

**From Custom to Rule:
The Mechanisms of Authority in the Medieval English Church**

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To study the emergence of new social forms presents difficult theoretical and methodological challenges. It is difficult theoretically because we need to de-essentialize important concepts that are commonly used to understand these social forms once they exist. Methodologically it is difficult because to study emergence means to study the shift from non-existence to existence of these new social forms. This paper is part of a larger project to understand the development of formal organization in its classic form: bureaucracy. Bureaucracy has been central to our understandings of modernity, and contemporary understandings of organizations developed from initial theorizations of bureaucracy (Scott 1992; Perrow 1986). However, the theories that have developed to understand organizations are not always well-suited to understand how formal organizations develop in the first instance. To this end, this paper examines the development of new forms of authority within the medieval church, the first continuous instance of bureaucracy in the West, and a case of *de novo* bureaucratization (Lancaster 2005).

Given the importance of new types of organizations in explaining significant features of social life, there has been a lack of theorizing about how new types of organizations emerge.

This under-theorizing is particularly pronounced in organization theory. Some of the most prominent theories of organizations ask similar questions, but do not directly examine the formation of new types of organizations. Population ecology began as an attempt to answer why there were so many kinds of organizations (Hannan and Freeman 1977, 1987), yet theorized the population dynamics of new organizational forms once they came into existence, instead of exploring how these new forms arose in the first

place (c.f. Ruef 2000; Young 1988). The new institutionalism in organizational analysis examines how new organizational practices or structures enter into an existing or new organizational fields, but these practices are constructed externally (Scott 1995, Hirsch 1997). In this perspective, new organizational forms, when they are analyzed, are the products of the hybridization of existing practices or structures, combining disparate existing elements to create a new entity (c.f. Clemens 1997; Padgett and McLean 2006). The transaction costs approach looks at how market failure creates organizational hierarchies, but avoids asking how the specific types of organizations come about (Perrow 1986).

The earliest attempts to elaborate a theory of bureaucracy also failed to provide a convincing account of its development. Hegel (1952 [1821]) was the first to provide an analytic description of bureaucratic political systems, but their origin lay within the larger transformations of the absolute spirit. Both Weber (1968) and Barnard (1938) provide accounts of the nature of bureaucracy, and its success through its efficiency, but focus more on the operations of bureaucracy than why it came into existence. For Weber, it is partly an account of how bureaucracies diffuse because of their efficiency over other forms of social organization. However, for Weber the development of bureaucracy was also part of the larger shift towards rationalization that occurred primarily in the West (Schluchter 1981; Sica 1988). For Weber, bureaucracy is the instantiation of rational/legal authority, and arises out of a more general shift in social structures.

The relative lack of attention to understanding how bureaucracies arose is not simply a result of theoretical problems, but also provides a methodological problem as well. When studying emergence, new units appear, as well as new relationships between

existing units, which makes a quantitative study of emergence of new forms difficult.¹ Furthermore, and this is a more important issue, is that our theory/method packages focus on the role of exogenous factors to study organizational change or development. However, to study the process of emergence, we need to endogenize the social processes which lead to the development of new organizational forms.

This paper examines one of the central aspects of bureaucratic forms of organization. We understand rules as central to the operation of formal organization, and no where more so than in bureaucracies (Simon and March 1958; but see Blau 1956). Organizational rules are unlike other rules in that they are formalized and written down, as well as linked together in particular arrangements which create a system of rules. This type of rule also requires a particular mental attitude of organizational participants, which Weber called rational/legal authority, or the idea that people gave impersonal rules, offices, and procedures legitimate authority to govern and structure action according to rational principles (Weber 1968). This development of a new kind of authority has been studied in several instances as a transformation of the individual through which they come to impose a strict self-discipline of themselves (Weber 1958; Gorski 2003). This shift happens externally to the operations of particular organizations or economic activities, instead being an independent and exogenous cause of the institutional development of the state apparatus for Gorski and of capitalist economic behavior for Weber. However, in applying this to the medieval church as the first bureaucracy in the West since the fall of the Roman Empire, we actually find that the acceptance of rational/legal authority as the principle source of authority within the church was a

¹ The two notable exceptions to this are the studies of the emergence of new forms by Ruef (2000) and Padgett and McLean (2006)

comparatively late development, occurring well after all the structural elements of bureaucracy were put into place. This raises the question of how this new model of authority developed and became accepted within the church.

Nevertheless, we can not simply examine the development of this new kind of authority on its own, as this is an ideational and cultural process that would not have any practical importance unless it became embedded within organizational and institutional practices. Furthermore, we have to explore the ways in which claims to rational/legal authority were being made, and in how they were mobilized in particular institutional settings, to examine the ways in which people began to follow organizational rules, and to accept them as the principle source of authority within the church.

This paper begins by describing two moments, separated by roughly 45 years, which show the mobilization of claims based within the rational/legal system of the canon law were used, as well as claims of other sources of authority, principally the traditional authority of the king. These vignettes then lead to a discussion of types of authority, and how they are tied up with organizational rules. I then turn to a discussion of how members of the clergy used the system of the canon law as a way of making claims within and about the organization in multiple settings, and the contest between competing models of legitimate authority. I then move to show how these claims of the law built a rational/legal system of authority within the context of the church in two institutional settings, appeals to the papacy and the routine administration of dioceses by their respective bishops.

Pope and King

In January 1164, king Henry II called a royal council at Clarendon Palace, a royal hunting lodge outside of Salisbury. Following up on an earlier council held in October, Henry sought to reestablish royal authority over the church in England. In a set of articles covering numerous aspects of ecclesiastical activity, the king sought a “recollection and recognition of some of the customs, liberties, and dignities of his predecessors, certainly of his grandfather king Henry and others, which should be held and observed in the kingdom” (Whitelock, Brett, and Brooke 1981, 877).² The specific claims included the establishment of the jurisdiction of royal courts over advowson (the right of presentation to an ecclesiastical benefice), grants of churches, and when members of the clergy commit crimes. Furthermore, it required royal approval for any bishop to leave the country, established procedure in the ecclesiastical courts (including preventing accusations against royal officials), prevented excommunication of royal tenants-in-chief as well as other royal officials, and restricted the ability of members of the clergy to appeal to Rome without royal approval, the process of election to significant ecclesiastical positions, as well as other articles placing firm royal control over the church (Whitelock, Brett, and Brooke 1981, 877-883).

The main target of this council was Thomas Becket. In 1162 Henry had put significant pressure on bishops and the chapter of Canterbury to elect his chancellor Thomas Becket, who was also the archdeacon of Canterbury, archbishop. Becket immediately began to vigorously pursue claims of the Canterbury church against laymen, using the full extent of his ecclesiastical power. He had quarrelled with Earl Roger of Hertford about the rights of the castle at Turnbridge, as well as with William of

² “. . . *recordatio et recognitio cuiusdam partis consuetudinum et libertatum et dignitatum antecessorum suorum, videlicet regis Henrici avi sui et aliorum, que observari et teneri deberent in regno.*”

Eynesford, a royal tenant-in-chief, over rights to a church, leading to William's excommunication by Thomas (Stubbs 1876, 311-12; Grim, in Robertson and Sheppard 1875-1885). Furthermore, Becket had engaged in disputes with royal officials and sherriffs, while allowing certain criminous clerks to receive what the king saw as light punishments (Grim and Potigny, in Robertson and Sheppard 1875-1885). While the reasons behind the rift between the king and the archbishop, who had been one of his closest councillors has long been debated, Becket was clearly pursuing an aggressive policy to increase the power and autonomy of the church in England (Berman 1983; Winston 1968; Knowles 1971; Barlow 1986, 1987).

At the council, Becket acquiesced to the kings demands, and ratified the council, as well as all of the other bishops, with the exception of the bishop of Salisbury, but was told by the archbishop to also agree to the council. The king sent a letter to pope Alexander III, with the support of the archbishop, asking for the pope's confirmation of the council. The pope refused, and returned the Constitutions with his glosses, indicating which ones he rejected and those he approved. By 1164 Becket had switched his position, rejecting the Constitutions, and twice tried to cross the channel to travel to Rome to seek repentance. Alexander absolved Becket for his failure to resist the king, but this led to a direct conflict with the king over his refusal to support the king in this matter. Henry sought to remove the problem of Becket by bringing him up on charges of misappropriation from his time as royal chancellor as well as failure to provide justice to a royal official in a land plea in the archbishop's court. The king summoned the court at Northampton to deal with these charges, and after a series of dramatic conflicts between the king and archbishop, Becket fled Northampton, eventually crossing the channel into

exile in Flanders. Becket traveled to the itinerant papal court at Sens, where Alexander III officially condemned the Constitutions.

Becket spent the next six years in Pontigny and Sens, attempting to use his ecclesiastical powers of excommunication and interdiction to secure the rejection of the Constitutions. The English clergy were firmly split between supporters of the king and those who supported Becket. Leading the supporters of the king was Gilbert Foliot, bishop of London, who made numerous entreaties to the archbishop and the pope to resolve the situation in the king's favor, while many supporters of Becket joined him in exile. Becket was appointed the papal legate in 1166, and began excommunicating royal advisors and officials, as well as the clergy who supported the king. The pope, the French king, and many members of the clergy on the continent sought to broker an agreement between Henry and Becket, but were unsuccessful. Throughout Becket was pressuring the pope to interdict England, or to excommunicate the king and the entire country, unless Henry relented. The pope was increasingly moving towards proclaiming an interdict, the threat of which Henry was increasingly concerned about, leading to his eventual acceptance of Becket's position and allowed for the return of Becket to England.

Throughout this affair, Becket had been firm well past the point of arrogance, alienating many who shared his views. On his return, he continued to do so by upholding his excommunication of the bishops of London and Salisbury, and suspended the archbishop of York (Duggan 2000). His continued intransigence led the king to openly ask for his dismissal, which was answered by four knights who went to Canterbury Cathedral and murdered Becket.

A similar conflict broke out between the king and the church under the reign of John. In 1205 Hubert Walter, archbishop of Canterbury, died. Upon the death of a bishop or archbishop, the chapter of the cathedral were responsible for electing his successor. However, it was customary at Canterbury for the suffragan bishops of the archdiocese to also participate in the election of the archbishop (Brett 1975). King John asked both the monks of the chapter and the bishops to delay an election, likely to gain the revenues of the archdiocese while the see was vacant. Both the bishops and the monks sent delegations to Rome to contest the claim over the suffragans participation, but the monks also elected their subprior Reginald without a royal license to elect, and sent him to Rome as well. At Rome, Reginald announced his election and passed a canonical examination of his fitness (Benson 1971; Benson 1968). However, the pope was concerned that the election did not follow appropriate procedure, and ordered both the bishops and the monks to send representatives to the Papal Curia to adjudicate whether or not the suffragans had rights in the election. The king meanwhile pressured the clergy to forgo their appeals, and instead had them elect his own nominee John de Grey, who was the bishop of Norwich.

When the monks sent a delegation to Rome to secure a confirmation for the election of John, the pope quashed both John's and Reginald's election for irregularities. Furthermore, the papal court decided that the suffragan's had no right to participate in the election, and had the monks in Rome agree to the election of Stephen Langton, a member of the papal administration. The king's representatives refused to give royal assent to the election of Langton, and returned a letter from the pope with additional reasons to reject Langton as archbishop, including his claims that the king had a right of veto against the

election (*Registrum Innocenti III*, in Migne 1844-1859, 1045; Stubbs 1879-1880). The pope consecrated Langton regardless, which prompted the king to expel the monks from the cathedral at Canterbury. In response, the pope wrote letters to the bishops of London, Ely, and Worcester, instructing them that unless the king let Langton into England, they were to “place the church of the entire country under interdict, so excommunicating everyone under the sentence of interdiction” (*Registrum Innocenti III*, in Migne 1844-1859, 1208).³

The king continued to oppose the king, so the bishops of London, Ely, and Worcester placed the kingdom under an interdiction on March 24, 1208, according to the papal order. Nearly all of the bishops left England to avoid royal pressure, with the exception of Peter des Roches, bishop of Winchester. They continued to have a role in their dioceses, however, by trying to soften some of the terms of the interdict, and determine ways to lessen its effects on the laity. The chapter of St. Paul asked their bishop about the papal order allowing for churches to celebrate mass once a week behind closed doors (Powicke, Cheney, and Hadden 1964). Furthermore, they appealed to the papacy to enforce the Cistercians to obey the interdict, even as they petitioned the pope to allow the *viaticum* to those who were dying (Stubbs 1872-1873; Stevenson 1875). This move by the papacy along with the assent of the bishops, essentially removed England from the Christian community, and made John’s position untenable (Cheney 1949). In addition, this increased the disaffection of the barons with king John, causing them to rise up in a more open revolt. In this situation, John resolved his dispute with the papacy, and agreed that England should become a vassal state of the papacy (Lawrence 1965). In

³ “. . . *et totam terram eorum ecclesiastico suppositam interdicto, facientes tam excommunicationis quam interdicti sententiam.*”

1215 this was further reiterated as the first chapter of the magna carta (Powicke, Cheney, and Hadden 1964, 85).

These two instances, separated by roughly 40 years, indicate numerous issues having to do with authority within the church. In the dispute involving king Henry II and archbishop Thomas Becket, we can see clearly how there were multiple competing claims of jurisdiction, based on overlapping authority. The king in the Constitutions of Clarendon clearly sought to return to the customary relationship between the English church and the monarchy, with the church respecting rights of both the papacy and the king in determining church affairs. Henry also desired greater jurisdiction of secular authorities in resolving disputes involving members of the clergy, in clear contrast to the claims being made by the papacy at the time (Warren 1973; Southern 1970; Barlow 1986, 1987). The English bishops and clergy were split in their loyalties, with many remaining with the king, notably Gilbert Foliot, while others supported Becket, with a number of them joining him in exile. In contrast to the Becket controversy, during the Interdict the English bishops and clergy were united in their support of the authority of the pope in effectively excommunicating all of England. When they thought the sentence was too severe, they appealed to the pope to receive orders that allowed them to soften the impact of the interdict on the lives of the laity. When they felt that they would have a difficult time resisting the power of the king, they went into voluntary exile, instead of being forced through the threat of violence into positions that they were unable to accept (Duggan 1965; Lawrence 1965). Overall, the clergy drew clear distinctions between the authority and jurisdiction of the king over the church, and saw the authority of the king

over the church through the lens of the canon law and its established jurisdictions between the ecclesiastical and the secular.

