 1242 until late 1244.[154] The careers and backgrounds of these men indicate that, even when the leading figures in the Chancery were not of explicitly continental origin, they were as a rule men capable of performing on a continental stage and experienced in the king's service overseas. If Wingham and Everdon are excluded from the 'continental administrative' group, this still leaves 10 out of 13 chancellors or keepers of the great seal as belonging to this network (approximately 77%). 3 out of 13, or just under 25% were foreign by birth, 5 were known or reputed schoolmen (33%). Three were bishops and a further four were known to have been active at the papal curia (53%). The leadership of the Chancery during the reign of Henry III was clearly dominated by an internationalising elite, who engaged with the Continent through various types of connectivity, and whose service to the crown also included continuing duties abroad.

[152] See above, pp. 64-7.
[153] H. Summerson, 'Everdon, Silvester of (*d.* 1254)', *ODNB.*
[154] A. J. Musson, 'Wingham, Henry (*d.* 1262)', *ODNB.*

The offices of the Chancery and Exchequer were by no means the only areas in which clerics of this type participated in royal government, nor was their participation in these offices only limited to their leadership. What this brief survey of the leadership positions can indicate in particular is the extent of their dominance in shaping these branches of English administration at the centre, and thus their potential close association with the king. The role of clerk, keeper or treasurer of the wardrobe also saw a similar dominance of internationalising clerics. Of the fourteen individuals who acted in this capacity, either singly or jointly, during Henry's reign, at least nine had definitive connections with the wider milieu of European intellectual and administrative culture (64%).[155] Of these, six were of European origins; Peter of Rivaux, Ranulph Brito, Peter of Aigueblanche, Artaud of Saint-Romain, Aubrey of Fecamp, and Henry of Ghent (43%). Three were bishops; Walter of Brackley, Walter of Kirkham and Peter of Aigueblanche (21%). Unsurprisingly, many of these officials gained their position through their association with more powerful figures in government; Peter de Rivaux was kinsman and client of Peters des Roches,[156] Peter Aigueblanche was a clerk to the queen's uncle, William of Savoy,[157] William de Burgh was a likely kinsman of the famous justiciar, to whom Ranulph Brito was chaplain and close associate,[158] Ralph Sandwich came from a family with close ties to Simon de Montfort, and his service in royal government was closely connected with the reforming administration.[159] However these men came into royal service, their promotion within the wardrobe, and other branches of government gave them the capacity to influence the developments of this period in a significant capacity.

[155] These were Peter of Rivaux, Walter of Kirkham, Ranulph Brito, Geoffrey the Templar, Peter of Aigueblanche, Peter Chaceporc, Artaud of Saint-Romain, Aubrey of Fecamp, and Henry of Ghent.
[156] See above, pp. 70, 72.
[157] N. Vincent, 'Aigueblanche, Peter d' [Peter de Aqua Blanca] (d. 1268), bishop of Hereford and royal councillor,' *ODNB*.
[158] R. C. Stacey, 'Brito, Ranulf [Ranulf le Breton] (d. 1246), administrator and ecclesiastic,' *ODNB*.
[159] C. Whittick, 'Sandwich, Sir Ralph,' *ODNB*.

The lack of a justiciar in England between the fall of Hubert de Burgh and the period of baronial reform makes it challenging to undertake a similar analysis for the royal courts, although anecdotal evidence indicates the pursuance of judicial work, and also shrieval administration. Certainly some of the most important figures in royal justice over this period appear to belong to this type, including those who also enjoyed prominent episcopal careers, most notably William Raleigh. The royal chapel was also an area in which these individuals were active, and one which allowed for more personal and indirect links with the king. This study cannot include a statistical analysis of all these branches of English government, but the combination of some statistical analysis with a range of biographical accounts demonstrates the extent to which clerics who engaged with European political culture were valued in Henry III's employ. Furthermore, it is evident that their work in royal government was by no means limited to 'foreign policy' or diplomacy, but rather engaged with the operations of power in a wide range of capacities across the kingdom.

Conclusion

Throughout the reign of Henry III, especially in the decades leading up to the crisis of baronial reform in 1258, the role of 'aliens' in royal government had been a frequent point of contention. From Peter des Roches and his *familiares* in the 1230s, to the Savoyard kinsmen of Queen Eleanor, and Henry's own Poitevin half-brothers in the 1240s and 50s, animus against specific groups of foreigners did reflect, as Huw Ridgeway has demonstrated, particular problems of court faction and crises of patronage.[160] However, opposition to 'foreignness' in government went beyond opposition to 'foreigners'. Discussion of national or

[160] See above, p. 14ff.

ethnic difference did not exist in isolation, more than a fact of birth or geography, it reflected a wider concern about particular attitudes and behaviours in government. In writing about the alien servants of Henry III in the circle of Peter des Roches, Nicholas Vincent has argued that 'the very fidelity and cosmopolitanism that earned them [the aliens] gratitude and reward from the crown were the selfsame factors that served to heighten their unpopularity in England'.[161] The nuances of thirteenth-century 'xenophobia' were complex and contextually conditioned; during this period, opposition to foreigners was conditional upon exacerbating political factors, such as excessive influence on the king, and the very idea of foreignness was often expressed in political terms.[162]

This went beyond an animus against particular individuals or factions, it spoke to a government that not only contained a significant number of 'aliens' (especially Italians), but also incorporated a wider spectrum of continentally-educated or connected personnel, perceived to exert extensive, or even atypical influence upon the king.[163] The perception of the 'alien' nature of Henry III's regime was not restricted to its composition of personnel, this was also a government that was shaped by the same intellectual, rhetorical and administrative developments that were occurring on the continent, and in which the curial elite considered here were well-versed. To understand the full implications of these influences and developments, and the modes of their transmission, we need to move from prosopography to consider the written materials at the disposal of members of the government, and the textual milieu in which they operated.

[161] Vincent, *Peter des Roches,* p. 37.
[162] See above p. 30ff.
[163] This was perhaps best demonstrated by Matthew Paris's use of the term *specialis consiliarius regis*, which did not denote specific function or position, but rather seems to have indicated a particular intimacy and influence with the king, eg. *Chronica Majora, v,* p. 101.

Two: Legal and Rhetorical Manuscripts and their Readers

Chapter Two – Manuscripts and their Readers in Thirteenth-Century England: Methodological Problems in Reconstructing Reading Culture

Introduction:

Ideas do not exist in a vacuum, abstracted from social reality, nor are they transmitted along a purely metaphysical continuum. The study of mentalities sits at the intersection between the "real" character of people's thoughts and their textual transmission; thus to understand the mental world of thirteenth-century English government requires recognition of the textual traditions that both shaped and were shaped by its broader conceptual context.[1] To explore the full dimensions of administrative culture under Henry III, it is thus necessary to reconstruct the textual milieu within which its members operated. However, representing this textual culture is by no means a simple task, and it is one that is complicated by the practical problems of manuscript survival. This chapter will thus outline the methodological and historiographical issues inherent in exploring thirteenth-century manuscript culture, laying the groundwork for the quantitative survey of manuscript evidence and reading patterns to be undertaken in the following chapter. Exploration of these considerations will be carried out in two segments. The first section will consider the issues of manuscript content and provenance; addressing the questions of the use of surviving evidence for a reconstruction of thirteenth-century collections. The second half will move to the connected question of the sources and methodologies involved in attempting to depict manuscript use and reading culture. By its very nature this analysis will be undertaken in an inter-disciplinary fashion, calling in particular on the methods of codicology and materialist philology developed

[1] M. Vovelle, *Ideologies and Mentalities*, trans. E. O'Flaherty (Cambridge, 1990), p. 12.

by literary scholars, and we shall need to think about the applicability of these methods to the legal and administrative texts that are of particular concern to this study.

The Survival of Medieval Manuscripts: An Analytical Problem?

> "Along one stretch of wall I found a bookcase, still miraculously erect, having come through the fire I cannot say how; it was rotted by water and consumed by termites. In it there were still a few pages. Other remnants I found by rummaging in the ruins below. Mine was a poor harvest, but I spent a whole day reaping it, as if from those *disiecta membra* of the library a message might reach me. Some fragments of parchment had faded, others permitted the glimpse of an image's shadow, or the ghost of one or more words. At times I found pages where whole sentences were legible; more often, intact bindings, protected by what had once been metal studs. . . Ghosts of books, apparently intact on the outside but consumed within; yet sometimes a half page had been saved, an incipit was discernible, a title."[2]
>
> *The Name of the Rose*, Umberto Eco

A monastery destroyed in flames, a lost volume of Aristotle, along with so many other treasures, consumed by a conflagration perceived by the fictional Franciscan Brother William de Baskerville to be the work of the devil himself, this is the dramatic and tragic culmination of Umberto Eco's *The Name of the Rose*. Yet to the modern student of medieval manuscripts it is Adso of Melk's subsequent return to the ruined *Aedificium* and the tattered remnants of the once great library that strikes with most melancholy. The loving and patient reconstruction of the library from these shattered remains resulted for Adso in 'a kind of lesser library, a symbol of the greater, vanished one', and even at the end of his life the monk remains tormented by doubt that what has survived is purely saved by chance and bears no meaningful representation of the lost original.[3] This ultimate uncertainty underlies the recurrent refrain among medieval historians that so much knowledge depends only on the

[2] Umberto Eco, *The Name of the Rose*, trans. W. Weaver (London, 1998), p. 500.
[3] *Ibid.,* pp. 500-1.

survival of material, with limited capacity to do more than speculate on that which is lost. Certainly there is a tension in the existing scholarship regarding these problems of survival. David Crouch recently outlined the prevailing and opposing trends of minimalism and maximalism in medieval manuscript studies, the former view roughly stating that the limited survival or material should be understood to indicate similarly limited production, while the latter proposes that a small extant sample can point to a more extensive original corpus.[4] Crouch himself appears to lean towards the maximalist view, as his recent work with Martha Carlin on thirteenth-century English formularies argues for the wider proliferation of written documents that do not survive based on the existence of these model collections.[5] Even when survival is not hindered by fire, flood or other disaster, however, it is necessary to be cautious in assuming that surviving material is necessarily representative, as the principles of archiving and storage practiced in the medieval millennium were not designed with the convenience of modern scholars in mind.[6]

For the consideration of thirteenth-century manuscript analysis the question of survival and destruction of material is of great significance, not due to natural disaster, but major human intervention. This stems from the fact that most collections of any significant size for this period pertained to ecclesiastical foundations. The dispersal of these collections from the sixteenth century onwards resulted not only in direct wastage of material, but the

[4] D. Crouch, 'Lay Literacy in England: Beyond Bureaucracy,' *Medieval History Research Seminar*, All Souls College, Oxford. 2 June 2014. In his analysis, Crouch contrasted the approaches of Geoffrey Koziol (minimalist) and Alice Rio (maximalist) on Carolingian diplomas and formularies; G. Koziol, *The Politics of Memory and Identity in Carolingian Royal Diplomas: The West Frankish Kingdom 840-987* (Turnhout, 2012); Alice Rio, 'Les formulaires mérovingiens et carolingiens: tradition manuscrite et reception', *Francia*, 35 (2008), 327-348. I would like to express my thanks to Professor Crouch for permitting me to reference this unpublished paper.
[5] *Lost Letters of Medieval Life. English Society, 1200-1250*, ed. and trans. M. Carlin and D. Crouch (Philadelphia, 2013), p. 14.
[6] M. Garrison, '"Send More Socks": On the Mentality and Preservation Context of Medieval Letters', in M. Mostert (ed.), *New Approaches to Medieval Communication* (Turnhout, 1999), pp. 69-99.

dislocation of the surviving texts from their *in situ* contexts. The extent of the loss of medieval material in the mid-sixteenth century is of course impossible to quantify. However, even recognising that it was in the natural life cycle of medieval books to be worn out and re-used – the latter being amply demonstrated by the existence of palimpsest manuscripts – the sixteenth century has been recognised as a time of great destruction, with one scholar describing the middle decades of century as 'a period of holocaust for manuscripts'.[7] Various factors contributed to this loss, not all of them iconoclastic. The shift from script to print left manuscripts as outmoded, and the religious shift of the mid-century denuded many texts of practical value, as well as leaving them as suspect artefacts.[8] The use of manuscript fragments in subsequent bookbinding can give some indication of the sheer scale of loss, as Neil Ker's survey of such pastedowns from Oxford bindings alone records the remnants of over two thousand mutilated manuscripts.[9] The loss of manuscripts was not uniform, as particular collections could suffer more grievously than others: Rodney Thomson has pointed to the particularly poor fate of the medieval collections of Gloucester Abbey, for instance.[10] In this respect, it is not readily possible to generalise from the survival or destruction of one collection to comment on the likely disposition of others.

The problems presented to students of medieval manuscript culture by the dissolution of the sixteenth century were not those of loss and destruction alone. Preservation of

[7] R. Gameson, *The Earliest Books of Canterbury Cathedral: Manuscripts and Fragments to c.1200* (London, 2008), p. 38.
[8] N. R. Ker, 'Salisbury Cathedral Manuscripts and Patrick Young's Catalogue', *Wiltshire Archaeological and Natural History Magazine*, 53 (1949-50), 153-83, at 175.
[9] N. R. Ker, *Pastedowns in Oxford Bindings, with a Survey of Oxford Binding c.1515-1620*, Oxford Bibliographical Society Publications, new series, 5 (Oxford, 1954); C. de Hamel, 'Dispersal of the Library of Christ Church, Canterbury, from the fourteenth to the sixteenth century', in J. P.Carley and C. G. C. Tite (eds.), *Books and Collectors 1200-1700, essays Presented to Andrew Watson* (London, 1997), pp.263-79, at p. 267.
[10] R. Thomson, 'Books and Learning at Gloucester Abbey in the Twelfth and Thirteenth Centuries,' in Carley and Tite, *Books and Collectors 1200-1700,* pp. 3-26.

manuscript material also created significant tensions. Not only were the surviving manuscripts dislocated from their bibliographical context, and the collections to which they belonged, but the pattern of preservation and selection in the sixteenth century was no less problematic than the choices for preservation made by thirteenth-century readers and writers. Certainly it is of great advantage to modern scholars that their distaste for the destruction of so much written material was shared by many bibliophiles and antiquarians from the sixteenth century onwards. Men such as John Bale and John Leland worked diligently to recover and preserve manuscripts, along with other private collectors such as John Dee and Matthew Parker, whose personal libraries became the home for many texts of previously monastic provenance.[11] These collectors were primarily specialists, and chose to preserve the choicest surviving specimens. The problem of preservation was not only one of quality, but also one type, as the collectors of the sixteenth century brought their own priorities to the texts they selected for conservation. James Carley has highlighted the ambiguities of the preservation efforts undertaken by Bale in particular, to whose work he attributed a tension between inclusivity of British authors based on national considerations and exclusivity based on confessional violence.[12] Furthermore, different genres of texts were more likely to be preserved than others, and Neil Ker has argued that manuscripts of the Roman civil and canon laws were among those least favoured, so that considering their numerical survival alone distorts potential analysis of their relative significance in thirteenth-century government.[13]

[11] J. P. Carley, 'Monastic Collections and their Dispersal,' in J. Barnard and D. F. McKenzie (eds.), *The Cambridge History of the Book in Britain, IV 1557-1695* (Cambridge, 2002), pp. 339-47.
[12] *Ibid*., pp. 340-1.
[13] N. R. Ker, 'The Migration of Manuscripts from the English Medieval Libraries,' *The Library*, 4th series, 23 (1942-3), 1-11, reprinted in his *Books, Collectors and Libraries. Studies in the Medieval Heritage*, ed. A. G. Watson (London, 1985), pp. 459-70, at p. 464.

These challenges of survival and migration present substantial challenges to any reconstruction of medieval English manuscript culture. This includes responses to and uses of the invaluable work done on the cataloguing and description of surviving texts. Catalogues of extant collections have in recent years been carried out to a very high standard by such experts in the field as Rodney Thomson, who has produced catalogues for such collections as that of Corpus Christi College, Oxford and Hereford Cathedral.[14] The majority of such catalogues use location as the primary organisational principle, which thus situates the manuscripts within their destination context rather than their origin. Catalogues which survey material along the lines of their type and genre, rather than location, add to the complexity of this picture, with recent work on legal and Aristotelian material.[15] However, even when such catalogues focus on a particular category of text rather than the content of a specific repository, these works tend to pursue a comprehensive rather than a comparative methodology. A catalogue such as that of Aristotelian manuscripts provides invaluable insights into the numbers and circulation of that particular category of text, but is limited in the extent to which it can indicate their prominence in relation to other subjects and genres. Such attempts at comprehensive cataloguing undertaken by distinguished scholars provide invaluable resources for subsequent researchers, but they are not in themselves a sufficient resource for reconstructing or understanding medieval manuscript collections. A more comparative approach is needed, focussing not only on specific types and genres of manuscript, but also the relationships between various collections and repositories.

[14] *A Descriptive Catalogue of the Medieval Manuscripts of Corpus Christi College, Oxford*. ed. R. M. Thomson (Cambridge, 2011); *Catalogue of the Manuscripts of Hereford Cathedral Library*, ed. R. A. B. Mynors, R. M. Thomson and M. Gullick (Cambridge, 1993).

[15] *A Catalogue of English Legal Manuscripts in Cambridge University Library*, ed. J. H. Baker and J. S. Ringrose (Woodbridge, 1996); S. L'Engle and R. Gibbs (eds.), *Illuminating the Law. Legal Manuscripts in Cambridge Collections* (London, 2001); *Catalogue of Medieval Manuscripts of Latin Commentaries on Aristotle in British Libraries*, ed. R. M. Thomson (2 vols, Turnhout, 2011-13).

Given the analytical problems with depending solely on the surviving manuscripts themselves, any attempted reconstruction of thirteenth-century reading culture must also employ various other surviving sources to supplement the problems of survival. This heterogeneous array of sources can provide valuable information about library collections, but still cannot provide a complete image of private ownership and usage in the thirteenth century. Perhaps the first and foremost source for the reconstruction of institutional collections are contemporary library catalogues.[16] These catalogues present varying levels of information about the collections they describe and thus form a spectrum of utility for reconstructing ownership. The majority of these catalogues date from the fourteenth and fifteenth centuries, and thus do not provide detailed information about which acquisitions could be dated to the thirteenth century. Furthermore, the oldest of these medieval catalogues tended to provide less comprehensive descriptions of their content, with the *secundo folio* method of cataloguing, wherein a work was listed by the opening words of the second leaf, not appearing until the closing decade of the fourteenth century.[17] Although these limitations make it difficult to make certain connections between catalogue entries and surviving manuscripts, these catalogues nonetheless provide invaluable information, especially about those texts owned by libraries whose manuscript do not survive – a particularly valuable source of information, given the problematic nature of manuscript survival discussed above. Furthermore, the impulse to cataloguing in itself provides a valuable insight into manuscript culture. Different catalogues represented distinct organisational

[16] For a detailed listing of these medieval lists and catalogues, see the 'Medieval Catalogues' section of the *Medieval Libraries of Great Britain* Project, http://mlgb3.bodleian.ox.ac.uk/authortitle/medieval_catalogues/ [accessed 1/12/2017].

[17] R. M. Wilson, 'The Contents of the Mediaeval Library,' in F. Wormald and C. E. Wright (eds.), *The English Library before 1700* (London, 1958), pp. 85-111, at pp. 85-6; N. R. Ker, *Medieval Libraries of Great Britain: A List of Surviving Books*, 2nd Edition (London, 1964), pp. *xix-xx*; J. Willoughby, 'The *secundo folio* and its Uses, Medieval and Modern', *The Library*, 12 (2011), 237-58.

rationales, with varying systems and methods being used to sub-divide material within the longer lists. The Rochester catalogue of 1202 organised its content by location and then by author, whereas the 1247 Glastonbury list used numerous different headings for individual subjects and authors.[18] The different styles and forms of cataloguing that were employed serve to emphasise the vitality of library culture at this time, with varying dynamic experiments in what modern scholars would now term library science. As a reflection of manuscript culture more broadly, this experimentation not only indicates that the collections were in active use, but also that desire to improve cataloguing suggests an interest in increasing ease of access.

The material and methods considered so far have concentrated on institutional book collections, particularly those which were developed and maintained by ecclesiastical foundations during the thirteenth century. What then for personal book ownership and royal government? That books came to rest in larger repositories did not preclude private book-collection, rather these tended to be transitory, with their contents migrating over time into the more established collections of perpetual monastic, university and episcopal institutions.[19] As the donation of books to perpetual institutions was most often motivated by a desire for spiritual reward, the preservation of the names of donors, either in library catalogues or through *ex dono* inscriptions in manuscripts, can be said to be a partial fulfilment on the part of the recipient institutions of this perpetual reward for generosity.[20] Testamentary evidence can also be used to illustrate these donations, and thus the previous

[18] R. Sharpe, 'Library Catalogues and Indexes', in N. Morgan and R. M. Thomson (eds.), *The Cambridge History of the Book in Britain, II 1100-1400* (Cambridge, 2008), pp. 197-218, at p. 202.
[19] J. Stratford and T. Webber, 'Bishops and Kings: Private Book Collections in Medieval England,' in E. Leedham-Green and T. Webber (eds.), *The Cambridge History of Libraries in Britain and Ireland, Volume I to 1640* (Cambridge, 2006), pp. 178-217.
[20] R. Lovatt, 'College and University Book Collections and Libraries' in Leedham-Green and Webber, *Cambridge History of Libraries in Britain and Ireland, Volume I to 1640,* pp. 152-77, p. 160

personal libraries. Such records can reveal extremely precocious collectors, such as Ralph Baldock, bishop of London, whose 1313-14 inventory of books stretched over five rolls.[21] Not all executors were as thorough as those of this bishop, and limited or non-existent references to book-ownership in testamentary material should not be read as evidence of limited or non-existent book-ownership in general. Furthermore, the survival of testamentary evidence is also limited for the thirteenth century, so that for some avid collectors such as Robert Grosseteste no testamentary record survives at all, and exploration of private ownership must draw on additional sources.

Evidence that survives from the book-trade can provide invaluable illumination of the purchasing habits of medieval readers, but cannot be easily linked with specific surviving manuscripts. One such example of this problem may be seen in the case of the book-purchasing activities of English scholars at Bologna. Bolognese records survive from the 1260s onwards which provide an invaluable glimpse into the activities of English scholars within the book-trade there. English scholars such as Nicholas de Gratonia were avid and discerning purchasers of books at this time, not only purchasing existing manuscripts, but commissioning the copying of their chosen texts with specific accompanying glosses.[22] But while manuscripts in Italian hands survive in English collections, without any more immediate provenance, it is frequently next to impossible to connect them with the record of their purchase or commission. This makes it more difficult to trace the life-cycle of any physical manuscript in relation to the career or training of its commissioner or purchaser. Reconstructing private ownership then requires the use of a diverse and often disjointed array of sources, because

[21] *Testamentary Records of the English and Welsh Episcopate, 1200-1413*, ed. C. M. Woolgar, Canterbury and York Society (Woodbridge, 2011), pp. 75-81, these are London, Guildhall Library MS 25271-17.
[22] *Chartularium Studii Bononiensis. Documenti per la Storia Dell'Università di Bologna Daalle Origini Fino al Secolo XV* (13 vols, Bologna, 1907-40), *v,* pp. 11-12, 226.

no single type of source material can provide a complete picture of book possession in the thirteenth century.

The area in which the fragmentary nature of the surviving evidence is most clear and most problematic is that of the question of royal book ownership in the thirteenth century. As no official royal library inventory survives prior to the 1535 Richmond inventory, the question of royal book possession has been a problematic one, not the least because of the problem of surviving evidence. The fragmentary and dispersed nature of this evidence has been explored in some detail by Susan Cavanaugh, whose 1988 essay on royal book ownership in the thirteenth and fourteenth centuries remains one of the few detailed studies on this question.[23] In attempting to assess the impact of the transmission of legal texts on royal government, it would seem self-evident that the ownership of books in the royal household would be one of the most important areas to study. It is however, one the most difficult to reconstruct, due to this fragmentary evidence; this fragmentation is not only the result of problematic survival, but also reflects the dispersed character of book-ownership within the royal household before the institution of a formalised and centralised library collection.[24] Isolated indications can occasionally be found, as in an entry from the wardrobe accounts of Henry III which recorded a payment of sixty shillings received from William de Kilkenny for 'certain books' sold to him (*quibusdam libris sibi venditis*).[25] While no further identification of these books is possible, this at least indicate some evidence of book purchasing within the royal household, and for figures in royal government beyond the king and the court. There may even be something to be gleaned from this fragmentation and

[23] S. H. Cavanaugh, 'Royal Books: King John to Richard II', *The Library*, 6th series, 10:4 (1988), 304-16.
[24] Briggs, *Giles of Rome's* De Regimine Principum, p. 54.
[25] TNA E 372/95 *Rot.* 7 *m.* 1, printed in *The Wardrobe Accounts of Henry III*, ed. B. L. Wild, Publications of the Pipe Roll Society (London, 2012), p. 53.

dispersal, in that it indicates the a certain degree of diffusion of book culture within the royal court, for if the sources which historians possess for the ownership of royal books must come from a bewildering diversity of records, then it may be argued that a wider spectrum of the household had some familiarity with the manuscripts in the possession of the crown and its offices than the king and his immediate *familia* alone.

With this perhaps more hopeful reflection on the fragmentary and dispersed nature of the evidence for book ownership in the thirteenth century it is possible to return to the fictionalised bibliographic endeavours of Umberto Eco's Adso of Melk. Scholars seeking to reconstruct the textual culture of thirteenth-century England certainly face many problems in the surviving material and the ways in which they may use it. These problems are both those of the preservation instincts of medieval owners and the deterioration of what was preserved over the centuries, with each generation imposing a different spectrum of priorities in the preservation and conservation of manuscripts. In the absence of the surviving manuscripts themselves, the sources for reconstructing the content of collections also present particular analytical problems, not the least in the bewildering diversity of repositories for information about book production and possession in this period. Nonetheless it is important to maintain the distinction between asserting that reconstruction of thirteenth-century book collections is difficult and saying that this difficulty makes any endeavours to do so meaningless.

Medieval Readers and their Manuscripts: Evaluating reading practice

Given the survival of such a copious heritage of manuscript material from thirteenth-century England, it is not unreasonable to suppose the existence of an audience of readers and owners

for these texts. However, what can be learned about these hypothesised consumers from the manuscripts that survive? Furthermore, is it possible to understand from these manuscripts not only by whom but how they were read? In this final section the relationship between ownership and use will be considered. Despite the limitations of evidence and problems of establishing individual owners or users, it may be said that the physical materiality of the manuscripts themselves can be revealing of the ways in which manuscripts were read and used in thirteenth-century England. This requires considering two distinct factors; first, the question of access to manuscript collections and the dissemination of information, and second, the way in which manuscripts as material objects can be used to evaluate reading practice.

Who then had access to the manuscript collections we have considered so far? A profusion of manuscripts did not automatically denote a more extensive readership.[26] This was particularly important in the case of monastic collections, which were enclosed by their very nature. The public library in its modern form, or even in the sense of classical antiquity, was simply not a phenomenon of the thirteenth century.[27] Even the majority of university students were not required to own their own copies of the texts they were studying; textual acquisition was primarily driven through the copying of extracts and passages, from dictation or more formally in the development of the *pecia* system.[28] While the friars were as a rule

[26] C. de Hamel, 'Books and Society', in Morgan and Thomson, *Cambridge History of the Book in Britain, II,* pp. 1-21, at p. 11.
[27] J. W. Thompson, *The Medieval Library* (Chicago, 1939), p. 14; K. Christ, *The Handbook of Medieval Library History*, rev. A. Kern, trans. T. M. Otto (London, 1984), p. 49.
[28] M. B. Parkes, 'Book Provision and Libraries at the Medieval University of Oxford,' *University of Rochester Library Bulletin*, 40 (1987-8), 28-43, reprinted in his *Scribes, Scripts and Readers. Studies in the Communication, Presentation and Dissemination of Medieval Texts* (London, 1991), pp. 299-310; C. Burnett, 'Give Him the White Cow: Notes and Note-Taking in the Universities in the Twelfth and Thirteenth Centuries,' *History of Universities*, 14 (1995-6), 1-30, at 7; G. Pollard, 'The *pecia* system in the Medieval Universities,' in M. B. Parkes and A. G. Watson (eds.), *Medieval Scribe, Manuscripts and Libraries. Essays Presented to N. R. Ker* (London, 1978), pp. 145-62.

better provided with books than their secular colleagues, the ordinaries were characteristically reluctant to permit secular persons access to their collections.[29] These limitations become even more pertinent when addressing book usage in royal government, given the limited evidence for private ownership associated with the court.

Although the ecclesiastical collections were not publically oriented, a number of contextual factors did permit the circulation of book culture beyond the library. The first of these was the lending and borrowing of texts. Although attitudes towards the borrowing and lending of books were ambiguous at best, and the communal characteristic of book ownership should not be confused with public ownership, it is undeniable that, at the very highest levels, access to book collections was greater than the theory of librarianship at this time might suggest. Borrowing and lending between private owners is attested most famously in the letter of Adam Marsh to Robert Grosseteste, concerning the return by Simon de Montfort of the bishop's treatise *de principatu regni et tyrannidis*.[30] Although the question of the influence of this treatise, now lost, upon the political ideas of the Earl of Leicester remains subject to some debate, this incident nonetheless testifies to a milieu of readers among which manuscripts circulated with greater freedom than might be assumed from the statistics of manuscript ownership.[31] Nor was this culture of borrowing and lending restricted to exchange between private owners, as in 1208 King John borrowed six theological texts from the Abbot

[29] K. W. Humphreys, *The Book Provisions of the Medieval Friars, 1215-1400* (Amsterdam, 1964), p. 89; P. J. Lucas, 'Borrowing and Reference: Access to Libraries in the Late Middle Ages', in Leedham-Green and Webber, *The Cambridge History of Libraries in Britain and Ireland, Volume I to 1640,* pp. 242-62, at p. 249.
[30] *The Letters of Adam Marsh*, ed. and trans. C. H. Lawrence (2 vols, Oxford, 2006-2010) *i,* pp. 56-7.
[31] S. Ambler, 'On Kingship and Tyranny: Grosseteste's Memorandum and its Place in the Baronial Reform Movement', in *TCE XIV*, pp. 115-28; F. Lachaud, '*De tyranno et principe* (Cambridge, Corpus Christi College, ms. 469) Un pamphlet « britannique » contre la tyrannie d'Henri III?', *Cahiers de recherches médiévales et humanistes*, 19 (2010), 87-104.

of Reading, manuscripts which belonged to the abbey collectively and not the abbot in his personal capacity.[32]

In cases where books were not physically alienated, they could still be consulted more broadly than the terms of their ownership might at first suggest. The fourteenth-century account given by Richard de Bury in his *Philobiblon* demonstrates the way in which one voracious bibliophile was able to leverage his position in royal service to gain access to collections and manuscripts of his choice. Bury is characteristically candid about his use of royal influence to pursue his personal bibliomania.[33] Although this case postdates the purview of this study, and Bury was in some respects exceptional in his appetite for books, the explicit reference to royal favour as a mechanism for gaining access is as applicable to the thirteenth century as the fourteenth. These examples of borrowing and consultation do appear to operate in the highest power circles of the land, but this should not exclude the possibility of similar patterns of textual circulation on a less grand scale. Furthermore, given the interest of this study in the influence of legal literature upon secular government, the implication that power and status were influential in gaining access to literary material suggests that secular power was seen to have an interest in the cultivation of scholarship.

From Richard Bury it is possible to turn to the second part of this analysis, which relates wider issues of reading culture to the evidence provided by manuscripts as material artefacts. This begins with the role of memorisation in the process of textual transmission. The role of memory as part of the medieval intellectual process has been well-documented in the work of Mary Carruthers.[34] Her insights about the development of memory as a

[32] Cavanaugh, 'Royal Books', 304-5.
[33] Richard de Bury, *Philobiblon,* text and trans. E. C. Thomas, ed. M. Maclagan (Oxford, 1960), pp. 80-1.
[34] M. Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture*, 2nd Edition (Cambridge, 2008).

speculative art in the thirteenth-century universities are of particular significance, as she shows that the questions of memory as part of the reading process and the construction of the intellectual world-view were an integral part of the training and philosophy of medieval 'men of learning'.[35] Bury himself was certainly a man of this type. In his typically grandiloquent style he alluded to the role of memory in the circulation of texts, not only in recounting his own experience recopying books he had seen, but also in the general terms by which he recognises that knowledge of texts could circulate far more widely even when the book as object remained in a static location.[36] Moving beyond Bury's grandiose rhetoric, the physical evidence provided by manuscripts themselves testifies to this wider circle of memorisation for the dissemination of texts. The proliferation of mnemonic verses attests to this kind of reading culture, including the insertion of the commonplace etymological observations about the origins of kingship in MS Bodley 655, 'O Rex, si rex es rege te vel eris sine re rex.'[37] This was a crude and commonplace formula, but one which, as an example of the wider use of mnemonics in manuscript annotation spoke to the significance of memory in shaping textual productions.

These habits of memorisation and copying, which proliferated at least in part due to the limited access to substantial library collections, themselves contributed to form of book production in this period, and in particular the increasing prominence of miscellanies and compilations. The composition of such works was rarely as random as it may seem to subsequent generations. The organisation and structuring of any given miscellany provides a particular context for reading and understanding the texts which it contains, and these

[35] *Ibid*., p.186
[36] Bury, *Philobiblon*, pp. 40-1.
[37] Bodl., MS Bodley 655 f. *v* .

contexts may be highly personal to their compilers or supervisors.[38] Prominent examples of informal notebooks and miscellanies have, from the fourteenth-century onwards, often been understood in the particular context of their original owners or compilers, from whom they may even get their names. [39] These insights become more complex in the case of miscellanies whose compositor is unknown. One example of such an ambiguous case may be seen in Worcester Cathedral Library MS F.146, a compilation of assorted civil and canon law texts, along with case notes dating from around the end of the thirteenth century. This manuscript compilation, with its interspersed commentaries on civil law among case reports appears to have been and has been described as a lawyer's handbook and is one that had early associations with the Worcester community.[40] Nonetheless, the function and interpretation of the manuscript must have been transformed when it left its original owner, if they can even be identified, and became part of the general cathedral collection, a transformation which reinforces awareness that manuscripts did not have one fixed use or user, and that readings of a text could be as diverse as the readers themselves.[41]

Beyond the composition and compilation of manuscript material, further physical aspects of its presentation can be used to illuminate reading habits. The use of such mnemonics as that considered above links with more general developments in the organisation of manuscripts and the implementation of finding aids such capitula and rubrication, both of which also occur throughout Bodley 655. The increasing sophistication

[38] S. G. Nichols and S. Wenzel, 'Introduction', in S. G. Nichols and S. Wenzel (eds.), *The Whole Book: Cultural Perspectives on the Medieval Miscellany* (Ann Arbor, 1996), pp. 1-6, at p. 2.
[39] These include *John Lydford's Book*, ed. D. M. Owen (London, 1974), *The Liber Epistolaris of Richard de Bury*, ed. N. Denholm-Young (Oxford, 1950), and *The Politics of Fifteenth Century England: John Vale's Book*, ed. M. Kekewich et al. (Stroud, 1995).
[40] Worcester Cathedral Library, F 146; *A Descriptive Catalogue of the Medieval Manuscripts in Worcester Cathedral Library*, ed. R. M. Thomson and M. Gullick (Cambridge, 2001), pp. 100-1.
[41] J. G. A. Pocock, 'Texts as Events,' in K. Sharpe and S. Zwicker (eds.), *The Politics of Discourse: the literature and history of seventeenth-century England* (London, 1987), pp. 21-34, at pp. 29-33.

and utility of the finding aids and organisational principles of books in the thirteenth century has been highlighted in the work of Malcolm Parkes, who observed that these organisational tools not only originated from scientific methodology, but were implemented as part of a new reading *habitus*. In contrast to the meditative monastic reading form, these new organisational methods emphasised a functional approach to reading, with priority given to convenience, concision and accessibility. In the same way that philosophers and theologians debated the increasingly pragmatic approach to education, the organisational structure of the texts themselves revealed a trend towards a technical and functional reading culture.[42]

The question of annotation and marginalia more broadly has multiple connotations for the study of thirteenth-century legal manuscripts. Successive layers and stages of annotation on a text reveal the interests and priorities of successive readers, but the material culture of manuscript annotation is more charged and complex. The layout of the page and its appearance were in many ways as significant as the text it contained and the organisation of the page was closely related to the organisation of different forms of writing that might appear on it.[43] This formalisation of the organisation of the page gave annotation an increasing charge as space was increasingly reserved for marginal glosses and annotations, making its absence more significant than merely demonstrating the individual tastes or preferences of one reader or annotator.[44] Indeed, legal texts present one of the cases wherein medieval annotation was brought to its apogee, in the form of the gloss, already familiar to biblical scholars and theologians. The gloss constitutes more than a functional finding aid or

[42] M. B. Parkes, 'The Influence of the Concepts of *Ordinatio* and *Compilatio* on the Development of the Book', in J. J. G. Alexander and M. T. Gibson (eds.), *Medieval Learning and Literature. Essays Presented to Richard William Hunt* (Oxford, 1976), pp. 115-41.
[43] S. Partridge, 'Designing the Page', in A. Gillespie and D. Wakelin (eds.), *The Production of Books in England, 1350-1500* (Cambridge, 2011), pp. 79-103.
[44] S. G. Nichols, 'On the Sociology of Medieval Manuscript Annotation', in S. A. Barney (ed.), *Annotation and its Texts* (Oxford, 1991), pp. 43-73, at p. 59.

interpretive tool, it becomes a crucial part of the legal discourse itself, so much so that when a copy of a legal text was commissioned it would be commissioned with a specific gloss – the gloss had in itself become an authoritative text. This principle was laid out with concision and force by Johannes Teutonicus, the author of the *glossa ordinaria* to Gratian's Decretum, who asserted that 'annotatio: id est lex'.[45] This apotheosis of the marginalia could denote a special status for this kind of glossing, in which the margins are a site for authority, in contrast to their conventional status as sites of subversion and transgression.[46] On the simplest level, marginalia and annotations could serve as direct evidence of manuscript use and highlight the levels of interest in particular sections and elements of a given text, while these more complex forms can inform our understanding of readership and interpretation. All these phenomenon in the physicality of the manuscript inform the understanding of its relationship to a broader textual culture and the ways in which manuscripts as artefacts operated in the practice of reading.

Conclusion

This survey began with the assumption that an understanding of the mental worlds of the administrators of the government of Henry III requires consideration of the textual culture within which they operated. Exploring the limitations of the surviving evidence for studying this textual world and the methodological and historiographical frameworks within which such a study must take place, it is clear that, these limitations notwithstanding, it is possible

[45] L. Mayali, 'For a Political Economy of Annotation', in Barney, *Annotation and its Texts*, pp. 185-91; Nichols 'Sociology of Medieval Manuscript Annotation', pp. 46-7; A. Grafton, *The Footnote: A Curious History* (London, 1997), p. 30.
[46] For the margins as sites of subversion see, M. Camille, *Image on the Edge: The Margins of Medieval Art.* (Cambridge MA, 1992), p. 20.

to undertake fruitful research into the reading practices of thirteenth-century English government officers. The surviving manuscripts may not be in themselves representative, but they are only one of the sources of information available for assessing reading trends. The necessity of consulting a diverse array of sources to reconstruct book-ownership, particularly secular and private book ownership, indicates the penetration of the use of books beyond the monastic scriptoria and the collegiate libraries. If there was no “royal library” in the formal sense at this time, it was because the books owned by the crown and its agents were dispersed in the places where they were used, and this dispersal is in itself indicative of their influence. Furthermore, analysis of the manuscripts themselves as physical artefacts, with their forms of annotation and organisation provides invaluable insight into the reading practices associated with specific forms of text. The increasing desire for organisation and utility in finding aids developed from the late twelfth to the fourteenth century indicates that legal texts were being composed in manuscripts that were operating as functional tools. These insights depend on techniques and approaches more familiar perhaps to literary scholars than historians, and there can be some tension in this interdisciplinary approach, applying literary theories to legal texts, as is seen in the case of the status of marginalia. Nonetheless a strict taxonomy of genre is not particularly useful to understanding thirteenth-century reading culture and awareness of the interdisciplinary nature of this approach provides a useful reminder that the legal and dictaminal treatises to be discussed in more detail in the following chapter were by no means the only reading material available to their users and influential in the formation of their mental worlds.

Chapter Three – Legal and Dictaminal Manuscripts in Thirteenth-Century England

Introduction:

With an understanding of the restricted and partial nature of manuscript survival from thirteenth-century England and the substantial limitations on establishing provenance and usage by contemporaries, it is nonetheless possible to posit some observations about the dissemination of legal and dictaminal manuscripts in thirteenth-century England. This survey considers in turn the distribution and utilisation of manuscripts of canon law, civil law and the *ars dictaminis* in England during the reign of Henry III. In concentrating on these three 'genres' of manuscript this research seeks to address the role such learning had in the formation of government mentalities at this time, rather than depicting the entirety of thirteenth-century manuscript culture. The basis for this analysis draws upon the rich scholarly field of manuscript research outlined in the previous chapter, but by undertaking a comparative and synoptic approach to this material it is possible to draw wider conclusions about the role of legal and dictaminal texts in shaping mentalities of thirteenth-century government.

It should however be observed that the imposition of this framework of genres of manuscript is something of an anachronism which serves the purpose of structuring rather than attempting to imply a substantial qualitative distinction. The fixing of genre was by no means absolute in thirteenth-century manuscript culture and there was significant overlap not only between the three categories employed in this analysis, but also with texts and manuscripts that do not fall directly under these headings. This is most clearly evident in the case of manuscripts of theology, scripture and liturgy, which were by far the most prevalent class of manuscript. There was also substantial overlap between the development of canon

law and the learned theology of the thirteenth century, despite the generally condescending and increasingly competitive attitude of theologians towards canon lawyers.[1] The overlap between civil and canon law was perhaps even more pronounced, made plain by the use of the term *utriusque ius*.[2] The teaching of the two laws clearly demonstrated this interpenetration, as the study of civil law was indispensable to the teaching of canon law, to the extent that at the University of Oxford the attainment of a doctorate in canon law required prior training in the civilian tradition. This relationship persisted despite the claims of Honorius III in *Super Speculam* in 1219, which prohibited the study of Roman law at Paris as unnecessary for canonists. Indeed, while the civil law could exist and be studied independently to the canonist tradition, the canon law was inseparable from the terms and concepts of the Roman law.[3] The connection between both branches of the law and the *ars dictaminis* was even more substantial. In addition to the theoretical treatises on dictaminal theory, model letters could encompass a wide variety of material, and students of *bonae litterae* might find examples from works also of interest to theologians, canonists, and historians. It is this very interdependence of these disciplines that makes them a coherent body of texts to consider as influencing mentalities in thirteenth-century England.

[1] For the role of learned theology in the development of canon law, see N. M. Haring, 'The Interaction between Canon Law and Sacramental Theology in the Twelfth Century', in S. Kuttner (ed.), *Proceedings of the Fourth International Congress on Medieval Canon Law: Toronto, 21-25 August 1972* (Vatican City, 1976), pp. 483-93; A. J. Duggan, 'Master of the Decretals: A Reassessment of Alexander III's Contribution to Canon Law', in P. D. Clark and A. J. Duggan (eds.), *Pope Alexander III (1159-81) The Art of Survival* (Farnham, 2012), pp. 365-417; K. Shoemaker, 'When the Devil went to Law School: Canon Law and Theology in the Fourteenth Century', in S. E. Young (ed.), *Crossing Boundaries at Medieval Universities* (Leiden, 2010), pp. 255-76; C. Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge, 2010); Brundage, *Origins of the Legal Profession,* p. 105.

[2] Bellomo, *Common Legal Past,* p. 74.

[3] G. Leff, *Paris and Oxford Universities in the Thirteenth and Fourteenth Centuries: An institutional and Intellectual History* (London, 1968), p. 178; L. E. Boyle 'Canon Law before 1380', in Catto and Evans, *The Early Oxford Schools*, pp. 531-64, at p. 542; J. A. Brundage, 'From Classroom to Courtroom: Parisian Canonists and their Careers', *Zeitschrift der Savigny-Stiftung Für Rechtesgeschichte, Kanonistische Abteilung,* 83 (1997), 342-61; Brundage, *Origins of the Legal Profession* p. 233, A. Gouron, 'Some Aspects of the Medieval Teaching of Roman Law', in J. Van Engen (ed.), *Learning Institutionalized. Teaching in the Medieval University* (Notre Dame, 2000), pp. 161-76, at p. 163.

Canon Law Manuscripts

The manuscripts of canon law represent the largest proportion of manuscripts from the three categories being considered. This should not be surprising. While an earlier historiographical tradition minimized the influence of canon law beyond the sphere of church administration in favour of a narrative of the development of the English Common law, more recent scholarship has emphasised the vitality of this legal tradition in England, emphasising not only the creative contributions made by English canonists, but also the cross-fertilisation with other strands of law and government.[4] The growing number of canon law manuscripts reflected the intellectual and theological reforms of the late twelfth century – the canons of the Fourth Lateran Council set forth broad educational reforms for the cathedrals, which were enthusiastically and rapidly adopted in England.[5] As well as the theology and grammar stipulated in the Lateran canons, the reforms adopted in teaching practice also encouraged the study of law, as in 1247 the Benedictine General Chapter decreed that, where possible, daily lectures were to be delivered on either theology or canon law.[6] These thirteenth-century developments built an existing and vibrant field of canonical jurisprudence already established in England, as Charles Duggan has shown that of the approximately 27 private decretal collections of the twelfth century, fifteen can be proven to be of English origin.[7] Although the composition of these private collections was entirely the subject of personal

[4] W. Stubbs, *Seventeen Lectures on the Study of Medieval and Modern History and Kindred Subjects* (Oxford, 1886), p. 313; for more recent rehabilitation of the place of canon law in English legal history, see Brand, *Origins of the English Legal Profession*, p. 145; Ibbetson, 'Civilian and Canonist Influence on the Writ of *Cessavit per Biennium*', p. 100.

[5] *Conc. Lat. IV c.ii*, in *Decrees of the Ecumenical Councils*, *Volume One: Nicaea I to Lateran V*, ed. N. P. Tanner SJ (London, 1990) p. 240; N. Orme, 'Salisbury Cathedral and Education, 1091-1547,' *Wiltshire Archaeological and Natural History Magazine* 104 (2011) 145.

[6] A. Coates, *English Medieval Books: The Reading Abbey Collections from Foundation to Dispersal* (Oxford, 1999) p. 67, M. D. Knowles, *The Religious Orders in England* (3 vols, Cambridge, 1948), *i*, p. 25.

[7] C. Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London, 1963), p. 66.

whims, this English material nonetheless played an important role in the development of the official decretal compilations that began with Innocent III's *Compilatio Tertia* (1209-10).[8] All these conditions made canon law an important element in the composition of manuscript collections in thirteenth-century England, and one which was, by its very nature, a continuously evolving and dynamic body of texts.

The diversity of canon law manuscripts that circulated during this period was to a great extent the product of the continuing development legal practice as well as intellectual interest. Certainly, the flourishing of canon law and the profusion of manuscript material from the twelfth century onwards owed a great deal to the work of the schools and the undertakings of the pre-eminent law teachers of Bologna in particular.[9] In the manuscript evidence from thirteenth century England, teaching practice appears to have been a strong driver behind textual acquisition. The provisions to encourage the teaching of canon law within the Benedictine order seem to have a strong influence upon the accumulation of these texts. Of the 44 library collections for whom N. R. Ker identified surviving manuscripts of canon law dateable to around the thirteenth century or earlier, over a quarter of the collections concerned are those of cathedral chapters, including the two metropolitan sees. Beyond the metropolitan sees, six out of the ten cathedrals concerned were secular foundations, while the other four were Benedictine chapters.[10] Over another quarter of the collections concerned were Benedictine houses.[11] A further six houses belonged to the

[8] E. Conte and M. Ryan, 'Codification in the Western Middle Ages', in J. Hudson and A. Rodriguez (eds.), *Diverging Paths? The Shapes of Power and Institutions in Medieval Christendom and Islam* (Leiden, 2014), pp. 75-97.
[9] Brundage, *Medieval Canon Law*, p. 57.
[10] In addition to York and Canterbury, Ker identified canon law material for Exeter, Hereford, Lichfield, Lincoln, Rochester and Salisbury, and the Benedictine cathedrals of Durham, Norwich, Winchester and Worcester.
[11] These were Belvoir, Lincolnshire, Bury St Edmunds, Canterbury St Augustine's, Chester, Crowland, Lincolnshire, Gloucester, Ramsay, Huntingdonshire, Reading, St Albans, Spalding, Lincolnshire, Westminster and York.

Augustinian order, six were Cistercian, and two Franciscan, while the remaining six houses all belonged to different orders. The evidence of survival can only be partial at best; nonetheless it indicates a strong association between the provisions for the study of canon law in English cathedrals and within the Benedictine order and the collection of canon law manuscripts, a context which would link the manuscript material with teaching practice.

This correlation between study and ownership can be further developed by consultation of manuscript catalogues as evidence for the body of lost material or that which cannot be provided with a precise provenance. Among the cathedrals perhaps the most dramatic loss of material was that endured by St Paul's with the destruction of its pre-Reformation collections in the Great Fire of 1666. Three catalogues survive for the thirteenth century, from 1245, 1255 and 1295, listing the books kept in the treasury, although these are mostly service books and thus include no record of canonist material.[12] However, records of bequests from the fourteenth century suggest a vibrant tradition of canonist study in the cathedral. The 1313 bequest of the Bishop of London, Ralph Baldock listed over a dozen volumes on the canon law and subsequent bequests indicated the continuing interest in this category of material.[13] While the evidence of bequests and catalogues is more substantial for the fourteenth century than the thirteenth, some examples do survive from the late twelfth-century onwards to indicate the presence of this material in episcopal and monastic collections from this earlier period before the documentation of cataloguing became more systematic. Bequests to the Benedictine Abbey of Peterborough show a continuing interest

[12] N. R. Ker, 'Books at St Paul's Cathedral before 1313', in A. Hollaender and W. Kellaway (eds.), *Studies in London History Presented to Philip Edmund Jones* (London, 1969), pp. 41-72, reprinted in N. R. Ker, *Books, Collectors and Libraries. Studies in the Medieval Heritage*, ed. A. G. Watson (London, 1985), pp. 209-42.
[13] For the testament of Ralph Baldock, see, London, Guildhall Library MS 25271-17, printed in Woolgar, *Testamentary Records,* pp. 75-81. For the later bequests of the almoners William of Tolleshunt in 1328 and William of Ravenstone in 1358, both including canonist material, see E. Rickert, 'Chaucer at School', *Modern Philology,* 29 (1932), 257-74.

in canon law material across the thirteenth century, with volumes being bequeathed by successive abbots; first Abbot Benedict on his death in 1194, then Abbot Walter of St Edmund's c.1246, Abbot Robert of Sutton in 1274 and Abbot William of Woodford in 1299.[14] Although these bequests in part reflected the interests and tastes of the specific abbots concerned, they are nonetheless significant for understanding the scholastic context of the Abbey community. Indeed, it is in itself of some considerable interest that subsequent generations of abbots were elected who maintained this interest in the canon law and their continuing inclusion of this material in their bequests suggests that they saw these studies as relevant and appropriate to the broader intellectual life of the house. Given the correlation between the provision for the teaching of canon law within the cathedrals and the Benedictine order more broadly the broad correlation of the distribution of canonist material within collections influenced by these provisions suggests that the ownership of canon law manuscripts was closely associated with this scholastic context.

Recognising the importance of the academic study for the dissemination and reception of canon law material, some words must be said about the manuscript evidence for the universities in the thirteenth century, which has not so far been mentioned. Certainly both Oxford and Cambridge were important centres for the study of canon law in thirteenth-century England. However, for much of the thirteenth century there is little evidence for the acquisition of books on an institutional level, although towards the end of the century efforts were being made to encourage and formalise the establishment of collections within individual halls and colleges.[15] This relative paucity is even more striking in comparison to the

[14] M. R. James, *List of Manuscripts Formerly in Peterborough Abbey Library*, Supplement to the Bibliographical Society's Transactions, 5 (Oxford, 1926), pp. 21-4.
[15] J. Catto, 'University and Monastic Texts I: Biblical Exegesis, theology and philosophy', in Morgan and Thomson, *Cambridge History of the Book in Britain, II: 1100-1400*, pp. 219-28, at p. 221; R. Gameson, 'The

great university collections in Paris; the 1338 manuscript inventory was a revision of a lost 1290 catalogue and listed a collection of some 1722 volumes, divided in 59 different categories, of which the 58th category, *Libri Juris*, was entirely comprised of volumes on the canon law.[16] The lack of comparable institutional collections in Oxford or Cambridge at this time resulted in the dispersal of volumes associated with studies at the schools amongst the better established libraries of cathedrals and monastic houses, particularly those where was a tradition of studies in canon law. This dispersal was encouraged by the movement of scholars from the universities into high posts in ecclesiastical administration. Acquisition of canon law manuscripts can nonetheless be associated with study at the schools and with an increasingly professionalised book trade to meet the needs of this study. Examples of works on the canon law probably associated with the schools but preserved elsewhere include two manuscripts now in the collection of Worcester cathedral, both of which appear to have been professionally produced at Oxford.[17]

In addition to study in the English schools, the evidence of English students studying at the great centre of canon law in Bologna over the thirteenth century suggests that their studies were associated with the acquisition of canon law material. Registers of such purchases in Bologna only survive for the later decades of the thirteenth century, but when they do they indicate the willingness of English scholars to invest considerable sums of money

Medieval Library (to c.1450)', in Leedham-Green and Webber, *Cambridge History of Libraries in Britain and Ireland, Volume I to 1640*, pp. 13-50, att p. 28.

