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**The Papacy and the Nations of Christendom:  
a study with particular focus on the  
pontificate of John XXII (1316-1334)**

**Sarah Layfield**

**Submitted for the degree of Ph.D.  
2008**

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## **Abstract**

This thesis offers a comparative examination of how expressions of nationhood and sovereignty in the four border nations of Poland, Scotland, Ireland and Lithuania were informed by the intellectual climate of the papal Curia in the early fourteenth century. It seeks to demonstrate that their shared conceptual language was in no small part due to their intended audience, the papacy, and the identity of their authors, whose understanding of a political language associated with the Curia was evidently profound. At a time when the more powerful monarchies of Christendom were articulating their national sovereignty in opposition to the universal claims of both empire and papacy, conceptions of nationhood and independence were evolving along, in many ways, quite different lines in these four frontier political communities. The inspiration for their assertions lay not with any powerful prince, but with a power vacuum, coupled with the threat of oppression or occupation from foreign neighbours. Responsibility for articulating concerns about nationhood and sovereignty lay with churchmen – both secular and regular – for whom such matters were naturally expressed within the legal and theological terms of reference provided by the Curia and its associated political discourse. While providing obvious parallels in conceptual language, the assertions of all four nations also demonstrate the breadth of ways in which canonistic thinking and other intellectual developments associated with the Curia could be harnessed as a means of expressing the political rights of a nation. The papacy's response to such articulations has often been characterised as unsympathetic, typified by the outlook of John XXII, to whom the most famed appeals from all four nations were directed. The comparative approach of this thesis reveals that in fact the pope's rather hesitant and carefully-worded responses did nothing to refute their assertions, and in many cases supported them, albeit sometimes inadvertently.

# Acknowledgements

My thanks are first and foremost due to my supervisors, Dr Len Scales and Professor Robin Frame, for their unceasing encouragement and patience.

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Family and friends have provided the emotional support (occasionally) demanded by doctoral students. In particular, my parents' refusal to tolerate any self-doubt has done much to boost morale at critical moments. This thesis is dedicated to them, in anticipation of their readiness to ignore all of its failings! My brother's kindness in putting me up (and putting up with me) during various research trips to London has been unconditional. And the value of the friendship, and of the various forms of assistance, provided by Meriel, Justin, Claire and Andy, cannot be overstated.

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## List of Abbreviations

ASR	E. L. G. Stones (ed.), <i>Anglo-Scottish Relations, 1174-1328</i>
Bamburgh	P. A. Linehan, 'A fourteenth-century history of Anglo-Scottish relations'
BL	British Library
BP	<i>Bullarium Poloniae</i> I, ed. Sulkowska-Kuras
CCR	<i>Calendar of Close Rolls</i>
CDMP	<i>Codex diplomaticus Majoris Poloniae</i> , ed. I. Zakrzewski and F. Piekosinski
CDPM	<i>Codex diplomaticus Poloniae Minoris</i> , ed. F. Piekosinski
CDPruss	<i>Codex Diplomaticus Prussicus</i> , ed. J. Voight
CDSil	<i>Codex Diplomaticus Silesae</i>
CHP	<i>Cambridge History of Poland</i>
CIC	<i>Corpus Iuris Canonici</i>
<i>Cod Dip Lith</i>	<i>Codex Diplomaticus Lithuaniae</i> , ed. E. Raczyński
CPL	<i>Calendar of Papal Letters</i> , ed. Bliss
CPR	<i>Calendar of Patent Rolls</i>
<i>Das Zeugenverhör</i>	<i>Das Zeugenverhör des Franciscus de Moliano 1312</i> , ed. A. Seraphim
<i>Declaration</i>	'The Declaration of Arbroath', ed. and transl. A. A. M. Duncan (Historical Association pamphlet, 1970)
EHR	<i>English Historical Review</i>
<i>Foedera</i>	T. Rymer, <i>Foedera</i> ,...
GL	<i>Gedimino Laiškai</i> , ed. V. T. Pashuto and I. Štal
HH	Henry of Huntingdon, <i>Historia Anglorum: the history of the English people</i> , ed. Diana E. Greenway (Oxford, 1996)



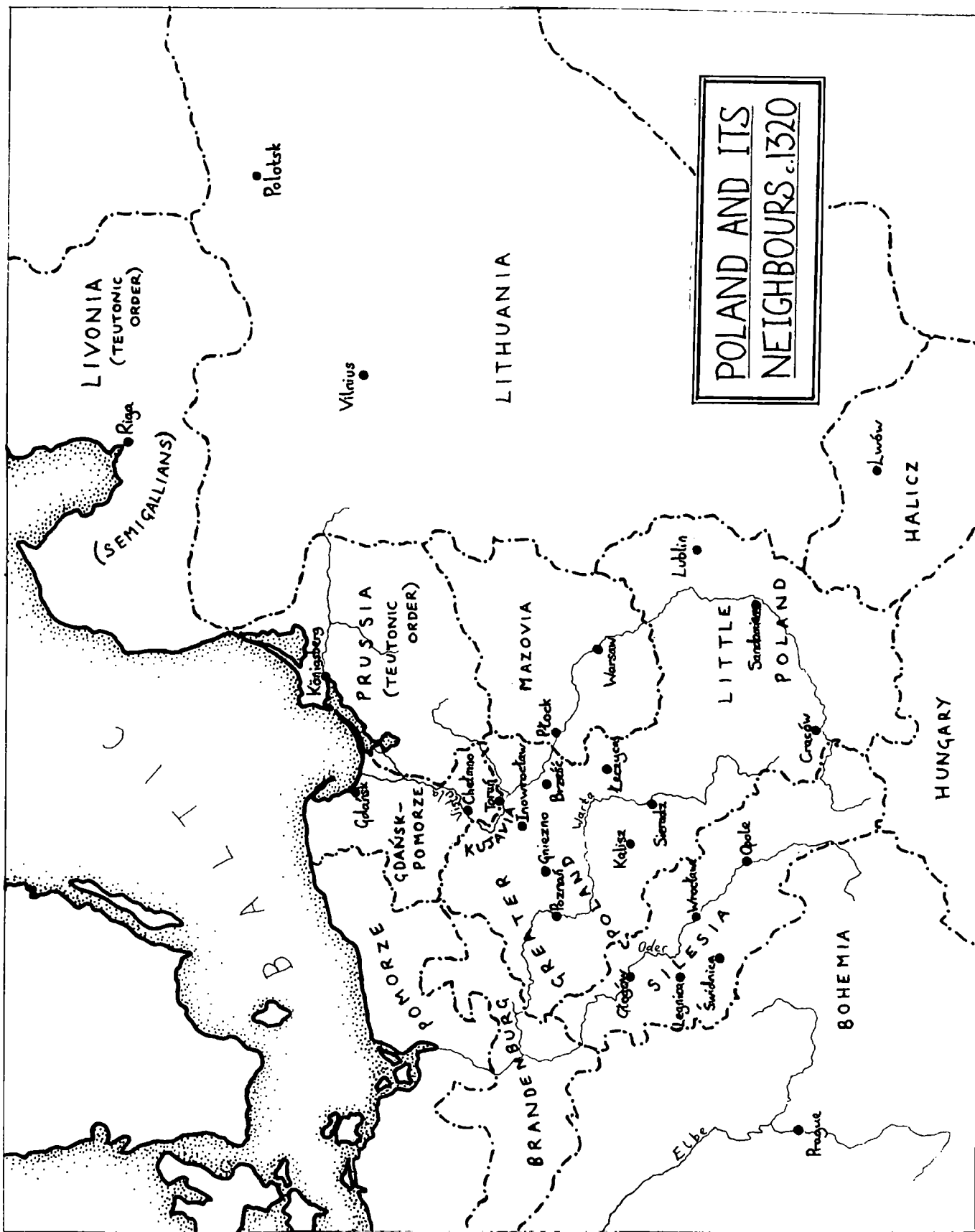
<i>IHS</i>	<i>Irish Historical Studies</i>
John of Paris	<i>On Royal and Papal Power</i> , transl and ed. J. A. Watt
<i>LGÉ</i>	<i>Lebor Gabála Éirenn</i> , ed. Macalister
<i>Lites</i>	<i>Lites ac res gestae inter Polonos Ordinemque Cruciferorum</i> (Wrocław, Warszawa, Kraków, 1970)
<i>LNR</i>	<i>Historical Paper and Letters from the Northern Registers</i>
<i>MPH</i>	<i>Monumenta Poloniae Historica</i>
<i>MPV</i>	<i>Monumenta Poloniae Vaticana</i> , ed. Ptaśnik
NA	National Archives
NAS	National Archives of Scotland
<i>OSP</i>	<i>Oxford Slavonic Papers</i>
Muldoon, <i>PLI</i>	J. Muldoon, <i>Popes, Lawyers and Infidels</i>
<i>Preuss UB</i>	<i>Preussisches Urkundenbuch</i> , 6 vols, ed. M. Hein and E. Maschke
<i>RL</i>	<i>Regesta Lithuaniae ab origine</i> , ed. H. Paszkiewicz
Knoll, <i>RPM</i>	Paul W. Knoll, <i>The Rise of the Polish Monarchy</i>
<i>RRS</i>	<i>Regesta Regum Scottorum</i>
<i>RV</i>	<i>Registra Vaticana</i>
<i>Scalacronica</i>	Sir Thomas Gray, <i>Scalaonica</i> , ed. and transl. A. King
<i>Scotichronicon</i>	Bower, <i>Scotichronicon</i> , ed. D. E. R. Watt <i>et al.</i>
<i>SRP</i>	<i>Scriptores Rerum Prussicarum</i> , ed T. Hirsch, M. Töppen and E. Strehlke
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>
<i>UB Bisthums Culm</i>	<i>Urkundenbuch des Bisthums Culm</i> , ed. K. P. Wölky
VA	Vatican Archives
<i>VMHS</i>	<i>Vetera Monumenta Hibernorum et Scotorum</i> , ed. A. Theiner

VMPL

*Vetera Monumenta Poloniae et Lithuaniae*, ed. A. Theiner

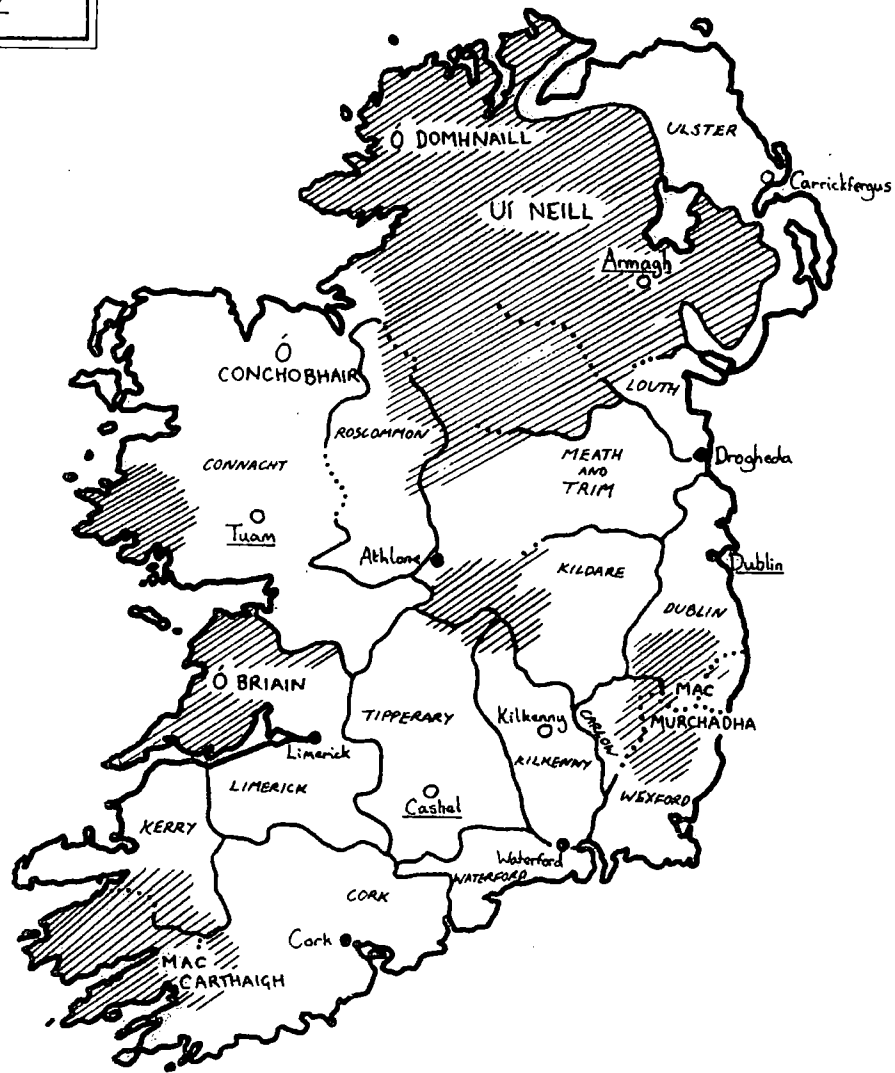
VMHung

*Vetera Monumenta Historica Hungariam sacram illustrantia*, ed. A. Theiner



**POLAND AND ITS  
NEIGHBOURS c.1320**

**IRELAND**  
c.1300



- |       |                                  |          |   |
|-------|----------------------------------|----------|---|
| —     | County/liberty boundary          | ////     | Irish areas barely touched by royal power |
| ..... | Conjectural Co./liberty boundary | UÍ NEILL | Major Irish dynasty                       |
| ●     | Main royal centre                | Tuam     | Archiepiscopal see                        |
| ○     | Other place mentioned in text    |          |   |
| CORK  | County/liberty                   |          |   |

# Introduction

During the pontificate of John XXII, spokesmen for the four frontier nations of Poland, Scotland, Ireland and Lithuania, presented the pope with their concerns about the territorial and jurisdictional threats posed by neighbouring powers. In the process, they arrived at some of the fullest expressions of nationhood and sovereignty to survive from the period.<sup>1</sup> From Scotland came what is now known as 'The Declaration of Arbroath' of 1320, composed in the name of the community of the realm, and refuting English claims to overlordship. Its rendition of the Scottish nation's origin from antiquity and its unquestionable right to occupy Scotland under a native ruler appointed by the community, free from foreign oppression, is now famed for the clarity of its conception of Scottish independence. From Ireland arrived a letter, authored in the name of the king of Ulster, the under-kings and magnates of Ireland, and the Irish people, remonstrating against English lordship in Ireland, and, akin to its relative the Scottish Declaration, recounting the origins of the Irish people to substantiate its appeal for freedom from foreign rule. From Poland came justifications for the natural unity of a hitherto fragmented kingdom, ruled by a single ruler of the Polish nation, in response to the threat of the Teutonic Order's encroachments into Pomorze, as well as to Bohemian claims to the Polish crown. It was in response too to the Order's presence in the region that spokesmen for Grand Duke Gediminas justified to the papacy pagan Lithuania's right to exist free from the Knights' expansionary activity.

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<sup>1</sup> In using the term 'sovereignty' I do not wish to imply the modern meaning of the word which has nonetheless seemingly informed appraisals of medieval declarations of jurisdictional independence. I use it to mean independence from other temporal powers, supported by a conception of a single political community of shared stock, laws, custom and language, governed by a king. For an introduction to such ideas in this period see Antony Black, *Political Thought in Europe, 1250-1450* (Cambridge, 1992), pp. 87-116.



In many ways the conceptions of nationhood and sovereignty formulated, certainly by spokesmen for the three Christian nations, broadly corresponded to widespread assumptions about political communities in this period. Susan Reynolds has amply demonstrated the ubiquity of the notion that kingdoms constituted the perfect political entity, and that they were conceived in terms of ethnicity – constituting a single people and led by a ruler usually of the same stock.<sup>2</sup> Peoples were considered to be ‘enduring realities’.<sup>3</sup> Binding and defining them, so contemporary commentators habitually observed, were their shared language, laws and customs,<sup>4</sup> and this notion of commonality was often expressed in the form of origin myths.<sup>5</sup> Across Europe, it was the national histories of the chronicles, the *gesta* and saints’ lives, rather than the products of any royal chancery, that often comprised the earliest expressions of nationhood in the later middle ages, tracing the history of peoples, their association with their homeland, and their national characteristics. Poland, Scotland and Ireland were no exceptions to this. All boasted a historiographical tradition which expounded (to greater or lesser degrees) the unity and ‘enduring reality’ of the people, their shared language, laws, customs and native rulers.<sup>6</sup>

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<sup>2</sup> Susan Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford: second edition, 1997), pp. 250-331. For case-specific discussions of ‘the nation’ in medieval times see Simon Forde, Lesley Johnson and Alan V. Murray (eds), *Concepts of National Identity in the Middle Ages* (Leeds Texts and Monographs, 1995).

<sup>3</sup> R. R. Davies, ‘The Peoples of Britain and Ireland, 1100-1400: Identities’, *TRHS*, sixth series, 4 (1994), p. 7.

<sup>4</sup> R. R. Davies, ‘The Peoples of Britain and Ireland, 1100-1400’, *TRHS*, sixth series, 4-7 (1994-7), 1-20, 1-20, 1-23, 1-24 (respectively).

<sup>5</sup> Susan Reynolds, ‘Medieval *origines gentium* and the community of the realm’, *History*, 68 (1983), pp. 375-90.

<sup>6</sup> The case of Scotland should perhaps be qualified here, however. As Dauvit Broun has demonstrated, accounts of the Scottish people and their history, emerging from the 1290s, were constructed ‘without the benefit of an origin-legend which focussed chiefly on the people of Scotland. There had, indeed, been no established sense of the Scots as an ancient people in their own right ... The question which remains is whether this idea of a Scottish nation can be explained chiefly as a response to the immediate crisis of the 1290s or was rooted in a more general change in the nature of Scottish society in the thirteenth century’. D. Broun, *The Irish Identity of the Kingdom of the Scots* (Woodbridge, 1999), p. 200.

Why and how such notions were aired at the Curia in the early fourteenth century by these four frontier nations are the concerns of this thesis. Certainly the legal thinking associated with the political 'fragmentation' of Christendom in this period, by which canon and civil lawyers attributed sovereign powers to individual monarchs, is often seen as sitting uncomfortably alongside the political outlook of the papacy.<sup>7</sup> This was an era in which, according to the canonists and civil lawyers in the employ of twelfth- and thirteenth-century rulers, the king was 'emperor in his own realm', recognising no superior in temporal matters.<sup>8</sup> Being crowned and anointed in the same manner as the emperor, he should enjoy equally unrivalled jurisdiction within his own lands. Such ideas were heavily informed by Roman law, from which were developed principles such as prescriptive right – that is, the right of *dominium* through peaceful and unchallenged occupation over a period of time.<sup>9</sup> For those who seek to emphasise the ultimate threat posed by such intellectual developments to the universal claims of the papacy, there is no better collection of sources than those produced by the pope's dispute with the French crown in the early fourteenth century.<sup>10</sup> Philip the Fair's publicists drew on this juristic tradition to refute papal temporal jurisdiction in the realm, and in the process gave legal expression to many common assumptions about

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<sup>7</sup> For the development of legal thought on the authority of the prince, see Kenneth Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley-Los Angeles-Oxford, 1993).

<sup>8</sup> For further discussion of the notion that the king 'superiorem in temporalibus minime recogniscit' see below. For the origin of the dictum 'rex est imperator in regno suo' (usually thought to have been first used in the late twelfth century by the English canonist Ricardus Anglicus), see Gaines Post, 'Two Notes on Nationalism in the Middle Ages', *Traditio*, 9 (1953), p. 306.

<sup>9</sup> Writing in the later thirteenth century and early fourteenth centuries it was partly on these grounds that the Neapolitan jurists Oldradus de Ponte and Andreas de Isernia formulated their cases for the jurisdictional freedom of the Neapolitan kingdom. W. Ullmann, 'The Development of the Medieval Idea of Sovereignty', in *EHR*, 64 (1949), *passim*; Pennington, *Prince and the Law*, pp. 165-201.

<sup>10</sup> Post, 'Two Notes', pp. 296-7. For a revisionist interpretation of Boniface VIII's world view, see J. Muldoon, 'Boniface VIII's Forty Years of Experience in the Law', *The Jurist*, 31 (1971), pp. 449-77. For an overview of the dispute see Joseph Canning, *A History of Medieval Political Thought, 300-1450* (London, 1996), pp. 137-48.

nationhood and the political nature of peoples and their *patria*. Drawing on the argument of prescriptive right the French publicists maintained that if France *had* ever been part of the empire's jurisdiction, it was now free from this by right of prescription, French kings having ruled over their territory peacefully for more than one hundred years, indeed, *ab antiquo*.<sup>11</sup>

The dispute reveals that, by the early fourteenth century, there existed a body of legal thought which supported the popular assumption that kingdoms were natural, enduring entities. The clarification of princely authority inevitably involved discussing the relative powers of pope and king.<sup>12</sup> The direction of much of this legal discussion tended towards an indirect relationship between the two and the idea that both were instituted separately by God, the pope as Christ's vicar, and the kingdom as naturally formed.<sup>13</sup> This argument rested on earlier thirteenth-century discussions concerning the relative powers of king and emperor. For many canonists in royal service, the emperor's authority rested on force alone, and acquisition of jurisdiction through force was against divine and natural law.<sup>14</sup> By contrast,

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<sup>11</sup> According to Pierre Dubois, the French monarchy had enjoyed prescriptive right for a thousand years. M. Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge, 1963), p. 427. Other supporters of Philip the Fair chose simply to point out that, having occupied their *patria* 'ab antiquo', they had done so for more than a century. J. A. Watt, 'The "Quaestio in utramque partem" reconsidered', in *Studia Gratiana* 13 (1967), pp. 420, 438; *Quaestio de Potestate Papae (Rex Pacificus): An enquiry into the power of the pope*, ed. and transl. R. W. Dyson (Lewiston, 1999), p. 88. It was, of course, an argument they used to refute the papacy's power to intervene in temporal matters. See, for example, R. Dyson (ed. and transl.), *Three Royalist Tracts, 1296-1302* (Bristol, 1999), pp. 63, 83, using Innocent III's decretal *Ad Audientiam* (CIC, 2.26.13).

<sup>12</sup> For this see Pennington, *Prince and the Law*, *passim*.

<sup>13</sup> This did not necessarily entail, of course, the belief that the pope had no authority to intervene in temporal matters relating to the kingdom, though the French publicists of the early fourteenth century did use it in this way.

<sup>14</sup> The argument concerning force in refutation of imperial jurisdiction was first evolved, it seems, by the canonist Ricardus. It was later appropriated by Oldradus de Ponte. Ullmann, 'Sovereignty', p. 31. John of Paris declared, similarly, that the empire was no more divinely instituted by God than any other temporal authority, and listed several empires that had preceded it: 'Each of these empires was just as much from God as the Roman empire'. John of Paris, *On Royal and Papal Power*, transl. and ed. J. A. Watt (Toronto, 1971), p. 227.



kingdoms were older, natural entities which were established without such force. From as early as the later twelfth century, canonists and legists came to perceive the formation of divisions in *societas* not simply as a necessary accommodation of man's sin, by which the original commonality of ownership of property had to be compromised: it came to be spoken of positively, as natural.<sup>15</sup> Natural law informed the *ius gentium* or the *ius commune* – the laws common to all men – in as much as natural reason was the author of such laws. The formation of societies was lawful according to this law, and it was therefore natural for peoples each to form their own society. It was also natural for them to defend these societies, since the naturalness of defending oneself came to be applied to the consideration of just war between states or *regna* – what Gaines Post described as ‘a kind of public natural law’, regulated by the *ius gentium*.<sup>16</sup> In discussing just war, canonists joined the legists in arguing that the defence of one's *patria* should supersede all other loyalties: feudal loyalty to one's lord, for example, ought to be abandoned if it compromised the defence and welfare of the fatherland, its prince and its people.<sup>17</sup>

By the mid-thirteenth century canonistic debates about just war also included varied considerations of the natural political rights of peoples *extra ecclesiam*.<sup>18</sup> Writing in his capacity as a canonist, Pope Innocent IV contradicted many of his contemporaries by recognising

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<sup>15</sup> As Gaines Post has made amply clear, that society naturally organised itself into separate political communities was a notion developed in legal, not least canonistic, circles, long before Aquinas' Christian synthesis of Aristotle, for whom the political plurality of man according to laws, language and customs was entirely natural. Gaines Post, *Studies in Medieval Legal Thought* (Princeton, 1964), pp. 3, 541 and *passim*.

<sup>16</sup> *Ibid.*, pp. 531-3. Post's contention is that the theory of the state conceived in this period emerged through the development of just war theory by canonists and legists, evolving the notion of the public welfare and the state of the realm. In doing so they drew on the Roman classics and Roman law, but also 'natural law'. Post, *Legal Thought*, *passim*, and 'Two Notes on Nationalism', *passim*.

<sup>17</sup> Post, *Legal Thought*, pp.532-3; Reynolds, *Kingdoms and Communities*, p.235.

<sup>18</sup> For this development, see J. Muldoon, 'Extra ecclesiam non est imperium: The Canonists and the Legitimacy of Secular Power', *Studia Gratiana* 9 (1966), pp. 553-80, and Frederick H. Russell, *The Just War in the Middle Ages*, Cambridge Studies in Medieval Life and Thought, series 3, no. 8 (Cambridge, 1975), pp. 119, 197-9, 209-11, 294.

that *dominium* did exist *extra ecclesiam*. It was not a widely emulated contention among the canonistic authors of the later thirteenth century, and was discordant with the opinions of Innocent's most famous student, Hostiensis. Nevertheless, Innocent's authority was weighty, and his opinions are an important illustration of the presence within canonistic debates of the notion that political communities were natural entities. According to Innocent, that men might select rulers for themselves was part of God's creation, and was a practice evident long before the coming of Christ: the Israelites, after all, had selected Saul as their leader.<sup>19</sup>

Aquinas' Christian synthesis of Aristotle was, in many ways, the theological complement to this developing body of legal thought: the central tenet of the *Summa Theologica* was the natural political plurality of human society. Aristotle's conception that peoples with different laws, language and customs, ought naturally to be governed separately, accorded neatly with the ideals of western kings in pursuit of jurisdictional freedom from imperial claims.<sup>20</sup> For many modern writers, it was this new Aristotelian contribution of thought that gave unprecedented and unlimited potency to the notion that 'the state' was naturally good and possessed its own moral purpose.<sup>21</sup> Through their discussion of just war Aquinas and other theologians elaborated on this moral purpose with the idea of public over private right.<sup>22</sup>

It was on this array of theological and legal conceptions that canonists and publicists of the French and Neapolitan courts in particular came to rest their case for regnal independence in

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<sup>19</sup> *Commentaria Doctissima in Quinque Libros Decretalium*, translated in James Muldoon (ed. and transl.), *The Expansion of Europe* (Philadelphia, 1977), p. 192.

<sup>20</sup> Aquinas in fact ignored the issue of world government altogether. Black, *Political Thought*, p. 109.

<sup>21</sup> Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London, 1961), pp. 231-79. The emphasis put on the importance of Aristotle by both Ullmann and Wilks has received much criticism, most famously perhaps by Gordon Leff in his article 'The Apostolic Ideal in Later Medieval Ecclesiology', *Journal of Theological Studies*, n.s., 18 (1967), pp. 58-82.

<sup>22</sup> For this see Russell, *Just War*, pp. 213-91.

the early fourteenth century. Oldradus de Ponte employed the principle of prescriptive right to refute imperial claims to jurisdiction over the Neapolitan kingdom, but he also maintained that the separateness of political communities was dictated by natural law, equating men to herds of animals on account of their natural political plurality. Powerful evidence for such naturalness could of course be obtained from the Old Testament, which testified to the eternity, the divine ordination, and therefore the naturalness, of kingdoms. Kings existed in the Old Testament, whereas emperors did not.<sup>23</sup> The French publicists drew their arguments on almost identical lines, with John of Paris turning to mythological history – the Trojan origin of the Franks – to illustrate further the longevity and eternal freedom of the French kingdom.<sup>24</sup>

This is not to say that the jurisdictional independence of all kingdoms was assumed by every jurist or publicist who advocated a degree of independence from imperial rule. A hierarchy of kingdoms was often postulated. The early thirteenth-century Spanish canonist Laurentius had restricted his assertion about the freedom of kingdoms from imperial jurisdiction to France and Spain.<sup>25</sup> A century later, the jurist Durandus argued that it was the French king alone who enjoyed freedom from the emperor's jurisdiction, which was otherwise universal.<sup>26</sup> For the French publicists, of course, the French nation constituted the chosen people and their kings the most Christian, not to be likened to any other.<sup>27</sup>

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<sup>23</sup> This is an argument employed by Oldradus, among many others. Ullmann, 'Sovereignty', p. 30.

<sup>24</sup> John of Paris, pp. 224-5. Largely, however, John of Paris illustrates this through the analogy of Old Testament peoples, particularly the Israelites.

<sup>25</sup> Discussed in Post, 'Two Notes on Nationalism', p.306.

<sup>26</sup> Ullmann, 'Sovereignty', p. 10.

<sup>27</sup> For this see J. R. Strayer, 'France: the Holy Land, the Chosen People, and the Most Christian King', in T. K. Rabb and J.E. Seigel (eds), *Action and Conviction in Early Modern Europe* (Princeton, 1969), pp. 3-16.

Even so, the implications of such thought were the same, regardless of a qualifying hierarchy. Philip the Fair's supporters demonstrated how such assertions of national sovereignty might be used to compromise not only the emperor's authority but also the pope's plenitude of power. It was in their efforts to challenge the pope's right to intervene directly in the temporal affairs of the kingdom that the French publicists described this jurisdictionally independent *regnum* of natural and ancient origin, consisting of a nation that enjoyed divine favour.<sup>28</sup> French kings claimed their authority to be directly instituted by God, evidenced by their own sanctity.<sup>29</sup> According to John of Paris,<sup>30</sup> whereas natural law and the law of nations produced the kingdom, the pope was instituted by Christ when he charged Peter with the words 'Feed my sheep'.<sup>31</sup> Thus ancient kingdoms, he continued, had existed 1,200 years before the founding of Rome, while kingship itself could be shown to have preceded priesthood. Christ's coming to earth had no direct impact on the nature or legitimacy of royal power, since this was a form of jurisdiction distinct from that granted to Peter and his successors, which was purely spiritual.<sup>32</sup> For many, this embodies the supposed 'secularisation' of Christendom in this period – the emergence of national political communities over which popes struggled to exert their universal authority: communities which increasingly looked inwards for the moral authority with which to justify their

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<sup>28</sup> For a recent interpretation of how the dispute changed the nature of relations between papacy and kingdom see T. Mastnak, *Crusading Peace: Christendom, the Muslim World, and Western Political Order* (Berkeley, Los Angeles, London, 2002), pp. 241-53.

<sup>29</sup> Philip the Fair's supporters could point to the ability of French kings to cure scrofula and perform other miracles. Thus the author of *Rex Pacificus* recounted how the 'blessed Louis, grandfather of the present king, paid the debt of all flesh at Carthage while spreading the Christian faith, ... [and] Jesus Christ ... proved his sanctity by so many and such great and evident miracles'. R. Dyson (ed. and transl.), *Quaestio de Potestate Papae (Rex Pacificus): An enquiry into the power of the pope* (Lewiston and Lampeter, 1999), p. 89.

<sup>30</sup> I understand that the outlook and intentions of John of Paris are a matter of contention, but the phrases I have taken from his work are those which represent common opinions of the French publicists. For the contention see J. Dunbabin, 'What's in a name? Philip, King of France', *Speculum*, 68 (1993), pp. 949-68.

<sup>31</sup> John of Paris, p. 85.

<sup>32</sup> *Ibid.*, p.93.

sovereignty, and which had the benefit of a loyal, secular clergy as their principal champions.<sup>33</sup>

This thesis will illustrate that such a paradigm is unsatisfactory, since it does not readily accommodate the fact that spokesmen from Poland, Scotland, Ireland and Lithuania chose the Curia as the forum for expressing concerns about their sovereignty and the survival of their nation. This is not to say that papal involvement in the evolution of doctrines of sovereignty has hitherto gone unnoticed. For Ullmann, papal support for French claims to jurisdictional independence from the empire constitutes 'one of the most fascinating aspects of political life in the later middle ages'.<sup>34</sup> Ullmann had in mind here Clement V's pronouncements on the dispute between Henry VII and Robert of Naples, which were informed by Oldradus, and stated, among other things, that 'those laws [that proclaim the emperor's universality] were valid during the time of the Roman empire, but the law of nations introduced separate dominions and separate kingdoms. The Roman empire now has boundaries and limits'.<sup>35</sup> Ullmann did not develop his appraisal of what was for him a rather

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<sup>33</sup> For Post, of course, this was first instigated by legal thought according to which the right to wage just war became potentially that of every prince, and the defence of the *patria* was every subject's duty. See above, note 15. For Ullmann and Wilks, the naturalness of political societies evidenced in Aristotle gave the final impetus to the process of thought identified in the works of John of Paris, Ockham and Dante, and which culminated in the scheme advocated in 1324 by Marsilius of Padua in his *Defensor Pacis*, in which the Church was a mere creation of the state. For the 'moral purpose' of political communities, see Post, *Legal Thought*, pp. 532-47 and *passim*; cf. Sophia Menache, *The Vox Dei: Communication in the Middle Ages* (Oxford, 1990), pp. 175-90; Mastnak, *Crusading Peace*, *op cit*.

<sup>34</sup> Ullmann, 'Sovereignty', p. 26. The most famous indicators of such support was perhaps the bull *Per venerabilem*, issued by Innocent III. *CIC*, 4.17.13. See also Kenneth Pennington, 'Pope Innocent's Views on Church and State: A Gloss to *Per Venerabilem*', reprinted as Chapter IV in K. Pennington, *Popes, Canonists and Texts, 1150-1550* (Aldershot, 1993). In this, Innocent concurred that the French king 'superiorem in temporalibus minime recognoscit'. This was seized on by canonists who debated whether or not it referred to the *de iure* or merely the *de facto* position of the French king. Though the *Glossa ordinaria* deemed it to be the latter, in his commentaries Pope Innocent IV interpreted it to mean the former. Canon lawyers in the employ of assertive monarchs could also draw on the *Super speculum* of Honorius III in 1219, which recognised that Roman law did not in fact run in many kingdoms. For this, see Post, 'Two Notes', p. 302.

<sup>35</sup> Quote in Pennington, *Prince and the Law*, p. 176.

ironic alliance between pope and king in refuting imperial jurisdiction,<sup>36</sup> but the works of subsequent historians have suggested how it might be possible to understand papal involvement in such intellectual developments as positive and constructive rather than (or as well as) being political. It is worth recalling here the process of producing what Kenneth Pennington has described as a European *ius commune*, a common legal system through which the powers of princes and the rights of their subjects were mapped out, was one involving Roman, canon and secular jurists. Despite a consciousness of their differing traditions, their involvement was harmonious: 'By the year 1300, the two major branches of law in Western Europe, canon and Roman law, were parts of a single intellectual system'.<sup>37</sup> It was a process with which popes, as canonists, were often occupied, and a system which they fully understood and respected.<sup>38</sup> Clement V's pronouncements can quite easily be reconciled to the papal outlook developed over the previous couple of centuries.

From as early as the pontificate of Gregory VII, the papacy had taken a very active role in the changing political landscape of Europe, demonstrated firstly by its attempts to forge feudal ties with kingdoms.<sup>39</sup> This role was assumed not only for political reasons but was also informed by intellectual developments. Christendom came to be conceived by successive popes as a series of peoples and their rulers, of worldly origin – a conception given credence through canonistic debates relating to just war and by the Christian synthesis of Aristotle,

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<sup>36</sup> Ullmann sees the irony of this alliance as epitomised by Clement V's bull *Pastoralis cura*, which acknowledged the *de iure* independence of the Neapolitan kingdom from imperial jurisdiction. For Ullmann, such an alliance was largely incidental and political, entered into without consideration of the possible ideological consequences. Ullmann, 'Sovereignty', pp. 27-9 and *passim*.

<sup>37</sup> Pennington, *Prince and the Law*, pp. 6-7.

<sup>38</sup> See James Muldoon, *Popes, Lawyers and Infidels* (Liverpool, 1979).

<sup>39</sup> Gerhart B. Ladner, 'The Concepts of "ecclesia" and "christianitas" and their relation to the idea of papal "plenitudo potestatis" from Gregory VII to Boniface VIII', in *Miscellanea Historiae Pontificiae*, 18 (1954), p.51.

pillars of the papacy's outlook.<sup>40</sup> The influence of the latter is unmistakable in a bull of Clement V, which pronounced that 'the king of Glory formed different kingdoms for diverse peoples according to differences in language and race'.<sup>41</sup> A 'pluralistic' conception of Christendom was implicit too in the language of Christendom's welfare, emanating from the Holy See. Kings had a responsibility within Christian society to defend the Faith and to protect the faithful, not only in their own lands but in Christendom as a whole – a responsibility of which the pope reminded them.

For some historians, the papacy's attempts to accommodate political plurality were inevitably limited. The lagging observance of feudal ties to the papacy from the later thirteenth century is seen to reveal the papacy's ultimate irrelevancy in the establishment of new sovereign 'states'.<sup>42</sup> In Yves Renouard's words, 'papal suzerainty only went on being exercised over weak kings who wanted the pope's help'.<sup>43</sup> Indeed, he may well have had Poland and Scotland in mind, where the idea of papal overlordship still had some currency in the early fourteenth century. In the first instance it should be noted that this analysis of mere pragmatism does not always square with the words of contemporaries. When negotiating with the Welsh in the early 1280s, Archbishop Peckham saw fit to remind them of the special protection enjoyed by the English through the payment of the census to the Holy See: 'regnum Angliae est sub speciali protectione sedis apostolicae et ... Romana curia plus inter regna cetera diligere consuevit'.<sup>44</sup> The notion that the papacy selected and supported those

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<sup>40</sup> For Gregory VII's understanding of this, see *ibid.*, p. 51, note 10.

<sup>41</sup> *Les Registres de Clement V* (Paris, 1957), no. 7501, quoted in Strayer, 'Most Christian King', p. 15.

<sup>42</sup> This is an attitude, as will be discussed below, which has informed modern appraisals of Scottish assertions of sovereignty.

<sup>43</sup> Yves Renouard, *The Avignon papacy: the popes in exile, 1305-1403* (New York, 1994), p. 129.

<sup>44</sup> *Registrum epistolarum Fratris Johannis Peckham archiepiscopi Cantuariensis*, ed. Charles T. Martin (Rolls Series; 3 vols, London, 1882-5), vol. 2, p. 436.

kingdoms of especial worth appears to have been one way of expressing the permanence, reality and indeed perfection of the kingdom.

But more importantly, such observations as Renouard's ignore completely what this thesis sets out to demonstrate: that the papacy often played an important role (knowingly or otherwise) in formulations of national sovereignty, and that for this it was ideologically well positioned. Even for those nations which could not, or did not wish to, boast a relationship of direct papal lordship, the papacy was seen as an appropriate audience for expressions of national sovereignty, that is, of natural, permanent independence and political legitimacy. There seem to be two main aspects to this, which will be explored. Firstly, as a participant in the intellectual developments associated with defining political authority within a politically plural Christendom, the pontiff was seen as a possible sympathiser with their concerns. Secondly, the papacy provided the spokesmen of such nations with an authoritative source of language through which to express, and even develop their concerns about nationhood and independence. Poland, Scotland, native Ireland and Lithuania were four such nations which faced urgent questions about political legitimacy in the early fourteenth century, which led them to the Curia, and about which a word of introduction is required.<sup>45</sup>

In January 1320, Duke Władysław Łokietek (1306-1333) was crowned king of Poland. The significance of this was that he was the first Polish prince to be accorded the title for over a century. By the later thirteenth century the kingdom of Poland had long become a collection of principalities for whose rulers Polish unity was not always, if ever, a priority. A burgeoning sense of national unity, frequently expressed in opposition to the alleged activity

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<sup>45</sup> For the political, economic and cultural context of such border political communities see Robert Bartlett, *The Making of Europe. Conquest, Colonisation and Cultural Change, 950-1350* (London, 1994).



and influence of German immigrants, emerged among clerical circles from the mid-thirteenth century. It was the efforts of a series of prelates, notably the Archbishops of Gniezno, which generated the kingdom's gradual reunification, realised in part under a number of Polish dukes, then in full, at the turn of the century, under the Bohemian king, Václav II. When Łokietek returned to Poland from exile during Václav's rule, his (re)acquisition of Polish territory was supported by anti-Bohemian sentiment which had developed after 1300. However, not until more than a decade later did he hold what he deemed sufficient territory to merit the royal title, and even thereafter his pre-eminence was far from uncontested. Bohemian claims to the crown persisted, while the integrity of his kingdom was irrevocably compromised by the presence of the Teutonic Order in Pomorze, a region commonly perceived to be part of the ancient Polish kingdom.

Early fourteenth-century Scottish leaders similarly felt compelled by circumstances to elaborate on the legitimate relationship between people and ruler, and between the kingdom and an overbearing neighbour. Until 1290, Scotland, unlike Poland, had enjoyed the reality of a stable monarchy on the model of western counterparts and around which coalesced a sense of political community and independence from English claims to overlordship. With the death of Alexander III and his only surviving heir, the Maid of Norway, Scotland's political community had to find a successor from an array of claimants. The rival factions associated with the competition's two front-runners, Bruce and Balliol, were to dominate Scottish politics for many decades to come. The initial choice was John Balliol, who paid homage to the English king. His subsequent failure to effect Scottish independence, and the resignation of his title at the English court presented an opportunity for the Bruces. The rise of Robert Bruce was the ascendancy of a faction, to which the suppression of the Comyn

(Balliol) faction was of central importance. Soon after murdering John ‘The Red’ Comyn in the friary of Dumfries in 1306, Bruce ascended the throne. In such circumstances, the Soules conspiracy of 1320 against the Scottish king should have provoked little surprise, despite being led by a supporter of otherwise blameless record. Bruce was never free from potential challengers. The Balliol/Comyn faction, with its ties to the English court, and central figure of Edward Balliol after John’s death, remained a substantial threat to Bruce’s rule.

The political landscape of native Ireland in this period was altogether very different from that of either Poland or Scotland. Ireland had been under English rule since Henry II’s papally-sanctioned enterprise there in 1171.<sup>46</sup> Much of the island was colonised and administered by the English crown on the English model. But much of the island also remained culturally and politically detached from the colony, notably in upland areas and in northern and western regions. Though initially eager to formalise their relationship with the English crown to confirm their territorial position, many senior native Irish rulers continued to rule in a manner to which they were accustomed before the conquest, and in familiar territory. Their style of kingship was, however, far removed from that of their Western European contemporaries. While the idea of a ‘high kingship’ had been touted by various native rulers since the late tenth century, native Irish political unity was never more than fanciful. Notwithstanding the pretensions, in particular, of the Ó Neill dynasty in the north of the island, no single native ruler commanded the loyalty of all others. Nor were national divisions concordant with political ones. Native Irish lords could be found at war with each other as readily as they might be found attacking neighbouring English communities. Despite this, particular conditions of the lordship preserved and even fostered a sense of

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<sup>46</sup> Papal sanction had been obtained earlier on in his reign in the form of the bull *Laudabiliter*, which is discussed at greater length in the chapter on Ireland, below.

ethnic and cultural identity:<sup>47</sup> distinctive Gaelic ecclesiastical and legal practices remained where English influence was minimal; where English and Irish communities met, the contrast in such practices provoked hostility and resentment, naturally expressed in national terms. Support for Edward Bruce on his arrival in 1315 was by no means nationally exclusive, being drawn from Anglo-Irish as well as Irish leaders, and certainly not all the Irish at that. But his assumption to the title of high king demanded justification which, akin to the Polish and Scottish situations, was sought in terms of the relationship between people and ruler.

In all three areas, therefore, there was a 'new' ruler seeking legitimacy from the community, as well as legitimacy within the context of Christendom. The latter was the aim too of the Lithuanian grand duke Gediminas, who approached the pontiff in 1323 regarding the possibility of conversion. Gediminas pursued this possibility in order to de-legitimise the Teutonic Order's persistent aggression. But Gediminas' mendicant advisors also saw the opportunities offered by the forum of the Curia for expressing his legitimacy in other ways, ones in fact far removed from the matter of faith.

In approaching the Curia to air their concerns about nationhood and sovereignty, Polish and Scottish representatives were, in one sense, continuing a tradition. In the later thirteenth century and at the turn of the fourteenth century, Poland and Scotland had claimed papal suzerainty as a means of safeguarding their jurisdictional independence from foreign powers. However, by the beginning of John XXII's pontificate this was far from central to their

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<sup>47</sup> For a sense of Irish nationhood as expressed in relation to Ireland's newcomers, see James Lydon, 'Nation and Race in Medieval Ireland' in Forde, Johnson and Murray, *Concepts of National Identity*, pp. 103-8. Cf. the fourteenth century tract in *The Tribes and Customs of Hy-Many*, ed. John O'Donovan (Dublin, 1843), p.136, describing Anglo-Irish and Scottish 'foreigners'.

conceptions of sovereignty. Instead, they understood the relevance of the Curia for airing their concerns irrespective of any relationship of papal overlordship emphasised previously. For Polish, Scottish and Irish spokesmen, the Thomist conception of political order clearly provided a suitable framework for their arguments: all three groups informed the pontiff of their shared laws and customs. But this was far from the full extent to which they used a conceptual language associated with the Curia to express their concerns. As will become clear, such men were highly attuned to an array of legal and theological thinking associated with political thought and discourse current at the papal court.

To determine the pedigree of ideas about nationhood and sovereignty put to the pontiff by these four nations, the thesis examines how far they rested on existing historical traditions, in addition to how they related to more general diplomatic practices. This examination reveals the extent to which a legal and political language associated with the Curia was being used to express existing and/ or changing conceptions of sovereignty, as well as the extent to which the audience itself shaped or clarified such conceptions. The influence of the papal audience on some of the documents with which this thesis is concerned has already received much attention, but it has rarely been of a detailed comparative nature. Use of the Latin *cursus* in the so-called Declaration of Arbroath, for instance, is widely recognised.<sup>48</sup> But only a comparative approach can yield a precise understanding of the influence of ‘papal’ political and legal conceptions.

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<sup>48</sup> First identified by Lord Cooper in his article ‘The Declaration of Arbroath Revisited’, that the *cursus* is employed is a seemingly mandatory observation in any discussion of the document (including this one!). Goldstein has considered the Declaration’s construction for a papal audience perhaps more than any other. The only study to have yet considered the letter in a detailed comparative way has been produced by Björn Weiler, who has appraised it within the context of a broader political discourse associated with the papacy. For bibliographical details see below, Chapter 2.

As would be expected, this comparison of the Curia's role in the formulation of political ideas and expressions has revealed clear similarities. That these nations chose to air such ideas at the papal court is itself indicative of perhaps the most obvious parallel: that they all perceived the pontiff as potentially sympathetic towards some notion of their natural political rights, or at least that they saw the potential offered by legal and political thinking associated with the papacy as a means of expressing such a notion. That they did so is suggestive of the learning of their envoys. It is also suggestive of more general, political similarities between these frontier nations. In such areas as Poland, Scotland and native Ireland, where national divisions were felt keenly in ecclesiastical circles, and a strong or sustained institution of a national monarchy was, to varying degrees, lacking, churchmen proved to be central in the formulation of ideas about national sovereignty. Lithuania marks an exception to this in as much as it was pagan. But the Grand Duke's reliance on Mendicant clerks provides an important insight into the role played by these Orders too in disseminating the political language of the Curia to the farthest corners of Europe.

It will also be seen that exactly *how* the intellectual climate of the Curia informed the construction of these four cases for sovereignty, or indeed, how the spokesmen of these four nations chose to utilise the political and legal language of the Curia, constitutes the way in which the case studies *differ*. This largely reflects differences in their political circumstances, as well as the influence of the regional political discourses in which these men were also operating. Such differences are in themselves important in that they reveal the full extent of how and why a political discourse associated with the papacy was relevant to expressions of independent nations. The differences also show how, on account of the learning of these

spokesmen, such a discourse and legal language could be utilised in very different and often innovative ways.

Consideration of these appeals begs an appraisal of the papacy's response, which in many ways itself accounts for various shifts and nuances in emphasis within the appeals. For instance, the thesis reveals clear parallels between John XXII's own expressed outlook concerning papal overlordship of Poland and Scotland and changes in *their* conceptions of independence. Regarding the Curia's reception of such arguments, interpretations of John XXII's response have hitherto tended to emphasise the importance of his own political rather than ideological concerns. It has been suggested, for instance, that the Lithuanian and Irish appeals rested on canonistic debates with which the fourteenth-century papacy was unlikely to sympathise, trying as it was to placate the interests of powerful secular rulers in order to maintain its political leverage.<sup>49</sup>

That John might be particularly averse to making enemies of great princes would have been explained by his long-running dispute with Ludwig of Bavaria, the emperor-elect whose title John refused to recognise without full consideration of his claims.<sup>50</sup> John decreed Ludwig unable to exercise any royal authority until such consideration were complete, but, having instead refused the papal citation, Ludwig was excommunicated in 1324 and his subjects absolved of their allegiance. Retaliation was to declare the pope a heretic, an allegation which legitimised Ludwig's recalcitrance, and inspired the political commentators at Ludwig's court

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<sup>49</sup> This is Muldoon's appraisal of John's response to the 'Remonstrance', and by implication also explains John's attitude towards the Lithuanian case, which in part rested on the same canonistic tradition as the Remonstrance. J. Muldoon, 'The Remonstrance of the Irish Princes and the canon law tradition of the just war', *American Journal of Legal History*, 22 (1978), p. 325.

<sup>50</sup> The body of literature generated by this dispute, both then and now, is of course vast. For an introduction to this see Offler's renowned article 'Empire and Papacy: The Last Struggle', *TRHS*, fifth series, 6 (1956), pp. 21-47.

who made the relative powers of pope and emperor their study. Ludwig and his intellectual champions (most famously Ockham and Marsilius of Padua) found themselves allies in the form of John XXII's other great thorn – the Franciscan thinkers who denied the existence of any form of *dominium* among the apostles. The effect of their combined forces was to subject the pope's temporal powers to profound questioning. And John supplied them with ample ammunition for their attacks, not least through his crusades against Italian lay powers – wars that were unjust, at the bidding of the French crown, and an abuse of the papacy's spiritual authority, according to observers like Dante and Pierre Dubois.<sup>51</sup>

In fact, John XXII's relationship with the French crown was distinctly less amiable than that of his predecessor, Clement V. Nevertheless, in view of the papal-imperial stand-off, John would have been unwise not to gratify the interests of the more powerful rulers of Christendom, against which these smaller nations were often pitched. It is such gratification that has dominated modern analyses of his responses to their appeals. Yet in order to appraise the relevance of the Curia as a forum for airing and developing conceptions of national independence, it is beyond such *Realpolitik* that this thesis has tried to peer: intellectual compatibility is the focus. Comparative analysis reveals that the papal response, doubtless informed by John's background as a canonist, was perhaps less discouraging to these four nations than has hitherto been supposed.

As a whole, modern historiography concerning political thought has tended to emphasise this period as an age in which the formation of national identities, gaining force of

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<sup>51</sup> N. Housley, *The Italian Crusades: The Papal-Angevin Alliance and the Crusades Against Christian Lay Powers, 1254-1343* (Oxford, 1982), pp. 37, 40-1, 106-10.

expression through legal and theological conceptions of the naturalness of political communities and their 'public welfare', diminished the papacy's role in the political organisation of Christendom. National kingdoms were becoming increasingly insular in their outlook and concerns. Divided in their loyalties, secular clergy chose king above pope, producing a 'nationalised' ecclesiastical structure that strengthened the efforts of secular rulers to free themselves from the jurisdictional claims of Christ's Vicar. The cases of Poland, Scotland, Ireland and Lithuania have been chosen to explore the possibility that this paradigm overlooks various ways in which, for some political communities, the papacy continued to play an important role in constructing doctrines of national sovereignty. Certainly, there are obvious intellectual parallels with the evolving sense of nationhood and jurisdictional independence in France to be drawn in the three Christian case studies: all ultimately portrayed their kingdom as a natural political entity of ancient origin, and in several instances employed the same legal arguments. Yet their assertions were not all developed with the same political purpose: where the papacy was not the focus of attack, these ideas could be expressed, refined, and elaborated through a conceptual language closely associated with the Curia.



# 1. Poland

## The Reunification of Poland, c.1250- 1333

It is now a commonplace of thirteenth-century Polish history that the notion of the *regnum Poloniae* proved more enduring than the political fragmentation which threatened its existence.<sup>1</sup> Since the mid twelfth century Poland had been ruled as a series of duchies. A century later fragmentation reached its full extent with the death of Conrad of Mazovia in 1247, creating unprecedented subdivisions of Poland's major provinces. Nevertheless, only a few years later a host of Polish princes assembled to celebrate the canonisation of St Stanislaus – a saint with whose dismemberment and miraculous recovery Poland had come to be likened in the hagiographical and chronicle tradition.<sup>2</sup> Those who sustained the idea of the *regnum*, despite its divisions, were also aided by the fact that its multiple rulers all owed their authority to inheritance as members of the Piast dynasty – a dynasty which contemporary commentators came to identify as providing Poland's natural rulers.<sup>3</sup> By the mid-thirteenth century, native chronicles bore witness to a fully elaborated understanding of

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<sup>1</sup> The first, and perhaps still the most magisterial work on this period in Polish is Oswald Balzer's *Królestwo Polskie, 1295-1370*, 3 vols., (Lwów, 1919-20), supported by his *Genealogia Piastów* (Cracow, 1895). A good overview in English is provided by Knoll, *RPM*.

<sup>2</sup> *MPH*, vol. 4, pp. 238-285, 319-438; *MPH*, nova series, vol. 6, p. 34. See also G. Klaniczay, *Holy Rulers and Blessed Princesses: Dynastic Cults in Medieval Central Europe*, transl. Éva Pálmai (Cambridge, 2002); Edward Skibinski, 'Identity and Difference. Polish Identity in the Historiography of the Twelfth and Thirteenth Centuries', in Brian Patrick McGuire (ed.), *Birth of Identities, Denmark and Europe in the Middle Ages* (Copenhagen, 1996), pp. 93-106; Symmons-Symonolewicz, 'National consciousness in Poland until the end of the fourteenth century: a sociological interpretation', *Canadian Review of Studies in Nationalism*, 8 (1981), p. 256.

<sup>3</sup> For an overview of this, see Jacek Banaszkiwicz, 'Slavonic *origines regni*: hero the lawgiver and founder of monarchy (introductory survey of problems)', *Acta Poloniae Historica*, 60 (1989), pp. 97-131. See also P. E. Schramm, 'Das polnische Königtum', in his *Herrschaftszeichen und Staatssymbolik. Beiträge zu ihrer Geschichte vom dritten bis zum sechzehnten Jahrhundert*, 3 vols. (Stuttgart, 1954-1956), vol. 3, p. 947.

the *gens Polonica*, associated with its *patria*, the kingdom, over which the *domini naturales* had governed since before the Poles' conversion at the turn of the millennium.<sup>4</sup>

Towards the end of the thirteenth century Poland's political reunification began to be realised when Duke Henry IV Probus of Wrocław designated Przemysł II of Greater Poland as his heir in Lesser Poland and Cracow.<sup>5</sup> As a consequence, Henry's death in June 1290 united Greater and Lesser Poland under one ruler. Crucially, despite continued opposition from Duke Władisław Łokietek, duke of Sandomierz – with whom Polish reunification eventually became so inextricably linked – Przemysł succeeded in exercising his authority in Cracow, control of which, as the home of the Polish crown, had come to signify supremacy within Poland.<sup>6</sup> However the unity was short-lived, as at the end of 1290 Przemysł had no choice under military pressure but to cede his claim on Little Poland to King Václav II of Bohemia. This momentous setback did not deter Przemysł from seeking coronation by the archbishop of Gniezno, Jakub Świnka, after he had inherited Pomorze four years later. It was, however, as 'King of Greater Poland' that he was crowned. Shortly after Przemysł's death, Łokietek, supported by the region's nobles, succeeded in gaining control of Greater

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<sup>4</sup> The importance of the Polish chronicle tradition in the development of national consciousness has long been emphasised in particular by two luminaries of mid twentieth-century Polish historiography, Tymieniecki and Grodecki. A good introduction to this can be found in D. Buczek, 'Archbishop Jakub Świnka, 1283-1314: An Assessment', in *Studies in Polish Civilization*, ed. Damian S. Wandycz (New York, 1966), p. 56. Of particular note are Vincent Kadłubek's writings, in which he applied his Parisian understanding of political theory to the history of Poland, denoting Poland as the *respublica*. Benedykt Zientara, 'Foreigners in Poland in the 10th-15th centuries: their role in the opinion of the Polish medieval community', *Acta Poloniae Historica*, 29 (1974), pp. 8-9.

<sup>5</sup> The two most detailed accounts in English of the reunification process are probably K. Tymieniecki, 'The Reunion of the kingdom 1295-1333', in *CHP*, pp. 108-24 and Knoll, *RPM*. The standard Polish work on this is *Historia Polski, vol. 1: do roku 1764*, 3 parts, ed. Henryk Łowmiański, part 1 (Warsaw, 1958), pp. 250-367.

<sup>6</sup> František Graus, *Die Nationenbildung der Westlawen im Mittelalter* (Sigmaringen, 1980), p. 68; Paul W. Knoll, 'Władysław Lokietek and the Restoration of the *Regnum Poloniae*', *Medievalia et Humanistica*, 17 (1966), pp. 52-8. The principality of Cracow had been given seniority in 1138 after the kingdom had been divided by Bolesław III between his sons – a gesture which heralded the geo-political division of Poland thereafter.

Poland and Pomorze.<sup>7</sup> The nobles' preference for Łokietek over Przemysł's designated heir, the Silesian Henry of Głogów, marked the emerging political importance of anti-Czech and anti-German sentiments within Poland. As it turned out, however, it was the Bohemian Václav II who realised the fullest reunification of Poland for over a century.

Having failed to consolidate his support in Greater Poland and Pomorze (as well as Breść and Sieradz), Łokietek lost his grip on them when Václav decided to attack in 1300, going into exile and leaving the Bohemian ruler with the vast majority of Polish territory under his authority. By the same hands that had placed the diadem on Przemysł only a few years earlier, Václav II was crowned in Gniezno as 'King of Poland'. Despite Świnka's involvement, it was not an act of which the pope approved, particularly as he was inclined to underline his own authority in such matters. Having been notified of the event by the exiled Łokietek, Boniface VIII refused to recognise Václav's royal claims and condemned his use of the title, asserting instead his own role as overlord of Poland on account of the payment of Peter's Pence.

Many Polish notables were evidently of a similar opinion, as Łokietek was able to return in 1304 and regain several cities in Little Poland, again at the head of anti-Czech sentiment. Bohemian rule was now on the defensive, both here and in Greater Poland, where Henry of Głogów was seeking finally to take control of his inheritance. The Czech presence was brought to an abrupt end in mid-1306 with the assassination of Václav III, who had succeeded his father. Łokietek and Henry remained as the two principal figures on the Polish stage. The former succeeded in regaining his earlier authority over Pomorze in addition to

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<sup>7</sup> An account in Polish of Łokietek's career is provided by Edmund Długopolski, *Władisław Łokietek na tle swiõch czasów* (Wrocław, 1962).

his acquisition of territory in Little Poland. When Henry died in 1309, the rule of his five heirs prompted grumblings and eventually military action from the region's nobles, seemingly on account of anti-German sentiment – for which Łokietek again came to provide a focus, adding the territory to his collection in early 1314.

