

ABSTRACT

SHUFORD, KEVIN DEAN. Composite Sovereignty at the Forest Floor: Constructing Status, Jurisdiction, and the Plenitude of Power in Thirteenth-Century England. (Under the direction of Dr. Julie Mell).

By the thirteenth century, the English kings had claimed large portions of the realm as royal forest, defined by a particular jurisdiction and a special legal status. By the same time, generations of clergymen had promulgated a vision of *libertas ecclesiae*, resting on the twin pillars of exemption from secular jurisdiction (*privilegium clericale*) and the assertion of an otherworldly status for the clergy. Which claim of status and jurisdiction was to prevail when a cleric was caught poaching in the royal forest?

Far more than just spaces for hunting, the royal forests developed into arenas for the pervasive jurisdictional politics that resulted from the overlap of incompatible assertions of sovereignty. The status of clergy in the royal forests provides an essential window into the dynamic construction of sovereignty. This thesis argues that rather than settled and fixed, sovereignty in thirteenth-century England was composite – the culmination of conflicting claims to the fullness of power, overlapping jurisdictional boundaries, and the contested and uncertain legal status beneath.

This legal pluralism operated on multiple levels: ideological, territorial, and social. Traditionally, sovereignty have been approached from the ideological level first; instead, I argue that since a claim to sovereignty must be constructed relationally in space, it should be approached from that perspective first to see the fluidity and dynamism beneath ideological claims to power. This thesis uses a particular case of clerical poaching to illustrate this process of negotiation and recalibration which stemmed from incompatible claims to the fullness of power, but resulted in a dynamic equilibrium of composite sovereignty.

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Composite Sovereignty at the Forest Floor: Constructing Status, Jurisdiction, and the Plenitude
of Power in Thirteenth-Century England

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BIOGRAPHY

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INTRODUCTION

It was early morning, the sixteenth of August, 1251, when William le Rus and Geoffrey of Pilton finally caught up with their quarry. Royal foresters in Huntingdonshire, they had been attacked in the night by a group of poachers near the forest of Weybridge two weeks prior. In the wake of a royal inquisition, they were now empowered to arrest the only man they recognized from the attack, Gervais of Dene. He was taken and imprisoned as the king's justice prescribed, and the matter likely seemed closed. Yet, in just a few hours the foresters would be threatened with excommunication by a cadre of high-ranking clergymen demanding the immediate removal of Gervais from custody. When the foresters replied, correctly, that they did not have the authority to do so, the irate priests marched to the jail, forcibly removed Gervais, and informed the royal foresters that they had wrongfully and perilously detained a member of the Church. As proof, they removed Gervais' cap to reveal a freshly-tonsured head. Although the foresters suspected that he had been shaven that very morning in prison, they could only watch as the priests led Gervais out of their custody with apparent impunity.

Who was this man that he could be released from prison in such a clear circumvention of royal justice? The answer is far from simple. At face value, it would be reasonable to assume that Gervais was a man of some importance to warrant such a strong response: was he an influential priest or even a prince of the Church? He was, in fact, neither, and the dramatic scene that afternoon was the culmination of complex networks of meaning. Gervais was simply a cook in the employ of a baron, who in turn served a powerful bishop, both of whom were in some way averse to the king's interest in the forest. As we will see, this case sits at the intersection of much larger forces at work in medieval England, and thus can only be understood in that broader context.

It was not coincidental that this altercation between churchmen and lawmen occurred in a royal forest. In fact, these spaces were sites of inherent tension and conflict. By the thirteenth century, the Angevin kings of England had laid claim to large swaths of land as royal forests – as much as a fourth of the realm by some estimates. Rather than delimiting actual woodlands, this was a spatio-legal claim by the king of particular (and in many cases exclusive) rights to the flora and fauna. However, this royal assertion was not a *fait accompli*, as it was at variance with the multifaceted customs of possession and use in medieval England, thus raising the ire of a broad segment of the population. The king's forest blanketed previously-established claims of ownership and often significantly curtailed the owner's use of their property; however, despite the Crown's best efforts, this exclusive claim was always highly contested and politically fraught, particularly among the English clergy. The Church had vociferously articulated and defended a special status vis-à-vis royal authority and held concern *ab initio* for jurisdictional (read: sacred) boundaries. Any curtailment of this status or jurisdiction was seen as an assault on the *libertas ecclesiae* that had been so painstakingly imagined and reified by generations of canonists. At the heart of these liberties lay an assertion of exclusive jurisdiction and protection of a special legal status for clergy, both of which were infringed upon in some way by the administration of the royal forests.

The interface between the royal claim to the forests and the ecclesiastical assertion of special jurisdiction was one of increasing intransigence, each party holding existential concern for its relative status. In effect, a *foresta regis* became an arena for the jurisdictional politics between the clergy and laity that came to define the High Middle Ages as one of the most formative periods in English history. It is this discursive relationship between competing claims of jurisdiction, legal status, and sovereignty – each contesting, overlapping, complimenting,

clarifying, and ultimately refashioning the other – that this research aims to elucidate, if only in part.

A framework for understanding jurisdictional politics is reliant on the concept of legal pluralism. According to Lauren Benton, the presence of “fluid, multi-jurisdictional legal orders” in a society naturally precipitates “conflicts over the preservation, creation, nature, and extent of different legal forums and authorities.” Pluralism requires politics. Moreover, Benton challenges the traditional view of competing jurisdictions as “stacked” or “nested” within a clear, hierarchical, and state-centered regime. As she notes, this assumption ignores “rampant boundary crossing” where both legal ideas and legal actors “fail to obey the lines separating one legal system or sphere from another.”¹ In the context of the thirteenth century, we find near-constant jurisdictional politics because we also find a great bundle of jurisdictions. According to R.C. van Caenegem, the layered structure of English law was due in large part to the Norman invasion and subsequent transplant of continental law. While English customary law and Norman feudal law initially operated in tandem, by the twelfth century and certainly by the thirteenth, the Crown struggled to consistently enforce royal justice via these overlapping systems. This was due in no small part to the jurisdictional uncertainty that stemmed from legal pluralism. As van Caenegem put it: “If you were a cleric and someone’s vassal, were you to go to the court of the county where you lived or to the court of the lord from whom you held your land and position.” Or, rather, should you present yourself “to the court of your bishop or your archdeacon (or, better still, were you to pay a solid sum into the royal exchequer or chamber to try and plead in *curia regis*)?”²

¹ Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2001), 5-10.

² R.C. van Caenegem, *The Birth of the English Common Law* (Cambridge: Cambridge University Press, 1973), 15-16.

Understanding such a tangle of jurisdiction requires a point of entry. This thesis will approach the jurisdictional politics of thirteenth-century England through the lens of clerical status in the royal forests as it provides a window into the dynamic construction of seemingly-static assertions of sovereignty. The claims of both *regnum* and *sacerdotium* to exclusive status, jurisdiction, and ultimately to sovereignty, precluded each other and elided their own dynamic construction and agonistic realities. Neither the assertion of the royal forests as inviolable nor the Church's claims of *libertas ecclesiae* were as solid as each would have liked – there is an essential difference between a static claim to authority and its dynamic construction and fluid application. I use static to denote concretization, something fixed and unmoving, but also carrying the connotation of totalizing and monolithic; by dynamic I mean the energetic fluidity, contingency, and ambiguity inherent in lived experience. Thus, a claim to sovereignty may be promulgated as reified, fixed, and complete, but in application it must be laid over the often-untidy social reality; in other words, reification of an abstract claim is ultimately dependent on the hurrying and scurrying, if you will, of actual people in a dense network of relations.

When the English kings insisted on exclusive jurisdiction in the forests and beyond, the Church responded in kind by reaffirming their ancient privileges; by the same token, the Crown subsequently felt compelled to bolster its own proprietary claims, which it deemed as long-established and customary. This dialectical tension resulted in a protracted process of jurisdictional politics in medieval England. To be sure, this process was but the localized expression of a discourse writ large in medieval Europe: Who rightly held the fullness of power (*plenitudo potestatis*)?³ From where did it stem? How should it flow and where? Was it divisible

³ Officially, this term was only applied to papal jurisdiction by expansionary pontiffs; for example, in a twelfth-century sermon by Pope Innocent III, he emphatically proclaimed “Peter alone has received the fullness of power” and thus the bishop of Rome was he “who judges all cases but is judged by no one.” See *Pope Innocent III: Between God and Man, Six Sermons on the Priestly Office* (Washington, D.C.: The Catholic University of America Press,

and by whom? Traditionally, competing claims to sovereignty have been examined from the perspective of this larger discourse, which belies their essentially constructed and contingent nature. Joseph Strayer, Norman Cantor, and Brian Tierney, whose work is discussed below, are representative of this top-down approach, which, I argue, neglects the crucial dynamism inherent in any sovereignty claim. To recognize the fluidity of an ideological assertion such as jurisdiction or sovereignty requires a fine-grained analysis of the daily, performative, micro-interactions which comprise political reality.

Thus, it is at the forest floor not from the treetop that we can see these mutually-exclusive claims to the plenitude of power pushing and pulling each other into what would ultimately solidify into a system of composite sovereignty – polycentric authority fashioned from mutually-incompatible claims to power. If sovereignty is broadly defined as an authority to which *all* others must yield, strictly speaking, it is nonsensical to conceive of both ecclesiastical and royal sovereignty. As Brian Tierney rightly pointed out, “To say that each side possessed ‘its own plenitude of power’ was to say nothing.”⁴

These jurisdictional politics were especially operative in the eleventh through the thirteenth centuries in England. Throughout Europe, the sweeping ecclesiastical reforms of the eleventh century had ushered in a constructive period of papal monarchy that lasted through the pontificate of Innocent III in the thirteenth. This movement upset a rather delicate balance between *regnum et sacerdotium* that had persisted for centuries. Concomitantly, canon law was undergoing a process of increasing definition and expansion through a series of formative church

2004), 24. Obviously, such a claim was problematic for Europe’s burgeoning lay authorities, and so I also use it here to describe the comparable aspirations of the Crown in response to mutually-exclusive ecclesiastical claims. While no English king, to my knowledge, claimed to hold *plenitudo potestatis* per se, any assertion of sovereignty is, at bottom, a claim to plenitude of power.

⁴ Brian Tierney, “Divided Sovereignty at Constance: A Problem of Medieval and Early Modern Political Theory,” in *Annuario historiae conciliorum*, Vol. 7 (1975), 249.

councils, coupled with the rise of universities and a professional juristic class. At the same time, the common law in England was experiencing marked standardization and centralization, expanding the notion of what constituted the “community of the realm,” with the wealthy landowners of England at the fore. In short, the thirteenth century was at once an important constructive period for the formation of papal, royal, episcopal, baronial, and popular claims to sovereignty; it deserves to be underlined that these entities were each trying to fashion sovereignty out of the same finite material. In a sense, there was not enough jurisdiction to go around – at least not to the extent that each interest claimed for itself. It is perhaps no wonder that, as A.L. Brown has noted, “English law was more elaborate than the law in any other kingdom in Europe at that time.”⁵

This thesis explores how the formation of legal pluralism in England (common law, canon law, forest law, etc.) was processual and necessarily included jurisdictional conflict and uncertainty of legal status, which ultimately resulted in a system of composite sovereignty. I contend that this legal pluralism grew out of conflicting claims of *plenitudo potestatis*, which precipitated the intense jurisdictional politics that made the status of clergy vis-à-vis the royal forests so uncertain and contentious. In turn, this ambiguity of legal status further fueled the jurisdictional conflicts between Church and Crown – the Becket dispute provides perhaps the most famous example in England – which fundamentally reinforced and expanded the pluralist system as each side’s claim failed to meet the standard for fullness of power. In short, the jurisdictional politics of the eleventh through the thirteenth centuries were at once constructed by and constructive for the competing claims of sovereignty in England. Any explication of this dialectical process – composite sovereignty, legal pluralism, contested jurisdiction, and

⁵ A.L. Brown, *The Governance of Late Medieval England 1272-1461* (London: Hodder Arnold, 1989), 101.

uncertainty of legal status – must necessarily hinge on the relative status of clergy in medieval England, as each swing of the pendulum, so to speak, from sovereignty to pluralism to jurisdiction to status and back to sovereignty must inevitably move through a social performance of status category. To see the pendulum in motion, then, requires a fixed point of observation, supplied here by the ambiguous status of clergy in the royal forests. From that perspective, the processual flow can be frozen for a moment to reveal both a historical person *actuated* on some level by jurisdictional conflict and a social actor *actualized* by the relational consequences of such a reality.

In the parlance of legal anthropology, “the notion of legal pluralism is a sensitizing concept that draws attention to the possibility that law of various kinds, with different foundations of legitimacy, validity, power, and authority, and with different degrees of institutionalization and formalization, can coexist within the same social space, often at different scales.”⁶ On a macroscale, the struggle to achieve sovereignty in England occurred at an ideological level – that of royal writs, papal decretals, or conciliar decrees. In response, negotiation of jurisdiction, what Lauren Benton has aptly named “jurisdictional jockeying,” occurred in space at a median scale – a patchwork of territorial claims, court competencies, and overlapping juridical boundaries.⁷ Underneath these broad ideological and territorial assertions

⁶ See Franz von Benda-Beckman and Keebet von Benda-Beckman, “Places That Come and Go: A Legal Anthropological Perspective on the Temporalities of Space in Plural Legal Orders,” in Irus Braverman et al., *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford: Stanford Law Books, 2014), 34.

⁷ For a spatial perspective on jurisdiction, see: Irus Braverman et al., *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford: Stanford Law Books, 2014); Andreas Philippopoulos-Mihalopoulos, “Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space,” in *Law, Culture and the Humanities*, Vol. 7, No. 2 (2010); and Richard Ford, “Law’s Territory (A History of Jurisdiction),” in *Michigan Law Review*, Vol. 97, No. 4 (1999). Anthropologists have been at the forefront on a spatial understanding of jurisdiction and sovereignty. See, for example, Keebet von Benda-Beckmann, “Anthropological Perspectives on Law and Geography,” in *PoLAR: Political and Legal Anthropology Review*, Vol. 32, No. 2 (2009). On the spatial construction and understanding of medieval law in particular, see R. A. Houston, “People, Space, and Law in Late Medieval and Early Modern Britain and Ireland,” in *Past and Present* No. 230 (2016) and, more broadly, David Delaney’s “Beyond the Word: Law as a Thing of this World,” in *Law and Geography*, ed. by Jane Holder and Carolyn Harrison (2003).

there ran ever-present and complex networks of lived experience – what might be called the sociological subsystem of jurisdiction and sovereignty. Real people with diverse perspectives and concerns, disparate abilities, and fickle motivations both fashioned and were fashioned by these political and legal structures. In lieu of a comprehensive system of documentary proof, status was acted out for others, it was worn on the body, it was embedded in language. Legal status, then, especially for the clergy, was worked out on the ground – at the forest floor, if you will – as a process of social performance, acceptance, and negotiation.

To be sure, these scales – ideological, territorial, and sociological – are inextricably linked. You can no more remove the territorial elements of jurisdiction than you can ignore the influence of hierarchical ideologies of power on the social reality of clergy and laity alike.⁸ Nevertheless, an understanding of the broad claims at the macro-scale must necessarily rest on the territorial context of jurisdictional politics and its expression in social reality. Legal theorist Andrew Halpin has expressed it this way: “Law is a practice...[yet] one cannot practice ideology as one can practice law.” Rather, ideology is a theoretical construct that serves to explain or illuminate some existing socio-political practice.⁹ Theory engenders politics, and politics requires praxis; thus, we must start from the practice of daily life in order to understand ideologies of power and authority, rather than the other way around.

To this end, I have drawn inspiration from the theoretical tools of a microhistorical perspective, even as my object of analysis is too broad to craft a true microhistory. In particular, Giovanni Levi, a pioneer of the field, has proposed that the unifying principle of all

⁸ The cultural anthropologist Clifford Geertz has characterized this as a “multiplicity of complex conceptual structures, many of them superimposed upon or knotted into one another, which are at once strange, irregular, and inexplicit.” See: “Thick Description: Toward an Interpretive Theory of Culture,” in *The Interpretation of Culture: select essays* (New York: Basic Books, 1973), 27.

⁹ Andrew Halpin, “Ideology and Law,” in *Journal of Political Ideologies*, Vol. 11, Issue 2 (June 2006), 153-154.

microhistorical research is the conviction that observation on a microscale will reveal things previously obscured by a normative system; microhistory, therefore, focuses on the “fragmentation, contradictions, and plurality of viewpoints which make all systems fluid and open.”¹⁰ In that light, microhistorians caution us to be wary of assuming that our subjects’ primary schema stemmed from their macro-networks of meaning, rather than the micro-connections of their daily life. Thus, I have been careful not to assume that the clergy and forest officials in question were both aware of and actuated by these broad claims of sovereignty; rather, it stands to reason that the more proximal networks of tything, hundred, parish, or manor were formative to a greater degree than the ideological assertions of pope or king. In particular, Susan Reynolds has called for a refocusing of scholarly activity from a hierarchical formation of society to a horizontal, collective understanding of medieval community, in which “the relationship between members of the community are characteristically reciprocal, many-sided, and direct, rather than being mediated through officials or rulers”¹¹ As legal historian Anthony Musson reminds: “medieval life, as with life today, was lived or experienced within a complex of relations.”¹²

Thus, we must be cautious of ascribing ideology to various groups and assuming that it was consistent and well-understood by them. These interpersonal and jurisdictional connections were far more dynamic and fluid than static claims to sovereignty perhaps indicate. This is integral to Jacques Revel’s definition of microhistory: an attempt to understand the social not as a reified object or institution, but rather as a set of interrelationships constantly adapting into new

¹⁰ Giovanni Levi, “On Microhistory,” in *New Perspectives on Historical Writing*, edited by Peter Burke (PA: The Pennsylvania State University Press, 2001), 101-111.

¹¹ Susan Reynolds, *Kingdoms and Communities in Western Europe 900-1300* (Oxford: Clarendon Press, 1977), 2.

¹² Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants’ Revolt* (NY: Manchester United Press, 2001), 6-7.

social configurations. Historians must try to express the complexity of social reality, even if this involves less assertive and more self-questioning forms of reasoning; as Revel quips, “why make things simple when one can make them complicated?”¹³

This work began as an attempt to contextualize the particularly complicated and puzzling episode described above, involving a cleric named Gervais of Dene caught poaching with several others in the king’s forest. Was this common for clergy to sneak through royal land, poach the king’s deer, and assault his officers? Why would the king’s magnates openly harbor a *malefactor de foresta*? Was it commonplace for minor priests to threaten excommunication in such a manner? How could these clerics break Gervais out of a royal prison? And most of all, how could Gervais have faked his tonsuring in order to claim clerical status? When the case finally appeared before the itinerate justices of the king, Gervais claimed benefit of clergy (exemption from secular authority) and was whisked away. I was intrigued. What I had, in a sense, was evidence in search of a story, rather than the other way around. Although here I attempt to place this case in the context of others that involve clergy in the *foresta regis*, as well as a broader framework of clerical status, overlapping jurisdiction, and composite sovereignty, it remains perplexing and evocative for me and thus serves as the narrative anchor of this thesis.

The case of Gervais is recorded in the plea rolls (*rotuli*) of the forest courts. These documents, written in Latin,¹⁴ are almost always rather laconic descriptions of who was charged,

¹³ Jacques Revel, “L’histoire au ras du sol,” introduction to Giovanni Levi, *Le Pouvoir au village* (Paris: Gallimard, 1989), xxiv.

¹⁴ M.T. Clanchy notes that these rolls were likely dictated to a clerk, who recorded them in Latin “court hand,” a more efficient, flowing script. However, this does not mean that pleading was necessarily done in Latin. He records a case from Kent in 1313 in which the jurors were addressed by the judge in French or Latin, they most likely replied in English, the clerk subsequently recorded their response in Latin, then read the presentments aloud in French, to which the jury foreman affirmed in English, and the final record of all this was recorded in Latin. See *From Memory to Written Record: England 1066-1307* (NJ: Wiley-Blackwell, 2012), Ch. 3. According to Anthony Musson, it was not until the 1350s that it was mandated that pleading be done in English: *Medieval Law in Context*, 168.

for what offence against the forests, and what sentence they received. An example from Northamptonshire in 1209 will suffice to show the paucity of detail: “Robert of Oakley is in mercy [fined] because he had not Godwin his forester, whom he pledged, and let him have him to-morrow. Elias of Carlton is in mercy because he had not the hart’s head which was entrusted to him, and let him have it to-morrow...”¹⁵ Until the middle of the thirteenth century, these terse records were intended only as internal memoranda for the courts to justify action and thereby establish right.¹⁶ Thus, there was no need for complex, extralegal narratives. It was not until the introduction of the Year Books in the latter thirteenth century that legal records became concerned with more than just the transactional nature of a specific case; with the growth of legal studies and a professional class, these records were now intended to aid students in understanding the law itself, rather than just a particular outcome, and they purported to record the actual dialogue of each case.¹⁷ Therefore, these brief reports of cases brought before the justices of the forest must be read with care and re-contextualized within their legal, political, and social frames of reference – in other words, we must uncover the stories that are elided, almost effaced, by their own production. Again, beneath the apparently static claim (in this case of a legal record) teemed a dynamic web of fluidity.

Within the plea rolls, I keep a particular focus on the counties of Huntingdon and Northampton during the reigns of King John and King Henry III. In part, this is due to the greater number of sources available to me from these counties and regnal years, but more importantly, the reigns of both John and Henry proved to be two of the most contentious in centuries; both

¹⁵ G.J. Turner, *Select Pleas of the Forest* (London: Seldon Society, 1901), 1.

¹⁶ According to M.T. Clanchy, the *rotuli* were primarily concerned with noting the procedural stages of the case for the purpose of financial restitution. In fact, the first written legal records in England seem to have been lists of amercements. See Clanchy, *From Memory to Written Record*, Ch. 3.

¹⁷ Ayelet Ben-Yishai, *Common Precedents: The Presentness of the Past in Victorian Fiction and Law* (Oxford: Oxford University Press, 2013), pp. 54-59. Although not a medievalist, she succinctly outlines the narrative limitations of the plea rolls, which she describes as “miserly in detail” and “devoid of character description” (50).

kings grappled with political unrest and baronial insurrections, which were in no small part the result of jurisdictional tensions in the forests. Finally, both Northamptonshire and Huntingdonshire seem to have been particularly burdened by the strictures of forest law. For example, by the end of the twelfth century, it seems that almost the entirety of Huntingdonshire had been afforested by the king (i.e. placed under forest law).¹⁸ In fact, in the early thirteenth century, the county paid several times to have a perambulation made of a forest in order to determine its legal extent and push for disafforestation. Instead of reducing its size, the jurors involved in the perambulation were fined and imprisoned and the whole of the county remained in the forest.¹⁹ I consider Huntingdon then to be representative of a county that was intimately acquainted with the intricacies of forest law and thus indicative of how it mediated legal status and jurisdiction.

Historiographic Framework

Without a doubt, there has been much ink spilled on the high politics and doctrinal struggles in England across the High Middle Ages. The contests between the king and his barons in particular, as well as the connection between the Magna Carta and baronial grievances against forest law have been thoroughly examined. Furthermore, the dramatic conflicts between secular and ecclesiastical authority – of which the twelfth-century struggle between King Henry II and Archbishop Thomas Becket is paradigmatic – have received a great deal of attention.²⁰ What is

¹⁸ W.L. Warren, *The Governance of Norman and Angevin England* (London: Edward Arnold, 1987), 161.

¹⁹ Margaret Bazeley, “The Extent of the English Forest in the Thirteenth Century,” in *Transactions of the Royal Historical Society, Vol. 4* (Cambridge: Cambridge University Press, 1921), 152-53.

²⁰ The conflict between King Henry and the archbishop is evocative and understandably famous. At its heart, however, was the far less romantic issue of clerical status under the law, and the fight was above all a jurisdictional dispute. I keep a tight focus on the jurisdictional politics at play in the intersection of royal and ecclesiastical claims to sovereignty. F.W. Maitland, as in so many things, remains the indispensable source. His close reading of the Constitution of Clarendon is an essential starting point for all subsequent research. See “Henry II and the Criminous Clerks,” in *The English Historical Review*, Vol. VII, No. 26 (April 1892). More recently, Hugh Thomas has written an excellent contribution to the study of jurisdictional conflict in the Becket Affair; in particular, his deft use of extant plea rolls provides crucial context for the prevalence of so-called criminous clerks: *The Secular Clergy in*

less well documented, however, is the dynamic construction and agonistic realities of these static claims by both Church and Crown, which I contend is a *sine qua non* for understanding how these broad assertions of sovereignty led to such conflicts. The *foresta regis* provides an opportunity to see jurisdictional politics at work beneath the overlay of high politics and church doctrine which, like the covert of a forest, often serve to obscure the dynamism of fluid networks below.

