THE MEDIEVAL CLERGY AND VIOLENCE: AN HISTORIOGRAPHICAL INTRODUCTION

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It is a commonplace that the Middle Ages were violent. Life then was demonstrably 'nasty, brutish and short'. In medieval society war was a frequent event, and violence, or the threat of it, was often used to resolve disputes. The period was allegedly violent from its inception. Violence accompanied the transition from ancient to medieval society, as barbarians invaded the declining Western Roman Empire. Violence also arguably played a key role in the social and political formation of the medieval West. In the central Middle Ages weak central power and untrammeled violence arguably forced the vulnerable to seek protection from and accept subjection to an emerging military aristocracy. The social dominance of this warrior elite was bolstered, according to Marc Bloch, by the violence of external aggressors, the Arab, Magyar and Viking raiders who began attacking Europe in the ninth century. In the tripartite model of medieval society this noble class or *ordo* were indeed the 'bellatores', those who made war.[1] Accordingly secular authority in medieval society depended on violence. Kings demonstrated their power by limiting and controling violence among their subjects, a responsibility implicit in the idea of the king's peace. One of their main functions was war-leader, a role depicted on medieval coins and seals showing kings as mounted fighting-men. Successful medieval rulers were expected to extend their realms by conquest and reward their military followers with the spoils of war: booty and land.

Hence lay violence was normal in medieval society and virtually institutionalised at its upper levels. But what of clerical violence, the theme of this volume? In principle this might seem a contradiction in terms. If clergy were supposed to be teachers and models of Christian living, surely they were to avoid and oppose violence? The Ten Commandments condemned killing. And Christ taught his followers to love their ene-

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[1] Marc Bloch, *Feudal Society*, trans. L. A. Manyon, 2 vols. (London: Routledge & Kegan 1962), I, 39-42; cf. François-Louis Ganshof, *Feudalism* (3rd edition; London: Longmans, 1964), esp. ch. 1. On the medieval tripartite model see Georges Duby, *The Three Orders: Feudal Society Imagined*, trans. A. Goldhammer (Chicago: Chicago University Press, 1980).

mies and shun violence even in self-defence, turning 'the other cheek' to attackers. Certainly early Christians had observed these pacifistic principles often accepting martyrdom at the hands of their Roman and other persecutors. This non-resistance to the Roman state was also consistent with Christ's and St Paul's teachings to obey earthly authority. But things were to change in the fourth century when Christianity was officially tolerated and even became the state religion of the Roman Empire.

How then could its Christian subjects reconcile obedience with non-violence when emperors fought wars and called on them to serve in these? Clergy, notably bishops as state 'officials', responded to this dilemma by justifying warfare in certain situations. They could cite biblical authorities in support of this. Despite its injunctions against violence, the Bible was actually ambivalent on the issue of war. The Gospels included Christ's ambiguous statements that he came to bring not peace but the sword and to turn brother against brother. More explicitly the Old Testament contained numerous examples of the ancient Israelites waging war with God's approval and even at His express command against His enemies, especially the stories of the Jewish military heroes Joshua and Judas Maccabeus.[2] St Ambrose (d. 397), bishop of Milan, quoted such examples to justify Christian warfare upon enemies of the faith. This legitimised both fighting pagans and persecution of heretics, as the Roman Church and State increasingly sought to enforce religious orthodoxy. Patristic thought combined this Christian idea of 'holy war' with the pre-Christian concept of 'just war'. The ancient Greek philospher Aristotle had 'coined' the latter term; the ancient Roman writer Cicero subsequently defined it as a war to correct an injustice done by the enemy. This idea expressly influenced St Augustine (d. 430), bishop of Hippo, who likewise argued that a just war avenged injuries. For him this included redressing grievances, and thus warfare was justified by the enemy's guilt. Indeed Augustine distinguished that war might be a consequence of and a remedy for sin. In the latter case war was justified since it punished sin, but when it arose from sheer love of violence, it was evil. Hence for Augustine right intention justified war, and like Ambrose he cited Old Testament examples as illustrations. This viewpoint legitimised not only defensive wars, retaliating for unprovoked attacks, but also offensive ones, notably against the Church's enemies. He also argued that only a legitimate authority might wage a just war, which meant that only God or the *princeps* (emperor) might order it. Effectively he gave the state a monopoly on legitimate violence, which might be exercised only by soldiers in its service. Social reasons explain his thinking, for Augustine was born into the Roman upper classes, but there were also religious grounds. His doctrine implied that 'private' violence was wrong even if it were carried out in self-defence, which was essentially Christ's teaching. 'Pub-

2 See Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), esp. ch. 1. Cf. Carl Erdmann, *The Origin of the Idea of Crusade*, trans. M. W. Baldwin and W. Goffart (Princeton: Princeton University Press, 1977).

lic' warfare also entailed Christian obedience to the public authority waging it; Augustine argued that soldiers had a duty to fight for the state even in unjust wars rather than disobey orders however sinful.

