Reform and Custom

The Statutes of Pamiers in Early Thirteenth-Century Christendom

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The early thirteenth century saw the proliferation of legal texts intended to restrain the arbitrary[1] exercise of power while simultaneously reinforcing political authority. From Syria to Spain, charters of liberties blossomed from negotiations between varying permutations of king, bishops, barons and burghers. Some of these documents would, by the nineteenth century, become foundational to national myths, such as the Golden Bull of Hungary or, most famously, Magna Carta in England. Others, such as the *Livre au roi* or the Assizes of Antioch in Outremer, were forgotten along with the principalities that gave birth to them. Connections among the legal customaries that appeared during this generation have been remarked upon by historians, particularly on anniversaries for such national myths, as in June 2015 at the Magna Carta Conference.[2] It therefore seems appropriate to use this volume, marking the octocentenary of the death of Simon V of Montfort in 1218, to shift the centre of gravity for such comparison away from a document with a great historical legacy and its attendant temptations to anachronism and teleology in order to explore instead a collection of customs that was not only very much of its time, but that never had a chance to be otherwise: Simon's « constitution » for his conquests in the Albigensian Crusade, the Statutes of Pamiers.

That is not to say that the Statutes have been immune to national myth-making. Promulgated on 1 December 1212 by a crusader-dominated parliament in Pamiers, they have been examined almost exclusively as part of wider narrative histories of the Albigensian Crusade and the expansion of the French state, and therefore seen primarily through the lens of military provision and cultural subjugation. Only three scholarly works to date, all in French, have been wholly dedicated to the Statutes: a pamphlet of 1856 by Firmin Laferrière, a detailed monograph by Pierre Timbal from 1949 and, most recently, an excellent feminist analysis by Marjolaine Raguin-Barthelmebs. The first two are concerned with the long-term impact of the legislation, rather than its historical context, and therefore address only the replacement of southern partible inheritance — evidence of a surviving Roman and written legal tradition —

[1] I am grateful to the participants and attendees at the conference in Poitiers for their questions and comments on an earlier version of this paper. I also owe a debt of thanks to Profs Peter Edbury, David Carpenter, Stephen Church, Martyn Rady, Martin Aurell, Laurent Macé and Nicholas Vincent who also offered generous comments and criticism. All errors and failings of the argument are my own.

[2] « Statutes, Constitutions and a Golden Bull: Early European Parallels to Magna Carta », The Magna Carta Conference, British Library, 19 June 2015. The Statutes were also deliberately included among the items on display at the concurrent national exhibition of Magna Carta: *Magna Carta. Law, Liberty, Legacy*, dir. C. Breay, J. Harrison, London, 2015, p. 59.

by French male primogeniture.[3] However, this legacy is derived from only three clauses in the entire document of forty-nine. These inheritance clauses — almost alone of the original Statutes, which were abolished by the Crown in much of the Midi after 1229 — survived, if only in those lordships retained by Montfortine partisans and their descendants.[4] For her part, Raguin-Barthelmebs provides instead a welcome lexical examination of the forty-sixth statute, that restricting marriages by indigenous noblewomen. As such, she is also chiefly concerned with inheritance and French « colonisation ».[5] But, as Prof. Sir James Holt reminds us in discussing Magna Carta, « [i]t is scarcely valid…to select this or that clause or group of clauses as typifying the quality of the Charter without establishing that the contemporary importance of these sections justifies their selection. »[6] The same is true of the Statutes. Despite the « highly unusual circumstances » of their drafting during the Albigensian Crusade, they nevertheless shine in a wider constellation of charters and customaries issued to or written for similarly wide territories — kingdoms, principalities or counties, rather than particular towns or communes — in the same generation (*c.* 1200-*c.* 1220).[7] When studied comparatively, these sources illuminate not only the « contemporary importance » of the Statutes, but also their place amidst the currents of reform running through the first quarter of the thirteenth century.

If the « colonial » dimension of the Statutes — their imposition of French inheritance custom — has been overemphasised, it nevertheless contributes to an essential impulse found in the legislation: the provision of reliable military service and the preservation of the peace. In the place of elective, partible inheritance, Simon of Montfort therefore introduced the unambiguous transmission of fiefs by primogeniture, even going so far as explicitly to forbid alms given to the Church in excess of a fifth of any estate. The insistence on French custom was included in both the main text of the Statutes as well as the separate provisions concluded specifically between Simon and his fellow crusaders, appended by the crusader's seal to the rest of the document.[8] Nor was Simon alone in seeing the importance of inheritance to the security of his principality. Around the turn of the century, King Aimery of Jerusalem probably commissioned the *Livre au roi* in an attempt to reinforce his throne and restore or reimagine

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[3] F. Laferrière, *Mémoire sur les lois de Simon de Montfort et sur les coutumes d'Albi*, Paris, 1856; P. Timbal, *Un Conflit d'annexation au Moyen Âge. L'Application de la coutume de Paris au pays d'Albigeois*, Toulouse and Paris, 1949. See also, e.g., the treatment in A. P. Evans, « The Albigensian Crusade », *A History of the Crusades*, dir. K. M. Setton, 2nd edn, Madison, Wisc., 1969-1989, 2: 296; M. Roquebert, *L'Épopée cathare*, Toulouse, 1970-1989, 1: 510-13; or J. R. Strayer, *The Albigensian Crusades*, New York, 1971, p. 87, where he confidently proclaims that the Statutes' « main purpose was to introduce French feudal law into the South. » For southern practice at the turn of the century, see e.g. Lo Codi*: Eine* Summa codicis *in provenzalischer Sprache aus dem XII. Jahrhundert*, ed. H. Fitting, F. Derrer, Halle and Zurich, 1906-1974, 1: 47-48, 52, 66-68, 200-02, 207-08, 2: 37-38, 41, 50-52, 144-46, 149-50; *Layettes*, 1: 256, 261, 273-74, 277.

[4] Laferrière, *Mémoire sur les lois…*, p. 21-22; Timbal, *Un Conflit…*, p. 34-35, 36. Even so, French primogeniture was largely abandoned by the nobles governed by the Statutes from the fourteenth century: Timbal, *Un Conflit…*, p. 131-72. I am preparing a critical edition of the Statutes for a future monograph; printed transcriptions exist in *HGL*, 8: 625-35 and Timbal, *Un Conflit…*, p. 177-84. Henceforth, the Statutes will be referenced by SP, followed by the clause number (a modern innovation, misapplied in *HGL*, 8: 633-34, where xlv is repeated) in Roman numerals.

[5] M. Raguin-Barthelmebs, « Simon de Montfort et le gouvernement. Statut des femmes dans les Statuts de Pamiers (art. 46) avant la Magna Carta », *Medieval Feminist Forum*, 53, 2017, p. 38-90. However, according to her own adopted definition of *colonisation* (p. 59-61) the Statutes make an awkward fit. It is unclear how the *exploitation* of the crusaders' conquests qualitatively differed from that of those noblemen they replaced. Even less evident is the *métropole* which putatively benefitted from this *colonisation*, as in 1212 France — strictly speaking, the territory around Paris — did not profit from or exercise any power over the conquests, and the attitude of King Philip II Augustus toward the Albigensian Crusade could be most generously described as « indifferent ».

[6] J. C. Holt, *Magna Carta*, 3rd edn, Cambridge, 2015, p. 235.

[7] S. Reynolds, « Magna Carta in its European Context », *History*, 101, 2016, p. 664.

[8] SP, xii, xliii, Appendix 1.

the laws of the kingdom as they had existed before the loss of the Holy City in 1187. The resulting work is a collection of customs in Levantine French which detail, among other things, how fiefs should descend in a wide variety of circumstances: at its most simple, the practice was male primogeniture. The same is true for the Assizes of Antioch, composed before 1219 amid the hazy circumstances of the War of Antiochene Succession between Prince Bohemond IV and King Raymond-Ruben of Lesser Armenia.[9] Superficial comparisons between the *Livre au roi* and other legal texts of the kingdom of Jerusalem, collectively if anachronistically known as the Assizes of Jerusalem, and the Statutes of Pamiers have often been suggested by historians, who see in them a common colonising purpose.[10] But they are in fact part of a much greater tradition of early thirteenth-century customs. In July 1200, as he prepared to set out for the Fourth Crusade, Count Baldwin VI of Hainaut (better known as IX of Flanders) laid down the rules governing inheritance in that county — again, based on male primogeniture.[11] Both Aimery and Baldwin were more specific and comprehensive than Simon, with the result that their provisions were distinctly more complicated than those vaguely indicated in the Statutes. However, all three were enshrining principles that would both avoid intrafamilial conflict and ensure fiefs that could provide reliable military service: it is significant that both the Statutes and Baldwin's so-called « Feudal Charter » make a point of restricting alienation that would prejudice the rights of overlords.[12] By 1222, even Hungary, on the borders of Latin Christendom, had adopted male primogeniture: the Golden Bull of that year, issued by King Andrew II amidst a political crisis and accusations of bad government, assumes the practice as normal while still allowing limited elective testaments in default of sons.[13] Such procedures and safeguards were crucial in territories where warfare was endemic. The point may seem obvious for the Midi, Outremer and Hungary, but Hainaut was also frequently subject to internecine violence among its fractious nobles.[14] The customs may have been novel — as

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[9] *Le Livre au roi*, ed. M. Greilsammer, Paris, 1995, p. 231-35, 238-40, 242-44, 282; *Assises d'Antioche*, ed. and trans. L. M. Alishan, Venice, 1876, p. 18-20; P. W. Edbury, « The *Assises d'Antioche*. Law and Custom in the Principality of Antioch », *Norman Expansion. Connections, Continuities and Contrasts*, dir. K. J. Stringer, A. Jotischky, Farnham, 2013, p. 244-45. However, in both Jerusalem and Antioch, surviving younger sons and even daughters inherited in preference to grandsons: *ibid*., p. 244.

[10] P. Belperron, *La Croisade contre les albigeois et l'union du Languedoc à la France, 1209-1249*, Paris, 1942, p. 244; Timbal, *Un Conflit…*, p. 174-75; J. Ventura, *Pere el Catòlic i Simó de Montfort*, Barcelona, 1960, p. 183; Y. Dossat, « Simon de Montfort », *Cahiers de Fanjeaux*, 4, 1969, p. 290; Roquebert, *L'Épopée…*, 1: 498; idem, *Simon de Montfort. Bourreau et martyr*, Paris, 2005, p. 272; L. W. Marvin, *The Occitan War. A Military and Political History of the Albigensian Crusade, 1209-1218*, Cambridge, 2008, p. 160.

[11] *Coutumes du pays et comté de Hainaut*, ed. C. Faider, Brussels, 1871-1883, 1: 3-5. There were important differences, particularly relating to the succession of children or siblings of an eldest heir: *Le Livre au roi*, p. 235; *Coutumes du pays…*, 1: 4.

[12] *Coutumes…*, 1: 5; SP, xli. The same concern about the interests of overlords appears in the constitution granted to the imperial princes by King Henry (VII) of the Romans in 1231 and confirmed by his father, Emperor Frederick II, in 1232: *MGH Const.*, 2: 212, 419. In an interesting and related reversal — if unsurprising given their different contexts — these German constitutions forbid the construction of new imperial castles to the detriment of the princes, while the Statutes prohibit new fortifications without comital approval, and Frederick's own 1220 assizes for the kingdom of Sicily order the surrender and destruction of castles built since the death of King William II the Good in 1189: *ibid.*; SP, xxiii; Richard of San Germano, *Chronica*, ed. C. A. Garufi, Bologna, 1937-1938, p. 92. Though exhibiting similar provisions, the first clearly aim at decentralisation, the latter two at a strong central authority.

[13] *The Laws of the Medieval Kingdom of Hungary*, ed. J. M. Bak, G. Bónis, J. R. Sweeney, Bakersfield, Calif., 1989-1992, 1: 34; M. Rady, *Customary Law in Hungary. Courts, Texts, and the* Tripartitum, Oxford, 2015, p. 78-79, 86-87.

[14] R. L. Wolff, « Baldwin of Flanders and Hainaut, First Latin Emperor of Constantinople. His Life, Death, and Resurrection, 1172-1225 », *Speculum*, 27, 1952, p. 283. A corollary to the codification of inheritance is the Statutes' specification that dowries should pass to children, not revert to the mother's family: SP, xliv; cf. *Layettes*, 1: 261, 277. This policy is echoed in the Assizes of Antioch and is implied in the *Livre au roi*, where a former

in the case of the Statutes — or traditional — as was probably true of the Feudal Charter — but their inscription was intended to resolve potential conflict within and prepare for potential threats from without.

Such precautions meant little if knights did not properly perform their service. Naturally, knights could not be compelled to serve beyond the limits of their obligation. If his own person or lands were not in question, Simon excused his French barons and knights from joining him on campaign unless they did so *ex amore et beneplacito suo*.[15] Aimery of Jerusalem made a similar exemption for his knights, as did Simon's cousin, Ranulf III, sixth earl of Chester, in the charter he issued for his county amidst the First English Barons' War in 1215.[16] In the wake of his abortive campaign to Poitou in 1213 and its disastrous sequel in 1214 — both of which had been intended to restrain Simon and the Albigensian Crusade — King John of England came under pressure to grant his barons the right to remain at home during royal campaigns outside of England, Normandy and Brittany. This concession would not finally appear in Magna Carta. Instead, the king recognised that knights could not be compelled to render service in excess of that owed by their fiefs.[17] Like primogeniture, the principle was not restricted to the Francophone world: the Golden Bull also exempts royal sergeants from unpaid service outside Hungary.[18] The promise not to command service beyond frontiers was a commonplace; its inclusion among such liberties was an easy one, though no less valuable to those who had pledged their swords.