However, forest law itself has been relegated largely to antiquarian interest, and it is only recently that concern for its study has grown. The bedrock of the field remains work at the turn of the twentieth century by G.J. Turner and J.C. Cox,²¹ followed by a period of waning interest throughout the century. In 1979, Charles Young's *The Royal Forests of Medieval England* argued that forest law was an incredibly live and pressing issue for all parts of medieval society and needed to be rescued from its treatment by scholars as a "medieval cul-de-sac of interest mainly to antiquarians."²² The prolific work of Jean Birrell on the economic and social realities of royal forests has followed in this vein.²³ However, scholarship on the *foresta regis* still pays relatively little attention to the status of clergy under forest law, and thus misses a crucial component of the lived reality beneath the king's claim. More work needs to be done to understand the ideological, territorial, and sociological nexus between competing, and ultimately complementary visions of sovereignty in medieval England. Overall, given its extent and

England, 1066-1216 (Oxford: Oxford University Press, 2014). I am much less concerned with the interpersonal dimensions of the conflict, especially since wildly speculative interpretations of Becket's mental state and actions seem to be a dime a dozen: Norman Cantor, for example, once inveighed that "Clearly, Becket was a psychologically disturbed person" with deep "neurotic tendencies" (*The Civilization of the Middle Ages*, 1963, p. 399). To my mind, the most balanced and accessible treatments of Becket are still David Knowles' *Thomas Becket* (1970) and Frank Barlow's 1986 book by the same name.

²¹ G.J. Turner, *Select Pleas of the Forest* (1901) and J.C. Cox, *The Royal Forests of England* (1905).

²² Charles Young, *The Royal Forests of Medieval England* (Philadelphia: University of Pennsylvania Press, 1979), 6.

²³ See, for example, "Common Rights in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century" (1987) and "Forest Law and the Peasantry in the Later Thirteenth Century" (1987).

influence on all levels of English society, there is a surprising lack of modern scholarship on the administration of forest law in general and its effects on the conflict between spiritual and secular power in particular. This thesis highlights the need to reopen scholarly debate on the dynamic role royal forests have played in English history.

On the other hand, there has been no shortage of seminal work in the history of medieval English law and politics more broadly, which still today cannot be ignored by any new project in the field.²⁴ As comprehensive surveys of English law, each of these texts in some way treats benefit of clergy, the relative status of the church, and the privileges of the king;²⁵ however, the social construction of status categories, the prevalence of jurisdictional fluidity, and the dynamism of contested sovereignty are notably absent. In other words, these scholars view secular and canon law and their relationship primarily from the macro-scale of ideology – royal statutes, papal doctrines, and constitutional charters predominate. This perspective is important, essential even, but it must be paired with an eye for the social construction of the juridical claims, assumptions, and negotiations that eventually inhere within these documents. Susan Reynolds has argued that in order to understand this level of collective activity, historians must push past ideology to the records of the activity itself: “we need to look not at treatises written by intellectuals but at the records of law-suits, at charters and chronicles, and at all the other documents in which the activities themselves were recorded.”²⁶ The pleas of the forest provide an opportunity to do just that. To do otherwise is to miss the quintessentially fluid nature of static sovereignty claims in the context of social space.

²⁴ For example: William Blackstone’s *Commentaries on the Laws of England* (1765); Pollock and Maitland’s *A History of the English Laws Before the Time of Edward I* (1898); A.T. Carter, *A History of English Legal Institutions* (1902); R. W. Carlyle, *A History of Medieval Political Theory in the West* (1903); William Holdsworth, *A History of English Law* (1941).

²⁵ Treatments range from the dismissive, almost polemical, commentary of Blackstone to the bland procedurals of Carter and Holdsworth.

²⁶ Reynolds, *Kingdoms and Communities*, 5.

The reciprocal relationship between law and society – and thus the conceptual framework needed to see sovereignty as constructed and composite – has traditionally been the purview of the anthropologist more than the historian, and there is rich literature on the socio-spatial construction and performance of law among the former more so than the latter.²⁷ A growing field of legal theorists have come to recognize that “nearly every aspect of law is located, takes place, is in motion, or has some spatial frame of reference.”²⁸ Far from static and fixed, “legal places may literally move in space,” the result of incessantly mobile people.²⁹ This view of the law as fluid and dynamic has become an increasingly popular perspective, and one that I think is essential for deconstructing static claims of sovereignty. It runs counter to the traditionally narrow conception of law as simply fixed, discreet jurisdiction – or worse, just another social factor that can, at best, provide context for a separate phenomenon.³⁰ My method is to approach the ostensible notion of law as fixed status, jurisdiction, or sovereignty from the perspective of socio-spatial fluidity (i.e. jurisdictional politics); however, I do not argue from a perspective of either/or, but rather both/and. Far from claiming that status, jurisdiction, and sovereignty are necessarily either static or dynamic, I suggest that a static legal structure was not always so, and more importantly, it may only exist as such in the minds (and documents) of its originators. In other words, there is an illusion of stasis that must be recognized and penetrated.

²⁷ Perhaps, as Claude Levi-Strauss has written, this is due to the fundamental perspective of the historian versus the anthropologist: “History organizes its data in relation to conscious expressions of social life, while anthropology proceeds by examining its unconscious foundations.” Nevertheless, he is clear that neither field of study can achieve anything without the scholarly tools of the other. See *Structural Anthropology* (NY: Basic Books, 1963), 18-25. My problematization of static claims to sovereignty necessarily draws from both theoretical perspectives.

²⁸ Irus Braverman et al., *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford: Stanford Law Books, 2014), 1.

²⁹ Franz von Benda-Beckman and Keebet von Benda-Beckman, “Places That Come and Go,” 36-37. In the same vein, Keebet von Benda-Beckmann writes of law as “mobilized” and “constantly in the making”: See “Anthropological Perspectives on Law and Geography,” in *PoLAR: Political and Legal Anthropology Review*, Vol. 32, No. 2 (2009), 266.

³⁰ See, for example, Andreas Philippopoulos-Mihalopoulos, “Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space,” in *Law, Culture and the Humanities*, Vol. 7, No. 2 (2010), pp.187-202.

One of the most useful legal historians to approach medieval law from this perspective is Anthony Musson. In *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasant's Revolt*, he attempts to contextualize law within English society, to understand how people experienced it relationally during the thirteenth and fourteenth centuries. Musson points to the birth of a legal consciousness and legal culture in England, where law was pervasive and formative for all levels of society. His study “emphasizes the need to see law (or ‘The Law’) not simply as an external mechanism regulating daily life,” he writes, “but as an integral part of the way in which social relations were actually lived out and experienced.”³¹ English law involved both the professional class and lay participants in a deep cultural process, what Musson calls “the dialogues of law,” which “could be intermittent...rather than constant, depending on the nature of internal reflection and the stimulus of external events.”³² Furthermore, Musson notes that these dialogues were complicated by the prevalence of legal pluralism in thirteenth-century England, which encompassed “several distinct types of law, sometimes competing, occasionally overlapping, invariably invoking different traditions, jurisdictions, and modes of operation.” Among these were canon law, statutory law, customary law, maritime law, martial law, and forest law, although Musson is quick to note that these legal types did not actually stay put in such discreet categories but rather stemmed from, challenged, and reinforced the others.³³ However, while I concur with Musson on his theoretical framework, I maintain that both ecclesiastical and forest law, representative of incompatible sovereignty, were far more formative in relation to each other than other legal types that existed, and therefore must be placed in conjunction and at the heart of any analysis of English law.

³¹ Musson, *Medieval Law in Context*, 2.

³² Musson, 7-9

³³ Musson, 12. Moreover, this multiplicity was compounded by the presence of various extra-judicial forms of dispute and settlement which “abrogated, circumvented and supplemented” each type of law (p. 16).

It should be evident by now that my core arguments cut across several fields and thus must be situated within multiple historiographies; in the interest of clarity, each will be introduced in the subsequent chapter where it is most relevant. However, there are two claims by prominent twentieth-century medievalists that constitute a primary counterpoint for my work and should be examined at length before continuing. Both hinge on a characterization of thirteenth-century England as having a settled system of state-sovereignty, a view I categorically challenge. The first is Joseph Strayer's *On the Medieval Origins of the Modern State* (1970), in which he attempts to trace how and when secular powers came to claim sovereignty in response to papal declarations. As his title suggests, Strayer was concerned with elucidating the origins of the modern state, and thus he reads the medieval past through that lens. In lieu of a definition of the state, he gives several indicators that it is beginning to form. "What we are looking for," he claims, "is the appearance of political units persisting in time and fixed in space, the development of permanent, impersonal institutions, agreement on the need for an authority which can give final judgments, and acceptance of the idea that this authority should receive the basic loyalty of its subject."³⁴ Next, he dances around ecclesiastical claims which do just that (largely in the wake of the papal reforms of the eleventh century), and asserts, in the end, that they precipitated parallel claims from secular powers: "By asserting its unique character, by separating itself so clearly from lay governments, the Church unwittingly sharpened concepts about the nature of secular authority."³⁵ He stops short of arguing that these claims to sovereignty created each other, that they were dynamically constructed and politically fluid. To be clear, I accept Strayer's characterization of the state and do not wish to argue that it did not

³⁴ Joseph Strayer, *On the Medieval Origin of the Modern State* (Princeton: Princeton University Press, 1970), 10.

³⁵ Strayer, 22.

exist in medieval England at all. However, I do reject his assumption that loyalty to a final (i.e. sovereign) authority was already present in twelfth- and thirteenth-century England.

Strayer continues: “The Gregorian concept of the Church almost demanded the invention of the concept of the State. It demanded it so strongly that modern writers find it exceedingly difficult to avoid describing the Investiture Controversy as a struggle of Church and State.”³⁶ He rightly avoids the pitfall of reading state-politics into that conflict of the eleventh century, yet just a few pages later he broadly, and I think erroneously, claims that “by 1300, the king of England had not only many of the attributes of sovereignty, he had, and he knew he had, sovereign power.” And thus, Strayer asserts, “England was a unified state with a recognized sovereign and final authority” such that during the thirteenth century “it became clear that the basic loyalty of the English people...had shifted from family, community, and Church to the State.”³⁷ I contend, rather, that England by 1300 was neither unified nor a state. The English kings in the eleventh through thirteenth centuries were infrequently, if ever, recognized by all as a sovereign with final authority. Instead, England in the thirteenth century was a system of composite sovereignty with numerous political entities yet vying for the plenitude of power. Moreover, English loyalty was still diffused among the disparate claims to it, especially for the numerous clerks who held both administrative positions in the royal bureaucracy and holy orders in the Church.

Strayer was certainly not the only scholar to make such a claim; Brian Tierney has also argued that by the end of the thirteenth century it was possible to speak of a sovereign, independent, legislative state exercising uniform control over territory.³⁸ I challenge the notion

³⁶ Ibid.

³⁷ Strayer, 44-45.

³⁸ Brian Tierney, *The Crisis of Church and State 1050-1300* (Toronto: University of Toronto Press, 1988), 2.

that the thirteenth-century English kings exercised uniform sovereignty over the realm, particularly in light of the strong clerical interest in *libertas ecclesiae* and the perennial persistence of aristocratic claims to the contrary. After all, the thirteenth century in England was bookended, in a way, by baronial insurrection and the ensuing clamor for divided sovereignty among the community of the realm – *dominium politicum et regale*.³⁹

A second counterpoint comes from the medievalist Norman Cantor, a student of Strayer's. In his best-selling book *The Civilization of the Middle Ages*, Cantor has made the claim that the Investiture Controversy of the eleventh century was a watershed moment in medieval Europe which “shattered the early-medieval equilibrium and ended the interpenetration of ecclesia and mundus.” This, he argues, allowed for the Anglo-Norman monarchy to begin laying the groundwork in the late eleventh and early twelfth centuries for a secular bureaucratic state, predicated on a juristic ideological of power to replace the theocratic kingship of the early Middle Ages.⁴⁰ As with Strayer, I do not reject his argument wholesale. That the Investiture Controversy was a turning point in medieval Europe is not in dispute. I also do not challenge the shift in the eleventh century from a theocratic model of kingship to a more bureaucratic and juridical one.⁴¹

I do, however, challenge the assertion that any equilibrium or interpenetration between the clergy and laity definitively ceased with the tumult of the Investiture Controversy. To be sure, there was a marked shift in their relationship as Western Christendom was, in R. W.

³⁹ The fifteenth-century jurist Sir John Fortescue famously drew a distinction between the unilateral exercise of royal power (*dominium regale*) and the supposedly customary system of the English king ruling by the assent of the polity (*dominium politicum et regale*). See: *The governance of England: otherwise called the difference between an absolute and a limited monarchy*, edited by Charles Plummer (Oxford: Clarendon Press, 1885), 109-110.

⁴⁰ Norman Cantor, *The Civilization of the Middle Ages* (NY: HarperCollins Publishing, 1963), 395.

⁴¹ Ernst Kantorowicz has written extensively on this transition, which he calls a shift from Christ-centered to Law-centered kingship, one “modeled after the Father in Heaven rather than after the Son on the Altar.” See: *The King's Two Bodies: A Study in Medieval Political Theology* (NJ: Princeton University Press, 1957) pp. 90-115.

Carlyles' words, "stunned with the noise of the great conflict between the Empire and the Papacy."⁴² One could even call it a shattering of equilibrium. However, it would be misguided to think that by the thirteenth century a new equilibrium had yet to be achieved and that these two powers had thus solidified into truly separate social spheres. Rather, in the wake of this rift, a new balance was achieved as a result of protracted struggle by the secular and ecclesiastical powers to fill the void with their own vision of a *societas perfecta*.

Anthropologist Victor Turner metaphorically explains this process of rift, negotiation, and recalibration as a "social drama," a particular type of symbolic and public dispute which reveals and potentially reorganizes the fault lines of power in a society. The "drama" follows four distinct stages: First, a social breach is opened in the normative pattern of law or custom. Second, the breach widens to reveal complex relational linkages and covert antagonisms until the "limits of consensus are reached and realized." Next, the disturbed faction(s) will attempt either sanctioned or illicit redress of their grievance. Each side has an existential imperative to limit the contagion of the breach and restore an equilibrium. It is in this stage, Turner says, when "real power emerges from behind the façade of authority." And finally, the social drama ends either with a reintegration of the disturbed social group or a recognition of permanent cleavage. In either case, a recalibration of sorts occurs and a new equilibrium is reached.⁴³

Equilibrium as a conceptual framework undergirds much of this thesis and should be properly defined before continuing. Although the word equilibrium rarely, if ever, appears in medieval literature, nevertheless the concept it expresses was present and pervasive. As Joel Kaye has masterfully demonstrated, medieval intellectualism was consistently preoccupied with

⁴² R.W. Carlyle, *A History of Medieval Political Theory in the West*, Vol. IV (London: Blackwood & Sons, 1903), 2.

⁴³ See: "Social Dramas and Stories About Them," in *On Narrative*, ed. W.J.T. Mitchell (Chicago: University of Chicago Press, 1983); also, *Dramas, Fields, and Metaphors: Symbolic Action in Human Society* (NY: Cornell University Press, 1974).

a concern for balance, be it in medicine, art, the economy, or politics. The word *aequalitas* was used more often than not to express this balance, although it must not be confused with the modern denotation of equality or parity; instead, *aequalitas* was utilized in the Aristotelian sense of a well-balanced body, city, community, etc. It carried the meaning of ordered, proper, and fitting, more so than equal or identical.⁴⁴ In that vein, I use equilibrium to express: first, simply the presence of a balance (i.e. pluralism) between competing ideological, territorial, and social claims; and second, the native ways of understanding and articulating that balance. Thus, equilibrium holds both the phenomenon and all related conceptions of propriety. Consequently, Cantor's claim that "early-medieval equilibrium" had been shattered can only be true if balance, and the pursuit of it, are static. A balance between clerical and lay interests certainly was disrupted (and subsequently redefined) by the papal reforms and the tumult of the Investiture Controversy; however, *the* balance, what Cantor called "the interpenetration of ecclesia and mundus," was not itself destroyed. Even as the papal reformers refashioned notions of propriety (proper balance), they could not eliminate the presence of balance itself.

Instead, this was a continual, cyclical process in medieval England and could no more have ceased than the monarchy be abolished or the Church dissolved. As R. W. Southern has recognized, "Church and society were one, and neither could be changed without the other undergoing a similar transformation."⁴⁵ F. W. Maitland described the pattern in this way: "everywhere we see strife and then compromise, and then strife again, and at the latest after the end of the thirteenth century the state usually gets the better in every combat. [Yet] the attempt to draw an unwavering line between 'spiritual' and 'temporal' affairs is hopeless."⁴⁶

⁴⁴ Joel Kaye, *History of Balance 1250-1375: The Emergence of a New Model of Equilibrium and its Impact on Thought* (NY: Cambridge University Press, 2014), 2-4.

⁴⁵ R. W. Southern, *Western Society and the Church in the Middle Ages* (NY: Penguin Books, 1990), 16.

⁴⁶ F. W. Maitland, *Roman Canon Law in the Church of England* (NY: Burt Franklin, 1898), 56-57.

In sum, rather than settled and fixed, sovereignty in thirteenth-century England was composite – the result of unsettling claims to the plenitude of power, of conflicting and overlapping jurisdictional boundaries, and of contested and uncertain legal status beneath. The traditional dichotomy between Church and State must be further problematized by the recognition of entrenched legal pluralism in medieval England, such that no one entity could truly hold *plenitudo potestatis*. To expose the constructed and contingent nature of ostensibly static claims to sovereignty, we must look beyond the façade of ideological texts to the social dynamisms they rest upon. The royal forests of England provide a uniquely agonistic social space to do just that. The comings and goings of clergy beneath the cover of a royal forest, carrying as they did the otherworldly burden of the Church, provide an important window into the lived experience of those who mediated daily between *mundus* and *ecclesia*. And through this window, we can see what some would call Church and State for what they still were by the thirteenth century – inchoate counterparts endeavoring to fashion sovereignty out of mutually-exclusive visions of a *societas perfecta*. In the end, their efforts settled England into a dynamic equilibrium of composite sovereignty.

In the following pages, I use the narrative structure of the intriguing case of Gervais of Dene to unpack the claims made in this introduction. Each chapter will take up a particular element, which I suggest illustrates the dynamic construction of sovereignty claims via jurisdictional politics. Moreover, each chapter will attempt to explicate this process at the three scales outlined above – sociological, spatial, ideological. In Chapter One, I examine the social dynamisms of the royal forests in order to provide context for the relative status of the English clergy. Far more than simply hunting preserves, the forests became arenas for jurisdictional politics between kings, barons, and bishops, and thus were sites for the formation of composite

sovereignty. Chapter Two juxtaposes the corresponding assertions of special status and exclusive jurisdiction by the Church, as evidenced through the disputed release of Gervais of Dene from royal custody via the threat of the Church's most potent sanction. It traces the (ab)uses of extra-judicial excommunication as a tool to define and delimit these claims, as well as the shifting processes of proving clerical status and claiming benefit of clergy in a secular court. Finally, Chapter Three will attempt to contextualize these two competing claims – the Crown's assertion of jurisdiction in the forests and the Church's rejoinder of exemption from that jurisdiction – in the centuries-long process of dualism between *regnum et sacerdotium* which produced such a bevy of ideological texts on the proper equilibrium of a *societas perfecta*.

Chapter 1: Constructing Sovereignty Through Territorial Jurisdiction

It was midnight, the 2nd of August, 1251, the day after the Feast of St. Peter's Chains, commonly known as Lammas Day. It was a time of thanksgiving and celebration for the first wheat harvest, when special cakes were baked and offered at a "loaf mass" in commemoration of the holy Eucharist. In many parts of England, there was a decidedly festive air – the houses were strewn with garlands by day and the streets crowded with candlelight processions by night. Perhaps the vestiges of these celebrations still clung to the houses and public spaces that night as two royal foresters, William le Rus and Geoffrey of Pilton, set out to patrol their bailiwick of Weybridge Forest in Huntingdonshire. They would later testify before the royal justices of the forest that it was not long before they stumbled upon a red greyhound worrying a doe.

To a modern observer, this may read as nothing more than the quotidian traffic of a medieval forest, yet any person living in or near Weybridge at the time would have understood that a grave offense had been committed. King Henry III, in the thirty-ninth year of his reign by 1251, had been forced to put his seal to the *Carta de Foresta* while just a boy. With its more famous counterpart, the Magna Carta, this document became an essential political touchstone in medieval England. Among its stipulations was a process known as the "lawing" of dogs (*expeditatio mastivorum*), which required that all dogs held within the bounds of a royal forest be hobbled by the removal of their front toes. Failure to do so would result in a hefty fine. That the greyhound that night could chase a deer at all was evidence that it had not been properly lawed. What is worse, it was attacking the personal property of the king. By law and custom at least as old as the Norman Conquest, all so-called "beasts of the forest" (*venacio*) were to be preserved

ferae naturae for the king's use and pleasure.⁴⁷ To infringe on this was a serious crime indeed; in fact, the *Carta de Foresta* is perhaps best known for lessening the famously draconian punishments meted out by Henry's predecessors for poaching the venison. Prior to the thirteenth century, attacking beasts of the forest could result in execution, yet even after the mitigation of the Charter poachers could expect a hefty fine and up to a year and a day in prison.

What is more, the loose greyhound was soon followed that night by its owners, whom the foresters would later describe as a band of twelve men, hounds in tow, "one of whom carried an axe in his hand, and another a certain long stick, and the others ten bows and arrows."⁴⁸ The possession of bows and arrows within a forest without a royal license had been strictly prohibited since at least the reign of King Henry II in the twelfth century.⁴⁹ Apparently, as a case from 1209 in Northamptonshire shows, this was taken so seriously that when two men were caught armed in the forest without a license the case was to be reported directly to the king.⁵⁰ The stakes were undoubtedly clear to the poachers that night: when the foresters called out to them, they returned a volley of arrows and fled. In the end, "on account of the thickness of the wood and the darkness of the night the foresters knew not what became of them."

Far from mundane, the events that night in Weybridge were part of both wide and deep social networks of meaning, which taken together shaped the royal forests as arenas for the jurisdictional politics that would ultimately settle England into a system of composite sovereignty. As we will see, those poachers were not solitary actors in search of a meal; rather, their social connections coursed through parish, county, diocese, and, if indirectly, to the king

⁴⁷ According to G.J. Turner, these included red deer, fallow deer, the roe, and wild boar. See *Select Pleas of the Forest*, xiii.

⁴⁸ Turner, *Select Pleas of the Forest*, 12-13.

⁴⁹ See the royal assize made at Woodstock in 1184: *Item defendit quod nullus habeat arcus, neque canes neque leporarios in foresta sua; nisi habeat ipsum regem ad warrantum; vel aliquem qui warrantizare possit.*

⁵⁰ Turner, *Select Pleas of the Forest*, 5.

and pope themselves. By starting on the ground, in the moment, we can ultimately trace these connections to illustrate the dynamic construction and fluid application of the king's claim to sovereignty in the *forestae*.

What a royal forest signified, both territorially and ideologically, was entirely a matter of perspective. Viewed from the throne above, the royal forests blanketed the realm like the thick canopy of an actual woodland, as fixed and unmoving as the great oaks of England. Each successor to the Conqueror built upon and vociferously defended the so-called ancient rights and privileges in these spaces, undergirded nevertheless by an ideology of kingship that was necessarily worked out on the ground. Thus, when viewed from the grassroots, the forests take on a very different hue. We see the cat-and-mouse games of poachers and foresters, hurrying and scurrying at the behest of bishops, barons, and kings. We see the dynamism of social reality, the energetic fluidity, contingency, and ambiguity inherent in political life. We see the often-untidy reification of abstractions like status, jurisdiction, and sovereignty. We see one king after another seeking territorial sovereignty and settling instead for temporary parity and inevitable equilibrium.

Viewing the royal forests from this perspective – looking up from the lived reality, through the forest bureaucracy, and on to the king's ideological claims – rather than the other way around, relies on an awareness of socio-legal space as fundamentally fluid, pluralistic and transgressive. I take up Doreen Massey's passionate challenge for scholars to see space not as fixed and static, but as “the product of interrelations,” “constituted through interactions,” “always under construction” and “never a closed system.”⁵¹ Even as the king and his officers endeavored to freeze the space of the forests, the flows of people and materials back and forth

⁵¹ Doreen Massey, *For Space* (London: Sage Publication, 2005) 9-12.

were simply rerouted or even intensified by their new illicitness. Legal historian Richard Ford has noted that jurisdiction of this type was just the “territorialization of social relations” – that is not to say that these social relations ceased or were even expelled from the legal space.⁵² With Massey, Ford has advocated for a view of space (and law) as a “discourse, a way of speaking and understanding the social world.” As a result, Ford claims, territorial jurisdiction is itself a set of social practices and status roles that can be read, learned, and performed in space; social actors can thus learn to “dance the jurisdiction” as they would the Tango.⁵³

Undoubtedly, medieval forest law was legible in space, and that reading could be used to constitute and perform social status as much as control and divide physical territory. Spatial claims such as a royal forest came to define the identity of the people that occupied them, and thus they divided more than just territory. The royal forests of England force us to realize that the discursive and the material, in this case static claim and dynamic construction, do not exist in discreet, autonomous dimensions. Legal historian David Delaney has termed the space of this crucial interaction the *nomosphere*: “the cultural-material environs that are constituted by the reciprocal materializations of ‘the legal,’ and the legal significance of the ‘socio-spatial,’ and the practical, performative engagements through which such constitutive moments happen and unfold.”⁵⁴

Like so many other cases recorded in the forest *rotuli*, the fray that night in Weybridge is representative of all three aspects of the nomospheric. By their presence, the royal foresters materialized law in space, and by their transgression the poachers did the same. As the case would proceed to inquest, arrest, and trial, the legal significance of the “socio-spatial” would

⁵² Richard Ford, “Law’s Territory (A History of Jurisdiction),” in *Michigan Law Review*, Vol. 97, No. 4 (1999), 845.