[16] L. Delisle, *Le Cabinet des Manuscrits de la Bibliothèque Impériale* (3 vols, Paris, 1868-81), *i,* p. 182, *iii,* pp. 69-71. The 1338 catalogue is Paris, Arsenal MS Français, Histoire 855. Although the 1290 catalogue is now lost, it is estimated to have contained 1,017 volumes – this indicates an enormous growth between 1290 and 1338, but nonetheless constitutes an enormous volume of material; L. Smith, 'Lending Books: The Growth of a Medieval Question from Langton to Bonaventure', in L. Smith and B. Ward (eds.), *Intellectual Life in the Midde Ages. Essays Presented to Margaret Gibson* (London, 1982), pp. 265-79, at p. 267.

[17] These MSS are Worcester Cathedral F 7 and F 22; Thomson and Gullick, *Worcester Cathedral Manuscripts*, pp. 8-9, 17.

in the acquisition of such texts. One particularly avid collector was an English scholar named Master Nicholas de Graton; on 2 June 1265 he promised to pay Damiano, son of Bolognetto di Rosso the sum of forty Bolognese pounds for him to produce a copy of the Decretals, 'tam veterum quam novarum'. This reference to the new decretals indicates Master Nicholas's desire to acquire the Decretals of Gregory IX, compiled by 1234 by the Dominican Raymond of Peñafort, and the following year Master Nicholas paid sixteen shillings to have copied the glossing apparatus of Bernard of Parma, perhaps onto the same manuscript.[18] Nor was Nicholas de Graton the only English scholar to participate in the Bolognese trade in canon law manuscripts, both as purchasers and vendors, as an Englishman Henry 'de Servingia' sold a copy of the decretals to another scholar named Guarnerio di Lucera for £25s10 in July of 1265.[19] Manuscripts of the canon law of Italian origin or following Italian exemplars certainly survive from thirteenth-century England. The Bodleian Library MS Lat.th.b.4, dated to c.1241 and likely originating from Bologna, consists of the Gregorian Decretals with the apparatus of Bernard of Parma, akin to that acquired by Nicholas de Graton, while parts of the Worcester Cathedral MS F7 mentioned above as produced professionally at Oxford were potentially copied from an Italian exemplar.[20] Although English universities lacked centralised collections of manuscripts, the production and acquisition of canon law material was closely connected with the university context, both within England and with broader connections to the dominant centre of canonist study at Bologna.

The canon law manuscripts of thirteenth century England reflect an increasing tendency towards standardisation and close affiliation with the Bolognese decretalists. This

[18] *Chartularium Studii Bononiensis, v,* pp. 11-12, 226.
[19] *Ibid., v,* p. 32.
[20] *Catalogue of Dated and Dateable Manuscripts c.435-1600 in Oxford Libraries*, ed. A. G. Watson (2 vols, Oxford, 1984), *i,* p. 92; Thomson and Gullick, *Worcester Cathedral Manuscripts,* pp. 8-9.

tendency towards standardisation can be seen above all in the widespread popularity of Gratian's *Decretum*, which survives in numerous copies from the thirteenth century. Perhaps the most compelling evidence for the profusion of manuscripts of the *Decretum* is the recurrence of ownership of multiple copies of this text within collections. Even in the evidence provided by surviving manuscripts these duplications can still be identified, as no fewer than five copies of Gratian's textbook survive from the collections of Durham cathedral dating from the late twelfth to the thirteenth century.[21] Multiple copies in a single collection may have resulted from multiple bequests, but there are cases in which donations included multiple copies of a single work, indicating the importance of such texts. [22] That Gratian's *Decretum* was treated in such a way indicates its centrality in canonical studies in England and the Continent.

But, as we have seen, the English consumption of canon law did not end with the *Decretum*. Over the course of the late twelfth and thirteenth centuries, the leading canonists, based primarily in Bologna, followed in two main intellectual trends – the decretists, who produced glosses and commentaries on the *Decretum*, and the decretalists, who collected, codified and commented upon the new legal decisions issued in papal letters.[23] The works of both the decretists and the decretalists survive from thirteenth-century England, reflecting the responsive and reflective character of the study of canon law in England, as well as its close association with the major intellectual trends of juridical thought in Bologna. Of the twelfth-century decretists, Huguccio had by far the most widespread reception in England, with both his *Summa* on the *Decretum* and his *Liber Derivationem* on etymologies circulating

[21] Ker, *Medieval Libraries of Great Britain,* pp. 60-76.
[22] The bequest of Abbot Benedict to Peterborough Abbey included two copies of Gratian's text book; James, *Peterborough Abbey Manuscripts,* p. 21.
[23] O. J Reichel, *The Canon Law of Church Institutions: Volume 1* (London, 1922), p. 28.

in English collections. A partial copy of Huguccio's *Summa* survives in Cambridge, Pembroke College MS 72, formerly belonging to the Benedictine Abbey of Bury St Edmunds, while Durham Cathedral MS C. 1. 20 preserves a fourteenth-century copy of the *Liber Derivationem*.[24] The existence of further copies of these text can be attested by testamentary evidence, as Abbot Robert of Sutton bequeathed a copy to Peterborough Abbey upon his death in 1274 and the bequest to St Paul's Cathedral by Ralph Baldock, Bishop of London included both the *Summa* and the *Liber Derivationem*.[25] This latter text also survives in manuscript form in the collections of Worcester Cathedral and Exeter College, Oxford.[26] The other decretist whose works circulated widely in thirteenth-century England was Bartholomew of Brescia, whose gloss on the *Decretum* was revised as the *Glossa ordinaria* of Johannes Teutonicus around 1240 and was used as a standard gloss on copies of the *Decretum* after this date.[27] While decretists collections concentrated on the established corpus of canon law, this English evidence points towards a desire to keep abreast of intellectual developments at Bologna, an appetite for recent scholarship that was to be further evidenced in the acquisition of decretalist material.

The decretalist material which can be traced to thirteenth-century England collections, included some of the most prominent texts produced over this period. The *Liber extra* or Gregorian decretals, compiled for Gregory IX by Raymund of Peñafort by 1234 was one of the most common decretalist texts from the English evidence. As with the *Decretum*, the influence of this later text can be seen in cases where there is evidence for multiple ownership by both individual collectors and within larger library collections. The surviving

[24] Ker, *Medieval Libraries of Great Britain,* pp. 18, 69.
[25] James, *Peterborough Abbey Manuscripts*, p. 23; Woolgar, *Testamentary Records*, pp. 76-77.
[26] Worcester Cathedral F 22; Oxford, Exeter College MS 42.
[27] An example of the Bartholomew of Brescia *glossa ordinaria* can be found in BL, MS Royal 9.C.iii.

manuscripts from the Benedictine Cathedral of Durham include at least six copies of the *Decretales Gregorii noni* dating from the mid to late thirteenth century, indicating the widespread circulation and popularity of this compilation during this period.[28] Although the sheer number of surviving manuscripts at Durham owes much to the extraordinary preservation of the chapter's pre-Reformation manuscript collections *in situ*, the cathedral was by no means exceptional in the acquisition of this text. Two thirteenth century copies of the Gregorian Decretals survive from the library of Reading Abbey, both now preserved in the Bodleian library.[29] The Gregorian decretals circulated widely and rapidly in thirteenth-century England.

Beyond the decretals themselves, the lawyers of Bologna also developed an extensive corpus of commentary material. The English collections similarly included these commentaries, *summae* and glossing apparatuses. Perhaps the most prominent of these scholars was Raymund of Peñafort himself, and the circulation of his manuscript material in England was by no means restricted to his work upon the Gregorian compilation. In addition to his great codification project, manuscripts of Raymund's *Summa Casuum* survive in multiple copies from thirteenth-century, originating from a diverse number of collections, including Lincoln Cathedral and Christ Church Canterbury.[30] The popularity of this work can be attested by the existence of abridgements, such as that preserved in Lambeth Palace MS 404, and another included in the bequest of Abbot Robert of Sutton to Peterborough Abbey in 1274.[31] Other works by Raymund also circulated in thirteenth-century England, although

[28] Ker, *Medieval Libraries,* pp. 69-70.
[29] These are Bodl. MSS Bodl. 639 and 760; cf. Coates, *English Medieval Books,* pp. 157-8.
[30] For provenances of manuscripts of Raymund's *Summa Casuum*, see Ker, *Medieval Libraries*, pp. 37, 87, 118.
[31] *A Descriptive Catalogue of the Manuscripts in the Library of Lambeth Palace. The Mediaeval Manuscripts*, ed. M. R. James (Cambridge, 1932), pp. 559-60; James, *Peterborough Abbey Manuscripts*, p. 23. Sutton's bequest also included a full and unabridged version of Raymund's *Summa*.

not as widely. His *Summa de Poenitentia et Matrimonio* appears to survive in only one copy, now preserved in the archives of Merton College Oxford, although more copies may have existed that do not now survive, as six copies of the 'Summa fratris Raimundi de poenitencia' were listed in the 1247 catalogue of the manuscripts of Gloucester abbey.[32] Other works by Raymund also appear to have circulated in thirteenth-century England, as Tables of Consanguinity included in Hereford Cathedral Library MS O.VII.7 possess a gloss likely to be identified with the Dominican jurist.[33] The pre-eminence and authoritative character attributed to the work of Raymund of Peñafort in Gregory IX's preamble to the decretals certainly appears to have be matched by the dominance of his works in thirteenth-century English collections.

While Raymund had a dominant position in the decretalist scholarship of the mid-thirteenth century, he was by no means the only leading figure in this juridical trend, neither in Bologna nor in the English manuscript evidence. The decretals that Raymund compiled for Gregory IX in themselves stimulated a rich commentary tradition, and this was also received in English collections. Of the earlier commentators on the decretals, most prominent in the English material are the works of Geoffrey of Trani, whose *Summa super titulis Decretalium,* composed ca. 1243 survives in multiple copies from English collections. Indeed, the speed with which Trani's work was transmitted to England should be noted, as the copy surviving in Worcester Cathedral MS F 7 was likely composed at Oxford not long after 1251, that is to say less than a decade after the composition of the work.[34] Another surviving thirteenth-century

[32] *A Descriptive Catalogue of the Medieval Manuscripts of Merton College, Oxford*, ed. R. M. Thomson, with a description of the Greek Manuscripts by N. G. Wilson (Cambridge, 2009), pp. 51-2; For the Gloucester abbey catalogue, see Cambridge, Trinity College MS 724, printed in T. Hearne, *Johannis, confratris & monachi Glastoniensis, chronica sive historia de rebus Glastoniensibus* (2 vols, Oxford, 1726), *ii*, p. 430.
[33] *Catalogue of the Manuscripts of Hereford Cathedral Library*, ed. R. A. B. Mynors and R. M. Thomson with M. Gullick (Cambridge, 1993), p. 51.
[34] Thomson and Gullick, *Worcester Cathedral Manuscripts,* pp. 8-9.

copy belonged to Reading Abbey, now in the collection of Pembroke College, Cambridge, and the *Summa Gaufridi* listed in the bequest of Robert of Sutton may be identified as this text.[35] Later in the thirteenth-century perhaps the greatest contribution of glossatorial scholarship can be seen in the establishment of the *glossa ordinaria* of Bernard Botone of Parma, which circulated from 1263 onwards.[36] Given this date of composition, Bernard's gloss has relatively little significance for the study of canon law in England during the reign of Henry III; however, it is nonetheless valuable to observe its prominence in English decretal manuscripts from the late thirteenth century onwards, most prominently in the so-called Smithfield Decretals.[37] Interest in the latest developments of the Bolognese jurists continued throughout the long thirteenth-century and was not a transitory or insignificant phenomenon.

It is clear therefore a major context for the circulation of canon law manuscripts within English collections was the study of canon law as an academic discipline. This is plain both in the distribution of texts in collections associated with the teaching and learning of this legal tradition and in the dominance of the scholastic products of the great Bolognese jurists within the material itself. Nonetheless it is crucial to understand that the scholastic study of the canon law over the thirteenth century was anything but abstract and detached from the concerns of practice and utility. The commentaries and projects of both the decretists and

[35] Coates, *English Medieval Books*, p. 158; James, *Peterborough Abbey Manuscripts,* p. 23. Another copy may also have belonged Bishop Ralph Baldock, whose books included compilation of *Summe Roffredi Goffredi et Reymundi*, Woolgar, *Testamentary Records*, pp. 76-7; these *summae* were likely the *Summa Casuum* of Reymund of Peñafort, the *Summa super titulis Decretalium* of Geoffrey of Trani and one of the two *libelli* of Roffredus of Benevento; given the compilation, it seems more plausible that it was his work on the canon rather than the civil law, Bellomo, *Common Legal Past*, p. 174.

[36] The dating of Bernard's *Glossa* has been subject to some controversy. Beryl Smalley and Stephan Kuttner outlined four stages of redaction; the first 1234-c.1241, the second 1243-5, the third 1245-c.1253 and the final 1263-6. In establishing these phases of redaction, they highlight the coincidence of the dating of the first redaction with that of another *Apparatus* of Geoffrey of Trani which appeared before 1241-3, suggesting that there was some substantial competition between these two leading decretalists for the establishment of an 'ordinary' gloss to the authoritative Gregorian text. B. Smalley and S. Kuttner, 'The 'Glossa Ordinaria' to the Gregorian Decretals', *EHR,* 60 (1945), 97-105.

[37] BL, Royal MS 10.E.iv.

the decretalists aimed at the creation and dissemination of standardized texts and associated commentaries, and this process of standardization was closely related to the practical and utilitarian focus of university studies in canon law during the thirteenth century.[38] But of these two trends of scholarship it has been shown that the texts of the decretalists enjoyed greater circulation and popularity in thirteenth-century England than those of the decretists. This was more than academic fashion – it demonstrated a desire to remain acquainted with the latest developments and assertions of papal legal thought and its interpretation by the leading juristic thinkers of the time.[39] Perhaps the most explicit demonstration of this awareness of the questions of utility and the need to be acquainted with the most recent developments in canonist scholarship can be seen in the division and description of the decretal material listed in the 1257 Gloucester Abbey catalogue. This material is listed in two separate sections, the latter of which is comprised primarily of older canonist material, the most recent of which were writings of Ivo of Chartres; the other texts include the *Canons of Theodoric* and two volumes of *decreta,* one of Pope Gelasius and the other of 'Caroli et Lodovici regum', likely another collection of Carolingian material. These texts are arranged together in the catalogue and except for the Ivo of Chartres volume are described as being 'vetust [sic]', showing an awareness of their antiquated nature. The earlier section of the catalogue is almost entirely comprised of twelfth and thirteenth century decreta and decretals and includes one entry

[38] The literature on the material concerns and utilitarian applications of canon law scholarship is extensive. The most concise summary of the theoretical concern for the harmonisation of texts of the law and its relation to the status of canon law as a system which informed the practical applications of theological and spiritual concerns, see S. Kuttner, 'Harmony from Dissonance: An Interpretation of Medieval Canon Law', *Wimmer Lecture X, 1956, St Vincent College* (Latrobe PA, 1960), reprinted in his *History of Ideas and Doctrines of Canon Law in the Middle Ages*, 2nd Edition, Variorum Reprints (Aldershot, 1992), pp. 1-16. A survey of the literature on the utilitarian concerns of the jurists can be found in E. Peters, 'The Sacred Muses and the Twelve Tables: Legal Education and Practice, Latin Philology and Rhetoric, and Roman History', in Pennington and Eichbauer, *Law as Profession and Practice in Medieval Europe,* pp. 137-52, at p. 144ff.

[39] For the increasing importance of the successive popes in creating and disseminating canon law, see G. Silano, 'Of Sleep and Sleeplessness: The Papacy and the Law, 1150-1300', in C. Ryan (ed.), *The Religious Roles of the Papacy: Ideals and Realities 1150-1300* (Toronto, 1989), pp. 343-61.

describe as 'Veteres decretales inutiles'. This description of a decretal volume as 'inutiles' emphasizes both the importance of keeping up-to-date with developments in decretal literature and a broader assumption that the newer volumes of decretal material had a utility which was absent in this case.[40]

Certainly the manuscript evidence for canon law material in England also demonstrates a distinct strand of pragmatic material, closely connected to the practice of canon law rather than its theoretical or scholastic dimensions. Given the focus on utility that lay at the heart of the conception of canon law, making an absolute distinction between scholarly and pragmatic material is neither useful nor appropriate. It may perhaps be more useful to refer to this more pragmatic material as syncretic, as it occupied a space and served a function that was divorced from neither the scholarly nor the pragmatic fields. Even individuals who might be at first identified with university scholastic law also produced works which had a distinctly procedural flavour and focus, and these formed an important category among the canon law material received in thirteenth-century English collections. The most prominent of these authors was the unimpeachably scholastic Tancred of Bologna, whose procedural manual the *Ordo Iudiciarius* circulated widely in England as well as abroad. This work, which was composed 1214-16 survives in multiple copies from this period, including two copies preserved in the archives of Worcester Cathedral.[41] In addition to being widely read, Tancred was widely imitated and a number of other *Ordines iudiciarii* circulated from other authors. These include the *Ordo Iudiciarius 'Olim'* of Otto of Pavia, found in Worcester Cathedral MSS F.14 and F.122 as well as that of the Englishman William of Drogheda, also known as the *Summa Aurea,* preserved in Worcester Cathedral MSS F.74 and F.159, both of

[40] Hearne, *Chronica Glastoniensis, ii*, pp. 430-1.
[41] These MSS are Worcester Cathedral F 47 ff. 1-35 and F 159 ff. 87-98.

which also contain Tancred's *Ordo* and the latter of which contains two further *Ordines* whose authors are not named. While the archives of Worcester Cathedral are remarkable for the survival of manuscripts connected with practical and procedural legal questions, the interest in and circulation of such material was by no means exceptional.

Lawrence of Somercotes, a Canon of Chichester, and possibly a kinsman to Cardinal Robert Somercotes and the king's clerk John of Somercotes was another English ecclesiastic to have composed a procedural canon law treatise.[42] His treatise on ecclesiastical elections in England was composed around the year 1254 and explicitly addressed the question of harmonizing diverse practices. Somercotes was explicit about the practical purpose of his treatise, which he outlined in his introduction to the text, linking the practice of the canon law as related to elections with the teaching of the law, and complaining that not enough was being done to teach such practical procedures, with the possibility of great danger arising from variation.[43] Multiple copies of this text survive, at least two of which can be dated to the thirteenth century, one in Lambeth Palace and the other in Lincoln cathedral, the latter of which can be dated to c.1280.[44] That manuscripts of this relatively minor work circulated and survive in some number within a relatively short period of time after its composition indicate its popularity and the veracity of the assertion Somercotes made attempting to unify academic teaching with the necessities of church practice.

The most important category of such 'practical' texts were the formularies, or letter collections which were as a genre intended to provide assistance to those involved in

[42] C. H. Lawrence, 'Somercotes , Laurence of (fl. 1245–1258)', *ODNB*; see above, pp. 54-5.
[43] *Der Traktat des Laurentius de Somercote Kanonikus von Chichester über die Vornahme von Bischofswahlen. Enstanden im Jahre 1254*, ed. Alfred von Wretschko (Weimar, 1907) pp. 27-8.
[44] For these manuscripts, see *Ibid.,* p. 23.

enforcing canon law, on a day-to-day and utilitarian basis.[45] Due to their commonly private and individual nature, the survival of formularies is more limited than that of more scholastic legal manuscripts.[46] They could also vary enormously in their form and content and indeed the preservation of formularies or letter collections could frequently reflect their interest or relevance on other topics. In terms of the relationship of this material to the broader field of canon law scholarship, it is crucial to observe that where formulary or exemplary material does survive, it frequently does so in conjunction with more theoretical or scholastic texts. One example of this is in the quite widely circulated judge-delegate formulary known as 'A., B., C., iudices'. Two early thirteenth century English copies of this manuscript survive, one in Cambridge, Gonville and Caius College MS.150 (44) and the other in British Library MS Royal 15.B.iv. The Gonville and Caius manuscript largely comprises three volumes of the pre-Gregorian decretals, *Quinque compilationes antiquae*, dating from around 1220, with the constitutions of the 1222 Council at Oxford added in another hand. The Royal MS presents an even greater diversity of material in addition to the formulary, containing commentaries of Priscian and Donatus, the letters of Peter of Blois, fragments of Euclidian geometry, fragments of Boethius on the Prior Analects of Aristotle, assorted theological works as well as a number of pieces on the civil and canon laws, including the decretals of Alexander III (1159-81).[47] The aggregation of legal, logical, grammatical, theological and mathematical material in the Royal MS would appear to suggest an academic context, perhaps even an association with the University of Oxford, and other early formularies from Oxford survive in which scholastic and

[45] Herde, 'Papal Formularies for Letters of Justice (13th-16th Centuries)', p. 123.
[46] That more English judge-delegate procedural formularies may have existed and from an earlier date has been suggested by Jane Sayers, 'The Procedure of the Courts of the Judges Delegate', p. 47. For a broader exploration of the likely circulation of formulary material and the varying maximalist and minimalist approaches to this evidence, above, p. 80.
[47] F. D. Logan, 'An Early Thirteenth-Century Papal Judge-Delegate Formulary of English Origin', *Studia Gratiana,* 14 (1967), 73-87, at 78.

procedural material can be found alongside each other. Baltimore University Library MS W.15 is a glossed gospel of the late twelfth or early thirteenth century that also includes a legal formulary all written in the same Oxford calligraphic hand.[48] The occurrence of such canonical formularies in manuscripts of a broader scholastic interest emphasizes the recognized association between the study and the practice of canon law.

The combination of theoretical and practical material should indeed be seen as one of the distinguishing features of legal miscellanies or compilations, and a number of these survive for the thirteenth century; analysis of these manuscripts can demonstrate a reading practice which also associated theoretical texts with practical legal notes. Corpus Christi College, Oxford MS.154, dating from 1278 or soon after, contains a number of canon law texts, including Sicard of Cremona's *Summa Decreti,* and the *Distinctiones* of Peter of Blois. The last 23 folios of this manuscript contain assorted documents related to the Augustinian monastery of Llanthony (*secunda*) in Gloucestershire, including numerous formulae for visitations, summonses and proceedings against malefactors.[49] This manuscript has a relatively low status appearance and presentation, with occasional holes in the original parchment being indicated by places in which the presentation of the text adheres to the flaws in the manuscript.[50] The absence of incipits, rubrication or capitulae from this MS seem to suggest the appearance of a notebook compilation rather than a scholarly textbook. This becomes increasingly clear with the documents relating to Llanthony priory, which are written in various hands and scripts with no meaningful rubrication or clear organizational principle. This somewhat disorganized and multi-stage appendage of this manuscript compares

[48] *Formularies Which Bear on the History of Oxford c.1204-1420*, ed. H. E. Salter, W. A. Pantin, and H. G. Richardson (2 vols, Oxford, 1942) *i*, p. 273.
[49] For an outline of the content of this MS, see Thomson, *Corpus Christi College, Oxford Manuscripts,* pp. 78-80.
[50] For an example of this see f.25^{r-v}.

strikingly with the relatively minimal annotation on the theoretical material. Its contents form a practical appendix to the theoretical treatises and represent a concern to associate scholastic legal training with the legal practice and concerns of a particular monastic house.[51]

Corpus Christi 154 is by no means the only example of such a lawyer's notebook from the thirteenth century combining scholarly works on the canon law with material and marginalia of a more practical nature. Two manuscripts preserved in Worcester Cathedral can also be identified as legal notebooks of this type, F 146 and F 159, both of which also feature extensive marginal annotations evidencing a responsive readership. These two MSS share many common features but also demonstrate some important distinctions. Perhaps the most important distinction between these two manuscripts is that while F 146 is a compilation of assorted theoretical and practical material, F 159 is comprised of a large number of different scholastic texts with marginal additions and annotations referencing specific cases and practical concerns. The texts included in F 159 are in themselves ones which are particularly associated with practical applications of canon law, including Tancred of Bologna's eminently practical *Ordo Iudiciarius* and multiple other such *ordines.*[52] The MS is heavily annotated throughout, with extensive marginalia and frequent use of assorted manicules, place markings using the form of a hand. Although it is not always possible to derive reading practice from the use of such finding aids, there is some suggestion in this manuscript that they were related to the content of the text, as can be seen in the addition of a pointing face depicting the head of a king in the margin of the section of Benencasa of Arezzo's *Casus Decretorum* that discussed the powers of the king within the kingdom.[53] That the manuscript

[51] Evidence for a scholastic context for this MS may be seen in the inclusion in ff.105-26 of the *Distinctiones Oxonienses*.
[52] For a full outline of this MS, see Thomson and Gullick, *Worcester Cathedral Manuscripts*, pp. 107-8.
[53] Worcester Cathedral MS F 159 f. 118^{v}.

may be associated with a practicing lawyer can be suggested by the marginal annotations on the partial copy of book four of the *Decretals* at the end of the manuscript. These include references to cases in church courts in Staffordshire (f.187^{v}) and Lincoln (f.188^{v}).

The interpolation of theoretical treatises with material related to cases is even more substantial in F.146, which appears to be an even more informal and personal manuscript than F.159.[54] The manuscript also includes the *Liber Iudicum* of the Spanish canonist Johannes de Deo and the *Constitutions* of Innocent IV, both in full and abbreviated form, as well as a number of notes and commentaries on the civil law. In addition to these more 'scholarly' treatises, F.146 also contains an extensive quantity of case material related to the West Midlands, including documents related to the Hospital of Holy Trinity, Northampton and the controversy between the Archbishop of Canterbury, Boniface of Savoy and the prior and chapter of Worcester. The relationship between these two categories of material within this manuscript, the procedural treatises and the case material, can be seen to be more substantive than their inclusion in the same miscellaneous legal notebook. The assorted case reports found in folios 19-23^{v} and 24^{v} are interspersed with notes on civil law, but it is the marginalia found on Benencasa of Arezzo's *Casus Decretorum* that are of particular interest. Annotations on this text include reference to cases, including one involving the abbot of Worcester on f.14. Furthermore, the headings of this text are annotated in the same hand as that referring to the case law with mnemonic verses throughout. The use of verse mnemonics is particularly striking alongside the inclusion of material by Johannes de Deo, whose extensive writings on canon law included at least two verse treatises, most prominently his *Arbor versificata* on consanguinity, which comprised 24 such verses and appears to have been

[54] The content of this MS is outlined in Thomson and Gullick, *Worcester Cathedral Manuscripts*, pp. 100-101.

aimed at his students at Bologna, although it was subsequently criticised for obscurity by Johannes Andreae.[55] The inclusion of mnemonics in F 146 not only demonstrates a responsive reading of the texts, but also illuminate the practical legal mentalities shaping this readership.[56]

It remains to be asked whether it might be possible to trace some association of canon law manuscripts with English royal government at this time. This task is made more difficult by the limited surviving evidence for royal book ownership for this period and the diffuse nature of the evidence that does survive.[57] It is nonetheless possible to make some observations by extrapolating from later thirteenth- and early fourteenth-century evidence. This evidence can be divided into two broad categories, that is evidence for the ownership or acquaintance with canonist material by figures serving within or associated with the offices of royal government and evidence for such book ownership by the king or the officers of royal government themselves.

In evaluating of the reading culture of royal administration during the reign of Henry III it is worth reiterating that the king's servants brought with them existing knowledge and training in the learned laws. The value of this knowledge and experience to government offices formed the argument of the first chapter of the thesis Inventories of book ownership by officials associated with the royal government mostly survives from the first half of the fourteenth century, but such evidence does seem to support a distinctly 'scholastic' flavour to this canon law material. While the educated character of royal servants at this later stage

[55] S. Worby, *Law and Kinship in Thirteenth-Century England* (Woodbridge, 2010), pp. 34-5.
[56] For the vulnerability of legally-trained minds to abridgements and maxims akin to this use mnemonics, see J. P. Dawson, *The Oracles of the Law* (Ann Arbor, 1968), p. 123.
[57] See above, pp. 87-8.

has been long recognised, the similar cultivation of learned clerks in the reign of Henry III makes it possible extrapolate back to this earlier period. This is particularly fruitful when the specialist evidence of the fourteenth century seems to be congruent with the broader patterns of manuscript circulation from the thirteenth. The inventory of books owned by Ralph Baldock, Bishop of London and largely left to St Paul's Cathedral upon his death in 1313 has previously been considered in relation to ecclesiastical collections, but as Baldock was also a leading counsellor to Edward I, his substantial collection of canonist material should also be considered with respect to his position in royal government.[58] Baldock's collection of canon law texts was certainly extensive and demonstrated a marked preference for decretal scholarship with multiple glosses, including that of Innocent IV as well as works for Geoffrey of Trani, Raymund of Peñafort and Hostiensis. Similarly, the bequest of canon law volumes by Abbot Benedict to Peterborough Abbey on his death in 1194 should also be considered within the context of his career as counsellor and particular intimate to Richard I.[59] An even more markedly scholastic overtone can be found in the inventories of books belonging to Master Peter de Peckham, clerk of Edward I's Treasurer William Marsh, whose books were taken into the custody of the Exchequer upon his death in 1293. Peckham's collection included multiple decretals and other *summae*, including one 'que vocatur innocentus', which might be identified as that of Innocent IV. Perhaps the clearest expression of the scholastic associations of Peckham's collection can be found in the entry regarding his volume of Hostiensis, which is described as being 'xxj pecie' of the *Summa*. The pecia system was a characteristic feature of the university book trade, and the inclusion of this volume in Peckham's inventory supports

[58] For the career of Ralph Baldock, see H. A. Tipping, 'Baldock, Ralph (d. 1313)', rev. M. C. Buck, *ODNB*. See above, pp. 101, 109.
[59] E. King, 'Benedict (c.1135–1193)', *ODNB*.

the argument for its presence at Oxford, with which university he may be associated.[60] Peckham's books were taken into the Exchequer on his death because he died intestate, and it cannot therefore be said with certainty that they were used there, but the level of detail and specificity in the Exchequer Memoranda indicate some knowledge of the texts discussed; at the very least it is significant that a figure whose professional career associated him with the Treasury and perhaps with the Exchequer possessed such a substantive collection of canon law works and that some effort was taken on his death to inventory those works and bring them into the Exchequer. Although we cannot be certain, it seems reasonable to assume a similar level of acquaintance with canon law on the part of Henry III's advisors and ministers.

The Peckham inventory, which passed on his death not into an ecclesiastical collection but into the hands of the Exchequer, raises the question of canon law book ownership not just by figures associated with the royal government but by the government and the king himself. Certainly it seems that Peckham's books would not have been the only specimens in the Exchequer. In 1313 Edward II ordered the barons and treasurer of the Exchequer to release thirty-three books out of the Exchequer to be brought to him at Windsor Park, where he had withdrawn from the council imposed by the Ordainers in 1311. It seems unlikely that this act would have emptied the Exchequer of its book collection, and volumes in the Peckham inventory are not found in this list, which included multiple copies of some canon law texts.[61] The canon law texts included in this list represented an overwhelmingly decretalist selection

[60] For Peckham's inventory, see R. J. Whitwell, 'Libraries of a Civilian and Canonists and of a Common Lawyer', *LQR*, 21 (1905) 393-400, at 398-9; for the career of Peter de Peckham, see M. Carlin, 'Fetcham , Peter of (*fl.* 1267–1276)', *ODNB*. For the *pecia* system and the university book trade, see Pollard, 'The *pecia* system in the Medieval Universities', p. 148; N. Ramsay, 'Law', in Morgan and Thomson, *Cambridge History of the Book in Britain II*, pp. 250-90, at p. 264-5

[61] Given Edward's dispute with the Lords Ordainer over the extent and limitations on his power as king, the interest in law books at this stage may suggest the desire to use them to bolster his own position. Cavanaugh, 'Royal Books', 308; for the full list, see *Calendar of the Close Rolls of Edward II, 1313-18* (London, 1893), p. 10.

of scholarship, including two copies of the more recent *Apparatus* of Innocent IV. An interest in more procedural texts can also be found in the inclusion of an unspecified *summa* of Tancred. This book list, together with the Peckham inventories, suggest that there was a rich repository of canon law material accumulated within the Exchequer, and while this material tended towards a scholastic context, the emphasis on the decretalists indicates an interest in the utilitarian aspects of canon law, particularly in relation to contemporary papal legislation and commentaries on it.

It is not likely that books found in the Exchequer would have been the king's personal possessions. More significantly for the king's own goods, two wardrobe accounts from the reign of Edward I testify to the presence of ten volumes on canon law in that far more personal household office. Both of these accounts date from around 1299-1300 and each contain around twenty books, with only one item, a *legenda vetera* being possibly identified as appearing in both lists.[62] Thus, of approximately forty books identified for the Wardrobe at this time, almost a quarter are volumes of canon law. Connection with the Exchequer books can be identified in the presence of another *Summa* of Tancred, suggesting that there was not a major divergence in the character of the canon law material received in the Wardrobe as opposed to the Exchequer, which seems to tend towards decretal and procedural works which may have had more practical implications for royal government, particularly in its relationship to the papacy. It is in terms of this relationship with the papacy that the final category of canon law material circulating amongst the offices of royal government may be considered. Using the theory of recipient transmission suggested by Ernst Kantorowicz for

[62] These two lists are a list of *Jocalia* in *Liber Quotidianus Contrarotulatoris Garderobae Anno Regni Regis Edwardi Primi Vicesimo Octavo*, ed. J. Nichols (London, 1787), pp. 347-9 and TNA E 101/371/17, both described in Cavanaugh, 'Royal Books', 307.

dictaminal material, it should be recalled that contemporary papal letters, as well as the acts and correspondence of papal legates and nuncios were received and survive in original in some numbers, and were copied in full into the chronicles and histories of such individuals as Matthew Paris.[63] Although meeting an immediate historical need in their production, the preservation and copying of this material developed a corpus of more informal material that might be relevant for canon law, and certainly provided a channel of communication for the associated concepts and vocabularies.

What then can be said overall about the circulation and ownership of canon law manuscripts in thirteenth-century England? First of all it should be emphasised that this broad category was anything but monolithic or static. Even accepting the imposition of an artificial genre distinction, the juristic output of the leading Bolognese canonists stimulated a diverse and vibrant legal tradition from the time of its inception at the close of the eleventh century. The reception of this material in England certainly seems to reflect a close association with this original scholastic context, given its circulation in collections connected with the teaching and study of canon law, and also a tendency to keep collecting the most current and important works being produced at Bologna over the century. Within the English material there seems to have been an increasing preference for the works of the decretalists over the decretists, as well as general trend towards standardisation and abridgement. These scholastic trends indicate an increasing appetite for functionality in the possession and use of canon law manuscripts, and this attitude was by no means restricted to the scholastic context. Syncretic manuscripts that combined theoretical, procedural and case material both in and text and in marginalia reflected how the study of canon law related to its practice as the

[63] Not all papal letters were decretals, but the writings of thirteenth-century popes tended to be rich with the language and forms of canon law, even when they not formally legal statements.

increasing emergence of a class of 'professional' canon lawyers over the first half of the thirteenth century.[64] Finally, such evidence as survives for royal ownership of canon law material, linked with the circulation of such material in the circles of royal government suggests that similar trends occurred in this area, stimulated by communication with the papacy, which not only required the capacity to comprehend and communicate the arguments of canon law, but also provided a channel for the broader reception of canonist concepts.

Civil Law Manuscripts

As with canon law, recent scholarship has proposed more evidence for the importance of civil law in medieval England, with widespread recognition of this legal tradition from the twelfth-century onwards.[65] Unlike the canon law, the civil was not practised extensively in England, although it would be given slightly increased scope within the limited contexts of the court of chivalry and mercantile cases from the fourteenth century onwards.[66] As the practice and teaching of the English Common Law was increasingly independent from any civilian learning, the study of civil law and the ownership of its manuscript material became increasingly closely connected with university study.[67] In addition to this flourishing academic tradition, civilian

[64] The classic account of the emergence of professional canon lawyers over the thirteenth century is Brundage, *Origins of the Legal Profession*.

[65] For the literature on civil law in England, see Barton, *Roman Law in England*, pp. 14-6; *idem.*, 'The Study of Civil Law before 1380', in Catto and Evans, *The Early Oxford Schools*, pp. 519-30; L. E. Boyle, 'The Beginnings of Legal Studies at Oxford', *Viator,* 14 (1983), 107-31; Brundage, *Origins of the Legal Profession*, p. 92; F. de Zulueta and P. Stein, *The Teaching of Roman Law in England around 1200* (London, 1990).

[66] G. D. Squibb, *The High Court of Chivalry: A Study of the Civil Law in England* (Oxford, 1959). The extent to which the law merchant was a distinct legal system has been subject to considerable debate in recent scholarship, questioning the assertion of civil law influence in this area, J. H. Baker, 'The Law Merchant and the Common Law before 1700', *Cambridge Law Journal*, 38 (1979), 295-306; E. Kadens, 'The Medieval Law Merchant: The Tyranny of a Construct', *Journal of Legal Analysis*, 7 (2015), 253-7.

[67] For the developing Common Law tradition and the separation of its teaching from that of the civil law, see Brand, *Origins of the English Legal Profession*, pp. 143-57; *idem.*, 'Courtroom and Schoolroom: The Education of Lawyers in England prior to 1400', *BIHR,* 60 (1987), 147-65, reprinted in his *The Making of the Common Law*

jurisprudence also persisted as a crucial point of reference for royal justices and legal advisors.[68] Despite this flourishing scholarship, systematic study of the circulation and ownership of civilian texts as a body of manuscripts remains limited, with the exception of the analysis undertaken by W. Senior in the 1930s.[69] Given this restricted scholarship, a survey of the content and trends in civil law manuscripts in thirteenth-century England can provide useful insights into the position of civil law at the time, particularly in terms of its relationship to canon law. Certainly the relationship between civil and canon law was a very close one indeed, as was mentioned above. However, there were important distinctions in the status and usage of the two laws, and surveying the condition of the manuscript evidence highlights these nuances, as well as re-iterating the close integration of the two traditions.

The symbiotic relationship between the civilian and canonist traditions can be demonstrated through the manuscript evidence in two main ways: proximity within collections and proximity in manuscript compilation. Addressing collections first of all, this close relationship can be demonstrated in the distribution and occurrence of civil law manuscripts. Where their provenance can be established, civil law manuscripts regularly appear in collections that also possessed substantial holdings of canonist material. In N. R. Ker's survey of surviving manuscripts, civil law texts dating from the twelfth to thirteenth centuries survive from twelve collections, from nine of which canon law manuscripts also survive. These are the secular cathedrals of Hereford, Salisbury and York, the Benedictine Cathedral houses of Durham and Worcester, the Augustinian Priory of Llanthony secunda,

(London, 1992), pp. 57-75; J. H. Baker, 'Personal Liberty under the Common Law, 1200-1600', in R. W. Davis (ed.), *The Origins of Modern Freedom in the West* (Stanford, 1995), pp. 178-202. For the teaching of civil law at English universities see Leff, *Paris and Oxford Universities in the Thirteenth and Fourteenth Centuries*, p. 178.

[68] Post, *Public Law and the State*, pp. 163-239, 425-32.

[69] W. Senior, 'Roman Law MSS in England', *LQR,* 47 (1931), 337-44.

near Gloucester, and the Benedictine abbeys of Bury St Edmunds, St Augustine's, Canterbury and Reading.[70] The problems of survival, especially in the case of civil law material mean that definitive conclusions cannot be drawn from the evidence of extant manuscripts alone, particularly not the limited selection for which provenance can be identified. However, the strong correlation between possession of civil law manuscripts and canon law manuscripts from even this partial sample is indicative of the close relationship between the two laws. Furthermore, a sense that contemporaries recognised the connection between the two laws can be gained from consulting library catalogues. The Glastonbury Abbey catalogue of 1247 lists six books on the civil law immediately following the records of the eight canon law texts in the same collection.[71] Later catalogues provide a similar picture of civil law manuscripts being listed alongside substantial collections of canonist texts. In the 1327 catalogue of Exeter cathedral books of the canon and civil laws are listed in the same section of the manuscript, of which canon law books form the vast majority, with only three of the twenty texts listed being those related to the civil law.[72] The inventory of the library of St Radegund's, Dover composed at the end of the thirteenth or start of the fourteenth century indicates a similar proportion of civil to canon law books, with only one civilian text among the ten books *de jure*.[73] Additionally, bequests indicate that private owners of civil law manuscripts were also likely to be owners of canonist texts. The books bequeathed by Abbot Benedict to Peterborough Abbey upon his death in 1193 included 11 legal texts, of which four were civilian texts.[74] Similarly, the Inventory of the books owned by Ralph Baldock, councillor to

[70] For these Roman Law MSS see as follows: Ker, *Medieval Libraries,* pp. 19, 22, 44, 69, 98-9, 109, 156, 174, 176, 207, 210-12, 216.
[71] Cambridge, Trinity College 724, printed in Hearne, *Chronica sive historia de rebus Glastoniensibus*, *ii*, p. 430.
[72] Exeter Cathedral, MS. 3671, printed in G. Oliver, *Lives of the Bishops of Exeter: and a History of the Cathedral, with an Illustrative Appendix. With Index Compiled by J. S. Atwood* (London, 1867), p. 304.
[73] Bodl. Rawlinson B.336, printed in A. H. Sweet, 'The Library of St Radegund's Abbey', *EHR,* 53 (1938), 88-93.
[74] James, *Peterborough Abbey Manuscripts,* p. 21.

Edward I and Bishop of London, bequeathed in large part to St Paul's Cathedral upon his death in 1313, included at least six civil law texts among a far larger proportion of canonist texts.[75] The close association between the ownership of civil and canon law books was made particularly clear in the chronicle account of the arrival of Thomas of Marlborough to Evesham abbey. Although unlike the other texts in Marlborough's possession the law books are not named, they are described as being 'utriusque juris, canonici scilicet et civilis'.[76]

This interpenetration is not only evident in the composition of manuscript collections, but also in the compilation of manuscripts themselves. Indeed, it is not always easy to make a clear distinction between manuscripts on the basis of treating 'civil' or 'canon' law separately as it was not uncommon for them to occur in the same compilations or miscellanies. For instance, as we have seen, Worcester Cathedral Library MS F 7 is in the most part composed of Geoffrey of Trani's *Summa Super Titulis Decretalium* (c. 1243), but the manuscript also includes Azo's *Brocarda* of civil law maxims (*ex*. 12th century), as well as Bartholomew of Brescia's *Brocarda* of canonical rules (c. 1234). Geoffrey of Trani was a student of Azo at Bologna and this may serve to explain the linkage of these two texts; certainly the school context played an important role in the production of this manuscript, which was probably created at Oxford soon after 1251.[77] However, the inclusion of the two *Brocardica* specifically is suggestive of a wider methodological association between the two laws. This collection of maxims resolved in an abridged disputational format apparent legal contradictions, which were noted in complete glosses but were collected and summarised in

[75] Woolgar, *Testamentary Records*, pp. 76-7; cf. Ker, 'Books at St Paul's Cathedral before 1313', p. 209. See above, pp. 118ff.
[76] *Chronicon Abbatiae de Evesham, ad 1418*, ed. W. D. Macray, Rolls Series (London, 1863), p. 267.
[77] Worcester Cathedral Library F 7; Thomson and Gullick*, Worcester Cathedral Manuscripts,* pp. 8-9.

such *brocardica*.[78] The inclusion of this concise compilation of maxims as an appendage to Trani's *Summa* may be said to reflect the way in which civil law maxims were expanded and transformed in canonist writings.[79] A more direct interface between civil and canon law texts in practice as well as codicology is shown in Worcester Cathedral F 146, which is comprised of four separate sections bound together, incorporating both civil and canon texts. The second of the four booklets contains the *Liber Iudicum* of John de Deo and assorted commentaries on the civil law. However, in addition to this, the first five folios comprise reports of cases from the church courts, interspersed with notes on the civil law.[80] In their catalogue entry for this manuscript Rodney Thomson and M. Gullick have suggested that this was a lawyer's handbook associated with Worcester from the late thirteenth century. Accepting this description of the manuscript, it would appear that lawyers practising in the church courts in the late thirteenth-century not only consulted both civil and canon law texts, but also appended to their observations of cases in the church courts notes on the civil law.[81] Comparison of these two Worcester manuscripts emphasises the way in which the scholarly influence of civil law upon canonist learning can also be observed in the evidence of the practice of law in the church courts. Thus both in the composition of collections and the compilation of manuscripts the civil and canon laws were in many ways inextricably bound together.

This close association between texts of the civil and canon laws should not however obscure the important points of divergence and distinction between these categories of text

[78] H. Dondorp and E. J. H. Schrage, 'The Sources of Medieval Learned Law', in J. W. Cairns and P. J. du Plessis (eds.), *The Creation of the ius commune: From Casus to Regula* (Edinburgh, 2010), pp. 7-56, at p. 22.
[79] R. C. Figueira, 'Decretalists, medieval Papal Legislation, and the Roman Law of Offices and Jurisdiction', *Res Publica Litterarum: Studies in the Classical Tradition*, 9 (Lawrence, 1986), 110-35, at 119.
[80] For discussion of the canon law content of this MS., see above, pp. 116-17.
[81] Worcester Cathedral Library F 146; cf. Thomson and Gullick, *Worcester Cathedral Manuscripts*, pp. 100-01.

and these distinctions can be illuminated further by a consideration of the civil law manuscript evidence in thirteenth-century England. While the church continued to create new law, the body of Roman civil law set down by Justinian was finite. [82] However, the completeness of Justinian's legislative undertaking and its textual standardisation in the twelfth century did not signify an end to civilian scholarship. New laws were not propagated, but the work of the glossators stimulated the growth of a vibrant and dynamic body of scholarship, and the English collections were not cut off from this contemporary literature, particularly in the case of the major writings of the Bolognese glossators of the thirteenth-century. Vacarius, a Bolognese trained lawyer, had been instrumental in the introduction of Roman law teaching in England as the first known teacher of the civil law in Oxford in the twelfth century and his compilation of extracts of Justinian, the *Liber Pauperum*, continued to be copied in England well into the thirteenth-century and appeared to have value for private consultation, although it was superseded as a textbook by the more complete volumes and glosses.[83] The study of civil law in England required staying abreast of the major developments in Bologna. Where an English civil juridical tradition existed, it often could be found alongside the major Bolognese texts. One example of this is the twelfth century *Brocardica 'Dolum'*, a treatise independent of the Vacarian tradition that survives in six manuscripts of English provenance, including Worcester Cathedral F 14, in which it is bound with Justinian's *Instituta*, Azo's *Brocarda*, the *Apparatus de Regulis Iuris* of Bulgarus, the *Titulus de Verborum Significatione* from the *Digest* and the *Ordo Iudiciarius 'Olim'* of the canonist Otto of Pavia, all texts with

[82] P. Clarke, 'The Growth of Canon and Civil Law Studies, 1070-1535,' in L'Engle and Gibbs, *Illuminating the Law,* pp. 28-38, at p. 27.
[83] *The Liber Pauperum of Vacarius*, ed. F. de Zulueta, Selden Society (London, 1927), p. *li*. For the disappearance of Vacarius from the legal curriculum at Oxford by the 1230s, see Boyle, 'The Beginnings of Legal Studies at Oxford', 126.

strong Bolognese connections.[84] The civil law, as it was studied and appeared in manuscripts from thirteenth-century England was conversant with the dominant contemporary writers of the continent.

Analysis of the glossators most prominent in English civil law material indicates that English jurists were very much engaged with the contemporary developments and dominant texts standardised at Bologna in the early thirteenth century. Among the English manuscript material it is clear that the works of Azo and his pupil Accursius (c.1182-1263) enjoyed the most widespread circulation. Manuscripts of Azo certainly enjoyed a broad geographical circulation in thirteenth century England. An Italian manuscript of Azo's *Summa* survives in Lambeth palace library on the closing flyleaf of which is a note that in 1273 this manuscript, belonging to a Hugh of Skeffling was pledged for the value of forty shillings to a master Stephen of Hedon, both locations in Holderness (Yorks).[85] Another copy of Azo's *Summa* appeared in the inventory of books belonging to Bishop Ralph Baldock as part of his bequest to St Paul's, most likely destroyed in the fire of 1666.[86] Even more popular than Azo was the *Glossa Ordinaria* of his pupil Accursius. The widespread popularity of Accursius's gloss can be particularly well testified by the evidence of English scholars at Bologna, who in the latter half of the thirteenth century commissioned copies of Justinian specifying their desire for this apparatus. One English scholar, William 'Anglige', sold his copy of the *Codex* with an Accursian gloss in 1268 to a Castilian scholar Pontius de Urgius for the exorbitant sum of sixty-six

[84] Worcester Cathedral Library F 14; Thomson and Gullick, *Worcester Cathedral Manuscripts*, p. 14. For more information on the *Brocardica 'Dolum'* see M. Schwaibold, *Brocardica. 'Dolum per subsequentia purgari'. Eine englische Sammlung von Argumenten des römischen Rechts aus dem 12. Jahrhundert*. (Frankfurt, 1985) reviewed by A. Gouron in *JEH*, 38 (1987), 147. Bulgarus was one of the *Quattor Doctores*, students of Irnerius, the founder of the Bolognese school of law, H. Kantorowicz and W. W. Buckland, *Studies in the glossators of the Roman Law: Newly Discovered Writings of the Twelfth Century* (Cambridge, 1938), p. 68.
[85] James, *Lambeth Palace Manuscripts*, pp. 28-9.
[86] Woolgar, *Testamentary Records*, p. 77.

Bolognese pounds.[87] The following year, another English scholar, Roger Marnnon [*sic*], paid the even higher price of one hundred and ten pounds for one volume of the *Institutes,* the *Authenticum*, and three books of the *Codex*, with the Accursian apparatus.[88] Not all purchases in Bologna were so expensive, as in 1269 an English scholar Master Roger, possibly from Leicester (Lechanstech) purchased a copy of the *Digestum vetus* with Accursian apparatus for only sixteen shillings.[89] Given this potential variation in pricing, the more costly payments are worth particular attention, signifying the high value of these legal manuscripts, and the amount of money that some students were willing to pay to acquire a copy.[90] Italian manuscripts with Accursian apparatus certainly made their way back to England. Corpus Christi, Oxford MS 73 is comprised of two booklets, the first of which, comprising Justinian's *Institutes, Authentica* and *Tres Libri*, was of Italian origin, with the Accursian gloss in an English hand, likely added in Oxford – the same glossing hand also composed the second booklet of Frederick II's *Constitutiones Feodorum*, also with Accursian gloss, both booklets being in use in Oxford from c.1300.[91] The *Glossa Ordinaria* was largely completed by 1230 and its prominence in English civil law collections from the mid-thirteenth century onwards indicates that the study of civil law in England engaged closely with the contemporary developments in Bologna. This relatively restricted range of civil law texts demonstrates the preponderance of the dominant Bolognese glossatorial tradition and the close association between the circulation of civilian manuscripts and the world of the schools.

[87] *Chartularium Studii Bononiensis, viii*, p. 109.
[88] *Ibid.*, *x*, p. 71.
[89] *Ibid.*, *xi*, p. 63.
[90] Estimates on the purchasing power of the *libra bononinorum* estimate that by 1290 a moderate house could be purchased for £bon.200. A. Thompson, *Cities of God. The Religion of the Italian Communes 1125-1325* (University Park PA, 2005), p. *xii*.
[91] Thomson, *Corpus Christi College, Oxford Manuscripts*, pp. 38-9.

