

Reason, Conscience and Equity: Bishops as the King's Judges in Later Medieval England

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Abstract

It has long been recognized that many late medieval bishops were heavily involved in secular government. Scholars have tended to characterize these activities in fairly general terms, labelling those who chose to serve the crown as 'administrators', 'bureaucrats' or 'civil servants'. In fact, they are better described as king's judges, for a large part of what bishops did in government was dispensing justice in the king's name. The first part of this article explores the contexts of this judicial activity, showing that bishops were especially active in institutions such as parliament, chancery and the council which offered justice to the king's subjects on a discretionary basis. Discretionary justice was closely informed by the precepts of natural law, which in turn derived authority from the abstract notion of the divine will. The second half of the article suggests that the strong theological underpinning of discretionary justice meant that bishops' involvement in secular government did not stand in opposition to their spiritual vocation or their role as leaders of the church. I argue that the sweeping and rather disparaging contemporary and modern characterizations of 'civil-servant' bishops as self-serving careerists ought to be replaced by a more nuanced understanding of the rationale and motivation of those senior clergymen who involved themselves in secular governance.

In 1418 the prior of Bath presented a bill to the chancellor complaining about the noise and disturbance caused by the ringing of parish bells at the behest of the mayor and citizens of the town of Bath.¹ He claimed that this was in contravention of a long-held custom which ordained that the bells of the priory cathedral church ought to have precedence over the town and that no other bells should sound between the curfew and the first ringing of the cathedral bells the next morning. The difficulties faced by the prior and monks of the Benedictine monastery were especially acute because the bells of the parish church were said to sound louder in the cathedral than in the parish churches

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¹ The National Archives [hereafter TNA], SC 8/302/15089, printed in G. Dodd and A. K. McHardy (eds), *Petitions to the Crown from English Religious Houses, c. 1272–c. 1485*, Canterbury and York Society, 100 (Woodbridge, 2010), no. 131. Unless otherwise specified all references to manuscript sources refer to collections held by TNA.

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themselves. Indeed, such was the cacophony of noise that the monks claimed that they were prevented from performing their divine service. This case has obvious interest as an early example of the more modern phenomenon of ‘noisy neighbours’, but there was probably more at stake for the monks of Bath than the peace and tranquillity of their early morning masses, for bell-ringing was an important symbol of authority and prestige, and could be used to demarcate (and overstep) lines of authority.²

For our purposes, however, the importance of the dispute lies in the role of the episcopate in bringing the warring parties to terms. The initial petition was sent to Thomas Langley, bishop of Durham, then chancellor; but he appears to have been ineffective in the matter.³ The real peacemaker was Nicholas Bubwith, bishop of Bath and Wells. As a result of his mediation, the ‘bell-wars’ of Bath came to an end and peace, in all senses of the word, was restored: in return for supplying candles to the cathedral, the citizens of Bath were permitted to sound their bells throughout the day, but they were strictly forbidden to ring before six in the morning, thus giving the monks the respite they so desperately sought.⁴ The resolution of the dispute by Bishop Bubwith nicely illustrates the mediating role of bishops in difficult and often protracted local conflicts in late medieval England. There are obvious reasons why Bubwith should have been involved in this episode, since the city of Bath was part of his diocese and the dispute related to matters of a broadly ecclesiastical nature;⁵ but the case itself had initially been brought to the attention of the crown, and Bubwith himself was functioning, in essence, as the agent of the king in seeking a resolution to the problem. Acting in this way, as a judge-delegate of the king, Bubwith was working in accordance with a tradition that had long seen members of the episcopacy fulfil quasi-jurisdictional functions on behalf of the state. It is a role which, though recognized in the late Middle Ages, has never received direct or full consideration. For the most part, studies investigating how late medieval bishops acted as the agents of the crown have concentrated on their activities as the raisers of taxation,⁶ the propagators of war propaganda,⁷ and/or the political supporters or

² *Ibid.*, p. xxxvii.

³ For the commission issued to the chancellor charging him to resolve the dispute, see *Calendar of Signet Letters of Henry IV and Henry V (1399–1422)* (London, 1978), nos. 811 and 843; *Calendar of Patent Rolls* [hereafter *CPR*], 1416–22, p. 205.

⁴ T. Scott Holmes (ed.), *Register of Nicholas Bubwith, Bishop of Bath and Wells, 1407–1424*, Somerset Record Society, 29 (1914), pp. 460–4, no. 1266.

⁵ W. Page (ed.), *The Victoria County History of Somerset* (10 vols; London, repr. 1969), II, pp. 70–1.

⁶ For example, A. Rogers, ‘Clerical taxation under Henry IV’, *Bulletin of the Institute of Historical Research*, 46 (1973), pp. 123–44; A. K. McHardy, ‘Clerical taxation in fifteenth-century England: the clergy as agents of the Crown’, in R. B. Dobson (ed.), *The Church, Politics and Patronage in the Fifteenth Century* (Gloucester, 1984), pp. 160–92.

