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Introduction

Renaissance and crisis

This book is concerned with justice and mercy, with how twelfth- and early-thirteenth century English judges wrestled with the requirement to be both just and merciful in their judgments. It that sense, it represents a study of one particular aspect of the medieval judicial office – the point at which impersonal law and personal virtue met, collided and conversed. But justice and mercy are vast ideas, and such a broad theme must reasonably invite the questions – why England; why this period? One could, after all, quite easily make the case that heated intellectual argument about the nature of justice is – if not a perennial problem – hardly a phenomenon discovered in, or exclusive to, twelfth-century England.[1]

The choice of twelfth- and early thirteenth-century England as the subject for this study is justified on two grounds. The period c.1100–c.1250 (the 'long twelfth century') in England saw two key and coinciding changes.[2] The first was the rise of scholasticism across Northern Europe, and the set of intellectual and cultural changes accompanying the proliferation of schools and the beginnings of the scholastic technique, often fitted under the umbrella term of the 'Twelfth-Century Renaissance'. The profound changes in the way in which learning was approached and texts were read placed tremendous conceptual pressure on the term 'justice' (*iustitia*), and its relative 'mercy' (*misericordia*). It generated a level of debate which – arguably – had not been seen for eight centuries. Those discussions primarily concerned how a judge should set punishment, and how, where and why mercy fitted into the judicial office.

The second development, equal in importance to the trans-national phenomenon of scholasticism, was the 'English' change: the emergence of

systematic law, or law with systematic aspirations, associated with Henry II's legal reforms. Although similar legal transformations were set in motion across Europe in the latter part of this period, English common law can still fairly be thought of as distinct and 'early' in its development, relative to its European counterparts.[3] This reorganisation of law is also packaged up with many other developments under the term 'Renaissance'.[4] But whether one describes it as a legal renaissance, or as a process of the professionalisation and systematisation of law, the law changed. In England, legal changes created the conditions and space for a 'crisis' of a conceptual and ethical kind: uncertainty regarding the moral duties associated with the office of the judge, and, most particularly, how a judge ought to exercise mercy in his judgments. That question became a matter of particular political and 'public' concern for English authors throughout the twelfth century. In the context of a judicial system aspiring to some level of uniformity and 'national' coherence, seemingly abstract questions about what justice should look like, and how mercy was to be defined, took on urgent practical relevance.

This book is, in part, an attempt to explain why defining justice, and its relative, mercy, presented such a complex problem for English moralists and judges in the period between 1100 and 1250, and how the struggle over those two terms was fundamental to the way in which the role of the judge was constructed. Of course, that problem was not static and unchanging, and over the course of a century and a half, its dimensions changed. It took on new shapes and was encountered in different settings. Criticisms of King Stephen's excessive use of mercy, for example, functioned in quite a different political context from later denunciations of the ways in which King John punished malefactors without mercy or abused the system of royal pardons. There is, however, a constant theme which draws these complaints and commentary together: an awareness that mercy and justice do not fit easily together, and a judge is obliged to think carefully about their relationship before giving judgment.

Determining how a judge should behave, and how he[5] should exercise his judgment, was not a question confined to England in this period. But the English dimensions to this problem are distinct. This is first due to the peculiar lineage, form and content of the common law itself, which emerged in a way markedly different from its Roman-law-derived European contemporaries. Secondly, the historian's discussion of how 'English' judges engaged with moral theology *must*, by necessity, follow different lines from those discussing continental judges. The thicket of historiographical assumptions and myths which have grown up around the common law, emphasising its

isolation, particularism and even 'native purity', demand a treatment of their own.

Thus, before one can even approach the medieval law itself, one must consider exactly what historians mean when they talk about medieval justice and medieval mercy. To offer a history of medieval justice can mean to examine the arguments forged in the medieval schools – discussions of soteriology, sin, virtue and the just life, finding its apotheosis in Aquinas's pronouncements. Alternatively, it can take on a resolutely practical cast, with historians following trails of administrative documents, court records and procedural manuals. In short, a history of medieval justice can trace a history of competing concepts and definitions, primarily moral and biblical; or of actions encompassing the devising of laws and their application. How one defines and approaches justice, therefore, conditions what we look for as evidence of medieval mercy: it is either an ethical and personal choice relating to medieval ambitions to live the virtuous life; or it is a question of searching for pardon rolls that will show how much it cost to purchase forgiveness for a crime from the crown.