But the Statutes do require Simon's barons, summoned to military service in defence of his person or his conquests, to muster within fifteen days with the requisite number of knights, under pain of confiscation of their moveables. Latecomers and those without a full complement of knights could expect substantial financial penalties.[19] Similarly, the *Livre au roi* docks the pay of knights who mustered with improper harness or unsuitable mount; those who proved incorrigible were then turned over to the marshal.[20] Ranulf of Chester likewise required his barons to turn up with their agreed complements, properly equipped, in the Cheshire Charter.[21] The Assizes of Capua, issued in 1220 upon King Frederick I's return to his kingdom of Sicily following his imperial coronation, proclaim his reinvigorated authority by insisting that all fiefholders be prepared to answer a royal summons with their expected service, on pain of

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ward of the king, upon entering into his inheritance, may return to his mother a dowry confiscated by the Crown, as the property is now within his gift: *Assises d'Antioche*, p. 18; *Le Livre au roi*, p. 226. In England, where the centralised royal administration more effectively restrained internecine struggles and more efficiently enforced military service, the rebel barons of 1215 instead laid emphasis upon the widow's rights to her dower: Holt, *Magna Carta*, p. 352, 360, 380, 422. Cf. R. H. Helmholz, « Magna Carta and the *ius commune* », *The University of Chicago Law Review*, 66, 1999, p. 316.

[15] SP, xvii (« out of their love and pleasure »).

[16] *Le Livre au roi*, p. 217; *The Charters of the Anglo-Norman Earls of Chester,* c. *1071-1237*, ed. G. Barraclough, Stroud, 1988, p. 390; G. J. White, *The Magna Carta of Cheshire*, Chester, 2015, p. 76-77. For more on the obscure context of this « Cheshire Charter », see J. W. Alexander, *Ranulf of Chester. A Relic of the Conquest*, Athens, Ga, 1983, p. 63-64; G. J. White, « The Cheshire Magna Carta. Distinctive or Derivative? », *Historical Research*, 91, 2018, p. 187-92, 194-96.

[17] N. Vincent, « England and the Albigensian Crusade », *England and Europe in the Reign of Henry III (1216-1272)*, dir. B. K. U. Weiler, I. W. Rowlands, Aldershot, 2002, p. 74-76; G. E. M. Lippiatt, *Simon V of Montfort and Baronial Government, 1195-1218*, Oxford, 2017, p. 42-43, 126-27; Holt, *Magna Carta*, p. 352, 360, 384, 422. In the Assizes of Capua, Frederick of Sicily likewise forbad demands for military service in excess of those in force during the reign of his ancestor, William the Good: Richard of San Germano, *Chronica*, p. 91.

[18] *The Laws…*, 1: 35, 39. For *servientes regis* in Hungary, see Rady, *Customary Law…*, p. 70.

[19] SP, xvii, xxi-xxii. The customs of Saint-Gaudens and Montpellier likewise require *host et cavalgada* from their townsmen, though with similar restrictions to those above: *La Grande Charte de Saint-Gaudens*, ed. and trans. S. Mondon, Paris, 1910, p. 16; *Layettes*, 1: 262.

[20] *Le Livre au roi*, p. 163-64.

[21] *The Charters…*, p. 389.

losing their fief.[22] Even when they were not required for a campaign, it was important to keep one's fighting force readily available. Simon therefore forbad his knights from tarrying in France (as opposed to the Midi) for longer than their agreed leave, on pain of forfeiture of their lands.[23] In the principality of Antioch, knights absent without leave could only be dispossessed for a year and a day, but in the kingdom of Jerusalem those knights who vacated their fiefs for a year and a day would face perpetual confiscation.[24] Military effectiveness was crucial to such ruling minorities beset by frequent warfare and unreliable subjects.

It is unsurprising, given the similar pressures faced by the Montfortine Midi and Frankish Outremer, to find the same concerns expressed in the Statutes and the *Livre au roi*. That does not mean that they always came to the same conclusions. Though he compelled them to go into exile, Simon allowed the Catholic wives of *proditores et hostes comitis* to retain the possession and rents of their dowries, so long as they swore that they would not benefit their husbands while they remained at war *contra christianitatem et comitem*.[25] Nowhere is it suggested that the lady's marriage might be dissolved on account of her husband's « rebellion » or possible heresy; indeed, her exile is a direct result of a continuing nuptial tie. In the kingdom of Jerusalem, orthodox wives of condemned heretics or the wives of knights who had gone over to the Saracens for a year and a day were likewise entitled to the usufruct of their dowries (or of half their fiefs if they were the fief-holders themselves). However, in a blatant contravention of scriptural and ecclesiastical teaching on marriage, after a year and a day of a renegade knight's apostasy, his marriage to a fief-holding lady was considered dissolved, freeing her for remarriage.[26] For all that this chapter of the *Livre au roi* might benefit the military requirements of the kingdom by allowing a new knight to maintain the service of the lady's fief, it flew in the face of the canonists' — or for that matter, Christ's — understanding of marriage.

In other respects, however, the desire of the kings of Jerusalem to provide for the marriages of important heiresses was hardly unique. The interest of a lord — especially the Crown — in the provision of a suitable knight to govern a fief through marriage was universally recognised, and usually led to rights over the choice of husband. In the kingdom of Sicily, counts and barons could not be married without royal licence, a restriction reaffirmed by Frederick in the Assizes of Capua.[27] Reformed customs more frequently tended to limit such rights. Magna Carta and the Cheshire Charter commit the king and the earl respectively not to

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[22] Richard of San Germano, *Chronica*, p. 93.

[23] SP, xix.

[24] *Assises d'Antioche*, p. 12; *Le Livre au roi*, p. 200.

[25] SP, xlv. In 1216, Simon required papal prodding to pay 150*m*. to the countess of Toulouse, Eleanor of Aragon, from her dowry at Beaucaire after the deposition of her husband: *RHGF*, 19: 606; G. E. M. Lippiatt, « Un symbole contesté. Beaucaire, la croisade albigeoise et le quatrième concile du Latran », *1216, le siège de Beaucaire. Pouvoir, société et culture dans le Midi rhodanien (seconde moitié du XIIe-première moitié du XIIIe siècle*, dir. M. Bourin, Beaucaire, 2019, p. 265-66. For later attitudes toward the dowries of the loyal and orthodox wives of outlawed or heretical husbands, see A. W. Jones, *Before Church and State. A Study of Social Order in the Sacramental Kingdom of St Louis IX*, Steubenville, Ohio, 2017, p. 134-35.

[26] Matthew 5.32, 19.9; Mark 10.11-12; Luke 16.18; D. L. d'Avray, *Medieval Religious Rationalities. A Weberian Analysis*, Cambridge, 2010, p. 19-20; idem, *Papacy, Monarchy and Marriage, 860-1600*, Cambridge, 2015, p. 208-09; *Le Livre au roi*, p. 196-97, 203-04. Cf. J. A. Brundage, « Marriage Law in the Latin Kingdom of Jerusalem », *Outremer. Studies in the History of the Crusading Kingdom of Jerusalem*, dir. B. Z. Kedar, H. E. Mayer, R. C. Smail, Jerusalem, 1982, p. 266-67; idem, *Law, Sex, and Christian Society in Medieval Europe*, Chicago, 1987, p. 201, 292-94. The provision for ending a marriage on the grounds of unbelief might be justified in light of I Corinthians 7.15, but Gratian specifies in his *Decretum* (C. 28, q. 2, c. 2) that the ability to remarry in these circumstances applies only to those who married as pagans and later converted to Christianity, not to the abandoned spouse of a baptised apostate; he was followed by Pope Innocent III, who expanded the question to treat heresy specifically: *Register*, 2: 88-89.

[27] Richard of San Germano, *Chronica*, p. 92. The prerogative would be enshrined once more in the Constitutions of Melfi in 1231: *MGH Const.*, 2 Suppl.: 388.

disparage heiresses; in other words, not to treat them as rewards for the service of a lord's socially inferior creatures. The king also promised not to force fief-holding widows to marry, though he retained rights over the choice of groom should they wish to do so.[28] The *Livre au roi* allows a year and a day of mourning for the late husbands of fief-holding widows; after this period, the lady might be made to marry one of the three choices presented to her by her lord or face confiscation of her lands. On the other hand, should she marry without seigneurial permission, she might be disseised by the king.[29] These qualifications betray an increasing, if still imperfect, reflection of canonical insistence on the consent of the partners to the validity of a marriage.[30] Their association with « colonialism » notwithstanding, Simon's Statutes go much further in conforming to decretal theory and limiting nuptial oversight. « Magnate » widows and heiresses possessing fortifications are forbidden from marrying southern husbands without comital licence for a period of ten years, but are able to marry French lords freely within that time and as they choose afterwards.[31] This clause has been seen by some historians as an attempt to « breed out » the southern nobility, and no doubt it was designed to exclude *faidits*, whether actual or potential, from political and social life and thus deprive them of descendants.[32] In the context of other customs, however, Simon's policy appears relatively permissive: the licence was no longer required in all cases, as was usual, and in time, would be phased out altogether.[33] In the meantime, of course, the statute benefitted the establishment of the crusader lords. As the lordly prerogative over marriages became increasingly circumscribed throughout Latin Christendom, Simon proposed to discontinue it, but, paradoxically, in such a way as to solidify his rule in a hostile land.

Concerns about sex were not reducible to inheritance. Simon and his wife, Alice, like Baldwin of Flanders — a fellow Fourth Crusader — and his wife, Mary of Champagne, appear to have maintained a chaste marriage. But neither Baldwin nor Simon confined their observance of sexual morality to their own beds: as eastern Roman emperor, Baldwin forbad his nobles to stay the night in his palace in the company of any woman other than their own wives, while Simon, anticipating the following year's council of Paris, ordered all prostitutes to be expelled without town walls.[34] Half a year after the Assizes of Capua, Frederick of Sicily issued the

[28] Holt, *Magna Carta*, p. 352, 360, 362, 380-82, 422; *The Charters…*, p. 389; White, « The Cheshire Magna Carta… », p. 193.

[29] *Le Livre au roi*, p. 219-22, 223, 225. Cf. Philip of Novara, *Le livre de forme de plait*, ed. P. W. Edbury, Nicosia, 2009, p. 290-91 n. 265.

[30] Helmholz, « Magna Carta… », p. 316-17; D. L. d'Avray, *Medieval Marriage. Symbolism and Society*, Oxford, 2005, p. 124-29, 184.

[31] SP, xlvi. In 1204, King Peter II of Aragon and Mary of Montpellier completely abandoned seigneurial rights over the marriages of Montepessulan townswomen, as did Viscount Raymond-Roger Trencavel of Carcassonne over the women of that city: *Layettes*, 1: 262, 278. After the deposition and death of Trencavel in 1209, Simon became Peter's man for the viscounty in 1211 and would administer Montpellier in trust for Peter's son, James, from that year until the collapse of relations between king and viscount in early 1213: Lippiatt, *Simon V of Montfort…*, p. 28-29, 47.

[32] J. Girou, *Simon de Montfort*, Paris, 1953, p. 131; Ventura, *Pere el Catòlic…*, p. 184; Roquebert, *L'Épopée…*, 1: 504; idem, *Simon de Montfort…*, p. 272-73; M. G. Pegg, *A Most Holy War. The Albigensian Crusade and the Battle for Christendom*, Oxford, 2008, p. 122; Raguin-Barthelmebs, « Simon de Montfort… », p. 64, 77, 85, 89-90.

[33] This is noted obliquely and in passing by Carpenter, *Magna Carta*, p. 273. Raguin-Barthelmebs, « Simon de Montfort… », p. 77-78 rightly notes that Carpenter finds the « positive » interpretation of this clause by reading between the lines, rather than according to its obvious intention. However, she does not fully acknowledge the significance of the abolition of marriage licences from superior lords, despite her analysis on p. 84-86. No doubt, as she argues, this clause contains a clever bit of rhetoric; nevertheless, it marked a significant liberalisation of existing marriage restrictions (save in Montpellier and Carcassonne), which would have become all the more radical upon the expiry of the ten-year period.

[34] G. E. M. Lippiatt, « Simon de Montfort, les cisterciens et les écoles. Le contexte intellectuel d'un seigneur croisé », *Cahiers de civilisation médiévale*, 61, 2018, p. 278-79; *MGH SS*, 21: 550-51; Nicetas Choniates,

further Assizes of Messina, which also required prostitutes to remove their trade from within city walls, as well as to wear a cloak in a masculine style and restrict their attendance at baths to Wednesdays.[35] Though its concerns seem to have been more feudal, the *Livre au roi* went so far as to prescribe disinheritance for any heiress who should lose her virginity through fornication.[36] Interest in sexual purity was not the exclusive preserve of the clergy.