⁷ For example, W. R. Jones, ‘The English Church and royal propaganda during the Hundred Years War’, *Journal of British Studies*, 19 (1979–80), pp. 18–30; A. K. McHardy, ‘Some reflections

opponents of the king.⁸ Moreover, on questions of legal process, and more generally of jurisdictional identity, historians have tended to cast the church and state in oppositional terms. It is a view informed by an implicit assumption that bishops were interested only in the operation of canon law in the ecclesiastical courts, and had little interest in the workings of the common law and other lay jurisdictional contexts, other than to defend their ecclesiastical interests from royal encroachment.⁹

In fact, there was no theoretical basis why bishops could not administer justice in a secular context, providing these judicial activities did not involve the shedding of Christian blood.¹⁰ Before the mid-thirteenth century the king sometimes appointed bishops as his senior judges, or more commonly, he chose some bishops from a pool of clerks who were professional judges serving on the bench and/or eyre.¹¹ Admittedly, from this point onwards, the clergy were increasingly sidelined, as a professional class of lawyers emerged to take over the running of the

on Edward III's use of propaganda', in J. S. Bothwell (ed.), *The Age of Edward III* (Woodbridge, 2001), pp. 171–92.

⁸ For example, K. Edwards, 'The political importance of the English Bishops during the reign of Edward II', *English Historical Review*, 59 (1944), pp. 311–47; R. G. Davies, 'The episcopate and the political crisis in England of 1386–1388', *Speculum*, 51 (1976), pp. 659–93; R. L. Storey, 'Episcopal king-makers in the fifteenth century', in Dobson (ed.), *Church, Politics and Patronage*, pp. 82–98; B. Thompson, 'Prelates and politics from Winchelsey to Warham', in L. Clark and C. Carpenter (eds), *The Fifteenth Century IV: Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 69–95; and, most recently, W. Mark Ormrod, 'An archbishop in revolt: Richard Scrope and the Yorkshire Rising of 1405', in P. J. P. Goldberg (ed.), *Richard Scrope: Archbishop, Rebel, Martyr* (Donington, 2007), pp. 28–44.

⁹ The work of W. R. Jones is of most relevance in this respect: W. R. Jones, 'Bishops, politics, and the Two Laws: the *Gravamina* of the English Clergy, 1237–1399', *Speculum*, 41 (1966), pp. 209–45; idem, 'The Two Laws in England: the later Middle Ages', *Journal of Church and State*, 11 (1969), pp. 111–31; and idem, 'Relations of the two jurisdictions: conflict and cooperation in England during the thirteenth and fourteenth centuries', *Studies in Medieval and Renaissance History*, 7 (1970), pp. 79–210.

¹⁰ James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago, 2008), pp. 174–9.

¹¹ For example, William de Vere, bishop of Hereford 1186–98 (justice of the eyre 1185, 1186, 1192, 1193 and 1194); Herbert Poore, bishop of Salisbury 1194–1217 (justice of the bench, 1190–7); Godfrey Lucy, justice of the eyre and of the bench from 1179, becoming bishop of Winchester in 1189; Peter des Roches, bishop of Winchester, 1205–38 (justiciar, 1213–15); William Raleigh, justice of the bench from 1229, until made bishop of Norwich in 1239 and later bishop of Winchester; William of York, justice of the bench from 1231, until made bishop of Salisbury in 1247; Simon of Walton, bishop of Norwich, 1257–66 (noted as chief justice of the bench of common pleas in 1257); John le Breton, justice of the king's bench until made bishop of Hereford in 1269. Biographical details of these individuals can be found in the *Oxford Dictionary of National Biography* (Oxford, 2004), online edn. For discussion, see J. R. H. Moorman, *Church Life in England in the Thirteenth Century* (Cambridge, 1955), pp. 164–5; F. Pollock and F. W. Maitland, *The History of English Law Before the Time of Edward I*, 2nd edn (2 vols; Cambridge, 1898), I, pp. 131–4; W. Holdsworth, *A History of English Law* (13 vols; London, 1922–35), II, pp. 177, 227; Ralph V. Turner, *Men Raised From Dust: Administrative Service and Upward Mobility in Angevin England* (Philadelphia, 1988), pp. 27, 92–104; and Brundage, *Medieval Origins*, pp. 73–4. For the presence of significant numbers of lower-status clerics serving as royal justices in the thirteenth century, having first found employment in the exchequer and chancery, see F. Pegues, 'The clericus in the legal administration of thirteenth-century England', *English Historical Review*, 71 (1956), pp. 529–59, esp. pp. 531–42. The majority of these clerks were in minor orders.

king's courts, but in the whole area of prerogative or discretionary justice – that is to say, cases which fell outside the usual remit of the common law, and were usually decided not according to preordained legal code but on the basis of what was considered to be fair and 'equitable' – bishops continued to play a crucial and prominent role. Indeed, as the institutional structures put in place to provide prerogative justice became more sophisticated, the involvement of bishops in this vital branch of secular law similarly became more pronounced.