These two moments also show the increasing importance of the canon law over custom in ordering action within the church. At first the pope thought that the English bishops who had, on his orders, placed the interdict on England had been too extreme, they were following the letter of the law, and not customary expectations on the relationship between the church and the crown (*Regesta sive Epistolae Innocentii III*, in Migne 1844-1859 p. 1423). Furthermore, the initial conflict that brought on the interdict was mobilized through legal appeals to the papacy, with the multiple parties to the election of a new archbishop of Canterbury all sending representatives with legal briefs to Rome to pursue the case. The matter came to a head when John refused to accept the pope's legal decision in the matter, causing the bishops to extend the interdict. In addition, the original position of the English bishops was that they had customary rights as suffragans to Canterbury to participate in the election, which had certainly been the case since soon after the Conquest. However, the lawyers in the papal curia ended up rejecting these rights of participation, arguing that it was opposite to the established canon law which applied to the rest of the church and the election of other metropolitans (*Regesta sive Epistolae Innocentii III*, in Migne 1844-1859 vol. 215, pp. 1043-1045).

In implementing the interdict, the English clergy were at first at a loss as to what exactly they should do. The pope sent a letter in June of 1208 specifying some instructions to the clergy on how to impose the sentence (Stubbs 1879-1880 vol. 2, p. 92). The bishop of Salisbury, Herbert Poore, was unclear on how to proceed, and asked the clergy in the diocese of London what he should do (c.f. Powicke, Cheney, and Hadden

1964 vol. 1, p. 11). The Cistercians refused to stop performing ministerial services, as they thought their exemptions prevented them from having to follow the terms of the interdict (Luard 1872-1883. vol. 2, p. 524). Even during the Becket affair, the bishops who remained in England continued to be involved in the administration of their dioceses as the major political battles continued. While this routine administration was an important element of the bishop's job by the mid-12th century, we can see in the interdict that even the excommunication of a country involved dealing with the minor administrative trivia raised such a rare and extreme sentence.

These two extreme moments show the importance of the canon law in providing a source of organizational authority in the 12th century, even as it was contested. However, by the beginning of the 13th century we see that the clergy only allowed for other sources of authority that were provided for in the canon law. The shift to a new mode of authority was attained. In the next section of the paper, I examine more deeply what was the organizational nature of this shift, from loose collections of customary rules and traditional authority that was characteristic of the church at the end of the 11th century, to a systematized, written, and formal set of rules that became paramount within the church by the 13th century.

Following Rules

Following rules is central to social life. Rules provide limits to action, allowing for social interaction and control that would be impossible without them. However, rules broadly defined come in a wide variety of forms, including customs, norms, grammar, habits, and formal laws, among others. The notion that rules of a particular type have

been central to studying bureaucracy has been around since Hegel (1952 [1821]) and Weber (1968) first began to explore the particular features of modern organizations. The early definition of organization theory as studying formal/complex organizations retained an idea that formal rules were fundamental to organizations. What makes rules in bureaucracy important is the understanding that rules are written and bound in a system that dramatically reduce the ambiguity surrounding these rules as guidelines for action (Weber 1968; Simon 1976; March and Simon 1958; Cyert and March 1992). Moreover, bureaucratic rules are a subset of a larger set of rule-making that occurs within the legal system, and for Weber, bureaucracy was the form appropriate to organizations in societies characterized by modern formal legal systems.

Rules of this type are considered formal and rational, to distinguish them from customs, traditions, habits, norms, and other types of rules. They are formal in that they are written down, reducing the ambiguity involved in interpreting and utilizing them, though certainly not eliminating it altogether. Also by being written down, they are not private and hidden, but open for all to observe, even if this requires specialized training in order to interpret. Furthermore, the locus of authority shifts away from the rule itself, instead located in the process of generating and enforcing rules. Under traditional authority, the invocation of tradition is ambiguous, and subject to significant interpretation. A rule has authority to the extent that individuals believe in the rule itself, as opposed to bureaucratic rules, where people can disagree, often vehemently, with the rule itself, yet still grant authority to the officials who are utilizing or enforcing the rule.

This is one of the aspects of bureaucracies that is most apparent, and most central to distinguishing bureaucracies from other organizational forms (Weber 1968).

Bureaucratic rules are consistent, abstract, and intentionally established. These rules are applied to situations, not to individuals, and part of the work of organizations is to classify situations so that the appropriate rule will be applied (Fuchs 2001). Rules provide the basis for bureaucratic action, by classifying situations and then applying a rule which determines the organizational response (March and Simon 1958). Action can then be controlled by those at the top of the organization by limiting the discretion of their subordinates by putting into place a set of rules and routines of appropriate action for different states of the world. That is, when a situation is identified as a certain specific state of the world, subordinates in the organization will put into place actions and decisions that are considered the appropriate response to this state of the world. This allows for those at the top of the organization to get their subordinates to do what the bosses would do, without requiring the bosses to go through all of the work in making the decision and deciding on an appropriate response to all situation and organization faces.

Furthermore, bureaucratic rules are rational in two ways. First, there is a process for generating, eliminating, and elaborating rules that holds authority, not the rule itself. New rules are created either through some form of legislative process, or through a rational system of thought that produces new rules. In addition, these rules are tied together in systems and do not stand alone. We can see this most clearly in the context of rational legal systems, where there are institutions of legislation, legal scholarship, legal practice, and legal decision-making that generate and interpret rules, applying them to new situations. For Weber, this was a major step in the development of Western rationalism, because it allowed for the development of a legal science.

Bureaucratic rules are also rational in the sense that they create predictable models of future action and decisions, and individual actors can create expectations about the future on the basis of rules themselves. In the legal system this allows for greater certainty in calculation, allowing for the development of a mode of decision-making on the basis of rational expectations. In organizations, it allows for individuals within the organization to predict the actions of other organizational participants, and for those outside of the organization who interface with it to have reasonable expectations about future action.

Prior to the twelfth century, very little of this was in place in the Catholic Church. There was general agreement on the identification of positions within the Church, but there was not a system of rules and routines that were consistent across dioceses (Berman 1983; Morris 1989; Southern 1970). Instead, actions, decisions, rules, routines, and staff positions were idiosyncratic and arbitrary. There was little oversight beyond the customs of the community and the previous actions of the Church as precedents. Though there was an organizational shell, there was not a formal organization because of the absence of centralized control, accountability to higher positions in the hierarchy, and no universal system of rules across dioceses.

Instead, authority and rules within the church looked more like what Weber called traditional authority. Under this regime, authority is based on custom, traditions, “the way things have always been done”. In mobilizing rules, actors appeal to the past in order to structure the present. Traditional rules of this sort are often disconnected from other rules, and do not form a coherent, rational system. Furthermore, there is greater ambiguity of rules as they are typically not written. If these rules are written, there is no

system for referencing or indexing them that allows for general applicability.

Furthermore, while not impossible, it is more difficult to positively apply the rule to particular situations which involve a greater degree of complexity than the original rule was intended for. These traditional rules are also selectively applied by those seeking particular advantages, because there is no systematization of the rules. In this system of authority, rules are also much more mutable. There are frequently individuals who are those who customarily interpret and apply the rules, and if there is no system of checks on these individuals, they can change the rules away from what they originally were.

This system of traditional rules and authority was characteristic of the Latin church at the end of the 11th century. While the papacy was utilizing arguments about the canon law, before 1140 the law had not been systematized, and they were appealing to traditions within the church to make claims about papal sovereignty.⁴ More generally, the church was a loose collection of different institutional arrangements that had developed between the church and various secular leaders. Even in internal church matters, arrangements were often customary, which created a tremendous amount of local variation. Furthermore, new activities could become customary if practiced frequently enough, and if powerful individuals continued to push these claims. One such example from England was the election of the archbishop of Canterbury, which in the late 11th century the suffragan bishops to Canterbury forced the monks there to accept them as co-electors of the archbishop, a practice that survived to 1208.

⁴ Many of these were collected in a 9th century collection called the *Pseudo-Isidore*, which included a large number of forgeries which the papal party used to advance their claims. The most important, the Donation of Constantine, was a forgery that purported to be an official act of the Emperor Constantine I, who granted the bishop of Rome (the pope) authority over ecclesiastical and secular affairs within the realm.

Furthermore, from the Carolingian empire to the mid-11th century, there was a close relationship between the church and secular rulers which had shaped the structure of the church. The church relied heavily on secular rulers to protect their land and to perform basic administrative duties within the diocese, while the secular leaders used the church to provide for divine legitimation of their power as well as providing a means of penetrating the central power into the provinces when the bishops were tied to the king instead of the local nobility. This mutually beneficial arrangement was the traditional structuring of church-secular relations throughout Latin Europe, and was based not on legal codes, but instead upon customary institutional arrangements that had developed from the 9th through the 11th centuries.

The major development of a system of impersonal rules in the Church came in the form of the systematization of the canon law. The first systemization of canon law was provided by a scholar at the University of Bologna named Gratian. Gratian published his *Concordantia discordantium canonum* (*Concordance of Discordant Canons*), more commonly known as the *Decretum*, in 1140 as an attempt to collect together all of the authoritative statements on the law of the Church (in Friedberg 1879 vol. 1). These statements came from Papal decretals, the decisions of different ecumenical councils, the writings of the Church fathers, and the Bible (Ullmann 1975). The result was comprehensive in attempting to collect the entire law of the Church and systematic in its attempt to present the law as a coherent whole (Berman 1983; Helmholz 1996; Bellomo 1995; Ullmann 1975). The first part of this collection was divided into 101 *distinctiones*, or divisions, was an attempt to provide a comprehensive list of the important concerns of

the canon law (Kuttner 1982, 1982). Of these divisions, the first 20 dealt with statements concerning the nature of law, the sources of law, and the relationships between different sources of law. The next 81 dealt with issues of ecclesiastical administrations. Divisions dealt with the jurisdiction of various offices within the Church, elections of personnel, proper activities of the clergy, and other issues concerning the clergy (Ullmann 1975; Morrison 1969; Benson 1968). The initial systematization of canon law by Gratian in 1140 provided the systematization of all previous rules and decisions. It was immediately taken up by the papal reform party as a tool to use throughout the Church. Very quickly, Gratian's book spread throughout the Church and was used as the legitimate basis for decision-making.

The systematic canon law that was developed provided a set of rules for administrative activity in the Church. Much of the canon law was organized around administrative activities, and took on the character of a public law. Canon law established systematic rules for the election of popes, bishops, and abbots. It also dealt with requirements for who could occupy positions in the clergy, and issues of church property (who owned the property, who had usufructory rights over property, how property could be alienated, etc.). A significant part of the canon law was organized around these administrative functions, providing a systematic basis for action throughout the organization that was consistent, universal, and transposable.

However, the systematization of canon law into a system that allows for bureaucratic rule formation only takes us to a certain point. Following Weber (1968; 1958; 1981 [1927]), we not only need to look at the character of the system, but also the

nature of individual action. In particular, we need to focus on two questions closer to the individual. First, following impersonal written rules occurs under particular social conditions where these rules are given legitimacy by social actors (Weber 1968). When individuals give legitimacy to these rules, they enact a particular model of authority, one where authority is not tied to questions of social identity, as it is for charismatic authority, nor to particular individuals in particular social positions, as in traditional authority, but instead authority is given to disembodied institutions, whether the office or the law.

In other words, the question is not how rules became systematized and formalized, but instead how and why people came to accept the claims of this new structure of rules. When pope Gregory VII made specific claims to the sovereignty of the papal see in the *Dictatus Papae* in 1075 (*Registrum Gregorii VII*, in Migne 1844-1859 vol. 148 p. 408), claiming that his decisions were final, and that no one else was able to pass judgment over these decisions, he was engaging in wishful thinking. However, by the early 13th century pope Innocent III said that it was he “who judges everyone, and is judged by no one” (*Sermones de diversis Innocentii III*, in Migne 1844-1859 vol. 217 p. 658)⁵, he was closer to making an accurate description of the nature of papal power.

To understand this shift, we need to understand how it was that members of the clergy came to accept the authority of the canon law as paramount over the church, to the exclusion of the authority of tradition, which included claims to family, custom, and king. As Strayer (1970) pointed out, but failed to elaborate on, the 12th century England and France saw in general a shift from multiple and conflicting loyalties to a singular loyalty to the state. Similarly, within the church, we can consider this a shift in loyalties from church, family, and king to the clergy giving loyalty solely to the church. This itself

⁵ “...*qui de omnibus judicat, et a nemine judicatur.*”

raises the second question, which is how this new system of authority was mobilized into actual institutional and organizational practices, to become less of an ideology and theory of the law to an actual model for organizational action that people used to structure their activities.

When looking at the question of emergence of bureaucracy, we need to go beyond asking how bureaucratic structures were put in place to also examining the processes by which individuals within the organization come to accept a particular type of authority. Following Weber (1968), we need to look both at how structures were organizing elements, but also how the mental lives of organizational actors come to give authority to rational laws. The next section of the paper examines how the language of authority was used in the 12th century church, to draw attention to the multiple, and often conflicting, claims made at the beginning of the century to a shift by the end where the ultimate authority was given to the canon law, even as many members of the clergy saw serious problems with this shift.

Rules, Law, and Language

When thinking about rules, we typically consider them to be real guidelines for behavior. However, organizational and formal rules are also symbolic, in that they provide a way to talk about the organization (March, Schulz, and Zhou 2000; Douglas 1973; Durkheim 1984). This symbolic nature of rules also operates when external rules are put in place around the organization and the organization develops new structures that provide symbolic compliance with these external rules (Edelman, Uggen, and Erlanger

1999; Dobbin and Sutton 1998; Kelly 2003). More generally, rules provide a way for organizational actors to talk about what they would like the organization to be, and to make claims on other actors.