Because mercy springs from justice, this book begins from justice. Both intellectual history and (English) legal history have written their own histories of justice, and both disciplines have broadly differing views about the most significant moments of change in the way that medieval people thought about and used justice. There are few, if any, points of contact between the two chronologies. The intellectual history of justice charts shifts in thought and interpretation which have never been mapped onto a legal history of justice. That strict division between theory and practice has led to the assumption – usually implicit – that scholastic discussions about moral virtue had no connection to English legal practice. But, as this book argues, twelfth- and thirteenth-century judges thought very hard, very long and very carefully about both the operation of justice as a virtue and the realisation of that virtue of justice in legal practice. The place where concerns about virtue and the practical giving of judgments most intersected was when those men of the law were required to deal with the issue – or, perhaps more accurately, the problem – of mercy. To put it simply, this book argues that, first, when it came to determining the judicial punishment of offenders in twelfth- and thirteenth-century England, theological thought informed legal practice; and, secondly, that theological modes of thinking drove a sophisticated and long-running debate about judicial ethics. These, in themselves, may not appear to be particularly challenging or surprising statements: that it may prove so is testimony to the very sharp separation of the modern disciplines of intellectual and English

legal history. I have tried to strike a balance: the first half of this book draws on the work of theologians and moralists – primarily those working in England but including those active across western Europe – in order to illustrate the depth and complexity of the discussions of justice, mercy and law taking place in the schools. The second half focuses on examples of judgment and judicial dilemmas within the English polity.

Justice and scholastic thought

The contemporary intellectual history of the medieval concept of justice was shaped by explanatory frameworks devised in the first half of the twentieth century. Modern studies take their cue from the work of Odon Lottin's magisterial *Psychologie et morale aux XIIe et XIIIe siècles*, an exhaustive exploration of scholastic moral philosophy, published in six volumes between 1942 and 1960.[6] Lottin's account of the development of scholastic moral thought was characterised by a clear teleology, where twelfth-century thought served to lay the foundations for the achievements of truly *systematic* thirteenth-century scholasticism.[7] Lottin's discussion of 'justice' in *Psychologie et morale* is in fact a slightly modified version of an article from the 1930s.[8] That article offers a similar narrative: twelfth-century analyses of the virtue of justice proceeded only in fits and starts. 'Justice' was only subject to a fully penetrating analysis with the thirteenth-century schools' re-engagement with Aristotle. This theme is evident even in the proleptic title of the original article – 'justice … avant l'introduction d'Aristote'. It was only when scholastic thinkers had access to the Aristotelian categories of 'general' and 'particular' justice that they were able to give a full account of justice, and fully explain the relationship between a just (virtuous) life and specific (judicial) acts of justice. By contrast, discussions of justice before the mid-thirteenth century were to be characterised as, at best, idiosyncratic, and, at worst, chaotic and disorganised, a mishmash of borrowings from classical texts, lacking any compelling structural principle.[9] Subsequent historians have reiterated this idea: while there were flashes of brilliance in twelfth-century thought about justice – perhaps, most obviously, Abelard's ethics of intention – these ideas never entered the main corpus of scholastic thought, and left little legacy.[10] Much of the twelfth- and early-thirteenth century is characterised as frenzied discussion without lasting influence.

More recent scholarship has followed the lines laid down by Lottin, enquiring into the classification of *iustitia* in scholastic *summae*, *quaestiones* and works 'de virtutibus et de vitiis'. The focus has often been to place justice in relation to its fellow cardinal virtues, *prudentia*, *temperantia* and

fortitudo.[11] Lottin's argument for a fundamental thirteenth-century shift has been upheld by, among others, István Bejczy, who has argued that the thirteenth century saw a changed conceptualisation of the cardinal virtues, with the view that virtue was a mental habit supplanting the opinion that virtue resided in the will.[12] Whereas twelfth-century authors argued that justice served an important role because it regulated the will, thirteenth-century thought argued that justice did not control its own mental power.[13] The thirteenth century conceived of only three faculties of the mind: reason, controlled by prudence; the irascible appetite, under the power of fortitude; and the concupiscent appetite, moderated by temperance. Like Lottin's, this narrative of a thirteenth-century shift in understanding and theorisation, too, condemns twelfth-century thought on justice to near-irrelevance.