Later writers, notably the twelfth-century canonist Gratian, would develop upon Augustine's views, but he established the core of the Church's just war theory. Though it thereby excused lay participation in war, the Church remained opposed to clerical involvement in violence. It forbade clergy to bear arms and fight in wars. Some rulings of the Early Church even banned ordination of former soldiers. The Roman state reflected this position, for emperors exempted clergy from military service. Ecclesiastical authorities confirmed this ban in the early Middle Ages. Pope Nicholas I (858-67) held that clergy who killed in war were suspended from their orders and could not be promoted further, even if acting in self-defence against infidel attack. Hence clerical participation in war, even if fought in a just cause, was completely prohibited. One of the few exceptions, sanctioned at the synod of Ratisbon (743), was that clergy might accompany armies for spiritual support, praying before battle to invoke saintly protection and hearing the confessions of troops, like military chaplains.[3]

However many clergy, especially prelates, violated such restrictions in the early Middle Ages and thereby occasioned their frequent repetition. Early medieval bishops and abbots normally came from the military aristocracy and were often obligated to raise troops from their lands to serve their feudal superiors. Some prelates even led such retinues into battle and fought with them. German bishops were particularly noted for such belligerence by the twelfth century.[4] As Timothy Reuter has pointed out, they could often summon larger military contingents than lay magnates and a few even had successful military careers, notably Archbishop Christian of Mainz (d. 1183) who commanded imperial troops in Italy for twenty years. Nevertheless such warlike prelates often incurred the criticism of colleagues for setting a bad example to other clergy and society.

Indeed clerical hostility to warfare had been growing since the ninth century as the clergy had increasingly become its victims. Initially they were targeted by external attackers, notably the Vikings who raided monasteries and churches. Admittedly local

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[3] See Ferminio Poggiaspalla, "La chiesa e la partecipazione dei chierici alla guerra nella legislazione conciliare fino alla Decretali di Gregorio IX," *Ephemerides iuris canonici* 15 (1959): 140-53; James A. Brundage, "Crusades, clerics and violence: reflections on a canonical theme," *The Experience of Crusading*, I: *Western Approaches*, ed. Marcus Bull and Norman Housley (Cambridge: Cambridge University Press, 2003), 147-56.

[4] See Timothy Reuter, "*Episcopi cum sua militia*: The Prelate as Warrior in the Early Staufer Era," in *Warriors and Churchmen in the High Middle Ages. Essays Presented to Karl Leyser*, ed. Timothy Reuter (London: Hambledon Press, 1992), 79-94; cf. notably Friedrich Prinz, *Klerus und Krieg im frühen Mittelalter: Untersuchungen zur Rolle der Kirche beim Aufbau der Königsherrschaft* (Stuttgart: Anton Hiersemann, 1971); Benjamin Arnold, "German Bishops and their Military Retinues in the Medieval Empire," *German History* 7 (1989): 161-83.

lay aristocrats were meant to defend them against such incursions, but as this threat from outside waned, increasingly these nobles turned their martial violence inwards against each other as they competed for territory. Clergy were often 'caught in the cross-fire' and even became subjected to the violence of their supposed lay 'protectors'. Royal authority was too weak in France and Germany by the tenth century to restrain such violence, so power fragmented into the hands of these local warlords, who marked their regional dominance by building castles.

The situation was particularly bad in France, and clergy reacted against this 'private' warfare above all there. Benedictine monks in northern France, Lester Little argued, fought back with spiritual weapons, proclaiming ritual curses against their attackers.[5] The insecurity of French clergy also famously gave rise to the 'Peace of God' movement. French bishops held the first 'peace councils' in the last quarter of the tenth century.[6] In 975 Bishop Guy of Le Puy called such a meeting to deal with those pillaging churches in his diocese. Guy told the armed men assembled there to swear an oath to keep the peace or face excommunication, a threat backed by the presence of his nephew's troops. He and other bishops continued to hold such councils but depended less on such secular support and more on popular pressure to extract oaths from fighting men to observe the Peace of God. Relics of saints were used to draw larger crowds to these later councils, which declared curses in the names of these saints against peace-breakers, paralleling Benedictine practice. The peace councils particularly sought to protect vulnerable groups, including the 'poor' but above all the clergy themselves. They issued decrees against sacrilegious plunder of churches and assaults on clergy as well as theft of peasant property.

Few councils met immediately after A.D. 1000, but the peace movement revived and changed in the 1020s. It expanded beyond its original heartlands of Aquitaine and Burgundy into other French regions and even northern Spain. The populace played a lesser role in it; secular rulers became its most prominent supporters as the power of kings and higher nobility rose again. In 1024, for example, King Robert of France and German Emperor Henry III met on the borders of their lands to declare a universal peace. Most significantly of all, councils now proclaimed the 'Truce of God' rather than the Peace. The Peace had aimed to protect certain groups at all times but the Truce sought to ban all violence at certain times, notably Lent and other periods of religious significance. It also went further than the Peace in suggesting that the shedding of any Christian blood, not just clerical, was sinful, as the council of Narbonne decreed in

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5 Lester K. Little, *Benedictine Maledictions: liturgical cursing in Romanesque France* (Ithaca: Cornell University Press, 1993).

6 See *The Peace of God: Social Violence and Religious Response in France around the Year 1000*, ed. Thomas Head and Richard Landes (Ithaca: Cornell University Press, 1992); Thomas Head, "The Development of the Peace of God in Aquitaine (970-1005)," *Speculum* 74 (1999): 656-86.