The role of rules as claims is important to consider in the development of a new form of authority. Appeals to custom and traditional practices are claims made when organizational practices are contested. Similarly, appeals to the law or systematic rules, as well as written records, themselves are claims. In the development of the Western legal tradition, the systemization of legal codes occurred prior to their implementation (Berman 1983). Prior to the systemization of the canon law, 11th and 12th century scholars began to use the scholastic method to make systematic the Roman law, which had recently been re-introduced into the west (Haskins 1971; Southern 1959, 1995). While it took centuries for this to be fully worked into secular legal systems, the existence of this legal scholarship provided a way of making claims. Similarly, when Gratian systematized the canon law in 1140, this provided an important set of discursive resources for organizational actors to use in pursuing strategic ends. This became increasingly common over the course of the 12th century as more and more clergy were being trained in the scholastic method, theology, and law at the developing universities (Southern 1995; Bellomo 1995; Baldwin 1970, 1976; Moore 2000; Rashdall 1936; Helmholz 1996). These members of the clergy made claims on the basis of their legal training within the English church.

As the 12th century progressed, more and more claims were made on the basis of the law, and less on the basis of tradition. While appeals to tradition never disappeared, many of them were brought into the rubric of the canon law, particularly claims about

ownership of property, as we shall see later in the paper. However, this is only important to the development of rational/legal authority to the extent that these discursive practices came to shape actual organizational practices. One way in which we can see this development is to look at the decrees of ecclesiastical councils within England, to understand how the language around the law changed.

Church councils were one of the most significant ways in which laws and rules relating to the church were discussed. Councils were a particular form of representative assembly, wherein the holy spirit was seen to guide decision-making (Tierney 1979, 1982). A council was celebrated (*celebrare*), using the same word to describe the performance of the mass and other sacraments. The most important councils were the ecumenical councils, in which the entire church gathered together to discuss and to make decisions regarding the church as a whole. The first such council was Nicea in 325 after the legitimization of Christianity under Emperor Constantine, and seven more were held prior to the eleventh century, with the Fourth Council of Constantinople in 869-870 being the last which included representatives of the Eastern Church.⁶ One of the decrees of Nicea required the metropolitans, or archbishops, of ecclesiastical provinces to hold provincial councils twice annually to decide on local matters and to hear cases of discipline involving the clergy, though these councils were rarely held at all, much less biennially.

However, while local councils or synods were not held as frequently as the canons indicated, they were held, and held for a variety of local reasons. In England between 1066 and 1250 there were 55 ecclesiastical councils held, some called by kings, some by

⁶ However, the Eastern Church held another council in 879-880 that repudiated Constantinople IV, so that it was no longer recognized as binding over the Greek Church.

archbishops, others by papal legates. These councils were occasions for determining new rules, reiterating old ones, deposing bishops and abbots, electing archbishops, and consecrating new bishops and abbots. While these councils reached decisions, they were also significantly important places for discussion. These councils provided opportunities for the English clergy to come together and participate in the governance of the church and to establish the rules by which they thought the church should operate. In Durkheimian fashion, many of these councils did not create rules that were enforced widely, if at all, but were moments to talk about the organization of the church, describing what the rules were that made the church a distinct social world (Durkheim 1965 [1915], 1984).

These councils created an interesting moment of tension. On one side, they were moments for collective representation of the church, trying to say what the church was and what the church was not. In this light, the rules were less manifestations of guides for action, but instead ways in which people could talk about the organization (March, Schulz, and Zhou 2000; Douglas 1973, 1986). Yet at the same time councils were making decisions, transacting business, and refining and elaborating rules. Furthermore, they were opportunities for rules to spread from the continent into England. As rules became embedded into actual practices within the church, the role of councils shifted away from legislation as collective symbol to legislation of actual practices.

One way we can clearly see the use of rules as collective symbols and ways of talking about the organization is to look at how the same rules were decreed as canons in multiple councils. Two rules in particular are important for understanding the multiple ends of legislation: bans on clerical marriage and bans on simony. These two principles

were two of the three basic pillars of the Gregorian Reform movement (the third being papal supremacy and sovereignty). In the context of the larger move to separate the church from secular rulers, these principles were central (Blumenthal 1988, 1998; Schimmelpfennig 1992; Robinson 1978, 1990). Each of these principles were strongly opposed to customary practice, with clerical marriage not only widespread but also widely accepted in England prior to the Norman invasion, and simony (the purchase of ecclesiastical offices or benefices, especially from lay rulers) a basic economic transaction in the early middle ages, both in England and on the continent.

The first council held in England after the conquest was in April 1070 at Winchester, where the second canon held “that none shall be ordained through the simoniac heresy” (Whitelock, Brett, and Brooke 1981).⁷ Furthermore, the fifteenth canon held “that clerks shall live either chastely or withdraw from office” (Whitelock, Brett, and Brooke 1981).⁸ Two years later, again in April, the archbishops of York and Canterbury returned from Rome and held another council. Here the council elaborated on the ban on simony, declaring:

“no priest shall either buy nor sell sacred orders, and no one shall sell nor buy a monastery, because all who trade in the sacred run the risk of excommunication, and whosoever gains shall be sorry” (Whitelock, Brett, and Brooke 1981).⁹

A similar decree was made in 1074-1075 at a council in London, invoking the authority of the apostle Peter and the holy fathers of the church.¹⁰ While these councils did not

⁷ “*Quod nullus per symoniacam heresim ordinetur.*”

⁸ “*Quod clerici aut caste vivant aut ab officiis recedant.*”

⁹ “*Ut nullum ministerium sacri ordinis aut vendatur aut ematur, et nemo monasterium emat aut vendat, quia omnis negotiatur sacrorum periculum excommunicationis incurrit, et quicumque emit peniteat.*”

¹⁰ “*Hoc enim scelus a Petro apostolo in Simone mago primitis damnatus est, postea a sanctis patribus vetitum excommunicatum.*”

reference clerical marriage, the next council, at Winchester in 1076, did so, where the first canon stated:

“And it is decreed that no canon shall have a wife. Of those priests who already have wives, even if they live in castles or in villages, are not to have them and to gather them in order to dismiss them, and those who do not already have wives are forbidden to have them. And bishops, priests, or deacons are hereafter to avoid and not presume to ordain priests or deacons if they do not first profess that they do not have a wife.” (Whitelock, Brett, and Brooke 1981 no. 93).¹¹

In each of the later councils we see how the decrees elaborate on the earlier council, while at the same time restating the general rule.

This process continued into the 12th century. In Anselm’s first disciplinary council in 1102, the first canon restates the rule against simony, “on the authority of the sacred fathers,” before deposing a number of abbots who were found guilty of purchasing their offices(Whitelock, Brett, and Brooke 1981 no. 113, can. 1; Rule 1884 142).¹² This council also reestablished the rule against clerical marriage, explicitly mentioning subdeacons who are not canons but marry after taking a vow of chastity (Whitelock, Brett, and Brooke 1981 no. 113, can. 5). Anselm held another council in 1108, which was almost entirely devoted to the issue of clerical marriage, where it restricted clerics to only have women who were close relations who lived in the house (following the decree of the Council of Nicea (Tanner 1990)), that married priests who had shed off their wives had to have witnesses to prove this, as well as witnesses if they were accused of sexual relations with women, the punishments for living with women or having wives, and

¹¹ “*Decretumque est ut nullus canonicus uxorem habeat. Sacerdotum vero in castellis vel in vicis habitantium habentes uxores non cogantur ut dimittant, non habentes interdicanur ut habeant. Et deinceps caveant episcopi ut sacerdotes vel diacones non presumant ordinare nisi prius profiteantur ut uxores non habeant.*”

¹² “. . . ex auctoritate sanctorum patrum. . .”

separate punishments for archdeacons if they were to take bribes when deciding on such a case (Whitelock, Brett, and Brooke 1981 no. 116, cans. 1-8; Rule 1884 193-195).

The first ecumenical council held in the Latin west since the schism with the Eastern Church was held in Rome in 1123, and issued canons against simony (can. 1), clerical marriage (can. 3), and related to simony a ban on lay investiture (can. 4) (Tanner 1990). Each bear a close resemblance to the comparable canons promulgated in England, even though contemporaries, such as Eadmer, indicated that they were not often followed (Rule 1884). In 1125, John de Crema, legate to England, held a council at Westminster in September to implement the decrees of the First Lateran Council. At this council, he implemented the decrees of the ecumenical council, while at the same time elaborating some of the canons to more closely fit current practices within England.

By 1125 there was general agreement amongst the English bishops as to what the church's position on simony and clerical marriage were. The local councils provided a way of disseminating papal policy into England, and were collective moments for the celebration of what the church should be. However, these councils also provided moments where these rules could be elaborated, refined, and developed to create less ambiguity about what they meant. As more and more members of the upper clergy of England came from university backgrounds, they began to accept these rules as descriptions of actual practice. However, the simple act of decreeing a ban on clerical marriage did not stop the priests in Gerald of Wales archdeaconry from complaining to him about this at the beginning of the 13th century (Brewer 1861-1891). These councils by themselves were never able to achieve changes in actual practices, and the use of local councils to legislate for the English church declined over the course of the 12th and 13th

century, with only 3 out of 16 councils in the years 1200-1250 issuing any canons at all (Powicke, Cheney, and Hadden 1964).

The use of law and rules as ways of talking about the church were not only occurred in councils, but also in the larger historiographic record. However, in discussing situations that fell under the law, many commentators often talked about customs, and legitimations were often for reasons that were not based on formal rules. This reliance on other understandings was fairly widespread. In a complicated case where a member of bishop Walcher of Durham's household out of jealousy killed an Anglo-Saxon thegn named Liulf who had been close to the bishop, the bishop's only response was to complain to the murderer, a certain Leobwine, that "This has been done, Leobwine, by your heinous actions and most foolish counsels, and I want you to know for certain that you have, by the sword of your tongue, slain both yourself and me and all my household" (Darlington and McGurk 1995 vol. III pp. 34-35). This moment shows that it was the unfortunate consequences of Leobwine's action, which was driven by base emotions, which led to an unfortunate end for the bishop, who was in fact killed, along with most of the members of his household, by the retainers of Liulf. However, the chronicler, John of Worcester, notes that they were righteously avenged by the king, who marched an army through Durham, and in the process slew the retainers of Liulf.

This also represents a common and traditional understanding of justice that was prevalent in the late 11th and early 12th centuries. Individuals were punished for their crimes and base morals not through the operation of courts, whether secular or ecclesiastic, but instead through divine punishments, often at far removes in time. Thus,

William the Conqueror was punished for his many crimes not in life, but in death, where his body began to rot early while it still lay in state, universally noted as punishment for his earlier actions. William of Newburgh recounts another story about the death of king William, where an unnamed individual arrived at the funeral service, and claimed that William had stolen the land under the monastery at Caen from him. William relates that “all present were astonished, thinking that this had occurred by God’s judgement to make manifest the emptiness of transient power; for that most powerful prince, who in life had held such wide sway, did not have in death an undisputed place to enclose his body” (Walsh and Kennedy 1988 40-41). Similarly, the just were frequently persecuted by worldly powers, only to achieve redemption at the end of life. Henry of Huntingdon describes how his benefactor, Robert Bloet the bishop of Lincoln, was humbled by the “vile insults directed at him” by members of the king’s party, even though Henry considered that Robert could not be “more blessed” (Greenway 1968 587).

This more traditional understanding also related authority to the sanctity of the individual. Bishops who were holy could bend the knee of the mightiest king, simply on account of their personal character. William of Newburgh also tells of the relationship between Ealdred, the archbishop of York who had coronated king William after the conquest, when archbishop Stigand refused to do so, and how they developed a very close relationship. He tells of one instance where:

“This bishop suffered a rebuttal from the king in some petition which he presented, and as he retired in anger he gave the king the cold shoulder, and threatened a curse instead of a blessing. William could not bear Ealdred’s anger, but fell at his feet begging pardon and promising satisfaction. When the nobles present sought to persuade him to raise up the prostrate king, Ealdred said, ‘Let him lie at Peter’s feet.’ Clearly this incident well demonstrates both the high

respect shown for the bishop by that most headstrong prince, and the great authority and confidence shown by this bishop towards the prince” (Walsh and Kennedy 1988 39).

While certainly apocryphal, this story nonetheless shows how members of the clergy conceptualized ecclesiastical power and authority as embodied in particular individuals based on their personal sanctity.

Within the church there were these manners of talking about custom and the relationship between sanctity and authority within particular individuals. Furthermore, the church was struggling with the relationship between other sources of power and authority, particularly royal authority as a counterpoint to ecclesiastical authority, whether customary or rule-based. In 1108 the king sought to break up the diocese of Lincoln, which was at the time the largest in the Latin church, and to create a new diocese at Ely for Cambridgeshire. The king sent his request to the pope, and in the papal mandate to found a new bishopric in Ely, at the request of the king and the bishop of Lincoln, pope Paschal II issued a letter granting the request in 1108, “because [it] seemed of a religious nature”, and that the monastery where the bishop would be placed, “the customary practices of English monasteries in which bishops are installed shall be observed” (*Epistolae et Privelegia Paschali II*, in Migne 1844-1859 vol. 163 pp. 250-1).¹³ This grant of a new bishopric did not specify the boundaries of the new diocese, nor did it clearly specify the arrangement under which the diocese should be organized. Instead the pope deferred to the wishes of the king, signifying that customs should be upheld, and indicated this as well to the archbishop of Canterbury (*Epistolae et Privelegia Pashcali II*, in Migne 1844-1859 vol. 163 pp. 251-252). The invocation of

¹³ “. . . quia religiosiae videbantur. . .” and “. . . in quo sedes episcopalis constitutus, Anglicorum monasteriorum, in quibus episcopi constituti sunt.”

customary practices was rather ambiguous, and the king had to establish exactly what the custom was for the new diocese of Ely, as the customs were not well established, and a significant amount of work had to go in to establish other aspects of the diocese. To this end the king issued a set of royal charters that included establishing the relationship between the monks and the bishop, the sources of funding for the diocese and chapter, the relationship between the new diocese of Ely and that of Lincoln, and even established a separate allowance for food for the monks, though the chronicler at Ely indicated most strongly that it was still insufficient (Fairweather 2005 nos. 302-304, 313).