This model of the apparent 'chaos' (or, at least, disorder) in scholastic thought on justice before the introduction of Aristotle is in keeping with modern narratives of the development of scholasticism itself. In purely formal terms, for example, the twelfth and early thirteenth centuries mark a period in which scholasticism was in something of a state of flux and experimentation.[14] The variety of organising principles on offer led to still greater variety in the expression of arguments about justice. Modern perspectives on justice have accordingly remained a depiction of intellectual disorder, and, as a result, the focus of historians has tended to be limited to salvaging the reputation and thought of individual authors.[15] Yet such studies can only be of limited assistance when attempting to establish what justice 'meant' in this period. The most interesting elements in any author's discussion of justice will be revealed only when their definitions are set alongside those of their contemporaries, and the broader contours of scholastic thought. Indeed, attempting to understand justice though the thought of one individual alone can be fundamentally misleading – because such an approach fails to reveal just how fissiparous and contentious the act of defining justice could be. Disagreement was the order of the day. Contributions to an often fractious debate on the meaning of *iustitia* might, for example, be hidden among otherwise more uncontroversial assertions in *speculum principis* literature or sermons. As a result, before the intricacies of that twelfth- and thirteenth-century debate about justice can be appreciated, the broader shape of medieval thought on *iustitia* must be fleshed out. That includes providing a chronology more sophisticated that Lottin's original schema of diversity of outlook in the twelfth century, followed by Aristotelian systematisation in the thirteenth. This means identifying, in detail, the arguments which made up that diversity of outlook, and examining exactly how they were deployed in defining *iustitia*.

The aim of this book is not to deny that twelfth-century debates on justice can be characterised by intellectual disagreement (although disagreement should be detached from the term 'disorder', which carries more unhelpful connotations), but to suggest that such disagreement is exactly what makes the period worthy of study. Justice was difficult to categorise not simply because Aristotelian answers still awaited rediscovery: justice was difficult to categorise – and many 'answers' were proffered – because scholastic authors recognised the complexity of its nature. Indeed, part of that complexity lay in sketching out the relationship between the concept of justice and its realisation in practice.

Justice and the common law

The historiography of twelfth-century scholasticism treats its subject as an international discipline, defined by personnel and debates that transcended national boundaries – as Richard Southern would have it, a truly 'European' phenomenon.[16] The same cannot be said of English legal history: going back to Maitland, and even beyond him, to Selden and sixteenth-century antiquarians, it has proudly proclaimed its insularity and particularity.[17] The common law has 'a life and logic of its own', and that life and logic are peculiar to England.[18] This historiographical tradition would appear to impede any attempt to draw meaningful connections between arguments in the medieval schools of northern Europe and contemporaneous developments in the English legal system. This may, in part, account for why the interpretation of the term 'justice' across the two disciplines (intellectual history and legal history) appears so starkly opposed in modern scholarship.

Indeed, 'justice' as an abstract idea is rarely invoked in this history. English legal historians have focused on the explicitly practical and procedural nature of common law, and the pragmatic approaches of its earliest practitioners. What is striking, however, is that, much like the history of scholastic thought in the twelfth century, twelfth-century English legal history is also framed as movement from disorder towards order, structure and systematisation. That 'structure' derives from a narrative of professionalisation – law becoming a full-time job, set against the background of the development of a national court system.[19]

The focus of English legal history – at least for the first century of common law, and before the emergence of the Inns of Court – has been the persons of its practitioners.[20] Much data has been accumulated on the social background of the earliest judges and advocates. English lawyers and administrators of the law have been characterised as largely self-interested

landholders; men concerned with securing or maintaining titles and position. To do justice, therefore, was to carry out the wishes of the crown, and 'a great gap separated the ideal expressed in the decrees of councils, complaints or moralists, and commentaries of canonists and theologians from the practice of the Angevin kings'.[21] What drove the development of justice was the need to work around practical problems in administering the law – whether that was the requirement to uphold order, or to generate revenue for the crown.[22] This was the case, from the perspective of legal history, even when ecclesiastical officers served as royal justices. On this account, even in those circumstances, even when royal officers had profound knowledge of scripture, of theology or of the practices of canon law, this had no impact on their attitude to administering common law.[23]