Certainly the evidence of Roman law manuscript ownership and distribution reflects a far closer relationship with the universities than the more disparate canon law material. In England this particularly close association between the civil law and the universities was strengthened in the reign of Henry III by his 1234 prohibition of its teaching in London.[92] This association with the universities certainly influenced the distribution and dissemination of civil law texts in thirteenth-century England. The earliest statutes for the teaching of civil law at the University of Oxford date from the early fourteenth century, although they likely reflect earlier pedagogical practice. The ordinary texts were the *Digestum vetus* and the first nine books of the *Code* and inception required reading also upon either the *Infortiatum* or the *Digestum novum*, the *Institutes* or the *Authenticum* and the three extraordinary books of the *Code*.[93] Given the dominance of Justinian both in statistical pre-eminence in the surviving manuscripts and substantive primacy in the teachings of the schools, the association between English civil law manuscripts and the scholastic context was substantial. Indeed, this textual association could be explicitly recognised by contemporaries, as can be seen in the case of the books brought to Evesham by Abbot Thomas of Marlborough. As mentioned above, the titles of the *libri utriusque iuris* brought by Thomas are not named in the Evesham chronicle, of which the abbot himself may have been an author, but the chronicle does assert the academic provenance of these volumes, stating that he had used them when teaching at Oxford and Exeter.[94] Ralph Baldock, the Bishop of London who made such an extensive bequest of civil and canon law texts to St Paul's Cathedral was similarly possessed of Oxford training.[95] In addition to these connections of personnel, civil law manuscripts themselves can

[92] J. Selden, *Ad fletam dissertatio historica* (London, 1647), p. 525; *Close Rolls, iii*, p. 26, for this mandate as a protection for the universities, see Barton 'The Study of Civil Law before 1380', p. 521.
[93] Barton, 'The Study of Civil Law before 1380,' p. 525.
[94] *Chronicon Abbatiae de Evesham*, p. 267; see above, p. 125.
[95] Emden, *Oxford*, p. 2147-8; see above, pp. 101, 109, 118, 124-5, 128.

be seen to emerge from a university milieu. Further to the evidence for the purchase of civil law manuscripts by English students at Bologna demonstrated above, it is possible to identify manuscripts of Roman law which can be seen to have been either produced or used at the universities of Oxford and Cambridge. A twelfth-century French manuscript of the *Infortiatum* of Justinian now in the Vatican library features Accursius's *Glossa Ordinaria* and *Additiones* to that Gloss in a thirteenth-century English hand and may well have been associated with Oxford.[96] Certainly the addition of the glosses and the inclusion of a rubrication table as finding aid for the manuscript appears to indicate a scholastic context.[97] Other civil law manuscripts potentially in use in Oxford in the thirteenth century include Corpus Christi, Oxford MS.73, Worcester Cathedral MS F.7, Merton College MS.320 and New College MS.343, while Worcester Cathedral F.135 has a posited association with Cambridge.[98] Certainly both the known owners of civil law manuscripts and the evidence provided by the manuscripts themselves suggest that these treatises were closely connected with the university context.

Given this university context, what relationship can be established between the circulation of civil law manuscripts and the potential development of a government mentalities in thirteenth-century England? As with the circulation of canon law manuscripts, the connection between the administration of Henry III and the schools provided a meaningful channel for the communication of these ideas and texts, particularly through the recruitment of university-trained *magistri* for the offices of government.[99] The connection between the civil and canon laws further expanded this channel of communication. In terms

[96] Vatican Library Vat.lat.1414; *A Catalogue of Canon and Roman Law Manuscripts in the Vatican Library*, ed S. Kuttner and R. Elze (2 vols, Vatican City, 1986-7), *i*, pp. 210-11.
[97] For the importance of rubrication and finding aids cf. Parkes, 'The Influence of the Concepts of *Ordinatio* and *Compilatio*', pp. 115-41; discussed above, p. 94.
[98] Thomson and Gullick, *Worcester Cathedral Manuscripts*, pp. 8-9, 95-6, Thomson, *Corpus Christi College, Oxford Manuscripts,* pp. 38-9, Thomson, *Latin Commentaries on Aristotle, Oxford*, pp. 347-9, 358.
[99] For these connections, see above, pp. 51-69.

of the manuscript evidence, it is possible to identify royal administrative possession of civil law manuscripts, although the restricted evidence for royal books means that civil law texts cannot be explicitly identified during the reign of Henry III. When the books of Peter de Peckham, clerk of the Treasurer William March, were taken into the custody of the Exchequer in 1293, these included seven volumes of civil law; three copies of the *Code*, one with the apparatus *de verborum significatione*, the three parts of the *Digest*, *vetus*, *novum* and *infortiatum*, and one further volume containing the *Institutes and Authentica* along with the three extraordinary books of the *Code*. Although no direct connection has been made between Peckham and the universities, he is referred to in the treasury memorandum that records this bequest as *magister* and the texts listed bear a close correlation with those required for inception in Civil Law at Oxford.[100] The details of Peckham's bequest have been discussed above in relation to the canon law material, but some further observations can be made about the civilian content. First it is clear that this clerk working within the Exchequer owned a considerable quantity of civil law material, possibly associated with a university training. Furthermore, the inventories themselves of these books reflect a working knowledge of the different civil law texts that are named explicitly and individually. That the volumes were deposited in the Exchequer also appears to suggest that this was considered an appropriate location for them and civil law texts continued to be found within the offices of the Exchequer. Edward II's 1313 summons of manuscripts from the Exchequer also included a number of civil law volumes, including multiple copies of some volumes, including three *Codices*.[101] While these texts may have ultimately been among those gifted by the king to his foundation of King's Hall in Cambridge in 1317, the continued association between civil law

[100] Whitwell, 'Libraries of a Civilian and Canonists and of a Common Lawyer', see above, pp. 118-19.
[101] *Close Rolls, Edward II, 1313-19,* p. 10; see above, pp. 119-20.

texts, the universities and the exchequer is not to be understated.[102] Indeed, the foundation was closely connected both with the training of educated clerks for service in royal and ecclesiastical administration, as well as the extension of the household offices and Chapel Royal in particular.[103] The overlap between prosopographical evidence and the depositing of books of civil law in the Exchequer in the later thirteenth and early fourteenth centuries makes a compelling case for an accepted connection between the scholarly milieu from which civil law texts originated and the government *mentalité* of Henry III's kingdom.

Thus the evidence for the circulation of civil law texts can provide illuminating points of reference for the wider manuscript culture of thirteenth-century England and the mental worlds which it both emerged from and stimulated. These connections can be highlighted by analysing not only the close interpenetration between the civil and canon laws, but the points at which their respective manuscript cultures diverged. In many ways, both in terms of theory and codicology, the two laws were inseparable, but the theoretical emphasis of the civil law due to its closed nature had significant effects on its manuscript culture. The civilian texts emerged from a far narrower range, and the English evidence from the thirteenth-century shows a particularly close connection with the world of the schools and the dominant teachers of Bologna. However, scholasticism was not synonymous with abstraction, and both the association of civil law studies with the practice of canon law and the relationship between the learned civil law of the schools and the offices of the Exchequer in particular facilitated a broader reception of civil law texts.

[102] For the donation to King's Hall, see Cavanaugh, 'Royal Books', 308.
[103] A. B. Cobban, 'Edward II, Pope John XXII and the University of Cambridge,' *Bulletin of the John Rylands Library*, 47:1 (1964), 52-8.

Dictaminal Manuscripts

Let us now move from the civil law to the third category of manuscripts to be considered by this study, those concerning *dictamen*. Many of the issues to be addressed in surveying the manuscript material for the *ars dictaminis* in thirteenth-century must be framed in terms of the historiographical tradition concerning this literature, particularly in terms of its treatment and reception in England. In previous generations of historiography, interest in the history of the English Common Law emphasised its incompatibility with dictaminal and notarial practice. The work of Noel Denholm-Young on 'The *Cursus* in England' surveying surviving manuscript evidence for dictaminal treatises was for many years almost the only exception, certainly in English language scholarship, which had largely restricted the influence of this practice in England to limited 'business' training at Oxford.[104] This scholarship has been transformed over recent decades, with the work of Martin Camargo doing the most to illuminate the vibrancy of the dictaminal tradition in England and the importance of the thirteenth century for its development.[105] However, while Camargo has provided invaluable insights into the circulation of dictaminal manuscripts in England from the thirteenth-century onwards, his work has concentrated overwhelmingly on theoretical dictaminal treatises rather than on the practice of *dictamen* and the collation of more informal letter-books and formularies. The manuscript evidence from thirteenth-century England depicts a far more diverse body of material. In addition to the academic theory, the works of the *dictatores* were inextricably

[104] N. Denholm-Young, 'The *Cursus* in England', in his *Collected Papers* (Cardiff, 1969), pp. 42-73. Denholm-Young's work was certainly the only significant study of the manuscript evidence, though more general questions about *dictamen* and business administration were addressed in Richardson, 'Business Training in Medieval Oxford'. The work of Ernst Kantorowicz also addressed questions regarding *dictamen* in England, but, especially early in his career, before fleeing Nazi Germany, he did not write for an English-language audience. The role of his scholarship is explored below in more detail, pp. 270-1.

[105] The works of Martin Camargo are extensive and many of his studies have been recently collected in a Variorum Reprints Edition, M. Camargo, *Essays on Medieval Rhetoric*, Variorum Collected Studies (Farnham, 2012); see also, *Medieval Rhetorics of Prose Composition. Five English* Artes Dictandi *and their Tradition*, ed. M. Camargo (Binghampton, 1995).

connected with practical and model material. Letter-books and formularies have as much bearing on the reception of the *cursus* in England as do the more didactic manuscripts, and the distinction between these categories was not always clear. Dictaminal exemplars were not necessarily defined by the purpose of their author but by their subsequent function, so that diverse sources of canon law as well as international diplomatic could enrich the theoretical literature. In this interplay between theory and practice, the English manuscript evidence reflects a distinct preference for pragmatism and functionalism, suggesting that these practices were conceived of not only in terms of literary elegance, but also in their direct utility and applicability.

The theoretical dictaminal material that circulated in thirteenth-century England was for the most part of continental origin; however it may be described as falling into two broad types, the French and the Bolognese, traditions that might also be described as the poetic and the legal. Until the mid-thirteenth century the dictaminal treatises that were received into England were of French origin, rather than directly imported from Bologna, and this preference for French works allowed for a greater flexibility in the reception and practice of *dictamen* in England in England. In contrast to the rigid and schematized system set out first in Bologna by Alberic of Monte Cassino the conception of dictaminal rules in the French *artes* was positioned within a wider and more broadly humanistic framework of the *ars grammatica*. [106]

[106] Murphy, *Rhetoric in the Middle Ages*, pp. 226-9, 239. For the poetic emphasis of *dictamen*, cf. Denholm-Young, 'The *Cursus* in England,' p. 49, for the long-term influence of this poetic attitude to *dictamen*, see E. Steiner, *Documentary Culture and the Making of Medieval English Literature* (Cambridge, 2003), p. 57. For the French *dictatores* circulating at this time, see e.g., M. Camargo, 'The English Manuscripts of Bernard of Meung's *Flores Dictaminum*', *Viator*, 12 (1981), 197-219; *Idem*., '*Tria Sunt:* The long and the Short of Geoffrey of Vinsauf's *Documentum de modo et arte dictandi et versificandi*', *Speculum*, 74 (1999), 935-55, reprinted in his *Essays on Medieval Rhetoric*.

Despite this early flourishing of theoretical and poetical *artes dictaminis*, over the course of the thirteenth-century and during the reign of Henry III in particular, the English manuscript evidence demonstrates an increasing desire for the more pragmatic and systematising Bolognese *dictatores*, as well as the established models of letter-writing practice. Of the more theoretical Bolognese authors, Guido Faba perhaps attained the greatest prominence. The *dictaminal* miscellany British Library Add. 8167, which contains one of the surviving thirteenth-century copies of Bernard of Meung identified by Camargo also contains a number of Faba's treatises. Denholm-Young identifies six separate works by Guido Faba in this manuscript, while Camargo only clearly identifies four, and queries the identification of *De arte conscribendi epistolas* starting on f.155 as a work of Faba's, not only because Faba is not named in the scribal heading, but also because this work does not appear in Virgilio Pini's account of Faba's life and works.[107] Faba's reception in England is further testified by the appearance in Oxford, New College MS.255 of a work of his known as the *Rota nova*. Indeed, this is the only surviving copy of this work and is a highly theoretical treatise, although its introduction has a semi-autobiographical character.[108] Other Italian authors whose works circulated in thirteenth century England included Thomas of Capua and the Roman notary Richard de Pophis, the latter of whose work particularly focussed on the dictaminal style of the Roman curia.[109] This increasing proportion of Italian works reflects a

[107] Denholm-Young, 'The *Cursus* in England', pp. 67-8; Camargo, 'English Manuscripts of Bernard of Meung', 205-6; V. Pini, 'La "Summa de Vitiis et virtutibus" di Guido Faba,' *Quadrivium* 1 (1956), 41-152.
[108] Oxford, New College 255. This manuscript is discussed briefly in Denholm-Young, 'The *Cursus* in England', p. 64, and is used by Ernst Kantorowicz as a biographical source for Faba, but has otherwise been little studied; E. Kantorowicz, 'An "Autobiography" of Guido Faba', *Medieval and Renaissance Studies*, 1 (1943), 253-80, reprinted in his *Selected Studies*, pp. 194-212.
[109] A copy of Richard de Pophis's *Summa Dictaminis* survives in Merton College, Oxford 194. Denholm-Young dated this manuscript to the fifteenth century, 'The *Cursus* in England', p. 69, but Thomson's work cataloguing the Merton manuscripts has dated it to the latter half of the thirteenth century, working not only on the palaeographical evidence, but also through the reference in the manuscript to Master Simon of Evesham, canon of York who died c.1269-71, *A Descriptive Catalogue of the Medieval Manuscripts of Merton College, Oxford*, ed. R. M. Thomson (Cambridge, 2009), p. 141.

growing desire for pragmatic and utilitarian approaches to *dictamen*, moving away from the theoretical and conceptual approach favoured by the French authors.

In addition to the acquisition of particular authors and texts, the codicological evidence also points towards an increasingly pragmatic attitude to dictaminal studies. As Camargo observed, the vast majority of medieval teaching manuscripts were bound together to form collections organised by subject matter.[110] Given this context, the tendency not only to include model letters within theoretical treatises, but also to bind them together in compilations with additional exemplars demonstrates how the teaching of *dictamen* in England was closely connected with considerations of letter-writing in practice. Despite the abstract nature of the *Rota nova* and the uncertain identifications of some of the 'Fabian' texts in Add. 8167 what both of these compilations demonstrate is the tendency not only to consult the more function-oriented Bolognese authors, but for English *dictaminal* manuscripts to contain an increasing proportion of formulary material.[111] New College 255 was discussed only briefly by Denholm-Young and Kantorowicz, but attention to the finding aids and presentation of the material included along with the *Rota Nova* suggests that the formatting of the manuscript reflected a particular concern with the consultation of the exemplary material. On f.17v, examples of forms of ecclesiastical address in model letters which, according to the *incipit* were composed by Guido Faba are clearly arranged for ease of visibility and consultation, with well-spaced lines between each address, the use of

[110] M. Camargo, 'Beyond the *Libri Catoniani*: Models of Latin Prose Style at Oxford University ca. 1400', *Mediaeval Studies,* 59 (1994), 165-87 reprinted in his *Essays on Medieval Rhetoric*, p. 167.
[111] For an outline of the model contents of Add. 8167 see Camargo, 'English Manuscripts of Bernard of Meung', 205-6; and Crouch and Carlin, *Lost Letters of Medieval Life*, pp. 5-7.

alternating red and blue capitals and organised in a descending hierarchy of the different grades of recipient.[112] The relation of this model material to practice is also made visible in the presentation of the text, as can be shown in the form letters on ff.32v-33.[113] These exempla are mostly papal and imperial in their style and the first line of each address has been composed in narrow elongated capitals, imitating the dominant charter style of the thirteenth century. Clearly these exempla were recorded by a scribe familiar with administrative scripts. Marginal additions also sought to encourage easy consultation of the exempla. In the form letters attributed to Bolognese scholars (ff.40v-49) each separate form letter is clearly marked not only by the use of red capitals, but also by the addition of pointers in the margin at the beginning of each model. Other marginal also suggests this functionalist attitude. There is little marginal annotation on the folios of the *Rota Nova* itself as a theoretical treatise, except for occasional pen tests on ff.4 and 9v-10, and the one substantive marginal addition is made on f.7, which has been misplaced and should in fact be f.1. At the foot of this folio, in a hand identified by Denholm-Young as not much later than the scribal hand a table of forms for the use of polysyllabics has been presented.[114] Of all the marginal additions to this manuscript this coheres most closely to the theoretical and rhythmical strictures of the *cursus*, yet its clear tabulation indicates a utilitarian and pragmatic consultative readership. This readership can also be seen in the additions to the *Summa Dictaminis* of Richard de Pophis in Merton College MS 194, to which additional documents apparently related to York cathedral have been appended in a late thirteenth-century English hand.[115] The association of dictaminal treatises with practical exempla clearly demonstrates

[112] New Coll. 255 f. 17v.
[113] *Ibid.,* ff. 32v-3.
[114] *Ibid.,* ff. 4, 9v-10, 7.
[115] Thomson, *Merton College Manuscripts*, p. 141.

an increasing concern for the utilitarian functions of the *ars dictaminis* and its application to the business of English administration.

Perhaps the greatest evidence of this utilitarian attitude to *dictamen* can be found in the popularity of model letter collections independent from the theoretical speculations of the *dictatores*. In this respect, the works of the Imperial proto-notary Petrus de Vinea were by far the most influential in England.[116] Certainly, copying of his letters, compiled after his death in 1249 by his pupil Nicholas de Rocca into six books without prefatory or theoretical material, was prolific in England from the late thirteenth century onwards.[117] Indeed, the rapid reception of de Vinea's work can be testified by the existence of several late thirteenth-century manuscripts of English provenance. While Denholm-Young dated all the English de Vinea manuscripts he listed as of fourteenth-century origin or later, subsequent work, especially the definitive catalogue of Hans Martin Schaller has identified thirteenth-century copies, among them manuscripts not identified by Denholm-Young.[118] Among these thirteenth-century manuscripts the most precise provenance can be established for that now in the collection of Corpus Christi College, Cambridge. This manuscript was originally in the collection of the Benedictine Cathedral Priory of Canterbury, Christ Church, belonging to Nicholas of Sandwich, who was prior for the period 1258-80.[119] A thirteenth-century Italian

[116] See above, pp. 38-40.
[117] For the composition of the de Vinea compilations, see Kantorowicz, 'The Prologue to *Fleta',* p. 173. Different selections of these letters have been printed, *Petri de Vineis Judicis Aulici et Cancellarii Friderici II. Imp. Epistolarum Quibus Res gestae ejusdem imperatoris aliaque multa ad Historiam ac Jurisprudentiam spectantia continentur.* Libri VI, ed. S. Schardius and J. R. Iselius (Basel, 1740); and Huillard-Bréholles, *Vie et Correspondance de Pierre de la Vigne.*
[118] For Denholm-Young's list, see 'The *Cursus* in England', p. 68; *Handschriftenverzeichnis zur Briefsammlung des Petrus de Vinea*, ed. H. M. Schaller (Hannover, 2002).
[119] Cambridge, Corpus Christi College, MS. 288; Schaller, *Handschrifenverzeichnis*, p. 48.

manuscript of the *Epistolae* survives in Merton College MS 122, which may have been in England by the early fourteenth century.[120] In all, the extreme popularity of de Vinea in fourteenth-century manuscripts suggests that this built upon a thirteenth-century tradition.[121]

But what does the manuscript evidence of de Vinea material suggest about the reception of *dictamen* in thirteenth-century England and how was this material received? In his work on the reception of de Vinea's material in England, Ernst Kantorowicz referred to what he described as "transmission through the recipient", which allowed for the copying and circulation of letters by de Vinea from the official correspondence, predating the composition of the 'official' *Epistolae*.[122] The most widespread recipient transmission can be seen in the use and recording of de Vinea's official correspondence on behalf of Frederick II, which subsequently appeared in the chronicle accounts of Matthew Paris and Roger of Wendover.[123] Other Frederician letters separate from the official collections appear in Bodleian Library Auct. F. 1. 8 and British Library Hargrave 313. The Bodleian manuscript has one de Vinea letter, that of Frederick II to the Roman Cardinals in 1229 appended to a copy of the *Policraticus* of John of Salisbury and the letters of Symmachus and Arnulph of Lisieux.[124] In addition to several Frederician letters, the Hargrave manuscript also contains a single charter of Frederick II, in a manuscript containing an assortment of material relating to English legal history and the exchequer in particular.[125] This inclusion in such a manuscript of legal

[120] Thomson, *Merton College Manuscripts*, p. 100.
[121] This popularity can be attested by BL, Royal MS 11.xii, a dictaminal treatise which is entitled as being letters of de Vinea, but whose contents bears no resemblance to the Vinea letters. This wrongful attribution could merely be a scribal error, but it nonetheless suggests the association of *dictamina* with the de Vinea letters.
[122] Kantorowicz, 'The Prologue to *Fleta,*' p. 171ff.
[123] Kantorowicz, 'The Prologue to *Fleta,*' p. 171ff; *idem.*, 'Petrus de Vinea in England', 75ff and Vehse, *Die amtliche Propaganda in der Staatskunst Friedrichs II*, pp. 216-236.
[124] Bodl. MS. Auct. F.1.8 f. 140v.
[125] BL. MS. Hargrave 313 ff. 100v, 103v-108v.

and administrative interest suggests that the products and style of the imperial chancery, including those penned by de Vinea were of interest to those actively engaged in the administration of thirteenth-century England.[126]

There is however another observation that can be made about the de Vinea manuscripts and the inclusion of dictaminal models in such compilations, from which broader conclusions about the place of the *ars dictaminis* in English manuscript culture can be drawn. The reception and use of stylistic models was far more widespread and flexible than a rigid obedience to the most rigid rules of the *ars dictaminis*. Indeed, it should be noted that this discipline was not monolithic and uniform, but rather reflected a graded hierarchy of complexity.[127] The use of formularies and model letters was far more widespread than the adoption of the most elegant forms of the *stilus supremus*, both on the Continent and in England.[128] In this respect, the use of exempla material indicates a far wider reception of letter-writing practice, a reception that was not restricted to the writings of the theoretical proponents of the *ars dictaminis*. The *ars dictaminis* was not without an English audience, but over the course of the thirteenth century the interest became increasingly pragmatic. This was reflected not only in a growing appetite for the products of the Bolognese *dictatores*, but also with an increasing move towards exempla material over theoretical treatises and the proliferation of model letter collections. This shift towards exempla over theory was not restricted to England, and has been the basis for criticism of the thirteenth-century *dictamen*

[126] This appears to have been the case in the fourteenth century; B. Grévin, 'Writing techniques in thirteenth- and fourteenth-century England: the role of the Sicilian and Papal letter collections as practical models for the shaping of royal propaganda', in M. Ormrod (ed.), *Fourteenth-Century England VII* (2012), pp. 1-29.
[127] Herde, 'Literary Activities of the Imperial and Papal Chanceries', p. 227.
[128] Herde, 'Papal Formularies for Letters of Justice (13th-16th Centuries)', p. 123, G. Constable, *Letters and Letter-Collections* (Turnhout, 1976) p. 11, Crouch and Carlin, *Lost Letters of Medieval Life*, pp. 1-5.

becoming increasingly sterile and mechanistic.[129] However, it may instead be concluded that this exemplary function of *dictamen* allowed for its closer integration with the world of legal studies and administration.[130] With this close relationship between legal and dictaminal material it is possible to postulate a far broader influence of papal and imperial style and rhetoric into the governmental mentalities of thirteenth-century England than would appear from an analysis of *dictamen* based solely upon the theoretical treatises of the *ars dictaminis*.

Conclusion

In analysing the role of legal and dictaminal material in thirteenth-century English manuscript collections, this study has considered in turn the evidence of canon law, civil law and the *ars dictaminis*. This division was imposed for the purposes of structuring rather than making a qualitative distinction; what this analysis has made most clear is the interdependence of these textual traditions in their manuscript contexts, not only in the composition of manuscript collections, but also in the structuring and organisation of compilations. Three main conclusions can thus be drawn from this evidence. The first is that these manuscripts tended to be associated with teaching collections. The second conclusion is that participants in the manuscript culture of thirteenth-century England were informed and selective consumers able to make deliberate choices about their manuscript material. And the third and final conclusion is that this preferential readership increasingly inclined towards pragmatic and utilitarian material over theoretical treatises. This utilitarian aspect is the most significant for

[129] For the literature that suggests an increasingly mechanistic sterility in *dictamen*, see Constable, *Letters and Letter-Collections*, pp. 36-7, L. J. Paetow, *The Arts Course at Medieval Universities with Special Reference to Grammar and Rhetoric* (Champaign, 1910) p. 76.
[130] H. G. Richardson, 'Letters of the Oxford *Dictatores*' in Salter, Pantin and Richardson, *Formularies Which Bear on the History of Oxford, ii*, pp. 331-450, at p. 345.

the influence of this integrated body of texts upon the development of government mentalities in the reign of Henry III, as it indicates the association of this material not with pure scholarly abstraction, but with questions of practical application and administration. Even the *ars dictaminis*, which in its theoretical form presents the most restricted body of manuscript evidence, when understood in relation to the role of exemplary material in letter-writing practice possessed a far broader and pragmatic base, closely connected with the concerns of law and governance. The middle decades of the thirteenth-century were a crucial period for this textual transmission, particularly in the development of an English formulary tradition, and thus the following section of this thesis will consider the linguistic influence of these textual developments, a period for which this language of government has yet been little studied in light of these influences.[131]

[131] For the development of formularies in the first half of the thirteenth century, see Crouch and Carlin, *Lost Letters of Medieval Life*, pp. 3-5. Grévin's 'Writing techniques in thirteenth- and fourteenth-century England' only considers the reign of Edward I onwards, while it is clear that this material circulated from a far earlier date.

Three: The Rhetoric of Government

Introduction

We have seen that the reign of Henry III saw the prominence in royal government of an international clerical elite, engaged with continental, especially papal, practices, informed by learned law. At the same time, this elite could have access to, own and employ manuscripts of the learned civil and canon law, as well of the *ars dictaminis*. To what extent then, did these men have any substantive influence on the theory and practice of government at this time? In itself, this question raises considerations about how to define or measure influence, particularly given the central focus of this thesis on the assessment of governmental *mentalité*, and its associated aims of exploring the relationship between European administrative culture and attitudes to royal power during the reign of Henry III. This approach thus focusses on the intersection between the theories and practices of government, and requires a synthesis of ideological influences and the roles played by the administrative personnel in their transmission. One way of pursuing analysis of this sort is through the lens of political language; scholars of the later middle ages have adapted this perspective to consider the relationship between the actions of government, and the ways in which they were communicated, justified, and understood.[1] The following chapters propose that the influence of a deliberately universalising European political culture, which synthesised the arguments of the learned laws with the rhetoric and style of the *ars dictaminis*, was substantial, and that a survey of the language of politics deployed by Henry

[1] Watts, 'Ideas, Principles and Politics'; J.-P. Genet, 'New Politics or New Language? The Words of Politics in Yorkist and Early Tudor England', in J. L. Watts (ed.), *The End of the Middle Ages?* (Stroud, 1998), pp. 23-64; the collected essays in Fletcher, Genet and Watts, *Government and political life in England and France, c.1300-c.1500*, further develop these concepts in a comparative cross-Channel analysis.

III and his administration reflected an engagement with the ideas and vocabulary of learned practice in order to bolster royal authority in thirteenth-century England.

Using the term 'political language' to frame this analysis raises a number of methodological questions, not the least of which is the definition and scope of what may appear to be a somewhat opaque term. In the broadest of terms, 'political language' was the language of politics; understanding the distinction between modes of language articulated by J. G. A. Pocock, in which distinguishing a language was not a case of differentiating between English and Latin, but rather identifying a set of specialised idioms.[2] By analysing the language choices of Henry III's government, this section builds on Quentin Skinner's contextualist theory of political thought, as well as an understanding of the performativity of texts as transmissions of persuasive speech acts.[3] The specialised idioms of royal government can not only be used to measure the influence of the contextual factors of personnel and manuscript circulation, but it also provides the opportunity to consider the language choices of Henry III's administration as an active part of governance, as both instrumental and illustrative of the king's authority. So we are looking at not only 'political language' in the broader sense, but specifically at the adoption of the 'language of power' identified by Benoît Grévin as being developed across the continent at this time, a language particularly informed by the vocabularies of Roman civil and canon law, and the rhetorical styles and structures of the *ars dictaminis*.[4] This section contends that this *écriture du pouvoir* played a more significant part

[2] Pocock, 'Texts as Events: Reflections on the History of Political Thought', p. 27.
[3] Q. Skinner, 'Some Problems in the Analysis of Political Thought and Action', *Political Theory*, 2 (1974), 277-303; J. L. Austin, *How to Do Things with Words: the William James lectures delivered at Harvard University in 1955* (Oxford, 1962), p. 6.
[4] B. Grévin, 'Les mystères rhétoriques de l'État médiéval: L'écriture du pouvoir en Europe occidentale (XIIIe-XVe siècle),' *Annales*, 63 (2008), 271-300.

in shaping the theory and practice of government during the reign of Henry III than has been previously recognised.

In comparison to the prosopographical survey of Henry III's reign more broadly and the consideration of manuscript circulation through the long thirteenth century, this section explores a much narrower chronology, ranging broadly from the fall of Hubert de Burgh and the *de facto* end of the minority in 1232 to the formalisation of Henry III's agreement with Innocent IV to secure the kingdom of Sicily for the king's second son Edmund in December 1252. This restricted scope seeks to refocus the chronological approach to the reign of Henry III. The personal rule of Henry III has for a large part been overshadowed by the great political and constitutional crises of 1215 and 1258-67, and this has tended to telescope the literature exploring political ideas and language over this period.[5] With a few notable exceptions, such as Michael Clanchy's article 'Did Henry III have a Policy?', studies of Henry III's personal rule have focused on explaining the period of Baronial Reform and Rebellion, rather than considering the political culture of this period of the reign on its own terms.[6] Neither the crises of John's reign nor the period of Baronial Reform could or should be ignored or neglected, but the theories of royal government during the personal rule must also be considered in their own context and in their own right.

[5] For a more detailed survey of the literature on the reign, see above, pp. 10-19.

[6] Clanchy, 'Did Henry III have a Policy?'; another valuable survey which treats the earlier portions of the reign on their own terms is Stacey, *Politics, Policy and Finance under Henry III*; it is striking to note that in a recent volume on the reign of Henry III, only one article deals with the issue of kingship, and then only for the years 1257-61, P. Hoskin, 'The Church and the King: Canon Law and Kingship in England, 1257-61', in Crook and Wilkinson, *The Growth of Royal Government under Henry III*, pp. 196-212. The desire to explain and understand the events of 1258-67 is of course extremely important, for a compelling recent survey of this literature, see C. Tilley, 'Modern Historians and the Period of Reform and Rebellion, 1258-1265', in A. Jobson (ed.), *Baronial Reform and Rebellion in England, 1258-67* (Woodbridge, 2016), pp. 13-29.

This concern to consider royal government on its own terms also frames the sources considered in this section. In order to evaluate the performative language of politics in this period, particularly in regards to the influence the *Ius Commune* and *dictamen*, this study draws upon the output of the epistolary branch of the royal administration, the Chancery. The Patent and Close Rolls, as well as the Charter Rolls, show Henry III's government in action, but they also show that government in the act of self-representation and persuasion.[7] The letters and charters they recorded were not only instrumental acts, but performative ones. The importance of these communications as part of the process of royal image creation is of particular significance given the absence of more loquacious theoretical treatises such as the Mirrors for Princes which would gain increasing prominence towards the end of the century.[8] While Michael Clanchy made effective use of a number of the king's recorded speeches in the Exchequer, these were numerically few.[9]

Preambles to Royal Statutes would be one area where we might expect to find discussions of this kind, but Henry III undertook very little statutory activity during this period, except for the 1236 Provisions of Merton, the preamble to which did not dwell on the nature of royal authority. While the period of conflict between Henry III and the reforming barons would see more explicit qualitative assertions about kingship, evidence from this earlier period tended to concentrate on royal power in action, rather than conceptually. Statements which reflected explicitly on the nature of kingship all too often were transmitted through a filter of receptions, the most substantial of which was the chronicle tradition. Perhaps the clearest articulation of regnal theory during the period of this study comes from an

[7] The Close Rolls are printed for this period in extenso, but the Patent Rolls are calendared, thus the linguistic analysis has required drawing upon the original rolls at the National Archives.
[8] The classic study of this genre is Briggs, *Giles of Rome's* De regimine principum.
[9] Clanchy, 'Did Henry III have a Policy?'.

anonymous letter preserved in an ecclesiastical letter-book in Bodleian Library MS Digby 11, describing the events of a meeting between the king and bishops to discuss a papal subsidy ca.1247. This letter transcribed a speech attributed to Henry III in which he explicitly expressed his conception of the relationship between the king and the magnates:

> "I am" [Henry III] said "your prince [*princeps*] and king. Without you I am not able to live, nor you without me. You depend on me and I am dependent on you, so when I am rich, you are rich, and if I am poor, you are poor…"[10]

This reported speech placed the king at the centre of the political community, and elided his interest with the common interest. Nonetheless, while it did employ the vocabulary of the Roman Law *princeps*, it made no precise assertions as to the nature of the royal authority.[11] The absence of such works of political thought did not necessarily indicate an absence of political thinking; and it is in this context that this study focusses on the epistolary products of the royal chancery. These letters and charters were public acts which both were framed by and sought to frame the conceptions of government and royal power in thirteenth-century England.[12]

This recentralisation of royal conceptions of government also frames what might appear to be a substantial lacuna in this section. There will be no extensive treatment of the much-discussed legal treatise *On the Laws and Customs of England*, commonly known as

[10] Bodl. MS Digby 11 f.96b. See also, R. Hill, 'Ecclesiastical Letter-Books of the Thirteenth Century,' (DPhil Thesis, University of Oxford, 1936), p. 268; and D. W. Burton 'Politics, Propaganda and Public Opinion in the Reigns of Henry III and Edward I,' (University of Oxford DPhil Thesis, 1985), p. 18, as well as Clanchy, 'Did Henry III have a Policy?' 207-11.

[11] G. Constable, 'The concept of *Princeps* in Gratian's *Decretum*,' in *Le Prince, son peuple et le bien commun. De l'Antiquité tardive à la fin du Moyen Age*, ed. H. Oudart (Rennes, 2013), pp. 115-24, K. Ubl, 'The concept of *princeps* in late medieval political thought: a preliminary survey,' in *Princely Rank in Late Medieval Europe: Trodden Paths and Promising Avenues,* ed. T. Huthwelker (Ostfildern, 2011), pp. 259-80.

[12] This distinction between 'political thought' and 'political thinking' was employed by John Sabapathy in his *Officers and Accountability in Medieval England, 1170-1300* (Oxford, 2014), pp. 11-12, in reference to the work of Janet Nelson, but other scholars have taken a similar approach, see for example, J. L. Watts, *Henry VI and the Politics of Kingship*, (Cambridge, 1996), esp. pp. 13-81.

Bracton. Although the noted Romanizing tendencies in Bracton may make this seem like an unusual exclusion, the reason for its absence is two-fold. First of all, the field of Bractonian literature, both from the legal and political perspectives, is a large and fertile one and incorporating his work into this study would provide little novelty or illumination.[13] Secondly, and in part connected with this vibrant scholarship, a case can be made that Bracton looms disproportionately large in the literature on the reign of Henry III. His text, with its documented eccentricities and revisions, as well as its contested authorship, is not an unproblematic source. While it is an undoubtedly invaluable record, it has perhaps too often been assumed to be a normative one; there is no unassailable reason to suppose that the attitudes and assumptions about kingship and the rule of law which this treatise asserted both explicitly and implicitly should automatically to be understood as typical of either thirteenth-century England more broadly, or the political ideas of the royal government more specifically. Taking a step away from Bracton may make it possible to take a step towards the king, and how the conceptions of authority at the centre of English government contributed to the development of political culture.

The majority of recent works on political thinking in thirteenth-century England – including some of the most illuminating – have focussed on the development and intellectual

[13] A full rehearsal of Bractonian literature would fill many pages of this study; key studies include, J.L. Barton, 'The Mystery of Bracton', *JLH*, 14 (1993), 1-142; Brand, 'The age of Bracton'. Significant areas of debate within this literature include the dating and authorship of the treatise, H. G. Richardson, *Bracton: The Problem of his Text*, Selden Society Supplementary Series, 2 (London, 1965), J. L. Barton, 'The Authorship of *Bracton*: Again', *JLH*, 30 (2009), 117-74; P. Brand, 'The Date and Authorship of *Bracton*: a Response', *JLH*, 31 (2010), 217-44; and Bracton's relationship with the *Ius Commune* and ideas of kingship, Tierney, '*Bracton* on Government'; C. J. Nederman, '*Bracton* on Kingship revisited', *History of Political Thought*, 5 (1984), 61-77. Some more recent scholarship has attempted to integrate *Bracton* into the broader sphere of English Legal Literature, T. McSweeney, 'Creating a Literature for the King's Courts in the Later Thirteenth Century: *Hengham Magna, Fet Asaver*, and *Bracton*', *JLH*, 71 (2016), 41-71, *idem*., 'Between England and France: A Cross-Channel Legal Culture in the Late Thirteenth Century', in R. Kaeuper, P. Dingman and P. Sposato (eds.), *Law, governance, and justice: new views on medieval constitutionalism* (Leiden, 2013), pp. 73-100.

formation of opposition to the crown.[14] For the period of personal rule, this tendency probably reflects the remarkable taciturnity of the king as regards his own authority or theory of government, notwithstanding the famous handful of declarations discussed by Michael Clanchy.[15] In comparison to the verbose defences of royal power in the period of baronial reform Henry III made very few explicit statements regarding his own authority and the justification for it, during the period of his persona rule. The richest and most fulsome accounts of the royal idea of power at this period did not appear in royal sources, but were reported elsewhere, most extensively in the *Chronica Majora* of the St Albans chronicler Matthew Paris.[16] Paris was a prolific writer with close connections to the court, but he was also the antithesis of a disinterested scribe.[17] His accounts can certainly illuminate perceptions of Henry III's attitude to government, and the numerous records he preserved are an invaluable body of evidence, but his chronicle cannot be called an unproblematic source for evaluating the ideas of royal government.

Instead of looking fruitlessly for these more explicit statements, this section instead explores the deployment of clausulae drawn from Roman civil and canon law in letters close and patent, as well as the royal charters, along with the adoption of stylistic features and modes of *dictamen*.[18] Some of the terms and concepts which are explored here have been studied by others, most notably in the work of Gaines Post, Kenneth Pennington and Ernst

[14] The most inspired recent work on this topic is that of Sophie Ambler, whose monograph *Bishops in the Political Community of England, 1213-1272* provides an invaluable reconsideration of episcopal culture and political reform over this period.
[15] Clanchy, 'Did Henry III have a Policy?'.
[16] R. Vaughan, *Matthew Paris* (Cambridge, 1958).
[17] Gransden, *Historical Writing in England*, pp. 356-60.
[18] The importance of clausulae in the *Ius Commune*, in particular their utility in legal practice as well as teaching, has been explored in P. Hyams, 'Due Process versus the Maintenance of Order in European Law: The Contribution of the *ius commune*', in P. Coss (ed.), *The Moral World of the Law* (Cambridge, 2000), pp. 52-90, esp. pp. 86-90.

Kantorowicz, but even when they have been explored, it has often not been in any great detail for this particular period, and very rarely in conjunction or thematically. This section seeks to explore the significance of the multiplicity of these forms and the image of royal power which they come together to illustrate. This is done in three separate chapters: the first looks at adoption of learned law motifs in describing the king and royal power, both discursively and instrumentally; the second chapter considers how this depiction of royal authority was framed within a view of the larger political community; while the third addresses the issue of persuasion and performativity in these texts by examining the deployment of dictaminal models and norms.

Finally, it is worth raising at this point a few important qualifications. First and foremost, the *ius commune* was anything but the only influence on political ideas in thirteenth-century England, and often not even the most prominent. Its terms and concepts interacted with the developing English Common Law, feudal law and custom, as well as other learned influences from theology and natural science. In terms of the sources themselves, Chancery practice had its own norms and styles which had their own trajectory and momentum.[19] In this context of multiple different traditions and influences, learned law was not adopted wholesale or with precision, and the adoption of canonical language did not necessarily imply the adoption of canon law procedures. A number of factors conditioned the use of these terminologies: the translation of context between different courts, the diverging political priorities of the king as opposed to the emperor or pope, the level of expertise beyond simple knowledge of languages and terms. However, even if some of the usages during this period were limited to a linguistic overlay on previous practice, the broader English

[19] For a discussion of these norms, see below, pp. 293-304.

royal language of power was re-shaped by romano-canonical and dictaminal norms over this period, with important consequences for Henry III himself and for later medieval English kingship.

Chapter Four – The Ius Commune and the Language of Government 1232-1252: The Language of Kingship

Introduction:

The evidence from the documentary record of royal government during this period demonstrates the striking prominence of ideas of kingship as a fruitful and desirable sphere for the adoption of Romano-Canonical language. The attraction of this language was based not simply on its general utility in political discourse, but on its capacity to provide a particularly powerful set of analytical tools for presenting and promoting kingship. The ways in which Romano-Canonical terminology was deployed in discussions of royal authority can be roughly divided into two different strands; the person and power of the king, and the status of the Crown as the public entity of kingship beyond the king's person and the royal dignity as that status and honour which was owed to the king's estate. This division was anything but absolute, but it is a suggestive trend, especially in relation to the famous thesis of Ernst Kantorowicz in *The King's Two Bodies*, and his proposition of the importance of jurisprudence in rationalizing the distinctions between the king and the Crown over the thirteenth century.[1]

For the discussion of the person and power of the king, the vocabulary of greatest significance to evaluate is that associated with discussions of the royal *potestas*, particularly the terminologies of *plenitudo potestatis* and *potentia absoluta* and their dependent formulae. Among these dependent formulae, the adoption of the clause 'non obstante' and the discussion of royal dispensatory power featured most prominently in government rhetoric and practice. In terms of jurisprudential influence upon the discourse of the crown and the royal dignity, the most prominent language is that of the royal 'dignitas et maiestas',

[1] Kantorowicz, *The King's Two Bodies,* p. 344.

brought into sharp focus in the articulation and promotion of the theory of non-alienation in the mid-thirteenth century.

Kingship, Imperium and Potestas

A preliminary basic observation to be made about the contribution of learned law to conceptions of royal governance in the thirteenth century is that neither the Roman civil law nor the canon law provided, nor indeed aimed to provide, a coherent theory of secular kingship.[2] There were however aspects of the legal vocabulary that were not only applicable to lay rule, but were also highly attractive to proponents of royal authority. Perhaps the foremost among these can be said to have been the words used to articulate legal theories about the nature and practice of power in itself. The development of this language of power should be seen as one of the most significant ways the learned law tradition affected political theory in the late twelfth and thirteenth centuries. At the apex of legal vocabularies of power were the distinct but related concepts of *plenitudo potestatis* and *potentia absoluta*, terms which developed in the intersection of law and theology in discussions of the power of the papacy. Before exploring the influence of this language in the royal administration of Henry III, it is worth undertaking a brief excursus on the development of these terms and their significance within the legal tradition.

Originating during the pontificate of Leo I (440-461), the vocabulary of *plenitudo potestatis* was articulated with increasing sophistication from the second half of the twelfth century, coming to articulate the loftiest jurisdictional claims of the thirteenth century

[2] Gouron, 'Some Aspects of the Medieval Teaching of Roman Law', p. 161.

papacy.[3] In its application to secular authority, the significance of the papal *plenitudo potestatis* as supreme jurisdictional authority had two distinct elements. The first was the supreme jurisdiction of the papal office, the "fullness of ecclesiastical power" and "primacy of ordinary power" articulated by Innocent III (*plenitudo ecclesiasticae potestatis* and *principatus ordinariae potestatis*).[4] In addition, the papal plenitude of power was also an extraordinary prerogative, the absolute power held, as Innocent III articulated, 'above the law, to make dispensations'.[5] In this second sense, the papal plenitude of power was linked with the vocabulary of *potentia absoluta*, the absolute power that was free from the law.

It should be reiterated here that *potentia absoluta* as understood in thirteenth-century Europe should not be confused with an amorphous 'absolutism'. The vocabulary of *potentia absoluta* was articulated by both jurists and theologians, who each utilised this language in distinct ways. In the legal context, the principle of *potentia absoluta* rested upon the Roman law maxim, *princeps a legibus solutus est*, the prince is not bound by the laws (*Dig*. 1.3.31). The legal tradition around this maxim was lengthy and extensive, and the *Corpus Iuris Civilis* could in itself appear ambivalent, as the *Codex* contrasted this view with the Theodosian *lex Digna*, which asserted that 'It is a statement worthy of the majesty of a ruler for the Prince to profess himself bound by the laws' [*Digna vox maiestate regnantis legibus alligatum se*

[3] The literature on this subject is detailed and extensive; a good recent introduction can be found in J. Black, *Absolutism in Renaissance Milan. Plenitude of Power under the Visconti and the Sforza, 1329-1535* (Oxford, 2009), pp. 8-11. See also G. B. Ladner, 'The concepts of "ecclesia" and "Christianitas" and their relation to the idea of papal "plenitudo potestatis" from Gregory VII to Boniface VIII', in his, *Images and Ideas in the Middle Ages: Selected Studies in History and Art* (2 vols, Rome, 1983), *ii*, pp. 487-515, R. L. Benson, '*Plenitudo potestatis*: evolution of a formula from Gregory IV to Gratian', *Studia Gratiana*, 14 (1967), 195-217, J. A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century* (New York, 1965), esp. pp. 75-105, *idem*. 'The Use of the Term "Plenitudo potestatis" by Hostiensis', in S. Kuttner and J. J. Ryan (eds.), *Proceedings of the Second International Congress of Medieval Canon Law* (Vatican City, 1965), pp. 161-87.

[4] Innocent III, *Opera omnia*, ed. J.-P. Migne, *PL*, 214-16 (3 vols, Paris, 1855), *ii,* p. 576; *Conc. Lat. IV*, c.5 in Tanner, *Decrees of the Ecumenical Councils, Volume One*, p. 236, both quoted in Benson, '*Plenitudo Potestatis*', pp. 196-7.

[5] *X* 3.8.4 (1198) quoted in Benson '*Plenitudo Potestatis*', p. 197.

principem profiteri] (*Cod*. 1.14.4). Furthermore, the glossators also developed and articulated this language in ways likely divergent from Justinian's original imperial project, and Brian Tierney has demonstrated how Accursius's gloss on the *legibus solutus* demonstrated a far more moderate view of princely authority.[6] The concept of *legibus solutus* was, much like that of *plenitudo potestatis*, one which could have various interpretations. Kenneth Pennington has highlighted this variability in his articulation of the different meanings of *legibus solutus*; first, the authority to 'change, derogate, abrogate, or dispense from positive law' and second 'the prince's immunity from prosecution, his authority to transgress or dispense from the normal rules governing the legal system, or his power to transgress the rights of his subjects', only the last of which, if abused, could be perceived as tyrannical.[7]

This legal tradition should not and cannot be considered without reference to the interconnected but quite distinct theological vocabulary of the divine *potentia absoluta*, contrasted to the *potentia ordinata.* The question of divine power and omnipotence in medieval theology is a monumental subject in its own right, and one which is far beyond the scope of this study; here it will only be explored in its relation to legal discussions of potency.[8] A clear summary of some of the key components of the theological *potentia absoluta* can be found in William J. Courtenay's significant volume *Capacity and Volition*, in the introduction

[6] B. Tierney, ''The Prince is Not Bound by the Laws': Accursius and the Origins of the Modern State,' *Comparative Studies in Society and History,* 5 (1963), 378-400.
[7] K. Pennington, *The Prince and the Law, 1200-1600. Sovereignty and Rights in the Western Legal Tradition* (Berkeley, 1993), p. 21.
[8] A good survey of the literature on this topic is F. Oakley, *Omnipotence and Promise: The Legacy of the Scholastic Distinction of Powers* (Toronto, 2002); Oakley discussed these issues further in relation to developments in seventeenth-century political discourse, *idem*., 'Jacobean Political Theology: The Absolute and Ordinary Powers of the King', *Journal of the History of Ideas*, 29 (1968), 323-46 . W. J. Courtenay provided a useful preliminary survey in his 1985 article, 'The Dialectic of Omnipotence in the High and Late Middle Ages', in T. Rudavsky (ed.), *Divine Omniscience and Omnipotence in Medieval Philosophy: Islamic, Jewish and Christian Perspectives* (Dordrecht, 1985), pp. 243-69; he expanded on this article in more detail and subtlety in his later volume *idem*, *Capacity and Volition. A History of the Distinction of Absolute and Ordained Power* (Bergamo, 1990).

to which he outlined three crucial features of the character of divine potency. The first of these features is perhaps the most fundamental difference from the legal tradition, and is a feature Courtenay bases on his translation of the term *absoluta* as "simply" or "considered in the abstract" – the exploration of the theological *absoluta*/*ordinata* distinction was one which considered the theoretical nature of divine power, not the forms of divine action. From this principle follow Courtenay's two conclusions, that *potentia ordinata* existed within the realm of the total capacity of divine *potentia absoluta* and was not separate from it; and that in the twelfth and thirteenth centuries there was particular stress on the idea that the *potentia ordinata* was not binding upon God, who could, within the capacity of his *potentia absoluta*, have ordained things otherwise.[9]

From this third feature, it is possible to see how these theological ideas about theoretical divine omnipotence were informed, and over the course of the thirteenth century transformed, by engagement with legal discussions about *potentia absoluta*. Discussions of the contingent nature of the ordained reality were informed by Theodosian *lex Digna*, whereby the ruler is not bound, but binds himself, by the laws. This legal influence, while comprehensible in a just and omnibenevolent God, became more complex with the developing analogy of divine and human power. From the early thirteenth century canon lawyers sought more clearly to clarify the relationship between the papal *plenitudo potestatis* and the established laws of the church, or *status ecclesiae*. In this context, they found the theological *absoluta/ordinata* distinction useful. In his 1270 *Lectura in quinque decretalium*, Hostiensis demonstrated how this theological distinction could be adopted to underline papal power, explicitly linking the *plenitudo potestatis* with the *potentia absoluta*, as he clarified

[9] Courtenay, *Capacity and Volition,* p. 19.

the papal capacity to act outside the law in extraordinary situations. In his discussion of whether it was possible for a pope to dispense a monk from his monasticism, Hostiensis proposed the argument that the Pope was empowered to make such a dispensation, being able to do this 'de plenitudine potestastis,' which meant that he would be acting not 'potestate ordinate, sed de absoluta', by which he was able even to change the nature of things.[10] This theological component supplied additional legitimation for the legal dispensing power, on which the views of the Romanists were more finely balanced.

The language of *plenitudo potestatis* was thus informed by a variety of legal and theological strands, which could be used to justify not only alterations to and dispensations from the law, but even actions which were above and contrary to the law. It was not, however, without certain theoretical limitations. Even when canonists such as Hostiensis discussed the papal capacity to act in an extra-legal fashion, they did so within specific parameters, so that the exercise of the extra-legal power was not regular but extraordinary, and one which had to be justified in the terms of common good (*propter utilitatem communem*). In the case of the proposed dispensation from monastic vows, for instance, it was necessary to justify the dispensation with the proposal that the whole of Christendom would be in danger if the monk was not released from his vows to become king.[11] Nor was Hostiensis alone in emphasising necessity and the common good as the fundamental basis for supra-legal actions of this type: Innocent III also emphasised that suspensions 'de plenitudine potestatis' should not be made

[10] Hostiensis, *Lectura in quinque Decretalium Gregorianarum libros*, Ad 3, 35, 6, quoted in Courtenay, 'The Dialectic of Omnipotence', p. 265ff.

[11] In the same passage in the *Lectura* where he discussed the dispensatory power of the *plenitudo potestatis* linked with the *potentia absoluta*, Hostiensis asserted the necessity of this action, 'Quid enim si tota Christianitas, vel etiam aliqua pars ipsius esset in periculo, nisi monachus fieret rex. [Lest all of Christendom, or certain parts of it, would be in danger, if the monk did not become king],' quoted in Courtenay, 'The Dialectic of Omnipotence' p. 265 ff.34; *idem*, *Capacity and Volition* pp. 92-4. Hostiensis wrote extensively on *plenitudo potestatis*, employing the term in 71 different contexts, Watt 'The Use of the Term 'Plenitudo Potestatis' by Hostiensis'.

on a regular basis, but only when there was sufficient cause (*cum non sit ea utendum generaliter, sed tantum ex causa*).[12] In addition to this restriction, he also discussed which laws it was possible to suspend. While it was generally accepted that positive human laws could be overruled in this way, the question whether it was possible to suspend natural or divine law and the *ius gentium* was more complex. Innocent IV ultimately approved the capacity for breaking or suspending these fundamental laws, but with a strong emphasis on the necessity for justification, as 'A law or rescript contrary to natural law is not valid unless a just cause exists'.[13] While this ultimately served to solidify the principle that even fundamental laws could be suspended by plenitude of power, this tradition of justification and restricted use nonetheless placed a powerful fetter on the exercise of this rhetoric. In this way, when royal government employed this language, it was drawing on a jurisprudentially complex debate which included specific pre-conditions and justifications for action.

Finally it is worth noting that *plenitudo potestatis* and *potentia absoluta* were not terms intended for the use of kings. The learned laws explored papal and imperial power, and the elevated authority they discussed was based on these supreme jurisdictions. Hostiensis was explicit in his defence of this restricted authority, as in the *Lectura* he complained that, despite the unique power of the emperor, other lesser ranks of rulers were claiming plenitude of power.[14] Despite Hostiensis's condemnation, the adoption of this language by non-imperial secular rulers was not unjustifiable. Most significant to the articulation of imperial language on the part of lesser secular rulers was Innocent III's 1202 decretal *Per Venerabilem*, subsequently included in Gregory IX's *Liber Extra*, in which the pope declared that the king of

[12] X. 1, 6, 20 (De electione, c. innotuit), nr 5.
[13] X. 1, 2, 7 (De constitutionibus, c. quae in ecclesia), nr 2.
[14] Hostiensis on X. 3, 49, 2 (De immunitate, c. tempore), s.v. Generaliter compellantur, quoted in J. A. Watt, 'The Term 'Plenitudo Potestatis' in Hostiensis' p. 185.