Thus, we can see how understandings of the church were embedded in a wide variety of other institutions. The king had a significant, if ill-defined, role in establishing frameworks for action within the church. Similarly, amongst the clergy themselves, there was an understanding of local customs of different episcopal sees and abbeys, as well as an understanding of authority that was based on individual characteristics, particularly the sanctified character of individual members of the clergy. However, a new model of understanding the organization was developing, one based on impersonal rules and law. As mentioned above, the canon law was principally an administrative law for the church, establishing the nature of the law, how new laws developed, and a description of ideal practice within the church. Furthermore, it established jurisdictional boundaries with other groups, notably the family and secular rulers (Moore 2000; Helmholz 1996; Bellomo 1995; Hudson 1994; Le Bras 1955-1971; Pennington 1976).

The systemization and codification of the canon law in 1140 by Gratian led to an increased usage of law as a formal system to describe action within the church. Prior to

this the papacy and reformers had used the image of the law in their attempts to mobilize the reform movement within the church. Pope Gregory VII, who gave his name to the reform movement, wrote in a letter to Wimund, the bishop of Aversa, who had argued that Gregory had overstepped the traditional authority of the papacy and was usurping the customs of bishops, that “If perhaps you were to use customs to argue against us, be turned towards that which the Lord said: ‘I am the truth and life’. The Lord did not say I am the custom, but instead I am the truth” (*Epistolae Extra Registrum Vagantes Gregorii VII*, in Migne 1844-1859 vol. 148 p. 0713).¹⁴ If we replace the word ‘truth’ with ‘law’, it would be an accurate description of how this phrase was used to legitimate the authority of the canon law in the following century.

Increasingly members of the clergy began to use the canon law to describe events within the church. Ralph Diceto, the archdeacon of London, compiled a history of England at the end of the 12th century that focused on the clergy. Whenever he discusses the election of a new bishop, he takes pains to show that the election was legal. In his description of the election of a new bishop of Rochester in 1182, he points out that the archbishop of Canterbury presided over a meeting of the local chapter, as Rochester was subordinate to Canterbury in a direct fashion, from which the prior and chapter of Rochester received a petition to elect a new bishop. They then held a council to consider the possibilities for a new bishop, and then elected Waleran, the archdeacon of Bayeux, to become the new bishop, and the archbishop consecrated him with the bible and the archbishop handed over possession of the temporailities (rights to land) for the church of Rochester. Diceto then discusses the nature of the juridical relationship between

¹⁴ “*Si consuetudinem fortassis opponas, advertendum est quod Dominus dicit: Ego sum veritas et vita. Non dixit, ego sum consuetudo, sed, veritati.*”

Canterbury and Rochester in order to explain the significant role of the archbishop in this election, as well as why the archbishop, as opposed to the king who would normally do so according to the canon law, granted the temporalities to the new bishop, as Rochester was a feudal dependency, as well as ecclesiastical, of Canterbury (Stubbs 1876 vol. 2 pp. 13-14).

This emphasis on legality became increasingly prevalent amongst the clergy throughout the 12th century and into the 13th. The role of a member of the clergy as a legal actor was growing more prominent, and was a cause for judgment over others. When writing to Thomas Becket to attempt to get him to change his behavior, Gilbert Foliot wrote in a letter that was signed by numerous other English bishops that Thomas always sought “to condemn first, judge second” (Morey and Brooke 1965 no.167).¹⁵ Similarly, the biographer of St. Gilbert of Sempringham, in the official biography for the canonization process, described Gilbert as “a high-minded man who set little store by loss, so long as natural justice and ecclesiastical law were preserved intact” (Foreville and Keir 1987 pp. 20-21). Furthermore, Gilbert sought to use the law to discipline himself, considering it “wise to live under the rule of a bishop . . . rather than running hither and thither with unbridled license like men who acknowledge no authority (*acephalus*)” (Foreville and Keir 1987 pp. 20-21). While this certainly does not tell us much about Gilbert himself, it does describe the high value placed on obedience and use of law at the time.

Increasingly, the words people used became important as ways of mobilizing institutions within the church. Thomas of Marlborough, who though a monk had extensive legal training, recounted a letter that Mauger, the bishop of Worcester, sent to

¹⁵ “. . . *damnare primum, et de culpa postremo cognoscere.*”

his abbot in 1202. The abbey where Thomas was at, Evesham, was exempt from ordinary episcopal jurisdiction. However, the monks had complained to the abbot and the pope about the poor behavior of the abbot, and Mauger had petitioned the pope for a special dispensation to visit the abbey of Evesham and subject it “to diocesan law (*diocesana lex*) without the possibility of appeal” (Sayers and Watkiss 2003 202-203) Mauger sent a letter to the abbot saying that he would like to come “for a visitation”, and the abbot replied to the bishop that he would be welcome to come. Some of the monks thought something else might be occurring, so they brought Thomas to the abbot to explain the letter. Thomas explained to the abbot that:

“If he admitted him for a visitation then because of the force of the words ‘for a visitation’, and in consideration of the previously mentioned empowerment which he had already shown at Gloucester [another abbey] when he had undertaken a visitation there, the bishop had complete power as much over the head as over the limbs to punish wrongs even to deposition from office or by deprivation of orders; and that no freedom would remain to our church if we admitted him as we were subject to diocesan law” (Sayers and Watkiss 2003 202-205).

Here the very language that the bishop used invoked particular powers within the law that would be supported by all other ecclesiastical authorities, and would greatly restrict the independence of the abbey. Thomas notes the importance of particular legal claims, especially ‘for a visitation’ (*causa visitationis*) as a particular legal formula that his abbot was not aware of, “being ignorant of both civil and canon law” (Sayers and Watkiss 2003 202-203).

Perhaps the best example of the shift in attitudes accompanying the use of law is that of Samson, the abbot of Bury St. Edmunds, and the main subject of Jocelin of

Brakelond's chronicle. Jocelin describes how Samson was called to be a judge delegate for the pope, saying of Samson:

“In the performance of this work he was rude and inexperienced, though he was skilled in the liberal arts and in the holy scriptures, as being a literate man, brought up in the schools and a ruler of scholars, and renowned and well proved in his own work. He therefore associated with himself two clerks who were learned in the the law and joined them with him, using their advice in church matters, while he spent his leisure in studying the decrees and decretal letters. And the result was that in a little while he was regarded as a discreet judge, by reason of the books which he had read and the causes which he had tried, and as one who proceeded in the cases which he tried according to the form of law. And for this cause one said, ‘Cursed be the court of this abbot, where neither gold nor silver profit me to confound my enemy!’” (Butler 1949 33-34).

Not only did Samson force himself to learn the law, he also gained a reputation as one who was incorruptible, and always priveleged the law over other concerns, even when he was moved to pity. Several years later, when a fight broke out between some of the townspeople and some of the abbey's monks after a day of drinking and sports, telling them that they were excommunicated under “the canon *Latae sententiae*”, all the while “showing the rigour of the law in his words and face, and concealing the kindness of his heart, he wished to be compelled by his advisors to absolve the penitents” (Butler 1949 92-94). The next day, after demanding penance “according to the provisions of the canons” of the parties to the fight, he removed the sentence.

While Samson was important as a judge who routinely heard cases for the pope, he was also typical of a different kind of organizational actor, one schooled in the law and who used this knowledge in legal proceedings. His chronicler notes how this was a transformation of learning, as well as a deeper transformation, where Samson showed

“the law in his words and face”. However, the importance of Samson’s legal training and propriety only became important in the context of particular institutional arrangements where this knowledge was utilized, and claims were made. The rest of this paper focuses on two such arrangements which provided mechanisms for the utilization of law, and became two sites where the new form of rational/legal authority that was developing was being put into action, and came to shape the structure of organizational action.

Appeals, Grievances, and the Structuring of Control

One of the central mechanisms which provided an institutional structure for claims making was in appeals. The idea of appeals was nascent in the Council of Nicea in 325, which decreed that members of the church who did not approve of the decision of a bishop would have recourse to the archbishop of the province (Tanner 1990). However, as an actual practice this was rare, but starting in the 10th century members of the clergy as well as secular rulers began to go to Rome to receive favorable decisions on various matters from the pope. The justification for the Norman invasion of England was a papal letter that supported duke William’s weak claims to the English throne. Beginning in the middle of the 11th century, and becoming more important in the next, the use of appeals to the Roman curia became increasingly prominent, as a series of popes tried to use these appeals to pursue their own interest in asserting papal sovereignty over the Latin west. Furthermore, as local organizational structures became increasingly formal, bishops,

archbishops, and papal judges delegate began to increasingly hear appeals within their respective jurisdictions.

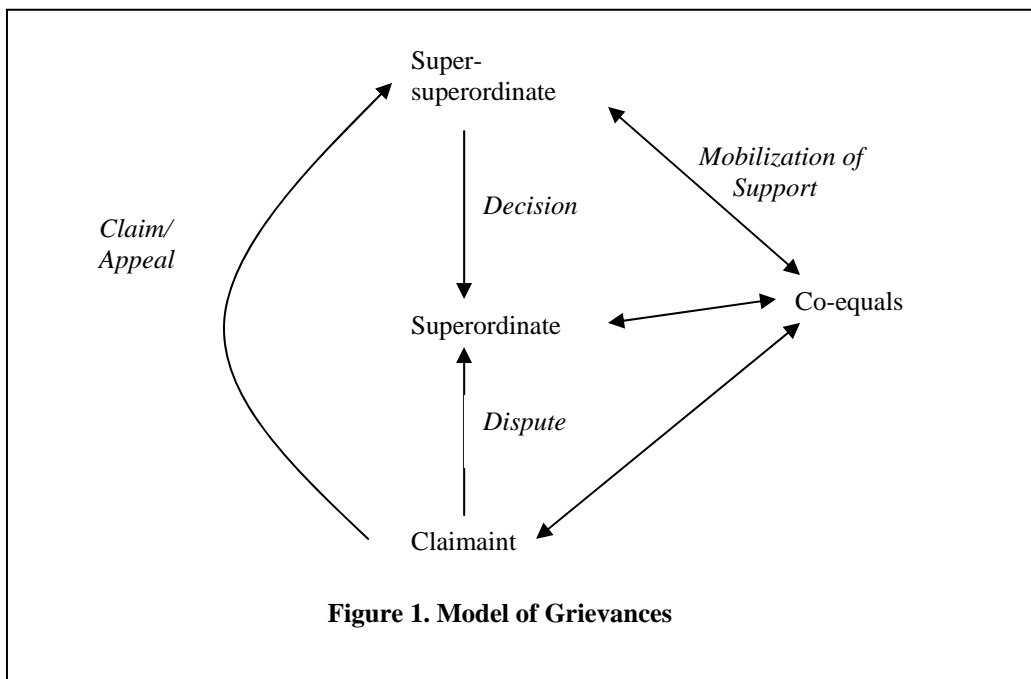
The use of appeals involved two important processes in establishing practices that were based on rational/legal authority. First, these were juridical forums that utilized the increasingly sophisticated canon law to make decisions about organizational affairs, both in matters of property and in the discipline of the clergy. We saw earlier how abbot Samson of Bury St. Edmunds hired two clerks trained in the law to help him learn legal procedure after he had been appointed a judge delegate for England, as well as studying law books and papal decrees to establish expertise in the canon law. These appeals became places where the formal and systematized organizational rules of the canon law became mobilized within the church. Second, and more important for the development of organizational practices, the system of appeals increasingly provided a monitoring mechanism for all members of the clergy. In deciding cases appealed from archidiaconal or diocesan courts, as well as other organizational grievances, the appeals process used the canon law to not only judge the particular case before them, but also the activities of the original judge or decision-maker within the organization. Furthermore, it provided an important means for organizational subordinates to discipline, constrain, and to some extent control the activities of their organizational superordinates by appealing to higher levels of the church hierarchy. However, and central to the account in this paper, this could only be done for claims made on the basis of the law, and could only act to constrain superordinates within the context of the organizational rules, instead of claims on traditional customs.

When scholars examine internal organizational grievance procedures today, the focus is on their relative ineffectiveness. Grievances filed with unions by workers are ostensibly to ensure that management abides by the terms of collective bargaining agreements, but generally make it hard to fire any worker, creating rigid internal labor markets that lack necessary flexibility. Others have pointed out that alternative dispute resolution mechanisms within organizations to handle organizational grievances by subordinates decide heavily in favor of higher-ups within the organization, and generally provide a means to prevent organizational liability by restricting the ability of aggrieved individuals to litigate their cases within courts. More generally, Edelman and her colleagues refer to these internal organizational grievance procedures as “rational myths”, providing a legitimation of action to external institutions, especially the courts, that prevent grievances from having any substantial impact on organizational practices, such as stopping discriminatory practices (Edelman, Uggen, and Erlanger 1999).

The church in the 11th through the 13th centuries certainly did have inefficiencies in its appeals process that favored the more powerful in the organization, yet at the same time these appeals were important at those points, of which there were many, where the appeals process operated in the manner in which it was intended. When the process operated effectively, it provided an important mechanism which brought powerful actors within the organization, especially bishops and abbots, under the control of organizational rules.