Such assumptions should not be accepted uncritically, and it is worth considering – in some detail – the biographies of a number of those administrators. Richard FitzNigel, for example, the son of Henry I's treasurer, Nigel, Bishop of Ely, was promoted through both royal administrative and ecclesiastical hierarchies; serving both as a royal justice and Bishop of London. His *Dialogue of the Exchequer* (c.1180), explains the performance and routine of royal justice at the exchequer with explicit reference to the scriptural foundations of that justice.[24] It is not only Richard FitzNigel whose biography suggests at least a familiarity with moral arguments about justice. Eustace de Fauconberg (1170–1228), educated in either Paris or Bologna, served as a judge both at Westminster and on eyre, and followed a similar path to FitzNigel, as both treasurer of the exchequer and Bishop of London.[25] Godfrey de Lucy (d.1204), Bishop of Winchester and Chief Justiciar, was a *magister* who had studied both in London and abroad, and is a plausible candidate for the authorship of the legal treatise *Glanvill*.[26] Richard Barre, who studied in Bologna with the celebrated canonist Stephen of Tournai, subsequently worked as a preacher, served Henry II as a justice in 1172 and later acted as chancellor for the Young King Henry.[27] Barre had also made a study of the Bible, dedicating a compendium of biblical excerpts to William Longchamp, Chancellor of England.[28]

The reason for reciting these four brief biographies is not to claim that these men rewrote English law to serve 'theological' ends, but to show that all four had the education and experience which would have forced them to at least *consider* the ethical implications of their judicial office. There is no reason to assume that such individuals neglected their moral responsibilities as churchmen, or deliberately divorced their ecclesiastical and temporal identities, or conceived of their judicial roles as requiring them to play yes-men. The argument of this book is that theological precepts did

impinge upon the behaviour of such men as judges. This is in no way to claim that they imported canonists' doctrines into English law – it is only to state that such figures understood that the act of judgment had ethical implications.

This book seeks to make that connection between English law and theology at a fundamental level. It is not to invoke the long-running, often fractious, and now rather tired debate about the relationship between English common law and the 'learned law' of the European *ius commune*.[29] Suffice it to say that the greater part of English legal history resists the claims that European law had a meaningful impact on English practices. That is an argument which stretches back to Selden's *Ad Fletam Dissertatio* of 1647. Selden believed that not only had medieval lawyers resisted the siren song of Justinian, but their Druidic predecessors had similarly scorned the Roman law impressed on them by Julius Caesar.[30] While the modern debate over the extent of *ius commune* influence on the common law is not directly relevant to this book, the lines of that argument do run parallel to some the questions considered here. There is an obvious analogy between the case made here for the importance of scholastic and explicitly theological ideas in shaping judgment in common law courts, and the argument of certain historians of canon law that there was a connection between the 'learned law' of the continental schools and some of the specific laws deployed in the English common law courts. The subject matter of this book, however, is broader than particular laws. It looks more generally at how we construct the wider categories of 'theology' and 'law'. More specifically, it considers the relationship between theological arguments from the schools and the application of the law in England by English judges at the moment of judgment. Its focus is not laws but individuals. Those with a formation in theology did not lose the habit of thinking in a theological mould if they subsequently departed the schools (whether of Paris or Oxford) to take up places in Angevin administration. Nor did they lose their theologically shaped convictions about the nature of judgment when they conversed with royal judges.

A second challenge to any analysis of the place of mercy within the early common law is the traditional historiographical focus on the development of procedural forms and procedural innovations. The history of English law has been written as the history of writs, not as a history of ethical dilemmas – not least because the material for a history of writs is plain, evident and the subject of scholarly discussion since the time of Maitland.[31] Ethical dilemmas – by their nature – leave much fainter marks in the historical record. But the unintended consequence of this approach has been,

at times, to reduce the application of the law to a matter of instructions and formulae, by definition rendering the moral aspects of judicial office unimportant.[32] Focusing on procedure has allowed historians of the common law to bypass questions of moral theology and ethics. A rare exception to this concentration is Paul Brand's examination of the ethical responsibilities of the judge under medieval common law. Brand's conclusion is that the issue of judicial morals was, for this period, moot. On this account, until the final decade of the thirteenth century, when the impetus of scandal made it a pressing consideration, English legal practitioners largely ignored the issue of judicial morality. Although there was concern surrounding the selection of jurors (and the removal of unsuitable jurors), Brand contends there was no similar concern for enforcing judicial ethics. There was, he writes, simply no concern to develop a code that would control the behaviour of justices or to ensure 'unbiased treatment by a neutral judge'.[33]