In scholarship, this phenomenon has been most clearly recognized in the context of the late medieval chancery, which developed into a court of first instance under the leadership of clerical chancellors in the course of the fourteenth and fifteenth centuries. Important work has also been done on the intellectual traditions that underpinned the development of discretionary justice, and the links that existed between theology, natural law, and legalistic notions of equity and conscience.¹² But there is, as yet, no broader appreciation of the nature of the judicial activities that many bishops (and not just clerical chancellors) undertook on behalf of the crown, nor any attempt to link these activities with the more theoretical or philosophical framework upon which prerogative or discretionary jurisdiction hung. This is to some extent explained by the limited conceptualization in academic work of the term 'justice'. 'Justice' is usually written about in relation to the common law, and 'judges' are usually identified as the men of law who worked in the king's common law courts. I adopt a more holistic approach by starting with the premise that the prerogative or discretionary jurisdiction that operated alongside, and often in conjunction with, the common law, was as much a manifestation of royal justice as the legal codes that shaped courts like the quarter sessions or the king's bench. I thus describe bishops as king's 'judges' because royal justice was in essence what they were called upon to exercise, in cases that frequently required evidence to be gathered and scrutinized, arguments to be weighed, often in the form of solemn testimony, and a final judgment to be reached in the name of the king. The aim of this discussion is to establish a more detailed and rounded picture of how and why bishops were willing to act in this capacity.

I

Bishops exercised discretionary justice in three main institutional contexts: parliament, the council and chancery. Since chancery developed its jurisdictional authority rather later than parliament and the council, it will be considered separately further on in the discussion. It is in parliament that bishops' involvement in secular jurisdiction is most apparent, for bishops headed the lists of triers who were appointed by the

¹² See in particular, N. Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge, 1990).

king to pass judgment on the numerous private petitions brought to each assembly for redress.¹³ Not all bishops who were summoned to parliament were appointed as triers. This was especially the case in the first half of the fourteenth century when only a small minority sat on the committees. In 1341, for example, only four bishops were appointed (i.e. Durham, Salisbury, Ely and Hereford); in 1354, the bishops of Lincoln, Rochester, Norwich and Chichester, together with the archbishop of Canterbury, were included.¹⁴ Later in the century, the pattern of appointment could vary considerably, influenced as it was by the changeable political climate. In October 1377, for example, during Richard II's unofficial minority, no fewer than seventeen members of the episcopal bench were appointed as triers (only two, in fact, were omitted).¹⁵ By contrast, only three out of fifteen bishops known to have attended Henry IV's first parliament of 1399 were involved in hearing petitions, no doubt because in this parliament attention was fixed on the tumultuous events of the deposition.¹⁶ At other times, a degree of selectivity was introduced in the appointments. In 1391, about half the members of the episcopal bench were selected as triers; in 1401, the proportion was roughly a third; in 1426, about a half again.¹⁷ This suggests that discrimination was exercised to ensure that only those individuals who were most willing and most able to perform the duties assigned to them were appointed as triers. Usually these were bishops with a proven track record of administrative competence and service to the crown.¹⁸ In 1391, for example, the five bishops appointed to try petitions from England, Ireland, Wales and Scotland included William Courtenay, archbishop of Canterbury (briefly chancellor in 1381); Robert Braybrooke, bishop of London (chancellor, 1382–3); William Wykeham, bishop of Winchester (chancellor, 1367–71, 1389–91); Thomas Arundel, bishop of Ely (chancellor, 1386–9 and currently serving in this position); and Walter Skirlawe, bishop of Durham (keeper of the privy seal, 1382–3).

We cannot be sure how much judicial work bishops undertook in parliament, for the petitions did not routinely record which cases particular triers scrutinized. However, the chronicler Thomas Walsingham shed valuable light on the process when he noted that a petition pre-

¹³ See G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007), pp. 91–109.

¹⁴ C. Given-Wilson et al. (eds), *Parliament Rolls of Medieval England* (Leicester, 2005) [hereafter *PROME*], parliament of 1341, item 3; parliament of 1354, items 6–7.

¹⁵ *PROME*, parliament of October 1377, items 9–10. For attendance of the episcopate at this parliament see R. G. Davies, 'The attendance of the episcopate in English parliaments, 1376–1461', *Proceedings of the American Philosophical Society*, 129 (1979–81), pp. 30–81, at pp. 55–6.

¹⁶ *PROME*, parliament of 1399, items 8–9; Davies, 'Attendance of episcopate', p. 59.

