‘A Special Case? The Papacy in the Early Thirteenth Century’*

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By the early thirteenth-century, it was firmly established doctrine that the Pope possessed supra-regnal authority: an authority developed in tandem with his claim to intervene in secular affairs, and the concept of ‘papal monarchy’. The latter built on the concept of papal primacy over Christendom, itself resting on the Gospels, firstly of Matthew (16:18-19, in which Christ, himself the ‘King of kings and lord of lords’ (Revelation 19:16), gave Peter the keys of heaven and the power of binding and losing both in heaven and on earth), and secondly of John (21:15-17, which sets out the Petrine primacy over the Church, and hence the judicial powers of the Pope).[1] Since the fifth century, such ideas had developed through the elaborations of Pope Leo I (440-61, who had maintained that the elected successors of Peter as bishops of Rome inherited his role as head of the Church over its parts), and Pope Gelasius I (492-96, who had asserted the so-called doctrine of the two swords - stressing the separation of priestly and royal powers and the superiority of the spiritual sword, over the secular or material).[2] In the ninth century these theological arguments had been further developed through the creation of forged historical evidence such as the ‘Donation of Constantine’, which confirmed papal superiority over secular rulers, and the concept of ‘translatio imperii’, which underpinned papal claims to approve the emperor-elect before his coronation.[3] Between the mid-eleventh and twelfth centuries, in the time of the so-called ‘Investiture Contest’ or ‘Gregorian Reforms’ and their aftermath, Church reformers redeployed these arguments to endorse the idea that the Pope was the ‘vicar of St Peter’ and had received Christ’s authority over Christendom, as Peter’s successor on the episcopal throne of Rome. This phase in the history of the late medieval papacy was followed in the thirteenth century by what is known as the age of ‘papal monarchy’, when the pope is deemed to have exercised his role as a ‘monarch’ alongside other rulers, citing his supposed

* I am extremely grateful to my husband, Peter Clarke, for sharing his transcriptions of early decretal collections and their commentaries. Those are mostly unedited and, in many cases, difficult to access.

[1] Matthew 16: 18-19: ‘And I say to thee: That thou art Peter; and upon this rock I will build my church, and the gates of hell shall not prevail against it. And I will give to thee the keys of the kingdom of heaven. And whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose upon earth, it shall be loosed also in heaven’.

[2] K. Cushing, *Reform and the Papacy in the Eleventh Century. Spirituality and Social Change* (Manchester, 2005), pp. 55-86; K. Cushing, ‘Papal Authority and Its Limitations’, in J. H. Arnold (ed.), *The Oxford Handbook of Medieval Christianity* (Oxford, 2014), pp. 518-19; D. D’Avray, *Papal Jurisprudence, c. 400: Sources of the Canon Law Tradition* (Cambridge, 2019), pp. 96-132.

[3] J. A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists* (London, 1965), pp. 9-40.

spiritual superiority. In the meantime, papal government itself developed increasingly state-like characteristics.[4]

The lengthy scholarly debate on the Pope's supra- or transregnal authority has mostly addressed the question of how, between the late eleventh and the thirteenth centuries, papal overlordship impacted territorial, governmental, financial, and judicial structures in the localities. This debate has coincided with scholarship on both 'papal monarchy' and 'feudalism'. However, what has so far been overlooked is the extent to which papal claims to authority over kings developed alongside the idea that the pope could, and occasionally should, act as arbiter of disputes among secular rulers, especially in cases where one or more of the parties involved in the dispute was placed under papal overlordship. This theme will be addressed in the second part of my essay.

### *1. The Scholarly Debate: 'Papal Monarchy' and 'Papal Overlordship'*

Historians have investigated at length the extent to which papal authority over kings was simply a theoretical justification of papal power, or instead resulted in effective papal government within the localities. On the one hand, Zachary Brooke maintained that the doctrine of 'papal monarchy', or 'papal sovereignty' supplied the foundations for the papal exercise of legislative, executive and judicial powers, which, in Brooke's opinion, led the eleventh-century papacy to convert its 'suzerainty' over Christendom into a 'true sovereignty'.[5] On the other hand, Walter Ullmann notoriously maintained that papal monarchy coincided with the formation of 'papal-hierocratic government', especially during the pontificate of Innocent III, who claimed papal plenitude of power as successor (or 'vicar') to Peter, anointed of God, universal judge and 'vicar of Christ'.[6] As is widely-known, Ullmann's argument on papal monarchy proved controversial and was challenged by scholars who focused on the creation of ecclesiastical government in medieval society (as was the case with Richard Southern), and the formation of a 'Christian principality' (to employ a

[4] W. Barry, *The Papal Monarchy from Gregory the Great to Boniface VIII (590-1303)* (London, 1902), p. ix;
[5] Z. Brooke, 'Gregory VII and the First Contest Between Empire and Papacy', in J. R. Tanner, C. W. Previté-Orton and Z. N. Brooke (eds), *The Cambridge Medieval History*, vol. 5 (Cambridge, 1926), pp. 109-10. This phase in the history of the papacy is defined as the 'Age of Investitures' by G. Tellenbach, *Church, State and Christian Society at the Time of the Investiture Context* (Leipzig, 1936), here from the English translation (Oxford, 1940), pp. 162-8.
[6] B. Tierney (ed.), *The Crisis of Church and State, 1050-1300* (Englewood Cliffs New Jersey, 1964), pp. 131-2. See also W. Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (London, 1962), pp. 447-57; W. Ullmann, *A Short History of the Papacy in the Middle Ages* (London, 1972).

definition coined by Brian Tierney, Michael Wilks and Jack Watt). These scholars focussed in particular on how canon law and its commentaries shaped the relationship between Church and State, addressing the idea that the Pope was the 'vicar of Christ', and hence that he exercised the kingship of Christ.[7] Significantly, the widespread criticism of Ullmann's work shifted the debate from 'papal monarchy' to the relationship between Church and State. In particular, Kenneth Pennington maintained that, while the early Church assumed a 'monarchical' model following the structure of the late Roman Empire, from the eighth century onwards it was organized around secular rulers and bishops. It was their dialogue with the papacy that helped to develop doctrines of papal monarchy, from the late twelfth century onwards.[8] Pennington concluded that the papacy was one of the first European institutions to develop a sophisticated theory of 'monarchy', accommodating the paradoxical position of the Pope, who was simultaneously considered both 'vicar of Christ', namely God's representative on earth ('vicarius Christi'), and servant of God's people ('servus servorum Dei').[9] From the 1990s the scholarly debate has therefore focused on this 'papal monarchy in action'. The latter encompassed papal interactions with the churches and secular kingdoms of western Christendom; the practical implications of the reforming activities of the papacy, the symbolic, gestural and visual representations of the Pope's person, the projection of the idea of the Pope as 'vicar of Christ', his plenitude of power, and the

[7] Watt, *The Theory*, pp. 2, 136-7, 142; M. Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge, 1963), pp. 30-43, 200-29; R. W. Southern, *The Making of the Middle Ages* (New Haven, 1953), pp. 138-48; R. W. Southern, *Western Society and the Church* (Harmondsworth, 1970), pp. 18-19; 91-133. Similar arguments had already been advanced by A. C. Krey, 'The International State of the Middle Ages: Some Reasons for its Failure', *American Historical Review*, 28 (1922), 1-12. See also B. Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge, 1955), pp. 11-46. For trenchant criticism of Ullmann's focus on legal theory rather than political philosophy or thought, see F. Oakley, 'Celestial Hierarchies Revisited: Walter Ulmann's Vision of Medieval Politics', *Past and Present*, 60 (1973), 3-48.

[8] K. Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia, 1984), p. 2.

[9] Pennington, *Pope and Bishops*, p. 190. See also C. Morris, *The Papal Monarchy: The Western Church from 1050 to 1250* (Oxford, 1989), p. 18. For essentially binary interpretations (Church v. state) of Innocent III's arguments, see H. Tillmann, *Innocent III* (Amsterdam, 1980); A. M. Stickler, *Sacerdotium et regnum nei decretisti e primi decretalisti* (Turin, 1953); F. Kempf, *Papsttum und Kaisertum bei Innocenz III: Die geistigen und rechtlichen Grundlagen seiner Thronstreitpolitik* (Rome, 1954); M. Maccarrone, *Chiesa e Stato nella dottrina di Innocenzo III* (Rome, 1940). See Watt, *The Theory*, pp. 179-317; B. Tierney, 'The Continuity of Papal Political Theory in the Thirteenth Century: Some Methodological Considerations', in Tierney, *Church Law and Constitutional Thought in the Middle Ages* (Ashgate, London, 1979), pp. 227-45, and J. C. Moore (ed.), *Pope Innocent III (1160/62-1216)* (Leiden-Boston, 2003), for various authorities accepting an essentially binary antithesis, also finding no striking difference between the approach of Innocent III and that of his successors. For the early debate on Innocent III and his claims, see also J. M. Powell, *Innocent III: Vicar of Christ or Lord of the World?* (Washington D.C., 1966).

superiority of the papacy as an institution vis-à-vis secular rulers and the Roman Church.[10] This approach has led scholars to focus on the role of thirteenth-century popes as 'monarchs in the Church' through their control over episcopal appointments, their implementation of canonical procedures and legislation, their dispatch of legates to the localities, their celebration of general councils, and their reorganization both of the college of cardinals and of curial administration.[11] Furthermore, scholars have emphasized the responsive nature of medieval papal government, defining the growth of 'papal monarchy' from the mid-eleventh century onwards as 'papal authority in practice'. Thus, scholars have recently investigated how, as a centralized institution, the papacy managed to oversee the affairs of the Western Church and its people through their claim to the superiority of papal power over secular authorities; the extension of papal legislative and judicial competence to the secular sphere; the development of papal administration, and the use of legates and judges delegate in the localities.[12]

Alongside their long-running debate over 'papal monarchy', historians have also examined the Popes' rule and territorial control over the so-called 'Patrimony of St Peter' ('patrimonium beati Petri') in central Italy: territories over which the papacy claimed temporal jurisdiction, developing 'state-like' administrative and governmental structures.[13] In

[10] Morris, *Papal Monarchy*, pp. 450, 568-9; I. S. Robinson *The Papacy, 1073-1198: Continuity and Innovation* (Cambridge, 1990), pp. vii-xi; A. Paravicini Bagliani, *Il corpo del papa* (Turin, 1994); A. Paravicini Bagliani, *Le chiavi e la tiara* (Rome, 1998).