There was no explicit written code of conduct regulating the behaviour of English judges in this period, but to state this is only to note the absence of such a document. It does not necessarily demonstrate a wider lack of engagement with judicial ethics. In fact, ethical principles were debated at length in moral literature and didactic texts. Judges may not have been measured against an explicit, externally audited code of ethics, but that still left room for an ethical code which judges were encouraged to apply by themselves and to themselves. As John Sabapathy has recently and persuasively argued, when discussing the rules governing the conduct of medieval office-holders, historians should be wary of discounting officials' self-consciousness 'as a real motor of official accountability'.[34] Though not codified in a single document, moral guidance for judges was available in abundance. The historian is not required to read between the lines in order to find explicit and complex discussions about judicial morality.

Theory and praxis: theology as social commentary

This book, therefore, aims to show how moral teachings (primarily distilled from the study of scripture) could be and, indeed, were applied, practically, to the task of judgment; how theology was married to law. It might, of course, be argued, that this flies in the face of the reality of medieval hierarchies of learning. G. R. Evans has expertly sketched out how *theologia* represented the highest form of *sapientia*, separate in aim from the 'lower wisdom' of the secular studies, an endeavour to be served by those lesser disciplines.[35] That apparent demarcation between the disciplines of theology and law is plain to see in the laments of medieval students, who drew

a sharp contrast between the worldly and avaricious individuals who chose to study law, aiming at wealth and success, and the impoverished students of theology who studied the 'Queen of the Sciences' with slim hopes of preferment or advancement.[36] A neat example of this disciplinary separation is furnished in Herbert of Bosham's *Vita Sancti Thomae*.[37] Herbert, who had been a distinguished master of theology in Paris, describes the dining arrangements in the household of Thomas Becket. Lawyers, he explains, were made to sit at a lower table than the theologians, a lesser place, suitable for those who concerned themselves only with worldly matters.[38] Herbert suggests a *cordon sanitaire* between the disciplines of law and theology.

Herbert of Bosham's line of demarcation between the world of theological abstraction and the pragmatic domain of law also reflects modern concerns about the apparent contrast between the abstracted world of the schools (and their conceptually complex discussions of justice) with the rough and tumble of twelfth-century politics. There is, admittedly, a considerable scholarly challenge in connecting *iustitia* as a virtue to justice in practice, moving from speculative commentaries to concrete legal change, as well as in the methodology employed in trying to detect practical judicial thought in speculative texts.[39] Cultural historians have often argued strongly against assuming that the settled and clear presentations of politics and lordly relations presented in the texts of highly educated authors reflect medieval *realpolitik*.[40] Indeed, so the argument goes, the words of an author such as (for example) John of Salisbury are not to be trusted, because John described the world as he wished it to be, rather than as it was – such texts are all persuasion, no description. By that same token, moralists who talk of 'justice' are engaging in wishful thinking, attempting to exert some edifying influence on the really rather unjust reality of everyday life. On this basis, over the past half-century, the perspective of revisionist cultural history has supported a strict separation between *iustitia* as an idea – intricately constructed, but entirely abstract – and the earthy, unlovely 'justice' of medieval political action. To accept that proposition would be to relegate the influence of scholastic ideas about justice – beyond the schoolroom – to near irrelevance. 'Justice' in political terms, it is argued, was a matter of might, not right: any action performed by the powerful or victorious could be retrospectively valorised as an act of 'justice'.[41] Such an approach assumes that the term held no particular meaning, and simply describes politically expedient practice, rather than politically charged theory.

This is the point made, recently and emphatically, in T. N. Bisson's *Crisis of the Twelfth Century*. The central argument of Bisson's *Crisis* is that kings and lords exercised a power which was essentially untrammelled and

unchecked for much of the twelfth century.[42] Moral discourses drawn from the Bible and classical philosophy on public power and lawful rule were simply 'platitudinous allusions', bearing no relation to the way in which twelfth-century society operated.