France acknowledged no temporal superior (*rex ipse superiorem in temporalibus minime recognoscat*).[15] This decretal was subsequently associated with the formula 'Rex in Regno suo imperator est', that the king was an emperor in his own kingdom.[16] Although this claim was not undisputed, it certainly demonstrated the existence of a strand of canonical argument which was comfortable in appropriating imperial style and authority for kings, and thus making possible the exercise of imperial *potestas*. Questions of *potestas* in particular, and the adoption of civil or canon law models for rule in general required in the first place the acceptance and assertion of the ideas of imperial kingship, and discussions of royal *potestas* were closely linked with ideas of royal *imperium*.

The use of this language of *potestas* during the reign of Henry III built upon legal and rhetorical precedents in commentaries on English kingship and particular English kings, dating back into the twelfth-century.[17] These could be negative, especially in critiques of abuses of kingship such as Henry II's dispute with Thomas Becket, in which the king was said to justify his behaviours by invoking a quasi-imperial power.[18] Despite these critical uses, the developing English legal tradition made use of imperial language in such a way as could bolster the king's authority, from at least the early twelfth century *Leges Henrici Primi* through the legal known as *Glanvill* into *Bracton* in the mid thirteenth century.[19] Both these ecclesiastical

[15] Innocent III, *Reg.*, *i,* pp. 1130-1134; X. 4. 17. 13. There has been significant scholarly debate on the *Per Venerabilem* and its medieval reception, a good summary can be found in B. Tierney, 'Some Recent Works on the Political Theories of the Medieval Canonists', *Traditio,* 10 (1954), 594-625; *idem*, '"Tria Quippe Distinguit Iudicia…" A Note on Innocent III's Decretal *Per Venerabilem*', *Speculum,* 37 (1962), 48-59.
[16] A summary of the literature on this topic may be found in G. Post, '"Blessed Lady Spain" – Vincentius Hispanus and Spanish National Imperialism in the Thirteenth Century', *Speculum,* 29 (1954), 198-209 and *idem*, *Studies in Medieval Legal Thought,* pp. 434-93.
[17] For a survey of some of these uses, see Post, *Public Law and the State,* pp. 462-3,
[18] John of Salisbury, *Joannis cognomine Saresberiensis Carnotensis Episcopi opera omnia: juxta editionem Oxoniensem quam nuper ad fidem codicum mss. exegit J.A. Giles: accedunt Petri S.R.E. Cardinalis tituli S. Chrysogoni ... [et al.] opuscula, diplomata, epistolæ*, ed. J.-P. Migne, *PL*, 199 (Paris, 1900), p. 271.
[19] G. Barraclough, 'Law and Legislation in Medieval England,' *LQR,* 56 (1940), 75-92, at 88; *The Treatise on the Laws and Customs of the Realm of England, commonly called Glanvill*, ed. G. D. G. Hall, rev. M. T. Clanchy (Oxford, 1993), p. 24. The precise view on kingship in *Bracton* is too complex and ambiguous to address here,

and legal precedents may not have been unambiguous in their application of the language of the learned law to English kings and kingship, but there was certainly a sufficient understanding of the applicability of this language to support its use in the rhetoric of English kings themselves.

In September 1202, in a royal demand for a clerical aid to assist Otto IV in his claim to the German throne, King John asserted that the kingdom of England was an equal partner in the treaty with Otto, (*quasi imperio*).[20] After this, however, expressions of kingship in this fashion receded for a time. Reaction against the extremes of John's claims to royal authority and autonomy was notoriously extensive, and the political crisis of the end of John's reign and the early years of the minority may have substantially militated against such expansive claims of authority.[21] This anxiety about invoking the memory of the disastrous reign of John appears to have lasted beyond the minority into the period of personal rule. Over the twenty years of royal letters close and patent, as well as royal charters and other miscellaneous documentation, no explicit invocation of royal *imperium* or *plenitudo potestatis* can be identified.[22] In part this may be attributed to the lack of explicit statements of royal authority contained in these sources, which tended not to present theoretical reflections on kingship, but were practical applications of that authority. The plenitude of power which Louis IX

but at the very least the treatise did include such assertions as that 'the king had no equal in his kingdom' (*parem autem non habet rex in regno suo*) that indicate his engagement with this imperialising discourse; *Bracton on the Laws and Customs of England*, ed. G. Woodbine and trans. S. Thorne (4 vols, Cambridge MA, 1968-77), *ii*, p.33.

[20] *Foedera*, i, p. 130.

[21] Although unpopular, King John did demonstrate a coherent concept of royal authority, bolstered by the rhetorical forces of civil and canon law, as well as the pillars of custom and English law. An excellent survey of John's ideas of kingship can be found in R. V. Turner 'King John's Concept of Royal Authority,' *History of Political Thought,* 17 (1996), 157-78.

[22] The idea of royal *potestas* in itself occurred occasionally, as in a grant of September 1243 made to William de Wignun, a burgess of Barfleur, confirming to the said William all the liberties in Gascony granted to him by the king's royal authority 'per potestatum regis,' TNA C 66/53 m. 3.

attributed to Henry III in the Mise of Amiens in 1263 was at the very most implicit in the royal documentation of the 1230s and 40s, and attempts to make it more explicit from the mid-1250s onwards formed a major contributing factor to the political crisis of 1258 onwards.

The lack of explicit claims of royal *plenitudo potestatis* during the period under consideration did not mean that associated language and ideas were absent. Acts performed *e plenitudine potestatis* could be communicated as such through the use of other formulae, the most prominent of which were *ex certa scientia* (from certain knowledge), *non obstante* (notwithstanding), and *motu proprio* (voluntarily).[23] Of these three formulae, *motu proprio* was an innovation of the papal curia in the first half of the fourteenth century, and thus does not fall under the scope of this study. The formula *ex certa scientia* did however have an important thirteenth-century usage and thus should be considered for the reign of Henry III. The form was not a total novelty in the period of personal rule, as it occurred in at least one royal letter patent from the minority, from January 1217, an early usage that may be attributed to the influence of the papal legate Guala.[24] Even so, this terminology did not become a common feature of the vocabulary of the Chancery of Henry III and, in the period of this study, only one clear use of it can be identified, in a letter close of 24th May 1236,

[23] For a clear and accessible introduction to these terms, see Black, *Absolutism in Renaissance Milan,* Appendix 1, pp. 206-9. Studies of the applications of these terms have been undertaken in other contexts, J. Krynen, '"De Nostre Certaine Science…" Remarques Sur l'Absolutisme Legislatif de la Monarchi Medievale Française,' in A. Gouron and A. Rigaudiere (eds.), *Renaissance du pouvoir législatif et genèse de l'état* (Montpellier, 1988), pp. 131-44; F. Luis Pacheco, '*Non Obstante. Ex Certa Scientia. Ex Plenitudine Potestatis*. Los reyes de la Corona de Aragón y el principio *princeps a legibus solutus est*,' in A. I. Ferreirós (ed.), *El Dret Comú I Catalunya. Actes del VII Simposi Internacional Barcelona, 23-24 de maig de 1997* (Barcelona, 1998), pp. 91-127. From the fifteenth-century onwards, the variant form of the *motu proprio*, the *mero motu* clause was to develop in English practice from the early fifteenth century onwards, gaining particular significance in the diplomatic language of Henry VIII's break from Rome; P. Zutshi, 'The Papal Chancery and English Documents in the Fourteenth and Early Fifteenth Centuries', in P. Herde and H. Jakobs (eds.), *Papsturkunde und europäisches Urkundenwesen : Studien zu ihrer formalen und rechtlichen Kohärenz vom 11. bis 15. Jahrhundert* (Vienna, 1999), pp. 201-18, at p. 207; P. D. Clarke, 'Canterbury as the New Rome: Dispensations and Henry VIII's Reformation', *JEH*, 64 (2013), 20-44.

[24] Shirley, *i,* p. 3.

regarding a dispute between the Archbishop of Canterbury Edmund Rich and the prior and monks of the chapter house.[25] Despite these occasional early usages, *ex certa scientia* remained an unusual formula. In contrast, the third of these formulae linked with the *plenitudo potestatis*, the clause *non obstante*, was relatively common in the vocabulary of government articulated by the royal administration during the period 1232-52 and needs to be explored in much greater detail.

Henry III and the Clause *Non Obstante*

A brief survey of the origins and development of the formula *non obstante* is fundamental to illuminating its role and significance in thirteenth-century England.[26] The formula appeared in the *Codex* of Justinian, providing conditions for the proving of a will to be false or forged, despite this being contrary to legal practice.[27] The use of this clause was reinvigorated in papal practice from the late twelfth century, and was associated with the curial reforms of Innocent III and the procedures of the court *audientia litterarum contradictarum*, which had oversight over the issuing of papal mandates and the commissioning of judges delegate.[28] The adoption of the civil law formula in the curia expedited the communication of this vocabulary into the English context, through both personnel and textual links. Individuals with lengthy careers at the curia, such as the Cardinal Robert of Somercotes, could act as transmitters of such knowledge and practices.[29] There was also possibility for substantial textual transmission of the formula, not just in contemporary papal letters and mandates, but also through its

[25] *Close Rolls*, *iii*, p. 356.
[26] The authoritative analysis of this clause is B. Meduna, *Studien zum Formular der päpstlichen Justizbriefe von Alexander III. bis Innocenz III. (1159-1216): die "non obstantibus"-Formel.* (Vienna, 1989).
[27] C.7.58.1.
[28] Peter Herde has argued convincingly that this court was a relative novelty, part of the reforms of Innocent III, in contrast to the older view of Geoffrey Barraclough; Herde 'Papal Formularies for Letters of Justice (13th-16th Centuries)', pp. 127-8.
[29] See above, pp. 54-5.

development and adoption in the texts of canon law. In many ways the development of *non obstante* was a product of the late twelfth and early thirteenth century, and thus exploring its influence in mid-thirteenth-century England presents an enlightening way of gauging the contribution made by such recent developments in papal theory to the formulation of political thinking during the reign of Henry III. Despite this context, the use of the formula in thirteenth-century England has received very sparse attention. The primary study of any length analysing *non obstante* in its English context during this period was Paul Birdsall's 1936 article, which considers the mid-thirteenth century in only the most general terms, with a primary interest in the arguments of Bracton regarding royal authority rather than exploring in any great detail the actual use and implications of the formula in itself.[30]

This absence of scholarly attention is all the more striking because of the significance attributed to the formula by thirteenth-century commentators. The main force of contemporary interest focussed on its papal use, as was clearly shown in the English *gravamina* submitted to Innocent IV in 1246 following his attempted exactions during the council of Lyons. These *gravamina* were preserved both by Matthew Paris and the Burton annalist, linking the use of *non obstante* with papal actions and revocations made *in plenitudine potestatis*, and indeed implicitly questioning the extent and applicability of this power in England.[31] Paris also preserved a letter about these grievances addressed to Innocent IV by the suffragan bishops of the province of Canterbury, in which the opposition

[30] P. Birdsall, '"Non Obstante" – A Study in the Dispensing Power of English Kings,' in C. Wittke (ed.), *Essays in History and Political Theory in Honor of Charles Howard McIlwain* (Cambridge MA, 1936) pp. 37-76. Both Patrick Zutshi and Jane Sayers have considered this formula briefly as part of broader analyses of papal influence; Sayers for the thirteenth century, and Zutshi for the fourteenth and fifteenth, J. E. Sayers, 'The Influence of Papal Documents on English Documents before 1305' in Herde and Jakobs, *Papsturkunde und europäisches Urkundenwesen*, pp. 161-200; Zutshi, 'The Papal Chancery and English Documents in the Fourteenth and Early Fifteenth Centuries'.

[31] *Ann. Mon., i*, pp. 284-5, *Chronica Majora*, iv, p. 528.

to the use of the clause was expressed in vehement tones, not referring to the papal power as such, but expressing the long suffering of the English in response to it.[32] Nor did Paris's interest in *non obstante* end with the Council of Lyons, as in 1251 he outlined with some horror a case in the royal courts between Silvester, Bishop of Carlisle and 'a certain baron', in which the unnamed magnate was attempting to recover a certain manor which his predecessor had sold to Silvester's predecessor Bishop Walter. Paris protested that the baron had obtained royal letters using the formula *non obstante*, here described as 'haec detestabilis adjectio'. In response to the use of *these letters* in a manner described by Paris as *contra logicae regulam*, the justice Roger de Thurkelby was said to have proclaimed the following mournful speech: "Alas, alas, why did we await these days? Behold now the civil court is defiled by the example of the church and the stream is poisoned by the sulphurous fountain." (*Heu, heu, hos utquid dies expectavimus? Ecce jam civilis curia exemplo ecclesiasticae coinquinatur, et a sulphureo fonte rivulus intoxicator*).[33]

Despite the potency of this condemnation, it may be said that, for once, Paris was understating the matter! Both in chronology and scope, the chroniclers seem to have failed to engage with the significance of the broader secular use of the *non obstante* clause. While Matthew Paris displayed an awareness of and substantial opposition to its use, his interests were primarily ecclesiastical, reflecting on the negative influence of this clause on church property and reforms.[34] Even when he discussed the penetration of the clause into civil courts, this was framed more in terms of the toxic influence of a church practice, and, crucially, was still addressing a case concerning church property. When Henry III was recorded

[32] *Chronica Majora, iv*., p. 530.
[33] *Ibid*., *v*, pp. 210-11.
[34] For the consequences of *non obstante* in relation to monastic property, see *Ibid., iv*, p. 619, for its use to undermine clerical privileges granted at Lyons, see *Ibid., iv,* p. 522.

by Paris as discussing the use of the *non obstante* clause, it was again only in relation to church property and papal exactions, in a narration of a furious dispute with the prior of the Hospitallers in Clerkenwell.[35] For Paris, the clause formed part of a specific and firmly held narrative regarding the dangers of abusive papal practices, and the risks to the English church and monastic houses of the king threatening to adopt these practices. This narrative might well be described as having a distorting influence on Paris's ecclesiastical focus on the *non obstante* clause. Furthermore, in considering *non obstante* primarily from the mid-1240s onwards, Paris did not address its much longer established use, first appearing in royal documents relating to ecclesiastical business during the reign of King John in 1205.[36] The wider and longer context for deployments of the *non obstante* and its implications for the conception of royal government more broadly require more substantial exploration.

As Paris and Roger Thurkelby saw the royal courts as an area of cross-contamination of this ecclesiastical practice, and because the clause *non obstante* grew out of essentially legal roots, it makes sense to begin by looking at the use of the *non obstante* in the English legal system. The use of this formula in civil cases relating to ecclesiastical property appears to have become increasingly standardised, and the following case from the King's Bench Roll for Michaelmas 1233 may serve as a typical example. In this case of a disputed presentation to the Church of Saxlingham, a father and son, Roger and Robert of Saxlingham, were

[35] *Chronica Majora*, *v.*, p. 339. The Clerkenwell case is a problematic one – Henry refers to the use of the *non obstante* clause by the pope and threatens to use it himself to annul the charters possessed by the Hospitallers. Clanchy saw this is evidence of Henry's absolutist policy and appears to consider the story credible if incomplete, Clanchy, 'Did Henry III Have a Policy?' 207, 209. In contrast, David Carpenter asserts that there is no evidence for this dispute ever having taken place, suggesting the entire episode to have been invented based on vague rumours of a conflict which took place between Henry and the Templars in the London house of St Thomas of Acre. D. A. Carpenter, 'Chronology and truth: Matthew Paris's Chronica Majora', in J. Clark (ed.), *Matthew Paris: A Companion* (forthcoming), accessed online http://www.finerollshenry3.org.uk/redist/pdf/Chronologyandtruth3.pdf [17 December 2017]. I would like to thank Professor Carpenter for bringing this paper to my attention and his discussion of this incident with me.

[36] Sayers, 'The Influence of Papal Documents on English Documents before 1305', p. 172.

summoned to answer Simon de Noers regarding the latter's rights to the presentation. Simon had recovered his rights using the assize of *ultime presentationes*, and the bishop of Norwich was ordered to allow Simon to make his presentation, notwithstanding the claims of Roger and Robert, (*non obstante reclamation ipsorum Rogeri et Roberti*).[37] The use of the *non obstante* clause in such cases occurred in the mandate issued to the bishop on the conclusion of the case, in which the claims of the victorious party were confirmed, notwithstanding the counter-claims of the unsuccessful litigant. It thus confirmed and ratified a legal judgement, and was not in itself an extra-legal proceeding. What it did do however was assert the jurisdictional authority of the king's courts, not only communicating the result of a court case, but obliging compliance by the bishop or archbishop who received the command. In subsequent enrolments, this mandate was described as a writ or *breve*, and seems to have been increasingly recognised as standard or formulaic, indicated by common abbreviation of the action, as at the conclusion of a Suffolk case from the Easter Term of 1242, the record noted that 'Et ideo Johannes et Gundrada mater ejus habeat breve ad episcopum Norw' quod non obstante etc. idoneam etc.'[38] Although the writ was not always abbreviated, and the decision to do so seems to have depended on scribal choice, the fact that it could be comprehensibly abbreviated does appear to suggest that even by the mid-1230s the use *non obstante* in writs regarding ecclesiastical property and rights of presentation in particular was sufficiently widespread to be formalised in this way.

However, the prominence of ecclesiastical business in the use of the formula *non obstante* in secular courts should not conceal the significant minority of variant and non-standard uses in contexts with little or no ecclesiastical connection. These alternative usages

[37] *CRR*, *xv,* p. 96.
[38] *Ibid., xvi,* p. 402.

can suggest some broader implications of the adoption of this clause and its translation to the secular context from church practice. Perhaps the most important category of cases of this type was where it was employed by royal justices to override local liberties in favour of the central court, often in cases where local non-compliance had impeded the judicial process. A case pled before the Justices of the Bench in Hilary Term 17 Henry III [1233] demonstrated such an employment of this clause. This case from Suffolk originally concerned a suit of dower by William de Burgh and his wife Emma against multiple parties, who failed to appear and were in default, resulting in a mandate to take the land being disputed in the case into the hands of the king. The sheriff delivered the mandate to the local bailiff, who subsequently failed to act upon it. The justices then commanded the sheriff directly to take the land into the king's hands himself 'notwithstanding the liberty of Luddingley (*non obstante libertate de Luddingel'*). [39] The use of the formula *non obstante* here rectified an immediate procedural problem, but in a broader sense it also asserted the judicial supremacy of the Justices of the Bench, and their capacity as a central court to suspend or amend local liberties or proceedings, when necessary.

A similar deployment appeared in a case heard before the King's Council between Trinity Term 26 Henry III and Trinity Term 27 Henry III [1242-3]. This case was not a land suit, but rather concerned a suit pursued by a certain Hamo Chever against Robert Pink of Bury St Edmunds and Roger of Gisney of a plea of robbery and breaking the king's peace. Neither Robert nor Roger appeared, and Robert, who was within the liberty of Bury St Edmunds, was described as having come to the archiepiscopal court. The bailiff was commanded to bring both Robert and Roger to attend the suit at London, but did nothing. As with the previous

[39] *Ibid., xv,* p. 25.

case, the sheriff was commanded to enter the liberty and himself take possession of Robert and Roger to force their attendance on the case before the Council, notwithstanding the liberty of the aforesaid abbot (*non obstante libertate predicti abbas*), while the abbot himself was summoned to answer for his bailiff's failure to comply, particularly as he had taken the malefactors into custody at the archiepiscopal court.[40] The same principle seen in the earlier case was further expanded here. Not only was the clause *non obstante* used to override the liberties of the Abbey of Bury St Edmunds, but further measures were taken to enforce the supremacy of central jurisdiction, with the summons of the abbot himself to answer for the dilatory behaviour of his servants. [41] The principle of suspending local liberties when they were mismanaged was not a new one, and by c.1200 the writ *non omittas* was an established action for interventions of this kind, particularly in cases where the king had an interest.[42] These cases could simply represent scribal eccentricity or error, but at the very least the choice to employ the formula *non obstante* instead of *non omittas* speaks to an increasing degree of familiarity with the language of learned law in the royal courts. It could further be drawn from this that the association of established legal practices with new legal language suggests, if not a new procedure, then a new way of articulating that procedure, and one which, although responding to individual cases and circumstances, affirmed the primacy of

[40] *Ibid., xvii,* p. 4.

[41] With this latter case in particular, it is extremely unusual that Paris makes no mention of this usage, particularly given his concern elsewhere with royal claims of supremacy expressed in the language of the learned law as they touched on monastic property, as in the dispute between Simon Passelewe and the Abbot of St Albans in 1258, *Chronica Majora, v*., pp. 684-7. This absence is particularly interesting as Roger of Thurkelby, Paris's purported source of complaints about the clause *non obstante* in civil courts, was a clerk to William Ralegh, to whom the 1233 roll belonged, by as early as 1231, and was himself a royal justice from c.1240, Turner, *The English Judiciary in the Age of Glanvill and Bracton,* p. 217.

[42] For the writ *non omittas*, see M. Clanchy, 'The Franchise of the Return of Writs', *TRHS,* 5th Series, 17 (1967), 59-82, at 61-2, K. Stringer, 'States, Liberties, and Communities in Medieval Britain and Ireland (c.1100-1400)', in M. Prestwich (ed.), *Liberties and Identities in the Medieval British Isles* (Woodbridge, 2008), pp. 5-36, at p.17.

the royal justice system, and the authority of that system to override and suspend local liberties and jurisdictions.

Not all the various uses of the clause *non obstante* demonstrated such considered ideas about jurisdiction and authority however, and there are a number of cases that must be treated as eccentric, if not outright erroneous. A Staffordshire case from Michaelmas Term 1230 concluded with a writ addressed to the sheriff of Stafford using the formula *non obstante*.[43] Here the writ *non obstante* was described as being given to the defeated party in the case, to enforce his own legal failure. More explicitly erroneous was the case which can be identified in a plea held before the king on 30th November 1237, distraining the prior of Holy Trinity Canterbury, who had attempted to pursue his own dispute against Archbishop Edmund Rich in a papal court. In the extremely vigorous language with which the prior's actions were criticised, he was described as having pursued his plea 'non obstante prohibitione domini regis.'[44] Although the prior was ultimately vindicated in this case, this use of the *non obstante* clause was questionable. Although it may be interpreted as an attempt to present the prior as claiming a higher degree of jurisdictional authority, this is unlikely, as cases of this kind generally express suits of this kind as being done 'contra prohibitione domini regis.' Uses of this kind which were erroneous or at the very least did not carry the claims of jurisdictional authority essential to the canonical interpretation of the formula do indicate that even in contexts like the royal courts where the term *non obstante* was being received and deployed, its precise implications were not always clearly understood.

[43] *CRR, xiv,* p. 207.
[44] *Ibid., xvi*, p. 40.

A few brief observations can be made about the employment of the clause *non obstante* in the civil courts 1230-1250. To begin with, contrary to the impression given by Matthew Paris, the use of this formula in relation to ecclesiastical business was already well-established by the beginning of the period under consideration. Over this period, while there were a number of exceptions, the trend in the use of this clause in the royal courts was one of increased standardisation and regularisation into ecclesiastical business. Eccentric and secular uses occurred far more in the 1230s than the 1240s. This does not mean however that the use of this formula had no implications for wider royal government. As Paris had Thurkelby complain, the appearance of this formula in secular courts was in itself a significant development and the number of exceptional cases relating to liberties indicate some attempts to interpret its possible implications for secular law and government. Fundamentally, even in the ecclesiastical cases, the formula remained a device of the court and its authority and as such its use reflected a broader assertion of jurisdictional supremacy derived from royal authority. Cases in the secular courts tended to centre around issues on the boundaries of secular and ecclesiastical law, not only was this an obvious context for the cross-fertilisation of language, but these jurisdictional boundaries were one of the most important areas of English legal practice for asserting the primacy of royal power. That these cases were restricted in number also indicated a broader context for the clause and its extra-judicial use; the widening and expanding direct deployment of this formula as part of the exceptional royal prerogative and *potestas* possessed by the king and delegated only in a more limited fashion to his justices.

If we now turn from the records of the royal courts to the wider body of royal letters and documents, we find a far broader and more varied picture of the potential employments

of the clause *non obstante*. What was in the hands of the royal justices an increasingly precise legal device was in the hands and mouth of the king a highly adaptable and multi-faceted tool for the exercise and expression of the royal will. In this context, the use of the clause *non obstante* in the letters and charters of Henry III provide an illuminating insight into the relationship between the king and the law as it was conceived and practised in the period of personal rule. Furthermore, given the limited sources for explicit statements of any royal theory of government at this time, the use of this formula and its conditions and justifications can operate as an important means for evaluating the influence of legal ideas to the operation of government more broadly.

Unsurprisingly, as with the records from the King's Bench, and likely influenced by the importance of papal grants in the adoption of the clause *non obstante* in secular contexts, a large number of deployments of this formula related to cases of ecclesiastical preferment or provision falling within the royal grant. In contrast to the court cases however, the royal letters demonstrated a far greater diversity of contexts for the employment of the clause and were not restricted to records of dispute. A small number of letters did follow the same pattern as the norms of the employment of the clause in King's Bench, although these mostly occurred towards the earlier part of the period of the personal rule. It is crucial to note that when the employment of the clause *non obstante* was employed according to the legal typology, the letters were discussing or recording events within court contexts. The formula 'non obstante reclamatione' occurred in letters close of June 1230 in favour of the Prior of Lewes and in October 1232 in favour of the abbot of Evesham; both of which recorded and enforced judgements made by royal justices assigned to the assize of *darrein presentment*.[45]

[45] *Close Rolls*, *i,* p. 355, *ii,* p. 114.

But these letters which enforced court decisions were a minority in the royal records. In addition to previous presentations, the royal *non obstante* in ecclesiastical provisions could also dispense from royal restrictions or other royal preferments, to give particular priority to one recipient. A number of cases from 1243 demonstrated how this deployment could operate. In a letter issued in Bordeaux on 15 April, Henry commanded Walter de Gray, Archbishop of York, to provide for Peter Saracenus, the son of Peter Saracenus, a Roman citizen and important continental agent of the king's, a benefice in the king's gift to the value of 100 marks a year, notwithstanding any royal letters made in favour of others, 'non obstante si pro aliis scripta Regis Rex eis direxit'.[46]This use of the clause *non obstante* followed by the construction 'si pro aliis' and the indicative perfect was a common papal formula, dispensing both from existing grants, but also those to be made in the future.[47] Furthermore the inclusion of this clause in the record seems to have been deliberately added. On the membrane of the Patent Roll, the grant was originally made without the clause *non obstante*, which appears as an interlinear addition below the testatory clause. It would seem that there was a desire to reinforce the original grant, and the clause *non obstante* was added in a broad way in order to do so. This broader application of the clause *non obstante* also appeared in two subsequent ecclesiastical provisions in June of the same year, both also addressed to the archbishop of York, as well as the bishop of Carlisle, Walter Malclerc, and William de Cantilupe, the three keepers of the realm during Henry's absence campaigning in Poitou. Both of these provisions were made in favour of leading royal servants, respectively Richard Ruffus and Simon Passelewe. While the provision to Richard Ruffus follows that for Peter Saracenus in

[46] TNA C 66/53 m.12.
[47] Hostiensis, *Summa Aurea*. De Constitutionibus, Innocent IV in lib 1. Decretal. The use of this construction by Hostiensis is particularly suggestive, as this case occurred during the time of his service in England, Didier, 'Henri de Suse en angleterre'.

dispensing from 'aliis litteris regis', it and the provision for Simon Passelewe also referred to a specific mandate regarding the revocation of the collation of benefices during the king's absence abroad, 'non obstante aliquis revocatione eis facta supra collatione beneficiorum'.[48] In these cases, what was being suspended was not only any other individual grants or preferments, but also a broader mandate regarding the custody of the realm during Henry's absence in Poitou and the treatment of benefices within the king's gift.

These dispensations could also be used more informally, to enforce upon a religious house a royal provision or preferment which was not necessarily in the interests or to the preference of the community. This was particularly evident when the clause *non obstante* was used in regards to requiring cathedral chapters to admit certain clerics to the cathedral choir and chapter, despite their prebends being of little value or comprising of cash instead of land. Two successive provisions to the chapter of Lichfield demonstrated the particular potency of this kind of royal command. In the first mandate of February 13 1242, the dean and chapter were required to assign to a certain 'John le Franceis' a stall in the choir and place in the chapter, *non obstante* that his prebend was only 100s from the king's chamber, which the king was willing to pay 'in his time'.[49] Only three days later, the king sent a mandate to the guardians of the bishopric requiring them to provide a four mark annual prebend to a royal clerk known as Simon of Norwich, and then subsequently required the dean and chapter to admit him to the choir, despite this minor prebend.[50] These royal provisions would have cut particularly hard against the preference for parochial prebends, especially in the diocese of Lichfield, which by the end of the twelfth century was highly impoverished in the value of its

[48] TNA C 66/53 m. 8.
[49] TNA C 66/50 m. 10.
[50] *Ibid*.

prebendaries.[51] Cases of this kind highlighted the role of the clause *non obstante* in enforcing the royal will in various contexts of ecclesiastical politics.

In addition to this diverse body of ecclesiastical employments, the evidence from royal letters highlights the range of secular contexts in which the clause *non obstante* could be deployed. One of the most significant was in suspensions of general royal mandates related to military organisation. The most prominent of these was for the delivery of ships seized at port. In preparation for Henry's ultimately unsuccessful French campaign in 1230 all ships were arrested by mandate at English ports. Subsequent to this, a swath of letters close enumerated various dispensations from this mandate. The more explicit exceptions appear to have been issued as orders within a military or political context. One, for example, was directed to the bailiff of the port of Winchelsea, 'non obstante mandate regis eis directo ad hujusmodi navibus arestandis'. This dispensation specified three ships belonging to three named parties; Peter son of John de Susey [*sic*], Bernard of St John and Julian de Camer'. These ships were to be released from the port, but their destination was highly circumscribed, as they were to go without diversion to the king's land in Bordeaux and Bayonne. The three beneficiaries were required to guarantee this itinerary with formal oaths of security before their departure, 'accepta prius ab eis Securitate per sacramentum'.[52] The precise purpose of a dispensation could be even more tightly circumscribed than this. In a mandate of February 1230 issued to the constable of Bristol and Roger Allard, the ship in which Ralph of Norwich and Gregory de la Fuble brought the king's treasure from Ireland to Bristol was to be

[51] J. Barrow, 'Cathedrals, provosts and prebends: A Comparison of Twelfth Century English and German Practices', *JEH,* 37 (1986), 534-64, at 562.
[52] *Close Rolls, i,* p. 353.

permitted to return to Ireland so that the justiciar of Ireland, Richard de Burgh, could cross over into England to speak with the king.[53]

In contrast to these very precise dispensations, granted for explicit purposes and guaranteed with oaths and securities, it was also possible to use the clause *non obstante* to grant far broader exceptions from these mandates arresting ships at port. Dispensations could be granted without restrictions, as in July 1233 Herbert de Alencon and Fulk Bainard, both important local officials in Norfolk, were commanded with a clause *non obstante* to permit two ships belonging to the Archbishop of Nidaros to go without impediment wherever they wished, 'sine inpedimento abire quo voluerint'.[54] The strength of this dispensation was heightened by the following entry on the Close Roll, which was addressed to all bailiffs of sea ports that they should not permit or enact any harm, harassment or impediment to these two ships (*nullum faciant vel fieri permittant dampnum, gravamen vel inpedimentum*).[55] This was not the only exception granted to ships connected to the kingdom of Norway, and the favour of foreign rulers played a significant part in these broader dispensations. A series were granted in July 1230 related to ships from the Empire and Flanders in particular, and they became increasingly broad in their scope. A letter of 4 August referred to six ships (*cogas*) seized at Hull and not only allowed their departure, but further stipulated that all other ships 'de terra imperatoris et comitis Flandrie' should be allowed to leave the kingdom.[56] This dispensation was reiterated and reinforced subsequently with a mandate of 28 August, in which merchants of England and Flanders were allowed to trade freely through Hull.[57] Beyond

[53] *Ibid. i,* p. 303.
[54] *Ibid. ii,* p. 242; for the careers of Herbert de Alencon and Fulk Bainard see, M. Morris, *The Bigod Earls of Norfolk in the Thirteenth Century* (2005), pp. 63-6; G. Garnett, 'Bainard, Fulk (b. in or before 1167, d. in or after 1243)', *ODNB*.
[55] *Close Rolls, ii,* p. 242.
[56] *Ibid., i,* p. 367.
[57] *Ibid., i,* p. 371.

their increasingly broad mandates, these use of the *non obstante* clause had a greater significance for conceptions of royal authority. Although they were mainly justified in terms of trade, the immediate context of the arresting of ships in preparation for foreign campaigns associated these dispensations with military organisation and the related royal prerogative. The association of the clause *non obstante* with acts touching the royal prerogative should not be considered inconsequential, especially at this early date for a purely secular usage.[58]

The delivery of ships was not the only foreign policy context in which the *non obstante* formula was used to assert the royal right to dispense from mandates made in this area. Henry III's conflicts with the Welsh prince Llewellyn in 1233 led to restrictions on the movement of food and other merchandise. One dispensation from these restrictions was recorded in September 1233, suspending a royal command against trade in Oswestry Castle with the clause *non obstante* while the castle was in the king's hands (*diu predictum castrum fuisset in manum regis*).[59] Similar restrictions on victualling were also suspended for Bristol in various letters close of August 1233, including a dispensation permitting the men of Cardiff, Carmarthen and Swansea to come to Bristol for trade. The context of military crisis was clear in the terms of this dispensation, as it included a security clause requiring that the men coming to Bristol would not take the food they purchased anywhere other than their own lands, an implicit requirement prohibiting trade with the king's enemies (*accepta ab ipsis Securitate quod ipsa victualia alibi non ducent nec duci facient quam ad partes suas proprias*).[60] Nor were these other dispensations limited to insular conflicts; after the expiry of the treaty with France at the end of 1234, a royal mandate was issued to arrest all French

[58] I would like to express my gratitude to Jim Bolton for highlighting the importance of the royal prerogative in relationship to military organisation.
[59] TNA C 66/43 m.2
[60] *Close Rolls, ii,* p. 244.

merchants in England, and this was not lifted until the end of February 1235.[61] Even before this mandate was lifted, it was possible for the king to grant *non obstante* dispensations from it, as on the 20 February a broad dispensation was granted to two merchants, Vincent de Caudebec and William de Lundeners, to go freely and without impediment with all their men and goods wherever they wished.[62] The defence of the realm and the associated organisation of military campaigns were widely accepted as one of the main functions of kingship (the other being the doing of justice), and in this area the extent of the royal prerogative was not much disputed. These deployments of the clause *non obstante* thus implemented the royal discretionary *potestas* in this fundamental sphere.

In addition to these dispensations from general royal mandates, another major category of dispensation *non obstante* in royal letters was related to the custody and tenure of land. The exceptions granted using the clause *non obstante* in relationship to landholding were for the most part acts of personal favour, but the types of dispensation could vary broadly in scope. The custody of entire lands or offices could be altered using this suspension, as was the case in an appointment of December 1233, wherein the custody of the town of Shrewsbury was granted to Henry de Aldithele, in the place of the earl of Lincoln, despite a previous grant made by the king of this custodianship to Walter de Cantilupe (*non obstante eo quod rex prioris ad se assignant W. de Cantilup'*).[63] To contrast with this total transfer of a grant, the same formula could also be employed to grant dispensations related to a particular part of portion of a larger holding or estate, particularly when the larger holding was under some kind of existing legal restriction. After the Marshal rebellion, measures were taken to

[61] For this arrest, see T. H. Lloyd, *The English Wool Trade in the Middle Ages* (Cambridge, 1977), p. 19.
[62] *Close Rolls, iii,* p. 50.
[63] TNA C 66/44 m. 17.

take Richard the earl Marshal's lands into the king's hands and preserve them. Nonetheless, in May 1234 a mandate was issued to the justiciar of Ireland, Maurice fitzGerald, to cause without delay 550l. of the goods of the earl to be released for the use of the king's sister Eleanor, Countess of Pembroke, in lieu of her dower, notwithstanding any other mandate (*non obstante alio mandato*).[64] These partial dispensations could suspend from substantial royal mandates, even those which were also influenced by assertions of royal authority framed by canon law. Even though, as we shall see, the principle of non-alienation of royal lands and rights formed a substantial policy initiative in the mid-1230s, it was possible through the clause *non obstante* to suspend even from mandates of non-alienation.[65] In a letter patent of January 1236 addressed to Mathilda, countess of Essex and Hertford, the king required the countess to fulfil a promised provision to Master John of Ferentino, archdeacon of Norwich, and to do this, notwithstanding the king's mandate of non-alienation (*non obstante mandato regis alias ei facto de terris suis non alienando*).[66]

Royal dispensations relating to land-holding were used not only to suspend previous royal mandates, but also to interfere with the rights of third parties. This was perhaps one of the most intrusive uses of the clause *non obstante*, and one which highlighted its role in an expansionary royal administration. The two most common forms of this intervention were in granting seisin of a piece of land for which another party had already had full seisin and granting the right to extract goods and chattels, especially already planted seed, from a piece of land which had subsequently been granted elsewhere. While interfering with the rights of seisin may appear to have been the more problematic evidence of royal authoritarian

[64] TNA C 66/44 m. 14.
[65] The canonical background and importance of non-alienation are discussed below, pp. 208-20.
[66] TNA C 66/46 m.10d.

behaviour, the latter intervention could be more disruptive in practice.[67] These latter cases highlighted the instability that could arise when Henry III was willing to use the clause *non obstante* to alter or suspend landholding arrangements. An excellent example of the problems this could cause is shown in the dispute over the manor of Clatford in Hampshire. This manor had previously been in possession of William Marshal, and was granted by the king to Walerand Teutonicus. However, in a dispensation *non obstante* made in May 1231, Henry granted to two previous tenants of the manor, Baldwin of Bethune and Henry de Brayboef', who had held the manor from William Marshal's bailiff, the right to the grain they had sown in the manor.[68] This was a standard dispensation. The extent to which this *non obstante* grant was problematic can be highlighted by the subsequent grant of July the same year made in favour of Walerand Teutonicus, that he retained primary ownership of the grain, save that which Baldwin and Henry might reasonably have planted during their incumbency.[69] These two different categories of land cases in which the *non obstante* clause was deployed demonstrated the further penetration of this vocabulary into royal administration and emphasised the role of the king's will in land-holding. The latter case highlighted the most dangerous aspects of this kind of royal dispensatory power, in particular its dependence on the will of the king, and the capacity for changeability and uncertainty it could have.

The use of the clause *non obstante* occurred in relation to a variety of aspects royal government. The examples considered thus far may be said to be more significant in the context of their application than in their individual content. Releases of ships and exceptions

[67] Grants relating to seisin were fairly formulaic – a typical example from December 1232 was made in favour of Nicholas of St Brigid, 'Mandatum est vicecomiti Sumers' et Dors' quod non obstante precepto regis ei facto de seisina terre Philippi de Denebaud' in Henton' et in Wudiat', qui est cum comite R. Marescallo, facienda Theobaldo de Engleskevill', plenam seisinam habere faciat Nicholao de Sancta Brigida de predicta terra, cui rex eam commisit ad se sustentandum in servicio regis, quamdiu regi placuerit', *Close Rolls, ii,* p. 349.
[68] Rot. Claus 15 Hen III m.12.
[69] Rot. Claus 15 Hen III m.9.

from previous rulings regarding the custody of land were often restricted in scope and responded to specific needs or acts of favour. However, if we place them in their linguistic context, it is possible to gain a greater understanding of their significance; the adoption of this language of Romano-canonical *potestas* from papal practice is deserving of recognition in its own right, its deployment in key areas of royal action – military organisation and land-holding – spoke to a wider awareness of concepts of kingship and authority. The increasing prominence of this language from the 1230s speaks to a developing interest in the assertion of royal power in action during Henry III's personal rule. This emphasis on royal autonomy in the king's majority was constructed in deliberate contrast to the minority period, and the clause *non obstante* played a crucial role in this, highlighted by its appearance in the 1237 Confirmation of the Charters.[70] The main thrust of the charter entry of 28th January 1237 was that the granting of the charters in 1225 lacked legal force, due to the king's incapacity as a minor. It was now through the royal will that the charters were confirmed, and through the use of the clause *non obstante* that the reissue was effected. The suspension of the legal incapacity of a minor would be noteworthy in itself; the use of this suspension in relationship to the Charters, undeniably an issue touching the common interest of the realm, was remarkable. Confirmation of the Charters was in reality a concession, but the framing of this Charter emphasised the primacy of the royal authority despite that concession. The reality of the politics of the Charters was thus reframed in the context of an assertion of royal authority, and the magnanimity of the king's grace was highlighted by the performative suspension of the legal impediment of minority. In this case, as with a contextual consideration of military and land-holding considerations, the significance of the *non obstante* clause was more

[70] TNA C 53/30 m.7.

rhetorical than legalistic; the actions the king took using it may not have fallen within the strict legal rules of the Canonist models, however, even quite petty actions by the king were framed in a vocabulary of plenitude of power. This clause not only gave Henry III a broad scope of discretion in his actions and interventions, but it characterised them even more expansively.

In the canon law for dispensations made *e plenitudine potestatis*, these actions depended on justification by due cause, necessity and the good of the Church. It is worth examining the ways and circumstances in which justifications for such dispensations were presented in their royal usages. The most strongly articulated justificatory clause was of course that associated with the confirmation of the Charters; this preamble associated the clause *non obstante* with actions taken following divine inspiration, for the salvation of souls, and the good of the Church and the Realm. Other justifications for dispensatory power were articulated in a much less elevated register. As these royal interventions often operated as functional expressions of personal favour and patronage, it should not be surprising that when explanations or justifications for dispensations were made, they could include references to petitions or intercessions by the beneficiary or a third party. One such case can be found on the Patent Roll for November 1250, in a concession which granted licence to a certain Maud the wife of the late John le Rus, a widow in the king's gift, to marry where she will, with a *non obstante* clause suspending a previous oath made by the widow not to marry without the king's licence. This grant was explicitly made following the intervention of a Brother Philip Trenchefoile.[71] Other intercessors could be of far higher status. In a pardon for homicide in February 1230, the intercessor is named as the Archbishop of Canterbury, Richard Grant.[72] The king's brother, Richard of Cornwall, also acted as a powerful intercessor, as in a

[71] TNA C 66/62 m.14
[72] *CPR*, *ii,* p. 329.

grant of September 1231, he was named in a grant returning the land of William Huntercumbe, which had been seized during the Marshall Rebellion, suspending another royal grant of seisin of the land to Engelard de Cygony.[73] It could even be argued that the use of the terminology of a royal grant or particularly a concession instead of a mandate or command could be seen to hint at this process of petition and intercession. Another notable trend in the justificatory framework of dispensations was the emphasis on the king's own will – an important factor to be associated with the exercise of such royal power. A dispensation *non obstante* made in August 1248 in favour of a certain Peter Branch began uncompromisingly with the phrase 'rex vult', while a 1231 letter of presentation addressed to Bishop Hugh of Lincoln cited the royal 'voluntatem nostram' as a motivating factor in the dispensation.[74] The nature of the royal will could indeed be made even more specific, as the June 1243 mandate in favour of Simon Passelewe discussed above made it explicit that not only was the dispensation from the king's will, but that the king wished for him to be provided amongst the first.[75]

Although the invocation of the royal *voluntas* was a significant factor, perhaps the most interesting trend from a legal perspective was the use of justificatory clauses which undermined the validity of the act being dispensed from. One condition for this was ignorance, as in the mandate addressed in 1235 to the Bishop of Norwich, Thomas Blundville, concerning the presentation of John Mansell to the church of Bamberg. In this mandate, the king dispensed from his own previous presentation of Mansell, which he had made believing the church to be in his gift, 'quod credebamus ad donationem nostram pertinentes'. In this

[73] *Close Rolls, ii,* p. 257.
[74] *Ibid., vi,* p.75, *i,* p. 600.
[75] TNA C 66/54 m.8.

case at least, the Abbot of Bourepos, to whom the presentation really belonged, made his own presentation of Mansell, to which the king added his dispensation from his own presentation.[76] A similar excuse of ignorance was made even more explicit in another signification of the presentation of R. de Watervill to the church of Patney in February 1242. This presentation had been made by the late Bishop of Winchester, Peter des Roches, but the king had later proposed his own candidate, a decision which was in the letter suspended, because the king had been unaware (*ignorantes*) of the previous provision.[77] Even more noteworthy than these justifications of lack of knowledge were a small number of justifications which cited deception in the original grant. The first of these can be found in the 1231 presentation of Pontius de Ponte to the Church of St Peter's, Oxford. This case, which as discussed above cited the royal 'voluntatem nostram', overrode a previous provision to Ern' de Berkelay, on the grounds that it had been made with the king being tricked and deceived (*circumventi fuimus et decepti*).[78] A later case from 1249 also cited deception as a reason for the presentation being suspended, as in a letter addressed to the Bishop of Lincoln, Robert Grosseteste, the bishop was requested to institute Gerard de Belac to the church of Medburn, as the king's provision of the royal clerk Sampson de Sanford had been carried out by the same deception.[79] These more explicit justifications did not articulate full legal arguments, but the desire to provide a rational and sustainable cause for these dispensations should be noted. It is particularly striking that these justifications by reason of ignorance or deception occurred in royal mandates relating to ecclesiastical provisions – a context in which closer attention to legal niceties would have been both more plausible and more necessary.

[76] TNA C 66/45 m.11.
[77] TNA C 66/50 m.10.
[78] *Close Rolls, i,* p. 600.
[79] TNA C 66/60 m.6.

Can it be said therefore that the employment of the clause *non obstante* in royal letters demonstrated an understanding of the theory of dispensation as associated with the exercise of plenitude of power? As with the cases from the royal courts, there were a number of examples where the clause was employed not only without an explicit legal justificatory framework, but in ways which could be interpreted as erroneous, or inapplicable to the wider context of plenitude of power. Perhaps the clearest example of this can be found in the Patent Rolls for April 1235, in a royal mandate addressed to the barons of the Cinque Ports. This mandate recounted the content of a complaint made before the king by four merchants from Barfleur, whose ships and goods had been seized. In describing the seizure of the ships, the mandate referred to royal letters of safe conduct which the Norman merchants had been granted. It was in relation to these safe conducts that the *non obstante* formula occurred in this incident, not as part of any royal grant or mandate, but in describing how the men who seized the ships and goods did so 'non obstantibus' these royal letters.[80] While it could possibly be argued that the use of the language of the *non obstante* in this context was a deliberate evocation of legal malfeasance, this would be highly improbable. This was likely just a convenient phrase, one perhaps familiar to the chancery clerk from its more deliberate employments, but one whose specific interpretations were not being applied in this case. Knowledge of romano-canonical language did not necessarily entail understanding.

Nonetheless, it can still be argued that there was a broader debate about and understanding of plenitude of power and its relationship to acts of dispensation in the administration of Henry III's personal rule. To emphasise this context for the deployments of the clause *non obstante*, the most detailed evidence lies in the stream of royal letters which

[80] TNA C 66/45 m.11.

surrounded the vacant see of Winchester following the death of Peter des Roches, and particularly the disputed translation of William Raleigh from the see of Norwich, recorded on the Patent Rolls from December 1243 to January 1244. The king had appealed this translation before Gregory IX and in multiple complex legal arguments sought to quash its confirmation by Innocent IV. As a general point for assessing the prominence of learned law in the royal administration of Henry III, these letters should be recognised as significant in and of themselves, for they evoked a remarkably extensive deployment of learned opinion in supporting the king's arguments. The canonist Hostiensis took a leading role in the framing of the royal arguments, and was described as the appellant for the king's side (*Magister H. de Secusia appellantes*).[81] The involvement of Hostiensis in this dispute was of some note to Matthew Paris, who scorned his legal efforts in Rome on the king's behalf, concentrating more on the immoderate amount of treasure sent with him to Rome to procure Raleigh's deprivation. Indeed, Paris asserted that rather than be of legal service to the king, Hostiensis worthlessly and treacherously absconded with the treasure, 'nequiter et seditiose thesaurum regis asportante'.[82] Paris's sustained hostility to both Hostiensis and the king's attempt to deprive Raleigh made his commentary on the topic less than disinterested, yet even were Hostiensis discounted, this case still demonstrated a remarkable degree of legal engagement by the royal party. In the same letter of appeal to Innocent IV in which Hostiensis was described as appellant, the Savoyard canonist was said to have proposed to Raleigh the appointment of an expert panel of lawyers, two appointed by the bishop and two by the king, to judge the validity of the case, 'duos probos iuros honestos et Jurisperitas'.[83] The king's desire to cite legal authority was further articulated in further letters addressed to the

[81] TNA C 66/55 m.11.
[82] *Chronica Majora, iv,* p. 286.
[83] TNA C 66/55 m.11.

guardians of the bishopric and subsequently to Innocent IV. These letters described a three-stage process of legal consultation, first from the men learned in law in the kingdom then available, 'de consilio diversorum jurisperitorum in regni nostri', and then further consultation from the masters of Oxford reading in law, 'magistros Oxonienses in jure legentes' as well as other men of religion and knowledgeable of the law, 'alios iuros religiosos et jurisperitos'.[84] The final stage of legal consultation was only proposed and not carried out, but it demonstrated an increasing hierarchy of expertise, as it outlined the notion that the king was willing to submit his arguments for judgement by all the masters of Paris, 'omnes magistros in jure ibidem regentes' and then be obedient to their ruling.[85] Henry's submission to the masters of Paris never occurred, but the very suggestion of it should be noted, not the least as a very early indication of royal utilisation of the universities to acquire expert consultation, presumably in the king's favour.[86]

Nor did it appear that Henry's employment of legal experts was intended to fill a purely consultative function. Henry's lengthy letter to the pope explicitly referenced what could be read in the decretals, laws and decrees, 'fuisse legitur in decretalibus et legibus et decretis'.[87] The passage explicitly asserted that if not the king himself, then those framing his arguments, did so based on the authority of canon law. More practically, Henry also deployed the agency of a canon lawyer to act directly in his service, a certain Master Robert of Ludlow,

[84] *Ibid.* m.10d.
[85] *Ibid.*
[86] Henry's reference to the learning of the Parisian masters of law was particularly significant. It indicated a continuing understanding of Parisian legal expertise despite Honorius III's restrictions on law in *Super Speculam* in 1219. Furthermore, this was a prodigiously early royal request for legal counsel from the universities, and it is worth comparing with the Capetian relationship with the masters of Paris. For the dearth of major requests to the masters of Paris in the thirteenth century, see W. J. Courtenay, 'Learned Opinion and Royal Justice: The Role of Paris Masters of Theology During the Reign of Philip the Fair', in R. Mazo Karras, J. Kaye and E. Ann Mutter (eds.), *Law and the Illicit in Medieval Europe* (Philadelphia, 2008), pp. 149-63.
[87] TNA C 66/55 m.10d.

'jurisperito magistro R. de Ludelawe', who was first sent to Winchester, to enforce the king's authority.[88] Ultimately, Robert of Ludlow was also sent to Rome to support the king's case, but the context of his removal from Winchester was particularly suggestive. In a letter of 22nd December 1243, Henry castigated Robert, whom he had sent to prevent the folly of lay persons, 'stulticiam laicorum', but who incited violence by arresting Raleigh's goods and employing armed force, acts that the king would never have wished to be done by a cleric, 'in manu clericali'.[89] This association of clerical servants of the king and particular expectations and standards of behaviour was significant as it indicated that not only were such canon lawyers and churchmen valued as royal agents, but that there was some idea of specialism and particular services which could be provided by the learned clergy. There was clearly some degree of more or less sophisticated thinking about the ways in which the employment of canon law and canon lawyers could be of benefit to the English king.