[11] A. Meyer, 'Papal Monarchy', in C. Lansing and E. D. English (eds), *A Companion to the Medieval World* (Oxford, 2008), pp. 383-93. B. E. Whalen, 'The Papacy', in R. N. Swanson (ed.), *The Routledge History of Medieval Christianity, 1050-1500* (Abingdon, 2015), pp. 5-17.

[12] Cushing, 'Papal Authority', pp. 513-30. T. F. X. Noble, 'Narratives of Papal History', in K. Sisson and A. Larson (eds), *A Companion to the Medieval Papacy: Growth of an Ideology and Institution* (Leiden, 2016), pp. 17-33; K. Sisson, 'Popes over Princes: Hierocratic Theory', in Sisson and Larson (eds), *Companion*, pp. 121-32; J. Canning, *Ideas of Power in the Late Middle Ages, 1296-1417* (Cambridge, 2011), pp. 1-10, 192-7. More recently, David D'Avray has maintained that 'papal monarchy' should be defined as 'practical papalism': i.e. as papal government functioning within a framework of Christian values and establishing a formal legal system (canon law), itself obliged to evolve and adapt in order to compensate for the shortcomings of the papal bureaucratic and fiscal apparatus: D. L. D'Avray, *Medieval Religious Rationalities. A Weberian Analysis* (Cambridge, 2010), pp. 122-49. Also in the last few years, new studies have engaged with the relationship between papal government and the localities, investigating the means by which papal monarchy developed into the effective papal government of Medieval Christendom: I. Forrest, 'Continuity and Change in the Institutional Church', in Arnold (ed.), *Oxford Handbook of Medieval Christianity*, p. 190.

[13] S. Carocci, 'Popes as Princes? The Papal States (1000-1300)', in Sisson and Larson (eds), *Companion*, pp. 66-8, and see also P. Partner, *The Lands of St Peter* (London, 1972); P. Toubert, *Les structures du Latium médiéval: Le Latium méridional et la Sabine du IXe à la fin du XIIe siècle* (Rome, 1973); C. Wickham, *Medieval Rome: Stability and Crisis of a City, 900-1150* (Oxford, 2015). Carocci maintains that the formation of the papal state can be traced back to the period between the eighth and eleventh centuries, whereas Toubert and Wickham argue that the process of institutionalisation began only after the tenth century, when the papacy began defining its territorial frontiers in the region around Rome and Latium, at the same time setting up effective government over its subjects.

particular, Becker argued that the papacy exercised direct and absolute rule over this papal state, which was managed through papal officials ('rectores') as well as the vassalage system. More recently, Carocci has maintained that thirteenth-century papal administration of the Patrimony St Peter represented a case of 'practical dualism', since the papacy governed its lands in central Italy through family networks and bonds of vassalage, rather than by direct rule, meanwhile claiming a spiritual plenitude of power.[14]

The extent to which this was also the case for the Pope's authority over other secular rulers in the medieval West, who were 'vassals' of the papacy and fell within the framework of papal overlordship, remains an open question. On the one hand, German scholars such as Fried, Becker and Schieffer have argued that the nature of the 'feudal' bonds between the papacy and secular rulers varied from case to case. Fried maintained that from the twelfth century the kingdoms of Aragon and Portugal and the county of Montpellier were under papal protection ('Schutzen') rather than full feudal lordship, and that during the thirteenth century this papal protection was extended to other secular rulers across medieval Christendom, intertwining with the organization of crusades, which required the protection of territories especially in case of the ruler's absence due to crusading activities. According to Fried, papal protection granted to secular rulers resembled that given to monasteries: it did not, however, imply property rights over a fief, but merely the payment of a census. Equally, by the thirteenth century the papal protection of secular rulers differed only marginally from the protection offered by secular rulers to third parties. However, because of the universal character of papal power, there was, for Fried, a risk that secular rulers might relinquish their sovereignty to the papacy by virtue of papal protection, ultimately creating papal universal rule.[15] Equally, Becker maintained that papal lordship over secular rulers was based on personal bonds of fidelity and vassalage, which guaranteed support and could be extended over a vassal's family and fiefs. This framework allowed the twelfth-century papacy to become the supreme authority, both politically and juridically, in the medieval West, through its grants of legitimation, and its protection of secular authorities.[16] The only exceptions to this pattern, according to Fried and Becker, were the Norman kings of Sicily (from 1059), and the kings

[14] For a summary of this debate, see Carocci, 'Popes as Princes?', p. 75. In Carocci's opinion, we should therefore write of papal 'states', to stress the fragmentation of the Pope's territories in central Italy.
[15] J. Fried, *Der päpstliche Schutz für Laienfürsten. Die politische Geschichte des päpstlichen Schutzprivilegs für Laien (11.-13. Jahrhundert)* (Heidelberg, 1980), p. 325.
[16] A. Becker, 'Politique féodale de la papauté à l'égard des rois et des princes (XI –XII siècles)', in *Chiesa e mondo feudale nei secoli X–XII,* Atti della dodicesima Settimana internazionale di studio Mendola, 24-28 agosto 1992 (Milan, 1995), pp. 411–46

of England (after 1213), who were feudal vassals of the papacy in a more traditional sense, having taken oaths of fealty that resembled those implemented in secular 'feudal' practice. On the other hand, Stefan Weinfurter maintained that the papacy adopted a model 'feudal' approach to the kingdom of Sicily after 1120, which was extended after the mid-twelfth century over other territories, either due to stringent political circumstances or because secular rulers came to regard their interactions with the papacy as in some way 'feudal'. Meanwhile, the late twelfth-century papacy tried to distance itself from the use of 'feudal' terminology ('fiefs', 'vassals' etc) in its relations with secular rulers, and more generally to clarify its role, since, in Weinfurter's words, 'the pope did not need to be a feudal lord to justify his preeminence in the church and the world, for there were better arguments at his disposal'.[17]

More recently, Benedict Wiedemann has insisted that in the context of the relationship between the papacy and secular rulers, the term 'feudal' should be adopted only when the primary sources define a territory under secular control as a 'feodum' of the Pope, asserting that the connotations of the word 'feudal' must be assessed on a case-by-case basis.[18] Wiedemann has further explored how the relationship between the papacy and secular rulers was established by means of investiture, homage, and vassalage.[19] Significantly, in the case of England, Wiedemann maintained that, while in 1213 John became a fief-holder of the papacy, it was the papal chancery that subsequently dubbed England and Ireland as papal fiefs, and John and his successors as papal vassals, unintentionally introducing feudal terminology into Anglo-papal relations.[20] Wiedemann further suggests that the papacy's initial adoption of feudal terminology in its documentation was made at the instigation of secular rulers who, for their part, sought to instrumentalize their special relationship with the Pope as overlord, first to legitimize their regnal powers, especially in the eleventh century, and later to consolidate such power in respect to their subjects. This was the case both for papal wardship of kingdoms during minorities, when papal wardship was used strategically to achieve mediation through the dispatch of papal legates, and with the confiscation of fiefs,

[17] S. Weinfurter, 'Die Päpste als *Lehnsherren* von Königen und Kaisern im 11. und 12. Jahrhundert?', in K.-H. Spieß (ed.), *Ausbildung und Verbreitung des Lehnswesens im Reich und in Italien im 12. und 13. Jahrhundert,* (Ostfildern, 2013), pp. 38-40

[18] B. Wiedemann, *Papal Overlordship and European Princes, 1000-1270* (Oxford, 2022), pp. 2-9.

[19] Wiedemann, *Papal Overlordship*, pp. 22-56.

[20] Wiedemann, *Papal Overlordship*, pp. 95-118. Likewise, in Wiedemann's opinion, feudal language was employed in 1219 to describe the papal relationship with the Isle of Man and in 1222 with Aragon.

used by kings to remove their vassals by appeal to papal overlords.[21] While Wiedemann therefore concluded that papal overlordship and protection represented a model of trans-national sovereignty, he maintained that kings co-opted papal power to bolster their own local sovereignty, kingdom by kingdom. Therefore, in Wiedemann's reading, despite the papal claim to plenitude of power, especially from the thirteenth century onwards, the papacy exercised overlordship in its dealings with secular rulers in response to those rulers' own demands, not so much as an imposed papal power, but as an aspect of the Pope's duty of service to his vassals. In this respect, thirteenth-century papal overlordship represented no real extension of papal authority, but rather lent papal legitimation to the power of individual kings.[22]

## 2. Papal Authority and Arbitration in International Affairs: The Decretal 'Novit' (X 2.1.13)

'Papal monarchy' and 'papal overlordship', as outlined in the scholarly debate, were arguably not only a means to legitimize secular rulers and their authority vis-à-vis their subjects, but also played a significant role in papal arbitration in conflicts arising between secular rulers. Especially in cases where one or more of the parties involved in such a conflict was deemed to reside under papal overlordship. Most scholarship has ignored this particular theme, which itself may help us to unpack important questions over the political effectiveness and the mechanics of the Pope's supra-regnal claims. The latter can be further investigated through the examination of the decretal 'Novit' (X 2.1.13), issued by Innocent III in March-April 1204 when arbitrating the conflict between England and France.[23] This decretal offers a key statement of the nature of papal plenitude of power over secular authorities. Moreover, its canonical interpretations significantly impacted the debate on the nature of papal arbitration in secular affairs throughout the ensuing century, in the process contributing to a redefinition of the principles of the Pope's supra-regnal authority.

[21] Wiedemann, *Papal Overlordship*, pp. 153-218.
[22] Wiedemann, *Papal Overlordship*, pp. 219-23.
[23] C. R. Cheney, *Pope Innocent III and England* (Stuttgart, 1976), p. 278; M. Maccarrone, 'La papauté et Philippe Auguste: la decrétale *Novit ille*', in Maccarrone, *Nuovi studi su Innocenzo III*, ed. R. Lambertini (Roma, 1995), pp. 111-136.