Polish reunification under Łokietek was not, however, devoid of setbacks, the most lingering and apparently frustrating of which was the Teutonic Knights' occupation of Pomorze.<sup>8</sup> Having been enticed into the area by Łokietek himself, to curb the threat posed by the margraves of Brandenburg and to shore up his hold on a rebellious Gdańsk in 1308, the Knights proceeded to take control of the city and, during the course of the next four years, to assume power throughout the surrounding area of Pomorze.<sup>9</sup> Conscientious as ever about giving their territorial acquisitions a legal basis, they negotiated purchase of the land with Margrave Woldemar, who was happy to exchange his claims for a considerable sum of money.<sup>10</sup> The loss of Pomorze was an aberration in Łokietek's reunification efforts, and one which he strove to remedy. In the absence of sufficient military strength, he sought instead legal redress, for which he turned to the pontiff. In 1319 three papal judges-delegate were appointed to hear the case against the Order's occupation, presented by Łokietek's lawyers. After several hearings, judgement was pronounced against the Knights, who were ordered to return the lands along with the sum of 30,000 marks for their alleged damages to the region.

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<sup>8</sup> For the various political powers vying for Pomorze in this period, see E. Sadow, *Die Polnisch-pommerellische Grenze, 1309-1454 (Beihefte zum Jahrbuch der Albertus-Universität Königsberg Pr., VI)* (Kitzingen/Main, 1954), pp. 4-19.

<sup>9</sup> For an introduction to the Order in this period see M. Tumlner, *Der Deutsche Orden im Werden, Wachsen und Wirken bis 1400* (Vienna, 1955), pp. 28-36, 40-8.

<sup>10</sup> Margrave Woldemar's claims were founded on Václav III's grant of Pomorze as a fief of the Polish crown: *Regesten der Markgrafen von Brandenburg aus askanischem Hause*, eds Hermann Krabbo and Georg Winter, 12 vols (Berlin 1910-55), vol. 2, nos. 1966, 1988 and 1992. The grant was not recognised by the inhabitants of Pomorze (nor of course by Łokietek) after Václav's death. Knoll, *RPM*, p. 28. For Brandenburg in this period see J. Schulz, *Die Mark Brandenburg* (Berlin, 1961-9), 5 vols, vol. 1, p. 187 ff. and vol. 2, pp. 9-50; vol. 1 p. 201 for the grant in 1306; pp. 202-3 for the events of 1308 in Pomorze.

With the papacy lacking a secular arm willing and able to enforce the judgement, the Knights refused to relinquish their hold or claim on the territory: the ruling served only as a justification for military action if and when Łokietek proved capable.

This setback aside, by 1314 Łokietek felt he boasted sufficient Polish territory to pursue the crown.<sup>11</sup> For this, the expected recourse to the Curia was taken, though little progress was possible before the election of a new pope in 1316, when headway was further thwarted by the death of the archbishop-elect of Gniezno at Avignon. It was not until the arrival at the Curia in 1318 of the nuncio of the new archbishop Jan Janisław, Bishop Gerward of Włokławek, that negotiations for a coronation could begin.<sup>12</sup> From the private letters sent back with Gerward addressed to Łokietek and to the archbishop and his suffragans, we know that the pope was in favour of the proposals. But he was unable to express his favour openly. Hearing of Gerward's efforts, King John of Bohemia was moved to stake his claim to the crown as heir to his Czech predecessors there. Faced with the possibility of offending the House of Luxembourg, the pope refused to give his formal assent to the appeal, advising instead that both parties do whatever they saw fit without harming the other's rights. It has recently been argued that the pontiff may well have been responsible for the suggestion that Łokietek's coronation be in Cracow rather than Gniezno – the latter being situated in the lands that the Czech ruler could legally claim as part of his inheritance.<sup>13</sup> Although the pope did not issue any formal recognition of the event once it had occurred in January 1320, the tone of papal correspondence in subsequent years was far from admonitory, with the pope

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<sup>11</sup> For the development of the idea and styles of Polish kingship see Schramm, 'Das polnische Königtum', 939 ff.

<sup>12</sup> K. Tymieniecki provides an account of Gerward in his 'Study nad XIV wiekiem: Proces polsko-krzyżacki z lat 1320-1321', *Przegląd Historyczny*, vol. 21 (1917-18), pp. 77-148, at pp. 131-48.

<sup>13</sup> I am grateful to Agnieszka Sadraei for advice on this matter.

using the royal title from 1323. As we have seen, Gerward's efforts also won papal support for Łokietek's complaint against the Teutonic Order's occupation of Pomorze, and the instigation of legal proceedings.<sup>14</sup> (The bishop's own acrimonious dealings with the Order in the diocese of Włocławek on account of at least one vacancy doubtless imbued his representations against the Order with added enthusiasm.)

The final decade of Łokietek's reign was devoted to defending his repaired kingdom against hostile neighbours, both Christian and non-Christian. With the death of the two Ruthenian princes, Leo and Andrew, in 1323, Łokietek feared an imminent Tartar offensive. Having written to the pontiff in May to request support for a crusade, and having received no reply, he entered Ruthenia but was unable to maintain there any authority, which came to be exercised instead by a relative, Bolesław-George. The advantage of this dynastic connection was not endangered by Bolesław-George's eventual conversion to Orthodoxy, and he remained a peaceful neighbour. Łokietek's attempt in 1324 to make a peaceful neighbour of the Teutonic Order, however, proved fruitless. His later attempts to recover part of Pomorze while the Order was campaigning against Lithuania in 1328 provoked retaliation, then annual conflict with the Knights, which led only to significant territorial losses for Łokietek in the north of his kingdom, in Kujavia, Dobrzyń and Płock.

The integrity of Łokietek's *regnum* was also threatened from within. During the thirteenth century German influence in Silesia had been much more substantial, and talked of, than elsewhere in Poland.<sup>15</sup> Central and northern Silesia in particular witnessed considerable

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<sup>14</sup> For this see Tymieniecki, 'Proces', pp. 77-148.

<sup>15</sup> For an account of German immigration across urban centres in Poland in this period see A. Gieysztor, 'From Forum to Civitas: Urban Changes in the twelfth and thirteenth centuries', in *La Pologne au XIIIe*

German immigration in the towns, and therefore also in those ministers to the towns, the mendicant orders, though the influence was by no means confined to urban centres. It was equally apparent in the political practices of the Silesian rulers, Henry IV Probus famously preferring to speak German to Polish.<sup>16</sup> The reluctance of many Silesian dukes to maintain their allegiance to Łokietek certainly in the later 1320s was something which John of Bohemia sought to exploit,<sup>17</sup> and, despite papal recognition, Łokietek was never able to quash John's claim to the Polish crown. It was this unresolved challenge that he left to his son Casimir on his death in 1333, in addition to a hostile and formidable neighbour in the form of the Teutonic Order, threatening to appropriate yet more Polish territory to the *Ordensstaat*.

Much of the success of reunification has to be attributed to provincial church leaders. Led by successive archbishops of Gniezno, they sustained and promoted the idea of reunification within political circles, particularly from the mid-thirteenth century. Their prominence in this reflects the fact that their province was broadly coterminous with the old *regnum Poloniae*.<sup>18</sup> During the thirteenth century it is within church circles that we can perceive both the preservation of a sense of Polish unity – most obviously through the promotion of national

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*Congres International des Sources Historiques a Vienne* (Warsaw, 1965), esp. pp. 2, 20-1. Cf. N. Davies, *Microcosm: Portrait of a Central European City* (London, 2002). See also Peter Moraw, 'Das Mittelalter', in N. Conrads (ed.), *Deutsche Geschichte im Osten Europas: Schlesien* (Berlin, 1994). For perceptions of non-Polish inhabitants see J. Strzelczyk, 'Die Wahrnehmung des Fremden im mittelalterlichen Polen', in O. Engels and P. Schreiner (eds.), *Die Begegnung des Westens mit dem Osten* (Sigmaringen, 1993), pp. 203-220; and Benedykt Zientara, 'Foreigners in Poland in the 10th-15th centuries: their role in the opinion of the Polish medieval community', *Acta Poloniae Historica*, 29 (1974), pp. 5-28.

<sup>16</sup> J. Lukowski and H. Zawadski, *A Concise History of Poland* (Cambridge, 2001), p. 16; Knoll, *RPM*, p. 15.

<sup>17</sup> The allegiance of Silesian princes to Václav in c.1290-1 is discussed in *Historia Śląska*, vol. 1, part 1, 528 ff. Cf. H. Aubin *et al.*, *Geschichte Schlesiens 1: Von der Urzeit bis zum Jahre 1526* (Stuttgart, 1961), 175 ff. For ethnic tensions in the area in this period see *ibid.*, 163 ff.

<sup>18</sup> See, for example, *MPV*, vol. 1, no. 53; in the *Annales capituli Gneznensis, ad annum 1243*, the archbishop of Gniezno is described as 'the archbishop of Poland': *MPH, nova series*, vol. 6, p. 6.

saints – and an increasingly articulated sense of ethnic division in response to the German incumbents of secular benefices and religious houses.<sup>19</sup> Central to the realisation of Polish reunification in the later thirteenth century were the formidable efforts of the then-incumbent of Gniezno, Archbishop Jakub Świnka (1283-1314). For Świnka, the church was the principal medium for preserving and fostering the idea of a unified and independent Polish nation. Its purpose as such is summed up neatly in a synodal statute of the later thirteenth century, decreeing that ‘in omnibus ecclesiis nostre provincie katedralibus et conventualibus hystoria beati Adalberti habeatur in scriptis, et ab omnibus usitetur et cantetur’.<sup>20</sup> St Adalbert had long been associated with the unity of Poland and identified as its protector in the chronicle tradition of the thirteenth century.<sup>21</sup> Świnka perceived the presence of German immigrants as a direct threat to this unity, particularly Franciscan activity, which he maintained threatened the very existence of the Polish people.<sup>22</sup>

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<sup>19</sup> For the mendicant orders, see J.B. Freed, *The Friars and German Society in the Thirteenth Century* (Cambridge, Massachusetts, 1977), pp. 75-7. Jerzy Kłoczowski has emphasised the ‘substantial cooperation’ of the Franciscans and Dominicans in the canonisation of St Stanislaus, and suggests that their role in East-Central Europe ‘in building up of the national historiography and or vernacular literature should be given particular attention’. J. Kłoczowski, ‘The Mendicant Orders between the Baltic and Adriatic Seas in the Middle Ages’, in S. Bylina (ed), *La Pologne au XVe Congrès International des Sciences Historiques à Bucarest. Etudes sur l’histoire de la culture de l’Europe centrale-orientale* (Wrocław-Warsaw-Kraków-Gdańsk, 1980), p. 109.

<sup>20</sup> *CDMP*, vol. 1, no. 551. Polish responses to German immigration are examined from a German-nationalist perspective by Erich Maschke in his *Das Erwachen des Nationalbewusstseins im deutsch-slawischen Grenzraum* (Leipzig, 1933).

<sup>21</sup> In what has been termed the ‘theologically-extended’ version of Polish history emerging in the thirteenth century, his historical role had been linked to the fortunes of the Polish people by signifying the importance of good church-state relations for the welfare of the nation. This of course served as a pertinent contrast to the fate of St. Stanislaus, which was associated with the demise of the nation’s unity. For this see Skibinski, ‘Identity and Difference’. For the two lives of St. Stanislaus written by Vincent of Kielcza, see *MPH*, vol. 4, pp. 238-85, 319-438.

<sup>22</sup> ‘alioquin in gentis exterminium et ecclesiarum nostrarum evidens periculum cogemur flebilibus vocibus deplorare, nisi vestra gracia misericorditer et efficaciter hii occurrat.’ *CDMP*, no. 616.



Such ethnocentric concerns did not deter this formidable prelate from crowning a Czech ruler in 1300 if it meant realising his vision of a reunited Poland.<sup>23</sup> Writing in the early part of the twentieth century, Oswald Balzer accorded him almost single-handed responsibility for Polish reunification in this period; Balzer's followers have ascribed crucial developments such as Henry Probus' decision to designate Przemysł as his heir in Little Poland and Cracow to the tireless efforts of this nation-loving archbishop.<sup>24</sup> While Świnka's involvement in what is known as the 'first coalition', supposedly formed prior to 1288 has, since Balzer, failed to withstand scrutiny (not least because the existence of the coalition itself is the subject of considerable doubt), his influence in the 'second coalition' formed in January 1293, when the four leading Polish rulers agreed to pursue the lordship of Cracow in opposition to Bohemian claims, is certainly beyond doubt.<sup>25</sup> Buczek has posited that Henry Probus' application to the papacy concerning the reunification of Polish lands similarly bears the hallmark of the archbishop's influence over what would otherwise be a somewhat uncharacteristic undertaking for the duke, whose communications with the emperor regarding the fate of Polish lands were well-attested.<sup>26</sup> Świnka was evidently prepared to persuade any ruler of sufficient means to effect Poland's reunification. Though he was fortunate to have a Piast to crown in the form of Przemysł, he made do with Václav in 1300 on account of his considerable territorial gains.

Nevertheless, on Lokietek's recovery of Cracow in 1306 Świnka positioned himself at the forefront of anti-Czech and anti-German sentiment when he tried his suffragan Bishop Jan

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<sup>23</sup> For an overview of the debate concerning the particulars of Świnka's involvement, see Buczek, 'Jakub Świnka'.

<sup>24</sup> *Ibid.*, pp. 54-9.

<sup>25</sup> Buczek cites two letters as evidence of this secret agreement, in which various financial grants are made to the see of Gniezno by all the rulers involved. Buczek, 'Jakub Świnka', p. 59.

<sup>26</sup> *Ibid.*, p. 58.

Muskata of Cracow for *lèse-majesté*. Allegedly surrounding himself with Germans, Muskata represented the influential presence of *alienigenae* whom Świnka had long tried to weed out from Poland through ecclesiastical legislation, and who apparently continued to blight Łokietek's rule in the area (such influence being associated with the 1311 rebellion in Cracow, led by Albert, advocate of the town, which sought to recognise Bohemian rule).<sup>27</sup>

Neither Świnka's death nor the establishment of single ruler in the form of Łokietek halted this marked ecclesiastical involvement in Polish politics. It was through the efforts of ecclesiastics such as Gerward and Jan Janisław, archbishop of Gniezno, that Łokietek obtained his royal dignity and confirmed, through the process of 1320, his legal claim to Pomorze. It was on the efforts of secular prelates that Poland's unity and the notion of national independence came to rest.

## **Early fourteenth-century expressions of Polish nationhood and sovereignty**

In the autumn of 1319 Bishop Gerward of Włocławek returned from Avignon bearing several letters, both public and private, the fruits of his efforts there to obtain papal support for the coronation of Władisław Łokietek as king of Poland.<sup>28</sup> According to the pope's formal reply, 'the clerics, nobles, and citizens of the kingdom of Poland' had beseeched the pontiff to sanction Łokietek's inauguration as the only means by which the kingdom might be relieved of the seditions and disagreements that had plagued its inhabitants since the death of the former king of Poland, and by which the Polish people (*Polonorum gentem*) might

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<sup>27</sup> For an overview of the 1311 Craców revolt, see Knoll, *RPM*, p. 33.

<sup>28</sup> Regests of the private, secret letters have been printed by W. Abraham, 'Stanowisko kurii papieskiej wobec koronacji Lokietka', *Księga pamiątkowa wydana przez Uniwersytet lwowski ku uczczeniu 500-letniego jubileuszu Uniwersytetu krakowskiego* (Lwów, 1900), pp. 32-4.

be protected from unceasing incursions by pagan neighbours.<sup>29</sup> From the pope's response it is clear that Gerward's representations involved some profound statements about the political make-up and character of the Polish kingdom. In this respect, the papal reply constitutes a close diplomatic relative of the proceedings against the Teutonic Order begun a year later. Both express the idea of the *regnum poloniae* as a natural political community, governed by native rulers, occupying a clearly delineated territory.

The process of 1320 sought restitution of a land that was 'known to be part of the kingdom of Poland' – a notion that had long been articulated in Polish chronicle sources,<sup>30</sup> and to which the carefully selected witnesses testified.<sup>31</sup> The inhabitants of Pomorze had always done homage to Polish rulers, and had rendered it freely, without coercion.<sup>32</sup> The Knights' occupation first of Gdańsk and later the surrounding territory of Pomorze had been achieved through force, the shedding of innocent Christian blood, and constituted an utter violation of the Knights' purpose on the borders of Christendom, as well as in Gdańsk more specifically (which was to assist Łokietek in repelling Brandenburg forces). Their base hunger for land, it was recounted in the proceedings, had brought about a great slaughter of Christian people without regard to age, sex or order.<sup>33</sup> Their seizure violated a peaceful and natural lordship: the land was rightfully that of Duke Władisław, who was heir to the kingdom of Poland. No mention was made of there ever being a non-Polish ruler of the land

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<sup>29</sup> *VMPL*, no. 226; *Joannis Długossii Senioris Canonici Cracoviensis Opera Omnia*, ed. A. Przezdziecki, 14 vols. (Cracow, 1863-87), *ad annum* 1319.

<sup>30</sup> Thus, for example, when recounting an instance when Pomorze had been recovered by Polish forces, Vincent of Kielcza observed that the area was 'in confiniis Polonie'. *MPH*, vol. 4, p. 277.

<sup>31</sup> The first of these was Gerward himself, who was more than ready to complain of the Order's activity on his patch; he was followed by the bishop of Płock; Leszek and Władisław, dukes of Kuyavia; the duke of Mazovia; along with various other clerics of Włocławek, local dukes, counts and other landowners and local judges. *Lites*, pp. 24-51.

<sup>32</sup> See *Lites*, *passim*.

<sup>33</sup> *Lites*, e.g. pp. 29, 34, 36, 38, 39.

before the arrival of the Knights. Indeed, in their account of Pomorze's governance since the death of Przemysł, the witnesses brought by Łokietek's lawyers omitted to mention the fact that Bohemian authority had been exercised there by both Vaclav II and his son Vaclav III. The papal judges-delegate were informed simply that Władisław had immediately succeeded Przemysł.<sup>34</sup> The implication of the omission was, of course, to emphasise the natural continuation of Polish lordship in the region – the suggestion, which we will have cause to consider with Scotland and Ireland too, of continued native rule since time immemorial.

The overarching portrayal in the 1320 proceedings of an ideal regnal unit naturally governed by native rulers also found expression in the coronation discussions initiated by Polish representatives at the Curia. The pontiff's support, we are informed by his reply, was sought on account of the special subjection of Poland to the Holy See 'without intermediary', as a sign of which the census payment known as Peter's Pence was paid annually from 'the faithful inhabitants of the kingdom'.<sup>35</sup> But the pope had been presented with more than one claim to the title: John of Bohemia had also despatched envoys to solicit the Polish crown as heir to the Přemyslids, and therefore to the last bearer of the title, Vaclav II.<sup>36</sup> The letter recounts how, in response to this attempt, Bishop Gerward maintained that John of Luxemburg had no grounds on which to claim the title, since Duke Władisław was the natural lord of the kingdom, his succession to the territory being by natural right.<sup>37</sup> In the same vein, the letter's reference to Poland's former king 'of illustrious memory' is

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<sup>34</sup> *Lites*, p. 27.

<sup>35</sup> *VMPL*, no. 226.

<sup>36</sup> He had of course claimed the title on his accession to the Bohemian throne, and the revolt of Cracow in 1311, led by Albert, *advocatus* of the town, was with a view to achieving his restoration in the kingdom. Knoll, *RPM*, p. 33.

<sup>37</sup> *VMPL*, no. 226: 'cum plenum ius predicto duci tanquam ipsius regni domino naturali et heredi, cui successio iure nature a suis progenitoribus debebatur, in regno competeret supradicto...'

deliberately ambiguous: no name is given, undoubtedly because mention would otherwise be made of Vaclav II. Akin to the efforts of Łokietek's witnesses in 1320 therefore, Gerward was clearly seeking to bolster the portrayal of Polish continuity and natural order by making the necessary omissions.

Many of these sentiments had long been voiced by Polish chroniclers. But their expression in 1319 and 1320 also constituted something new, for which we need look little further than their intended audience, the Curia. Ostensibly the pope was being approached in his traditional roles of (Polish) king-maker and arbiter between warring Christian nations. The appeals were therefore couched in the appropriate terminology of just war and deference to the papal overlord. But the influence of the Curia on these appeals was in fact much more profound, since they were formulated by men whose conceptions of political authority were heavily influenced by the international intellectual climate, and particularly that of the Curia. These men were members of the clerical elite among whom a sense of the *regnum poloniae* had been preserved and evolved in the absence of a strong, centralised monarchy during the thirteenth century. In the hands of such men the use of the Curia as a sounding board for concerns about Polish nationhood and independence steadily developed. This was the intellectual legacy left to Łokietek when he came to reunify the kingdom, and, importantly even with the emergence of a unifying ruler, the use of a conceptual political language associated with the Curia, though modified, did not cease to shape the construction and expression of Polish nationhood and sovereignty. In part this has to be explained in a regional context. Inhabited by Christian powers preoccupied with protecting themselves and their fellow Christians from the attacks of pagan and schismatic peoples, this was a region in which political authority was conceived of and justified in terms of legal principles relating to

just war and the defence of Christendom. But the importance of the Curia in informing expressions of nationhood and sovereignty during Łokietek's reign also rests on the prominent part played by Poland's secular prelates prior to his reign. It is to these that we now turn.

## The legacy of Jakub Świnka, Archbishop of Gniezno (1283-1314)

Much of the language and sentiment of Polish nationhood and independence expressed during Łokietek's programme of reunification had a very tangible pedigree within ecclesiastical circles during the previous half century. Concerns about the spiritual impact of immigration on the population of Poland were being voiced by ecclesiastics by the mid-thirteenth century. A provincial synod of 1248 decreed that foreigners could not be ordained in Poland, since their character and suitability would be unknown, and could well have been tainted by marriage, excommunication or apostasy in the country (*patria*) from which they had fled.<sup>38</sup> Unlike the legislation of later synods, to which that of 1248 has been likened,<sup>39</sup> no mention was yet made of the linguistic difficulties raised by the ordination of foreign clerics (*extranei*), and no explicit reference was made to a particular nation, though as one of the other statutes of 1248 described meat-eating during Lent as a custom of German inhabitants, such reference is at least implicit.<sup>40</sup> Indeed, another statute sought to counter the tendency of knightly retinues to flout ancient custom by neglecting to pay tithes, suggesting the tendency

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<sup>38</sup> *CDMP*, vol. 1, no. 274, pp. 235-6. Symmons-Symonolewicz gives a brief overview of the chronology of such provincial legislation, in 'National Consciousness in Poland', pp. 256-7.

<sup>39</sup> Symmons-Symonolewicz's account is perhaps misleading here in that it cites the legislation of this synod as the first in a long line of similar efforts, but in fact most of the concerns are not couched explicitly in national terms. For the provincial statutes of the thirteenth and fourteenth centuries see R. Hube, *Antiquissimae constitutiones synodales provinciae Gnesnensis* (Petropoli, 1856).

<sup>40</sup> *CDMP*, vol. 1, no. 274, p. 236.

could be ascribed to German presence in the retinues concerned.<sup>41</sup> Tithe-evasion was confirmed as a characteristic attributable to German colonists in the synod of 1267, listed among the usual catalogue of concerns regarding the preservation of ecclesiastical liberties recorded by Cardinal Guido, who was present at the synod. In this instance, the payment of tithes is described as the ancient custom of the *patria* (though no mention is made of the German 'nation', or of their poor suitability for ecclesiastical office, as with later legislation).<sup>42</sup>

The synodal statutes of 1285 make clear that such fears were sustained by competition over benefices and the impact of immigration on ecclesiastical structure and administration.<sup>43</sup> Statutes published at the synod of Łęczyca attempted to limit such damage by making knowledge of the Polish language a pre-requisite for the holding of any office with care of souls, while Sunday sermons, along with various prayers, were to be spoken in Polish forthwith. The church was to be, it was hoped, a vehicle through which the Polish language might be 'preserved and promoted'.<sup>44</sup> The authors of these statutes sought for the secular church something that had not been achieved with the mendicant religious houses. The occupation of friaries by German brothers who set about excluding their Polish brethren had become a common grievance. Concerns over the equation of provincial and political

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<sup>41</sup> *Ibid.*, p. 234.

<sup>42</sup> For Guido's account of the synod see *CDMP*, vol. 1, no. 423, pp. 370-5. (p. 373 for the matter of tithes). The provincial synod of September 1279, again presided over by the apostolic legate, made no reference to any problems associated with the presence of 'foreigners' in Poland: *CDMP*, no. 487, pp. 426-56. Nor were such concerns articulated in the provincial synod of 1262. Again, for this and other provincial statutes see Hube, *Antiquissimae constitutiones*.

<sup>43</sup> For this see Graus, *Die Nationenbildung*, pp. 122-3.

<sup>44</sup> Statutes, *CDMP*, vol. 1, no. 551: '...Statuimus etiam, ut omnes presbyteri singulis diebus dominicis, intra missarum sollempnia dictum symbolum et oracionem dominicam et Salutacionem Virginis gloriose, decantato simbolo, loco sermonis exponere populo debeant in Polonico, et festa indicere...' (p. 510); 'Statuimus insuper ad conservacionem et promocionem lingwe Polonice: in singulis ecclesiarum katedralium et conventualium, et aliis quibuscunque locis non ponantur rectores scolarium, nisi linguam Polonicam propre sciant, et possint pueris auctores exponere in Polonica lingua.' (p. 511); Bartlett, *Making of Europe*, p. 224.

boundaries were given some (though not always fruitful) consideration by successive general chapters. It was often lamented that the aim of the German friars was to destroy the Polish brothers, and that, as a result, the Polish people would suffer from poor spiritual nourishment.<sup>45</sup>

The statutes of Łęczyca were published through the unmistakable influence of Świnka.<sup>46</sup> Their phrasing and content reflect the outlook of a man concerned with more than the care of souls. His reiteration of the importance of native incumbents and preservation of Polish customs found in earlier statutes was informed by an evident commitment to the idea of an independent Polish nation, with its own laws and customs. In the same year as the synod of Łęczyca, Świnka wrote to the Curia expounding the dangers posed to the Polish nation by German colonisation.<sup>47</sup> It was an exposition that went far beyond the grievances aired in previous provincial synods, and that introduced language which came to feature prominently in later expressions of nationhood and independence. It was on account of growing German colonisation that Świnka feared the extermination of his people, along with their language, laws and customs – the well-developed language of ethnicity common to medieval commentators.<sup>48</sup> His fears bear close comparison with those voiced by his western counterparts, with whom he has been compared.<sup>49</sup>

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<sup>45</sup> For such complaints being made by the Hungarian wife of Ottokar II (Queen Kunigunde, 1253-1278) see Franz Palacky (ed.), *Ueber Formelbücher, zunächst in Bezug auf böhmische Geschichte* (Prague, 1842), p. 288, no. 55; Freed, *Friars*, p. 75.

<sup>46</sup> For his use of language concerning the *gens Polonica*, see Graus, *Die Nationenbildung*, pp. 121-2.

<sup>47</sup> *CDMP*, vol. 1, no. 616. The letter was addressed to various cardinals on account of vacancy of the Holy See.

<sup>48</sup> For western comparisons see Davies, 'The peoples of Britain and Ireland, 1100-1400: II. Names, Boundaries, and regnal solidarities', *TRHS*, sixth series, vol. 5 (1995), pp. 2-5; Len Scales, 'Bread, Cheese and Genocide: Imagining the Destruction of Peoples in Medieval Western Europe' *History*, 92 (2007), pp. 284-300.

<sup>49</sup> Buczek (p. 61) made the observation, likening him to Robert Winchelsey and Pierre Barbette, and maintained that the only notable difference in the careers of these 'ecclesiastical statesmen' was that



It was from the Curia that Świnka sought a sympathetic ear for his fears. He informed the papacy in particular of the activities of the Franciscans of the province of Saxony, who were bringing about the ‘destruction’ of the Polish people (by which he meant the destruction of all that distinguished them from other peoples). Despite ecclesiastical censure, he lamented, these Franciscans were continuing to establish houses in Polish lands and to refuse entry to Polish brothers. It was observed how, for example, they sought to ordain brothers with Saxon rather than Polish names – an observation which clearly reflected a fear not simply of exclusion but of a process of ‘Germanisation’. More generally, he described how German colonists occupied towns and other areas that had previously been inhabited by Poles, and were responsible for causing many ills towards ‘the nation’, which was allegedly suppressed by them, disregarded, and deprived of the commendable laws and customs of its land.

In expressing such grievances he went further than any of his ecclesiastical predecessors in developing a portrayal of national customs and animosity, and in a way that was evidently intended to induce prompt action from the letter’s recipient. The ostensible purpose of the correspondence was to seek redress for the activity of German Franciscans, since it was with this that the letter concluded. But the weight of Świnka’s appeal lay in his fear for the safety of the human laws by which the Poles were governed, which were worthy not of destruction, but preservation. To underline this, he tied the virtue of these laws to the welfare of the Church, by emphasising the special relationship of Poland to the Holy See. Since the time of their conversion, he recounted, the *gens Polonica* had remained peacefully under the protection and *dominium* of the holy Church, and had always paid what was owed on account of this,

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Świnka did not happen to clash with the papacy – an institution against which, if we are to believe Buczek, he would have happily fought if the preservation of Polish sovereignty had demanded it.

namely, Peter's Pence. This payment had been unceasingly made in sign of the land of Poland being 'specially subjected' to the Roman see, and therefore by each person in that land. That the custom was singular to the Poles, signifying that they were 'special sons' of the Church, was emphasised by the ensuing complaint that the German immigrants were loath to make the payment, despite inhabiting the lands from which it was owed.<sup>50</sup> Such non-payment, Świnka maintained, was against the legal custom of the land and the earliest custom of the people.<sup>51</sup> This reflected a more general disparity in customs between the two nations: the pope was told it had been customary for the Poles, in contrast to the German immigrants, to observe ecclesiastical rights and liberties.<sup>52</sup> This, as we have seen, was a complaint that had featured in various forms in earlier Polish provincial synods, but the identification of paying Peter's Pence with national customs seems to receive unprecedented elaboration during Świnka's incumbency.

In developing the implications of payment or non-payment of the due, Świnka's appeal in some ways rested on previous approaches to the Curia concerning the safety of the Polish kingdom, in particular that made in the name of the Polish princes in 1253<sup>53</sup> - the year of St. Stanislaus' canonisation. We can therefore be in little doubt over the ecclesiastical influence on the appeal. The princes entreated Innocent IV, as Poland's protector, to ensure that the

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<sup>50</sup> Symmons-Symonolewicz seems to suggest that it was a payment unique to Poland. 'National Consciousness in Poland', p. 257. In the letter, Świnka also observed that the Germans were reluctant to pay other sums to the Church, such as tenths.

<sup>51</sup> 'ymmo quedam penitus denegantur, sicut in solucione decimarum patet liquido, quas quidam eorum omnino non solvunt, quidam vero non iure terra consueto, sed iuxta primam consuetudinem gentis sue.' *CDMP*, vol. 1, no. 616.

<sup>52</sup> 'Nobis vero, per eiusdem gentis Theutonice ingressum ecclesiastici libertas et iura nostra nunc adimuntur, devote per Polonos primitus observata'. *CDMP*, vol. 1, no. 616.

<sup>53</sup> The idea was sustained in ecclesiastical circles, and remained one to which the papacy proved responsive. See, for example, *BP*, no. 711, dated May 1262 in which the pope replied to an appeal from the bishop of Cujavia, who, 'Cum .. terra Polonia ad Ecclesiam Romanae nullo pertineat mediante', allowing him to construct fortifications against the Tartars and Ruthenians, notwithstanding the customs of that land.

*patria* was not slowly subsumed by the empire. They protested that they and their successors were subject to none but the Holy See, and that in sign of this subjection they and the inhabitants of Poland paid the annual due known as Peter's Pence.<sup>54</sup> Świnka deployed the same conception to urge the pope to limit Poland's disintegration: for the Holy See, he maintained, German immigration was tantamount to the papacy's loss of *dominium*. Since the limits of Poland were now being occupied by German princes who recognised no temporal superior other than the emperor, the Church's direct temporal authority in Poland was being eroded.<sup>55</sup>

Clearly Świnka's letter was also intended to produce a favourable response by resonating with papal concerns: non-payment of the due by German inhabitants was bemoaned in a papal letter dated to the same month as Świnka's, addressed to the dukes of Opole, Wrocław and Cracow regarding the appointment of Jan Muskata as papal collector for the province of Poland.<sup>56</sup> But, however unintentionally, in presenting this grievance Świnka also developed a useful conception of Polish nationhood and legal independence. It was a conception which, as will become clear, while espousing similar sentiments, differed notably from the native chronicle tradition in which conceptions of the Polish people and *regnum* were first evolved.

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<sup>54</sup> The appeal is recounted in a letter from Innocent IV to his legate in the region, ordering him to assist in the collection of the due. *CDMP*, vol. 1, no. 314.

<sup>55</sup> 'Romane quidem ecclesie dampnum provenit, quia dum fines Polonie pro principes Theotonie occupantur, qui principes subsunt imperio, et sic fines occupati devolvuntur ad imperium, et ob hoc ecclesia Romana proprio dominio frustratur.' *CDMP*, vol. 1, no. 616.

<sup>56</sup> *MPV*, vol. 1, pp. xviii-xix; *CD Sil*, vol. 7, p. 59; *VMPL*, no. 173; Erich Maschke, *Der Peterspfennig in Polen und dem deutschen Osten* (Leipzig, 1933), p. 76; *BP*, nos. 848 and 852, p. 158: 'Ducibus Opol, Wrat. et Crac. d.: Mandatur, ut Theotonici et alii, qui se ad incolatum terrarum ducatum transtulerunt, sed denarium b. Petri solvere indebite contradicunt, Iohanni Muscatae in Polonia collectori pro praesenti et praeteritis annis a tempore retentionis integraliter persolvant'. Clearly, there can be no *direct* influence between the two letters on account of their dates, but evidently the Curia had been informed of the problem at an earlier date. Maschke identifies this bull as the first evidence of the papacy acknowledging the problem. Maschke, *Der Peterspfennig*, p. 86; see also *ibid.* p. 74 for Martin IV and the collection of Peter's Pence in Poland.

Much of the language of nation used by Świnka was that which had been evolved in the chronicles and hagiographical works of the preceding centuries – a tradition which in this respect had evinced a degree of precocity.<sup>57</sup> Świnka's concerns were for the survival of the habits and language of the *gens Polonica*, which had been the subject of chronicle sources from the time of Gallus.<sup>58</sup> Gallus famously conceived of the *gens*, or *natio Polonica*, as a unified linguistic and ethnic group, which identified itself with a *patria* and evinced a dynastic loyalty towards its rulers.<sup>59</sup> Gallus in fact expressed an understanding of the *patria* which most historians of western states associate with intellectual developments occurring somewhat later, along with a clear notion of the *res publica* and the idea that *Polonia* constituted more than merely the monarch's property.<sup>60</sup> The great Vincent Kadłubek, informed by his Parisian learning, elaborated yet further this idea with reference to the Polish nation in his political treatise. Later chronicles and hagiographies of the thirteenth century went on to unfold the nation's history prior to its conversion – which had delimited Gallus' timescale – identifying, in the process, its customs and common characteristics, as well as the determinants of its fortunes and misfortunes. Within Polish hagiography there emerged analogies with which to personify the kingdom, representing it as a natural entity, immune to the political vagaries of its more recently errant rulers.<sup>61</sup>

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<sup>57</sup> This is observed by Symmons-Symonolewicz, 'National Consciousness in Poland', p. 250.

<sup>58</sup> See note 3, above.

<sup>59</sup> Polish historians have debated the chronology of the development of these concepts, and, as Symmons-Symonolewicz summarises, largely comprise two opinions on the matter (though they are not necessarily opinions that oppose or negate the validity of the other), with some emphasising the emergence and indeed fully-fledged nature of such concepts in the eleventh and twelfth centuries, and others positing the thirteenth and fourteenth centuries as the period in which a sense of Polish nationhood was most fully articulated.

<sup>60</sup> Symmons-Symonolewicz ascribes such precocity to the fact that the lands understood to constitute Poland in this period were occupied by an ethnically – and certainly linguistically – uniform people. Symmons-Symonolewicz, 'National Consciousness in Poland', p. 250.

<sup>61</sup> The development of the account of St. Stanislaus's death, dismemberment and subsequent miraculous reformation as a pertinent analogy for the reunification of the kingdom is well-known: *MPH*, vol. 4, p. 391; the idea of the 'corpus regni' became a commonplace of the Polish chronicle tradition – see, for example, *Biskupów Krakowskich*, *MPH*, vol. 3, p. 365.

But not one of these sources dwelt on the idea of Poland as part of the papacy's *dominium*, however keen they might have been to refute the notion of imperial overlordship.<sup>62</sup> Even references to the payment of Peter's Pence, with or without its political implications, are of the utmost brevity in annalistic sources. That it was identified with a sense of Polish unity was hinted at in the *Cronica Petri Comitis Poloniae*, written not later than the mid thirteenth-century, which contains one of few references to the census, observing how the payment was made by each person inhabiting the lands then ruled by the Poles.<sup>63</sup> But the chronicle makes no mention of the political implications of the due concerning papal *dominium* and protection from imperial rule ascribed to it by the churchmen of 1253. Indeed, it happily recounts Emperor Otto III's involvement in the coronation of Bolesław I in the year 1000, and the homage this occasioned from the latter.<sup>64</sup> While, as Pierre David has observed, the payment 'was to become the sacred link between the scattered duchies, and later between the motherland and the provinces which were to pass under the foreign yoke',<sup>65</sup> it was certainly not identified as such in the Polish chronicle tradition of the twelfth and thirteenth centuries.<sup>66</sup>

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<sup>62</sup> Imperial claims over Poland had a solid foundation on the coronation of Bolesław in 1000, overseen by Emperor Otto III, though attitudes to the political implications of this varied in chronicles written in Poland.

<sup>63</sup> 'Poloni autem ob hoc beneficium denarium a quolibet capite pro alendo lumine ante sepulcrum sancti Petri dare quotannis sponderunt, quod usque ad hec tempora servatum est per omnes terras, ubi tunc Poloni imperabant'. The chronicler refrains from specifying the extent of these lands. *MPH*, nova series, vol. 3, p. 2.

<sup>64</sup> *MPH*, nova series, vol. 3, p. 2.

<sup>65</sup> Pierre David, 'The Church in Poland, from its Origin to 1250', *CHP*, pp. 76-7.

<sup>66</sup> Fear of German occupation and imperial 'overlordship' finds repeated mention in Polish thirteenth-century chronicle sources, though as yet I have found no instance where this is tied to an awareness of papal *dominium*. See, for example, the expression of such fears in *Rocznik Małopolski*, *MPH*, vol. 3, pp. 154-6.

Of the sources most famed for their expositions of the histories or ‘pseudo-histories’ of the *gens Polonica*, only Vincent of Kielcza mentions Peter’s Pence in his two *vitae* of St. Stanislaus, composed in the mid-thirteenth century.<sup>67</sup> According to both *vitae*, the payment was agreed in return for Pope Benedict IX’s dispensation to Casimir the Restorer, then a Cluniac monk, during the 1230s, allowing him to return to Poland and reinstate order there.<sup>68</sup> But, like the *Cronica Petri Comitis*, the *vitae* offer no comment on the implications of the payment regarding papal *dominium*, merely making the somewhat resentful suggestion that the payment was a condition of the dispensation. Rather than being something the Poles might therefore identify with as a safeguard of their freedom from foreign rule, or as indicative of their virtuous national character, the payment is presented by Vincent as being for the benefit of the papal coffers alone. Indeed, his account goes on to record how, once the dispensation had been obtained, it was with the kindness of his kinsman the emperor that Casimir’s return to the kingdom was effected.<sup>69</sup> Like Gallus, Vincent’s chronicle makes no mention at all of the due, let alone papal *dominium*, either in his account of Casimir’s return or that of Mieszko’s conversion.<sup>70</sup>

It should be noted that Świnka’s portrayal of the Polish people differed from the chronicle tradition in another interesting way. He chose not to dwell on the pre-conversion history of

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<sup>67</sup> *Vita Minor*, *MPH*, vol. 4, pp. 238-85; *Vita Maior*, *MPH*, vol. 4, pp. 319-438

<sup>68</sup> ‘Auditis autem papa Benedictus Polonie desolacionibus, Christiane fidei compassus casibus gentique orbate principe misertus, ducem Kazimirum ad tenenda regni Polonie gubernacula redire decrevit. ...Statutum est nichilominus, ut pro alendo lumine ecclesie beati Petri Rome census solverent, quod vocatur Swatopetre id est sanctum beati Petri.’ *MPH*, vol. 4, p. 382; *ibid.*, pp. 271-2.

<sup>69</sup> *MPH*, vol. 4, p.382. For a summary of these events see David, ‘Church in Poland’, p. 68.

<sup>70</sup> Master Vincent does not, however, suggest imperial overlordship (indeed, quite the opposite – see *Magistri Vincentii qui Kadłubek vocari solet de origine et rebus gestis Polonorum*, ed. Adolphus Mulkowski (Cracow, 1864), p. 48); Gallus recounts the Polish coronation at the hands of the emperor in 1000, but for a convincing interpretation of the significance of Gallus’ language in terms of imperial overlordship or otherwise, see B. B. Szcześniak, ‘The Imperial Coronation of Gniezno in AD 1000’, in *Studies in Polish Civilization*, *op. cit.*, pp. 23-37.

the *gens Polonica* elaborated in many thirteenth-century chronicles, most notably by Master Vincent, and a favoured means of expressing at least jurisdictional independence in many other kingdoms in this period. Instead, in Świnka's conception, Poland's subjection to the Holy See provided for the Poles' identification with their land. This represents an obvious contrast to the views of contemporary Scottish and Irish spokesmen as we shall see, and, although it must be remembered that Świnka's immediate purpose was not to pursue a legal defence of Polish jurisdictional freedom, the fact that his conception was utilised to some extent by future spokesmen with this purpose means it requires consideration. It is surely of note that native histories and pseudo-histories of the *gens Polonica* did not in fact furnish their readers with any explicit description of how the people came to settle in Poland. Despite recounting the brave and warlike qualities of the virtuous Poles from the time of antiquity, Master Vincent refrained from any account of the exact means by which they came to occupy their land, or indeed of any previous occupants.<sup>71</sup> In trying to tie people and land, therefore, perhaps Peter's Pence was simply of more use to Świnka than the chronicle tradition.

Świnka's conception was therefore a synthesis of much older notions and language developed within the chronicle tradition, with an idea of papal *dominium* hitherto confined to a rather narrow ecclesiastical awareness. Peter's Pence provided Świnka with a new means of expressing an association between the Polish nation and its territory on account of its characteristic as a virtuous people. As we shall see, it was also a conception that offered future proponents of Polish sovereignty a means of associating the nation and territory with a ruler.

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<sup>71</sup> See *Magistri Vincentii, passim* and also Banaszkiwicz, 'Slavonic *Origines Regni*', p. 101.

After 1285, we know of no comparable correspondence with the Curia by the archbishop prior to the trial of Jan Muskata, bishop of Cracow, commencing in 1306, and heard before the papal legate Gentilis.<sup>72</sup> Despite, again, its immediate purpose being one of ecclesiastical discipline, the trial provides an important insight into the development of a body of ideas and language on which justifications for Polish sovereignty and unity came in part to rest.

The case against Jan Muskata was brought by Świnka. The testimonies heard in 1306 and 1308 unanimously alleged, firstly, that the bishop had acquired his benefice through simony. Hinko of Duba, Vaclav II's *starosta* in the region at the time, was said to have threatened the canons in order to secure the election, or bribed them with money, much of which had been extorted from surrounding areas.<sup>73</sup> The uncanonical election allegedly heralded an episcopate characterised by uncanonical transgressions. Soldiers supposedly in his pay, and under his orders, were said to have terrorised the region's churches and monasteries, obtaining spoils in which the prelate himself shared; he was also accused of permitting the consumption of meat, eggs and milk during Lent. What is of particular interest is that most of these canonical failings took on a national bent with Świnka at the helm of the proceedings:<sup>74</sup> Muskata was charged with *lèse-majesté*.<sup>75</sup> The soldiers in his pay were apparently Germans, whose machinations included fortifying churches and building a castle to act as a base for their excursions, which was tantamount to German colonisation.<sup>76</sup> Reneging on the oath he took to other Polish prelates prior to his election, promising not to bestow benefices on Germans,

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<sup>72</sup> The coronation of Vaclav II in 1300 does not appear to have moved Świnka towards any diplomatic efforts at the Curia.

<sup>73</sup> *MPV*, vol. 3, no. 121, *passim*.

<sup>74</sup> I describe it as such since he was clearly instrumental in phrasing the accusations and therefore the testimonies also.

<sup>75</sup> *MPV*, vol. 3, no. 121, p. 94.

<sup>76</sup> *Ibid.*, *passim*.



Muskata proved unstintingly committed to promoting them at the expense of Poles.<sup>77</sup> Echoing the concerns of the synod and archiepiscopal communications of 1285, such activity posed a threat to the welfare of the nation: it was allegedly Muskata's aim to 'eos [the lord prince Łokietek and *gens Polonica*] exterminare de terra et alienigenas inducere'.<sup>78</sup> He had, it was said, firmly promised to adhere to the lord duke and the people of that land (*terrigenae*).<sup>79</sup> But he was instead 'the persecutor of the lord prince and of the Polish people'.<sup>80</sup>

What is most important to note is that, despite the presence of the papal legate at the proceedings, the papacy is no longer depicted as a victim of these crimes, as in Świnka's letter of 1285. There is no mention of papal *dominium*, or of the protection from imperial claims that this would entail. Peter's Pence does not go entirely unmentioned, but its significance is limited. In the testimonies of two representatives of the church of Cracow, the payment is hinted at as a means by which the virtues of the two nations (Polish and German) might be distinguished, maintaining that the due was not paid by those inhabiting towns settled under German law.<sup>81</sup> The accusation of non-payment is not levelled against Muskata himself (no doubt because his earlier involvement in its collection would make this implausible). Nevertheless the shift suggests the increasing irrelevancy of papal overlordship, and the crimes of which Muskata is accused have a new victim. The activities which he allegedly encouraged are denoted quite specifically as crimes against Duke Władisław and the

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<sup>77</sup> *MPV*, vol. 3, no. 121, pp. 84-5.

<sup>78</sup> *MPV*, vol. 3, no. 121, p. 82; '...et quod nititur principem eliminare et gentem Polonicam de suis patrimoniiis, nec habet dominum Wladislaum, verum heredem, pro duce.' *Ibid.*, p.91; cf. also p. 92, and p. 93: '...ut terram et linguam, gentem Polonicam destruerent et adnichilarent...'

<sup>79</sup> *Ibid.*, p. 83.

<sup>80</sup> *Ibid.*, p. 82.

<sup>81</sup> *Ibid.*, p. 89. Of course, large numbers of Polish towns were settled according to German law and this by no means entailed that their inhabitants were themselves German. But it was arguably used to suggest (particularly in light of Świnka's assertions in 1285, and indeed a concern also mentioned by the Pope in 1284) that German customs (associated with the Germans themselves) did not accommodate the payment.

*gens Polonica*, or the *terrigenae*, not the Holy See, and as hindering the process of reunification: the alleged crimes all happened, it was complained, just as the land of Cracow was being recovered.<sup>82</sup> In 1285, papal *dominium* had served to emphasise the regnal status of Poland. A kingdom required a single ruler, and since Poland was then unable to boast a pre-eminent prince,<sup>83</sup> the pontiff, rather than the kingdom's 'true heirs', was the safeguard of its independence from imperial authority. Of course, by the time of Muskata's trial, Łokietek had become the focus of reunifying ambitions, and assumed the role of the single ruler with whom the *gens Polonica* could identify. This was not the end of papal *dominium* for Poland since the idea reappeared, as we shall see, in the negotiations undertaken at the Curia for Łokietek's coronation a few years later. But its relegation to a secondary role in the conception of Polish independence is evident by the time of Muskata's trial.

What therefore receives principal emphasis in the trial proceedings is a conception of Łokietek's authority in relation to the Polish people and the reunified kingdom. The interests of the ruler and nation are portrayed as being inextricably bound together, and in this we can see elements common to expressions of nationhood elsewhere in Europe at this time – the natural existence of a nation and its native ruler. Łokietek is described as 'verum heredem et patronum terre', protector of the people of the land, the *terrigenae*.<sup>84</sup> 'Verum heredem' was a not untypical style for most Polish dukes of this period, whether they were making a serious bid for the Polish crown or not: it might be used to justify their lordship over however small a portion of Poland, and was intended to indicate their hereditary right, usually as Piasts.

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<sup>82</sup> *MPV*, vol. 3, no. 121, p. 83: '...ut terram suam Cracoviensem recuperarent...'

<sup>83</sup> Władysław Łokietek's half brother, Leszek the Black, ruled Cracow at this time, but the kingdom was still very much divided. See Knoll, *RPM*, p. 15, and Buczek, 'Jakub Świnka', p. 57 for a discussion of attempts to effect reunification in the 1280s.

<sup>84</sup> *MPV*, vol. 3, no. 121, p. 78: 'true heir and protector of the land' – and also, it adds, 'of the church of Cracow'.

Nevertheless, although the proceedings against Muskata make no mention of the phrase *dominus naturalis* found in the coronation appeal a decade later, they suggest that formal accounts of Łokietek's rule were being fashioned to accord with a conception of the 'naturalness' of his authority as a native ruler. A glance at the trial's context further illustrates this. The trial began only weeks after Łokietek's seizure of Cracow, before which he had exercised no authority in the area since 1289 (and even then had only done so for a matter of months).<sup>85</sup> Certain crimes that were committed directly against the duke at some point receive specific mention, notably the capture of the castle of Tynecz.<sup>86</sup> But the continued use of the phrase 'duke Władisław and the Polish people' to denote the victims of Muskata's crimes more generally throughout the document suggests that Łokietek was being fashioned as the *de iure*, even if he was not the *de facto*, ruler in the period and place in which the crimes occurred. The portrayal of Łokietek's position as 'true heir' in this way is further bolstered by the anti-Bohemian sentiments that pervaded the trial. The accusations suggested that Muskata's pro-German actions were supported by Bohemian interests from the start:<sup>87</sup> his election had been at the behest of the Bohemian king through the agency of his *starosta* in the region; and, we are told, it was to the king of Bohemia that the bishop fled to avoid consecration by the papal legate in Poland.<sup>88</sup>

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<sup>85</sup> For an account of Łokietek's early career see Knoll, 'Restoration', and for his occupation of Cracow, see p. 52.

<sup>86</sup> See, for example, *ibid.*, p. 82. Perhaps also the alleged attack on Sandomierz (p. 82) undertaken at the prelate's behest (in which Sigfrid, custodian of Sandomir was captured), was co-ordinated before 1300 when this constituted one of Łokietek's strongholds. See Knoll, 'Restoration', p. 52.

<sup>87</sup> Knoll maintains that anti-German and anti-Czech sentiments do not appear to have been synonymous at this time. Knoll, 'Restoration', p. 57, note 28.

<sup>88</sup> *MPV*, vol. 3, no.121, p. 81. The papal legate in question is that assigned to the kingdom of Hungary and the 'parts' of Poland, Nicholas, bishop of Ostia (later Benedict XI), appointed in November 1301: *BP*, nos. 951,956; *VMHung*, nos. 624, 627. For his dealings with Muskata see *BP*, no.958, and *VMPL*, no.199.

Świnka's efforts and preoccupations gave clear direction to expressions of Polish national unity and independence in these years. His efforts also set the tone for approaching the papacy regarding such matters. This concept of Łokietek as 'true heir' and natural lord of Poland subsequently provided the backbone for both the coronation negotiations, and the process against the Teutonic Order. Świnka's understanding of papal *dominium* also proved to be durable, featuring in the bid for the Polish crown pursued by Boryslaw, and later by Gerward, representing Boryslaw's successor, Archbishop Jan Janisław. It was during these negotiations that a new means of assessing the tax – that is, per capita rather than per household – was agreed.<sup>89</sup> Akin to Świnka's understanding, the idea of direct subjection and the associated payment illustrated the Poles' lawful and natural occupation of Poland, as well as their unity and character as a nation. Łokietek's spokesmen at Avignon insisted that the subjection was something which the 'faithful of the kingdom' had persistently recognised, having remained faithful to the mother Church by constant devotion.<sup>90</sup> Its use as a way of emphasising the Polish characteristics of fidelity and devotion was similarly employed in a letter of 1323, in which Łokietek sought financial assistance for his proposed efforts in Ruthenia, following the deaths of its two princes.<sup>91</sup> Here, the subjection is described as a mark of particular favour within Christendom more generally.

The payment also provided a territorial framework for reunification, and therefore legitimisation of the kingdom's natural unity. The collection was to be made from what was

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<sup>89</sup> Maschke, *Der Peterspfennig*, pp. 120-6.

<sup>90</sup> *VMPL*, no. 226.

<sup>91</sup> *MPV*, vol. 1, no. 83, p.73. It has been suggested that a letter, now lost, sent by Łokietek to the Curia in 1330, appealing for a crusading tenth to aid the fight against Poland's 'barbarian' neighbours was phrased in similar terms (I am grateful to Agnieszka Sadraei for drawing my attention to this matter). Nevertheless, in his account of the pope's reply, Długosz makes no reference to any suggestion of Poland's subjection, although the account appears otherwise quite faithful to the content of the reply. We are therefore at a loss to know whether or not the original letter contained any reference to the concept. Długosz, *Opera Omnia*, vol. 12, ad annum 1330, pp. 137-8.

referred to in papal correspondence simply as the 'old kingdom'. Papal letters relating to the renegotiated tax of 1317 never in fact delineated the boundaries of this more explicitly, but it is worth noting that the Camera's understanding of this 'old kingdom' would have been the extent of the territory ruled by Bolesław I (Chobry), whose father, Mieszko I (Poland's first Christian ruler), donated Poland to the Holy See.<sup>92</sup> According to the donation his territory ran from the long sea shore of Prussia to a land called Russe, then extending down to the region of Cracow, then on to the river Oder as far as a tributary on its left bank, and then along the Oder up to Stettin.<sup>93</sup> As Maschke has observed, therefore, the idea of the 'ancient boundaries' of the kingdom was understood at the Curia long before it was fully worked out in Poland – most notably through the processes of 1320 and 1337.<sup>94</sup> This is not to say that a conception of regnal boundaries was lacking in Poland: indications of the existence of one are found in such sources as Vincent of Kielcza's *vita*: describing an instance when Pomorze had been recovered from enemy hands, he observed that the region was 'in confiniis Polonie'.<sup>95</sup> But the Curia's conception of the old kingdom and the associated payment provided a new basis for justifying Poland's reunification in specific areas with which Łokietek was immediately concerned – most obviously, Pomorze.

It should be noted that the papacy's understanding of the old boundaries, based on Mieszko's donation, and Łokietek's plans for reunification did not always coincide, the area

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<sup>92</sup> For a description and discussion of the donation see F. Dvornik, *The Making of Central and Eastern Europe* (London, 1949), pp. 315-18. For an edition of the document, see B. Stasiewski, 'Untersuchungen über drei Quellen für älteste Geschichte und Kirchengeschichte Polens', *Breslauer Studien für Historische Theologie*, Bd. 24 (Breslau, 1933). More generally, see J. Ptaśnik, *Dagome Judex* (Cracow, 1911).

<sup>93</sup> Dvornik, *Making*, pp. 315-16: the words of the donation's copyist (translated by Dvornik) read 'an entire city called Schinesne with all its territory as enclosed within the following frontiers: starting first from the long sea shore as far as Pruzze, running thence to a country called Russe and extending as far as Cracooa, thence to the river Odere and straight on to a place called Alemure, and from Cracow to the land of the Milze; from Milze right on to the Oder and along its banks as far as Schinesne, mentioned previously'.

<sup>94</sup> Maschke, *Der Peterspfennig*, pp. 107-8.

<sup>95</sup> *MPH*, vol. 4, p. 277.

of Stettin being an obvious example. But, usefully for Łokietek, the Curia never imbued its correspondence on the matter with much geographical substance, other than in response to Polish efforts, which usually concerned Pomorze. Geographical clarification was provided by the Camera at the behest of Polish envoys. Thus, the letter of 1317 appointing Archbishop Jan Janisław and Bishop Gerward as collectors of the payment made particular mention of the dioceses of Chełmno and Kamień lying within the kingdom's ancient limits, whose inhabitants were therefore liable for payment.<sup>96</sup> In the absence of such specific references, papal correspondence tended rather to express a seemingly timeless conception of the Polish kingdom, equally useful for the proponents of its reunification. The appointment letter of 1317 described the payment as being owed by the whole duchy of Poland, in sign of its subjection, 'since before records began'.<sup>97</sup> It was a due that has been owed by all the inhabitants of the duchy, of 'whatever nation, state or dignity', order, and by those otherwise exempt.

Peter's Pence continued to prove its worth not only as a means of delineating the Polish kingdom but also in identifying and denouncing those who compromised its national unity. In 1337, the papal nuncio and collector of the due (and later a judge in the process against the Order heard in 1339), Galhard de Carceribus, whose favour for Casimir and the unity of his territories was far beyond doubt, reiterated the idea of the kingdom's old boundaries,

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<sup>96</sup> As is well known, this was a rather contentious assertion that ran counter to previous papal acknowledgements of the status of these dioceses, and John, in collusion with Polish representatives at the Curia, was clearly basing this conception of the duchy's boundaries on the limits of the kingdom under the rule of Boleslaw Chobry. Cf. Maschke, *Der Peterspfennig*, p. 100. Even within the context of his own administration, the claim on Kamień seems inconsistent: collections of papal dues from this diocese were usually organised in conjunction with those connected to the archbishopric of Riga. See, for example, *Preuss UB*, nos. 179-80.

<sup>97</sup> *UB Bisthums Culm*, no. 176, pp. 118-19; *CDPruss*, vol. 2, no. 83.

maintaining that the diocese of Kamień 'notorie est infra antiquos limites Regni Polonie'.<sup>98</sup> He drew attention also to the now oft-cited disparity in devotion to the papal Camera between the dutiful Poles and renegade Germans and Bohemians.<sup>99</sup> In his complaints of 1331 concerning the machinations of the Teutonic Order in and around his diocese, Matthew, bishop of Włocławek, likewise used the non-payment of Peter's Pence in those lands occupied by the Knights to embellish his account of their wrong-doings.<sup>100</sup> And perhaps most famously, the conception of the 'old kingdom' articulated by the pope in association with Peter's Pence coincided with Lokietek's own ambitions for a reunified kingdom in his attempts to reclaim the area of Pomorze occupied by the Teutonic Knights.

Polish spokesmen also used the idea of papal overlordship in an attempt to legitimise Lokietek's own authority as ruler of the kingdom, and as a means therefore of undermining any rival claims to the crown. That they intended the Peter's Pence negotiations at the Curia to be associated specifically with Lokietek's authority, rather than simply the independence of the Polish people irrespective of their ruler, is suggested in the king's letter of 1323 already mentioned. In it, no explicit reference is made to the *gens Polonica* (despite references to schismatic and pagan *gentes*, who implicitly at least provide the contrast to the Poles' virtues). Rather, the subjection to the Holy See is described as 'ours', by which Lokietek clearly means himself *as king* along with his subjects, since he styles himself at the outset of

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<sup>98</sup> *VMPL*, no. 519, p. 392. This is part of a relatively lengthy report on the state of the kingdom and payment of the due sent back to the Curia in 1337. See also Knoll, *RPM*, p. 94: Kamień was not politically subject to Poland at the time. For spiritual and ecclesiastical links between Poland and Kamień in the thirteenth century, and their political context, see Jürgen Petersohn, *Der südliche Ostseeraum im kirchlich-politischen Kräftespiel des Reichs, Polens und Dänemarks vom 10. bis 13. Jahrhundert* (Cologne and Vienna, 1979), pp. 410-36. Galhard, hailing from a region in France (which one is disputed), is universally described in modern historiography as 'the great Polonophile' (e.g. Knoll, *RPM*, p. 74).