⁵³ Ford, 855-56.

⁵⁴ David Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations* (Abingdon: Routledge/Glasshouse Press, 2010), 25.

become evident as townships, counties, dioceses, and various courts were drawn in, each with their own jurisdictional boundaries and social concerns. And at the nexus of both: the performative engagements of real people, both actuated by and constrained by the broader institutional and ideological frameworks that constituted their social and legal identities.

The Royal Forests

Although it was without a doubt a live and pervasive aspect of political life in medieval England, forest law would eventually languish and become little more than a quaint anachronism in modernity; capricious kings, aristocratic vanity, draconian punishments, these were the vestiges of a bygone medieval institution that had been blessedly supplanted by a more humane society. To many scholars of those generations, medieval law was almost an embarrassment to the teleological trajectory of the modern world. This periodization caused some to accentuate the supposed barbarity of medieval institutions like the royal forest. In particular, there persisted a false narrative that the king so valued his venison he would mete out such “medieval” punishments as blinding or castration for any form of poaching; in fact, this was nothing more than the embellishment of disgruntled medieval chroniclers.⁵⁵ More recent scholars have noted that not a single incident of these barbaric punishments occurs in the actual court records; instead, the punishment was almost always pecuniary.⁵⁶ Thus, the historiography of the *forestae*

⁵⁵ The Anglo-Saxon Chronicle, for example, records that William the Conqueror “made great protection for the game and imposed laws for the same, that who so slew hart or hind should be made blind. He preserved the harts and boars and loved the stags as much as if he were their father.” See Dorothy Whitelock, ed., *The Anglo-Saxon Chronicle* (New Brunswick, NJ: 1961), 165. According to William of Newburgh, King Henry II was no better: “He cared for the wild animals more than was right, and in public punishment he made too little distinction between a person who killed a deer and one who killed a man.” See “Historia Rerum Anglicarum,” in R. Howlett, ed., *Chronicles of the Reigns of Stephen, Henry II, and Richard I*, Rolls Series (London, 1884-89), 1: 30.

⁵⁶ See, for example, Oliver Rackham’s *Trees and Woodlands in the British Landscape: The Complete History of Britain’s Trees, Woods, and Hedgerows* (London: Phoenix Press, 2001), 168.

is a case in point for what medievalist Marcus Bull has called “five centuries or more of judgementalism” that must be overcome to truly understand institutions of the Middle Ages.⁵⁷

Almost all modern analysis of the medieval forests begins with John Manwood’s seminal treatise on forest law published originally in 1598. Manwood, a barrister and justice in eyre, sought to comprehensively explain the legal intricacies of what had become a declining institution in England, and thus his work reads like an alphabetized encyclopedia more than anything else. Manwood’s definition of a *foresta*, his explanation of the royal bureaucracy, as well as his citations of legal precedents pertaining to forest law remained the standard source on the subject for generations. However, interest in the medieval forests waned across the intervening generations until the turn of the twentieth century when G.J. Turner published his *Select Pleas of the Forest* in 1901. Turner, like Manwood before him, worked to systematize the convoluted and poorly-understood laws and procedures that had developed around the royal forests. His introduction to forest law is impressively comprehensive and remains the starting point for all subsequent research in the field. Other studies, most notably by J.C. Cox in 1905 and Charles Young in 1979, continued in this pursuit of a comprehensive analysis.⁵⁸ However, their treatment remains little more than bland procedurals, albeit necessary ones at the time. Thus, I attempt to build on this foundation by probing the social, spatial, and legal roots and consequences of these procedures in order to highlight them as fluid, constructed, and contingent, rather than fixed and static as they often appear in earlier work on the royal forests of England.

⁵⁷ Marcus Bull, *Thinking Medieval: An Introduction to the Study of the Middle Ages* (London: Palgrave Macmillan, 2005), 2.

⁵⁸ See J.C. Cox, *The Royal Forests of England* (London: Methuen & Co., 1905); and Charles Young, *The Royal Forests of Medieval England* (Philadelphia: University of Pennsylvania Press, 1979).

However, Turner, Cox, and Young were not the only type of scholar to take up the royal forests as a valuable object of analysis. With the growth of social history in the 1960s and 70s, the field opened up to the social, economic, and demographic layers of legal institutions such as the *forestae*. Most notably, economic historian Jean Birrell has written extensively on the multifaceted uses of the forests, in particular how they shaped and were shaped by the daily life of the peasantry.⁵⁹ Birrell pushed back against the traditionalist view that the forests were largely the concern of the king and aristocracy; instead, she highlighted the social and economic implications inherent in the demographic realities of life beneath the king's claim. Moreover, she re-examined the *rotuli* themselves through the lens of social history, reading between the lines, so to speak, documents that had been largely ignored since the generation of G.J. Turner and J.C. Cox.⁶⁰ The work of Jean Birrell, among others, allows us to navigate the multiple scales of the jurisdictional politics outlined in the Introduction: sociological, territorial, and ideological.

In this chapter, the ideological is constituted by the king's claim to sovereignty, while the territorial is the spatial expression of that claim, particularly through a complex bureaucracy connecting hundreds, counties, parishes, and dioceses. On the other hand, the sociological scale is comprised of the complex networks of interaction and meaning constantly at work through and beneath the others. This scale of analysis has benefited greatly from the interplay between history, philosophy and literature, particularly in the post-structuralist frameworks of Michel Foucault and Michel de Certeau. Foucault, for one, recognized that the use of space itself was a significant mechanism of power and control, and thus poaching was a discourse on the nature of

⁵⁹ See Birrell, "Peasant Craftsmen in the Medieval Forest," in *The Agricultural History Review* Vol. 17, No. 2 (1969), pp. 91-107.

⁶⁰ See Birrell, "Common Rights in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century," in *Past and Present* No. 117 (Nov. 1987); also, "Forest Law and the Peasantry in the Later Thirteenth Century," in *Thirteenth Century England II: proceedings of the Newcastle upon Tyne conference 1987* (1988).

property, liberty, and authority, rather than simple foraging or theft.⁶¹ Furthermore, as Michel de Certeau argued in *The Practice of Everyday Life*, the construction and redefinition of spaces like the royal forests was predicated on the physical actions of those who used it more so than abstract ideological theories. In what he termed “pedestrian speech acts,” Certeau provocatively compared the walker to the speaker, in that both, through differing mediums, enunciated some meaning, and thus gave shape to otherwise amorphous space. The walker – whether poacher, forester, cleric, or otherwise – necessarily appropriated the space to their needs, even to the extent of subverting and redefining it from the original intent of the designer.⁶² Thus, as this thesis claims, the medieval clergy who lived, worked, or simply ambulated within the royal forests became, perhaps even without conscious thought or malice, subversive walkers, transgressive poachers, and crafters of a contested space.

In that sense, more than just a royal prerogative, a *foresta* was fundamentally a locus for the dynamic process of defining, redefining, and enforcing the contours of socially-acceptable versus legally-acceptable behavior, and thus it necessarily signified beyond just the taking of a deer or imprisonment of a poacher.⁶³ It was the site of what scholar Jeffrey Theis has labelled a “socially resonant discourse” in England. “Poaching,” he writes, “is rarely about finding dinner; rather, poaching is enmeshed in social privilege and control of the English landscape.” Cases like that of Gervais of Dene in 1251 were as likely to be poaching as a form of social protest as they

⁶¹ For example, “Questions on Geography” in *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, edited by Colin Gordon (NY: Pantheon Books, 1980).

⁶² Michel de Certeau, *The Practice of Everyday Life*, translated by Steven Rendall (Los Angeles: University of California Press, 1984), 97-102.

⁶³ Understanding of how this semantic process works is necessarily indebted to Eric Hobsbawm’s seminal argument in *Bandits* (1969), namely that social acceptance and aspirations elevated certain dissidents beyond the level of mere criminal to the archetypal. Two other works to take up this type of socially-acceptable poaching in royal forests, albeit in periods much later than the Middle Ages, are E.P Thompson’s *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975) and Peter Sahlin’s *Forest Rites: The War of the Demoiselles in Nineteenth-Century France* (Cambridge, MA: Harvard University Press, 1994).

were to be poaching for pragmatic needs. This poaching, Theis claims, “offers a model of transgression that reveals the shaky foundation upon which rests the arbitrariness of property.”⁶⁴ Thus, poaching can serve to demonstrate the contested, multifaceted, fluid nature of the royal forests and the concomitant social negotiation that occurred beneath.

Foresta Regis: more than just a hunting preserve?

Despite its clear social resonance and political relevance at the time, what a royal forest actually was, what it was originally meant for, remains a matter of debate today. While historians agree that the practice of afforestation was a legal transplant from Normandy, consensus breaks down regarding its *raison d'être*. Traditionally, scholars have relied on contemporary literature for insight, and these sources almost invariably focus on the forests as hunting preserves for the so-called “beasts of the forest” (i.e. deer) to be kept *ferae naturae* for the king’s pleasure, even if found on another’s property. That left hares, foxes, badgers and the like for the inhabitants of the forest to hunt, and then only with royal permission. This prerogative of the king was in sharp contrast to the inheritance of Roman law customarily held by the inhabitants of the forest. For them, it was an absurdity that anyone could lay perpetual claim to beasts that had been held as common for centuries – prior to capture, these animals had traditionally been *res nullius*, rendered property only through *occupatio* or the physical act of capture.⁶⁵

It was this function of the forests that seems to have drawn the most ire from the residents, and is thus reflected most strongly in the contemporary literature. A passage from the *Anglo-Saxon Chronicle* regarding William the Conqueror provides an early example of this:

⁶⁴ Jeffrey Theis. “The ‘ill kill’d’ Deer: Poaching and Social Order in *The Merry Wives of Windsor*, in *Texas Studies of Literature and Language* Vol. 43, No. 1 (Spring, 2001), 47. In addition, Theis has written an excellent monograph on the contested and socially-resonant nature of forests in England: *Writing the Forest in Early Modern England: A Sylvan Pastoral Nation* (Pittsburgh, PA: Duquesne University Press, 2009).

⁶⁵ William Perry Marvin, *Hunting Law and Ritual in Medieval English Literature* (Suffolk: Boydell and Brewer, 2006), 59.

*He made great protection for the game and imposed laws for the same,
That who so slew hart or hind should be made blind.
He preserved the harts and boars and loved the stags as much
As if he were their father.
Moreover, for the hares did he decree that they should go free.
Powerful men complained of it and poor men lamented it,
But so fierce was he that he cared not for the rancour of them all,
But they had to follow out the king's will entirely
If they wished to live or hold their land, property estate, or his favour great.⁶⁶*

Although the picture of the king here is almost certainly exaggerated, it does preserve a kernel of the truth: the beasts of the forest became loci for political animosity between the king, his foresters, and the powerful and poor men alike who complained and lamented the loss of their common rights to hunt. In medievalist Robert Fossier words, “the hunt was a pillar of society, and literature staggers under the weight of the miracle tales, romances, poems, chronicles, manuals – and trials – in which hunting is prominently featured.”⁶⁷ Certainly hunting, licit or otherwise, occupied the imagination of medieval people, if not always their daily lives, well beyond the escapades of William the Conqueror.

This focus on the royal forests as sites of hunting inflected their categorization for generations after. For example, in the twelfth-century *Dialogus de Scaccario*, Richard Fitz Nigel claimed “the forests are the kings’ retreats and their greatest delights. For they go there to hunt, leaving their cares behind, to refresh themselves with a little rest.”⁶⁸ It was this romantic vision, he believed, that lay at the etymological root of the word forest: a *feresta* was a place of *ferae*, wild beasts waiting for the princely pleasure of hunt and capture. However, royal hunts were surprisingly infrequent in the Middle Ages and alone likely would not have warranted the

⁶⁶ Dorothy Whitelock, ed., *The Anglo-Saxon Chronicle* (New Brunswick, NJ: 1961), 165.

⁶⁷ Robert Fossier, *The Axe and the Oath: Ordinary Life in the Middle Ages*, translated by Lydia Cochrane (Princeton: Princeton University Press, 2007), 211.

⁶⁸ Richard Fitz Nigel, *De necessariis Observantiis Scaccarii Dialogus qui vulgo dicitur Dialogus de Scaccario*, ed. and trans. C. Johnson (Oxford: Clarendon Press, 1983), 90-3.

expensive bureaucracy that was created to support them. As Oliver Rackham put it, “a royal hunt was nearly as full of meaning as a coronation, and about as rare.”⁶⁹ As an example, it seems that the forest of Dean (or Dene), one of the largest and most heavily wooded, was rarely visited by the king at all.⁷⁰ Thus, Rackham concludes, “a forest was not the king’s absolute property, nor was it ‘reserved to the king for hunting’ as we are so often told. All land, even roughland, in eleventh-century England belonged to someone and was used. The king’s deer were added to, and did not replace, whatever was already going on.”⁷¹

What, then, was “going on” in these sprawling, multi-use spaces when not coursed through by an eager prince? A great deal. The royal forests did not lie inert on a map, waiting for the pomp and ceremony of a royal hunt. The forests, always essential to the material life of humanity, were positively teeming with people who, especially from the eleventh to the fourteenth centuries, “penetrated the forest, dominated it, and subjected it to rules.”⁷² The king’s was but one claim of many for right and use in these spaces – albeit an undeniably powerful one.

The Forest of Dean was representative of the multi-faceted and fluid nature of the royal forests that has often been obscured by an inordinate focus on hunting alone. In his groundbreaking study of that forest, Cyril Hart argued that the king, far from the singularly-focused hunter of the chronicles, was ever mindful of his subjects’ pragmatic needs, and thus was usually lenient as long as his venison were secure in their covert. Moreover, his concern for the venison of Dean was “much more for his prestige, gifts, and larder than for the little hunting he enjoyed.”⁷³ Hart’s statement takes us through each of the major uses of the forest that existed

⁶⁹ Oliver Rackham, *Trees and Woodland in the British Landscape: The Complete History of Britain’s Trees, Woods, and Hedgerows* (London: Phoenix Press, 2001), 170.

⁷⁰ Cyril Hart, *Royal Forest: A History of Dean’s Woods As Producer of Timber* (Oxford: Clarendon Press, 1966), 8.

⁷¹ Rackham, *Trees and Woodland in the British Landscape*, 166-68.

⁷² Fossier, *The Axe and the Oath*, 176-83.

⁷³ Hart, *Royal Forest: A History of Dean’s Wood*, 52.

below the apparently static overlay of the king's law: protection of vert and venison, social prestige, political gifts, and the pragmatic needs of an expansive household and retinue. Each of these uses reveals the fluid and contingent nature of the king's claim, allowing us to see the royal forests as not just hunting preserves or even sites of resource management, but rather as arenas for the dynamic construction of composite sovereignty in England. However, to view the forests as arenas of jurisdictional jockeying alone is no less reductive than the tendency to see them as spaces only for deer or just to preserve the vert or simply as sources of revenue and largesse. The forests were all of those things at once, a complex web of socio-economic and spatio-legal constructs inextricably tied together.

The Vert and Venison: Hunting, Conservation, and Profit

First, to the protection of the vert and venison: under forest law, the vert was defined as any land and vegetation needed to support the population of the king's venison. Thus, as Oliver Rackham has noted, "nearly always the legal Forest was much wider than the physical Forest." The venison could range freely across the countryside, necessitating, at least from the Crown's perspective, the afforesting of huge swaths of land, wooded or otherwise; consequently, unlike its modern connotation, a medieval forest was "a place of deer, not necessarily a place of trees."⁷⁴ In the effort to support the venison, woods, meadows, rivers, farms, and even whole villages were placed under the covert of forest law to prevent the destruction of habitat; for example, the royal forest of Cannock in Staffordshire stretched across some 230 square miles and included roughly forty populated settlements.⁷⁵ What is more, since the Assize of the Forest made by Henry II in 1184, the Crown had forbidden the mundane act of collecting firewood

⁷⁴ Rackham, *Trees and Woodlands*, 165-66.

⁷⁵ L.M. Cantor, "Medieval Forests and Chases of Staffordshire," in *North Staffordshire Journal of Field Studies* (1986), 44-46.

within these spaces except under the supervision of a royal forester, as unfettered collection could contribute to the “wasting” of the vert and thus to the detriment of the venison.⁷⁶ However, with just a hand full of foresters to perambulate each forest, it is unlikely that this stricture was consistently enforced.

Perhaps in the initial years after the Norman Conquest the protection of the vert was in fact intended mainly for the preservation of venison. But, by the start of the fourteenth, the royal forests had become much more concerned with timbering and the sale of wood as a revenue source than with conserving the habitat of venison. Thus, by the sixteenth and seventeenth centuries, England had largely been disafforested.⁷⁷ More recent scholarship has challenged the traditional narrative of forests as hunting preserve or conservationist effort, pointing instead to enormous profits garnered from their productive capacity, rent schemes, and near constant ameracements.⁷⁸ For example, in Dean we see large sums of money being made from the sale of wood by the thirteenth century; even windblown limbs and trees were dealt with deliberately and carefully as a valued source of income.⁷⁹ In fact, the longest extant list of the royal forests was produced by Henry III after a massive gale that swept much of England in 1222: the king ordered an immediate valuation of the fallen wood and its subsequent sale.⁸⁰

Timber was lucrative, but certainly not the only forest product that was tapped and regulated by the Crown. As Jean Birrell has masterfully outlined, forest industries included

⁷⁶ See “The Assize of the Forest (1184),” in *English Historical Documents, Volume II: 1042-1189*, edited by David Douglas (NY: Oxford University Press, 1953), 418-20. Charles Young has noted that the Assize and other laws like it inadvertently contributed to the conservation of English woodlands for centuries. With the breakdown of forest law by the sixteenth century, England saw an inevitable increase in the destruction of its woodlands. See “Conservation Policies in the Royal Forests of Medieval England,” in *Albion* Vol. 10, No. 2 (1978), pp. 95-103.

⁷⁷ See Della Hooke, “Royal Forests – Hunting and Other Forest Use in Medieval England,” in *New Perspectives on People and Forests*, eds. E. Ritter and D. Dauksta (2011), 54.

⁷⁸ An excellent example is Dolly Jorgensen’s article “The Roots of the English Royal Forest,” in *Anglo-Norman Studies XXXII: Proceedings of the Battle Conference* (2010).

⁷⁹ Hart, *Royal Forest: A History of Dean’s Wood*, 25-29.

⁸⁰ J.C. Cox, *The Royal Forests of England*, 6-7.

trapping, tanning, rope making, the crafting of wooden tools, grazing, milling, fishing, and the production of charcoal and iron, to name a few.⁸¹ The Forest of Dean is again representative, particularly in the production of charcoal and smelting of iron; an evaluation in 1282 revealed that at least 2,990 hearths of charcoal used in iron production were found in Dean alone – to the great detriment of the vert and venison.⁸² Here we see again the tension between the ideological claims of the king, tied to the symbolic act of hunting and notions of royal prerogative, and the pragmatic reality of social life. Birrell writes: “On the whole, policy in the royal forests in the thirteenth and fourteenth centuries was designed rather to draw revenue from the controlled exploitation of certain forest resources than to enforce forest law so strictly as to prevent their use. The growing demand for forest products at this time made such a policy both advisable and profitable.”⁸³

That growing demand was particularly acute given the marked population increase in the thirteenth century, and as a consequence the arable land and productive capacity encased in royal forests became a particular target for rival gentry, clergy, and peasants alike. The king, like the rest of the realm, undoubtedly felt inflationary pressure as a much larger population fought for increasingly scarce agricultural resources.⁸⁴ Moreover, afforesting land was not the sole purview of the Crown. Since before the Conquest, various Norman dukes and lords had owned forests, perhaps much longer than the king; even after transplant to England, it seems that numerous magnates – both secular and ecclesiastical – owned forests and could dispose of them at will.⁸⁵

⁸¹ See “Peasant Craftsmen in the Medieval Forest,” in *The Agricultural History Review* Vol. 17, No. 2 (1969), pp. 91-107.

⁸² Hart, 44.

⁸³ Birrell, “Peasant Craftsmen,” 104.

⁸⁴ See Robert Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change 950-1350* (Princeton: Princeton University Press, 1993), pp. 107-20. For a more numerical analysis, see Carlo Cipolla’s *Before the Industrial Revolution: European Society and Economy 1000-1700* (NY: W.W. Norton and Company, 1993), Ch. 5.

⁸⁵ Dolly Jorgensen, “The Roots of the English Royal Forest,” 120-121.

Thus, the royal policy of setting apart vast tracts of land to protect private beasts – and stringently punishing all who threatened them – was inevitably mitigated by the dynamic reality of economic life in the thirteenth century. As Carlo Cipolla quipped, “When population pressure grew and/or the demand for wood increased, the knell of the forest was rung.”⁸⁶

The almost manic focus on the animal aspects of the forests that we see in the *rotuli* of the early thirteenth century likely became far too burdensome to maintain as the century closed. For example, numerous cases from 1209 in Northamptonshire record the requirement to keep and present in court, often months or even years later, the bones and skins of slain animals. Failure to do so resulted in a heavy fine. In one instance, the entire town of Maidford was “seized into the king’s hand with the wood belonging to the same” simply because no one could provide information on a single hart. In Buckby, a man named Robert the Welshman was fined for not keeping and presenting two tree branches that had supposedly “worried a hart into the forest.”⁸⁷ But with increased demographic pressure and a growing need for additional revenue, forest law in the thirteenth century morphed into a much more streamlined, bureaucratic operation than had previously been needed or possible.⁸⁸

Concomitantly, the thirteenth century saw an increase in claims of exclusive land rights and privileged use in England, more frequent attempts at legal regulation, and perhaps an inevitable spike in poaching by those who had previously held customary rights. It is no coincidence, then, that this period also saw exceedingly high levels of amercement as economic desperation clashed with increasingly concretized laws and bureaucracy.⁸⁹ The pressure of this

⁸⁶ Cipolla, *Before the Industrial Revolution*, 92.

⁸⁷ *Select Pleas of the Forest*, 4-5.

⁸⁸ On this process of centralization and bureaucratization see especially: M.T. Chanchy’s *From Memory to Written Record: England 1066-1307* (NJ: Wiley-Blackwell, 2012); and Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants Revolt* (NY: Manchester United Press, 2001).

⁸⁹ See Jean Birrell, “Common Rights in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century,” in *Past and Present*, No. 117 (Nov. 1987), pp.22-49.

tension – between static claim and dynamic reality, between professionalized legalization and customary use – eventually escalated into the famous hedge and fence-breaking of the next century. And, as Anthony Musson has noted, the backlash against legal regulation of the thirteenth century culminated with the so-called Peasants' Revolt in the late fourteenth century, characterized as it was by the burning of records (and the jurisdiction they implied), attacks on bureaucrats, and frequent calls to behead jurists.⁹⁰

The new focus in the thirteenth century on bureaucratized regulation in response to increased demographic pressure left an indelible mark on the royal forests. Rather than the individual cat-and-mouse games of foresters and poachers, which would later become romanticized in the Robin Hood legends, forest law of the thirteenth and fourteenth centuries was much more concerned with large-scale inquisitions and county-wide courts. Poaching certainly did not cease, but the focus of the forest administration shifted perceptibly from the preemptive curtailment of such transgressions to the reactionary response of a bustling bureaucracy. This expanding regulation was two-fold. First, an array of localized forest officials – justices, wardens, verderers, regards, foresters – all intricately linked and connected ultimately to the king; and secondly, the forest eyres, itinerate courts that circulated to each county and forest to hear pleas and mete out the king's justice. By the thirteenth century, that justice was almost always a very hefty fine. And, as we will see, both the courts and the forest officials were not immune to the economic realities of life in a forest. They were caught, in a sense, at the intersection of their lord's revenue and their neighbors' livelihood.