It should be noted from the outset that the thirteenth-century approach to diplomatic arbitration was founded on both practical procedures and theoretical justifications. On the one hand, the procedure for diplomatic arbitration was set out in the 'ordines iudiciales', on which the standard authority was to be that of William Durandus' *Speculum iudiciale* (first recension 1271-6, second recension 1287-91).[24] Arbitration could be of two kinds: arbitration carried out by a body of arbiters, jointly appointed by the parties among their peers;[25] or arbitration overseen by only one arbiter, chosen by the conflicting parties both to resolve dispute and to act as peace-maker.[26] The latter option was most commonly chosen for the diplomatic arbitration of conflicts among secular authorities, who generally selected a fellow ruler as arbiter: the pope, or some other authority acting as papal representative. Especially from the thirteenth century, the arbitration of the pope or his representatives in conflicts among secular rulers was further justified on ecclesiological and legal grounds through the doctrine of papal monarchy. This saw the pope acting as universal judge ('iudex ordinarius omnium'), possessing jurisdiction over all spiritual affairs.[27] In practice, as Werner Maleczek has noted, the Pope either acted as an arbiter in conflicts, exhorting conflicting parties to peace, or intervened in matters which fell under ecclesiastical jurisdiction by virtue of the Pope's own judicial powers.[28] However, in several cases, while the Pope had been called upon as arbiter to mediate a mutual agreement and peace (an 'amicabilis compositio') between the contending parties, his intervention intertwined with spiritual concerns and therefore generated conflicts of interest. This was ultimately the case between 1198 and 1204, when Innocent III intervened in the long dispute between England and France. It was this that led eventually to decretal 'Novit'.[29]

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[24] J.-M. Moeglin and S. Péquignot, *Diplomatie et 'relations internationales' au Moyen Age (IXe-XVe siècle)* (Paris, 2017), pp. 705-16, and see J. Benham, *International Law in Europe, 700-1200* (Manchester 2022), pp. 196-221.

[25] Willelmus Durandus, *Speculum iudicialis* (Lyon, 1499), fol. 42ra: 'arbiter est quem partes eligunt ad cognoscendum de questione del lite*'* (accessed 29/9/2023: https://gallica.bnf.fr/ark:/12148/bpt6k59354x/f4.imag)

[26] Willelmus Durandus, *Speculum iudicialis*, fol. 41rb: 'arbitrator vero est amicabilis compositor nec sumit super se litigiosa, vel ut cognoscat, sed ut pacificiet; et quod certum est dividat, ut in societate qua certum est fuisse contractas, sed eligitur ut det cuilibet certas suas partem que ipsum ex societate contingit' (accessed 29/9/2023: https://gallica.bnf.fr/ark:/12148/bpt6k59354x/f4.imag).

[27] W. Ullmann, 'The Medieval Papal Court as an International Tribunal', in Ullmann, *The Papacy and Political Ideas in the Middle Ages* (London, 1976), pp. 356–61.

[28] W. Maleczek, 'Das Frieden Stiftende Papsttum im 12. und 13. Jahrhundert', in J. Fied (ed.), *Träger und Instrumentarien des Friedens im hohen und späten Mittelalter* (Sigmaringen, 1996), pp. 283-7.

[29] See Innocent III's decretal 'Venerabilem' (1202) (X 1.6.34), on the disputed imperial election, also in *Regestum Innocentii III pape super negotio Romani imperii*, ed. F. Kempf, 2 vols (Rome, 1947), i, p.169 no. 62): 'Est enim regulariter et generaliter observatum ut ad eum examinatio persone pertineat, ad quem impositio manus spectat. Numquid enim, si principes non solum in discordia, sed etiam in concordia sacrilegium quemcunque vel excommunicatum in regem, tyrannum vel fatuum hereticum eligerent out paganum nos

As is well known, in August 1198, almost immediately after his election, Innocent III sent Soffredus of Santa Prassede and Peter of Capua as his legates to England and France, to mediate a peace or at least a five-year truce between Richard I, king of England, and the French king, Philip Augustus. The intention here was to promote a new crusade to the Holy Land.[30] On this occasion, Richard complained that the French had seized castles and territories while he was absent on crusade. Had these claims been proved, the action of the French king would been in breach of canon law, by which the property of crusaders was placed directly under the Church's protection.[31] Innocent III ordered Peter of Capua to investigate the matter further and, on 15 January 1199 at Le Goulet, a five-truce was agreed between the parties.[32] However, the death of Richard I on 6 April 1199 and the disputed succession to the English throne of his younger brother, John, reopened Anglo-French hostilities that summer. The French and English kings met in mid-August, but negotiations failed. Philip accused John of taking Normandy without his lord's (i.e. Philip's) permission, and demanded the return to Arthur of Brittany, John's young nephew, of a large portion of the Noman March, together with Anjou, Maine and the Touraine. Once more, thanks to the mediation of the papal legate Peter of Capua, on 15 January 1200 negotiations resumed and a treaty was agreed by the parties, again at Le Goulet, on 22 May 1200.[33] Here John was recognised as holding his continental possessions as a fief from Philip, in return for 20,000

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iniungere consecrare ac coronare hominem huiusmodi deberemus?'. See also 'Per Venerabilem' (1202) (X 4.17.13), on the divorce of Philip Augustus, also in *Register Innocenz III: 5*, pp. 249-55 no. 127): 'medium inter causam et causam, quod ad utrumque refertur, tam ecclesiasticum quam civile, in quibus quum aliquid fuerit difficile, vel ambiguum, ad iudicum est sedis apostolice recurrendum, cuius sententiam qui superbiens contempserit observare mori precipitur, id est per excommunicationis sententiam, velut mortuus, a communion fidelium separari'. Maccarrone argued that the pope intervened on this occasion, as he did later in 'Novit', basing his claims to arbitration on theological grounds: Maccarrone, 'La papauté', p. 113. On 'Per Venerabilem' and the Pope's role as a judge, see B. Tierney, '*Tria Quippe Distinguit Iudicia...*: A Note on Innocent III's Decretal *Per Venerabilem*', *Speculum*, 37 (1962), 48-59.

[30] See *The Letters of Pope Innocent III (1198-1216) Concerning England and Wales: A Calendar with an Appendix of Texts*, ed. C. R. and M. G. Cheney (Oxford, 1967), pp. 8-9, nos. 38, 42-5; *Register Innocenz III: 1*, pp. 498-505, 517, 530-2 nos. 336, 346, 355. In his defence, Philip argued that castles and territories had been seized by the French because Richard had not fulfilled the terms of the Anglo-French Treaty (of Gisors), signed in 1188 by Philip and Henry II. See also Cheney, *Pope Innocent III and England*, pp. 279-80; Maccarrone, 'Innocenzo III e la feudalità', pp. 221-2.

[31] M. Maccarrone, 'Innocenzo II e la feudalità: *non ratione feudi, sed occasione peccati*', in Maccarrone, *Nuovi studi*, pp. 218-21. See also J. Brundage, *Medieval Canon Law and the Crusader* (Madison, 1970), pp. 165-70.

[32] W. Maleczek, *Pietro Capuano. Patrizio amalfitano, cardinale, legato alla quarta crociata, teologo (1214)*, trans. F. Delle Donne (Amalfi, 1997), pp. 82-3. On 3 April 1199, Innocent III congratulated Peter on his achievements: *Letters of Pope Innocent III*, ed Cheney and Cheney, p. 18 no. 98; *Register Innocenz III: 2*, pp. 34-5 no. 25. See also Maccarrone, 'Le papauté', pp. 117-18.

[33] *Layettes du Trésor des chartres*, ed. A. Teulet, J. Laborde, E. Berger and H.-F. Delaborde, 5 vols (Paris, 1863-1909), i, pp. 217-9 no. 578. See also Maleczek, *Pietro Capuano*, p. 84. Michele Maccarrone ('Le papauté', p. 119) argued that Innocent III may simply have ignored the feudal background of the dispute over Normandy.

marks to be paid as a relief to his French overlord, and the surrender of various territories, some minor, some more strategically significant. John also asked for the homage of his rebellious vassals, promising no retaliation, and agreed to repudiate his support for his nephew Otto of Brunswick, the candidate for the imperial throne opposed by the French crown, committing himself to withhold whatever inheritance or legacy Richard had promised Otto.

However, as a supporter of Otto, Pope Innocent proclaimed his disapproval of the clause denying Otto Richard's legacy. He therefore declared the Anglo-French treaty illicit, and released the kings from their sworn oaths.[34] Furthermore, he offered to act as a guarantor ('fideiussor') of Anglo-French peace, requesting that his legate, now Ottaviano of Ostia, arrange the appointment of intermediaries.[35]

The negotiations over Otto's legacy coincided with the rebellion of the Lusignans against the English in Poitou, and the Lusignans' appeal against John to the French royal court. When, at Easter 1202, king Philip summoned John to appear before the court of his barons in Paris, to justify his default of justice, John refused on procedural grounds, arguing that, as duke of Normandy, he could only be summoned to attend hearings on the frontier between France and his duchy, not in Paris. In actual fact, Philip had summoned John as duke of Aquitaine and count of Anjou, so that John's case was weak.[36] Hence, when he failed to appear for his hearing before the French court, Philip declared him a contumacious vassal and announced the confiscation of Aquitaine, Anjou and Poitou, himself leading an invasion of Normandy. The French campaign in the summer of 1202 proved successful, not least in recruiting support from large numbers of Norman barons. In February 1203, John requested papal arbitration with France, obtaining the dispatch of the papal envoys Gerald of Casamari and

[34] *Letters of Innocent III*, ed. Cheney and Cheney, p. 43 no. 262; *Regestum Innocentii III super negotio Romani imperii*, ed. Kempf, i, pp. 69-70 no. 25: 'si quas forsan inter se vel cum aliis obligatione tenentur illicita, eam secure dissolvas, cum, secundum prophetam, dissolvere debeamus colligationes impietatis et fasciculos deprimentes; illam enim colligationem censemus illicitam que regiae devotionis obsequium erga sedem apostolicam impediret'.
[35] *Regestum Innocentii III super negotio Romani imperii*, ed. Kempf, i, pp.130-1 no. 47: 'nec nos ut fideiussores ... inter te et ipsum constituere recusamus'; *Letters of Innocent III*, ed. Cheney and Cheney, p. 43 no. 263.
[36] W. L. Warren, *King John* (London/Berkeley, 1961), pp. 69-80; Maccarrone, 'Innocenzo III e la feudalità', pp. 222-4. Cheney (*Innocent III and England*, p. 285) noted that, writing to the archbishop of Rouen on 7 May 1202, Innocent III requested that ecclesiastical censures without appeal were to be imposed upon the rebels in Poitou, who had withdrawn the respect and honour due to John.