1054: 'No Christian should kill another Christian, for whoever kills a Christian doubtless sheds the blood of Christ'.

Such prohibitions applied to clerical as well as lay violence, since the peace councils renewed the traditional ban on clergy committing bloodshed, even prelates. Bishop Fulbert of Chartres (d. 1028) echoed this sentiment in a letter berating so-called 'bishops' who were more skilled in warfare than lay princes and were not ashamed to disturb the peace of churches or shed the blood of Christians.[7] Some conciliar canons had even declared that such clergy bearing arms forfeited their protection under the Peace of God. Such views acquired greater significance in the context of the eleventh-century Church reform movement. It aimed to remove clergy from involvement in secular affairs (in keeping with St Paul's advice to Timothy) and release them from lay subjection, including feudal obligations. It also sought to direct lay violence towards ends approved by ecclesiastical authority. This had long been understood to mean fighting the Church's enemies, and indeed those promoting the Truce of God considered warfare justified in the defence of Christendom. This thinking achieved its highest expression in the crusading movement.

At the council of Clermont in 1095 Pope Urban II called on Christians to help their brethren in the east resist Muslim attack and probably proclaimed the Truce of God in the West. This 'First Crusade' exported the violence of the *milites* away from Europe towards a 'holy' goal. Declarations of universal peace indeed accompanied subsequent papal calls for crusades. But, in line with traditional doctrine, clergy were not meant to fight in these 'holy' wars. A canon of the council of Clermont confirmed the prohibition on clergy bearing arms. Urban's sermon at Clermont apparently sought to restrain them from joining the crusader army. Certainly in a letter of 1096 to Vallombrosa he forbade priests and monks to go on crusade without the permission of their ecclesiastical superiors. Even with this consent they might only take part 'in accordance with the discipline of the holy canons', i.e. they might not fight but only provide spiritual support.

Nevertheless crusaders almost became 'honorary clergy', receiving certain clerical privileges and adopting some aspects of monastic asceticism. More significantly the military orders emerged in the twelfth century to defend the crusader states. As Brundage has observed, their members were like monks in that they were professed, took vows and enjoyed papal immunities, and closely resembled lay brethren in other orders, but they differed from other religious since most bore arms and used them in their religious vocation.[8] Canonists, therefore, had to use considerable ingenuity to get around the canonical ban on clergy carrying weapons and fighting with them. They did

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7 See Poggiaspalla, "La chiesa e la partecipazione dei chierici alla guerra," 145; Brundage, "Crusades, clerics and violence," 149.

8 Ibidem 152-6.

so by devising a new legal category of 'ecclesiastical persons' to accommodate both clergy and military orders. Canonists also excused clerical participation in warfare in certain circumstances by the late twelfth century.[9] Rufinus (*c.* 1164) held that clergy might use arms in extreme necessity defensively or against infidels on a superior's order. Huguccio (*c.* 1188) agreed but specified that clergy might use only defensive arms in these instances, i.e. armour, not offensive weapons. Thirteenth-century canonists accepted this qualified position, limiting clergy to their traditional role of encouraging those fighting 'just' and 'holy' wars, except that they might wield offensive weapons in unavoidable personal self-defence, not military action. Pope Clement V (1305-14) subsequently confirmed this exception in canon law declaring that clergy committing such defensive bloodshed no longer incurred 'irregularity', an impediment to receiving and exercising holy orders.[10]

So far we have focussed on clerical attitudes to and the legitimacy of clerical involvement in 'public' violence, or warfare. Admittedly historians have termed wars among local magnates 'private', and even public authorities, i.e. princes, might wage wars for 'private' ends, rather than to serve the 'common good', which the theologian Thomas Aquinas (d. 1274) saw as the proper end of a just war. Indeed Guy Halsall has remarked on the difficulty in differentiating between 'public' and 'private' violence in the early Middle Ages and the equally problematic and related distinction of 'legitimate' and 'illegitimate' violence.[11] 'Illegitimate' or criminal violence has been defined as 'private' violence, and we also need to explore violent crime in relation to medieval clergy since the historiography is extensive.

Firstly clergy were often victims of 'private' violence in this sense. There are many medieval accounts of clergy being murdered; consequently some were even canonised as martyrs, most notably Thomas Becket, Archbishop of Canterbury (d. 1170).[12] The papacy sought to protect clergy from such personal violence. Pope Innocent II made the best-known attempt by issuing the canon 'Si quis suadente' at the Second Lateran Council (1139).[13] It ruled that anyone who laid violent hands on clergy or monks incurred automatic excommunication and might obtain absolution only in person at the papal curia. This ruling entered Gratian's *Decretum* (*c.* 1140) and so became

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9 Poggiaspalla, "La chiesa e la partecipazione dei chierici alla guerra," 149-52; Russell, *Just War*, 135.

10 He revoked a ruling of Pope Innocent III (1198-1216) that recognised the Roman law principle of self-defence but still insisted that such clergy incurred irregularity.

11 Guy Halsall, "Violence and society in the early medieval west: an introductory survey," in *Violence and society in the early medieval West*, ed. Guy Halsall (Woodbridge: Boydell Press, 1998), 1-45, at 7-16.