Yet in regard to an English understanding of dispensations as related to the plenitude of power, the content of the arguments put forward by the king and his agents were particularly significant. These arguments were outlined with the greatest detail in a letter sent by the king to the Pope on 12th January 1244. While this letter explicitly specified that its delivery was not an official part of the king's judicial proceedings, and all assertions were made saving his appeal (*salva sua appellatione*), the form taken in the correspondence was very much that of a legal disputation. In the letter, the king outlined the four points of Raleigh's argument, and refuted them by providing his own responses. The discussion of the plenitude of power and the different interpretations of that authority put forward by the king and the bishop were made most evident in the first and second points. Raleigh's first

[88] *Ibid.* m.11.
[89] *Ibid.* m.11d.

argument justified his translation explicitly in the terms of papal plenitude of power, asserting that his translation from Norwich to Winchester had been confirmed by papal letters with the consent of the cardinals, with any defect in his postulation supplied by papal plenitude of power, 'se sue potestatis supplens plenitudine'. Furthermore, Raleigh argued that in preventing him from exercising his office, and by suggesting the submission of the articles of the masters of Paris, the king might be seen to be undermining the canonical procedures, 'contra omnem canonicam sanctionem dubitare videretur'.[90]

In his response, the king did not question the nature of papal plenitude of power, but rather argued that the pope had already declared himself willing to admit exceptions against the mandate, and that in attempting to enter the bishopric before the case had been decided, it was Raleigh himself who was acting abusively. Furthermore, the king emphasised that the original letters had been acquired by stealth and falsity (*per subreptionem et falsitatem*)[91] an important justification to note given the employment of deceit as a grounds for suspension *non obstante* noted above in the cases from 1231 and 1249.[92] These differing attitudes to plenitude of power were reiterated in the second argument and its refutation. In this argument, Raleigh suggested that the king's appeal, and particularly his invocation of the masters of Paris, was intended to undermine papal authority and undo the pope's previous actions. In his response, the king argued that he did not seek to undermine papal authority, but by bringing to light the falsity of the original grant, to reform what the pope had been tricked into doing (*id quod dominus summus pontifex circumventur fecit in melior reformanda*).[93] The king's went on to argue that this was argued by what had been read in

[90] *Ibid.* m.10d.
[91] *Ibid*.
[92] See above, p. 185.
[93] TNA C 66/55 m. 10d.

the decretals, laws and decrees. In essence, these contrary arguments presented two different views of the papal plenitude of power and its exercise. Raleigh's articles demonstrated the conception of this power as the supreme hierarchical jurisdiction, which could not be altered. In contrast, the king's party suggested that what had been procured from the pope through deceit could legitimately be suspended or overturned by the same pope. As was discussed at the outset of this section, the thirteenth-century was a time in which these two theories of plenitude of power were disputed, and the attitudes of canon lawyers increasingly tended towards the latter theory of papal volition.[94] After the increasing use of the *non obstante* clause for dispensations by royal authority over the course of the 1230s, this case from the early 1240s gave an opportunity to discuss the theoretical framework for this legal language in a far more explicit fashion. Furthermore, it could also be interpreted as significant in the development of Hostiensis's own views on the issue, which were not articulated fully in the *Lectura* for several more decades. If in this case, the royal discussion of dispensation and plenary power addressed papal and not royal authority, the very engagement with these ideas should be seen in itself as influential. Although Henry may have hesitated to attribute to himself powers discussed as the province of divinely-mandate papal *potestas*, the discussion of these ideas may have nonetheless stimulated and encouraged thinking about royal dispensing power and provided a form for its articulation.

From these specific cases, some more general observations may be drawn. In contrast to the increasingly restricted and formulaic employment of this clause in the royal courts, its deployment in royal letters became increasingly diversified and explicitly associated with the expression of the royal will. It was certainly a *de facto*, if not a *de iure* assertion of royal

[94] See above, pp. 155-9.

potestas. Even if the legal theory behind the phrase was not fully articulated, and the clause *non obstante* in itself was by its very nature an supra-legal device, Henry's government was clearly aware of and engaged with the canonical framework for its expression. This was evident from both the broader involvement with debates regarding dispensatory acts and plenitude of power, and from the evocation of justifications and rationales behind dispensations. Nonetheless, the adoption of this formula and its association with the expression of royal authority did not depend solely on legal justification – to contemporaries Henry may well have been within his rights, but not in the right. Even in the purely ecclesiastical sphere, this clause was controversial, as demonstrated by the complaints of the bishops and Matthew Paris. In the secular sphere, particularly in the context of post-Charter politics, the adoption of *non obstante* spoke to an expansionary conception of royal discretionary authority that could be problematic. The clause may have been desirable to royal officials because of its broad scope and flexibility, yet these qualities allowed it to express some of the most dangerous characteristics of Henry III's personal rule. The threat to the security of tenure, royal wilfulness in military organisation and even a threat to the stability of the Charters could all be perceived. Henry III may not have explicitly evoked the plenitude of power that led John of Salisbury to accuse his grandfather of tyrannous acts, but his utilisation of this associated formula could impinge similarly on the political fabric of thirteenth-century England.

Kingship and the Royal Dignity

Moving from assertions of the power of the king, the second portion of this chapter considers the way in which the power and character of the royal estate was asserted. This was

expressed in the broad terminology of the royal dignity and majesty, 'dignitas et maiestas', and was invoked in practice in the articulation and application of the canonically-reinforced theory of non-alienation. Neither the broader rhetorical framework of the royal dignity, nor the specific concern with non-alienation were novelties to the period of Henry III's personal rule, but their frequency and intensification as part of a body of canonically-inspired linguistic adoptions by the royal administration was significant, and they have rarely been considered within this broader linguistic framework. Furthermore, the association of the canonical theories of non-alienation with the long-standing and not specifically juridical language of *dignitas* and *maiestas* can be said to demonstrate a remarkably successful integration of the new vocabularies of the learned law.

In contrast to the language of *potestas* and *imperium*, the language of the royal *dignitas* and *maiestas* was far more widespread and less controversial. This vocabulary was already present in English royal rhetoric before the personal rule of Henry III. As Ralph Turner has emphasised, this rhetoric played a prominent role in the political language of King John, and one which was not a novelty even in his reign, with explicit exhortations of the *dignitas regi* being identified in the reigns of both Richard I and Henry II.[95] The origins and legal framework of this vocabulary have been discussed lucidly and in detail by Ernst Kantorowicz and Gaines Post, and a full recapitulation of their observations would be superfluous. It is nonetheless worth making a few brief comments about the broader meaning of these terms

[95] Turner, 'King John's Concept of Royal Authority', 162-9. Turner makes the important point that in these early deployments under the Angevin kings, the invocation of the special rights of the royal dignity was frequently associated with the desire to fend off the perceived encroachment of canon law upon royal rights and jurisdiction. The adoption of the language of learned law did not necessarily imply an appreciation or welcoming of its practice in a period when there were determined attempts to enforce the supremacy of the royal courts in a network of competing jurisdictions.

considering their application in the English context. The most succinct definitions was given by Gaines Post, who observed:

> 'In the two laws, then, and in the documents of emperors and kings on the Continent, *status*, *honor*, *dignitas*, and *corona* often stood for the public authority, or for those powers of the prince which were deemed necessary for the maintenance of the *status* of the realm.'[96]

Similarly, Ernst Kantorowicz began his influential work, *The King's Two Bodies*, by quoting the Elizabethan jurists' assertion that the king's natural body was 'conjoined to his Body politic, which contains his royal Estate and Dignity'.[97] The royal *dignitas* was the body of rights and authority which belonged not to the king as an individual, but to estate of the crown and the realm. This was certainly the definition maintained by Bracton, who defined the king's supra-legal rights in relation to the law as pertaining to 'none except only to the Crown and the royal dignity'.[98] The language of *maiestas* even more specifically invoked the inheritance of the Roman civil law, and was closely connected with not only the language of *dignitas* as the public *status* of the prince, but also of a specifically imperial status, as it had been developed in particular in the chancery of Frederick Barbarossa in the twelfth century.[99] These were vocabularies that articulated royal power, but specifically referred to the power of the royal office that transcended the immediate individual person of the king, relating instead to the supra-temporal crown and more broadly to the *status regni* or well-being of the realm.[100]

Before moving on to the evidence from the reign of Henry III, one particular aspect of the language of *dignitas* and *maiestas* should be subject to special consideration; *dignitas*

[96] Post, *Public Law and the State*, p. 382.
[97] Plowden, *Reports*, 213, cited in Kantorowicz, *The King's Two Bodies*, p. 9.
[98] *Bracton*, *ii*, p. 167.
[99] Post, *Public Law and the State*, pp. 380-1
[100] The *corona*, as an aspect of the public persona of kingship, is discussed in more detail in Chapter Four, pp. 230-4.

illaesa, or more commonly, *maiestas illaesa*, harm to the public authority. This language had special significance in the Roman law vocabulary of majesty, and in particular, the Roman law on treason. The *Lex Iulia maeistatis*, appearing in both the *Codex* and *Digest* of Justinian, made explicitly clear the severity of this crime. Ulpian described the *crimen maiestatis* as next to sacrilege, and one that was committed against the people and their safety.[101] Following from the articles taken from Ulpian, Justinian also preserved the comments from Marcianus, describing the tablets of those to be publically proscribed from the city, including those who committed treason, or, more literally, harmed the public majesty, (*qui maiestatem publicam laeserit*).[102] The severity of this crime was further emphasised in the *Codex*, where another article from Marcianus permitted the torture of slaves in relation to the crime against the emperor (*quod ad laesam maiestatem imperatoris pertinent*).[103] From this principle, twelfth-century theorists emphasised that the royal *maiestas* should be kept *illaesa*, as to do the opposite was treason.[104] The adoption of the language of what would later be known as the crime of lèse-majesté was a significant transformation of the understanding of treason in the later middle ages, as J G Bellamy argued it indicated a shift from reciprocal feudal lordship to imperial-style sovereignty.[105] In the political vocabulary of the later middle ages, notions of interpersonal betrayal (treason) were transformed, in the unique case of the higher powers, by the addition of a notion of harming the public authority (*crimen maiestatis*), and this helped to differentiate the king from other lords.

[101] D.48.4.1.
[102] D.48.4.3.
[103] C.9.8.6.1.
[104] For an outline of these developments, and in particular the English context of the late twelfth century, see Post, *Public Law and the State*, p. 418.
[105] J. G. Bellamy, *The Law of Treason in the Later Middle Ages* (Cambridge, 1970), p. 10; for the development of similar ideas in France, cf. S. H. Cutler, *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge, 1981), pp. 4-15.

There has been extensive debate about the relative importance of the *crimen maiestatis* over the thirteenth century, especially in the context of baronial rebellions. While the civilian language of this construction of treason certainly circulated in England from the late twelfth century onwards, it remained only one of a number of different ways in which rebels could be categorised and punished.[106] However, Matthew Strickland in particular has emphasised the reign of Henry III as a period in which the language of lèse-majesté was used, and crimes of this kind prosecuted, more intensively and widely than before.[107] If this increasing application is considered alongside the broader deployments of the language of *dignitas* and *maiestas* during the period of personal rule, it is possible to see how this intensification of treason charges were situated within a larger discourse of expansionary royal authority expressed in these terms.

The utilisation of this language of treason built upon the existing theoretical tradition, invoking a set of rights and responsibilities particular to the king, and signalling of a quasi-imperial concept of monarchy. Within this tradition, it was articulated either descriptively or defensively, to assert the rights of the crown, and to prevent depredations against them by other parties. This distinction is to some extent artificial, as descriptive and proscriptive uses

[106] M. Strickland, '*In Coronam Regiam Commiserunt Iniuriam*: The Barons' War and the Legal Status of Rebellion, 1264-1266', in P. Andersen, M. Munster-Swendsen and H. Vogt (eds.), *Law and Power in the Middle Ages. Proceedings of the Fourth Carlsberg Academy Conference on Medieval Legal History 2007* (Copenhagen, 2007), pp. 171-98; *idem*, 'Against the Lord's anointed: aspects of warfare and baronial rebellion in England and Normandy, 1075-1265', in G. Garnett and J. Hudson (eds.), *Law and government in medieval England and Normandy: essays in honour of Sir James Holt* (Cambridge, 1994), pp. 56-79; and *idem*, 'Treason, feud and the growth of state violence: Edward I and the 'War of the Earl of Carrick', 1306-7', in C. Given-Wilson, A. J. Kettle and L. Scales (eds.), *War, Government and Aristocracy in the British Isles, c.1150-1500: Essays in Honour of Michael Prestwich* (Woodbridge, 2008), pp. 84-113; S. D. White, 'Alternative Constructions of Treason in the Angevin Political World: *Traïson* in the *History of William Marshal*', *e-Spania* [Online], 4 (2007, online 2010), http://journals.openedition.org/e-spania/2233 [accessed 18 December 2017]; For a consideration of treason trials in the thirteenth century more generally see P. Coss, 'Law and Political Culture in Thirteenth-Century England: The Treason Trial of 1225', in P. Coss amd C. Tyerman (eds.), *Soldiers, Nobles and Gentlemen: Essays in Honour of Maurice Keen* (Woodbridge, 2009), pp. 261-78; and *idem*, 'How did Thirteenth-Century Knights counter Royal Authority?' in *TCE XV,* pp. 3-16.

[107] Strickland, '*In Coronam Regiam Commiserunt Iniuriam*', pp. 174-7.

often overlapped to a large extent. However, in recognising these two different modes of expression, it can be shown that the terms of *dignitas* and *maiestas* diverged to a degree in their application in royal rhetoric. For the most part, the language of *maiestas* tended to appear in the context of the *crimen laesae majestatis*, while that of the royal *dignitas* occurred with a far greater frequency and in a diversity of contexts. Where the language of *maiestas* did appear far more regularly was not in the style adopted by the king in his own correspondence, but in the address of others towards him; as from at the least the late 1240s the kings seems to have preferred this more elevated address, see eg. the letter sent from the men of Chateau Dusar to Henry III in 1249, in which the king was greeted first as 'serenissimo ac magnifico viro domino Henrico,' and then addressed in terms of his royal majesty (*vestram regiam maiestatem*).[108] The elevation of the royal style was not so much in how Henry III referred to himself, but in the ways he expected others to address him; in this context the invocation of royal majesty was more common than of royal dignity, and engaged with a broader conception of elevated royal status.[109]

In contrast to the conception of *maiestas* as the royal status in the construction of lèse-majesté, *dignitas* appeared much more closely associated with a specific body of rights and privileges. These privileges could be linked with other concepts which related to the public status of the king, most common of which was an association with the crown (*corona*) as the corporate body of kingship.[110] In a letter close of January 1238, the king addressed the papal legate Cardinal Otto on the subject of a plea concerning a fish-market; the case was

[108] Shirley, *i,* pp. 57-9.
[109] For the relative precocity of Henry III's insistence on this elevated royal style and its links with his ideas about kingship, see N. Saul, 'Richard II and the Vocabulary of Kingship,' *EHR,* 110 (1995), 854-77, at 856, 868.
[110] The term *corona* had various origins and implications, see G. Garnett, 'The Origins of the Crown' *PBA,* 89 (1996), 171-214; its employment as a representative construct of the public and supra-temporal persona of kingship during the reign of Henry III is discussed in greater length in the following chapter, pp. 230-4.

being carried out in ecclesiastical courts when it ought to be carried out in the royal courts. In this letter, the king asserted that those things which pertained to his crown and dignity (*qui spectant ad coronam et dignitatem nostram*) should be preserved in full.[111] Although the link here with the crown would seem to invoke a status-based *dignitas*, the context of the letter indicated the defence of a particular body of rights relating to the limits and extent of royal jurisdiction. This focus was particularly emphasised by invocation of their long-standing nature and basis in custom. Thus in June 1236, when Henry addressed letters close to Robert Grosseteste, Bishop of Lincoln, he began by referring to the legal precedent of his predecessors as kings of England (*predecessoribus* [sic] *nostrorum regum anglie et tempore nostro*) that clerics accused of crimes pertaining to the royal dignity (*ad regiam dignitatem pertinentibus*) should not be prosecuted in ecclesiastical courts, but should be attached to reply in the royal courts, following the laws and customs of the realm (*secundum legem et consuetudinem regni*).[112] This description not only established the legal and customary precedent for Henry's assertion of the royal dignity, but may have been an explicit reference to Chapter iii of the Constitutions of Clarendon, requiring criminous clerics to be accountable to royal justice.[113]

The question of jurisdiction was by no means the only royal dignity to be defended in this way. In a letter close of April 1251, Archbishop David of Cashel was described as having called the elect of the church of Limerick to appear in his court on behalf of that church. This citation was described as having been made notwithstanding the royal privilege requiring assent to ecclesiastical elections (*non obstante dignitate regis de assensu requirendo*

[111] *Close Rolls, iv,* p. 120.
[112] *Ibid., iii,* p. 360.
[113] *Select Charters and Other Illustrations of English Constitutional History. From the Earliest Times to the Reign of Edward the First*, ed. W. Stubbs, 9th edition revised throughout by H. W. C. Davis (Oxford, 1913), p.164

confirmaret).[114] The use of the clause *non obstante* in this context should be noted, as it either represented an erroneous application, or the implication of an attempt to usurp the royal *potestas*, although the former is more probable. This defence of royal rights was active as well as reactive, as can be demonstrated in a 1242 letter patent appointing Masters Thomas of Bedford and Alan of York as the king's proctors before papal judge delegates in a case between Robert Grosseteste and the dean and chapter of Lincoln. This appointment required them to represent the king regarding visitations, procurations, and other contentions affecting the crown and the king's dignity (*et quibusdam aliis contentionibus coronam et dignitatem nostram tangentes*).[115] The precise content and extent of the royal dignity were not defined in this appointment, but they were clearly intended to be broader in scope than a few specific cases and exceptions. A comparison with the Constitutions of Clarendon may again prove informative. At the end of the list of the outlined Constitutions, the closing language of the charter referred to many other great customs and dignities not included in the document (*sunt autem et aliae multae et magnae consuetudines et dignitates sanctae matris ecclesiae et domini regis et baronum regni, quae in hoc scripto non continentur*).[116] In contrast to the legal understanding of the *crimen laesae maiestatis*, which was fairly restricted, the royal dignities were evidently far more expansive, ranging from specific individual rights or privileges to a broader sense of jurisdictional independence. In this way, there was a far greater diversity of contexts for this latter language to be deployed, especially in epistolary sources rather than legal ones.

[114] *Close Rolls, vi*, p. 533.
[115] TNA C 66/52 m.2.
[116] Stubbs, *Select Charters,* p.167.

While the language of *dignitas* in itself was well-established in England, the evidence from the period of personal rule of Henry III suggests that there was some considerable degree of flexibility in how this language was deployed, and a degree of fluidity and experimentation in its use. This was perhaps clearest in the tendency to elide the language of the royal *dignitas* with that of the *crimen laesae maiestatis*. Even in explicit references to *maiestas*, the legal formula was not always followed exactly. One particularly unusual form was expressed in another royal letter to Innocent IV complaining of papal exactions preserved by Matthew Paris for the year 1246. While expressing the profound love of the English for the mother Church, this letter recorded the extent of complaints from the magnates, both clerical and lay, of the terrible oppressions laid on the kingdom, which could not be sustained. The invocation of the royal majesty and its contravention was then made, that in stopping the oppressions of the papal nuncios, the *majestas regia* would be made free (*faceret liberari*).[117] The concept of liberating the royal majesty was a remarkable one that did not recur in other sources.

In an opposing variation, *maiestas* was not the only potential victim of acts of *laesio*. Various forms could be employed relating the contravention more or less directly to the royal *dignitas*. Another letter sent by the king to Innocent IV in 1246 and preserved by Matthew Paris described the harm done to the laws and liberties of the kingdom (*iura nostra et libertates*). In protesting against ecclesiastical exactions, Henry III argued that these should be preserved intact and undamaged (*illaesa et integra*). The connection with the royal *dignitas* was then made subsequently, as it was asserted that these laws and liberties were granted to the king from God to the office of the royal dignity (*ex concesso nobis a Deo regiae*

[117] *Chronica Majora*, *iv*, pp. 534-5.

dignitatis officio). [118] In this case, the more intangible royal *dignitas* as status was linked with the specific protections of the *iura et libertates* of the realm, which were to be preserved because of their relationship with this sacral image of kingship. A more direct invocation of the concept of a 'crimen laesae dignitatis' appeared in a later letter of December 1250, again addressed from the king to Innocent IV, regarding a dispute between Walter de Cantilupe, Bishop of Worcester, and the sheriff of Worcester, William de Bello Campo. This case invoked two different stages of threat to the royal dignity, the first being that the king permitted the case to be heard despite having forbidden the parties concerned from continuing. Despite this, the case was heard in the royal courts 'not without damage and prejudice to our dignity, with an unsettled heart' (*non sine lesione et nostre prejudicio dignitatis cum cordis turbacione*). Subsequent to the pursuit of the case in the royal courts, the bishop had obtained an excommunication upon the sheriff through papal intervention, and it was this that the king protested to Innocent IV. Henry argued that according to the counsel of his barons (*de consilio magnatum nostrorum*) as the Bishop held land from the king in chief, according to the law and custom of the kingdom (*sicut est legis et consuetudinis regni nostri*), he should be subject to the king's jurisdiction. [119] In this case reference was made to both the harm (*laesio*) and the prejudice (*prejudicium*) done to the *dignitas*. This both served for rhetorical effect, and also demonstrated the plurality of potential modes for expression of damage done to the royal dignity. [120]

[118] *Chronica Maiora*, iv, pp. 314-15.
[119] *Close Rolls, vi,* p. 525.
[120] It is also possible to identify even isolated alternate descriptions of harm to the royal *dignitas* that did not use either the language of *laesio* or *prejudicium*. One such example was the reference to the *dignitatis derogatis* made in a letter close of October 1247, addressed a certain S., archdeacon of the East Riding, and Richard of Gloucester, treasurer of Lichfield. This letter permitted that an ordination made between the Church of Winchester and the Abbey of Evesham should be allowed to proceed, as long as it did not derogate the royal dignity (*Quam quidem procedatis dummodo vestra ordinacio in aliquot nostro non deroget dignitati*), *Close Rolls, v,* p. 548.

Despite the possibility for variant forms, there was over this period a gradual but noticeable development of more standardised modes of expression. The *crimen laesae maiestatis* was legally defined, and thus operated within a fairly restrictive framework.[121] The use of the term *laesio* in the context of the royal *dignitas* allowed the invocation of the offence without requiring the same legal strictures. Alongside this rhetorical strategy, the form of the *prejudicium dignitatis* emerged with increasing frequency in letters over this period. As with the Worcester dispute, the language of *prejudicium* could coincide with that of the *laesio dignitatis*. In a letter from Henry III to Gregory IX in May 1234, complaining of the usurpations of the Irish bishops, the king asserted that their actions were done in grave prejudice and harm to the royal dignity (*in grave praejudicium nostrum et regiae dignitatis laesione*).[122] It could also be used to express a form of harm to the king and the royal dignity in its own right. The term 'prejudicium regis' also occurred in the citation to the Archbishop of Cashell in 1251, closely after the employment of the clause 'non obstante dignitate regis'.[123] Another expressive use of the language of *prejudicium* occurred in a 1242 letter close issued to the justices of the Bench in favour of the dean and chapter of Lincoln, regarding their dispute with Bishop Grosseteste. This letter ordered the case to be heard before the Bench, and did so asserting that as it touched upon the royal dignity and the crown, it could not proceed in an ecclesiastical court without injury to the king and prejudice to his laws (*sine injuria nostra et juris nostri prejudicio in curia predicta non potuit ventillari*).[124] The language of *prejudicium* could be applied directly to the *dignitas regis* itself, as was case in a letter addressed to Walter de Cantilupe, bishop of Worcester regarding the same case. This letter was laden with the

[121] For the *crimen laesae maiestatis* in thirteenth century English legal treatises, see, *Glanvill*, p. 172, and *Bracton,ii,* p. 534 .
[122] Shirley, *i,* 399-400.
[123] *Close Rolls, vi,* p. 533.
[124] *Ibid., iv,* p. 521.

language of the royal dignity, and emphasised that the case could not be heard in an ecclesiastical court without great prejudice to the same (*que sine magno prejudicio dignitatis nostre in foro ecclesiastico non poterit ventilari*).[125] The language of prejudice to the royal dignity also occurred, perhaps unsurprisingly, in the correspondence regarding the dispute over the translation of William Raleigh to the bishopric of Winchester in 1243-4. In one of the earliest letters of appeal against Raleigh from December 1243, the bishop's refusal to do homage to the king was described as being to the prejudice of the king and his royal dignity (*in prejudicium Regis et Regiae dignitatis*) and the letter closed with an exhortation to the Prior and Chapter of St Swithun's, Winchester, to do nothing in prejudice of the king (*in prejudicium regis*).[126] The language of acting against the king's dignity and to his prejudice became an important part of the dispute itself, emphasising the importance that could attributed to this accusation. In the letter of January 1244 outlining Raleigh's arguments and the king's responses, acting contrary to the royal dignity constituted the main part of the fourth point. Raleigh insisted that he had always been obedient to the king in all things that were congruous to the royal dignity (*set rebus que regie congruant dignitati in omnibus affectat obedire*) and promised to correct anything attempted to the king's prejudice (*in sui prejudicium*).[127] The king gave an unsurprisingly blistering response to this defence, saying that the bishop had acted in prejudice of the king and with the highest contempt (*in prejudicium domini regis et summum contemptum*).[128] Acting in prejudice of the king's dignity was a sensitive issue; invoked alongside legal *laesio*, it increasingly had a legal and political force of its own.[129] The personal rule of Henry III did not see a total crystallisation of the

[125] *Ibid., iv,* pp. 435-6.
[126] TNA C 66/55 m.11.
[127] TNA C 66/55 m.10d.
[128] TNA C 66/55 m.9d.
[129] For the king's dignity and the language of *laesio*, see above, p. 200.

language of *dignitas* and *maiestas*, but the fluid use of these terms increasingly tended towards more common forms.

The cases considered so far all emerged from royal letters discussing ecclesiastical business, and in particular in disputes over boundaries of jurisdiction and defence of the rights of the crown. In the first place, this spoke to the engagement of secular government with church affairs, and the papacy in particular, as a context which encouraged the cross-fertilisation of Romano-canonical language into the royal style. This influence of ecclesiastical precedent, and even direct papal encouragement could be testified to in the letters themselves. The most explicit example of this was in the 1250 letter to Innocent IV discussed above.[130] In asserting his displeasure at the papal excommunication Henry argued that the pope had always wanted everything touching the crown and the king's dignity to be maintained undamaged (*que omnia nostram coronam et dignitatem regiam tangencia semper voluit et vult illesa servari*), and that, to protect these rights, he should issue a decretal prohibiting the case from being heard in another court or any other which touched the height of the royal dignity and the affairs of state (*seu aliis que nostrum forum et dignitatis nostre culmen tangere*).[131] This not only explicitly invoked the role of papal rhetoric and decretals in shaping English political discourse, but was almost certainly a direct reference to theories of non-alienation, and the encouragement of these by Pope Gregory IX in the 1230s.[132] This link between the promotion of theories of non-alienation and the responsive defence of the royal dignity against papal exactions was made earlier, if slightly less directly, in the 1244 letter to Innocent IV. Before asking for the laws and liberties (*iura nostra et libertates*) to be conserved

[130] See above, p. 201.
[131] *Close Rolls, vi,* p. 525.
[132] Discussed below, pp. 208-20.

'illaesa et integra', it was asserted that these should not be alienated because they rightly pertained to the king's prerogative power (*quae non aliena sed propria potestas merito reputare*).[133] In these letters, royal rhetoric was not only appropriating papal terminology, but was using previous advice offered by the pope to Henry III as a basis for defending royal prerogative rights.

Not only did the ecclesiastical contexts of these disputes indicate the fora in which this language was particularly directly transmitted, but they also demonstrated the importance of the boundary of lay and spiritual jurisdictions as an area in which Henry III used these terms to assert his kingship more vigorously and expansively. Over the twenty years of the personal rule, we have looked at cases in which the king advanced and defended his rights and jurisdictions against ecclesiastical and especially papal encroachment. These rights and privileges covered a range of issues, from the principle that any case touching the king's interests should be heard in the royal courts, to the rights of approval to ecclesiastical elections and the defence against excessive financial exactions. Beyond these specific conflicts, this repeated emphasis on the royal dignity gave the conception of kingship a broader and more elevated status. This was particularly evident in one exceptional case where the king bound himself not to defend the royal dignity. This appeared in a letter from May 1236, directed from the king to Gregory IX and outlining the terms of Henry's payment of the dowry of his sister Isabella to the Emperor Frederick II. The fourth part of this letter, the *petitio,* invoked supreme ecclesiastical sanction on the part of the Pope in the event of non-payment, and did so in the most substantive ways. The enforcement of the ecclesiastical sanction was guaranteed by the inclusion of a clause *non obstante*. This was placed at the

[133] *Chronica Majora*, *iv*, p. 315.

very end of the *petitio*, just before the testamentary clause, to give it especial force and significance. The relevance to the royal *dignitas* is that it appeared in the list of factors which were dispensed from. These included exceptions of public policy (*exceptione fori*) or the royal dignity (*regiae dignitatis*) put forward not only by the king himself, but also by his successors.[134] While the use of the king's *potestas* through the dispensation *non obstante* to suspend the interests of public policy and the dignity of the royal office could highlight the potential conflict between the institutional and personal dimension of kingship, this very tension made the concession more significant. This emphasised the king's commitment to the matrimonial agreement, by placing it above the royal dignity, and at the same highlighted the importance of that dignity in its suspension, and in particular the suspension by the clause *non obstante*.

In this way, the developments in the language of the royal *dignitas* during the personal rule of Henry III also served to enhance the secular conception of that status. By 1250, when Henry wrote to Innocent IV about the Worcester case, this broader image of *dignitas* and kingship could be addressed quite explicitly. Even before the papal excommunication had been incurred, this letter showed that it was possible for *laesio dignitatis* to take place in a purely secular context, as the pursuance of the case 'in curia nostra' was in itself said to be an affront to royal dignity, as the king had, by both spoken and written word (*contra prohibitionem nostram sibi factam expresse tam viva voce quam litteris*) forbidden the parties from pursuing the case. This harm to the dignity was exacerbated by the excommunication, it did not originate entirely from the collision with papal intervention. Furthermore, when the excommunication further complicated the situation, Henry III was able to defend himself in

[134] *Foedera, i,* p. 226.

terms which elevated the royal dignity to a remarkable extent, and connected it with the public good of the realm. In his letter forbidding Bishop William from pursuing his case through papal intervention, the king stated that Cantilupe should not pursue any plea on issues known to touch public affairs and the height of the royal dignity (*eidem episcopo nullam prebere velitis audienciam in placito memorato seu aliis que nostrum forum et dignitatis nostre culmen tangere dinoscuntur*).[135] This is not only a remarkably extensive invocation of the royal status, but one which linked it to the public good of the realm more generally. The invocation of the royal *dignitas* in ecclesiastical disputes contributed to an expansionary and elevating conception of the king's office in its own right. In this context, references to the *crimen laesae maiestatis* over the reign, from attempted assassinations in the 1230s and 40s to the royal justice Henry of Bath in 1251, and finally against Simon de Montfort in the April Parliament of 1260, were not only examples of how civilian language formed part of the matrix of treason during this period, but also fitted into a broader narrative of the royal status and its defence and elevation over the period of personal rule.[136]

This elevating language gave the king increased status and discretion, however it also raised expectations for royal government, and could leave the king open to accusations of failure in the very aspects of his authority that he himself had promoted. The issue of non-alienation, which was one of the most important secular applications of the theory of the royal dignity, highlighted this tension. It gave great power to the king to act in relation to his land, but also emphasised a particular responsibility for the king to act in a certain way. To explore this tension, the question must be considered in more detail.

[135] *Close Rolls, vi,* p. 525.
[136] For these cases, see Strickland, '*In coronam regiam commiserunt iniuriam*', pp. 176-7.

Inalienability in the Period of Personal Rule

The language of the royal dignity and majesty was not 'mere' rhetoric; it not only carried with it a descriptive elevation of the concept of kingship, but it also supported and defended a set of more specific behaviours, obligations and rights that pertained to the king and his estate. Crucial to this discourse were the language and theory of non-alienation, whereby the principle was developed that not only was there a body of rights and functions which were particular to the king, but that these were integral to the very nature of kingship and were inalienable.[137] The concepts underlying non-alienation had established precursors, particularly in feudal concepts of mutual obligation, but their development in the works of civil and canon lawyers from the twelfth century onwards not only solidified and formalised these ideas, but constructed a new operative vocabulary for their articulation.[138] As was discussed above, the Roman law concepts of *dignitas* and *maiestas* were closely connected with the idea of that the same qualities should be preserved *illaesa* and also *illibata*. In the civil law, this concept was applied not only to the intangible status of the prince, but also more closely and precisely to goods and property.[139] This was most closely connected with the goods and property of the Church, as in the *Codex* (C. 1, 2, 12; Valentinian and Marcian, *an.* 451) it was maintained that the privileges of the Church should be maintained secure and undiminished in perpetuity (*firma et illibata in perpetuum*).[140] This non-alienation related not only to the privileges of the Church, but also its real goods and property, as later in the *Codex* (C. 1, 2, 14, 2; Leo and Anthemius, *an*. 170) it was ruled that the real goods of the Church

[137] P. N. Riesenberg, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956). Riesenberg provides one of the most comprehensive and accessible guides to the principle of non-alienation in secular and ecclesiastical contexts, and much of what follows here is drawn from Chapter III – The Ecclesiastical Theory of Inalienability, pp. 48-80.
[138] *Ibid*., pp. 20-21.
[139] The Roman Law origins of the concept of inalienability have been outlined most precisely by Post, *Public Law and the State*, esp. pp.416-19
[140] C.1.2.12

should not be alienated, but rather that they should be kept both whole (*intacta*) and undiminished (*illaesa*).[141]

The invocation by Justinian of this duty of the Prince to preserve the goods of the Church of Rome meant that, in the twelfth century, and especially during the reign of Emperor Frederick Barbarossa, conflicts between the empire and the papacy concerning rights over church property were increasingly framed in the language of non-alienation, and the rights and responsibilities of the prince in regards of the preservation of that property. What was at stake was not the principle of non-alienation in itself, but to whom these responsibilities, and rights, pertained. As Gaines Post demonstrated, Barbarossa's condemnation of the alienations of the properties and of the church and Archbishop of Cologne in 1153 did not target Church property in general, but when asserting the emperor's duty to preserve inviolate the laws and goods of the church, Barbarossa specified those laws which were recognised in the imperial courts.[142] The *constitutio* of 1154 took a step further, using the civilian language on ecclesiastical non-alienation to the lay context of the welfare of the people (*commoda subiectorum*), the dignity of the prince (*dignitatem imperii*) and the public utility (*regni utilitas*).[143] As this language moved from an ecclesiastical to a secular context, the Civil Law of inalienability could be a powerful weapon for the interests of a strong ruler.

A fundamental principle of twelfth-century jurisprudence was the vibrant cross-fertilisation of the civil into the canon law. As the relevant articles of the civil law focussed especially on church property, the development of an ecclesiastical theory of non-alienation over the twelfth century should not be in any way remarkable. The principle of non-alienation

[141] C.1.2.14.2.
[142] Post, *Public Law and the State*, p. 422.
[143] *Liber feudorum*, quoted in Post, *Public Law and the State*, pp. 422-3.

of Church property was referred to at least as early as the reign of Leo the Great (400-61), at which time the principle of possible exemptions to the theory of non-alienability was conceded, but only alongside far stricter penalties and rules for observation.[144] These early rulings were incorporated into the canonical tradition, but much of what subsequently followed was concerned most of all with the conditions and requirements for proper exceptions and dispensations from the general rule. Aside from these general restrictive theories, the most prominent manifestation of the principle of non-alienation in ecclesiastical practice was in episcopal oaths upon accession to office. One of the earliest forms of this oath including a non-alienation clause could be identified in an archiepiscopal oath cited in a letter of Gregory VII from 1078. This letter was included in the early canonical collection *Deusdedit*, and subsequently into the 1198 compilation of the *Liber Censuum* by the future Honorius III.[145] This oath asserted that the bishop would not alienate (*non alienabo*) the treasure, apparatus and wealth of the Church (*thesaurus . . . et ornamenta et predia ecclesie*).[146] A fuller articulation of this oath was found in a late twelfth-century pontifical, in which the lists of relevant goods was expanded and the conditions of non-alienation further elaborated, along with the requirement for communal counsel and consent.[147] The state of inalienability formed a crucial part of both canonical theory and practice, each stimulating the development of the other.

Alongside these civil and canonical theories of non-alienation, perhaps the most significant context in which the theory of inalienability was articulated was not in the twelfth-century context of conflicting papal and imperial claims of authority, but in thirteenth-century

[144] Riesenberg, *Inalienability of Sovereignty,* p. 49.
[145] *Ibid.,* p. 51.
[146] *Liber Censuum de l'église romaine*, P. Fabre et al (eds.) (Paris, 1889-1910).
[147] Riesenberg, *Inalienability of Sovereignty,* p. 51.

papal exhortations to secular rulers not to alienate their lands and goods. By far the most prominent assertion of this theory was the 1220 decretal of Honorius III to the Archbishop of Kalocsa, Ugrin Csák, *Intellecto*. This decretal, directed as it was in favour of King Andrew II of Hungary, would in itself seem a small matter in relation to the broader papal policies of thirteenth-century Europe. Yet, through its inclusion in first the *Compilatio Quinta* and then the Gregorian *Decretales*, this decretal dealing with the affairs of the kingdom of Hungary became one of the most influential, and certainly the most well-known texts in the development of the articulation of the theory of sovereign non-alienation. The decretal *Intellecto* served to release King Andrew from oaths he had made regarding donation charters, as these were alienations in prejudice to the kingdom and against the king's honour (*alienationes in praeiudicium regni sui et contra regis honorem*) and contravened the oath he had taken at his coronation to maintain intact the laws of his realm and the honour of the crown (*iura regni sui et honorem coronae illibata servare*).[148] Canonical commentators on this decretal noted its marked similarity with contemporary episcopal oaths, but the flourishing of the doctrine of inalienability in a secular context, while informed by learned law, depended, as Peter Riesenberg has observed, on its compatibility with existing feudal ideas.[149] The development and articulation of the language of inalienability was based in jurisprudential theories, but its successful adoption depended in large part on its compatibility with existing social ideas and structures.

The question of inalienability and kingship in thirteenth-century England has been subject of substantial debate. For the most part this attention has focussed on the issue of

[148] X. 2. 24. 33.

[149] For commentaries on *Intellecto* related to the episcopal oath, see Riesenberg, *Inalienability,* pp. 52-3; the compatibility with feudal society was noted at p. 114.

inalienability in the context of the English royal coronation oath. The political significance of the coronation oath should not be denied, and its development up until the introduction of the fourth clause at the coronation of Edward II in 1307 emphasises the extent to which such oaths and the associated concept of kingship as an office formed the centre of the English constitutional crises of the long thirteenth century.[150] Given this broader political importance, it is no surprise that the question of non-alienation, particularly in relation to the coronation oath, has been subject to substantial scholarly debate, tracing the origins of the theory to well before the personal rule of Henry III. In his first article on the subject, H. G. Richardson saw the theory as emerging in the reign of Henry III, but in his subsequent study, he traced the language back to the coronation of Henry II in 1154.[151] Gaines Post similarly emphasised the importance of the twelfth-century context and the reign of Henry II, citing both the example set by Frederick Barbarossa, and the developments in legal theory and papal chancery practice from the reign of Alexander III.[152] Despite these earlier precedents, the legal developments of the early thirteenth century, and in particular the decretal *Intellecto*, made this a crucial period for the elaboration of the theory and language of inalienability, and the connection of this theory with coronation oaths can be argued to have been a substantive part of papal policy at this time.[153] The combined influences of developments in canon law,

[150] An excellent recent study of the political significance of the coronation oath in the late thirteenth and fourteenth centuries is A. Spencer, 'The Coronation Oath in English Politics, 1272-1399', in Thompson and Watts, *Political Society in Later Medieval England*, pp. 38-54.
[151] H. G. Richardson, 'The English Coronation Oath', *Speculum,* 24 (1949), 44-75; *idem*, 'The Coronation Oath in Medieval England: The Evolution of the Office and the Oath', *Traditio*, 16 (1960), 111-20.
[152] Post, *Public Law and the State,* pp. 415-32.
[153] E. Kantorowicz, 'Inalienability: A Note on Canonical Practice and the English Coronation Oath in the Thirteenth Century,' *Speculum,* 20 (1954,) 488-502; K. Stulrajterova, 'The Non-alienation Clause in the Hungarian and English Coronation Oaths: An Unjustified Papal Assumption?' *Bulletin of Medieval Canon Law,* n.s. 29 (2011-12), 219-51.

papal policy and secular politics made Henry III's reign a crucial period in the story of inalienability.

Even before the period of Henry III's personal rule, an interest in non-alienation can be identified as a significant element of English royal policy. In addition to the precedent from the reign of Henry II, non-alienation also formed the basis for Innocent III's quashing of Magna Carta in 1215 as prejudicial to the king's liberties.[154] In the aftermath of the civil turmoil of the end of John's reign, alienation of royal rights, especially regarding the custody of castles, formed a crucial part of the political terrain. Lack of total novelty does not in itself constitute lack of significance however. The continuing assertion of the theory of non-alienation over the long term was in itself worth noting – the adoption of language influenced by the civil and canon law could thrive and be perpetuated with some considerable durability. The language of inalienability did not operate in isolation, it was particularly closely related to that of the preservation and promotion of the royal *dignitas* as well as the wider employment of Romano-Canonical language in the reign of Henry III. Furthermore, the period of personal rule from 1232-1252 provides some substantial insights into the development and articulation of the doctrine of non-alienation, and the potential to demonstrate links between the theory and the practice of policies of inalienability and resumption as a political reality. The literature on inalienability and the coronation oath is remarkable and erudite, but a concentration on the oath has perhaps led to insufficient attention to the broader application of these theoretical debates. The main exception to this can be found in the work of Peter Riesenberg, who, in addition to looking in some detail at the assertions of inalienability as theory during the 1230s, also looked at the application of the policy of resumption in the Dictum of

[154] BL, Cotton MS Cleopatra E I, ff. 155–156.

Kenilworth in 1266. Riesenberg however concluded that the evidence could not support with certainty the assertion that resumption in practice was the result of inalienability in theory.[155] Although arguments of causality are inherently problematic, it can be argued that the evidence from the 1230s and 40s shows a closer relationship, if not a direct causal one, between the theory and practice of inalienability.

The most significant of the 'theoretical' texts for this period were the letters from Gregory IX to Henry III in 1233 and 1235, permitting him to cancel and overturn existing donations and charters as they had been made contrary to the oath of non-alienation the king had made at his coronation.[156] Despite the broad literature on this topic, a few comments should be made about the language of these letters. In *Etsi cunctorum jura*, after the content of the purported coronation oath had been outlined, the grants that Henry had made were described as having been done in grave prejudice to the king's crown (*in grave coronae regiae praejudicium*).[157] The emphasis upon harm to the royal status, here the crown (*coronam*), signalled the extent to which policies of non-alienation and resumption operated within the broader linguistic framework of the royal *dignitas* and *maiestas*. It should also be noted that at the close of the letter, when Henry was given papal sanction for his revocations, these were to be made notwithstanding illicit oaths (*non obstantibus juramentis illicitis*).[158] A connection was thus suggested between the invocation of *potestas* in revocations made *non obstante* and the preservation and protection of *dignitas regis* and the public authority of kingship. Gregory's letters were redolent with the canonical language of non-alienation. Nor was this

[155] Riesenberg, *Inalienability of Sovereignty*, p. 164.
[156] These letters are *Etsi cunctorum jura* on 10 January 1233, Shirley, *i*, p. 551 and *Quanto majori vincula* of 1235, *Foedera*, *i*, p. 229.
[157] Shirley, *i,* p. 551.
[158] *Ibid*.

all one way: it should be emphasised that Gregory's first letter was the response to a royal petition in 1232. Although H. G. Richardson almost categorically ruled out *Intellecto* as a model for the royal clerk behind this petition, he suggested instead the influence of Innocent III's bull annulling Magna Carta.[159] This bull employed the same canonical language of non-alienation that informed *Intellecto*, although without the explicit reference to the coronation oath. The use of Innocent III's bull would in itself be a significant reflection on Henry III's political interests, as it would suggest that his move towards resumptions based on inalienability was a move away from acceptance of the authority of the charters.[160]

This theoretical framework was illuminated by the corresponding practice of inalienability and resumption at this time. Riesenberg questioned the possibility of making a clear link between the theory and practice of resumption in the context of the Dictum of Kenilworth in 1266. The situation in the 1230s was quite different. From 1236 onwards a string of royal letters patent testified to the systematic establishment of royal inquests to investigate the condition of the manors of the royal demesne. This formed a key part of the substantial royal initiative from 1236 to redirect the profits of the shires into the royal treasury, through the appointment of custodial sheriffs and the direct farming of the

[159] Richardson, 'English Coronation Oath', 52.

[160] Even during the minority, there was some movements towards resumption, particularly on the issue of the recovery of alienated royal castles. This began under the legate Guala, who sent instructions about specific properties: in 1217 he commanded Robert de Gaugy to release Newark Castle to Henry de Coleville, a knight of Hugh, Bishop of Lincoln; in 1218 he instructed Peter des Roches as to whom he should release another castle which Robert de Gaugy had surrendered to him, Guala, *Letters and Charters*, p. 56, *CPR*, *i,* p. 164. Although Robert Eales has questioned the strategic importance of the custody of castle, R. Eales, 'Castles and Politics in England, 1215-1225', in *TCE II*, pp. 23-43, their relationship to the papal rhetoric of *regalia* and non-alienation was an important context. Even after the departure of Guala and then Pandulph, resumption of castles continued under the minority government, with the justiciar Hubert de Burgh publishing papal letters of 1223 which stipulated that the king should have the rights of coming of age in regard to the disposition of castles, lands and wardships, *Ann. Mon.*, *iii*, p. 83. For de Burgh's particular interest in this issue, see C. Veach, 'Beyond respite: a case study in local power and authority during the minority of Henry III,' *Henry III Fine Rolls Project: Fine of the Month July 2010,* http://www.finerollshenry3.org.uk/content/month/fm-07-2010.html [20 December 2017].

demesne.[161] These commissions, without fail, included an instruction to investigate lands alienated (*de terris alienatis*).[162] These inquests continued into the 1240s and touched on more than the custody of lands. A remarkable letter issued in August 1251 to the bailiff and men of Havering demonstrated the extent of alienations that were considered and opposed during this period. In this letter, the inquest was to be into marriages, wards, reliefs and other royal rights concealed and alienated in the manor (*alii iuribus nostris concelatis et alienatis*).[163] That these inquests led to resumptions can be demonstrated by references to lands and particularly serjeanties taken into the king's hands as they had been alienated. The most comprehensive evidence of this was from a series of commissions to the knights from each county issued in June 1246. One knight from each county was appointed along with a royal clerk, to keep the king's escheats there and to continue holding inquests into alienations. These commissions continued and built upon those of the late 1220s and 1230s, and they referred to serjeanties which were not only alienated, but had been taken into the king's hands as such.[164] This demonstrated a continuing interest in the restoration and resumption of the king's rights. That lands resumed on the grounds of alienation were exploited by the king can be demonstrated from another letter patent from 1251. This letter constituted the presentation of Simon de Offam, royal chaplain, to the church of Pecham. The grounds for the presentation were stated as being that the church belonged to the king's gift, the serjeanty having being alienated and taken into the king's hands (*ad donacionem regis spectante ratione serjante regis de Pecham alienate quam rex tenet in manu sua*).[165]

[161] For the importance and significance of this policy, see Stacey, *Politics, Policy and Finance under Henry III,* esp. pp. 45-92.
[162] TNA C 66/46 m.3.
[163] TNA C 66/62 m.4.
[164] TNA C 66/57 m.3.
[165] TNA C 66/63 m.15.

Alienation did not only justify resumption, but it could be used to frame continued exploitation of the land and its rights.

The link between the policies of non-alienation and resumption and the theory of inalienability and the royal dignity and *iura regia* was made most explicit in references to alienation and non-alienation in regard to the king's French possessions. Given the instability of royal rule in Gascony in particular, the repeated assertion and maintenance of the royal *iura* was of especial significance. This interest even predated the experiment with direct demesne farming from 1236. In 1232, during the king's campaign in Gascony, a letter patent was issued condemning the former seneschal of Gascony, Henry de Trublevill, for having sold and alienated (*vendidit et alienavit*) some of the king's lands, rents and castles there. The letter went on to assert that the seneschal did this without Henry's warrant, and to revoke all the pledges and sales made by him.[166] Subsequently in February 1236 another writ of aid was issued to all persons of Gascony for the same Henry de Trublevill, once again seneschal. This universal appeal for aid was to assist Trublevill in recalling and recovering (*revocanda et recuperanda*) the rights of king in Gascony which had been dispersed and alienated (*iura nostra in terra nostra Wascon' dispersa et alienata*).[167] This shift from the alienation of lands to the alienation of royal rights could be said to suggest an understanding of some association of the practice of non-alienation with the doctrine of inalienability in relation to the royal dignity and *iura regia*. This connection with theory became more apparent in custodial grants relating to the king's overseas possessions, in which the non-alienation of royal goods and rights became a condition for the custody. A letter regarding the legal status of the Ile de Ré in 1242 emphasised this connection. This letter appointed John le Fleming as the king's

[166] TNA C 66/43 m.8.
[167] TNA C 66/46 m.11.

provost there. This appointment was made on the patent roll and then vacated, with the alteration of the addition of the clause requiring the said John to preserve the king's rights there (*ad iura nostra ibidem constituanda*).[168] Not only were alienations a grounds for criticism and to be undone, the preservation intact of the king's rights and goods was an important enough condition of their custody as to necessitate the alteration of the letter patent to insert this clause. There were good and legitimate socio-political reasons for these policy decisions, but they were made with some awareness of the theoretical and canonical principles of inalienability in relation to the condition of kingship.

One exceptional grant highlighted the relationship between the maintenance of the royal dignity and the policy of non-alienation. This was the grant of the custody of Gascony made to the Lord Edward in 1252. This grant was made by royal charter, and letters patent were issued as notification of the grant. The letter thus occurred on both the charter and patent rolls, with consistent language of inalienability. The clause of non-alienation in the grant was perhaps the broadest employed by Henry III during this period, as it stipulated that neither Edward nor his heirs should in any way alienate the lands from the English crown (*non liceat . . . aliquot modo alienare a corona nostra Anglie*). Not only was the policy of non-alienation thus linked with the crown, but this connection was made more explicit, as the lands of Gascony were described as being conjoined with the crown (*conjuncte predicte corone*).[169] The preservation of the king's rights in Gascony was articulated as the preservation of the crown intact. A further note should be made of one other substantial limit on this grant, even before the clause of inalienability. That was that the grant was made saving to the king during his lifetime the allegiance of the land of Gascony and the Isle of Oléron (*salva nobis*

[168] TNA C 66/52 m.13.
[169] TNA C 53/44 m.20.

lyjancia eiusdem terre Vascon et predicte Insule Oleronis tota vita nostra).[170] The royal 'lyjancia' was maintained to the crown, even when the custody of the lands was granted away. The term 'ligancia', of which 'lyjancia' was an isolated erroneous form evoked the strongest possible form of feudal kingship and its unifying capacity above all other forms of lordship.[171] In this case at the very least, assertion of inalienable rights was an assertion of strong kingship. Furthermore, the integration of the Romano-canonical language of inalienability with the feudal language of *ligancia* demonstrated the extent to which the adoption of learned vocabulary was integrated within the broader political fabric of thirteenth-century England.

Finally, while inalienability was to some extent informed by canonical theories of the royal dignity, it also created the potential for criticism of royal government and assertions of alternative models of authority. Non-alienation clauses did not always support royal authority. The earlier feudal precedents for the theory of inalienability in England have been noted by Scott Waugh, who identified the right to consent to alienations a fundamental prop of lordship undermined by the introduction of the writ of *novel disseisin* by Henry II, and re-emerging in thirteenth-century noble charters in an attempt to bolster magnate authority.[172] The king could and did claim his own lands and rights as inalienable, and bind his nobles not to alienate his lands, or even their own. This however reciprocally heightened expectations of kingship, and limited Henry's ability to dispose of his own lands according to his own will. One of the clearest examples of this was in the letter patent recording a loan from 10,000 marks made by Richard, Earl of Cornwall to the king in 1247. This letter confirmed that until

[170] TNA C 66/63 m.6.
[171] A. Taylor, '*Homo ligius* and unfreedom in Medieval Scotland', in M. Hammond (ed.), *New Perspectives on Medieval Scotland* (Woodbridge, 2013), pp. 85-116, at pp. 88-90; see also F. L. Ganshof, *Feudalism*, trans P. Grierson (London, 1952), pp. 94-5.
[172] S. L. Waugh, 'Non-alienation Clauses in Thirteenth-Century English Charters', *Albion,* 17 (1985), 1-14.

the Earl was repaid, a condition was imposed that the king could pay, alienate or withdraw nothing.[173] The language of non-alienation in England was informed by influential developments in learned law which enhanced royal authority and prestige. It was not however, a monolithic theory, and the increased assertions of and familiarity with this elevated rhetoric of kingship emphasised royal responsibilities as much as it did rights, and set a standard for government that Henry III was fundamentally incapable of meeting.