Peter of Capua. This before Normandy fell into French hands, late in June 1203.[37] On 22 August 1203, at Mantes, flushed with his success and having secured the endorsement of at least eleven of his great feudatories who counselled him against any papally arranged peace with England, Philip II repudiated Innocent III's right to intervene, declaring it to be a dispute between lord and vassal to be heard in the French royal, rather than the papal court.[38]

Issued on 31 October 1203, the papal letter addressed to Philip, 'Ex divina lectione', had a twofold purpose. First, the Pope firmly reminded Philip that the papal legate, Peter of Capua, had originally been sent to France, after Richard I had appealed to the papacy over his treatment as a crusader, and that Philip, along with John, had freely agreed first to a truce in 1199, and then to a treaty at Le Goulet in 1200, in the presence of the Pope's envoy. Secondly, Innocent III lamented that Philip had failed to acknowledge the dispatch of Gerald of Casamari in Spring 1202. Furthermore, when the legate arrived at Mantes on 22 August 1203, he had been presented with a French claim that the Anglo-French dispute was over a feudal issue, appertaining to the king, not over a matter of sin, whose judgement undoubtedly might rest with the Pope.[39] On this occasion, therefore, Innocent reasserted the papal right to intervene in Anglo-French conflict, since the treaty of Le Goulet of 1200 had been broken, and the dispute itself was thus to be regarded as subject to the arbitration originally agreed in 1198-9, when the Pope had been asked serve as arbiter by both parties. Furthermore, Innocent III rejected Philip's accusation that he was usurping royal power in this affair, claiming the right to intervene since peace-keeping belonged to the office of the Pope, along with the right to pronounce judgment on the salvation or damnation of souls.[40] Finally, Innocent III maintained that Philip's decision to break the treaty of Le Goulet imposed detrimental effects on the Church and its properties in France, now devastated by the war.

Concluding his argument, Innocent likened the breakdown of the peace to sin itself. The specific papal claim is significant here: i.e. that the bond established between the parties

[37] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 80 nos. 484-6; *Register Innocenz III: 6*, pp. 94-8 nos. 68-70, and see also Maccarrone, 'La papauté', pp. 119-20.
[38] Warren, *King John*, pp. 93-96. See also Maccarrone, 'La papauté', p. 121; Maccarrone, 'Innocenzo III e la feudalità', pp. 225-227. The question of arbitration in feudal matters was addressed later on by Durandus, *Speculum iudicialis*, fol. 43va: 'sed numquid vassallus cum alio contendens super re feudali compromittere potest' (accessed on 29/9/2023": https://gallica.bnf.fr/ark:/12148/bpt6k59354x/f4.imag).
[39] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 83 no. 506; *Register Innocenz III: 6*, p. 267 no. 163: 'de iure feudi stare mandato sedis apostolice vel iudicio non teneris, et quod nihil ad nos pertinet de negotio quod vertitur inter reges'.
[40] Maccarrone, 'La papauté', p. 121; Maccarrone, 'Innocenzo III e la feudalità', pp. 228-9.

when the treaty had been concluded did not represent 'carnal kinship' ('cognatio carnis'), but a 'union of faith' ('unio fidei'). Against this Philip had sinned when he broke the treaty and went to war against John.[41] Hence, Innocent III reprimanded Philip for deviating from the precepts of the Gospel, emphasising that the French king had no clear right against John, merely grievance.[42] Foreshadowing an argument to be expressed in 'Novit', some six months later, the Pope ultimately concluded that it was he and his legate who had the prerogative to pronounce censure in the Anglo-French dispute ('ad nos pertinet sine dubitatione censura'), not because this was a feudal issue pertaining to royal judgement, but because it concerned sin, which fell without any doubt under papal jurisdiction.[43]

In March-April 1204, the papal envoy, Gerald of Casamari, oversaw further negotiations in both London and France. In April-May 1204, Innocent III finally addressed an encyclical letter to the prelates of France: the decretal 'Novit' mentioned above. In it Innocent III first addressed the issue of royal jurisdiction and power, maintaining that the Pope was not to hinder royal jurisdiction and power, and that the same should apply to the king vis-à-vis the pope.[44] This claim was supported by references to Matthew 18:15-17.[45] Secondly, Innocent emphasised that the pope had rebuked the French king in accordance with the Gospel's ruling, only *after* the king of England had accused Philip of trespassing on his prerogatives.[46] Third, Innocent III claimed that it was the Pope's duty, by divine decree, to rule over the

[41] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 83 no. 506; *Register Innocenz III: 6*, p. 269 no. 163: 'Ecce conqueritur rex Anglie, frater tuus, frater, inquam, non cognatione carnis sed fidei unione, quod pecces in eum, et in gravamen ipsius extendas et extenderis manus tuas'.
[42] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 83 no. 506; *Register Innocenz III: 6*, p. 270 no. 163: 'non ius sed iniuriam exerceas contra ipsum'.
[43] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 83 no. 506; *Register Innocenz III: 6*, p. 270 no. 163: 'super hoc de plano cognoscat, non ratione feudi cuius a te spectat iudicium, sed occasione peccati, cuius ad nos pertinet sine dubitatione censura', and cf. Maccarrone, 'Innocenzo III e la feudalità', pp. 220-2. Maccarrone ('Innocenzo III e la feudalità', pp. 230-2, 247-53) further stresses how Innocent III opted for the procedure 'de plano', which would have allowed a papal legate to judge the king on the grounds of sin alone, without getting involved in the feudal dispute, expanding on this procedure in a letter addressed to the French episcopate of 7 March 1205: *Register Innocenz III: 8*, pp. 17-18 no. 7.
[44] *Letters of Pope Innocent III*, ed. Cheney and Cheney, no 556, p. 91; *Selected Letters of Pope Innocent III Concerning England (1198-1216)*, ed. C. R. Cheney and W. H. Semple (London, 1953), pp. 63-4; *Register Innocenz III: 7*, p. 73 no. 42: 'Non ergo putet aliquis quod iurisdictionem aut potestatem ipsius minuere vel perturbare velimus, cum ipse iurisdictionem et potestatem nostram impedire non debeat aut etiam coartare'.
[45] Watt, *Theory of Papal Monarchy*, p. 39, 41, linking Innocent III's argument here to the decretal 'Solite', and pointing out that Innocent III quoted Huguccio's commentary on 'Duo quippe sunt': 'nonne dictum est de quolibet nolente satisfacere, dic ecclesie'. This, according to Watt (*Theory of Papal Monarchy*, pp. 17, 41), was the basis for the papal claim to arbitration in the Anglo-French conflict. Furthermore, according to Maccarrone ('Innocenzo III e la feudalità', p. 229), Innocent III's argument here built on Huguccio's *Summa in Decretum* (commenting on D. 96, c. 10 v. 'pendere').
[46] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 91 no. 556; *Selected Letters*, ed. Cheney and Semple, p. 64; *Register Innocenz III: 7*, p. 73 no. 42: 'quod rex Francorum peccat in eum, et ipse circa illum in correctione processit secundum regulam evangelicam'.

universal church.[47] Therefore, echoing his letter to Philip of 31 October 1203, Innocent III maintained that he did not intend to judge concerning a fief, on which judgement would belong to the king, save when the application of 'ius commune' might be limited by special privilege or contrary custom, but as a matter of sin, in which the power to censure unquestionably belonged to the Pope, and where the Pope could and should intervene regardless of the parties involved.[48]

At this point, Innocent III moved a step further in his argument. Through legal references to Gratian's *Decretum* (D. 63 c. 3, and C. 11, q. 1, cc. 35 and 37), he acknowledged the possibility of appeal to the Pope at any stage of a trial, since papal authority is not of man but of God ('nostra potestas non est ex homine sed ex Deo'). Therefore, he argued, it belonged to the papal office to rebuke any Christian for their mortal sins and to coerce them by ecclesiastical means ('districtio ecclesiastica').[49] Kings were to be treated like any other man (as in Matthew 16:19, and Deuteronomy 1:17). Building on Biblical references from Ezekiel 3:18-20, 1 Thessalonians 5:14, Jeremiah 1:10 ('I have this day set thee over the nations), and Matthew 16:19 ('Whoever thou shalt bind on earth …'), Innocent justified his action by the Pope's 'power of the keys', itself derived from the fact that the Pope was direct successor to St. Peter.

Moving forward, Innocent then equated breaking the peace, as had happened with the French invasion of Normandy in 1202, to a criminal act of sin. Quoting Colossians 3:14, Innocent defined peace as the 'bond of love' ('vinculum caritatis') to which Christ had especially directed his apostles.[50] The exercise of ecclesiastical punishment ('districtio ecclesiastica')

[47] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 91 no. 556; *Selected Letters*, ed. Cheney and Semple, p. 64; *Register Innocenz III: 7*, p. 73 no. 42: 'et tandem, quia nullo modo profecit, dicat ecclesie, quomodo nos, qui sumus ad regimen universalis ecclesie superna dispositione vocati, mandatum divinum possumus exaudire'.
[48] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 91 no. 556; *Selected Letters*, ed. Cheney and Semple, p. 64; *Register Innocenz III: 7*, p. 73 no. 42: 'non enim intendimus iudicare de feudo, cuius ad ipsum spectat iudicium, nisi forte iuri communi per speciale privilegium vel contrariam consuetudinem aliquid sit detractum, sed decernere de peccato, cuius ad nos pertinet sine dubitatione censura quam in quemlibet exercere possumus et debemus'. On this point, see also Maccarrone, 'Innocenzo III e la feudalità', p. 241.
[49] *Letters of Pope Innocent III*, ed. Cheney and Cheney, no. 556, p. 91; *Selected Letters*, ed. Cheney and Semple, p. 65; *Register Innocenz III: 7*, p. 74 no. 42: 'ad officium nostrum spectet de quocumque mortali peccato corripere quemlibet christianum et, si correctionem contempserit, ipsum per districtionem ecclesiasticam coercere'.
[50] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 91 no. 556; *Selected Letters*, ed. Cheney and Semple, p. 66; *Register Innocenz III: 7*, pp. 74 no. 42: 'et licet hoc modo procedere valeamus super quolibet criminali peccato, ut peccatorem revocemus ab errore ad veritatem et a vicio ad virtutem, precipue tamen cum contra pacem peccatur, que est vinculum caritatis, de qua Christus specialiter precepit apostolis'.

should therefore apply against any who denied the apostolic communion ('communionem apostolicam').