¹⁷ *PROME*, parliament of 1391, items 5–6; parliament of 1401, items 6–7; parliament of 1426, items 6–7, for the triers. See Davies, 'Attendance of episcopate', pp. 58 and 59 (1391 and 1401); and N. H. Nicholas (ed.), *Proceedings and Ordinances of the Privy Council* (7 vols; London, 1834), II, pp. 188 (1426) for attendance.

¹⁸ See discussion in Dodd, *Justice and Grace*, pp. 101–3.

sented by Michael de la Pole in 1399 was dispatched by a sub-committee of triers comprising the archbishop of Canterbury, the bishop of Winchester, the abbot of St Albans and the earl of Northumberland, besides two royal justices.¹⁹ This suggests a disproportionately high input by members of the senior clergy into parliamentary judicial processes. A fragment of evidence dating to the start of Edward III's reign points to a similar conclusion. In response to a petition presented in c.1331 by William de Hoo, who alleged that his goods and chattels had been illegally seized by exchequer officials when he had been expelled from the manor of Tolworth (Surrey), the endorsement stated that it had been 'agreed that those who have complaints against the king's ministers are to deliver their petitions on this to [Robert Wyvil] bishop of Salisbury'.²⁰ This suggests that the bishop had been given particular responsibility for those cases of special sensitivity relating to alleged malpractice within government.

To some extent these impressions are confirmed when we shift our focus from parliament to the council, where the records are rather more revealing. Like parliament, a great proportion of the routine business of the king's council – that is to say his permanent 'executive' council, usually based at Westminster, overseeing the day-to-day running of government – was taken up receiving and dispatching petitions.²¹ Clergymen, and especially bishops, shouldered much of this burden, for attendance lists show that they were most assiduous attendees of council meetings and regularly formed the most consistent element: while senior lay lords might not always have been present, there were always bishops acting in this capacity.²² The endorsement of a petition presented in 1328, from the workers and weavers of cloth in Norfolk, illustrates this point clearly, for it was noted that the supplication had been brought for adjudication into 'the presence of the bishops of Durham, Ely, Worcester and others of the council', implying that the three bishops comprised the essential core of the council's membership.²³ With the virtual automatic attendance of the chancellor, treasurer and keeper of the privy seal, who were usually also clergymen, the king's council could take on a distinctly ecclesiastical hue.²⁴ Take, for example, the names of those councillors who considered a petition presented by the merchants

¹⁹ J. Taylor, W. R. Childs and L. Watkiss (eds), Thomas, Walsingham, *The St Albans Chronicle, Volume II, 1394–1422* (Oxford, 2011), pp. 262–4.

²⁰ SC 8/52/2597.

²¹ J. F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), pp. 262–306; G. Dodd, 'Henry IV's Council, 1399–1405', in G. Dodd and D. Biggs (eds), *Henry IV: The Establishment of the Regime, 1399–1406* (Woodbridge, 2003), pp. 95–115.

²² J. L. Kirby, 'Councils and councillors of Henry IV, 1399–1413', *Transactions of the Royal Historical Society*, 5th ser., 14 (1964), pp. 35–65, esp. appendix.

²³ SC 8/266/13292; printed in *Rotuli Parliamentorum* (6 vols; London, 1767–7), II, p. 28 (no. 50).

²⁴ Interestingly, contemporaries sometimes appear to have thought of the council as an essentially clerical body, by addressing their letters to it using diplomatic usually reserved for prelates (i.e. 'Tresreverentz piers en Dieux'). See Nicholas (ed.), *Proceedings and Ordinances*, II, pp. 56, 57–8, 71, 196–7.

of Bordeaux on 4 June 1405, in which the latter requested confirmation of their rights to trade in England.²⁵ The list indicated the attendance of the chancellor (Edmund Stafford, bishop of Exeter); the treasurer (Henry Bowet, bishop of Bath and Wells); the keeper of the privy seal (Thomas Langley, dean of York); together with Thomas Arundel, archbishop of Canterbury; Henry Beaufort, bishop of Lincoln; John Trefnant, bishop of Hereford; Richard Young, bishop of Bangor; John Bottlesham, bishop of Rochester; and four low status laymen.²⁶ Similarly, a list of names for a council meeting dating to 12 February 1407 indicates that besides the key officers of state and of the household, the only other men in attendance were: Nicholas Bubwith, bishop of London; Henry Beaufort, bishop of Winchester; and Thomas Langley, bishop of Durham.²⁷ Another petition presented between 1426 and 1431 was endorsed with the names of Henry Chichele, archbishop of Canterbury; John Kemp, archbishop of York (and chancellor); Philip Morgan, bishop of Ely; John Stafford, bishop of Bath and Wells, together with Lords Cromwell and Bourghier.²⁸ In the parliament of 1426, it was agreed that any petitions not dealt with in the assembly should 'be committed to the king's council by the aforesaid authority, to hear all the matters specified in the same petitions, and determine them according to their discretions and good faith and conscience'.²⁹ Well over a dozen petitions survive which were dealt with in this way. On each is noted the name of a councillor, presumably to indicate his special responsibility for that case. While four petitions recorded the involvement of two lay lords (i.e. the earl of Stafford and the duke of Gloucester (two each)),³⁰ the majority were assigned to bishops: John Stafford, bishop of Bath; Phillip Morgan, bishop of Worcester; John Fordham, bishop of Ely; Thomas Langley, bishop of Durham; and William Alnwick, bishop of Norwich.³¹

In their capacity as councillors and parliamentary triers, many bishops were regularly exposed to the full gamut of disputes, injustices and difficulties that adversely affected the lives of large numbers of the king's subjects. As will already be obvious, there was no question that they were assigned to these roles only to adjudicate on petitions relating

²⁵ See *PROME*, parliament of January 1397, item 40.