Figure 1 shows the general process of appeals and grievances within the church. These begin when there is some dispute between an organizational superordinate and his subordinates. This dispute can be about property rights, the alienation of common

property, clerical discipline, the usurpation of rights, a legal decision, amongst other things. Many of these claimants were monks against abbots, abbots against bishops, bishops against archbishops, members of the cathedral chapter against the bishop, priests against the archdeacon, and so on. These claimants would then appeal to a super-
superordinate, or someone in the ecclesiastical hierarchy above the person they were disputing against. So monks might appeal to the bishop, abbots to the archbishop, bishops to the papal curia. The appeal was a means by which the most local parts of the organization could activate the organizational hierarchy.



In making the appeal, claimants frequently also enlisted support of others within the organization to support their claim, as did the superordinate being claimed against. Furthermore, in establishing the facts of the case in order to make a decision, the super-
superordinate would empower others to ascertain the details. The pope who would not have good access to various witnesses and the detailed contextual knowledge needed to make a decision would empower bishops or abbots to look into the case and report on

the facts of the matter. This mobilization of members of the organization by all parties to the dispute became a means of creating moments of surveillance within the organization.

Once the super-superordinate had made a decision, they made a public announcement of their decision, and sent it not only to the parties of the dispute, but also organizational peers of the original superordinate. Decisions about a dispute against the bishop of Winchester would be sent not only there, but also to the archbishop of Canterbury and other English bishops so that the decision would be more widely known.¹⁶ By doing so, it bound all parties to the original dispute to the decision, as this decision became known throughout the organizational hierarchy, so that the decision would be final and unambiguous. In this way, it provided a means to enforce obedience to organizational rules.

This understanding of the consequence of appeals in enforcing obedience to organizational rules was not unknown at the time. While specific appeals were mobilized to pursue a specific case in order to achieve a favorable outcome, people were not unaware of their larger ability to mobilize social control. In one case, Hugh, the abbot of Bury St. Edmunds, sought an exemption from the control of the bishop and the legate, and attempt to achieve total exemption from most local ecclesiastical control, and to place the monastery directly under the rule of the pope. He sent an emissary to Rome, who was able to get such an exemption if the abbey could pay a large sum of money to the Roman Curia, which the abbey did not have on hand. Many in the abbey thought it would be worthwhile to gain this money any way possible, even melting down the gold

¹⁶ This became the basis for the collections of papal decrees that were very common in bishop's chanceries in England, and provided the basis for their use in making later decisions within the ecclesiastical courts (Duggan 1963).

cross above the altar of the abbey's church. However, a monk of the abbey who wrote a chronicle of the abbey's history made the following comment:

“But they considered not the great danger that might ensue from so great liberty. For if by chance we should have an abbot who wished to waste the goods of the church and evilly entreat his monastery, then there would be no one to whom the monastery might make complaint of the evil deeds of the abbot, who would fear neither bishop, nor archbishop, nor legate, and whose impunity would give him boldness in wrongdoing” (Butler 1949 p. 5).

It is interesting to note here that the monk saw that there were significant advantages for the monastery as an institution to be under episcopal and legatal control, to restrict the activities of any future abbot. Furthermore, this would be through a process of appeal, where the monks of the abbey would be able to appeal to other ecclesiastical authorities to restrict the activities of the abbot.

The use of appeals was not without price, however. Appeals, especially appeals to the Roman curia, were costly affairs. The monastic chroniclers in particular point out the costs of justice, as a way of indicating the lack of credibility these appeals had, yet they continued to use them. William of Newburgh discusses a case where the archbishop of Canterbury and the bishop of Winchester were in a dispute over jurisdiction in resolving a dispute at Rochester. The archbishop of Canterbury held ordinary jurisdiction (*ordinaria potestas*) over the bishop of Winchester, but the bishop of Winchester was currently the papal legate, holding jurisdiction over the archbishop of Canterbury as such. This jurisdictional conflict led both of them to appeal to Rome, where although the archbishop of Canterbury prevailed, “neither returned with their purse unemptied”

(Walsh and Kennedy 1988 66-67).¹⁷ Similarly, Jocelin of Brakelond noted that his abbot “often sent his messengers to Rome, nor did they go empty-handed” (Butler 1949 56). The expense of appeals did not decrease their utilization. By the beginning of the 13th century, the Roman curia and the scholars of canon law were trying to find ways of limiting the utilization of appeals, because it was dragging out the length of time to reach a decision and was overloading the job of the curia (Moore 1972).

The canonical structure of appeals was formalized fairly late, principally in the *Decretales Gregorii IX* (in Friedberg 1879, vol. 2) and *Liber Sextus Bonifacii VIII* (in Friedberg 1879, vol. 2). In the Council of Nicaea in 325 there was some indication of appeals in canon 5, where inquiries were to be held for those receiving a sentence of excommunication to be examined by others to ensure that the sentence was not on account of “any pettiness or anger or any such ill nature on the part of the bishop” (Tanner 1990). This was reaffirmed in a number of councils in the West, including several councils of Carthage, Vannes, Visieus, and Orleans in the fourth through the sixth centuries. It was reaffirmed in the Fourth Council of Constantinople in 868-869, specifying that the appellant had rights of recourse to the metropolitan (archbishop) of the province, or if a bishop of the province, to appeal to the pope (Tanner 1990). However, appeals were not a central question for Gratian, who mentions them in passing, but does not develop a full theory of appeals. By the time of the Fourth Lateran Council of 1215, appeals had created a real problem for the papacy, with the number of appeals straining the resources and time of the papal curia, and many complaints about the amount of time that the ecclesiastical courts took to reach a decision (Helmholz 1996, 2001; Moore

¹⁷ William of Newburgh didn’t particularly care that one of them had won their case, simply noting that “one of them prevailed”, a further indication of the lack of trust in the appellate system.

1972). Canons 35 to 37 of the council sought to create limits on the ability of claimants to appeal, and also imposed that an appellant determined to have an unreasonable case would be forced to pay the costs of the appeal for the other party (Tanner 1990).

To get a clearer picture of this mechanism, it is worthwhile to look more closely at a particular case which involved numerous appeals to multiple parties within the church hierarchy. This was a set of troubles that occurred in several houses in the Gilbertine order, which was an English monastic order founded in 1131 by Gilbert of Sempringham, who was a secular clerk in the diocese of Lincoln (Knowles, Brooke, and London 2001; Knowles and Hadcock 1953). The Gilbertine order was distinct not only in being the only English monastic order, but also in that it was an order for both men and women, who would live in separate buildings but within the same monasteries, and also had lay brethren, or individuals who were part of the monastery but not actual monks (Knowles 1950, 1976). In 1164 or 1165, several of these lay brethren went to Thomas Becket in exile to let him know about an incident where a nun in one of the monasteries had an affair with one of the monks or lay brothers. Becket sent them to Rome, where they informed pope Alexander III, telling him that there had been a relaxation of monastic discipline in the houses allowing for such a scandal to take place. The pope sent a letter to Thomas Becket, telling him to reform the order if necessary. Becket then sent a letter to Gilbert, forwarding the papal order, telling him to institute reforms and to appear before the archbishop in France (Duggan 2000). Gilbert did not receive the letter because of the dispute between the king and Becket, and the lay brethren continued their accusations to the pope, who began a judicial proceeding, naming the bishops of Norwich

and Winchester as papal judges delegate to decide on the cases involving monasteries in the diocese of Lincoln, and the archbishop of York and the bishop of Durham to serve for the diocese of York.

Because of an illness of the bishop of Winchester, William de Turba, the bishop of Norwich issued the decision for the diocese of Lincoln in a letter to the pope. He discussed the trial, describing how the lay brothers were unable to supply proof of the charges against Gilbert, which Gilbert had denied (Foreville and Keir 1987 pp. 134-137). Furthermore, “following the terms of your mandate”, he ordered Gilbert to reinstate the lay brethren who had appealed to Rome, except those who did not wish to return and had received letters of dismissal and absolution of their vows. Finally, the bishop expressed surprise about the charges that men and women were living together in the monasteries, which he made an inquiry to and found to be unsubstantiated. However, the bishop did decide that “in order to remove all suspicion and scandal we have ordered that the lay brothers, who used to enter the nun’s church during the night office. . . , should for the time being visit the church where the canons held their separate services” (Foreville and Keir 1987 pp. 138-139). The decision in the diocese of York was similar, finding no evidence of wrong-doing, but imposing stricter controls on the order following the papal mandate, in order to ensure future good behavior.

Because of the nature of the scandals charged by the lay brothers, the clergy and king of England sent additional letters to the pope attesting to the good character of Gilbert and his order. King Henry and the bishops of Lincoln, Norwich, and Winchester certainly sent letters to the pope in support of Gilbert. When the dossier of this case, containing these letters as well as the letters from the formal inquest by the papal judges

delegate, arrived in Rome, the pope sent letters to Gilbert, the king, and the English bishops exonerating Gilbert of all charges. Furthermore, in the letter to the bishops, he ordered them to support and defend the Gilbertine houses from future unfounded claims (Holtzmann 1952-1972 vol. 1, no. 185).

In this case we can see how the appeals process generated organizational control. While the case was decided against the lay brethren and in favor of Gilbert, all of the various judges, from the pope to the archbishops of Canterbury and York, to the bishops of Winchester, Durham, and Norwich, took the claims seriously and as worthy of investigation. Before the final decision had been made, the bishops under papal authority instituted new institutional rules within the Gilbertine order, even though they did not find them to be warranted. The bishop of Norwich, in a separate letter, thought that they should fully support one who was “so industrious and successful in winning and keeping souls for God” (Foreville and Keir 1987 140-141). The process brought discipline and the order of law to all members of the Gilbertine order, including its founder. In addition, it provided a means to mobilize the law in a particular local matter, as well as diffusing the ruling throughout the English church.

While this is simply one instance of an appeal, it shows how the utilization of the appellate process was driven by local claimants against their direct organizational superordinates. By making an appeal, first to the archbishop and then the pope, institutions for implementing organizational rules were activated, and bound the members of the organization together. Appeals were common practices, and one that the canon lawyers sought to limit because of their frequent use, yet provided an important mechanism for the mobilization of rules. However, these were still important events, and

do not tell us much about the utilization of rules in everyday organizational practices. To that end, the next section examines practices of routine administration as practiced by English bishops.

Rules and Routine Administration

One of the major developments of the 12th century was the relative success of the Gregorian Reform movement, which created significant distinctions between the ecclesiastical and secular (Cantor 1958; Duby 1980). One of the consequences of this was that bishops were increasingly required to engage in routine administration of their dioceses, in particular managing property relationships within the church. In this routine administration, different areas of the clergy were increasingly bound together under an ecclesiastical system of control. In large part this was part of the shift from an oral and customary tradition to a written and legal one (Clanchy 1993; Stock 1983, 1996; Goody 1986). Much of the routine activities of bishops involved the issuance of charters to members of the organization within the diocese. Monasteries in particular were active in pursuing their property rights with their diocesan bishops in order to make more secure their claims to various pieces of property.

However, in seeking written documentation, members of the clergy also brought themselves increasingly under a system of written records, which was the basis upon which increasingly organizational rules were utilized and activated. This seeking of textual evidence decreased ambiguity, but by doing so increasingly formalized relations

within the church. Bureaucracies thrive on paper, and one of the reasons why the 12th century is easier to study than the 11th is that the amount of evidence increases dramatically in response to the shift towards the keeping of written evidence. The role of literacy and of written records is a non-trivial one in the development of bureaucracies, though it is often overlooked, because the majority of bureaucracies that people have studied have been in societies and cultures with a relatively high literacy rate.

The demand for written records increased the role of literate clergy within the dioceses to serve as administrators. This itself produced a positive feedback loop in that the clergy who were literate produced more records, and used their literacy, and later university training, to create structural advantages for themselves. Furthermore, they interpreted the role of writing differently, seeing it increasingly as authoritative, and would use this authority over other claims (Goody 1977). The production of written records provided a mechanism for the importation of particular understandings derived from codified information to shape relationships throughout the church.

Furthermore, in attempting to administer the local diocese, the bishop and his administrators also relied on legal understandings to solve local problems, because these legal understandings provided a framework for action that was not as developed with models under traditional authority. Customary practices were unable to tell bishops how to structure a charter for a monastery to own the tithe rights to the parish church while still allowing for the support of the parish priest, but the canon law was able to do so. The legal system, with its implications of the authoritativeness of the system as a whole, provided a means for bishops to administer the diocese that was unavailable with other

models of authority. This section explores some of the ways in which organizational rules became utilized in the routine administration of individual dioceses.

If we look at what the bishops were doing in their dioceses at the end of the eleventh and beginning of the twelfth centuries, we see that much of their official activity was in confirming property rights to various ecclesiastical bodies, primarily the monasteries. Over a third of their acts were confirmations of property holdings. Of these confirmations, one-third were confirmations of existing property holdings, and two-thirds were confirmations of grants by lay people to ecclesiastical bodies, typically monasteries. Most of these confirmations were rather straightforward, listing the property and holding vague rights. For example, the following confirmation is confirmation for the monks of La Charité of a gift of churches from the sheriff Hugh that was probably composed in 1109:

Robert, bishop of Lincoln, to the archbishops, bishops, and all of the faithful of the Holy Mother Church in all of England, I greet you in the name of the Lord. We wish your brotherhood to know that Hugh the sheriff made a gift to concede to the monks of the church of St. Mary, La Charité, of the church of Daventry with all of the churches of the land of Robert, son of Vitalis, and I wish that the aforementioned monks remain in their church in all peace and that all those things of which they were given to honorably hold that extend to us, within the sound customs of the church of St. Mary, Lincoln to all things which pertain to the bishop and his archdeacons. Fraternal farewells to you beloved in the Lord (Smith 1980 no. 8).¹⁸

Here we can see that these early confirmations listed the property, with implicit reservations for the authority of the bishop, though these are not spelled out, merely the “sound customs” of the cathedral church.