The system of forest eyres was lucrative, politically fraught, and ultimately an attempt by each king to legitimate (and fund) his aspirations to the plenitude of power. The Angevin kings

⁹⁰ Musson, *Medieval Law in Context*, 253.

in particular had an acute need to quickly raise revenue to fuel war abroad or quell insurrection at home. Thus, far from frequent or regular, the forest eyres were a political and pecuniary tool deployed by kings *pro re nata*. It seems that some counties and forests waited quite a long time indeed to see an eyre from the king. As an example, in the case of Gervais of Dene referenced above, the initial crime in Weybridge, Huntingdonshire occurred on the second of August 1251, but the case was not heard before a royal justice until sometime in 1255. The next eyre would not come until 1271, and the interval was much longer for other counties, if they saw more than one at all.⁹¹

And, when the eyres did occur, they moved very rapidly from place to place, hearing pleas in the king's name and expeditiously dispensing amercements, before riding off to the next county. For example, in one particularly swift eyre ordered by King John, the justices heard pleas in Lincolnshire on March 7th, moved on to Huntingdon two days later, and by the 14th of that month they had reached Shrewsbury in the west of England.⁹² The *rotuli* are clear regarding the priorities of these itinerate courts: in the absence of readily available documentary proof, or when litigants failed to appear in court, or when the facts were uncertain, the solution was almost always summary amercement.

It seems that the more unsettled a king's reign became, the more heavily he relied on the forest eyres to raise revenue. Not surprisingly then, the eyres of King John in the beginning of the thirteenth century were among the most severe. After the disastrous loss of his holdings in Normandy, John was consigned to remain in England far more often than his predecessor; and

⁹¹ Lincolnshire, Norfolk, and Devonshire appear to have seen just a single eyre that century. See Charles Young, "The Forest Eyre in England during the Thirteenth Century," in *The American Journal of Legal History*, Vol. 18, No. 4 (Oct. 1974), 331.

⁹² David Crook, "The Forest Eyre in the Reign of King John," in *Magna Carta and the England of King John*, ed. Janet Loengard (Suffolk: Boydell Press, 2010), 66.

unlike kings before him, instead of increasing the size of forests to raise revenue, John turned his attention to the forest eyres to fund his often-inept campaigns.⁹³ W.L. Warren described his use of the eyres in this way: “Petty infringements were visited with heavy penalties and when John was in urgent need of cash he would send round a commission of forest justices. It can be said in his favour that he did not extend the bounds of the forest, as his predecessors had frequently done; but perhaps he had no need to: he made a lot of money out of what there was.”⁹⁴ The Pipe Rolls of the Exchequer bear out just how much could be made from a forest eyre. In 1212, John’s eyre collected almost £4,500 in revenue from amercements, thousands more than previous averages. According to David Crook, this 1212 eyre alone comprised almost ten percent of all royal revenues for that year.⁹⁵ John was following in the footsteps of his father, Henry II, who was also known for incredibly severe eyres; for example, in 1175, the rolls record a stunning £12,305 collected into the Exchequer from amercements.⁹⁶ It should also be noted that the case of Gervais of Dene fell in the middle of another particularly severe round of eyres in the 1240s and 50s, this time under John’s successor Henry III.⁹⁷

A cursory look at the Pipe Rolls reveals the source of these enormous figures: hefty fines for petty crimes. As an example, in 1187 the Pipe Rolls of Staffordshire under Henry II record that a man was fined twenty shillings for having a dog in the forest unlawfully.⁹⁸ Equivalent to 240 pence, this fine was undoubtedly crippling for the average litigant. For context, an estimate of the daily wages of a thatcher, for example, was roughly two pence in the 1260s. By the early

⁹³ And since the Northern portions of the realm bore the brunt of John’s eyres, it is not surprising that Northerners were the driving force behind the baronial insurrections against John, and the penning of the Magna Carta and *Carta de Foresta*.

⁹⁴ W.L. Warren, *King John* (Berkeley: University of California Press, 1961), 152.

⁹⁵ Crook, “The Forest Eyre in the Reign of King John,” 80.

⁹⁶ See Charles Young, *The Royal Forests of Medieval England*, 38-40.

⁹⁷ Crook, “The Forest Eyre in the Reign of King John,” 82.

⁹⁸ “The Pipe Rolls of 33 Henry II (Staffordshire, 1186-87),” in *English Historical Documents Vol. II: 1042-1189*, edited by David Douglas (NY: Oxford University Press, 1953), 580.

fourteenth century, this had risen to roughly two and a half pence, climbing to three and a half by the 1350s.⁹⁹ It stands to reason, then, that the wage for a common laborer prior to the 1260s would have been something less than two pence a day. This pattern persists into the fourteenth century. In the forest of Sherwood in April of 1334, a man was amerced six pence (perhaps two days wages) for taking a single branch. The fine increased to twelve pence for the entire tree and eighteen if it was a green oak.¹⁰⁰ In the end whatever the fine, as Richard Mortimer remarked, “Those who attended the royal courts of justice could expect to leave poorer than they came.”¹⁰¹ And what is more, most Englishmen could expect to be amerced by the Crown, whether in a forest eyre or otherwise, at least once a year.¹⁰²

Thus, the royal forests, more than just hunting preserves or conservation efforts, were immensely lucrative and politically fraught spaces. With Dolly Jorgensen, I would say that due to an inordinate focus on the protection of vert and venison alone, scholars of the English royal forests have “failed to see the forest through the trees.”¹⁰³ Specifically, scholars have failed to see the space itself, the forest as a social place, a territorial endeavor, in their rush to portray it as an almost quaint game preserve. The reality had far more extensive and formative implications for virtually all segments of English society. Fundamentally, the forests were political tools deployed by kings to bolster their broader aspirations. Geographer Robert Sack has labelled this phenomenon “territoriality,” a spatial strategy intended to “affect, influence, or control resources and people, by controlling an area.”¹⁰⁴ The forests, then, were spatial strategies deployed in the

⁹⁹ Christopher Dyer, *Standards of Living in the Later Middle Ages: Social Change in England c. 1200-1500* (Cambridge: Cambridge University Press, 1989), 206.

¹⁰⁰ See the pleas of Nottinghamshire Eyre for the regnal year 8 Edward III in *Select Pleas of the Forest*, pp. 67-68.

¹⁰¹ Richard Mortimer, *Angevin England 1154-1258* (Cambridge: Blackwell Publishers, 1994), 46.

¹⁰² See Pollock and Maitland’s *The History of English Law before the time of Edward I*, Vol. II (Cambridge: Cambridge University Press, 1895), 512.

¹⁰³ Dolly Jorgensen, “The Roots of the English Royal Forest,” 128.

¹⁰⁴ See Robert Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986), 1-3.

increasingly contentious political arena that was thirteenth-century England. Nevertheless, they were too large, too far-flung to be regulated appropriately, and thus opened up as spaces for contestation and jurisdictional jockeying.

Bureaucracy in the Royal Forests

Were the king to have relied solely on the eyre courts to regulate his forests, he would have been a frustrated and impoverished prince indeed. However, the eyres were just the penultimate layer in an extensive and far-flung bureaucracy. A large number of local officials collaborated to surveille, arrest, inquire, and guard so that when the justices in eyre did arrive, they could collect as much revenue for the Crown as possible before continuing their circuit.¹⁰⁵ The most common official of this type was known as a forester. Like modern-day gamekeepers, albeit with much broader jurisdiction, these men were empowered by the king to patrol definite territories and detain any violators (*malefactores de foresta*) found within its bounds. More egregious to the inhabitants of the forest, however, was their right to attach (seize) the property of any offender discovered within their bailiwick. It was this type of officer that was assaulted by an armed group of poachers in Weybridge that August night in 1251.

Ostensibly, then, these men were tied to the pedestrian defense of the royal vert and venison, but as R.A. Houston has written, “simply by being within a territory, people and things became juridical objects in England.”¹⁰⁶ Control of these juridical objects, be they deer or foresters, became a consuming territorial project for the Plantagenet kings, concomitant with an equally involved counter-effort by all levels of society to either remove the overlay of forest law or at the very least to mitigate its effects. We see a concerted spatial strategy by the Crown to

¹⁰⁵ For more on this, see instead Turner’s excellent Introduction to *Select Pleas of the Forest*, especially *xiv – xxvi*.

¹⁰⁶ R.A. Houston, “People, Space and Law in Late Medieval and Early Modern Britain and Ireland,” in *Past and Present*, No. 230 (Feb. 2016), 74.

freeze the political territory of the forests, even as adverse interests perpetually worked from within and without to thaw it, if you will, and refreeze their own portion. The foresters themselves were often just as likely to balk at the king's territorial assertions, even as they were tasked with enforcing them. In fact, by far the largest percentage of transgressors to the king's law in Huntingdonshire were those tasked with enforcing it.¹⁰⁷ They were subject to the same economic realities of mobility, subsistence, and necessary transgression within the bounds of these royal territories as was anyone else. Here it is clear again that these forests were defined by far more than just preservation of deer or princely leisure – they were tied up in the dynamic and relational flows of labor and capital.

Case in point: while foresters worked for the royal warden of the forest directly and the king indirectly, they actually received remuneration from neither. As a result, many turned to all manner of extortion and coercion to make a profit from the inhabitants of the forest; eventually, they came to see this exaction as their customary right in exchange for service to the Crown.¹⁰⁸ A list of grievances from Somerset, preserved in the *rotuli* of the late thirteenth century, is representative of the subversive activities to which the foresters resorted. Each item begins in the roll with *La ou la chartre dit*, referring to the Charter of the Forest first penned in 1217. “Although the Charter says...” the complaint alleged, the reality was far different, long after the king was supposed to have solved such issues.

For example, although the Charter mandated that inspection of dogs and their claws be done every three years, the foresters would often flout the law in the name of profit: “[they] come through town blowing horns and making a nuisance with much noise to cause the mastiffs

¹⁰⁷ Julia Serovayskay, “People’s Struggle Against the Institution of Royal Forest Reserves in England in the 11th-14th Centuries,” in *Forest History: International Studies on Socio-economic and Ecosystem Change*, eds. M. Agnoletti and S. Anderson (2000), 256.

¹⁰⁸ *Select Pleas of the Forest*, xxi.

to come out to bark at them, and so they attach the good folk every year for their mastiffs if the three toes be not cut and a little piece from the ball of the right foot.”¹⁰⁹ In another explicit violation of the Charter, foresters would illegally harvest corn and oats from the fields of the forest inhabitants, then force the people to buy the ale they manufactured from it: “and those who do not come there to drink and do not give money to their will are sorely punished at their pleas for dead wood.” The complaint ends with, “and this every forester does year by year to the great grievance of the country.”¹¹⁰ The alleged corruption borders on the absurd: calling fake inquisitions when no venison had been harmed, foresters harassing farmers for even carrying tools near a forest, and most bizarrely of all, foresters seizing the property of anyone carrying wood of any kind, even an “old chest” or “a pair of wheels for a wagon.”¹¹¹ These abuses of the law would seem inane if not for the dire straits of the royal foresters.

In another example, contemporary with the case of Gervais of Dene, a particularly nefarious forester in Huntingdonshire named Norman Sampson apparently terrorized the inhabitants of Weybridge. In one instance, after detaining a supposed trespasser, Sampson took him back to the home of his host¹¹² and put his prisoner “on a harrow, and pained him sorely, so that [his host] gave [Sampson] twelve pence that [the prisoner] might be released from the said pains, and afterwards he gave to [Sampson] five shillings that he might by his and be able to withdraw quit.” A closer look at the *rotuli* of Huntingdonshire in the middle of the thirteenth century reveals that Sampson was himself a known *malefactor de foresta*. He had reportedly stolen and sold the king’s wood while a forester, and what is more, he had conscripted the

¹⁰⁹ *Select Pleas of the Forest*, 126.

¹¹⁰ *Ibid.*

¹¹¹ *Select Pleas of the Forest*, 128.

¹¹² Sampson was a “walking forester,” which meant he perambulated throughout the forest’s territory and often had recourse to stay with local inhabitants – at their own expense.

daughters of William, the same poor host mentioned above, to sell the wood for him each day in Huntingdon. It was also revealed in court that he had given the same William permission to run his animals through the forest as he pleased – for personal gain, no doubt – in direct violation of the king’s law.¹¹³

How could the king’s forests be rife with such subversion? Would the Crown not go to great lengths to preserve such a lucrative enterprise? Even the authors of the grievances mentioned above took note of the king’s true interest in the forest of Somerset: “[We] pray our lord the king that such things and grievances may be amended, seeing that the king from such things has no profit.”¹¹⁴ In no small part, this inefficiency was the result of the English monarchy being in the midst of a prolonged constructive period in the two centuries following the Conquest, which R.C. van Caenegem has called “a cataclysm of the first magnitude.”¹¹⁵ In its wake, England became a patchwork of overlapping jurisdictions, competing courts systems, and disjointed ideologies of kingship: Norman feudalism mixed with the sacred kingship of the Anglo-Saxons, English customs and Norman laws came frequently into conflict, and all the while, confusion bred corruption.

As a consequence, the work of Henry II and his heirs became centralization of the courts and clarification of the law. In 1170, Henry II ordered his famous Inquest of Sheriffs, requiring all of his officials to keep detailed records of their subordinates’ actions for “everyone of their hundreds, everyone of their villages, and everyone of their men.”¹¹⁶ Royal writs from the twelfth century were incessantly concerned with the maladministration of justice (*defectus justicie*) such

¹¹³ *Select Pleas of the Forest*, 20-21.

¹¹⁴ *Select Pleas of the Forest*, 128.

¹¹⁵ R.C. van Caenegem, *The Birth of the English Common Law* (Cambridge: Cambridge University Press, 1973), 4.

¹¹⁶ William Stubbs, *Select Charters and other illustrations of English constitutional history*, 9th ed., edited by H.W.C. Davis (Oxford: The Clarendon Press, 1913), 176.

that contempt of a royal writ was quickly made a plea of the Crown.¹¹⁷ Into the thirteenth century, the king remained as interested in the accountability of his officials as he was in preserving his rights and properties. The Crown's anxiety can be seen through both the enormous proliferation of royal writs across the century and in the formation of the King's Bench, a peripatetic court that travelled with the king so that important matters could be heard *coram rege*, rather than by a separate justice.¹¹⁸ Fundamentally, the period from the Conquest to the end of the thirteenth century was marked by an uncertain ideology of kingship, anxious centralization, and inconsistent administration, and thus, as W.L. Warren has noted, it was not marked by any particularly strong awe or reverence for the royal majesty.¹¹⁹ The king's endeavors in the forests lay within the context of this constructive period of royal administration. The same anxious centralization and almost paranoid surveillance was at work in the forests as it was in the rest of the realm. And, as William Perry Marvin evocatively explains, forest law was particularly tenuous – entirely dependent on the strength of a given king and the extent of his charisma. Without that, “it sank in the throes of its own subversion, infested with the poaching of its own officers.”¹²⁰

“For His Prestige and Gifts”

As stated earlier, the importance of the royal forests rested on far more than just protection of natural resources; they were fluidly used as tools of social and political capital, and as gifts to bolster royal prestige in the arena of jurisdictional politics. Again, the apparent solidity of the king's claim in the forests, viewed from above, fades away at the forest floor. From a cartographic perspective, the royal forests stretched across England, solidly bifurcating the land

¹¹⁷ Van Caenegem, 7-17.

¹¹⁸ See Anthony Musson, *Medieval Law in Context*, 137-161.

¹¹⁹ W.L. Warren, *The Governance of Norman and Angevin England 1086-1272* (London: Hodder Arnold, 1987), 18.

¹²⁰ Marvin, *Hunting Law and Ritual in Medieval English Literature*, 72.

between *terra regis* and all the rest. The Charter Rolls and Pipe Rolls of the eleventh through thirteenth centuries reveal a different reality on the ground: frequent parceling and gifting of the forests by the king, the recipients ranging from family members and allied barons to bishops and monasteries. Each grant carried varying degrees of rights of use and legal privileges which shifted across the decades with the political needs of each king. Thus, according to R.A. Houston “many English jurisdictions were fragmented, the result of centuries of royal grants seemingly made without heed to previous awards,” and only gradually, over hundreds of years, was “a complex network of overlapping and often competing jurisdictions disentangled.”¹²¹

The fabric of the royal forests was absolutely riddled with legal exemptions and special circumstances, the result of numerous demands for special status (especially by the Church) on the one hand and political machinations by the Crown on the other.¹²² In effect, the fluctuating extent of the royal forests was part of a dynamic and shifting cultivation of a political landscape in which the king was as active as anyone else. In fact, after the Conquest, it became a deliberate tactic for the Normans to disperse royal lands and loyal baronial holdings throughout the shires to maintain control and integrate the invaders.¹²³ Territory was also gifted for spiritual favors: in 1227, Henry III relinquished land to the Augustinian priory of Grace Dieu on the promise that “three priests, monks of their order, shall minister there for the souls of the king’s father, his ancestors and heirs.”¹²⁴ *Terra regis*, including the royal forests, was essentially exchangeable, particularly for princes who lacked more liquid resources at the time. Thus, the forests were fluid and dynamic political tools.

¹²¹ Houston, “People, Space, and Law,” 65-66.

¹²² The royal forests were far from a hermetic category; rather, as John Langton writes, “*jura comitis, ducalis*, and *episcopalis* were as potent as *jura regalia*, and tenaciously maintained.” See “Royal and non-royal forests and chases in England and Wales,” in *Historical Research* Vol. 88, Issue 241 (August 2015), 400.

¹²³ Warren, *The Governance of Norman and Angevin England*, 156-57.

¹²⁴ *Calendar of the Charter Rolls, preserved in the Public Records Office*, Vol. 1 (London: Mackie and Co, LD, 1903), 4.

The resulting patchwork of land ownership and rights waxed and waned with the political currents of the day. Kings Henry I and Stephen parceled it out to buy loyalty. In order to placate the princes of the church, Stephen declared in 1136, “I reserve for myself the forests which my grandfather William and my uncle William II established and held. I return, quit, and concede to the churches and to the kingdom all other which King Henry added over and above these.”¹²⁵ Henry II, on the other hand, worked to reclaim the lost land in his grand campaign of centralization; the afforestation of Huntingdonshire which would ensnare Gervais of Dene in the thirteenth century was part of this dramatic expansion. By the reigns of the subsequent kings, however, the political currents would shift again. Richard, John, and Henry III all proved much more willing to balance the remunerative potential of royal lands with the need to curry favor in times of political tumult.¹²⁶

The cycle, then, was this: political uncertainty necessitated parceling of royal demesne, in turn precipitating a weakening of royal prestige and gifting capacity; this prompted a subsequent king to seek an expansionary policy in order to recover and maintain their authority in an newly crowded field of rival claimants; in turn, these expansionary policies fueled the discontent of increasingly frustrated and even desperate local actors (i.e. Northern barons particularly burdened by forest law in the years preceding Magna Carta); and so the cycle continued and the patchwork grew.

The best window into the details of this fluid process are the Charter Rolls: lists of land grants and confirmations of privileges, liberties, offices, etc. made by the king to various individuals or groups. Two examples from the thirteenth century will suffice to illustrate the

¹²⁵ In *English Historical Documents, Volume II: 1042-1189*, David Douglas and George Greenaway, eds. (New York: Oxford University Press, 1975), 403.

¹²⁶ Young, *The Royal Forests of Medieval England*, 19-20.

fluid nature of the royal forests, particularly the dynamic reality of boundaries and jurisdiction beneath a static overlay. First, the rolls show that on February 8th of 1227 King Henry III ordered the removal of his territorial jurisdiction from a particular parcel of land in a *quid pro quo* exchange with the abbey of Dore. The overlay of forest law was lifted from the land as easily as it had been draped across it: “all of which land shall henceforth be disafforested and quit of regard and waste and all things pertaining to the forest, the foresters, verderers, and their ministers.” As for the parcel of land in question, it included “all the lands from the brook called Trivelbroc along the land of the Hospitallers to the road which comes from Kylpec and thence up to the top of the hill called Kevenesquoyt and thence along the top of the hill to Bathlegh and thence to Fernilegh in Hoppilegh and so to the corner of the forest of Trivel.”¹²⁷ In another case from April of 1251, Henry granted a similarly amorphous piece of land which had previously been disafforested to be re-enclosed. The parameters here are startling in their impermanence: “from the ford of Wodesned to Kingesettle along the old dike, and thence to the house of Iwan.”¹²⁸ Undoubtedly the house of Iwan was fixed and easily identifiable at the time of this grant, but there were no guarantees years, even months later.

In the midst of this haphazardly parceled space, it was essential that both inhabitants and officials were clear on the actual boundaries of the forests – such as they were at any given time – since the king’s bureaucracy could only exert territorial jurisdiction therein. In other words, a forester could kill a poacher who fled or resisted arrest if the offense occurred in the forest and expanded beyond its scope, but otherwise, the same forester would be counted a felon.¹²⁹ A case from the plea rolls of the 1255 Huntingdon Eyre demonstrates the tension of ambiguity when the

¹²⁷ *Calendar of the Charter Rolls*, 3.

¹²⁸ *Calendar of the Charter Rolls*, 357.

¹²⁹ *Manwood’s Treatise of the Forest Laws*, edited by William Nelson (London: E. Nutt, 1717), 40.

jurisdictional lines of the forest were in dispute. Richard Trussehare, the hunter of the abbot of Ramsey, was charged by the foresters and verderers with illegally running hounds in the forest. When brought up in court, the bishop-elect of Ely claimed that Richard had been taken in a “free chace [sic],” an often ill-defined portion of land adjacent to or even within a *foresta* where common rights were stronger.¹³⁰ The bishop-elect argued that this chase was within his episcopal *banlieu*, and that Richard had started towards the forest only when his hounds had escaped: “...and some of his dogs were running towards the marsh and some towards the forest; and he went after those dogs to call them back, and for no other reason.”¹³¹ Ultimately, the bishop was acquitted, while Richard Trussehare was fined for “contemptuously” bringing a bow and arrows into the forest in violation of the law. This case turned on whether or not the hunter had crossed from his lord’s *banlieu* into the royal jurisdiction of the forest, and it illustrates the essentially uncertain extent of the forest on a micro-scale. At what point did episcopal jurisdiction end and royal begin? How would the hunter have known he had crossed into the forest in the absence of clear landscape markers or signage?

The denizens of the royal forests could not help but become adept at navigating the king’s territorial overlay. In other words, they were not always victims, so to speak, of the spatial ambiguities inherent in the royal forests – they could also be beneficiaries. “Knowing about space,” R.A. Houston writes, “mattered to the English because of the associated legal rights of inclusion and exclusion, obligation and entitlement. Rights were often much less mobile than people, so that pragmatic legal knowledge meant, for many purposes, being aware of ‘law-in-space’.”¹³² We can see this in a fascinating case from the Rutland eyre of June 1269. Apparently

¹³⁰ *Select Pleas of the Forest*, cx.

¹³¹ *Select Pleas of the Forest*, 17.

¹³² Houston, “People, Space, and Law,” 49.

King Henry III had gifted two of his does to a man named James of Panton, likely in exchange for some political favor, yet “the said James took six does, whereof four were without warrant. And by reason of the noise which he made by beating drums when he beset the does, many beasts came out of the forest into the liberty and were taken, to the loss of the lord king and the detriment of this forest.”¹³³ It seems James was well aware of the extent of the forest relative to lands held in common, enough to manipulate the system against the king.

This type of behavior was not unique; challenges to the extent of the royal forests came from all segments of society. Again, woodland and pasture were in high demand in the thirteenth century and the king’s claim flew in the face of the customs of use and common rights held by peasants and nobles alike. In fact, it was the clergy and nobility, not the commoners, who were responsible for most of the offenses against the king’s venison, if not his vert. In other words, while the peasants infringed on the king’s claim over the vegetation – mainly through the illicit collection of firewood – it seems the secular and ecclesiastical princes would hunt the king’s venison on principle.¹³⁴ They would raid the royal forests with their households and retainers as an expression of their ancient right to do so despite the king’s assertion of exclusive jurisdiction. The plea rolls of the Northamptonshire Eyre for 1272 record a particularly provocative example of flagrant disregard for the king’s law. In August of that year, in full light of day, a large group of poachers, clergy among them, “cut off the head of the buck and put it on a stake in the middle of a certain clearing [...] placing in the mouth of the aforesaid head a certain spindle, and they made the mouth gape towards the sun, in great contempt of the lord king and of his foresters.”¹³⁵

¹³³ *Select Pleas of the Forest*, 44.

¹³⁴ Birell, “Forest Law and Peasantry in the Later Thirteenth Century,” 155.

¹³⁵ *Select Pleas of the Forest*, 38-39.