Finally, Innocent addressed the issue of papal arbitration in the Anglo-French conflict. His argument here was fourfold. First, any right that one man has established against another may be used by the latter against the former (*Digest*, II, 2 rubric). Secondly, during the war the French king had availed himself of the papal office, and benefited from it in his dealings against Richard. As a result, he must now accept John's appeal to the Pope against him (as he did in February 1203) ('in bello fuerit officio et beneficio nostro usus'). Thirdly, the king of England was not of inferior status to the king of France, the Pope making now allowance here for John's position as duke of Aquitaine and French vassal. Last but not least, the peace made at Le Goulet (in 1199 and 1200), confirmed on both sides by oath, had been not kept for its full duration.[51] Therefore, Innocent demands, 'How could we fail to take cognizance of the sacrality of the oath ('de iuramenti religione'), which unquestionably belongs to the Church's jurisdiction, so that the broken treaty of peace may be remade?'.[52]

It is worth noting that between 1200 and 1204 Innocent III's position on papal arbitration in inter-regnal affairs had evolved substantially. First, in 1200, when he challenged the clause of the treaty of Le Goulet that denied Otto of Brunswick Richard I's legacy, the pope stated that the treaty was illicit ('colligatio illicita'). This on the grounds that it diminished the papal prerogative to ordain a suitable candidate for the Empire.[53] Secondly, in the letter 'Ex divina lectione' of 31 October 1203, after Philip had excluded the Pope from any intervention in feudal disputes on 22 August 1203 at Mantes, Innocent had claimed the papal prerogative to intervene in Anglo-French negotiations concerning the implementation of the treaty of Le Goulet, since his legate had been the arbiter in this matter in 1200.[54] On this occasion, as Michele Maccarrone long ago noted, Innocent III grounded the prerogative of the Apostolic

[51] *Letters of Pope Innocent III*, ed. Cheney and Cheney, p. 91 no. 556; *Selected Letters*, ed. Cheney and Semple, p. 67; *Register Innocenz III: 7*, p. 75 no. 42: 'inter reges ipsos formata fuerint pacis federa, et utrinque prestito iuramento firmata, que tamen servata usque ad prefixum terminum non fuerunt'.
[52] *Letters of Pope Innocent III*, ed. Cheney and Cheney, no. 556, p. 91; *Selected Letters*, ed. Cheney and Semple, p. 68; *Register Innocenz III: 7*, p. 75 no. 42: 'numquid non poterimus de iuramenti religione cognoscere, quod ad iudicium ecclesie non est dubium pertinere, ut rupte pacis federa reformetur?'. On peace-making and oath-taking in the late twelfth and early thirteenth centuries, see J. Benham, *Peacemaking in the Middle Ages: Principles and Practice* (Manchester, 2011), pp. 145-55.
[53] *Regestum Innocentii III super negotio Romani imperii*, ed. Kempf, i, p. 130 no. 47: 'super ordinatione imperii Romani, quod ad nos principaliter et finaliter noscitur pertinere'.
[54] See above n. XYZ ? 39.

See to promote peace on ecclesiological and legal arguments ('evangelizare pacem').[55] Hence, because the peace of Le Goulet had been broken, and because upholding peace was a papal prerogative, justified by ecclesiological and legal arguments, Innocent considered Philip's conquest of Normandy in 1203 not as a rightful action, but as an injury against John.[56] In other words, because of the broken peace, the French conquest of Normandy was, for Innocent III, no longer a secular affair ('cognatio carnis') but had become a matter of faith ('unio fidei'). It was thus to be considered a sin sanctionable with ecclesiastical censure. In this respect, Innocent III carefully defined the sphere of his intervention in Anglo-French conflict, claiming that he did not intend to diminish human judgement, but that he equally could not neglect divine mandate.[57]

Significantly, the letter 'Ex divina lectione' of 31 October 1203, for the most part overlooked by historians because it did not enter canonical collections, especially the *Liber Extra*, laid the foundations for the decretal 'Novit' of March-April 1204.[58] Here Innocent III argued for the separation between secular and ecclesiastical 'potestas et iurisdictio', while reiterating that Philip had committed a mortal sin in breaking the Anglo-French peace. It was therefore a papal prerogative to intervene in Anglo-French affairs ('correctio secundum regulam evangelicam') without any question that the pope was judging a feudal matter, but in this instance only on the question of sin ('non iudicare de feudo ... sed decernere de peccato'). In 'Novit', however, Innocent moved his argument forward in two respects. First, quoting Gratian's *Decretum* (D. 63 c. 3 and C. 11, q. 1, cc. 35 and 37), he emphasised that an appeal to the Apostolic See was possible at any stage in the trial.[59] This point significantly weakened the link, made in previous letters, between the implementation of the treaty of Le Goulet and papal intervention, shifting the role of the Pope in the matter from that of arbiter in the Anglo-French conflict, to that of supreme ecclesiastical authority reprimanding in matters of sin.[60] Secondly, Innocent expanded on the idea that the infringement of the peace, seen as a bond of love ('vinculum caritatis'), resulted in the violation of a sworn oath ('iuramento firmata'). Since the sacred quality of the oath ('de iuramenti religione') fell under

[55] Maccarrone ('La papauté', pp. 113-16) connects this to the doctrine of the peace of God, as developed from the tenth century onwards in tandem with the idea of crusading.
[56] See above n.XYZ ? 42.
[57] See above n.XYZ ? 48.
[58] Maccarrone ('Le papauté', pp. 121-2) notes the relationship between those two letters, and stresses the doctrinal features to 'Novit'.
[59] Maccarrone, 'La papauté', pp. 125-6, 130-3; Cheney, *Innocent III and England*, p. 290.
[60] Maccarrone, 'La papauté', pp. 127-30; Maccarrone, 'Innocenzo III e la feudalità', pp. 240-1, expanding on the difference between 'iudicio' and 'censura'.

ecclesiastical jurisdiction, it was therefore a papal prerogative to deal with the infringement of peace as a matter of sin.[61]

### *3. The Perception of Papal Supra-Regnal Authority and Diplomatic Arbitration in the Canonistic Debate over* 'Novit' *(1206-c. 1250)*

As shown above, in 'Novit' Innocent III established the principle that papal supra-regnal authority in diplomatic arbitrations rested on the papal prerogative to maintain peace among secular rulers. This, he inferred, was to be the case not only when the Pope had been called upon as an arbiter in secular disputes, but also when the peace was broken, since the violation of peace, contracted by the sworn oath of the parties, resulted in the sin of perjury. The subsequent canonist commentary on 'Novit' significantly expanded on these issues, shaping the juridical framework of papal authority thereafter. After 1204, 'Novit' was rapidly received into early decretal collections, including those of Alanus Anglicus (1.16.1, *c*. 1206) and the 'Compilatio III' of Peter of Benevento (Comp. III, 2.1.3, *c*. 1210), itself authorised by Innocent III. 'Novit' was also glossed in the schools by Alanus, Johannes Galensis (*c*. 1210-1215), Vincentius Hispanus (*c*. 1210-1215), Laurentius Hispanus (1210-1216), and Johannes Teutonicus (1216).

The first two commentaries on 'Novit' were both produced before 1210 by masters from the British Isles teaching at Bologna. Writing in about 1206, Alanus Anglicus was mostly concerned with defining the Pope's jurisdiction in 'feudal' affairs, emphasising papal plenitude of power, the Pope's role as universal judge in all matters, and the papal prerogative to investigate 'feudal' or secular issues directly or indirectly when they pertained

[61] Watt, *Theory*, p. 41 n. 14; Maccarrone, 'Innocenzo III e la feudalità', pp. 242-4. Richard Helmholz points out that the oaths for the sake of peace fell into the category of lawful oaths, discussing the extent of ecclesiastical jurisdiction over the enforcement of agreements stipulated through oaths: R. Helmolz, *The Spirit of Classical Canon Law* (Athens, Georgia, 1996), pp. 145-51, 161-71; R. Helmolz, 'Pope Innocent III and the Annulment of Magna Carta', *Journal of Ecclesiastical History*, 69 (2018), 6-13. Nicholas Vincent further explores the issue of oath-taking and 'coniuratio', especially during king John's reign: N. Vincent, 'Magna Carta, Oath-Taking and *Coniuratio*', in M. and J. Aurell and M. Herrero (eds), *Le Sacré et la parole. Le serment au Moyen Age* (Paris, 2018), pp. 214-22. More recently, Emily Corran, has investigated how perjury was addressed in medieval thought: E. Corran, *Lying and Perjury in Medieval Practical Thought: A Study in the History of Casuistry* (Oxford, 2018). On the oath of fidelity and its jurisprudence see M. Ryan, 'The Oath of Fealty and the Lawyers', in J. Canning and O. G. Oexhle (eds), *Political Thought and the Realities of Power in the Middle Ages* (Göttingen, 1998), pp. 211-28; K. Pennington, 'Feudal Oath of Fidelity and Homage', in K. Pennington and M. Eichbauer (eds), *Law as Profession and Practice in Medieval Europe: Essays in Honor of James A. Brundage* (Farnham, 2011), pp. 93-115. As Jenny Benham has pointed out, in practice rulers often broke peace sworn by oath, balancing the sacrality of oath-taking against political and pragmatical calculations: Benham, *Peace-Making*, pp. 151-3.