Conclusion

To conclude, it is possible to draw a few general observations about the way in which the adoption of Romano-canonical language articulated ideas about kingship during the personal rule of Henry III. First and foremost, there was no consistent and wholesale adoption of a specific vocabulary of government, not the least because neither the civil nor the canon law provided one universal model for secular kingship. Language was adopted in different ways under different influences, some more directly responding to papal practice, such as the vocabulary of non-alienation, and others meeting immediate domestic needs or reframing older practices, for example the use of the clause *non obstante* in place of *non omittis*. This language had to fit within the existing landscape of English political practice. Nonetheless, there was an intensification in the deployment of this vocabulary in the twenty years considered here, and it demonstrated an increasingly assertive view of a particular kind of kingship, reinforced by the most convenient terminology of the learned laws. This view of kingship was an elevated one, emphasising the particular powers of the king in relationship to laws, both in the capacity to alter and dispense from them, and in the special legal rights

[173] TNA C 66/58 m.4

particular to the king. As a final point however, promoting this language was not unproblematic. Henry and his intimates were outlining a broadly omni-competent depiction of royal authority, and the failure to meet the expectations they had themselves set would underline the subsequent political turmoil of the reign. The king depicted himself as the head of the political community, but he was never able to exclude the rest of the body – as much as the language of the *Ius Commune* addressed ideas of imperial power and royal dignity, it did so within an inescapable framework of a broader civil society. It is to this broader political society that this study now turns.

Chapter Five – The Ius Commune and the Language of Government, 1232-1252: Conceptualising the Political Community

Introduction:

The language of government and that of kingship in particular, could not and did not consider the king and the nature of royal authority in isolation. In theory as well as in practice, the king and royal government existed within and operated through the broader sphere of the political community. That is not to say that the relationship was always an equal or unproblematic one, with the continuing tension between communitarian and absolutist conceptions of government underpinning much of the structures of medieval politics and political theory.[1] The 'community of the realm' constituted one of the most important constituent elements of thirteenth-century political discourse, both in contemporary usage and the historiography of the period. The language of community was widespread in medieval political and social thought, especially from the late twelfth century onwards; it could refer to various forms of social and political grouping, from the civic commune to the universal community of Christians, the *congregation fidelium*.[2] The 'community of the realm' as a pre-eminent unit or political organisation and exclusion featured in political debates from Magna Carta to the period of Baronial Reform and Rebellion. Perhaps the most obvious testimony to the importance of the community of the realm in the literature on this period was its appearance as the subtitle to F. M. Powicke's monumental work, *King Henry III and the Lord Edward*, which

[1] In Justinian, the *Lex Regia* outlined the voluntary surrender of political power from the people to the emperor, D. Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, 2016), pp. 25-49. In Canon Law, the conflict between the Conciliarists and advocates of papal authority was a defining feature of the later Medieval church, B. Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Leiden, 1998); K. Pennington, 'Representation in Medieval Canon Law', *The Jurist*, 64 (2004), 361-83.

[2] Tierney, *Foundations of the Conciliar Theory,* pp. 121-9.

remains still one of the definitive works on the reign.[3] The nature, composition, and rights of this community, especially in relation to royal authority, framed much of the political turmoil of the thirteenth century.

These ideas of collective identity, and the assertion of the political agency of this 'community of the realm' were to be of immeasurable significance to the greatest crisis of Henry III's reign, the period of reform and rebellion, 1258-65. Perhaps the most outspoken claims of the power of the political community were made in the Montfortian panegyric of the *Song of Lewes*. Following the description of the battle, the anonymous author contrasted the king's conception of his own authority with the baronial arguments in favour of the political community. The idea of kingship articulated in the royal arguments was distinctively Romanizing, as it included a form of maxim occurring in Glanvill and Bracton that what pleased the prince had the force of law, asserting that 'the command of the prince had the force of law' (*vim habente legis Principis imperio*).[4] In contrast to this imperial kingship, a vision of rulership was proposed in which the political community took a leading role, taking counsel and legislating according to the opinion of the community, 'Therefore let the community of the realm take counsel, and let that be decreed which is the opinion of the commonalty' (*Igitur communitas regni consulatur, Et quid universitas senciat, sciatur*).[5] This language, although expressed with particular vigour in the *Song of Lewes*, was hardly a novelty, and the period 1232-1252 witnessed the development and articulation of these ideas. The reforming barons and bishops of the late 1250s were not inventing new ideas or

[3] Powicke, *King Henry III and the Lord Edward*.
[4] *Song of Lewes*, ed. C. L. Kingsford (Oxford, 1890), p. 17.
[5] *Ibid*. p. 25. For the reading of *communitas* as the political collectivity, see J. L. Watts, 'The Commons in Medieval England,' in J.-P. Genet (ed.), *La légitimité implicite : actes des conférences organisées à Rome en 2010 et en 2011 par SAS en collaboration avec l'École française de Rome* (2 vols, Paris, 2015), *ii*, pp. 207-23.

new means of expression, they were utilising and building upon a framework of rhetoric and theory that had developed over the previous decades, though not always in such prominent and outspoken ways. Over recent years the development and articulation of reforming ideas has been the subject of some significant and illuminating research, especially that of Sophie Ambler on the Montfortian bishops.[6] The development of the royal conception of the political community has received less subsequent attention and should be considered further, especially in relation to the influence of the *Ius Commune* and how these ideas related to the conception of kingship articulated over this period.

The rebel barons of 1258 attempted to tie the interests and actions of the king more firmly to the wider political community. In preceding decades, the king had worked to tie the political community more directly to himself. In the royal rhetoric of this period, this was articulated most clearly in the anonymous letter describing the meeting between the king and the bishops in c.1247.[7] In this letter, the king not only emphasised the interdependence between the king and his magnates, but he did so in a distinctly hierarchical way. The well-being of the king determined the well-being of the community. Selective adoption and application of ideas from the Roman civil and canon law bolstered this view of the political community as they were deployed in royal letters over this period. To explore this juristic influence, this chapter consists of two main channels of inquiry. The aim is to look at the role of learned law vocabulary in shaping the broader conceptions of the relationship between the

[6] Ambler, *Bishops in Rebellion and Revolution in Thirteenth Century England*; see also, *eadem*, 'The Montfortian Bishops and the justification of conciliar government in 1264', *HR,* 85 (2012), 1-17. Particular attention has been paid to the so-called 'Paper Constitution' preserved by Matthew Paris for the year 1244, and the ideas of government that it transmitted; *Chronica Majora*, *iv*, pp. 366-8; N. Denholm-Young, 'The 'Paper Constitution' Attributed to 1244', *EHR,* 58 (1943), 401-23; C. R. Cheney, 'The 'Paper Constitution' Preserved by Matthew Paris', *EHR,* 65 (1950), 213-21; and more recently D. A. Carpenter, 'Chancellor Ralph de Neville and Plans of Political Reform, 1215-1258', in *TCE II*, pp. 69-80.

[7] Bodl. MS Digby 11 f.96b, see above p. 149.

king and the political community. This language connected most closely with the language of kingship explored in the previous chapter, and the vocabulary of the *status regni* was closely related to that of *dignitas* and *majestas*. This section will also consider how the king articulated his will in relation to the political community, and how the pleas of *necessitas* and *utilitas* were deployed to emphasize a form of royal supremacy. Moving from this broader conceptual analysis, the second half of this chapter explores specific Roman law forms relating to the political community and the fundamental question of representation and consent. This compares the deployment of the two infamous clausulae, *plena potestas* and *quod omnes tangit*, forms of great significance in the history of parliament. In the differing application of these terms, the royal government sought to advance its own view of political society, but as with the language of kingship, ultimately informed the vocabulary that could be used to resist royal authority.

The King and the Common Good

The language of political community was multi-faceted and reflected the various strains of thought, theory and practice that underlay its evolution. Tracing the influence of one particular set of concepts or ideas in framing this discourse is correspondingly difficult. This difficulty begins with the language of community, or *communitas*, in itself. Communities could be understood and described on multiple levels in multiple fashions at different times. The so-called 'community of the realm' was only one of a number of different scales of organising society in communitarian terms.[8] The language of the commune received its earliest and

[8] S. Reynolds, *Kingdoms and Communities in Western Europe, 900-1300*, 2nd Edition (Oxford, 1997), p. 3.

fullest expression in the context of urban politics,[9] but over the course of the twelfth-century in particular it developed more broadly due to its resonance with the intellectual forms of Ciceronianism, Aristotelianism and the burgeoning civil and canon law.[10] From the urban commune outwards, the language of the community generally indicated, as John Watts has noted, collective action undertaken in the name of the 'common' good, and a model of political organisation that included both the governors and the governed.[11]

This diversified heritage and usage made the language of community easily communicable, but also made it a difficult motif to use in order to analyse political thinking because it could refer to so many different ideas and constructs. Just because the language of the community formed part of learned law rhetoric did not necessarily indicate that the deployment of this vocabulary in thirteenth-century England was illustrative of the influence of Romano-canonical thought. Furthermore, as the language of the community was so diverse, it was not always evident, either to historians or contemporaries, what a particular deployment of the terminology was invoking. In the historiography, this is perhaps most evident in the divergent understanding of the 'community of the realm' in the interpretive schemes proposed by Maurice Powicke and Michael Clanchy. For Powicke, this eponymous community was a fairly loose and harmonious corporation of the whole kingdom, a view that has been criticised by both Clanchy and Robert Stacey in the 1980s.[12] For Clanchy and Stacey,

[9] S. Reynolds, 'Medieval Urban History and the History of Political Thought', *Urban History Yearbook* (1982), 14–23; S. H. Rigby, 'Urban "Oligarchy" in Late Medieval England', in J. Thomson (ed.), *Towns and Townspeople in the Fifteenth Centur*y (Gloucester, 1988), pp. 62–86.
[10] J. Quillet, 'Community, Counsel, and Representation,' in J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought c.350-c.1450* (Cambridge, 1988), pp. 520-72; B. Tierney, *Religion, Law and the Growth of Constitutional Thought, 1150–1650* (Cambridge, 1982), p. 13; Post, *Public Law and the State*, p. 29.
[11] J. L. Watts, 'Public or Plebs: The Changing Meaning of 'the Commons', 1381–1549', in H. Pryce and J. Watts (eds.), *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007), pp. 242-62, at pp. 244-5.
[12] Powicke, *Henry III and the Lord Edward*; Clanchy, *England and its Rulers, 1066-1307*; Stacey, *Politics, Policy and Finance under Henry III.*

the community was more like a commune – rigid and restricted, and bound by oaths of the kind developed in urban settings.[13] This latter understanding of the political community reflected the influence and regulation imposed by learned law and scholastic thought, but it is not clear that these kinds of distinctions were always rigidly maintained or understood.

Significant confusion could arise from attempting to translate or transpose different ideas of the community and what it might mean. Perhaps the best example of this could be found in the letter sent by Peter de Vinea to Henry III, in which the imperial officer requested the rights of an English citizen, assuring the king that the Emperor would not object to this request.

> 'Your Apulian beseeches you, in loyalty to [you as] king, by the grace of [your] royal bounty, to be adopted into the protection of England, [and], by the same, that he would be held not only a devoted liege of the king and lord, but a son and citizen of the kingdom.'(*Apulus vester a vobis in fidelem regis per regiae munificentiae gratiam adoptatus adoptari in municipem Angliae supplicat per eandem, ut non solum devotus fidelis regis et domini, sed et regni filius habeatur et civis*.) [14]

In this letter, Vinea seems to be attempting to elide the language of the civic commune in the Italian sense with a request for membership of the English realm more broadly. The terminology deployed does not explicitly cite the community, but first requests adoption as an English citizen, using the Roman law language of the *municeps*, then reiterates this request by expressing Vinea's assertion that he would be both a son and a citizen of the kingdom *regni filius habeatur et civis*. This request for citizenship on the scale of the *regnum* is extremely atypical, as in thirteenth-century England, the language of the Roman law *municeps* as citizenship was uncommon, and the language of the citizen, or *civis*, was a strictly urban

[13] K. Asazi, *The Angevin Empire and the Community of the Realm in England* (Osaka, 2010), pp. 35-6.
[14] Huillard-Bréholles, *Vie et Correspondance de Pierre de la Vigne*, p. 303.

phenomenon and even in this context did not invoke the same extent of kind of conceptions of citizenship as political organisation that developed in the Italian city states.[15] Vinea's letter, probably dating to around first half of the 1240s, invoked a particularly legalistic conception of civic identity that did not yet enjoy wide circulation in English practice. Ideas or terms which were deployed in the context of the urban commune did not mesh exactly onto the broader community of the realm into which he requested to be received. However, this period of the thirteenth century, and Henry III's reign in particular, did see an increasing solidification of ideas about communal identity as a form of political organisation and agency, particularly in the language of the community of the realm.

It is apparent that the period of personal rule formed a significant stage in this process of solidification. Certainly this language was not a novelty, and it is important to recognise the way in which Romano-canonical language could be similar to existing vocabularies. This is particularly evident in the question of the language of *communitas* in Magna Carta. Sir James Holt emphasised the importance of corporate and municipal ideas in shaping this terminology; while this may be more appropriate for the references to common counsel (*commune consilium*) in the charter, the reference to 'community of the whole land of England' (*communa tocius terre*) would seem to be made in reference to a wider population than that of the oath-sworn barons.[16] Furthermore, the extent to which this language drew deliberately on the precedents of Romano-Canonical law has been subject to substantial dispute. Holt himself recognised the role both of the specific precedent of the commune of

[15] P. Critchley, *The City of Reason: vol. 3 Universitas* [e-book] (2004), pp. 64-7, http://mmu.academia.edu/PeterCritchley/Books [accessed online 21 December 2017]; for the urban context to the language of the *civis*, see eg. the letter issued to the Mayor of Sheriffs of London in March 1234, which referred to 'civitatis nostrae Londoniae,' Shirley, *i,* p. 432.

[16] Holt, *Magna Carta*, pp. 73-5; the wider reach of the *communa tocius terre* can be imputed from its inclusion alongside but distinct from the council of the twenty-five barons.

London, as well as the wider 'communal movements of the continent'.[17] Subsequent scholars have engaged in significant and extended debate about the influence of the *ius commune* on the charter more generally.[18] The extent of this disparity is in itself significant, as it testifies to the relative lack of consolidation in the language of community in Magna Carta.

Certainly, as Michael Prestwich has noted, vocabulary of this sort was not adopted immediately; the evidence of the period of the royal minority included frequent references to common counsel (*communi consilio*), but these tended to refer to the specific body of minority government, and did not reach outwards to the community of the realm in the same way.[19] It was in the decades of Henry III's personal rule that this language began to crystallise. Even from 1233, in letters to the Abbot Coggeshall, Henry was able to assert that agreement to an aid of a fortieth on moveables had been made with the common counsel and unanimous assent of all the magnates of the kingdom (*de communi consilio et unanimi assensu omnium magnatum de regno nostro*).[20] By June 1244, when discussing the summons issued to the king of Scotland to appear in the English court at Newcastle, the king was able to state that he was

[17] *Ibid.*, pp. 73-4.
[18] The case for the recognition of the role of the *ius commune* in Magna Carta was made strongly in Richard Helmholz's 1999 article, 'Magna Carta and the *ius commune*', *University of Chicago Law Review*, 76 (1999), 297-371; a strong riposte to this view was outlined by John Hudson, 'Magna Carta, the *ius commune*, and English Common Law', in J. S. Loengard (ed.), *Magna Carta and the England of King John* (Woodbridge, 2010), pp. 99-119. An outline of this debate is offered in G. Garnett and J. Hudson, 'Introduction,' in Holt, *Magna Carta*, pp. 15-25, a further recent analysis has been offered by Thomas McSweeney, 'Magna Carta, Civil Law and the Canon Law', in A. Martinez, D. B. Magraw Jr. and R. E. Brownell II (eds.), *Magna Carta and the Rule of Law* (Chicago, 2014), pp. 281-307.
[19] M. Prestwich, *English Politics in the Thirteenth Century* (Basingstoke, 1990), pp. 129-45; for specific invocations of *communi consilio*, see e.g. the letter of the legate Pandulph to Hubert de Burgh in 1219 regarding the negotiations with Llewellyn, which were undertaken having deliberated diligently and with common counsel (*diligenti deliberatione habita, et communi consilio*), Shirley, *i,* p. 58; cf. with Gascon letters of the same period in which the same phrase was used to refer to urban counsel, for the *commune concilium Aquis* (Dax), see Shirley, *i,* p. 45, the town of St. Junien used the formula of the consulate and community (*consulatus et communitas villae*), Shirley, *i,* p. 62, while letters from La Reole referred to the council and the other burghers (*consilium ceterique burgenses Regulae*), Shirley, *i,* p. 51. That there was potential for elision between these two contexts can be identified from a letter from Henry III to the Mayor and good men of Bordeaux (*majori et probis hominibus Burdegaliae*), in which the king stated that he was acting based on knowledge from his common counsel (*de communi consilio nostro*), Shirley, *i,* pp. 36-7.
[20] Shirley, *i,* pp. 415-16.

acting in his own person on the common counsel of the realm (*nos de communi consilio regni nostri in propria persona nostra*); this assertion not only invoked the wider community of the realm, but through the representative formula *in propria persona nostra* implied that the king took unto his own person the right to represent the wishes and interests of this wider political community.[21] This was a clear example of how the language of common consent and representation of the common interest could be invoked by Henry III in order to bolster his own personal authority and discretionary action. In addition to the increasing prominence of this language of the *communitas,* and its near synonym *universitas*, the language of royal letters over this period increasingly deployed a number of related and inter-dependent terms in order to express the political constitution and priorities of English government.[22] The usage of these terms similarly illustrated a royal interest in appropriating representative language in order to reinforce the powers of the king.

The Visible and Invisible Crown

The ways in which the language of the community more generally was constructed in relation to royal authority was perhaps the most clearly demonstrated in the language of the crown (*corona*). As with the *communitas*, the *corona* indicated a nexus of different ideas and traditions over a long-term, in which the learned law was only one contributing strand. The meaning of the 'crown' is perhaps even more opaque than that of the community, as Maitland observed and George Garnett has more recently emphasised.[23] The crown could and did refer to many different concepts in varying contexts, and while it could, from the thirteenth-

[21] Shirley, *i,* p. 37.
[22] For the use of *universitas* as representative of the community of the realm, see Matthew Paris's description of the parliament held at Newcastle in August 1244, *Chronica Majora*, *iv*, p. 380; J. R. Maddicott, '"An Infinite Multitude of Nobles": Quality, Quantity and Politics in the Pre-Reform Parliaments of Henry III', in *TCE VII*, pp. 17-46, at pp. 21, 29-30.
[23] F. W. Maitland, *Constitutional History: A Series of Eight Lectures* (Cambridge, 1908), p. 418; Garnett, 'Origins of the Crown'.

century onwards in particular, be used in association with the royal dignity or prerogative, or simply refer to the physical object, without any broader constitutional inference being intended, it could also indicate the kingdom writ large, intersecting with the language and ideas of the community of the realm.[24] The term has all too often been used as a convenient shorthand for the actions of the king and the royal government, an obscuring elision that tends to conceal its deployment in contemporary sources, and the relationship between the language of the crown and the broader political community. This functional shorthand was evident from earlier uses of the *corona* in a non-corporeal sense dating from the first half of the twelfth century; 'pleas of the crown' (*placita coronae*) was employed at least as early as Henry I's Charter for the City of London (1130x33), and as Ernst Kantorowicz emphasised, from Henry II's reign it was used in direct reference to the royal demesne.[25] It was from the late twelfth and early thirteenth century onwards that the 'mystical' crown informed by legal thought began to occur in English sources, transmitted through papal practice, as in the course of his negotiations with King John, Innocent III distinguished between the king's person and his crown.[26] That references to the crown could be used to refer both to the public power of the king, and the wider political community which participated in governance was not contradictory, rather it reflected the way in which the crown was used to unify these participants in the body politic, with the king as its literal and figurative head.[27]

For the most part, the language of the *corona* in the period of Henry III's personal rule did seem to indicate an understanding of the crown as representative of royal power and

[24] Garnett, in 'Origins of the Crown' asserted that all pre-conquest references to the crown, *corona* or *cynehelm*, were operated only as descriptors of the physical object, pp. 172-3.
[25] Kantorowicz, *King's Two Bodies*, pp. 342-3.
[26] *Foedera, i,* p. 109, quoted in Kantorowicz, *King's Two Bodies*, pp. 358-9.
[27] Kantorowicz, *King's Two Bodies*, pp. 360-1.

authority, and these cases seem to reflect some engagement with the influence of papal decretals and decretalist commentary that the crown might be equated with the royal dignity or majesty, factors considered in the previous chapter.[28] Indeed, many examples are referenced above.[29] One of the most ostentatiously juridical deployments of the crown as part of the royal prerogative can be found in the letter of May 1236 concerning the suit being pursued by Edmund of Abingdon, archbishop of Canterbury, against the prior and monks of his cathedral chapter. In this case, which related to the rights of advowson of certain churches, the prior and monks of the chapter had sought, so the king claimed, remedy in the king's courts. The archbishop, however, had chosen to pursue the case in the ecclesiastical courts, obtaining papal letters in order to evade the lay jurisdiction, an action which the king asserted to be insupportable and in manifest prejudice to the royal dignity (*manifesto prejudicio regie dignitatis nullatenus sustinere possemus*).[30] The king went on to assert that, from certain knowledge (*ex certa scientia*, language redolent of the royal plenitude of power) this plea on the part of the archbishop was being done against the king's crown and dignity (*contra coronam et dignitatem nostram*) calling upon the archbishop to answer for this affront.[31]

This ostentatiously canonical language was maintained in the corresponding letter sent to three Kentish abbots regarding the dispute. Henry again asserted that the relevant churches and their properties looked to the crown and royal dignity, and went on to say that the case could not be pursued in ecclesiastical courts without manifest harm to that dignity (*manifesta lesione dignitatis regis*). This invocation of the *crimen laesae maiestatis* even more

[28] Post, *Public Law and the State*, pp. 397-8.
[29] For more references to the crown as the royal dignity see above, p. 194.
[30] *Close Rolls, iii,* p. 356.
[31] *Ibid*., *iii,* p. 356. For the *ex certa scientia* formula, see above, pp. 163-4.

explicitly linked the archbishop's actions with an almost treasonable assault on the royal majesty, while making it clear that the crown was part and parcel of those royal rights and dignities. In such cases, the language of the crown would appear to be a rich field for considering the cross-fertilisation of royal rhetoric with the theories of Roman civil and canon law, and a case could be made that the crown became another synonym for the royal dignity, and thus part of the language of kingship rather than that of the political community. That would certainly seem to fit with Henry's deployment of the physical crown as part of the royal image and the performance of the majesty of kingship.

Even so, while the majority of references to the crown tended to be used in relation to the king's status and public power, the language of the crown was not simply this one thing alone. These usages tended not to occur in the products of the king's own offices, but informed the debate around the ideas of community and authority, a debate that was reinforced by Henry III's insistent employment of this vocabulary in the construction of his own authority. This was particularly evident, as Ernst Kantorowicz has demonstrated, in the use of the language of non-alienation, as in the case of Simon Etelan recorded in Matthew Paris's *Historia Anglorum*.[32] According to Paris, in 1240, while acting as custodian of the great seal, Master Simon, himself a participant in cosmopolitan curial networks, refused to seal a charter on the grounds that its content was against the interests of the Crown (*contra coronam*).[33] Although the evidence of this episode is dependent on Paris's account, it does at least indicate that even members of the king's own administrative elite were capable of asserting the good of the crown as distinct from the will of the king. Even as the king used the language of the *corona* to bolster his own authority, this same terminology could also

[32] Kantorowicz, *King's Two Bodies*, p. 360. For the career of Simon Etelan, see above p. 72.
[33] Paris, *Historia Anglorum*, *ii,* p. 440.

begin to be employed to assert the concepts of the supra-temporal crown which served for the public good. This separation of king and crown was to be made even more explicit in the period of reform and rebellion, when the barons swore mutual allegiance, saving the faith they owed both to the king and to the crown (*salva la fei le rei e de la corune*).[34] What references to 'the crown' meant at any given moment could be contextually dependent, and reflected a spectrum of different interests and interpretative schemes.

Moving from the language that validated the existence of a sense of political public, one of the most fundamental elements of royal rhetoric on this area was in describing the obligations and relationship between the king and those who claimed to participate in the political community. This formed an integral part of reforming vocabularies in the thirteenth century, but it also was an area which royal rhetoric attempted to shape in the interests of the king. Two of the distinct formulae employed in royal government in describing this relationship employed to strengthen the king's authority in relation to the wider community of the realm will be considered here. These were references to the *status regni* and the related justifications of royal actions in terms of *necessitas* and/or *utilitas*.

Status Regni

The modern conception of the state, as the formal apparatus of government and the political entity which it ruled over, may at first seem to have little applicability to the more informal and personal forms of government that dominated during the thirteenth century. However, the language of the *status regni* was of fundamental importance to the conception of the political community as outlined in the public law in particular. In the Roman tradition, the

[34] Stubbs, *Select Charters*, p. 379. The importance of this oath in relation to the community of the realm is discussed by Kantorowicz, *King's Two Bodies*, pp. 360-1.

state, or *status*, did not refer to an institutionalised bureaucracy or government office, it instead was deployed to indicate the public good or condition of whatever body or institution which it described.[35] As the state itself had yet to emerge as a separate entity from its object, it is of paramount importance to note that, in the context of thirteenth century England, the state of the realm, *status regni*, often coincided in its deployment with the state of the king, *status regis*, with at least certain degree of elision of meaning between these two formulae. There was an obligation to preserve and defend the public good of the political community, but this was not clearly distinguished from the public manifestation of royal authority. The kingdom, and those seeking to promote its interests, could not be clearly separated from those of the king, whether in his official or personal capacity. Channelling this language of the state, with its amalgamation of public and private authority, could be a central element of the manipulation of learned law vocabulary to support strong and centralising royal government, a project at which Edward I was to have particular success.[36] In his study of this language, Gaines Post was to compare Henry III's attempts to deploy this vocabulary unfavourably with those of his son, arguing that he and his advisers lacked the capacity to put forward the same kind of public law statist attitude in a coherent and persuasive fashion.[37] While there is truth in this, it is important nonetheless to note the developments in the vocabulary of the *status regis et regni* during the period of personal rule. Most important among these were the coupling of the interests of the king and the kingdom in this terminology, and some indication

[35] Post, *Public Law and the State*, p. 248.
[36] Post, *Public Law and the State*, pp. 241–2; B. Keeney, 'Military Service and the Development of Nationalism in England, 1272-1327', *Speculum*, 22 (1947), 534–49; *eadem*, 'The Medieval Idea of the State: the Great Cause, 1291-2,' *University of Toronto Law Journal*, 8 (1949), 48–71; a more recent study on Edward I's approach to government, including the deployment of public law vocabulary to develop a statist approach is that of C. Burt, *Edward I and the Governance of England, 1272-1307* (Cambridge, 2013), esp. pp. 35–45.
[37] Post, *Public Law and the State*, p. 391.

of a shift towards the *status regis et regni* as not merely descriptive terminology, but a persuasive political factor.

The most significant element to note regarding the language of the *status regni* in the period of the personal rule was its consistent coupling with that of the *status regis*, although there could be some variation in how this association was expressed. As royal epistolary style unilaterally placed the voice of the king into the royal first person plural, the language of this coupling was not always explicitly articulated in full. The *status regni* could simply be paired with the royal 'we', *nos*. This was the case in a letter close of June 1245, addressed to Pope Innocent IV, although in this case the *status regni* was objective and not persuasive. In this letter, the king made reference to the forthcoming ecumenical Council of Lyons, and indicated that he was sending his own representatives to attend. The concern expressed in this letter was that, given the requirements of travel between England and Lyon, the council might begin before Henry's delegates had arrived. If this were the case, the king expressed his concern about the possibility of matters touching English interests being addressed without the involvement of the delegates, and asked requested of the Pope that he might suspend any issues until the king's representatives arrived, if those issues were 'touching on our state and that of our kingdom' (*nostrum et regni nostri statum contingentibus*).[38] While this coupling served to specify those matters which were common to the king and the realm, and the inclusion of both forms could be interpreted as to maintain some distinction between the concerns of the king and the kingdom, this emphasis on common interest served to highlight the connection between the king's public and private personae.

[38] *Close Rolls, v,* p. 356.

In the development of the public law language of the reason of state, it was important to evaluate when the *status regis et regni* appeared not only in the descriptive or objective sense, but in the extent to which it could be used as a persuasive or justificatory factor. This was the case in a letter close of August 1238, discussing the prorogation of the treaty negotiations between Henry III and the Welsh prince Llewellyn. In the postponement of the negotiations, the *status* of both king and kingdom takes on a certain degree of agency. The delay is said to have been due to 'the various and difficult business pertaining to the state of us and our kingdom' (*diversis et arduis negotiis statum regni nostri et nostrum tangentibus prepediti*).[39] While the emphasis on the diversity of the issues facing the kingdom gives some scope for the separation of the royal and public interests, the crucial clause here is the form 'statum regni nostri et nostrum tangentibus'. The *status nostri* is not clearly differentiated from that of the *regni nostri*. In presenting the concern for the *status regni* as a persuasive factor in delaying an event as important as these treaty negotiations, the personal interests of the king are presented on an equal level with those of the kingdom, and furthermore, these common interests have a persuasive capacity or agency in justifying the action being taken.

Beyond the defence of English interests on a continental scale, the language of the *status regis et regni* was to play a role of fundamental importance in the development of representative institutions domestically, particularly in the history of parliament over this period. During the personal rule of Henry III, when parliamentary summonses had yet to be formalised or standardised, the use of this terminology was a key feature of the construction of conciliar discourse, and reflected the ambiguous relationship between the interests of the king and those of the kingdom that was to underpin the conflicts of the reign. In a letter sent

[39] *Close Rolls, iv*, p. 143.

to Walter Grey, Archbishop of York, in December 1235, summoning him to prepare for the parliament that was to be held at Merton in January the following year, the king described business that was to be considered. This was the difficult business (*negotiis nostris arduis*), which touched upon the state of the king and the kingdom (*nostrum et regni nostri statum tangetibus*).[40] This language was to recur in parliamentary summons over this period; those sent to the bishop of Durham, Nicholas Farnham, in 1247 referred to the 'certain business touching us and our kingdom' (*quedam negotia nos et regnum nostrum tangentia*), while those sent to his successor Walter of Kirkham in 1255 more specifically invoked the 'difficult business touching us and the state of our realm' (*arduis negotiis nos et statum regnum nostrum tangentibus*).[41] That the public *status* of the king was the subject of this business was emphasised in this latter writ, which went on to encourage diligence towards the honour of the king and that of the whole realm (*nos et honorum nostrum et tocius regni regni nostri*).[42] The central decades of the thirteenth century were a crucial period in the development of parliament, even before the Montfortian innovations; over this period the business of the realm was referred to in the Roman law language of the *status reipublicae,* and there was a distinct tendency to elide this with the personal and public interests of the king.[43]

That the association of the interests of the king with those of the kingdom was informed by wider engagement with concepts of public law kingship, and that the tensions in this vocabulary could play a role in shaping the political tumults of the realm can be shown through the mandate issued to bishops attending the great council at Gloucester in 1233-4. This council took place during the peak of the des Roches regime, and shortly before the onset

[40] Shirley, *i,* p. 484.
[41] Printed in A. J. Piper, 'Writs of Summons of 1246, 1247 and 1255,' *BIHR,* 49 (1976), 284-6.
[42] *Ibid*., 286.
[43] Maddicott, '"An Infinite Multitude of Nobles"'; *idem*, *Origins of the English Parliament*, pp. 157-232.

of the rebellion of Richard Marshall, which was to precipitate the downfall of the bishop of Winchester. The mandate to the bishops was not in itself a conciliar summons, but rather outlined further conditions restrictions on the potential actions the bishops could take in council. The mandate opened with an exhortation to the barons not to forget their tenurial dependence on the king, reminding them of their baronies which they hold from the king (*de rege tenent*) and on this basis exhorting them not to act in council on any matter affecting the king's rights. It was this clause outlining the matters which were prohibited to them which employed the expansive coupling of the language of public and private rights. The bishops were warned against acting on matters relating to anything which belonged to the crown (*ad coronam regis pertinent*) or which affected the king's person (*personam regis*), the king's state (*statum suum*), or the state of his council (*statum consilii sui*).[44] The areas of the privileged royal prerogative identified here were multiple, with a clear distinction being drawn between the king's person and his estate, both of which were also distinguished from the king's crown.[45] The elision of the language of the state of the realm and the king's personal status allowed Henry III to propose his own interests as those of the wider political community, but when the opinion of the baronage began to turn against the king (or his intimates), this association of interests could be more problematic. Rather than dispute the rights of his councillors to discuss the broader affairs of the realm, in this case the king sought to protect and privilege his own personal rights, up to and including the right to appoint his own ministers and advisors. Twenty-five years before the tumultuous events of the Parliament of Oxford, the language of the state and the king's estate framed this essential discourse about the political constitution of the realm.

[44] TNA C 66/43 m.17.
[45] For the language of estate, see Post, *Public Law and the State*, pp. 314-18.

The expression of the language of state was most notable for its consistent coupling of the *status regis* with the *status regni*. While this coupling was to a certain extent formulaic, it still constructed a certain degree of equivalence between the interests of the king and those of the wider public. When this vocabulary was combined with additional elements of public law language, such as that of the crown and the person of the king, this coupling could operate to equate the king's private interests with the privileges and priorities of the community of the realm and kingship as an office. While not constituting a fully articulated reason of state, these persuasive deployments of this vocabulary indicate the process of this development, especially when combined with the more widespread use of the language of necessity and utility, *necessitas* and *utilitas*.

Necessitas and Utilitas

In the development of the statist approach that was to be articulated by Edward I, perhaps the most important aspect of the claims of necessity and utility was the contexts in which they were deployed: that is to say, an association with parliamentary counsel, and particularly the securing of financial aids.[46] Although for Henry III's reign we lack universal parliamentary summonses and parliament rolls to provide details of this vocabulary, the letters close and patent for the period of personal rule seem to indicate that the language of necessity and public utility was deployed at this stage in association with these representative contexts. While this period does not demonstrate a fully articulated statist approach, these more scattered occurrences indicate the development of this kind of language and form of political thinking. The plea of necessity or utility became a persuasive one, used to justify and attempt to secure actions. Furthermore, as with the language of the political community more

[46] Harriss, *King, Parliament, and Public Finance*, pp. 37-8.

broadly, in the use of this terminology, the distinction between the public and private aspects of kingship was not clearly maintained, and it could be inferred that there was some indication of a conception of political society on the royal side, wherein the interests of the king determined the interests of the kingdom, rather than the king being bound by the common good.

In the development of the plea of necessity in the context of representative institutions, it is worth noting that some of the deployments of this language could be related to common counsel and the procurement of grants of taxation. Lacking universal parliamentary summonses, the evidence for this is somewhat fragmentary, but some indications can be established. The most explicit link with parliamentary counsel and subsequent actions taken for the utility of the realm can be found in the preamble to the Statute of Merton (1236). As we have seen above, individual summons to prepare for this parliament explicitly invoked the business (*negotiis*) to be undertaken, relating to the estate of the realm.[47] The Statute was then described as being made regarding the common utility of the kingdom (*commune utiliate regni*).[48] Considering this legislation as the output of that January parliament, and within the context of the summons issued to the archbishop of York, it is possible to see the legislative process being framed in the language of first the *status* of the king along with the wider interests of the kingdom, and then the drafting and issuing of provisions for the common good of that public estate.

While this rare legislative example from this period employed the language of *utilitas*, the framing of financial demands, in and out of parliament, tended to focus more on the

[47] See above, pp. 237-8.
[48] *The Statutes of the Realm* (11 vols, London, 1810-28)*, i,* p. 162.

justifications of necessity. Perhaps the most substantial financial grant that can be linked with the plea of necessity is that of a third on movables which was conceded in 1237 in order to fund the enormous dowry of 30,000 marks that the emperor Frederick II demanded for his marriage to the king's sister Isabella.[49] Alongside this English grant, the king had previously made efforts to secure additional monies from his Irish possessions, and a letter close of October 1236 explicitly linked these financial exactions with the plea of necessity.[50] Before addressing the plea of necessity itself, a few factors about this letter should be noted. This was not a financial demand in isolation: before the request for an aid was made, the king first asked for a more complete account of the conditions of his lands, here referred to as the 'the state of our land of Ireland' (*statum terre nostre Hibernie*). Following this request for information (or perhaps counsel), the king affirmed that he would then take steps to provide for his Irish possessions if it would be necessary (*si necesse fuerit*). In addition to providing the necessities for the Irish lands, the king also guaranteed the provision of those things which were necessary for his own undertakings 'ad opus nostrum'. Although this reference is not a direct invocation of the statist formula considered above, the coupling of the needs of the land with the needs of the king's own business could be said to have similar overtones. Most importantly, both of these factors were justified using the language of necessity.

Moving on, the king addressed the question of his sister's marriage, and lamented that, while the English magnates had granted a third on movables, the Irish magnates had so far been unwilling to concede a comparable scutage. Mandating the justiciar to secure this

[49] The sheer size of this payment is worth noting, and the willingness to grant taxation to support it is of some significance, as the marriage of the king's sister did not qualify as one of the customary aids to be granted according to Magna Carta, which made provision only for the knighting of the first-born son and the marriage of first daughter as acceptable without common consent.
[50] *Close Rolls, iii,* pp. 571-2.

desired aid diligently and immediately (*diligenter et instanter*), the letter articulated the importance of its purpose, which was 'our necessity jointly with the necessity of our kingdom of England' (*de regno nostro Anglie necessitate nostre compati*). In this context the plea of necessity is thus explicitly equated with both the king's own interests and those of the kingdom, and this is then used as a persuasive device in order to secure a substantial financial aid. Combining this in the same letter as a request for counsel on the state of affairs in Ireland and a reciprocal guarantee of support for their needs, the consensual process of taxation is represented in outline in this letter, culminating in the king's demand for an aid justified on the basis of the necessity of both his person and the realm.

This was not the first instance in which the Irish context showed this relationship between counsel and financial relief for the necessities of kingship. An earlier letter patent of March 1234 gave an abbreviated indication of this same phenomenon.[51] It concerned the issuing of royal funds for military actions in Ireland, but it still demonstrated the connections between the king's interests, the relationship between fiscal demands and taking counsel, and the persuasive use of necessity as a rhetorical strategy. The letter was a mandate, issued to Eustace de Leveland and the chamberlains of Dublin castle, requiring them to deliver money from the king's treasure to the justiciar of Ireland, Maurice FitzGerald, as this money was deemed necessary and expedient (*necesse fuit et expediens*), by the common counsel of the same justiciar (*de communi consilio eiusdem justiciar'*), to keep the peace in Ireland and maintain war against the king's enemies. In contrast to the letter close considered above, the designation of necessity was here agreed by common counsel, and there was no distinction between the king and the realm. The military context of the mandate was of particular

[51] TNA C66/44 m.16.

importance, as it brought this action those aspects of political organisation particularly associated with kingship.

The linking of the public and private aspects of kingship in the context of the relationship with the broader political community became of most significance for the language of necessity and utility when it was deployed in the same rhetorical form regarding the securing of private loans, especially when these were made necessary by the king's increasing inability to secure grants of public taxation. In letters patent of March 1232, Henry III outlined the efforts he had gone to in order to secure loans from foreign merchants, only days after his demand for a parliamentary subsidy had been refused.[52] These loans amounted to 1200 marks sterling, and before the strenuous conditions of the loan were outlined, the justification and purpose of the transaction was emphasised. With Hubert de Burgh's attempts to secure a parliamentary aid thwarted, this essentially private loan was framed in the public language which might be expected of a representative forum. The purpose of the loan was stipulated as 'for usefully expediting our business and that of our kingdom' (*pro negotiis nostris et regni nostri utiliter expediendis*), using the similar coupling of the business of the king and the realm that was typical of the language of state. Distinguished from one another, yet at the same time connected here, the plea of utility applies the vocabulary of representative financial grants the king's securing of private loans.

As the king found it more and more difficult to extract financial aids from his parliaments, this equation of representative pleas of necessity and utility continued to be applied in the contexts of essentially personal business arrangements. In the letter patent issued in July 1247 acknowledging the loan of a colossal 10,000 marks from the king's brother

[52] TNA C 66/42 m.7d.

Richard of Cornwall, it was specified that the purpose of the loan was for the application to the utility of the realm (*utilitas regni*).[53] This plea of utility not only used public language to frame a private transaction, but it also justified the king's enormous financial commitment in the terms of the public good. Appropriating public language for private loans continued to emphasise the king's primacy in leading and directing the wider political community, and could be conceived of as a way for the king to claim to act in the interests of the common good without the difficulties and conflicts of actually participating in extensive representative or conciliar processes. The language of the state and the political community could thus be deployed in this way to attempt to minimise other voices and maintain royal direction and control.

Representation and Consent: Learned Law and the History of Parliament

Although Henry III and his chief servants may have favoured an adoption of those parts of civil and canon law which favoured the extension of royal power along an imperial model, the community of the realm remained an indispensable part of thirteenth-century politics, and an unavoidable feature of contemporary political rhetoric. This was not limited to a broad invocation of the common good as an ideological trope, but influenced some of the most significant developments in the mechanisms of royal government in the reign of Henry III. This practical application of the language of the community of the realm, in the functions of counsel and consent, was essential in the development of thirteenth-century parliamentary vocabulary. The history of parliament built on various models and precedents of varying origin

[53] TNA C 66/58 m.4.

and antiquity and incorporated the vocabularies of its diverse antecedents. Many of the developments in parliamentary procedure over the first half of the thirteenth century were, as James Holt asserted, ad hoc innovations intended to resolve immediate challenges, building on feudal precedent rather than jurisprudential theory or even an active policy iteration.[54] In the vocabulary of feudal representation, it was the vassal's obligation to provide 'council and aid' (*consilium et auxilium*) to his lord.[55] This feudal vocabulary, gradually transmuted from a duty to a right, was further developed by the jurisprudential framework of learned law, which did not create new representative concepts or institutions, but fortified and formalised the existing frameworks and ideas of government.

Two of the learned law formulae which would have the most significance in the development of parliamentary frameworks in the later Middle Ages were that of the delegation or granting of full power, *plena potestas*, to representatives, and the learned law maxim that what touched all should be approved by all (*quod omnes tangit ab omnibus approbari debet*).[56] In comparing the deployment of these two terminologies in the royal letters of Henry III more broadly, not only those relating to parliaments, it is possible to see how the king's selective deployment of Roman law vocabulary in relation to representation emphasised the element of duty in the feudal tradition. This continuing emphasis on duty and

[54] J. C. Holt, 'The Prehistory of Parliament', in R. G. Davies and J. H. Denton (eds.), *The English Parliament in the Middle Ages* (Manchester, 1981), pp. 1-28; for more detailed analysis of the feudal and pre-conquest precedents influencing the development of English parliament, see Maddicott, *Origins of the English Parliament.*

[55] Maddicott, *Origins of the English Parliament*, p.76; Maddicott defines *consilium* as a primarily verbal obligation, while *auxilium* was related to military service and subsequently to financial aids, cf. T. N. Bisson, 'The Military Origins of Medieval Representation', *AHR*, 71 (1966), 1198-218 for the importance of military service; for the importance of *auxilia* in the origins of taxation, see Harriss, *King, Parliament, and Public Finance,* pp. 6-16.

[56] Maddicott, *Origins of the English Parliament*, pp. 209-10, 289-90; for the broader importance of *plena potestas* in comparative representative institutions, see M. Hébert, *Parlementer. Asemblées representatives et échange politique en Europe occidentale à la fin du Moyen Age* (Paris, 2014), pp. 220-3.

obligation mirrored how much of this language was deployed in papal applications of the canonist vocabulary to ecclesiastical councils, at a time when there was fertile ground for asserting counsel as a right, not an obligation, on the part of subjects. The most extensive assertion of such conciliar rights was contained in the *Song of Lewes*, which emphasised the wisdom of the men of the kingdom in adjudicating those matters which touched it most closely, 'because it touched the community' (*quod communitatem tangit*).[57] An earlier indication of the perceived *right* of the nobles to counsel the king can be found in Matthew Paris's account of the fall of Hubert de Burgh and the rise of Peter des Roches at the Christmas court at Winchester of 1232-3, in which the king dismissed all his 'natural counsellors' (*omnes naturales ministros*).[58] The 'Paper Constitution' preserved for 1244 articulated this view more fully, as it proposed the election of four nobles by common consent to the king's council to carry out the business of the king and the realm.[59] Perhaps the clearest evidence of these priorities in the application of this vocabulary was the distinct preference in the period of personal rule for the language of delegated *potestas* rather than that of *quod omnes tangit*.

Plena Potestas

The language of *potestas* had an especially significant role in the development of English parliamentary summonses. The fully elaborated form of this summons was not articulated until Edward I's summons of the Knights of the Shire to parliament in 1294, in which they were ordered to come with full power for themselves and their whole community (*cum plena potestate pro se et tota communitate ejusdem comitatus venire faceres*).[60] The durability of this form after that point made this language a touchstone of subsequent constitutional

[57] *Song of Lewes*, p. 25.
[58] *Chronica Majora*, *iii*, p. 240.
[59] *Ibid.*, *iv*, pp. 366-8.
[60] Stubbs, *Select Charters*, pp. 476-7.

debate, and its origins have been traced well back before the reign of Edward I to the latter part of the reign of Henry III. J. G. Edwards outlined a classically Whiggish constitutional view of this terminology, describing it as one of the key roots of parliamentary sovereignty and acted even from an early stage as a limiting force on royal authority.[61] In contrast to this view, other parliamentary historians such as T. F. T. Plucknett have argued that the formula served as an expression of involuntary agreement to the demands of royal government.[62] The most substantial revision to these views was provided in the analysis of Gaines Post, who traced the origins of this language through the Roman civil law adopted in canonical theory and practice from the late twelfth century onwards.[63] Post explored the development of these terms from the early third century through Justinian's *Codex* (2.12.10) into twelfth-century civilian treatises and thence into canonical theory and the decretals (*Decr.* 1.38.c.10 *Accedens*) and procedural works.[64] Perhaps Post's most significant insight is his observation of the two distinct forms which plenipotentiary representation could take: representation between equals (diplomatic representatives), and representation between inferior and superior (eg. parliamentary representation).[65] The period of the personal rule of Henry III was instrumental in the transmission of the diplomatic usage into the vocabulary of hierarchical representation, especially in parliament.

In outlining his definitive survey of the legal significance of the clause *plena potestas*, Gaines Post explored the relevant English material in some detail. He identified the influence

[61] J. G. Edwards, 'The *Plena Potestas* of English Parliamentary Representatives', in *Oxford Essays in Medieval History Presented to H. E. Salter* (Oxford, 1934), pp. 141-54.
[62] T. F. T. Plucknett, 'Parliament', in W. A. Morris (ed.), *The English Government at Work, 1327-1336*. *Volume 1; Central and Prerogative Administration* (Cambridge MA, 1940), p. 101.
[63] G. Post, '*Plena Potestas* and Consent in Medieval Assemblies. A Study in Romano-Canonical Procedure and the Rise of Representation, 1150-1325,' *Traditio,* 1 (1943), 355-408, revised and reprinted in his, *Public Law and the State,* pp. 91-162.
[64] *Ibid.,* pp. 92-102.
[65] *Ibid*., p. 108.

of Roman civil and canon law in transmitting this vocabulary into English diplomatic and ecclesiastical practice by the second half of the twelfth century, with increasing emphasis in the reign of King John. For the reign of Henry III, he noted the significant lacuna in the deployment of this kind of language for much of the royal minority, especially between 1220 and 1229. After 1229, he observed that it became more prevalent, but he paid little detailed attention to its application between 1229 and 1254, when the early parliamentary summonses began to be developed.[66] Evaluating the occurrence of the terminology of representative *potestas* in the period of personal rule can thus not only illuminate some ideas of the shift from its employment in language of diplomatic to parliamentary representation, but the use of this language in the personal rule of Henry III provides an invaluable way of evaluating how learned law contributed to the ideas of representation and consent in the political vocabulary of the mid-thirteenth century.

Between the resumption in the use of this vocabulary in 1229 and the developments in parliamentary summonses from 1254 onwards, the use of the clause *plena potestas* and the associated forms was restricted entirely to the language of diplomacy. It would be anachronistic however to assume a complete dichotomy or divorce between 'foreign' and 'domestic' policy at this time, so these diplomatic communications depicted the international performance of the ideas of kingship and governance that Henry III wished to articulate. Accordingly, the use of the language of *plena potestas* in diplomatic correspondence over this period revealed several distinctive features related to the conception of Henry III's kingship. These informed the way in which this vocabulary could subsequently be transmitted to a parliamentary context. In the first place, there was a recognised understanding that the

[66] *Ibid*., pp. 106-7.

delegation of *potestas* in diplomatic negotiations was not incidental language, but represented a specific grant and commission. In the course of the negotiations for the marriage between Henry's sister Isabella and the Emperor Frederick II, a letter was sent by the king to the first off his three sisters, Joanna, queen of Scotland. This letter incorporated a discussion of the commission which had been given to Petrus de Vinea, who was acting as the emperor's representative in these negotiations. It stated that de Vinea had been sent 'with power to consent in the name of the same emperor to our sister Isabella' (*specialiter destinatum cum potestate consentiendi in ipsam sororem nostram nomine ipsius imperatoris*).[67] Although this form of words was far from a grant of full power, it nonetheless indicated that there was a sophisticated understanding of the language and limitations of diplomatic mandates, and that the vocabulary of delegated *potestas* was an understood feature of Anglo-Imperial negotiations.

Given the importance of the legal framework of negotiations, the language of delegated *potestas* played an important part in Anglo-papal correspondence during the period under consideration. The increasing importance of permanent or semi-permanent royal proctors at the curia expedited this trend and encouraged the utilisation of more formal and explicit legal terminology in royal mandates and letters of introduction.[68] Delegated power in this juridical context could be explicitly limited, as was the case in January 1237, when the king appointed Master William de Kilkenny as proctor at the papal curia in the case of the disputed election of Simon of Elham to the bishopric of Norwich. As proctor, Kilkenny was not given full power, but the language of specific delegated *potestas* did occur in the letters patent addressed to Gregory IX, with the specification that the said proctor was

[67] *Close Rolls, iii,* p. 167.
[68] Sayers, 'Proctors Representing British Interests at the Papal Court, 1198-1415'.

granted the power to appoint a substitute in his place, *datum est eidem magistro Willelmo potestatem substituendi*.[69] The language of delegated *potestas* here clearly engaged closely with the legal procedures of the papal curia.

This emphasis on the appropriate legal context for the delegation of *plena potestas* in diplomacy can be further demonstrated by exploring the stage of the process of negotiations at which it was granted. In the correspondence from 1235 which detailed the arrangements for Henry's own marriage to Eleanor of Provence, it is possible to see this awareness of function and timing for the delegation of *plena potestas*. Delegated authority did not feature in the earlier stages of representation, but was only employed in the latter stages of confirming the match. The earliest occurrence of the relevant formula was in a letter close of October 1235 addressed to Count Raymond discussing the finalising of the marriage. The deployment of *plena potestas* in this letter reflected the legal necessities of such a royal marriage by proxy, as the king needed to delegate fully his authority to consent for the arrangements to be legitimate. The reference to the sending of nuncios with full power (*cum plena potestate*) was in this context inextricably linked to the canonical language of the procedure of consent to marriage and the essential reference to the marriage vows of the two parties, (*per verba de presenti*).[70] This was reiterated in the marriage with the even more fulsome grant to two of the royal representatives, his seneschal John fitz Philip and Robert Muscegros, in which the king conceded full power and a special mandate (*plenam concedimus potestatem, et speciale mandatum*), again closely linked with the canonically binding vows.[71]

[69] TNA C 66/47 m.11.
[70] *Foedera, i,* p. 218.
[71] *Ibid.,* p. 219.

This was not the only specific mandate of delegated power to these royal proctors, and it should not be seen as restricted to fulfilling the practicalities of marriage by proxy. The marriage articles were extensive and detailed, and included various other mandates to the royal proctors. One of these further mandates was also linked to the canonical language of marriage, as it comprised the special mandate (*specialem mandatum*) to take Eleanor as a wife in Henry's name and spirit (*in nomine nostro, et in anima nostra*), while further deploying the technical language of marriage in the presence of the church (*ipsam in facie ecclesiae solempniter desponsare*).[72] Substantial provisions of these articles focussed on the delegation of plenipotentiary authority in regards to negotiating Isabella's dower, power that was not granted broadly, but articulated with detailed precision in numerous articles. Although the representatives were granted full power in the dower negotiations, what they were permitted to negotiate was closely prescribed. Furthermore, a degree of consultation was obliged on the proctors; not back to the king, but with the other more senior members of the marriage party, as, if the dower lands stipulated in the articles were not sufficient, they were given the power to grant more lands, but only with the counsel of the other bishops and leading ecclesiastics on the delegation (*de consilio predictorum fidelium nostrorum*).[73] These highly sensitive and important negotiations required extensive delegated power, not only to fulfil the canonical requirements of marriage by proxy, but also to finalise the delicate arrangements over issues of dower. *Plena potestas* was a legal formula, which was used with precision to accomplish the king's objectives without compromising his authority. The delegates confirmed and did not set the terms of their agreements.

[72] *Ibid.,* p. 219.
[73] *Ibid.,* p. 219.