In sum, the political realities of England in High Middle Ages did not allow for the fixed and permanent boundaries necessary for the king to possess true territorial sovereignty. The king could certainly claim inviolable rights to the royal forests and was within his authority to defend them. Yet, as each ruler grappled with the demands of a new political cycle, the forests, like all royal lands, necessarily became bargaining tools in the arena of jurisdictional politics. For centuries, huge tracts of land in England were contested territory, as kings pragmatically afforested and disafforested them at will, as bishops and barons sought legal protections for their own lands and claims, and as the kingdom settled into a patchwork of conflicting jurisdictions and composite sovereignty. It was likely difficult to convince the kingdom that royal land was sacrosanct when it was traded like livestock. Thus, sovereignty in the royal forests was more aspirational than truly territorial. At bottom, the king's claim was ideological – notions of ancient rights and royal prerogatives – and tied up in much older and broader discourses on what constituted a *communitas perfecta*. However, such a claim to power, much less the fullness of power, must necessarily be applied in space, in time, in people even. Again, there is a fundamental difference between a static claim and its dynamic construction and application. The royal forests were worked out on the ground, so to speak, and thus were far more fluid and porous than a totalizing ideological claim would otherwise allow.

The King's Larder

By now it should be obvious that the royal forests were spaces for far more than just hunting, financial gain, or political jockeying; rather, they were part and parcel of local and regional economies that connected the king and his needs with a host of bishops and barons, merchants and peasants, each with their own pragmatic realities. Very briefly, it should be noted that the forests also sourced the king's larder by which he maintained an expansive household

and retinue. However, the royal larder was but one of many that necessarily relied on the land encased in the spatio-legal *forestae*. This use of the forests serves to further underline the tension between an ideological view of land (such as the king's claim to exclusive territorial jurisdiction over previously common spaces) and the pragmatic reality of daily life in a pre-industrial community. The Charter Rolls are filled with exemptions to forest law being made to allow various groups, especially religious houses, to utilize the land for their daily sustenance. In fact, one of the king's most lucrative sources of income was landowners paying huge sums to be "quit of the regard" i.e. exempted from forest law so they could assart (make arable) their own land.¹³⁶

The *rotuli* also carry an undercurrent of the economic desperation of those caught up in as yet unmitigated forest law. For example, the same roll that contains the case of Gervais of Dene records the neighboring townships appearing in eyre to argue that their fields abutting the forests were being ravaged by the king's deer, and thus they could not profit from them.¹³⁷ We cannot ignore that the king's household and retinue demanded a great deal of meat and produce. This most certainly came at the detriment of competing larders, especially where there was a large concentration of royal demesne or residences. Thus, the largest concentration of royal forests clustered in a triangle between London, Cambridge, and Dorset where the king had over a dozen palaces to feed.¹³⁸ Weybridge, where Gervais of Dene and his companions were caught poaching, was situated in such a position: a heavily wooded area with rich soil, abutted by large meadows, and in close proximity to a royal manor.¹³⁹ Unsurprisingly, the plea rolls records a greater number of petty infringements against the vert or venison in that area.

¹³⁶ Birrell, "Forest Law and the Peasantry," 158.

¹³⁷ *Select Pleas of the Forest*, 25-26.

¹³⁸ Rackham, *Trees and Woodland in the British Landscape*, 166.

¹³⁹ H.C. Darby, *The Domesday Geography of Eastern England* (Cambridge: Cambridge University Press, 1971), 338.

This chapter began with a discussion and example of poaching as a form of politics, but it ends with poaching as the quotidian reality of life in the forests. We may see poaching as a social discourse among magnates competing for jurisdictional sovereignty, but peasants were by far the greater part of the offenders to forest law. To some, it is possible to read into this class struggle and social consciousness, an oppressed working class pushing against their feudal bonds.¹⁴⁰ This position is overstated, especially since most peasants caught poaching were doing so in the employ or even at the behest of a social superior. There is a clear pattern in the *rotuli*: a peasant is caught poaching, they are arrested, and at the inquisition their employer either comes and demands their release or claims no knowledge of their crime and abandons them.¹⁴¹ Bifurcating the peasantry from the gentry as distinct classes elides the relational dynamism at work in the forest. As we will see in the next chapter, Gervais of Dene, the man caught in the fray with two royal foresters on an August night in 1251, was himself a cook in the employ of a baron; he was very likely in the forest that night to bolster his lord's larder at the expense of the king's. However, his story reveals far more than just a simple cook caught in illicit behavior.

Conclusion

In this chapter I have tried to highlight the royal forests as multi-faceted and socially-resonant arenas for economic and political jockeying. They were not just hunting preserves, as the contemporary chronicles would have us believe, nor were they anemic attempts at conservation of England's dwindling woodlands. Rather, the forests were part and parcel to the economic life of their environments and tied up in the political negotiations and recalibrations by

¹⁴⁰ Julia Serovayskay, for example has written of this poaching as a "people's struggle" against institutional oppression, culminating in the uprising of 1381. Forest law, she claims, "served as an occasion for displeasure of the whole working population and evoked social conflict." See "People's Struggle Against the Institution of Royal Forest Reserves," in *Forest History: International Studies on Socio-economic and Ecosystem Change*, 255.

¹⁴¹ For an example of the former, see the case of Richard of Trussehare, the hunter of the powerful abbot of Ramsey, *Select Pleas of the Forest*, 17. For the latter, see the case of the Vicar of Geddinton's servant from the Northamptonshire Eyre of 1255, *Select Pleas of the Forest*, 37-38.

which the Plantagenet kings claimed, bolstered, and preserved their sovereignty in an increasingly pluralistic legal system. Thus, I argue that every function of the forests, from the simple collection of firewood to the sourcing of the expansive royal larder, in the end amounted to the working out of sovereignty in the midst of mutually-exclusive counter claims. Put another way, the multi-faceted uses and perceptions of the royal forests constituted the materialization of royal ideology – a battle of ideas grounded in finite space and time.¹⁴² As we will see in the next chapter, royal ideas of power and authority came into increasing conflict with ecclesiastical notions of *libertas ecclesiae*, both of which were forced to come to terms with the crucial distinction between what might be called pure ideology and ideology-in-space. To borrow David Delaney’s neologism, the royal forests were nomospheric arenas where abstract ideology was tempered into ideology-in-space, where “The Law” necessarily functioned as “law-in-space.”

¹⁴² See Elizabeth DeMarrais, Luis Jaime Castillo, and Timothy Earle, “Ideology, Materialization, and Power Strategies,” in *Current Anthropology* Vol. 37, No. 1 (February 1996), 16-19.

Chapter 2: Constructing Sovereignty Through Clerical Bodies

It was the second day of August, 1251, when the royal foresters of Weybridge were attacked in the night by armed poachers; by that Sunday, August 6th, the royal officers had called all the neighboring townships to an inquest to determine the identities of the assailants. There, the foresters swore that they recognized one of the malefactors, a man “who is called Gervais of Dene in the county of Bedford, formerly the cook of Jeremiah of Caxton, and who is now with Sir John of Crakehall.” Moreover, they testify “that he is wont to do evil in the forest and is enrolled in the verderer’s roll.”¹⁴³ Apparently, a few years prior to this inquest Gervais had been caught in an almost identical situation: a group of poachers, illegally armed in the forests, stumble upon the foresters, attack, then flee into the dark of the woods. His prior offense will become important later, but for now suffice it to say that in both cases Gervais was in the employ of influential men when he ran afoul of the king’s foresters.

In 1249, he was the cook of Jeremiah of Caxton, an itinerate judge of some note who presided over at least one royal assize under Henry III and heard pleas *coram rege*.¹⁴⁴ By 1251, Gervais was in the employ of Sir John of Crakehall, a far more illustrious benefactor. John was an archdeacon of the Church and the longtime steward and confidant of Robert Grosseteste, the powerful bishop of Lincoln; in this capacity, John negotiated with kings, disputed in the papal curia, and served as the executor of the bishop’s final will. As Grosseteste wrote in 1235, “John belongs to my household and ate at my table.”¹⁴⁵ Of equal importance, John served as the Lord Treasurer of England during the tense years leading to the Second Baron’s War, spearheaded by

¹⁴³ *Select Pleas of the Forest*, 77.

¹⁴⁴ Edward 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*, Vol. II (London: Spottiswood & Shaw, 1848), 293-94.

¹⁴⁵ *The Letters of Robert Grosseteste, Bishop of Lincoln*, translated by Frank Mantello and Joseph Goering (Buffalo: University of Toronto Press, 2010), 131.

the nobleman Simon de Montfort.¹⁴⁶ It is unclear to what extent John was involved in the buildup to this civil war, if at all, but there is evidence that Grosseteste likely was. The bishop seems to have had a close relationship with Simon de Montfort, whose son was under his tutelage. According to Adam Marsh, an intimate of both, Simon received a copy in 1249 of the memorandum *De Regno et Tyrannide* from the bishop, in which Grosseteste outlined the difference between a king and a tyrant.¹⁴⁷ It is altogether unclear how much this may have influenced the reformers' agenda, but it is clear that the barons came to rely on comparable ideas in their justifications for rebellion.¹⁴⁸

What has this to do with Gervais and the royal forests? A simple cook was caught poaching in the forests and was rightly charged, never mind the status of his employers. From the initial attack to the community inquest, this would seem to be true; however, the remainder of the case only makes sense in the context of Gervais' networks of connections. Gervais was a cook, yes, but one in the employ of an influential politician, who in turn served a powerful bishop, both of whom were averse to the interest of the king in the forests. Thus, Gervais was caught in a much wider and subtler constellation of meaning, stretching from the social and territorial to the ideological and back. In other words, a close reading of this case allows us to see Gervais at the nexus of the nomospheric – the “practical, performative engagements” of one individual in the midst of the “reciprocal materializations of ‘the legal,’ and the legal significance of the ‘sociospatial.’”¹⁴⁹ In that light, consider the next stage of the case.

¹⁴⁶ For more on John's role as treasurer under the Council of Barons, see Adrian Jobson's “John of Crakehall: the ‘forgotten’ baronial treasurer, 158-60,” in *Thirteenth Century England*, XIII (2011), 83-99.

¹⁴⁷ *The Letters of Adam Marsh, Volume I*, edited and translated by C.H. Lawrence (Oxford: Clarendon Press, 2006), 57-59.

¹⁴⁸ D.A. Carpenter, *The Reign of Henry III* (London: The Hambledon Press, 1996), 236-37. For more on the possible connections between Grosseteste and the reform agenda, see Sophie Ambler's article “On Kingship and Tyranny: Grosseteste's Memorandum and its Place in the Baronial Reform Movement,” in *Thirteenth Century England XIV* (2013), 115-128.

¹⁴⁹ David Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations*, 25.

Ten days after Gervais was named at the inquest, the foresters had been empowered to arrest him. The two foresters he allegedly attacked along with several others “came to the court of the granges of the priory of Huntingdon and met [him] riding upon the harness [saddle] of Sir John of Crakehall.”¹⁵⁰ They arrested Gervais, confiscated the harness, and put him in Huntingdon prison under the supervision of the sheriff, Sir Henry de Colleville. Notice both the location and the position of Gervais upon arrest. The priory of Huntingdon was a very important Augustinian house that held a large number of churches and endowments in the county.¹⁵¹ That Gervais was found in its grange indicates he was likely involved in either food production or trade with the priory, if not both. Whether or not he was clergy himself or just worked in their employ would become a crucial matter of debate. At this time, the priory was under the jurisdiction of the bishop of Lincoln – Robert Grosseteste. Did Gervais’ superiors know that he had attacked foresters of the king and was even then the subject of a royal inquest? Could they have been harboring him from the king’s justice? What is more, Gervais was found riding the personal mount of Sir John of Crakehall. Was the cook simply going about his business for Sir John or was his lord condoning his actions? It was certainly not uncommon for nobles and clergy to flout forest law and defend poachers from their households. It was also quite common for the bishops and barons to take part in the poaching themselves; Jean Birell notes that “amongst the venison offenders [as opposed to the vert], barons, bishops, parish priests and the local gentry and their households predominated.”¹⁵² It is entirely possible that Sir John not only knew of the poaching that night, but took part himself and escaped into the night.

¹⁵⁰ *Select Pleas of the Forest*, 78.

¹⁵¹ William Page, Granville Proby, and H.E. Norris, eds., *A History of the County of Huntingdon: Volume 1* (London: Victoria County History, 1926), 393-95.

¹⁵² Jean Birell, “Forest Law and the Peasantry in the Later Thirteenth Century,” 155.

The conclusion of this episode in 1251 – at least until it was brought back up in eyre years later – is swift and surprising and takes us to the heart of this case’s broader significance. Just a few hours after Gervais was arrested, “there came to the foresters Walter the chaplain of Huntingdon, and other chaplains of the same town, and William of Leicester, the bailiff of the lord bishop of Lincoln, with a book and candle, intending to excommunicate all those who laid hands on the said Gervais.” The clergymen claimed that Gervais was a clerk himself and a servant of the lord bishop, and thus demanded that he be released immediately. When the foresters, stunned no doubt, responded that they did not have the authority to release him once imprisoned, “[the priests] went to the prison and in the presence of the foresters took the said Gervais from prison as a clerk.¹⁵³ And they took off his cap and he had the crown of his head freshly shaven, whence the foresters suspected that it was shaven that day in prison.” And after just a few hours in custody, “Gervais went to his harness, and took it and went home.”¹⁵⁴

There is much here that needs unpacking. At first glance, this case would seem to be either a flagrant violation of royal jurisdiction on the part of the clergy or of ecclesiastical rights by the royal foresters. In reality, it was something much more complex. The foresters were legally justified in arresting and detaining Gervais as a poacher based on the king’s law. On the other hand, the clergy were legally justified in demanding the release of one of their own to stand trial in an ecclesiastical court by the force of canon law and customary right.

Ostensibly, then, this case was both a royal overreach and an ecclesiastical violation, yet in effect it was neither – at least not in the way the two sides imagined it. Neither position was as solid as each would have liked, as there was an essential difference between the static claim of

¹⁵³ As yet, I have found only one other example of forest law being vitiated by the threat of excommunication in such a manner. See the case from 1282 quoted in Margaret Bazeley, “The Extent of the English Forest in the Thirteenth Century,” 154-55.

¹⁵⁴ *Select Pleas of the Forest*, 78.

right or authority and its necessarily dynamic construction and practical application. Thus, Gervais and his fate sat at the intersection of incompatible assertions of special status and exclusive jurisdiction, both of which were defended through parallel procedures. The Crown was offended and reacted by marshalling the royal bureaucracy to a punitive response; the Church was violated and likewise deployed a cadre of its own bureaucracy, armed with its most potent sanction. A battle of competing ideologies played out on the ground over and over, each time in the bodies of individuals, and when the legal dust settled it was composite sovereignty that remained. After all, medieval society was perpetually marked by two rival structures of governance, both interlinked but conflicting, each limiting the other's power in their pursuit of incompatible goals.¹⁵⁵ And, to paraphrase Lord Acton's famous argument, this bifurcation eventually became a salutary check on both secular and ecclesiastical aspirations to the fullness of power, avoiding despotism and giving birth to England's much-celebrated civil liberties.¹⁵⁶

This chapter will follow the unfolding drama of Gervais' story and thus it begins with the unexpected threat of excommunication. To understand why the clergymen would react to Gervais' arrest in such a way and why the foresters would suspect trickery and refuse to comply, we must set this case in a much larger story in medieval England, one hinged on the use of excommunication but concerned ultimately with the proper allocation of power. Much has been written on the subject of excommunication in the Middle Ages, ranging from attempts at comprehensive analysis to more specialized studies of the particularities of canon law,¹⁵⁷ while

¹⁵⁵ See Brian Tierney "Medieval Canon Law and Western Constitutionalism," in *Catholic Historical Review*, Vol. 52 (1966), pp. 6-15.

¹⁵⁶ For Lord Acton's complete argument, see "The History of Freedom in Christianity," in *The History of Freedom, and other essays* (London: Macmillan & Co, 1907), pp. 30-60.

¹⁵⁷ For the former, refer especially to Elizabeth Vodola's *Excommunication in the Middle Ages* (Berkeley: University of California Press, 1986), and Rosalind Hill's "The Theory and Practice of Excommunication in Medieval England," in *History*, Vol. 42 (1957), pp. 1-11. As for the latter, the work of Richard Helmholz is essential. See especially: "Excommunication as a Legal Sanction: The Attitudes of the Medieval Canonists," in

others have focused on excommunication as a liturgical element rather than legal sanction.¹⁵⁸

While my purpose here is not to provide another comprehensive study of excommunication, nor is it to attempt an explication of canonical discourse on the practice, I do maintain that excommunication of the type used in this case is crucial to understanding the formation of sovereignty in England, yet it is often papered over by an inordinate focus on its ideological scale. In the case of Gervais, we see sovereignty being worked out on the ground, far from the contemplative centers of scholastics and jurists. As R.H. Helmholz has written, “the picture provided by the canonists masks the complexity of the process by which the canon law was made effective.”¹⁵⁹ Again, this case illustrates the essentially fluid process of constructing sovereignty, sitting as it does at the nexus of two mutually-exclusive claims to the fullness of power.

Next, as Gervais is hauled from jail by the irate priests and his cap is removed to reveal a fresh tonsure, I proceed to the shifting issue of proving clerical status. If there was to be a clear dividing line between *mundus* and *ecclesia*, if *libertas ecclesiae* was to be articulated, much less maintained, there would have to be an efficient categorization of cleric and laymen that was recognizable to all. Yet here we see a cook, recently caught poaching, now tonsured and apparently in holy orders after just a few hours in jail. To modern sensibilities, the foresters were right to be suspicious of Gervais’ tonsure, but in the context of thirteenth-century England they were very likely wrong about his status. The Church had gradually come to accept a very broad and fluid range of persons within the term *clericus*, and by the thirteenth century it was expanded to include anyone *qui habet tonsuram clericalem* i.e. those who had been taken the step of first

Zeitschrift Der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt. 202 (1982); and “Excommunication and the Angevin Leap Forward,” in *The Haskins Society*, Vol. 7 (1997), pp. 133-49.

¹⁵⁸ For two excellent examples, see: Lester Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca: Cornell University Press, 1993); and Sarah Hamilton, “Interpreting Diversity: Excommunication Rites in the Tenth and Eleventh Centuries,” in *Understanding Medieval Liturgy: essays in interpretation*, edited by H. Gittos and S. Hamilton (London: Routledge, 2017).

¹⁵⁹ Helmholz, “Excommunication and the Angevin Leap Forward,” 135.

tonsure as an indication of their plans to take minor church orders.¹⁶⁰ Thus, the expanding definition of *clericus* became another mechanism of the church to extend its sovereignty in the face of burgeoning royal power.

Finally, when Gervais was whisked away by the churchmen that afternoon, their actions were firmly within the tradition of a vociferously-defended legal practice known as *privilegium clericale* or the benefit of clergy. Gervais, they would later claim in eyre, should not have been imprisoned that day by virtue of his status (*ratione personae*), regardless of the legal matter at hand (*ratione materiae*); in other words, they would claim that the secular power did not have the authority to detain or call to court a clerk of the Church in the first place. This question of clerical status vis-à-vis secular jurisdiction and court competence was indeed a perennially fraught issue; in fact, as H.C. Lea once wrote, “perhaps the most efficient cause of demoralization in the clergy, and of hostility between them and the laity, was the personal inviolability and the immunity from secular jurisdiction which they succeeded in establishing as a recognized principle of public law.”¹⁶¹

Scholarship on *privilegium clericale* in the Middle Ages has traditionally been marked by the opinionated and often anti-clerical treatments of William Blackstone, F.W. Maitland, and H.C. Lea. When William Blackstone wrote of benefit of clergy in his seminal *Commentaries on the Laws of England* in the eighteenth century, he had at least six hundred years of the procedure to look back on. In describing the “ill use” of the *privilegium* by the “popish clergy,” Blackstone compared it to a river that had overrun its course: “as the overflowing of waters doth many times make the river to lose its proper chanel, so in times past ecclesiastical persons, seeking to extend

¹⁶⁰ For more on proof of clerical status and its broader significance, see Leona Gabal, *Benefit of Clergy in England in the Later Middle Ages* (New York: Octagon Books, 1969), pp. 62-90; and M.T. Clanchy, *From Memory to Written Record*, pp. 229-277.

¹⁶¹ H.C. Lea, *A History of the Inquisition of the Middle Ages* (New York: Harper and Brothers, 1887), 32.

their liberties beyond their true bounds, either lost or enjoyed not those which of right belonged to them.”¹⁶² Even as he admitted that this exemption stemmed originally from adherence to legally-accepted canon law and had eventually gone astray, Blackstone defined canon law itself as potentially usurpative: “[It] is a body of Roman ecclesiastical law, relative to such matters as that church either has, *or pretends to have*, the proper jurisdiction over.”¹⁶³ The emphasis here is mine, as this small phrase is paradigmatic of the whole extended struggle between secular and ecclesiastical jurisdictions in the thirteenth century. Did the clergy in fact have the right to be exempt from secular jurisdiction or did they not? Was it canon law that had ultimate authority over them or was it the increasingly centralized justice of the king?

By the nineteenth century when the practice was finally abolished in England, F.W. Maitland would describe the *privilegium clericale* in even more disparaging terms. In his view, the idea that a clergyman could not stand trial in secular court was ridiculous when the alternative was the anemic justice infrequently meted out by the ecclesiastical courts. Assuming that most criminous clerks who escaped royal justice through the procedure also escaped any form of punishment, Maitland asserted that by the end of the thirteenth century, the idea of a canonical trial was “little better than a farce” and only served to breed more crime.¹⁶⁴ In that same vein, H.C. Lea lamented that the Church “habitually threw its aegis over those least deserving of sympathy” and was therefore “responsible for crowds of unprincipled men, clerks only in name, who used the immunity of their positions as a stalking-horse in preying on the community.”¹⁶⁵

¹⁶² William Blackstone, *Commentaries on the Laws of England (1765)*, Vol. I (Chicago: University of Chicago Press, 1979), 364.

¹⁶³ Blackstone, 82.

¹⁶⁴ Frederick Pollock and F.W. Maitland, *The History of the English Law Before the Time of Edward I*, Vol. I (Cambridge: Cambridge University Press, 1898), 467.

¹⁶⁵ Lea, *A History of the Inquisition*, 33-24.

Given what benefit of clergy became in the later centuries, these legal historians might have been correct in painting the procedure as corrupt and bloated; however, in the thirteenth century, it was still very much a live political, economic, and spiritual issue that was much more complex than the Protestant snobbery of Blackstone, Maitland, or Lea allows. It is essential, then, to view benefit of clergy in its original context and with its intended purpose – as a bulwark of *libertas ecclesiae* in the midst of robust counter-claims to royal and baronial sovereignty in the twelfth and thirteenth centuries. Although it certainly grew into a personal exemption from justice that could be easily faked and was often manipulated, it began as a foundational right of the church itself. It was the privilege, after all, of the *clericale* (i.e. priestly class) not the individual *clericus* himself; Maitland and Blackstone miss the importance of this distinction in their refusal to praise a so-called popish practice. Like the *foresta regis*, this practice was fundamentally a claim of sovereignty predicated on jurisdictional control and an assertion of legal status. If it shed its larger implications by later centuries and became a question solely of status, we cannot let that prejudice our analysis of it as a dynamic and pressing concern for the nascent church of earlier centuries.¹⁶⁶

Excommunication: A Mechanism of Constructing Sovereignty

Excommunication had been protean and contested for almost the whole of Christianity's existence, as the Church struggled with each new generation to define both theory and practice. Like comparable secular sanctions in medieval England, it was fluid and contingent rather than fixed and certain. Doubtless this was due to the expansive purpose it was forced to serve in later years as Christendom morphed from the margins of empire to its very core. By the time the terror

¹⁶⁶ For a more balanced treatment of the practice see Leona Gabal's comprehensive study *Benefit of Clergy in England in the Later Middle Ages*, and Candace Gregory-Abbott's summation in "Sacred Outlaws: Outlawry and the Medieval Church" in *Outlaws in Medieval and Early Modern England: Crime, Government, and Society c. 1066-1600* (London: Routledge, 2009).

of excommunication was leveled against the hapless foresters in 1251, the practice had undergone quite a marked transition indeed. The practice is grounded in the teachings of Jesus in regards to a gradual process of admonition for an erring brother. An initial offence to the brethren was to be handled privately first, then in the company of several others, then by the whole church. Only then could an unrepentant man be expelled: “but if he neglect to hear the church, let him be unto thee as a heathen man and a publican.”¹⁶⁷ From the beginning, then, excommunication was a mechanism to return a sinner back to the faithful, not a political weapon to be wielded in the arena of jurisdictional politics.

Almost immediately, however, excommunication gained a more dramatic tone. Upon hearing reports of incest among the Corinthian church, the apostle Paul insisted that the offenders be immediately expelled from the faithful, without any need for further process: “deliver such a one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus.” Thus, there remained a soteriological concern, but the processual timeline was abbreviated for fear of contagion.¹⁶⁸ As he writes, “Know ye not that a little leaven leaveneth the whole lump? Purge out therefore the old leaven, that ye may be a new lump.”¹⁶⁹ For much of its early life, the Church was a structurally simple, often fragile community in which individuals and the *corpus Christi* were “radically interdependent”; thus, anxiety over social cohesion or deviance was a serious, even existential concern for the church.¹⁷⁰ A few centuries later, St. Jerome articulated this fear best: “Cut off the decaying flesh, expel the mangy

¹⁶⁷ Matthew 18:15-17 (KJV)

¹⁶⁸ For more on this, see Adela Yarbro Collins, “The Function of ‘Excommunication’ in Paul,” in *The Harvard Theological Review*, Vol. 73 (1980), pp. 251-63.