The persecution of heresy, the *raison d'être* of the Albigensian Crusade and therefore the Statutes of Pamiers, also reveals lay approaches to realising the Christian republic. Simon ordered the destruction of heretical « convents » and their replacement with churches and presbyteries, the dispossession of those found to have harboured heretics, the barring of heretical believers — even if reconciled — from public functions, the expulsion of reconciled heretics from the towns in which they had ministered and the compulsion of former heretical believers to strict military service.[37] Many of these provisions echo earlier papal pronouncements against heretics. In 1184, in partnership with Emperor Frederick I Barbarossa, Pope Lucius III had issued the bull *Ad abolendam*, which forbad the appointment of supporters of heretics to public office and imposed confiscation on relapsed heretics themselves.[38] Thirteen years before the Statutes of Pamiers, Pope Innocent III repeated these penalties in *Vergentis in senium*, as well as extending confiscations in papal lands to those who received or defended heretics and disinheriting their orthodox children.[39] Simon was therefore reiterating papal policy in the Statutes while also adapting it to the particular realities of the Midi, where heretics formed a respected element of society.

Beyond confiscation for believers in heretics, punishment was left intentionally vague. *Ad abolendam* had decreed relaxation to secular justice for those convicted of heresy, while *Vergentis in senium* urged princes to follow Innocent's example in expanding the penalty for confiscation. Given canonical aversion to *iudicia sanguinis*, the Church could not impose the

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Historia, ed. J.-L. van Dieten, Berlin, 1975, 1: 597; SP, xxxix; *Sacrorum conciliorum nova et amplissima collectio*, ed. G. D. Mansi *et al.*, Florence and Venice, 1758-1798, 22: 854. The consuls of Toulouse and Carcassonne had already expelled prostitutes from their cities earlier in the century: *HGL*, 8: 472; *Layettes*, 1: 281.

[35] Richard of San Germano, *Chronica*, p. 97; W. Stürner, *Friedrich II.*, Darmstadt, 1992-2000, 2: 12-13.

[36] *Le Livre au roi*, p. 228-30; J. Prawer, *Crusader Institutions*, Oxford, 1980, p. 459-60. An extramarital loss of virginity reflects the same penalties as a marriage without seigneurial licence, as they share the same feudal result of jeopardising the lord's ability to command service from the fief: *Le Livre au roi*, p. 223, 227; cf. Philip of Novara, *Le livre de forme…*, p. 161-62.

[37] SP, x-xi, xiv-xv, xxiv. The pre-crusade customs of Carcassonne, perhaps at the urging of Peter of Aragon, had already banned heretics from remaining *in omni terra et posse domini Carcassone*: *Layettes*, 1: 279. Though not concerned with heresy, Baldwin of Hainaut's requirements that his subjects forswear friends and neighbours convicted of murder or be associated in their punishment shares commonalities with Simon's penalties for those who aid or abet heretics or other *hostes christi*. Simon's exclusion of heretics from his lands also finds parallels in the proscription of convicts by Baldwin, Emperor Frederick II, and King Henry (VII) of the Romans from the protection of cities, towns, lords or other men: SP, xi, xxxvi-xxxvii; *Coutumes…*, 1: 7-8; Richard of San Germano, *Chronica*, p. 89; *MGH Const.*, 2: 212, 419.

[38] *Corpus iuris canonici*, ed. E. Friedberg, 2nd edn, Leipzig, 1879-1881, 2: 780-81. The phrase *ad abolendam hereticorum pravitatem*, almost exactly mirroring the incipit of Lucius' bull, appears in the preamble to the Statutes of Pamiers: SP, Preamble; *Corpus iuris…*, 2: 780.

[39] *Register*, 2: 4-5. Cf. *MGH Const.*, 2: 108-09. For the controversy over *Vergentis in senium* among the canonists and Innocent's own second thoughts, see K. Pennington, « 'Pro peccatis patrum puniri'. A Moral and Legal Problem of the Inquisition », *Church History*, 47, 1978, p. 137-54; O. Hageneder, « Studien zur Dekretale *Vergentis* (X V.7.10). Ein Beitrag zur Häretikergesetzgebung Innocenz III. », *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 49, 1963, p. 150, 158-60, 163-66; M. Meschini, « L'Evoluzione della normativa antiereticale di Innocenzo III dalla *Vergentis in senium* (1199) al IV concilio lateranense (1215) », *Bullettino dell'Istituto storico italiano per il Medio Evo*, 106, 2004, p. 207-31; idem, « Innocent III, the Fourth Lateran Council and the Albigensian Crusade », *The Fourth Lateran Council and the Crusade Movement*, dir. J. L. Bird, D. J. Smith, Turnhout, 2018, p. 125-28 (though the last may be too receptive to the propagandistic portrayal of the pope in the *Canso*).

death penalty, however much she knew that it lay behind her recommendation that heretics be given *pro qualitate facinoris ultio*.[40] Nor did Simon define a penalty in the Statutes for those handed over to his authority for punishment, though the experience of his campaigns shows his preference for death by burning.[41] Fifteen years earlier, in the neighbouring Crown of Aragon, King Peter II — who would become Simon's reluctant overlord for the viscounties of Béziers and Carcassonne — had ordered all heretics expelled from his lands; those discovered after Passion Sunday (15 March) 1198 would have their goods confiscated and their bodies committed to the flames.[42] On the other side of the Mediterranean, the kingdom of Jerusalem had likewise, since the third quarter of the twelfth century, explicitly codified the stake as the punishment for heresy — significantly, not the « classical » heresies observed among local Christians, but rather the same dualist, *patelin* creed that so terrified the contemporary West.[43] Catholic Christendom, from France to Palestine, had moved beyond the controversies of the great oecumenical councils, concentrating her quite literal fire on the neomanichees suspected of undermining Latin society.

Judging heretics, however, remained a tricky prospect for a number of reasons. Chief among these was the absence of firm evidence should the accused choose to dissemble. A near universal means of supplying proof when it was lacking — especially, but not exclusively, in cases of heresy — was the ordeal. This was an appeal to divine intervention through the healing of burns, the immersion of water, or the decision of combat. However, in the face of vehement condemnation by elements of the « neogregorian » Church as superstitious and unreliable, the former two « unilateral » ordeals would largely disappear following canonical proscription at the Fourth Lateran Council in 1215.[44] Three years earlier, in the appendix to the Statutes of Pamiers agreed by Simon of Montfort with his French barons, the crusader had forbidden *duellum* — trial by battle, the ordeal most hated by clerical reformers — in all seigneurial courts. This prohibition, however, seems to lack the force of its convictions, making allowances for trial by battle in most capital cases, such as treason, theft, rape and murder.[45] Perhaps the

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[40] *Corpus iuris…*, 1: 179-80, 964, 2: 781 (« retribution according to the nature of the crime »); *Register*, 2: 5; cf. J. W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle*, Princeton, 1970, 1: 320-21.

[41] *CCA*, 1: 116-18, 164, 172; PVC, 1: 118, 161, 228, 233; GP, p. 70.

[42] *PCD*, 1: 266-67.

[43] *Le Livre au roi*, p. 196-97; Prawer, *Crusader Institutions*, p. 461-62. This distinction is clear from the invitation of the Latin Patriarch Aimery of Antioch to his Jacobite counterpart, Michael the Great, to accompany him to the Third Lateran Council in 1179. Michael did not ultimately make the journey, but he did write an extensive (now lost) refutation of dualist heresy as he had been given to understand it: Michael the Great, *Chronique*, trans. J.-B. Chabot, Paris, 1899-1905, 3: 377-78. For conceptual connections between the *albigenses* of the Midi, the *patelin* of the *Livre au roi* and the *popelican* encountered by the Fourth Crusaders at Philippopolis, see G. E. M. Lippiatt, « Bogomils or Bogeymen?. Heresy in the Thirteenth-Century French Mediterranean », forthcoming.

[44] R. Bartlett, *Trial by Fire and Water. The Medieval Judicial Ordeal*, Oxford, 1986, p. 20-24, 52-53, 57, 79-81, 84-88, 97-99; J. W. Baldwin, « The Intellectual Preparation for the Canon of 1215 against Ordeals », *Speculum*, 36, 1961, p. 613-36; *Conciliorum oecumenicorum generaliumque decreta*, ed. G. Alberigo, A. Melloni, Turnhout, 2006-2013, 2: 177. For the neologism « neogregorian », see Lippiatt, « Simon de Montfort… », p. 269. The kingdom of Jerusalem had embraced the hot iron for suspected adulterers since 1120, and it remained through the thirteenth century the test for those accused of homicide without witnesses in the Court of Burghers: B. Z. Kedar, « On the Origins of the Earliest Laws of Frankish Jerusalem. The Canons of the Council of Nablus, 1120 », *Speculum*, 74, 1999, p. 333; *Les Livres des assises et des usages dou reaume de Jerusalem*, ed. E. H. Kausler, Stuttgart, 1839, 1: 340. In Hungary, there is isolated evidence of the survival of the ordeal by fire until at least 1234: Bartlett, *Trial by Fire…*, p. 128-30.

[45] SP, Appendix 2; Bartlett, *Trial by Fire…*, p. 117-18. In the Midi, as recently as 1202, the ordeal — under the forms of hot iron or boiling water — had been enshrined as the means of appeal from a conviction for theft or *alia maleffacta* in the customs of Fendeille in the Lauragais, while trial by battle was admitted in the comital court of Comminges in 1203: J. Ramière de Fortanier, *Chartes de franchises du Lauragais*, Toul, 1939, p. 445; *La*

intention was to provide a public deterrent from such heinous crimes, as Frederick of Sicily would explain when making a similar prohibition with similar exceptions in the Constitutions of Melfi of 1231; no doubt the clause appended to the Statutes was also a result of negotiation between Simon and his followers, who wished to maintain their judicial rights.[46] The situation in England was similarly vague: no mention was made of the ordeal in Magna Carta, but the Charter's liberalisation of the writ of inquisition of life or limbs meant that anyone accused of a crime meriting death or dismemberment could insist on a jury trial instead. Nevertheless, despite the abolition of the ordeals of fire and water in 1219, trial by battle long survived in England and in the rest of Latin Christendom.[47] Indeed, the Statutes are remarkable for their attempt to restrict the *duellum*, which appears as normal practice in the *Livre au roi*, the Assizes of Antioch, and the Golden Bull. Even King Louis IX of France, forbidding trial by battle in his demesne in 1258, would allow it to persist in *la court a ses barons*.[48] More pertinent for cases of heresy was Simon's insistence on the testimony of bishops or priests for such convictions: no mention is made of the ordeal, but this restriction to clerical jurisdiction — particularly given neogregorian opposition to such *peregrina iudicia* — all but ensured its exclusion in favour of inquisition.[49] For all their equivocation and implication, the Statutes provide one of the earliest attempts by temporal power to curtail trial by battle and separate judgements of heresy from the ordeal.

A second problem in judging heretics was their accurate identification. In Outremer, perhaps because of the scarcity of dualist heresy, such recognition was assumed to be self-evident. A heretic in the kingdom of Jerusalem was condemned on his confession or the testimony of his neighbours or former heretical companions, turned King's evidence; in other words, by denunciation before temporal courts.[50] Again, the Statutes' emphasis on ecclesiastical competence in such cases presents a contrast. Not only did this neogregorian reorientation implicitly discourage the ordeal, it also asserted clerical rights in defining and discovering heresy, preventing the charge — in theory — from becoming a tool for temporal ends.[51] Perhaps surprisingly, given the place of the First Crusade in the Gregorian programme, Outremer was consistently out of step with the ecclesiastical prerogatives represented in the

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Grande Charte…, p. 24-26. In Montpellier, clerical interest led to a restriction of the ordeal by 1204, an initiative imitated in pre-crusade Carcassonne, though without reference to ecclesiastical pressure: *Layettes*, 1: 261, 277. In 1211, Simon's own court had offered trial by battle to a knight charged with treason; when he refused, his lord, the Frenchman Guy of Lucy, had him hanged: PVC, 1: 251.

[46] *MGH Const*., 2 Suppl.: 338-41; Bartlett, *Trial by Fire…*, p. 123-25. It does not seem to have been, *contra* Lippiatt, *Simon V of Montfort…*, p. 96 and idem, « Simon de Montfort… », p. 280, an attempt to guard aristocratic privilege, as trial by battle was not yet exclusive to chivalry: Bartlett, *Trial by Fire…*, p. 110, 125.

[47] Holt, *Magna Carta*, p. 364, 388, 425; Carpenter, *Magna Carta*, p. 181; *Patent Rolls of the Reign of Henry III*, London, 1901-1903, 1: 186; Bartlett, *Trial by Fire…*, p. 122-23.

[48] *Le Livre au roi*, p. 152, 193-94, 206, 254; *Assises d'Antioche*, p. 26, 32, 34; *The Laws…*, 1: 35, 40; *Les Établissements de Saint Louis*, ed. P. Viollet, Paris, 1881, 1: 487-93; J. Tardif, « La Date et la caractère de l'ordonnance de Saint Louis sur le duel judiciare », *Nouvelle revue historique de droit français et étranger*, 11, 1887, p. 169-70; Philip of Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, Paris, 1899-1900, 2: 379. Attempts had been made to exclude trial by battle among the Lombards in the kingdom of Sicily as early as 1171: C. Pellegrino, *Historia principum langobardorum*, Naples, 1643-1644, 1: 258; cf. G. Petroni, *Della Storia di Bari*, Naples, 1857-1860, 2: 442.