<sup>99</sup> *VMPL*, no. 519, p. 395.

<sup>100</sup> *VMPL*, no. 442. Matthew did not, however, make a clear distinction concerning payment along national lines, unlike Galhard de Carceribus.

the letter as 'Wradislaus [*sic*] Dei et apostolice Sedis providencia rex Polonie'. The emphasis of this personal dependency was evidently intended to override any future imperial claims on the kingdom: with Ludwig of Bavaria favouring the claims of John of Luxemburg, this consideration was paramount.

However, the utility of the concept of papal overlordship had its limits for Łokietek, limits which are best explained through an appraisal of the papacy's attitude to the concept. The pope was unsurprisingly supportive of a renewed interest in the payment of Peter's Pence, and not for entirely financial reasons: he also initially proved sympathetic to the political implications of the due, in line with his more recent predecessors. In 1302, Boniface VIII had written to Vaclav II principally regarding matters in Hungary, but also noting that his letters were styled not only 'king of Bohemia' but also 'king of Poland'. Boniface professed to be disturbed by this since the province of Poland pertained to the Holy See, adding that 'Nos enim tibi paratos offerimus ad manutenendum et conservandum iura, si qua in ipsa Polonia ostenderis tibi competere legitime coram nobis'.<sup>101</sup> The same notion was voiced by John in his formal response to the matter of Łokietek's coronation. The open letter dated September 1319 recalled how the kingdom was 'nobis et ecclesie Romane nullo mediante subiectum', adding that Peter's Pence was paid in sign of this subjection.<sup>102</sup> The same relationship of papal overlordship was recounted in the other letters sent from Avignon in 1319,<sup>103</sup> and also in a letter written at some time between 1317 and 1319 to King Charles of Hungary. The phraseology here is of particular note: it is not simply the land of Poland that

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<sup>101</sup> *VMHung*, no. 628. The tone of the letter has been cited as indicative of Łokietek's presence at the Curia: Długosz informs us of his arrival in Rome subsequent to his expulsion from Poland. But details are lacking and it is difficult to conjecture how far the words resembled the duke's own notions: they certainly closely resemble well rehearsed papal phrases.

<sup>102</sup> *VMPL*, no. 226.

<sup>103</sup> Abraham, 'Stanowisko Kurii', appendices 2 and 3, pp. 33-4.



is described as enjoying this relationship, but the duke himself, and 'terra sua'.<sup>104</sup> In this instance at least, John may be seen as responding not only to the idea of the land and people being subjected, but also the association of this subjection specifically with Łokietek.

However, in the longer term John proved less committed to Łokietek's authority than to the more general idea of the kingdom's liability to pay Peter's Pence. In 1323, the pontiff formally recognised Łokietek as king of Poland, having refrained from doing so openly prior to this.<sup>105</sup> His initial informal approval of the coronation proposals has been surmised by many, but, although his recognition of Łokietek's new status was implicit in correspondence with his consort Jadwiga prior to the formal letter of 1323,<sup>106</sup> his eventual recognition was nevertheless reticent and guarded. The correspondence of 1323, in which John exhorted the king to pay due reverence to the Roman Church, professed to understand Łokietek's majesty as having been acquired on account of 'divine grace', and his title as one to which he had been elected.<sup>107</sup> While such phrases might have been expected in a similar letter of recognition to any other ruler, in the case of Poland, mention of Poland's subjection and, more particularly Łokietek's debt to the Holy See for his royal title, is conspicuously absent.

The pope's evident reluctance to acknowledge openly that Łokietek's royal authority was, or could only be, derived from the Holy See was reflected in his attitude towards the collection of Peter's Pence. During the 1320s it became increasingly clear that John XXII was happy to collect the due from any ruler exercising authority in any part of the 'old kingdom of

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<sup>104</sup> *Ibid.*, appendix 1, p. 32.

<sup>105</sup> Peter of Dusburg's account is interesting, nonetheless, in identifying Łokietek as having been instituted in his royal status by the Holy See. Petrus de Dusburg, 'Chronicon terrae Prussiae', in *SRP*, vol. 1. Supplement to Chron. IV, chapter X.

<sup>106</sup> *VMPL*, no. 258.

<sup>107</sup> *VMPL*, no. 272.

Poland', independently of Łokietek. This undermined the potential of Peter's Pence as a conceptual device for Łokietek's association with the kingdom.

The language of the papal correspondence concerning the census collection perhaps best illustrates this. Peter's Pence was owed by all the inhabitants of the old kingdom of Poland, 'of whatever nation, state, dignity or order'. No mention is made of a particular ruler, and certainly not of a king. These qualifications did not therefore prevent John from, as he later did, negotiating matters concerning the payment without reference to Łokietek's authority within the kingdom. One such negotiation occurred in 1323, when Henry, styling himself 'duke of Silesia and heir to the kingdom of Poland, lord of Głogów and Poznań', agreed to pay the tax, recognising 'ourselves to be immediately subject to your most sacred paternity and to the apostolic see'. Accordingly he professed to understand that 'if by chance any emperor or king of the Romans should wish to extend his jurisdiction over us *de facto*, we would be defended from his violence and injuries by the protection of the holy see'.<sup>108</sup> Meanwhile, later letters commissioning the collection in the 1320s did not vary in form from their predecessors: in June 1325, Jan Janisław and Gerward were ordered to collect the due from 'quibusvis personis infra dicti regni *antiquos limites* constitutis, cuiuscunque nationis conditionis status dignitatis existerent'.<sup>109</sup> So while John remained committed to the idea of those inhabiting the 'old kingdom' being liable to make the payment, Łokietek had evidently been by-passed.

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<sup>108</sup> William E. Lunt, *Papal Revenues in the Later Middle Ages* (New York, 1934), vol. 2, no. 251; *MPV* vol. 1, no. 84; *CDPM*, vol. 2, p. 146; Maydorn, 'Der Peterspfennig in Schlesien', pp. 54-5.

<sup>109</sup> *UB Bisthums Culm*, no. 211 (my italics).

Negotiations with the dioceses of Chełmno and Kamień, both of which continued to resist the payment, similarly betray John's priorities in this respect. Non-payment initially prompted the expected response of ecclesiastical censure. The Teutonic Knights and the diocese of Chełmno had their case for non-payment heard in Rome before Peter de Nogareto at the beginning of 1321: Matthew of Viterbo was appointed proctor to represent the Order and John, rector of the church of Chełmno, as well as the brothers of the cathedral chapter and 'all the people of whatever condition of the diocese'.<sup>110</sup> It was argued that the Roman see presumed to collect the payment in the diocese of Chełmno without cause, 'cum dictum census nunquam sedes apostolica ab eisdem habuerit nec iudem domini solvere tenebantur.' In response it was decreed by the papal auditor that the complainants could do nothing against the collection. However, the appeals persisted, with proctors acting in the name of the people of the diocese of Chełmno and those of certain parts of Pomorze. In direct refutation of the papal conception of the 'old kingdom' they declared that these people had enjoyed freedom from the imposition of census payments 'from ancient times', and appealed to the papacy as the protector of neophytes by highlighting the problem these impositions – which were described as amounting to 'servitude' – posed to people relatively new to the faith.<sup>111</sup> The papacy was asked to consider whether such payments ought therefore to be made from these lands.<sup>112</sup> In August 1328, the pope agreed to suspend the sentence of interdict incurred through non-payment, and in support of his decision conceded that the situation did indeed pose a threat to the souls of those in a region already

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<sup>110</sup> *Ibid.*, no. 191; see also nos. 185, 214, and *CDPruss*, vol. 2 nos. 91 and 92.

<sup>111</sup> See *UB Bisthums Culm*, no. 214. It should be noted, however, that, even though these appeals were responding directly to the assertions of Polish spokesmen put forward in 1320, no explicit mention of Polish claims in the region was made: the servitude is that associated with any non-customary imposition, and so in this instance, is threatened by the papacy. There is also the suggestion, however, that this servitude might be imposed through the offices of a secular power in the region – presumably Lokietek.

<sup>112</sup> *Ibid.*, no. 214.

facing considerable spiritual challenges.<sup>113</sup> The suspension was renewed a year later, again in the same terms:<sup>114</sup> significantly, however, the pope did not respond directly to the matter of the customs of the people in question, or the character of their temporal jurisdiction. He only observed that those making the appeal had told how temporal jurisdiction in these parts belonged to the Teutonic Order.

Similarly, in June 1329, the prelates of Chełmno and Pomorze assembled along with the Knights and senior men of the land of Chełmno, when the Master General proposed again that the Roman see was wrongfully imposing the payment of Peter's Pence on the diocese and those parts of Pomorze that were subject to the Order. From a time that cannot now be remembered, he asserted, until the time of the present lord pope, the census was not given, nor required, from anyone in those parts. To this assertion, the bishops added their own narratives, maintaining that they knew the men of these lands to assert that they had not heard from their forefathers of this payment 'for about a hundred years', and that the pope had been deceived in this matter. The Order's pious works in the region were then recounted, and their fear for the servitude imposed on their subjects by this census despite their rightful immunity once more lamented.<sup>115</sup> Yet when the pope again renewed the suspension of interdict six months later, he included no pronouncement concerning the political status of the region.<sup>116</sup> Indeed, in a papal response of March 1331 to the complaints of Matthew, bishop of Włocławek, concerning the violence of the Teutonic Order in his diocese, the Order's claims to the area of Pomorze are described only as being 'asserted',

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<sup>113</sup> *Ibid.*, no. 221.

<sup>114</sup> *Ibid.*, no. 222; *VMPL*, no. 416; *CDPruss*, vol. 2, no. 122.

<sup>115</sup> *UB Bisthums Culm*, no. 223; *CDPruss*, vol. 2, no. 124.

<sup>116</sup> *UB Bisthums Culm*, no. 224; *VMPL*, nos. 430, 431, 436, 437, 444.

rather than *de iure*.<sup>117</sup> The pope was evidently reluctant to override the legal precedent, however theoretical, of payments from this region.

Papal policy was ultimately reflected in Polish diplomatic practice. It is clear that, while the papacy remained committed to the concept of certain regions being liable, implicitly (though perhaps not always explicitly) on account of their being part of the old kingdom of Poland, this commitment did not extend to recognition of a single Polish ruler. Łokietek's letter to the pope in 1323 concerning the Ruthenians, in which he ascribed his title to the providence of God and the apostolic see, proved to be exceptional rather than normal practice. His more usual style came to be 'by the grace of God, king of Poland', as in a letter dated only a month after that concerning the Ruthenians.<sup>118</sup> Very often, this was accompanied by a list of his claims to territories, of which, along with his royal title, he professed to be 'duke and lord'.<sup>119</sup> That he distinguished between his royal title and his dynastic territories in this way was a diplomatic characteristic of his reign, but it was not one that tended to associate the former with bestowal by the Holy See: Łokietek consistently attributed his claims, both to specific Polish lordships and to the kingdom of Poland, to his lawful inheritance, describing himself as 'the true heir' of both.<sup>120</sup> Łokietek clearly came to realise that the pope, contrary to his assertion in the early letter to Charles of Hungary, was not in fact committed to associating the payment and subjection of Poland with Łokietek himself.<sup>121</sup>

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<sup>117</sup> *VMPL*, no. 442.

<sup>118</sup> *CDMP*, vol. 2, no. 1037.

<sup>119</sup> See, for example, *CDMP*, vol. 2, nos. 1042, 1045, 1072 and *passim*.

<sup>120</sup> He had done this prior to his coronation as well. For an overview of his use of titles, see Knoll, 'Restoration' pp. 58, 63.

<sup>121</sup> Maschke notes how the political implications of the payment lost currency. Maschke, *Der Peterspfennig*, p. 127. Maschke argues that during John's pontificate, the papacy never gave an explicit opinion on the constitutional state of Poland. *Ibid.*, p. 109.

Yet while the idea of Peter's Pence espoused by the papacy ultimately proved to offer limited justification for Łokietek's own authority, the ecclesiastical identity of his spokesmen clearly continued to inform their remarks about the kingdom, its independence, its people and their ruler. Nowhere is this more apparent, perhaps, than in the process instigated by Łokietek against the Teutonic Order over its seizure of Pomorze. It is in these proceedings that we witness the Polish spokesmen's considerable adaptability in conveying their understanding of a natural, unified kingdom to the papacy. They did so in terms that were informed by the papacy's own political outlook, and therefore with which in all likelihood it would sympathise.

## **The 1320 process against the Teutonic Order, and beyond**

Although the conception of the old kingdom informed the instigation of the process against the Teutonic Order in 1320, no mention either of Peter's Pence or papal protection of the kingdom was made throughout the entire proceedings. Concern for payment from this region had undoubtedly prompted support for the trial by the pontiff, who was probably persuaded that efficient collection could only be secured and justified within the framework of the *regnum Poloniae*. A judgment establishing the return of Pomorze to the pre-eminent Polish ruler clearly appealed as the safest means of ensuring payment from the region. Securing a favourable judgement was probably therefore the pope's intention when he appointed three judges-delegate who were rather vulnerable to the charge of partiality – a charge that the Order levelled without hesitation.<sup>122</sup> They were all senior Polish clerics: Jan Janisław, archbishop of Gniezno; Domarat, bishop of Poznań; and Nicholas, abbot of

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<sup>122</sup> For this and other exceptions taken by the Order to the Polish case, see *Lites*, pp. 58-9.

Mogilno.<sup>123</sup> Peter's Pence went unmentioned in the proceedings not least because, as an argument for Polish *dominium* in Pomorze, its utility was minimal: since payment from the region had long since lapsed, it would not have withstood the weight accorded in legal proceedings to customary practice.

Lokietek's lawyers therefore had to develop alternative justifications for a legitimate and proper relationship between the Polish ruler and the inhabitants of this alienated land. In their efforts they were undoubtedly assisted by the Polish envoy to Avignon and their first witness, Gerward bishop of Włocławek, since the influence of the intellectual climate of the Curia is unmistakable. This influence is detectable in two (related) developments that occur in the proceedings, and on which the case came to rest: the first of these is the utilisation of canon law in the construction of a specific legal basis for the idea of a reunited kingdom; the second is the influence of canonistic ideas about just war and the political rights of peoples on the construction of Polish independence and, more particularly, Lokietek's authority.

As a preliminary, it is worth noting that inquiry into the Knights' presence in Pomorze first appeared alongside complaints made by the archbishop of Riga to the Holy See more than ten years before the proceedings of 1320.<sup>124</sup> In 1310, Clement V wrote to a papal judge about these complaints, making specific mention of the Knights' seizure of Gdańsk and their reputed killing of ten thousand inhabitants.<sup>125</sup> The accusation was to be one of many heard against the Order in 1312 by the papal legate Franciscus de Moliano, again as part of the

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<sup>123</sup> *VMPL*, no. 231, letter of appointment dated 11 September, 1319; also in *Lites*, p. 3.

<sup>124</sup> As will be discussed below, successive archbishops of Riga had complained of the Order's position in the region. Final judgment on the matter was not given until 1324: *VMPL*, no. 279.

<sup>125</sup> *VMPL*, no. 204, letter dated 19 June 1310; *BP*, no. 1015.

Rigan efforts.<sup>126</sup> The crime was described as a hostile invasion of the land of Władisław Duke of Cracow and Sandomierz, but nothing was decreed concerning the restitution of the land, and certainly not in terms of the *regnum Poloniae*, while the witnesses were limited in number. The instigation of the process in 1320 constituted something quite different. The case was heard by the three papal judges-delegate on whose credentials as loyal Polish prelates Łokietek's lawyers could rely.<sup>127</sup> Łokietek's three prosecuting lawyers, who included Philip, Chancellor of Greater Poland,<sup>128</sup> summoned an array of carefully selected witnesses, including Gerward, bishop of Włokławek, Florence, bishop of Płock, Leszek and Władisław, dukes of Kujavia, Waclaw, duke of Mazovia, and nineteen other clerics (prelates, canons, deans) and laymen (royal officials, knights, townsmen, lords), all of whom had some connection to the area in question.<sup>129</sup>

The prosecution case sought to demonstrate that the land of Pomorze was a constituent of the Polish kingdom. Witnesses testified that the region was widely known to be part of the kingdom, both by its inhabitants and its neighbours, and that Łokietek had received homage and subsidies from the habitants (*terrigenae*) of the region, since he was the 'true heir' to that land.<sup>130</sup> The prosecution case makes clear that Łokietek was its true heir on account of his inheritance, and not as 'king of Poland'. Nevertheless, here again we witness the elaboration of the idea of continual Polish rule: the conception of Łokietek as the land's true heir is bound up with the idea of his being a natural, native ruler of the Polish kingdom, with or without the royal title. Witnesses maintained that Łokietek immediately succeeded Przemysł

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<sup>126</sup> *Das Zeugenverhör*, pp. 79, 171, 178, 186-7. See also U. Neiss, *Hochmeister Karl von Trier (1311-24) Stationen einer Karriere im Deutschen Orden* (Quellen und Studien zur Geschichte des Deutschen Ordens, XLVII) (Marburg, 1992), pp. 73-86.

<sup>127</sup> See note 112, above.

<sup>128</sup> For more on these three men see below.

<sup>129</sup> *Lites*, pp. 24-51.

<sup>130</sup> *Ibid.*, *passim*.



in the possession of Pomorze, while no mention is made of any Bohemian influence in the region under Vaclav II or Vaclav III. The immediate purpose which this omission served, legally, was to undermine the foundations on which the Order was likely to rest its defence.<sup>131</sup> In 1310, a representative of the Knights had outlined before an audience at the Curia the legitimacy of their presence in Gdańsk-Pomorze as dependent on an agreement with the margraves of Brandenburg. Pomorze, they maintained, having initially been ruled by the king of Bohemia, devolved to the kingdom of the Romans on his death (without heir); King Albert then conceded it as a fief to the margraves of Brandenburg, from whom, it was later asserted, the Knights acquired the land.<sup>132</sup> But the omission of Václav also underlined the notion of continuous Polish rule in the region, and the naturalness of Łokietek's rule there *as* a Polish ruler. Indeed, even prior to Przemysł's rule in Pomorze, witnesses professed, the area had been ruled by numerous Polish rulers.

Again, we should note here the absence of the idea of papal *dominium*. I have already proposed that the payment of Peter's Pence was an unsustainable argument for the process. Perhaps it was on account of this that the political implications of the payment (papal *dominium*) were not expounded: since the payment was always referred to as the 'sign' of this subjection, the legality of the subjection itself might not fare much better against legal scrutiny than would the payment. But it must also be highlighted that the Polish lawyers had chosen to use the Curia as a forum to rebut the Order's claims of imperial *dominium* in the land, not *explicitly* with the idea of papal *dominium*, but with this conception of *natural* Polish

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<sup>131</sup> For an edition of the Order's representations at the Curia in this period, see Walter Friedrich, *Der Deutsche Ritterorden und die Kurie in den Jahren 1300-1330* (Königsberg, 1912), of which I have as yet been unable to obtain a copy. See also Niess, *Karl von Trier*, pp. 128-51 for their representations concerning Pomorze and Riga.

<sup>132</sup> *Das Zeugenverhör*, p. 186.

lordship. This is in notable contrast to the earlier appeals against the Order from the region which, as will be discussed below, influenced the 1320 process in so many other ways. In 1300, for example, the archbishop of Riga complained that the Order was responsible for subjugating a land, Livonia, which was known to be the possession of St. Peter,<sup>133</sup> while in response to Rigan representations Boniface VIII duly reminded the cardinals, to whom the hearing was delegated, that the archbishopric and its province were immediately subject to the Roman See.<sup>134</sup>

In 1320 therefore, ideas of Polish unity and independence did not hinge on that of papal overlordship. This was in contrast both to other appeals from the region and to Świnka's conception. Nevertheless these ideas were expressed instead through canon law, developed with the pontiff in mind, and possibly even with his advice. The choice of canon law is particularly interesting, and testifies to the continued importance of senior Polish clerics in the construction of formal expressions of Polish sovereignty, unity and nationhood, long after the death of Świnka.<sup>135</sup>

For the purposes of the process Lokietek's claim to Pomorze was given legal grounding in the decretal *Redintegranda*.<sup>136</sup> The canon constitutes one of a series concerning the restitution of a bishop's possessions (that is, the property of his church, and as such of the Roman Church) of which he may have been deprived by whatever means (violence, alienation)

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<sup>133</sup> *Ibid.*, p. 148.

<sup>134</sup> *Ibid.*, p. 153.

<sup>135</sup> The centrality of Polish churchmen in the proceedings has already been noted: Gerward was its instigator at the Curia and the judges were all Polish prelates. Such clerical involvement evidently applied to the majority of those present at and involved in the administration of the hearings: we know that, interestingly, one such cleric was a public notary of the name Boleslaw, a canon of Gniezno, and a former notary in the chancery of Archbishop Świnka. *Lites*, p. 14.

<sup>136</sup> For the decretal see *CIC, Decreti secunda pars*, causa III, q. I, c. III; for reference to it in the proceedings see *Lites*, pp. 11, 16, 17.

without papal authority.<sup>137</sup> It is quite possible that the pope was influential in this choice of canon.<sup>138</sup> Whether or not he was, the decretal does not appear to have been chosen to resonate with the idea of Poland as a papal fief, since, as already noted, this was not a notion aired during the proceedings nor, more importantly, was it one that featured in the papal letter appointing the judges-delegate for the process.<sup>139</sup>

The decision of Łokietek's three lawyers to rest the case solely on *Redintegranda* is particularly interesting for the fact that they chose *not* to pursue the more usual lines of legal discussion about just war and wrongfully seized lands. Had they wished to, they could have employed any number of legal precedents for the restitution of Pomorze, canons relating specifically to the consequences of war and restitution, and which had been given detailed consideration by thirteenth-century canonists.<sup>140</sup> While canonists were far from united over the *means* of recovering seized property, it was generally agreed that property seized during an unjust war ought to be restored. Indeed, according to Gratian's *Decretum* the recovery of goods provided legitimate grounds for just war.<sup>141</sup>

Certainly, much of the language of the trial demonstrates a possible awareness among Łokietek's lawyers of such canonistic discussion on the matter of restitution. Inevitably, canonists made an important distinction between possessions seized in just wars and those

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<sup>137</sup> 'Redintegranda sunt omnia expoliatis vel eiectis episcopis presentialiter ordinatione pontificum, et in eo loco, unde abscesserant, funditus revocanda, quacumque [quecunque] conditione temporis, aut captivitate, aut dolo, aut violentia [virtute] malorum, et per quascumque iniustas causas res ecclesiae, vel proprias, id est suas substantias perdidisse noscuntur.'

<sup>138</sup> According to Długosz's account, the process was suggested by John to Gerward before his return to Poland, though whether or not the pope offered advice on the specific legal grounds for the investigation cannot be known. Długosz, *Opera Omnia*, ad annum 1320.

<sup>139</sup> *VMPL*, no. 231; *Lites*, pp. 6-8.

<sup>140</sup> For this see Russell, *Just War*, in particular pp. 161-7, 182.

<sup>141</sup> *Ibid.*, p. 163.

obtained rather through unjust wars and held violently, and it was generally agreed that those acquired through the latter means were possessed illegally and should be restored.<sup>142</sup> Perhaps for this reason, the violence of the Order's rule in Pomorze, during, and subsequent to their seizure of Gdańsk, was a salient feature of the Polish representations. Moreover, the desire to obtain formal judgement on the matter may reflect an awareness of the belief, common to several legal commentators, that unjustly seized lands could only be reclaimed if the war was still being fought, otherwise, a legal judgement was required to enable a *bellum continuatum* and the recovery of the land.<sup>143</sup> (That said, the limitations of Łokietek's military capabilities at that time meant that a favourable legal judgement was the *only* means by which he could pursue his claims in Pomorze.)

But in fact the choice of *Redintegranda* suggests that the conception of a war between two lay powers was not one which the Polish lawyers wished to pursue, even though it was one that could have been used to express the sovereign authority of Poland's new ruler.<sup>144</sup> Here it is worth considering again the possible influence of comparable appeals against the Order in the region, most obviously that prosecuted by successive archbishops of Riga. We know at least that Archbishop Frederick was prosecuting his case against the Order at the Curia between 1312 and 1324, and some communication with Polish representatives seems certain.<sup>145</sup> And, ostensibly at least, *Redintegranda* seems more appropriate as a legal basis for the archbishop's complaints than for those of Łokietek. It is, after all, a law that specifies the restoration of lands and other possessions wrongfully seized from a bishop. Following papal

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<sup>142</sup> This was argued not least by Alanus Anglicus and Hostiensis. *Ibid.*, p. 163.

<sup>143</sup> This was the opinion of Peter of Salins. *Ibid.*, p. 164. For others, however, no such judgement was requisite.

<sup>144</sup> See Introduction.

<sup>145</sup> R. Mažeika and S. C. Rowell, 'Zelatores maxima: Pope John XXII, Archbishop Frederick of Riga and the Baltic Mission, 1305-1340', *Archivum Historiae Pontificiae*, 31 (1993), pp. 51-2.

enquiry into Rigan complaints, in June 1299 Boniface VIII ordered the Knights to make appropriate restitution for the damages caused, and to return all seized goods and property, to the archbishop of Riga and to the canons and vassals of the church of Riga.<sup>146</sup> Although the bull (unsurprisingly) does not specify the legal basis of the decision, the parallel is obvious. The final judgement on Frederick's process pronounced in 1324 took a similar form: it was ordered, alongside other means by which the Knights might reform their ways and justify their presence in the region, that the lands, liberties and rights of the archbishop should be restored.<sup>147</sup>

However the decretal clearly had resonances too for the particular concerns of Łokietek's lawyers. If the choice of decretal can be ascribed to Rigan influence, it certainly did not constitute emulation for lack of any other inspiration. In the first place, *Redintegranda* bore a close resemblance to the situation being recounted. In contrast to decretals regulating the restitution of seized possessions in the course of war, *Redintegranda* addressed the return of property without specific reference to any circumstance of war: it was, on the contrary, published to address simply the illicit seizure and alienation of property. In particular, *Redintegranda* provided for circumstances in which a bishop had been *ejected* from his see. Thus, the Knights were indicted by the Polish lawyers for ejecting the king, then duke, from the castle and city of Gdańsk, and ejecting him also from the castle and town of Tczew. Similarly, they were also charged with ejecting the lords Przemysl and Kasimir from their possession of the castle and town of Swecze along with its appurtenances.<sup>148</sup>

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<sup>146</sup> *VMPL*, no. 196.

<sup>147</sup> 'et restitui faciant et procurent, quantum in eis est, dando securitatem predictis et in ipsius (?) recuperandis suum consilium, auxilium et favorem, et quod de cetero nichil occupent vel usurpent de bonis et iuribus predictorum:...' *VMPL*, no. 279.

<sup>148</sup> *Lites*, p. 23.

Perhaps most importantly, the use of *Redintegranda* enshrined both the concept of a reunified kingdom, and of the naturalness of its possession by Łokietek, as part of the *regnum Poloniae*. The return of Pomorze was to be a reintegration of a formerly and legally unified whole, an entity whose conception had long been articulated by Polish churchmen. ‘Redintegrare’ was to make whole again something which had been separated.<sup>149</sup> The wording of Gratian’s notes to the decretal is of particular interest, as it describes this restitution as one of ‘natural possessions’.<sup>150</sup> That Pomorze constituted a natural possession of Łokietek, being part of the kingdom, was the central theme of the 1320 *processus. Redintegranda* therefore provided a much more meaningful legal basis for the conception of a unified Polish kingdom than an argument based on more commonly cited principles of just war between two sovereign lay powers.

Using this canon to express these concerns says much about the three prosecuting lawyers. They were clearly well enough versed in canon law to use it in an apparently innovative way.<sup>151</sup> Doubtless they were also advised by Gerward on his return from Avignon, but all were themselves of a clerical background. The first of them, Philip, who was then Chancellor of Greater Poland, had from 1309 until 1314 been chancellor of the cathedral of Poznań. In 1321 he was made archdeacon of Poznań and canon of Gniezno.<sup>152</sup> He and his colleague,

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<sup>149</sup> Note the use of the verb in another canonistic context, re: marriage, in *CDMP*, vol. 1, p. 372.

<sup>150</sup> *CIC, Decreti secunda pars, causa III, q. 1, c. II.*

<sup>151</sup> Poland could already boast a canon lawyer of European renown by this period in the person of Martinus Polonus of Opawa (d. 1278/9), whose summary of Gratian’s *Decretum* (known as *Tabula Martiniana*) included (naturally) the matter of just war. As a source Martinus was not cited by Łokietek’s lawyers, but was used by later Polish legal theorists who considered the *ius gentium*. For this see Stanisław Wielgus, *The medieval Polish doctrine of the law of nations: ius gentium* (Lublin, 1998).

<sup>152</sup> *Lites*, p. 4, note 12; K. Tymieniecki, ‘Proces’, *op cit.*, p. 96, note 2.

Zbigniew, canon of Cracow (as well as vice-chancellor of the city),<sup>153</sup> were joined by Jan, canon of Ruda who was also a Poznań official and, interestingly, a scholastic canon of Gniezno.<sup>154</sup>

It is on account of this very particular use of canon law to express the idea of Polish unity and independence that the process of 1320 cannot be categorised simply as (yet) another appeal from the region against the machinations of the Teutonic Order. Nevertheless, the influence of similar appeals from the region contributes in no small way to our picture of how expressions of Polish nationhood and sovereignty were informed by political ideas associated with the Curia. This was a region in which justifications for temporal authority had come to be rooted in ideas about the welfare of Christian subjects, and the welfare of Christendom. That Polish spokesmen would therefore draw heavily not only from this regional political discourse but also from canonistic thinking on which it rested should perhaps cause little surprise. Nevertheless it merits consideration, not least because it invites comparisons with the Scottish, Irish and Lithuanian appeals to the Curia, all of which in some way (and to differing degrees) propped up their assertions of national independence with canonistic discussions about just war and the rights of peoples. In all these nations, the conceptual language associated with canonistic discussions about just war – tyranny, servitude, and oppression – was used to express the natural independence of a nation or kingdom.

The Curia had long provided a forum for discussing the position of the Teutonic Order in the Baltic. Almost from the Order's first arrival, the papacy had played a central role in

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<sup>153</sup> *Lites*, p. 4, note 13; K. Tymieniecki, 'Proces', *op cit.*, p. 97.

<sup>154</sup> *Lites*, p. 4, note 14. Ruda is situated just to the south of Świdnica.

regulating its activities in relation to neighbouring powers by confirming certain rights and privileges, and pronouncing on the parameters of its authority in relation to the rights of both Christians and pagans.<sup>155</sup> Consequently it was to the papacy that the Order's enemies appealed. By 1319, the idea of the Knights diverging from their prescribed purpose in the region, which features in the letter of appointment to the Polish judges-delegate, was a recurrent complaint at the papal court. Stock accusations levelled by the archbishops of Riga (and then frequently reiterated by the papacy) consistently depicted the Knights as having become intent on obtaining lands through any means and irrespective of the spiritual state of the occupants. In 1300 the proctors of John, archbishop of Riga, reported on how the converted Livonians had since lapsed under the harsh governance of the Knights;<sup>156</sup> how, similarly, the Order had forced into persistent apostasy the Semigallians – a people who, before the Knights' arrival, had enjoyed the ministry of bishops and priests;<sup>157</sup> and how the Knights' desire for certain strongholds belonging to the archbishopric of Riga led them to perform indiscriminate killings not only of pagans but also Christians, to commit daily atrocities, and to employ all manner of weapons, even siege engines, to this end.<sup>158</sup> When renewed complaints from the archbishop of Riga (now John's successor, Frederick) were heard before the papal legate Franciscus de Moliano in 1312, witnesses similarly testified to the apostasy brought about by the Knights' methods of governance,<sup>159</sup> their belligerence toward both the faithful and infidels,<sup>160</sup> and their questionable commitment to spreading the faith. Indeed, it was alleged that whenever the Knights advanced on infidel lands, taking their spoils, they were happy for the pagans to accept their governance without observing peace

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<sup>155</sup> For an overview of this, see Muldoon, *Popes, Lawyers and Infidels*, p. 57.

<sup>156</sup> *Das Zeugenverhör*, p. 147.

<sup>157</sup> *Ibid.*, p. 148.

<sup>158</sup> *Ibid.*, pp. 149-51.

<sup>159</sup> See, for example, *ibid.*, p. 4.

<sup>160</sup> For example, *ibid.*, p. 6.



with other Christians, against whom they still turned, causing the Church maximum damage, and allegedly assisted, on occasion, by the Knights themselves.<sup>161</sup>

Such allegations constituted a carefully constructed mirror of long-expressed papal concerns, built on canonistic thinking about just war and the political rights of peoples. They reflected the apprehension expressed by thirteenth-century popes over the spiritual welfare of new converts, and the relation this bore to the Order's authority in the region.<sup>162</sup> Papal grants and privileges suggested that the conversion of peoples justified the Knights' authority over them, since it was asserted, famously by Innocent IV, that they were owed protection. (This also established the limits to their position in the region: in the 1250s, Alexander IV reminded the Order that it possessed no authority over the inhabitants of Culm, since it was not responsible for their conversion.<sup>163</sup>) Through successive complaints made against the Order at the Curia therefore, a political discourse evolved in which political authority in the region was justified in terms of the spiritual welfare of peoples and the defence of Christendom. This discourse was constructed using language associated with just war theory and informed by canonistic arguments.<sup>164</sup>

Its influence on Polish assertions of sovereignty during Łokietek's reign was detectable not only in the proceedings in 1320, but in other diplomatic material surviving from the period

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<sup>161</sup> For example, *ibid.*, p. 7.

<sup>162</sup> Such concern reflected the increasing emphasis that the thirteenth-century placed on the missionary aspects of 'christianising' activity in the region. For a recent account of this development in the early to mid-thirteenth century see Iben Fonnesberg-Schmidt, *The Popes and the Baltic Crusades* (Leiden, 2006). For the order's relationships with papacy and empire during the first decades of its establishment in the region, see Udo Arnold, 'Der Deutsche Orden zwischen Kaiser und Papst im 13. Jahrhundert', *Der Ritterorden zwischen geistlicher und weltlicher Macht im Mittelalter: herausgegeben von Zenon Hubert Nowak* (Toruń, 1990), pp. 57-70.

<sup>163</sup> *Das Zeugenverhör*, p. 7.

<sup>164</sup> As will become apparent, the Lithuanian appeals, and the Rigan appeals, were partly informed by strains of canonistic thought relating to the political rights of non-aggressive non-Christians.

as well. Of course, borrowing from the Rigan complaints served the immediate purpose of corroborating the Polish case. But the discourse of which these complaints were a part also provided an invaluable means of asserting the naturalness of Łokietek's authority over a unified, independent Polish kingdom, which came increasingly to be justified in terms of the protection of Christian subjects as well as the protection and welfare of Christendom itself.

The parallels in language and content between the Rigan appeals and the Polish proceedings of 1320 are obvious. The Knights were accused of seizing Gdańsk despite the very clear terms on which they were invited by Łokietek to the area. The image of the land-hungry Order which had forgotten its purpose was reaffirmed throughout the testimonies. In his account of the Knights' violent acquisition of the town, Gerward damningly observed that while they were employed in this iniquitous endeavour, Władisław Łokietek was elsewhere fighting schismatics.<sup>165</sup> The witnesses recounted how the Order's greed had brought about a great slaughter of Christian people<sup>166</sup> – not only Christian knights, but the Christian population more generally, without regard to sex, age or order.<sup>167</sup> Nor, in doing so, did they shy from the use of war machines 'and other instruments of war'.<sup>168</sup>

The use of the spiritual volatility of subjects to contest temporal lordship within Polish lands has already received passing reference concerning Peter's Pence. As we have seen, the need to avoid the imposition of 'servitude' on peoples was stressed – something to be avoided anyway of course, but especially in this region on account of the prevalence of neophytes. It was a tactic deployed, as already mentioned, by the representatives of the inhabitants of

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<sup>165</sup> *Lites*, p. 25.

<sup>166</sup> *Ibid.*, e.g. p. 34.

<sup>167</sup> *Ibid.*, e.g. pp. 29, 36, 38, 39.

<sup>168</sup> *Ibid.*, p.35; also, pp. 38, 40, 46, 50.

Chelmno when refuting the notion of customary census payments: such payments, it was maintained, were a form of servitude that threatened the safety of their souls.<sup>169</sup> Such servitude under a foreign power was a refutation of their original state of being.<sup>170</sup> It was in such terms that Polish spokesmen conveyed the legitimacy of Polish lordship in Pomorze. The emphasis they placed during the 1320 process on the *freely* given homage by Pomorze's inhabitants, set against the Knights' oppressive behaviour there, reinforced the notion of Polish natural lordship in the land. Political treatises of the period commonly juxtaposed tyrannical rule with natural lordship: Polish spokesmen gave the juxtaposition additional force by adding the safety of Christian souls to the equation. It provided a potent means of expressing the naturalness of Polish lordship in Pomorze, just as it provided the Teutonic Order the equally potent means of asserting exactly the opposite.

References to the inhabitants of Pomorze in the 1320 process are particularly revealing in showing the increasing importance of this regional political discourse in Polish conceptions of sovereignty during Łokietek's reign. Firstly, it is noteworthy that accounts of Polish lordship in the region during the process are not more detailed: it is presented as timeless, and therefore no mention is made of the historical relationship between the inhabitants of Pomorze and the Polish nation. The inhabitants are not described as being of the *gens Polonica*, but simply as 'Christian people' and the 'inhabitants of the land'.<sup>171</sup> No mention is made of any shared language or of the 'national' customs to which Świnka had appealed. This apparent shift is one that in fact characterised the diplomatic practices of Łokietek's

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<sup>169</sup> See above, and *UB Bisthums Culm*, no. 214.

<sup>170</sup> *Ibid.*: '...pocis se loca sua velle deserere et originario incolatu dimisso ad partes transferre alienas quam subici nunc insolite servituti'.

<sup>171</sup> There is no implicit suggestion of nationality in the usage of 'terrigenae' in 1320, unlike earlier examples of the term's employment in Polish sources – especially those associated with Świnka.

reign more generally in the 1320s, and marked a clear departure from the language employed during Świnka's lifetime.<sup>172</sup> Świnka's conception of Poland had assumed a straightforward association between land and people, which was characterised by a shared set of laws and customs, an association that was enshrined in 'national' appeals across Europe at this time.<sup>173</sup> In the trial of Muskata, the prosecutors suggested that the bishop's behaviour threatened the freedom of the Polish people – the *terrigenas Polonos* or, more usually, the *gens Polonica* – from foreign authority: the *alienigenas* and the *gentes exerae et scismaticae*.<sup>174</sup> And the same language can be seen in chancery practices during the early years of Łokietek's rule, in which the duke's authority was closely bound up with the welfare of the Polish people: in a letter of April 1312, Władisław, duke of Cracow and Sandomierz, restoring the privileges of a monastery after the recent rebellion in the city of Cracow, observed the danger posed to 'heredes nostros et gentem Polonicam'.<sup>175</sup>

But much more characteristic of later diplomatic practices was a letter of only six months later, emanating not from the duke's or the archbishop's chancery, but composed in the

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<sup>172</sup> Balzer identified a comparable shift more than ninety years ago in his 'Polonia, Poloni, gens Polonica', in *Księga pamiątkowa ku czci Bolesława Orzechowicza* (Lwów, 1916), and in his *Królestwo Polskie, op cit.*, vol. 3, 144 ff. He saw 1320 as the turning point from an ethnographic conception of Poland to a constitutional one. In my analysis I am inclined to follow Knoll, who identifies the second decade of the fourteenth century as when understandings of Poland became increasingly historical and territorial. Knoll, *RPM*, p. 41.

<sup>173</sup> See, for example, J. R. S. Phillips, 'The Irish remonstrance of 1317: an international perspective'. *IHS*, 27 (1990), pp. 112-29. Knoll has described the archbishop's death as unfortunate for Łokietek, 'leaving him without the individual whom Oswald Balzer called the *primus movens* of the goal of a reunified *regnum*'. Knoll, *RPM*, p. 34.

<sup>174</sup> For example, '...et quod persecutor est domini principis et gentis Polonice et facto eis iuramento corporali de pace et fidelitate nititur eos exterminare de terra et alienigenas inducere;...' *MPV*, vol.3, no.121, p.82. See also pp. 84-93, *passim*.

<sup>175</sup> 'monasterii Sandecensis', order of St. Clare: We, Władisław etc. wish it to be known 'quod propter demerita publica, periuria, tradiciones, prodiciones civium civitatis nostre Craoviensis, que in nos, heredes nostros et gentem Polonicam prodicionaliter verbo, factis et operibus comiserunt, exterminando et excludendo nefandissime a bonis temporalibus et perpetuis hereditariis in opprobrium nostrum, heredum nostrorum et gentis Polonice, sibi alios dominos ausu temerario fovendo, lese maiestatis sceera perpetrando, ipsos iusticia Dei exigente de maturo senatus nostri consultu... etc.' *CDPM*, vol. 2, no. 557.

name of the community of the city of Wrocław.<sup>176</sup> The letter was addressed to the pontiff and lamented the danger posed to the flock of the bishop of Wrocław in his absence. The danger was exacerbated by their geographical situation, since the city of Wrocław 'is known to be situated within the kingdom of Poland', a kingdom that constitutes a 'colony of the catholic faith' situated among pagans and new converts. As such, the inhabitants of this kingdom are in especial need of regular spiritual nourishment from their shepherd. The clerical authorship of the document is self-evident, but explicit reference to the *gens Polonica* is notably absent. While their enemies are referred to as *gentes* (a term often used to denote non-Christian peoples), the term *incole regni* is employed.<sup>177</sup>

By the 1320s, references to Poland tend more frequently to indicate its regnal status, and what might previously have been referred to as the *gens Polonica* is more usually described – akin to the phrasing of the Wrocław letter – as 'the inhabitants of the kingdom'.<sup>178</sup> As we have seen, the opinions and arguments voiced in the proceedings of 1320 in particular evince this change. Rather than being conceived as posing a threat to the Polish people, its laws, language, and customs, the Order's crimes are described as a threat to 'the kingdom of Poland',<sup>179</sup> the *regnum*, of which the land of Pomorze was known to be a part.<sup>180</sup> And just as the Order's actions were conceived as crimes against the *regnum*, they were also against its ruler, Władisław.

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<sup>176</sup> *Breslauer Urkundenbuch*, ed. George Korn (Wrocław, 1870), no. 95.

<sup>177</sup> 'Quia Polonie regnum, in quo civitas Wratislava tamquam famosior situata [est], tartaricorum et scismaticorum gentium adiacesiis in suis confinibus est undique, et incole prefati regni ...'

<sup>178</sup> See note 172, above.

<sup>179</sup> '...magnum preiudicium et diminucionem dicti regni.' *Lites*, p. 21.

<sup>180</sup> *Ibid.*, p. 20.

This shift cannot simply be ascribed to Świnka's death. The concerns he expressed, and the 'ethnocentric' terms he used to do so, certainly lived on in ecclesiastical circles, and therefore among men who remained close to Łokietek. In February 1326, a synod of the Polish bishops ordered the re-publication of the 1285 statutes concerning the preservation of benefices from foreign incumbency and the use of the Polish language in services and schools.<sup>181</sup> Such concerns continued to be aired at Avignon also, since in 1330 the pope gave Bishop Nanker faculty to provide six persons to benefices to counter the problem of benefices being given to foreigners (*alienigenae*).<sup>182</sup> Concurrent letters were sent by the pope to the dukes of Opole and Głogów, in which the presence was lamented of foreigners 'qui ad destructionem eiusdem Wratislavis ecclesie et gentis tue toto posse laborant'.<sup>183</sup> Indeed, the tenacity of these concerns within ecclesiastical circles was indicated by the report of Galhard de Carceribus in 1337, in which it was proposed that Polish sees be reserved to avoid their occupation by Germans.<sup>184</sup>

But it was increasingly language associated with the defence of the Faith in the region – both through the protection of subjects and the defence of its borders – that was used to justify Poland's unity and its independent regnal status. The conception of the '*gens Polonica*', bound by a set of timeless laws and customs, became less important than the Christian inhabitants of the kingdom, whose spiritual interests could best be preserved through that political unit.

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<sup>181</sup> *CDMP*, vol. 2, no. 1061, p. 396: 'Precipimus, quod statutum felicitatis recordacionis dominis Iacobi quondam Gneznensis archiepiscopi, nostri predecessoris: De non recipiendis alienigenas in provincia Polonie ad beneficia ecclesiarum curam animarum habencia, et magistris a regimen scholarum non assumendis, nisi linguam Polonicam sciant, cum inibi se nequeant utiliter exercere.' We are told that, alongside Jan Janisław, the council consisted of Nanker bishop of Cracow, Florence bishop of Płock, Matthew bishop of Włocławek, and John bishop of Poznań, along with nuncios and proctors from the dioceses of Wrocław and Lubusz. See also Hube, *op. cit.*

<sup>182</sup> *MPV*, vol. 3, no. 265.

<sup>183</sup> *Ibid.*, no. 266.

<sup>184</sup> *VMPL*, no. 519 (at p. 395).

The shift did not indicate the demise of Świnka's influence so much as a shift in concerns and circumstances.<sup>185</sup> It was a rhetoric that reflected Łokietek's newly acquired royal status, but which also better suited his territorial ambitions, not only in Pomorze but also in Ruthenia. In addition to constituting an obvious means of refuting the legality of the Order's aggression, it underlined the idea of a unified kingdom of Poland under a single Polish ruler, Łokietek, in a way that Peter's Pence did not. The most obvious exception to the shift in language is the reference to the '*gens Polonorum*' in the representations made at the Curia in the bid for coronation. But in these representations too we see the fullest association being made between Polish sovereignty, the protection of the Faith in the region, and Łokietek as protector of his subjects and safeguard of their fidelity.

This is something that has been noted already by Polish historians: the association made between the defence of Poland and the defence of Christendom. The Polish appeal for Łokietek's coronation certainly suggested that Poland's geographical position was integral to Christendom's safety, urging the pope to agree to the proposal on these grounds in addition to the others presented. The association became increasingly refined during the fourteenth century: it came to be articulated through a series of metaphors, the most popular of which was that of the *antemurale Christianitatis*, whose pedigree has been traced by Paul Knoll.<sup>186</sup> In 1323, Łokietek provided the earliest known example of one such metaphor when he referred to the Ruthenians, who, despite being a schismatic people, provided an impregnable shield against the cruel incursions of the Tartars.<sup>187</sup> Inspiration for this association indisputably

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<sup>185</sup> As Balzer points out, of course, the shift broadly corresponds with Łokietek's coronation in 1320.

<sup>186</sup> Paul W. Knoll, 'Poland as *antemurale christianitatis* in the late Middle Ages', *Catholic Historical Review* 60 (1974), pp. 381-401; Knoll, *RPM*, p. 174; cf. J. Tazbir, *Polskie Przedmurze Chrześcijańskiej Europy: mity a rzeczywistość historyczna* (Warsaw, 1987).

<sup>187</sup> *MPV*, vol. 1, no. 83, pp. 72-3.

came from the Curia: associations of some form between the welfare of the Polish kingdom and the defence of Christendom had featured in papal correspondence for some time. Correspondence concerning crusading efforts in the region was always addressed to the faithful of specified kingdoms.<sup>188</sup> And the association was made more directly in 1233 when Pope Gregory IX wrote to the archbishop of Gniezno, lamenting that feuding between Polish princes aided the aggressions of pagans and schismatics.<sup>189</sup> It was clearly something Łokietek's spokesmen thought worth developing, as in 1325 John XXII's reply to the request for a crusading grant made a much more explicit association between the welfare of the kingdom and the defence of Christendom: indulgences were offered to all faithful Christians within Poland who defended the Catholic faith either through war, or by defending the kingdom.<sup>190</sup> The association not only rivalled the Order's justification for acquiring lordship in the region (namely, the defence of Christians), but also constructed an image of the kingdom as legitimate and impregnable. Though the papal reply of 1325 clearly intended the defence to be against non-Christian enemies (to whom Łokietek repeatedly referred in his appeals), the implication that the enemies of the kingdom were those of Christendom also was a powerful one for Łokietek and his supporters.

The association also provided a means of expressing Polish independence under the lordship of Łokietek specifically, by emphasising the relationship between the welfare of the inhabitants of Poland, their freedom from the aggressions of neighbours (whether pagan or Christian) and Łokietek as their protector. His repeated appeals to the papacy for grants of crusading tenths (some of which were more successful than others), helped define him not

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<sup>188</sup> Thus in 1251, it was to 'all the faithful throughout Poland' that the pope appealed, along with the like in the kingdoms of Bohemia and elsewhere. *VMPL*, no. 107.

<sup>189</sup> *Ibid.*, no.46, at p. 23.

<sup>190</sup> *Ibid.*, no. 316.



only as a defender of Christendom to rival the role of the Teutonic Order, but as a defender of his own people, whose vulnerability might be equated to that of any other in the region. Indeed, the coronation negotiations suggest that the Polish people had been likened by Gerward to the neophytes of the region. It was asserted in the pope's letter of September 1319 to Jan Janisław that the Polish people were, after all, comparatively new to the faith.<sup>191</sup>

## Conclusions

For some political communities, therefore, nationhood and regal independence could be expressed and developed as readily through ideas about the public welfare of Christendom as that of the 'state', the *res publica*. Polish spokesmen were expounding the kingdom's natural right to defend itself in terms not merely of a Roman-law inspired conception of its public welfare, but of the defence and protection of Christian society as a whole, the language for which emanated from the Curia. This is not to say that writers like Vincent Kadłubek had not been influenced by Roman law in their portrayals of the Polish nation. Such influences are perhaps also present in some of Łokietek's most important diplomatic correspondence. Gerward's appeal for Łokietek's coronation incorporated the notion of his popular support, obtained on account of his ability to protect his people from foreign aggressors. And yet, at the hands of Łokietek's spokesmen, this protection was bound up with something that transcended national boundaries – Christian society.

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<sup>191</sup> The spiritual welfare of the region's inhabitants more generally was a point of discussion during the coronation negotiations: in a papal letter sent after Gerward's return to Poland, the bishop of Poznań and others were appointed to investigate accusations of heresy in the diocese of Chełmno, on account of representation Gerward had made while at Avignon. *UB Bisthums Culm*, no. 133, p. 134.

This concern for the welfare of Christian society – an inherently papal concern – says much about the outlook of the Polish spokesmen. In the absence of political unity, the idea of an independent, Polish kingdom was constructed and conveyed by its secular prelates, a group by whom, certainly in the second half of the thirteenth century, ethnocentric concerns were frequently aired. The formulation of Poland's unity and independence in the hands of such men differed distinctly both from the Polish native chronicle tradition, and from the jurisdictional grounds for regnal independence developed elsewhere in Europe at this time, both of which tended to rest on pseudo-historical accounts of the nation. Archbishop Świnka made no *explicit* reference to the antiquity of the kingdom and its people, nor to the sovereignty of its kings, since the regnal body had been without a head for some time. Instead, his concerns about the danger posed to the Polish language, laws and customs were conveyed to the pontiff through the notion of papal overlordship. For Świnka, this relationship between pope and people was the element that bound the Polish nation to their land and customs, and revealed their character.

Other than in ecclesiastical circles, however, this conception was not to last. By the 1320s, on account largely of papal fiscal policy, but also of changing domestic circumstances, the idea of papal overlordship became less relevant and useful for the proponents of reunification, which was being realised by Łokietek. Concurrently, references to the '*gens Polonica*' were superseded by those to the '*regnum*'. Though the '*gens Polonica*' had featured in Gerward's appeal only a year earlier in 1319, the '*regnum*' as conceived in the process of 1320 did not specify a particular nation. The *regnum* was nevertheless a natural unit with timeless existence, over which Polish rulers were the natural lords. It was a shift that served well Łokietek's own territorial ambitions: the exact relationship between the inhabitants of

Pomorze and the Polish nation had clearly been something that Łokietek's lawyers had been disinclined to delineate in the 1320 proceedings, while the idea of the '*gens Polonica*' would certainly have been of little use in justifying anticipated acquisitions such as Ruthenia.

Importantly, the shift did not reflect a change in 'personnel', or the identity of Łokietek's spokesmen. Within this new conception of the *regnum*, the unassailable relationship between land, people and native ruler was expressed using political and legal language associated with the Curia. The relationship was elaborated through a language of foreign tyranny and servitude, contrasted with natural lordship – a language common to political treatises throughout Europe, but which Łokietek's lawyers combined with the safety of Christian souls being put at risk by tyranny. It was a language which originated with the papacy, and had particular relevance for the region since the arrival of the Teutonic Order. What was needed to justify lordship here, particularly when contending with the Order, was the claim to be defending the Church and the faithful. But perhaps most revealing of the outlook of those responsible for formulating conceptions of national sovereignty in Poland in the 1320s was the legal basis of the process. *Redintegranda* was a relatively obscure piece of canon law of particular ecclesiastical significance, chosen instead of the more common just-war theory relating to land restitution, to express the natural unity and sovereignty of the Polish kingdom.

So, although in new and varied ways, unity and independence from foreign influence was still being aired and developed at the Curia in the 1320s just as it had been by Świnka at an earlier date. What all these representations shared was belief in the naturalness of native lordship over the Polish people and lands, and the almost timeless existence of the Polish

kingdom. For Świnka, the language, customs and practices of the Polish people pre-dated memory. Likewise, Poland's longevity was expressed in 1320 through the assertion that Pomorze had always been part of the Polish kingdom. Such assertions reflected many of the assumptions found both in the Polish chronicle tradition and in other material, such as the letter from the city of Wrocław in 1312.<sup>192</sup> But they were also ones with which the pontiff was evidently expected to sympathise.

It is worth noting here how far these representations differed from assertions of jurisdictional independence identified as more usual for the period, in particular the argument of prescriptive right. This was a justification for sovereign temporal lordship favoured particularly by French and Neapolitan lawyers, and also, notably, by the Teutonic Order, yet it is nowhere to be seen in the Polish appeals. Rather, supporters of a reunified Poland relied on the idea of the kingdom's timeless existence. This *does* parallel other conceptions of sovereignty in the period, but elsewhere it was often used as a means of refuting the temporal powers of universal institutions. In Poland, it was a concept not only deemed fit for the papal ear, but one which was expressed through political and legal language associated with the Curia.

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<sup>192</sup> *Breslauer Urkundenbuch*, ed. George Korn (Wrocław, 1870), no. 95, as in note 176, above.

## 2. Scotland

### The Kingdom of the Scots, c.1250-1329

There are notable parallels between the political development of Scotland and Poland in this period.<sup>1</sup> Unlike Poland, Scotland had enjoyed the almost unchallenged rule of successive kings throughout the thirteenth century in the form of Alexander II (1214-49) and Alexander III (1249-86).<sup>2</sup> But with the unexpected death of the latter, and the subsequent death in 1290 of his only surviving heir, the Maid of Norway, Scotland was left in a kingless state.<sup>3</sup> Edward I's attempts to exercise overlordship after being invited to judge the Scottish crown's claimants were met with resistance, central to which were the efforts of several secular prelates. The names of Robert Wishart and William Lamberton, for instance, are now famed for their association with the cause of Scottish independence, both acting as Guardians in the physical absence of a Scottish king, and supporting the nation's eventual champion, Bruce, even at the expense of good relations with Avignon.<sup>4</sup> They are two names which would sit quite comfortably alongside that of Archbishop Świnka on account of their efforts. It was Wishart who, in 1291, reiterated the late king's assertion that the kingdom of Scotland was free 'from long ago', owing tribute or homage 'to no-one save God alone and his agent on earth'.<sup>5</sup>

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<sup>1</sup> For an overview of these parallels, see my article, 'The papacy and the nations of Poland and Scotland, c.1250-1334', in R. Unger and J. Basista (eds), *Britain and Poland-Lithuania: Contact and Comparison from the Middle Ages to 1795* (Brill, 2008).

<sup>2</sup> Excepting the MacWilliam rebellion under Alexander II in 1215.

<sup>3</sup> Norman Reid, 'The Kingless Kingdom: The Scottish Guardianship of 1286-1306', *SHR*, 61 (1982), pp. 105-29.

<sup>4</sup> See, for example, Wishart's alleged speech during 'the Great Cause', as reported in Bamburg, p. 120. For a discussion of the role of Scottish clergy in the Anglo-Scottish dispute see G. W. S. Barrow, 'The Scottish Clergy in the War of Independence', *SHR*, 41, pp. 1-22.

<sup>5</sup> *Scotichronicon*, vol. 6, p. 29; Edward J. Cowan, 'Identity, Freedom and the Declaration of Arbroath', in Dauvit Broun, Richard J. Finlay, and Michael Lynch, (eds), *Image and identity: making and remaking of Scotland through the ages* (Edinburgh, 1997), p. 44.

The prominence of secular prelates is nothing extraordinary, of course. As in Poland, such figures were the principal decriers of anything that threatened the survival of their nation and its laws and customs, concerns which were often aired with particular reference to the incumbency of clerical offices.<sup>6</sup> The Scottish church had been a particular focus for sentiments of the kingdom's independence from English overlordship during the thirteenth century on account of its special relationship with the Holy See, by which the pope had acted as metropolitan since the later twelfth century.<sup>7</sup> Though this 'special daughter' status originally applied to only nine of the eleven Scottish dioceses of the thirteenth century, it is clear that the papal chancery came to regard all the sees within the Scottish kingdom as enjoying this status, and this was reflected too in Scottish understandings of the relationship.<sup>8</sup> Despite the fact that this was not a political subjection like that of Poland, the privileges laid down in the bull *Cum universi* of 1192 came to act as assurances of Scotland's political independence.<sup>9</sup> These privileges included the separate collection of papal taxes, and the stipulation that no legate, except when sent *a latere*, was to exercise office in the kingdom,

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<sup>6</sup> Most obviously the expulsion of English clerics from the diocese of St Andrews recorded in Fordun, *Chronicle of the Scottish Nation*, ed. and transl. William F. Skene (Edinburgh, 1872), p. 318. Cf. comparable divisions among religious clerics suggested in a papal letter of 1289 censuring Scottish clergy for apparently refusing to admit 'alienigenae' to either secular clerical positions or into religious houses. *Les Registres de Nicolas IV*, ed. M. E. Langlois (Paris, 1905), p. 176.

<sup>7</sup> G. W. S. Barrow discusses the importance of the *ecclesia Scoticana* in the development of notions of national liberty in Scotland in the thirteenth and fourteenth centuries in his 'The Idea of Freedom in Medieval Scotland', *Innes Review* 30 (1979), pp. 18-32.

<sup>8</sup> See the *Le Liber Censuum*, edd. MM. Paul Fabre et L. Duchesne (Paris, 1910), 3 vols, vol. 1, pp. 230-2 – eleven sees, including Argyll and Whithorn (not included in the earliest bulls laying down the privileges), with the description 'qui est domini pape' appended to each.