12 For a recent fine biography of the archbishop see Anne Duggan, *Thomas Becket* (London: Arnold, 2004). More generally on the murder of bishops see *Bischofsmord im Mittelalter*, ed. Natalie Fryde and Dirk Reitz (Göttingen: Vandenhoeck & Ruprecht, 2003).

13 R. H. Helmholz, "'Si quis suadente' (C.17 q.4 c.29): Theory and practice," in *Proceedings of the Seventh International Congress of Medieval Canon Law*, ed. Peter Linehan, Monumenta Iuris Canonici, Series C, 8 (Vatican City: Biblioteca Apostolica Vaticana, 1988), 425-38.

part of the common law of the Western Church. It emphasized that assaults on clergy were serious crimes by reserving them to papal absolution; this required the assailants to make penitential pilgrimages to Rome. Admittedly in practice local bishops might absolve them for minor assaults and in other circumstances, at least in English church courts, but the principle remained. It reflected the idea of the reform movement that clergy were a separate, privileged caste within society, and hence worthy of special respect; their cloth was meant to protect them, even if it seldom did. Numerous petitions from lay assailants of clergy, seeking papal absolution, were recorded in the medieval registers of the Apostolic Penitentiary.[14]

The protection which the canon 'Si quis suadente' afforded became known as the *privilegium canonis*. And by the twelfth century clergy claimed another privilege, *privilegium fori*.[15] This also concerned crime, including murder and assault, but in cases where clergy were allegedly perpetrators rather than victims. It meant immunity from lay justice, so that clergy accused of crimes might not be tried or punished by secular courts. It was related to *privilegium canonis* in that the latter technically forbade officials of secular justice from laying hands on clergy to arrest them, and certainly from inflicting physical penalties on them, including execution and mutilation. In the context of the reform movement *privilegium fori* also reinforced the notion of ecclesiastical liberty from lay control and the clergy's special social status. Nevertheless it inconveniently suggested that some clergy fell short of the reformers' ideals, committing not only canonical crimes, notably simony, but also serious felonies like laymen, notably murder. Ideally clergy were not supposed to participate in lay affairs or any violence (until Clement V excused this in self-defence). Canon law even forbade their involvement in administering lay justice, for this implicated them in bloodshed as secular courts imposed physical penalties for many crimes. Likewise church courts might not hand down 'sentences of blood'. Admittedly clerks continued to serve secular authorities, even acting as justices, and ecclesiastical judges condemning heretics often handed them over to the 'secular arm' for execution. Nevertheless in theory lay and ecclesiastical jurisdictions were meant to be separate, but the line separating them was unclear and disputed at many points. And one of the jurisdictional issues that would provoke controversy between the medieval Church and 'State' was indeed *privilegium fori*.

Under the impetus of the reform movement, the Western Church, and particularly the papacy, had extended and asserted its jurisdiction over many issues by the twelfth century, including all cases regarding the clergy. Its juridical authority was de-

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[14] See Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages: The Example of the Province of Uppsala 1448-1527* (Helsinki: Academia Scientarum Fennica, 2001), 128-38, 288-310.

[15] The two main studies of this privilege are Robert Génestal, *Le* privilegium fori *en France du Décret de Gratien à la fin du XIV^e siècle*, 2 vols. (Paris: Ernest Leroux, 1921-24), and Leona C. Gabel, *Benefit of Clergy in England in the Later Middle Ages* (Northampton, Mass., 1929; repr. New York: Octagon, 1969).

fined in new canonical collections, notably Gratian's *Decretum*, and articulated through an international system of church courts extending from diocesan level up to the papal curia as the highest ecclesiastical tribunal in the West. Many secular rulers were wary of such developments and perceived them as a threat to their own growing power, especially their control over churches and clergy in their domains. This is not to say that *privilegium fori* was an innovation of the reform papacy. It had already emerged under the Emperor Constantine (d. 337) and it was also respected under the Frankish monarchy from the seventh century.[16] By the ninth century many legal authorities (not all of them authentic) supported *privilegium fori*, and many of these were subsequently included in Gratian's *Decretum*. However it was not systematically enforced nor widely contested before the growth of ecclesiastical power and canon law in the twelfth century.

The first major clash over *privilegium fori* was in England, maybe because royal government was more advanced there and so more defensive of its claims. It was the most heated issue in the famous conflict between King Henry II (1154-89) and Thomas Becket, culminating in the latter's death in 1170. The story is well known to historians, at least in England, and has been the subject of considerable debate in Anglophone historiography,[17] so it will only be outlined in brief here. The issue of 'criminous clerks' was first raised by Henry at a council of English prelates in December 1163. He proposed that clergy convicted of crimes in the church courts should be handed over to royal justices for secular punishment. Becket and his fellow bishops opposed this, insisting on clerical immunity from lay justice. But Henry was determined, and in January 1164 he laid before a council of nobles and bishops a statement of the 'customs of the realm'. The king thereby sought to restore 'ancient' royal rights over the English Church, including 'criminous clerks'. The latter were the subject of clause 3 of this document, which became known as the 'Constitutions of Clarendon'. The clause was worded ambiguously, but since Maitland historians have agreed that it meant that clergy accused of serious crimes were to be summoned before secular justices to face charges and then handed over, without trial, to be judged in the church courts as clergy. If convicted, they were to be 'degraded' and brought back to the secular court to receive punishment as laymen; 'degradation' was an ecclesiastical penalty depriving them of clerical status, thus reducing them to laymen. Royal officials were to attend the ecclesiastical

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16 Génestal, *Le* privilegium fori *en France*, 1. ii-iii; 2. iii-xx. See also Anton Nissl, *Der Gerichtsstand des Clerus im fränkischen Reich* (Innsbruck: Wagner, 1886).