[49] SP, xxv; R. I. Moore, *The Formation of a Persecuting Society. Authority and Deviance in Western Europe, 950-1250*, 2nd edn, Oxford, 2007, p. 124-25. Moore, however, overstates the « communal » nature of the verdict by ordeal: cf. Bartlett, *Trial by Fire…*, p. 36-42, 101-02.

[50] *Le Livre au roi*, p. 195-96.

[51] SP, xxv. Cf. the councils of Avignon (1209), Montpellier (1215) and Toulouse (1229): *Sacrorum conciliorum…*, 22: 785, 950, 23: 195 and Emperor Frederick II's Constitution of San Pietro in Vaticano (1220): *MGH Const.*, 2: 108. The adaptation of *Vergentis in senium* in the third canon (*Excommunicamus*) of the Fourth Lateran Council likewise seeks to bring confiscation penalties for heresy under episcopal and papal oversight: *Conciliorum oecumenicorum…*, 2: 167; Hageneder, « Studien zur Dekretale… », p. 165.

Statutes. The Church in the Holy Land was slow to adopt Gregorian practices and only ever showed limited enthusiasm for neogregorian ideas, in part because she was rarely supplied with clergy from the schools.[52] Though heresy was clearly a concern for the ruling aristocracy in both the Montfortine Midi and Outremer, their methods for addressing it represented the great shift in perceptions of the Church's role in good governance.

Nevertheless, an emphasis on the importance of proof — however understood — and process in judgement was common to all the customs codified in the early thirteenth century. When Simon of Montfort repeatedly stressed throughout the Statutes that judgements should rest on the accused being *confessus*, *conuictus*, or *comprobatus*, he was not articulating a doctrine previously alien to the Midi: local precursors demonstrate similar concerns.[53] Instead, he was reassuring his subjects that his customs would be enforced with justice, not abused through arbitrary will. The *Livre au roi* similarly grounds its customs in an objective source external to royal or seigneurial will by justifying its procedures and penalties with the refrain of *la raison juge et comande*, while the so-called « Penal Charter » — issued by Baldwin of Hainaut at the same time as the Feudal Charter discussed above — concludes with the provision that *hec omnia per bonam veritatem comprobanda sunt*.[54] The Assizes of Capua require that royal justiciars swear an oath to deliver justice to all swiftly and without deceit.[55] The Golden Bull insists that royal sergeants are not to be imprisoned or ruined *nisi prius citati fuerint et ordine iudicario convicti*.[56] With the possible exception of the last example, these are as much background acknowledgements as explicitly stated priorities. As such, and like so much else discussed here, the emphasis on impartial justice was nothing new, but rather an easy concession of a recognised principle.

What makes these aspirational commonplaces worthy of the ink and parchment to record them is the introduction of procedures for how they might be attained. Outside of the detailed *Livre au roi*, these mechanisms of criminal justice are rarely elaborated, suggesting that they remained largely assumed.[57] The Statutes forbid private vengeance, reserving redress

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[52] H. E. Mayer, *Geschichte der Kreuzzüge*, new edn, Stuttgart, 2005, p. 210-11; idem, « The Concordat of Nablus », *Journal of Ecclesiastical History*, 33, 1982, p. 541; M. Angold, « The Interaction of Latins and Byzantines during the Period of the Latin Empire (1204-1261). The Case of the Ordeal », *Actes du XVe Congrès intérnational d'études byzantines*, 4, 1980, p. 3; C. MacEvitt, *The Crusades and the Christian World of the East. Rough Tolerance*, Philadelphia, 2008, p. 19-20; B. Hamilton, *The Latin Church in the Crusader States. The Secular Church*, London, 1980, p. 134-36; C. Tyerman, *God's War. A New History of the Crusades*, London, 2006, p. 218, 235-36. Archbishop William II of Tyre and Bishop James of Acre (better known as James of Vitry) were notable exceptions: P. W. Edbury and J. G. Rowe, *William of Tyre. Historian of the Latin East*, Cambridge, 1988, p. 15; J. Donnadieu, *Jacques de Vitry (1175/1180-1240) entre l'Orient et l'Occident. L'Évêque aux trois visages*, Turnhout, 2014, p. 83-121.

[53] SP, xi, xxi, xxvi, xxxiv-xxxvii. Customs in Limoux (1178), Pexioria (1194), Fendeille (1202) and Rabastens (1211) had prohibited the arbitrary capture of men within their borders, though murderers, traitors and thieves might still remain outlaws: A. Sabarthes, *Les manuscrits consulaires de Limoux (Aude). Étude historique et philologique*, Paris, 1930, p. 40; Ramière de Fortanier, *Chartes de franchises…*, p. 444, 534; E. Marty, « Cartulaire de Rabastens », *Revue historique, scientifique et littéraire du département du Tarn*, 18, 1901, p. 102. The Charter of Saint-Gaudens (1203) in Comminges shows intimate concern with judicial procedure: *La Grande Charte…*, p. 16-18, 20, 22-24, 32, 34, 36-38, 40, 46-50, 52-54. The customs of Montpellier and Carcassonne (1204) are likewise concerned with due process, and townsmen are entirely immune from detention without cause: *Layettes*, 1: 255-64, 272-81. Nevertheless, these customs preserve a right to vengeance, though requiring its exercise be registered with the court: *ibid*., p. 258, 259, 263, 275, 278-79.

[54] *Le Livre au roi*, *passim*; *Coutumes du pays…*, 1: 9 (« all these things will be proved according to good evidence »).

[55] Richard of San Germano, *Chronica*, p. 89.

[56] *The Laws…*, 1: 34, 38-39 (« except they will first have been summoned and convicted by judicial order »).

[57] Magna Carta, with its references to various writs, is the exception that proves the rule: the writs themselves, even when made universal, are not themselves explicated but are taken for granted as part of the furniture of the centralised royal administration: e.g. Holt, *Magna Carta*, p. 388.

to superior jurisdiction, while guaranteeing rights to bail, a legal advocate and free judgement.[58] Baldwin's charters of 1200 likewise restrict private conflict in the count's absence by reference to the comital bailiff and the forswearing of blood feuds.[59] Ranulf of Chester, while promising the liberty of his barons' courts, reserved *placita ad gladium meum* — felony cases — to himself, ensured the right to bail by one's lord and limited the power of his own sergeants to bring charges against his barons' men in the comital court. He also upheld the local custom of *thwertnic*, whereby an immediate denial by the accused could preserve his liberty or at least transfer his case to his lord's court.[60] Between 1207 and 1209, Peter de Brus, a Yorkshire baron and future rebel in the First Barons' War, promised his knights and freemen of Cleveland that he would only summon them to the Langbaurgh wapentake court according to the traditional *consideratio* of that court; the resultant charter was likely an implicit criticism of royal practice. In response, Magna Carta, like the Statutes two and a half years earlier, famously ensures free and immediate justice for all and, like the Cheshire Charter, restricts royal agents by preventing bailiffs from bringing charges without witnesses.[61] In Sicily, Frederick excluded the possibility of personal justice, reserving all punishment to his own justiciars.[62] Due process implies a regulated forum — a court — in which that process can take place.

However, in the Statutes and most other early thirteenth-century legal texts, the elucidation of judicial process goes no further. Only the *Livre au roi* and the Assizes of Antioch articulate the mechanics of judgement. In the kingdom of Jerusalem, the *esgart de ses pers* was a public process by which the king should judge his liegeman: the accusation must be made in the presence of the accused and other liegemen assembled, who must then give a verdict.[63] Although « judgement by peers » was not a slogan in the principality of Antioch, the principle is nevertheless found in the Assizes' prescription that a liegeman should be tried, after a strictly formulaic summons, by his fellow liegemen in the princely court.[64] The developed procedure of Jerusalem is unsurprising, given that the kingdom was at this time one of the most centralised monarchies here under discussion. Princely authority was traditionally somewhat weaker in Antioch but nevertheless remained centripetal, especially in the wake of Saladin's conquests of 1188. Moreover, the principality's judicial practices were likely influenced by its southern neighbour.[65] Famously, Magna Carta did explicitly demand *legale iuditium parium suorum*, but

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[58] SP, xiii, xxviii, xxxiv. The customs of Montpellier and Carcassonne likewise require gratuitous justice: *Layettes*, 1: 255, 256, 257, 263, 272, 273. However, in Montpellier, a case would proceed even without an advocate: *ibid*., p. 262.

[59] *Coutumes du pays…*, 1: 5, 7-8.

[60] *The Charters…*, p. 389; White, *The Magna Carta…*, p. 35-36, 49; R. Stewart-Brown, « Thwert-ut-nay and the Custom of 'Thwertnic' in Cheshire », *The English Historical Review*, 40, 1925, p. 16-17. Cf. *The Treatise on the Laws and Customs of the Realm of England Commonly Called* Glanvill, ed. G. D. G. Hall, Oxford, 1965, p. 19-20, 171-72.

[61] *Cartularium prioratus de Gyseburne*, ed. W. Brown, Durham, 1889, 1: 93; H. M. Thomas, *Vassals, Heiresses, Crusaders, and Thugs. The Gentry of Angevin Yorkshire, 1154-1216*, Philadelphia, 1993, p. 204-06; Holt, *Magna Carta*, p. 364, 388, 425. Cf. Helmholz, « Magna Carta… », p. 339-42.

[62] Richard of San Germano, *Chronica*, p. 89, 92.

[63] *Le Livre au roi*, p. 208-10. Cf. *ibid*., p. 190-91, 193, 201. Usama ibn Munqidh provides independent testimony of the inviolability of the judgement by peers in the twelfth-century kingdom of Jerusalem: Usama ibn Munqidh, *The Book of Contemplation. Islam and the Crusades*, trans. P. M. Cobb, London, 2008, p. 76-77. Since the time of King Baldwin II, the king could, in specifically enumerated cases, disinherit his liegemen without *esgart de cort*, but this was with respect to sentence rather than verdict: *ibid*., p. 177-84; J. Riley-Smith, « Further Thoughts on Baldwin II's *établissement* on the Confiscation of Fiefs », *Crusade and Settlement*, dir. P. W. Edbury, Cardiff, 1985, p. 177-78.

[64] *Assises d'Antioche*, p. 12-16.

[65] S. Tibble, *Monarchy and Lordships in the Latin Kingdom of Jerusalem, 1099-1291*, Oxford, 1989; A. D. Buck, *The Principality of Antioch and its Frontiers in the Twelfth Century*, Woodbridge, 2017, p. 86-123; Edbury, « The *Assises…* », p. 246.

the structure of this judgement was not defined — save in the threat of distraint upon the king by the « security council » — perhaps because a sophisticated legal procedure could be taken for granted in England.[66] Elsewhere, barons such as Simon of Montfort hint at the existence of process with guarantees, suggesting that, in their case at least, the distinction is one of capacity rather than will: Simon simply did not possess the financial or human resources to construct from scratch a legal infrastructure comparable to that of England and simultaneously ruled a territory far too large to govern as personally as did the kings of Jerusalem or princes of Antioch. As a result, the Statutes leave the essential details of judicial process frustratingly vague.

Nevertheless, procedure comes more clearly into focus in the Statutes and elsewhere when considering their attitude toward the lower social classes. Both Magna Carta and the Cheshire Charter require the liberties granted by the king or earl to « trickle down » to the subjects of their beneficiaries.[67] These beneficiaries appear to be defined quite broadly, at least at the linguistic level. Magna Carta benefits the *liber homo*, who might be a tenant, a lord or finally any member of society not bound to serfdom. The Statutes, by contrast, juxtapose *homo* in opposition to *dominus* in their protection of men from seizure on account of their lords' debts. This contrast leads Holt to conclude that the Charter extends legal rights across society « in a characteristic and unique manner ».[68] However, Prof. David Carpenter points out that Magna Carta's careful exclusion of unfree serfs in fact left the overwhelming majority of the English population in the cold.[69] The Statutes' preservation of social hierarchy between « lords » and « men » paradoxically proves more inclusive, since the latter indiscriminately refers to free and unfree throughout the document. Unlike in Magna Carta, these *homines* are all protected from imprisonment so long as they can provide sureties that they will stand trial.[70] Both documents extend their procedures to include those not party to their drafting, but only the Statutes make these guarantees — as well as restrictions — universal.

The social distinctions in the Statutes emphasised by Holt have a further function, as indeed they have in Magna Carta. In clauses reminiscent of the apparent breadth of the Charter, the Statutes associate everyone in inheritance customs and peacekeeping prohibitions. But once again, rather than use a levelling term such as Magna Carta's *liber homo* to refer to the whole, individual social classes are explicitly denominated: barons (*barones*), knights (*milites*), burghers (*burgenses*) and peasants (*rustici*/*rurales*).[71] No doubt Holt is right to identify a concern to protect social distinctions in the tenor of the Statutes. But in relation to the penalties for those who break the peace or enter sworn confederations, they also establish a gradation of fines that protects the substance of those with fewer means, just as Magna Carta requires that amercements not infringe on the livelihood of the offender, whether he be a freeman, merchant

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[66] Holt, *Magna Carta*, p. 364, 370, 388, 392, 394-96, 424-25; Carpenter, *Magna Carta*, p. 180-81, 260-61. Cf. e.g. Roger of Howden, *Chronica*, ed. W. Stubbs, London, 1868-1871, 2: 89-91, 248-52; idem, *alias* Benedict of Peterborough, *The Chronicle of the Reigns of Henry II and Richard I*, ed. W. Stubbs, London, 1867, 1: 108-10.