<sup>9</sup> *Cum universi* is not known to have been accompanied by any agreement to pay Peter's Pence. B. Crawford, 'Norse earls and Scottish bishops in Caithness', in Colleen E. Batey, Judith Jesch and Christopher D. Morris, (eds), *The Viking Age in Caithness, Orkney and the North Atlantic* (Edinburgh, 1993), pp. 129-47; B. Crawford, 'Peter's Pence in Scotland', in G. W. S. Barrow (ed.) *The Scottish Tradition* (Edinburgh 1974), pp. 14-22.

unless he was himself 'of the kingdom of Scotland'.<sup>10</sup> The political importance of this recognition is demonstrated by Alexander II's request in 1248 that the terms of *Cum universi* be re-affirmed.<sup>11</sup>

As indicators of Scotland's independence these were also cited by the canonist Baldred Bisset and his colleagues William Frere and William Eglisam, despatched to the Curia in 1301 by the Guardians of the Kingdom of Scotland to plead the case for its independence.<sup>12</sup> Their pleas were heard with a sympathetic ear by a pope who two years previously had already indicated his acceptance of the notion that Scotland was in fact feudally subject to the See of St Peter – a notion undoubtedly concocted by Scottish petitioners. Indeed, in Bisset's pleading too (the so-called *Processus*), Boniface VIII's bull of 1299, *Scimus fili*, was echoed in the assertion that the kingdom of Scotland 'is recognised to be subject without intermediary in temporal and spiritual matters' to the Roman church.<sup>13</sup> This happy union of interests was short-lived however as, due to faltering relations with the French crown, in 1303 Boniface abandoned his conception of Scotland as a papal fief to avoid provoking Edward I.

1286 heralded a turbulent but defining period for the political and legal status of Scotland, a time when its political leaders were compelled by circumstances to clarify, and even develop,

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<sup>10</sup> Separate permissions were to be sought for taxation, even if, for administrative ease, the same collector was appointed to both kingdoms. P. C. Fergusson, *Medieval papal representatives in Scotland: legates, nuncios, and judges-delegate, 1125-1286* (Edinburgh, 1997), pp. 1-2.

<sup>11</sup> *VMHS*, no. 131. Not all popes, in practice, observed these privileges however. See *ibid.*, no. 245. These terms came to feature in the Pleading of 1301. *Scotichronicon*, vol. 6, pp. 148-9, 162-3.

<sup>12</sup> For the English response to this, see E. L. G. Stones, 'The Mission of Thomas Wale and Thomas Delisle from Edward I to Pope Boniface VIII in 1301', *Nottingham Mediaeval Studies*, 26 (1982), pp. 8-28.

<sup>13</sup> *Scotichronicon*, vol. 6, p. 169. That Scottish thinkers, as well as the pope himself, may have understood the pope's role in Scotland as that of suzerain of the kingdom is possibly reflected in the letters of confirmation for Scottish bishops in the 1320s when concurrent letters were sent to 'vassals of the church'.

its character. In 1291, having been invited by Bishop Fraser of St Andrews to intervene in the succession dispute, Edward I called the Scots leaders to Berwick to press on them his claim to overlordship. Sensing their likely trouble at this, he challenged them to produce evidence that would demonstrate he was *not* the rightful lord of Scotland. After several weeks they gave the astutely non-committal reply, on behalf of the community of the realm, that 'whoever shall be king shall perform to you whatever right and law require, for he and no one else will have the power to do this'.<sup>14</sup> Two weeks later, however, the Scots leaders themselves swore fealty to Edward I as overlord. Following more than twelve months of hearings, judgement was pronounced in favour of John Balliol, who was inaugurated on 30 November 1292 at Scone.<sup>15</sup> Almost immediately he began to repudiate the political ground obtained by Edward during the interregnum, but his initial resistance was only temporary, and after objecting to Edward's declared status as the final judge in all matters, he submitted himself as Edward's vassal.

The Scots leaders were unwilling to countenance Balliol's evident pliability and began to take steps to limit the damage done to their understanding of Scotland's independence. When in late June of 1294 Edward summoned the personal service of the Scottish king and twenty-six other notables, excuses were made by all. In early July 1295, government was withdrawn from Balliol at the Stirling parliament and put into the hands of a council of twelve – a body made up of equal numbers of bishops, earls and barons. With this step the Scots leaders took to another level the system of guardianship established after 1286 and with it the

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<sup>14</sup> Cited in G. W. S. Barrow, *Robert the Bruce and the Community of the Realm of Scotland* (4<sup>th</sup> edn, Edinburgh, 2005), p. 43, quoting from Stones and Simpson, *Great Cause*, vol. 2, p. 31.

<sup>15</sup> For an account of the legal arguments of the various claimants, and the legal advice sought from Paris, see: G. J. Hand, 'The Opinions of the Paris Lawyers upon the Scottish Succession c.1292', *The Irish Jurist*, 5 (1970), pp. 141-55; G. G. Simpson, 'The Claim of Florence, Count of Holland, to the Scottish Throne, 1291-2', *SHR*, 36 (1957) pp. 111-24; and see also B. C. Keeney, 'The Medieval Idea of the State: the Great Cause', *University of Toronto Law Journal*, 8 (1949-50), pp. 48-71.



concept of Scottish kingship. Here, government was taken not from a minor, and exercised not during an interregnum, but from a sane adult king.<sup>16</sup> The council assumed government and set about making the diplomatic and legal preparations for war: a treaty was signed with France in October and before the end of the year the Scots had obtained papal absolution from all oaths made under duress.<sup>17</sup> War with England commenced in March 1296. In early July Balliol submitted again to Edward I, abdicated, and resigned his kingdom to the English crown. Mass swearing of fealty followed in August, and English government in Scotland was established, but only six months passed before the Scots were on the offensive again, destroying English forces at Stirling Bridge in September 1297, and appointing a new succession of Guardians who supported their military activity with concerted diplomatic efforts at both the French court and the papal Curia.<sup>18</sup>

Throughout these years the rivalry of the Great Cause continued between the ambitious Bruce family and the Balliols. When summonses were made by the council of twelve to fight the English in 1296, the Bruces did not answer.<sup>19</sup> Balliol's abdication and residence in England, however, saw a more active presence of the Bruces, with the future king being elected as joint Guardian in July 1298. Their ambitions continued to be monitored however, with Bruce's fellow Guardian being a Comyn and therefore of the Balliol faction. The Guardians did not recognise Balliol's abdication, and despite his physical absence (eventually on the continent), government continued either on behalf of the king (before 1301) or in the king's name (from 1301 to May 1303), and it was for the recognition of his title that Bisset and his colleagues presented their case to the pontiff in 1301. Once Balliol was released from

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<sup>16</sup> Barrow, *Bruce*, p. 84.

<sup>17</sup> *Ibid.*, pp. 82-3.

<sup>18</sup> See also J. W. Dilley, 'Scottish-German Diplomacy, 1297-27', *SHR*, 36 (1957), pp. 80-7.

<sup>19</sup> Barrow, *Bruce*, p. 88.

papal custody in the summer of this year to reside in his own ancestral home at Bailleul-en-Vimeu, his reinstatement was anticipated by the Scots leaders.<sup>20</sup> Edward I remained reluctant to oblige the Scots, however, and proceeded with his summer campaign in 1301. The Scots' resistance, led in the field by John Soules, forced the English crown into a nine-month truce at the beginning of 1302. The expectation of Balliol's reinstatement was doubtless in Bruce's mind when he decided to submit to Edward before mid February.<sup>21</sup> England's peace with France a few months later, which excluded the Scots entirely, despite the French king's supposed assurances, exposed the Scots to the full wrath of the English king. Their defeat saw the submission of Comyn along with all the other leading Scots prelates and magnates in February 1304, apart from John Soules and William Wallace, the latter of whom Edward pursued without mercy. To the rest, lands were restored in return for homage.

From the English crown's perspective, Scotland now constituted a land akin to Wales or Ireland.<sup>22</sup> The government that had continued in the name of Balliol, that had sent talented diplomats to Paris and Avignon to bring about his return, was extinguished. The determination of Bishop Lamberton was not so easily quashed however, and he made a pact with Bruce in June 1304, signalling the new focus of Scottish rebellion against England. Following the trial of Wallace at Westminster in 1305, Edward committed the land's custody to four Scottish notables, including Lamberton, pending the arrival of a new lieutenant planned for a year later. Unadvisedly, as it turned out, Bishop Wishart and Robert Bruce

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<sup>20</sup> For the developments in diplomatic practice which seem to reflect this anticipation, see *Ibid.*, p. 156.

<sup>21</sup> *ASR*, no. 32, pp. 118-19.

<sup>22</sup> Barrow, *Bruce*, p. 170; R. R. Davies, *The First English Empire: Power and Identities in the British Isles, 109-1343* (Oxford, 2000) p. 27. The last English chancery reference to Scotland as a kingdom in this period was in 1305; thereafter it was consistently referred to as a land, *terra nostra*.

were also allowed to remain in Scotland.<sup>23</sup> On 10 February, 1306, Bruce murdered John Comyn in the friary at Dumfries. In the absence of John and Edward Balliol, Comyn was the most significant obstacle to Bruce's ascending the Scottish throne, which occurred at Scone six weeks later. War with the English resumed, and Bruce's bid to exercise the authority of his title throughout Scotland began.

Diplomatically, the isolation of Bruce and his allies at this point was unprecedented. French support was no longer available following the peace made with England, while Bruce squandered any chance (however slim) of papal backing when he murdered Comyn, for which he incurred papal excommunication, and for which he showed little inclination to seek absolution.<sup>24</sup> Recognition of his royal title was not forthcoming from Clement V and until the papal legation sent by John XXII in 1317 direct correspondence with the 'self-styled king' was non-existent.<sup>25</sup> The papal stance was clearly informed by the English account of Bruce and his allies as mere rebels of the English crown, which they evidently were in that they had sworn oaths of fealty to Edward. But the lack of initial international recognition should also serve as a reminder that Bruce was not backed by many of the notables who acted in the name of Balliol. Throughout Bruce's reign there remained a collection of Scottish magnates who denied his claims and grouped themselves around Edward Balliol at the English court. John XXII followed his predecessor in condemning Bruce at the outset of his pontificate for Comyn's murder and for his refusal to participate in peace negotiations.<sup>26</sup> The belligerence of Bruce and his supporters was a concern frequently voiced by the pontiff,

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<sup>23</sup> Cf. *ASR*, no. 35, pp. 135-6.

<sup>24</sup> Excommunicated by Clement V. *Foedera*, I, ii, 754.

<sup>25</sup> The papal legation was sent in response to English requests. See N. Denholm-Young (ed. and transl.), *Vita Edwardi Secundi* (Oxford, 1957), pp. 78-9.

<sup>26</sup> *CPL*, vol. 2, pp. 433-4; *VMHS*, no. 412; *Foedera*, II, i, pp. 327-8, 364.

and undoubtedly confirmed his initial attitude. The Curia was well informed of the Scottish raids into northern England, not only by the English chancery but also by the clergy of the region, notably the archbishop of York.<sup>27</sup>

Bruce did little to sway the pontiff's opinion after the arrival of papal legates Gaucelin and Luke, sent to negotiate a truce in response to the English mission of 1317. Bruce declined all participation in any negotiation, refusing to read the nuncios' letters on account of their inadequate address, and, by seizing Berwick in April 1318, flouting the papal truce that was eventually declared.<sup>28</sup> When Bruce and four of his bishops were summoned to the Curia to explain their actions before May 1320, they sent instead three letters, probably in April of that year – one from Bruce himself, one from certain prelates of Scotland, and the third from the barons and community of the realm. Only the last, known as the Declaration of Arbroath, is now extant.<sup>29</sup> The letters secured for Bruce and the bishops of St. Andrew's, Dunkeld, Moray and Aberdeen a reprieve. All five again failed to appear at the Curia and in April 1322 the four bishops were again excommunicated for 'acts of violence' and cited to appear before the pope on pain of further censure.<sup>30</sup> In their stead, at the end of 1323, the earl of Moray was sent, who managed to secure the pope's agreement to address Bruce as king (John simultaneously assuring Edward II of the emptiness of any such address).<sup>31</sup> Nevertheless, it was only following the Treaty of Edinburgh that, in 1328, Bruce was finally

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<sup>27</sup> For correspondence between the two concerning Scotland see *LNR*, (Clement V) pp.203-6; (John XXII) pp. 271-3, 282-4, 285-6, 299-300.

<sup>28</sup> For Bruce's refusal to treat with the cardinal legates, see *CPL*, vol 2, p. 419. For the pronouncement of the papal truce in May 1317, see *ibid.*, pp. 260-2, 417. For the capture of Berwick, see *Scotichronicon*, vol. 6, p. 413.

<sup>29</sup> The letters reached the Curia some time after the beginning of June, when Bruce and the four prelates were excommunicated, but before the end of July when John wrote to Edward II urging him to make peace. *Foedera*, II, i, p. 431. In August John replied to all three letters. See *VMHS*, nos. 431-3.

<sup>30</sup> *CPL*, vol. 2, p. 449; *VMHS*, no. 445.

<sup>31</sup> *CPL*, vol. 2, pp. 239, 457. The earl was allowed to take the crusading vow.

absolved and the interdict against the kingdom relaxed for two years.<sup>32</sup> Among those sent to the Curia to obtain this were Master Alexander de Kinninmonth, a canonist, and very likely an author of the Declaration.<sup>33</sup> Details of their business there are lacking, but it is clear that they sought from the pope the privileges of crowning and unction, the lack of which had long troubled those championing Scottish independence.<sup>34</sup> It is also possible that they discussed the payment of Peter's Pence as a sign of the kingdom's temporal subjection to the Holy See, though evidence for such payment thereafter does not survive.<sup>35</sup>

For Rosalind Hill and Sophia Menache, Scotland displays in this period a pronounced spiritual independence, characteristic of the rise of inward-looking political communities within Christendom and of the Avignon papacy's waning influence.<sup>36</sup> That several leading prelates chose to bear the burden of papal excommunication incurred through support for their king would certainly give weight to such a suggestion.<sup>37</sup> Proponents of Scottish independence reputedly came to liken the defence of their nation to holy war – a popular analogy deployed across Europe in this period, which modern observers have associated with the 'spiritualisation' of lay powers and a decline in the political significance of the Avignon papacy.<sup>38</sup> Tempting though this paradigm is for historians, and daring though the

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<sup>32</sup> *Foedera*, II, ii, p. 730; *CPL*, vol. 2, p. 289.

<sup>33</sup> This is the suggestion of Barrow in his *Bruce*, p. 308. According to Goldstein, A. A. M. Duncan suggested (in personal correspondence) Walter de Twynham as a likely author. R. James Goldstein, *The Matter of Scotland: Historical Narrative in Medieval Scotland* (Lincoln, Nebraska and London, 1993), p. 315, note 26.

<sup>34</sup> The absence of crowning and unction in Scotland had constituted to crux of John Hastings' claim to the royal title during the Great Cause, by which it was maintained that Scotland was in fact not a kingdom at all. Keeney, 'Medieval Idea of the State', p. 63.

<sup>35</sup> Crawford, 'Peter's Pence', *op cit*.

<sup>36</sup> Rosalind M. T. Hill, 'Belief and Practice as illustrated by John XXII's excommunication of Robert Bruce', in C. J. Cuming and Derek Baker (eds), *Popular Belief and Practice*, Studies in Church History, 8 (Cambridge, 1972), pp. 135-8; Menache, 'The failure of John XXII's policy toward France and England: reasons and outcomes, 1316-1334', *Church History*, 55 (1986), pp. 423-37.

<sup>37</sup> See *VMHS*, no. 427, and Barrow, *Bruce*, p. 349.

<sup>38</sup> Menache, *Vox Dei*, pp. 175-90 and Mastnak, *Crusading Peace*, pp. 241-53.

behaviour of secular prelates often was in this period of Scottish history, such a view ignores three important facts: that communication persisted between the Curia and senior Scottish clerics throughout Bruce's excommunication;<sup>39</sup> that proponents of Scottish independence clearly still looked to the papacy as the potential provider of their long-sought-after inauguration privileges; and that a conceptual language associated with the Curia continued to inform the formulation of ideas about Scotland as an independent nation.

## **The Declaration of Arbroath: interpretations**

The Declaration of Arbroath, famed for its concise yet emotive prose, is now regarded as a charter for Scottish independence, embodying the fullest expression of the political relationship between people and *regnum* to survive from the wars of independence.<sup>40</sup> It was in this period that the conception of the 'community of the realm' flowered in Scotland, and the letter, composed in the name of this community, has served historians as its most eloquent manifestation – that is, the idea of a political community made up of a single people, associated with a single kingdom, and deserving of a single native ruler. In it can be found a polished account of Scotland as an independent kingdom, seen through the history of its people and their association with the territory, and then through their relationship with the English and their rulers which reveals the Scots' own Christian and military heritage as a victorious people. Edward I's attempts to exercise lordship over Scotland threatened this

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<sup>39</sup> Regarding the pontificate of Clement V, this has been demonstrated amply by P. C. Fergusson in his 'Clement V to Scone Abbey: an unprinted letter from the abbey cartularies', *Innes Review*, 40 (1989), pp. 69-71. It is clear that comparable traffic persisted at least for the sake of ecclesiastical administration between Scotland and Avignon in the time of John XXII. In Maurice, bishop of Dunblane, appointed in 1322 and an ally of Bruce, John had a dependable contact with the kingdom.

<sup>40</sup> The body of literature relating to the letter is vast, and so will be cited only when of direct relevance. For an edition of the letter, see J. Fergusson, *The Declaration of Arbroath* (Edinburgh, 1970) and for English translations, see *Declaration*, and E. J. Cowan, '*For Freedom Alone*': *the Declaration of Arbroath* (East Linton, 2003).

natural relationship between land, people and ruler. But the Scots, by divine providence, were not intended for servitude; just as they had always avoided subjugation by other peoples, they now enjoyed a ruler in the form of Robert Bruce who is intent on restoring and protecting their natural and just freedom.

The letter has been seen as the culmination of ideas about Scottish independence that had been prepared for diplomatic use since 1292.<sup>41</sup> It also represents the influence on these ideas of Bruce's rise after 1306, and the tactics used by his spokesmen to legitimise his rule. It therefore has several well-known diplomatic predecessors. The best known of these are the *Instructiones* and *Processus* of 1301, produced by Baldred Bisset and his colleagues at the Curia in response to Edward I's mythological and historical justifications of English overlordship, which the king had outlined in a letter to the pope of the same year. The *Instructiones* is a working draft of the envoys' legal arguments which were then polished and refined by Bisset to produce the *Processus*. Alongside these we have formal declarations such as that of the Scottish clergy in 1309-10 and the so-called Bamburgh brief – an account of Scottish independence that served as a negotiating tool in 1321 as part of ultimately fruitless peace negotiations – in addition to other, more minor diplomatic records.

Much has been made of the way in which the Declaration signified a departure from earlier uses of the Curia as a forum to argue the case for Scottish independence.<sup>42</sup> The efforts of Bisset and his colleagues had produced a closely worked set of legal justifications that appealed directly to the pope's authority as the natural judge of the matter, resting their case on the '*ius commune*' and natural law. It mustered the common law notion (derived from

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<sup>41</sup> Cowan, 'Identity, Freedom and the Declaration of Arbroath', p. 39.

<sup>42</sup> See, for example, Goldstein, *Matter of Scotland*, pp. 90-103 and also Linehan, 'Bamburgh', p. 109.

Roman law principle of *par in parem*) of the equality of kingdoms to demonstrate Scotland's natural independence, which it also supported by citing the law of nations and prescriptive right.<sup>43</sup> It was primarily in illustration of these principles that a history of the Scottish nation, from ancient to modern times, was set out, and the spokesmen responsible for this were all renowned canon lawyers who developed their case almost entirely at the Curia.<sup>44</sup> The Declaration, by contrast, was dispatched to the Curia as an alternative to Bruce and four of his prelates appearing in person, and constituted a comparatively cursory account of Scottish independence, with no explicit reference to any law according to which the pope might pronounce judgement in the matter. Though delivered to the Curia by its likely author, Master Alexander de Kinninmonth, it was never intended to institute a legal process there.<sup>45</sup> For Bisset, the Curia was the appropriate forum for examining the case, while the bold tone of the 1320 Declaration suggested that it was in no need of examination.

Integral to this perceived development is the eventual discarding, during the Bruce regime, of the deference to papal authority with which Bisset's representations were so strongly flavoured. Bisset famously presented his case for Scottish independence at the Curia on the grounds that the pope possessed direct temporal authority over the kingdom through the

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<sup>43</sup> For equality of kingdoms, *Scotichronicon*, vol. 6, pp. 138-9, and Goldstein, *Matter of Scotland*, p. 68. The principle of *par in parem* had also been developed by twelfth- and thirteenth-century canon lawyers as a theory of papal sovereignty. For this see B. Tierney, *Origins of Papal Infallibility, 1150-1350* (Leiden, 1972), 29 ff. and also editorial notes in *Scotichronicon*, vol. 6, p. 265. For reference to law of nations, see *Scotichronicon*, vol. 6, p. 185. The use of prescriptive right is of course interesting, as it was a common form of expressing national sovereignty in this period, and one which had received approbation from successive pontiffs in the thirteenth and early fourteenth centuries.

<sup>44</sup> See editorial notes to *Scotichronicon*, vol. 6 for production of 'Instructiones' at the Curia. Bisset later served as vicar-general under the bishop of Bologna. See Goldstein, *Matter of Scotland*, p. 66; David McRoberts, 'The Glorious House of St. Andrew', in David McRoberts (ed.), *The Medieval Church of St Andrews* (Glasgow, 1976), pp. 110-14. For the unlikelihood of any advice being sent from Scotland, see R. James Goldstein, 'The Scottish Mission to Boniface VIII in 1301: A Reconsideration of the Context of the *Instructiones* and *Processus*', *SHR*, 70 (1991), pp. 1-15.

<sup>45</sup> This authorship has been postulated by Barrow, in his *Bruce*, pp. 306, 308. See note 33, above. For Kinninmonth's career see *BDSG*, pp. 301-3.



Donation of Constantine, but also maintained that Scotland was ‘the special and particular freehold property of the [Roman] church’.<sup>46</sup> Such deference tallied with Scottish efforts at the Curia two years previously, the product of which was the bull *Scimus, fili* of 1299.<sup>47</sup> In this, Boniface VIII admonished Edward for his claims to overlordship of Scotland, maintaining that the kingdom has always ‘belonged rightfully, and is known still to belong in the full legal sense, to the Roman church’.<sup>48</sup> Boniface’s opinion on this clearly constituted a rather liberal interpretation of the special status enjoyed by the Scottish church, recasting in a temporal light its relationship to the Holy See, a relationship in which the Scots had enjoyed ‘ancient freedom’.

It was Edward’s response to the bull that heralded quite different tactics, on both sides. It constituted the first of the appeals to ancient ‘history’ in support of his claims over Scotland, by employing the mythological account of Brutus as testament to the historic, and therefore legal, overlordship of Scotland.<sup>49</sup> Bolstered by the accompanying baronial letter, it also made clear that this legal superiority was not according to any law of which the pope might be judge. The king was accountable in this only to his subjects, while the rights of the English crown over Scotland rested on ancient custom, and therefore customary law (English common law – human law, over which the pope had no direct jurisdiction). The Scottish

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<sup>46</sup> *Scotichronicon*, vol. 6, pp. 148-9. For the use of the Donation see pp. 146-7: ‘Power over the whole island of Britain undoubtedly passed over to the Roman Church, as much by divine disposition as by the devotion of the faithful in later times, and by a gift of the emperor Constantine... it clearly resides with it’. Reference to the Donation clearly implied much more than the 1299 appeal with regard to *universal* papal authority – something with which Boniface would have evidently sympathised, even though it was an argument from which even hierocratic polemicists tended to shy away in this period.

<sup>47</sup> The bull itself constitutes the only extant record of these efforts. The substance of these representations evidently differed considerably from those of Bisset and his colleagues, who were responding directly to the mythological claims presented by Edward I in response to *Scimus, fili*.

<sup>48</sup> *ASR*, no. 28, pp. 81-7, at p. 81.

<sup>49</sup> E. L.G. Stones, ‘The Appeal to History in Anglo-Scottish Relations between 1291-1401’, *Archives*, 9 (1969), pp. 11-21, 80-3.

response to these letters contradicted their tone and content on every major claim. Not only did Bisset and his colleagues refute the English arguments point by point, adding their own formulation of pseudo-historical Scottish origins, but they did so with close reference to a set of laws of which the pontiff was the natural interpreter and judge. They evidently relished the opportunity to highlight the disparity between their own deference and the behaviour of the English crown.<sup>50</sup>

However, the idea of direct papal lordship was one from which the proponents of Scottish independence, like the Polish spokesmen, eventually shied away, and which was all but absent from any form of Scottish diplomacy by 1320. Although the Declaration hinted that some such special favour associated with St. Peter had been enjoyed by the Scots, since Peter's brother Andrew was responsible for bringing Christianity to Scotland, no conclusions were drawn from this regarding their temporal relationship.<sup>51</sup> For this reason, the absence of the Donation argument from the Bamburgh brief of a year later has been deemed particularly noteworthy by its editor, Paul Linehan, as in so many other respects the brief draws heavily on Bisset's 1301 pleading. Linehan explains the transition with the Scots' strengthened position by the 1320s, becoming less dependent on papal support.

Of course, by 1320 the Scots, like the Poles, were no longer kingless, but could identify with a new ruler, whose authority depended not on papal approval but on military prowess and

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<sup>50</sup> *Scotichronicon*, vol. 6, p. 161. This was also a more general matter of concern during Boniface's pontificate. In arbitrating the Anglo-French dispute, Boniface was forced to intervene not in the capacity of Christ's Vicar, but as a private individual. On this, see: J. Gaudemet, 'Le rôle de la papauté dans le règlement des conflits entre états aux XIII<sup>e</sup> et XIV<sup>e</sup> siècles', *Recueil de la Société Jean Bodin XV: La paix* (Brussels, 1961), 79-106; Renouard, *The Avignon Papacy*, pp. 128, 132-3.

<sup>51</sup> *Declaration*, p. 35. The pope's reply to Bruce's letter, now lost, sent in 1320, suggests that Bruce had referred to the special daughter status enjoyed by the Scottish church to urge the pontiff not to support English candidates to the see of Glasgow (a grievance borne of John's appointment of one of Edward II's penitentiary friars, John Eggescliffe, in 1318. *CPL*, vol. 2, pp. 173, 426); *VMHS*, no. 431.

the assent of 'the community of the realm'. The tone and character of the Declaration evinced this perfectly, devoid as the letter was of any of the direct legal citations formerly employed by Bisset and his colleagues.<sup>52</sup> Rather it pronounced, as Goldstein has it, a 'moral or theological right' to Scottish independence.<sup>53</sup> Its presentation of the Scots as an ancient people, analogous to the Israelites, destined for a homeland and succeeding by divine will, justified the notion of an independent nation in a way that seemed to preclude any papal judgement in the matter. The contrast here with the 1301 instructions and pleading, in which history was deemed to be mutable, is striking. In the instructions it was maintained that 'when situations changed, the rights of kingdoms and peoples also changed; and ... the state of affairs both in the past and now is not permanent'.<sup>54</sup> The successive waves of conquest experienced by Scotland were then recounted, beginning with the Britons, then the Picts, and finally the Scots.<sup>55</sup> Bisset's deployment of the Scottish origin myth was to serve specific legal arguments, rather than primarily to invoke any theological references.<sup>56</sup> One illustration of this disparity of purpose in the invocation of Scottish mythological history between the Pleading and the Declaration is the inclusion of Spain in the Scots' itinerary on their journey from distant lands to Scotland. Scottish residence in Spain was a component part of the Scottish origin myth tradition, but since, for Bisset, the Spanish episode could serve little or

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<sup>52</sup> Interestingly, this is in contrast to the content of the *Bamburgh* brief of 1321, which retained Bisset's references to the two common-law principles of the equality of kingdoms and prescriptive right. *Bamburgh*, p. 118.

<sup>53</sup> Goldstein, *Matter of Scotland*, p. 90.

<sup>54</sup> *Scotichronicon*, vol. 6, pp. 144-7.

<sup>55</sup> Unlike the final Pleading, the Instructions have the Scots coming from Ireland to overthrow the Britons, and later allying with the Picts, who are described as 'incomers' ['advenis Pictorum populis']. *Scotichronicon*, vol. 6, pp. 142-3; cf. pp. 182-3.

<sup>56</sup> There is, however, something divinely-ordained about *Scota's* carrying the coronation stone in Bisset's final Pleading, which is revealed yet more clearly in the *Piere D'Escoce* poem of c.1307, of anonymous authorship, but which undoubtedly used Bisset's Pleading as a source. In this, *Scota's* arrival in Scotland was presented as the fulfilment of a prophecy by Moses that she heard in Egypt. M. Dominica Legge, 'La *Piere D'Escoce*', *SHR*, 38 (1959), pp. 110-11.

no obvious legal purpose, he omitted it from his account.<sup>57</sup> In 1320, the author of the Declaration reinstated it in accordance with the Scottish historical tradition, to parallel with the wanderings of the Israelites.<sup>58</sup>

Most famously perhaps, the Declaration's moral or theological hue was achieved by likening Bruce to 'another Maccabeus or Joshua'.<sup>59</sup> It was an analogy that recurred, slightly altered, in the final part of the Bamburgh brief of 1321, in which it was asserted that even if the Scots were forced, like the Maccabees, to live in the mountains eating nothing but herbs, they would not submit to the ruler of any other nation.<sup>60</sup> Again, the use of such biblical references distinguishes the letter as rhetorical rather than legal in essence. Such usage, as Susan Reynolds has shown, was, by this period, a very familiar way of expressing a sense of nationhood and regnal solidarity, the analogy of the Israelites being the most common.<sup>61</sup> Indeed, the twelfth- and thirteenth-century historical tradition in Scotland located the nation's origin within a framework of biblical chronology, a method broadly comparable to the appropriation by the English of the Trojan myth.<sup>62</sup> As Geoffrey Barrow has observed, the analogy of the Maccabees was an obvious choice, which neatly resembled the Scottish

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<sup>57</sup> The only reference to Spain is the residual assertion, much older than the 1301 appeal, that Ireland was named after the river Ebro in Spain. This is noted only in the *Instructiones*, and its absence from the final Pleading leaves no mention of Spain. *Scotichronicon*, vol. 6, pp. 142-3.

<sup>58</sup> That the Scots wanted to be likened to the Israelites is again suggested by the Declaration's decision to retain from its source – which is Henry of Huntingdon – the crossing of the Red Sea as a reference point for Scottish chronology. *Declaration*, p. 34, and Henry, Archdeacon of Huntingdon, *Historia Anglorum: The History of the English People*, ed. Diana Greenway (Oxford, 1996), pp. 30-1.

<sup>59</sup> *Declaration*, p. 35.

<sup>60</sup> Bamburgh, p. 122; Barrow, 'Freedom', pp. 30-1.

<sup>61</sup> Reynolds, 'Origines gentes'; see also Alan V. Murray, 'Ethnic Identity in the Crusader States: The Frankish Race and the Settlement of Outremer', in Forde, Johnson and Murray (eds), *Concepts of National Identity in the Middle Ages*, *op cit.*, pp. 68-9.

<sup>62</sup> For this see Tange's Roll, printed in E. L. G. Stones and Grant G. Simpson (eds.), *Edward I and the Throne of Scotland: an edition of the record sources for the Great Cause* (Oxford, 1978), vol. 2, pp. 298-300.

struggle since 1292.<sup>63</sup> Nevertheless, its use in communications with the Curia might also be likened to efforts, particularly by French at the turn of the century, to define national sovereignty in terms suggestive of limits to the papacy's temporal authority. Depicting the nation as an ancient and therefore natural entity, divinely ordained and implicitly pre-dating the universal authorities of papacy and empire, indicated its freedom from the institutions of later ages.<sup>64</sup>

Perhaps in terms of purpose, therefore, the 1320 Declaration's appeal to history appears to bear a closer resemblance to Edward I's response to *Scimus fili* in 1301 than to the Scottish pleading of the same year – an attempt to demonstrate the limitations to, rather than the relevance of, the papacy's political role in Christendom.<sup>65</sup> The pope is, after all, advised by the Declaration to heed the facts put to him in the letter if he wishes to avoid scandalising his reign by encouraging doubt over his impartiality as an arbiter: the community of the realm urges him to be wary of showing favouritism 'since with him whose viceregent on earth you are there is neither weighing nor distinction of Jew and Greek, Scotsman or Englishmen', beseeching him therefore to 'look with paternal eyes' on the dispute.<sup>66</sup>

The similarities in tone between the Declaration and baronial letters such as that composed in the 1301 Lincoln parliament in response to *Scimus fili* have in fact been given considerable emphasis by historians.<sup>67</sup> The comparison, made most forcefully by Grant G. Simpson, has

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<sup>63</sup> Barrow, 'Freedom', p. 32.

<sup>64</sup> See Introduction, above.

<sup>65</sup> An apparent nervousness on account of this chosen tone is discernable in its redrafting: *Scotichronicon*, vol. 7, p. 173.

<sup>66</sup> *Declaration*, p. 36.

<sup>67</sup> G. G. Simpson rooted the letter in a European tradition of baronial letters in his important article 'The Declaration of Arbroath revitalised', *SHR*, 26 (1974), pp. 11-33. The parallel was also drawn by A. A. M.

been prompted not simply on account of its nominal authors – the eight earls, thirty-one named barons and ‘the other barons and freeholders and the whole community of the realm’ – but more particularly on account of its use of the idea of political rule. In the English baronial letter of 1301, Boniface had no *de iure* involvement in the dispute, since it was a temporal affair and the king was only accountable to his barons in such matters.<sup>68</sup> The increased political importance of the community of the realm in the Declaration, in contrast to Bisset’s Pleading, served a similar purpose. The Declaration maintained that, in the matter of Scotland’s freedom, Bruce was accountable to his people alone: thus, if he neglected his charge as Scotland’s protector against English ambitions ‘we would strive at once to drive him out as our enemy ... and we would make some other man who was able to defend us our king’.<sup>69</sup> For Edward Cowan, this element of the Declaration is underpinned by the political legacy of William Wallace, whose career ‘embodied the practical, secular, political counterpart to the Roman law maxim much favoured by the canonists – “What touches all must be approved by all”’.<sup>70</sup>

Historians have not had much difficulty in explaining the shift in tone from Bisset’s representations: in 1320 appeals to Scottish sovereignty had become bound up with the legitimacy as king of Scotland of Bruce, whose assumption of the title, and the associated murder of John Comyn in the same year (1306), had soured Scottish-papal relations. The Bruce camp was rife with suspicion of the pope’s favouritism: according to reports from the

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Duncan in his ‘The Making of the Declaration of Arbroath’ in D. A. Bullough and R. L. Storey (eds), *The Study of Medieval Records: Essays presented to Kathleen Major* (Oxford, 1971), p. 180.

<sup>68</sup> As Simpson demonstrates, there are instances of the use of this tactic from across Europe from as early as 1205.

<sup>69</sup> *Declaration*, p.36. Bruce had used a comparable tactic in 1317 when he refused to receive the letters carried by the papal nuncios, sent to negotiate a truce, in view of their failure to style him as king, ascribing his refusal to the counsel of his nobles.

<sup>70</sup> Cowan, ‘Identity, Freedom and the Declaration of Arbroath’, p. 61.

papal nuncios, it was common belief that the royal title was absent from papal letters because of English influence at the Curia;<sup>71</sup> and no doubt the imprisonment of Scottish envoys at Avignon in 1318 did little to allay such suspicions.<sup>72</sup> Anything akin to Bisset's recognition of the pope's *direct* temporal lordship would therefore undoubtedly have been seen as tantamount to surrendering to English claims. Indeed, Menache has identified the Declaration's implicit rejection of papal arbitration as indicating a despondency brought about by the pope's unquestionable partiality.<sup>73</sup>

In view of all this we might at least query Linehan's suggestion that the Declaration's defiant tone can be ascribed to the Scots being in a stronger position in the 1320s. Such a view surely stems from the rather teleological premises that the clearest expression of national sovereignty in this period could only be one that was free from all universal claims of the papacy – akin to the French model – and that such a model was the conscious goal of all those involved in formulating conceptions of national freedom. This obscures the way in which the Scots arrived at some of their statements of nationhood and independence, by ignoring the continued importance of papal-Scottish relations and the influence of political discourse current at the Curia. Linehan's appraisal depends on Bruce's strength as a ruler and his apparent popular support, but in fact it was his poor relations with the pontiff that most likely explain why, in 1320 at least, his spokesmen fell back on a rhetorical tone in which there was little room for sincere deference to papal judgement.

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<sup>71</sup> *Foedera*, II, ii, pp. 370-1.

<sup>72</sup> *RRS*, vol. 5, p. 148.

<sup>73</sup> Menache, 'Failure', pp. 423-7. She observes a similar phenomenon occurring in Flanders at the same time, induced by John's partiality towards the French monarchy. The analogy is interesting, but, as will be argued in Chapter 5, based on questionable assumptions about the pope's outlook.

What is clear nonetheless is that, irrespective of any difficulties within papal-Scottish relations, political expressions in Scotland continued to be informed by language and ideas that had some currency at the Curia, even during Bruce's rather isolated regime. Certainly, the Declaration questioned the Pope's authority to judge the matter, and as such bears a resemblance to the English baronial letter of 1301. But the Declaration also forms part of a complex process of idea-formation in which conceptual language and political ideas associated with the Curia continued to play a part. Central to the Declaration is a desire to portray the Scottish kingdom as a natural entity, inhabited by a single people, governed by a native ruler, and as such entitled to freedom. This was also the thrust of Bisset's Pleading at the Curia in 1301. To assess exactly how far and in what ways this resulted from engaging with the Curia, we must now turn to the diplomatic and historiographical tradition on which both the Pleading and the Declaration rested.

## **Negotiating legitimate independence**

In his invaluable reconstruction of Scottish historiography before Fordun, Dauvit Broun has identified an important transition after c.1292 from an Irish identity to a specifically Scottish one, revealed through shifts in detail of the Scottish origin myth.<sup>74</sup> He has also observed how this highly-responsive origin myth came, in the post-1292 era, to enshrine the idea of the 'community of the realm' in its increasing emphasis on the history of the Scots and a lessening emphasis on their rulers. How more general and evolving notions of Scottish freedom weave their way through the diplomatic documents of the period has been explored

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<sup>74</sup> Broun, *Irish Identity, passim*; cf. his thesis (under the name David E. Brown), 'The Scottish Origin-Legend before Fordun' (Unpublished Ph.D. thesis, University of Edinburgh, 1988), *passim*.



by Barrow.<sup>75</sup> But what becomes clear from an examination of the Scottish expressions of independence intended for the papacy, within this more general context of diplomatic and chronicle material, is that the idea of a naturally independent people often receives its most forceful expression under the influence of a conceptual language associated with the Curia and within documents destined for the papal ear.

We might first consider in more detail some of the developments in conceptions of an independent Scottish nation that historians have identified in the post-1292 period, before assessing the importance of the Curia as a forum for their presentation and elaboration. Such a consideration would be impossible without the reconstructive work of Broun, which enables us to trace the development of the Scottish origin legend. Broun's delineation of the much older source material that informed Fordun's work has significantly advanced our understanding of the breadth of Scottish historiography from the thirteenth century onwards. Notwithstanding the work of Marjorie Anderson on Scottish king-lists associated with the inauguration ceremonies of Scottish rulers,<sup>76</sup> accounts of the Scottish people – expounded briefly in the pleading at the Curia in 1301 as well as in the Declaration, but not given full expression until the work of Fordun in the later fourteenth century – were believed to have been largely of Irish provenance, acquired through the research efforts of Fordun himself.<sup>77</sup>

By extrapolating a series of origin-legend accounts featured in the *Chronica gentis Scotorum*, alongside those found in Wyntoun and Thomas Gray's *Scalacronica*, Broun has identified the

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<sup>75</sup> Barrow, 'Freedom', pp. 18-32.

<sup>76</sup> For this see Marjorie O. Anderson, *Kings and Kingship in Early Scotland* (London, 1973); J. W. M. Bannerman, 'The King's Poet and the Inauguration of Alexander III', *SHR*, 68 (1982), pp. 120-49

<sup>77</sup> Broun, *Irish Identity*, p. 13.



existence of a Scottish tradition of historiography quite distinct in content from its Irish counterpart associated (primarily) with the *Lebhor Gabala*. Not only has he traced thirteenth-century accounts of Scottish origins, but he has also identified an important body of more and less 'official' renditions of this tradition datable to the early fourteenth century. In attempting to reconstruct this tradition, Broun has postulated a series of non-extant sources and their relationship both to each other and to later extant accounts, identifying within these extrapolated accounts important ideological developments corresponding to the political circumstances of thirteenth- and fourteenth-century Scotland. Among these is a shift from the identification of Ireland as the natural homeland of the *Scoti*, which was prevalent in sources prior to the reign of King John, to a stronger emphasis on Scotland alone as the homeland after the beginning of the wars of independence.<sup>78</sup> And establishing the tradition on which both the *Processus* and the Declaration rested has also allowed him to identify an unprecedented emphasis in these two sources on the origin and history of the Scots as a people, rather than a group of followers (often of varying national origin) under the direction of a formidable ruler. The shift reflects, he maintains, the political importance of the idea of the 'community of the realm' in the post-1292 era.<sup>79</sup>

What seems clear from a comparison of the arguments put forward by Bisset in 1301 with the historical tradition from which some of his arguments were drawn, is a notable attempt to portray a symmetry between kingdom and nation. It is a degree of symmetry that was only ever replicated in documents destined for the Curia, not least in the Declaration itself. A striking feature of the 1301 *Instructiones* and *Processus* is the treatment of Gaedel, the figure who in thirteenth-century accounts led the Scots from Egypt to Spain, whence they travelled

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<sup>78</sup> Brown, 'Scottish Origin-Legend', pp. 398-427; Broun, *Irish Identity*, 110 ff.

<sup>79</sup> Brown, 'Scottish Origin-Legend', 428 ff.

first to Ireland and ultimately to Scotland.<sup>80</sup> He is only mentioned briefly in the *Instructiones* – as a way of explaining the etymology of Galloway – and is entirely erased from the final *Processus*. By contrast, in the *Processus* Bisset gives Scota, daughter of Pharoah and Gaedel’s wife in the thirteenth-century tradition, the responsibility for leading the people who would ultimately be known as Scots to the place now known as Scotland. After taking on board some Irishmen, we are told, ‘she sailed to Scotland, carrying with her the royal seat’ – the Stone of Scone.<sup>81</sup> This newly-ascribed role appears to be an innovation of the final pleading,<sup>82</sup> deemed attractive no doubt in part because it added weight to her existing etymological importance as outlined in the *Instructiones*.<sup>83</sup>

The shift in the Scota/Gaedel emphasis in the 1301 appeal tallies with a changed outlook identified by Broun in Scotland more generally, whereby Scotland came to be regarded as the homeland of the Scots, rather than Ireland. Broun highlights how Ireland no longer tended to be referred to as *Scotia* by Scottish authors – a name increasingly reserved to denote Scotland alone – but rather was increasingly called *Hibernia*.<sup>84</sup> Of particular interest for present purposes, however, is the fact that the eventual absence of Gaedel in the 1301 *Instructiones* and *Processus* is in notable contrast to other documents of the period in which the

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<sup>80</sup> The accounts varied in detail, but these variants will only be discussed as they pertain to early-fourteenth-century developments with which we are primarily concerned.

<sup>81</sup> *Scotichronicon*, vol. 6, p. 183.

<sup>82</sup> Skene has argued that this element of Bisset’s origin account was probably his own invention, and Broun has followed him in this. W. F. Skene, ‘The coronation stone’, *Proceedings of the Society of Antiquaries of Scotland*, 8 (1868-70), pp. 66-99; Brown, ‘Scottish Origin-Legend’, pp. 234-5; Broun, *Irish Identity*, pp. 120-1.

<sup>83</sup> In this it was stated that the Scots, and subsequently Scotland, were named after Scota. *Scotichronicon*, vol. 6, p. 143.

<sup>84</sup> For this again see Brown, ‘Scottish Origin-Legend’, p. 127 – the shift can be identified also in the *Scalacronica* account.

Scottish origin-legend is expounded, notably in the *Liber Extravagans* poem.<sup>85</sup> The poem has been dated to between 1296 and 1306, most likely around 1304, and is concerned with the history of Scottish kingship, consisting of a c.1214 text interpolated with early fourteenth-century material.<sup>86</sup> The poem traces the wanderings of Gaedel and the eventual arrival of his offspring in Ireland and then Scotland, via Spain. It is a much more protracted account than that put to the pontiff in 1301, but, while it contains an etymological connection between the Scots and their land,<sup>87</sup> there is nevertheless no mention of Scota herself. The account enshrines the elaborated king-list tradition of the thirteenth century. But its use in the post-1301 period (and quite possibly in a formal context)<sup>88</sup> suggests that Bisset's alterations to the role of Gaedel might be ascribed to his mentality as a spokesman working within the climate of the Curia. His concise historical account, presenting Scota as the Scots' leader/founder, identified primarily with Scotland rather than anywhere else (namely, Ireland), betrays a concern with portraying the kingdom as a coherent political entity, and with illustrating a precise association between land and people. Evidently it was a concern that was not strong enough outside the context of the Curia to justify major alterations to the Gaedel/Scota balance in the origin account used in the *Liber Extravagans* poem.

The marginalisation of Ireland in the 1301 *Processus* account clearly served a similar purpose, but it is more difficult to determine whether or not this was a product of Bisset working at the Curia which then influenced other diplomatic material, rather than simply being

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<sup>85</sup> The only comparable account associating the Stone with Scota is in the poem, of English provenance, 'La Piere D'Escoce' written probably c. 1307 and drawing this particular element from the Pleading. Legge, 'La Piere D'Escoce', p. 111.

<sup>86</sup> Broun, *Irish Identity*, p. 122.

<sup>87</sup> Thus, it is observed: 'For just as the Get takes his name from Gethi, and the Goth from Gothia, and the Scythian from Scythia, so the Scots from Scotland'. *Scotichronicon*, vol. 9, p. 69.

<sup>88</sup> In his thesis, Broun postulated that the poem could have been constructed for Bruce's inauguration ceremony in 1306. Even though the likely date is deemed to be c.1304, it is surely likely that its author / interpolator was associated with the *clerici* of royal government.

reflective of the direction of political opinion in Scotland more generally after 1292. Bisset clearly deemed more than minimal mention of Ireland unsuitable in the final Pleading, altering the original *Instructiones* significantly in this respect. The *Instructiones* recounted how the Scots first occupied Ireland, which was named after the river Ebro in Spain, adding that ‘Ireland is called by Isidore the island of the Scots’.<sup>89</sup> Such common ancestry was almost entirely discarded in the final rendition by Bisset, who noted only that Scota ‘landed in Ireland with an armed force and a very large fleet of ships. Then after taking on board some Irishmen, she sailed to Scotland’.<sup>90</sup> But mention of Ireland and a common Irish ancestry is similarly sparse throughout official documents produced in Scotland that were *not* necessarily intended for the Curia. The *Liber Extravagans* poem incorporates Ireland as a residence of Gaedel’s descendants, as do the *Instructiones* and the earlier Scottish tradition. But, while implying this common ancestry, it also makes an etymological distinction between the Scots and the inhabitants of Ireland, noting that ‘those led there [Argyll] are *afterwards* called Scots’.<sup>91</sup> The absence of Ireland from an account as cursory as that of the Declaration of the Clergy of 1309/10 cannot on its own be deemed significant, but the Bamburgh brief of 1321, which gives the Scots’ early history a much fuller treatment, also omits the Irish connection. Despite selecting much of its material from the *Instructiones*, it rests its account of Scottish origins, with Scota undertaking all the journeying from Egypt, mainly upon the *Processus*. Furthermore, Ireland is now omitted entirely from Scota’s itinerary, in contrast even to the final 1301 Pleading.<sup>92</sup>

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<sup>89</sup> *Scotichronicon*, vol. 6, pp. 142-3.

<sup>90</sup> *Ibid.*, pp. 182-3.

<sup>91</sup> *Scotichronicon*, vol. 9, pp. 68-9. My italics.

<sup>92</sup> Bamburgh, p. 113.

Nevertheless, we do have the famous correspondence from Robert Bruce to the ‘inhabitants of Ireland’, with whom he claimed that the Scots shared a common ancestry and language, being ‘ab uno germine nationis’.<sup>93</sup> Under Robert, it has been argued, ‘Celtic Scotland was more important and more frequently appealed to than under his predecessors’.<sup>94</sup> He certainly saw political value in the notion of the common ancestry of the Scots and the Irish, but *not* at the Curia. Since we also find the suggestion of common ancestry in the *Liber Extravagans* poem, it is surely reasonable at least to suggest that the fullest and most consistent dissociation of Scotland and the Scots from Ireland and the Irish is only to be found in documents written for a papal audience – the *Processus*, and the Declaration of Arbroath, in which no mention either of Ireland or the Irish is made. In his 1970 edition of the Declaration, Duncan identified a renewed interest in Celtic Scotland, evident before 1286 but which increasingly became a feature of the political language of Scottish independence, and which included ‘the historical myth of an Iberian people travelling from Egypt by Spain and Ireland and thence to Scotland’.<sup>95</sup> As Broun has shown, however, this sense of common ancestry long pre-dates 1286, after which efforts to move away from the association can be identified. It seems clear that such efforts were at least in part influenced by a papal audience.

The pattern is repeated with regard to various portrayals of the Picts and Scots in Scottish origin accounts of this period. The *Instructiones* relayed what appears to have been derived

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<sup>93</sup> For the dating of this letter, see S. Duffy, ‘The Bruce Brothers and the Irish Sea World, 1306-29’, *Cambridge Medieval Celtic Studies*, 21 (1991), pp. 64-5. It is of note, however, that common ancestry was not directly referred to in the Brucean appeal to the Welsh to join in throwing off the authority of the English. Though identifying their situations as almost identical, it clearly denotes ‘Albanicus et Britannicus populus’. For an edition of this letter from Edward Bruce to the Welsh in 1316, see J. B. Smith, ‘Gruffydd Llwyd and the Celtic Alliance, 1315-1318’, *Bulletin of the Board of Celtic Studies*, 26 (1974-6), p. 478.

<sup>94</sup> *Declaration*, p. 32.

<sup>95</sup> *Ibid.*, p. 31.

from a much older account of the Picts and the Scots co-existing for a time as allies against the Britons. Their co-existence certainly features in the king-lists of the thirteenth century, and remnants remain in the *Liber Extravagans* poem.<sup>96</sup> The *Instructiones* quite simply reflect this tradition. The Picts are denoted as ‘newcomers’, the Scots having arrived previously and expelled the Britons from Albany. The two peoples occupied separate regions of the land formerly known as Albany, and as allies they harried the Britons in northern England.<sup>97</sup> Nothing more is said of the Picts, the implication perhaps being that the two people subsequently mingled. But the final draft of the Pleading entirely eschews any such alliance, by having the Scots destroy the Picts on their arrival.

The ultimate destruction of the Picts by the Scots also features in the interpolations of the *Liber Extravagans* poem,<sup>98</sup> but, as already noted, the account nevertheless still enshrined the older tradition of co-existence found in Scottish king-lists. The Bamburg brief drawn up for the peace negotiations in 1321 also incorporates this earlier tradition by ignoring Bisset’s re-working, according to which the Picts were destroyed on the Scots’ arrival. Instead the Bamburg brief relays the original *Instructiones* account largely verbatim: the Scots’ history prior to their arrival in Scotland is mentioned only implicitly, by stating that the Scottish people derive their name from Scota, daughter of Pharaoh. On their arrival it is the Britons (as in the *Instructiones*) rather than the Picts (as in the *Processus*) that they expel, along with their laws, language and customs, which the Scots quite emphatically do not share.<sup>99</sup>

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<sup>96</sup> Thus, recounting the kings of Argyll it noted that ‘these ruled side by side with the aforesaid Picts in their time’. *Scotichronicon*, vol. 9, pp. 70-1.

<sup>97</sup> *Scotichronicon*, vol. 6, pp. 142-3.

<sup>98</sup> *Scotichronicon*, vol. 9, pp. 70-1.

<sup>99</sup> Bamburg, p. 113: ‘...et eiectis inde Britonibus cum ipsorum legibus, novam gentem, novos ritus et linguam cum moribus quibus nihil commune est cum Britonibus ipse Scotorum populus ipsi parti imposuit insule...’ This mention of a disparity in laws, language and customs is found in the Bamburg brief but not in the *Instructiones*, though this may have been derived from a similar source.

Subsequently, the brief goes on, it is in alliance with the Picts, with whom they have partitioned the land of Scotland, that the Scots attack the Britons, who have to call on the aid of the Romans to assist them. Clearly, the author's priority here was to emphasise the distinction between the forefathers of the English and the Scots, emphasising the military superiority of the latter. The destruction of the Picts is of little concern. By contrast, such a Scottish-Pictish military alliance is absent from both the Declaration of the Clergy (which is, in any case, perfunctory in its origin account), and the Declaration of Arbroath, both of which adopt Bisset's scheme used in the final Pleading – the outright destruction of the Picts on the Scots' arrival. Any mingling of the two peoples is not, therefore, even an implicit possibility.

The Declaration's inherent inconsistency regarding the Picts has been highlighted by Broun: the boast of 113 kings is ultimately derived from a king-list that includes rulers of the Picts, a people that the Declaration asserts the Scots had 'altogether destroyed'. The Declaration's kings were apparently all of Scottish stock, 'the line unbroken by a single foreigner'.<sup>100</sup> That the author of the Declaration was responsible for the alteration therefore, and that the alteration quite possibly constituted an innovation, is suggested by a comparison with the Bamburgh brief of a year later, with which the Declaration clearly shares a common source here. According to the Bamburgh brief it was the Scots *and* the Picts who had always remained free for the duration of 113 kings.<sup>101</sup> This certainly strengthens the possibility that Scottish spokesmen at the Curia were intent on depicting Scotland as the land of one people, and one people alone.

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<sup>100</sup> *Declaration*, p. 35.

<sup>101</sup> *Bamburgh*, p. 114: '...Scotis tamen cum Pictis illam [the English] semper resistentibus et in sua libertate semper remanentibus per tempora centum et tredecim regum quorum quilibet successive et libere regnavit...'



Such a depiction – imagining a people in association with a kingdom – was a commonplace one of the period, as Susan Reynolds has demonstrated.<sup>102</sup> Bisset and the author of the Declaration were no innovators in this respect. And yet the clarity and neatness of Bisset’s portrayal was distinctively new within the context of the Scottish historical tradition, and can be accounted for in large part by the intellectual context in which he formulated his appeal. That such clarity was inspired by more than the demands of legal precision is suggested by the same being found in the Declaration, which demonstrably was not legal in purpose. Clearly, this clarity, which spanned two decades of profound political change in Scotland, was intended to resonate with the outlook of the Curia, to accord with its possible theological and legal understanding of peoples and kingdoms as naturally existing entities. Co-existence with the Picts would necessarily have compromised the neatness of any such portrayal, as would a strong association with the Irish nation.

Throughout the period, proponents of Scottish independence therefore deemed the Curia an appropriate forum for expressing a sense of nationhood and an associated conception of political independence – to such an extent that the clearest expositions of national unity are to be found in diplomatic material addressed to the pontiff. The ancient origins of the Scots, defined by their customs and laws, are clearly something with which they hoped the pontiff might sympathise. Their deployment of the origin myth, both in 1301 and 1320, to demonstrate that Scotland constituted a natural entity was not done with the principal aim of refuting papal *de iure* temporal authority as it was among the French publicists. It was done to illustrate the political worth of the nation, its natural political rights, free from the

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<sup>102</sup> Reynolds, *Kingdoms and Communities*, pp. 250-331.

oppressions of foreign rulers. As canonists, both Bisset and Alexander de Kinninmonth would have been very aware that such notions could be supported not only by theological but also by canonistic thought, in particular the commentaries of Pope Innocent IV. Indeed, the 1301 proctors' awareness of this canonistic use is betrayed later on in Bisset's Pleading when he cites the supposed observation of Innocent IV that 'it is almost against natural law and astonishing for someone who enjoys legal independence to be subjected to the authority of someone else'.<sup>103</sup>

This observation is in fact the thrust of both the 1301 and 1320 appeals: the oppressiveness and unnaturalness of foreign rule. It is a notion articulated most forcefully when presented to the Curia. There are of course important instances where the idea of unnatural and even 'barbaric' rule of the English is described in correspondence not intended for Avignon – as in Edward Bruce's letter to the Welsh.<sup>104</sup> The 'tyranny' and 'servitude' imposed by English rule, of which this letter complains, however, clearly agreed with a political language associated with the Curia. We have already seen how such language was used to articulate the notion of a united Polish kingdom ruled by a prince of native stock – its natural lord – notably in the process against the Teutonic Order in 1320. It is the note of 'tyranny and servitude' as opposed to natural, peaceable rule that also rings throughout the Scottish Declaration of the same year, as well as throughout its forerunner in so many respects, Bisset's *Processus*.

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<sup>103</sup> *Scotichronicon*, vol. 6, pp. 168-9. The observation has yet to be found in the *CIC*, and more probably refers to a commentary, possibly on *par in parem* itself. The reference does not appear to relate to the other reference in the proceedings of Innocent's judgement concerning the coronation of Scottish kings, largely on account of the use here of the word 'someone' – i.e. rather than 'kingdom'. The bull to which the proctors refer elsewhere is now lost, but does not appear to have applied the *par in parem* maxim to regnal independence.

<sup>104</sup> Smith, 'Gruffydd Llwyd', p. 478.

Such language also characterises the Bamburgh brief's postscript, which complains of English lordship as 'unnatural' and 'intolerable'.<sup>105</sup> Hitherto in this discussion the Bamburgh brief has been used to shed light on how the Declaration's audience may have shaped its language and arguments, not least because of their proximity in date and the likeliness of their shared authorship. Although we are ignorant of the brief's compilers and of those who presented the Scottish case at the negotiations, Barrow suggests that the involvement of Alexander Kinninmonth and William of Eaglesham in the process is quite possible.<sup>106</sup> Though papal representatives were present at the Bamburgh negotiations, the brief was not composed with their presence in mind. The nuncios attended alongside representatives of the French king and were not there to judge the case but to ratify the anticipated truce.<sup>107</sup> According to its editor, however, the brief's postscript constitutes an exception to this, and was a direct appeal to the pontiff (who remains unnamed, presumably as the document was concluded in this way for posterity). This postscript, appended 'perhaps after the breakdown of negotiations',<sup>108</sup> justifies the Scots' independence as being in accordance with 'divine and human laws', a favoured phrase of jurists such as Oldradus to justify national sovereignty. Divine and natural law forbade the appropriation of land through force. Such language was, of course, current at the Curia.<sup>109</sup>

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<sup>105</sup> Bamburgh, pp. 121-2.

<sup>106</sup> Barrow has drawn attention to the strong connections between the various incumbencies of the two men. Barrow, *Bruce*, p. 314. There are notable parallels in content between the brief and the Declaration that support the possibility – both mentioning the continual line of 113 kings, and deploying the Maccabees analogy.

<sup>107</sup> For a list of those attending from England, France and Avignon, see Barrow, *Bruce*, p. 313.

<sup>108</sup> Bamburgh, p. 110.

<sup>109</sup> Ullmann, 'Sovereignty', *op cit.* In this, Oldradus referred to *Prov.* xxii, 28, and the Decalogue, as Ullmann has observed. Oldradus' association with the court of Clement V is well known.