Bisson is primarily interested in recognising and rescuing the experiences of those who suffered under the infliction of lordly *potestas* in the twelfth century, rather than describing the origins of government. Moreover, though he deals with England, he aims at describing a common set of structures found across western Europe.[43] But in the course of capturing the experience of power, Bisson notes that the change which does occur in the late twelfth century is more closely related to growth in procedures for holding officers accountable, rather than the invention of a system of government. Power, unchecked and untrammelled for much of the century, was brought under control not by idealists, but by pragmatists, by kings interested in controlling their officers, rather than living up to moral expectations.[44]

It cannot be denied that *Crisis* makes an important point about the dangers of anachronism when discussing medieval governance. It warns against viewing the past through a teleological lens which warps our reception of terms such as *administrare*, *gubernare*, *regere* or *res publica*, as they feature in medieval texts.[45] Bisson's critique has two aspects to it: first that we should not fill up medieval terms with modern meanings – that cannot be argued with. A twelfth-century 'jury' is not the same thing (in its make-up, its purpose, its place in the legal system) as a twenty-first-century jury. There is a danger in assuming that the modern term 'mercy' maps directly onto the twelfth-century *misericordia* – which is why this book works hard to explain and unpack its dimensions and associations. But Bisson's second point about the relationship between moralists, theorists, texts and power is more contestable: he argues for a wide gulf between the authors of texts about governance and those who really wielded power. Theoretical language belonged to the schools, where justice was analysed but not exercised. 'Power was felt more than it was analysed.'[46] The people who experienced power, the people who theorised power and the people who commanded power were distinct groups.

What follows here challenges that assumption. The employment of terms used to analyse the ethical nature of justice was not limited to abstract discussions. Those who 'theorised' about power also attempted to influence power. Moral arguments could be abstract and lengthy, but they could also be practical and conveyed with brevity, through the use of typologies and *exempla*. At one end of the scale, John of Salisbury's *Policraticus* was densely packed, full of classical learning and certainly 'abstract' (in some ways,

though not in others). But *Policraticus* was not the only place that a discussion of justice and judges could be found – those arguments ranged more widely and could be fitted for less educated audiences. An examination of mercy's place within justice was not limited to dense theological tracts and philosophical treatises: it permeated the culture; was nearly inescapable; and it must be reckoned to have had some considerable impact on modes of thought and patterns of behaviour. The number and diversity of texts examined here speak to a society genuinely concerned to find a just course of action – and to 'do justice'.

The intellectual foundations, and precedent, for a fruitful study of the interplay between theology and law do exist. Southern, for one, argued that the very definition of the scholastic method that characterised theological learning was a practical one, seeking a 'unity of life and ideals' as its aim.[47] By clarifying and systematising the knowledge they had inherited from the ancient world, scholastic authors sought to impose order (*ordo*) on both knowledge and action, 'to give the truths thus clarified practical application by deducing from the them appropriate rules of conduct'.[48] Education in the schools prepared men for future careers in royal and ecclesiastical administration; scholasticism furnished the conceptual tools and systematic approach which produced a new type of European governance. John Baldwin's *Masters, Princes and Merchants* developed this line of argument, studying the work of the late twelfth-century masters in the circle of Peter the Chanter who addressed the most pressing practical questions of the age, ranging from economics to politics and ethics; taking in the problem of usury, standards of conduct for administrators and officials, and the behaviour of advocates and judges.[49] Baldwin's theologians were social commentators.[50] That argument is embraced, and developed, here. Moral arguments – drawn primarily from the Bible, but supplemented by classical texts – directly engaged with the practical matter of judgment and judicial ethics. But, beyond simply commenting on judicial behaviour, men with scholastic training used that learning to offer solutions to judicial dilemmas: the central and thorniest dilemma being how a judge was to reconcile the conflicting requirements of justice and mercy.

Notes

1 See, for example, Melissa Barden Dowling, *Clemency and Cruelty in the Roman World* (Ann Arbor, MI, 2005).

2 For the sake of simplicity and brevity, this book employs the term 'twelfth century' in an inclusive and 'long' sense, encompassing the period c.1100–c.1250.