[67] Holt, *Magna Carta*, p. 368, 394, 427; *The Charters…*, p. 390.

[68] Holt, *Magna Carta*, p. 239-240. Holt misapplies the contrast to SP, xxviii rather than xxxiii. Like Magna Carta, the liberties of the Cheshire Charter apply to *barones et milites et ceteri libere tenentes*: *The Charters…*, p. 390.

[69] Carpenter, *Magna Carta*, p. 110-14.

[70] SP, xxviii; Holt, *Magna Carta*, p. 388. Cf. SP, viii, xxx-xxxii, xxxvi, esp. xxvii, xxix. The juxtaposition of *homo* and *dominus* is a common one in pre-crusade southern charters, and textual sources from the Midi use the former to refer to noble knights and unfree serfs alike: H. Débax, *La féodalité languedocienne, XIe-XIIe siècles. Serments, hommages et fiefs dans le Languedoc des Trencavel*, Toulouse, 2003, p. 187-90, 192. The similarly expansive use of the word in the Statutes may suggest a certain sensitivity to local traditions on the part of the drafters.

[71] SP, xii, xxxiv-xxxv, xliii, Appendix 1.

or villein.[72] An emphasis on hierarchy does not preclude — in fact, it may reinforce — an interest in the welfare of the lower orders.

The two obviously did not always march together, as a comparison of the Statutes of Pamiers with other cognates makes clear. The *Livre au roi* implicitly preserves the *ligesse par l'assise* of King Amaury of Jerusalem, which flattened the noble hierarchy by making all the men of the king's barons direct royal liegemen themselves in relation to the High Court.[73] However, it makes few provisions for anyone else, despite its claim to be *le livre de tous les jugemens qui establirent les anciens roys, et de borgés et de chevaliers et de Suriens et de toutes autres leus*. Some protections were extended to the urban classes. A burgher could only be convicted of striking a knight on the testimony of fellow burghers and could not be forced to pay a reparative fine before judgement, while a knight convicted — by knightly witnesses — of beating a burgher would lose his chivalric harness and beasts; if the burgher had been permanently maimed, the knight could be convicted by bourgeois witnesses under oath and lose his right hand as well. A knight accused of killing a burgher could flee the kingdom, suffering perpetual confiscation of his goods, or stand trial by battle. If defeated, he would be hanged and his property confiscated by the Crown. However, in such a trial, the victim's family had to find a knightly champion to fight their cause; if he were defeated, he would suffer the same humiliating penalty, and the bourgeois family's property and persons would be at the king's mercy. Such attendant risks surely encouraged the bereaved to settle out of court.[74] The Golden Bull makes hardly any mention of most freemen. Save for the order that tithes be paid in kind rather than silver and a passing wish that *pauperes…non opprimantur nec spolientur* by the itinerant royal household, it ignores the concerns of those below the rank of royal sergeant. Only the latter were defended from arbitrary royal seizure or destruction and the collection of freemen's pence and other extraordinary taxes. All men were to be tried in the palatine court, but only nobles accused of charges leading to execution or confiscation could expect royal interest in their case.[75] Emperor Frederick II, by contrast, explicitly defended peasants throughout the Empire from assault or seizure.[76] In Hainaut, the Penal Charter omits sanctions laid down by Baldwin's father in 1171, which — similar to those in the *Livre au roi* — protected peasants from murder or injury by aristocrats. Presumably, this was a result of consultation between Baldwin and his nobles, wherein class solidarity won out over *noblesse oblige*.[77] The

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[72] SP, xxxiv-xxxv; Holt, *Magna Carta*, p. 362, 384, 423. Cf. *Cartularium prioratus…*, 1: 93; Helmholz, « Magna Carta… », p. 328. The penal scale for violence in the Statutes is: 20*l.* for a baron, 10*l.* a knight, 100*s.* a burgher and 20*s.* a peasant. For swearing illicit oaths: 10*l.* for a baron, 100*s.* a knight, 60*s.* a burgher and 20*s.* a peasant. On medieval attitudes toward confederations or *coniurationes*, as well as a discussion of the English baronial rebellion in light of their proscription in the Statutes, see N. Vincent, « Magna Carta, Oath-Taking and *coniuratio* », *Le Sacré et la parole. Le Serment au Moyen Âge*, dir. M. Aurell, J. Aurell, M. Herrero, Paris, 2018, p. 212-16.

[73] *Le Livre au roi*, p. 71 n. 105, 102-03, 135-36, 205; John of Ibelin, *Le Livre des assises*, ed. P. W. Edbury, Leiden, 2003, p. 307-06. A similar process can be observed in the increasing frequency of *hominagium ligium* in French royal diplomas from the same period and the creation of *servientes regis* in Hungary several generations later: A. Taylor, « Formalising Aristocratic Power in Royal *Acta* in Late Twelfth- and Early Thirteenth-Century France and Scotland », *Transactions of the Royal Historical Society*, 28, 2018, p. 53-55; Rady, *Customary Law…*, p. 70.

[74] *Le Livre au roi*, p. 185, 190-94, 253-54, 285. The burgher maimed by a knight without witnesses faced fewer disincentives to trial by battle: *ibid.*, p. 254-55. A Court of Burghers had existed since the mid-twelfth century, but its operations would only be codified in the second quarter of the thirteenth: Prawer, *Crusader Institutions*, p. 264-68, 371.

[75] *The Laws…*, 1: 34, 35, 36, 40 (« the poor not be oppressed nor despoiled »). Protection from royal abuses and taxation would be extended to everyone in the 1231 reissue of the Bull: *ibid.*, 1: 39, 40.

[76] *MGH Const.*, 2: 109.

[77] Wolff, « Baldwin of Flanders… », p. 286.

Statutes are therefore marked by the broad application of their paternalism, which granted protections to a portion of society only cursorily considered in most similar customs.

This paternalism was more frequently shared in guarantees to freedom of movement and traditional agricultural rights. Simon of Montfort abolished throughout his conquests all tolls instituted since 1178 and exempted absolutely clerks, religious, pilgrims and knights — so long as they did not also trade as merchants.[78] Exploitative and novel exactions on travellers had been condemned by the Church since the Third Lateran Council in 1179 — hence the retroactive period in the Statutes — and their repeal formed an integral part of her peace programme for the Midi in 1209.[79] When Peter of Aragon, as count of Barcelona, had attempted to negotiate further financial commitments from his Catalan subjects to his cash-strapped regime in 1205, he offered to admit wrong-doing in the erection of new tolls and cancel them, though retaining them for merchants and foreigners. This proposal — like the English « Unknown Charter » — would in fact never be promulgated, but its terms are indicative of the importance of free passage to contemporary conceptions of responsible government.[80] By contrast, Frederick would publish the repeal of all exactions imposed in Sicily since the death of his parents in 1197/1198, a generous gesture made easier since, like Simon, he had not introduced them in the first place and therefore, unlike Peter, needed admit no fault.[81] In addition to liberating travellers from protection money, the Statutes confirmed the usage of woods, waters and pastures worked by *homines villarum* for the past thirty years. Such a wide-ranging confirmation is not found in any of the cognate documents, perhaps because it went without saying. As the process articulated in the Statutes for settling disputes over usage rights demonstrates, Simon was anxious to maintain production in the wake of warfare and instability and to appeal to the burghers living in his conquered lands, whom he hoped might be a more dependable support for his regime than the resentful indigenous nobility.[82] But other sources also show an interest in access to public commercial and agricultural goods. Magna Carta did not just conserve rights, but expanded common possibilities for transportation and cultivation by abolishing weirs on English rivers, reclaiming enclosures on riverbanks and disafforesting land afforested by King John. The Cheshire Charter likewise gave Ranulf of Chester's barons, knights and freemen the right to assart forests and gather wood on their lands.[83] Less generously, Andrew of Hungary promised in the Golden Bull not to put his pigs to pannage in the woods or fields of his sergeants without their permission.[84] The Statutes of Pamiers seem here to fall between their English and Hungarian counterparts. While not laying out a comprehensive programme for agricultural expansion, they nevertheless recognise and reinforce established rights.

However, the preservation of these rights went hand in hand with attendant taxation and labour obligations. After all, agricultural production did not benefit only or even primarily the

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[78] SP, xvi, xl. Cf. *MGH Const.*, 2: 109.

[79] *Conciliorum oecumenicorum…*, 2: 143; *Register*, 12: 145, 149, 151, 162-63, 213, 215, 217-18, 220, 223, 226. Specific exemptions had already been granted in Pexioria, Saint-Gaudens, and Carcassonne: Ramière de Fortanier, *Chartes de franchises…*, p. 536; *La Grande Charte…*, p. 30; *Layettes*, 1: 276, 277, 280.

[80] *PCD*, 2: 628. Peter had already confirmed the exemption of the inhabitants of Montpellier from tolls and exactions the previous year: *ibid.*, 2: 586; *Layettes*, 1: 260, 261, 262, 263.

[81] Richard of San Germano, *Chronica*, p. 90.

[82] SP, xxxii; A. Luchaire, *Innocent III*, 2nd edn, Paris, 1906-1908, 2: 190; Lippiatt, *Simon V of Montfort…*, p. 150, 160, 196. The customs of Montpellier guarantee public rights to fish, collect sand and launder clothes at riverbanks: *Layettes*, 1: 260. In Carcassonne, the townsmen were to have rights to salt at the same price as paid by the lord or his bailiff and were confirmed in the traditional rights and service owed by their properties: *ibid.*, 1: 279-80.

[83] Holt, *Magna Carta*, p. 352, 368, 390, 423, 431; Helmholz, « Magna Carta… », p. 356; *The Charters…*, p. 389.

[84] *The Laws…*, 1: 36, 40.

cultivators. According to the Statutes, a lord could continue to expect the customary *jornalia*, or agricultural labour on his demesne lands required from his tenants, though he was to provide their nourishment while they were so employed. Simon of Montfort also reinforced traditional census payments, imposing a 5*s*. penalty on the tenant for each term that they were in arrears. After three years of nonpayment, the lord could confiscate the farm to give, sell or keep; in the latter case he was bound to restore it to the tenant upon full payment of their unpaid census along with the accumulated penalties.[85] Such clauses present safeguards for the rights and revenues of the lord, as well as for the just treatment of the tenant. Unsurprisingly, the object of the Statutes — as with all of the customs examined here — was reform, not revolution.

But this distinction should not prevent the recognition of their innovative procedures of appeal against abuse. In tandem with the conservative retention of traditional obligations came the restriction or repeal of excessive exactions by lords. Simon of Montfort forbad the lords to whom he had granted lands in the Midi from demanding more tallage from their subjects than had been agreed at the new lords' enfeoffment.[86] Likewise, Magna Carta required all administrative divisions in the realm to maintain their ancient farms, restricted the levying of aids from tenants, limited demands for service from free tenements and forbad the seizure of corn and possessions by constables and bailiffs. The Forest Charter issued by the minority government of King Henry III in 1217, in addition to facilitating agricultural exploitation of forested land and moderating penalties for poaching, reiterates the prohibition against confiscation of animals and produce by royal agents.[87] Ranulf of Chester also put an end to demands for sheaves of corn and other impositions by comital beadles and sergeants, restricting the number of and consumption by the latter in his barons' lands.[88] Again, the Albigensian Crusade and the baronial reform movement in England produced the closest parallels in consideration of the protection of the labouring classes from arbitrary exactions.

As with the references to justice, all these intentions would be just air without measures to enforce them. Simon therefore promised to investigate complaints of abuse and compel lords to restore what they had unjustly taken. The subjects of indigenous lords were likewise empowered to appeal to him in the same circumstances. Most remarkably, the Statutes grant the poor access to advocates, preserving their access to the courts.[89] The Golden Bull decrees the deposition of corrupt royal counts, or *ispánok*, while Andrew's reissue of the liberties in

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[85] SP, xxx, xlii. Enforced agricultural labour was an important — if negotiable — feature of the Sicilian economy: I. Peri, *Uomini, città e campagne in Sicilia dall'XI al XIII secolo*, Bari, 1979, p. 93-95. In contrast, there was no *corvée* obligation in twelfth-century Outremer: Prawer, *Crusader Institutions*, p. 196, 207; MacEvitt, *The Crusades…*, p. 148-49. Although such obligations remained in force throughout most of the Midi before 1212, an exemption had been made for the inhabitants of Caignac in the Lauragais as early as 1130x1140: Ramière de Fortanier, *Chartes de franchises…*, p. 250.

[86] SP, xxvi. Viscount Raymond I Trencavel of Albi had already sold exemption from exactions to the freemen of Castres in 1160, and the customs of Montpellier and Carcassonne had prohibited officials from collecting in excess of established rents since at least 1204: *HGL*, 5: 1236; *Layettes*, 1: 264, 279.

[87] Holt, *Magna Carta*, p. 360, 362, 384, 386, 422, 424; *The Statutes of the Realm*, London, 1810-1828, 1: 20-21. Cf. Helmholz, « Magna Carta… », p. 334-35. Simon personally knew something of oppressive financial exactions, as his disseisin of the earldom of Leicester by King John in 1207 had ostensibly been due to his failure to pay the required relief. This was a classic Plantagenet tactic for exploiting English nobles, and one that would see redress at Runnymede in 1215: Lippiatt, *Simon V of Montfort…*, p. 38; N. Vincent, « Exiled Hero or Absconding Alien? Simon V of Montfort in England », in this volume; J. E. A. Jolliffe, *Angevin Kingship*, 2nd edn, London, 1963, p. 81-84; Carpenter, *Magna Carta*, p. 226, 344-45; Holt, *Magna Carta*, p. 259-61, 350, 360, 378-80, 421; cf. *The Charters…*, p. 389.