It is possible to trace various attempts to attune the history of the Scottish nation to these concerns of natural, peaceable rule, evidently with the papal audience in mind. Conscious of the illegitimacy associated with forceful conquest in legal thought, when addressing the pontiff Scottish spokesmen were keen to temper the Scots' traditional war-like qualities and to emphasise instead their peace-loving nature. It has already been noted in passing that Bisset accommodated the military prowess of the Scottish nation to his legal framework when he described their conquering of the Picts. The Scots could boast of military strength on account of which they had never been subjected to any other ruler. But it is also possible to see an apparent concern to moderate this portrayal. It is notable, for instance, that in the final draft of the Pleading Bisset made no reference to the Scots and Picts conducting frequent raids into the northern parts of England: this is in contrast to the thirteenth-century origin-legend tradition, as well as the initial drafting, which adopted this element of the tradition.<sup>110</sup> Naturally, any mention of this would suggest co-existence of the two peoples, which Bisset was demonstrably trying to avoid. And yet there is no suggestion of the Scots ever exercising their military prowess by attacking their neighbours even *without* the Picts. There seems, therefore, to be a dichotomy in his representation of the Scottish nation – war-like on the one hand, and peace-loving and occasionally persecuted on the other – that is born out of an attempt to marry the native historical tradition with an account considered more appropriate for the papal ear.

In identifying this tension within Bisset's argument we might note with some surprise his decision not to portray Scotland as a virgin territory on the arrival of the Scots, but as one which they conquered. His decision signals the limit to his moderating of the traditional

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<sup>110</sup> Cf. therefore *Scotichronicon*, p. 183, with p. 145.

origin account for his audience. We know that Bisset probably had to hand the example of a virgin territory, since it exists in the 'Éber' recension, part of the source-text used by Fordun and used also, Broun has argued, by Bisset and his colleagues.<sup>111</sup> The recension, tentatively dated by Broun to the mid-thirteenth century, marks a notable departure from all other Scottish origin legends, by portraying Ireland as uninhabited on the arrival of the *Scoti*.<sup>112</sup> Admittedly, the account relates to Ireland, rather than Scotland.<sup>113</sup> Moreover, it is, unfortunately, difficult to extrapolate from Fordun what might have been the rest of the Éber account, that is, when the Scots finally reached Scotland.<sup>114</sup> Nevertheless, the idea of a virgin territory, if only in relation to Ireland, was available to Bisset and his colleagues, and it is difficult to imagine that, as a canon lawyer of such renown, he would not have seen the possibilities offered by the notion in terms of canonistic discussions of legitimate conquest.

But Bisset maintained that the Scots held Scotland by right of conquest, and subsequently by prescriptive right.<sup>115</sup> And yet it is on account of Edward's seizure of Scotland 'through force and fear' that his authority over Scotland is argued to be *illegitimate*. The apparent inconsistency is obvious, and has been highlighted by Goldstein.<sup>116</sup> Edward, according to Bisset's own scheme, could now claim the same right to the land of Scotland as the Scots had had previously, that is, right of conquest. What Goldstein fails to appreciate is that Bisset's argument from prescriptive right was intended to override any such claim, because

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<sup>111</sup> Broun has convincingly argued that the *Instructiones* betray an awareness of the synthesis used by Fordun in his *Chronica gentis Scotorum*. Broun, *Irish Identity*, pp. 72-3.

<sup>112</sup> 'eam non vi sed vacuam ut quidam volunt omni cultore carentem obtinuit...'; see also Broun, *Irish Identity*, p. 64.

<sup>113</sup> Indeed, I believe it is possible, as discussed in the following chapter, that this account was used by the Remonstrance author.

<sup>114</sup> For the post-Ireland element in Fordun's synthesis source-text see Broun, *Irish Identity*, p. 69.

<sup>115</sup> Thus the Scots occupied the land formerly known as Albany 'by the same right and title as that by which Brutus had earlier occupied the whole of Britain'. *Scotichronicon*, vol. 6, pp. 142-3.

<sup>116</sup> Goldstein, *Matter of Scotland*, p. 72.

the Scottish *nation* still occupied Scotland, and did so peaceably. *Dominium*, according to prescriptive right, depended on a territory being held in peace, and for a significant number of years, neither of which Edward could claim. His rule there was forced and unnatural. Indeed, the same notion is found in the Declaration of the Clergy of 1309/10: the signatories challenged anyone supporting English claims to provide documentation testifying to the ‘consent of the whole people’ to ‘this entire business [which] was in fact carried through by force and violence’.<sup>117</sup> As the *Instructiones* had it, the Scots had enjoyed peaceful existence until Edward ‘thrust himself forward in sheep’s clothing without being asked’.<sup>118</sup> By this analogy, the Scots were the righteous people, on whom the devil’s agents prey.

Nevertheless, the apparent inconsistency over the matter of conquest is one which later Scottish spokesmen sought to resolve when communicating with the Curia, by emphasising this righteousness of the Scots, and their almost pre-destined association with Scotland. There is evidence to suggest that one author may have sought to achieve this by depicting Scotland as a virgin territory before the arrival of the Scots. Broun has suggested that the St. Brendan account incorporated into Sir Thomas Gray’s *Scalacronica* may well have constituted an official re-working of the Scottish claims in light of the 1301 process, undertaken possibly on account of his association with Bishop Lamberton, by Nicholas de Balmyle, who became chancellor of Scotland in 1300/1.<sup>119</sup> In his doctoral thesis Broun postulated that it may have been intended as a reference document for future negotiations – a Scottish equivalent to

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<sup>117</sup> *ASR*, no. 36, p. 142: the ‘force and violence’ reference derives from Roman law. It is also found in the Bamburg brief.

<sup>118</sup> *Scotichronicon*, vol. 6, pp. 158-9. The analogy is a popular one, drawn from St Matthew’s gospel (7.15).

<sup>119</sup> Brown, ‘Scottish Origin-Legend’, pp. 135-6; for the St. Brendan account see *Scalacronica*, pp. 18-31. Nothing specific is known of Nicholas’ education, though he studied abroad, possibly on more than one occasion. In the early 1290s he had been employed by the canonist William Frere as his official, and in April 1301 he went to Canterbury for unsuccessful negotiations. *BDSG*, p. 24.

Tange's Roll perhaps. But he refrained from reiterating this possibility in his more recent publications and now proposes 1292x1304 as the safest date for the account.<sup>120</sup>

There seem, however, to be several features of the account that make Broun's original suggestion a convincing one.<sup>121</sup> Even if we cannot date it precisely to post-1301, we can say that it embodies assertions evidently designed for a papal audience,<sup>122</sup> comparable to the concerns shown by Bisset when phrasing his appeal at the Curia. We may note, for example, that although, akin to the thirteenth- rather than fourteenth-century tradition, the account describes Ireland, rather than Scotland as the Scots' 'true country, with the according customs and speech',<sup>123</sup> it also shuns the older idea of Ireland once being called *Scotia*. It in fact deploys the false etymologies of Iber=Hibernia and Scota=Scotia to underline a degree of separateness of the two kingdoms that agrees with the emphasis of Bisset's case. Broun described the re-working as a considered attempt to turn the account into a more logical narrative.<sup>124</sup> But it also enshrines a sensitivity to papal concerns, which is absent from most pre-1301 accounts. Certain details seem to betray direct influence of the intellectual climate at the Curia. We are given, for example, the figure of 'nearly two thousand years' for the age of the kingdom, and told that the English kings paid little attention to the land known as

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<sup>120</sup> He does not, however, explain his hesitancy in his *Irish Identity*.

<sup>121</sup> Readers of the *Scalacronica* may note that the account's portrayal of the Picts in Scotland and their co-existence with the Scots, allying with them to harry the north of England, does not tally either with Bisset's Pleading or with the majority of later 'official' accounts: but, as Broun points out, most of the 'Pictish' material seems to have derived from Higden, and was quite possibly interpolated into the original account by Thomas Gray himself.

<sup>122</sup> Among such assertions we might note the spiritual superiority of the Scots over the English which, as will be discussed below, was a prominent feature of appeals to the Curia, notably after 1301, but the seeds of which can be identified in the Scottish efforts of 1299. In this assertion the *Scalacronica* account uses a different source from Bisset. *Scalacronica*, p. 23. For a discussion of this source see Broun, *Irish Identity*, pp. 85-95.

<sup>123</sup> *Scalacronica*, p. 34. We are also told, in the subsequent sentence, that on arriving in Scotland the Scots 'merged with the Picts'. I think this again is probably a Gray interpolation, not only because it contradicts the thrust of nearly all other Scottish 'official' accounts of the era (see below), but because the sentence concludes with a reference to the ensuing account of the Picts, which we know was a Gray interpolation.

<sup>124</sup> Brown, 'Scottish Origin-Legend', p. 135.

Albany 'while the Scots were taking this regal authority without impediment, that [the Scots] held it long enough for it to be well-established by right'.<sup>125</sup> The account certainly has a note of the official about it, enshrining legal thinking relating to prescriptive right, as well as ideas and rhetoric that would be sure to meet with a favourable response in Avignon.<sup>126</sup> It was also probably detailed enough to be used in bilateral negotiations with the English, should they arise.

It is in this account that the suggestion is made of Scotland having been uninhabited before the arrival of the Scots, though the idea is portrayed somewhat ambiguously. We are told that:

one of the sons of one of the kings of Ireland descended from Scota, who was named Fergus son of Ferchar, went to the most remote country beyond Britain to the north, and beside the Britons, occupied the land towards Caithness beyond the land of Porry [Cape Wrath], and settled there.<sup>127</sup>

The account was derived from Bede, and Broun notes in his thesis that 'it could have been added in order to emphasise the idea that the Scots were the first to colonise *Scotia*, and that "Britain" meant only the area from Dumbarton southwards'.<sup>128</sup> If this was its intention then it marks a significant departure from Bisset's scheme: not only would it provide the Scots

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<sup>125</sup> *Scalacronica*, p. 27; for the figure of two thousand years, *ibid.*, p. 29. The figure refers to the rule of both the Picts and the Scots. Specific datings constituted part of the very old king-list tradition, but the use of this approximate round figure has a legal ring to it.

<sup>126</sup> If it was an official document, this would surely make a post-1301 date very likely, as such evident effort to re-work a historical account in accordance with the papal outlook is more likely to have occurred when the use of historical accounts in this way had been prompted by Edward I in 1301.

<sup>127</sup> *Scalacronica*, pp. 19-21.

<sup>128</sup> Brown, 'Scottish Origin-Legend', p. 131, note 28.



with their own destined homeland, separate from Ireland, and reserved for them alone, but it would also resolve the apparent contradiction in Bisset's account of successive conquests, thereby avoiding any inadvertent legitimation of Edward's claims.

However, this was not the way in which later Scottish spokesmen handled the contradiction. If the *Scalacronica* account was intended as a point of reference for future negotiations, it does not appear to have been used as such,<sup>129</sup> and there is no evidence that the idea of Scotland as a previously uninhabited land ever received further elaboration. In the origin accounts of the Declaration of 1310 and that of 1320, both intended for a wide (including papal) audience, the Scots remain a war-like conquering people who overthrow the Picts in order to obtain their land. It was in the Declaration that, through theological analogy, the Scots' rightful possession of Scotland was reinforced.<sup>130</sup> As has already been noted, their wanderings, akin to those of the Israelites, implied Scotland was their pre-ordained, natural homeland.

Nonetheless it is evident that, as a general rule, the historical justifications for Scottish sovereignty were modified for the Curia in a way that emphasised the peace-loving nature of the Scottish nation. The origin account featured in the *Scalacronica* has been typified by Goldstein as featuring 'the good Gaedel' – a typology that he uses to distinguish its tone from 'the bad Gaedel' who features in some of the accounts used by Fordun.<sup>131</sup> Unlike his alter-ego, the good Gaedel avoids association with Pharaoh and his persecution of the Israelites by omitting Egypt from his itinerary altogether: in the *Scalacronica* account

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<sup>129</sup> The Bamburgh brief, used in the 1321 negotiations, relied instead on the *Instructiones* and *Processus*.

<sup>130</sup> Cf. Goldstein, *Matter of Scotland*, pp. 92-4.

<sup>131</sup> *Ibid.*, p. 114.

therefore, he travels directly from Greece to Spain.<sup>132</sup> Despite implying elsewhere that he had read Broun's unpublished thesis, Goldstein nevertheless decided that the good Gaedel account is unlikely to have been produced during the wars of independence, since it does not enshrine the war-like tone adopted in other accounts synthesised by Fordun. But Broun's argument for the reign of King John as the most plausible period for the account's construction rests on a convincing array of close textual analysis and source-comparison.<sup>133</sup> The fact that Scota's connection to Pharaoh is not masked is explained by Broun by its being too well-known to hide. (Perhaps also her importance in providing the nation's etymology was too appealing to allow her to be dispensed with altogether.)

If the *Scalacronica's* version of Gaedel's movements constituted a post-1301 re-working, it was not a re-working, in this respect, of Bisset's account. The two are not discordant in as much as Gaedel is absent from the latter, perhaps in part for the same reason – to dissociate the Scots from the persecution of the Israelites.<sup>134</sup> But the *Scalacronica* account has a more obvious precedent in the Éber recension, in which Gaedel very specifically refused to persecute the Hebrews.<sup>135</sup> As such the inspiration for this element of the account seems to pre-date 1301 but, importantly, it does not necessarily pre-date papal influence: Broun deems it quite possible that the Éber recension constituted an 'official' account datable to the mid-thirteenth century associated with Scottish appeals to the Curia for coronation and unction.<sup>136</sup>

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<sup>132</sup> *Scalacronica*, p. 19; Broun, *Irish Identity*, p. 92.

<sup>133</sup> Broun, *Irish Identity*, p. 15.

<sup>134</sup> Though, as already discussed, the stronger emphasis on Scota rather than Gaedel also served a legal purpose. Gaedel features only in the *Instructiones*, and then only to service a false etymology. *Scotichronicon*, vol. 6, pp. 142-3.

<sup>135</sup> See Brown, 'Scottish Origin-Legend', p. 102. It might be observed that the two are also comparable in terms of the idea of virgin territory, Éber regarding Ireland, and *Scalacronica* regarding Scotland.

<sup>136</sup> Brown, 'Scottish Origin-Legend', p. 168.

Importantly, Gaedel's embarrassing Egyptian associations were a matter which the author of the 1320 Declaration also took pains to address. By taking as a starting point the account of Scottish origins from a copy of Henry of Huntingdon,<sup>137</sup> rather than previous Scottish renditions, the author managed to detach completely the Scots' history from anything pertaining to Pharaoh. There is no mention of Egypt on the itinerary, nor is there mention of either Scota or Gaedel, both of whom had obvious connections to Pharaoh according to the Scottish tradition. That this reflects the intended audience is confirmed by comparison with the 1321 Bamburgh brief, in which 'Scota, daughter of Pharaoh' still receives mention.<sup>138</sup> In complete contrast to Bisset's version of Scottish origins, on which the Bamburgh brief is largely based, the 1320 Declaration has the Scots journeying from Greater Scythia. Indeed, it is an invention singular to the final draft of the Declaration, the first having denoted their origins as Greece and Egypt.<sup>139</sup> Nevertheless its origins are very easily detected. Gaedel was described as a Scythian in older Scottish accounts, while Henry of Huntingdon, in accordance with an old tradition of Pictish origins, has the Picts originating in Scythia.<sup>140</sup> Barrow has pointed out that the modification of the final draft of the Declaration emphasised the Scots' association with St. Andrew, who preached to the Scythians.<sup>141</sup> But the effect is also to clear the Scots finally of any association with the persecution of the Israelites. By identifying a Scythian rather than Greek origin in order to emphasise their national virtues, it could be argued that the Scots were risking a worse

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<sup>137</sup> See *ibid.*, in which he argues that the copy used may be associated with the St. Andrew's region, p. 168.

<sup>138</sup> Bamburgh, p. 113.

<sup>139</sup> For the first draft see Bower, *Scotichronicon*, vol. 7, pp. 40-9; pp.4-5 for origin account. See also Fergusson, *Declaration*, p. 33 for a discussion of this.

<sup>140</sup> *HH*, p. 26. Scythian origins are also a component of the Irish origin legend tradition – see *Lebor Gabála Éirenn*, vol. 5, p. 97: 'As for the Gáedel, it is thus that they took Ireland, after journeying on every way from Scythian Greece to Nemrod's Tower...'.  
<sup>141</sup> Barrow, *Bruce*, p. 426; Fergusson, *Declaration*, p. 33.

association yet – the Scythians were for the ancients, after all, quintessential barbarians! But no reference to this appears to have been intended: their ancient origins, and the dissociation from the Egypt, alone were intended.

Moreover, although the Declaration's portrayal of the Scots' traditional military prowess is evident in their expulsion of the Picts, the Scottish nation remains the victim rather than the perpetrator of military aggression. There is no harrying of northern England as there still is in the Bamburgh brief of a year later. By contrast, the aggression of Edward I is described using a set of phrases associated with just war: coming in the 'guise of a friend ... to attack them as an enemy', it recounts his 'wrongs, killings, violence, pillage, arson, imprisonment of prelates, burning down of monasteries, despoiling and killing of religious, and yet other innumerable outrages, sparing neither age nor sex, religion nor order'.<sup>142</sup> Such language, so often deployed in reference to the savage military practices of the Scots themselves,<sup>143</sup> is here being deflected back onto the English.

## **A nation within Christendom**

As one might expect, the spiritual worth of the Scots is a salient feature of communications with the pontiff concerning Scottish independence. In the 1320 Declaration this partly takes the form of stressing the Scots' spiritual equality within Christian society – a society in which nations are immaterial where spirituality is concerned. Thus, no distinction should be drawn between 'Scotsman and Englishmen', just as there should be none drawn between 'Jew and

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<sup>142</sup> *Declaration*, p. 35. There are obvious parallels in language here with Polish complaints to the pope about the Teutonic Order. For these see *Lites*, *passim*.

<sup>143</sup> See for example, A. Ruddick, 'National and Political Identity in Anglo-Scottish Relations, c.1286-1377: A Governmental Perspective', in A. King and M. Penman (eds), *England and Scotland in the Fourteenth Century: New Perspectives* (Woodbridge, 2007), p. 200.

Greek': ethnicity was an irrelevancy in Christ's eyes, as it should be in his vicar's.<sup>144</sup> Though this was clearly part of the Declaration's warning to the pontiff to review his alleged tendency towards partiality, it was also supported by a stock of assertions addressed to the Curia over the preceding decades – the early conversion of the Scots being first among these assertions. Besides the Declaration of 1320, the early conversion of the Scots is also stressed in the 1301 appeal and the *Scalacronica* account.<sup>145</sup> The conversion had also featured in the historical tradition of the twelfth and thirteenth centuries: in the 1214 material of the *Liber Extravagans* poem, we are told when Scotland 'began to adopt the Catholic faith' (203AD), and when the 'law of Christ' was renewed in Scotland (430AD).<sup>146</sup> But there was no explicit comparison with other nations: it was in communications with the pontiff that it served as another means of expressing the Scots' spiritual – and therefore political – equality within Christian society.

The Scots are not just spiritually equal however: since their neighbours' spirituality might sometimes be called into question, the Scots are spiritually superior. The desire to refute any association with barbarity is a common theme of Scottish diplomatic material in this period,<sup>147</sup> but particularly of Scottish communications with the papacy. The Declaration of 1320 puts considerable emphasis on the contrast between the virtuous Scots and other,

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<sup>144</sup> 'There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus' (Gal 3:28).

<sup>145</sup> *Declaration*, p. 35; *Scotichronicon*, vol. 6, pp. 149, 171; *Scalacronica*, p. 23.

<sup>146</sup> *Scotichronicon*, vol. 9, pp. 72-3. The latter refers to idea that Scotland was converted twice. For a discussion of this see Broun, *Irish Identity*, p. 95. See also M. Miller, 'The disputed historical horizon of the Pictish king-lists', *SHR*, 58 (1979), pp. 1-34. Cf. *Scalacronica*, p. 23.

<sup>147</sup> The Metrical Prophecy of c.1306, for example, contrasts the Scots with the Saxons, described as a 'perverse nation' – a phrase which is of course of biblical origin, but which may be identified in other documents destined for the papal ear in this period, used to suggest barbarity, particularly in a spiritual sense. An obvious example of this may be found in the 'Remonstrance of the Irish Princes'. Metrical Prophecy, *Chronicle of the Picts, Chronicle of the Scots, and other Early Memorials of Scottish History* (Edinburgh, 1867), p. 118.

barbarous, peoples. Thus, despite spending a long time in Spain ‘among the most savage peoples’ (*ferocissimas gentes*),<sup>148</sup> the Scottish nation could nowhere ‘be subjugated by any people, however barbarous’.<sup>149</sup> Indeed, we are told that, despite being settled ‘in the uttermost ends of the earth’, ‘Jesus Christ, after his passion and resurrection, called [the Scots] ... almost the first to accept his most holy faith’. Their conversion at the hands of St Andrew, St Peter’s brother, is doubtless mentioned to emphasise this spiritual association with the centre of Christendom, rather than its ‘backward’ peripheries.<sup>150</sup> The alleged savagery of the Scots had also been a notable concern of Bisset and his colleagues. In 1301 they complained bitterly about English characterisations of the Scots as barbarous. For Bisset, the most obvious criterion of barbarity was clearly religion, rather than habit or custom, since he rebutted the allegation with the observation that the Scots were converted long before the English.

This continual desire to juxtapose the virtuous Scots with barbarous nations is rendered particularly interesting by a comparison with English claims to Scotland. The savage barbarism of the Scots was the subject of many English chronicles of the period, and in view of the regularity with which their authors held office from the English crown, it is not surprising that, as Andrea Ruddick has demonstrated, such national characterisations were employed in official correspondence, not least when relaying events to other European rulers.<sup>151</sup> Nevertheless, the Scots’ alleged savagery did not feature either in the English claims formally presented to the pontiff in 1301, or in the so-called ‘Tange’s Roll’, drawn up and

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<sup>148</sup> *Declaration*, p. 34; for the Latin edition, see Fergusson, *Declaration*, p. 6.

<sup>149</sup> *Declaration*, p. 34.

<sup>150</sup> For general perceptions of peoples of the borders of Christendom as prone to spiritual corruption and backwardness worthy of the label barbaric, see W. R. Jones, ‘The Image of the Barbarian in Medieval Europe’, *Comparative Studies in Society and History*, 13 (1971), pp. 367-407.

<sup>151</sup> Ruddick, ‘National and Political Identity’, p. 200.

used as the 'official' account of English claims over Scotland in subsequent negotiations.<sup>152</sup> Indeed, in one instance Edward's letter to the pope of 1301 and Tange's Roll both *omit* a component of their chronicle source in which the Scots are specifically likened to barbarians:<sup>153</sup> this is the account of Constantine, king of the Scots, submitting to King Athelstan of England, when Constantine's son became the godson of Athelstan in confirmation of the oath. The account is drawn from William of Malmesbury, the first great commentator on Celtic barbarity, who goes on to observe that 'the barbarians [in reference to the Scots and the Cumbrians] had no spirit to utter a word of protest; they preferred to gather without reluctance... and put themselves and their kingdoms in the hands of the English king'.<sup>154</sup> The surviving mention of the baptism in both Edward's letter and the Roll is clearly not made with the intention of highlighting any spiritual inequality of the two peoples. English polemicists, as we have seen, were not seeking papal approval.

Here it might be worth considering again the famous Maccabees analogy, which persisted throughout Scottish writings of the fourteenth century. In our period, it only finds expression in two extant sources, the 1320 Declaration and the postscript of the Bamburgh brief, the only section of the brief intended directly for a papal audience. Interestingly, a related analogy of Edward I as Antiochus was used in the process of 1301.<sup>155</sup> The importance of the Curia in inspiring this analogy cannot therefore be ignored. In his appraisal of the analogy's use, Barrow neglects to make any observation regarding audience,

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<sup>152</sup> For the English claims presented at the Curia, see *ASR*, no. 30, pp. 96-109. For Tange's Roll see Stones and Simpson, *Edward I and the Throne of Scotland*, vol. 2, *passim*. It was certainly used, for instance, at Bamburgh in 1321.

<sup>153</sup> *ASR*, no. 30, pp. 99-100; *Throne of Scotland*, vol. 2, p. 302.

<sup>154</sup> Malmesbury, pp. 214-15. For the importance of Malmesbury in deploying the barbarous analogy in relation to Celtic peoples, see J. Gillingham, *The English in the Twelfth Century. Imperialism, National Identity and Political Values* (Woodbridge, 2000), and Davies, *First English Empire*, pp. 114-19.

<sup>155</sup> *Scotichronicon*, vol. 6, p. 135; Cowan, 'Identity, Freedom and the Declaration of Arbroath', p. 42.

arguing that it was a natural and obvious connection to be made by Scottish clerics, who found in the Maccabees a parallel with their own struggle against the English crown. It enshrined the numerical superiority of their enemy, and was intended, he argues, to reflect only a shared sense of 'nationalism': 'The Scots' quarrel with the English touched religion only in the sphere of church government and clerical independence. They therefore took the nationalism from the Maccabees but largely dispensed with the religion, save for the feeling that God was on their side'.<sup>156</sup> With this, Barrow at best only hints at the full significance of the analogy. In one sense, it demonstrates, as already noted, the nation's antiquity. But it was also intended to suggest the nation's particular worth within Christendom, by using an analogy commonly associated with the defence of the Church.

In the Maccabees analogy the papacy and crusade chroniclers found a biblical precedent for absolving men for killing the Church's enemies and for the establishment of military orders, 'warrior-priests'.<sup>157</sup> Mary Fischer has observed that 'the Maccabee material is used, with differing emphases, by nearly all the popes who concerned themselves with the crusades'.<sup>158</sup> Noting how Baldwin I was reputedly known as 'the new Maccabeus', she also maintains it was a model that captured the popular crusading imagination.<sup>159</sup> In Scotland, however, it was

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<sup>156</sup> Barrow, 'Freedom' p. 32.

<sup>157</sup> Mary Fischer, in her *Die Himels Rote*, cites Manegold of Lautenbach for using the analogy to absolve crusaders from blame for killing the Church's opponents, and argues that the Maccabees were a popular model for all the military orders certainly at their inceptions, and a particularly long-standing one for the Teutonic Order, well into the later Middle Ages. Fischer, *Die Himels Rote*, pp. 99-104.

<sup>158</sup> *Ibid.*, p. 101. She does note, however, that during the thirteenth century the material is 'used less centrally and in conjunction with a greater variety of other biblical motifs'. *Ibid.*, pp. 103-4.

<sup>159</sup> Mary Fischer, 'Biblical Heroes and the Uses of Literature: The Teutonic Order in the Late Thirteenth and Early Fourteenth Centuries', in Murray (ed.), *Crusade and Conversion*, pp. 270-1. See also Murray, 'Ethnic Identity in the Crusader States', p. 69.



clearly seized on by clerics who were aware of its papal pedigree.<sup>160</sup> They were also aware of the political value which the analogy afforded at the Curia: it worked well with the Declaration's argument that English aggression was compromising the safety of Christendom. It tells how the English king was prepared to kill innocent Christian people even at a time when 'the frontiers of Christendom [were] being pressed inward day by day', and suggested his military efforts would be better spent elsewhere, if he were a good Christian king.<sup>161</sup> Here the Declaration author was participating in a common European political discourse relating to the *negotium terrae sanctae*, deployed to legitimise, or de-legitimise, secular disputes.<sup>162</sup> Leaving Scotland in peace was integral to the overall defence of Christian society. The public welfare of Christendom depended on the preservation of an ancient kingdom (as in Poland) as part of its natural political order. Within the context of this discourse we can see that the Maccabees model was a particularly pertinent one for legitimising Bruce's regime and its war with England: defending Scotland equated to defending the Church; the 'medieval Maccabees' were responsible for exactly that – they were warriors who defended the Church.

Supporting the use of this political discourse was a more general concern throughout the early fourteenth century to establish for the Scottish nation some sort of crusading heritage. The Declaration maintained that the Scots and their king would happily go to recover the Holy Land if only the king of the English would leave them in peace.<sup>163</sup> According to the Bamburgh brief, Bishop Wishart addressed the assembled notables of 1290 in very similar

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<sup>160</sup> Not least because, as MacQuarrie has demonstrated, the crusading tradition of this northern kingdom was at best patchy before this period. A. MacQuarrie, *Scotland and the Crusades, 1095-1560* (Edinburgh 1997), pp. 1-68.

<sup>161</sup> Declaration, pp. 35-6.

<sup>162</sup> Weiler, '*Negotium terrae sanctae*', *passim*.

<sup>163</sup> Declaration, p. 35.

terms.<sup>164</sup> The Scots' historical contribution to the welfare of Christendom was certainly expounded by Bisset and his colleagues, though resting neither on fact nor even historical tradition.<sup>165</sup> The *Instructiones* noted that William (c.1143- 1214), the grandson of King David I, was 'abroad at Toulouse on an expedition in support of the faith and the church against the Albigensian heretics' at the time of David's death.<sup>166</sup> It was during William's absence that Henry II seized the opportunity violently to invade and occupy Cumbria, Northumbria and Westmorland, 'thus ungratefully returning evil for good'.<sup>167</sup> This is a convenient muddling of events. William lost the earldom of Northumberland in 1157 when Henry II regained the northern counties from Malcolm IV (1153-65). It was only two years later that William might have been found in southern France, along with Malcolm, serving Henry II against the Count of Toulouse.<sup>168</sup> Moreover, though Catharism was not unknown in this area by the mid twelfth century, fighting heretics here, certainly in return for spiritual indulgences, was exclusive to the early thirteenth century. Such details did nothing to deter Bisset, however, who went on to suggest that such was the Scots' commitment to the welfare of Christendom that in former times 'the Roman church has like the Assyrians used [the Scots] to tame rebellious neighbouring nations in other areas, and will perhaps in the course of time still need to use their help as it has needed it [in the past]'.<sup>169</sup>

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<sup>164</sup> Bamburgh, p. 120: 'Ad hoc autem quod tamquam ab hoste se defenderent, ut predicatur, respondebat memoratus episcopus quod honor tanti regis non esset gentem invadere sic divisam et omni defensoris presidio destitutam, per quod etiam Terre Sancte viagium quod assumpserat impediri posset et multa alia sequi dispendia satis magna.'

<sup>165</sup> For Scotland's crusading tradition see MacQuarrie, *Scotland and the Crusades*, *passim*.

<sup>166</sup> The only evidence of Scots in the Mediterranean for such a purpose in this period is for 1147 (six years before David I's death), when a group joined a fleet comprising Rhinelanders, Englishmen, and those of other provenance, which was involved in the capturing of Lisbon in that year. MacQuarrie, *Scotland and the Crusades*, p. 123. So far as I am aware, there is no evidence to suggest that William was among them.

<sup>167</sup> *Scotichronicon*, vol. 6, pp. 154-5.

<sup>168</sup> *RRS, II: The Acts of William I*, pp. 3-4; A. A. M. Duncan, *Scotland: The Making of the Kingdom* (Edinburgh, 1975), pp. 222-6.

<sup>169</sup> *Scotichronicon*, vol. 6, pp. 144-5.

Both English and papal diplomacy at the outset of John XXII's pontificate helped to confirm the relevance of the Holy Land discourse for the Anglo-Scottish dispute. Citing the plight of the Holy Land when rebuking warring Christian powers was by now common papal practice, not least because it was an inoffensive method of intervening in secular disputes at a time when the pontiff's right to do so was being questioned: few would dispute that the welfare of Christian society and the Holy Land were reason enough for the pope to knock princely heads together. But the English embassy sent to Avignon early in 1317 confirmed this as the lens through which the pope ought to perceive the matter. The embassy not only sought papal backing in the dispute but attempted also to persuade the pope of Edward II's desire to go to the Holy Land.<sup>170</sup> The connection between the two issues was incorporated into nearly all of John XXII's subsequent exhortations to both Bruce and the English crown to make peace.<sup>171</sup>

It has been observed that the *negotium terrae sanctae* was a discourse which, while shaped by papal language, could be deployed to question papal policy, and that the author of the Declaration was fully aware of its potential in this respect. Any involvement in needless wars within Christendom could implicate the pontiff himself in the threat to its overall defence: John's direction of crusades against Christian lay powers in Italy unsurprisingly prompted a wave of such criticism.<sup>172</sup> The Declaration has been identified by Björn Weiler as an unequivocal example of such usage, warning the pope of the scandal threatening his reign if

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<sup>170</sup> For an overview of this embassy, see J. R. S. Phillips, *Aymer de Valence* (Oxford, 1972), pp. 107-11.

<sup>171</sup> For such letters, see, for example, *VMHS*, nos. 209, 430; *CPL*, vol. 2, p. 427. He also used it as an excuse for *not* involving himself in the dispute again in 1333. Responding to a petition relating to Scotland brought by two English envoys, he had decided not to bring it forward in consistory on account of there being too much other business and too little time for the preaching of the crusade. *CP*, vol. 2, p. 512; *VA*, RV 116, ff. 42v-43.

<sup>172</sup> For this see Housley, *The Italian Crusades*, pp. 75-110.

he continued to support those currently compromising Christendom's welfare, the English.<sup>173</sup>

Nevertheless, the Scots' questioning of papal authority at a time of soured papal-Scottish relations should not detract from the more general utility of crusading discourse for the proponents of Scottish independence. As we have seen, the concerted construction of a Scottish crusading heritage pre-dates the Declaration of Arbroath by two or even three decades.<sup>174</sup> That the potency of this construction was at its height when confirmed by papal approval is suggested by the tactics of the earl of Moray's visit to the Curia in 1324. Sent to urge the revocation of Bruce's excommunication, he proposed a crusade, which was evidently described very much as a Scottish enterprise, engineered to demonstrate the nation's merit as a constituent defender of Christendom. This may certainly be deduced from the papal reply, in which John declared that the subjects of the kingdom of Scotland – *Scotiae regnicolae* – were unworthy of such favours.<sup>175</sup> It was, therefore, evidently a way of suggesting Scottish independence and nationhood that remained closely informed by the Curia. While the political discourse of the *negotium terrae sanctae* became partly detached from its originator, the worthily-directed and justifiable aggression of the Scots remained a notion which linked Scottish expressions of national sovereignty to the Curia.

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<sup>173</sup> The pope was warned that 'it will tarnish your Holiness' memory if (God forbid it) the Church suffers eclipse or scandal in any branch of it during your time'. Declaration, p. 36.

<sup>174</sup> It is also of note, perhaps, that at the time of these earlier examples, no comparable assertions are to be found in the English communications with the papacy, or, later, in Tange's Roll.

<sup>175</sup> *VMHS*, no. 480. John subsequently granted an indult to the earl: *CPL*, vol.2, p. 239; VA, RV 77, f. 229v.

## Conclusions

It is clear therefore that many of the now most famed expressions of an independent Scottish nation owe much of their emphasis and language to their intended audience, the Curia. It was here that the Scots (like the Poles) complained bitterly of the tyranny and servitude associated with unnatural foreign rule. It was here that they constructed legal and theological accounts to justify the natural legitimacy of their own independent residence in Scotland. It was here that the symmetry of nation and kingdom was most fully expounded, and that the independence of both was asserted through the use of biblical analogy. It was here that the Scots' historical war-like tendencies were moderated, to accommodate legal understandings of just war and *dominium*. And it was here that the Scots' spiritual worth as a constituent nation of Christendom was asserted.

Clearly, the substance of these ideas was not contrived merely to appease papal sensibilities. Corresponding conceptual developments are easily discerned in other diplomatic material, as well as in more popular political discourse. It is very likely that the spiritual inferiority of the English was a widespread and popular means of articulating a sense of nationhood.<sup>176</sup> The Christian heritage of the Scots as a nation was in any case expounded in the Scottish historical tradition of the thirteenth century. And the conception of a politically independent and unified nation was enshrined in the notion of the 'community of the realm', the conceptual mainstay of Scottish diplomatic material in this period.

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<sup>176</sup> This is at least suggested by the accusation made against David Murray, bishop of Moray, who, as a rousing call on the battlefield, apparently likened fighting the English to fighting the Saracens. *Documents and Records Illustrative of the History of Scotland*, ed. F. Palgrave (London, 1837), p. 330; *Calendar of Documents Relating to Scotland*, ed. Joseph Bain, 4 vols (Edinburgh, 1881-8), vol. 2, p. 490.

Nevertheless, political discourse associated primarily with the Curia provided varied means of expressing and sharpening these sentiments. For Bisset, developing his case at Avignon, this primarily meant using an array of legal principles often already tried and tested by national (usually canonist) spokesmen seeking papal support for independence from imperial overlordship – most obviously, perhaps, prescriptive right. Most of these principles went on to service bilateral negotiations at Bamburgh in 1321. The Declaration of a year earlier, however, shunned any such explicit legal citations. This does not reflect its likely authorship: Alexander de Kinninmonth, although not of Bisset’s reputation, was nonetheless a doctor of both canon and civil law and was employed as a papal auditor of causes in 1328-9.<sup>177</sup> The shift is explained largely by papal-Scottish relations. Deference to papal judgement in the dispute at this point would probably not have served Bruce’s cause.

Underpinning Scottish communications with the Curia, however, was the belief that the pontiff *ought* to approve of the antiquity of the Scottish nation and its freedom. The Declaration’s author was certainly *au fait* with the now popular way of questioning the pope’s role as judge between nations, revealed its use of the *negotium terrae sanctae* discourse. For many, the letter’s assertive tone constitutes a statement of the legitimacy of Scottish national sovereignty with or without papal approval. But the terms in which it expressed the antiquity and apparent naturalness of such freedom were still informed by papal political discourse, and were evidently constructed in the hope of obtaining some sympathy from the pontiff. Alexander de Kinninmonth, like his predecessors, was aware of the canonistic tradition that supported his case, as well as the political theology which complemented it. Indeed, it is possible that one of the Declaration’s now most famed components, the suggestion of the

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<sup>177</sup> *BDSG*, p. 299.

barons' intransigence in their support of Bruce, in fact accorded with this canonistic tradition. When commenting on the natural political rights of peoples, Innocent IV had identified as evidence the election of rulers – just as the Israelites had elected Saul.<sup>178</sup> 'Political rule' was a symptom of the natural independence of the Scottish people, which Kinninmonth was hoping the pontiff would accept.

While Bruce's representatives understood the ways in which the pontiff might sympathise with the notion that Scottish sovereignty was natural and ancient, they also saw the potential for expressing this through a political discourse of crusading. In constructing a Scottish crusading tradition, they were asserting the equality of their kingdom with any other in Christendom. The preservation of this nation as a peaceful constituent of Christendom was integral to the latter's defence.

The principal aim of Bruce's proponents was never to attack directly papal temporal authority as a threat to Scottish sovereignty. The focus was always on refuting English rather than papal claims. The tone of the Declaration certainly sought immunity from papal intervention on account of soured relations. But the natural freedom of this nation, and its inherent spiritual worth, were something of which Scottish spokesmen throughout the period hoped to convince the pontiff. When appraising the character of the Declaration it is worth recalling that Bruce and his associates still sought for this new ruler the privileges of crowning and unction, which they eventually obtained in 1329. The papal grant itself describes how Saul had received these privileges – an analogy through which John apparently intended to sanction not so much Bruce's legitimacy on account of election as the

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<sup>178</sup> Innocent IV, *Commentaria...*, 3.34.38, fol. 176v: 'Item per electionem poterunt habere Principes sicut habuerunt Saul, et multos alios'. Quoted in Muldoon, *PLI*, p. 8.

ultimate political superiority of priest over king.<sup>179</sup> This was a notion which the Scottish proctors, if it concerned them at all, were prepared to accept for the sake of obtaining such significant privileges.<sup>180</sup>

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<sup>179</sup> *VMHS*, no. 480.

<sup>180</sup> It seems likely that the possibility of paying Peter's Pence in recognition of Scotland's temporal subjection to the papacy was raised during the negotiations for these privileges. For this see Crawford, 'Peter's Pence', p. 16. As Crawford argues, however, it seems unlikely that any payment of the tax was ever delivered to the papal camera – there is certainly no extant record of it.



### 3. Ireland

#### Native Ireland in the early fourteenth century

The 'Remonstrance of the Irish Princes' of c.1317 describes to its audience a set of political and legal systems in Ireland perfectly drawn along national lines. The Irish nation, as an apparently unified entity, was said to be transferring its allegiance from the English crown to Edward Bruce, and justified this on account of the injustices (particularly of a legal nature) that they had suffered under English rule. Edward Bruce stood as the liberator of this oppressed people, the nominated incumbent of an ancient institution, the high kingship of Ireland. Of course the reality of Irish politics in this period lacked any such clarity.

In 1155 Pope Adrian IV sent a letter to Henry II sanctioning an English invasion of Ireland. The bull, *Laudabiliter*, gave the need for church reform as the reason for the invasion: the ungodly customs of the Irish had no effectual church structure to temper them. Though such language had passed the lips of many native Irish churchmen in the preceding decades, this was also the language of English church reformers who held the notion of *orbis Britanniae*. Their ambitions were not immediately satisfied by Henry, whose invasion of Ireland in 1171 was a response to the presence there already of 'Strongbow'. *Laudabiliter* had not been forgotten, however, and for Henry the papal interpretation of his arrival in Ireland was very convenient in light of the recent Becket murder.

The outcome of the invasion was nothing so far-reaching as the reformation of the Irish nation. Throughout the period Ireland remained a land of two political cultures. English royal administration was centred on Dublin. The surrounding lowland areas of the South

and East, referred to in official sources as 'the land of peace', were occupied by a settler population which had towns, county and liberty structures, and English law.<sup>1</sup> Native Irish communities remained in upland areas such as the Wicklow hills south of Dublin and in much of the North, South and South-West of the island, where native Irish dynasties like the Ó Neill and Ó Domnall in the North and the Ó Bhriain in the West, were still entrenched in (more or less) their centuries-old territories: here they remained largely immune from any form of English political authority.<sup>2</sup> Nevertheless, as a people the native Irish lacked any common political institutions to encourage uniform, co-ordinated resistance to the subjects of the English crown. Many native communities lived under the overlordship of Anglo-Irish magnates, and provided both tribute and military assistance when required.<sup>3</sup> Beyond this, border lords might make military alliances with Irish leaders, often against other native rulers, producing a complexity of border politics which often ignored nationality and which the Dublin government could but try to manage. Few episodes demonstrate the limitations of ethnicity as a political marker in Ireland, and the dominance of local and regional grievances within border politics, better than the invasion by Edward Bruce in 1315.<sup>4</sup> Contrary to the Remonstrance, Bruce's followers in Ireland were not exclusively Irish, nor were his opponents exclusively English or Anglo-Irish: some of Bruce's support came from

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<sup>1</sup> For a recent consideration of the extent of English lordship in Ireland, see R. F. Frame, 'Exporting state and nation: being English in medieval Ireland', in Len Scales and Oliver Zimmer (eds), *Power and the Nation in European History* (Cambridge, 2005), pp. 143-8.

<sup>2</sup> For this see Katharine Simms, *From Kings to Warlords: The Changing Political Structure of Gaelic Ireland in the Later Middle Ages* (Woodbridge, 1987); Aoife Nic Ghiollamhaith, 'The Uí Briain and the king of England, 1248-76', *Dal gCais*, 7 (1984) pp. 94-99, and 'Kings and vassals in later medieval Ireland: the Uí Bhriain and the MicConmara in the fourteenth century', in T. Barry, R. F. Frame and K. Simms (eds), *Colony and Frontier in Medieval Ireland: Essays Presented to J. F. Lydon* (London, 1995), pp. 201-216; K. W. Nicholls, *Gaelic and Gaelicised Ireland in the Middle Ages* (Dublin, 1972).

<sup>3</sup> Notably in Ulster and Connacht. For an overview of this see R. F. Frame, *The Political Development of the British Isles, 1100-1400* (Oxford, 1990), pp. 203-6.

<sup>4</sup> For this see R. F. Frame, 'The Bruces in Ireland, 1315-18', *IHS*, 19 (1974), pp. 3-37; and for some important documents relating to the defence of the lordship in these years, see J. R. S. Phillips, 'Documents on the early stages of the Bruce invasion of Ireland, 1315-1316', *Proceedings of the Royal Irish Academy, section C*, 79 (1979), pp. 247-70.

renegade Anglo-Irishmen while many native Irish leaders refused their assistance.

Whatever the 'imperial' conception of the British Isles might have been in the minds of royal government officials in England, and of English commentators,<sup>5</sup> the Dublin government, certainly from the beginning of the fourteenth century, was not an expansionary one: its survival depended heavily on the loyalty and military capability of magnates as well as compliant native Irish leaders:<sup>6</sup> military assistance from Irish rulers was as readily sought by the royal government in Ireland as it was by Anglo-Irish magnates. By contrast, the language of English government in Ireland was much less pragmatic. By the end of the thirteenth century Dublin officials were producing legislation on the premise that native Irish influence was degenerate and indicative of rebellious activity, the Irish being deemed naturally fickle with a propensity for war even when nominally at peace.<sup>7</sup> Successive rounds of Dublin legislation during the next century revealed the tenacity of this fear that acculturation of the English in Ireland compromised their political loyalty.<sup>8</sup> Categorisations of the Irish as 'wild' and 'barbarous' were favoured at least as much by officials of the fourteenth century as they had been by those who sought papal blessing for the invasion of Ireland in the mid twelfth century.

Such rhetoric was one extreme of a divided society, the other of which was, as Robin Frame

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<sup>5</sup> For these see Davies, *The First English Empire*.

<sup>6</sup> James Lydon, 'The impact of the Bruce invasion, 1315-27', in A. Cosgrove (ed.), *A New History of Ireland, II: Medieval Ireland, 1169-1534* (Oxford, 1987), p. 278. The Dublin government statutes of 1297 set out how local communities were expected to co-ordinate their own defence, and provided that two magnates in each county or liberty would act as keepers of the peace. For these see *Statutes and Ordinances ... of Ireland, King John to Henry V*, ed. Henry F. Berry (Dublin, 1907), pp. 195-213.

<sup>7</sup> See James F. Lydon, 'Nation and Race in Medieval Ireland' in Forde, Johnson and Murray, *Concepts of National Identity*, *op cit.* pp. 103-8.

<sup>8</sup> Such instances include the bardic practices of the third earl of Desmond, showing processes of acculturation to exist at the highest echelons of Anglo-Irish society.

has put it, 'a self-conscious Gaelic culture', 'two poles, between which large elements in the population oscillated'.<sup>9</sup> Nevertheless, the Dublin attitude shaped the lordship's legal system, and so while political or cultural oscillation was possible, legal 'acculturation' (so laudably anticipated by the pontiff when he sanctioned English invasion in 1155) was not. Those of Irish blood were refused access to English common law, a principle maintained in the face of several appeals from both English and Irish inhabitants for this to be changed. Such appeals might reproduce royal chancery language in describing native law as 'evil', but only as a way of redressing this national imbalance.

It is hard to know how widespread this grievance was, though it is reasonable to suggest that it was felt most keenly where the two nations met. One such meeting place was the Church, whence complaints about the exclusion of the native Irish from English common law in fact first emerged.<sup>10</sup> The requirements of effectual ministry meant that political and cultural spheres of influence in Ireland were broadly reflected in ecclesiastical organisation.<sup>11</sup> In its day-to-day workings, at least at its lower levels, secular ecclesiastical administration accommodated national divisions without too much strife.<sup>12</sup> At the higher levels, the English crown's tendency to appoint Englishmen to bishoprics from Henry III's reign onwards meant that ethnic tension compounded the frustration of individual careers in the three

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<sup>9</sup> Frame, *Political Development*, p. 204.

<sup>10</sup> Namely, the clergy of the province of Cashel. See J. Otway-Ruthven, 'The request of the Irish for English law, 1277-80', *IHS*, 6 (1949), pp. 261-70; J. Otway-Ruthven, 'The native Irish and English law in Ireland', *IHS*, 7 (1950), pp. 1-16.

<sup>11</sup> The fullest account of this is provided by J. A. Watt, *The Church and the Two Nations in Medieval Ireland* (Cambridge, 1970); but see also K. Simms, 'Frontiers in the Irish Church – Regional and Cultural', in Barry, Frame and Simms (eds), *Colony and Frontier*, pp. 177-200.

<sup>12</sup> English archbishops of Armagh, for instance, were unable to reside in the cathedral town itself, but instead used various manors in English areas as their administrative bases. The arrangement became standardised, though various archbishops in the fourteenth century attempted to 'normalise' the situation. For the practising of national exclusivity by the English crown in the appointment of secular prelates, and the papacy's condemnation of such practice, see Watt, *Two Nations*, pp. 73-5; cf. pp. 150-6.

provinces, Armagh, Cashel and Tuam, where English and native Irish lordship met. Within the secular church, however, consciousness of the national divide was frequently surmounted to complain of encroachments by the lay power. As John Watt makes clear, the idea of the *Ecclesia hibernicana* should not be overshadowed by largely fourteenth-century expressions of the church *inter Anglicos* and *inter Hibernicos*.<sup>13</sup> More apparent and perennial was the existence of national tensions within the supposedly ‘universal’ ecclesiastical institutions – the regular orders.<sup>14</sup> Here the pull of nation and language resulted in certain houses becoming nationally exclusive. The Remonstrance of the Irish Princes famously complained of this exclusivity being at the expense of the Irish, but such selection was practised by houses of both nations. The earliest evidence of this development came from Cistercian sources, with the visitation of Stephen of Lexington to Mellifont in 1228.<sup>15</sup> By the end of the thirteenth century, it is possible to regard this as a much more general pattern.<sup>16</sup> It is also in this period that we first hear of official English apprehension at the ‘subversive’ behaviour of native Irish clerics, particularly those of the Mendicant orders.<sup>17</sup> Through English offices, Mendicant support for the Bruce invasion incurred papal condemnation.<sup>18</sup>

The importance of certain Irish clerics in sustaining a sense of nationhood and promoting its political dimension from the later thirteenth century has much to do with the nature of Irish

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<sup>13</sup> *Ibid.*, p. 117.

<sup>14</sup> See Watt, reflecting on thirteenth-century developments: *ibid.*, p. 174; cf. *Calendar of Ormond Deeds*, ed. E. Curtis, vol. 1, no. 575, pp. 237-42.

<sup>15</sup> For these see Stephen of Lexington, *Letters from Ireland, 1228-1229*, ed. and transl. Barry W. O’Dwyer (Kalamazoo, 1982).

<sup>16</sup> Armagh and Down were cited as particular problem areas in this respect by the Justiciar in 1297. Watt, *Two Nations*, p. 175.

<sup>17</sup> For the most recent account of the political activity of mendicants in Scotland and Ireland see N. Gallagher, ‘The mendicant orders and the wars of Ireland, Scotland and Wales, 1230-1415’ (Unpublished PhD thesis, Trinity College Dublin, 2003). For an overview of the English crown’s efforts to secure English incumbents in ecclesiastical offices, see Watt, *Two Nations*, p. 185.

<sup>18</sup> Papal condemnation of mendicant involvement: *VMSH*, p. 411.

political structures in this period.<sup>19</sup> The ‘high kingship’, which the Remonstrance tells us was held by Domnall Ó Neill and transferred to Edward Bruce, even at its height never involved the degree of political unity usual for contemporaneous European monarchies.<sup>20</sup> By the time of the Anglo-Norman invasion the title usually carried the qualifier ‘with opposition’, recognising the fact that not all the island’s native kings recognised its incumbent. The invasion itself destroyed the possibility of the high kingship moving any further in the direction of continental models, removing from the native orbit of power Dublin, with its wealthy hinterland. The invasion also removed from the political weaponry of all native rulers the support of the Church, and inauguration ceremonies reverted to secular form. Ó Neill’s pretensions to the title by the time of the Bruce invasion almost a century and a half later did not rest on any unanimous recognition, and it is noteworthy that mention of any other dynasties was notably absent from the Remonstrance. Events surrounding the Bruce invasion were an exception to a system of rulership which was primarily regional in focus. Wider political horizons called for suitably sophisticated diplomatic practitioners. Mendicant activity elsewhere in Christendom (and indeed beyond) confirms the mendicants not simply as town-based but also very much as court-based orders, as well as ministering to the lowest levels of society.<sup>21</sup> In Ireland they were inclined, and well-positioned, to politicise their national concerns: as will become clear, they were certainly active at the courts of Ó Neill

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<sup>19</sup> Native Irish commentators were often as conscious of ethnicity as the Dublin government, sometimes to the extent that, as James Lydon has observed, the newcomers of the twelfth century ‘might have been in Ireland for generations, have adopted the language and *mores* of Gaelic Ireland, but nothing could alter the fact of their foreignness’, the fact that they were *Gaill*. Lydon, ‘Nation and Race’, p. 105; see also A. Cosgrove, ‘Hiberniores ipsis Hibernis’, in Art Cosgrove and Donal MacCartney (eds), *Studies in Irish History Presented to R. Dudley Edwards* (Dublin, 1979), p. 13.

<sup>20</sup> Frame, *Political Development*, pp. 108-15; for the emergence of the concept, and how European models may have been influential in this, see J. F. Byrne, ‘The Rise of the Uí Néill and the high-kingship of Ireland’, pp. 3-27.

<sup>21</sup> J. Kłoczowski, ‘The mendicant orders between the Baltic and the Adriatic Seas in the Middle Ages’, in *La Pologne au XV<sup>e</sup> Congrès international des sciences historiques à Bucarest. Etudes sur l’histoire de la culture de l’Europe centrale-orientale* ed. S. Bylina (Wrocław-Warsaw-Krakow-Gdańsk, 1980), p. 100. It is of note here that native Ireland could not boast any significant towns, beyond perhaps Armagh.

and Bruce.

Their opportunity was, however short-lived, as Edward Bruce's own presence in Ireland did nothing to realise the idea of unified kingship. His base at Carrickfergus may well have witnessed an embryonic government with the potential for administrative sophistication already achieved in Scotland, but events in the field prevented any such development. His influence in Ireland came to an abrupt end with his death in the autumn of 1318. Reflecting the limits of his influence perhaps, the letter that proclaimed his legitimate rule of all Ireland had a very strong regional flavour to it: in addition to the obvious Ó Neill bias, the Remonstrance's illustrations of legal injustices were drawn exclusively from the experiences of the island's northern inhabitants.<sup>22</sup> For present purposes however the period of the Bruce invasion is of considerable importance. It shows how doctrines of national sovereignty might be developed along quite distinctive lines by ecclesiastics in an area where well developed notions of nationhood were not matched by any political order of a national kind.

### **'The Remonstrance of the Irish Princes', c. 1317**

As a declaration of the political freedom of the Irish nation, the 'Remonstrance of the Irish Princes' of c.1317 is unrivalled by any other extant source from the region in this period. An obvious explanation for its uniqueness is that it emanated from rather exceptional, and rather short-lived, political circumstances. Indeed, the denouement of the document – the supposed transfer of allegiance by the 'Irish people' to Edward Bruce – became something from which many native Irishmen dissociated themselves in subsequent decades.<sup>23</sup> Such

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<sup>22</sup> See note on authorship below, note 62.

<sup>23</sup> See, for example, the way in which dealings with the Bruces are mustered by the dean and chapter of

documents as the Remonstrance, hyperbolic in language and often fanciful in content, tend to reflect a degree of optimism rather than political reality – optimism which was quick to fade after the death of Edward Bruce at Faughart. As far as we know therefore, no comparable diplomatic effort was made in the name of the Irish nation and its native rulers. Nevertheless, the Remonstrance does have an identifiable pedigree, and one which demonstrates how intellectual developments at the heart of Christendom might inform the conception and articulation of the nation at its fringes.

In what has been described as ‘rambling’ style,<sup>24</sup> in contrast to the Scottish ‘Declaration’ of three years later, the Remonstrance sought to inform the pontiff of ‘the absolute truth about our origin and our form of government ... and also about the cruel injuries to us and our ancestors which have been so heartlessly inflicted, threatened, and still continued’ by some English kings and their ministers, as well as by the English born in Ireland.<sup>25</sup> Composed in the name of Domnall Ó Neill and other Irish princes, it began in a mythological vein with the exposition of the early ancestors of the Irish, namely, the three sons of Milesius, who arrived in Ireland from Spain in a fleet of thirty ships. Ireland at the time of their arrival was unoccupied, and had since been populated by the descendants of these men without any admixture of foreign blood. One-hundred-and-thirty-six kings had ‘received royal power over the whole of Ireland’. With the arrival of St Patrick ‘our chief apostle and patron’, sent directly by the pope, the kings of Ireland (numbering sixty-one subsequent to this) had all

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Armagh as an allegation with which to condemn the archbishop Roland Jorz in the 1320s. *VMHS*, no. 446.

<sup>24</sup> J. R. S. Phillips, ‘The Irish remonstrance of 1317: an international perspective’, *IHS*, 27 (1990), p. 126. This is a description which he subsequently revised in his ‘The remonstrance revisited: England and Ireland in the early fourteenth century’, in T. G. Fraser and Keith Jeffery (eds), *Men, women and war : papers read before the XXth Irish Conference of Historians, held at Magee College, University of Ulster, 6-8 June 1991* (Historical Studies (Irish Conference of Historians), 18) (Dublin, 1993), p. 17.

<sup>25</sup> *Scotichronicon*, vol. 6, p. 387.



been instructed in the faith.<sup>26</sup> It was these kings who enriched the church with the lands and liberties which had since been eroded by the coming of the English. Their arrival, it argues, is to be laid at the door of Pope Adrian IV, who granted the lordship of the kingdom to Henry II, murderer of Thomas Becket. The grant was merely *de facto* and illegal: 'Thus was the course of justice altogether abandoned with the vision of so great a pontiff blinded, alas! by his English partiality'.<sup>27</sup>

It then goes on to illustrate how Henry II and his successors had transgressed the terms under which the lordship of Ireland was granted by the papacy in the bull *Landabiliter*, a copy of which was appended to the Remonstrance when it was delivered (in all likelihood) to the Cardinals Gaucelin and Luke.<sup>28</sup> According to the bull, the English kings were obliged 'to extend the boundaries of the Irish church, to preserve its rights unimpaired and intact, to subject the people to law, to train them in proper *mores*, to implant virtues, to root out the weeds of vices, and to make a payment of one penny annually from each house to the blessed apostle Peter'.<sup>29</sup> The Remonstrance goes on to demonstrate how they categorically failed to achieve all these things. Rather than extending the boundaries of the church, the crown had been responsible for attacking church liberties and eroding its possessions. The author is relatively brief on this point however, professedly because of the shamefulness of the acts to which he refers.<sup>30</sup> On the issue of law, training, and *mores*, he is much more forthcoming: rather than extending their laws to the Irish, and training them to live virtuously, the English have deprived them of their own written laws and, as part of their

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<sup>26</sup> *Ibid.*, p. 387.

<sup>27</sup> *Ibid.*, p. 387.

<sup>28</sup> For its transmission see Phillips, 'international perspective', p. 126.

<sup>29</sup> *Scotichronicon*, vol. 6, p. 391.

<sup>30</sup> *Ibid.*, p. 391.

apparent attempt to exterminate the Irish nation, have set up an evil and unfair system in their place.<sup>31</sup> The inequality of the Irishman (and woman) before the law is then illustrated using various examples,<sup>32</sup> and it goes on to lament the recent legislation of the Dublin government intended to enforce this inequality in religious houses.<sup>33</sup>

Such was the state of Ireland, one that had been brought about by the 'evil' character of the English newcomers there – the perfidious 'middle nation'.<sup>34</sup> The alleged duplicity of this breed, equipped with their complicit clergymen, is illustrated through a series of incidents drawn from the recent past. All of them involve the brutal killing of Irishmen, seemingly to demonstrate the grave allegation that 'not only their laymen and their secular clergy but even certain of their regular clergy make the heretical assertion that it is no more a sin to kill an Irishman than a dog or any other brute creature'.<sup>35</sup>

It goes on to assert that the occupation of land by the English in Ireland is done by no authority, but simply through force of arms: it is usurped and unlawful.<sup>36</sup> The antipathy between the two nations in Ireland is 'natural', longstanding, and worsening, the relationship

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<sup>31</sup> *Ibid.*, p. 391.