3 P. Brand, 'The English difference: the application of bureaucratic norms within a legal system', *Law and History Review* 21 (2003), 383–7.
4 The classic formulation of this is S. Kuttner, 'The revival of jurisprudence', in R. L. Benson and G. Constable (eds), *Renaissance and Renewal in the Twelfth Century* (Toronto, 1991), 299–323.
5 The use of the pronoun is deliberate. The judges considered here are all – to a man – men.
6 O. Lottin, *Psychologie et morale aux XIIe et XIIIe siècles* (6 vols, Louvain, 1942–60).
7 For the repetition of a similar teleology in recent work see C. Nederman, 'Aristotelianism and the origins of "political science" in the twelfth century', *Journal of the History of Ideas* 52 (1991), 179–94.
8 O. Lottin, 'Le concept de justice chez les théologiens du moyen âge avant l'introduction d'Aristote', *Revue thomiste* 44 (1938), 511–21; reproduced, with minor modifications, in *Psychologie et morale*, 3:283–99.
9 For example, M. Lutz-Bachmann, 'The discovery of a normative theory of justice in medieval philosophy', *Medieval Philosophy and Theology* 9 (2001), 1–14; I. P. Bejczy, 'The cardinal virtues in medieval commentaries on the *Nicomachean Ethics*, 1250–1350', in I. P. Bejczy (ed.), *Virtue Ethics in the Middle Ages: Commentaries on Aristotle's Nicomachean Ethics, 1200–1500* (Leiden, 2008), 199–221.
10 I. Bejczy, *The Cardinal Virtues in the Middle Ages: A Study in Moral Thought from the Fourth to the Fourteenth Century* (Leiden, 2011), 87–8.
11 For example, Bejczy, 'Gerald of Wales on the cardinal virtues'; Riccardo Quinto, 'The *Conflictus vitiorum et virtutum* attributed to Stephen Langton', in István P. Bejczy and Richard Newhauser (eds), *Virtue and Ethics in the Twelfth Century* (Leiden, 2005), 197–267.
12 Bejczy, *Cardinal Virtues*, 159.
13 *Ibid.*, 73–133; cf. William of Auxerre, *Summa aurea*, ed. Jean Ribaillier (5 vols, Paris, 1980–87), 11.3.3, 4:190–1.
14 Marcia L. Colish, 'From the sentence collection to the sentence commentary and the *summa*: Parisian scholastic theology, 1130–1215', in Marcia L. Colish, *Studies in Scholasticism* (Aldershot, 2006), XII, 9–29.
15 For example, R. H. Rouse and M. A. Rouse, 'John of Salisbury's doctrine of tyrannicide', *Speculum* 42 (1967), 697–709; P. Delahaye, 'La vertu et les vertus dans les oeuvres d'Alain de Lille', *Cahiers de civilisation médiévale* 6 (1963), 13–25.
16 Cf. R. W. Southern, *Scholastic Humanism and the Unification of Europe* (2 vols, Oxford, 1995).
17 Sir Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (2 vols, Cambridge, 1895), 1:135; on the early modern connection between the distinctiveness of common law and English character, Brian Lockley, *Law and Empire in English Renaissance Literature* (Cambridge, 2006), esp. 113–41.
18 David J. Seipp, '*Bracton*, the Year Books, and the "transformation of elementary legal ideas" in the early common law', *Law and History Review* 7 (1989), 175–217, esp. 175.

19 See Susan Reynolds, 'The emergence of professional law in the long twelfth century', and the response of Paul Brand , 'The English difference', both in *Law and History Review* 21 (2003), 347–66 and 383–7.

20 Cf. Donald W. Sutherland, 'Legal reasoning in the fourteenth century: the invention of "color" in pleading', in Morris S. Arnold, Sally A. Scully and Stephen S. White (eds), *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* (Chapel Hill, NC, 1981), 182.

21 R. Turner, 'Clerical judges in English secular courts: the ideal versus the reality', in R. Turner, *Judges, Administrators and the Common Law in Angevin England* (London, 1994), 178.

22 R. Turner, 'The reputation of royal judges under the Angevin kings', in *Judges, Administrators and the Common Law*, 112–15.

23 Cf. J. Hudson, 'Magna Carta, the *Ius Commune* and English common law', in J. S. Loengard (ed.), *Magna Carta and the England of King John* (Woodbridge, 2010), 116–17.

24 See J. Hudson, 'Administration, family and perceptions of the past in late twelfth-century England: Richard FitzNigel and the "Dialogue of the Exchequer"', in P. Magdalino (ed.), *Perceptions of the Past in Twelfth-Century Europe* (London, 1992), 75–98.