¹⁶⁹ I Corinthians 5:4-6 (KJV)

¹⁷⁰ Vodola, *Excommunication in the Middle Ages*, 191-92.

sheep from the fold, lest the whole house, the whole paste, the whole body, the whole flock, burn, perish, rot, die.”¹⁷¹

As the Church grew in numbers and power across the Early Middle Ages, so too did both its temporal holdings and the threats against them. In the uncertainty of political decentralization, the Church took to a territorial strategy as much as the nascent kingdoms it inhabited. By the twelfth and thirteenth centuries in England, these territories were often centered around religious houses and their environs – including farms, woods, pastures, and even villages. Even a royal forest was no impediment. For example, in February of 1227, King Henry III granted to the Abbey of St. Mary in Dean Forest “all the woods about” in order to provide them with a needed source of fuel.¹⁷² In another charter that same month, the king granted to the bishop of Bath and the chapterhouse of Wells “that their manor of Nortcury shall be disafforested as well of venison as of all other things pertaining to the forest, so that they may enclose, make parks and essarts, and take wood in the same manor at their will.”¹⁷³ This was replicated over and over across the realm as every religious house, large and small, clamored in some way for territorial sovereignty. G.W.S. Barrow was likely correct when he claimed that “there were in fact too many monasteries in England [and] too much property was owned by them.”¹⁷⁴ These ecclesiastical territories were hardly few and far between; the realm was scattered with them, each reliant on the same mechanisms of territoriality as the king’s demesne.

And, like their secular counterparts, these territories were not inviolable and could easily become sites of fluid boundaries and rampant transgression. As Lester Little has shown, these

¹⁷¹ Quoted by Thomas Aquinas in *Summa Theologica*. See *The Summa Theologica of Thomas Aquinas*, trans. by The Fathers of the English Dominican Province (London: R&T Washbourne, Ltd., 1917), 154-55.

¹⁷² *Calendar of the Charter Rolls*, 11.

¹⁷³ *Calendar of the Charter Rolls*, 4.

¹⁷⁴ G.W.S. Barrow, *Feudal Britain: The Completion of the Medieval Kingdoms 1066-1314* (London: Edward Arnold, 1956), 321.

religious houses developed in response the complex doctrinal and procedural framework that would eventually coalesce into excommunication as it was used in the Gervais case. Known as maledictions – scripted liturgies performed by monastics to curse enemies who infringed on their rights or trampled their lands – these invectives were intended to preserve a territory much as one would build a wall or ditch. In fact, their use, Lester notes, indicated a failure of alternate means of redress. In other words, a malediction was deployed when the strength of a wall had failed or the fear of Holy Mother Church had waned.¹⁷⁵ Thus, ecclesiasts relied on liturgical drama and fear of the unknown to compel those who would infringe on *libertas ecclesiae* to repent.¹⁷⁶ Often, this was embedded in the founding charters themselves in the form of sanction clauses; these began with *si quis* (“If anyone...”), and promised a slew of disaster should they be violated. Every monastery had a cartulary (collection of charters) which they jealously guarded, often copying them into sacred texts to preserve them.¹⁷⁷ In times of crisis, these sanction clauses would take effect and the maledictions would be publically pronounced to protect the Church’s territorial jurisdiction.¹⁷⁸

Thus, we see the spiritual sanction intended by the early church to maintain the Body of Christ becoming a political tool of territoriality and jurisdictional politics. It matters little that the Church was forced to use excommunication in such a way by the political realities of the time;

¹⁷⁵ Lester Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca, NY: Cornell University Press, 1993), 115-125.

¹⁷⁶ For example, these maledictions would often include the phrase *anathema maranatha* (roughly “An offering – oh Lord come!”) which was rarely translated into Latin. Thus, it retained an almost magical quality that was likely meant to instill a sense of mystery or terror. The implication was that the anathematized were to be offered up to perish at the Parousia of Christ. See *Benedictine Maledictions* 32-33.

¹⁷⁷ Little, 53.

¹⁷⁸ A particularly dramatic and evocative example is Pope Victor II’s eleventh-century bull in defense of Chertsey Abbey: “but if anyone moved by the prompting of the devil [...] shall presume to diminish the goods of this church by encroachment, let him be condemned by God and St. Peter [...] Shall it be done? Let it be done. Does it please? It pleases. Do you commend it? We commend it. Let it be established.” The anathema ends with *Fiat. Fiat. Fiat*. Quoted in *English Historical Documents, Volume II: 1042-1189*, edited by David Douglas (New York: Oxford University Press, 1953), 599.

when the *corpus Christi* was mapped onto empire, it became like a massive guild, reliant on the same mechanisms of power as the secular authorities. By the High Middle Ages, the Church had become dependent on excommunication (or at least the threat of it) to stretch, if you will, the *corpus Christi* onto a political frame of *societas perfecta*. Social and spiritual cohesion now required much larger efforts to maintain and much more dire consequences for deviance.

Therefore, I contend that by the middle of the thirteenth century, when a cadre of irate priests sprung Gervais from jail under a vague threat of excommunication, it had become a mechanism of constructing sovereignty, at once tied inextricably to its salvific roots in theory and yet far removed from them in practice. And, like the comparable royal claims to the fullness of power, papal sovereignty was frequently contested and always contingent; there remained, as ever, an essential difference between legal mandates and their social manifestations.¹⁷⁹ It is no surprise that the pope's most potent weapon was the same.

How, then, was excommunication functioning that morning in 1251? Were the priests of Huntingdon seeking in their pastoral role to admonish and restore a wayward soul? Had they followed the gradual due process outlined by the Church? Certainly not. Look, for example, at the standard rite of excommunication used for centuries by the church. According to the Romano-German Pontifical, when a certain man had been "persuaded by the devil" to err, he was to be warned thrice by priests and letters, inviting him *ad emendationem et satisfactionem et poenitentiam corripientes eum paterno affectu*. It was only after a rebuke of paternal affection and a clear refusal to make amends that the *membrum putridum et insanabile* must be cut off.¹⁸⁰

¹⁷⁹ This was particularly true on the periphery of Christendom (e.g. Ireland), where "the same widespread conflict and decentralization which gave rise to the behavior incurring excommunication also prevented enforcement and reduced the sanction's sting." See Jay Gundacker, "Absolutions and Acts of Disobedience: Excommunication and Society in Fourteenth-Century Armagh," in *Traditio*, Vol. 64 (2009), 184.

¹⁸⁰ Quoted in Sarah Hamilton, "Interpreting Diversity: Excommunication Rites in the Tenth and Eleventh Centuries," in *Understanding Medieval Liturgy: essays in interpretation*, edited by Helen Gittos and Sarah Hamilton (London: Routledge, 2017).

It is clear then that the episode in 1251, with the accouterments of liturgy present but no prior warnings, was what R.H. Helmholz has called a “canonically questionable” use of the sanction. The canonists, he argues, were keenly aware that excommunication should only be used with circumspection and procedural care; its purpose, after all, was to “cure a spiritual disease, not to aggravate one.”¹⁸¹

In practice, however, as the Church turned to the sanction over and over for an increasingly wide array of needs, excommunication perhaps inevitably lost its spiritual terror and gained instead the patina of politics and power. In other words, when it became a weapon in the arena of jurisdictional politics, when popes and bishops wielded it to bludgeon princes into compliance, and when even local clerks could use it to indemnify one of their criminous brothers, perhaps even the most pious could be excused for looking askance at the practice. There is, after all, a wide gap between the threat of excommunication to spur repentance and a threat to spring a well-connected poacher from jail. To be sure, the Church sought repeatedly to rein in abuses of the sanction, especially in the face of mounting lay apathy toward it by the fourteenth century.¹⁸² Beginning with the papal reform movement of eleventh century, canonists and church councils repeatedly struggled to both preserve *libertas ecclesiae* and maintain strict moral standards for the clergy. Yet, in their zeal to achieve the former, the reformists often neglected the latter.

Consequently, from the Second Lateran Council of 1139 to the First Council of Lyon in 1245,¹⁸³ the Church utilized a novel form of the sanction known as excommunication *latae*

¹⁸¹ R.H. Helmholz, “Excommunication as a Legal Sanction,” 204.

¹⁸² Vodola attributes this to secular failure to prosecute contumacious excommunicates, the willingness of Mendicants to perform mass for the liturgically ostracized, and the culmination of centuries of ascendancy of royal courts over the ecclesiastical. See *Excommunication in the Middle Ages*, 140-63.

¹⁸³ By 1245, the council sought to refocus excommunication back to its roots as medicine and discipline rather than death and annihilation (*cum medicinalis sit excommunicatio non mortalis, disciplinans non eradicans*). See *Decrees of the Ecumenical Councils*, Vol. 1, edited and translated by N.P. Tanner (D.C.: Georgetown University Press,

sententiae. Far removed from the gradual redress of grievances outlined in the New Testament, this sanction took effect immediately upon pronouncement and required full social ostracization without a secular trial.¹⁸⁴ It was at once a robust response to heresy and secular overreach and a recipe for *ex parte* abuse of clerical authority, undergirded as it was by the assumption that prior warnings were not needed (or were already implicit) due to the manifest nature of the transgression.

At its best, this *ipso facto* use of the sanction contributed, if inadvertently, to a pronounced increase in political awareness and legal consciousness in England by 1300. With the reissue of Magna Carta and the Charter of the Forest in the 1220s, a sentence of excommunication *lata sententia* had been applied to any violators of the privileges (particularly ecclesiastical) granted in those documents.¹⁸⁵ And, since prior warning was technically required, clergymen, out of concern for the *cura animarum*, were to frequently publish and read the sentence as well as teach the clauses of the Charters to their parishioners, lest they imperil their souls through ignorance. Thus, the Magna Carta and the Charter of the Forests were widely copied and held by parish priests all across England, and knowledge of their contents was widespread among the laity.¹⁸⁶

At its worst, excommunication of this sort became a cudgel for reforming clergy to enforce their vision of proper balance between *mundus et ecclesia*. Perhaps no other cleric was

1990), 291. Note, however, that only the soteriological consequences of excommunication *latae sententiae* were removed, not the socio-legal.

¹⁸⁴ Vodola, 28-29.

¹⁸⁵ As Rosalind Hill noted years ago, even if we no longer venerate the Magna Carta as the keystone of all constitutional freedoms, we cannot ignore that the medieval Church felt it important enough to warrant such an automatic sanction. To break the Charter was to place yourself outside the bounds of Christendom. See “The Theory and Practice of Excommunication in Medieval England,” in *History*, Vol. 2 (1957), 9.

¹⁸⁶ For more on this, see Felicity Hill, “Magna Carta, canon law, and pastoral care: excommunication and the church’s publication of the charter,” in *Historical Research*, Vol. 89, No. 246 (2016), 640-43. For how this contributed to an increased legal consciousness in England, see Musson, *Medieval Law in Context*, Ch. 6: The Politicization of Law

more paradigmatic of the dangers to such an approach than Thomas Becket. The archbishop was known for repeatedly issuing excommunication without any prior warning; what is more, Becket relied on the older tradition of liturgical maledictions to curse his enemies rather than the newly-judicialized sanction found in canon law. Throughout the twelfth century, the practice of excommunication gradually shifted from the old anathemas hurled against malefactors by irate saints and priests to a more measured and procedural sanction. In effect, excommunication shifted from the weapon of heroic priests to the processual task of professional lawyers. Becket, much to the chagrin of the canonists, relied on the older tradition of heroic – one almost thinks swashbuckling – saints. St. Bernard of Clairvaux, for example, was famously said to have excommunicated a swarm of flies drowning out his sermon; the next morning they were all found dead. And, according to the *Magna Vita Sancti Hugonis*, Hugh of Lincoln once excommunicated on the spot a woman who had spit her defiance in his face; three days later, she was found “strangled by the devil.”¹⁸⁷ Like these seemingly indomitable saints, R.H. Helmholz writes that Becket “wielded the sword of excommunication as if it were in fact a weapon.”¹⁸⁸

Indeed, anathema had been compared to a sword of the church long before Becket; however, by the archbishop’s famous conflict with King Henry II, both secular and ecclesiastical law had been undergoing parallel processes of centralization and institutionalization. The streamlining of secular justice under Henry II was accompanied by a marked systemization of the theory and application of canon law. Thus, by the turn of the next century, the once terrible sword of the church had been sheathed in the legalization of what R.H. Helmholz characterized

¹⁸⁷ *Magna Vita Sancti Hugonis. The Life of Saint Hugh of Lincoln*, Volume II, edited by Decima Douie and D.H. Farmer (Oxford: Oxford University Press, 1961), 20-25.

¹⁸⁸ Helmholz, “Excommunication in Twelfth Century England,” 241.

as the “canonical leap forward.”¹⁸⁹ Not only was a stricter process created by the canonists for using excommunication,¹⁹⁰ by the thirteenth century it had become so judicialized that lay authority was almost entirely responsible for its use. In other words, the Church could brandish the sword all it liked, but it was the secular arm that would have to do the heavy work of wielding it. R.W. Southern has rightly described this as a “division of sovereignty” wherein the secular power held almost all responsibility for coercion.¹⁹¹ By the thirteenth century, England in particular had settled into a well-established procedure for the use of excommunication: the bishop would signify to the royal chancery that an excommunicate had remained contumacious for more than forty days, at which point the chancery would issue a writ of arrest to the local sheriff to detain the offender. This process required near constant cooperation between the clergy and laity – a clear message that the English Church could not by itself maintain cohesion.¹⁹²

Despite the dramatic shift in legal culture as excommunication was restrained by effective procedural bounds, nevertheless “its imposition for trivial and unworthy ends did not come to a halt.”¹⁹³ Thus, not only did Gervais’ rescuers deploy the sanction in a canonically questionable manner, by the middle of thirteenth century they had also done so *extra iuris ordinem*. Yet why would a group of priests come laden with books and candles to spring Gervais from jail? Their conflict was nothing short of the construction of composite sovereignty from the interplay of mutually-exclusive claims – with excommunication as the medium of coercion. The

¹⁸⁹ See Helmholz, “Excommunication and the Angevin Leap Forward,” in *The Haskins Society*, Vol. 7 (1957), 145. His choice of phrase was in response to Doris Stenton’s earlier notion of an “Angevin Leap Forward” under Henry II. See *English Justice between the Norman Conquest and the Great Charter, 1066-1215* (Philadelphia: The American Philosophical Society, 1964), 22-53.

¹⁹⁰ For example, it could only be used by a bishop or his deputy, the defendant was now ensured a chance to respond, and written documentation was required.

¹⁹¹ Southern, *Western Society and the Church in the Middle Ages*, 17.

¹⁹² See F.D. Logan, *Excommunication and the Secular Arm in Medieval England: a study in legal procedure from the thirteenth to the sixteenth century* (Toronto: Pontifical Institute of Medieval Studies, 1968).

¹⁹³ Helmholz, “Excommunication in Twelfth Century England,” 250.

clergymen that morning were brandishing the sword of anathema against the same secular arm that would inevitably be tasked with wielding it. In other words, this was a performative engagement; the sanction was being used as a weapon of sovereignty, if you will, to express and defend an ultimately untenable position. The result of such micro-conflicts multiplied across the Middle Ages was a “genteel rivalry of attrition” between ecclesiastical and secular jurisdictions in England.¹⁹⁴ In the end, then, the question of whether the threat of excommunication in Gervais’ case was legitimate is far less interesting than whether or not the clerks that day *thought* of it as such. After all, both jurisdiction and sovereignty remain ideological constructs until they are worked out on the ground, in space, and through the corporeal bodies of their agents. We turn next to the definition of the term *clericus* and the social performance of that status category.

Proving Clericus

R.W. Southern has noted, “there was no general lay interest that called for protection. But there was very conspicuously a general clerical interest.”¹⁹⁵ It was the clergy, not the laity, that required protection for a particular status, and this differentiation ran right to the core of Christian doctrine. “My kingdom is not of this world,” Jesus tells Pontius Pilate.¹⁹⁶ And Peter assures the churches of Asia Minor, “ye are a chosen generation, a royal priesthood, a holy nation, a peculiar people.”¹⁹⁷ Perhaps inevitably, the Church had struggled to articulate a vision of a *societas perfecta* linking laity and clergy, while also maintaining the otherworldliness of both their possessions and bodies. There was a long tradition of sanctuary law in England, whereby all churches were automatically given a protected status – a peculiar place for a peculiar

¹⁹⁴ Vodola, *Excommunication in the Middle Ages*, 190.

¹⁹⁵ Southern, *Western Society and the Church in the Middle Ages*, 39.

¹⁹⁶ John 18-36-37 (KJV)

¹⁹⁷ 1 Peter 2:9 (KJV)

people if you will.¹⁹⁸ However, it was the body of the clergy themselves that became a far more contentious issue between Church and Crown.

Libertas ecclesiae, it was argued, applied to all sons and daughters of the Church – not only to a particular location. Consequently, in the same way a church was to be kept holy, so too was the person of a clerk. These liberties applied to the clergy *ratione personae*, not by virtue of their physical position. Thus, when a clerk stepped outside the recognized sacred space of a sanctuary, in effect their corporeal frame became spatialized as a territory; by their very bodies, and the legal and spiritual value vested within, they fashioned and extended the territorial claims of the Church, even as they passed within the covert of a royal forest. Consequently, to “lay violent hands” on a clerk was not just a serious crime,¹⁹⁹ it was the transgression of a boundary. And, R.A. Houston reminds us, “breaking a boundary in England was a relational statement, replete with symbolic as well as legal and material meaning.”²⁰⁰ In lieu of a comprehensive system of documentary proof, the boundaries of that status were performative – acted out for others, worn on the body, embedded in language. Legal status for the clergy was worked out on the ground – at the forest floor – as a process of social performance, acceptance, and negotiation.

Thus, when Gervais of Dene was hauled from prison by the churchmen that morning, one imagines they rather dramatically whipped off his cap and presented a freshly-tonsured head to the wary foresters. Perhaps in an earlier century that would have been enough to terrify the officers into restoring a clerk to the Church; however, by the thirteenth century both the term

¹⁹⁸ Churches were held above the supposed pollution of secular justice; thus, any criminal could avoid capture in a church provided they had not stolen from the church or committed murder in the church itself. See Helmholz, *The Ius Commune in England: four studies* (Oxford: Oxford University Press, 2001), 35.

¹⁹⁹ The Second Lateran Council of 1138 declared an automatic excommunication for anyone who harmed a clerk and required that they travel to Rome personally to be absolved of their sin. Doubtless, this was rarely enforced, but it shows the gravity of the issue for the Church. See Hugh Thomas, *The Secular Clergy in England, 1066-1216* (Oxford: Oxford University Press, 2014), 210.

²⁰⁰ Houston, “People, Space, and Law,” 81-82.

clerk and the methods of proving it had become much more complicated. Thus, the foresters could suspect that Gervais was shaven that very morning while in prison; whether or not Gervais was actually a clerk in holy orders is hard to ascertain.

This uncertainty was exacerbated by the very broad range of roles that the Church recognized under the category of *clericus*.²⁰¹ In the reign of Henry II, it was defined as those clergy in Holy Orders (i.e. subdeacon or above). By the thirteenth century, however, this definition was expanded to include those having first tonsure (*qui habet tonsuram clericalem*).²⁰² Thus, many more people from all levels of society began to seek ordination and tonsuring, either for the economic opportunities of holy orders or the protection it afforded. Perhaps Gervais was indeed a clerk who had recently (very recently) taken the first steps to joining an order. With this expansive definition came both greater uncertainty and greater dishonesty. It was not entirely uncommon for the accused to fake clerical status to avoid punishment in secular court; occasionally they were even assisted by a sympathetic jailor.²⁰³ And, this was not unique to England – there is evidence of French men in the thirteenth century also shaving their own heads to pass as a clerk in court.²⁰⁴ This type of duplicity rested on the popular assumption that the habit made the priest, that it was enough to look and act like a clerk to actually be one. According to Giles Constable, it was the outward signs of religious life, the habit and tonsure as a tacit profession of faith, that for most people “summed up what it means to be a member of a religious community.”²⁰⁵

²⁰¹ According to Pollock and Maitland, the term could technically apply to all monks and nuns, although they seem to have rarely claimed benefit of clergy. See *The History of the English Law*, 469.

²⁰² Gabal, *Benefit of Clergy in England*, 63.

²⁰³ Gabal, 64.

²⁰⁴ Phillippe de Beaumanoir, *Coutumes de Beauvaisis*, Vol. I, edited by A. Salmon (Paris, 1889), 169-70.

²⁰⁵ Giles Constable, “The Ceremonies and Symbolism of Entering Religious Life and Taking the Monastic Habit from the Fourth to the Twelfth Century,” in *Culture and Spirituality in Medieval Europe* (Brookfield, VT: Ashgate Publishing Company, 1996), 832.

However, by the thirteenth century, *habitum et tonsuram clericale* had become such a simple thing to fake that both secular and ecclesiastical authorities inevitably came to demand stricter proof. Finally, the ultimate piece of evidence became either letters proving membership in a holy order or a literacy test.²⁰⁶ Until the fourteenth century, literacy remained solidly the purview of clerks and thus could not easily be faked. In the early Middle Ages, uncertain of their role in a martial culture of illiterate warriors, the clergy had established and jealously guarded a privileged status as *litterati*. By the thirteenth century, *clericus* and *litteratus* had become so intertwined that in common parlance, the latter could be called the former whether they were actually in holy orders or not. Thus, it seems the term clerk was used adjectivally, denoting erudition rather than membership in Holy Orders per se.²⁰⁷ As an example of the preeminence given to literacy, according to Reginald of Durham's hagiography, one of St. Godric's miracles was to identify a young knight as a clerk despite his shamefully overgrown tonsure. Godric demanded that the young man read the Mass, revealing his clerical status and allowing the saint to admonish him publically.²⁰⁸

As literacy rates expanded across the thirteenth century, so too did the ability to again foil the proofs required for clerical status. As A.T. Carter noted, "the reading test which once sifted out the clerks now let in the layman."²⁰⁹ There are numerous instances of supposed clerks failing the literacy test, then learning to read a few verses in Latin the night before a capital sentence. The opening of the fifty-first Psalm became a popular "neck-verse,"²¹⁰ so named because its recitation could save your neck by transferring your case to an ecclesiastical court where no

²⁰⁶ Gabal, 64-65.

²⁰⁷ Clanchy, *From Memory to Written Record*, 229-31.

²⁰⁸ Reginald of Durham, *Libellus de Vita et Miraculis S. Godric, Herenitae de Finchale*, edited by Joseph Stevenson (London: J.B. Nichols and Sons, 1847), 226-28.

²⁰⁹ A.T. Carter, *A History of English Legal Institutions* (London: Butterworth & Co., 1902), 247.

²¹⁰ Psalm 50 in the Vulgate: *Miserere mei Deus secundum magnam misericordiam tuam et secundum multitudinem miserationum tuarum dele iniquitatem meum.*

sentence of blood (i.e. capital punishment) could be passed.²¹¹ By the end of the thirteenth century, and certainly by the fourteenth, literacy had shifted from just an accessory proof of clerical status to itself proof competent. A fascinating case from 1293 illustrates this transformation. After being charged with rape, a man named Hugh plead clergy in court (*ego sum clericus, et non debeo respondere sine ordinariis meis*) but was denied when it was revealed that he was married. Next, he claimed to be a knight and demanded a jury of his peers; evidently it was allowed, but when the jury ruled against him, Hugh challenged them as biased. The judge next asked him to read his challenge in court as proof of clerical status, and when he admitted that he could not, his counsel coached him privately, he read the challenge before the court, and was promptly acquitted.²¹² No king relished the thought of fake clerks escaping justice, but it was not until the reign of Henry VII at the end of the fifteenth century that the literacy test was finally abolished.

What has this to do with composite sovereignty? In the articulation and defense of *libertas ecclesiae* we see two dominant threads: special status and exclusive jurisdiction. Both inevitably led back to the view of the Church as a *genus electum* – in the world yet not of the world. Consequently, any secular claim to sovereignty was inevitably at odds with the ecclesiastic’s self-conception. And yet Jesus had said, “Render therefore unto Caesar the things which be Caesar’s, and to God the things which be God’s.”²¹³ The apostle Peter admonished his readers to “Fear God. Honour the King.”²¹⁴ These verses, along with numerous others, raised a host of questions about sovereignty and jurisdiction in the Middle Ages: Was it Caesar’s to judge

²¹¹ This can be expressed through the legal maxim *ecclesia abhorret a sanguine* (“the Church recoils from blood”). For more on this, see James Whitman’s excellent discussion regarding corruption of blood in *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven: Yale University Press, 2016).