to a matter of sin.[62] Furthermore, expanding on the exceptions mentioned in 'Novit', whenever the king's application of the *ius commune* in secular affairs was limited by special privilege or contrary custom, Alanus maintained that the Pope could define the jurisdiction of the *ius commune* without any prejudice. Indeed, Alanus argued that the Pope could acquire a privilege by his own authority, and questioned if 'Novit' referred to a universal or a place-specific papal right of intervention, unlimited by grant by any particular secular prince.[63] In about 1210, Johannes Galensis offered a more moderate assessment of the Pope's power to intervene in Anglo-French disputes. Johannes acknowledged the jurisdiction of a lord's court in the event of disputes between a vassal and his lord, as well as the lord's right to pass judgement in disputes amongst his vassals when the lord in question retained jurisdictional rights over a vassal's fief.[64] Building on this distinction. and in contradiction of Alanus, Johannes maintained that the Pope was not superior to kings and princes in temporal jurisdiction, since no such superiority was granted by the *ius commune* and the Church could not grant itself such supremacy without scandal. He conceded, even so, that the Church could intervene if an appeal had been brought before it.[65]

Between 1210 and 1215, Johannes's position was further refined by two Bolognese masters, originally from the Iberian Peninsula: the Portuguese Vincentius, and the Castilian Laurentius Hispanus. Vincentius reiterated Johannes' opinion on the right of judging disputes over fiefs,

[62] Vercelli, Cathedral Chapter MS 89, fol. 65rb (S. Kuttner, *Repertorium der Kanonistik (1140-1234)*, I (Vatican, 1937), p. 321): 'v. intendimus: quod papa est iudex ordinarius omnium hominum de omni negotio et sufficienter probavimus ..... v. iudicare, directe vel indirecte enim de feudo cognoscit eo ipso quod inquirit an peccaverit regem Anglie feudo privando quod investigare ad ipsum directe pertinet, ut per totum c. istud nititur probare'. On the early canonistic debate over Novit, see also Maccarrone, 'Innocenzo III e la feudalità', pp. 254-8.

[63] Vercelli, Cathedral Chapter MS 89, fol. 65rb: 'v. iuri communi. Ergo ius commune est quo papa de feudis non cognoscat, quod est contra hic quod supradicimus ... ius est commune quod papa hic vult pro iure communi hoc habere, sed hec voluntas potestatis eius non preiudicat, quin possit hoc ius contraria constitutione revocare. Hoc dico si scandalum de revocatione non oriretur sed quia certum est quod si hoc ius sibi assumeret, plurimum ecclesia perturbaret, rebus se habentibus, ut nunc revocare non debet nec etiam potest', and f. 65rb: 'v. privilegium: concessum pape ab aliquo principe concessum; dico de facto quia, ut predictum est, sibi posset sua auctoritate assumere, ubi de hoc ecclesia non turbaretur et forte hic loquitur de privilegio quod papa in aliquo loco sibi assumpsit'. See also Watt, *Theory*, p. 50.

[64] Münich, Bayerische Staatsbibliothek MS Clm. 3879, fol. 182rb (Kuttner, *Repertorium*, p. 356): 'v. iudicare: directe indirecte enim cognoscit, de feudo inquirem an peccaverit feudum subcontrahendo directum, vero inditium super feudo inter dominum et vassallum spectat ad curiam domini ut in nova const. Frederici De feudis et penult. Ad ipsum autem dominum spectat, si inter vassallos agitetur, ut ibidem et supra de iud. ceterum l. i supra de foro compe. extransmissa l. ii et c. Verum ita, si ipse dominus alias habet iurisdictionem aliquam; non enim quilibet privatus ob feuda aliis data statim habet iurisdictionem'.

[65] Münich, Bayerische Staatsbibliothek MS Clm. 3879, fol. 182rb: 'v. iuri communi: ar. papam non esse superiorem regibus et pincipibus in iurisdictione temporali cum iure communi de hiis non cognoscat. Solutio hoc plane quidam comedunt, sed male nos contra expone ergo iure communi, idest in iure quo nunc communiter iudicatur sed de permissione ecclesie, propter vitandum scandalum vel in hiis iure communi non iudicat, nisi per appellationem ad ipsum causa deferatur....'

but here with enhanced emphasis on the Pope's jurisdiction. Acknowledging that the Pope was neither superior nor inferior to the emperor in temporal matters, and that the Pope could interfere in temporal affairs only indirectly as a result of sin ('ratione peccati'), he recommended that sin best be expunged through penance.[66] Significantly, however, Vincentius is the first commentator to develop 'Novit's arguments over the infringement of truce and peace, central to the decretal, to justify papal intervention in secular affairs due to sin. Here Vincentius's argument was founded on two earlier authorities: firstly canon 21 of the Third Lateran Council (1179), which had been included in 'Compilatio I' by Bernard of Pavia (Comp. I, 1.24.1, c. 1189-1192), granting bishops the right to excommunicate transgressors who violate truces; and secondly two linked clauses (c. 24 q. 3 cc. 23-24) of Gratian's *Decretum*, where any attack on pilgrims or merchants in transit, as well as against ecclesiastical properties and persons, was to be considered an attack upon the wider Christian community, deserving censure.[67] Likewise, Laurentius Hispanus maintained that the Pope was not superior to the emperor in temporal matters. However, maintaining a more moderate line, he argued that both spiritual and temporal powers ('sacerdotium et imperium') derived from the same principle, and that the spiritual jurisdiction might interfere with the temporal jurisdiction, albeit only in case of necessity, notably when temporal jurisdiction was vacant or void.[68] Touching on e issue of sin, Laurentius further addressed the question of whether a lord might pass judgement against his vassal. Here, he explicitly referred to the king of England as holding a fief from the French king, acknowledging, as Johannes Galensis had done, that in the case of dispute between lord and vassal, jurisdiction belonged to the lord's court. However, if the lord himself had a superior, he would have the right to judge. Quoting the decretal 'Ceterum' (Comp. I, 2.1.7), where it was maintained that a lord might judge a vassal who held a property in fee, Laurentius pointed out that ultimate judgement in such a

[66] Vatican, Biblioteca Apostolica MS Vat. Lat. 1378, fol. 32va (Kuttner, *Repertorium*, pp. 356-7): 'v. iurisdictionem: hic est expressa oppinio mea quod papa non est maior vel inferior quo ad temporalia quam imperator (supra xciii Cum ad verum, xi Quoniam idem). Ex eodem enim principio procedunt in auctoritate que oporteat episcopos in princi(pibus). Ergo papa de temporali se intromittere de iurisdictione i(d est) non debet, nisi indirecte ratione peccati, ut hic et in aliis casibus notatis c. proximo c. ii Vin.', and also 'v. intendimus: directe cognoscendo, an peccet, inducendo ad penitentiam...'. See also Watt, *Theory*, p. 53 n. 25.

[67] Vatican, Biblioteca Apostolica MS Vat. Lat. 1378, fol. 33ra: 'v. precipue: et ideo treuga canonica convencio inventa est supra De treuga c.l.i (Comp. I, 1.24.1), et est alia treuga conventionalis supra que nosti servanda est promittitur xxiii q. i noli (C. 23 q. 1. c. 3) Vinc.', and cf. Watt, *Theory*, pp. 48, 53.

[68] B. J. MacManus, 'The Ecclesiology of Laurentius Hispanus (c. 1180-1248) and his Contribution to the Romanization of Canon Law Jurisprudence, with an Edition of the Apparatus glossarum Laurentii Hispanii in Compilationem Tertiam' (PhD Thesis, Syracuse University, 1987), p. 342: 'v. alienam usurpare vellemus: hic est expressum quod papa non est maior vel superior quoad temporalia quam imperator, xcvi. di. Cum ad verum. Imperium enim et sacerdotium ex eodem principio prodeunt, in authen. quomodo oport. episc. in principio col. ii. Non ergo de temporali iursdictione se debet intromittere, nisi in subsidium cum secularis negligens est, infra titulo proximo, c. i et ii., vel vacante imperio infra titulo proximo c. i. in fine'.

case was the responsibility of the lord who ultimately owned the fief, even when the latter was an ecclesiastical rather than a secular person.[69]

After 1216, building on Vincentius' argument, the Bolognese master Johannes Teutonicus connected the issue of satisfaction due to sin with the concept of the confiscation or restitution of fiefs. Teutonicus here moved on from Gratian's arguments over papal authority, by which the Pope wielded both the spiritual and temporal swords.[70] Maintaining that God alone is the source of temporal power, Teutonicus defined the sphere of papal action in three respects. Firstly, that the Pope could exercise his authority not only regarding hidden crimes, but also regarding those that were manifest; secondly, that he could intervene directly in secular matters on grounds of sin, sanctioned through penance; and thirdly that, as a result, he could enforce the restitution of fiefs.[71] As Jack Watt noted, Teutonicus's argument exercised considerably influence over subsequent debate: namely that sin could not be forgiven without satisfaction, via penance, and that, owing to sin, the ecclesiastical power might have to pass judgement on temporal satisfaction, through the restitution of a fief, in matters which might otherwise be deemed to fall under the competence of secular courts.[72] Finally, Teutonicus prepared the ground for equating the infringement of peace with the infringement of sworn oaths.

[69] MacManus, 'Ecclesiology', p. 343: 'v. ad ipsum spectat: alias nam intelligas hoc de feudo quod rex Anglie habet ab eo. Certe cum questio sit interdictum dominum et vassallum cum superiorem dominum non habeat per partes curie res est decideda ut in constitutione Frederici § Preterea (Lib. Feud. 55 §1). Si autem habet superiorem ille iudex erit, et hoc cum agitur super iure feudatario an in feudum scilicet rem habere debeat. Si autem sit questio inter alium et vassallum istum hoc obtinet, arg. supra de foro comp. *Ceterum*. Si autem agitur de proprietate feudi, ille erit iudex qui esset si dominus fundi conveniretur, arg. illius decretalis *Ceterum* (Comp. I, 2.1.7, X 2.1.5)'. For 'Ceterum', see X 2.1.5: 'ab ecclesia tua constat possessiones tenere in feudum ... parati fuerint super his in tua presentia iustitiam exhibere'. On the issue of ecclesiastical lords, see M. Mordini, *Il feudo ecclesiastico nella prima età dei glossatori* (Milan, 2013), pp. 61-3. Unlike Vincentius, Laurentius did not discuss the issue of truce and peace: MacManus, *Ecclesiology*, p. 344: 'v. de iuramenti religione: violata prout dicitur'.