²⁶ SC 8/229/11432. See also SC 8/335/15836 which notes the names of Thomas Arundel, archbishop of Canterbury, William Wykeham, bishop of Winchester, Thomas Langley, bishop of Durham (chancellor), and Nicholas Bubwith, bishop of London, in addition to Thomas Neville, Lord Furnivall (treasurer), John Prophet (keeper of the privy seal) and Edward, duke of York. The petition is dated 18 November 1406, when parliament was in session. The names do not correspond to the membership of the committees of triers appointed in parliament at that time, and in fact the group is described in the endorsement as constituting the council.

²⁷ SC 8/147/7312.

²⁸ SC 8/47/2331.

²⁹ *PROME*, parliament of 1426, item 21.

³⁰ SC 8/96/4767; 121/6016; 138/6879; 150/7493.

³¹ SC 8/96/4761; 101/5027; 101/5041; 111/5523; 113/5613; 115/5732; 115/5734; 118/5866; 121/6012; 135/6709; 143/7137; 148/7383; 158/7900.

to church matters: from piracy on the high seas, to banditry in the localities, to the administrative incompetence or corruption of the king's ministers, members of the episcopate were called upon to resolve a great number of requests and complaints from laymen that were not readily resolvable through common law processes (in addition to a good number of supplications presented by clergy). Viewing the lists of bishops who were appointed on these tribunals, however, provides only a partial insight into such activities, for bishops were also not infrequently nominated to *ad hoc* commissions sent into the localities to investigate and settle problems that had come to the attention of the crown. Often, these commissions were generated from petitions which the parliamentary triers and/or king's councillors had themselves scrutinized. In response to the petition presented by the cloth workers of Norfolk in 1328 noted earlier, for example, William Airmyn, bishop of Norwich was assigned by the bishop-councillors of the king to investigate (with others) the truth of the cloth-makers' allegation that Robert de Poley was using his office as alnager to extort fines and to force them to manufacture cloth at unaccustomed lengths.³² In 1391, the bishops of London and Ely, together with Richard Lescrope, were charged by parliament to arbitrate in a dispute between Walter Sibile, on the one hand, and William Coggeshale and Nicholas Twyford, on the other.³³ These men were prominent London merchants, but the dispute originated in the provinces, between Sibile's tenants in Landwade (Cambs.) and Coggeshale and Twyford's tenants in Exning (Suffolk). In May 1413, shortly after Henry V had succeeded to the throne, the bishops of Exeter and Bath and Wells were charged to expedite unresolved cases brought before Henry IV by various men of Bayonne.³⁴ In 1426, the burgesses and tenants of Melcombe Regis requested special dispensation because of their poverty: John Stafford, bishop of Bath, together with William Cheyne (justice of the king's bench) and John Juyn (justice of the common pleas and chief baron of the exchequer) were charged to conduct a survey to decide whether financial respite should be allowed to the town.³⁵ Finally, in 1427, John Stafford, bishop of Bath and Wells and William Alnwick, bishop of Norwich were assigned by parliament to investigate the circumstances of John Botiller's imprisonment at the hands of William Orwell and others from Calais following disturbances there at the end of Henry V's reign.³⁶

In other contexts the involvement of bishops in arbitration and adjudication can be discerned from the terms of the commissions themselves. Thus, Henry Gower, bishop of St David's, was appointed with four

³² SC 8/266/13292. See also SC 8/17/811 and SC 8/268/13364. For the response of Poley, see SC 8/268/13369. For the commission, see *CPR*, 1327–30, pp. 297–8.

³³ SC 8/21/1044; 21/1045.

³⁴ *CPR*, 1413–1416, p. 33.

³⁵ SC 8/128/6388.