²¹² *Year Books of the Reign of King Edward the First*, edited and translated by A.J. Horwood (London: Longman & Co., 1873), 529-531.

²¹³ Luke 20:25 (KJV)

²¹⁴ 1 Peter 2:17-18 (KJV)

the Church or was it God's alone? How could you honor the king if you refused to submit to his justice? How could the secular arm punish a criminal clerk without committing sacrilege themselves? There were no easy answers, and thus a protracted process of calibration, equilibrium, and re-calibration stretched across the centuries. The friction between two mutually-exclusive claims to the fullness of power produced a fluid system of legal pluralism in England, which in turn almost guaranteed the presence of pervasive jurisdictional politics. This occurred most *noticeably* at the level of courts, as we will see in the next section, but most *often* through the performative engagements of actual people constructing sovereignty on the ground. *Clericus*, and all it ideologically entailed, was necessarily worn on the body and acted out well before it was written down. Therefore, as Gervais and his compatriots moved through Weybridge that night in 1251, it was their very bodies, tied as they were to status, jurisdiction, and sovereignty, that constituted the forest as contested space. As a corporeal expression of special status (conveyers of sovereignty, if you will), clergy in the royal forests became what de Certeau has called subversive walkers, at once constituted by and constructive for the nomosphere of law-in-space. In the end, the expanding definition of *clericus* throughout the Middle Ages and the increasingly uncertain social performance of that status both served as mechanisms of the Church to expand its jurisdiction (or perceived sovereignty) in response to burgeoning royal power.

Privilegium Clericale

Although I have drawn a distinction here based on the stages of the Gervais case, in practice special status and exclusive jurisdiction were inextricably bound to each other. A privileged status allowed for the existence of exclusive jurisdiction, while the latter in turn protected and reified the former. The final section of this chapter moves from clerical status to

this exclusive jurisdiction in the form of ecclesiastical courts and the procedure of *privilegium clericale*. First, let us return to the case of Gervais of Dene as it concludes on the sixth of June, 1255, with a flurry of claims to special status and exclusive jurisdiction. When Gervais' case was finally heard in eyre, perhaps unsurprisingly he did not appear in court to answer the summons. The king's justices turned to the highest-ranking clergyman present that day, the archdeacon of Huntingdon, Roger of Raveningham, who was ordered to have Gervais and the clerks who released him from jail in court by the next Sunday.²¹⁵ When the day arrived, Roger returned with Walter, the vicar of the priory where Gervais was arrested and the apparent leader of his rescue, who testified that he did nothing more than admonish the foresters that Gervais was a clerk (special status) and must be released to answer in courts Christian (exclusive jurisdiction).²¹⁶

Unconvinced, the king's justices informed Walter that he and his companions had acted *contra pacem* and by force rather than words alone; as the foresters would describe it to the court, the priests had dragged out and forcibly carried away their prisoner (*extraxerunt et abduxerunt*). And being asked how he wanted to acquit himself, "he says that he will not answer in this court."²¹⁷ Soon after, "master Roger comes and demands the said Walter as his chaplain, and he was delivered to him convicted of the aforesaid deed." At last, Gervais arrives in court and "it is proved by the foresters and verderers that he is an evil doer to the venison." However, the archdeacon again steps in: "Roger demands him as a clerk, and [Gervais] is delivered to him as a manifest evil doer, and one convicted of this."²¹⁸

²¹⁵ Roger was apparently no stranger to the forest eyre; he had previously been amerced by the justices after his hunter was caught poaching in the forest. See *Select Pleas of the Forest*, 12.

²¹⁶ The word used in the plea roll is *ammonere*, meaning to remind or warn. Importantly, it carries the meaning of a reminder of something that should already be known (in this case, the sovereignty of the Church).

²¹⁷ ...*dicit quod non vult in ista curia respondere*.

²¹⁸ *Select Pleas of the Forest*, 12-13.

A few details should be noted. First, Roger was very likely present in court that day in an official capacity as ordinary: to claim certain accused as clerks and whisk them away to an ecclesiastical court.²¹⁹ Secondly, Walter's reply that he would not answer in a forest court was a clear statement on court competence – the eyre did not have the jurisdiction needed to demand a plea from him. Finally, indicative of the shifting equilibrium of composite sovereignty, the court did in fact release Walter and Gervais to the Church, but only after convicting them as *malefactores de foresta*. A great deal deserves to be said on each of these, but at the risk of giving short shrift to such an important topic as benefit of clergy, I end this chapter with relatively few comments on the practice. The minutia of the legal procedure has been treated elsewhere and a gloss is not my aim here. Instead, I hope to highlight a particular example of shifting legal procedure as a process of negotiation – a cycle of equilibrium, disturbance, and recalibration – between clerical and lay authority. As with the fluctuating use of excommunication and the expanding definition of clergy, the *privilegium clericale* illustrates the reality of composite sovereignty in England by the thirteenth century.

How did such a procedure emerge? It was predicated on the existence and jurisdiction of separate ecclesiastical courts to which the clergy could retreat. In England, this divide was born from an ordinance of William the Conqueror in the 1070s that mandated separate courts be set up for matters spiritual and moral. “No bishop or archdeacon,” the king ordered, “shall henceforth hold pleas relating to the episcopal laws in the hundred court; nor shall they bring to the judgement of secular men any matter which concerns the rule of souls.”²²⁰ The ambiguity of this categorization perhaps inevitably led to future contestation. What happened when a so-called

²¹⁹ For more on the role of ordinaries in court, see Gabal, *Benefit of Clergy in England*, 53-55.

²²⁰ See “William I's writ concerning spiritual and temporal courts,” in *English Historical Documents, Volume II: 1042-1189*, 604-05.

spiritual case also violated the king's peace? Who had jurisdiction then? It should be noted that this ordinance did not actually establish a new and separate ecclesiastical jurisdiction in England, but served rather to bolster existing church rights against encroachment by the hundred courts. As Colin Morris explains, the ordinance "did not create a spiritual jurisdiction, but corrected its exercise from existing malpractice."²²¹ The creation of truly distinct church courts with defined procedure and jurisdiction was the creation of the succeeding century and the so-called Becket Controversy.

The famous struggle between King Henry II and Archbishop Thomas Becket in the twelfth century was concerned primarily with this troubling uncertainty of jurisdiction and thus with the relative status of clergy. All of this was thrown into sharp relief by the issue of criminous clerks. How do you punish a clerk who had committed a violent crime without yourself committing the sacrilege of "laying violent hands" on him? After a protracted, high-profile drama – culminating with the murder of Becket in his own cathedral and the public penance of the king – a rather innovative solution was crafted from compromise, with the Crown gaining far more than it lost. As F.W. Maitland described the cycle of negotiation between *mundus et ecclesia*: "everywhere we see strife and then compromise, and then strife again, and at the latest after the end of the thirteenth century the state usually gets the better in every combat. [Yet] the attempt to draw an unwavering line between 'spiritual' and 'temporal' affairs is hopeless."²²² In other words, with the Becket Controversy, the line was moved again but remained, as yet, un-concretized.

²²¹ Colin Morris, "William I and the Church Courts," in *The English Historical Review*, Vol.82, No. 324 (1967), 451.

²²² F.W. Maitland, *Roman Canon Law in the Church of England*, 56-57.

How did this conflict begin? Remember first that Henry II was the great centralizer of royal jurisdiction and common law, responsible for the so-called Angevin Leap Forward, and an aspirant to the title of *Rex Iustus*; any perceived threat to royal justice would have to be met with a robust response. According to William of Newburg, this impetus came when the king was apparently informed “that many offences against public order, namely theft, rapine, and homicide were very often committed by clerks, whom the vigorous arm of the secular jurisdiction could not reach.” More specifically, “it was declared in the king’s hearing that more than a hundred murders had been committed by clerks within the borders of England during his reign.” One can imagine Henry’s anger and perhaps embarrassment at this news (legitimate or otherwise).²²³ William of Newburg recounts the king’s response: “Deeply moved on this account [Henry] in a violent passion enacted laws against evildoers among the clergy [...] though his intemperate ardour exceeded proper bounds.”²²⁴ Clerical abuse plus royal overreach – now the cycle of negotiation began in earnest.

The Crown’s legal position, as expressed in the third clause of the 1164 Constitutions of Clarendon,²²⁵ was to affirm the right to a canonical trial but with stipulations intended to curtail the use of *privilegium clericale*: the initial accusation of a clerk was to be made in a royal court; the canonical trial must be open to the king’s justices; and finally, once a clerk had gone through the process of degradation (i.e. defrocking), they could then be punished by secular authorities

²²³ Using extant plea rolls from the succeeding kings, Hugh Thomas has argued persuasively, I think, that no such mass wave of clerical crime actually occurred. While it may have been the case by the end of the thirteenth century when so many could fake clerical status, it certainly was not in the time of the Becket Controversy. See *The Secular Clergy in England, 1066-1216*, 217-20.

²²⁴ William of Newburg, *Historia Rerum Anglicarum*, in *English Historical Documents, Vol. II*, 331-32.

²²⁵ Cap. iii. Clerici reitati et accusati de quacunque re, summoniti a Justitia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod ibidem sit respondendum; et in curia ecclesiastica, unde videbitur quod ibidem sit respondendum; ita quod Justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cetero eum ecclesia tueri. From William Stubbs, *Select charters and other illustrations of English constitutional history from the earliest times to the reign of Edward the First*. (Oxford: Clarendon Press, 1870).

like any other lay person. In Maitland's words, "the scheme is this: accusation and plea in the temporal court; trial, conviction, degradation in the ecclesiastical court; sentence in the temporal court to the layman's punishment."²²⁶ In effect, the exclusive jurisdiction of the Church was preserved, as was the special status of clergy; secular justice only fell upon the layman, recently degraded, and thus ecclesiastical jurisdiction *ratione personae* was negated.

By and large, these stipulations were undesirable but bearable for the Church. After all, the linchpin of the whole process was the degradation of the criminous clerk in ecclesiastical court; there was, however, no way for the Crown to ensure the accused was actually degraded by the court to then be returned to secular jurisdiction. The process hinged on a practice known as compurgation: the accused would swear their innocence before a judge and, in the absence of evidence, find a certain number of compurgators or "oath helpers" to likewise swear.²²⁷ Without a doubt, there were a disquietingly large number of acquittals, as clerks seemed to have little trouble achieving purgation among their own. Thus, Pollock and Maitland famously described canonical trial as "little better than a farce."²²⁸ Nevertheless, Henry's plan did not remove the process of compurgation,²²⁹ and so even if some pieces of the compromise were opposed to canon law, the Church had a long history of ignoring minor abuses or even tolerating royal overreach.²³⁰ As Maitland quipped, "[the clergy] were not called upon to shed their blood for

²²⁶ F.W. Maitland, "Henry II and the Criminous Clerks," in *The English Historical Review*, Vol. VII. No. 26 (April 1892), 226.

²²⁷ For a detailed discussion on the law of compurgation, see R.H. Helmholz's excellent chapter in *The Ius Commune in England: Four Studies* (2001).

²²⁸ Frederick Pollock and F.W. Maitland, *The History of the English Law Before the Time of Edward I*, Vol. I (Cambridge: Cambridge University Press, 1898), 467.

²²⁹ However, by the thirteenth century some royal courts had taken to delivering the clerks to their ordinary *asque purgatione*, declaring that they could not be cleared via purgation without the ordinary paying a heavy fine first. See William Holdsworth, *A History of English Law*, Vol. III (London: Methuen & Co. Ltd., 1941), 294-96.

²³⁰ Frank Barlow, *Thomas Becket* (Los Angeles: University of California Press, 1986), 102.

every jot and tittle of a complex and insatiable jurisprudence.”²³¹ Thus, many bishops agreed with the king that this process was fair.

Nevertheless, the audacious archbishop claimed that lay authority was never competent to judge a clerk and that degradation itself was punishment enough.²³² He relied on the words of the prophet Nahum, *non judicabit deus bis in idpsum* – oft-cited in Gratian’s *Decretum* – to argue that degradation plus sentencing in secular court would constitute double punishment.²³³ In turn, Henry II maintained that the royal prerogatives articulated at Clarendon, particularly those curtailing benefit of clergy, were ancient customs and dignities and thus were not claims to new jurisdiction, but rather a re-assertion of the old. The canonists who opposed his claims, on the other hand, were increasingly distrustful of the king’s reliance on unwritten law in the twelfth century, especially in comparison to Justinian’s Codex, which had recently been rediscovered. By the time of the Becket Controversy, Gratian’s mistrust of frequent claims to ancient and customary rights had become the refrain of the canonists: “Christ has not said ‘I am Custom,’ but he has said ‘I am Truth.’”²³⁴ Thus, when Henry demanded at the council of Westminster in 1163 that the Church “absolutely and without qualification promise to observe the royal customs,” the bishops promised instead to obey “saving their order” i.e. except when it interfered with their holy orders. According to Herbert of Bosham’s account, the king angrily replied that “poison lurked” in the phrase and that it was “mere sophistry.”²³⁵ It was, rather, composite sovereignty born of legal pluralism.

²³¹ F.W. Maitland, *Roman Canon Law and the Church of England* (NY: Burt Franklin, 1898), 57.

²³² Gabal, *Benefit of Clergy in England*, 25-26.

²³³ Barlow, 103.

²³⁴ van Caenegem, *The Birth of English Common Law*, 2-3.

²³⁵ In *English Historical Documents*, Vol. II, 716.

Despite clerical opposition, Henry's legal procedure stood in its basic form for several centuries to come. In fact, in response to the forgery of papal letters, Pope Innocent III proposed almost an identical scheme as Henry did years prior; in his commentary on this, Maitland has a prophetic King Henry cheekily remark that surely it was far worse to murder, rape, and steal, yet the Church was finally willing to use his proposal for such an offence as forgery.²³⁶ However, by the end of the thirteenth century, secular courts were increasingly struggling to define what constituted a "clergyable offense," that is those for which a secular court admitted a plea of *privilegium clericale*. Just a few years after the martyrdom of Becket, Henry was able to win papal approval to remove forest offences as clergyable; thus, by the thirteenth century, the forest eyres were freely amercing and attaching the property of clergyman and laity alike.²³⁷ Nevertheless, the secular arm was still barred from physically punishing a clerk until they had been degraded, and since the church had long held the punitive shedding of blood to be anathema, financial restitution was very often all the Crown could expect from criminous clerks. Given the highly lucrative nature of the forest eyres in the thirteenth century, that was likely enough to satisfy the king's interest in the short term.

Therefore, it gradually became common practice for a lay court such as the forest eyres to indict the supposed clerk before they ever arrived at the ecclesiastical court to face trial. Thus, they would already be presented at the *coram episcopo* as either *clericus convictus* or *clericus quietus*. The strict canonists perhaps saw this lax procedure as a violation of ecclesiastical liberty or perhaps even a meaningless formality to be ignored. So why did secular courts insist on it? In no small part, this was because the Crown could seize the chattel of the accused clerks until they

²³⁶ Maitland, "Henry II and the Criminous Clerks," 232.

²³⁷ Pollock and Maitland, *The History of English Law Before the Time of Edward I*, 471-72.

could successfully achieve purgation – if that occurred at all.²³⁸ Gervais and his rescuers were caught in this process, released to Roger the archdeacon already convicted as evildoers to the royal forest. Whether they achieved purgation or returned to secular court as a lay person is unknown. One can imagine that an archdeacon would breeze through the canonical trial; it is less certain for a servant like Gervais.²³⁹

We cannot forget that the stakes were incredibly high here. Remember that Gervais of Dene was not alone in either of the cases for which he was caught. His first offense – March, 28, 1249, in the forest of Sapley – illustrates the divergent fate of those who could claim the *privilegium* and those who could not. While Gervais was whisked away to a far softer punishment,²⁴⁰ his companions were less fortunate. One, Hugh le Fekere, had been living as a fugitive under a false name since fleeing from the foresters. After being caught, he escaped Huntingdon jail (where Gervais would later be held) and drowned mysteriously. Before his escape, he also indicted Osbert the marshall, who failed to appear in court. The *rotuli* note: “And now Osbert does not come, nor is anyone willing to be his mainperner [pledge] or to answer for him, therefore let him be exacted and outlawed.”²⁴¹ Thus, by Gervais’ connections to advantageous networks – socially (via his employer), spatially (through the territorial jurisdiction of the priory where he was found), and ideologically (in the balancing act between royal power and ecclesiastical authority) – he was able to escape imprisonment, outlawry, and death.

²³⁸ Galal, *Benefit of Clergy in England*, 41.

²³⁹ Some canonists, such as Hostiensis, claimed the protection of benefit of clergy even for the servants of clerks, whether or not they were themselves in holy orders. See Helmholz, *The Ius Commune*, 209.

²⁴⁰ The Church was certainly aware of this imbalance. The Fourth Lateran Council of 1215, for example, recognized that a heretical clerk should be stripped of ecclesiastical protection “so that the heavier punishment may be employed against him whose fault is the greater.” See the text of the third canon in Patrick Geary, ed., *Readings in Medieval History* (NY: Broadview Press, 2003), 446.

²⁴¹ *Select Pleas of the Forest*, 17-18.

Conclusion

Ultimately, the Becket Controversy, like the procedural negotiation regarding benefit of clergy, like the expanding definition and shifting proof of *clericus*, and like the fluid theory and practice of excommunication, was a fight over jurisdiction and sovereignty, and each side was waging a war of attrition. Even if the martyrdom of Becket and the papal renunciation of the Constitutions of Clarendon dealt a blow to the royal prerogative, the Crown had nevertheless laid the foundation for a legal apparatus that placed greater emphasis on the rule of law and gradually hedged *libertas ecclesiae* with more and more strictures. In this chapter, I have tried to demonstrate how cases like Gervais' illustrate this fluid process of jurisdictional politics on the ground, far below the ideological contestations that mark such famous conflicts as the Investiture Controversy or the Becket affair. As the Church vociferously defended its vision of *libertas ecclesiae*, it was a special legal status, exclusive jurisdiction, and the sword of excommunication that became the mechanisms of turning that vision into a reality. Just as the royal forests became contested sites where sovereignty was tested and worked out for expansionist princes, so too did the social, spatial, and ideological claims of a Church that had by the twelfth century become, "more self-sufficient...less subservient to the lay powers, more vocal, more self-confident."²⁴²

²⁴² Frank Barlow, *Thomas Becket*, 68.

Chapter 3: Constructing Sovereignty Through Ideology-in-Space

How does a case of clerical poaching in a royal forest in the mid-thirteenth century fit into a broader narrative of medieval sovereignty? I have spent the preceding pages stressing the necessity of viewing ideological claims as dynamic and fluid, constructed at a socio-spatial scale. By way of conclusion, I turn now to those ideological frameworks themselves. If the case of Gervais of Dene is to illuminate something about sovereignty, we must come to terms with what that meant in the context of medieval England. Who rightly held the fullness of power (*plenitudo potestatis*)? From where did it stem? Was it divisible and by whom? How should it flow and where? In their parallel efforts to answer these questions, both the Church and the Crown precluded each other from actually doing so; the result was an inevitable balance of composite sovereignty. The aim of this final chapter is to demonstrate that thirteenth-century England was as yet in a process of finding a social balance, and that at no point did it cease to do so, even as one side claimed a temporary victory or even when both settled into a period of acquiescence. In other words, sovereignty was ever in motion, constantly constructed, and always being worked out.

The remaining pages will broadly trace the parallel processes that came to cohere into composite sovereignty by the thirteenth century, namely the Crown and the Church's competing visions of a *societas perfecta*. Both agreed that *mundus et ecclesia* had to be fashioned into a cohesive whole – no one at this time was advocating for a true separation, much less an abolition of either component. Thus, dualism lay at the heart of both political theory and ecclesiastical doctrine, expressed here as the oft-cited Doctrine of the Two Swords.²⁴³ Pope Innocent III, in his acceptance of King John's fealty, expressed that dualism in this way: "Jesus Christ, a priest

²⁴³ See R.W. Carlyle's excellent discussion of medieval dualism in *A History of Medieval Political Theory in the West*, Vol. IV (London: Blackwood & Sons, 1903).

forever after the order of Melchisedech, has so established the priesthood and kingship in the church that the kingship is priestly and the priesthood is royal.”²⁴⁴ This ancient priest-king came to figure the balance between *regnum et sacerdotium* for generations of medieval thinkers. As Ernst Kantorowicz has noted, interpenetration between the clergy and laity was active in every century of the Middle Ages “until finally the *sacerdotium* had an imperial appearance and the *regnum* a clerical touch.”²⁴⁵ Before tracing these parallel ideological journeys, we should first articulate a framework for understanding how *regnum et sacerdotium* understood sovereignty itself.

Conceptions of Sovereignty

One of the primary dangers of approaching medieval sovereignty is presentism: the pernicious tendency to read modern schemata and values into the past.²⁴⁶ Thus, if we use the now classic formulation of sovereignty as supreme authority within a territory, it is evident that nothing of the sort existed in medieval England. First, authority, as opposed to raw coercive power, stems from a mutually-recognized source of legitimacy. According to R.P. Wolff, it is “the right to command and correlatively the right to be obeyed.”²⁴⁷ Within their own purview, this kind of authority certainly existed in varying degrees for secular and ecclesiastical rulers; however, it was in pushing out of their mutually-accepted bounds that the coercive mechanisms of both Church and Crown broke down. Again, there is a crucial difference between a static ideology or claim and its necessarily dynamic construction or practice. Thus, as Bertrand de Jouvenel has argued, medieval authority (*auctoritas*) was more akin to superiority than

²⁴⁴ Quoted in Brian Tierney, *The Crisis of Church and State 1050 – 1300* (Toronto: University of Toronto Press, 1988), 135.

²⁴⁵ Kantorowicz, *The King's Two Bodies*, 193.

²⁴⁶ For a full discussion, see Francesco Maiolo's *Medieval Sovereignty: Marsilius of Padua and Bartolus of Saxoferrato* (Delft, The Netherlands: Eburon Academic Publishers, 2007).

²⁴⁷ R.P. Wolff, *The Conflict Between Authority and Autonomy* (Oxford: Basil Blackwell, 1990), 20.

sovereignty. Perhaps a pope or king might assert that no one was higher on a temporal hierarchy, but that did not necessarily mean that the higher power was itself the source of all others below, or that it was somehow of a unique substance or kind.²⁴⁸ “In the Middle Ages,” de Jouvenel cautioned, “men had a very strong sense of that concrete thing, hierarchy; they lacked the idea of that abstract thing, sovereignty.”²⁴⁹

Hierarchies were everywhere in the medieval world, from the extensive ecclesiastical bureaucracy to the various levels of the peerage to the multi-layered system of land tenure in England. In each case, it was never in dispute that Christ and the Kingdom of Heaven were the true source of all lower echelons; in fact, *hierarchia* itself meant sacred rule and expressed the Neo-Platonist principle that all things emanated from the Divine and were ordered into manifold ranks, both celestial and terrestrial.²⁵⁰ Thus, the concept of *maioritas* (superiority) versus *minoritas* (inferiority) was manifest, while the more abstract notion of sovereignty remained in the Middle Ages an “ambiguous construct” and a complex “constellation of thought,” to use Francesco Maiolo’s words.²⁵¹

Moreover, the notion of supreme or absolute authority within a specific territory is a modern concept (so-called Westphalian sovereignty), as yet unseen in the Middle Ages. To be sure, any number of entities could legitimately claim to be *superus* (“higher”) than others, but the superlative *supremus* (“highest”) could only remain aspirational as power in medieval England was shared, limited, and “tied down, not only in theory but in practice, by the *Lex Terrae*.”²⁵² For a power to have true sovereignty, de Jouvenel proposed that it must do two things: maintain

²⁴⁸ Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* (NY: Viking Press, 1948), 31.

²⁴⁹ See *Sovereignty: An Inquiry into the Political Good* (Chicago: University of Chicago Press, 1957), 203.

²⁵⁰ Jeremy Larkins, *From Hierarchy to Anarchy: Territory and Politics before Westphalia* (NY: Palgrave Macmillan, 2010), 54-55.

²⁵¹ Maiolo, *Medieval Sovereignty*, 79; 99-103.

²⁵² De Jouvenel, *On Power*, 31.

legislative authority while keeping itself *legibus solutus* and have the ability to simultaneously alter its subjects' behavior while recasting the rules of its own.²⁵³ The status of both kings and popes vis-à-vis the Law was still a live issue in medieval England, but it was never commonly accepted that either was *above* the law. In fact, the legal maxim *regem iura faciunt non persona* ("laws, not the person, make the king") had become widely accepted by the twelfth and thirteenth centuries.²⁵⁴ And as for papal power, the popes were always limited and subjected to the rule of canon law. For example, at the Council of Constance in the early fifteenth century the church fathers, admitting that the pope was superior to any individual cleric in the Church, nevertheless stressed that he was not superior to the Church itself.²⁵⁵ He could be supreme *in council* but not over the council.