[88] *The Charters…*, p. 389, 390.

[89] SP, xiii, xxvi, xxxi. The customs of Montpellier and Carcassonne already guaranteed the right of the convicted to appeal to his lord: *Layetttes*, 1: 259-60, 276.

1231 provides for peasant courts to protect husbandmen from abuses by the servants of elites.[90] In England, Peter de Brus promised to remove and replace any of his administrators who might violate the liberties he had granted to Cleveland. The barons at Runnymede implemented oversight for royal abuses, establishing local committees of twelve knights to investigate and abolish *omnes male consuetudines* and a council of twenty-five barons to examine cases of unlawful disseisin, fines and amercements. Potential royal resistance to reform was to be forcibly overcome by this same security council. These mechanisms suggest that, in the words of Carpenter, « [t]he barons believed certainly in justice and judgement, but most strongly when it came to themselves ».[91] As in England, barons across Christendom insisted on accountable government through the recording of enforcement measures to guarantee promises of their own liberties; sometimes, as in the Statutes or the Brus charter for Cleveland, this accountability even protected those of others.

The Statutes go even further in recording the right of those liable to tallage — both free and unfree — to take matters into their own hands. They could unilaterally leave their lands for the lordship of another, though only freemen were allowed to take their moveable goods with them: serfs could transfer only their own persons. Emigrants could not be pursued, and lords were forbidden from compelling pledges from their men to stay.[92] Such freedom of movement was not unique to the crusader Midi. In 1196, Count Louis I of Blois and Chartres, a fellow crusader with Simon of Montfort and Baldwin of Flanders, had exempted the residents of Châteaudun from tallage, emancipated the serfs there and allowed anyone to settle in the newly enfranchised town. Around the same time, customs were recorded in the southern towns of Pexioria, Fendeille and Saint-Gaudens offering to free immigrating peasants. This principle of *Stadtluft macht frei* was widely, though not universally, recognised throughout Europe at the turn of the century.[93] Ranulf of Chester and his barons, while happy to allow peasants from outside Cheshire to resettle on — and work — their lands, attempted to discourage the liberation of serfs bound for Chester itself; finally, however, they had to admit their freedom should they live in the town for a year and a day.[94] But while these grants share a general thrust, the Statutes' provisions again stand slightly apart. Their aim is not emancipation: freedom of movement is open to both free and unfree, and the right to leave one's lord does not exempt a man from tallage, but rather creates a more favourable labour market. Lords now came under pressure to

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[90] *The Laws…*, 1: 35, 39. The « security clause » of the Golden Bull (*ibid.*, 1: 37), so-called because of its superficial similarity with cap. 61 of Magna Carta, is actually a safeguard of the « loyal opposition », rather than a right to rebellion: M. Rady, « Hungary and the Golden Bull of 1222 », *Banatica*, 24, 2014, p. 99-100. Cf. S. Church, « The Dating and Making of Magna Carta and the Peace of June 1215 », *Staufen and Plantagenets. Two Empires in Comparison*, dir. A. Plassmann, Bonn, 2018, p. 64-65.

[91] *Cartularium prioratus…*, 1: 93; Holt, *Magna Carta*, p. 364, 366, 370, 390, 392, 394-96; Carpenter, *Magna Carta*, p. 152-53, 322, 336. In England, regulation of baronial courts and restriction of seigneurial abuses would have to await the revolt of Simon of Montfort's namesake son in the next generation: *ibid.*, p. 439-40; cf. Holt, *Magna Carta*, p. 239. For more on accountability in England, see F. Lachaud, *L'Éthique du pouvoir au Moyen Âge. L'Office dans la culture politique (Angleterre, vers 1150-vers 1330)*, Paris, 2010; J. Sabapathy, *Officers and Accountability in Medieval England, 1170-1300*, Oxford, 2014.

[92] SP, xxvii, xxix.

[93] P.-A. Poulain de Bossay, « Charte de commune de Châteaudun », *Bulletins de la Société dunoise. Archéologie, histoire, sciences et arts*, 1, 1864-1869, p. 26-27, 29; Ramière de Fortanier, *Chartes de franchises…*, p. 444-45, 534; *La Grande Charte…*, p. 58-60. Cf. Peri, *Uomini, città…*, p. 92-93. However, a market of migrating labour seems to have been discouraged in Outremer, while the *Statutum in favorem principum* of 1231-1232 forbad the reception of the serfs of princes and nobles in imperial cities: MacEvitt, *The Crusades…*, p. 146-47; *MGH Const.*, 2: 212, 419. MacEvitt, *The Crusades…*, p. 147 argues from the silence of John of Ibelin that urban settlement probably still conferred liberty in Outremer, but John's lack of comment might more probably be read in the contrary sense, i.e. that there was no tradition of urban emancipation: John of Ibelin, *Le Livre des assises*, p. 675-80.

[94] *The Charters…*, p. 389, 390; White, *The Magna Carta…*, p. 38-39, 70-72.

restrain their tallages as they competed for subjects. While these clauses initially appear less liberal than the town franchises prevalent elsewhere, the very fact that they are not tied to particular settlements make the opportunities they offer more universal. They therefore attest an independent approach to the contemporary baronial trend of granting agency to peasants in order to encourage urban growth and curb the power of subordinate lords.

These economic and even political motives, while probably necessary, are nevertheless insufficient to explain the proliferation of written customs such as the Statutes of Pamiers in the early thirteenth century. No doubt Simon of Montfort used the Statutes to bolster his foreign regime with support from the Third Estate in the face of widespread aristocratic opposition. The rebellious English barons in Magna Carta likely tried to do the same, instigating petty knights, tenants and burghers against King John.[95] But genuine *noblesse oblige* almost certainly played a role as well. Peter of Vaux-de-Cernay, Cistercian apologist for Simon and the Albigensian Crusade, claims that the reforms of Pamiers were especially necessary in the context of the Midi, *terra siquidem illa ab antiquis diebus depredationibus patuerat et rapinis; opprimebat quippe potens inpotentem, fortior minus fortem*. This is clearly propaganda, but the picture Peter paints was not without truth.[96] Nor were Simon and his peers immune to obligations to protect the lives and goods of their subjects. It is hard to see how the Statutes' protection of poor widows from tallage offered material benefit to Simon's regime, while to rule justly was an integral part of the baronial rank in the social hierarchy.[97] The commitment of early thirteenth-century written customs to justice — understood not only in judicial procedure but across all political activity — is unsurprising in itself.

What requires more investigation is why the kings and barons behind these documents so frequently raised similar questions about the practice of justice, if not always reaching the same conclusions. Some scholars of Magna Carta have suggested one possible source in the clerical and scholastic ideas emerging at this time from the continental universities; certainly the Church played a crucial role in disseminating and preserving the Charter.[98] But Miss Susan Reynolds suggests that while « [i]n thirteenth-century Europe academics analysed and refined their society's principles…the basic norms did not…come from them. » Instead, these norms were « in the air », echoing Holt's judgement that the liberties codified in these documents « were part of the very atmosphere » of thirteenth-century politics.[99] By contrast, Prof. Martyn Rady rightly points out that this « atmosphere » necessitates shared political circumstances across different contexts, a condition that this comparative study has demonstrated existed in some, but by no means all, cases.[100] The appeal to something « in the air » likewise does not account for the sudden proliferation of written customs during this period.

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[95] Luchaire, *Innocent III*, 2: 190; Holt, *Magna Carta*, p. 252.

[96] PVC, 2: 62 (« since that land from ancient times had been exposed to depredations and rapine; the powerful naturally oppressed the powerless, the stronger the less strong »); R. Benjamin, « A Forty Years War. Toulouse and the Plantagenets, 1156-96 », *Historical Research*, 61, 1988, p. 270-81; Tyerman, *God's War…*, p. 578; Lippiatt, « Simon de Montfort… », p. 285.

[97] SP, iv; Reynolds, « Magna Carta… », p. 666-67.

[98] Helmholz, « Magna Carta… », p. 297-371; J. W. Baldwin, « Master Stephen Langton, Future Archbishop of Canterbury. The Paris Schools and Magna Carta », *The English Historical Review*, 123, 2008, p. 811-46; N. Vincent, « The Twenty-Five Barons of Magna Carta. An Augustinian Echo? », *Rulership and Rebellion in the Anglo-Norman World,* c. *1066*-c. *1216. Essays in Honour of Professor Edmund King*, dir. P. Dalton, D. Luscombe, Farnham, 2015, p. 243-47; D. L. d'Avray, « Magna Carta. Its Background in Stephen Langton's Academic Biblical Exegesis and its Episcopal Reception », *Studi medievali*, 38, 1997, p. 423-38; Carpenter, *Magna Carta*, p. 375-78. Contrasting views may be found in J. Hudson, « Magna Carta, the *ius commune*, and English Common Law », *Magna Carta and the England of King John*, dir. J. S. Loengard, Woodbridge, 2010, p. 105-119; Carpenter, *Magna Carta*, p. 262, 332-35, 347-52.

[99] Reynolds, « Magna Carta… », p. 660; Holt, *Magna Carta*, p. 92-93.

[100] Rady, « Hungary and the Golden Bull… », p. 90.

It is profitable, therefore, to return to an examination of the importance of Christianity to the articulation of these legal currents. Both the Statutes of Pamiers and Magna Carta place a protection of ecclesiastical liberties first and foremost among their provisions. Far from being « a necessary bow to the Church », these privileges are essential to the nature of the grants.[101] In the Statutes, the liberty of the Church — not only from heretics but also from pre-Gregorian practices of lay interference — was the foundation of the entire *negotium pacis et fidei* upon which the Albigensian Crusade was based.[102] Meanwhile, Carpenter argues that — thanks to the intervention of Stephen Langton, archbishop of Canterbury, cardinal-priest of San Chrisogono and master of Paris — the freedom of the English Church was made an *a priori* condition of Magna Carta, one that would remain even should the king cavil over the implementation of the rest of the Charter.[103] In both the crusader Midi and baronial England, just government depended on the neogregorian vision of Church liberty.

Ecclesiastical interests were also given definite shape. The legacy of Saint Thomas Becket, archbishop of Canterbury, appears in the Midi among the Statutes of Pamiers and even as far away as Hungary, where Andrew exempted the clergy from temporal justice in a separate charter of 1222.[104] On 22 November 1220, the same day as his imperial coronation in Rome, Frederick II promulgated from San Pietro in Vaticano a ringing endorsement of the neogregorian liberties of the Church. Shock at such a document from this future « Antichrist » is anachronistic: the emperor was still marked by the tutelage of Innocent III rather than the coming conflict with Gregory IX. His subsequent Assizes of Capua repeat the imperial guarantee of independent ecclesiastical justice in Sicily, though those of Messina prescribe the laicisation of blaspheming clerks and their relaxation to the temporal arm, including potential mutilation.[105] In England, despite Becket's influence on Langton, clerical immunity does not appear in Magna Carta, which goes only so far as to restrict the amercement of clerks in civil suits to their temporal property, thereby preserving their spiritual benefices.[106] The Statutes, however, exempt clerks — save those who are merchants or unchaste, once again mirroring reform priorities — from tallage on any temporal inheritance that should come to them. Ecclesiastical serfs are likewise spared from tallage, a freedom also found in the Golden Bull.[107] The Statutes characteristically preserve or restore ecclesiastical firstfruits and tithes. The Assizes of Capua similarly protect the tithes owed under King William II the Good, while the

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[101] Reynolds, « Magna Carta… », p. 666. Peter of Barcelona also named God, the churches, bishops, religious and their tenants — as well as nobles, knights and other honest men — as beneficiaries of his renunciation of novel exactions: *PCD*, 2: 628.

[102] SP, Preamble, i; Jones, *Before Church…*, p. 29-94.

[103] Holt, *Magna Carta*, p. 378, 398; Carpenter, *Magna Carta*, p. 349-51. Cf. Helmholz, « Magna Carta… », p. 312-14. Significantly, Langton appeared less equivocal about the unforced 1225 reissue of Magna Carta, which integrates the spiritual and temporal beneficiaries in its preamble and encompasses *omnes* rather than only *liberi homines* in its liberties: Carpenter, *Magna Carta*, p. 420-21; Holt, *Magna Carta*, p. 420-21, 427.

[104] SP, vi; *Vetera monumenta historica Hungariam sacram illustrantia*, ed. A. Theiner, Rome, 1859-1860, 1: 112. However, see Lippiatt, *Simon V of Montfort…*, p. 86 and idem, « Simon de Montfort… », p. 284-85 for the distance between idea and reality in the crusader Midi on this point. Pre-crusade Carcassonne had moderated clerical immunity by insisting that religious wear their habits and that clerks not be merchants or married to an heiress: *Layettes*, 1: 280-81. In Hungary, the clerical privilege of spiritual courts was integrated into the 1231 rescript of the Golden Bull: *The Laws…*, 1: 39, 40.