[70] Johannis Teutonici *Apparatus glossarum in Compilationem Tertiam*, ed. K. Pennington (Vatican, 1981), p. 171: 'v. alienam usurpare: per hoc patet quod papa habet utrumque gladium...'.

[71] Johannis Teutonici *Apparatus*, ed. Pennington, p. 171: 'v. rex Francorum peccat: sic patet et quod hec auctoritas, 'Si peccaverit', non solum ad occulta, set etiam ad manifesta crimina extenditur... v. de feudo: directe, set tantum ratione peccati et inducendo ad penitentiam ... Et sic per consequentiam cogetur restituere feudum ...v. ex homine: similiter imperium a solo Deo est, ut xxiii q. iiii Quesitum, xliii di. Si rector'. This was an awkward issue, addressed in 'Novit' with reference to Gratian's *Decretum* (I, D. 63, c. 3 and II, C. 11, q. 1, cc. 35 and 37), where an abrogated law of the Theodosian Code is quoted to acknowledge the possibility of appeal to the ecclesiastical authorities at any stage of a trial, since Church authority is not human but divine in origin. On the difficulties arising from the use of any abrogated law, see Johannis Teutonici *Apparatus*, ed. Pennington, p. 171, and Godfrey of Trani, in Bnf MS Latin 15402, fol. 48vb.

[72] Watt, *Theory*, p. 122.

First, in common with Vincentius, he maintained that peace with an enemy had to be kept, and that the preservation of peace was a duty of the Church.[73] Secondly, he argued that the breach of the Anglo-French peace amounted to perjury.[74] In doing so, he cross-referenced his opinion on two other decretals of Innocent III: 'Venerabilem' (Comp. III, 1.6.19; X 1.6.34), and 'Sicut' (Comp. III, 1.1.3; X 3.13.8). In both cases he had already addressed the different degrees of satisfaction owed for oaths unlawfully sworn.[75]

Teutonicus' argument was influential over the next generation of canonists commenting on 'Novit'. In about 1220, Tancred, another Bolognese master, contemporary with Teutonicus and a pupil of Laurentius Hispanus, maintained that papal authority was superior to imperial authority because God had given Peter and his successors both earthly and heavenly jurisdiction. While the Church bestowed on kings and princes the execution of temporal power, Tancred maintained that the Church occasionally exercised jurisdiction in civil cases via the clergy.[76] Furthermore, as soon as 'Novit' entered *Liber Extra* in 1234, it received the attention of *Extra*'s early commentators, namely Godfrey of Trani (before 1243), and Bernard of Parma (*c*. 1239-1266). While arguing for a distinction between spiritual and temporal jurisdictions, Godfrey built on Teutonicus' argument that the Pope could exercise his authority not only over hidden crimes but those that were manifest, intervening in feudal matters on grounds of sin for which satisfaction was owed through penance.[77] In respect to Anglo-French hostilities, Godfrey noted that, although the French king had denied that he had sinned against the king of England, he had unjustly confiscated King John's fee since there was only evidence that the English king held his fief from the French king, not that the fief belonged to the king of France: an intriguing distinction between possession and right in

[73] Johannis Teutonici *Apparatus*, ed. Pennington, p. 172: 'v. reges ipsos: nam et hosti pax est servanda, xxiii q. i Noli …. v. pacis federa: ad ecclesiam enim spectat servare pacem, ut supra de treuga et pac. c. i'.
[74] Johannis Teutonici *Apparatus*, ed. Pennington, p. 172: 'v. de iuramenti religione: simile supra de elect.'; Johannis Teutonici *Apparatus*, ed. Pennington, p. 86 (on 'Venerabilem'): 'v. periurium: quandoque periurium non repellit ut supra de constit. Sicut lib. eodem'.
[75] Johannis Teutonici *Apparatus*, ed. Pennington, p. 4: 'v. iuratione incauta: ... Que autem crimina inducant depositionem et quid iuris sit de hac materia plene notavit xv qu. ult. in Summa' (*Decretum*, C. 15 q. 8 c.1). Cf. Watt, *Theory*, pp. 41 n., 53, 54 n.
[76] Vatican, Biblioteca Apostolica MS Vat. Lat. 1377, fol. 187va (Kuttner, *Repertorium*, p. 343): 'v. alienam: ... Ego credo papam esse maiorem imperatorem, ... Petro enim apostolo terreni et celestis imperii iura a Deo commissa sunt ... Ipse utrumque gladium habuerit iuxta illud evangelicum, ecce duo gladii hic quam iurisdictionem et potestatem suis posteris transmisit ... Verumtamen executionem gladii materialis, quo ad iudicium sanguinis, imperatoribus et regibus ecclesia committit, iurisdictionem vero causarum civilium aliquandoque per sacerdotes exercuit ....'. See also Watt, *Theory*, pp. 41 n., 49, 53.
[77] Bnf MS Latin 15402, fol. 48vb: 'v. intendamus: immo alter alterum amare debet. Nam alter alterumlibet auxilio eget ut x di. Quoniam idem mediator (D. X, c. 8), xcvi di. Cum ad verum (D. XCVI c. 6) G. ..... v. si peccavit: auctorem istam exponas nec exposita est ii. q. i Si peccaverit (c. 19 C. II q. 1); rationem infra que non peccaverit in regem Anglie G.'.

which Godfrey builds on Laurentius's argument, that possession of a fief was inseparable from the jurisdiction over it.[78] Like the earlier Bolognese canonists, Godfrey therefore concluded that it was a papal obligation to maintain peace, emphatically calling the clergy to support one other and soliciting the defence of ecclesiastical jurisdiction against armed attacks.[79] Furthermore, building like Tancred on the doctrine of the two swords, Bernard states that the Pope had intervened in the Anglo-French conflict only after the peace, agreed by the parties and secured through a sworn oath, had been broken, following which King John had appealed to the apostolic see against the French.[80] Like Laurentius Hispanus and Johannes Teutonicus before him, Bernard acknowledged that the judgement over fiefs belonged to the lord of the fief and that the Pope might nonetheless judge matters concerning fiefs, if there were a question of sin ('ratione peccati'). Thus, he concluded, the Anglo-French dispute fell within ecclesiastical jurisdiction, because the infringement of a peace sworn by oath entailed perjury, whose censure pertained to ecclesiastical officials by means of excommunication.[81] Hence, the Pope had acted in the Anglo-French dispute in his spiritual capacity, judging sin rather than on any 'feudal' grounds.

In or about 1251, Pope Innocent IV moved the debate on 'Novit' forwards in a different direction. First, he addressed the issue of procedure, arguing that satisfaction and penance could be pursued *ex officio*, without accusatorial procedure.[82] Secondly, he reiterated that perjury, as a mortal sin, fell under papal jurisdiction, even if it arose in a temporal cause.[83] This was to remain at the core of canonistic debate in the second half of the thirteenth century, when Hostiensis, most notably, sought to distinguish those things comprehended within ecclesiastical jurisdiction, to be satisfied through canonical penance, and those that fell

[78] Bnf MS Latin 15402, fol. 48vb: 'v. de feudo: quod rex Anglie habet a rege Francie sed nunc rex Francie iniuriose ad se revocasse dicebatur G. ..... v. detractum: ita ut ad regem Francie non pertineat in dictum et super feudo. G.'.
[79] Bnf MS Latin 15402, fol. 49ra: 'v. pacem: ad quam servandam intendere debet verum s. de pa. et treu. c. et D. xxiiii q. iii. Si quis Romipetas. In quo mutuum sibi auxilium debent prelati, ut ix di. precipi (D. X c. i). Ruis, cur enim ad arma et rixat, permittet contravenire quos potest sua iurisdictio compescere ii. ff. de usuris l. equissimum (Dig. 22.1. 8 'Equis per!' or 22.1.39 'Equis per!') G'. It is likely that Godfrey was here thinking about Frederick II's contemporary attack on the cardinals travelling to Gregory IX's general council.
[80] *Decretales Gregorii IX* (with the *glossa ordinaria* of Bernard of Parma) (Paris 1529), fol. 166r-v.
[81] Watt, *Theory*, p. 41 n., and pp. 14 n. 10, 21, pointing out that Bernard of Parma's argument was reiterated by Raymond de Peñafort.
[82] Innocent IV, *Apparatus in quinque libros Decretalium* (Frankfurt am Main, 1570), commentary on X 2.1.13, at fol. 193rb: 'v. si peccaverit: ... et videtur quod in hac denunciationem non sit necessarius ordo iuris'.
[83] Innocent IV, *Apparatus* (1570), fol. 193rb, §7: 'Item dicimus quod iste modus agendi habet locum, ubi aliquod temporale in quo est reus naturaliter obligatus debet dari vel fieri ... Et est idem in omnibus aliis, que debent dari vel fieri, et peccat qui promisit nisi promissum impleat, ut hic, ubi dicit, quod ad papam pertinet de omni peccato mortali quemlibet corripere'; fol. 193vb: 'v. iuramenti. ... crimen pacis facte et periurii directe pertinere ad iudicium ecclesie'.

within temporal jurisdiction, to be satisfied through the judgement of secular courts.[84] Moreover and most significantly, Innocent IV maintained that the satisfaction of sin might depend upon the restitution of a fief, and that in such a case it could only be judged by the fief's lord or other peers. Since the king of England held his fief from the French king, their dispute should therefore have been judged by jointly chosen judges or arbiters.[85] Finally, returning to procedural issues, Innocent IV maintained that it was for the judges to admit an accusation, deemed to be true unless challenged by the opposing party.[86]

### *4. Conclusions*

Innocent IV's concern for procedure and the appointment of mutually acceptable judges or arbiters leads us back to the question of supra-regnal authority and papal overlordship in the arbitration of secular disputes. The latter were considered within the context of a wider debate over the nature of papal monarchy, and the relationship between spiritual and ecclesiastical jurisdictions, developed in three basic phases.