17 The main contributions are Frederick W. Maitland, "Henry II and the Criminous Clerks," *English Historical Review* 7 (1892): 224-34, repr. in his *Roman Canon Law in the Church of England* (London: Methuen, 1898), 132-47; Charles Duggan, "The Becket Dispute and the Criminous Clerks," *Bulletin of the Institute of Historical Research* 35 (1962): 1-28, repr. in his *Canon Law in Medieval England: the Becket Dispute and Decretal Collections* (London: Variorum, 1982), art. X; Richard M. Fraher, "The Becket Dispute and Two Decretist Traditions," *Journal of Medieval History* 4 (1978): 347-68. See also Génestal, *Le* privilegium fori *en France*, 2. 95-114, and Duggan, *Thomas Becket*, 39-58.

proceedings, apparently to prevent convicted clerks from escaping. Becket persuaded his fellow bishops to approve these royal 'customs', perhaps to spare them Henry's likely retaliation,[18] but refused to do so himself, eventually preferring exile.

Clause 3 was the main sticking-point for him and Charles Duggan summarised Becket's three principal objections to it: the lay jurisdiction asserted over clerks in the initial hearing; secular courts might not punish degraded clerks except for subsequent felonies committed as laymen; degradation was sufficient penalty for clerical crimes without additional lay punishment since God does not judge (and punish) twice for the same offence.[19] Maitland, Génestal, Fraher and other historians have considered Becket's views innovatory, notably in extending *privilegium fori* to degraded clerks for felonies they committed as clergy.[20] Henry II certainly alleged that the proposed double punishment of convicted clerks was 'customary', going back to the time of his grandfather Henry I (1100-35). But this is debatable as English legal practice is unclear on this point before 1164. Some sources even indicate that English clergy were not normally subject to secular punishment but tried and sentenced by their bishops, notably following the separation of ecclesiastical and royal jurisdictions under King William I (1066-87).[21] Henry's predecessor Stephen had recognised episcopal jurisdiction over all clerks in a charter of 1136. This, however, reflected how far church reform had advanced under Stephen's weak rule, and arguably Henry sought to strengthen royal government by limiting the extent of ecclesiastical jurisdiction, especially papal, in England. In this respect some historians have seen Henry as the real innovator not Becket.

But Henry and Becket both claimed support for their positions from canon law, and historians have also intensely debated this.[22] Maitland famously argued that the king had a better case in canon law than his archbishop. He noted in Gratian's treatment of *privilegium fori* (*Decretum* C.11 q.1) that several texts used the phrase 'curiae tradere' in relation to criminous clerks. He argued that this was understood to mean delivery to the secular court for punishment, so these legal texts set precedents for Henry's proposed procedure. Génestal also claimed that this was a standard interpretation of 'curiae tradere' by the twelfth century, and traced the phrase back to Roman law. Justinian (d. 565), he argued, had established this procedure of secular powers punishing degraded clerks, and Frankish laws subsequently adopted it. These legal authorities entered canonical collections, including Gratian's *Decretum*, which apparently considered

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18 As suggested by Duggan, *Thomas Becket*, 45.

19 Duggan, "Becket Dispute," 4.

20 Maitland, *Roman Canon Law*, 146; Génestal, *Le* privilegium fori *en France*, 2. 100; Fraher, "Becket Dispute," 354b, 356, 362a. Cf. Christopher R. Cheney, "The punishment of felonous clerks," *English Historical Review* 51 (1936): 215-36, at 215.

21 See Duggan, *Thomas Becket*, 48-9.

22 See n. 17 above.

the procedure standard. Génestal hence concluded that canon law backed Henry not Becket.[23]