¹⁸ *Robertus Lincolnensis episcopus archiepiscopis et episcopis et omnibus sancte matris ecclesie fidelibus totius Anglie in domino salutem. Scire volumus fraternitatem vestram me concessisse donum quod Hugo vicecomes fecit monachis ecclesie sancte Marie de Caritate de ecclesia de Daventre cum ecclesiis totius terre Roberti filii Vitalis et volo ut predicti monachi in eadem in ecclesia in omni pace remaneant et omnia illa que eis data sunt in quantum ad nos pertinet honorabiliter possideant, salvis consuetudinibus sancte Marie Lincolnensis ecclesie in omnibus que ad episcopum seu archidiaconum pertinent. Valeat fraternitas vestra in domino, dilectissimi.*

These early confirmations functioned largely to write down the existing or new property rights of ecclesiastical corporations, such as monasteries or the cathedral chapter. In this sense, they functioned similarly to a modern recorder of deeds. In large part, this was to use these confirmations to ensure that the bishop knew about their holdings, as well as getting additional evidence to prevent others from encroaching on their rights (Innes 1998). We can see this in the few mandates to archdeacons, charging them to preserve these property rights. For instance, Roger of Salisbury order two laymen to “restore to the abbey of Abingdon the rights [*rectidunes*] which you owe to the abbey of your church of Kingston. If you do not do this, Ilbert the rural dean is to interdict the divine serve at Kingston” (Kemp 1999 no. 5).¹⁹

While these bishops were making some changes to the administrative structure of their dioceses, as we saw in chapters 4 and 5, in their role as bishops they were otherwise spending much of their time cataloguing and confirming the property rights of the church. Concerns about pastoral care and implementing legal controls over the clergy were a distant second to the control of property. This fits in with the common depiction of these royal bishops using their positions to increase their own wealth, a view often seen among contemporary chroniclers. For example, Roger of Wendover refers to Stigand, archbishop of Canterbury at the time of the conquest, as a “man who held his honors, not with a view to religion, but to satisfy his avarice” (Giles 1849 i. 338).

In addition, property rights were not understood as permanent in the ways in which we understand today. Instead, they were much more flexible, and involved a continuing relationship between the giver and the receiver (Rosenwein 1989). The

¹⁹ “[*Precipio vobis*] reddatis ecclesie de Abbandona *rectidunes* quas illi debetis de ecclesia vestra de Kingestuna [sic]. Et nisi feceritis, Ilbertus decanus interdicat divinum officium apud Kingestona.”

receiving body would go back to the giver's heir on the death of the original granter of property, in order to ensure the continued security of their rights. We can see this clearly among the recipients of grants from the bishops, where the receiving monastery would return to each new bishop to secure their rights. For example, we have records of Richard de Belmeis in the 1150s, Gilbert Foliot in the 1170s, and Richard of Ely in 1191 successively confirming to Monks Horton Priory that Robert de Vere and his wife granted a church to the priory (Neininger 1999 nos. 70, 171; Johnson 2003 no. 45). As we saw in the example, many of these confirmations were confirming some form of transaction, such as the grant of land from Hugh to the monks of La Charité. That is, they were active not only in securing existing property rights, much of which would have been established in the Domesday survey of 1086, but also in securing of property rights at the moment of exchange, typically the granting of land or churches to monasteries by the nobility. Much of this role of the bishop's administration comes from the fact that they clergy were literate.

In addition to confirming property rights to ecclesiastical bodies, the bishops were also active in granting land holdings. Of these, about half (10 of 21) were to monasteries, roughly a quarter (6 of 21) were to either the cathedral chapter or offices of the cathedral, and the final quarter (5 of 21) were to laypeople, some of whom were relatives to the bishop. These grants were vaguely defined, essentially giving away unspecified rights to the recipient. For example, Bishop Richard de Belmeis notified his chapter of his gift to St. Osyth priory in this *actum*:

R. by the grace of God bishop of London, to W. dean and all the canons of St. Paul's London Cathedral and to all those of France and England who hold benefices in the aforementioned church, greetings. Know that I have given to the church of St. Osyth the virgin of Chich the churches of Southminster and Clacton with everything which pertains

to them, etc. Moreover, I want you to confirm and witness this gift. Farewell (Neininger 1999 no. 28).²⁰

Here we can see that even though it was the grant of two churches to canons regular, there was no mention of pastoral provision, nor any retention of rights and obligations to the diocese. In fact, St. Osyth was given “all things which pertain to the churches”, including all rights. The chapter was expected to, and did, confirm this grant free of any restrictions or obligations on the part of the canons of St. Osyth.

It was these two activities, the confirmation of property holdings and the granting of land, that were the principal activities of the bishops prior to 1125. There were very few (3) instances of the bishop acting as legal arbitrator or judge in disputes, an activity that had a much greater significance in later periods. Furthermore, there was little official contact among the bishops, or between the bishops and the pope in Rome. Their activities in the diocese were largely confined to handling local matters without reference to actions taken by others, such as the pope, outside of their diocese.

However, we see very few official acts of bishops prior to 1125, and while some of this is due to the relative lack of formalization and bureaucratization in the church at the time, it is also because the activities of bishops was much more diffuse. Some bishops, such as Roger of Salisbury, were principally royal administrators, only rarely acting in their capacity as bishops, and often when acting as bishop, only to include ecclesiastical authority to their secular authority in pursuing secular ends. Others were less active in the royal administration, but were not always particularly active as bishops, though we know relatively little about their activities.

²⁰ “*R. dei gratia London. episcopus W. decano et omnibus canonicis sancti Pauli London. ecclesie et omnibus, qui de beneficiis supradicte ecclesie tenent, Francis et Anglis salutem. Sciatis, quod ego dedi ecclesie sancte Osythe virginis de Ciz ecclesias de Sudmenestra et de Clachentona cum omnibus, que ad illas pertinent, etc. Huius autem donationis volo ut sitis confirmatores et testes. Valet.*”

The activity of the bishops began to develop more extensively after the first quarter of the 12th century. The bishops are still active in confirming property rights as well as granting churches and land to monasteries. However, there is a shift in confirmations towards confirmations of transactions, with relatively fewer confirmations of existing holdings. In addition, after 1125 we see a greater use of general confirmations, which are an extension of the confirmation to include all of a monastery's holdings, either generally or within the diocese. These confirmations were often very exact in their specifications of existing holdings. However, confirmations during this period were also very general in their terms of use, withholding vague rights to the episcopacy.

The general confirmations were an extension of the use of bishop's chanceries to establish property rights. Instead of a confirmation of a specific piece of property or rights over a church, or of a particular grant, they were confirmations of all of a monastery's possessions and rights within the diocese. This separation of property gave incentives for the chapter to act in common to protect its property. A short example is from the general confirmation by Bishop Robert Chesney of Lincoln to the nuns of St.

Mary, Alvingham:

Robert by the grace of God bishop of Lincoln to all of the sons of the Holy Church, greetings. We are responsible to protect the law concerning the obligations of all the men of the church that are subject to us. Still we devote special care to those who we know to be instituted under a religious rule. Therefore, to the church of St. Mary, Alvingham and the nuns there serving God, with the episcopal authority which has been charged to us, we confirm the possessions and goods which they indeed canonically possess at present and indeed all grants that will be able to gain in posterity, and the particular things we command the names expressed: five tofts [a homestead and attached arable land] and four and a half bovates [the amount of land an ox could plow in a year, roughly ten to sixteen acres] of land in Alvingham from the gift of William de Fristun; in the same vill [township] one toft and one bovate of land from the gift of Hugo de Scotenia; in Cokerington the church with all other things which hold to it; half of a mill-house with twelve acres of land; additionally the church of Caltorp; one bovate of land and sixty

acres of land which Affrid de Lechburn gave them just as it is witnessed in the same charter. Accordingly we establish that they may freely and peacefully possess this, saving all of the obedience reverently owed to the mother church of Lincoln and to us and our successors. Farewell (Smith 1980 no. 67).²¹

There were two main reasons for the development of this legal innovation. The first had to do with one of the major elements of church policy at this time, which was the establishment of a separate jurisdiction from the royal courts for the clergy (Ullmann 1975; Ullmann and Garnett 1988; Turner 1985). These arguments about a particular legal jurisdiction for ecclesiastical courts also played out within the church as bishops established stronger jurisdictions for the entire church, including monasteries, within their dioceses. Below the bishops the archdeacons sought the same within the territories of their archdeaconries (Kemp 1995). Both of these moves to establish stronger jurisdictions were tempered, with bishops excluding certain groups, notably canons, from archidiaconal jurisdiction, and the pope excluding monasteries and even entire orders from episcopal jurisdiction (Ullmann 1970, 1975, 1975; Knowles 1950).²² These exceptions were largely reactions to the increasing formal jurisdictions bishops held over their dioceses.²³ This increased jurisdiction authority bishops held within the dioceses

²¹ *“Robertus dei gratia episcopus Lincolnie universis sancte ecclesie filiis salutem. Debemus ex officio omnium ecclesiarum que nobis subiecte sunt iura tueri. Illis tamen specialem curam inpendimus quas sub religionis habitu ordinate novimus institutas. Eapropter ecclesie beate dei genetricis marie de Alvingham et sanctimoniabilibus ibidem deo servientibus episcopalis officii quo fungimur auctoritate confirmamus possessiones et bona que vel in presentiarum canonice possident vel in posterum annuente domino iuste poterunt adipisci, inter que hec propriis duximus exprimenda nominibus: in Alvingham ex donatione Willelmi de Fristuna quinque toftas et quatuor bovatas terre et dimidiam; et in eadem villa ex donatione Hugonis de Scotenia unum toftum et unam bovatom terre et in Cokerington’ ecclesiam cum ceteris eidem ecclesie pertinentibus et dimidium molendinum cum xii^{cim} acris terre; preter hec ecclesiam de Caletorp et unam bovatom terre et lx acras terre quas Affridus de Lecheburn eis dedit sicut eisdem carta testatur. Hec itaque statuimus ut libere et quiete possideant, salva in omnibus matris Lincolnensis ecclesie reverentia nostraque et successorum nostrorum debita obedientia. Valete.”*

²² For example, during his tenure Bishop Robert Chesney of London granted to his chapter their prebends free from archidiaconal jurisdiction, or what the archdeacons “are accustomed to demand” (Foster and Major 1931-1973 i. no. 290).

²³ Bouchard (Bouchard 1991) shows that the Cistercian monasteries, though the entire order was given a full exception from episcopal jurisdiction, still went to the bishop in order to confirm their property

was in part responsible for the use of general confirmations. Some earlier confirmations were by bishops for churches held in other dioceses by a monastery in the bishop's diocese. Furthermore, monasteries often did not receive confirmation for churches and other land outside of the diocese they were in. The general confirmation was a means of cleaning up these matters, as monasteries received a blanket confirmation of their holdings within the diocese.

During this period there was also a relative decline in the number of grants. The number of grants drops from a third of all cases to about 16% (95/585). In addition, many of these were grants of indulgences. These were grants to a religious corporation whereby individuals who made some contribution to the corporation would receive a specified decrease in the number of days they spent in purgatory. For example, Robert of Lewes, bishop of Bath and Wells, granted an indulgence of twenty days to all those who visited Reading abbey on the feast of St. James or the eight days following and gave alms (Ramsey 1995 no. 41). This meant that those who visited the abbey and gave alms on those nine days spent twenty fewer days in purgatory than they would have otherwise. This increased traffic to abbeys for the dates of the indulgence and gave them an increased income from the alms generated by this traffic. These indulgences were a popular, and relatively cheap, way of supporting monasteries within the diocese, since it did not involve the transfer of rights over churches or land.

One of the more important developments that occurred after 1125 was the use of bishops as arbitrators in disputes within the church. The papal judges delegate system began to develop around 1130 as a way of deciding cases where the judges had the local

transactions in order to keep good relations with the bishop and as a token gesture to the bishop's authority and jurisdiction within the diocese.

knowledge necessary for making just decisions (Sayers 1971; Cheney 1941). As the absolute number of appeals to Rome increased it was also used as a way of easing the burden of the papal curia. The role of a judge-delegate was to serve as a stand in as the pope in a case, having the same authority as the pope to make the decision. The delegation was not only of responsibility but of authority as well. These cases were assigned individually, and all English bishops during this time heard at least one case under a papal mandate, but some, such as Gilbert Foliot, heard multiple cases over extended periods of time. Since the judges-delegate were granted the same authority as the pope for a particular case, they became the court of last appeal for these cases (Sayers 1971).

On the whole, the activity of bishops as judges appears after 1125, and much of this was driven by certain bishops and members of the clergy serving as papal judges delegate. This introduced canonical procedure and ecclesiastical courts into the English setting. Furthermore, the bishops who served as papal judges delegate were more active in operating the courts than were bishops who did not serve in this capacity. For bishops who were routinely papal judges delegates, roughly one-quarter (30/116) of the acts between 1125 and 1169 were adjudications, while for the other bishops it was only 13% (63/484), a difference that is significant at $p=.003$.²⁴ By serving as papal judges delegate, they helped to bring intra-church disputes into episcopal courts. The role of the bishop as adjudicator represents an important shift from the previous period, where disputes were handled in council or directly by the pope. The use of papal judges delegate brought papal authority to the local bishops in a distinct way, by investing them with the pope's

²⁴ The definition of being routinely selected as a judge-delegate is five or more cases heard during a bishop's tenure.

judicial authority to resolve disputes. This led in general to a rise in the role of bishops as judges, but also in instantiating papal judicial authority within England in the form of bishops.

This extension of papal authority down through the hierarchy was also accompanied by bishops and archdeacons asking for legal advice, primarily from the pope but also from other bishops in England. While some of these were judges-delegate asking for advice on particular matters of the law, there were also a number of instances of cases in the regular episcopal courts where bishops sought advice on legal matters relating to particular cases or particular points of the canon law.²⁵

Bishops in court also requested legal investigation from other bishops, and a number of these letters are similar to depositions, in that the bishops serve as a witness to events, or investigate events for another bishop's court. For example, Hilary, bishop of Chichester, provided written testimony about his ownership of a church when he was dean of a house of canons, during a dispute over the church in the court of the bishop of Exeter:

Let it be known to your community that I proved as dean of Christchurch, Twynham, against the regular canons of Breamore, my right to the church of Sopley, and obtained proof in the courts in the synod before the venerable Henry, bishop of Winchester, pertaining to the church of Christchurch. Whence I held it for many years and in the same way as dean I allotted it (Mayr-Harting 1964 no. 52).²⁶

Similarly, bishops were not only in providing legal assistance, but also requesting that other bishops perform their roles. In a letter from 1143-1146, Robert de Bethune, bishop of Hereford, complains to the bishop of Lincoln that his officers are not doing justice in

²⁵ Unfortunately, few of these letters survive, but we do have a large number of the responses of the popes to the requests by the bishops (Cf. Holtzmann 1952-1972; Holtzmann and Kemp 1954).