First, as Watt has argued, the canonical debate over 'Novit', outlined above, shows that the diversity of opinions on the nature of papal monarchy encompassed in the opposite views of Alanus and Johannes Gallensis between 1206 and 1210 provided the foundations for a discussion of papal intervention in temporal affairs due to sin, shifting from the more cautious, binary interpretation of papal arbitrations in temporal affairs expressed by Innocent III in 1204, to a more radical position after 1213.[87] While Alanus both directly and indirectly argued for papal intervention in temporal affairs due to sin, Johannes Gallensis only admitted indirect papal intervention, for instance if an appeal had been presented to the apostolic see. Between 1210 and 1215 both Vincentius and Laurentius Hispanus followed Johannes Gallensis' moderate approach and argued for indirect papal intervention in temporal affairs,

[84] Henricus de Segusia, *Lectura siue apparatus domini Hostiensis super quinque libris Decretalium*, I (Strasbourg, 1512), fol. 123vb-124ra. See also Watt, Theory, pp. 121-3. On the fifteenth-century 'additiones' of Panormitanus to 'Novit', see K. Pennington, 'Panormitanus' Additiones to *Novit ille* (X 2.1.13) in His Commentary on the Decretales', *Rivista Internazionale di Diritto Comune*, 13 (2002), 39-52.
[85] Innocent IV, *Apparatus* (1570), fol. 193vb: 'v. de feudo: directe secus indirecte quia non potest agere poenitentiam, si non restituat..."; "v. iuri: illi sunt quo cavetur quod dominus vel pares debent esse iudices …. v. privileg.: forte enim rex Anglie habebat privilegium a rege Francie quod non iudicaretur per ipsum tamquam per dominum, sed per communes eorum iudices vel per alias certas personas communiter electas idem esset, si super hoc specialem consuetudinem haberet'.
[86] Innocent IV, *Apparatus* (1570), fol. 194ra. See on this point Maccarrone, 'Innocenzo III e la feudalità', pp. 267-8; Watt, *Theory*, p. 61-5.
[87] Watt, *Theory*, pp. 120, 132-3.

albeit with expanded commentary on the reasons for papal intervention due to sin, justified in the case of a broken peace (Vincentius) or in case of necessity, such as an absence of secular authority (Laurentius). Significantly, Laurentius also introduced the argument that the judgement of disputes over fees should fall ultimately to the land's ultimate lord, even when the latter was an ecclesiastical rather than a secular authority.

However, while borrowing many of the arguments of their predecessors, after 1216 Teutonicus and Tancred abandoned these moderate binary positions on papal power. In particular, Teutonicus advanced the debate over 'Novit' on three important issues: first, remarking that the Pope had the power of direct and indirect interventions in temporal affairs owing to sin, especially with regard to peace-keeping; second, mirroring Innocent III's argument in 'Novit', equating breach of a peace with perjury; thirdly, acknowledging that satisfaction due to sin in temporal affairs might lead not only to spiritual penance but also to the forced restitution of a fief. Though more moderate in their estimation of papal authority, in the mid-thirteenth century Godfrey of Trani and Bernard of Parma both followed the earlier canonists, especially Teutonicus, arguing a role for ecclesiastical jurisdiction in peace-keeping (Bernard), linking jurisdiction to property rights (Godfrey), and equating breach of peace with perjury.[88]

Finally, in about 1251 Innocent IV reiterated the Pope's direct and indirect authority in temporal affairs due to sin, exploring the possibility that papal intervention might be initiated *ex officio*, equating perjury with mortal sin, and connecting satisfaction due for sin with the restitution of a fief. Significantly and specifically, Innocent IV addressed the issue of jurisdiction in any judgement between the kings of England and France, arguing that jurisdiction here should be deputed to a jointly chosen team of judges or arbiters. In other words, although he does not here explicitly mention the role of the Pope as arbiter, it remains a reasonable inference from Innocent's commentary to assume that papal arbitration might indeed be required.

[88] As Nicholas Vincent has recently argued, peace-keeping became a popular rhetorical reference in Anglo-papal correspondence, with the incipit to the decretal 'Novit' recycled in a number of letters from 1200 onwards: N. Vincent, 'Gregory IX and the Search for an Anglo-French Peace, 1227-1241', in D. J. Smith (ed.) *Pope Gregory IX (1227-1241): Power and Authority* (Amsterdam, 2023), p. 120 n. 70.

To what extent does this shifting debate reflect the contemporary multiplication of papal claims to supra-regnal authority in secular affairs? Arguably, such an expansion in papal claims seems to be confirmed by our evidence. As Wiedemann has recently suggested, the Pope's supra-regnal authority began to assume a more definite legalistic form from the 1210s, especially after 1213 and king John's surrender of the temporal lordship of England to Pope Innocent III, now received back as a fief-holder in return for fealty ('fidelitas'), liege homage ('homagium ligium') and the payment of annual census. Between June and December 1215, papal correspondence specifically refers to the king of England as the Pope's vassal ('vassallus'). In condemning Magna Carta, by his letters of 24 August 1215, Innocent III further referred to John as having received his kingdoms in fief ('feudum') from the Roman Church, proclaiming that when John had previously offered papal arbitration to the barons, it had been by reason of (papal) lordship ('ratione dominii').[89] Again, as a minor, in September 1219, John's son Henry III specifically surrendered the kingdom of England to the papacy as a fief, as did Rognvald, king of the Isle of Man, in 1219, and James I, king of Aragon, in June 1222. In James case, this came after crowning as a child in 1213, placed under the guardianship of Innocent III by his mother, Marie of Montpellier.[90]

It is worth noting here that, before 1213, neither Alanus nor Johannes Gallensis, discussing indirect papal intervention in temporal affairs due to sin, associated it with the ownership of any fief. However, after 1213, at a time when Innocent III and his legates were politically active in establishing papal overlordship, itself adopting terminology borrowed from vocabulary of 'fiefs' ('feoda'), both Vincentius Hispanus and Laurentius Hispanus in their commentaries on 'Novit' began to argue for indirect papal intervention in temporal affairs, as allowed in the case of a broken peace (Vincentius) or a voidance of temporal jurisdiction (Laurentius). As a Castilian, Laurentius may well have had the minority of James I of Aragon in mind, in which Innocent III had intervened in temporal affairs in his capacity as guardian.[91] Most importantly, the canonists also began discussing the issue of judgement concerning fiefs, agreeing that in the case of a dispute between lord and vassal, judgement fell either to the lord's court, or to a superior, if available, and that the owner of a fief should pass judgement, even if that owner were an ecclesiastical lord.

[89] Wiedemann, *Papal Overlordship*, pp. 95-108. This point is also addressed by Maccarrone, 'Innocenzo III and la feudalità', p. 258, and see Maccarrone, 'La papauté', pp. 134-6; Helmolz, 'Pope Innocent III', pp. 1-14; Vincent, 'Magna Carta', pp. 209-22.
[90] Wiedemann, *Papal Overlordship*, pp. 109-18.
[91] Wiedemann, *Papal Overlordship*, pp. 154-91.

Finally, it is important to note that, from about 1220, the papacy increasingly, albeit for the most part tacitly, threatened its vassals with confiscation of fiefs or land in cases justified by the judgement of sin. This, at precisely the same time that the canonists commenting on 'Novit' (Teutonicus, Godfrey and Innocent IV) addressed the question of the restitution of fiefs in satisfaction for the sin of perjury. Such, for instance, in cases in which vassal-kings were associated with support for heresy (as with James I of Aragon in southern France in 1217), or threatened to break their oaths of fealty sworn to the papacy. Just such a threat, of the 'loss of right to the kingdom' was incorporated within king John's surrender of England and Ireland to Innocent III in 1213, while similar deprivation was to be not only threatened but eventually implemented against the emperor Frederick II, after 1228, and in permanency after 1245.[92]

There is little doubt that Pope's overlordship and his claims to supra-regnal authority developed exponentially across the first three decades of the thirteenth century. As argued by scholars from Richard Southern onwards, the growth of papal power benefitted in practice from the implementation of papal administrative and diplomatic practices, including taxation and other governmental tools, such as the employment of legates or papal judges delegate, across the whole of Christendom. This was by no means a straightforward process but built on ongoing negotiations between the popes and the localities. Meanwhile, the Pope's supra-regnal authority was increasingly justified using ecclesiological and canonical arguments concerning the plenitude of power, framed in decretals such as 'Novit', in which the Pope's right to arbitrate in the Anglo- French conflict is founded upon a complex theoretical apparatus. Significantly, such claims were discussed and informed in dialogue between the papacy and the schools, especially Bologna: a dialogue itself fully cognizant of the principles of *ius commune*. Thus, the disagreement among the canonists concerning the justification of papal intervention and arbitration in temporal affairs as a result of sin (*ratione peccati*) in the first half of the thirteenth century evidence the difficulties in reconciling the theoretical foundations of the Pope's supra-regnal authority with the practice of government within Christendom, which was contingent on political circumstances.

[92] Wiedemann, *Papal Overlordship*, pp. 126-34, 201-2. Nicholas Vincent has recently addressed the issue of peace in Anglo-French relations during the pontificate of Gregory IX, showing how peace and truces dominated this period both in political practice and papal rhetoric. Interestingly, he notes that on 14 May 1233 Gregory IX addressed a letter to Henry III and Louis IX on Anglo-French negotiations with the recycled incipit 'Novit ille qui': Vincent, 'Gregory IX', pp. 101-26.

To conclude. To what extent did the medieval papacy represent a 'special case' in its claims to trans- or supra-regnal authority? In many ways, it might be considered not so much to have diverged from as to have mirrored other contemporary case-studies examined in this volume, in which political power was justified on the basis of theoretical principles. However, there is one particular feature of papal authority that stand out from its wider context. Because of its claims to exclusive authority over Christendom, papal power, as embedded in Christian doctrine, served as a model for other Christian rulers of the Medieval West. As outlined above, in the first half of the thirteenth century the specifically supra-regnal quality of papal power was developed to justify papal jurisdiction over spiritual and temporal affairs, far beyond those territories that were specifically or by sworn agreement placed under papal overlordship. Of course, such claims were met with substantial political and military resistance throughout the thirteenth century. Indeed, the higher the rhetoric of papal authority soared, the weaker the practical political control that the papacy could exercise. Even so, as successor to the Bible's 'King of kings and lord of lords', the Pope himself remained, both in theory and practice, both a potential threat and a potent example to kings or princes seeking to extend the frontiers of their dominion.