³⁶ SC 8/96/4767.

laymen in May 1332 to act in the place of Gilbert Talbot, justice of South Wales, to respond to petitions presented in several parliaments complaining about the oppressions of Roger Mortimer when he had been justice of Wales.³⁷ In August 1335, John Stratford, archbishop of Canterbury and Henry Burghersh, bishop of Lincoln were charged to investigate the complaints of merchants who claimed to have suffered diverse oppressions in York by the office-holders of that city.³⁸ And in 1337, Richard de Bury, bishop of Durham and John Kirkby, bishop of Carlisle, were part of a large commission to investigate and fix the border between Yorkshire and Westmorland, following a report presented in parliament that disputes had arisen over the matter between the people of both counties.³⁹ In other cases, commissions involving bishops appear to have arisen from policy decisions taken by the crown on its own initiative. This was especially the case when inquiries were needed to investigate the actions of the king's ministers and officers. In 1314, for example, Walter Langton, bishop of Coventry and Lichfield, together with Hervey Staunton (justice of common pleas), were appointed to inquire into the 'many evils and losses' which had occurred in Cambridgeshire as a result of the failure of the king's commissioners to carry out their survey of walls and ditches properly.⁴⁰ A few years later, in 1321, Walter Stapledon, bishop of Exeter, with Robert de Stokheye, received a commission to inquire into the behaviour of the bailiffs of hundreds across Somerset, Dorset, Cornwall and Devon.⁴¹ On 28 April 1340 three commissions were issued with the purpose of instigating a complete overhaul of customs officers across the kingdom, for what was termed the 'negligence' of those who had held office during the king's absence abroad. The archbishop of Canterbury headed the commission dealing with ports in the west; Richard de Bury, bishop of Durham headed the commission appointed to survey northern ports; while Henry Burghersh, bishop of Lincoln led the commission assigned to eastern ports.⁴²

Why were senior clerics involved in these activities? It is a question that has rarely received direct consideration, perhaps because the answers have appeared too obvious to be worth detailed investigation. In practical terms, the reasons why bishops were called on to settle disputes and arbitrate between warring parties admittedly appear to be straightforward. In many of the examples given above, and especially the commissions sent into the localities, it will be readily seen that bishops were frequently appointed to act in cases that concerned individuals or communities located in their dioceses, so their involvement

³⁷ *CPR, 1330–1334*, p. 346.

³⁸ *CPR, 1334–1338*, p. 205.

³⁹ *Ibid.*, p. 445.

⁴⁰ *CPR, 1313–1317*, p. 147.

⁴¹ *CPR, 1321–1324*, p. 15.

⁴² *CPR, 1338–1340*, pp. 507–9.

presumably reflected a belief that they possessed the standing and authority to be able to restore peace and harmony. There is an argument to be made that the crown utilized bishops in this fashion not because they were senior clergymen, but because they were powerful landowners who possessed the same influence as important secular lords and because they had equal responsibility to ensure that peace existed in the territories which fell within their authority.⁴³ On the other hand, there is a symmetry about many of these commissions, which suggests that the choice of personnel reflected a conscious desire by the crown to mobilize both the secular and ecclesiastical arms to give clout and prestige to the proceedings. In this sense, the ecclesiastical standing of bishops was not incidental but integral to the workings of such commissions.

In other respects, historians have emphasized the pragmatic nature of the clerical presence on commissions, in parliament and the council, and more generally within government. Robert Swanson summarized the underlying dynamic when he stated that ‘the relationship affecting clerics in state service was blatantly symbiotic: individuals were as dependent on the crown for securing their careers within the church as the crown was dependent on the church for providing through those careers sufficient finance and motivation for continued service’.⁴⁴ In other words, the clergy served the king to enhance their careers and gain promotion; the crown employed clergy because it was cheaper to remunerate clergymen than laymen, for clerics could be provided with ecclesiastical livings which made no direct impact on crown finances. Undoubtedly the mutual benefits to accrue by employing clergy in royal administration were an immensely powerful incentive, but the danger in depicting this relational dynamic in such functional and acquisitive terms is that it suggests that no higher motives existed for engaging senior ecclesiastics in crown service. It casts the clergy in particular as either single-minded careerists or unwilling (but resigned) state functionaries, offering their services because this was the only route to ecclesiastical preferment. While this may have been true of many lower-status clergy, still hungry for advancement, it is not clear how important such a consideration would have been for bishops, who had already reached the pinnacle of ecclesiastical preferment and whose only real possibility

⁴³ The most obvious, but also arguably the most atypical, example of bishops exercising secular jurisdiction by virtue of their temporal powers are the bishops of Durham, who held the bishopric (or palatinate) of Durham as a secular franchise: see most recently, C. D. Liddy, *The Bishopric of Durham in the Late Middle Ages: Lordship, Community and the Cult of St Cuthbert* (Woodbridge, 2008). See also a useful discussion of the military activities of late medieval bishops by P. H. Cullum, ‘*Virginitas and virilitas: Richard Scrope and his fellow bishops*’, in P. J. P. Goldberg (ed.), *Richard Scrope: Archbishop, Rebel, Martyr* (Donington, 2007), pp. 86–99, esp. pp. 86–91.