Beyond the awareness of the legal significance of *plena potestas* and its application in specific contexts accordingly, Henry III's granting of diplomatic *potestas* could be accompanied by further clausulae or forms that not only indicated an awareness of Romano-Canonical procedure, but also demonstrated the king's understanding of delegated authority and how he envisaged the power dynamics of representation. The desire to control the activities of his agents was an important element of this language, and one which could be highlighted by the supplementary use of the terminology of 'sufficient instruction'. In canon law, especially the decretals of Innocent III, this instruction was intended both to expedite the process of negotiations and to prevent any subterfuge on the part of the agent. [74] In a letter close of circa June 1236, Henry III described sending envoys to be present at a meeting between the emperor and Louis IX; although these envoys were not said to have been given *plena potestas*, they were noted to have been sent with sufficient instruction (*sufficienter instructos viros*).[75] In granting sufficient instruction, the king was able to control and circumscribe the actions of his agents, whilst also not impeding the progress of their mission.

The importance of this detail in the diplomatic mandates can be further demonstrated in the treaty negotiations that were carried out between Henry III and the Welsh prince Llewellyn. These letters not only indicated the king's understanding of the power he delegated to his own representatives, but also demanded that Llewellyn grant plenipotentiary powers to his own delegates, indicating a great deal about Henry's understanding of the expectations of the role of representatives. In his negotiations with Llewellyn, Henry seemed to be shifting away from diplomatic representation between nominal equals – the tone of his

[74] *Decr. Greg. IX* 2.14.6; the details of this phrase are also discussed in Post, '*Plena Potestas* and Consent' pp. 131-2, who noted the occurrence of this phrase in English episcopal practice from the mid-1220s.
[75] *Foedera, i,* p. 218.

letter close of March 1238 clearly demonstrated an attitude of command rather than negotiation. This letter emphasised Henry's overlordship, with repeated references to his right to superior homage, and the king was evidently attempting to force Llewellyn to send representatives with powers determined by him. The reason for Henry's request for Llewellyn to send representatives *cum plena potestate* were articulated earlier in the letter, and were perhaps one of the most demonstrative statements regarding representation to occur in Henry III's correspondence over this period. Henry complained that earlier envoys on Llewellyn's behalf had not had sufficient power to ratify a truce between them, saying that they had been insufficiently instructed to treat of peace (*minus sufficienter instructus ad tractandum de pace inter nos et vos*). If Llewellyn truly desired peace, he would send plenipotentiaries on the day appointed by Henry.[76] This demand for *plena potestas* in part served to indicate the utility of canonical language in diplomatic negotiations, as it indicated an assumption of mutual comprehension and common frameworks of expression, but this episode may also be read to indicate something of Henry's understanding of representation more broadly. Once again, Henry deployed the language of *plena potestas* alongside that of *sufficienter instructus*, depicting a mode of representation which played down the agency of the representatives. Grants of *plena potestas* did not increase the autonomy of the delegate in his negotiations, but were perceived as a mechanism for confirming royal decisions, further enforced by the issuing of 'sufficient instruction'.

The desire of Henry III to maintain his primary control in negotiations was also demonstrated through the inclusion of the Roman Law *ratihabitio* clause in his grants. Outlined in the *Digest*, the use of this formula bound the king with a promise to ratify

[76] *Close Rolls, iv,* pp. 124-5.

whatever his agents agreed. [77] As with sufficient instruction, this form operated in part to expedite the processes of negotiations, but it also emphasised the ultimate necessity of royal ratification and highlighted the status of the contexts in which it was employed. In February 1243 Robert Anketil was appointed as royal proctor general (*procuratorem generalem*) in all matters related to the disputed election of Boniface of Savoy to the see of Winchester and the translation that William Raleigh, bishop of Norwich had procured for himself. Within Anketil's mandate, he was granted from the king 'power and orders' (*potestatem et speciale mandatem*) to contradict, either in person or through a substitute whatever the king considered ought to be contradicted, *in quibus contradictionem nobis viderat expedire*.[78] The grant closed with the *ratihabitio* clause as the king promised to ratify whatever his agents agreed. Despite this guarantee, the grant indicated important restrictions on the freedom of action possessed by the representative. The delegated power was explicitly asserted to be the king's power, and the right to contradict did not include the right to determine what ought to be contradicted. Although the king might be said to have been bound by the *ratihabitio* clause, Anketil was bound in the first place by the will of the king, which remained central to the negotiation process.

Similar deployment of the *ratihabitio* clause along with a specific mandate occurred in Anglo-French treaty negotiations. In a letter of 24th May 1242, complaining of violations of the truce between England and France, Henry appointed the knight Ralph fitz Nicholas, the royal clerk and trained lawyer John of Lexington, master Peter of Bordeaux, and the Gascon administrator William Gumbaud to address these violations. That these were plenipotentiary

[77] For an introduction to the *ratihabitio* and the mandate, see Post, '*Plena Potestas* and Consent', pp. 106-7 and 130, as with *plena potestas*, the *ratihabitio* had emerged in English practice by the end of the reign of King John, but was not employed extensively in the 1220s.
[78] TNA C 66/53 m.15.

representatives was made clear from the outset of the notification sent to Louis IX. Immediately after the salutation, the letter opened with the clause granting *plenam potestatem* to these men. This plenipotentiary representation was confirmed in the civilian form with the inclusion of a *ratihabitio* clause at the close of the letter, wherein the king promised to ratify and confirm whatever emendations would be lead to be done by the foresaid representatives (*ratum et gratum habituri quicquid praedicti fideles nostri super praedictis emendis duxerint faciendum*).[79] Nonetheless, while this was a broad plenipotentiary mandate, it was also a specifically focussed one. The power granted to the delegates was limited to the specifics of their mission, to set out and put in place amendments to the violations of the truce. This power served to repair violations to an existing treaty, it did not confer the power to alter the existing arrangement or procure a new treaty. The precision of the instructions emphasised the juridical framework for these diplomatic negotiations and thus controlled the extent of the granted mandate.

Having first emerged in English practice towards the end of the reign of King John, and then fallen into abeyance during the royal minority, the revival and reinvigoration of this language during the personal rule was in itself indicative of the need for familiarity with learned law in diplomacy. In addition to revealing aspects of the king's attitude towards representation more broadly, there is also a small amount of evidence that this period also started to lay the groundwork for the adoption of this language into parliamentary representation. The first element of this evidence was in the use of delegated *potestas* along with the language of the utility of the realm which, as discussed above, formed a key element of developing parliamentary discourse. During the proceedings of the Council of Lyons in

[79] *Foedera, i,* p. 244.

1245, one of the king's leading proctors at the curia, Master Laurence of Sancto Martino was granted broader royal power (*potestatem nostram*) to approve any episcopal translation that might be made during the council, as long as that translation were to suit the utility of the realm (*ex aliquem episcopum ex utilitate regni nostri debere transferre*).[80] This linked diplomatic representation with the language of the parliamentary and legislative process through the language of the public interest. It also demonstrated that international diplomacy and church business were integral to the 'domestic' affairs of the kingdom.

A second example shows that the language of diplomatic representation was coming to be applied directly in a domestic setting, concerned with the good of the realm. It comes from a letter close addressed to the magnates of Ireland in July 1248, in which the king complained that the representatives the magnates had sent to appear before the council had not been granted full power by them (*dictis nunciis non habentibus a vobis…plenariam potestatem consummandi negocium pro quo venerant*). This lack of representative *potestas* inhibited the negotiations, so that the messengers could not conclude their business, nor could the king himself grant the liberties which were requested.[81] Rather than requesting sending more fully empowered representatives, the king referred the magnates to the justiciar of Ireland, John fitz Geoffrey. In this case, the grant of *plena potestas* from the magnates to their representatives was a prerequisite to their acquisition of the desired liberties from the king, without it, the king was not bound to oblige their requests. Again, this emphasised the advantages of mutual comprehension seen in the diplomatic correspondence, but it is also indicated an understanding of representation which implied the power to consent rather than negotiate, and without which, those petitioning the king could

[80] TNA C 66/56 m.5.
[81] *Close Rolls, vi,* p. 118.

be excluded from the process. The Irish context was particularly important for framing a transition between ideas of diplomatic and parliamentary representation, being part of the king's *dominium*, but not part of the *regnum Anglorum*, potentially providing an opportunity for a slippage of vocabulary. This was not a parliamentary summons, but it nonetheless can be read to hint at the way in which the deployment of the language of representative *potestas* in the negotiations between the king and magnates were influenced by the legalistic, restrictive *plena potestas* of diplomacy which structured representation and consent to bolster royal authority. The adoption of canonical clausulae was not fixed from the outset, nor was the distinction between 'diplomatic' and 'domestic' vocabulary so strictly compartmentalised as to prevent cross-fertilisation; representation was not automatically assumed to be intrinsically different in these varying contexts.

In the aftermath of the baronial civil wars of 1258-67, the language of *plena potestas* was to emerge as one of the keystones of the parliamentary summons and mandate. Its adoption in this form was neither fixed nor inevitable. Its deployment in the period of Henry III's personal rule, picking up after its abeyance in the 1220s, served primarily to emphasise the power of the king, as the recipient and commissioner of representatives. Not all references to *plena potestas* were strictly representative,[82] but those that were, especially in the diplomatic context, highlighted the restrictive and conforming delineation of that delegated power. Diplomatic representatives were granted *potestas* in order to enact from a

[82] As with other clausulae, *plena potestas* also saw incidences of non-technical slippage, where romano-canonical language could be deployed in what appeared to be inappropriate contexts, especially earlier in the period. A patent letter of September 1237 included a concession to William de Peretot of *plenam potestatem*, for the cutting of the long hair of the king's clerks, at the threat of Peretot's own hair being shorn. TNA C 66/47. David Carpenter has referenced this patent as one of the evidences of Henry III's own, rather bemusing, sense of humour, while also noting the king's knowledge of the working of government through the plenipotentiary clause, 'The Sense of Humour of King Henry III', *Henry III Fine Rolls Project: Fine of the Month: November 2011,* www.finerollshenry3.org.uk/content/month/fm-11-2011.html [accessed online 5 December 2016].

distance the king's will, their consent was implicit in their mandate and what they were to consent to was outlined with varying degrees of explicitness. Furthermore, their consent was inferior to that of the king, while the prominence of *ratihabitio* clauses indicated the extent to which their agreements and negotiations were reinforced by and did not in themselves guarantee, the king's own confirmation. In diplomatic representation, the power of the plenipotentiary was the delegated power of the king, and in theory at least, he lacked individual agency. Although there were no parliamentary deployments at this time, this depiction of Henry III's conception of representation and the function of consent as a duty not a right is more broadly suggestive. The mandate to the Irish magnates further demonstrated that there was not a strict compartmentalisation of ideas about domestic and diplomatic ideas of representation; the role of the king remained paramount. In the personal rule of Henry III, the deployment of the canonical language of plenipotentiary representation operated to structure these functions of the political community in such a way that the powers and rights of the king remained paramount.

Quod Omnes Tangit

It is becoming clear that the adoption of romano-canonical formulae was selective and knowing, and apparently designed to assert royal authority, even when these formulae could later be used for representative purposes or as part of challenges to royal authority. This deliberate employment of learned law can perhaps be seen in the treatment of the most celebrated Roman law formula legitimating representative government, *Quod Omnes Tangit*. Studying the eclipse of this formula in royal records over this period can serve to indicate how the awareness of and engagement with Romano-canonical language was not a sufficient impetus for its adoption in the rhetoric of royal government. Arguments from absence are always somewhat problematic, but the silence of the royal record on this formula, when it

occurred in contemporary episcopal records, speaks to the way in which the adoption of learned law vocabularies was a selective process the aim of which was not juristic purity, but the advancement of royal authority.

The formula *quod omnes tangit*, henceforth *q.o.t.,* emerged from the principle of Roman private law regarding the exercise of authority by multiple *tutores*, wherein all the *tutores* were required to act, as what touched all similarly should be approved by all (*quod omnes similiter tangit, ab omnibus comprobetur*) (*Codex* 5.59.5.2).[83] Over the course of the thirteenth century, this maxim became central to canon law arguments for the right of representation, following from Honorius III's decretal *Etsi membra* in 1216, issued following a dispute where the archbishop of Sens refused to permit representatives from the cathedral chapter to attend a provincial synod. In this decretal Honorius opened his *arenga* with the metaphor of the body of the Church, and ruled decisively in favour of the chapter's right to representation. Honorius did not explicitly cite *q.o.t.*, but he did defend in particular the rights of the chapter to be involved in the business of councils which concerned them in particular (*maxime super illis que capitula ipsa contingere dinoscuntur*).[84] Although an explicit link to *q.o.t.* cannot be proved simply from the use by Honorius of the verb *contingere*, subsequent commentators on this decretal made an explicit link between this influential assertion of the right to representation in ecclesiastical councils and the Roman law maxim. *Etsi membra* was included in the *Compilatio Quinta* of Tancred, promulgated by Honorius in 1225, and shortly

[83] G. Post, 'A Roman Legal Theory of Consent, *Quod Omnes Tangit*, in Medieval Representation', *Wisconsin Law Review* (1950), 66-78; *idem*, 'A Romano-Canonical Maxim, *Quod Omnes Tangit* in Bracton and Early Parliaments', *Traditio,* 4 (1946), 197-251; Y. M.-J. Congar, 'Quod omnes tangit, ab omnibus tractari et approbari debet', *Revue historique de droit Française et Étranger*, 4th series, 36 (1958), 210-59; and K. Pennington, 'Representation in Medieval Canon Law', *The Jurist,* 64 (2004), 361-83.

[84] This decretal has been edited in *The Council of Bourges, 1225: A Documentary History,* ed. R. Kay (Aldershot, 2002), pp. 541-3; it was included by Tancred in the *Compilatio Quinta* at 3.8.1 and by Raymund of Peñafort in the *Gregoriana* at 3.10.10.

afterwards, Jacobus de Albenga glossed this decretal, explaining Honorius's decision by asserting that that which touched them ought to be approved by them (*quia quod eos tangit ab eis comprobari debet*).[85] This reference was made even more explicit in the ordinary gloss to this decretal in the *Gregoriana*, where he asserted that rightly that which touches all ought to be approved by all (*Et merito quia quod omnes tangit ab omnibus debet comprobari*).[86] The maxim *q.o.t.* was thus increasingly crucial to the vocabulary of ecclesiastical councils, and was increasingly closely connected with the requirement for consent in fiscal councils. Although originally intended as a mechanism to enforce attendance and consent, the maxim increasingly came to stand for claims for representation as the right to refuse consent, rather than the duty to provide it.

Certainly, in thirteenth-century England the maxim *q.o.t.* formed an important part of the rhetoric of ecclesiastical councils and the consent to clerical taxation. The earliest appearance of this formula in an English context was that made in 1213 in a letter to Innocent III from the legate Nicolò di Romanis, and it emerged with more frequency in the ecclesiastical discourse of the mid-thirteenth century.[87] These mid-thirteenth-century clerical citations, in 1240, 1245 and 1256 were all made in protest against papal financial exactions and highlighted the growing emphasis being placed upon the connection between representation, assembly and consent.[88] For such opponents of aggressive papal overlordship as Matthew Paris, *q.o.t.* came to stand for the rights of the English church to resist the demands of a corrupt and avaricious Roman Church. In 1225, this clerical tradition was expressed in the

[85] Jacobus de Albenga to *5 Comp. 3.8.1 s.v. contingere*, quoted in Pennington, 'Representation', 371.
[86] Bernardus Parmensis to *X 3.10.10 s.v. contingere*, quoted in Pennington, 'Representation', 371.
[87] A. Mercati, 'La prima relazione del Cardinale Nicolò de Romanis sulla sua legazione in Inghilterra', in H. W. C. Davis (ed.), *Essays in History Presented to Reginald Lane Poole* (Oxford, 1927), pp. 274-89, at p. 280. For this and what follows, see. Maddicott, *Origins of the English Parliament,* pp. 208-210.
[88] *Chronica Majora*, *iv*, p. 37; *Councils & Synods, II: A.D. 1205-1313, with other Documents Relating to the English Church*, ed. F. M. Powicke and C. R. Cheney (2 vols, Oxford, 1964), i, pp. 287, 391, 506.

royal rhetoric, in what was a remarkably early secular adoption of this clause. In September the papal nuncio Otto approached Henry III that year to propose a papal tax on the prebendal income of cathedral chapters, proposed earlier in that year at the Council of Bourges, to which the representatives of cathedral chapters had been summoned in tacit recognition of *q.o.t.*. The royal response was to deny a capacity to decide in this matter, because it touched the laity and the clergy of the whole kingdom (*quod omnes clericos et laicos generaliter totius regni tangebat*), a judgement that was asserted once more in January 1226 at a royal council deferring the decision.[89] This was a remarkable abnegation of royal authority, and one which served primarily to defend English cathedral finances against papal exactions. It was also a stance made possible by the context of a royal minority. The role of Stephen Langton in the framing of this stance should not be understated; since the end of the legation of Pandulph in 1221 he had regained primacy in the royal council, and was a noted opponent of the unrestricted exercise of power by either the king or the pope.[90]

The image of representation and consent that was invoked by the conciliar deployment of the formula *q.o.t.* and given a remarkably early expression in the minority government, was one in which the interests of the whole kingdom were of primary importance. The king himself could not decide unilaterally on these issues, and representation was necessary to ensure the common good of the whole kingdom. These ideas were expressed during the king's minority, but in the period of personal rule, c.1230-c.1250, this consensual language was notably absent from royal records, not occurring until the reforming project of 1258. It persisted over this period in English ecclesiastical contexts and Gaines Post

[89] Kay, *The Council of Bourges,* pp. 217-24; Maddicott, *Origins of English Parliament,* pp. 208-9.
[90] E. Hall, 'King Henry III and the English Reception of the Roman Law Maxim *Quod Omnes Tangit,' Studia Gratiana,* 15 (Rome, 1972), 126-45, at 130-1, 144.

has argued that it was influential in shaping Bracton's understanding of court summonses.[91] This language was not unknown or unprecedented, even though, as we have seen, other learned law clausulae and concepts were beginning to appear in appreciable numbers.

Compared to the increasing number of deployments of the language of *plena potestas*, the absence of *quod omnes tangit* is striking. Issues of representation and consent were integral to the politics of Henry's reign, and the two learned law provided a rich vocabulary for engaging with these questions. The adoption of learned formulae into the language of power of Henry III's personal rule depended on selective decisions rather than simple awareness; the development of *quod omnes tangit* in thirteenth-century England reflected a view of the political community in which the common good of the realm was separate from the king, but this was not the view of the community of the realm and the role of representation that was constructed to the royal interest in the period of personal rule. Comparing the use of *plena potestas* with that of *quod omnes tangit* emphasises the extent to which Henry III's chancery clerks were not passive reproducers of *ius commune* language and concepts, but adopted and transformed those which served their broader discursive purpose, one in which the authority of the king was paramount and supported but not challenged by the representation and consent of the wider political community.

Conclusion

Henry III, as with all medieval English kings, could not express his kingship except in the context of the kingdom that he ruled. Any conception of royal authority in the thirteenth

[91] Post, *Public Law and the State,* pp. 196-210.

century also had to contend with an understanding of the powers of, and relationship with, a wider community of the realm. The language of the political community was diverse and drew on multiple intellectual and institutional traditions, but the evidence from the royal letters of the period of Henry III's personal rule demonstrate that elements and clausulae from the continental public law played a significant role in shaping the vocabulary deployed by the royal chancery. While not constitutive of a fully articulated 'theory' of the state, certainly not as fully as was to emerge under Edward I, the Henrician evidence nonetheless indicates a number of noteworthy trends. Most fundamental in relationship to the idea of kingship was the lack of clarity in distinctions between the personal and official capacities of the king, an elision of public and private in which the king could attempt to claim the right to direct the public interests of the kingdom and determine the criteria for fulfilling the requirements of *consilio* and *auxilium*. The language of parliament was in a crucial period of development at this point, with the most significant clausulae of later medieval parliamentary representation, such as *plena potestas* and *quod omnes tangit*, seeing some of their earliest deployments in an English context. As with the more general discussions of the political community, this language was framed in such a way as to indicate the hierarchical authority of the king, in which the processes of representation and consent were subject to royal direction and primarily intended for royal convenience.

Considering this approach to the political community along with that of the theory of kingship articulated in the previous chapter, it is clear that, even if Henry III did not have one single and coherent 'policy' of government, the period of his personal rule saw experimentations in the adoption of the language of European public law in a way that bolstered royal authority and began to frame a vision of that authority within a wider polity.

These linguistic adoptions not only formed a rhetorical style in royal letters, they were also of some significant substantive importance, constituting an integral part of the development of such royal practices as resumption, the assertion of the royal prerogative, and the development of parliamentary and diplomatic forms. But as much as this language could bolster kingship, it was not restricted to the claims of the crown; opposing parties could and did use the same intellectual and legal traditions in order to present increasingly pointed challenges to royal authority. Furthermore, the elevated view of kingship that was proposed in this period set a standard that Henry III proved simply incapable of meeting as a king.

Attempts to communicate this vision of royal authority depended upon a performative and persuasive rhetorical strategy, as well as a legal one, and these attempts and their relative success should also be considered in the light of the broader diplomatic forms of royal letters and how these were influenced by the engagement with continental forms, particularly those of the *ars dictaminis*. All of the claims that Henry III's government began to put forward in this period, which were to be articulated more fully in the competing arguments set forth during the Barons' Wars, depended not just on their legal validity, but their persuasive character; their reception was as crucial to their success as their adoption, and in this process, the styles for the transmission of royal claims to authority took on a crucial role.

Chapter Six – Rhetoric, Dictamen, and the Performance of Kingship

Introduction:

If the king's clerks were attempting to present a new image of imperial-style kingship centred on the person and prerogatives of the ruler, simply adopting the terminology of learned jurisprudence as a facet of royal rhetoric could never have been sufficient. The language of government was performative and constitutive of kingship, and any attempt to introduce a new style of rulership, or to choose to emphasise more authoritarian elements of royal authority, required more than the introduction of isolated clauses or legal terms. It required the adoption of a broader rhetorical framework in which to communicate and persuade. Following this theory, this chapter considers the extent to which the transmission of ideas about learned-law kingship in the period of Henry III's personal rule was framed within a broader rhetorical strategy related to the influence of the treatises of the *ars dictaminis* and the adoption of dictaminal models.

It is worth beginning this analysis by articulating the establishing the relationship between civil and canon law jurisprudence and the *ars dictaminis*. Although *dictamen* can be viewed within the lens of the rhetorical tradition, its connection with the teaching and practice of learned law was inextricable.[1] As a form of rhetoric in its broadest sense, the art

[1] To those scholars interested in Classical rhetoric, the thirteenth century, and particularly the *ars dictaminis*, had been viewed as something of a sad chapter in the history of rhetoric, where an over emphasis on technicalities and a focus on the 'insignificant phase' of the Epistle displaced the study of rhetoric proper, P. Abelson, *The Seven Liberal Arts, a Study in Mediaeval Culture* (New York, 1906), p. 52; Paetow, *The Arts Course at Medieval Universities*, pp. 70-6. This view of the antagonism between law and the classics has been rehearsed more recently in Witt, *The Two Latin Cultures and the Foundation of Renaissance Humanism*, pp. 3-4. While recognising the importance of law and practical application, the more recent work of James Murphy and Martin Camargo has done much to rehabilitate the stature of the *ars dictaminis* and *ars dictandi* as forms of rhetoric, as well as recognising the continuing importance of classical, particularly Ciceronian, rhetoric; see for example Murphy, *Rhetoric in the Middle Ages*.

of writing letters was not intrinsically a legal one, but the teaching of *dictamen*, above all at Bologna, was inextricably connected with the teaching of learned law. Indeed, in his monumental history of medieval universities published in the first half of the twentieth century, Hastings Rashdall went so far as to suggest that the legitimacy of the faculty of law within the university depended upon its relationship with the grammar and rhetoric as part of the classical *trivium*, a connection that was mediated through the *ars dictaminis*.[2] The relationship was one that went beyond providing a legitimation for law as an academic discipline; *dictamen* and classical jurisprudence reinforced each other on both practical and theoretical levels. The clearest example of this reciprocal relationship is perhaps seen at the papal curia, where the regularisation of the *cursus Romanae curiae* governed both the production of elaborate diplomatic documents, but also shaped the procedural and theoretical developments of the practice of canon law within the apostolic court.[3]

Beyond the procedural and paedagogical connection between *dictamen* and the *Ius Commune*, this flourishing of jurisprudential rhetoric played an enormously significant role in the development of political persuasion and the public performance of authority in the thirteenth century. The performative aspects of authority and assertions of power were to paint themselves vividly across the landscape of thirteenth-century Europe, providing one of the most important contexts for the development of Henry III's own view of kingship. This was the context of the prolonged dispute between the Hohenstaufen Emperor Frederick II and the Papacy during the pontificates of Gregory IX and Innocent IV. In this highly public conflict, the circulation of formal diplomatic letters to maintain support was a crucial element of the strategy of both the papal and imperial courts. The use of both jurisprudential language

[2] H. Rashdall, *The Universities of Europe in the Middle Ages* (3 vols, Oxford, 1936), *i*, pp. 109-10.
[3] Sayers, 'The Influence of Papal Documents on English Documents before 1305'.

and dictaminal style was particularly notable in this conflict, and Peter Herde has noted that both popes and emperor not only deployed the techniques of the *ars dictaminis* in their correspondence, but employed the most complex and sophisticated level of the *stilus supremus*.[4] This was more than elevated rhetorical performance in a competition of international diplomacy, it indicated the extent to which *dictamen* provided a conceptual and linguistic framework for the articulation of jurisprudential language in a way that had a substantive influence upon the theory and practice of statecraft.

The ways in which Roman law influenced statecraft and the language of government in Europe have long been recognised, and the English engagement with that tradition has been the subject of the previous two chapters. *Dictamen* played a crucial part in shaping this intellectual tradition and in framing its communication.[5] The recent work of Benoît Grévin in particular has illuminated how the importance of these rhetorical modes went beyond external performance or competition, and exercised considerable influence in establishing and indicating the nature and extent of royal power on a broader basis. In an article published in *Annales* in 2008, Grévin articulated the importance of developments in rhetoric and *dictamen* in shaping what he referred to as 'L'écriture du pouvoir', the writing of power. Grévin argued that through the circulation and replication of dictaminal models in *summae*, the personnel of royal and imperial chanceries could produce documents which elevated the majesty and status of the ruler, while also establishing the procedural norms of official communication. In short, dictaminal handbooks allowed rhetorical innovation without sacrificing stylistic authority. This was particularly important when the elements of innovation were linked with the transposition of jurisprudential language in which the power of the

[4] Herde, 'Literary Activities of the Imperial and Papal Chanceries'.
[5] Kantorowicz, 'Kingship under the Impact of Scientific Jurisprudence'.

prince was linked with assertions about legal validation and jurisdictional supremacy.[6] In his magisterial monograph, *Rhétorique du Pouvoir Médiéval*, Grévin has provided a systematic evaluation of the importance of the letter collection of the imperial proto-notary Petrus de Vinea. In the third part of the volume, Grévin indicated the extent to which Vinea's letters constituted a model which influenced political theory and practice through the late thirteenth to the fifteenth centuries.[7] As far as the English context of this influence is concerned, Grévin's emphasis on dictaminal *summae* turned him towards the latter part of the thirteenth century, and his main area of analysis, both in *Rhétorique du Pouvoir* and in his separate article on the English evidence specifically, is focussed on the reign of Edward I onward.[8] But the dictaminal *summae* were the product of an ongoing process of redaction and recension which was only finalised in the late thirteenth century, and while they had a profoundly formative influence on European political language, this began before the formalisation of this genre of texts.

So far this introductory passage has sought to frame the importance of *dictamen* as a vehicle for transmitting into political theory and practice. While Grévin's recent work has presented potentially one of the most profitable frameworks for considering the influence of *dictamen* on medieval European politics, including in an English context, it would be helpful to place his scholarship alongside the existing literature on the *ars dictaminis* in England. This literature has developed over several generations, and reveals some striking trends, as well as some significant lacunae. Perhaps unsurprisingly, the first major contributions to this study tended to focus on the rhetorical tradition. In accordance with the trends of rhetorical

[6] Grévin, 'Les mystères rhétoriques de l'État medieval'.
[7] *Idem.*, *Rhétorique du Pouvoir Médiéval: Les* Lettres *de Pierre de la Vigne et la Formation du Langage Politique Européen (XIII^e^-XV^e^ Siècle)* (Rome, 2008).
[8] *Ibid*, pp. 715-774; *idem*, 'Writing Techniques in Thirteenth- and Fourteenth-Century England: The Role of the Sicilian and Papal Letter Collections as Practical Models for the Shaping of Royal Propaganda', in W. M. Ormrod (ed.), *Fourteenth Century England VII* (Woodbridge, 2012), pp. 1-29.

scholarship mentioned above, this work tended to view English *dictamen* as repetitive, legalistic, and business-like. Noel Denholm-Young indicated the importance of so-called 'cosmopolitan Englishmen of the twelfth and thirteenth centuries' in the transmission of the *cursus* to England, depicting it as an administrative and bureaucratic skill, associated to some degree with the schools at Oxford, and the functionaries of the royal chancery.[9] H. G. Richardson subsequently built further upon this bureaucratic context, and emphasised the development of an Oxford dictaminal teaching tradition, as he argued for a limited and reduced business school on the Bolognese model operating in Oxford possibly from as early as the reign of King John.[10] In both of these analyses, the bureaucratic overtones of *dictamen* are treated pejoratively from a stylistic perspective, and although Denholm-Young in particular argued for the penetration of these models in English Chancery practice, he did not comment extensively on the implications of this for royal government. This contrasts sharply with the study done by the third of the main commentators on English relations with *dictamen* writing during the first half of the twentieth century, Ernst Kantorowicz. For Kantorowicz, as we have already seen, the nexus of dictaminal style with jurisprudential vocabulary played a central role in transforming the image of kingship in Europe over the twelfth and thirteenth centuries.[11] This was also a factor in thirteenth century England. Kantorowicz focussed on the visit to the visit of Petrus de Vinea to the court of Henry III, and used this as a base for the analysis of the adoption of dictaminal models, particularly those inspired by Vinea and his followers in the English context.[12] For Kantorowicz, *dictamen* was distinctly more than

[9] Denholm-Young, 'The *Cursus* in England'.
[10] Richardson, 'Business Training in Medieval Oxford'.
[11] See above, p. 21ff.
[12] Kantorowicz, 'Petrus de Vinea in England'; *idem*, 'The Prologue to *Fleta* and the School of Petrus de Vinea'.

mechanistic bureaucratising, and thus de Vinea's influence in England was more than merely stylistic.

Grévin's work has explicitly engaged with Kantorowicz's work on England, despite his somewhat later chronological focus. He is not however the only more recent scholar to provide a further reconsideration of these earlier intellectual narratives. The view of dictaminal rhetoric as sterile and bureaucratic has undergone a particular re-examination recently, most profoundly in the English context in the work of Martin Camargo. Camargo identified England as not only a consumer but a producer of dictaminal manuscripts, a phenomenon discussed in more detail in Chapter Two. Furthermore, he also emphasised the vibrancy and vitality of *dictamen* as a form of rhetoric beyond the stalely mechanistic.[13] As Camargo's work focussed mostly on the theoretical treatises, he pays less attention to the issue of adoption, and particularly government practice, although he acknowledges this an important area for consideration, and pays tribute to the Kantorowicz article on Vinea as a rare example of analysis of chancery practice.[14] In many respects, Grévin's monumental work seeks to fill this absence, but the earlier period remains under-explored. For this earlier period, less attention has been paid to influence on practice; Michael Clanchy picked up on the de Vinea issue in his 'Policy?' article, but only in passing, and real substantive analysis on the influence of *dictamen* on the language of government in the first half of the thirteenth century remains to be addressed.[15] This chapter is a preliminary attempt.

[13] M. Camargo, 'Defining Medieval Rhetoric', in C. J. Mews, C. J. Nederman, and R. M. Thomson (eds.), *Rhetoric and Renewal in the Latin West 1100-1540. Essays in Honour of John O. Ward*, (Turnhout, 2003) pp. 21-34, at pp. 23-7. Camargo built in particular on the work of James Murphy, who had played a critical role in reframing the *ars dictaminis* as a flourishing element of the rhetorical tradition, Murphy, *Rhetoric in the Middle Ages*.
[14] Camargo, *Medieval Rhetorics of Prose Composition*, pp. 10-12.
[15] Clanchy, 'Did Henry III have a Policy?', 210-11.

This analysis will be presented in the two following stages. Given the importance of identifying channels of transmission and communication, this chapter will first focus on the role played by foreign experts in the drafting of Chancery documents and in the introduction of the formal elements of dictaminal style and the *cursus*. From these immediate interventions, attention turns to the extent to which these models were adopted, adapted and imitated in other royal documents and different contexts. The second half of the chapter will then address the broader significance of these developments; their relationship with existing chancery practice and the models of government writing practice and persuasion and the performance of kingship. In this section it will then be possible to present some more conclusions about how the introduction of elements of *dictamen* played a particular role in the development of Henry III's policy during the period of personal rule.

The *Ars Dictaminis* and Rhetoric in the Court of Henry III

In their most elementary form, the manuscripts of the *artes dictaminis* consisted of a set of theoretical principles for the composition of correspondence, often accompanied by a compilation of model letters for emulation. As was demonstrated in Chapter Two, the evidence for English dictaminal manuscripts during the thirteenth century indicated a pronounced preference for manuscripts which incorporated such collections of exemplary material.[16] In analysing the influence of dictaminal modes on English royal correspondence for the period of Henry III's personal rule, it is worth considering the nature of these model letters and how they might influence letter-writing in practice. Among the various forms that could be copied, which ones were likely to gain particular influence in the royal Chancery?

[16] See above, pp. 133-42.

In the work undertaken by Benoît Grévin the dictaminal *Summa* of Petrus de Vinea provided a key source for analysis. The evolution of this collection and other similar *Summae* over the course of the thirteenth century demonstrate some of the most important features about the status and textual formation of model dictaminal letter compilations. The de Vinea letters offer a model for the development of these texts which offered a similar chronology to other contemporaneous *summae*. The majority of the key letters that were to be incorporated into this collection were originally composed during the Papal-imperial conflicts of the first half of the thirteenth century; it was only in subsequent decades that students and followers of Vinea were to select and organise his material into the *Summa*. Comparing the letters in the *summa* to surviving copies of the originals, it has been demonstrated by Grévin and others that substantial alterations were made to the texts for the purpose of providing more perfect exemplary material. The letters were copied often not as they *were written*, but as they *should have been written*.[17] The idealised forms of letters preserved in exemplary collections did not necessarily correlate with letter writing in practice, or even with the letters of the *dictatores* themselves. This raises a broader question about the nature of formula-books and letters collections. Medieval epistolary theory emphasised the importance of the emulation of distinguished models, but these ideal forms often had a complex textual relationship with the actual practice of letter writing. There was a moral as well as practical element to the art of letter-writing,[18] and across the compilations from formularies and

[17] Grévin, 'Writing techniques in Thirteenth- and Fourteenth-Century England'; for an analysis of the similar process of compilation and recension in the papal *dictatores*, see M. Thumser, 'Les grandes collections de lettres de la curie pontificale au xiiie siècle. Naissance, structure, édition', in B. Grévin and A.-M. Turcan-Verkerk (eds.), *Le* Dictamen *Dans Tous ses États. Perspectives de Recherche sur la Théorie et la Pratique de* L'Ars Dictaminis *(XI^e-XV^e Siècles)* (Turnhout, 2015), pp. 209-41.

[18] P. F. Gehl, *A Moral Art. Grammar, Society and Culture in Trecento Florence* (London, 1993), p. 103; this was connected with the cultivation of the classical idea of the *habitus* in reading Latin, K. Breen, *Imagining an English Reading Public, 1150-1400* (Cambridge, 2010), pp. 45-9. This question of the moralised ideal in exemplary material is by no means restricted to the epistolary sphere – it also remains a central question in the interpretation and analysis of medieval law, and especially those texts which occupy a position on the

epistolaries to the more formal *summe* attached to dictaminal treatises, the spectrum of models for mechanical emulation to paedagogical idealised forms was equally diverse and subject to varying interpretation.[19] Given these interpretational ambiguities, this section will explore the influence of models which can be linked to direct impact on the royal chancery, tracing, at this very early stage of dictaminal influence on royal style in England, the contribution of significant principals to the Chancery productions and the subsequent influence and emulation of these contributions. It will concentrate on the impact of Petrus de Vinea in this period before the *Summa*, and the role played by imitation and examplars in the transmission of the *cursus Romanae curiae*.

Petrus de Vinea

As has already been discussed at some significant length throughout this work, the most prolonged and direct contribution of Petrus de Vinea to the politics of thirteenth-century England was in the negotiation of the marriage of Henry III's second sister, Isabella, to the Emperor Frederick II. The negotiations for this marriage began in the late months of 1234, with the strong support of Pope Gregory IX.[20] The enthusiasm for this match can be demonstrated by the rapidity of the negotiations – Frederick's first offer of marriage was issued in November 1234, with the arrival of the imperial negotiators the following month; the contract of marriage was finalised by the 22nd February 1235. In regards to the influence

practico-theoretical intersection such as the *ordines iudiciarii* and *iudiciorum*, procedural texts which nonetheless had idealised and moralising overtones, as the Roman Law terminology of the *ordo* had two related meanings; first the sequence of events, second the correctness of the procedure, L. Fowler-Magerl, *Ordines Iudicarii* and *Libelli de ordine iudiciorum* (Turnhout, 1994), p.18; M. Vallerani, *Medieval Public Justice*, trans. S. R. Blanshei (Washington DC., 2012), p. 82.

[19] This again links more broadly to the maximalist/minimalist debate about the interpretation of letters as historical evidence. See above, p. 80.

[20] The pope's motivations for prompting this marriage may have been multiple; to tie the often fractious Hohenstaufen emperor to a house closely loyal and indebted to the papacy, to support an imperial alliance as a counter-balance to Anglo-French hostilities, or more broadly to assert his position as a spiritual leader of the power politics of royal marriage across the continent.

on royal correspondence, little documentary evidence survives from this relatively short negotiation period; the bulk of the material dates from the announcement of the marriage contract and its publication and fulfilment. Given the diplomatic importance of the match, the publication of information about its detail and significance provided an invaluable national and international platform for the administration of Henry III to make deliberate statements about the relationship between the king of England and the Emperor, the king's power and benevolence in negotiating the marriage, and his ability to communicate according to a continental register and conforming to the technicalities of the laws governing such a match.

With the formalisation of the betrothal in 1235, two parallel legal documents were issued confirming the match; the first was the marriage contract issued by the king and the second was a public notification of the marriage made by de Vinea himself.[21] As regards the legal details of the match, in particular the subject of Isabella's dower and dowry, the two documents were obviously congruent, but in terms of their language and style, it is possible to make some worthwhile comparisons between them as they each provided a model for the further expression and communication of ideas about the marriage. Perhaps the most substantive difference between these two documents is the exclusion of the role of the papacy in contracting the marriage from the *notificatio* made by de Vinea. The royal contract of marriage explicitly included the intervention of Gregory IX in part of the declaration of the marriage, stating that it was counselled and ordained by the Pope (*ad consilium et*

[21] De Vinea himself features prominently in the royal contract, as the Imperial representative negotiating the match, and given the proximity of the two documents, it is not improbable that de Vinea had some role in drafting the royal contract as well as his own *notificatio*, but it is at the very least worth distinguishing between these two documents in terms of their public voice and the extent of control that could have been exercised over their stylistic composition.

ordinationem Domini Gregorii, sacrosanctae Romanae Ecclesiae Summi Pontificis).[22] The decision to evoke or exclude the role of the papacy was to play an ongoing rhetorical role in the correspondence around this marriage agreement. In the context of opening the negotiations, invoking the papal encouragement of the match served to emphasis its diplomatic favourability. In making a public declaration of the settlement of the match, reiterating the Roman involvement would only detract from the emphasis on the Anglo-imperial deal.

This contrast between papal and imperial models for communication about the marriage alliance can be further developed by identifying the elements present in de Vinea's *notificatio* which reflect the interest and concerns of one of the *dictatores* rather than a canon lawyer. Perhaps the most striking trend throughout is an evinced concern for issues of status and particularly Isabella's future status after the marriage. In both the royal contract and the *notificatio*, the description of the proxy wedding ceremony incorporated the words of consent (*verba de praesenti*), and the exchange of rings, along with the obedience to the provisions of the Fourth Lateran Council that the wedding ceremony was to be conducted in front of a church (*in facie Ecclesiae*); the Vinean *notificatio* also made an explicit reference to the future consort coronation that Isabella would receive:

The Royal Marriage Contract	The Vinean *notificatio*
…in facie Ecclesiae solempniter et publice desponsetur;	…et quod ipsam in facie Ecclesiae solempniter et publice desponsabit, **et coronabit**.

[22] *Foedera*, *i,* p. 223.

This emphasis on Isabella's future rank continued throughout the *notificatio*, particularly in the description of her dower, which is described as being 'exactly as was customary for previous queens of Sicily to have as dower in full'.[23] Vinea repeated this emphasis on the customs of the kingdom of Sicily, when outlining the guarantee of Isabella's dower in the event that Frederick was to predecease her.[24] The *notificatio* also emphasised the procedure by which Isabella was invested with her dower; an act which Vinea himself undertook through his delegated authority. In describing this investiture, the account outlines in specific detail the form of Imperial letters Patent which would be used to confer the grants, providing a particularly vivid description of the seal used, a 'golden bull impressed with the seal of the Imperial majesty'.[25] The disposition of Isabella's dower as a land grant sealed with a *bulla aurea* highlighted the extreme significance of this act, as well as indicating a preoccupation with the detail of imperial chancery practice. The references to Isabella's coronation and treatment according to the customary status as the queen of Sicily could be seen not only as a guarantor of the emperor's willingness to treat the king's sister with honour, but also showed the concern of the *dictatores* with the hierarchical ordering of society and fitting modes of treatment and address.[26] These two documents, the royal contract and the Vinean *notificatio*, described essentially the same events and agreement, but their differences in style and content reflected their diverging secondary purposes. They also provided two

[23] *Foedera*, p. 224.
[24] *Ibid*. p. 224.
[25] *Ibid*. p. 224.
[26] This hierarchical division and its representation and reproduction in epistolary form was a well-attested preoccupation of dictaminal treatises. The consideration of the *salutatio* received disproportionate attention in a broad number of dictaminal treatises, and Guido Faba began his summa *de materia* by stipulating the guiding principle of epistolary style in the relative positioning of persons according to rank, *Briefsteller und formelbücher des eilften bis vierzehnten jahrhunderts*, ed. L. Rockinger (2 vols, New York, 1961), *i*, p. 185. The importance of social hierarchy was explored in some detail by Giles Constable, 'The structure of medieval society according to the dictatores of the twelfth century', in K. Pennington and R. Somerville (eds.), *Law, Church and Society. Essays in Honour of Stephen Kuttner* (Philadelphia, 1977), pp. 253-67.

different models for future commentary on and communication about the wedding agreement.

In the subsequent correspondence regarding the marriage and its arrangements, these two documents became influential exemplars for shaping discussion and presentation of the match. The influence of the Vinean *notificatio* as an exemplar should be seen as particularly significant given the existence of the royal contract. This significance is two-fold; not only did it demonstrate that even at this very early stage a document written by an influential principal such as de Vinea could be received and transmitted through the royal chancery, but also the passages chosen for emulation and the relative emphases on the differing aspects of these two legal accounts of the agreement could be seen as indicative of the rhetorical and performative interests in the offices of English government. On the most basic level it is clear that some of the language employed in the *notificatio* circulated in the other products of the royal chancery: although not all of these formulations were necessarily rhetorically or ideologically significant, their adoption indicated in the very least that attention was paid to the document and that it had some influence of future productions. Perhaps the most frequent example of this can be shown in the vocabulary used to describe de Vinea's role as imperial representative in the proxy ceremony performed with Isabella. In the royal contract, his function is presented strictly in the legal terms of his representation for Frederick: he acted for the part of the emperor (*pro parte Imperatoris*) and in his name (*nomine Imperatoris praefati*) and this was repeatedly framed as being done according to his role as procurator (*Caesaris speciali et legitimo Procuratore*).[27] In the description of the ceremony, the Vinean *notificatio* employed very similar language, asserting that he acted on

[27] *Foedera*, *i,* pp. 223-4.

the part of the emperor (*pro parte praefati Domini mei Imperatoris*) and again received the ring in the name of the emperor (*nomine Imperatoris*). However, de Vinea used strikingly different language to frame his role as imperial representative; at the conclusion of the letter, summing up the agreement of the match and the assignation of Isabella's dower, signified by the exchange of wedding rings and to be ratified by the *bulla aurea*, rather than invoking his position as procurator or referencing a specific mandate or statute, he promised and swore on the soul of the emperor regarding the agreement (***Promisi*** *ego praeterea, praenomiatus Magister Petrus de Vinea,* ***et juravi in anima Imperatoris*** *praedicti*).[28] This evocative image of oath-taking was in many ways supererogatory to the legal requirements of the document, which were circumscribed by de Vinea's imperial mandate and the agreed statutes, but they served a useful rhetorical function. In addition to enhancing the status of a representative who could take such actions on the emperor's behalf, this clause also involved Frederick himself more intimately and personally in the match. This theme recurred through the *notificatio* from the outset, where the special mandate was matched with Vinea's corporeal participation in sacrament (*de speciali mandato antedicti Domini mei Frederici, et in anima sua corporaliter praestito Sacramento*), and then again emphasising his mission as taking place not only by the mandate but by the will of the emperor (*De voluntate et speciali mandato antedicti Domini Imperatoris*). These references not only fulfilled the necessary legalities of a marriage by proxy, but they also elevated the status and solemnity of the negotiations and their concluding documents.

[28] *Foedera*, *i,* p. 224. The seeming multifunctionality of the wedding rings here is worth noting; earlier in the *notificatio* it confirms and signifies the exchange of the words of consent between Isabella and de Vinea as Frederick's proxy, at this point it is being said that it the future it will function as significant of the assignation of Isabella's dower. I would like to thank Anna Boeles Rowland for her discussion of the material significance of the wedding ring with me, and for letting me consult a copy of her DPhil thesis, 'Material Mnemonics and Social Relationships in the Diocese of London, 1467-1524', which includes discussion of the material, social and legal significance of the exchange of wedding rings.

These differences in tone and emphasis between the royal contract and the Vinean *notificatio* should be considered of particular importance given their parallel capacity to shape the rhetorical forms of subsequent royal letters regarding the agreement. That the completion of the marriage agreement necessitated a broader dissemination of communication beyond the agreement between the parties was both functional and performative. In many respects, the successful conclusion of the deal required further correspondence, particularly on such areas as Isabella's impending departure from the kingdom and journey to the empire, as well as the financial arrangements of dower and dowry. In addition to this, the canonical understanding of marriage required its publication, and that was all the more imperative considering the connotations of the presentation of such a match in the broader world of European power politics. An examination of the language of these subsequent communications can indicate the extent to which Vinea's account of the agreement worked alongside the royal contract to shape certain rhetorical strategies.

The two elements of the Vinean document which were to be adopted most consistently were the exclusion of the papacy from the narrative of the marriage in general, and more explicitly, the language of Vinea's representation of the emperor, most particularly, his formula 'iuravi in anima Imperatoris'. Both of these elements were shown in the letter sent by the king to his sister Joan, the queen of Scotland. In describing the impetus for the marriage negotiations, there was no mention of the papacy, only the observation that the emperor had sent envoys to Henry to seek Isabella's hand in marriage (*Imperator Romanorum, nuper Nuncios suos ad nos in Anglia destinassset, pro praedicta sorore nostra petenda in uxorem*). As a similar form of letter was also sent to Joanna's husband, Alexander II, and to the prince of Gwynedd, Llewellyn ap Iorwerth, Maurice Fitzgerald, the justiciar of

Ireland, and the Archbishop of Dublin, it could be supposed that there was not an immediate desire within the insular context to invoke the agency of the papacy in the marriage. This was not necessarily the direct result of imitation of Vinean rhetoric, but did at least demonstrate the degree of care and attention which framed the vocabularies of royal diplomatic.[29]

Moving to the second element of the *notificatio*, the presentation of Vinea's role in the negotiations, the formula regarding the future guarantees made regarding the marriage, 'iuravi in anima Imperatoris', appears to have been adopted wholesale by the English chancery.[30] In the letter sent to Joan and similarly to other insular rulers, Vinea was described first as an imperial *nuncio*, who had been sent to England with the delegated power to say the words of consent in the emperor's name in marrying Isabella (*ad hoc specialiter destinatum cum potestate consentiendi in ipsam sororem nostram nomine ipsius Imperatoris*).[31] In contrast, in the subsequent letter addressed to the Archbishop of Cologne, Vinea was first described as imperial *nuncio*, but this was then clarified with the subsequent descriptor that he had been sent in this matter as a procurator of the emperor (*ac in hoc Procuratorem ipsius Imperatoris*).[32] The language of Vinea's procuratorship draws on the royal contract rather than the *notificatio*, but in both of these letters, the subsequent formula, was adopted from Vinea's future guarantees directly.

[29] *Foedera, i,* p. 224. A comparison could perhaps be drawn here between this set of letters and the letter sent to the Archbishop of Cologne, both outlining the match, and entrusting Isabella to his care during her journey to the Emperor. The exclusion of papal agency from this letter again follows the Vinean model, but the exclusion here could be said to be partly due to the increased proximity to the imperial space and thus an elevated awareness of the imperial presentation of the marriage.
[30] It is worth noting that this language also occurred in letters discussing the negotiation of Henry's own marriage in the same year, *Foedera*, *i,* p. 222.
[31] *Ibid.,* p. 224.
[32] *Ibid.*, p. 224.

The Vinean *notificatio*	Letter to Joan, Queen of Scotland	Letter to the Archbishop of Cologne
'et **in anima** sua corporaliter praestito Sacramento, **juravi**, quod antedictus Dominus Imperator ducet in uxorem legitimam Dominam Isabellam sororem illustris Regis Angliae'	'et **in anima** ipsius Imperatoris **juravit** quod idem Imperator eam ducet in uxorem;'	'et **in anima** ipsius Imperatoris **juravit** quod idem Imperator ipsam sororem nostram ducet in uxorem.'[33]

This direct adoption of the latter Vinean formula showed not only the potential continuing engagement of the imperial protonotary in the chancery productions relating to the royal marriage, but also demonstrated how the adoption of his language reflected the differing interests of the king in his correspondence. For Vinea, the emphasis on his personal role and importance in the matrimonial contract served to elevate his status and his intimacy with Frederick; for the king, the formula of this promise provided a more prestigious guarantee of Isabella's future status and the commitment of the emperor to the contract.

Perhaps the most significant context in which to explore the extent of the Vinean influence over the matrimonial communications was in the letters sent by the king to the Pope and cardinals concerning the match. These letters not only required the most elevated diplomatic register, but they by their very nature highlighted the key differences between the royal contract and the *notificatio*. This is to emphasise the particular tensions over the relative positions of pope and emperor in securing the match and how Henry's government could use rhetorical strategies to balance these two alliances and interests. For the most part, the

[33] *Ibid.,* p. 225.

language of the Anglo-papal correspondence drew more closely on the model of the marriage contract rather than the *notificatio* – this was perhaps unsurprising, as the former drew much more explicitly on the vocabulary of papal authority and canon law, as was noted above. Even so, there were elements of the letters (both to Gregory IX and the cardinals), which indicated at the very least an awareness of the imperial material in general, and the Vinean style in particular. In the first letter, informing Gregory IX of the outcome of the wedding, the elements of international epistolary style are very clearly observed. Indeed, the exordium of the English letter is more clearly distinguished from the *narratio* than was typical of English royal correspondence, and seems to have drawn directly on the language of Gregory's own *arenga* in the letter he sent promoting the match.

Arenga of Papal Bull	*Exordium* of Royal Letter
'Quae tuae Celsitudinis respiciant incrementum, libenter tibi facienda suggerimus, et eadem per nos ipsos opportuno tempore procuramus.'[34]	'Quod, ex affectione paterna, libenter nobis suggeritis ea facienda, quae nostrae celsitudinis incrementum respicere sentitis, et per ipsos vos liberaliter eadem tempore procuratis opportune, sanctae paternitati vestrae copiosas referimus gratiarum actiones.'[35]

Although minor necessary structural changes had been made to the construction of the royal *exordium*, it still contained the three clauses of the papal *arenga*, right down to the choices of vocabulary. It is worth comparing this particularly diligent dictaminal observation in this letter to the relative slackness of the parallel document issued to the cardinals, which did not

[34] *Ibid.,* p. 220.
[35] *Ibid.,* pp. 225-6.

distinguish the *exordium* clearly from the *narratio*; formal epistolary style was not observed universally and to the same extent in all foreign, or even all Roman curial correspondence. This lack of uniformity represented the possible spectrum of exposure to either the *cursus* of the Roman curia in particular or dictaminal models more generally among government clerks; it also underscores the significance and the cases wherein the more formal elements of style were observed, and the potential role of the intervention of principals and the imitation of exempla in their composition.