Consequently, sovereignty by a modern definition did not exist in the Middle Ages; that is not to say that sovereignty by medieval definition did not exist. Whether or not supreme territorial authority was actually attained by a medieval power, they nevertheless pursued their own vision of the fullness of power; in other words, they did not "fail" to "achieve" sovereignty. The broadest definition of sovereignty proposed by de Jouvenel is the one that allows us to see what medieval people themselves thought they were doing. Put simply, sovereignty is "the idea that somewhere there is a right to which all other rights must yield."²⁵⁶ Both *regnum et sacerdotium* believed this at least. The king was not that highest authority in the Middle Ages, and neither was the pope; instead, they both claimed to be *Vicarius Dei*. This was the *radix* for

²⁵³ The latter can best be expressed in Carl Schmitt's twentieth-century formulation: "Sovereign is he who decides on the exception." In other words, a true sovereign power is one that can suspend the rule of law. See *Political Theology: Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Chicago: University of Chicago Press, 2005), 5.

²⁵⁴ For more on the development of a law-centered kingship, see Kantorowicz, *The King's Two Bodies*, 129-191.

²⁵⁵ See Brian Tierney, "Divided Sovereignty at Constance: A Problem of Medieval and Early Modern Political Theory," in *Annuaire d'histoire conciliaire*, Vol. VII (1975), 246.

²⁵⁶ De Jouvenel, *On Power*, 29.

their divergent yet parallel ideological journeys. Could both Pope and King be the Vicar of Christ? Only in part and only in a system of composite sovereignty.

“The Kingship is Priestly”

From the beginning of Christianity there persisted a scriptural ambiguity that would allow both secular and ecclesiastical powers to claim divine authority. Apologists for each turned to the same passages over and over; perhaps the most common was Jesus’ words in the Book of Luke: “Render therefore unto Caesar the things which be Caesar’s, and to God the things which be God’s.”²⁵⁷ He was speaking of taxation in particular, but textual ambiguity allowed radically divergent interpretations for centuries. Answering before Pontius Pilate, Jesus said “My kingdom is not of this world,” perhaps articulating the otherworldliness of the Kingdom of God or perhaps removing the Church from the arena of worldly politics.²⁵⁸ In the Acts of the Apostles, the early church leaders stood before secular government and proclaimed, “We ought to obey God rather than men.”²⁵⁹ Yet Peter would later write that the Church must both fear God *and* honor the King.²⁶⁰ And, in the epistle to the Roman church, Paul warns of damnation for those who disobey the higher powers: “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whoever resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.”²⁶¹ Were these words of empowerment for the lay authority or limitation for the ecclesiastic?

The question of divine ordination was at the heart of the dualism that solidified after the eleventh-century reforms. If “there is no power but of God,” then the king was ordained by the

²⁵⁷ Luke 20:25 (KJV)

²⁵⁸ John 18: 36 (KJV)

²⁵⁹ Acts 5:28-29 (KJV)

²⁶⁰ I Peter 2:17-18 (KJV)

²⁶¹ Romans 13: 1-2 (KJV)

highest power to fulfill some sort of *higher* function on earth. Why would God ordain kingship if it was unnecessary or maladaptive? Rather, for much of the early Middle Ages it was sacred kingship that predominated; kings successfully positioned themselves as divine lawgivers and anointed defenders of the faith. Even as the Carolingian Empire fell to the disintegrative forces of time, it was lay powers who built, owned, and invested priests in local “proprietary” churches (*ecclesia propria*) – and often expected some level of obedience in return. In England, this right of patronage was called advowson and it remained a custom long after it was abolished by a strengthened papacy.²⁶² In fact, R.W. Carlyle warns us of reading constant rivalry into the relationship between the Church and Crown; for many centuries, lay rulers presided over ecclesiastical councils, enforced the laws of the Church, and contributed to a general air of amity and cooperation.²⁶³

Something changed in the twelfth and thirteenth centuries for both the Church and the Crown. To be sure, the Investiture Controversy of the late eleventh and early twelfth centuries radically upset this equilibrium; however, it was just the impetus for a much more profound legal shift, what Caroline Burt has called a “process of increasing definition” in the role of secular government.²⁶⁴ With the rediscoveries of Roman and Aristotelian jurisprudence, kingship entered into a new era of legalization; monarchs increasingly began to claim what might hesitantly be called *plenitudo potestatis* – the ability to legislate, execute, and judge. We see a shift from a sacramental or liturgical role for the king to a bureaucratic and legislative; in Kantorowicz’s words, one “modeled after the Father in Heaven rather than after the Son on the Altar.”²⁶⁵ By the

²⁶² According to William Holdsworth, it perennially “stood on the frontier of the law and ecclesiastical jurisdictions.” *A History of English Laws*, Vol. III, 140.

²⁶³ Carlyle, *A History of Medieval Political Theory in the West*, 49-50.

²⁶⁴ Caroline Burt, “Political Ideas and Dialogue in England in the Twelfth and Thirteenth Centuries,” in *Thirteenth Century England XIII: proceedings of the Paris Conference 2009* (Woodbridge: Boydell Press, 2011), 1.

²⁶⁵ Kantorowicz, *The King’s Two Bodies*, 93.

twelfth and thirteenth centuries, kings were presenting themselves as a *rex iustus* – even the *imago aequitatis* – and they were very often believed.

Representative of this shifting view of kingship was a series of tractates penned sometime around the turn of the twelfth century by the so-called Norman Anonymous.²⁶⁶ Fiercely anti-Gregorian and vigorously royalist, “they still breathe the fire kindled by the Investiture Struggle.”²⁶⁷ The tractates articulate a bold assertion. The king, the author argued, “is the Lord’s anointed (*christus domini*), and by adoption and grace made like unto God; he is the supreme ruler, the chief shepherd, master, defender, and instructor of holy Church, lord over his brethren and worthy to be worshipped by all men as chief ‘bishop’ and supreme ruler.”²⁶⁸ Effusiveness notwithstanding, an important point is made here: the Church did require a defender and it knew it; what is more, the laity knew it too. Accepting a secular king as supreme ruler, “like unto God,” was understandably out of the question, yet the fact remained that there was a crucial disconnect between papal claims to temporal power and the ability to actually dispense it.²⁶⁹ Thus, the Church, like the rest of the realm, sought a balance between the security afforded by robust kingship and the liberty necessary to make it worthwhile. With the revival of Aristotelian ethics, there persisted a deep conviction that untrammelled power was dangerous and immoral; nevertheless, the negation of secular authority, and thus its part in constituting a *societas perfecta*, was just as dangerous and immoral.²⁷⁰ After all, as Paul wrote to the Romans,

²⁶⁶ Although Ernst Kantorowicz has argued that this author represented tenth and eleventh century ideology of kingship more than his contemporary world, I nevertheless believe that these tractates express a real, albeit gradual shift in how medieval kings were viewed and how they viewed themselves. If his rhetoric remains a bit heavy handed, we should read a vehement response to the perceived marginalization of royal governance after the Investiture Controversy and a legitimate concern for the formation of a true *societas perfecta*.

²⁶⁷ Kantorowicz, 42.

²⁶⁸ In *English Historical Documents Volume II*, 676.

²⁶⁹ See Southern, *Western Society and the Church*, 125-26.

²⁷⁰ Burr, “Political Ideas and Dialogue in England,” 3.

“Whoever resisteth the power, resisteth the ordinance of God; and they that resist shall receive to themselves damnation.”

And for what was this power ordained? “For the governance of the Church,” the Norman Anonymous answers, as kings “reign together with Christ in order to rule, protect, and defend her.” To accomplish this task, kings were invested by God with the sword of justice, even as it was the priesthood that consecrated their power upon coronation; this was a clear indication to the author that the priests were merely officiating as divine agents – they were not “authors of the consecrations, but the ministers.”²⁷¹ The author thus echoes a common theme in the long dispute over royal authority: “whoever then strives to deprive kings of this ‘investiture’ is striving to act contrary to the ordinance and decree of God.” The dissemination of sovereignty thus flowed from God directly to king, who used it to guide and protect the Church, which passed its benefits on to the *congregatio fidelium*. Unsurprisingly, the papacy promulgated an almost identical process: the start and end remained the same, while the conduit of divine power was reversed.

The Norman Anonymous represents a destabilizing position on the balance between *regnum et sacerdotium*, a response to the equally destabilizing attempt by expansionist popes to claim the plenitude of power. It was not, however, the only path to a *societas perfecta* that could be pursued in the king’s favor. A middle way hinged on the division of labor inherent in the *anima-corporis* doctrine that became so prevalent in medieval discourse. The first to articulate it as such appears to have been John of Salisbury, an esteemed twelfth-century scholar and clergyman. In his *Policraticus*, written sometime around 1159 and directed at King Henry II of England, John likened the commonwealth to a human body; at the apex was the priesthood,

²⁷¹ In *English Historical Documents Volume II*, 677.

which he called the “soul in the body of the commonwealth.” The head, on the other hand, was filled by the prince, “subject only to God and to those who exercise His office and represent him on earth, even as in the human body the head is quickened by the soul.”²⁷² The prince certainly held authority, he noted, in the hierarchy of the body politic: “inferiors should cleave and cohere to their superiors, and all the limbs should be in subjection to the head.” But this was true only if “religion is kept inviolate.”²⁷³

And how was the religious soul of the body politic to be preserved? John writes that the prince receives a sword “from the hand of the church, although she herself has no sword of blood at all,” and thus the Church was able to use the sword “by the hand of the prince.” As a result, the prince was in truth “a minister of the priestly power, and one who exercises that side of the sacred offices which seems unworthy of the hands of the priesthood.”²⁷⁴ Although he was far from an apologist of royal superiority, John of Salisbury nevertheless provided a nuanced role for the Crown that would be expanded and solidified in generations to come. After all, John admitted that in the prince’s role as arbiter of justice, he was a “kind of likeness on earth of the divine majesty”; and, therefore, “not without reason he bears a sword, wherewith he sheds blood blamelessly.” In order to fulfill this divine purpose, then, power must be concentrated in his sword “that he may be sufficient unto himself” to do so. This view of justice was reliant on John’s notion of equity (i.e. balance): “a certain fitness of things which compares all things rationally...allotting to each that which belongs to him.”²⁷⁵ In other words, for the hierarchical body to function properly, it must have an empowered head.

²⁷² John of Salisbury, *Policraticus: The Statesman’s Book*, abridged and edited by M.F. Markland (NY: Frederick Ungar Publishing, 1979), 60-61.

²⁷³ *Policraticus*, 93.

²⁷⁴ *Policraticus*, 48-49

²⁷⁵ See *Policraticus*, 44-48.

John of Salisbury's *Policraticus* raises two important points for the future balance between *regnum et sacerdotium*. First, John preserved an essential function for the prince in relegating violent coercion to “that side of the sacred offices which seems unworthy of the hands of the priesthood.” Unworthy, perhaps, but ever present and necessary for the maintenance of a commonwealth. What is a sword without a hand to wield it? And what can a hand accomplish without a mind to coordinate it? With the ecclesiastical arm constrained by the prohibition against cognizance of blood, the task of putting that hand to use fell solidly within the purview of the secular princes, and in that pursuit they could claim all manner of rights, privileges, and prerogatives in the name of divine justice, as the history of the English Crown bears out.

Second, in bifurcating the head and the soul, John opened up the possibility for a sort of division of labor, whereby the head could theoretically gain dominance over the soul. This mitigated one of the thorniest issues with the *anima-corporis* metaphor: would not a society, like a person or an animal, be monstrous and profane if it had two heads? This was a common critique by canonists and popes opposed to nascent royal sovereignty. For example, in his 1302 bull *Unam Sanctam*, Pope Boniface VIII scoffed at the idea that the universal body (*unum corpus mysticum*) of the Church could have multiple sovereigns: “this one and single Church has one head and not two heads – for had she two heads, she would be a monster – that is Christ and Christ’s Vicar, Peter and Peter’s successor.”²⁷⁶ Secular powers were on tenuous ground when they tried to challenge this notion of a universal mystical body as it inevitably evoked the devilish image of a bicephalous monster. According to Jeremy Larkins, princes were in a much stronger position on balance when they admitted that the body must have one head,

²⁷⁶ The text is found in H.E. Manning, *The Vatican Decrees in their Bearing on Civil Allegiance* (NY: Catholic Publication Society, 1875), 172-73.

encompassing both spiritual and secular authority, then argued that it ought to be them rather than the Bishop of Rome.²⁷⁷

What is more, by the beginning of the fourteenth century, it was possible (though not popular) to articulate a vision of *regnum et sacerdotium* as two truly distinct bodies. In 1313, for example, Dante Alighieri advocated for a radical extrication of *ecclesia* from *civitas*, allowing for a separate body for each entity and thus negating the danger of a two-headed polity. Dante was responding in particular to Thomas Aquinas' influential claim in *De Regimine Principum* (1265-67) that as the clergy were responsible for humanity's "ultimate end," rather than its "intermediate ends," they were to be afforded greater honor and obedience: "since the end of the good life that we live on earth is the happiness of heaven, it is the duty of the king to promote the good life of the community so that it leads to happiness in heaven."²⁷⁸ In response, Dante proposed that humanity had two ultimate goals, the happiness of heaven and that of this world; the Church may have had a monopoly on the one, but not necessarily the other.²⁷⁹ Thus, two bodies could work in tandem, shepherded by two distinct sovereigns towards their ultimate goals of *beatitudo* in this life and the next.

Therefore, from the sacred kingship of the early Middle Ages, through the stresses of the papal reform movements, and into the thirteenth century, we see notions of royal sovereignty being almost constantly promoted, tested, and inevitably recalibrated in response to rival claimants; as a result, rather than a cessation of adjustment in this balance by the thirteenth century, we see an intensification. In other words, nothing had been settled or fixed, except perhaps the reality of legal pluralism and the concomitant impulse to jurisdictional politics.

²⁷⁷ Larkins, *From Hierarchy to Anarchy*, 83.

²⁷⁸ In *St. Thomas Aquinas On Politics and Ethics*, translated and edited by Paul E. Sigmund (NY: W.W. Norton & Co., 1988), 27-28.

²⁷⁹ See Larkins, *From Hierarchy to Anarchy*, 87-91.

“The Priesthood is Royal”

For their part, ecclesiastical theorists clearly accepted the need for a division of labor between *regnum et sacerdotium*; however, the proper relationship between the two within that dual system was hotly contested. In other words, the existence and limited jurisdiction of the secular arm was not in question, but its extent and relative authority certainly was. Jesus may have admonished his followers to “Render therefore unto Caesar the things which be Caesar’s,” but from the throne of Saint Peter, that list of things began to look smaller and smaller as the centuries progressed. Had not Jesus also said, “thou art Peter, and upon this Rock I will build my church; and the gates of hell shall not prevail against it”? Jesus did not say how much was included in “the things which be Caesar’s,” but he did say “I will give unto thee [Peter] the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven: and whatsoever thou shalt loose on earth shall be loosed in heaven.”²⁸⁰ What then was the proper balance between *mundus* and *ecclesia* in light of these scriptural ambiguities? The remainder of this section will highlight several well-known papal attempts at recalibrating the *societas perfecta* to answer that thorny question. Rather than a comprehensive analysis, the goal here is to survey briefly the types of ideological assertions made by the Church in its broad pursuit of *plenitudo potestatis*.

First, all subsequent attempts at equilibrium relied, in part, on the so-called Gelasian Doctrine of the fifth century. In a letter to Emperor Anastasius in 494, Pope Gelasius I articulated a dual vision of the world akin to Augustine of Hippo’s two cities paradigm: “two there are,” Gelasius wrote, “by which this world is chiefly ruled, *auctoritas sacrata pontificum et regalis potestas*.” And of the two, “the responsibility of the priests is more weighty in so far as they will

²⁸⁰ Matthew 16:17-18 (KJV)

answer for the kings of men at the divine judgement.” Therefore, the Gelasian Doctrine outlined a division of labor whereby specialization was accepted and necessary; the pope admitted the need for royal power (*regalis potestas*) “so far as the sphere of public order is concerned,” but exhorted the lay rulers to in turn “obey those who have been charged with administering the sacred mysteries.”²⁸¹

This almost genteel separation of society into distinct yet interdependent spheres was sorely tested, one might say radicalized, by the Gregorian Reforms of the eleventh century. Papal efforts to defend clerical autonomy and purify the Church from secularizing influences disturbed the balance between *regnum et sacerdotium* to an unprecedented extent; thus, we see a marked shift from Pope Gelasius’ paternal admonition to Pope Gregory VII’s fervid and intransigent tract *Dictatus papae*. Penned in 1075, this radical statement of papal primacy understandably raised the ire of Europe’s secular princes; its bold assertions ranged from the unpopular to the impossible. The first claim, *quod Romana ecclesia a solo Domino sit fundata*, was relatively tame, even if it was a less-than-subtle jab at lay investiture. The remaining claims were far more inflammatory: “That the Roman pontiff alone is rightly called universal”; “That he may depose emperors”; “That he himself may be judged by no one”; and worst of all, “That the Roman Church has never erred, nor ever, by the witness of Scripture, shall err to all eternity.”²⁸²

This document prompted a flurry of response and counter-response. Emperor Henry IV’s rejoinder was highly evocative and has been well documented.²⁸³ In calling for Gregory to step down from the Holy See, “now not Pope, but false monk,” the emperor relied on what had

²⁸¹ Quoted in Brian Tierney, *The Crisis of Church and State 1050 – 1300*, 13-14.

²⁸² In E.F. Henderson, *Select Historical Documents of the Middle Ages* (London: George Bell and Sons, 1910), 366-67.

²⁸³ For example, see Tierney’s excellent summation of the tit-for-tat exchange between the pope and Holy Roman Emperor Henry IV in *The Crisis of Church and State*. 53-84.

become a standard metaphor of dual (i.e. composite) sovereignty in the Middle Ages: the Two-Sword Doctrine. The pope, he alleged, had disrupted the divine order intended by God: two swords held respectively by the Church and the Crown.²⁸⁴ Both were necessary, although each side argued their sword was the dominant one at various times and to varying degrees. This metaphor seems to have appeared first in the twelfth-century writings of St. Bernard of Clairvaux. “Therefore, the sword is yours,” he wrote to Pope Eugenius III, “to be unsheathed, perhaps, when you so indicate although not by your hand. For if it did not belong to you in any way, the Lord, when the apostles said, ‘Behold, here are two swords,’ would have answered not ‘It is enough,’ but ‘It is too much.’”²⁸⁵ This doctrine rested on a rather shaky exegesis of Luke 22:38,²⁸⁶ in which Jesus’ words were taken by later generations as a prescription of sufficient duality. On this gossamer foundation, Bernard concluded “both swords, the spiritual and material, belong to the church, but the former is to be drawn by the church, the latter on behalf of the church; the former by the hand of the priest, the latter by the hand of the warrior...at the indication of the priest and the order of the emperor.”²⁸⁷

This doctrine was vigorously and frequently applied beginning with the pontificate of Innocent III, who became perhaps the most articulate framer of what Walter Ullman has called a “hierocratic ideology.” Sometimes referred to as papal monarchy, this ideology portrayed the pope as a spiritual and temporal sovereign (i.e. wielding both swords), presiding over an orderly hierarchy of the Christendom – including all the faithful, be they king or commoner. The clergy were the soul, while the laity comprised the body; and like any natural body, this *corpus* had

²⁸⁴ Tierney, *The Crisis of Church and State*, 62.

²⁸⁵ In E.K Lewis, *Medieval Political Ideas*, Volume II (NY: Alfred A. Knopf, 1954), 520-21.

²⁸⁶ “And they said, Lord, behold here are two swords. And he said unto them, It is enough.” (KJV)

²⁸⁷ Lewis, *Medieval Political Ideas*, 521.

only one head.²⁸⁸ In the sermon for his consecration as Bishop of Rome (February 1198), Innocent expressed this ideology succinctly: “Peter alone has received the fullness of power” and thus his successor is “clearly the vicar of Jesus Christ...constituted mediator between God and mankind; on this side God, but beyond man; less than God, but greater than man; who judges all cases but is judged by no one.”²⁸⁹

This type of unreserved claim to the fullness of power – that the Pope was inerrant, that he could be judged by no one – was obviously an untenable position as lay sovereignty continued to expand and solidify. And, we must remember that such a papacy nevertheless required the secular arm to fulfill the mundane needs of Christendom. However, by the thirteenth century it was still possible to write, as Thomas Aquinas did, that the Pope was the “summit of power both spiritual and secular, because of the will of Him who is both King and Priest unto Eternity according to the order of Melchisedech.”²⁹⁰ By the beginning of the fourteenth century, Marsilius of Padua would argue from a scriptural basis the exact opposite perspective: “neither the Roman bishop called pope, nor any other bishop or priest, or deacon, has or ought to have any rulership or coercive judgement or jurisdiction over any priest or non-priest, ruler, community, group, or individual of whatever condition.”²⁹¹ In other words, the protracted process of equilibrating recalibrating proper balance between *regnum et sacerdotium* was still in full swing in this period of the Middle Ages.

²⁸⁸ See Walter Ullman, “The Hierocratic Doctrine,” in *The Middle Ages Vol. II: Readings in Medieval History*, edited by Brian Tierney (IL: McGraw-Hill, 1998), 205-7.

²⁸⁹ *Pope Innocent III: Between God and Man, Six Sermons on the Priestly Office*, translated by Corinne Vause and Frank Gardiner (D.C.: The Catholic University of America Press, 2004), 24.

²⁹⁰ Quoted in *The Political Ideas of St. Thomas Aquinas*, edited by Dino Bigongiari (NY: The Free Press, 1981), xxxv.

²⁹¹ Marsilius of Padua, *Defensor Pacis*, translated by A. Gewirth (NY: Columbia University Press, 2001), 113.

Conclusion

Despite their apparent confidence, in the end these various documents show secular and ecclesiastical powers vying for generations to achieve a *societas perfecta* through mutually-exclusive claims and inevitably failing. Were one to succeed, the other must necessarily fail. As a result, we see a long process of recalibration writ large across medieval England and beyond. To come to terms with such a massive and convoluted ideological discourse is daunting indeed; however, we must remember that medieval sovereignty was aspirational, and thus was worked out on the ground through the performative engagements of actual people with ideology-in-space. Consequently, we must approach the ideological through its conduit of contingency: the social and spatial networks whereby sovereignty was asserted, tested, and refined – in a word, constructed – each day.

This thesis has argued that by the thirteenth century royal forests in England had become arenas for jurisdictional politics between the clergy and laity and provide an essential window into the dynamic construction of seemingly-static assertions of sovereignty. The claims of both *regnum* and *sacerdotium* to exclusive status, jurisdiction, and ultimately to sovereignty, were each preclusive of the other and elided their own dynamic construction and agonistic realities; there is an essential difference between a static claim to authority and its necessarily dynamic construction and fluid application. A claim to sovereignty may be promulgated as reified, fixed, and complete, but in application it must be laid over the often-untidy social reality. And by the thirteenth century in England, this social reality was defined by legal pluralism stemming from mutually-incompatible claims of *plenitudo potestatis*, which in turn precipitated the intense jurisdictional politics that made the status of clergy vis-à-vis the royal forests so uncertain and contentious.

In that light, we must continue to both problematize the ideological assertions of sovereignty – unearthing the socio-spatial dynamism upon which they rest – and challenge the tendency of scholars to approach sovereignty through a macro-scale of analysis alone. Historians in the tradition of Joseph Strayer and Norman Cantor have tended to view the perennial fight over the proper social, political, and spiritual balance in medieval England from the ideological down to the social scale. Instead, I have advocated for a conscious effort to approach sovereignty and jurisdiction from the bottom up, to see them as the product of interrelations, movements, and adjustments made at a micro-scale: the nomospheric nexus of ideology and practice. Thus, from the traditionalist macro scale, perhaps it would appear that Strayer was correct when he wrote that by 1300 “England was a unified state with a recognized sovereign and final authority.”²⁹² Or, again, one might understand how Norman Cantor could argue that after the Investiture Controversy the early-medieval equilibrium and interpenetration between *regnum et sacerdotium* could be shattered.²⁹³

However, when viewed from the forest floor, we see claims to the fullness of power meet the agonistic realities of a pluralistic legal system and inevitably diffuse into a tangle of jurisdictions. The result was a system of composite sovereignty, more often than not fashioned from failed aspirations to true sovereignty. Scholars like Strayer and Cantor have neglected to take a hard look beneath the overlay of ideological texts, which often promote a claim to power or authority that is problematic if not outright impossible on the ground. I argue that such an abstraction as sovereignty simply cannot be understood except in the context of social interactions and territoriality. Cases like that of Gervais of Dene, though limited, allow us to pierce the otherwise monolithic façade of these ideological structures. A pope or a king, after all,

²⁹² Strayer, *The Medieval Origins of the Modern State*, 45.

²⁹³ Cantor, *The Civilization of the Middle Ages*, 395.

could claim to hold both spiritual and temporal authority until Judgement Day, but that claim would always have to be tried and tested in space – perhaps even by a poaching priest.

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