⁴⁴ R. N. Swanson, *Church and Society in Late Medieval England* (Oxford, 1989), p. 104. Scholarship has tended to concentrate on how individuals *became bishops* through their service to the crown, rather than what they did for the crown once they had attained this position; for example: L. Betcherman, ‘The making of bishops in the Lancastrian period’, *Speculum*, 41 (1966), pp. 397–419.

for advancement lay in translation to a richer and more prestigious see. The point is that bishops did not have to serve the crown. Many, of course, did not. For those who did, it is virtually impossible to tell whether they did so because they were driven by the promise of reward; because they felt an obligation to the king, perhaps in part because of the favour he had shown to them; because they were already 'civil-service' minded, having served in government before promotion to the episcopal bench; or because they felt that it was part of their spiritual vocation which, more by default than by design, brought them material reward and advancement.

One way of shifting the emphasis towards a more 'vocational' perspective is to analyse the ideas and principles which underpinned the operation of discretionary jurisdiction, for this reveals a set of assumptions and propositions with which most clergymen, and certainly most university educated bishops, will have strongly identified. With so much focus by scholars on chancery and the development of the concepts of conscience and equity, it is easy to assume that it was only in chancery and only in the fifteenth century that theological principles were of relevance in a secular legal context. But in fact 'conscience' was part of a much broader set of ideas and values that underpinned natural law, and natural law was from the very outset axiomatic in providing a theoretical and philosophical basis for the operation of discretionary jurisdiction.⁴⁵ One of the reasons these connections have not previously been made is because legal historians have focused too rigidly on the concept of conscience as the guiding principle behind the operation of discretionary justice. In fact, 'reason' was the word most commonly used by contemporaries, and especially petitioners, to conceptualize the fundamental authority which they believed the examiners of petitions drew on to reach a fair and just verdict. Like conscience, the concept of reason went to the very heart of natural law.⁴⁶ Thus, it was commonplace in petitions presented throughout the thirteenth, fourteenth and fifteenth centuries for supplicants to express the hope that their request would receive a favourable hearing or a suitable remedy 'according to right and reason' or 'reason and the rule of law' (it was also common for petitioners to appeal to God and to a sense of charity). Petitioners understood that their quest for justice in parliament, the council or chancery pushed them outside the established, codified strictures of the common law into a position where achieving resolution depended almost entirely upon the sound judgment and good sense of those who

⁴⁵ The key work is Doe, *Fundamental Authority*, passim. I have also benefited by consulting R. L. Jefferson, 'The uses of natural law in the royal courts of fifteenth century England' (unpublished DPhil Thesis, University of Utah, 1972).

⁴⁶ For discussion of the concept of reason, see Doe, *Fundamental Authority*, ch. 5; M. J. Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge, 1963), pp. 211–15. There is also useful discussion in J. A. Alford, 'The idea of reason in *Piers Plowman*', in E. D. Kennedy, R. Waldron and J. S. Wittig (eds), *Medieval English Studies Presented to George Kane* (Woodbridge, 1988), pp. 199–215.

received and considered such requests. This placed a high premium on the personal qualities, knowledge and wisdom of both the king and those to whom he delegated such matters, for providing justice in these cases was a matter of discretion rather than prescription.

All this is important because natural law and its associated concepts of conscience and reason, and indeed of equity, were firmly rooted in a theological and canonical scholarly tradition. Norman Doe offers a succinct summary: 'The natural law outlook advances the view that law is not dependent for its authority solely upon human enactment or usage. Within the natural law view human law is also treated as originating in, and as deriving authority from, the abstract notion of a divinely given morality.'⁴⁷ Doe illustrated this relationship by drawing on the work of two of the foremost legal theorists of the fifteenth century, the royal justice John Fortescue and Reginald Pecock, bishop of Chichester. Both men, it is to be noted, served in parliament on the committees charged with trying petitions.⁴⁸ Fortescue remarked that 'natural law is nothing else but the participation of the eternal [i.e. divine] law in a rational creature', whilst Pecock declared that it is 'the judgment of [man's natural] reason which is the moral law of nature and the moral law of God'.⁴⁹ Both writers, and especially Fortescue, were strongly influenced by the thirteenth-century theologian Thomas Aquinas, whose view that law was of divine origin and must accord with reason featured prominently in his work.⁵⁰ The ideas of 'reason' (or reasonableness) and 'equity' were as intrinsic to the workings of the courts of the church as they were to the king's discretionary courts.⁵¹

⁴⁷ Doe, *Fundamental Authority*, p. 60. See also F. Pollock, *Jurisprudence and Legal Essays* (London, 1961), pp. 130–2; Wilks, *Problem of Sovereignty*, pp. 210–11; T. F. T. Plucknett and J. L. Barton (eds), *St German's Doctor and Student*, Selden Society, 91 (1974), pp. xxiii–xxix; and Alford, 'Idea of reason', pp. 200–7.