25 N. Vincent, 'Master Eustace de Fauconberg', in N. Vincent (ed.), *English Episcopal Acta IX: Winchester, 1205–1238* (Oxford, 1994), appendix 4, no. 30, 193–5.

26 R. Turner, 'Who was the author of *Glanvill*?', in *Judges, Administrators and the Common Law*, 71–102.

27 R. Sharpe, 'Richard Barre's *Compendium Veteris et Novi Testamenti*', *Journal of Medieval Latin* 14 (2004), 128; see also R. Turner, 'Richard Barre and Michael Belet: two Angevin civil servants', in *Judges, Administrators and the Common Law*, 181–98.

28 Sharpe, 'Richard Barre's *Compendium*', 135.

29 An outline of this argument can be found in R. M. Helmholz, *The Ius Commune in England: Four Studies* (Oxford, 2001), 3–15. See further P. Brand, 'Legal education in England before the Inns of Court', in Jonathan A. Bush and Alain Wijffels (eds), *Learning the Law: Teaching and the Transmission of Law in England, 1150–1900* (London, 1999), 51–84; T. F. T. Plucknett, *Early English Legal Literature* (Cambridge, 1958), esp. 85, 96.

30 John Selden, *Ad Fletam Dissertatio*, ed. David Ogg (Cambridge, 1925). For the context of Selden's work, see Reid Barbour, *John Selden: Measures of the Holy Commonwealth in Seventeenth-Century England* (Toronto, 2003), 151–4.

31 Cf. R. Turner, 'Henry II's aims in reforming England's land law: feudal or royalist?', in *Judges, Administrators and the Common Law*, 1–16. Patrick Wormald made a similar point when describing the difference between studying 'law as System' and 'law as experienced': *Lawyers and the State: The Varieties of Legal History* (London, 2006), 19.

32 Plucknett, *Early English Legal Literature*, 102–3; see also H. D. Hazeltine, preface to *Radulphi de Hengham Summae*, ed. William Huse Dunham, Jr. (Cambridge, 1932).
33 P. Brand, 'Ethical standards for royal justices in England c.1175–1307', *University of Chicago Law School Roundtable* 239 (2001), 278.
34 J. Sabapathy, *Officers and Accountability in Medieval England 1170–1300* (Oxford, 2014), esp. 237.
35 G. R. Evans, *Old Arts and New Theology: The Beginnings of Theology as an Academic Discipline* (Oxford, 1980), 34.
36 S. C. Ferruolo, '"Quid dant artes nisi luctum?" Learning, ambition, and careers in the medieval university', *History of Education Quarterly* 28 (1988), 2.
37 For Herbert see D. L. Goodwin, 'Herbert of Bosham and the horizons of twelfth-century exegesis', *Traditio* 58 (2003), 133–73, and more recently Eva de Visscher, *Reading the Rabbis: Christian Hebraism in the Works of Herbert of Bosham* (Leiden, 2014), 1–22.
38 Herbert of Bosham, *Vita Sancti Thomae*, 3.12, *MTB*, 3:207.
39 See Alan Harding, 'The reflection of thirteenth-century legal growth in Saint Thomas's writings', in G. Verbeke and D. Verhelst (eds), *Aquinas and Problems of His Time* (Louvain, 1976), 18–37.
40 Cf. W. Davies, 'Judges and judging: truth and justice in Northern Iberia on the eve of the millennium', *Journal of Medieval History* 36 (2010), 193–203.
41 Frederick L. Cheyette, 'Custom, case law and medieval "constitutionalism": a re-examination', *Political Science Quarterly* 78:3 (1963), 366–7.
42 Thomas N. Bisson, *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government* (Princeton, NJ, 2009).
43 *Ibid.*, 19–21; for England see 168–81; 380–97.
44 For the development of accountability, and where it fits into the argument made here, see Conclusion, below.
45 Bisson, *Crisis*, 12–13; 16: 'classicising verbiage (not to mention a long lapse of time) may have distorted the reality'.
46 *Ibid.*, 3.
47 Southern, *Scholastic Humanism*, 1:3.
48 *Ibid.*, 1:5.
49 John W. Baldwin, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and his Circle* (2 vols, Princeton, NJ, 1970).
50 See too, the work of Philippe Buc on the explicitly political and practical applications of biblical exegesis: *L'Ambiguïté du livre: prince, pouvoir, et peuple dans les commentaires de la Bible au moyen âge* (Paris, 1994).