However Charles Duggan challenged these interpretations and argued that 'Becket's case was canonically better grounded'. Gratian broadly defended clerical immunity from lay justice, he observed, and only conceded secular punishment of clergy with episcopal consent, restricting 'curiae tradere' to exceptional cases involving offences against bishops. Duggan also pointed out that delivery to lay justice was one meaning of 'curiae tradere' in Gratian's *Decretum* but not the only one. In some texts it implied reduction to 'curial' status, a Roman law idea which suggested that clerks were sent to serve perpetually in a *curia* or household.[24] Some canonists also interpreted the *curia* where clerks were sent as a bishop's prison. Finally Duggan argued that contemporary decretists (commentators on the *Decretum*) held views more favourable to Becket's position than the king's. Notably Rufinus taught that clergy might be handed over to lay justice at the Church's initiative, not the State's as Henry intended; and Stephen of Tournai concluded that lay judges might only punish degraded clerks who reoffended. Admittedly this was the closest that a contemporary decretist came to opposing double punishment, but Beryl Smalley has shown that Becket's views here owed more to theological than canonistic debate. Richard Fraher, however, has disagreed with Duggan's reading of the canonistic sources. He argued that Bolognese decretists indeed supported clerical immunity from secular justice, but not beyond degradation, as Becket held, till after his death in 1170. Anglo-Norman canonists, according to Fraher, were even slower to change their views in response to the Becket dispute and only followed this Bolognese lead after 1190, even though Henry II had revoked clause 3 of the Clarendon Constitutions by 1176 and Pope Alexander III had issued the decretal 'At si clerici' (*c.* 1178) forbidding lay jurisdiction over criminous clerks and secular punishment of them. Nonetheless, as Anne Duggan has noted, such canonistic commentaries are notoriously hard to date and interpret, so Fraher has doubtless not had the last word.[25] In any case even if *privilegium fori*, or 'benefit of clergy' as English historians call it, was not firmly established in England before the Becket conflict, much evidence suggests that it was respected thereafter both in practice and principle not only there but increasingly also on the continent. By 1190 it had been extended to Normandy, for example.

Even though this appeared a posthumous victory for Becket, royal government subsequently increased its jurisdiction over criminous clerks in England, as Leona Gabel has demonstrated, and to a lesser extent in France, according to Génestal.[26] With

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23 Maitland, *Roman Canon Law*, 141-6; Génestal, *Le* privilegium fori *en France*, 2. iii-xxxix, 3-13, 98, 102-4.

24 Duggan, 'Becket Dispute', 3 (quotation), 8-10; cf. also Duggan, *Thomas Becket*, 50-53.

25 Duggan, *Thomas Becket*, 50. See n. 17 above for Fraher. See also Génestal, *Le* privilegium fori *en France*, 2. 20-26, on "At si clerici".

26 Génestal, *Le* privilegium fori *en France*, 2, esp. chs. 6-10; Gabel, *Benefit of Clergy* (as n. 15), esp. chs. 2-3. Cf. also Cheney, "Felonous clerks"; Austin L. Poole, "Outlawry as a punishment of criminous clerks," in

regard to the English Crown its judicial records make this clear by the mid-thirteenth century. Firstly clerks accused of crimes in England were normally arrested by the lay authorities, but not immediately delivered to the church courts for trial. Instead they were formally charged before royal justices, who required a jury to give a verdict on a clerk's guilt usually before handing him over. This resembled the first stage of Henry II's proposed procedure. Nonetheless the English lawyer Bracton, though a trained canonist, recognised it as standard practice under Henry III (1216-72), and English episcopal records refer to clergy already found guilty in the county courts as *clerici convicti*. Admittedly clergy were not judged and sentenced in the royal courts at this stage. However a guilty verdict entitled royal justices to seize a clerk's property in the king's name. There were clear political and fiscal motives behind this, for if an ecclesiastical trial confirmed the clerk's guilt subsequently, his goods were forfeit to the Crown. Even if a church court acquitted him, restitution of his property was not automatic; his bishop had to request this formally by an act of royal 'special grace'. And English bishops often complained that the Crown did not always release such property even then. Another grievance was that clergy often languished in royal jails for some time awaiting their hearing before itinerant justices and delivery to the Curch's custody.

Secondly if a clerk sought the transfer of his case to a church court, he had to plead 'benefit of clergy' and his bishop had to claim him from the royal authorities. Since lay judges might inflict capital punishment and often did but ecclesiastical judges might not, 'benefit of clergy' meant the difference between life and death to a convicted criminal so it had to be established whether he was genuinely entitled to it. Canonists regarded the tonsure as the outward sign of clerical status and basis for clerical privilege.[27] Some canonical rulings suggested that clerical dress was also an important test of privilege, notably for minor clergy who were married or in lay occupations since secular authorities were especially inclined to doubt their clerical status in thirteenth-century France and England. Indeed royal courts in both kingdoms accepted the clerical tonsure and dress as proof of status in that century. But by the fourteenth century the English courts had introduced a Latin reading-test as the chief means to prove clerical status since literacy was seen as the preserve of clergy. In fact it was an inadequate method because some clergy were barely literate, while literacy was spreading among the later medieval laity thereby allowing spurious claims to 'benefit of clergy'. In theory the bishop's representative who came to claim the alleged clerk administered the test, but in practice royal judges had the final say and might even reject his assessment. Hence secular jurisdiction

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Historical essays in honour of James Tait, ed. John G. Edwards, Vivian H. Galbraith and Ernest F. Jacob (Manchester: printed for the subscribers, 1933), 239-46.