[105] *MGH Const.*, 2: 107-08; *Register*, 7: 211, 9: 282-85, 11: 5-6; Stürner, *Friedrich II.*, 1: 111-12, 2: 14; Richard of San Germano, *Chronica*, p. 89, 95-96.

[106] Carpenter, *Magna Carta*, p. 123, 192-93; Holt, *Magna Carta*, p. 362, 384, 423. Cf. Helmholz, « Magna Carta… », p. 330-31. The customs of Montpellier and Carcassonne protect the persons of insolvent foreign clerks, in contrast to those of lay debtors, from retribution by creditors: *Layettes*, 1: 258, 263, 275, 279.

[107] SP, iv, viii; *Conciliorum oecumenicorum…*, 2: 175, 176; *The Laws…*, 1: 34.

Golden Bull likely forbids usurpation of episcopal tithes for the royal stables.[108] The Great Charter of England, as noted above, may occupy a more « liberal » position with respect to social distinctions among freemen or agricultural usage rights, but the Statutes — and, perhaps surprisingly, their Hungarian cognate — make more generous and explicit provision for the Church.

No doubt much of this is owed to the fact that ecclesiastical liberty was a battle that had largely been won in England, while Hungary and the crusader Midi still worked to bring themselves in line with the rest of Latin Christendom on this point. But the arc of this tendency is itself indicative of a contemporary movement toward a particular vision of Christianity that lay behind all these documents. Reynolds is characteristically cautious about this attribution, sensibly observing that « much as medieval society was marked by the teachings of the Church, that does not mean that all the values and norms that had been held before Christianization disappeared or become overlaid after it was accepted. »[109] It need hardly be remarked that discussions of justice, for example, predate Christianity in both Roman and Germanic contexts. However, Christianity inevitably redirected and reshaped these discussions as it inherited them. Most marked, perhaps, is the emphasis on the protection of the vulnerable discussed above: following St Augustine, political action became a divinely ordained means for correcting violence and restoring peace, rather than essential to the flourishing of the community in a perpetually competitive symbiosis. Provision must therefore be made for the *pauperes* [*spiritu*], rather than simply the net benefit of oneself or one society; concern for the poor and suffering became « entrenched and assumed norms ».[110] Of course, in this world of sin, law and force remained necessary, and so other vulnerable communities emerged: the persecution of heretics, examined above, was an act of charity, intended to recall them from the violence of error into the peace of Christ, while the exclusion and disadvantaging of Jews, reaffirmed at Lateran IV, is a common theme in customs and liberties from England to Hungary.[111] Like any monotheistic faith, Christianity had profound political consequences, which only intensified over the twelfth and thirteenth centuries.

Some of the aims of the neogregorian reform championed by the Cistercians, the schoolmen and Pope Innocent III have already been outlined above. The impact of these ideals for lay Christian behaviour can be clearly seen in the actions of barons such as Simon of Montfort and others.[112] The warnings of Holt and Reynolds not to seek the inspiration of these

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[108] SP, iii; Richard of San Germano, *Chronica*, p. 89; *The Laws…*, 1: 36. On the uncertain interpretation of the latter passage, see *ibid.*, 1: 101 n. 30. Frederick's protection of tithes at Capua was offset by his concern to recover royal domain and privileges bequeathed to the Church since the reign of William: H. J. Pybus, « The Emperor Frederick II and the Sicilian Church », *The Cambridge Historical Journal*, 3, 1930, p. 137-39; Stürner, *Friedrich II.*, 2: 14-15, 21-22.

[109] Reynolds, « Magna Carta… », p. 661.

[110] J. Milbank, *Theology and Social Theory. Beyond Secular Reason*, 2nd edn, Oxford, 2006, p. 367, 372-73, 391-94; C. Dawson, *The Formation of Christendom*, New York, 1967, p. 116-18, 124-28; P. Buc, *L'Ambiguïté du livre. Prince, pouvoir, et peuple dans les commentaires de la Bible au Moyen Âge*, Paris, 1994, p. 98-101; Reynolds, « Magna Carta… », p. 660. Cf. Matthew 5.3; Luke 6.20.

[111] F. H. Russell, *The Just War in the Middle Ages*, Cambridge, 1975, p. 24; *Conciliorum oecumenicorum…*, 2: 199; Holt, *Magna Carta*, p. 354, 366, 382; *Layettes*, 1: 256; SP, xiv; Richard of San Germano, *Chronica*, p. 96; *The Laws…*, 1: 36, 40. However, in Magna Carta, the real target is not so much the Jews as the king: Helmholz, « Magna Carta… », p. 321; Carpenter, *Magna Carta*, p. 212-13.

[112] e.g. Lippiatt, « Simon de Montfort… »; A. Berner, *Kreuzzug und regionale Herrschaft. Die älteren Grafen von Berg, 1147-1225*, Cologne, 2014, p. 152, 163-83, 211, 240-42. Like Simon, Ranulf of Chester favoured the Cistercians over other orders, though the significance of this preference is difficult to determine: Lippiatt, *Simon V of Montfort…*, p. 114, 115, 138-39, 181-82; Alexander, *Ranulf of Chester…*, p. 39-41, 45. Peter of Aragon and Mary of Montpellier specially exempted the white monks from dues and tolls in the lordship of the town, while Baldwin of Flanders invested in the Cistercians and the similarly reform-minded Premonstratensians:

liberties and customs in academic commentaries is well-taken, but need not prevent recognition of a shift in active Christian piety in which both scholastic clerks and lay nobles participated. The Church and the aristocracy, though they might inhabit two cultures in certain respects, shared a single society. The political principles of the barons might be derived « from parents and neighbours, and…inculcated from childhood », but then so too were those of the Cistercian monks or Paris masters, who often came from the same aristocratic families.[113] As Andrew Willard Jones demonstrates, attempts to divorce the medieval « secular » from the « sacred » are doomed to frustration, a point which suggests that any picture of unidirectional influence from clergy to laity in the evolution of Christian ideals, however much it was promoted by clerical reformers, is incomplete.[114] When speaking of a « neogregorian Church », it must be remembered that this concept includes both clergy and laity as active participants.

A prominent vehicle and expression of this shared evolution of ideals was the crusade. The Cistercians had played a crucial role in preaching since the Second Crusade, while the importance of the Paris schools had grown since the Third. At the turn of the thirteenth century, masters such as Fulk of Neuilly and Robert of Courson especially connected the crusade with moral — and therefore, among the aristocracy, political — reform.[115] The crusade thus created a space for nobles to hear preaching that dignified their chivalric station while also enjoining on them moral obligations for holy living in the world. In turn, crusading knights on campaign mixed with each other and with crusade preachers, who often accompanied the armies as papal legates, inevitably sharing their independent experiences and aspirations as political actors.

Significantly, all of the liberties and customs under consideration here have strong crusade connections. The *Livre au roi* and Assizes of Antioch, while not composed by crusaders, were written in Outremer, destination of most men who took the cross. The Albigensian context of the Statutes of Pamiers is similarly obvious, but Simon of Montfort also sailed to the Holy Land as a member of the Fourth Crusade. On the Adriatic leg of this journey he accompanied Baldwin of Hainaut, whose Feudal and Penal Charters were issued five months

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Layettes, 1: 260; Wolff, « Baldwin of Flanders… », p. 288; E. A. R. Brown, « The Cistercians in the Latin Empire of Constantinople and Greece, 1204-1276 », *Traditio*, 14, 1958, p. 68; **above, p.?**; **below, p.?**.

[113] Reynolds, « Magna Carta… », p. 660; M. Aurell, *Le Chevalier lettré. Savoir et conduite de l'aristocratie aux XIIe et XIIIe siècles*, Paris, 2011, p. 8. The Langton brothers are perhaps the most relevant example for present purposes. While Stephen and Simon undertook ecclesiastical and scholastic careers, Walter identified with reform as a knight in the world, serving multiple tours on the Albigensian Crusade and eventually marrying into the circle of Robert fitz Walter: Baldwin, « Master Stephen… », p. 844-45; C. Woehl, Volo vincere cum meis vel occumbere cum eisdem. *Studien zu Simon von Montfort und seinen nordfranzösischen Gefogsleuten während des Albigenserkreuzzugs (1209 bis 1218)*, Frankfurt am Main, 2001, p. 173-74; Lippiatt, *Simon V of Montfort…*, p. 40, 94; F. M. Powicke, *Stephen Langton*, Oxford, 1928, p. 6-7 n. 1. Such close ecclesiastical blood relations were, however, almost nonexistent among the baronage of Outremer, which may further explain the lack of neogregorian purchase in Syria: Hamilton, *The Latin Church…*, p. 124; Tyerman, *God's War…*, p. 218; **above, p.?**.

[114] Jones, *Before Church…*, e.g. p. 2-21, 152-64. Cf. Buc, *L'Ambiguïté…*, p. 186-97; M. T. Clanchy, *From Memory to Written Record. England 1066-1307*, 3rd edn, London, 2013, p. 250-52.

[115] *The Cistercians and the Second Crusade*, dir. M. Gervers, New York, 1992; B. M. Kienzle, *Cistercians, Heresy and Crusade in Occitania, 1145-1229. Preaching in the Lord's Vineyard*, York, 2001; J. Bird, « Reform or Crusade? Anti-Usury and Crusade Preaching during the Pontificate of Innocent III », *Pope Innocent III and his World*, dir. J. C. Moore, Aldershot, Hants, 1999, p. 165-85; idem, « The Victorines, Peter the Chanter's Circle, and the Crusade. Two Unpublished Crusading Appeals in Paris, Bibliothèque nationale, MS latin 14470 », *Medieval Sermon Studies*, 48, 2004, p. 5-28; idem, « Paris Masters and the Justification of the Albigensian Crusade », *Crusades*, 6, 2007, p. 117-55; idem, « Crusade and Reform. The Sermons of Bibliothèque nationale, MS nouv. acq. lat. 999 », *The Fifth Crusade in Context. The Crusading Movement in the Early Thirteenth Century*, dir. E. J. Mylod *et al.*, Abingdon, Oxon, 2017, p. 92-114; idem, « How to Implement a Crusade Plan. Saint-Victor and Saint-Jean-des-Vignes of Soissons and the Defence of Crusaders' Rights », *Crusading Europe. Essays in Honour of Christopher Tyerman*, dir. G. E. M. Lippiatt, J. L. Bird, Turnhout, 2019, p. 147-80; idem, *Heresy, Crusade and Reform in the Circle of Peter the Chanter*, Oxford, forthcoming.

after he had taken the cross in February 1200.[116] John of England and Ranulf of Chester were also signed with the cross in 1215 as the king attempted to stave off baronial rebellion. Both men advertised their crusader status in their charters of that year; the king would use his to plead for delays in restitutions demanded by Magna Carta.[117] John's crusade never materialised, but Ranulf led an English contingent composed of both loyalists and former rebels to Egypt on the Fifth Crusade in 1218. Among the latter, or following shortly after, were seven of the twenty-five barons on Magna Carta's security council.[118] One of these was Robert fitz Walter, who, as military leader of the revolt in 1215, had styled himself *marescallus exercitus Dei et sancte ecclesie in Anglia*, a title which signals a pretended union of clerical and baronial purpose and perhaps even a homegrown crusade; his loyalist opponents, including Ranulf, at the battle of Lincoln in 1217 likewise adopted a crusading identity.[119] Andrew of Hungary also participated in the Fifth Crusade five years before issuing the Golden Bull, and while his time in Syria was brief, his career had been haunted by the cross for over twenty years.[120] No doubt many of those pressuring him to issue the Golden Bull were also veterans of the eastern expedition. Like Andrew, Frederick of Sicily spent over a decade signed with the cross, and he issued the Assizes of Capua and Messina amidst renewed enthusiasm for the fulfilment of his vow.[121] The crusade, as one lay expression of reform, correlates closely with recorded attempts at good government.

One should not assume that cross-pollination inspired and facilitated by the crusade always resulted in consensus. The examples studied above reveal multiple points of divergence of greater and lesser significance due to particular circumstances and priorities. The campaign against usury, a practice long condemned by Christianity, offers an especially salient caution. Peter of Aragon forbad usurers from testifying in the Montepessulan court in 1204, though suppression of the practice itself was half-hearted.[122] Baldwin of Flanders had gone further, outlawing usurers in his lands, cancelling interest on any loans contracted since Christmas 1198

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[116] Geoffrey of Villehardouin, *La Conquête de Constantinople*, ed. E. Faral, Paris, 1961, 1: 10, 54; G. E. M. Lippiatt, « Duty and Desertion. Simon of Montfort and the Fourth Crusade », *Leidschrift*, 27, 2012, p. 79-81.

[117] Gervase of Canterbury, *The Historical Works*, ed. W. Stubbs, London, 1879-1880, 2: 109; W. L. Warren, *King John*, London, 1961, p. 233; S. Church, *King John. England, Magna Carta and the Making of a Tyrant*, London, 2015, p. 217; C. R. Cheney, *Pope Innocent III and England*, Stuttgart, 1976, p. 374-75; *The Charters…*, p. 387; Holt, *Magna Carta*, p. 287, 364, 392, 394. Cf. White, « The Cheshire Magna Carta… », p. 188-89.