<sup>32</sup> For explanation of these, and for issue of native Irish access to English law see G. J. Hand, 'The Church and English Law in Medieval Ireland', *Proceedings of the Irish Catholic Historical Committee* (1959), pp. 10-18; G. J. Hand, 'The status of the native Irish in the lordship of Ireland, 1272-1331', *Irish Jurist*, n.s., 1 (1966), 93-115; G. J. Hand, *English Law in Ireland, 1290-1324* (Cambridge, 1967); Otway-Ruthven, 'The request of the Irish', pp. 261-70; and A. J. Otway-Ruthven, *The Native Irish and English Law in Medieval Ireland* (Dublin, 1951). The three particular points of inequality cited by the Remonstrance are the killing of Irishman, inheritance of Irish widows if married to Englishmen, and the inability of Irishmen to make wills to dispose of their possessions as they choose. English laws, it is argued, are entirely geared to dispossessing the Irish of their rightful inheritance: in essence, English greed is enshrined in their laws.

<sup>33</sup> *Scotichronicon*, vol. 6, p. 393.

<sup>34</sup> For the use of this term see J. F. Lydon, 'The middle nation', in J. F. Lydon (ed.), *The English in Medieval Ireland* (Dublin, 1984), pp. 1-26. For settler identity see Frame, 'Exporting state and nation', pp. 148-58.

<sup>35</sup> *Scotichronicon*, vol. 6, p. 397.

<sup>36</sup> *Ibid.*, p. 397.

being one of tyranny and servitude.<sup>37</sup> The English crown has done nothing to resolve the situation, despite receiving communication of these grievances; nor has it upheld the commitment to pay Peter's Pence, which was agreed as part of the submission of King John to the papacy in 1213, confirming what *Laudabiliter* had implied – that Ireland was a papal fief, for which the English crown made payment. Rather, the Remonstrance continues, unlike the Irish nation, the English, particularly in times of prosperity, 'despise the power of God and that of the Roman court'.<sup>38</sup> Having never paid homage to the English king in any case (supposedly like his ancestors), Domnall and his people are now exercising their inherited right as the inhabitants of the kingdom of Ireland by transferring their allegiance to one who will assist them in regaining their 'native freedom', namely, Edward Bruce, who is 'sprung from our noblest ancestors'.<sup>39</sup> It concludes with a plea that the pope will approve the transfer, 'or at least .. grant us with fitting favour our due complement of justice with respect to them [our afore-mentioned enemies]', and with an assurance, as if to allay any doubts concerning Bruce's credentials as a suitable ruler for Ireland, of the connection between kings of Lesser and Greater Scotia, and their shared language and habits.<sup>40</sup>

As is apparent merely from this précis, the letter shares many of the themes deemed appropriate for the papal ear by the Polish and Scottish authors, central to which was an idea that Ireland's occupation by the Irish, governed by native rulers, was natural – indeed, divinely ordained. Its pre-empting of the Declaration of Arbroath and its conception of the ancient, natural rights of people of one stock, ruled over by a single line of native rulers is

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<sup>37</sup> See, for example, *ibid.*, p. 401 for language relating to tyranny.

<sup>38</sup> *Ibid.*, p. 401.

<sup>39</sup> *Ibid.*, p. 401.

<sup>40</sup> *Ibid.*, p. 403. That language and habits were shared, it does concede 'to some extent'!

particularly striking.<sup>41</sup> The notion of natural lordship was one that, as we have already noted, was deployed by secular and ecclesiastical rulers in this period for varying, often opposing purposes, but it was nevertheless one that the papacy would recognise.<sup>42</sup> Quite clearly, it was a notion that chimed with the Thomist conception of the world, composed of naturally existing political communities, which were not necessarily Christian, and indeed, could not have been before the coming of Christ. Tyrannical rule and natural lordship had come to constitute the two poles of political treatises in this period,<sup>43</sup> and so the Remonstrance observes that the state of servitude which the Irish endured under the English newcomers was regarded as contrary to natural law.<sup>44</sup> The hostility persisting between the English and Irish was itself natural: it could not be expected that two such distinct peoples could accommodate their different languages and customs within a limited area of land.

The means chosen by the Remonstrance author to express the naturalness of the free Irish nation also has similarities with the other appeals. Like the various Scottish representations, the Remonstrance constructs an account of the history of this people that underlines the naturalness of their free, unchallenged occupation of Ireland. In describing the illegality of English usurpation, the author understandably chooses to deploy the language of just war – so we hear again of the ‘force and fear’ through which they occupied the land, identical to the concerns aired by the Scots and Poles.<sup>45</sup> All of these appeals warn the pope of their aggressors’ territorial greed, masquerading under the guise of religious conviction.<sup>46</sup>

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<sup>41</sup> *Ibid.*, p. 387; cf. *Declaration*, p. 35.

<sup>42</sup> Papal hierocrats such as Augustinus Triumphus are known to have recognised the concept. Wilks, *Sovereignty*, pp. 414-15.

<sup>43</sup> See, for example, Augustinus Triumphus’ *Summa* in *ibid.*, p. 414, n. 2.

<sup>44</sup> For a discussion of this see, for example, introduction to *Aquinas: Selected Political Writings*, ed. A. P. D’Entrèves, transl. J. G. Dawson (Oxford, 1948).

<sup>45</sup> For instance, *Scotichronicon*, vol. 6, p. 159.

<sup>46</sup> The *Processus* similarly contrasts the spiritual integrity of the Scots with the English in its appeal to

According to the Scottish *Processus* of 1301, Edward I's seizure of Scotland was *de facto*, and without the sanction of any higher authority, taking it 'for himself by such well-known oppression, force and fear';<sup>47</sup> 'He was not authorised to intrude into a foreign kingdom when it was vacant and without a head just by military might.'<sup>48</sup> The *Processus* also observes, as we saw, that 'it is almost against natural law and astonishing for someone who enjoys legal independence to be subjected to the authority of someone else'.<sup>49</sup> In both instances, just war theory is used to assert the divinely-ordained, natural right of these respective peoples to possess their own land.

Nevertheless, in spite of the obvious Scottish influences on the letter's final construction, the bulk of the material, and particularly its use of legal arguments, is very specific to Irish concerns and to an existing political discourse in the region. The Remonstrance may be seen as falling into two parts: the exposition of 'Irish' grievances and English negligence and aggression in the first; and transferral of allegiance to Edward Bruce in the second. The structure strongly suggests that the second section was tagged on almost as an afterthought – as Phillips has it, an addition inspired by the Bruce invasion added to a pre-existing 'dossier' of complaints.<sup>50</sup> Several details support this suggestion, not least the fact that no attempt appears to have been made to harmonise the native origin account incorporated in the 'dossier' with the assertions of the 'tagged-on' section: as we saw in the previous chapter, Scottish spokesmen set great store by etymologies when expounding their descent. In view of the second section's emphasis on the common ancestry of the Scottish and Irish nations,

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their prior conversion, and their crusading heritage.

<sup>47</sup> *Scotichronicon*, vol. 6, p. 159.

<sup>48</sup> *Ibid.*, p. 167.

<sup>49</sup> *Ibid.*, p. 168-9. The ruling has not been found in the *CIC*. See note 102, chapter 2, above.

<sup>50</sup> Phillips has drawn attention to this in discussing its authorship in his 'Remonstrance Revisited', p. 20.

we might expect something to be made of Irish descent from *Scota*. Yet the Remonstrance's origin myth chose to omit any such reference, despite mentioning her husband *Míl*, and in stark contrast to the Irish origin legend tradition.<sup>51</sup> Although there are some notable similarities between the final section and the origin myth paragraph of the 'dossier' section – not least that they both exemplify rich yet concise rhetoric, and share the phrase 'native freedom' which is absent from the rest of this lengthy document – we can agree with Phillips that not even in the Remonstrance's origin myth do we see a direct influence of 'Brucean' thought or rhetoric.<sup>52</sup>

Only in the final 'tagged-on' section are there some obvious Scottish influences. The notion of a shared origin, laws and customs, in view of which Edward Bruce's rule would be natural and legitimate also occurs in a letter sent by Robert Bruce to the Irish probably in 1307.<sup>53</sup> The use of the term *natio* similarly betrays direct Scottish influence. Lydon has maintained that the use of the word in its more 'modern' sense was unheard of in Irish sources in this period.<sup>54</sup> The fact that the Remonstrance was composed by a learned cleric should explain its use easily enough,<sup>55</sup> but it is surely also significant that the term was common currency in Scottish diplomacy at this time, and appeared in the letter of 1307. For present purposes, it should also be noted that the Scottish influence was largely cosmetic, however, since such words and phrases are simply another means of expressing the ideas and assumptions about

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<sup>51</sup> See *LGÉ*, second recension, *passim*.

<sup>52</sup> That the inclusion of an origin myth was inspired at least in part by the earlier Scottish *Processus* of 1301 cannot, however, be doubted. In the 1301 account the origin myth is similarly treated with brevity. *Scotichronicon*, vol. 6, pp. 143, 183.

<sup>53</sup> *RRS*, vol. 5, p. 695 (and for the re-dating of this letter from 1315 to 1307 see Sean Duffy, 'The Bruce Brothers and the Irish Sea World, 1306-29', *Cambridge Medieval Celtic Studies*, 21 (1991), pp. 64-5). While of course awareness of shared origin is a component of the Irish origin legend tradition, and also appealed to in the *Instructiones* and *Processus* of 1301, its use in this way is clearly 'Brucean'. Cf. Smith, 'Gruffydd Llwyd', pp. 468-78.

<sup>54</sup> Lydon, 'Middle Nation', p. 114.

<sup>55</sup> As Lydon points out, the more modern sense of the word was being developed within clerical circles.

Irish nationhood found in the original 'dossier' section: the notion of a people whose coexistence with a different nation, possessing different language, laws and customs, is unnatural and insupportable. The first 'dossier' section is undoubtedly of post-1301, but pre-1315 Irish authorship.

As Phillips has convincingly proposed, the likelihood that these two sections were written separately is supported by the apparent identity of the letter's alleged (principal) author: he suggests Michael Mac Lochlainn, a Franciscan, probably belonging to an old Irish ecclesiastical dynasty, passed over for the archbishopric of Armagh in 1303, after which the office was held by non-native Irish.<sup>56</sup> His background as a Franciscan makes his authorship especially plausible as the national dissensions that plagued the mendicant orders in Ireland are well-known.<sup>57</sup> Almost upon their arrival in the lordship, disputes over exclusions from houses on national grounds necessitated high-profile intervention from the Franciscan General Chapter and the papacy.<sup>58</sup> Concerns over the political activity of the Franciscans during the Bruce invasion recur in English correspondence with Dublin and Avignon.<sup>59</sup> Such

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<sup>56</sup> Phillips, 'Remonstrance Revisited', p.19. The suggestion of a common authorship with the Declaration of Arbroath has long been deemed implausible, despite its suggestion by R. G. Nicholson in his 'Magna Carta and the Declaration of Arbroath', *Edinburgh University Journal* (1965), p. 143; see also Hand, *English Law in Ireland*, p. 198; Frame, 'Bruces in Ireland'. A. A. M. Duncan confidently maintained in his 'The Scots' invasion of Ireland, 1315', in R. R. Davies (ed.), *The British Isles, 1100-1500: comparisons, contrasts and connections* (Edinburgh, 1988), p. 111, that the Remonstrance 'did not come from a Scottish pen', and Phillips's suggestion, as the leading authority on such matters, of Mac Lochlainn currently holds sway. Even if the proposed authorship is challenged, the proposal of shared authorship flouts the diplomatic context that Phillips has adeptly provided for the document in his 'International perspective', in which he argues that the similarity between the Remonstrance and the Declaration should not be surprising: 'the use in dealing with the papal curia of arguments drawn from both mythology and from real historical events had become commonplace' (p.124). He cites, for example, the appeal made by Llywelyn ap Gruffydd in 1282.

<sup>57</sup> For an overview of the subject, see Watt, *Two Nations, passim*. For a more recent and detailed appraisal, see Gallagher, 'The Mendicant orders', *op cit*.

<sup>58</sup> Despite efforts by the General Chapter to reduce such national tensions, the problem proved a perennial one: see, for example, for 1325, *Materials for the History of the Franciscan Province of Ireland, 1230-1450*, edd E. B. Fitzmaurice and A. G. Little (Manchester, 1920), p. 120.

<sup>59</sup> For documents relating to this, see *Materials for the Franciscan Province*, pp. 94-5.

concerns had also been expressed several decades previously.<sup>60</sup>

Little is known in detail about Mac Lochlainn's education, though his academic training is suggested by his position as lector in Armagh, and it is quite possible that he received training in Paris.<sup>61</sup> Phillips suggests that, in his role as unsuccessful metropolitan candidate, and as a member of an order suffering from deep racial divisions, Mac Lochlainn had probably been compiling a 'dossier of complaints' since 1303 relating to Irish oppressions by the English in both the ecclesiastical and secular spheres, a dossier which informed the first part of the letter.<sup>62</sup> In so doing, Mac Lochlainn may have taken inspiration from the compilation of grievances for the Council of Vienne in 1312.<sup>63</sup> Ecclesiastical grievances certainly feature prominently in the Remonstrance's list of injustices endured by the Irish, where we are told of the propensity of English monastic houses to exclude all those of Irish birth.

The relationship of the Remonstrance to ecclesiastical grievances such as the Vienne *gravamina* may also be seen in terms of language: such complaints provided an important well of phrases from which the Remonstrance author clearly drew. A prominent assertion of the

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<sup>60</sup> *Ibid.*, p. 75. It is characteristic of members of the mendicant orders in this period to establish links with centres of political power, if only regional or local ones. For this phenomenon in another part of Christendom, see Jerzy Kłoczowski, 'The mendicant orders between the Baltic and the Adriatic Seas in the Middle Ages', in *La Pologne au XVe Congrès international des sciences historiques à Bucarest. Etudes sur l'histoire de la culture de l'Europe centrale-orientale* ed. S. Bylina (Wrocław-Warsaw-Krakow-Gdańsk, 1980), p. 108.

<sup>61</sup> Phillips, 'Remonstrance Revisited', p. 19, endnote. I am grateful to Professor Phillips for advice on this matter. He has found no evidence to suggest that Mac Lochlainn attended either Oxford or Cambridge, though he may well have received his evidently good education on the continent. For the education of friars in Ireland see Watt, *Two Nations*, p. 180.

<sup>62</sup> The anecdotal evidence employed in the letter is certainly northern in provenance, and Phillips suggests that Mac Lochlainn's primary purpose may have been northern in focus also - to restore the independence of Armagh under the high kingship of Edward Bruce, citing as evidence of this privileges granted by Domnall Ó Neill and confirmed by Edward Bruce. Phillips, 'Remonstrance Revisited', p. 20.

<sup>63</sup> As Phillips observes, 'It would be very interesting to know if Mac Lochlainn was present at the council.'



Vienne *gravamina* is the ancient liberty of the Irish church. It is a notion which the Remonstrance not only reiterates to emphasise (for legal reasons, as we shall see) the fact that the Irish were already spiritually civilised prior to the English invasion, but which it also echoes in a broader sense with its claim of ‘pristine liberty’ enjoyed by the Irish nation before their relatively recent oppression. According to the Vienne council records of 1312, representatives of the *Ecclesia Hibernicana* complained that ‘before the arrival of the English in Ireland ... [the Irish church] was free, and recognised no superior in temporal matters, and in every way possessed and exercised spiritual and temporal jurisdiction’.<sup>64</sup> The Irish submission goes on to recount how ‘the king of England obtained licence from the lord pope to enter and subjugate the said land of Ireland, saving only the rights of the Roman and Irish churches; it was under the pretext of this licence that the same king entered the land and subjugated some of it to himself.’<sup>65</sup> And in those subjugated parts, both the king and his successors gradually usurped, appropriated and occupied the lands, possessions, rights and jurisdictions of the church.’<sup>66</sup> This language of subjugation, usurpation, false pretexts, the pope’s involvement, as well as threatened and appropriated rights, only differs from the Remonstrance in one respect: it speaks of the Irish church rather than the Irish people. Otherwise its language has a legal character so similar to that of the Remonstrance that it is impossible to doubt its ecclesiastical provenance.

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<sup>64</sup> F. Ehrle, ‘Ein Bruchstück der Akten des Konzils von Vienne’, in *Archiv für Literatur und Kirchengeschichte* (1888), p. 370. The strength of this influence is thrown into relief by the fact that, as discussed below, the Remonstrance does not follow, contrary to Phillips’ assertion, Bisset’s line on the nature of papal temporal authority over Ireland.

<sup>65</sup> It is interesting that this distinction is made between conquered and unconquered lands in Ireland: no such distinction is highlighted in the Remonstrance, because it hopes to imply, presumably, that the entire Irish nation is being oppressed.

<sup>66</sup> For the other grievances submitted by the Irish church, all of which are of a more standard character, complaining of infringements of ecclesiastical liberties by the king’s ministers and other temporal rulers, see Ehrle, ‘Akten’, pp. 382, 386, 391, 399.

This is still more apparent when we examine other ecclesiastical complaints emanating from Ireland in this period, many of which were destined for the papal, as well as the royal, court.<sup>67</sup> The notion of a free church prior to the arrival of the English in Ireland was not unique to the *gravamina* presented at Vienne, and was in fact a feature of several other ecclesiastical complaints.<sup>68</sup> A similar set of grievances, tentatively dated by Sheehy to the second half of the thirteenth century, introduces its case by recounting the terms on which the lordship of Ireland was granted by the pope to the English crown, namely, to correct the *mores* and manners of its people.<sup>69</sup> Attaching a copy of the bull, it catalogues the injustices committed against ecclesiastical lands, rights and privileges by the crown's representatives and asks for restoration of the liberties which the church possessed before the arrival of Henry II. This theme of English hypocrisy is a central pillar in the Remonstrance's case. A similar tale is told by a later set of grievances of unknown provenance, dating from some time after (possibly long after) 1270.<sup>70</sup> It ascribes considerable pre-conquest rights and jurisdictions to the church, including jurisdiction over all criminal and civil cases relating to ecclesiastical property (another grievance which reappears in the Remonstrance): in such cases not only clergy but also laymen were exempt from any other jurisdiction, yet since the reign of Henry II such rights had been eroded. It also lamented the inequalities according to

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<sup>67</sup> As were, for example, the petition from the archbishop of Tuam and his suffragans addressed to Henry III and Alexander IV in 1255 (see *CCR 1254-56*, pp. 412-14) and that of the archbishop of Dublin and his suffragans addressed to Alexander IV and Urban IV in the years 1260-1 (see *Historic and Municipal Documents of Ireland, 1172-1320*, ed. J. T. Gilbert (London, 1870), pp. 170-8), as well as of course the Vienne *gravamina* (Ehrle, 'Akten'). In the first and last of these, the author clearly deemed it expedient to add an article relating to Holy Land subsidies that does not feature in the other petitions, namely that royal judges prohibited in wills the bequest of aid for the Holy Land. Ehrle, 'Akten', p. 399; Watt, *Two Nations*, p. 123.

<sup>68</sup> Watt has compiled a list of extant *gravamina* produced in Ireland in the thirteenth and fourteenth centuries, presented either to the king, the pope, or both, by churchmen both *inter Anglicos* and *inter Hibernicos*. References to the coming of the English do not occur in all of them.

<sup>69</sup> Lambeth MS 619, f.206, printed in M. P. Sheehy, 'English Law in Medieval Ireland. Two Illustrative Documents', *Archivium hibernicum*, 23 (1960), pp. 174-5.

<sup>70</sup> This is Sheehy's suggestion. For transcript of BL Cotton Augustus II, f. 104a, see Sheehy, 'Two illustrative documents', pp. 171-4.

nationality before the common law in Ireland, and in this we glimpse a tradition of grievance-gathering within church circles whose concerns extended beyond the purely ecclesiastical.<sup>71</sup>

We might also note that, although less preoccupied with denouncing the conquest *per se*, a similar notion of ‘ancient liberty’ was adopted with reference to English occupation by the archbishop of Armagh, Nicholas Mac Maol Iosa (1272-1303). Nicholas’ career was characterised by his attempts to unite the clergy of his province, both *inter anglicos* and *inter hibernicos*, against any infringement of ecclesiastical liberties.<sup>72</sup> In one of his numerous petitions to the king,<sup>73</sup> dated 1278, Nicholas reminded Edward of Armagh’s various privileges enjoyed ‘from ancient times’, one of which in particular – the right to the temporalities of suffragan sees during their vacancy – had existed before the coming of the English.<sup>74</sup> Repeatedly, ecclesiastics turned to this notion of ancient liberty when formulating their complaints, and it seems that Mac Lochlainn was no exception. Indeed, the suggestion has been made that Mac Lochlainn’s *own* interest in composing the Remonstrance, as a cleric of the see of Armagh, was to encourage the recognition of a ruler under whom Armagh’s ancient liberties might be restored,<sup>75</sup> and that Edward Bruce may in fact have eventually been

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<sup>71</sup> It seems to suggest that clergy of native Irish birth suffered the same inequality before the law as their lay counterparts. See Watt, *Two Nations*, pp. 131-2.

<sup>72</sup> In particular the provincial meeting at Trim in 1291. For this see Watt, *Two Nations*, p. 118.

<sup>73</sup> For a transcript of these see A. Gwynn, ‘Documents Relating to the Medieval Diocese of Armagh’, *Archivium Hibernicum*, 13 (1947), pp. 1-17.

<sup>74</sup> *Ibid.*, p. 10.

<sup>75</sup> Namely, the liberties cited in the petitions of Patrick O’Scannell, 1261x1270 (BL Cotton *Cleop.* E. I fo. 186) and Mac Maol Íosa in 1278 (*op. cit.*). And for another set of petitions of Armagh provenance using the same notion, see *Documents on the Affairs of Ireland before the King’s Council*, ed. G. O. Sayles (Dublin, 1979), no. 82, pp. 64-6: *Petitions of Irish prelates concerning the franchises and jurisdiction of the Church*, ‘Prima peticio prelatorum Hybernie de hoc consistit quod de omnibus scilicet causis et rebus possessionibus in posterum libere cognoscere de quibus ante predicti triumphatoris adventum sine cuiusquam contradicione cognoscere consueverant, ut pote si de prediis ecclesie seu de causis criminalibus, civilibus, pecuniaribus, ut quibuscumque aliis...’.

complicit such a plan.<sup>76</sup>

This tradition of ecclesiastical grievances is reflected in the Remonstrance author's decision to build his case around questioning the legality of *Laudabiliter* as a justification for English lordship in Ireland. Some historians have queried this concentration on the bull, rather than on the submission of 1213, both in the Remonstrance and in the ecclesiastical tradition which the Remonstrance follows. The tenacity of *Laudabiliter* within political discourse in Ireland has been deemed peculiar not least because even at the time it was considered by some to be of dubious authenticity.<sup>77</sup> By contrast, John's submission to Innocent III in 1213 offered something more concrete for refutation. Ostensibly at least, the submission of 1213 contained all the crucial components of *Laudabiliter*, namely, that English lordship was granted (and therefore might be revoked) by the Holy See, and that in return for the grant, the English crown was obliged to make census payments in the form of Peter's Pence. Indeed, the Remonstrance noted how the crown was now in arrears with these payments. As a means of obtaining papal assistance in overthrowing English lordship in Ireland much could therefore also have been made of the English crown's evident reluctance to acknowledge the political implications of the submission – its stipulation of a 'feudal' relationship between king and pope. The Remonstrance does note the propensity of the English to flout papal involvement in temporal disputes:<sup>78</sup> they despise the 'power of God

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<sup>76</sup> For evidence of this see *RRS*, vol. 5, p. 695.

<sup>77</sup> Though the pope never refuted its authenticity, neither did he acknowledge it, other than implicitly perhaps by sending a copy of the bull to Edward II in response to the Remonstrance: there is no record of the original bull in the papal archives. For a discussion of the document's continued use, to which some of the above discussion relates, see J. A. Watt, '*Laudabiliter* in medieval diplomacy and propaganda', *Irish Ecclesiastical Record*, 5<sup>th</sup> series, 87 (Jan-June 1957), pp. 420-32.

<sup>78</sup> This is of course in its use of *Laudabiliter* - to disobey the terms of the bull, as the English crown has, is to disobey papal authority. The *Processus* authors also saw fit to remind the pope that, through its actions, the English crown had flouted papal claims to plenitude of power.

and that of the Roman court, which we call one and the same ordinance',<sup>79</sup> and only seek solace there in times of weakness; amidst prosperity and power the Holy See is entirely disregarded by them.

The use of *Laudabiliter* in Irish political discourse prior to the Remonstrance might in part be explained by its circulation in later thirteenth- and fourteenth-century Ireland. The bull survived as a component of Gerald of Wales' *Topographia*, and there is evidence to suggest that the popularity of Gerald's work was increasing in the lordship at this time.<sup>80</sup> This in itself would make it more likely for writers to use than the submission.<sup>81</sup> Nevertheless the author's awareness of the submission is surely evident in the reference to England's non-payments of the census. The choice of *Laudabiliter* was deliberate. According to the terms of the 1213 submission, English lordship could be made good simply through the payment of Peter's Pence: it was a legal agreement between king and pope. By contrast, *Laudabiliter* concerned king, pope, *and people*, and elaborated on the nature of the pope's power to grant the lordship of Ireland. It presented a justification for conquest which could easily be refuted with thirteenth-century legal understandings of the political rights of peoples. And this is exactly what the Remonstrance author did, in his attempt to articulate the natural rights of the Irish nation.

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<sup>79</sup> *Scotichronicon*, vol. 6, p. 401.

<sup>80</sup> Gerald's work was increasing in popularity in the fourteenth century (from when the first copies written in Ireland survive (BL Royal MS 13 A. XIV; BL Harley MS 4003; Watt, '*Laudabiliter*', p. 428), as part of the colonists' literary heritage. There is also evidence, from a little later, that Gerald's works were being copied in the Irish language - see Whitely Stokes, 'The Irish Abridgement of the "Expugnatio Hibernica"', *EHR*, 20 (1905), pp. 77-115; Frame, 'Exporting state and nation', p. 153.

<sup>81</sup> Of course, polemicists for the English crown would have more likely had access to the details of the submission, but would have been unlikely to want to use it for the reasons suggested. For their favouring of *Laudabiliter* as justification for English lordship in Ireland, see *Affairs of Ireland before the King's Council*, no. 136, p. 99-100.

In arguing that the grant of *Laudabiliter* was unlawful, the Remonstrance deployed a strain of canonistic thought, developed by the celebrated canonist Sinibaldo Fieschi (later Pope Innocent IV), which emphasised the natural political rights of all peoples, whether Christian or not. As James Muldoon has argued, the Remonstrance's use of canon law betrays an awareness of Fieschi's assertion that ignorance of the Christian faith did not itself sanction conquest, and that if they adhered to the tenets of natural law, infidels possessed political rights – the rights of *dominium*. It is against this opinion that the Remonstrance author assesses the validity of *Laudabiliter*: the bull would only have been valid, he suggests, if the Irish had shown barbarous tendencies and lived contrary to natural law. In pressing this point, the Remonstrance puts the issue of 'barbarity' centre-stage: a shift in emphasis from the original bull, which justified the conquest in terms of the need for church reform, rather than the barbarism of the native Irish.<sup>82</sup>

The refutation of the alleged barbarity is made primarily through a description of the laws and customs by which the Irish, both pre- and post-conquest, as well as the English in Ireland, were governed. While conceding tacitly that the pre-conquest Irish lived in a manner and according to a set of laws perhaps inconsistent with those of other western Christian kingdoms at the time, (describing their state affectionately as one of 'dove-like simplicity'), the Remonstrance author argued that they nevertheless had their own written laws, of which they were deprived by the English in association with their efforts to exterminate them.<sup>83</sup> The implication of the narrative is that, far from formalising barbarous *mores*, these pre-conquest laws were in accordance with natural law. Indeed, at one point in the letter the author refers to the law 'from which they [the Irish people] could not be separated', by

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<sup>82</sup> Muldoon, 'Remonstrance', pp. 316-17. Though, of course, the two were not entirely unconnected.

<sup>83</sup> *Scotichronicon*, vol. 6, p. 391.

which he can only mean natural law.<sup>84</sup>

The English in Ireland, the Remonstrance argues, lack such virtues and virtuous laws. Since the conquest the hitherto 'pure' Irish had been corrupted by the 'middle nation' - a perfidious people which had evinced 'evil' habits since antiquity.<sup>85</sup> Indeed, their attitude towards the Irish was said to be heretical, Mac Lochlainn citing the examples of various Cistercians and Franciscans who would happily celebrate mass after shedding the blood of an Irishman, declaring such an act not to be a sin.<sup>86</sup> According to the Remonstrance, the character and habits of this nation were reflected by its laws. Thus, for instance, the inequality of *access* to the law of which the Remonstrance complains is identified as itself part of 'their laws',<sup>87</sup> laws which reveal the newcomers' national character. This is best illustrated by the complaint concerning the inequality in punishment for the deaths of Englishmen and Irishmen. It is true that different punishments were meted out for murder depending on the nationality of the victim, reflecting a disparity in legal traditions. It is also true that the crown was generally unmoved by Irish appeals for access to English law instead. But the Remonstrance author abandons accuracy when he portrays the disparity as itself a tenet of English law.<sup>88</sup> The reality of legal injustices is either ignored or exaggerated throughout the letter for the same purpose.<sup>89</sup> It asserts, for instance, that legal injustices between the two nations are observed irrespective of the religious status of the victim, including prelates - an

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<sup>84</sup> *Ibid.*, p. 391.

<sup>85</sup> See, for example, *ibid.*, pp. 391, 393.

<sup>86</sup> *Ibid.*, p. 397.

<sup>87</sup> *Ibid.*, p. 391.

<sup>88</sup> On this see Hand, 'The Status of the Native Irish', p. 105. The disparity to some extent demonstrates an awareness of Irish law within 'English' practice, and the fact that pre-conquest native law operated on a 'wergild' system through the payment of an *eraic*.

<sup>89</sup> For the realty, see Hand, *English Law in Ireland*, pp. 187-210.

assertion in no way borne out by the sources.<sup>90</sup> The author is clearly attempting to refashion Irish laws and customs to accord with divine law, thereby dissociating the Irish from any suggestion of barbarity. And the effect is to suggest that, in contrast to the legal practices of the Irish prior to the conquest, it is those of the conqueror that are in need of reform, who ‘have by themselves brought in and planted vices and cut out virtues by the root’.<sup>91</sup> They have corrupted the natural order of things, which existed in the form of a peaceful kingdom prior to their arrival.

Indeed, that, far from evincing barbarous traits, the Irish kingdom prior to its conquest was as worthy as any other is suggested not only by this account of its human laws, but by a consistent use of language relating to the ‘kingdom’.<sup>92</sup> Reference to the multiplicity of secular rulers that characterised Irish politics even before the conquest is entirely absent. Nor is it glossed over with what might be only a slight tampering with the truth, by emphasising the rule of its ‘high-kings’. No such details are broached. The portrayal is one of a single line of native rulers.<sup>93</sup>

The ‘authenticity’ of the native Irish origin legend similarly suffered under this legal argument. Muldoon has already drawn attention to the way in which the traditional Irish origin myth was adjusted to fit the Remonstrance’s use of Innocent IV’s just war theory. It has long been recognised that the account of Irish origins used in the Remonstrance derives from the *Lebar Gabála Éirenn - The Book of the Taking of Ireland*.<sup>94</sup> The two main redactions of

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<sup>90</sup> See *Scotichronicon*, vol. 6, p. 391.

<sup>91</sup> *Ibid.*, p. 393.

<sup>92</sup> E.g., *ibid.*, p. 387, line 64.

<sup>93</sup> *Ibid.*, p. 387.

<sup>94</sup> Muldoon, ‘Remonstrance’, p. 319. *LGÉ* was consistently popular as early as a few decades after its



this text date from no later than the eleventh century, and constitute the culmination of a much older native Irish literary tradition (both Gaelic and Latin):<sup>95</sup> *Leabar Gabála* constitutes the marriage of two elements within this tradition - native legend, and continental models of historiography.<sup>96</sup> Bearing strong resemblances to Frankish origin myths, and drawing on patristic works and those of Isidore of Seville, while incorporating legends more particular to Ireland, *Leabar Gabála* documents the history - or rather 'pseudohistory' - of the Irish people and their journey from Egypt, via Spain, and eventually to Ireland. It also documents the successive conquests of Ireland by a series of peoples prior to the final conquest by the Irish themselves, akin to the history proffered by the *Historia Brittorum* and later Gerald of Wales. The union of these literary traditions results in the tale of an heroic, conquering tribe, but also the story of a chosen people, analogous to the children of Israel.<sup>97</sup>

However, only this biblical element survives the legalistic scruples of the Remonstrance author, who describes the land of Ireland as entirely uninhabited on the arrival of the Irish from Spain: their heroic, conquering attributes are sacrificed. This was, Muldoon has argued, an attempt to square the Irish narrative tradition with the thinking of Innocent IV

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composition, and underwent considerable reproduction throughout the later middle ages and into the seventeenth century. Such copies varied considerably in content, however, and the text did not enjoy the same faithfulness received by Geoffrey of Monmouth from the copyists of his *History of the Kings of Britain*. See J. Carey, *The Irish National Origin-Legend: Synthetic Pseudohistory* (Cambridge, 1994), p. 23. Nevertheless, between c.1200 and c.1600, according to Van Hamel, no new material was introduced, and all the earlier traditions were amalgamated. He also gives an account of the differences between the extant manuscripts: A. G. Van Hamel, 'On *Lebor Gabála*', *Zeitschrift für celtische Philologie*, 10 (1915), pp. 97-197.

<sup>95</sup> For this see the introduction by Macalister to *LGÉ* and, for a more recent account of its development: Carey, *Origin-Legend*; R. E. Scowcroft, 'Leabhar Gabhála - Part I: The growth of the text', *Ériu*, 38 (1987), pp. 81-140 and 'Leabhar Gabhála - Part II: The growth of the tradition', *Ériu* 39 (1988), pp. 1-66; F. J. Byrne, 'Senchas: The Nature of Gaelic Historical Tradition', in *Historical Studies IX*, ed. J. G. Barry (Belfast, 1974), pp. 137-59.

<sup>96</sup> Carey, *Origin-Legend*, p. 16.

<sup>97</sup> Indeed, as Macalister points out in his edition of the text, the book is clearly a composition of two works, with one being interpolated into the other: if this work (which documents the successive conquests of Ireland) is removed from the other, we are left with an account of the Irish people that is drawn almost entirely from the Old Testament. See his introduction in *LGÉ*, vol. 1, pp. xxvi-xxvii.

concerning the rights of infidels to govern themselves and to live free of foreign rule, if they live in peace according to natural law. The adjustment seeks therefore to avoid the possibility of the same argument being levelled against the Irish themselves: the conquest of peaceful peoples living according to natural law is unjust. It is presented therefore as a crime of which the English are guilty and the Irish are not. The result of the adjustment is a peace-loving, wandering people, analogous to their biblical counterparts, arriving in their homeland 'by God's will',<sup>98</sup> and enjoying *dominium* there thereafter. It also distinguishes the account from the Scottish history proffered by Bisset, which highlighted the changeability of history, the natural order of successive conquests, and the right to *dominium* obtained through conquest. By contrast the Remonstrance account suggested a divine connection between people and homeland which was not accidental (like the Declaration).

The biblical analogy is particularly interesting, since it echoes the way in which Fieschi himself justified his opinion on the rights of non-Christians, citing the political rights of the Israelites before the coming of Christ. Although the author already possessed a good source for this analogy in the form of the *Lebar Gabála*, he clearly sought to emphasise it. This conclusion holds firm when we consider another possible source for this section of the letter, what Broun has called the 'Éber' recension: part of the source-text used by Fordun.<sup>99</sup> It is the only extant pre-1317 reference to Ireland as uninhabited prior to the arrival of its present occupants, and the language is similar to that of the Remonstrance:

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<sup>98</sup> *Scotichronicon*, vol. 6, p. 387.

<sup>99</sup> See Broun, *Irish Identity*, pp. 68, 74-5, 115-19 and *passim*. Muldoon makes no mention of the possibility – perhaps because he deems it unlikely, though his references show no indication of his having consulted Broun's work as part of his research on the Remonstrance.

‘...in Hiberniam tunc omni carentem incola divinitus devenerunt...’ [Remonstrance]<sup>100</sup>

‘...eam non vi sed vacuum ut quidam volunt omni cultore carentem obtinuit.’ [Éber]<sup>101</sup>

Notable is the presence of the divine ordination element in the Remonstrance account, lacking in Éber. Whichever his principal source, the author was clearly therefore intent on imbuing the Irish nation with a biblical quality to a greater extent than his sources, in a way that recalled the theological inspiration for Fieschi’s commentary.

The Remonstrance uses Fieschi’s commentaries, therefore, to portray the Irish nation as divinely associated with its homeland, and entitled to governance by its own natural lords. These are beliefs which, as Susan Reynolds might observe, are very old, and may be traced to the native origin myth tradition represented by *Lebar Gabála*. Nevertheless the Remonstrance serves to give these assumptions a legal grounding in relatively modern (even, Muldoon has argued, contentious) principles, and to refine them accordingly.

This conception of the naturalness of Irish freedom might appear to leave little room for the plenitude of power ascribed to the pope in *Laudabiliter* and in the Scottish appeal of 1301. Indeed, far from recognising the pope’s ‘rights over islands’, the Remonstrance’s criticism of *Laudabiliter* turns on the fact that the pope has ignored a yet higher authority - that of law.<sup>102</sup> It also maintains that the native rulers of Ireland had from time immemorial, recognised ‘none as their superior in temporal matters’<sup>103</sup> – a phrase that had come to constitute a

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<sup>100</sup> *Scotichronicon*, vol. 6, p. 386.

<sup>101</sup> Broun, *Irish Identity*, p. 64, note 6.

<sup>102</sup> The idea that the pope was bound by natural law was discussed at the beginning of the fourteenth century by the canonist Johannes Monachus, an adviser to Philip the Fair. For this see Pennington, *Prince and the Law*, p. 161.

<sup>103</sup> *Scotichronicon*, vol. 6, p. 387. Similarly, the Remonstrance only refers to the payment of Peter’s Pence

*leitmotif* in later thirteenth- and early fourteenth-century expressions of sovereignty and freedom from papal claims to ultimate temporal authority.<sup>104</sup> And yet the Remonstrance author then goes on to use the very terms of *Laudabiliter* as a means of criticising English rule in Ireland, alleging their failure to fulfil the terms by improving the *mores* of the Irish. The implication seems to be that the pope might therefore consider reversing the grant. But since the initial grant has already been pronounced ‘illegal, according to natural and human laws’ by the author, this might be seen as a rather stark contradiction.

But it may be accounted for in two ways. It is possible that the letter, constructed as it was in the form of a legal *processus*, sought to present various legal possibilities to the pontiff: if the pope did not choose to concur in the belief that his predecessor’s bull had been illegal, he might at least pronounce judgement on the failure of the English to keep to its terms. Alternatively, it constituted yet a further understanding of canonistic thought. If the author was aware of Fieschi’s commentaries on the legitimacy of conquest, he would also have been aware of his arguments regarding lordship over conquered peoples. Fieschi maintained that any conquest, even that of a pagan ruler over Christians, was to be upheld, unless the manner of his rule flouted the tenets of natural law and posed a threat to the souls of Christians under his rule. In composing a legal process, the Remonstrance author therefore clearly deemed it prudent to address the issue of the *continuation* of lordship over conquered peoples, whether or not the initial conquest proved to be understood as illegal by the judge to whom he was appealing. In doing so, the terms of *Laudabiliter* provided an obvious set of criteria by which to demonstrate the failure of the English crown, despite repeated efforts by

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by the English Crown for Ireland as part of the argument that the terms of *Laudabiliter*, according to which lordship over Ireland might be justified, have not been observed. See *ibid.*, p. 399.

<sup>104</sup> See Introduction, above.

the Irish to obtain redress for their numerous grievances,<sup>105</sup> to govern according to natural law.

This clearly explains the accusation of heresy levelled at the English in Ireland (though not, it should be noted, the English king himself). Of course the language of heresy fell readily from the mouths of most Franciscans at this time. But it had profound implications for the legitimacy of lordship. Oaths of fealty to an heretical ruler were dissolved in association with his excommunication, though some decretalists argued that even such legal procedures were not a necessary precursor for the withdrawal of allegiance from, and attacking of, heretics.<sup>106</sup> While the pope might otherwise ponder the continuance of English rule in Ireland, any accusation of heresy, and the threat this posed to Christian souls, legitimised, according to thirteenth-century canonistic thought, extreme action, either on the part of the pontiff or the people facing this threat. Heresy was of no little significance in the development of just war theory in the thirteenth and fourteenth centuries. While thirteenth-century discussion regarding infidels may have moved some way in the direction of toleration,<sup>107</sup> it was universally acknowledged that the lapsed Christian forfeited all his legal rights.<sup>108</sup> War against heretics was always justified and perceived not only as just but as crusade. Doubly unnerving for those fearing accusation was the fact that the thirteenth-century definition of heresy had become so broad that decretalists ceased to distinguish between those who flouted the authority of the Church, and those who dissented from its teachings. Nor could heresy be

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<sup>105</sup> *Scotichronicon*, vol. 6, p. 399.

<sup>106</sup> For a discussion of the papacy and the dissolving of oaths, see P. N. Reisenberg, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956), 113 ff.

<sup>107</sup> This was a direction pursued by theologians as well as canonists, and which was reflected in the increasing stress laid on the importance of missionary work as well as crusading by pontiffs such as Honorius III. For this see Schmidt, *The Popes and the Baltic Crusades*, *op cit*.

<sup>108</sup> For discussion of this see Russell, *Just War*, pp. 201-2. Innocent IV was of this opinion also.

ignored: heretics, unlike infidels, could not be allowed to live in peace.<sup>109</sup>

This may account for the Remonstrance author's desire to dissociate the Irish themselves from similar accusations, knowing that, if the English crown came to realise that the terms of *Laudabiliter* were questionable according to more recent canonistic thinking, heresy could provide an effective alternative for justifying Irish subjection. The Remonstrance therefore maintains that any apostasy evident among the Irish is entirely a result of their treatment at the hands of the English.<sup>110</sup>

How the Remonstrance chooses to interpret the relative rights of the Irish nation and the pontiff over lay rulership in the region is an important one in terms of more general articulations of sovereignty in this period. Clearly, as already noted, the Remonstrance did not wish to pursue the possibility of Ireland constituting a papal fief. Nevertheless, the case for Irish sovereignty was evidently constructed on legal premises which the pontiff should recognise. Its use of canonistic thinking regarding just war, and particularly heresy, produced a very clear conclusion: in possessing the right to self-government the Irish people had the legitimate authority to choose its own ruler and reject English lordship,<sup>111</sup> but a transfer of lordship also seems to be something that the pope could effect, if he saw fit. Indeed, the idea that the pope could grant or take away lordship is suggested by the assertion that Henry II,

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<sup>109</sup> *Ibid.* Even Alanus Anglicus argued on occasion that infidels ought to be allowed to live in peace.

<sup>110</sup> There is an interesting parallel here with complaints against the Teutonic Order: see *VMPL*, no. 239 regarding Lithuania, and no. 442: 'et per consequens in episcopatu prefato crescet indevotio populi, et infinita pericula animarum insurgent'.

<sup>111</sup> The 'rights of the Irish' in relation to *Laudabiliter* was a notion that quite possibly pre-dated the Remonstrance. This is indicated by a remark found in the preface to a copy of *Laudabiliter* added to the twelfth-century 'Book of Leinster' (to be found in TCD, shelfmark H 2 18. A facsimile was published in 1880 but doesn't appear to include this marginal comment). The hand of the remark dates from either the thirteenth or fourteenth centuries, and states that 'nothing in the bull in any way diminishes the rights of the Irish'. Quoted in Phillips, 'Remonstrance Revisited', p. 17.

'who on account of the said fault [the murder of Becket] ... ought to have been deprived [by the pontiff, one assumes] of his own kingdom.'<sup>112</sup> Overarching both of these possibilities is the letter's appeal to natural order: whichever acted, people or pope, their actions would only be legitimate if they were in accordance with the natural order of things. As such, the pope himself could act erroneously, or in fact illegally - as Adrian IV himself had done when, blinded by his partiality for the English, he failed to comprehend the legitimate independence of the kingdom of Ireland. (In some ways therefore the Remonstrance perhaps pre-emptes the Declaration of Arbroath and its adoption of crusading rhetoric to remind the pontiff of the importance of impartiality.<sup>113</sup>)

That said, the document displays Franciscan influences throughout, and its assertion of Irish sovereignty was not intended to refute the pontiff's ultimate plenitude of power, or even his direct intervention in Irish affairs in exceptional circumstances – which these clearly were. It operates within a paradigm which was then current in canonistic circles regarding the nature of papal authority in relation to the natural political rights of ancient peoples. And, ultimately, it is a case constructed according to a set of laws, language and ideas generated by the papacy itself.

Indeed, as a whole, the letter constitutes an articulation of Irish sovereignty through a conceptual language that would have been well understood at the Curia. Muldoon has argued that its dependence on what was still, within canonistic circles, a rather extreme

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<sup>112</sup> *Scotichronicon*, vol. 6, p. 387. Something similar is also perhaps suggested when the Remonstrance complains that the English king has therefore been acting 'without the authority of a superior'. There is perhaps also a comparison to be made here with the *Processus*' assertion that, having ignored papal admonitions and twice invaded Scotland, Edward I 'deserves to be completely deprived of all right in the kingdom of Scotland, if he had any in the first place...' (p. 169).

<sup>113</sup> See previous chapter, and for the development of Holy Land rhetoric as a tool for criticising papal policy see Weiler, 'Negotium Terrae Sanctae', *passim*. and Menache, *Vox Dei*, pp. 175-90.

understanding of the political rights of infidels, was never likely to evoke sympathy from an Avignon pope, famed as these popes are for their intellectual conservatism. We may note, in fact, how much the Remonstrance differs in its use of canonistic thought from its apparent predecessor, the Scottish appeal of 1301: while the Remonstrance was informed by the notion that infidels might enjoy the same political rights as Christians, Bisset, when observing that the conversion of the Scots predated that of the English, maintained that ‘it would have been permitted from then on for the Scots to appropriate any goods of the unconverted English’.<sup>114</sup> But Muldoon’s analysis ignores two important things. Firstly, that, by the early fourteenth century, the notion that non-Christians might possess political rights was increasingly accepted in intellectual circles, not least because it resonated with, and was informed by, theological understandings of the natural political state of peoples – most importantly perhaps, Aquinas’ *Summa Theologiae*.<sup>115</sup> Secondly, it ignores the fact that, while using this strain of thinking, the Remonstrance was only expressing the political rights commonly understood to pertain to all Christian nations. The spiritual integrity of the Irish was, after all, central to their portrayal.

The Irish ‘virtues’ are not simply natural virtues, revealed through their human laws. They are spiritual, Christian virtues. Thus their conversion at the hands of Patrick constitutes the summit of their glorious history in Ireland. (Indeed, the reign of Legarius, during which Patrick arrived in Ireland, divides the two calculations of successive Irish kings: one hundred and thirty-six before his arrival, and sixty-one thereafter).<sup>116</sup> In consequence, since their laws

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<sup>114</sup> *Scotichronicon*, vol. 6, p. 170.

<sup>115</sup> See Introduction.

<sup>116</sup> *Scotichronicon*, vol. 6, p. 387. It is not clear how these figures were calculated, though the latter figure resembles the number of ‘high-kings’ (itself a ninth-century concept) that were believed to have reigned since Legarius’ reign. The citation of such figures clearly echoes Geoffrey of Monmouth, and, as the editors of the *Scotichronicon* rightly observe, their accuracy was less important than their meaning.



are not otherwise degenerate, the English had no grounds for conquest. They had, quite simply, invaded a neighbouring, peaceful Christian nation. The Remonstrance therefore straddles two legal traditions concerning thought on just war, one concerning infidels and one concerning Christians. The two are deployed to reinforce each other according to modern canonistic thought: the piety of the Irish strengthens the claim to sound pre-conquest human laws, while these sound human laws suggest that their early conversion had not since been corrupted.

Although the tradition of canonistic thought on which the Remonstrance depended may be deemed eclectic, the conclusions that were arrived at would have chimed with what were, by now, commonplace assumptions about the existence of independent peoples, entitled to be ruled by their own natural lords. We may observe that this appreciation of broad theological, and particularly Thomist, assumptions, supported by canonistic thought again betrays the letter's Franciscan authorship. There are, in fact, various hints in what are rather patchy sources, to suggest that the mendicant communities in Ireland were responsible for evolving a conception of Irish nationhood and sovereignty along these lines some time before the construction of the Remonstrance. The *De Veneno* of Friar Malachy, a treatise on the seven deadly sins composed in the closing decades of the thirteenth century, thus makes several references to Ireland, one of which is to the ancient history of the Irish, who were originally of Greek origin.<sup>117</sup> Malachy's work embodied the breadth of learning that later informed the author of the Remonstrance – spanning the teachings of Aristotle and the Fathers of the Church.<sup>118</sup> Perhaps more significantly, in 1284, more than three decades before the Remonstrance was completed, Nicholas Cusack, bishop of Kildare, warned Edward I of

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<sup>117</sup> Which, of course, they were, according to the *Lebar Gabála*.

<sup>118</sup> *Materials for the Franciscan Province*, pp. 57-8.

certain friars who, when encouraging the Irish to revolt, assured them that to do so was justified by divine and human law.<sup>119</sup>

## The broader context

The legal framework offered by the Curia was used by the Remonstrance author to give legal impetus to existing political discourse about lordship and nationhood in Ireland. As already noted, the use of *Laudabiliter* was in keeping with well rehearsed ways of discussing the position of the native Irish within Ireland. In one sense, the emphasis placed on the issue of barbarity by the Remonstrance author in comparison to that in *Laudabiliter* was a response to popular and deep-seated stereotypes enshrined in the written tradition of the English community in Ireland. The depravity of Irish customs had been given prominence in English diplomatic efforts very soon after Henry II's arrival in 1172. These efforts can surely be discerned in a papal letter sent to the native Irish rulers, professing

'...the greater is our joy in that, by God's aid and the power of the said king, there shall reign in your land greater peace and tranquillity and that the Irish people, in proportion as, through the enormity and filthiness of their vices, they have fallen away so far from the divine law, so they shall be all the more surely moulded in it and receive all the more fully the discipline of the Christian faith'.<sup>120</sup>

The popularity and circulation of the works of Gerald of Wales, which recount the strange

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<sup>119</sup> *Ibid.*, p. 52. Also quoted in Watt, *Two Nations*, p. 174. The date of the letter is only postulated as 1283x1299 in Fitzmaurice and Little. For an account of mendicant links/communications between Scotland and Ireland during the wars of the Bruces see Gallagher, 'The mendicant orders', *op cit.*

<sup>120</sup> *Irish Historical Documents, 1172-1922*, edd. E. Curtis and R. B. McDowell (London, 1943), p. 22; *Pontificia Hibernica: Medieval Papal Chancery Documents concerning Ireland, 640-1261*, ed. M. P. Sheehy, 2 vols (Dublin, 1962-5), vol. 1, p. 20: '... gentem illam barbaram, incultam et divine legis ignaram...'

and often irreligious ways of the Irish before the coming of the English, have already been noted. The view that the laws of the Irish required considerable reform was widespread, and formed the backbone of appeals for grants of English law throughout the period. Thus when petitioning for a grant of English law for the Irish in the later 1270s, the (Irish) archbishop of Cashel spoke of the 'evil' laws by which the Irish would otherwise have to be governed.<sup>121</sup> The inherent depravity of the Irish nation was another theme that even Irish petitioners might adopt in attempting to obtain royal favour: hence the description we find being used by an archbishop of Armagh when describing the state of his manor at Termonfechin which, he complained in notably biblical terms, was situated amidst a 'perverse nation'.<sup>122</sup>

The Remonstrance questioned these assumptions and their legal implications according to thirteenth-century canonistic thought as a means of appealing to more modern assumptions about the right of individual peoples to live freely. But how far this questioning affected political discourse concerning Ireland more generally in this period has yet to be discussed. As we have seen, Muldoon conforms to the common appraisal of the Remonstrance as, intellectually, a flash in the pan, arising from unique circumstances which never enjoyed repetition, and depending on a relatively unpopular strain of canonistic thought. That this was not the case either within native Irish ecclesiastical circles or necessarily within the intellectual climate of the Curia should by now be clear. Interestingly, there is also evidence to suggest an increased sensitivity among spokesmen for the English crown regarding the legal implications of the language used to refer to the Irish and their habits.

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<sup>121</sup> Otway-Ruthven, 'Request of the Irish', p. 269.

<sup>122</sup> Gwynn, 'Medieval diocese of Armagh', p. 11.

On receiving the Remonstrance, the pope reprimanded Edward II for the injustices suffered by the Irish.<sup>123</sup> Two years later the king granted a petition from Ireland asking for a grant of English criminal law, and in 1324 Philip of Slane, bishop of Cork, was sent to Avignon to present proposals for reform of the church in Ireland.<sup>124</sup> Edward insisted that the proposals, by which various sees were to be united, were for the sake of reforming *status terre nostre*. By this, however, he meant creating larger sees, focussed on royal towns, for which it would be easier to secure English appointments. As part of the proposals, Philip of Slane took with him a version of Gerald of Wales' *Topographia Hibernica*, which he left at the Curia – the contents of which were presumably deemed pertinent to the negotiations.

In accordance with the British Library catalogue, the few references to Slane's work in modern historiography all describe it as an abbreviated version of Gerald's *Topographia*.<sup>125</sup> The nature of the abbreviations have never received consideration. The author (whether Slane or not) does not always demonstrate particular incisiveness in his selection of material: the overall impression is one of a work cobbled together at relatively short notice.<sup>126</sup> Unfortunately, Slane's version omits so much detail from the original that it would be rash to consider it more than a point of interest that he chose not to include Gerald's recognition of the affinity in language and customs and the shared origin of the Irish and the Scots.

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<sup>123</sup> *VMHS*, nos 422-3.

<sup>124</sup> For an edition of these proposals see Appendix A in J. A. Watt, 'Negotiations between Edward II and John XXII concerning Ireland', *IHS*, 10 (1956).

<sup>125</sup> J. R. S. Phillips, 'Edward II and Ireland (in fact and in fiction)', *IHS*, 129 (2002), p.13; Watt, *Two Nations*, p. 192; Fr Aubrey Gwynn, *Anglo-Irish church life: 14<sup>th</sup> an 15<sup>th</sup> centuries. A History of Irish Catholicism*, ed. Patrick J. Corish (Dublin and Sydney, 1968), p.11. BL Add MS, 19513.

<sup>126</sup> In some instances, the abbreviations are merely a matter of condensing Gerald's extensive observations, but elsewhere the selections made are somewhat unexpected. It contains, for example, perhaps rather surprisingly, Gerald's account of the retort of the archbishop of Cashel, which hardly presents English occupation in the best light (BL Add MS, 19513, ff. 186b-187).

Nevertheless, the work far from abandons Gerald's detailed accounts of the barbarous ways of the Irish,<sup>127</sup> and informs its reader of their ignorance of rudiments of the faith.<sup>128</sup> Importantly also, Slane included the copy of *Landabiliter*, although in doing so he emulated Gerald's account of the other ways in which the English crown claimed the lordship of Ireland, all of which supported a hereditary claim to the kingdom, which *Laudabiliter* served simply to confirm.<sup>129</sup> True to the original, Slane's version also recounted the successive conquests of Ireland, culminating in that of Henry II.<sup>130</sup> So although the issue at hand in 1324 was ecclesiastical reform rather than the justification of English lordship *per se*, the arguments put before the pope by Slane in this version of the *Topographia* respond in many ways to the assertions of the Remonstrance concerning the claims of the Irish over Ireland.

Another English source which betrays the influence of more recent intellectual developments at the Curia is the 'counter-Remonstrance' of 1331, so called for its refutation of the Remonstrance itself.<sup>131</sup> The letter, addressed to the pontiff, begins by recalling the terms of *Laudabiliter* and the associated duty incumbent on the English crown to correct the *mores* of the Irish and to spread the Christian faith.<sup>132</sup> Diplomatically, the document says

<sup>127</sup> *Ibid.*, ff. 184b-185. Cf. R. Bartlett, *Gerald of Wales, 1146-1223* (Oxford, 1982), pp. 158-77.

<sup>128</sup> BL Add MS, 19513, f. 186b.

<sup>129</sup> Gerald draws on Geoffrey of Monmouth's assertion that Ireland was given by the king of the Britons to the Basques. He also mentions, as a claim of more modern times, 'the spontaneous surrender and protestation of fealty of the Irish chiefs - for everyone is allowed to renounce his right', as well as 'the favour of the *confirmation* of the claim by the Pope'. Such claims reflect more widely held opinions on the king's rights over Ireland in the later thirteenth and early fourteenth centuries. See, for example, Cambridge Univ. Ms.li.IV.5, which is currently being edited for publication by Prof. Seymour Phillips.

<sup>130</sup> Much of Slane's abbreviated version is in fact concerned with these conquests, omitting little of the *Topographia*'s detail.

<sup>131</sup> For transcript of this letter see Appendix B to Watt, 'Negotiations'. The one name explicitly mentioned in association with the document is William Nottingham - whether he was the author, or merely its deliverer is uncertain, but it is interesting that he may have been involved in accusations of heresy in the Kyteler case seven years previously (or else a kinsman of the same name was). T. Wright (ed.), *A Contemporary Narrative of the Proceedings against Dame Alice Kyteler, prosecuted for sorcery in 1324* (London, 1843), p. 16.

<sup>132</sup> 'pro dilatandis ecclesie terminis, pro vitiorum restrigendo decursum, pro corrigendi moribus et

nothing of the payment of Peter's Pence,<sup>133</sup> but it does assure its audience that the predecessors of the present king encouraged peace and the faith in that land. But it then goes on to propose a crusade against the Irish in view of the fact that they are *gentes indomitas*, guilty of heresy and dissensions, enemies of God and man. The use of the word 'peoples' rather than 'people' here is interesting, as it undermines the efforts of the Remonstrance to portray the Irish as a coherent, ancient nation, established in its own divinely ordained *patria*, and it is also possibly intended to recall references to infidel peoples. It records in particular their heretical acts committed in the province of Dublin, and these take up a large proportion of the letter. It cites in particular one Irishman of the name Aduk Duff Octohyl, a lapsed Christian who blasphemed in the presence of a judge and was convicted. The Irish, it alleges, are plagued by erroneous doctrine which has informed a series of atrocities in the region, and as such, and for the sake of the king's peace and the continued reformation of that land, the author requests papal condemnation, and ultimately the sanction of a crusade against them.<sup>134</sup> In one respect therefore, the accusations resort to centuries-old notions of the depraved practices of the Irish: their propensity to intermarry and commit incest and adultery. But the accusations are also clearly intended to chime with the political implications associated with heresy in thirteenth- and fourteenth-century just war theory.

The suggestion of a crusade has been denounced by Watt as being simply 'unrealistic'. While such a criticism might be supported by the fact that such crusading rhetoric was indeed a

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virtutibus inferendis, et pro Christiane religionis augmento'. Watt, 'Negotiations', Document B, p. 19.

<sup>133</sup> Most probably because of the consistent non-payments and the negotiations then taking place concerning grace for such non-payments – see, for example, *VMHS*, no. 410.

<sup>134</sup> The counter-Remonstrance is usually assumed to have been a request for a crusade against the Irish as a whole. But the letter in fact only requests support for an enterprise against Irish 'malefactors'. This might give yet more credence to the suggestion that the letter was primarily a bid for financial support.

popular feature of diplomatic documents intended for the papacy in this period,<sup>135</sup> it is in fact quite probable that, short of money as the Dublin government perennially was in the post-1317 period, the counter-Remonstrance was a bid for financial support from the papacy.<sup>136</sup> Indeed, sanctioning crusade against heretics and Christian lay powers was rather a notable feature of John's pontificate! And although he would instinctively have been reluctant to divert crusading funds from causes closer to his own political interests, some sort of financial assistance to those waging war against the 'heretical Irish' would not have seemed out of the ordinary (though it was unprecedented in Ireland).