In this respect, the potential Vinean interventions in this letter become all the more striking. First and foremost is the continued adoption in the English royal rhetoric of the formula 'iuravi in anima Imperatoris', which is again included in this letter as part of the description of the proxy ceremony in England and the future guarantees for the solemnities in the empire. This was not the only element of the letter in which some imperial interest can be seen. The use of the word 'princeps' is of particular significance. The emperor is referred to twice in this letter as 'such a great prince' (*tantum princeps*).[36] While this fit generally with the pattern of learned law terminology within the piece, as a commentary on imperial authority it should be observed as especially noteworthy. Neither the marriage contract nor the *notificatio* employed the word 'princeps', and it also did not appear in the earlier papal bull. Furthermore, while Frederick's letter to Henry proposing the match had deployed the term, it had been used to refer not to imperial authority, but to the status of the archbishop of Cologne as one of the imperial princes electoral. Throughout the majority of Vinea's letters, the term *princeps* was deployed in both of these senses; to indicate the imperial princes, or other rulers below the level of kings, and to emphasise the status of the imperial power. In

[36] This phraseology was also employed in the parallel letter sent to the Roman cardinals.

his letter 'Levate oculus', which would be sent by Frederick II to Louis IX and the French barons during the prolonged dispute with Gregory IX, the emperor decried the damage done to the power of the Roman Emperor (*Caesaris Romani potentia*), which would be easy for other kings and princes to understand (*facilis enim aliorum regum et principum humiliatio creditur*).[37] In another letter describing his victory of the Lombards, Vinea referred to the imperial power as princely, declaiming the praise due to the victory of so great a prince, 'pro tanti Victoria principis.'[38] Whether the deployment of the *tantum princeps* address in this earlier letter discussing the marriage was a direct or deliberate Vinean intervention or imitation in this letter, there was at the very least a receptivity in English chancery practice to the employment of expansive language regarding the nature of secular power.[39] As has been shown in the preceding chapters, the invocation of learned law language to elevate the status of royal authority was extended during Henry III's personal rule, and would reach its apex in the period of baronial reform and rebellion. The law-books provided a fertile array of vocabulary for the presentation of power, but it was the *dictatores* in particular who presented models for the application of that language to the discussion of contemporary secular rulers. Although at this stage the adoption of these forms of address was more restrained than the most florid products of the imperial chancery, and was directed outwards rather than applied to the king himself, this indication of the potential of *dictamen* as a

[37] Vinea, *Epist.*, *i*, XXXIV, p. 158.

[38] Vinea, *Epist.,* ii, I, p. 235. This usage was of particular significance, as Kantorowicz observed that in this letter, and in the subsequent *Epist* ii,XLV, the phraseology deliberately invokes liturgical phrasings, with the victory of the emperor taking the place of divine victory. As Schaller observed, the Chancery of Frederick II made particular use of liturgical language, though this was also a common feature of legal and dictaminal writings more broadly. Kantorowicz, *The King's Two Bodies*, pp. 118-19ff.

[39] The *tantum princeps* form was not the only expansive vocabulary of imperial authority deployed in the royal chancery at this time; the marriage contract made repeated references to Frederick as Caesar, *Foedera, i*, pp. 223-4. This language featured even more frequently in Vinea's letters as a term of reference for the emperor.

medium for the transmission of legal terms and constructs shows the way in which rhetorical habits could be communicated.

From the initial marriage mission onwards through the late 1230s and 1240s, a connection was maintained between the English and Imperial courts, and with Petrus de Vinea in particular. This continued interaction encouraged an ongoing awareness of imperial chancery style in the long term, and especially Vinean products. In this period before the *summae*, this textual influence was mediated through current correspondence and the practice of recipient transmission.[40] In the conflict that surrounded Frederick II's second excommunication by Gregory IX in 1239, both the curia and the imperial chancery circulated their opposing claims widely, and directly sought to elicit support from other European rulers. As one of the largest financial contributors to the papacy, and an imperial ally, the English court was to receive direct requests for support from both parties, including Vinean letters which explicit invoked the imperial power and secular authority more generally. After Vinea's departure from England, the circulation of these letters not only served as a source of information about the tremors of papal-imperial politics, but also provided one of the most important mechanisms for the continuing English awareness of developing dictaminal practices and the application of juristic language to assertions of lay sovereignty.

If the marriage of Frederick and Isabella was one of the greatest diplomatic achievements of this period, then the following conflict was to be perhaps the most substantial diplomatic challenge faced by Henry III's government. Henry III had to present himself both as a faithful son of the pope and Christian prince, as well as a respected brother of the emperor: he could afford to antagonise neither given his ambitions in France. This

[40] For the theory of recipient transmission, see above, pp. 120-1.

required rhetorical as well as political calculations. The marriage alliance played a substantial role in shaping the king's rhetorical strategies, and this included awareness of the emphasis on the imperial coronation of Isabella promised in the Vinean *notificatio*. In October 1239, a letter from Frederick II was sent to the king, complaining that he had allowed the papal sentence of excommunication to be declared in England, and further permitted the collection of papal monies. This letter opened with a direct invocation of the fraternal relationship between the two rulers, and the mutual obligations to which they were bound, when they entered into a marriage contract (*Cum inter reges orbis et principes affinitas interdum et matrimonium contrahitur*).[41] Further in the body of the text, the emperor addressed Henry directly as his most beloved brother (*frater carissime*), and reproached him that he should accede to the pope's demands when he was closest in kinship (*proximum*), the brother-in-law (*sororium*), friend (*amicum*) and just as a brother (*immo fratrem*).[42] The emperor used similar language in an accompanying letter sent to the barons of England, again referring to the king as his most beloved brother and brother-in-law (*karissimi fratris et sororii nostri*), and going on to refer to the chains of marriage and kinship which ought to be between them (*matrimonii affinitatis vinculum*).[43] Only the first of these two letters was preserved by the St Albans chronicler Matthew Paris, who went on to comment that the messenger Hugh Chabet concealed and distorted parts of the letter. Although the king had previously acted as an intercessor on the emperor's behalf with Pope Gregory,[44] the response here was more lukewarm, as Henry was said to reply that he would not dare to contradict the pope, and

[41] *Historia Diplomatici Frederici Secundi*, ed. J. L. Huillard-Bréholles (Paris, 1852), p. 464.
[42] *Ibid.,* p. 465.
[43] *Ibid.,* pp. 467-9. Subsequently in this letter, Frederick also extended the familial references by invoking the memories of both Henry II and Richard.
[44] In 1236 Henry III addressed a letter to Gregory IX in which he advocated for the Emperor's right to act against his rebellious subjects in Lombardy, articulating both the right to defend the imperial dignity, and that this was not an affront to the papal majesty, *Foedera*, *i,* p. 229.

further marvelled that his sister the empress had not received her proper coronation.[45] Although Paris did not preserve the letter in full, the inclusion of the language of solemnity (*sollemnibus*) and the status of the imperial magnificence (*imperio magnifice*), both invoked the Vinean language of the marriage negotiations, particularly in relation to dignity and status.

Using the marriage negotiations as a case-study, and considering their resonance in a longer-term narrative of Anglo-imperial relations, it is possible to demonstrate the ways in which the presence of a figure like Petrus de Vinea could make a personal contribution to the products of the royal chancery which was to have a much longer resonance in the development and expression of concepts of status and royal dignity. English royal rhetoric in this period did not come even close to the stylistic flourishes of either the imperial or papal chanceries in the throes of the conflict between Frederick II and Gregory IX; in part this would have simply been inappropriate for the mediatory role that the king attempted to take. However, the wide circulation of these letters was in itself significant for providing a context for discussions of authority, and the persistence of elements of Vinean language referring to the crown and dignity indicated the extent to which the presentation of kingship within the vocabulary of learned law could be received through its presentation in dictaminal models.

The *Cursus Romanae Curiae*

Before moving to the broader question of *dictamen* in the English chancery, the position of the *cursus Romanae curiae* in relation to the *ars dictaminis* should be briefly addressed. It is worth noting that the development of the *cursus* was a distinct genre and practice. By the beginning of the thirteenth century, the practices of the Roman curia engaged far more

[45] *Chronica Majora*, *iv*, p. 19.

directly with the rhetorical theorists, but there were ongoing and often highly technical divisions in opinion between the Bolognese *dictatores*, those of Orléans, and the practitioners of the papal courts.[46] But despite these disputes, there were general principles that were agreed upon; the usage of rhythmical clausulae to end each clause and sentence. This followed three main forms, the *planus* (a paroxytone trisyllable preceded by a paroxytone disyllable), the *tardus* (a proparoxytone tetrasyllable preceded by a paroxytone disyllable), and the *velox* (a paroxytone trisyllable preceded by a proparoxytone tetrasyllable), as well as combined or compound clausulae.[47] Noel Denholm-Young concluded that, while the use of the *cursus* increased over the course of the thirteenth century, its use in chancery foreign correspondence only began to emerge towards the end of Henry III's reign.[48] One recognised exception to this rule was the letter sent by the barons to Honorius III in either the second half of 1220 or the first half of 1221: for Denholm-Young this was a 'diplomatic freak' in its use of rhythmical clausulae, and he proposed that it was likely written under the auspices of the legate Pandulph, potentially by an Italian clerk in his household.[49] Further, Denholm-Young observed that, given the medieval preponderance of imitation of authorities, and the ubiquity of rhythmical clausulae in exemplar material, the occurrence of an isolated clausula did not necessarily indicate any personal knowledge of or desire to deploy the *cursus*. Given these restrictions, the intercession of foreign principals was essential for the emerging adoption of these rhythmical elements, especially for tracing such influence in the period before 1250.

[46] Murphy, *Rhetoric in the Middle Ages*, pp. 250-1.
[47] P. Toynbee, 'The bearing of the Cursus on the text of Dante's *De Vulgari Eloquentia*', *PBA*, 10 (1923), 259-77.
[48] Denholm-Young, 'The *cursus* in England,' p. 58.
[49] N. Denholm-Young, 'A Letter from the Council to Pope Honorius III, 1220-21,' *EHR*, 60 (1945), 88-96. Denholm-Young disputed Rymer's attribution of the letter to 1223, citing internal evidence which dated to this earlier period.

Certainly examples of such metrical prose, especially in papal correspondence, appear most often in relation to forms or phrases that may have been adopted from exemplars for reasons other than their meter. One example of this can be found in a letter addressed to Gregory IX in April 1235, concerning the Anglo-Imperial marriage.[50] The text of this letter included approximately 30 clausulae following the Roman *cursus* (12 *planus*, 6 *tardus*, and 13 *velox*). This was, especially for this period, a relatively high number, and indicated not only the diplomatic context of the epistle, but also the role played by Petrus de Vinea in these negotiations and the transmission of dictaminal models, including aspects of the *cursus*.[51] However, in contrast to the opinions held by curial purists, other rhythmic forms were also deployed, and a significant number of the *cursus* clausulae could have been drawn from imitation of content rather than form. These included the *supersalutatio*, 'patri reverentiam et honorem' (*velox*), the inclusion in the *exordium* of the attribution of papal paternal affection, 'ex affectione paterna' (*velox*), and the titles attributed to Emperor Frederick, 'semper augustum' and 'regem illustrem' (both *planus*). The imitation of these elements did not require any awareness of, or desire to use, the *cursus*. Similarly, the elements of this letter which, as discussed above, appear to drawn directly on Vinean examples, including 'tanti principis destinatis' (*velox*) and 'in animam eiusdem imperatoris iuravit' (*velox*) could be attributed simply to imitation, rather than metrical interest. However, even if these adoptions were purely incidental or imitative, their sheer volume in this letter is worthy of note, as is the broader conclusion that imitations drawing on other factors could spread awareness of this writing style; there was a relationship between the form and the content of these letters in how they were received and adopted.

[50] *Foedera*, pp. 225-6.
[51] Kantorowicz, 'Petrus de Vinea in England'.

As with the adoption of Vinean exemplars, the use of the *cursus Romanae curiae* did not necessarily imply ideological agreement with the original content or context. Just as the language of canon law was increasingly adopted to assert royal authority in conflict with ecclesiastical jurisdiction, the imitation of the papal *cursus* was similarly used to add rhetorical weight to royal letters which complained of the actions of the papacy. This was particularly evident from the sequence of letters preserved in the *Chronica Majora* of Matthew Paris which protested against the oppressions of the curia. One of these letters was recorded in the entry for the year 1244, while two more were included for the year 1246. As a recorder, and as a writer, Paris was himself interested in the forms of classical rhetoric, although he tended to employ an idiosyncratic form known as the *cursus trispondaicus* (a paroxytone hexasyllabic ending), rather than the forms of the curia.[52] Nonetheless, he was a more accurate copyist than he was an objective commentator, and his close links with multiple individuals in the royal courts mean that his transcriptions are relatively reliable. As with the 1236 letter, that of 1244 also included a numerically significant number of *cursus* clausulae (3 *planus*, 7 *tardus*, and 13 *velox*).[53] These again included forms in the *salutatio* which could simply have been imitated as appropriate style for addressing the pope, including the *tardus* title 'Dei gratia summon Pontifici' and the *supersalutatio* 'pedem oscula beatorum' (*velox*). While the proper form of address of the pope was a common topic for canon lawyers, *cursus* clausulae were also used to refer to the royal rights and dignities, both in reference to the king's laws and liberties, 'iura nostra et libertates' (*velox*), and their status as conceded from God as part of the dignity of the royal office, 'regiae dignitatis officio' (*tardus*). Further to this use of the *cursus* to emphasise the royal authority, it was also used to add rhetorical force to

[52] Denholm-Young, 'The Cursus in England', p. 43.
[53] *Chronica Majora*, iv, pp. 314-5. There were also an additional 3 following the *cursus trispondaicus*.

the king's demands, particularly in his suit for justice, with the force of *petitio* positioned at the very of the letter, with the *velox* request for the pope to show full justice (*plenam iustitiam exhibere*).

The two letters for 1246, one addressed to Innocent IV himself and the other to the cardinals, were shorter epistles than that of 1244, nonetheless they retained a proportionally significant number of clausulae (17 and 13 respectively).[54] In the letter to the pope, the *salutatio* was abbreviated; the *exordium* included 6 of the clausulae, 3 *planus* (*nihil ignorat, dilectionis sincerae*, and *fovere tentur*), 2 *tardus* (*necessitates articulis* and *lactavit uberibus*), and 1 *velox* (*confugimus confidenter*). As the *exordium* was one of the most commonly copied elements of a letter, this number of clausulae was not unexpected, however, their usage continued throughout the subsequent *narratio* and *petitio*, in which there were 7 more *velox* endings, and 2 more each of the *planus* and *tardus* forms. In addition there were a further 2 clauses using the *cursus medius*, in which a trisyllabic with a unstressed penultimate was preceded by another polysyllabic with an unstressed penultimate, this form was not allowed by the strictest interpretation of papal practice, but was an acceptable addition.[55] In the letter to the cardinals, 2 of the clausulae were found in the *salutatio*, with a further *velox* clausula in the brief *exordium*. As with the papal letter, however, the majority of the *cursus* forms were in the *narratio* and *petitio,* where there was greater scope for scribal invention and the need to diverge from simple slavish imitation of models. Nor was this letter a direct copy of that sent to the pope: although they bore marked similarities, they were sufficiently divergent for the following of a single exemplar to be insufficient for the drafting of these texts and the inclusion of the *cursus* forms, which were among the degrees of variation. Without exact

[54] *Chronica Majora*, *iv*, pp. 534-5, 535-6.
[55] Denholm-Young, 'The cursus in England', p. 45.

models, the line between imitation and invention in scribal practice can be hard to draw, but it would not seem implausible that the consistent and frequent conformity with rhetorical norms was more than an accident of copying. The examples considered here did not conform exactly to the highest strictures of papal theorists, but their usage of forms drawing on curial practice was more than incidental.

Dictamen and the Chancery Style during the Period of Personal Rule

Neither the *ars dictaminis* in general nor the *cursus* in particular was an end in itself; their imitation and deployment interfaced with a broader spectrum of rhetorical and ideological priorities. Bearing this in mind, we should now turn to the significance of these deployments to broader chancery practice and its relevance for the analysis of political thinking in the personal rule of Henry III. The usages considered thus far were spurred by the involvement of foreign experts and driven in the first place by the need for diplomatically appropriate registers of communication, but was this the extent of their impact? Did the chancery clerks who drafted the letters considered above simply use this language because it was the most effective way to advance the king's interests in the imperial court or the papal curia? Even if this were the case it would not be insignificant. The most fundamental principle of rhetoric in general and the *ars epistolaria* in particular was that letters should be composed in the appropriate register to their author, recipient and content. The gradation of formality of style within the *ars dictaminis* did not simply allow for a functional range of expertise, but reflected this conceptual understanding of the functioning of rhetoric. Accordingly, the adoption of elements of prosody in the chancery should have been most obvious and elaborate in the highest status productions addressed to the pope or the emperor. Even if this were a tactical

rather than an ideological calculation, it nonetheless still spoke to the desire of Henry III's administration to present his kingship on a continental scale, and within the more elaborate modes of a legal and rhetorical discourse. Within this theoretical framework, it is possible to explore the ways in which the reception and imitation of dictaminal styles, including rhythmical elements of the *cursus* intersected with chancery style more generally, especially in relation to the adoption of phraseology of government drawing upon the learned legal tradition.

English Royal Chancery Style

To say that the direct emulation of forms from the *ars dictaminis* had a limited impact on the style of the English chancery during this period, is not to suggest that that office of royal government was in any way primitive. In fact, the administrative precocity of the Angevin regime meant that a chancery style was already formalised and well-developed by the period under consideration. The major reforms of the 1190s had done much to solidify chancery practice in the issuing of writs, and this business expanded substantially in volume over the course of the thirteenth century, a phenomenon attested by Michael Clanchy in his calculations regarding the levels of wax consumption, with a ten-fold increase in weekly demand between 1220 and 1260.[56] The Chancery was central to the political and administrative life of the realm; all legal proceedings required the issuing of a set form of chancery writ, while during the reign of Henry III, the office was central to the king's personal control over exchequer finances, exemplified by the origination of the *liberate* rolls from 1226 onwards.[57] Writs, especially relating to legal actions, had to meet the established formulae

[56] M. Clanchy, *From Memory to Written Record. England 1066-1307*, 2nd Edition (Oxford, 1993), pp. 43-4.
[57] J. E. Sayers, 'The English Royal Chancery: Structures and Procedures,' in J. Marques (ed.), *Diplomatique royale du moyen-âge. XIIIe-XIVe siècles* (Porto, 1996), pp. 77-114; P. Brand, 'Chancery, Justices and the Making of New Writs in Thirteenth Century England,' in M. Dyson and D. Ibbotson (eds.), *Law and Legal Processes:*

and criteria in order to have force, this gave the scribes of Chancery limited scope in which to engage in epistolary invention.

Furthermore it should be queried how much scribal inventions or innovations made within the chancery can be seen as indicative of royal 'policy' or attitudes to government or kingship. This becomes particularly problematic when considering the relationship between the chancery and the wardrobe, between the great and privy seals. David Carpenter has argued that during the thirteenth century the chancery remained with the king, and thus its productions remained close to royal policy.[58] However, Jane Sayers has presented a far more ambiguous picture of the relationship between wardrobe and chancery during the reign of Henry III, describing the period as 'full of paradoxes' and pointing to the adoption of the *teste me ipso* clause as indicative of more actions being taken in the wardrobe, a deliberate step away from chancery control during the latter half of the royal minority.[59] As no surviving wardrobe rolls are evident for this period, and those writs that do survive were warrants for writs to be produced in the chancery under the great seal, it can at least be asserted that if the wardrobe was developing a separate sphere of personal authority, the chancery was not yet out of court, and its expanding business and significance in directing legal, diplomatic and financial business made it a crucial political body whose innovations in practice were of great significance. As Andrew Hershey has argued, the continuing importance of the chancery both politically and institutionally was emphasised by the reformers' attempts to control it in 1244 and subsequently in 1258; the epistolary significance of the office was also highlighted in the

Substantive Law and Procedures in English Legal History (Cambridge, 2013), pp. 17-33; Carpenter, 'The English Royal Chancery in the Thirteenth Century', pp. 50-51; A. H. Hershey, 'The English Royal Writ and '1258',' *EHR*, 113 (1998), 829-51.

[58] Carpenter, 'The English Royal Chancery', pp. 49-69.

[59] Sayers, 'The English Royal Chancery: Structure and Production', p. 83.

framing and dissemination of arguments regarding royal power in the context of the Barons' War.[60]

It is in this context of chancery-centred politics that the reception of *dictamen* and the *cursus* should be considered. Chancery practice was in itself a form of *dictamen*, in that it regulated and proposed best practice for how documents should be written. With the massive growth in volume of business over the thirteenth century, there was also an immense diversification and types and variety of production and action. This has, especially in judicial business, tended to be interpreted as a commonsensical form of problem-solving in response to increased demand and diversity of business.[61] But the possibility that the chancery scribes whose innovations were so important to the development English bureaucracy could have been acting not only from immediate necessity but also have been influenced by other factors, including broader continental intellectual trends and developing conceptions of authority and royal government, has not yet been given the consideration it deserves. Even in the work of those scholars such as Geoffrey Barraclough, Jane Sayers, and William LaDue who have emphasised the comparative similarities between the practice of chancery clerks and that of the papacy over this period, these developments have not been situated within a broader conception of 'constitutional' development or political culture.[62] We have seen in the preceding chapters that Henry III's government was staffed by men learned in more than English practice, and that these men had a particularly prominent role in the royal chancery. They belonged to a loose set of clerical and curial networks in which both technical knowledge

[60] Hershey, 'Justice and Bureaucracy,'; D. W. Burton, 'Politics, Propaganda and Public Opinion in the Reigns of Henry III and Edward I,' (DPhil Thesis, University of Oxford, 1985).
[61] Brand, 'Chancery, Justices and the Making of New Writs'.
[62] Barraclough, 'The English Royal Chancery and the Papal Chancery'; Sayers, 'The Influence of Papal Documents on English Documents before 1305'; and W. J. LaDue, *Papal Rescripts of Justice and English Royal Procedural Writs, 1150-1250. A Comparative Study*. *An Excerpt* (Rome, 1960).

and cosmopolitan influence circulated. The learning that they possessed drew upon continental practices and the *ius commune* in particular, within a textual milieu which prioritised questions of procedure and practicalities of administration. The terminology from the learned law which was adopted and adapted during the period of Henry III's personal rule was such that prioritised and privileged royal power and authority. As we have already seen in this chapter, the adoption or imitations of dictaminal models, including the rhythmical elements of the *cursus* could be stimulated in part by other factors or priorities: diplomatic necessity, imitation of language for content-based reasons. This final section will briefly consider the ways in which engagement with *dictamen* more broadly, both in foreign and in domestic correspondence, related to conceptions and attitudes to kingship in general.

Dictamen – Basic Principles and Best Practice

As a basic point with which to begin, it is worth reiterating that the most expert and elaborate examples of dictaminal practice belonged to international diplomatic correspondence. This was in itself in accordance with rhetorical principle with register guided by context and audience, as can be further emphasised by the varying extent to which the principles dictaminal best practice were applied even within foreign material. At its most elementary, the *ars dictaminis* consisted of a small number of basic elements for letter composition, the *salutatio*, the *exordium*, the *narratio*, and finally the *petitio.* Within the diplomatic letters from the period under consideration, three of these elements were observed consistently throughout; the inclusion of any form of *exordium* was less regularised, and its occurrence should be noted as indicative of the special status of the document to which it belonged. The further elaboration of rhetorical form, including such elements as a *supersalutatio* and occasional elements drawing on the rhythmical modes of the *cursus* further indicated the importance of that context.

This variation of forms can be shown both between different correspondents and in different stages of correspondence. We have considered above examples of Anglo-papal and Anglo-Imperial letters wherein more elaborate rhetorical styles have had some influence, but this did not mean that all the diplomatic communications with either the emperor or the pope operated consistently at such a high level. Letters to the papacy from the early years of the 1230s were much less likely to bear any evidence of consistent use of the *cursus*. Nor were these letters likely to contain any substantive *exordium*. What was more common in addresses to the curia, even those of particular brevity, was the inclusion of the *supersalutatio*. This was most commonly expressed through a devoted kiss to the pope's blessed foot (*devote pedum oscula beatorum*).[63] Other forms of the *supersalutatio* included due reverence to the father (*debitam patri reverentiam*), and could be included in even very minor letters, such as that issued on behalf of the monks of Evesham in January 1230, which used the compound *salutatio* 'salutem et debitam tanto patri reverentiam.'[64] The inclusion of anything resembling an *exordium* seems, much like the *cursus*, to have developed more from the latter half of the 1230s onwards, with the fullest examples from this period occurring from the mid-1240s, particularly in those letters preserved by Matthew Paris considered above. As we have seen, the examples from the 1230s seem to have been associated in particular with the developments in royal style associated with the presence of Petrus de Vinea in England, particularly the letter of April 1235.[65] In this way, the elaboration of rhetorical forms in Anglo-papal correspondence was not calculated based on the recipient alone, while an elaborate *supersalutatio* could be included even in relatively routine business, elements such as the

[63] Chaplais, *English Diplomatic Practice*, p.111; see for example, the letter of Henry III to Gregory IX from January 1231, on the topic of a dispute between Reginald de Ponte and Bernard de Mauritania, from the diocese of Saintonge, which used the form 'devotissima pedum oscula', Shirley, *i,* p. 391.
[64] *CPR, ii*, p. 321.
[65] See above, p. 290.

rhythmical *cursus* clauses and the inclusion of an *exordium* tended to belong to the most high status communications. These often appear to have reflected not only the status of the pope, but the elevation of the king's own status in these letters, thus they occurred when Henry III complained of the oppressions of papal exactions in the 1240s and defended his own dignities and liberties. In 1235, writing on the subject of the Anglo-Imperial marriage, Henry not only asserted his own status in relation to the pope, but also in relation to the emperor.

Both imperial and papal correspondence from this period made increasing use of forms of address that drew on exemplars from the civil and canon law; this usage of appropriate titles and descriptors was crucial to the framing of the *salutatio* in dictaminal practice.[66] Again this demonstrated the integral relationship between terminology which drew upon the learned law and the models of the *ars dictaminis* which illustrated the appropriate deployment of this language. Many of these more common forms did not require any specialist knowledge of their legal basis, but could simply indicate knowledge of the imperial or papal style. Thus even as elaborate a *salutatio* as that which appeared in a letter sent from Henry III to Frederick II in March 1233 did not necessarily indicate any ideological comment on the imperial authority, but rather simply showed conformity to diplomatic norms.[67] Even so, this full style was not always used, with the correct, but much less expansive formulation 'Domino Imperatori rex' also being a possible form.[68] There was a similar variance

[66] For an accessible listing of these diverse forms of address, see P. V. Aimone-Braida, 'Titoli Attribuiti al Papa e All'Imperatore Nella Decretistica', *Apollinaris. Commentarius Instituti Utriusque Iuris,* 59 (1986), 213-49.

[67] 'To the most serene prince Frederick, by the grace of God the always august emperor of the Romans, king of Jerusalem and Sicily, from Henry, by the same grace king of England, etc., greetings and sincere affections of devotion' [*Serenissimo principi Frederico, Dei gratia Romanorum imperatori semper augusto, Ierusalemiae et Siciliae regi, Henricus eadem gratia rex Angliae, etc., salutem et sincerae dilectionis affectum*.], Shirley, *i,* p. 412.

[68] See for example, the letter of January 1243 concerning the treachery of Raymond, count of Toulouse, and the rebellion of the Poitevins, *Foedera*, *i*, p. 250. Subsequently in this letter far more elevated language was used to address the imperial power, including that of magnificence (*magnificentia*) and serenity (*serenitati*).

in extent for papal salutations, from 'Domino papae' to the more extensive 'Sanctissimo patri in Christo'.[69] Diplomatic forms were not so mechanistic as to be meaningless.

Even more elaborate modes of address were possible, showing the potential for development and creativity in Chancery style. The *salutatio* to the letter sent by Henry to Frederick in April 1235 denouncing the bishop of Winchester, Peter des Roches, showed how this language could be used far more expansively, not only using the imperial style of the 'always august Emperor of the Romans, king of Jerusalem and Sicily,' but expanding the 'most serene prince' to 'the unconquered in war and magnificent prince, his most beloved friend and brother in Christ' (*Invictissimo et magnifico principi, amico suo et fratri in Christo*).[70] Juristic language was used repeatedly throughout, not just in the reference to the plenitude of royal power (*plenitudini regiae potestatis*), but also in invocations of utility and necessity.[71] In addition to the use of these terms, the letter also demonstrated a higher degree of awareness of dictaminal and rhetorical structures. Before the full *narratio* of des Roches's actions, the opening sentence following the *salutatio* serves as a brief but distinct *exordium* to the letter, and the concluding *petitio* was clearly distinguished from the earlier sections. Furthermore, the text as a whole demonstrated a notable proportion of *cursus* rhythmical forms. Every sentence and nearly every clause ended with one of the three accepted

[69] For *Domino papae*, see for example, Shirley, *i,* p. 393, *Foedera*, *i*, p. 225; for various forms of *sanctissimo patri*, see Shirley, *i,* p. 391, *Foedera*, *i,* p. 226. Other variants included *Venerabili patri et amico suo in Christo karissimo*, *Close Rolls, i*, p. 583, and *Reverendo domino et patri in Christo sanctissimo, CPR, ii*, p. 321. A letter sent to Gregory IX in February 1235 included both *domino papae* and *Sanctissimo patri in Christo et domino reverentissimo*, *Foedera*, *i*, p. 215.

[70] Shirley, *i,* pp. 467-9.

[71] The reference to the plenitude of power in this letter is an extremely unusual one. Its implications here are somewhat ambiguous. At the very least it indicated that this vocabulary was known explicitly in England at this time, and could conceptually be applied to royal power. However, the reference here is critical of des Roches's arguments, and may conceivably have been intended to prejudice the emperor against the bishop by suggesting that he had advocated applying to the king's power the elevated power which should belong to the imperial princedom. This reading would certainly support the elevated form of address and extended *supersalutatio* in the letter. I would like to thank Professor David d'Avray for his comments on this matter.

rhythmical forms, with approximately 40 separate clausulae (16 *planus*, 8 *tardus*, and 17 *velox*). Of these only 3 were formed by substituting multiple words for a longer polysyllabic (*nostri se iactat*, *descendat et causa*, and *machinetur aut nostros*). This sheer number of forms would be implausible as accidental. While this elevated rhetorical form may in part be attributed to the continuing influence of Petrus de Vinea (his role as an advocate on the king's behalf in this matter was reference in the *petitio*), the inclusion of *cursus* forms in a letter not addressed to the papacy would appear to suggest that these elements were not simply cynical devices for promoting business at the curia.

An interest in the developments of rhetoric and *dictamen* was not restricted to these most elevated spheres of papal and imperial discourse. The work of the great diplomatist Pierre Chaplais emphasised the importance of the royal style and its influence in diplomatic negotiations in the 1259 Treaty of Paris, elements of these factors can also be identified in Anglo-French correspondence of the preceding decades.[72] Certainly considerable care went into the drafting of these letters, particularly in the recurrence of the form 'Domino suo si placet', or more commonly, 'Domino suo, quando ei placuerit', which served to indicate the king's willingness to resume feudal relations with the French crown.[73] Although the Capetian correspondence was even less likely to include anything resembling an *exordium*, the other elements of the *salutatio, narratio,* and *petitio* were more consistent throughout. Furthermore, elements of the language of address used in correspondence with the pope or emperor also arose within these letters. The most obvious of these was the fairly standardised

[72] Chaplais, 'The Making of the Treaty of Paris (1259) and the Royal Style'.
[73] See eg. *Diplomatic Documents Preserved in the Public Record Office*, ed. P. Chaplais (2 vols, London, 1964), *i,* p. 156; for *domino suo si placet*; for *domino suo, quandi ei placuerit*, see *Foedera*, *i*, pp. 214, 218, 244. For the diplomatic significance of these terms following the loss of Normandy, see Chaplais, *English Diplomatic Practice*, p. 106.

form of the *supersalutatio*, but there could be additional incidences within the body of the letter. This was the case in a very brief letter sent to Louis IX in November of 1234. In the *salutatio*, Louis was addressed as 'by the grace of God, the illustrious king of France' (*Dei gratia, illustri Regi Franciae*). In the opening of the *petitio*, in which Henry requested the admission of his representatives Simon Langton and the Abbot of St Radegund's, the king began by referring to his French counterpart as 'your royal serenity' (*regiae serenitati vestrae*).[74] Beyond the careful construction of the *salutatio* throughout this correspondence, and the broad conformity to elements of epistolary structure, the aggregation of elevated forms of address throughout this correspondence indicated that there was a continuing concern for the expression of royal status and dignity, even if it was appropriate to use less extensive and elaborate formulations than those belonging to the papacy or the empire.

Thus far the consideration of Chancery practice in relation to *dictamen* has focussed on the most prominent sphere of foreign correspondence. While evidence from 'domestic' material is far more limited and fragmentary, it could also point towards a concern with the expression of royal power through language and address. This is manifest in the observance of epistolary structures, and in particular the linguistic adoption of terminologies from the learned laws considered in the two previous chapters. The artificiality of maintaining too rigid a distinction between 'foreign' and 'domestic' letter styles at this time can be highlighted by the letter sent to the justiciar of Ireland, Maurice FitzGerald in October 1237. A number of striking features can be noted here. The first of these is the inclusion, immediately after the *salutatio*, of the opening 'we are well' (*sani sumus*), followed by blessings to God (*benedictus*

[74] *Foedera*, *i,* p. 214. The form *serenitati vestrae significamus* also occurred in the *narratio* of another letter discussing the prorogation of the truce issued in August 1235, *Ibid.,* p. 218.

Deus).[75] The formula *sani sumus* was not in itself remarkable: it appeared in multiple letters of King John, as well as of Otto IV.[76] However, in both these previous examples, the formula was used in the full text of the letter, whereas here it occurred directly after the *salutatio* and before the *narratio.* This was fairly standard language for discussing the king's well-being, could it perhaps be argued that it was used here as an embryonic *exordium*? Certainly there were some slight indications of further dictaminal influence on this letter, including a sufficient number of *cursus* clausulae to suggest more than purely accidental usage. (3 *planus*, 9 *tardus*, 4 *velox*, and 1 *medius*). In the previous chapter we have already seen how that Anglo-Irish correspondence was a medium through which there was potential for the transmission of the language of diplomatic representation from a continental to a domestic context, it would also appear that there were some inclinations towards the transmission of rhetorical influences as well.[77]

Ecclesiastical business could also serve to facilitate increased rhetorical attentiveness in royal letters, often coinciding with the employment of language defending the royal dignity and liberties from perceived clerical intrusions. This was evident even from a relatively early stage. In a letter patent addressed to the Prior and Convent of Christ Church Canterbury in March 1232, the king complained of attempts to secure papal approval for election in such a way as was prejudicial to the royal laws and privileges.[78] Although it is far from being as rhetorical as some of the diplomatic correspondences considered above, there are some indications of a more careful style to this letter. First and foremost, it possessed a more

[75] *Close Rolls*, *iii*, p. 571.
[76] N. Vincent, 'Feature of the Month: September 2014 - A Letter of 9 July 1214 Showing King John's Disquiet', *The Magna Carta Project*, http://magnacarta.cmp.uea.ac.uk/read/feature_of_the_month/Sep_2014_2 [accessed online 24 December 2017]; *Acta Imperii selecta. Urkunden deutscher könige und kaiser mit einem anhange von reichssachen,* ed. J.F. Böhmer and J. Ficker (Innsbruck, 1870), p. 231.
[77] See above, pp. 257-8.
[78] Shirley, *i,* p. 406.

elaborate *salutatio* than was customary in such a relatively brief communication, the prior was given the canonically and dictatorially appropriate title of the king's beloved in Christ (*dilectis sibi in Christo*), and a brief *supersalutatio* was employed (*salutem in Domino*). Furthermore, some of the ending clauses employed conformed to the *planus*, *tardus*, and *velox* forms of the *cursus*.[79] These uses, particularly in the forms of the *supersalutatio* and the technical clause of licence to elect, may have simply been drawing upon exemplars or canonical procedure, however, this in itself should not be dismissed, particularly at this very early stage. As with the content of the letter, the imitation of form indicated how closely related stylistic and substantive copying could be.

That this rhetorical style was particularly associated with emphasis upon the king's status can be demonstrated in a later letter addressed to Walter de Cantilupe, bishop of Worcester in March 1242.[80] This letter complained that the hearing of the dispute between Robert Grosseteste, Bishop of Lincoln, and the dean and chapter of his cathedral, in ecclesiastical courts was prejudicial to the king's liberties and dignities, using the civilian language of *laesae dignitatis* discussed in Chapter Four.[81] Beyond this specific terminology, the structure of the text also incorporated what might be considered a brief *exordium*, which directly addressed the question of the elevation of the king as the defender of the church, and the king's corresponding right to address church matters in his own courts in order to conserve the laws and liberties of the kingdom. Fragmentary though this evidence is, it does begin to point towards the association of rhetorical forms with the learned law language of

[79] These were 'salutem in Domino' (*tardus*), 'quidam monachi vestri' and 'attentare curetis' (*planus*), and 'licentiam eligendi', 'diliegenter inspicientes' and 'praejudicium generari' (*velox*).
[80] *Close Rolls, iv*, pp. 435-6.
[81] See above, pp. 194-207.

kingship, not only in foreign but in domestic correspondence, with a particular interest in the defence of jurisdictions between the church and crown.

Conclusion

Even with the cases considered in this chapter, it should nonetheless be recognised that the evidence for dictaminal practice during the personal rule of Henry III was extremely fragmentary and limited, and did not compare in any significant degree to the more fulsome demonstrations of the form emanating from the papal and imperial chanceries over this same period. The most advanced rhetorical performances seem to have been those most closely linked with these superior powers, and particularly with the intervention of Petrus de Vinea, recognised by Kantorowicz as of such importance for the adoption of dictaminal modes in England. Nonetheless, at the very least this chapter has extended our sense of the influence of rhetoric on the English royal chancery, particularly for this earlier stage than has often been considered.

Furthermore, looking more at this use of *dictamen* in royal letters more broadly, a number of more substantial points can begin to be drawn. The conformity to dictaminal best practice was at most aspirational in the English material, and often more rudimentary styles were employed, particularly beyond the papal and imperial correspondences. This was not necessarily reflective of pure pragmatism and ignorance; rather, the very rhetorical theories on which *dictamen* depended emphasised the appropriate use of language and forms dependent on factors such as authorship, audience, and intention. Letters to Louis were composed in a less elevated register and with far less indication of such rhythmical features as the *cursus*, but their construction and terminology could still show a painstaking awareness

for appropriate usage of language. *Dictamen* was not just the way to get things done with the pope or the emperor, it was in itself a recognition of these differing modes and levels of communication.

Finally, the *ars dictaminis* as applied in royal government was not intended as an end unto itself. Those elements of the letter which were most likely to be used in an elaborate fashion in English documents during this period were those which focussed on this crucial question of status and dignity. Elaborate, and canonically correct, addresses in the *salutatio*, emphasised by the inclusion of a compound *supersalutatio* served to place a particular weight on the proper address due to a ruler from their office. This could be further emphasised in the occasional inclusion of an *exordium* in Henry III's letters, which gave an opportunity to speak more expansively about the status and duties of the recipient, or, occasionally, the author. The relationship between dictaminal forms and a broader conception of the status of kingship was also prominent in the tendency for the content of letters which used elements of learned rhetoric to draw upon the language and concepts of the learned law, with the particular interest demonstrated in the two preceding chapters for the emphasis upon the king's power and dignity. It would be next to impossible to prove that whether an interest in rhetoric led to the adoption of learned law language, or vice versa, but they were closely related. This was perhaps the greatest utility of *dictamen* within the 'language' of power: it did not create an ideology in itself, but rather it provided a framework and potential models for transmitting ideas about politics and authority, and also highlighted how communication in itself could be a mechanism for exerting power.

Conclusion – Henry III and the development of continental kingship

> Further, we decree and ordain that the said king shall have full power and free authority in his kingdom and in all that pertains to it, and shall be in that same state and fullness of power, in and for all things, that he enjoyed before this time.[1]

In 1264, when he concluded his arbitration of the dispute between Henry III and the Montfortian reformers, in this penultimate clause of the *Mise of Amiens*, Louis IX reiterated the fullness of power (*plenam potestatem*) that the king should have and had previously enjoyed in his own kingdom. This judgment reaffirmed and ratified the arguments that Henry III and his advocates had been making for the restoration of royal power since at least 1260. During this period of reform and rebellion, the vocabulary used to promote and defend the powers of the king made increasingly direct and persuasive usage of the language of power which had been developed in practice during the earlier decades of Henry III's personal rule. Terms and clausulae which had previously been used in a mechanistic fashion were in this later period employed explicitly to advance the king's untrammelled authority, and they did so in an increasingly self-conscious fashion. In the royal *gravamina* of 1260, the king complained of the council that, rather than restoring the state of the king and the realm (*status regis et regni*) as they had sworn, they had rather 'stripped him of all hour and of his original royal dignity' (*honore et pristina dignitate regali privaverunt*).[2] The dignity of the king and the crown, the state of the realm and the plenitude of royal power featured prominently in the defence of royal autonomy of action in this period, and did so with explicit reference to their established custom and historical precedent.

[1] *Documents of the Baronial Movement of Reform and Rebellion, 1258-1267*, ed. and trans. R. E. Treharne and I. J. Sanders (Oxford, 1973), pp. 288-9.
[2] *Ibid*., pp. 218-19.

This juridical language of power weaponised the more mundane and procedural vocabularies that developed somewhat inchoately in the 1230s and 40s, but in doing so depended on the practices and innovations of the period of personal rule. The rhetoric of royal authority required not only the availability of this terminology, but its arguable historicity in practice. The exposition of principles of kingship in the period of reform and rebellion was thus in large part the legacy of the application of juridical vocabularies in the middle decades of the reign. These vocabularies were in themselves the product of an English polity that shared multiple personal and structural connections with the administrative culture and intellectual milieu of the Latin West.

These connections have been considered in this thesis through three separate lenses: a prosopographical analysis of the personnel of royal government; a reconstruction from surviving manuscript evidence of the textual and intellectual milieu in which servants of the crown operated; and finally an exploration of the language of royal government as expressed through the years of Henry's personal rule, c.1230-c.1252. Each of these strands show important developments in their right, but the interweaving of them provides the most significant analyses. Before drawing these broader conclusions, it is worth rehearsing a sketch of the outcomes of these different modes of analysis.

The first section has depicted the variety of ways in which the king employed and promoted clerical servants whose training and experience brought them within the wider spheres of European curial administration. This included a number of highly prominent figures, both in domestic and international politics, including the Bishop of Winchester, Peter des Roches, the imperial protonotary Petrus de Vinea, and the Savoyard Canonist Hostiensis. While the contributions of these figures to thirteenth-century English government has

previously been recognised, the analysis presented here positions them within a far wider spectrum of cosmopolitanism within thirteenth-century royal governance. Notionally 'English' clerks could and did participate in a more international milieu; through education at the schools or service for the king abroad, especially in the imperial or papal courts. The cultivation of this cosmopolitan network brought into the sphere of royal administration servants with both enhanced technical knowledge and training, and a diversity of contacts and patrons. Although not numerically dominant in English government overall, the men of this circle were noted for their particular influence with the king, and their dominance of the key offices of central government, especially the Chancery and the Exchequer.

Analysis of the manuscript evidence has required engaging with various evidentiary and methodological challenges. Some of these are common to all reproductions of reading culture; the destruction and diaspora of manuscripts, and the difficulties of analysing practices of reading and textual use from the surviving artefacts. For the question of book use in royal government, particularly during the reign of Henry III, a number of more particular issues arise, first and foremost the extreme paucity of evidence for governmental book ownership at this time. However, having considered the available material for the longer span of the thirteenth century, trends have been observed that are suggestive for this particular period. Over this more extensive time frame, the circulation of legal and dictaminal texts reflected the growing significance of training in these capacities for service to the crown. The growing engagement with the world of the schools, both at home and abroad, was clearly evident in the acquisition of contemporary legal scholarship and commentaries. That a technical appreciation of this material was prominent can be shown by the preference for practical and exemplary material. Evidence from subsequent reigns, particularly those of

Edward I and Edward II indicates that royal servants with the kind of training we have explored for this earlier period were likely to possess and acquire manuscripts that fit within this broader pattern. Although these developments may have been at a greater state of maturation at this later stage, this comparison of patterns of service argues for a similar textual practice. At the very least, we know from Wardrobe Accounts that a figure such as William de Kilkenny, a university-trained clerical diplomat knowledgeable in the civil and canon laws, was engaged in book purchasing within the royal household. Thus the understanding of royal personnel established in the first section of the thesis can permit us to use this broader field of manuscript evidence to comment on the reign of Henry III in particular.

Both the cultivation of a clerical administrative elite, and their likely engagement with these broader patterns of textual transmission constituted ways in which English administrative practice could be informed by continental developments, particularly those related to the development of learned law and the *ars dictaminis*. Drawing on these modes of transmission, this study then turned to an assessment of the impact of these factors on royal government. This evaluation has been done through the consideration of political language and the adoption and adaptation of jurisprudential vocabularies to English political practice. This operated on a number of levels. First and foremost, the language employed by Henry III's government tended throughout to elevate the status and authority of the king, and employed Romano-canonical formulae in order to emphasise this. Uses of this kind tended not to be descriptive but functional: thus the language of plenitude of power was not frequently employed, but its dependent clausulae, especially *non obstante*, occurred with far greater regularity. References to the broader political community were similarly framed in

order to privilege the king, with such legal terms as *necessitas* and *utilitas* conflating the interests of the monarch with those of his realm. Finally, the influence of rhetorical modes, while much more restricted than it was to be subsequently, played a more important role than has hitherto been recognised. The use of dictaminal elements and *cursus* clausulae was not an end in itself, but was closely interconnected with the wider deployment of canonical and civilian vocabularies, and showed a particular concern for the portrayal of royal status and authority, on an explicitly continental scale. None of these elements constituted a wholesale adoption of Romano-canonical concepts or procedures, and they could sometimes merely indicate a new linguistic overlay on existing practice. What these tendencies did show, however, is the way in which English political developments were far more closely integrated and contextualised within continental intellectual trends than a purely procedural analysis would indicate.

Bringing these three strands together, this thesis highlights the importance of engagement with continental curial networks and the transmission of the ideas and practices of Roman civil and canon law in particular. The focus on political language as a mode for assessing impact in preference to political thought or politics more generally highlights the importance of the 1230s and 40s as an embryonic period in the early reception and adoption of these ideas. The vocabulary and practices explored during this period were to have long-lasting influence in the development of later medieval English politics, both in the development of opposition to Henry III and in the elaboration of the tools and strategies of English kingship. Included in these developments were ideas about counsel and representation, the power and majesty of the king and its application to land-holding and military organisation, and the growth of a state-based conception of the English polity. There

existed in the reign of Henry III an educated clerical elite active in the highest offices of royal government, who used their knowledge and training in the learned laws in order to promote an elaborated and extensive view of royal kingship during this period. If the king himself perhaps remains a cipher, then the interests, training and activities of those at the highest levels of his service appear to have been much more internationalising. The uncertainties and paradoxes of the reign reflect more the changeability of the king's favour than any substantive shifts over the policies of royal government. The broader significance of this period can thus be assessed through a number of more general observations.

This thesis has sought to demonstrate that engagement with the continent over the course of the thirteenth century was more than simply 'foreign policy' or diplomacy, but rather underpinned significant developments in the theory and practice of royal power during this period. Being 'in Europe' was not simply a geographic fact in thirteenth-century England, it was also conceptually crucial to the structure of Henry III's kingship and its position within a broader picture of the development of the English polity. Henry III's reign saw a conceptually expansive and ambitious view of royal government, which his administration attempted to communicate and enforce using formulae and styles drawing upon the Romano-canonical juridical tradition, shared and transmitted by a curia and clerical elite of cosmopolitan and European character. From these general observations, some more substantive conclusions can be drawn about the implications of this.

First and foremost, considering England within this continental dynamic of power and authority, the reign of Henry III was far more significant to the development of the later medieval English state than has previously been recognised. At the outset of this thesis we began with a survey of the recent literature on this period, in which perhaps one of the most

fundamental historiographical divisions was that between Michael Clanchy's active and policy-making Henry III, and the pacifist and pacifying king depicted by David Carpenter.[3] At the heart of this divide was the question posed by Clanchy – Did Henry III Have a Policy? The answer that might be proposed here is that the problems of his reign were not due to a lack of policy, but rather to an excess of them. Henry III benefitted from a diverse and able body of royal servants, who were educated and well-trained, and conversant with the legal and political developments of the continent. Thus the 1230s and 40s were decades in which a number of actual and rhetorical policy innovations were taken. In this respect, the central decades of Henry III's personal rule which have been the focus for this thesis were crucial for understanding the character of his reign as a whole; far from being a brief respite between the turmoil of 1215 and 1258, these years saw the articulation of policies and principles of kingship which were to play a substantive role both in the breakdown of royal-baronial relations in the later 1250s, and also in the subsequent defence and promotion of royal power as a consequence.

Beyond the immediate context of Henry III's own reign, these developments included innovations and intensifications that laid the groundwork for the subsequent development of the Edwardian state. One of the most direct of these foundations was the building up of the rhetoric and policy of non-alienation at this time. For Henry III and his administrators, this policy reflected the urgent financial needs of the crown after the Angevin fiscal system had been substantially impeded through the provisions of Magna Carta. The contemporary papal legal rhetoric on this topic framed it in such a way as to emphasise the preservation of royal power, rather than its limitation. Indeed, it was the foundations of the experiments in direct

[3] See above, p. 13.

demesne management from the late 1220s onwards that the most expansive elements of Edward I's *Quo Warranto* inquests built. The language of the royal *dignitas*, evolution of concepts of treason, pleas of *necessitas* and *utilitas* which equated the *status regis* with the *status regni* placed the king at the ideological centre and representative head of a corporate kingdom. Along with the learned law language of representation, these various efforts to enhance the royal honour in the reign of Henry III were to underpin the machinery and parliamentary, fiscal and military organisation by which the Edwardian state was mobilised. The observance of rhetorical forms and dictaminal models which was to shape the propagandising of Edward I and his successors began to see its embryonic gestation and tentative efforts from this earlier stage. All these earlier attempts and their subsequent fulfilments depended upon the same patterns of cosmopolitan kingship, especially in the reception of learned law through the cultivation of an educated and internationalising administrative elite. Plentiful ink has been spilled over the lessons Edward I learned from the period of baronial reform and rebellion,[4] but these most significant elements of his kingship drew on precedents set and developed during the period of his father's personal rule, and made possible by the vitality of Anglo-European connections at this time.

Even so, in this comparison with the strident and expansionary government of Edward I, the incoherence of Henry III's rule and policy is more starkly evident. In part this was an accident of chronology; the developments of the 1270s and 80s were able to be pursued and present in a much more coherent and persuasive fashion precisely because of the earlier groundwork that had been laid. Both Edward's successes and Henry's troubles were framed by these innovations. The many policies of Henry III drew on a common ideology, the desire

[4] J. R. Maddicott, 'Edward I and the Lessons of Baronial Reform', in *TCE I*, pp. 1-30.

for the king to perform his rule on a European scale and in line with imperialising and expansionist views of royal authority informed by the learned laws. The various experiments of the 1230s and 40s however lacked a structural cohesion beyond this insistence on royal power. In heightening the portrayed conception of kingship, these developments also elevated the guarantees made and expectations of the crown; these were commitments that Henry III was simply unable to meet. In this way, the baronial reformers used the very vocabulary that had been introduced to bolster royal authority in order to frame and justify its criticisms when that elevated kingship failed to meet its obligations.

One of the key areas for this was in the king's relationship with the church. The influence of canon law was naturally felt most immediately in cases which affected the jurisdictional balance between the church and state. Henry III was, from the evidence in this thesis, a king who fit more into the traditional model of Angevin predations upon church liberties than has previously been recognised in the emphasis on his personal piety. The work of Sophie Ambler has shown how the reforming bishops who arrayed themselves against the king over the course of his reign did so drawing upon these very same continental and legal ideological developments. [5] If we recognise the centrality of these ideas and vocabularies to Henry III's own kingship, then not only can we gain a greater understanding of his relationship with the church, but we can also understand the common intellectual and constitutional conceptions and categories upon which both the king and his opponents drew. The common language of the king and the reformers was one that was shaped by a spiritual understanding

[5] Ambler, 'The Montfortian Bishops and the justification of conciliar government in 1264'; *eadem*, *Bishops in Rebellion and Revolution in Thirteenth Century England*.

of secular power in the abstract, and the profound material influence of the universalising claims of the late twelfth- and thirteenth-century papacy.

In part as a result of the inchoate nature of Henry III's multiple policies, and their common influence as much on opposition to the king as support for him, the extent of the Romano-Canonical influence on this period of English political development has not previously been fully realised. By placing these scattered intellectual strands within their broader continental context, not only is the importance of this language to the English political system of the later middle ages emphasised, but it can also be shown that the events of thirteenth-century England belonged to a far wider discourse about politics and authority. To invoke the importance of the European dimension to the politics of mid-thirteenth century England is not to deny the realities of Henry's troubled reign, but to assert that both the successes and failings of English kingship at this time can only be understood if they are placed within this broader ideological and cultural framework.

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