²⁶ *“Notum sit universitati vestre quod me existente decano Christi ecclesie de Twynham egi contra canonicos regulares de Brummore super jure ecclesie de Soppeleya, et probam in judicio optinui in synodo coram venerabili viro Henrico Wynton episcopo eandem ecclesiam ad Christi ecclesiam pertinere. Unde postmodum multis annis eam tenui et sicut decanus ea disposui.”*

the matter of a dispute involving a priory in the diocese of Hereford. He says that “It was shown to us that a certain official of your bishopric made to ignore what he should know that the canons have the right in the donation of Henlow church, who were neither seen, though the spoke, nor were they heard” (Barrow 1993 no. 40). He provides some evidence in the letter of the priory’s claims, and also sends another letter to further substantiate these claims (Barrow 1993 no. 41). After 1125, the bishops communicated more with each other over legal matters, asking advice, seeking information, and even chastising them for not operating their courts justly, as we have seen.

Another development during this time was the establishment of local statutes within the dioceses. Prior to 1125 there were few examples of this, though the reconstitution of the chapter and the creation of formal positions stand out as important exceptions. However, there is little textual evidence of the specificity of these early statutes. One, the constitution of Salisbury was for a long time believed to have been created by Osmund, who was the bishop when the chapter was reconstituted. However, recent arguments by Greenway (1985) have called this into question, instead indicating the the statutes of the cathedral were largely developments of the twelfth century that were read back into the earlier history of the diocese.

This new statute-making was significant in that it began to establish formal rules for the local church. These statutes were primarily establishing jurisdictions and rights within the chapter. For example, Bishop Robert Chesney of Lincoln exempted his canons from archidiaconal jurisdiction in their prebends, instead giving the rights of the archdeacons to the canons within the boundaries of their prebend (Smith 1980 no. 161).

In addition, we saw in chapter 5 how the canons were also gaining rights over their prebends after their own death.

In the last third of the twelfth century there is a marked change in the role of law in the English church. On the whole, it becomes much more elaborate, technical, and specific in terms in ways that differ dramatically from the earlier period. What this represents in a significant way is the routinization and formalization of administrative practices in the church, particularly those practices related to property and people.

We can see this in the acts of bishops. After 1170 we still see a large number of confirmations, as well as a continued use of general confirmations. However, the content of these confirmations are drastically different. One way to see this is by looking at the confirmation of the same grant by two successive bishops. In the 1160's, Bishop Jocelin de Bohun of Salisbury confirmed the grant of a church by King Henry II to Bec abbey:

Jocelin, by the grace of God bishop of Salisbury, to all of the faithful of Christ to whom the present charter shall arrive, greetings. Let it be known to all of you that, at the presentation of the lord king son of the Empress Mathilda, we have conceded and donated to Bec abbey and its religious community, for the service of God, Wantage church with all that pertains to it in a perpetual gift, saving all of the customs of the bishop. However, so that our gift shall persist undiminished and firm, we confirm this present charter with testimony and the fortification of our seal, just as the aforementioned lord our king confirmed the charter of this church. Witnessed by. . . (Kemp 1999 no. 50).²⁷

The same grant was confirmed about thirty years later by Jocelin's successor Hubert

Walter:

H., by the grace of God bishop of Salisbury, to all of the children of the Holy Mother Church to whom the present charter shall arrive, greetings in God. Because we know our

²⁷ *“Jocelinus dei gratia Sar’ episcopus omnibus fidelibus ad quos presens carta pervenerit salutem. noverit universitas vestra nos, ad presentationem domini regis filii Matildis imperatricis, concessisse et donasse abbatie de Becco et religiosis fratribus ibidem deo servientibus ecclesiam de Wanenting cum omnibus pertinentiis suis in perpetuam elemosinam, salvis in omnibus episcopalibus consuetudinibus. Ut autem hec nostra donatio illibata et inconcussa confirmamus, sicut prefatus dominus noster rex eandem ecclesiam cara sua eis confirmavit. Hiis testibus....”*

blessed sons the monks of Bec abbey to be as distinguished in their honored way of life as the commendable soundness of their order, that we pursue them especially for their not undeserved and particular goodwill, and we wish to administer indemnity of their great industry and we are able to mercifully provide a great gift to their benefice. Therefore to the aforementioned monks we confirm untouched, with episcopal authority, the church of Wantage which Lord Henry II, illustrious king of England piously conceded to them, with all that pertains to it, conceding with benign indulgence to legally convert perpetually to their own use [*in proprios usus*] its fruits and obventions, and having of themselves free administration of the church, possessing freely with our authority all that pertains to it and to hold peacefully forever, saving to all of the dignities of the church of Salisbury and all things to be owed to us and our successors concerning the episcopal customs will be kept, and saving a just and reasonable maintenance for a chaplain who will minister in the aforementioned church for the [*per manus*] previously mentioned monks. That this confirmation of ours will remain firm for all future times, we secure this page of testimony with our seal. Witnessed by.... (Kemp 1999 no. 161).²⁸

Even though both confirmations are for the exact same grant, we can see a number of differences between them. Beyond the flowery opening of Hubert Walter's confirmation, it also includes a number of terms that were missing from Jocelin's confirmation. While both confirmations are for perpetual grants, the second, including the terms *in proprios usus*, provides a canonical phrase for the perpetual giving of rights of a church. In addition, the second confirmation includes obligations on the part of the grantee, Bec abbey, to ensure for a "just and reasonable" amount of support for a vicar for the church, to stand in the place of the monks of the abbey, who are unable to serve as priests.

Furthermore, there was the introduction of a new type of confirmation, the *inspeximus*. The *inspeximus* is important because it represents a shift from the use of

²⁸ "Universis sancte matris ecclesie filiis ad quos presens carta pervenerit H. dei gratia Sar' episcopus salutem in domino. Quia dilectos filios nostros monachos Beccensis monasterii tam honesta conversatione quam approbate religionis integritate novimus illustrari, illos precipua non immerito et speciali dilectione prosequimur, eorumque volumus indemnitate quanta licet industria procurare quantaque possumus eis beneficiorum munera misericorditer erogare. Predictis igitur monachis ecclesiam de Wanenting' quam dominus Henricus secundus illustris Anglie rex eis pie concessit nos episcopali auctoritate integram cum omnibus pertinentiis suis confirmamus, concedentes et benignius indulgentes ut omnes eiusdem ecclesie liberam administrationem habentes, eam cum omnibus pertinentiis suis libere et quiete perpetuo tenant et auctoritate nostra possideant, salvis in omnibus dignitate Sar' ecclesie et illis que nobis et successoribus nostris ex episcopali consuetudine deberi constiterit, salvaque iusta et rationabili sustentatione capellani qui per manus predictorum monachorum in predicta ecclesia ministrabit. Hanc nostre confirmationis paginam ut perpetuam futuris temporibus obtineat firmitatem, sigilli nostri testimonio communimus. Hiis testibus:"

memory and witnesses to the use of the written record as authoritative. The *inspeximus* is a confirmation of property rights, but it confirms these rights from an examination of a document. The majority of these were confirmations by a bishop's predecessors, but they could also involve the examination of a charter by a layperson giving land to a monastery. In their most elaborate form, they involved the confirmation of the property, followed by a written copy of the original document contained within the *inspeximus*. However, they also appeared without this copy of the original document, but the text of the act includes a discussion of the document which had been examined. An early example of this is the *inspeximus* by William de Vere, bishop of Hereford, of his predecessors confirmation of churches to Lire abbey:

William, by the grace of God the humble minister of Hereford Cathedral, to all of the children of the Holy Mother church, eternal greetings in Christ. We have carefully examined the charter of our venerable brother Robert of pious memory, once bishop of Hereford, to Lire abbey concerning the confirmation of the benefices of churches which the same monastery and the monks there hold in the diocese of Hereford discerned in the concession, namely in such a form as: [The text of a charter of Robert Foliot confirming to Lire abbey its possessions in the diocese of Hereford]. Therefore posterity should not empty what is known to be ridden in the previous statute that with the present serious writing and with the impression of our seal we command it to be fortified. Accordingly we confirm with episcopal authority and with the present charter sheet and strengthen with the seal of our testimony the arrangement of the decree of our predecessor Bishop Robert, in whose strong footsteps we cling, with the aforementioned Lire abbey and the monks there who attend the rule of God of the benefices of the churches in the diocese of Hereford (Barrow 1993 no. 218).²⁹

Grants also become more specific in their terms, in particular in reserving specific rights to the bishop. In particular, there was a shift towards the granting of churches in perpetuity (*in proprios usus*, lit. "for ones' own use"). Perpetual grants were almost

²⁹ "Willelmus dei gratia Hereford' ecclesie minister humilis universis sancte matris ecclesie filiis eternam in Cristo salutem. Cartam venerabilis fratris nostri Roberti pie memorie quondam Hereford' episcopi Lirensis monasterio super confirmatione beneficiorum ecclesiasticorum que idem monasterium et monachi loci illius in episcopatu Hereford' habere dinoscitur indulgam diligenter inspeximus, cuius videlicet carte talis est forma: Ne ergo posteritas evacuet quod equitate previa statua esse cognoscitur illud presentis scripti serie et sigilli nostri impressione duximus muniendum. Nos itaque prescripti predecessoris nostri Robert episcopi vestigiis firmiter inherentes prefato monasterio Lirensi et monachis ibidem deo famulantibus prescripta beneficia ecclesiastica in episcopatu Hereford' constituta episcopali auctoritate confirmamus et presentis carte pagina et sigilli nostri attestacione roboramus. His testibus. . ."

always tied with the obligation for the grantee to appoint a perpetual vicar, saving a reasonable, though often unspecified, amount for their sustenance and support. At Wells and Chichester, the grants were slightly different, in that they granted a specified amount of money each year from a church, saving the rest for the vicar and the cathedral.

As we saw in chapters 4 and 5 there was a development in the latter half of the twelfth century of perpetual vicarages, which allowed for the expansion of the episcopal household. Their appearance in conjunction with the shift towards perpetual grants is not merely coincidence. Their appearance in confirmations of this time as well indicate that there was a concerted push, even before the Third Lateran Council which required them, to establish perpetual vicarages in churches held by monasteries. Since they were initially not required by the canon law, and they appear with grants or confirmations for perpetual ownership, it appears as if there was an arrangement between monasteries and bishops that the monasteries could hold the rights in perpetuity, without having to reseek confirmation and to establish more firmly their ownership, in exchange for the provision of a perpetual vicar. Some of these vicarages saved right of presentation (i.e., appointment) to the bishop, while others, particularly after the Third Lateran Council, saved the right of presentation to the abbot and monks of the monastery, but only on affirmation by the bishop. By trading some of the revenues from these churches abbeys were able to establish firm rights over the church, and in exchange, bishops were able to find sources of support for their clerks, as we saw in chapters 4 and 5. After they became mandatory, the number of vicarages dramatically increases, much beyond the needs of the bishop, and they were used more for pastoral provision than for expanding the administration.

The ecclesiastical courts were also by this time much more concerned about process. Bishops continued to play a significant role in the operations of ecclesiastical justice, both in holding their own courts and in serving as judges delegate. For example, in a case in the diocese of Lincoln around 1200 involving the attack of a deacon by a layperson, there were ten sworn witnesses for the deacon who was attacked, and recorded in the list of depositions (*attestationes*) taken by the court at Canterbury (Adams and Donahue 1981 31),³⁰ Similarly, there was a case heard in Chichester that was concerned with the intimidation of witnesses, with a concern about their free status as witnesses in the ecclesiastical courts (Adams and Donahue 1981 35-37). This concern with procedure can also be seen in concerns about bishop's holding court when they were one of the parties to the suit. A dispute over prebendal churches between the bishop of Chichester and the bishop of Exeter in 1204-1206 was decided by the bishop of Ely (Mayr-Harting 1964 no. 149). Bishops also used their power to compel individuals to come to their courts. For example, Bishops Robert Foliot of Hereford and Roger of Worcester ordered the prior and monks of Bermondsey priory to appear on a particular day to be present when the case brought against them by another abbey would be heard (Barrow 1993 no. 134). This concern with procedure also played out in uncertain cases. For example, upon the request of a bishop, Pope Alexander III wrote to him on how to proceed in cases where papal letters had been forged (Barrow 1993 no. 131). Similarly, Giles de Braose, bishop of Hereford, wrote to the archbishop of Canterbury asking for his advice on a case involving a marriage dispute, after explaining why he did not allow for an appeal in the case (Barrow 1993 no. 247).

³⁰ The case was tried at Canterbury because the bishop of Lincoln had just died and the see was vacant. The case was tried in the ecclesiastical courts because the victim was a clerk, and thusly protected by church law.

The letters used to ask for legal advice were also used to issue orders or to compel others to follow the law. During the interdict, Bishops William of London, Eustace of Ely, and Mauger of Worcester wrote to the officials of the archbishop of York asking them to use censure on the Cistercians in the archbishopric of York, since they were not following the interdict, instead continuing to hold the divine office (Johnson 2003 no. 97). Similarly, we see the bishops executing mandates issued by the pope and the archbishop. For example, Jocelin de Bohun, the bishop of Salisbury, ordered the abbot of Reading to pay their tithes in full in accordance with the decisions of a general council at Westminster. The order was following a mandate by the archbishop to enforce the decision of the general council, and if the abbot did not follow the bishop of Salisbury's order, he was to appear in the bishop's court to explain his non-compliance (Kemp 1999 no. 111).