Whether or not the granting of a crusade was a likely proposition, the emphasis signifies a shift in the political discourse concerning Ireland more generally, to one that would resonate with conceptions of nations and their political rights now prevalent at the Curia. While, in line with *Laudabiliter*, the 'reformation of Ireland' still constitutes justification for the counter-Remonstrance's proposed actions, the use of the accusation of heresy responds to more modern conceptions about the rights of peoples, revealed not least through canon-law theory. By accusing the Irish of heresy, the authors of the counter-Remonstrance were also defending the English in Ireland against the same accusation which, as we have seen, constituted the most indisputable grounds, according to canonistic thought, for a transferral of lordship in Ireland (if not now, of course, to the long-deceased Edward Bruce).

## Conclusions

Diplomatic discourse concerning Irish nationhood and sovereignty in this period was

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<sup>135</sup> See chapter on Scotland, above; Weiler, '*Negotium Terrae Sanctae*', *passim*; and Menache, *Vox Dei*, p. 176.

<sup>136</sup> For an account of how the Dublin exchequer takings deteriorated in the first two decades of the fourteenth century, see Lydon, 'Bruce invasion', pp. 276-7.

therefore in many ways conceived through the legal outlook of the papacy, more so than at any point since the reign of Henry II. For this we need look no further than the Irish Franciscan community in the northern part of the island. Akin to the situations in Scotland and Poland, where political instability prevailed, it was within clerical circles that conceptions of nationhood were preserved and evolved in the absence of a strong, centralised monarchy, with a well-appointed chancery. In Ireland (as in Lithuania) it was the Franciscans in particular who plugged this gap with their own particular view of nationhood, informed by the language and laws of the Curia. Building on previous ecclesiastical grievances, and responding to an existing popular political discourse in Ireland, the author constructed an unprecedented, elaborate portrayal of a unified nation, irrefutably bound to its homeland and possessing the legal right to *dominium* there. The association between *gens* and kingdom, kingdom and *patria*, had very old origins as can be witnessed, in the case of Ireland, in the *Lebar Gabála*. But the Remonstrance's author imbued these concepts, as well as existing discourse about the barbarity of the Irish, with the authority of canon law: he adjusted the native origin account to this end, and constructed a remarkably fictional portrayal of Irish laws, customs, and pre-conquest political unity. His use of canonistic theory was perhaps deliberately broad, spanning several theories on the political rights of peoples in the hope that one at least would be appealing to the pontiff. In this sense, the Remonstrance reflects the variety of ways in which legal thought current at the Curia might inform the arguments of such spokesmen.



## 4. Lithuania: a pagan nation's bid for sovereignty

### Lithuania in the early fourteenth century

Nearly all we know of the grand duchy of Lithuania in this period is on account of its dealings with neighbouring powers. The duchy's geographical situation – bordering Catholic Poland, Prussia and Livonia in the west and north, the Orthodox Rus' in the east, and the Golden Horde in the south-east – was reflected in its pluralistic diplomatic practices. Various grand dukes of the thirteenth century flirted with the possibility of conversion either to Orthodoxy or Catholicism.<sup>1</sup> The first instance of this occurred during the reign of Mindaugas in 1253. His conversion paved the way for his coronation as a Catholic prince, but the resentment of his notable pagan subjects led to his eventual apostasy in 1261.<sup>2</sup> Thereafter, Christian worship incurred severe penalties in the grand duchy until the reign of Vytenis (1295-1315). Vytenis, keen to provide foreign traders with their necessary spiritual comforts, permitted the arrival of Christian clerics, though he did not permit them any missionary activity.

Vytenis' brother, Duke Gediminas, made use of new Dominican and Franciscan arrivals as clerks through whom he might better communicate with his Catholic neighbours.<sup>3</sup> Such

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<sup>1</sup> S. C. Rowell, *Lithuania Ascending: A Pagan Empire within East-Central Europe, 1295-1345* (Cambridge, 1994), pp. 149-57; M. Giedroyc, 'The arrival of Christianity in Lithuania: early contacts (thirteenth century)', *OSP*, n.s. 18 (1985), pp. 1-30 and 'The arrival of Christianity in Lithuania: between Rome and Byzantium (1281-1341)', *OSP*, n.s. 20 (1987), pp. 1-33; R. Mažeika, 'Bargaining for Baptism: Lithuanian Negotiations for Conversion, 1250-1358', in J. Muldoon (ed.), *Varieties of Religious Conversion in the Middle Ages*, pp. 131-45; and M. Giedroyc, 'The Ruthenian-Lithuanian metropolitanates and the progress of Christianization (1300-1458)', *Nuovi studi storici*, 17 (1992), pp. 315-42.

<sup>2</sup> K. Forstreuter, *Deutschland und Litauen im Mittelalter* (Cologne-Graz, 1962), p. 7.

<sup>3</sup> Rowell, *Lithuania Ascending*, pp. 28, 208; and see also 'A pagan's word: Lithuanian diplomatic procedure 1200-1385', *Journal of Medieval History*, 18 (1992), pp. 145-60.

communication was increasingly necessitated not least on account of the activity of the *Ordensstaat*.<sup>4</sup> Its unparalleled territorial aggression and military capability shaped the region's diplomacy along lines that overrode religious divisions. The grand duchy's most reliable allies against the Order were the city and archbishop of Riga, who in 1312 informed the papal legate of the Knights' violence towards Lithuania.<sup>5</sup> But before the marriage of Gediminas' daughter to Łokietek's son in 1325, Lithuania lacked a dependable Catholic ally against the Order of any significant military force. The Order's perennial attacks therefore warranted significant diplomatic efforts at Avignon, and the consideration of conversion to Catholicism.

## **The reign of Grand Duke Gediminas (c.1315-c.1341)**

Grand Duke Gediminas' diplomatic dealings with western Christianity in the early 1320s have received considerable attention for the way in which they reveal the political and strategic challenges posed by Lithuania's position on the eastern border of Christendom,<sup>6</sup> as well as the importance of conversion in the Baltic for the Avignon papacy.<sup>7</sup> But as well as exposing much about the Avignon papacy's missionary concerns and the diplomatic practices of a pagan polity sandwiched between powers of more than one denomination, the episode provides us with another example of how the legal framework of the Curia could be

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<sup>4</sup> For the Teutonic Order's Lithuanian crusades see W. Paravicini, *Die Preussenreisen des Europäischen Adels* Teil I and II (Sigmaringen, 1989 and 1995), esp. Teil II; and for introductory overview see E. Christiansen, *The Northern Crusades* (London, 1997), pp. 139-176.

<sup>5</sup> The efforts of Archbishop Frederick to obtain redress at the Curia for grievances against the Order has already been noted in relation to Poland. For his career and character see Mažeika and Rowell, 'Zelatores maxima', *op cit.*, and K. Forstreuter, 'Erzbischof Friedrich von Riga (1304-1341). Ein Beitrag zur seiner Charakteristik', *Zeitschrift für Ostforschung: Länder und Völker im östlichen Mitteleuropa*, 19 (1970), pp. 652-65.

<sup>6</sup> See note 1, above, and also Forstreuter, *Deutschland und Litauen*, pp. 44-5.

<sup>7</sup> For this see James Muldoon, 'The Avignon Papacy and the Frontiers of Christendom: the evidence of Vatican Register 62', *Archivum Historiae Pontificae* 17 (1979), pp. 125-95.

used to articulate a notion of national sovereignty. When Gediminas wrote to the pope in 1322 with the news that he was prepared to enter the fold, he knew he was appealing to an authority that could potentially recognise his status as an independent ruler and affirm the boundaries of his territory, providing a legal barrier to any unsolicited aggression from his most persistent adversary, the Teutonic Order.<sup>8</sup>

Ostensibly, Gediminas sought the privileges and protection enjoyed by ‘all other Christian kings’ – namely, those he might enjoy once he had undergone baptism. The pope, in turn, assured him of such equality once he had received the faith. The pope would be his father, and the Church his mother, and both would care for him as they did for all Christian nations. As a member of this new family, Gediminas could be assured of his political independence and the illegitimacy of any unprovoked attack by his Christian brethren. But, as we shall see, Gediminas’ spokesmen were also attuned to the possibility of the papacy recognising the legality of a non-Christian ruler and his *dominium*. Since Gediminas’ conversion only ever remained a possibility throughout the negotiations (despite the letters implying the conviction of his good intentions), his efforts provide a testing ground for how the Curia might be used even by a non-Christian nation to articulate a notion of sovereignty. As we shall see, his spokesmen were *au fait* with the legal arguments open to both, and employed them to varying degrees in the course of their dealings with Avignon.

At some point in 1322, Gediminas wrote to the pope, explaining why his predecessor, Mindaugas, who had accepted baptism in 1251 at the hands of the Grand Master of the

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<sup>8</sup> For a discussion of Gediminas’ motivations for a possible conversion, see Forstreuter, *Deutschland und Litauen*, pp. 43-60 (at p. 45), which is a reprint of his essay ‘Die Bekehrung des Litauerkönigs Gedimin; eine Streitfrage’, *Jahrbuch der Albertus Universität Königsberg*, 6 (1955), pp. 142-58.

Order, reverted to paganism a decade later – or, as the letter put it, lapsed from the faith, and remained, as did his successors, in error.<sup>9</sup> The lapse – not simply of Mindaugas, but allegedly of *all* his kingdom who had supposedly been converted – was blamed on the repeated injury suffered from the Teutonic Order. The noble rebellion faced by Mindaugas after his conversion is entirely ignored, and the lapses ascribed entirely to the persistent aggression of the Knights. The pope was told that Lithuanian efforts to secure peace with other neighbours had been thwarted by the crossbearers, who were responsible for killing several Lithuanian peace envoys. By contrast, according to the letter, Gediminas had no desire to fight his Christian neighbours, but simply to resist his own injury. Proof of this, he maintained, was that he allowed preachers in his lands complete freedom to baptise, preach, and conduct other sacred ministry.<sup>10</sup> In concluding the letter, it was stated that ‘we are ready to obey you [reverend father] in all things’, just like other Christian kings, and to receive the Catholic faith (provided the Order was not involved in the process).<sup>11</sup>

From the papal reply dated 1 June, 1324, we know that Gediminas also addressed a second letter to the pontiff, probably around the spring of 1323.<sup>12</sup> The letter apparently included a reaffirmation by Gediminas and ‘the barons of his kingdom’, of their desire to receive the faith, recognising that there was only one God, the supreme judge, from whom salvation could be obtained. The grand duke’s spokesmen also communicated this apparent desire to various neighbours, with two intended outcomes: to conclude a peace treaty; and to

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<sup>9</sup> *GL*, p. 23. For Mindaugas’ conversion, see *ibid*, no. 1, p. 21; M. Hellmann, *Der Deutsche Orden und die Königskrönung des Mindaugas* (Marburg/Lahn, 1954); Z. Ivinskis, ‘Mindaugas und seine Krone’, *Zeitschrift für Ostforschung*, 3 (1954), 360-86; Mažeika, ‘Bargaining for Baptism’ pp. 131-45.

<sup>10</sup> *GL*, p. 27.

<sup>11</sup> *Ibid.*, p. 27.

<sup>12</sup> *GL*, p. 79; *VMPL*, no. 293, pp. 193-4. Rowell suggests that the letter arrived at the Curia just before November 1323, and estimates at least six months for its delivery. Rowell, *Lithuania Ascending*, p. 209, note 111.

encourage the immigration of skilled labour and learned men.<sup>13</sup> Peace efforts began in 1322 (paralleling the first letter to the Curia), when Gediminas dispatched letters to the Order and the Livonian colonies, as well as sending peace envoys to the king of Denmark.<sup>14</sup> The grand duchy had enjoyed good relations with the city of Riga for some time,<sup>15</sup> but Gediminas' approaches were examined by the citizens of Riga in association with representatives from the Danish king, the Livonian chapter of the Teutonic Order and the mendicant orders, who convened in Ermes in August 1323. The Lithuano-Livonian treaty was subsequently sealed at the beginning of October in the same year.<sup>16</sup>

In writing to the Dominican and Franciscan orders, and to the burghers of Lübeck, Stralsund, Bremen, Magdeburg, Cologne and to other cities to advertise the favourable terms of settlement on offer to any knights, armsbearers, merchants, carpenters, and craftsmen of any kind who chose to settle or trade in Lithuania, Gediminas assured his addressees that he had approached the pontiff about 'receiving the faith', and was eagerly awaiting the arrival of papal nuncios.<sup>17</sup> As in the letters to the pontiff, his spokesmen were keen to convey a sense of the damage inflicted by the Teutonic Order, and of their efforts to thwart the settlement of Christians in his lands. It is recounted how the Franciscans had built two churches, one in Vilnius and the other in Novgorodok, with the latter having since been burned by 'the

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<sup>13</sup> *GL*, pp. 31-43, 59-65.

<sup>14</sup> These letters are no longer extant, but see *GL*, pp. 59-63; Rowell, *Lithuania Ascending*, p. 195.

<sup>15</sup> The merchants engaged in trading agreements with the duchy notably from the mid thirteenth century onwards, and in the early fourteenth, the Lithuanians established a garrison in the city. See Rowell, *Lithuania Ascending*, pp. 76-9, and R. Mažeika, 'Of cabbages and knights: trade and trade treaties with the infidel on the northern frontier, 1200-1390', *Journal of Medieval History* 20 (1994), pp. 63-76. In communicating with the city of Riga, Gediminas would always ask about the archbishop's efforts at the Curia, no doubt because they reflected on the Order's relationship with the Grand duchy as well as the city. Mindaugas' lapse had, of course, featured in the archbishop's process against the Order heard by Mollano in 1312 – see *Das Zeugenverhör*, pp. 63, 147-8, *passim*.

<sup>16</sup> *MPV*, vol. 3, no. 168, pp. 226-7. For an examination of Lithuanian diplomatic practices in peace negotiations see Rowell, 'A pagan's word'.

<sup>17</sup> For these letters see *GL*, pp. 29, 39.

Prussian crossbearers'. Nevertheless Gediminas had this same year ordered its reconstruction, so that the praise of Christ and worship undertaken by the Franciscans for the benefit of Gediminas and his family might continue.<sup>18</sup> The possibility of his conversion is a prominent feature of all his communication with the communities of Christendom, not simply the pope.

In June of the following year, the Treaty of Vilnius received papal ratification, and the pontiff finally commissioned two nuncios, Bartholomew, bishop of Alet, and Bernard of St Chaffré du Puy, men 'learned in canon law and theology',<sup>19</sup> with the task of overseeing the baptism. Famously, when their own envoys arrived in Vilnius and conversed both with the grand duke and the Dominican and Franciscan friars closely associated with his court and responsible for composing the letters, they were informed by Gediminas (much to the embarrassment of the friars) that he had never harboured any intention of undergoing baptism. He tolerated Christians in his lands, and keenly desired peace with his neighbours. But such tolerance was only that which he afforded to all religious groups in his *dominium* – Poles and Russians alike, and he had apparently never anticipated baptism for himself.<sup>20</sup> Despite this he expressed a wish to observe the Treaty of Vilnius. Since the envoys felt unable to transact negotiations on this basis owing to his recent declaration, they returned to Riga with one of Gediminas' advisors to discuss the treaty's future status. The legates ratified the treaty and it continued to be observed (albeit with several minor transgressions) until the *Reise* of 1328-9.

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<sup>18</sup> See *GL*, pp. 29-37.

<sup>19</sup> *MPV*, vol. 3, p. 231; *Cod Dip Lith*, p. 33.

<sup>20</sup> The valuable account of this meeting recorded by the envoys is edited in *GL*, pp. 117-45.

The sincerity of Gediminas' supposed promise has constituted a long-standing point of interest.<sup>21</sup> Those wanting to believe in his initial fervour can be buoyed by the envoys' account, which records that his good intentions were undermined by threats from the Teutonic Knights.<sup>22</sup> He clearly considered at some point the possibility of baptism on account of the political advantages it afforded – namely, the ready and universal recognition of his kingdom's boundaries and the outright illegality of any unsolicited aggression. It would have directly undercut the Knights' favoured justification for their *Reisen*.<sup>23</sup> For the Knights, there could be no disputing the notion that 'extra ecclesiam non est imperium':<sup>24</sup> infidels could not legitimately claim to have *dominium*. They depended on this contention, for example, in their responses to the archbishop of Riga's complaints about their behaviour in the early fourteenth century, arguing, in relation to various ecclesiastical lands on which they had set their sights that, since infidels had held these lands for more than a hundred years, they could no longer be claimed by the church on account of prescriptive right and so were now legitimate targets for conquest.<sup>25</sup> By becoming Christian, Gediminas would have removed the lynchpin from the Knights' diplomacy.

Gediminas was very specific, therefore, regarding the method of his proposed conversion: fully aware of the political implications involved, he was adamant that the Order was to play no part. The Knights boasted a substantial collection of imperial and papal grants that

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<sup>21</sup> See, for example, K. Forstreuter, 'Die Bekehrung Gedimins und der Deutschen Orden', *Altpreuussische Forschungen*, 5 (1928), p. 240 and ff. Cf. S. C. Rowell, 'The Letters of Gediminas: *Gemachte Lüge?* Notes on a controversy', *Jahrbücher für Geschichte Osteuropas*, 41 (1993), pp. 345-51.

<sup>22</sup> *GL*, p. 139.

<sup>23</sup> For the issue of indulgences and perceptions of Lithuanians see H. Birkham, 'Les croisades contre les paiens de Lituanie et de Prusse. Idéologie et réalité', in D. Buschinger (ed.), *La Croisade : réalités et fictions. Actes de colloque d'Amiens 18-22 mars 1987* (Göppingen, 1989), p. 41.

<sup>24</sup> See Muldoon, "'Extra ecclesiam'", *passim.*, for the development of canonistic debates regarding this.

<sup>25</sup> *Das Zeugenverhör*, p. 200 – a very interesting use of a theory usually associated with jurisdictional independence in this period.

recognised any lands conquered and converted by the Order as its property.<sup>26</sup> If he received baptism directly from the pontiff, he could enjoy the authority of any other ruler – or, indeed, king, since this is how he styled himself in his letters – in Christendom, immune from the claims of the Teutonic Order. Voluntary baptism would negate the Order's use of earlier papal and imperial grants. We see this determination to secure *dominium* in the region against the Knights' territorial ambitions again in his apparent intentions for the Semigallians. Styling himself as *dux Semigalliae* throughout his letters, the specification of linguistic competence in his invitations to preaching friars – with knowledge of Semigallian, but not Lithuanian, being desirable – suggests a desire to effect their baptism.<sup>27</sup> This would outflank the Knights in attaining an important conversion and the attendant claims to *dominium* they might make: Gediminas could instead claim responsibility and, according to the political values and practices common to this border region, make safe his own *dominium* there. Although similarities abound, Gediminas' efforts were not therefore a direct copy of Mindaugas', since he was not prepared even to receive baptism from the Order.<sup>28</sup> Instead his appeal was couched in terms that undermined the Order's ambitions and reveal a full

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<sup>26</sup> *GL*, p. 27. Indeed, the Order is known to have attempted (unsuccessfully) to bribe the Lithuanian ruler to allow them to take responsibility for his conversion. See Rowell, 'Pagans, Peace and the Pope', p. 86, and *CDPruss*, vol. 2, no. 111, p. 148. See also *Cod Dip Lith*, p. 20, a document of 1289 in which the Order may be seen carving up the kingdom in anticipation of its conquest.

<sup>27</sup> This has been observed by Rowell in his *Lithuania Ascending*, p. 207. The use of matter of the Semigallians in this way possibly betrays the letters' mendicant authorship, though mention had of course been made before this by John, Archbishop of Riga (Frederick's predecessor). See V. Gidžiunas, 'De missionibus fratrum minorum in Lituania', *Archivum Franciscanum Historicum* 42 (1949), pp. 16-22.

<sup>28</sup> Mindaugas received baptism from the Provincial Master of Livonia, Andreas von Stirland, in 1251 in preparation for approaching the papacy for receiving the royal title. V. Gidžiunas, 'The introduction of Christianity into Lithuania', *Lituanus*, 4 (1957), p. 8; Rowell, *Lithuania Ascending*, p. 51. Gidžiunas argues that, having received baptism from the Order, Mindaugas was sufficiently 'adroit' to realise it 'would attempt to subjugate Lithuania': Mindaugas, on the other hand 'desired to be an independent ruler', and approached the pontiff for a crown in this vein. See also Gidžiunas' 'De missionibus', p. 21. Mindaugas was subsequently crowned at the hands of the Bishop of Chełmno who, as Forstreuter notes, was German but not a brother of the Teutonic Order. Forstreuter, *Deutschland und Litauen*, p. 6. Interestingly, however, a letter dated 1260 bequeaths to the Order Mindaugas' lands if he dies without heir. See *Cod Dip Lith*, p. 19.



understanding of the legal grounds of his future sovereignty as a newly-converted Christian king in the region.

Gediminas' letters therefore betray an awareness that his conversion would secure the legal sovereignty of his kingdom, and that the pope would act as protector of this new status, and judge of any territorial disputes.<sup>29</sup> The intellectual climate of the Curia offered Gediminas the notion of a plurality of kingdoms living peacefully as equals within Christendom, regulated in their dealings with each other by an impartial father, Christ's Vicar. His spokesmen informed the pontiff that he understood the Church's role in judging such matters,<sup>30</sup> and of course the descriptions of the Knights' 'iniquity, greed and violence' are entirely informed by Christian political discourse relating to just war.<sup>31</sup> Notwithstanding the fact that his conversion had not yet occurred, when writing to the burghers of various regional towns in 1323 he spoke in terms suggesting the equality of his kingdom in the house of God: his kingdom and authority had been received from God and were therefore subject to Christ, just like form in matter or a servant in a home.<sup>32</sup> It was an image constructed in papal language, as the pope's eventual response of 1 June 1324 reveals. In reminding Gediminas of the supreme authority of the pope as Christ's representative on earth, papal correspondence spoke of Christendom as a group of peoples and nations acceptable to Christ, observing the same faith and all living in the house of God.<sup>33</sup> It is 'out of fatherly love' that he urges the pagan ruler to follow

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<sup>29</sup> Gediminas appears to have recognised the pope's power to judge, for example, in his second letter to the Curia, in 1323. See *GL*, p. 97.

<sup>30</sup> *Ibid.*, p. 115.

<sup>31</sup> See, for example, the letter from Gediminas to the bishops of Dorpat and Ösel, the captain of Revel, and the councillors of the city of Riga in September 1324, interestingly after his refusal of baptism, in which he describes the Teutonic Order cruelly killing people 'like ravenous wolves' (only shortly after Lent, it also notes). *GL*, pp. 167-73.

<sup>32</sup> *Ibid.*, p. 37.

<sup>33</sup> *Ibid.*, p. 101.

the light and join this house.<sup>34</sup> The language clearly suggests that this was a house in which Gediminas could be assured of the equality for which he yearned.

Nevertheless, as Stephen Rowell has pointed out in relation to the possibility of conversion, Gediminas' letters are characterised by deliberate ambiguity:<sup>35</sup> the assertion that the grand duke wanted to receive the faith could have been intended to suggest that he wanted to undergo baptism, but it could also mean simply that he was prepared to welcome the faithful to his lands, which it is asserted he has already demonstrated by building churches and permitting preaching. What he understandably fails to mention is that ministering the sacraments in his lands was confined to Christians, and any attempts to convert his pagan subjects were severely punished.<sup>36</sup> It was not, of course, a tactic for which the friars who composed the letters were prepared to take responsibility when questioned by the legates' envoys in 1324: naturally, they insisted on their belief that Gediminas had intended to undergo baptism. In view of the circumstances, however, there can be little doubt that the ambiguity was intentional. This makes it very likely that Geminas' letters intended to suggest something else as well as baptism: they intended to suggest that Lithuanian sovereignty was not necessarily contingent on the kingdom's conversion, that the nation possessed political legitimacy irrespective of its existence outside the fold. This suggestion is conveyed in many ways throughout the letters, serving to accommodate the possibility of Gediminas' refusal to accept baptism. For this, his spokesmen depended on thinking increasingly prevalent in theological circles, and championed within canonistic circles by Sinibaldo Fieschi, regarding the political rights of infidels.

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<sup>34</sup> *Ibid.*, p. 103.

<sup>35</sup> Rowell, *Lithuania Ascending*, p. 197.

<sup>36</sup> For details of this, see Rowell, *Lithuania Ascending*, pp. 205, 207.

No baptism had of course yet taken place when Gediminas wrote in 1323 to the burghers of Lübeck, Rostock, Gotland and Stettin, describing how, in his own dominions, through God's providence he possessed the power 'to instruct and govern, to condemn and to save, to close and to open'.<sup>37</sup> Despite this markedly direct borrowing from the pontiff's own language of papal authority, the statement suggests not that he was now a faithful subject of the Catholic Church, but that political power is natural, on account of its being God's creation. The opening paragraph describes how all kingdoms are subordinate to the heavenly kingdom of Jesus Christ, and states that his own kingdom is no exception.<sup>38</sup> And his spokesmen certainly had no hesitation in describing Gediminas' lands as a kingdom and the grand duke himself as a king – a title which had seemingly no necessary connection with the Catholic Church or papal authority. Thus, in his letter to the pope in 1322, Gediminas referred to his brother and predecessor, Vytenis (c.1295-1315), as *rex*.<sup>39</sup> Although, as the letter recounts, Vytenis sought to establish peace with his Christian neighbours, he never sought baptism. It was to his 'land, *dominium* and kingdom' that Gediminas invited skilled settlers.<sup>40</sup> The letter to the burghers could therefore be taken to imply that political power, although it ultimately derives from God, can exist outside the Church. Indeed, it seems to suggest that God recognises a political equality of kingdoms, irrespective of their faith.

A direct comparison with Mindaugas' dealings with the papacy is instructive here. In 1251, Mindaugas received baptism as a pre-requisite for approaching the pontiff for the royal title.

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<sup>37</sup> *GL*, p.37.

<sup>38</sup> *Ibid.*, p. 37.

<sup>39</sup> *Ibid.*, p. 25. On its own this would be insufficient evidence to make the point: spokesmen for the Order also used the title when referring to Lithuanian rulers, though in conjunction usually emphasised their infidel status. See, for example, *SRP*, vol. 2, p. 155, which talks of the fortress being constructed in Riga 'pro rege infidelium'.

<sup>40</sup> *GL*, p. 33.

It was an exchange which pontiffs became practised in offering as an incentive to prospective neophyte rulers: royal dignity in return for conversion.<sup>41</sup> By contrast, Gediminas' approach to the pontiff suggested no such equation: he already used the title *rex*, and enjoyed the trappings of a Christian king.<sup>42</sup> We have pictorial evidence of this on Gediminas' seal, used throughout his reign (so far as is possible to tell) when corresponding with Western powers. On it, Gediminas is pictured holding a crown in his hand.<sup>43</sup> That it differed from Mindaugas' seal, on which a bishop is portrayed placing the diadem on the ruler's head, is explained simply by the fact that Gediminas never underwent baptism. What is of particular interest is that he is holding a crown at all, when Lithuanian inauguration rituals in this period (notwithstanding Mindaugas') are known to have included no element of coronation. The portrayal is constructed as a means of informing Gediminas' western neighbours that his royal authority was legitimate, and that it existed regardless of his faith.

When writing to the pope in 1322, Gediminas suggested that the pontiff send envoys with the returning archbishop of Riga to negotiate peace and settle boundaries with him.<sup>44</sup> He did not append to these aims that of conversion: his spokesmen were surely testing the ground on which the pope was prepared to deal with pagans, sounding out the possibility that a recognition of sovereignty might be obtained without conversion. That he specified the involvement of Archbishop Frederick is surely revealing, in that Riga had negotiated and enjoyed peace settlements and military alliances with the Lithuanians for some time.<sup>45</sup> In a

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<sup>41</sup> As Rowell notes, this was offered by Clement VI to Kestutis in 1350. *Lithuania Ascending*, p. 64.

<sup>42</sup> Rowell has warned against being quick to read political implications into Gediminas' use of the title *rex*. In this he seems to ignore the possibility that his spokesmen were probably aware of the breadth of canonistic and theological thought concerning the political rights of infidels. Rowell, *Lithuania Ascending*, pp. 65-6.

<sup>43</sup> *Ibid.*, p. 65.

<sup>44</sup> *VMPL*, pp. 190, 193.

<sup>45</sup> Rowell, *Lithuania Ascending*, pp. 56-9.

letter sent to the Curia in 1322, as in Gediminas' letter to the burghers, there was no mention of king-making being within the pontiff's remit. Nor, from what we can assume from the reply, was there any such mention in the letter sent to the Curia a year later. Gediminas was already *rex* (and, for that matter, continued to be after the fruitless negotiations of 1324).<sup>46</sup> This is in complete contrast to the terms on which Mindaugas approached the papacy in the 1250s. Then, baptism was being sought in order to gain recognition of the royal title: the pope was to *make* Mindaugas king and recognise his political authority, subsequent to his conversion.<sup>47</sup> Their communication betrays no expressions of ancient political rights, or of troublesome neighbours challenging Lithuania's existence, but simply the desire for baptism.<sup>48</sup> While Mindaugas was undoubtedly ready to accept conversion for its political benefits,<sup>49</sup> by the early fourteenth century, some canonistic thought offered such benefits to the infidel, which Gediminas' spokesmen were keen to explore. Explicit assertions regarding Gediminas' royal authority being derived directly from God were avoided when communicating directly with the pope, but the same sentiment was effectively conveyed through references to canonistic thought on just war. As already noted, before making any mention of conversion, the letter of 1322 informed the pope that, far from attacking other Christian nations, 'we [simply] resist our own injury, just as Christian kings and princes do'.<sup>50</sup> The statement appeals to a perception of peaceful infidels having the right to defend themselves – the political rights of an infidel nation.

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<sup>46</sup> Thus in later letters, complaining of the Order's continuing aggression despite the peace settlement, Gediminas continued to style himself with the royal title. See *GL*, pp. 167-87.

<sup>47</sup> In a letter of 1254, Innocent wrote '...Regie dignitatis titulo fecimus insigniri...'. *Cod Dip Lith*, p. 10.

<sup>48</sup> *Cod Dip Lith*, no. 2.

<sup>49</sup> Undertaken as part of improved relations with the Order.

<sup>50</sup> *GL*, p. 27.

At the same time, the Teutonic Order was portrayed as unremittingly belligerent. Here, Gediminas' spokesmen borrowed heavily from complaints levelled against the Knights by the archbishops of Riga when prosecuting their case against them at the Curia. The accusation of inducing the apostasy of Mindaugas and his kingdom was already a well-worn argument, as was the devastation of Semigallia.<sup>51</sup> Again, this may explain Gediminas' proposal in his 1322 letter to the pope that Archbishop Frederick should accompany the papal nuncios. This borrowing from the Rigan case assisted the portrayal of Lithuania as pacific, a fundamental premise for asserting Lithuanian sovereignty according to the terms of just war. On one level, complaining of the Knights' belligerence could have been perceived (and intended) as the lodging of a grievance to be dealt with by the pontiff once the grand duke had entered the house of God. On another, it bolstered the case for the political rights of infidels: the portrayal closely accords with the criteria on which the papacy had advocated peaceful relations with the Moslem communities of North Africa over previous centuries – relations which had informed Fieschi's commentaries.<sup>52</sup> These criteria had been: firstly, the infidels' own desire for peace; and, secondly, the protection of Christians within their lands – hence the stress laid on the tolerance of Christians within his kingdom. It was especially regarding this latter criterion that pontiffs communicated with infidel rulers of the region. Given the assurance that Christian subjects were not harmed by their infidel rulers, and with the papacy having no desire for conflict in the region, the Church enjoyed working relations with non-Christian political communities. They were able to do so, intellectually and legally, on account of both theological and canonistic thought.

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<sup>51</sup> See *Das Zeugenverhör*, and refs above – the case of Lithuania was made by the archbishop.

<sup>52</sup> See Muldoon, *PLI*, p. 38.

The outlook of Gediminas' Christian advisers is instructive here. An account written by the nuncios' envoys, charged with approaching Gediminas on the matter of his conversion, informs us that the grand duke had to hand the knowledge, advice, and diplomatic skills of both the Dominican and Franciscan Orders.<sup>53</sup> Confusion during these discussions in 1324 over Gediminas' spiritual intentions revealed that two Franciscans, Henrick and Berthold, took responsibility for writing to the pope and to the towns. It was Berthold who had written to the Curia on behalf of Gediminas professing a desire to accept the faith (a point of contention that understandably preoccupied the envoys and the friars during their visit). A Dominican brother, Nicholas, appears to have counselled Gediminas particularly closely, and was a member of the 'royal council'.<sup>54</sup> As members of the mendicant orders, all these clerics would have been aware of the various precedents of papal dealings with infidels, and of the canonistic and theological thought on which such dealings might rest.<sup>55</sup>

This is evident not least in the advice apparently given to Gediminas when the cardinals arrived in Vilnius. While Berthold clearly appeared distressed at the grand duke's change of heart, all the correspondence written on behalf of Gediminas, as we have seen, betrays an awareness of canonistic thinking on the rights of infidels, and this was demonstrated again by Gediminas' tactics during the visit. From the envoys' account it could be argued that Nicholas, knowing the possibilities still open to an infidel ruler in dealing with the papacy, advised the grand duke that the peace agreed a year earlier might yet be preserved. Gediminas' response to the envoys therefore was again couched in terms of suffering at the hands of the violent and treacherous Order, which, although supposedly upright and

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<sup>53</sup> For a general overview of the Mendicant orders in this region, see Freed, *The Friars and German Society*, and J. Kłoczowski, 'Mendicant Orders between the Baltic and Adriatic', *op cit.*, pp. 95-110.

<sup>54</sup> *GL*, p. 119.

<sup>55</sup> The presence of the Mendicant orders in Lithuania is discussed below.

religious, was guilty of crimes against churchmen and other fellow Christians, including the city of Riga. Moreover, the Knights had never kept an oath, despite kissing the cross in affirmation. Notwithstanding this, the grand duke was prepared to keep the peace as agreed a year earlier, which the pope had ratified on the same day as commissioning the nuncios destined for those parts.<sup>56</sup>

According to the envoys' account too, Brother Nicholas was responsible for counselling Gediminas *against* conversion, in view of rebellious stirrings among his nobles orchestrated by the Order: it was alleged that clothes and valuables were given to the powerful men of Žemaitija, who then warned Gediminas that if he underwent baptism they, with the assistance of the Knights, would overthrow him. Faced with such an immediate threat, Nicholas had apparently advised against seeking solace from a remote institution that could do little to protect him materially. In many ways, this account embodies by now clichéd anti-Order propaganda: the crossbearers stopping at nothing for the sake of perpetuating war, even ensuring a state of apostasy among their neighbours. It would be an acceptable explanation for the friars of Vilnius to offer the bemused envoys, who had been anticipating more positive discussions on their arrival: easier to blame the Knights than admit an error of judgement regarding Gediminas' intentions.

But it may also be true, and although the envoys represent Nicholas as a cleric with a somewhat faltering sense of purpose, the account strengthens the likelihood that Gediminas' Christian advisers still saw the possibility of peaceful relations with their Catholic neighbours irrespective of the grand duke's own faith, counselled him with this in mind, and possessed a

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<sup>56</sup> See *MPV*, vol. 3, no. 168, pp 226-7; cf. *ibid.*, no. 175, pp. 231-3.



good enough understanding of canon law to express the legitimacy of Lithuanian sovereignty in such terms. The likelihood of this is also reinforced by the thrust of subsequent letters, composed in Vilnius after 1324, complaining of the Order's continuing aggression. Gediminas clearly retained some or all of his Christian advisors to assist with his diplomacy after the negotiations of 1324. Descriptions of the Knights' 'cruel killings' still abound;<sup>57</sup> they behave 'like men who have forgotten their salvation', and 'ravenous wolves'<sup>58</sup> – the Lithuanians being, by implication, the sheep, despite their lack of a (Christian) shepherd. Such language reinforces the juxtaposition favoured in earlier correspondence of the Knights' prospective authority in Lithuania as tyrannical and unjust, and Gediminas', by contrast, as natural and conducive to peace.

Throughout all these diplomatic dealings with their Catholic neighbours in the 1320s, Gediminas' clerks cleverly managed to appropriate the rhetoric of defending Christendom that had done so much damage to the image of pagan Lithuania over previous decades.<sup>59</sup> Irrespective of whether or not Lithuanian forces were fighting alongside Christian allies, as was sometimes the case, the Order's spokesmen were always careful to characterise Lithuanian activities as attacks on Christendom, and their own fighting as being *pro defensione christianitatis*.<sup>60</sup> Their chronicles likened the Lithuanians to the Saracens.<sup>61</sup> And yet, as Gediminas' spokesmen pointed out, it was in the name of defending Christendom that the neophyte Semigallians had been reduced to apostasy. Peace between Lithuania and

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<sup>57</sup> *GL*, pp. 169, 177.

<sup>58</sup> *Ibid.*, p. 169.

<sup>59</sup> For the skilled diplomacy of the Order regarding Lithuania see Muldoon, *PLI*, p. 30, note 3.

<sup>60</sup> See, for example, *SRP*, vol. 2, pp. 143-4 (the pagination is skewed in this section – the reference here is to the second round of these page numbers).

<sup>61</sup> An example of which may be found in Puymaigre, 'Une Campagne de Jean de Luxembourg, Roi de Bohême', *Revue des Questions Historiques*, 42 (1887), p. 176. Cf. Fischer, *Die Himels Rote*, pp. 51-72.

Christendom, on the other hand, was clearly in the interests of the latter.<sup>62</sup> Gediminas' efforts, despite his paganism, were more in the interests of Christendom's safety than those of the Order.

The involvement of the mendicant orders in this episode of diplomacy bears obvious comparison with the case of Ireland. In both instances, their theological and canonistic learning informed the construction of a case for sovereignty, suitable for a papal audience, and demonstrating their awareness of the full breadth of writing then current regarding the political rights of peoples. In Ireland they built on a tradition of native pseudo-history and current sentiment born of legal inequality to construct the image of an independent kingdom, in a way that betrays the importance of ecclesiastics operating in the vacuum of a strong, centralised (and Christian) monarchy. In Lithuania, their learning supplied a pagan ruler with what he otherwise would not have enjoyed: the intellectual means of articulating a sense of sovereignty according to political thought then current in papal circles.

Franciscans are known to have been present in Lithuania as early as Mindaugas' coronation,<sup>63</sup> and seemingly thereafter, being martyred whenever their ministering was extended to those other than German merchants.<sup>64</sup> Largely on account of Archbishop Frederick's efforts and appeals to Clement V, in 1312 Vytenis formally invited two friars to build a church in Novgorodok, from which they were permitted to minister (only) to Christian merchants.<sup>65</sup> Under Gediminas, both grey and black friars were given residence

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<sup>62</sup> *GL*, p. 27.

<sup>63</sup> A rather brief account survives: M. L. Colker, 'America rediscovered in the thirteenth century?', *Speculum*, 54 (1979), pp. 712-26; Rowell, *Lithuania Ascending*, p. 208.

<sup>64</sup> Rowell, *Lithuania Ascending*, p. 208.

<sup>65</sup> *Ibid.*, p. 58.

inside the walls of the new fortress built in Vilnius, and patronised as his scribes by the grand duchess.<sup>66</sup> As we have seen, in addition to composing letters in Latin, these friars serviced Gediminas with an understanding of contemporary political thought for which the mendicant orders perhaps had an unrivalled sympathy: a broadly Thomist conception of political order, complemented by an understanding of canonistic thought, informed both by a reverence for papal authority over all things and a legal understanding of the existence of political authority without the Church. Their correspondence on behalf of Gediminas demonstrates a strong understanding of the language of papal power, notably in describing the nature of the grand duke's own authority: the papacy's use of the Aristotelian *forma in materia*, and the power to loose and to bind.<sup>67</sup> This is coupled with an understanding of theological and canonistic thought about the rights of non-Christians associated with their general activity in border regions.

Their activity in the Baltic region during the thirteenth century had been encouraged by the papacy primarily for the purposes of preaching the crusade, and in the 1260s they were charged by the Teutonic Order to undertake this task on their behalf.<sup>68</sup> But, as in Ireland, mendicant activity so often combined this higher purpose with an involvement in secular politics, offering those whom they championed an unrivalled publicity machine. From the mid-thirteenth century onwards they embroiled themselves in 'kingmaking' activity in Germany, and they possessed the intellectual tools to do so elsewhere.<sup>69</sup> We know that the Franciscan friars in Gediminas' counsel were from the Saxon province but, more

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<sup>66</sup> *Ibid.*, pp. 29, 47. The close links with the court enjoyed by the friars is characteristic of their activity in this region more generally, according to Kłoczowski in his 'Mendicant Orders between the Baltic and Adriatic', p. 100.

<sup>67</sup> Rowell notes both of these in *Lithuania Ascending*, p. 65.

<sup>68</sup> Freed, *The Friars and German Society*, p. 66.

<sup>69</sup> For their activity in Germany in this respect see *ibid.*, pp. 161-7.

importantly, that they had close connections with the Archbishop of Riga (a Franciscan himself), whose process against the Order was long-standing, and from which many of the letters' assertions were drawn.<sup>70</sup> The friars in Gediminas' service therefore appear to have been part of a network spanning ecclesiastical centres in the region opposed to the Knights' activity, and the Curia, to and from which clerics associated with the archbishop of Riga travelled back and forth.<sup>71</sup>

## Conclusions

In Gediminas' approach to the Curia we therefore see an awareness of theological and canonistic thinking concerning the political rights of infidels. This awareness is heavily veiled by talk of a possible baptism. But the language of his correspondence accommodates an array of possibilities for the justification of Lithuanian sovereignty, designed surely to test the papal outlook. As such the episode reveals the considerable breadth of the intellectual framework in which nations might express their sovereignty through negotiations with the Curia in this period. Akin to the Irish Remonstrance of 1317, Gediminas' letters straddle two very different strains of canonistic thought to which the Curia might respond. The first is based on the political rights enjoyed by a Catholic prince; the second on the rights of peaceful infidel rulers who are prepared to protect Christians within their lands. As we shall see in the following chapter, John XXII's response to the Lithuanian correspondence,

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<sup>70</sup> For links between Frederick von Perstein and the friars of Vilnius see Gidžiunas, 'Christianity into Lithuania', p.10; and also his 'De missionibus', pp. 22-35. Enquiries into the archbishop's whereabouts (usually Avignon) feature in all Gediminas' letters to Riga. See also Rowell and Mažeika, 'Zelatores Maxima', esp. 46 ff; see Forstreuter, 'Erzbischof Friedrich', pp. 664-5 for the notion that the events in Lithuania during these years (and their failure) were entirely of the archbishop's making.

<sup>71</sup> For evidence of this see *Chronicon Livoniae*, SRP, vol. 2, pp. 61-2, and Peter of Dusburg, SRP, vol. 1, p. 192.

although limited, embodies the intellectual possibilities provided by the Curia to such nations.

## 5. The Papal Response

It is clear from the discussion so far that the intellectual climate of the Curia provided the proponents of all four border nations with a conceptual language to assert their political independence. But the efforts of all four also have in common the assumption that the pope might respond favourably to expressions of 'natural lordship', of nations having the right to occupy their own territory free from the oppressions of a foreign power, and to live in peace. Overarching the transition witnessed in Poland for example, from an ethnocentric language to one of regnal sovereignty, was evidently the belief that the pontiff would be sympathetic to articulations of natural lordship and the timeless existence of the kingdom. Elsewhere this belief informed different tactics. In the Irish and Lithuanian representations the notion of their natural political rights as a nation were given a specific grounding in canon law. In the Scottish and Polish representations we also witness appeals to the pope's more general understanding of the political rights of peoples, informed not only by canon law but also political theology.

Modern appraisals of John XXII's response to the appeals of all four nations have understandably been dominated by his dispute with Ludwig of Bavaria and the need to maintain and cultivate friendships among the more powerful rulers of Christendom. Many of these powerful rulers were, of course, the aggressors against whom these border nations were remonstrating. Consequently, John's responses to their appeals, particularly in the cases of Scotland and Ireland, were characterised by a reluctance that has often been interpreted as an ideological, as well as a political, stance: several historians have portrayed him as the

intellectual and practical champion of powerful monarchies.<sup>1</sup> However, any such appraisal neglects the subtleties of his responses, and certainly does not rest on close examination of the very careful language found in the papal correspondence of his pontificate. Although the effect of the pope's response was not always encouraging to those formulating these appeals, it was less *discouraging* than has often been suggested. It is quite possible that John's training as a canon lawyer informed his responses. A full evaluation of his approach to each of the appeals, in which some attempt is made to tease his theoretical understandings of the various cases out from the *Realpolitik* that few pontiffs could avoid, is integral to appraising the continued relevance of the Curia as a forum for airing ideas about nationhood and sovereignty by these border nations. And it is only from a comparative perspective that such a full appraisal can be attempted.

John's education as a canonist is well testified.<sup>2</sup> Having enjoyed tuition from the jurists of Montpellier in both civil and canon law, he later studied in Orléans and eventually became professor of canon law at the University of Toulouse.<sup>3</sup> His learning accounts not only for a considerable expansion in the papal library during his pontificate, but also for an array of annotations on the library's holdings from that period, identifiable as his own hand.<sup>4</sup> Perhaps unsurprisingly, John's own summary copy of the *Decretum* of Gratian exhibits more of his

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<sup>1</sup> Probably the most recent of which has been Sophia Menache, in her 'Failure', *op cit*.

<sup>2</sup> It was, of course, his aptitude in this, supposedly rather than in theology, which caused him considerable trouble during his pontificate over the question of the Beatific Vision. For a recent study see P. Nold, *Pope John XXII and his Franciscan cardinal: Bertrand de la Tour and the apostolic controversy* (Oxford, 2003). See also T. Turley, 'John XXII and the Franciscans: A Reappraisal', in J. R. Sweeney and S. Chodorow (eds), *Popes, Teacher and Canon Law in the Middle Ages* (Ithaca and London, 1989), pp. 74-88.

<sup>3</sup> J. E. Weakland, 'John XXII before his pontificate, 1244-1316: Jacques Duèse and his family', pp. 163-4.

<sup>4</sup> A detailed account of his annotations is provided by Anneliese Maier, 'Annotazioni Autografe di Giovanni XXII in Codici Vaticani', *Rivista di Storia della Chiesa in Italia* 6 (1952) (Istituto Grafico Tiberino, Roma), pp. 317-22; see also M. D. Lambert, 'The Franciscan Crisis under John XXII', *Franciscan Studies*, 32 (1972), pp. 123-43.

personal annotations than any other work.<sup>5</sup> But his notes on other holdings demonstrate that his intellectual pursuits extended far beyond the realm of law. In addition to the various theological works he read to inform his debate with the Franciscan Spirituals,<sup>6</sup> his hand reveals a decided interest in the works of Aquinas, well above the degree demanded by the canonisation process for which he undoubtedly set about considering them in detail,<sup>7</sup> and also, in particular, an interest in Aquinas' subject, Aristotle: annotations reveal that the pope had digested not only Aquinas' commentary on *Politics*, but the work itself. The impression given by his annotations is that he dissented from few of Aquinas' opinions.<sup>8</sup>

Interestingly, from the present perspective, his reputation as a talented canonist resulted in his employment at the Angevin Neapolitan court of Charles II, King of Sicily, in around 1297-8. After a period in Fréjus he returned to Naples to serve as Chancellor to Charles and, on his death in May 1308, to his successor Robert, until his appointment to the see of Avignon in March 1310.<sup>9</sup> Although his stay there was apparently no more than a year in duration, the appointment is highly significant in terms of his understanding of canonistic thinking about sovereignty and *dominium*. The later thirteenth- and early fourteenth-century Neapolitan court was a hotbed of debate regarding the kingdom's sovereignty in relation to the empire: the Neapolitan school included such eminent figures as Andreas de Isernia and Oldradus de Ponte, who concerned themselves with establishing a legal basis for the independence of the kingdom from the universal claims of imperial authority.<sup>10</sup>

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<sup>5</sup> Maier, 'Annotazioni', p. 327.

<sup>6</sup> For a list of these see *ibid.*, p. 321.

<sup>7</sup> Aquinas' canonisation was introduced in 1318 and proclaimed in 1323. Angelus Walz, 'Papst Johannes XXII. und Thomas von Aquin. Zur Geschichte der Heiligsprechung des Aquinaten', in *St Thomas Aquinas, 1274-1974: Commemorative Studies*, 2 vols. (Toronto, 1974), vol. 1, pp. 29-47.

<sup>8</sup> For an exception to this, see Lambert, 'Franciscan Crisis', p. 136, and below.

<sup>9</sup> Weakland, 'John XXII, 1244-1316', pp. 165-8.

<sup>10</sup> This, at least, is how Ullmann presents their work in his article, 'Sovereignty', pp. 19-33.



Many of the legal discussions nurtured by the Neapolitan court bore a close resemblance to those later deployed in the appeals from the border nations with which this thesis is concerned. The Neapolitan kingdom was considered a papal fief, and much was made of this in the lawyers' attempts to reject the legality of imperial claims.<sup>11</sup> The Neapolitan canonists also gave consideration to the acquisition and legality of Roman imperial authority. The notion that the empire was acquired through brute force, and therefore lacked any legal status, became a popular one. At least one Neapolitan glossator maintained that the conquest of peoples was not legal but simply factual.<sup>12</sup> That the empire had been acquired by force alone was an argument with which Andreas de Isernia concurred. Akin to the arguments presented by the Irish and Scottish spokesmen only shortly thereafter, Andreas considered the matter of homage as indicative of the emperor's *de iure* authority over certain Christian kings: had such homage not been paid by a king for more than a hundred years, it was evidently not due.<sup>13</sup>

As a canonist holding the position of clerk and later of Chancellor in the Neapolitan court, John would have quickly become attuned to this political discussion. We may assume that it consolidated his already comprehensive grounding in such debates acquired through his considerable experience as a canonist prior to his appointment. He was undoubtedly prepared for the breadth of arguments about sovereignty, *dominium* and just war that were presented to him during his pontificate. Whether or not he was sympathetic to them is perhaps harder to gauge. His responses to Scotland and Ireland have usually been

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<sup>11</sup> Again, Ullmann discusses this in *ibid.*, p. 18.

<sup>12</sup> *Ibid.*, p. 19.

<sup>13</sup> *Ibid.*, pp. 20-1.

characterised as largely lacking in sympathy, both ideologically and politically. His responses to Poland and Lithuania have usually been discussed with close reference to political considerations arising from his dispute with Ludwig of Bavaria. What becomes clear through a comparative appraisal of his responses to all four nations is that this pope in fact shied away from making any definite judgements on the cases put to him and, as if to facilitate this, refused to assume the role of overlord in Poland, Scotland or Ireland.

What is often overlooked is that such hesitancy rarely prejudiced the claims of any of these nations. In particular, the language used in papal correspondence never directly refuted their ideas, even if it did not always directly support them – though often it did (particularly in the case of Poland). John therefore did little to jeopardise the Curia's position as a sounding board for these four nations. This alone would suggest that his response was informed by more than *Realpolitik*; that, despite having little need to, he was careful not to undermine entirely the assertions of the spokesmen for these nations. In all of the cases, except perhaps Lithuania, there are hints that he sympathised with many of the ideas put to him.

## **Poland**

John's response to the Polish case was fairly straightforward. His reluctance to alienate John of Bohemia through formal support for the coronation proposals was coupled with an evident willingness to support the Polish efforts for reunification whenever this was feasible. While this did not translate into a fiscal policy that was particularly favourable to Łokietek's cause, in other instances John provided support and advice that complemented Polish arguments – usually intentionally, though occasionally not. What remains difficult to fathom is the basis for his support, since Polish interests almost invariably complemented his own: it

would be impossible to disentangle entirely any sympathy he might have had for the intellectual basis of the Polish appeals from his evident inclination to support reunification in any case. What can be said is that, whether intentionally or not, the Curia generally provided a responsive audience for evolving articulations of Polish nationhood and sovereignty during the reign of Władysław Łokietek.

Notwithstanding the lack of formal recognition for Łokietek's coronation, John clearly gave encouragement to Gerward's representations, and it has recently been suggested that John may even have advised on Cracow as a venue for the ceremony as an alternative to the (presumably) proposed Gniezno.<sup>14</sup> While this was primarily done to avoid confrontation with John of Bohemia, it also complemented the symbolic importance of Cracow for the regnal unity of Poland. John's general encouragement was revealed again, of course, in his appointment of judges to proceed against the Teutonic Order, but this was also doubtless informed by his determination to settle grievances against the Order expressed throughout the region.<sup>15</sup> Due to the nature of the Polish appeals, however, and the fact that they took the form of very specific requests, there was little reason for John to make any pronouncement on the 'naturalness' of Polish rule by a single ruler over the whole *regnum Poloniae*. His private support for Łokietek's coronation may well have stemmed from the simple desire to encourage political stability for the sake of efficient revenue collection: his support for the process against the Order was undoubtedly informed by such fiscal concerns.

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<sup>14</sup> The presumption is being made on account of the fact that Gerward was acting as the archbishop's nuncio at the Curia. I am grateful to Agnieszka Sadraei for advice on this matter.

<sup>15</sup> His determination in this was made evident from the outset of his pontificate when he stated the desire to complete the investigations begun by his predecessors into the Order's activity in the region. See *VMPL*, no. 218.

Indeed, if his fiscal policy were to provide the only indication of his understanding of Poland as a 'national kingdom', it would seem that John remained fairly unmoved by the notion. He was, at least, unwilling for it to compromise a healthy balance sheet in the papal *camera*. While his dealings with rulers in the region regarding Peter's Pence depended on an understanding of traditional payments being made from people inhabiting the old *regnum Poloniae* – a tradition that was integral to Archbishop Świnka's assertions of Polish national independence<sup>16</sup> – it was not an understanding that depended for its validity on the idea of a single native ruler.<sup>17</sup> As has been demonstrated, John was happy, and indeed probably preferred, to make census payment agreements with any willing ruler, this being the most reliable method of ensuring that money reached the papal coffers.

As a result of this, the utility of Peter's Pence for Łokietek's proponents declined, despite remaining, for later Polish spokesmen and particularly the Polish clergy, a pertinent means of expressing a sense of nationhood. John's reluctance to take on the role of Poland's overlord, acknowledging Łokietek's authority as originating from a combination of election and divine grace rather than from any papal sanction,<sup>18</sup> also corresponded to a shift in expressions of Polish regnal unity. But this shift was one which was still informed by a conceptual language relating to political authority associated with the Curia. It was through a regional political

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<sup>16</sup> As was demonstrated in Chapter 1, Świnka associated the payment with the Polish people and the old inhabitants of the Polish kingdom, though he did not use the same language that later emerged from the Curia on this – the 'ancient boundaries' of the kingdom. This evidently arose, as Maschke has argued, at the Curia at the outset of John XXII's pontificate.

<sup>17</sup> Nor indeed, was Peter's Pence something regarding which John followed Świnka by associating its payment exclusively with the Polish people: in a papal letter of June 1325 John spoke of 'nationes' who had paid the census in accordance with the ancient custom of the kingdom. This did not, of course, jar with the later assertions of Łokietek's spokesmen, after Świnka's death. *UB Bisthums Culm*, no. 211, pp. 148-9; *VMPL*, no. 328.

<sup>18</sup> *VMPL*, no. 272.

discourse in which secular authority was legitimised first and foremost in terms of the spiritual welfare of subjects that Łokietek's spokesmen came to express his supreme authority within Poland and independence within the region.<sup>19</sup> This was the much less 'ethnocentric' guise that slightly earlier expressions of Polish nationhood had assumed. It was one to which John XXII proved responsive in so far as he was willing to consent to Polish crusading proposals. Though delayed in doing so on account of wider political considerations, when in July 1325 he finally replied to Łokietek's request for a crusading grant two years after it was made on the death of the Ruthenian princes, John offered indulgences to all faithful Christians within Poland who defended the Roman Catholic faith, either through war or by defending the kingdom.<sup>20</sup> Even when unable to fulfil Łokietek's requests, John showed sensitivity towards the association favoured by Polish spokesmen between the kingdom's unity and defence, and its crusading role in the region. In 1330, John was unable to provide the Polish ruler with the crusading tenth for which he had petitioned. Instead, he suggested that celebrations on the feast day of St Stanislaus be organised in Cracow, where those desiring indulgences give two gold coins to a collection with which Łokietek could then finance his enterprise.<sup>21</sup> Until this point, Łokietek's personal interest in Stanislaus' cult had been minimal.<sup>22</sup> The suggestion demonstrates, rather, a strong understanding between the pontiff and Łokietek's clerical spokesmen regarding expressions of Polish unity and nationhood. John's suggestion directly identified Łokietek's proposed crusading efforts with the symbol of Polish national unity: St Stanislaus.

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<sup>19</sup> As has been argued in Chapter 1, this feature in Gerward's representations for Łokietek's coronation as well as in the 1320 process. *VMPL*, no. 226, and *Lites*, *passim*.

<sup>20</sup> *VMPL*, nos. 316, 334, 337. For Łokietek's initial request see *MPV*, vol. 1, no. 83.

<sup>21</sup> *Joannis Długossii Senioris Canonici Cracoviensis Opera Omnia*, ed. A. Przezdziecki, 14 vols. (Cracow, 1863-87), vol. 12, pp. 137-8.

<sup>22</sup> This has been observed by Agnieszka Sadraei in her current research on Piast involvement in St Stanislaus patronage. I am grateful to Agnieszka for discussion and advice on this matter.

The papacy therefore provided a response to Polish appeals which complemented the changing expressions of Polish national unity and independence. Evidently, this was not always done intentionally, and was only done with any conviction when it suited papal policy. Indeed, John's understanding of Peter's Pence and papal overlordship may in part explain the declining utility of these notions for Polish spokesmen during Łokietek's reign.<sup>23</sup> In some ways the pope's response therefore shaped the way in which the idea of a Polish kingdom, governed by a native ruler, was expressed. But what is clear above all is that, by responding positively (however unintentionally) to these developing expressions, in which political authority was understood in terms of peoples, their spiritual welfare, and the welfare of Christendom, John helped ensure that these ideas continued to inform articulations of Polish nationhood and sovereignty.

## Scotland

It cannot be disputed that the pope's intervention in the Anglo-Scottish dispute favoured the English crown with friendship and sensitivity.<sup>24</sup> England was a powerful and lucrative ally not to be shunned. Indeed, on several occasions support for the English crown was offered in the hope of immediate financial return. In 1318, when John made available his help and counsel in repressing rebellion in England and Scotland, this was in conjunction with an exhortation that Edward would allow William de Baleato, the papal legate, to collect various outstanding papal dues in England. Again, in 1319, Edward was told to make 'due and prompt satisfaction' of these outstanding debts, which the kings' officials had been so

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<sup>23</sup> Though I would not argue that John's attitude *entirely* explains the shift in Polish diplomatic practices. See Chapter 1.