27 See Gabel, *Benefit of Clergy*, ch. 3; Génestal, *Le* privilegium fori *en France*, 1, esp. chs. 1 (on the tonsure) and 4 (on married clergy).

denied some clergy access to ecclesiastical justice.[28] In addition canon law deprived certain clergy of *privilegium fori*. Degraded clergy might no longer claim it if they reoffended. Canonists doubted whether apostates retained it, especially if they committed violence. And notably from 1274 bigamous clergy automatically lost their status and privileges since such minor clerks had married a widow or more than once. A canon of the Second Council of Lyon abandoned them to lay justice for crimes committed after their bigamy, but English royal law even understood this to apply retrospectively. In France lay jurisdiction also strictly enforced this ruling with papal support, even if bishops still sought to protect such clergy.[29]

However if a clerk secured the transfer of his case to ecclesiastical jurisdiction, his chances of conviction were apparently low. Certainly most cases involving criminous clerks that reached English church courts ended in acquittal, even if this overturned a guilty verdict in the county court. Two reasons account for this. One was that the church courts required higher standards of proof than lay judges, and the other was canonical purgation.[30] Clerks might seek to prove their innocence by this procedure, which involved them assembling a set number of witnesses who were willing to testify that they were telling the truth when they denied their guilt. These were not necessarily witnesses to the alleged crimes but more like character-witnesses. Other parties might object to a clerk availing himself of purgation or to the compurgators he called to testify, but in practice it rarely happened, sometimes since supporters of the accused bribed opponents to buy their silence. Unsurprisingly secular authorities distrusted purgation, and in England they sought to limit its use by the later thirteenth century, delivering certain clerks to bishops provided that purgation was denied or deferred at the king's pleasure. Nevertheless it could fail to clear the accused, and some clergy confessed their guilt before the church courts. Moreover bishops usually initiated the canonical trial by ordering an inquiry into the life and reputation of the accused; if it reported unfavourably, purgation was forbidden and conviction the usual outcome. When the church courts found clerks guilty of felonies, the normal penalty they imposed was degradation. According to Gabel, English bishops increasingly imprisoned such degraded clerks to perform life-long penance too and kept jails for this purpose.

But did any criminous clerks also suffer secular punishment? Poole found that some degraded by their bishops were also exiled by the English Crown, and Génestal noted a similar practice in Normandy by 1205. As outlaws they lost all legal rights, effectively including their clerical privileges, since outlaws who returned from exile might be licitly hunted down and hanged. If clergy suspected of felonies failed to appear be-

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28 Gabel, *Benefit of Clergy*, 71-2, 87-91; Génestal, *Le* privilegium fori *en France*, 1, esp. chs. 3 (bigamy) and 5 (apostasy).

29 Cheney, "Felonous clerks," 216-18; Génestal, *Le* privilegium fori *en France*, 1. 66-72

30 Gabel, *Benefit of Clergy*, ch. 4.

fore English royal judges for an initial hearing, they also risked outlawry. Indeed Cheney argued that outlawed English clerks were generally fugitives rather than suffering double punishment. Nevertheless the Crown's sequestration of property from clergy degraded by their bishops was a financial penalty, and English prelates certainly protested at this double punishment.[31] However historians agree that in England the Crown generally respected the reservation of clerical crimes to ecclesiastical judgement and punishment (despite its attempts to restrict this to its advantage). Génestal concluded that the same was true in France by the later thirteenth century, except where canon law surrendered clergy to secular punishment for certain crimes, notably heresy.[32] Further research is needed on *privilegium fori* in other parts of Europe, and many essays in this volume make a valuable contribution in this direction.[33]

In conclusion the existing historiography has largely discussed medieval clergy and violence in two contexts: war and crime. In theory clerks were not meant to participate in either, but in practice some did. The ecclesiastical authorities had to find ways of coping with this situation even if they had to co-operate with secular powers in disciplining violent clergy. Likewise the clergy were often victims of warfare and violent crime, and the Church also developed means to cope with these problems, notably the peace movement, crusades, and *privilegium canonis*. However certain questions need further research. How successful was the medieval Church in restraining violence against and by clergy? How common was clerical violence in the Middle Ages, especially compared with lay violence? Why were some clergy violent? What were lay attitudes toward clerical violence? One could go on, but arguably such gaps in our knowledge exist since past historiography has not addressed the topic of medieval clergy and violence in general, but only dealt with certain aspects of it. Admittedly recent historians have attempted general approaches to the place of violence in medieval society and to medieval warfare as a phenomenon,[34] but these have rarely included much special and separate consideration of the clergy. This volume is, therefore, an important corrective to such

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[31] Poole, "Outlawry," 243-6; Génestal, *Le* privilegium fori *en France*, 2. 110-14; Cheney, "Felonous clerks," 234-6. On episcopal grievances see William R. Jones, "Relations of the Two Jurisdictions: Conflict and Co-operation in England during the Thirteenth and Fourteenth Centuries," *Studies in Medieval and Renaissance History* 7 (1970): 77-210, esp. 178-92.

[32] Génestal, *Le* privilegium fori *en France*, 2, esp. chs. 7-10.

[33] The rich judicial records for late medieval Italy indicate one promising avenue for such research; see Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2007), and Prof. Andrea Zorzi's work on Tuscany notably his *L'amministrazione della giustizia penale nella Repubblica fiorentina. Aspetti e problemi* (Florence: Olschki, 1988).