What these patterns represent is an increase in the legal formalization in the church at the time. In every category of activity the terms used and the legal specifications increase. While the distribution of activity is different from the previous period, there are no new basic types of activities. The episcopacy still confirms property rights over land and churches, grants land and churches, issues orders, asks for advice, and settles disputes. However, we have seen how in each type of activity there was an increase in the formalization. Confirmations are much more explicit about rights and obligations, and increasingly use earlier documents to establish these rights, as we saw in the use of *inspeximi*. Grants now use *in proprios usus* clauses and specify the obligations of the grantee to provide for a suitable vicar to be appointed, after inspection by the bishop. Orders and mandates are now more closely aligned with the official church

hierarchy, with bishops receiving mandates from the pope or the archbishop which they then in turn execute through orders to deans, archdeacons, rural deans, and the chapter. The advice from the pope or other clerics is focused more on the specific procedural progress of cases, or to indicate the reasoning behind decisions that are appealed to the pope. Settlements are frequently done with papal authority, and moreover, with the advice of the pope on legal matters. Criminal cases involving clerks are in their procedure highly formalized, with advocates, witnesses, depositions under oath, and a concern for a fair trial (Ullmann 1980; Berman 1983; Helmholz 1996). Statutes are increasingly made within the dioceses to more firmly establish the rights and obligations of the clerks within the diocesan administration and those charged with pastoral care.

Along these dimensions, we can see that there was a marked shift in the role of law in the English church at the time. Some of this is a product of increasing levels of education, but the shift is somewhat quicker than a trend would suggest. Instead, I argue that much of this shift occurred because of a transformation of the role of the secular clergy, primarily those who are responsible for the operation of the diocese, namely the bishop, dean, archdeacon, and to some extent the chancellor. Their roles become much more focused on the implementation and development of ecclesiastical law in the church at the time, and this was largely a result of their having a greater legal function than before, because of their involvement in the royal courts.

As we saw in chapter 6, after 1170 the secular clergy began to reenter service in the royal administration, principally by serving as royal justices as we saw in chapter 6. The secular clergy in general, and particularly those who were advancing in the ecclesiastical hierarchy, were more likely to be university educated and to either serve or

to have served in the royal courts.³¹ This transformed their role dramatically, putting legal issues to the forefront. For example, Herbert Poore, bishop of Salisbury from 1194 to 1217, was active as both a bishop and as a royal justice. We can see his involvement in both activities by looking at where he was in the year 1199. He began the year in an episcopal visitation to Southwick priory, and then much of the spring in the royal courts in France (Kemp 1999 no. 240; Landon 1935 127-28). He returned to England to attend King John's coronation on May 27, and then spent the first part of June in the court as it travelled to Northampton and Shoreham (Stubbs 1868-1871 iv. 90; Kemp 1999 409). He was then at several abbeys in Salisbury diocese, before spending the fall in the royal court in France, before returning at the end of the year (Kemp 1999 nos. 194, 207, 46, p. 409).

This activity in the courts, both royal and ecclesiastical, was typical of many of the secular clergy at the time. The combination of roles for the upper levels of the secular clergy, combining the ecclesiastical position with a position in the royal courts, was a result of King Henry II reestablishing control over the church at the same time as he was reforming the judiciary. His reforms to royal justice were tremendously significant at the time, and some of his innovations, such as trial by jury, still echo to this day. Other reforms including the creation of judicial circuits for royal justices (the "general eyre"), the creation of a central court in London to hear civil cases, often referred from the eyre justices, and experimentation with the appointment of justices. The overall concern of the king at the time was to simultaneously establish royal, not clerical or noble, control over the court system, bringing a standard system of justice throughout England, but also to make the system more fair, systematic, and less harsh (in a very relative sense).

³¹ For their educational background, and the increased likelihood of clerks at this time to have a higher level of education, see chapter 7. For the use of secular clerks in the courts, see chapter 6.

Because of this impetus behind the reforms, he experimented with different types of justices, before settling on the clergy as one of the primary sources of royal justices, because their educational and moral background would lend themselves to a more effective and reasonable legal system (Turner 1985). This combination of roles, secular and ecclesiastic, heightened the prominence of the law in the secular clergy's activities, particularly for deans, archdeacons, and most prominently, of bishops.

Confirmations and grants hold the same form as before, though there is a further elaboration of the specifications of rights. For example, a grant from Hugh of Wells, bishop of Lincoln in December 1217 shows the more detailed nature of such grants:

To all of the sons of the Holy Mother Church to whom the present writing shall arrive, from Hugh by the grace of God bishop of Lincoln, eternal greetings in the Lord. Let it be known to all of you that we, with the consent of Roger the dean and our chapter of Lincoln, with divine pious consideration have conceded and with the present charter confirm to the blessed daughters in Christ the abbess and convent of Godstow abbey a mediety [half] of the church of Pattishall which they previously held, to hold in their own use and possess perpetually: saving in their mediety a vicarage for our assignment. This [vicarage] consists of the land, meadow, messuage [domicile], and altarage [the revenues rising from oblations at the altar] of the mediety, and to which on their [the nuns] presentation we admit the chaplain John of Milcombe to the vicarage. But the aforementioned abbess and convent shall owe to use and our successors the presentation of a suitable chaplain if the vicarage should be vacant: still saving all the episcopal customs and dignities of Lincoln cathedral. And so that our confirmation shall be perpetually strengthened, we command that our seal with the seal of our aforementioned chapter of Lincoln be applied to the present writing. Witnessed by. . . (Smith 2000 no. 69).³²

³² “*Universis sancte matris ecclesie filiis ad quo presens scriptum pervenerit, Hugo Dei gratia Lincolnienis episcopus eternam in domino salutem. Noverit universitas vestra nos, de consensu Rogeri decani et capituli nostri Linc’, divine pietatis intuitu concessisse et presenti carta confirmasse dilectis in Cristo filiabus abbatisse et conentui de Godestow; medietatem ecclesie de Pateshull’ quam prius habuerunt in proprios usus habendam et in perpetuum possidendam: salva vicaria in eadem medietate per nos assignata. Que consistit cum in terra tum in prato, tum in mesuagio et altalagio eiusdem medietatis ad quam ad presentationem earum Iohannem de Mildecum’ capellanum perpetuum vicarium admisimus. Debebunt autem predicta abbatissa et conventus nobis et successoribus nostris ad eandem vicariam semper cum vacaverit capellanum idoneum presentare: salvis etiam in omnibus episcopalibus consuetudinibus et Linc’ ecclesie dignitate. Et ut hec nostra confirmatio perpetuam obtineat firmitatem, presenti scripto sigillum nostrum una cum sigillo predicti capituli nostri Linc’ duximus apponendum. Hiis testibus. . .*”

Here we can see that the details of the grant become much more explicit, specifying what portion of the actual portion of the revenues of the half of the church granted to the nuns would go to the perpetual vicar, the actual naming of the vicar appointed, and the process by which future vicars would be appointed.

The ecclesiastical courts also established full criminal jurisdiction over matters relating to heresy, witchcraft, marriage, and all matters relating to clerks, whether one party was a layperson or not. The king's role was to dispense corporal punishment when it was called for, and to confirm the judgment of the ecclesiastical courts. For example, there were three cases in London at the beginning of the period (1216-1221) where Bishop William de Sainte Mère Église had excommunicated two clerks (Johnson 2003 nos. 121-23), and affirmed that they had been excommunicate for forty days and had continued their contumacy, both clauses of which were required for the king's affirmation of the verdict (Logan 1968). Similarly, at the end of the period there are a number of such notifications by Bishop Richard Wich of Chichester asking the king to bring his authority to bear on excommunicates:

To his most serene lord Henry by grace of God illustrious King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, from R. by your permission the humble minister of Chichester cathedral, greetings and with every honor and obsequious reverence. We have made excommunicate Alan of Bramblehang', a layman of our diocese, after his manifest contumacy, and he has remained so for forty days and holds the greater keys of the church in contempt, we hope to persuade with affection your serenity that since the discipline of the church does no return him from evil, following the customary rights of the king, to execute coercion on him (Hoskin 2001 no. 141).³³

³³ *“Serenissimo domino suo H. dei gratia illustri regi Angl’, domino Hybern’, duci Norm’ et Aquit’ et comiti And’, R. eiusdem permissione Cicestr’ ecclesie minister humilis salutem et cum omni reverencia obsequium et honore. Cum Alanus de Brambelhang’ laicus nostre diocesis excommunicatus fuerit propter suam contumaciam manifestam, et in eadem steterit per xl dies et xamplius claves ecclesie contempnendo, serenitatem vestram affectione qua possumus exoramus quatinus ipsum quem ecclesiastica disciplina non revocat a malo, secundum regni consuetudinem, exequamini cohercere.”*

The operations of the court were also established to prevent conflicts of interest, so in a dispute in the diocese of Salisbury where the bishop was a party to the suit against the monks of Glastonbury, along with the chapter, the bishop of Salisbury himself issued an act submitting to the arbitration of a panel of judges, including

our venerable brother Jocelin bishop of Bath and Wells [in whose diocese Glastonbury was and which was intimately connected to the bishop], master R. chancellor of Salisbury, master Ely of Durham, and Richard de Mapedore, or if one of them happen to be absent, our chaplain John canon of Salisbury, prior Eustace, master H. the rector, and Michael the chamberlain of Glastonbury (Kemp 1999 no. 287).³⁴

On the whole, the operations of the courts became much more formalized and focused around ensuring fairness and due process.

Letters to the papacy continued, and still asked for advice and provided legal briefs for appeals. In addition, these letters and mandates were used to execute decisions. When a council at London was called in 1225 for the following year, bishop Eustace of Fauconberg sent letters to the bishop of Salisbury for him to attend the council, and in turn issue orders to his deans, archdeacons, and heads of religious houses in his diocese to attend the council (Johnson 2003 nos. 242-243). Similarly, Bishop Richard Poore of Salisbury mandated his dean to appear to hear a papal mandate, following a mandate from the archbishop (Kemp 1999 nos. 366-367).

Within the dioceses there was a fuller establishment of diocesan constitutions. The first was slightly before this, in 1213-1214 in Canterbury, but throughout this period nearly all of the dioceses established synodal statutes. In 1217-1219 Bishop Richard Poore of Salisbury held a synod where a full set of statutes were promulgated, which were later copied at Durham. Sometime during his tenure (1219-1234) Bishop Hugh

³⁴ “. . . venerabilis fratris nostri Iocelini dei gratia Bath’ episcopi et magistri R. cancellarii Sar’ et magistri Elye de Derham et Ricardi de Maupudre vel, si alterum illorum abesse contigerit, Iohannis capellani nostri canonici Sar’ et Eustachii prioris et magistri H. refectorarii et Michaelis camerarii Glaston’ . . . ”

Foliot enacted statutes for Hereford. Robert Grosseteste enacted them in 1239 for Lincoln. At the end of the period or immediately afterwards they were enacted in Chichester by Bishop Richard Wich and London by Bishop Fulk Bassett. For Bath and Wells they were not enacted until 1258 (Powicke, Cheney, and Hadden 1964). These were lengthy descriptions of the rules and regulations of the dioceses, and covered a significant amount of ground. For example, the statutes in Salisbury from Bishop Richard Poore include rules about belief in the trinity (no. 4), clerical marriage (nos. 7-10), usury (no. 19), rites of baptism (no. 20-24), how the canons of the cathedral should confess (no. 46), marriage (nos. 78-92), and ordaining vicars (no. 113), among other matters relating to the operations of the church (Powicke, Cheney, and Hadden 1964 57-96).

Conclusion

The understanding of bureaucracy derived from Weber sees bureaucracy as the organizational instantiation of rational/legal authority. However, if we simply follow Weber, we would expect the bureaucracy of the church to develop from a new type of authority. However, all of the structural elements of a bureaucratic organization, such as careers, formal positions, specialized training, separation of office from individual, and remuneration tied to position were all in place by the end of the 12th century, while the general acceptance of the authority of the canon law as the primary source of authority within the church, and its use to shape organizational action, was only achieved after these structural elements were in place. This raises the question of how this new type of authority arose, and how it came to be accepted as legitimate by members of the clergy.

This paper described the development of a new understanding of the organization that was based on the system of the canon law. Increasingly clerks within the church began to use arguments based on the canon law, and to invoke it in making claims. However, this paper argued that this development of a particular cultural understanding and its related discursive practices, was initially interesting as one of several competing systems of authority within the church. In order for this new type of authority to become dominant within the church, it had to be mobilized in particular institutional structures. This paper identifies two such mechanisms, appeals and routine administration, that were important sites for the mobilization of legal claims, and increasingly only legal claims, to structure organizational action. However, these were certainly not the only mechanisms by which this occurred. The use of organizational rules also requires a transformation of information into forms suitable to the organization (Scott 1998; Simon 1976). Similarly, while clerks were important in the mechanisms discussed in this paper, they were constituted as a new social class, with a particular mindset that was shaped by their training in law and administration, and engaged in a process of occupational closure which had a tremendous impact on the importation of models of the law into organizational practices (Moore 2000). Finally, the use of organizational rules in the form of the canon law increasingly disciplined members of the clergy, shaping them into a particular kind of rational organizational actor, which is also important in understanding the shift to the authority of the law.

This paper also suggests that in thinking about emergence, we cannot simply identify new cultural forms and analyze their adoption. Instead, the use of the law within the church was contested, and required a significant amount of work to end up becoming

dominant in shaping organizational practices. Furthermore, it indicates the importance of thinking about how individual actions within organizations shape the structure and practices of the organization as a whole, to think more about how organizational actors “enact” organizations (Weick 1995). Finally, this paper attempted to show that to understand the process of bureaucratization, we need to think more seriously about how organizational participants shape, and are shaped by, organizational process, to create new kinds of organizational actors, and to shape the underlying basis of action within organizations.

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