<sup>24</sup> For John's response to the Anglo-Scottish dispute see my article, 'The Pope, the Scots, and their "Self-Styled" King: John XXII's Anglo-Scottish Policy, 1316-1334', in King and Penman (eds), *England and Scotland*, pp. 157-71. Cf. Menache, 'Failure', *passim*.

instrumental in obstructing, and John reminded the king in the same letter of the appointment of Eggescliffe, as requested, to the see of Glasgow.<sup>25</sup> The letter leaves little doubt that John may have seen the matter of Scotland as a useful tool for exacting much-needed revenue from England. His reluctance to alienate English interests is perhaps evident in the chronology of his dealings with Bruce: his decisions to address the Scottish king with the royal title, and then finally to absolve him in 1329 and confer the privileges of crowning and unction, were made only after Anglo-Scottish truces had been concluded, according to which the English crown agreed not to hinder Scottish appeals to Rome.<sup>26</sup>

John occasionally sought English opinion directly on his dealings with the Scots. When considering whether or not to address Bruce as king in 1317, the pope commissioned Cardinals Gaucelin and Luke to invite Edward II's opinion on the matter. Having received no indication of the king's stance by October,<sup>27</sup> John wrote to Edward, begging him not to take offence at his decision to use the royal title in writing to Bruce, explaining that, in accordance with a constitution of Clement V, his so doing would not confer or approve it.<sup>28</sup> When receiving the earl of Moray in 1323-4, he was quick to assure Edward that no support would be given to any of the earl's proposals that might be 'to the prejudice of his realm'.<sup>29</sup> And in response to the suggestion then put forward that Bruce might himself visit the Curia

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<sup>25</sup> *CPL*, vol. 2, p. 426.

<sup>26</sup> A copy of the truce was sent to the Curia: *Foedera*, II, i, p. 542; *ibid.*, II ii, p. 730. See also the wording of the negotiations for the Treaty of Edinburgh/Northampton, in which it was agreed that the king of England, 'in order to [aid the Scots' appeal]..., and to bring it about ... will send a private letter of request to the pope and to the cardinals'. *ASR*, no. 41, pp. 161-70 (at p. 168); Stones, 'An Addition to the "Rotuli Scotiae"', *SHR*, 29 (1950), p. 39. Letters were duly sent, paving the way for the successful Scottish legation in the following year. *Foedera*, II, i, pp. 739-40.

<sup>27</sup> *CPL*, vol. 2, p. 418.

<sup>28</sup> *Ibid.*, pp. 418, 432, 457.

<sup>29</sup> *Foedera*, II, i, p. 541; *CPL*, vol. 2, p. 461; cf. *Foedera*, II, i, p. 542.

with the king of France, Moray was told that until peace was made with the king of England it would not be fitting or expedient to receive them.

One historian has suggested that something more profound than simple *Realpolitik* might have accounted for John's apparent partiality. In drawing a parallel with his approach to the dispute between the French crown and the county of Flanders, Sophia Menache has maintained that in both instances he demonstrated a 'deep commitment to advance royal interests against separatist movements'.<sup>30</sup> This was made evident not least, she argues, in his use of Holy Land rhetoric as a means by which to condemn the 'rebels' and bring them to order; a rhetoric which, as we have seen, was a salient component in Scottish articulations of sovereignty. John denounced the actions of the Flemish as a direct hindrance to the recovery of the Holy Land – an enterprise to which the king of France had demonstrated a clear commitment.<sup>31</sup> While John refrained from explicitly declaring the king's military efforts in Flanders to be a crusade, he nevertheless granted a four-year tenth to aid the king in his efforts. A similar argument featured prominently in papal correspondence relating to the Anglo-Scottish dispute: fighting between the two kingdoms was denounced as hindering an English expedition to the Holy Land, Edward's apparent enthusiasm for which had been communicated to the pontiff.<sup>32</sup> There was never any suggestion from papal quarters that Bruce might demonstrate a similar enthusiasm.

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<sup>30</sup> *Ibid.*, p. 434.

<sup>31</sup> N. Housley, *The Avignon Papacy and the Crusades 1305-1378* (Oxford, 1986), pp. 109-110. See also J. R. Strayer, 'France: the Holy Land, the Chosen People, and the Most Christian King', in T. K. Rabb and J.E. Seigel (eds.), *Action and Conviction in Early Modern Europe* (Princeton, 1969), pp. 3-16.

<sup>32</sup> *CPL*, vol. 2, pp. 423-439.



Yet Menache's analysis suggests that John supported the idea of English overlordship. This would certainly seem to be substantiated by his early correspondence, in which Bruce and his adherents are denoted as 'rebels'. One letter in particular (which Menache in fact fails to mention) indicates such an attitude. This letter was composed in October 1317 and addressed to the two cardinals, and sets out how John himself had managed to bring about peace between the rival claimants to the kingdom of Sicily – the Angevin kings of Naples and the royal house of Catalonia-Aragon, under which the citizens of Sicily had placed themselves in the 1280s.<sup>33</sup> John's support for the Angevins was unstinting, reflecting his association with the Neapolitan court. All papal correspondence during his pontificate faithfully employed the titles agreed to in the Treaty of Caltabellotta (1302), by which only the Angevins could be addressed as 'king of Sicily', the Catalonians being left with the fictional kingdom of 'Trinacria'.<sup>34</sup> John's efforts to establish a lasting peace there were considerable, but ultimately unsuccessful, with the Sicilians being put under interdict. Although his peace proposals included the suggestion that the island be split and ruled only in the eastern (albeit more stable) half by the Angevins, his partiality for the Angevin claims was unceasing, and informed an energetic appointment campaign, filling ecclesiastical benefices with pro-Angevin (and usually absentee) incumbents whenever the opportunity arose.<sup>35</sup> If we were to transpose this into papal Anglo-Scottish policy, we could reasonably conclude that John was suggesting to the cardinals some sort of territorial compromise between Bruce and the English crown, but that in legal terms he perceived Bruce's claim to the throne of Scotland as entirely unlawful.<sup>36</sup> (Indeed, the analogy may be extended so far as

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<sup>33</sup> *Ibid.*, p. 419. For an overview of Sicilian history in this period see Clifford R. Backman, *The Decline and Fall of Medieval Sicily* (Cambridge, 1995), *passim*.

<sup>34</sup> For this see Backman, *Medieval Sicily*, pp. 3-4.

<sup>35</sup> *Ibid.*, pp. 211-12.

<sup>36</sup> There is no other evidence to suggest, however, that the Cardinals proceeded with this suggestion.

to observe that the failure of Bruce and his allies to keep the peace of 1317 resulted in the kingdom being placed under interdict, the same punishment endured by the citizens of Sicily.)

However, John's early denunciation of Bruce and his associates as rebels must be qualified. In making war against the English crown, Bruce, along with many of his prominent supporters, was breaking an oath of fealty he had taken to Edward I before assuming the royal title in 1306.<sup>37</sup> To condemn such oath-breaking was of course a central remit of papal authority. Perhaps most interestingly, despite Bruce's rebellion, John never made any explicit suggestion that the oath had signified the subjection of Scotland. John's early interest in the dispute does not necessarily indicate undue partisanship. This is clear in the reported papal response to the English embassy early in 1317: the ambassadors lobbied 'for sentence of excommunication to be promulgated against Robert Bruce and all his supporters, and for the land of the Scots to be put under interdict, until the same Robert should make good the wrongs committed by him against the King of England, and should utterly give up the kingdom of Scotland, which he is known to have seized wrongfully'. Far from assenting to this, John decreed that the kingdom of Scotland was not to be put under an interdict until the rights of the parties had been ascertained.<sup>38</sup> John's subsequent condemnation of Bruce and the imposition of ecclesiastical censures were entirely usual responses to the belligerent actions of Bruce and his adherents. Bruce had famously refused to read the papal letters addressed to him without the royal title, entrusted to the cardinals sent to negotiate a truce, and then flouted the truce in 1318 by seizing Berwick.<sup>39</sup> While the denunciation of these

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<sup>37</sup> e.g. *VMHS*, no. 408.

<sup>38</sup> *Vita Edwardi*, pp. 78-9.

<sup>39</sup> Barrow, *Bruce*, pp. 321-2.

actions may have been phrased in similar terms to the warnings given to the Flemish, it was not a direct condemnation of the Scottish claim to independence from English overlordship. Nor was the Holy Land rhetoric being used simply to veil support for the English – Bruce and his supporters had demonstrated their clear defiance of papal authority themselves.

Of course, there was a clear disparity in emphasis put on the crusading ambitions of the two parties when they were urged by the pontiff to make peace: the suggestion that the crusade would be advanced if peace were brought about was only ever made in reference to Edward, who had in fact declared his intention of assisting the Holy Land in 1317.<sup>40</sup> Thus, in the summer of 1320, John urged Edward to make peace with Scotland, ‘so that not only may he be free from the cost and calamity of war, but also may be able to come to the assistance of the Holy Land’.<sup>41</sup> There was never any suggestion by the pontiff that Bruce might be willing to take the cross. But John’s use of this rhetoric appears far from an abuse of authority, for it lasted only as long as he was assured of Edward’s sincerity in fulfilling his expressed intention.<sup>42</sup> Moreover, the rhetoric was used by John not so much to condemn the behaviour of the Scots, as to exhort *both* sides to make peace.<sup>43</sup>

Throughout his pontificate, and particularly from around 1320, John proved reluctant to make any formal pronouncement on the constitutional complexities of the dispute.<sup>44</sup> It

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<sup>40</sup> *CPL*, vol. 2, p. 423.

<sup>41</sup> *VMHS*, no. 430; *CPL*, vol. 2, p. 427.

<sup>42</sup> It might be observed that there were comparable assumptions about the crusading commitment of the two crowns in papal letters dating from the early 1330s, but this may have simply reflected that fact that King David was still an infant and therefore unable to undertake any such enterprise. VA, RV 117, ff. 117-117v.

<sup>43</sup> e.g. *VMHS*, no. 209.

<sup>44</sup> John’s disassociation from the issue of the constitutional relationship between the two kingdoms seems at odds with the terms on which he was invited to judge the dispute, and for which he agreed to send nuncios,

appears that, by the 1320s, the making of peace signalled the extent of John's interest in the matter – a stance evident in his responses to the series of English petitions presented by John Stratford in 1323.<sup>45</sup> The first of the petitions urged the pope to persist in the process against the Scots. The pope replied that he had entrusted the process to two cardinals, who were in receipt of all the necessary material to inform their judgement. Stratford presented the pontiff with a copy of the recently-concluded Thirteen Year truce, which John confirmed. But he then informed the bishop that he would no longer be concerned with the Anglo-Scottish 'business', or willing to proceed with the case against the Scots, since the principal purpose of his office was simply to make peace.

Menache has suggested that such caution reflected John's perception of Edward II's 'helplessness' as a monarch, declaring that 'the papal alliance with the kings of England was conditional upon the kings' ability to strengthen the royal position in the realm'.<sup>46</sup> John supposedly proved more favourable to Edward III, and abandoned the Scots once again after the removal of Isabella and Mortimer: hence the author of the *Annales Paulini* was able with great satisfaction to report on how the Scots' legation of 1333 returned from the Curia 'empty-handed'.<sup>47</sup> While John undoubtedly showed considerable regard for the young king,<sup>48</sup> he continued to adopt a tentative approach until the end of his pontificate, and the events of the 1330s in fact demonstrate the extent to which his stance transcended the influence of personal bonds. When Edward decided to flout the 'shameful peace' and sponsor the ambitions of Edward Balliol in opposition to the young King David, John was unresponsive,

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as described in the *Vita Edwardi Secundi*, as cited in note 38. His stance was also notably at odds with the approach taken by Boniface VIII.

<sup>45</sup> *Foedera*, II, i, p. 542.

<sup>46</sup> Menache, 'Failure', p. 430.

<sup>47</sup> *Ibid.*, pp. 433-4.

<sup>48</sup> See C.G. Crump. 'The Arrest of Roger Mortimer and Queen Isabel', *EHR*, 26 (1911), pp. 331-2.

merely exhorting both Edward and David to ensure that neither they nor their adherents did anything to break this peace.<sup>49</sup>

For the remainder of his pontificate the name Balliol does not feature at all in papal letters, despite John having been informed by the English king in 1332 of Balliol's coronation as king of Scotland.<sup>50</sup> In the summer of 1333 Edward III sent two envoys to the Curia entrusted with various petitions. In September John replied that he was prepared to give a favourable answer to these, although, with regard to the petition 'touching the realm of Scotland', he had been unable to bring it forward in consistory, due to there being too much other business and too little time for the preaching of the crusade.<sup>51</sup> It is possible that the petition in question was related to the St. Andrew's appointment,<sup>52</sup> for which Edward had put forward a candidate whom he urged the pope to confirm in recognition of the traditional rights of the English crown to make such appointments in Scotland. Whether or not John would have been willing to give a favourable answer to this is uncertain, but in any case the petition appears to have been evaded until the pope's death in 1334. So although Menache recounts the crowing of an English chronicler at the supposedly 'failed' Scottish legation to the Curia in 1333, English attempts rarely fared much better.

John's immediate response to the Declaration must be understood in this context. In replying to the letter, the pope chose not to engage with any of the ideas for which it has later become famed.<sup>53</sup> When John subsequently wrote to Edward II, he infused his

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<sup>49</sup> *CPL*, vol. 2, p. 510.

<sup>50</sup> *Foedera*, II, ii, p. 849.

<sup>51</sup> *CPL*, vol. 2, p. 512.

<sup>52</sup> *Foedera*, II, ii, pp. 866-7.

<sup>53</sup> *VMHS*, p. 212.

correspondence with examples of the Scottish eloquence. But the excerpts he chose were only those relating to the suffering and depredation caused by war that hindered the fight against the enemies of Christendom.<sup>54</sup> Nothing was mentioned regarding Bruce's legitimacy, and nothing decreed regarding English supremacy.

Nevertheless, 1320 appears to mark the point at which papal language regarding Scotland became consistently impartial. Bruce and his adherents are no longer described as 'rebels' of the English king, while papal communication maintained a safe distance from any committed judgements on the dispute – a distance which complemented the Scots' own agenda. That the Declaration's words may have frightened the pontiff into his subsequent impartiality, as Menache maintains, is possible. But whatever the cause, his understanding of the Scottish claims seems to have informed a stance which did not prejudice the claims of either disputant – something which has not been sufficiently recognised hitherto. The resultant language deployed in papal correspondence, as well as the privileges of crowning and unction, provided something with which the Scots might at least work, allowing the Curia to remain a useful forum for their ideas.

Importantly, whatever role he chose to play in the dispute, John was never prepared to recognise English claims to overlordship, even implicitly. Most significantly perhaps, in none of his extant letters can there be found reference to Scotland constituting a 'land' of the English king. This is in clear contrast to those letters being sent *to* the Curia from the

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<sup>54</sup> *Declaration*: '...corporum excidia, animarum excitia, et cetera que sequentur incomoda...', in Fergusson, *Declaration*, pp. 95-6; papal letter: '...animarum exitia, excidia corporum, vastitates rerum, et alia...', *Foedera*, II, i, pp. 431-2.

English chancery, in which the realm was almost always referred to as *terra nostra*.<sup>55</sup> Scotland was viewed by the pontiff as a kingdom, not a 'subregnum', nor a land of the English king. By the 1320s the dispute was being described in papal correspondence as a conflict between two 'peoples',<sup>56</sup> or two 'kingdoms'.<sup>57</sup> While some letters still betrayed a belief that the violence against England was an enterprise of Bruce and his supporters,<sup>58</sup> there also appears to have been an awareness in the papal Chancery that Scotland constituted a coherent polity, an independent realm inhabited by a specific people, and headed by one ruler, be he excommunicate or not. Indeed, it is surely significant that, when urging the pope not to use the royal title when addressing Bruce in 1324, Edward II felt the need to remind John of England's claims to overlordship.<sup>59</sup>

It should also be noted that the papal chancery was not as stringent in its observation of the interdict on Scotland as it might have been. In June 1320, despite being excommunicate, Bishop Lamberton was commissioned to suspend a canon of Dryburgh, and in 1321 the similarly censured bishop of Aberdeen was given a mandate to grant a marriage dispensation.<sup>60</sup> The four bishops had been cited to the Curia in 1319 for failing to observe the interdict and continuing to perform mass and marriage ceremonies. And yet a comparable accusation could have been levelled at the Curia in the 1320s, in the matter of

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<sup>55</sup> *Foedera*, II, i, pp. 337, 372, 428, 443-4, 454; Stratford petitions; there are three exceptions to this: *VMHS*, nos. 408 and 481, and *Jean XXII, 1316-34: Lettres Communes analysées d'après les registres dit d'Avignon et du Vatican*, ed. G. Mollat et al. (Paris, 1904-33), no. 45,668.

<sup>56</sup> In this instance, a practice which in fact reflects English Chancery usage. *Jean XXII. Lettres Communes*, nos. 9,424, 9,426, 10,387; *Foedera*, II, i, p. 541.

<sup>57</sup> *Jean XXII. Lettres Communes*, nos. 5,155, 5,160, 5,167, 5,174, 5,175, 5,184, 5,321, 5,324, 10,674, 10,675, 10,801, 10,802, 40,617; *VMHS*, no. 421; *Foedera*, II, i, pp. 327-8.

<sup>58</sup> *VMHS*, no. 428.

<sup>59</sup> *Foedera*, II, i, p. 549.

<sup>60</sup> *CPL*, vol. 2, pp. 201, 217.

episcopal appointments.<sup>61</sup> Episcopal appointments in areas under interdict were not forbidden.<sup>62</sup> But it is nonetheless notable that there is no mention of the interdict in any of the letters of appointment, which follow the usual formula: the new appointees were ordered to go and reside in their sees, and to govern them correctly, without mention of any limitations on this authority.<sup>63</sup>

John was certainly not interested in recognising English claims to overlordship as far as they pertained to the Scottish church, and this again marks a notable point of departure from his policy towards Sicily. In 1318, at the request of Edward II, the pope appointed one of the king's penitentiary friars, John Eggescliffe, to the see of Glasgow, overriding the claims of two Scottish candidates.<sup>64</sup> But the favour appears to have been granted in association with financial negotiations concerning the payment of Peter's Pence, and therefore can hardly be taken to indicate a commitment to upholding English rights in Scotland.<sup>65</sup> In any case, this was as far as he ever allowed Edward to dictate the fate of Scottish benefices. In the same year Edward petitioned the pope that William Lamberton be replaced by Thomas Rivers as the bishop of St. Andrews, maintaining, falsely, that Clement V had agreed to the proposal.<sup>66</sup> John replied that he was unable to do this, and, having ordered a careful search, had found

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<sup>61</sup> In September 1325, for instance, Andrew Moravia and Christina Seton 'of the diocese of Glasgow' were given a dispensation to marry – not because they were inhabitants of a kingdom under interdict, but because of consanguinity; *CPL*, vol. 2, p. 246; NAS, RH2/6/1-6: Transcripts from the Vatican: Dispensations, 1290-1418, no. 10. Nevertheless, other dispensations in the 1320s were made in view of the interdict. For examples of these, see *ibid.*

<sup>62</sup> I am grateful to Dr Peter Clarke for advice on this matter. Nor is it surprising, from a financial standpoint, that they were made: while in theory the papal camera might have claimed revenues from the vacant sees, it was probably aware that the collection of these would be difficult, if not impossible – Scotland's record of making payments to Avignon was poor: in 1329 the agreement that Scotland would pay Peter's Pence included a clause to pay all arrears on the papal tenth. Crawford, 'Peters Pence', p. 16.

<sup>63</sup> See, for instance, *VMHS*, nos. 441, 448, 460.

<sup>64</sup> *CPL*, vol. 2, pp. 173, 426. Eggescliffe was unable to reside in his see and had to be transferred.

<sup>65</sup> VA, RV 110, f.100.

<sup>66</sup> *Foedera*, II, i, pp. 363-4.



no evidence for Clement's stance on the matter.<sup>67</sup> John's position was further made evident in his response to the petitions presented by Stratford. One of these requested, supposedly in accordance with custom, that the English king be written to for the release of temporalities to all new bishops appointed in Scotland. No such notification had been given when appointing Maurice to the bishopric of Dunblane in 1322,<sup>68</sup> and although the pope in fact initially endorsed the petition, promising to write to the king regarding any future appointments,<sup>69</sup> he failed to honour his word: in the provision of John Pilmour to Moray in 1326, concurrent letters do not appear to have been sent to the English king informing him of the appointment.<sup>70</sup>

It is certainly noteworthy that, for the duration of the 1320s, every bishop appointed to Scottish see could be deemed an ally of Bruce.<sup>71</sup> The most notable of these perhaps was Maurice, appointed to Dunblane in 1322, and remembered for his pre-battle encouragement at Bannockburn as abbot of Inchaffrey.<sup>72</sup> His election to the see, probably in 1318, was contested, and so, along with the other candidate Roger de Balnebrich, he proceeded to Avignon. Since his confirmation did not occur until several years later, it may be presumed that the litigation was lengthy. Dowden has ascribed its protracted character to John's sympathies lying with the English king: Edward II had made efforts to secure his own candidate, Richard Pontefract, and this was seemingly done in propitious circumstances, since the letter may well have arrived in the summer of 1320, just prior to the Declaration,

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<sup>67</sup> *Ibid.*, i, p. 374.

<sup>68</sup> *VMHS*, no. 441.

<sup>69</sup> *Foedera*, II, i, p. 542.

<sup>70</sup> *VMHS*, no. 460. None of the relevant information survives to discuss the other two appointments to Scottish sees after 1324 in this respect – Roger (?de Ballinbreich) to Ross and Bernard de Linton to Sodor.

<sup>71</sup> Barrow, *Bruce*, p. 376.

<sup>72</sup> See John Dowden, *The Bishops of Scotland* (Glasgow, 1912), p. 202.

and long after the deadline for the Scottish prelates' summonses had elapsed.<sup>73</sup> And yet, ultimately, it was a famed ally of Bruce whom John chose to confirm in his election, despite Edward II's efforts.<sup>74</sup> Nor do the appointments of Scottish clerics appear to have been made grudgingly. In Bishop Maurice of Dunblane, John possessed an invaluable link with the Scottish kingdom, granting him the power to appoint two notaries in 1322,<sup>75</sup> and in the same year commissioning him to excommunicate afresh the four recalcitrant bishops of his national church. In 1324, it was to this same bishop that John turned when attempting to negotiate the release of John, earl of Richmond, and Henry, lord of Sully, who had been captured by the Scots at Byland.<sup>76</sup>

In keeping with his approach to the dispute more generally, John never responded directly to the notion that the *ecclesia Scoticana* enjoyed the privileged position of a 'special daughter' of the Holy See. He would certainly have been aware of the claim: Clement V had made explicit reference to it when appointing bishops, and John had been reminded of it at least twice in 1320.<sup>77</sup> Nevertheless his actual dealings with the Scottish church did nothing to contradict its independent status, by which proponents of Scottish sovereignty set so much store. In his responses to the negotiations with Scottish envoys in 1328 – negotiations about which we know relatively little – John likewise provided the Scots with an armoury of privileges, phrased in terms that complemented Scottish claims to freedom previously aired at the Curia. In confirming the status of Scotland as a kingdom by granting the privilege of coronation to Bruce and his successors, John employed a language that buttressed many of

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<sup>73</sup> *Foedera*, II, i, p. 428.

<sup>74</sup> Similarly, as Barrow points out, Egglecliffe's successor had been Bruce's initial candidate for the see of Glasgow in 1317. Barrow, *Bruce*, p. 373.

<sup>75</sup> NA, PRO 31/9/61.

<sup>76</sup> *CPL*, vol. 2, p. 450.

<sup>77</sup> It is hinted at in the Declaration and Bruce evidently mentioned it in his accompanying letter to the Curia, judging from the contents of the reply: *VMHS*, no. 431.

the ideas deployed in the Declaration. The grant opened with the statement that every king is made and every prince created by God, to conquer ills with the temporal sword and to honour good; to dispense justice to the peoples within their lands and to preserve the peace. In this they have been supported since ancient times by the unction received from priests (John is here citing the example of Saul).<sup>78</sup> From ancient times too the kings of Scotland have likewise received the royal dignity from the bishop of St. Andrews. The addition of crowning and unction to the inauguration ceremony presumably confirmed the legality of this tradition.

The purpose of unction, as related in this grant, is of interest, particularly when compared with John's response to Edward II's bid for unction using the Becket oil in 1318. Notwithstanding the difficult domestic circumstances facing Edward at the time and his evident desire for a show of papal support, John refused any special counsel on the matter, and suggested that, if undertaken, it should be done privately.<sup>79</sup> John used the grant to reiterate and elaborate the notion that the Scots were an ancient people, ruled over by a king, akin to those of the Old Testament to whom the sovereignty of Christian rulers had been repeatedly likened by thirteenth- and early fourteenth-century canonists and political theorists.<sup>80</sup> In all probability the Scottish envoys had a hand in drafting the grant. But it nevertheless demonstrates the Curia's willingness to respond, beyond the bare minimum, to a conception of sovereignty articulated by the Scots.

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<sup>78</sup> *VMHS*, no. 480.

<sup>79</sup> *CPL*, vol. 2, p. 437; F. Kern, *Kingship and Law in the Middle Ages* (tr. S B. Chrimes: Oxford, 1948), p. 55; see also Legg, *English Coronation Records*, p. 72.

<sup>80</sup> See Introduction, above.

John's reference to Saul is also interesting. For Innocent IV the election of Saul had illustrated the natural political rights of all peoples, whether Christian or not.<sup>81</sup> The authority of a nation to elect its own king (as opposed to the appointment of an emperor, which was reserved to the pontiff) had also been pronounced by Innocent III.<sup>82</sup> But for papal hierocrats, the anointing of Saul testified to the superiority of priest over king.<sup>83</sup> It seems to be with this latter meaning that John intended the analogy. It is possible that he saw it as an opportunity to reiterate an argument pertinent to his dispute with another lay ruler, Ludwig of Bavaria. What is important however, is that Bruce's envoys were not averse to this meaning: evidently the fact that the pope was recognising the antiquity of the Scottish kingdom was of greater importance to them. Coupled with his reluctance to make any definitive pronouncement on the Anglo-Scottish dispute, John's response therefore did nothing to lessen the relevance of the Curia as a forum in which notions of national sovereignty might be shaped.

Sophia Menache might be right in her suggestion that the Scots in the later 1320s sought assistance from the French court in negotiating peace on account of some frustration at the pope's ineffectuality in the matter.<sup>84</sup> But this did not result in any attempt to exclude the pontiff from discussions in which Scotland's sovereignty was recognised. Every effort in fact seems to have been made by the Scots to keep the pontiff informed of such discussions. That efforts were made to involve the pope in negotiations with France is suggested by Thomas Randolph's presence at the Curia at around the time of the Franco-Scottish

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<sup>81</sup> Muldoon, 'Remonstrance', p. 318.

<sup>82</sup> For this see Muldoon, '*Extra ecclesiam*', p. 566.

<sup>83</sup> See above, p. 120.

<sup>84</sup> Menache, 'Failure', p. 433.

discussions.<sup>85</sup> An examination of the negotiations for the treaty of Edinburgh undertaken by Professor Duncan perhaps serves to reinforce this.<sup>86</sup> The clause relating to the payment of £20,000 in return for the surrender of English claims to overlordship was recorded by Scottish notaries in Latin, rather than French, and submitted to papal authority. This is in notable contrast to the English record of the negotiations, and in which there is no suggestion of any papal authority.

## Ireland

The papacy's dealings with political matters concerning the Irish nation were comparably hesitant. That the matter of Irish independence from English overlordship featured only very temporarily among the Pope's concerns can be explained by the fact that the circumstances giving rise to the Remonstrance were only temporary themselves.<sup>87</sup> Much more tenacious was the related matter of the divided Church in Ireland, with which the grievances of the Remonstrance were closely associated, and which mirrored some of the complex political divisions of the colony. On the matter of Church reform the pontiff had more involvement, from which it is possible to supplement our understanding of his outlook on Ireland's political status. Muldoon has characterised the papacy's response to the Remonstrance as inevitably minimal, prioritising the interests of English lordship in Ireland, and therefore unable to respond to the canonistic arguments so adeptly deployed by the Irish spokesmen. Indeed, Muldoon notes how there was little room for such arguments in

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<sup>85</sup> *RRS*, vol. 5, p. 154.

<sup>86</sup> *Ibid.*, no. 345 and p. 159.

<sup>87</sup> It seems almost certain that the Remonstrance itself was never accompanied by any spokesmen charged with its representation at the Curia.

practical papal policy.<sup>88</sup> While this may largely be true, John's response does suggest an awareness of the canonistic arguments, as well as the more general sentiments, presented in the Remonstrance. Moreover, his response to the various claims of heresy and wrong-doing emanating from both sides was sufficiently guarded to not prejudice either the claims of the English crown or the liberty of the Irish people.

John's general approach towards Ireland – his response to matters of Church administration there as well as political matters – was supportive of the continuation of English lordship and sought above all to make the *status quo* work.<sup>89</sup> He recognised the homage and fealty owed by the Irish people to the English crown,<sup>90</sup> congratulating the king on his victory in Ireland in 1318,<sup>91</sup> and in taking this approach he followed his predecessors since the time of Adrian IV.<sup>92</sup> His early correspondence reveals that he was certainly swayed by the English view that the trouble in Ireland was the doing of 'dissident' clergy stirring up rebellion in an otherwise peaceful lordship.<sup>93</sup> When he wrote to the archbishops of Cashel and Dublin in April 1317, he echoed a letter sent by Edward earlier in the year relaying the role of certain clerics in the Bruce invasion.<sup>94</sup> It was the activities of the mendicant orders in particular which provoked papal condemnation in response to accusations which, while conveniently

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<sup>88</sup> Muldoon, 'Remonstrance', p. 325.

<sup>89</sup> John's approach to Ireland has been given thorough examination by Watt in his article 'Negotiations', *op cit.*

<sup>90</sup> See, for example, *VMHS*, no. 411.

<sup>91</sup> *CPL*, vol. 2, p. 422; *VA*, *RV* 109, f. 230.

<sup>92</sup> The outlook of Innocent III may be considered an exception to this since, both before and after the submission of King John in 1213, he addressed native Irish rulers as kings and recognised their responsibilities as such towards the Church. For this see P. J. Dunning's three articles: 'The Letters of Innocent III to Ireland', *Traditio*, 18 (1962), pp. 229-53; 'Pope Innocent III and the Irish kings', *Journal of Ecclesiastical History*, 8 (1957), pp. 17-32; and 'The Letters of Innocent III as a source for Irish history', *Irish Catholic Historical Committee Proceedings* (Dublin, 1959), pp. 1-10.

<sup>93</sup> The role of dissident clergy in the Bruce invasion was relayed to John by Edward in March 1317. See Watt, 'Negotiations', p. 1.

<sup>94</sup> *VMHS*, no. 411; *VA*, *RV* 63, f. 393.

reflecting previous problems associated with mendicant houses in Ireland, were no doubt justified.

But the pope's response to the Remonstrance reveals, as much as any sympathy for the English crown, a practical understanding of the realities of the lordship. The name of Edward Bruce cannot be found in any extant papal correspondence; nor was there a direct reply to Ó Neill, only a letter to Edward admonishing him to consider the iniquities suffered by the Irish and warning him of their possible rebellion were nothing done to correct such injustices.<sup>95</sup> John probably knew enough of Irish affairs from communication channels other than the English chancery to know that the Remonstrance did not accurately represent the true political complexities of Ireland. We know, for example, that he was present at the Council of Vienne in 1312, when the *gravamina* of prelates from the church both *inter hibernicos* and *inter anglicos* were presented by a united body of representatives, quite unlike the situation portrayed by the political appeal of only five years later. It is unthinkable that he would have transferred the lordship to Bruce very readily.

John's response in fact tallies quite well with many of the Remonstrance's assumptions about legitimate authority in Ireland according to canonistic thinking. Interestingly, he makes no mention of the 1213 submission when writing to Edward about the Irish grievances. He was evidently keen to distance himself from the notion that Ireland might be considered a papal fief. We have already seen him adopt a similar attitude towards comparable notions in the cases of Poland and Scotland. But it also complemented the Irish appeal, in which the pope's direct authority over Ireland (other than in exceptional circumstances) had been denied by

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<sup>95</sup> *VMHS*, no. 422.

pronouncing *Laudabiliter* illegal. Since the English also saw no reason to mention Ireland's being a papal fief, John was able to absolve himself of anything other than an admonitory role. In this role, John responded to the Irish concerns appropriately. Though he was clearly inclined to maintain the *status quo*, he was also acting in accordance with the canonistic thinking appealed to in the Remonstrance regarding the continuation of lordship. The Remonstrance author, as we have seen, was clearly conscious of canonistic arguments about continued lordship, even if the initial conquest was deemed illegal. Aware of this, it has been argued, the author was keen to emphasise the heresy and barbarity of the English, in order to deny the possibility of their continued lordship in Ireland.<sup>96</sup> It was clearly with this point that John concerned himself. To have accepted the Irish accusations outright and supported Edward Bruce would have been uncharacteristic of the papacy's rather legalistic attitude to such accusations. The most obvious initial response would be to raise the matter with the accused, as he did.

It is also a response that the Remonstrance itself suggests, however disingenuously in view of Bruce's inauguration. The Remonstrance recounted the failed attempts of the Irish to achieve redress themselves. Although its emphasis on heresy and barbarity were intended to dissuade the pontiff from backing a continuation of English lordship, it nevertheless implies at least that, instead of recognising Bruce, the pontiff might try where the Irish had failed, by informing the king of these injustices. Indeed, in other ways, the letter provides ample scope for such an interpretation. In particular, the emphasis put on the 'middle nation' as the perpetrators of injustice, while intending to illustrate the inability of the two nations to

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<sup>96</sup> As discussed in Chapter 3, according to Sinibaldo Fieschi, a pope could not revoke conquest once it had occurred, even of an infidel ruler, unless that ruler posed a direct threat to the welfare of the faith of his Christian subjects.



occupy the same territory, relieved the English crown of a least some culpability, and there is even the suggestion that, in theory at least, the king might mediate between the two nations.<sup>97</sup> Essentially, by retaining *Laudabiliter* as a measure of legitimate rule, and focussing on justice *within* Ireland to justify governance, despite also appealing to the illegality of conquest, the letter offered an alternative to recognising Bruce.

When John admonished Edward to address the Irish grievances, he warned that his failure to do so might result in the Irish people transferring its allegiance to another ruler.<sup>98</sup> He does not specify who this ruler might be, but the implicit suggestion is that there would be nothing the pope could do if they did. It may have been mere pragmatism that prompted his stance, but it was one that complemented the Irish appeal by acknowledging their right to transfer their allegiance irrespective of papal temporal lordship. And that it was an acknowledgement of their right, rather than illicit rebellion, is suggested by the fact that he coupled the admonition with a reference to the Irish accounts of their ill-treatment, and therefore the terms in which allegiance might legitimately be transferred. John's primary concern was clearly to assist the English crown in retaining Ireland. As Watt has highlighted, in addition to advice, he offered financial assistance by allowing Edward to retain the Vienne tax, and appointed William FitzJohn, then chancellor of Ireland, to the archbishopric of Cashel.<sup>99</sup> Nevertheless, his response betrays an awareness of the legal arguments mustered in the Remonstrance. Indeed, the pontiff's favour for the continuation of English lordship does not necessarily imply sympathy with the legal grounds for the initial conquest.

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<sup>97</sup> *Scotichronicon*, vol. 6, p. 399.

<sup>98</sup> *VMHS*, no. 422.

<sup>99</sup> Watt, *Two Nations*, pp. 185-6.

Importantly, John was never asked to concur in the notions that the Irish evinced barbarous traits or were in need of moral reform. It was in such terms that Edward II's proposals for church reform in Ireland in the 1320s were phrased. Strikingly reminiscent of the intentions behind *Laudabiliter*, his suggested re-ordering of episcopal boundaries in the colony was intended to bring about 'the reformation of Ireland'.<sup>100</sup> Though the phrase was reiterated (as was custom) in the papal response, John's interest in the proposals did not extend beyond his general administrative reforming tendencies for which his pontificate is now renowned.<sup>101</sup> He certainly showed little sympathy, as Watt has demonstrated, towards the English crown's ambition to populate certain Irish sees 'inter hibernicos' with loyal servants of the king.<sup>102</sup> Indeed, his reluctance to do so may well have been informed by a pastoral concern for the Irish receiving ministry from pastors versed in their own tongue. In 1324, the dean and chapter of Armagh wrote to the pontiff complaining of their non-resident archbishop Roland Jorz, who, among other things, permitted abbots to live in adultery, and petitioning therefore for a replacement. The root of the problem, it was argued by the petitioners, was that Jorz did not possess the Irish language, with which he might have rebuked his flock's indiscretions. It seems likely that John took such concerns seriously, communicating them to Jorz's successor, Stephen Segrave.<sup>103</sup> In 1325, the new archbishop saw fit to assure the pontiff that he had published the sentence of excommunication against Ludwig of Bavaria in

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<sup>100</sup> The phrase is reiterated in a papal response to the proposals. For the proposals and reply see Appendix A in Watt, 'Negotiations', pp. 16-18.

<sup>101</sup> For an overview of this see John E. Weakland, 'Administrative and Fiscal Centralization under Pope John XXII, 1316-1334', *Catholic Historical Review*, 54 (1968), pp. 39-45, 285-310.

<sup>102</sup> The initial proposals were never fully realised, and the elements that were enacted were short-lived and did not serve to favour the crown's agenda. See Watt, 'Negotiations', *passim*.

<sup>103</sup> Segrave had in fact spent some time at Avignon before going to Armagh. *DNB*, vol. 49, pp. 599-600.

the languages of both the English and the Irish people,<sup>104</sup> and in the presence of, among others, 'Donnald, king of Erther', and 'Macmahono, lord of Heriel'.<sup>105</sup>

When the counter-Remonstrance of 1331 appealed to the notion of the Irish as heretic peoples, it seems that John was left similarly unconvinced by the accusations. Certainly, there is evidence to suggest that the pope endeavoured to assist the English crown in dealing with heresy in the lordship. In August 1332, Edward acknowledged a debt of £1,000 from the four-yearly papal tenth and fruits of void benefices, which had been allocated to finance 'the furtherance of the king's business in Ireland'.<sup>106</sup> That the loan may have been connected to John's awareness of heresy in Ireland is suggested by the Dublin annals which record, in April of that year, the heresy of the Irish of Leinster ('Hibernici de Lagencia'), who were responsible for the burning of churches, often with the congregations inside. The annals go on to report that rumours of these acts reached the papal court and a bull was soon to follow, excommunicating all those responsible for the trouble – namely, 'the said Irish of Leinster and their adherents'.<sup>107</sup> The Dublin exchequer records show that the bull was read in Wicklow.<sup>108</sup>

But the assistance offered was to deal with the Irish 'heretics' of Leinster, not the Irish as a whole. It is not possible, therefore, to regard the money received by the king in August as papal sanction for an enterprise akin to that proposed in the counter-Remonstrance. Much more telling of John's understanding of Ireland is his response to Edward III's proposed

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<sup>104</sup> 'in ydiomate Anglicano et Ybernicano populi exponi'. *VMHS*, no. 456.

<sup>105</sup> O Hanlon and MacMahon respectively.

<sup>106</sup> *CPR, 1330-34*, p. 325.

<sup>107</sup> *Chartulary of St Mary's*, vol. 2, pp. 367-7. The connection is also noted by Frame in his *Lordship*, pp. 198-9.

<sup>108</sup> Frame, *Lordship*, p. 199, note 7.

visit to the colony in 1331, in which he advised the king that ‘as there are two sorts of people there’, care should be taken to have impartial governors from both nations (*gentes*).<sup>109</sup> His warning represents not only an attempt to give practical advice (however impractical it may be), but perhaps also an appreciation of the Remonstrance’s portrayal of two distinct and irreconcilable peoples living in the lordship, who can only be governed, as is natural, by those of their own nation. Coupled with the fact that he was reluctant to recognise the premises of *Laudabiliter* (that is, the barbarity of the Irish and recognition of Ireland as a papal fief), his perception of the lordship was quite possibly informed by a greater sympathy for the arguments of the Remonstrance than has hitherto been recognised.

## Lithuania

The pope’s response to Gediminas’ letters shows the extent and limits of the reception of such ideas by the Avignon papacy, revealing its breadth of outlook in terms of the political rights of nations *extra ecclesiam*. John’s interest in Lithuania was guided first and foremost by his wish to see the Lithuanians converted.<sup>110</sup> It was John, rather than Gediminas, who initiated contact in 1317, with the aim of bringing this pagan ruler and his nation into the fold.<sup>111</sup> His priority was again made clear when he wrote to Gediminas in 1324 in response to the two letters sent to the Curia in 1322 and 1323.<sup>112</sup> We may safely assume that the second of these letters resembled the first in its array of concerns – the Order’s aggression,

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<sup>109</sup> VA, RV 116, ff. 42v-43 (at f. 43); *CPL*, vol. 2, p. 500.

<sup>110</sup> See, for example, his concurrence in plans to consolidate Gediminas’ conversion and ensure that of his subjects by sanctioning the construction of new friaries in Prussia and Reval, proposed by the Franciscan Provincial of Saxony. *MPV*, vol. 3, no. 177, p. 235. Cf. Rowell and Mažeika, ‘Zelatores maxima’, pp. 33-63.

<sup>111</sup> *MPV*, vol. 3, no. 139.

<sup>112</sup> For an explanation of the lapse in time before John replied to Gediminas’ letters, see Rowell and Mažeika, ‘Zelatores maxima’, *op cit.*, who stress the influence of John’s broader political concerns on his attitude towards the Lithuanians. While accepting their conclusions, I am also concerned here with his thinking as well as his politics.

Gediminas' desire for peace, and the suggestion that he would welcome papal envoys to effect his conversion. It is only to the last of these that John makes reference in his reply, omitting the rest 'on account of the need for brevity'.<sup>113</sup>

As a canon lawyer he would have understood the legal debates about the rights of infidels, but as pope he faced the challenge of accommodating a much broader array of thinking into his diplomacy. This is most evident perhaps in his letter to the Teutonic Order, informing the Knights of Gediminas' wish to undergo baptism. He insists that, once Gediminas has accepted the faith, they must refrain from causing injury to his people.<sup>114</sup> What is interesting here is that peace appears to be contingent upon the grand duke's conversion. That legitimate political authority in Lithuania depended on its faith is also suggested in a papal letter to the king of France, in which Gediminas is denoted as 'styling himself as king',<sup>115</sup> the suggestion possibly being either that only the pope had the power to grant the royal title, or that a king could not exist *extra ecclesiam*. We know at least that in his initial letter of 1317, John referred to Gediminas as duke, and his subjects as 'people': only later, in his letter of 1324, did he choose to use the royal title in his address.<sup>116</sup>

Such practice only emulated the approach adopted by many of John's predecessors. Innocent IV, as already noted, saw it as incumbent on his office to bestow the royal title on Mindaugas. Several papal grants of the thirteenth century suggested the inherent illegitimacy of Lithuanians, as infidels, possessing land. One such instance was in 1268 when the pope

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<sup>113</sup> *GL*, p. 99; *VMPL*, p. 193.

<sup>114</sup> *GL*, p. 115; *Cod Dip Lith*, p.25. That only conversion can ensure peace is also suggested in his letter of 1324 to Gediminas (*VMPL*, no. 293), and yet, as will be discussed below, John ratified the Treaty of Vilnius before baptism of the Lithuanian ruler was secured. He may have made this suggestion, therefore, as a means of enticing Gediminas into accepting the faith.

<sup>115</sup> *GL*, p. 85.

<sup>116</sup> *Ibid.*, p. 93.

granted to the king of Bohemia any lands which he succeeded in 'rescuing' from the possession of the Lithuanians 'or any other infidels'.<sup>117</sup> Papal policy differed little in the mid-fourteenth century: in 1349 Clement VI assured Gediminas' son, Kestutis, of the protection of his people from Polish aggression, on the condition that he converted.<sup>118</sup>

Nevertheless, there are several interesting features of John's approach to Lithuania which suggest that, for whatever reason, he was responsive to the notion, implied in Gediminas' letters, that Lithuania was a sovereign nation. In direct contrast to Innocent IV's approach seventy years earlier, there was no mention of any coronation. Notwithstanding the description of Gediminas as 'self-styled' already mentioned in his letter to the king of France, John appears to have been willing to accept that Lithuania might be called a kingdom, and Gediminas a king, irrespective of the pope's approval, or even of the faith of either Gediminas or his subjects. His earlier reference in 1317 to the two respectively as 'duke' and 'people' may simply reflect the pope's awareness that, after the sorry fate of Mindaugas, Lithuanian rulers did not attempt to emulate the royal dignity of their western counterparts.<sup>119</sup> Although Mindaugas received coronation at the hands of a papally-appointed bishop, his successors reverted to their traditional inauguration ceremony, composed only, it would seem, of some form of oath-swearing.<sup>120</sup> Therefore despite his evident concern for conversion, John did not perceive the political rights of the kingdom as contingent upon this. Indeed, we might expect him to have used the possibility of coronation as a bargaining counter for baptism, but he did not. This could quite possibly be

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<sup>117</sup> *Das Zeugenverhör*, no. 281, p. 199; *RL*, no. 470; *VMPL*, no. 151.

<sup>118</sup> *VMPL*, pp. 526-7.

<sup>119</sup> Gediminas in particular, however, was intent on adopting western diplomatic practices, such as using a seal, from the outset of his rule. See Rowell, 'A Pagan's Word', p. 151.

<sup>120</sup> For this see Rowell, *Lithuania Ascending*, p. 140.

because he feared alienating Gediminas, who had already demonstrated his penchant for the royal title in his letters. But to explain John's eventual use of the royal title, we would have to couple such fear with the pontiff's appreciation that political rights were not necessarily dependent on faith.

This is borne out by John's attitude towards the peace concluded in 1323. Although his urging of the Knights to observe the peace appeared to be dependent on Gediminas' baptism, he nonetheless ratified the treaty on the same date as the letter in question. Most interestingly, perhaps, he did not revoke the peace once Gediminas' apparent *volte face* had been exposed.<sup>121</sup> This was a treaty, it should be remembered, that arranged for the Order to return various territories and fortifications that it had seized from the infidels.<sup>122</sup> Rowell has attributed John's stance to his fear of alienating any power – pagan or otherwise – during his dispute with Ludwig of Bavaria.<sup>123</sup> This is undoubtedly true, but what is surely of particular interest is that John had to hand the intellectual framework to permit such a policy. He clearly understood that, even in a region where legitimate *dominium* had traditionally been associated with conquest and conversion (and enjoyed by the conquerors and converters), peace agreements, and the recognition of regnal boundaries and sovereign rights, could be observed between Christians and infidels. Indeed, despite his suggestion, in a letter of June

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<sup>121</sup> In the crusading grant sent to Łokietek in 1325, explicit reference to Lithuanians in the list of infidel enemies is conspicuously absent. This might simply mirror the language of the Polish, but it also tallies with the pope's observance of the peace, and that it probably reflects the papal outlook is given force by the fact that the Polish request arrived at the Curia before relations between the two nations were settled. *VMPL*, p. 205.

<sup>122</sup> *GL*, pp. 167-75.

<sup>123</sup> Rowell, 'Pagans, Peace and the Pope', pp. 88-9, 98; and also Rowell and Mažeika, 'Zelatores maxima', *op cit*.

1324, that the Knights observe the peace pending Gediminas' conversion, a letter dated three months later included no such proviso.<sup>124</sup>

The papal response, like Gediminas' approach, therefore betrays an awareness of canonistic thinking concerning the political rights of infidels. John's primary concern was naturally to win Gediminas over to the Catholic faith. To this end, in the manner of various predecessors, and like some of his successors too, John informed this pagan ruler of the political advantages to be had from conversion. But, by notable contrast, he did not equate conversion with coronation, or even the royal title, which Gediminas had already appropriated. John's response, typically, is characterised by wider concerns which conceal the full extent of his opinions on these matters in his capacity as a canon lawyer. But, as with his response to similar appeals, albeit from Catholic communities, his language and attitude, implicitly at least, accommodated the breadth of terms in which communities such as Lithuania might articulate their independence from neighbouring Christian powers. His response in this respect embodies the intellectual possibilities provided to such nations by the Curia.

## Conclusions

John XXII's response to the concerns about nationhood and sovereignty do not therefore provide us with a great deal of tangible or detailed information about his attitude towards such conceptions. His annotations of Aquinas' work indicate that he sympathised with much of its content. There is, however, one important exception to this. In the margin next to Aquinas' suggestion in the *Secunda Secundae*, Q. 12 article 2, which stated that the Church did

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<sup>124</sup> *MPV*, vol. 3, no. 175, pp. 231-3.



not possess the authority to punish infidels who had never received the faith, John wrote, in uncharacteristically large and emphatic script, 'hoc est dubium valde'.<sup>125</sup> It might be deduced from the annotation that his personal opinion on the political rights of infidels at least sat uncomfortably with Sinibaldo Fieschi's. Nevertheless, the evidence regarding Lithuania suggests that, if this was his personal opinion, it remained just that: he was a learned enough canon lawyer to respond to and understand alternative arguments when it was politically expedient to do so. Moreover, we see in his concerns regarding Ireland an unmistakably Thomist understanding of the natural political make-up of Christendom.

The picture that emerges from the above discussion is of a pontiff who, although perhaps not always inclined, as a canon lawyer, to sympathise with the arguments put to him, was sufficiently aware of them to justify a measured and often ineffectual response, which complemented his own political circumstances and did not directly denounce the ideas submitted to him. Most notably in the cases of Scotland and Poland he was prepared (if only sporadically and sometimes inadvertently) to lend support to important touchstones of nationhood and independence: the antiquity of the nation and symbols of national political unity.

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<sup>125</sup> Maier, 'Annotazione', p. 325.

## Conclusion

For those who have made medieval national identity their study, the Church has never been central to their analyses. Certainly, it would be difficult to refute the late Rees Davies' conclusion that, as a supra-national organisation, the Church inhibited 'the development of what might be called national consciousness'.<sup>1</sup> As a general rule, the international web of regular and secular clergy, converging on the see of St Peter, tempered national insularity. But it also provided the infrastructure for the transmission of a European political discourse through which a sense of nationhood and national sovereignty might be expressed, central to which was the intellectual climate of the Curia.

The naturalness of political communities – particularly kingdoms – being inhabited by a single nation of shared customs, laws, and language, was a widespread assumption in this period. A broad understanding of such 'regnal solidarity' was consolidated, and may be discerned, at relatively low levels of society.<sup>2</sup> It was also often articulated by secular clergy, in their capacity as members of society and as spokesmen for their king, from the later thirteenth century onwards – men who were preoccupied with the welfare of their nation rather than that of Christendom.

The examples of Poland and Scotland illustrate how, in certain circumstances, secular clergy might air their concerns about the nation and its political rights with close reference to an international political discourse. In the case of Ireland, which lacked a comparable tradition

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<sup>1</sup> Davies, 'The Peoples of Britain and Ireland, 1100-1400: Identities', *TRHS*, sixth series, 4 (1994), p. 3.

<sup>2</sup> Reynolds, *Kingdoms and Communities*, esp. p. 250 ff.

of ties between the secular clergy and the papacy, and pagan Lithuania, which understandably enjoyed no such ties, the Mendicant orders supplied the connection.

As in so many parts of Christendom in this period, it was in ecclesiastical circles within Poland, Scotland and Ireland that some of the most profound ethnocentric concerns were expressed from the mid-thirteenth century onwards. This, as elsewhere in Europe, involved the rejection of foreign political and ecclesiastical influence and rule. When political developments in the early fourteenth century came to fuel the urgency of such concerns, it was men from these circles who understood the possibilities offered by the Curia for expressing and developing them. It was here that they sought a receptive audience for their complaints of 'tyranny and servitude'. They understood that the pope might be persuaded to recognise their ancient political rights, revealed in the cases of Scotland and Ireland through their ancient origins, assumed as timeless in the Polish representations, and implied (though more ambiguously) in the Lithuanian correspondence. By such rights they were free from foreign rule, and constituted self-contained national political units. The spokesmen for Ireland, Scotland and Poland also understood that the pope might recognise their natural political right to appoint a ruler of their own – the utility of the papacy in this respect being particularly pertinent for the political circumstances of all three nations. For the proponents of Lokietek, Robert, and Edward Bruce, recognition of such natural political rights meant the legitimation of their new rulers.

In the hope of securing such recognition all four nations came to utilise a conceptual language associated with the Curia to articulate their sovereignty; their right to unquestioned *dominium*. For Polish spokesmen, this came to be articulated in part through the protection of

vulnerable souls, drawing on a political discourse then flourishing in the region. It was through this discourse that they expressed the natural, peaceful lordship of the Polish ruler, Łokietek, as opposed to the unnatural and oppressive lordship of the Teutonic Order, or indeed, any other would-be ruler. For the Scots, their spiritual worth as a nation confirmed their natural, ancient right to *dominium*, while spokesmen for Ireland and Lithuania explored different perceptions of the political rights of infidels for the same reason: they were all engaging with theological and canonistic debates about the relationship between *dominium* and faith in order to express their natural political rights.

The formulation of national sovereignty in this period has been closely associated with the Roman law-influenced development of public over private right – that is, the public welfare of the *regnum* – the ‘state’ possessing its own moral purpose, the *patria* being put before the interests of anything or anyone else. Yet, particularly in the cases of Scotland and Poland, we see that it was partly through the defence of Christendom that national sovereignty was asserted. Defence of the kingdom (or ‘*patria*’) and defence of Christendom were portrayed as mutually beneficial.<sup>3</sup>

Interactions between the Curia and representatives from Scotland, Ireland and Poland had a ‘refining’ effect on existing formulations of national sovereignty. In attempting to make their justifications and accounts palatable to the papacy, they clarified and adjusted accepted details regarding the historical relationship between land, people and kingdom. In Scotland

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<sup>3</sup> This is an alternative perhaps to Sophia Menache’s interpretation of the political manipulation of the Crusade theme ‘to legitimize the process of state-building’: ‘The manipulative use of the Crusade theme by royal communicators aimed both at fostering fears and love, contempt and suspicion: love for the king and identification with his policy; fears, contempt, and suspicion toward foreign forces, personified by the pope, the Templars, or a foreign king, all of whom represented the harmful forces of evil’. Menache, *Vox Dei*, p. 176.

in particular, writings for a papal audience produced a symmetry between nation and kingdom unrivalled by other contemporary sources from the region. In meeting the legal standards of Innocent IV's commentaries, the author of the Remonstrance evolved a neat portrayal of kingdom and people, typical of native Irish Franciscan concerns in this period, but rarely so fully elaborated. Regnal unity in Poland under the natural leadership of native rulers was recounted for the papal ear at the expense of historical realities. It is also noteworthy that the means of expressing such concerns to the pontiff had an impact on more general political discourse within these communities – the Maccabees analogy in Scotland, the matter of heresy in Ireland, and perhaps also the political significance of Peter's Pence within Poland.

In many ways therefore, the development of doctrines of national sovereignty within these border nations travelled along rather different lines from their more central counterparts. There was never any consistent urgency to refute direct papal involvement in temporal matters: this was not the focus of their concerns. In the cases of Poland and Scotland, when direct papal lordship did become redundant, it was not because its refutation was seen as integral to expressions of national sovereignty and freedom. For Polish spokesmen it was partly a response to the pope's attitude, and for Scottish spokesmen it was a political manoeuvre on account of perceived papal partiality. Moreover, when such spokesmen appropriated comparable arguments to those of, say, the French publicists of the early fourteenth century, it was not with the same purpose. Bisset's use of prescriptive right, and claims of later Scottish and Irish spokesmen regarding the antiquity of their kingdoms and the appointment of rulers were not mustered in defence against papal interference. Similarly, while John of Paris and others acknowledged the pope's role in co-ordinating the defence of

Christendom and arbitrating between rulers, it was almost as a concession that they did so.<sup>4</sup> Particularly for Scottish and Polish representatives, the idea of the pope's co-ordination of Christendom's defence was rather an idea onto which they hooked their assertions of national sovereignty. The authors of the Declaration of Arbroath were certainly prepared to deploy the discourse of Christendom's defence as a means of questioning papal policy. But, more generally, it was a discourse that was used to express the political rights of the Scottish nation, and ultimately to seek papal sanction.

Indeed, the comparative approach of this thesis allows a re-appraisal of the meaning of certain political values enshrined in communications with the papacy, most particularly perhaps the idea of 'political rule' in the Declaration of Arbroath. The employment of 'baronial intransigence' certainly provides a notable parallel with the tactics of other political communities asserting their freedom from outside (and especially papal) interference over the course of the previous century: relations between Bruce and the Holy See in 1320 were sufficiently poor to merit this interpretation. But it is hard to imagine that the Declaration's likely author was not hoping also to appeal to the pontiff's possible understanding of the natural political rights of all peoples. The appointment of a native ruler was a feature of the Irish, Polish and Scottish communications with the papacy, and something for which they may well have hoped to obtain papal sympathy.

When we turn to John XXII as a putative source of such sympathy, however, we are not immediately rewarded. The four case studies, and particularly Ireland and Lithuania, present the breadth of possibilities in terms of the papal opinion on the natural political rights of

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<sup>4</sup> John of Paris, p. 104.

peoples. The spokesmen for both peoples were evidently attuned to the possibility that John XXII might follow Innocent IV's understanding, and indeed that of many theologians, or else adopt an understanding more usual for canonists throughout most of the thirteenth century: to deny the natural political rights of peaceful non-Christians. John's response to the concerns of all four political communities was such that it is difficult to discern his own opinion on this: his communication was rarely explicit regarding constitutional matters. We do see, nonetheless, certain hints that might suggest sympathy for the type of concerns being aired at his court. Particularly revealing is John's response to Edward III's proposed visit to Ireland, which indicates an understanding that peoples are naturally governed by their own laws, language, customs and by people of their own stock. In his response to the Polish appeal for Lokietek's coronation we may similarly discern a readiness to accept the appointment of this new ruler by his people. Though his attitude towards Gediminas is more ambiguous, it does seem that he understood the possibility of maintaining peace with this professedly peaceable pagan nation in accordance with canonistic and theological thinking. In general, his responses, though often limited, were less discouraging to the spokesmen of all four nations than has often been thought, and because he was often reluctant to pronounce judgement on the constitutional details of such disputes he cannot be decried as a mere supporter of powerful monarchy, guided by *Realpolitik* alone.

Often the alliance of papal and 'national' interests was coincidental, as with the political significance of Peter's Pence. And, just as such interests might converge, so they sometimes diverged. But ideologically they were not necessarily entirely opposed to each other,<sup>5</sup> and, importantly, the negotiating process was a productive one for the proponents of national

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<sup>5</sup> Goldstein, for example, identifies 'inherent contradictions' between papal and national ideologies. Goldstein, *Matter of Scotland*, pp. 48, 70, 89.

sovereignty in these four border nations. Discussions with the Curia often promoted existing, as well as producing new, ways of expressing national concerns. It is surely of note, for example, that Łokietek's own personal interest in the cult of St Stanislaus was not roused until the pope's suggestion that his proposed crusade might be financed by a feast on the saint's day. It is of note too that it was in communicating with the papacy that Scottish spokesmen evolved the Maccabees analogy, which so reinforced the growing political importance of the idea of the 'community of the realm'.<sup>6</sup> The intellectual climate at the Curia was also one in which champions of nations felt able to adapt and evolve their expressions in accordance with changing political circumstances – the case of Poland highlighting this perhaps above all, particularly through the disuse of the *gens Polonica* in the 1320s and its replacement with the discourse of Christendom's safety, as well as the ingenious use of *Redintegranda*. For all four nations, the papacy provided a pool of language and ideas, in contrast to the rather different and certainly more familiar expressions of national sovereignty common to their enemies, and to other Christian powers, in this period.

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<sup>6</sup> In general terms, Brown has identified this growing emphasis on the community's importance in the increasing prominence given in mythological historical accounts to the Scottish people as actors in their own history. Concurrently, *Scota* and *Gaedel*, or indeed any other Scottish leader are increasingly demoted to the role of mere name-source (as in the *Bamburgh* brief), else expunged altogether (as in the *Declaration of Arbroath*). See Brown, 'Scottish Origin-Legend', pp. 432-44.



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