[118] J. M. Powell, *Anatomy of a Crusade, 1213-1221*, Philadelphia, 1986, p. 77, 222, 228, 232, 240, 242, 246; Holt, *Magna Carta*, p. 402. Family connections were also obviously important in the English passage to Egypt: cf. Alexander, *Ranulf of Chester…*, p. 2. One of the crusading rebels was Saher IV de Quincy, first earl of Winchester and uncle to Simon of Montfort: Lippiatt, *Simon V of Montfort…*, p. 25, 38-39, 122-23; Vincent, « Exiled Hero… ».

[119] Holt, *Magna Carta*, p. 412; F. M. Powicke, « The Bull 'Miramur plurimum' and a Letter to Archbishop Stephen Langton, 5 September 1215 », *The English Historical Review*, 44, 1929, p. 92; *CM*, 2: 586, 3: 19. Profs George Garnett and John Hudson, in Holt, *Magna Carta*, p. 8-9, do not explain why this title should evoke the Albigensian Crusade particularly, but they may hear an echo of *mareschal de la Foy*, the appellation carried by the Lévis family as lords of Mirepoix from the end of the fifteenth century: É. Baluze, *Histoire généalogique de la maison d'Auvergne*, Paris, 1708, 1: 309-10. During the actual crusade, however, Guy of Lévis was simply *marescallus* [*domini comitis Montisfortis*]: *HGL*, 8: 578-79, 609, 669, 705, 733-34, 877; Lippiatt, « Un symbole… », p. 274; L. Ménard, *Histoire civile, ecclésiastique, et littéraire de la ville de Nismes*, Paris, 1744-1758, 1: preuves, p. 55; *Recueil des chartes de l'abbaye de La Grasse*, ed. É. Magnou-Nortier, A.-M. Magnou, C. Pailhès, Paris, 1996- , 2: 348, 350; *CCA*, 1: 90, 120, 2: 186, 3: 10, 22, 94; PVC, 1: 188-89, 261-62, 264, 266-68, 270, 2: 11, 53-54. Nicholas Vincent, in this volume, suggests another possible inspiration: « Exiled Hero… », **p.? n. 113**.

[120] Powell, *Anatomy of a Crusade…*, p. 116-17, 127, 133; J. R. Sweeney, « Hungary in the Crusades, 1169-1218 », *International History Review*, 3, 1981, p. 475-76, 478-79.

[121] D. Abulafia, *Frederick II. A Medieval Emperor*, London, 1988, p. 138-40, 143.

[122] *Layettes*, 1: 256, 261, 264. Cf. *ibid.*, 1: 278. For neogregorian definition and condemnation of usury, see Baldwin, *Masters, Princes…*, 1: 129, 156, 220, 242, 270-311.

and protecting debtors from an immediate recall of the principal by an imposed gradual repayment until 1203.[123] Given the shared interest of these men in the struggle against Islam, the close ties of Peter and Montpellier with the papacy of Innocent III, and Baldwin's — though certainly not Peter's — commitment to sexual continence, such anti-usury measures might be attributed to neogregorian zeal. This interpretation could hardly apply, however, to Frederick of Sicily's prohibition in 1231, part of a new constitution for his kingdom with a very different perspective on reform, no doubt influenced by the idiosyncratic experience of his excommunicate crusade and subsequent war with the Apostolic See. Indeed, Frederick's expansive criminalisation of usury, unlike that of his ancestor William the Good, deliberately avoids mention of papal teaching on the matter and permits Jews to continue collecting interest in violation of Lateran IV.[124] This seems calculated to declare royal independence of action from ecclesiastical influence. On the other hand, Simon of Montfort, a man keen to advertise his cooperation with the Church, hardly lifted a finger to curb usury in the Midi during the Albigensian Crusade, despite the projects of ecclesiastical allies such as Bishop Fulk of Toulouse or Robert of Courson, now cardinal-priest of Santo Stefano al Monte Celio. Simon forbad its excesses in prohibiting the arrest of any man for the debt of his lord, unless he were himself an explicit guarantor or debtor, but this was hardly an innovation. No doubt his reluctance to go further owed something to his heavy reliance on credit to fund his own incessant campaigns; even his fellow Albigensian Crusader, Walter Langton, brother of Archbishop Stephen, borrowed at interest from Jews.[125] But these compromises make Baldwin's edict on the eve of his own vow all the more impressive. One must therefore avoid positing a homogeneous neogregorian reform « movement », even while acknowledging the strength of connections formed around the crusade and a resulting tendency toward deeper expression of Christian practice in lay politics.

Despite variation reflecting particular circumstances and concerns, one universal trait of the customs and liberties discussed above is so obvious it perhaps goes unnoticed: they were all written down. A century and a half before, the original Gregorian reform had emphasised the importance of truth — associated with written Scripture, patristic opinion and Roman law — over oral custom.[126] However, it furnished no such wealth of lay documents, at least not at

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[123] L. A. Warnkönig, *Flandrische Staats- und Rechtsgeschichte bis zum Jahr 1305*, Tübingen, 1835-42, 3.2: 200-01.

[124] *MGH Const.*, 2 Suppl.: 155-56; *Conciliorum oecumenicorum…*, 2: 198. Significantly, at Messina ten years earlier, Frederick had justified his harsh measures against blasphemy with reference to the canons: Richard of San Germano, *Chronica*, p. 95; Stürner, *Friedrich II.*, 2: 13-14. However, by the time of the Constitutions of Melfi, he charted an independent course on blasphemy and other neogregorian subjects, including heresy: *MGH Const.*, 2 Suppl.: 147, 149-52, 175, 240, 337-41, 450-51; Stürner, *Friedrich II.*, 2: 192-93, 198-99.

[125] Lippiatt, « Simon de Montfort… », p. 286-88; idem, *Simon V of Montfort…*, p. 149, 199-200; SP, xxxiii; *Close Rolls of the Reign of Henry III*, London, 1902-1938, 3: 256. Cf. Holt, *Magna Carta*, p. 360, 382, 422; Helmholz, « Magna Carta… », p. 318-21. For southern precedents against arbitrary detention, see **note 52/53** above. A ruling of the consuls of Toulouse in 1152 likewise protects citizens from detention for the debt of another citizen, but simultaneously allows them the right to revenge injuries received from an inhabitant of the Toulousain on the property and fellow inhabitants of the malefactor's village or town. The clause in the Statutes of Pamiers — along with the one immediately following (SP, xxxiv), prohibiting private vengeance — seems aimed at making the protections of this ruling universal while abolishing its provisions for retribution: R. Limouzin-Lamothe, *La Commune de Toulouse et les sources de son histoire (1120-1249)*, Toulouse, 1932, p. 269; Lippiatt, *Simon V of Montfort…*, p. 199-200. Cf. *La Grande Charte…*, p. 32; *Layettes*, 1: 258, 280 for Saint-Gaudinois, Montepessulan and Carcassonais attitudes to debt recuperation similar to that of Toulouse, though the customs of Carcassonne guarantee safety on market days in terms that clearly foreshadow the wider protection of the Statutes: *ibid.*, 1: 281; SP, xxxiii.

[126] Gregory VII, *The* Epistolae vagantes, ed. H. E. J. Cowdrey, Oxford, 1972, p. 151; *PL*, 151: 356; G. Morin, « Un Critique en liturgie au XIIe siècle. Le Traité inédit d'Hervé de Bourgdieu *De correctione*

the baronial level. Since then, written culture had exploded, and literacy amongst lay élites had grown correspondingly. Even those who remained illiterate or engaged with literacy only superficially could participate in a sort of aristocratic « textual community » facilitated by common crusading ideals and experience.[127] Moreover, the very necessity for a term such as « neogregorian » — like « Gregorian », admittedly a modern category — helps to explain the change: reform was no longer the preserve of the Church, but impinged upon lay behaviour and involved lay participation at a more profound level.[128] The ideas espoused in these documents were not necessarily new, but their appearance in earlier sources is limited.[129] Their proliferation in the early thirteenth century was the result of the conjunction of this new emphasis on Christian morality with the increasing importance of written monuments. When requesting liberties, petitioners demanded they be set down on parchment rather than remembered by elders in order to fortify them with the new, literate standards of authority. Custom was no longer discovered through constant consultation, but enshrined in immutable ink by rulers.[130] In many cases this was simply the translation of oral into written processes, but it also allowed reformers to alter the political fabric — sometimes dramatically — whether under the guise of conservatism, as did Aimery of Jerusalem, or nakedly, as did Simon of Montfort. In a culture that increasingly privileged literacy, once written down such customs and liberties would, in theory, be more resistant to challenge, and the reform they embodied might endure.

Most of these customs and liberties did not in fact endure. The abortive legacy of the Statutes of Pamiers has been discussed in the introduction. The *Livre au roi* was issued for the rump of a doomed kingdom and seems to have been deliberately ignored in essential points by the legal practice of succeeding generations in Outremer.[131] The « Unknown Charter » of Barcelona was stillborn.[132] Magna Carta, in its 1215 form, was revoked by the pope just over two months after it was sealed.[133] The Assizes of Antioch do not even survive in their original language, extant only in a later Armenian translation.[134] Despite its importance to the constitutional history of Hungary, the very authenticity of the Golden Bull was a point of debate until the early nineteenth century.[135] With the exception of Magna Carta and the Golden Bull,

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quarundam lectionum », *Revue bénédictine*, 24, 1907, p. 39-41, 43-44; G. Ladner, « Two Gregorian Letters on the Sources and Nature of Gregory VII's Reform Ideology », *Studi gregoriani*, 5, 1956, p. 237-42.

[127] Clanchy, *From Memory…*, p. 60-63, 70-72, 78, 98-100, 162-63, 237-38, 245-46, 248-53, 323; D. Crouch, *The Birth of Nobility. Constructing Aristocracy in England and France, 900-1300*, Harlow, 2005, p. 85-86; Aurell, *Le Chevalier…*; B. Stock, *The Implications of Literacy. Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries*, Princeton, 1983, p. 49-59, 90-92. Simon of Montfort had a particularly literate maternal ancestry: Aurell, *Le Chevalier…*, p. 82-86.

[128] Cf. Crouch, *The Birth…*, p. 80-86, 90-94.

[129] Reynolds, « Magna Carta… », p. 665.

[130] Stock, *The Implications…*, p. 55-57. This transformation of reformed customs into a written body of law may be seen as a temporal complement to the contemporary spiritual « institutionalisation of certainty » observed by A. Power, « The Uncertainties of Reformers. Collective Anxieties and Strategic Discourses », *Thirteenth Century England XVI*, dir. A. M. Spencer, C. Watkins, Woodbridge, 2017, p. 11-15, 18.

[131] Prawer, *Crusader Institutions*, p. 9, 18, 56-57, 462-63.

[132] T. N. Bisson, « An 'Unknown' Charter for Catalonia (1205) », *Album Elemér Mályusz*, Brussels, 1976, p. 71-74.

[133] *Selected Letters of Pope Innocent III concerning England (1198-1216)*, ed. C. R. Cheney, W. H. Semple, London, 1953, p. 217-18.

[134] A. Ouzounian, « Les *Assises d'Antioche* ou la langue en usage. Remarques à propos du texte arménien des *Assises d'Antioche* », *La Méditérranée des Arméniens. XIIe-XVe siècle*, dir. C. Mutafian, Paris, 2014, p. 133-34.

[135] L. Péter, « *Ius resistendi* in Hungary », *Resistance, Rebellion and Revolution in Hungary and Central Europe. Commemorating 1956*, dir. L. Péter, M. Rady, London, 2008, p. 44; Rady, *Customary Law…*, p. 80-83, 187; idem, « Hungary and the Golden Bull… », p. 88.

the obsolescence of these customs has in some ways preserved them, allowing the historian to see more clearly their significance to contemporaries.

In centring this comparative study on the Statutes of Pamiers, the intention has been to explore the content of these cognate documents with as little anachronism as possible. While many of the elements most interesting to modern commentators — inheritance in the Statutes, due process in Magna Carta, revocation of privileges in the Assizes of Capua, right of resistance in the Golden Bull — were of great importance to medieval legislators, their sense could vary considerably across contexts, most especially from that of the twenty-first century. In common among these early thirteenth-century customs and liberties was a commitment to reform — written reform — by politically engaged lay élites, barons as well as kings. This reform might be oriented toward various, often overlapping, aims: military effectiveness, political accountability, justice within and without the court and Christian morality.

What has perhaps gone unnoticed by previous historians is the extent to which the final concern underpinned the others. Good government had always been tied to morality, but by the end of the twelfth century, this connection was increasingly articulated in ways that penetrated deeper and deeper into lay behaviour. Nor should this be seen as a clerical conquest abetted by the slavish obedience of the laity, who reflected the spirit more often than the letter of ecclesiastical conceptions of reform. The thirteenth would be the century not only of Frederick II, whose peculiar relationship to neogregorian prescriptions has already been mentioned, but also of St Louis, who never allowed his clergy to lead him around by the nose. Like the royal saint, Simon of Montfort was seen as a paragon of Christian virtue in his time, though modern historiography has translated this judgement into « a narrow-minded zealot » or, even less charitably, « a self-righteous, sanctimonious prig ».[136] But if his crowning — albeit short-lived — constitutional achievement is any indication of his sentiments, he was in many ways a man of his time, balancing present security and future salvation through the codification of a reformed political Christianity.

[136] D. E. Queller and T. F. Madden, *The Fourth Crusade. The Conquest of Constantinople*, 2nd edn, Philadelphia, 1997, p. 93; Tyerman, *God's War…*, p. 593.