[34] E. g., *Violence and society*, ed. Halsall; *Violence in Medieval Society*, ed. Richard W. Kaeuper (Woodbridge: Boydell Press, 2000); Philippe Contamine, *War in the Middle Ages*, trans. M. Jones (Oxford: Blackwell, 1984); Helen J. Nicholson, *Medieval Warfare* (Basingstoke: Palgrave Macmillan, 2003); *La guerre, la violence et les gens au Moyen Âge*, ed. Philippe Contamine and Olivier Guyotjeannin, 2 vols. (Paris: CTHS, 1996); in ibidem 2. 89-126, clergy are considered but largely as victims of warfare.

neglect. The case studies it contains indicate the wealth of sources on the subject, not least the Apostolic Penitentiary records, and will hopefully lead the way for further research. The subject is an important one, since it has so much to tell us about clerical relations with the laity and the Church's relationship with the 'State' in medieval Europe, *inter alia*. Indeed one significant way forward will be to study medieval ecclesiastical and secular records together; this requires more collaboration between scholars in the all too separate fields of church history and political history,[35] and the study of medieval history can only be richer for that.

[35] A project designed to encourage such collaboration internationally is 'Law and Violence in the Middle Ages' led by Prof. Anne Curry and Dr Peter Clarke of the History Department at the University of Southampton (UK);); for further details see http://www.wun.ac.uk/ external/lvma/index.html.

VIOLENCE AND THE MEDIEVAL CLERGY

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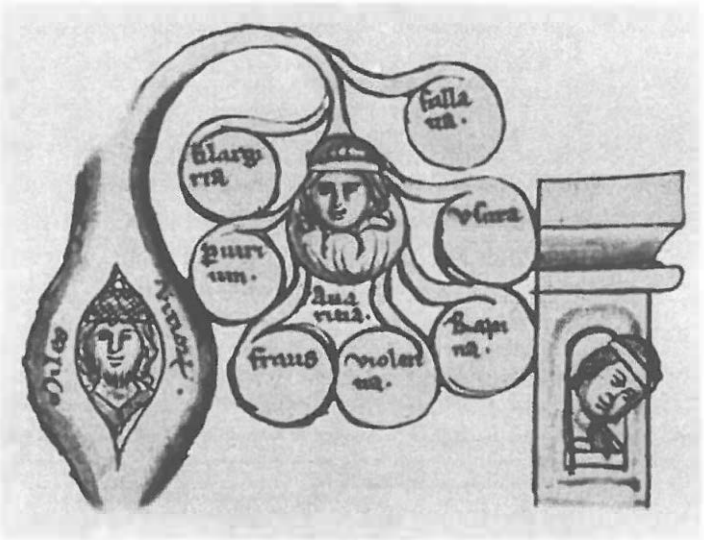
and
Ana Marinković



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PREFACE

Studies of the Apostolic Penitentiary and its role and function for all strata of late medieval society have become an important field of research at the international level. The requests of Christians for grace to be granted by the papal curia offer information about a variety of problems and needs that confronted both clerics and laypeople and made petitions to the pope necessary or, at least, advisable.

Since 2001, the Department of Medieval Studies of Central European University has been concentrating on comparative research in the East Central European data of the Penitentiary Registers. This has led to intensive cooperation with other scholars in the field, to a number of international meetings and the publication of their results.[1] The most recent of these workshops was held in Dubrovnik in 2008 and dealt with a research question for which the Penitentiary registers contain rich material: "Coping with Violence, and the Medieval Clergy (from the Local Settlement of Dispute to Approaching the Apostolic Penitentiary)."

In recent decades research into violence in the Middle Ages has seen a particular boom. In a large number of studies historians discovered that violence was omnipresent in medieval society and affected all areas of life and the members of all social strata. Although one has to be careful with such generalizations, it can be stated that the surviving sources deal regularly with issues of violent actions, signs and results of violence, violent people and coping with violence. Members of the clergy played an important role in recording such evidence – as writers about violence and critics of violence, but also as perpetrators, victims, and witnesses. However, systematic analyses of the patterns of behaviour and the different functions and actions of clerics on these issues have not yet been realized often in a context-bound and comparative way. The Dubrovnik workshop aimed to contribute towards changing this situation and offer a forum to discuss questions about the various roles of medieval clerics in the attempts

[1] The results of meetings at Bergen (2003) and Budapest (2004) were published in Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen (ed.), *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*, CEU Medievalia 8 (Budapest and New York: Central European University Press, 2005); selected papers of a workshop at Rome (2005) may be found in iidem (ed.), ... et usque ad ultimum terrae *The Apostolic Penitentiary in Local Contexts*, CEU Medievalia 10 (Budapest and New York: Central European University Press, 2007).

and processes designed to cope with violence. Particular emphasis was put on the function of the Apostolic Penitentiary and its decisions in this context. This volume contains selected contributions from the meeting.

In his introductory paper, Peter Clarke offers an overview of the state of the art of research into the connection of the clergy and violence in the Middle Ages. Kirsi Salonen concentrates on violence at the Roman curia and its reflection in the Penitentiary records. Torstein Jørgensen and Etleva Lala deal with violence and the clergy in two peripheral areas of medieval Western Christianity, namely, Norway and Albania, and also include Penitentiary evidence in their analysis. Gerhard Jaritz studies the role of one important object in the violence-bound argumentation of the supplicants to the Penitentiary: the short bread-knife that was allowed to be carried by everyone and did not count as a weapon, but seems to have been used regularly as such. Gordan Ravančić and Nella Lonza offer analyses of problems of violence occurring in the clerical space of medieval Dubrovnik.

November, 2011

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