⁴⁸ For Fortescue, see *PROME*, parliament of 1445, item 6; parliament of 1447, item 7; parliament of February 1449, item 4; parliament of November 1449, item 4; parliament of 1450, item 4; parliament of 1453, item 4; and parliament of 1455, item 5. For Pecock, see *PROME*, parliament of 1455, item 6. For summaries of the careers of both men, see E. W. Ives, 'Fortescue, Sir John (c. 1397–1479)', and W. Scase, 'Pecock, Reginald (b.c. 1392, d. in or after 1459)', *Oxford of National Biography* (2004), online edn.

⁴⁹ Cf. Doe, *Fundamental Authority*, pp. 61–2. See also N. Doe, 'Fifteenth-century concepts of law: Fortescue and Pecock', *History of Political Thought*, 10 (1989), pp. 257–80, esp. pp. 269–73. On Fortescue, see also S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936), pp. 199–203; A. Cromartie, 'Common law, counsel and consent in Fortescue's political theory', in L. Clark and C. Carpenter (eds), *The Fifteenth Century IV: Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 45–67, esp. pp. 55–6.

⁵⁰ Thomas Aquinas, *Summa Theologiae*, ed. and trans. T. Gilby et al. (60 vols; London, 1964–73), 28, 1a2ae, question 91, articles 1–3; D. J. O'Connor, *Aquinas and Natural Law* (London, 1967), ch. 7; A. J. Lisska, *Aquinas's Theory of Natural Law: An Analytical Reconstruction* (Oxford, 1996), pp. 89–96, 126–31. For an introduction, see D. E. Luscombe, 'Natural morality and natural law', in N. Kretzmann, A. Kenny and J. Pinborg (eds), *The Cambridge History of Later Medieval Philosophy* (Cambridge, 1982, repr. 1984), pp. 705–19.

⁵¹ H. Coing, 'English equity and the *Denunciatio Evangelica* of the canon law', *Law Quarterly Review*, 71 (1955), pp. 223–41; J. L. Barton, 'Roman law in England', *Ius Romanum Medii Aevi*, pars v, 13a (1971), pp. 64–5, 69–71; J. L. Barton, 'Equity in the medieval common law', in R. A. Newman (ed.), *Equity in the World's Legal System* (Brussels, 1973), pp. 139–55; Plucknett and

They were the guiding principles which underpinned canon law, as well as civil law, and bishops will have drawn on them extensively in the running of their diocesan affairs.⁵²

We should not, then, conceive of a situation in which bishops and other senior clergymen were invited by the crown to act as judges in cases of discretionary justice simply because they were willing and capable servants of the royal bureaucracy. Nor should we characterize this discretionary jurisdiction merely as an offshoot of the secular legal arm. Instead, we should regard their involvement as a vital prerequisite for the successful implementation of a form of jurisdiction which gained currency and legitimacy precisely because it was not obviously secular in nature, but operated more clearly in accordance with the fundamental precepts of morality and the divine will. Thus, whereas statutory legislation was created in parliament by the king and political community by popular consent, and whereas the common law was the product of the judicial will and was shaped by legal custom and precedence, discretionary justice was considered to be an abstract ‘system of precepts and prohibitions created by God’.⁵³ As the senior figures in the church, bishops were amongst the best-qualified individuals in the kingdom – besides the king himself – to identify and follow this divinely ordained moral code. In part, this was because, as a result of their spiritual vocation and duties, they had a natural and obvious claim to be able to pronounce judgment on the basis of divine authority, but in part too it was because the principles of natural law and reason were understood to reside in and to be revealed by scripture. Those best qualified to read and interpret scripture were therefore in a particularly strong position to be able to understand the proper application of natural law and reason. Both Fortescue and Pecock noted the important role which scripture played in revealing the divine truth,⁵⁴ though Pecock famously placed more emphasis on the importance and value of a learned clergy who possessed sufficient rational acuity to be able to discern natural law where scripture was lacking.⁵⁵

All this leads to the conclusion that bishops will have regarded their involvement in royal administration, and especially their role in the implementation of discretionary justice, not simply (and perhaps not

Barton (eds), *St German's Doctor and Student*, pp. xxix–xxxix. G. R. Evans, *Law and Theology in the Middle Ages* (London, 2002), pp. 81–119.

⁵² W. S. Holdsworth, ‘The early history of equity’, *Michigan Law Review*, 13 (1914–15), pp. 293–301; C. Lefebvre, ‘Natural equity and canonical equity’, *Natural Law Forum*, 8 (1963), pp. 122–36; J. A. Brundage, *Medieval Canon Law* (Harlow, 1995), pp. 154–8.

⁵³ Doe, *Fundamental Authority*, p. 60.

⁵⁴ *Ibid.*, pp. 64–5.

⁵⁵ R. Pecock, *The Repressor of Over Much Blaming of the Clergy*, ed. C. Babington (2 vols; London, 1860), I, pp. 16–17, 39–40, 121–6; II, pp. 11–12; see also J. H. Landman, ‘“The Doom of Resoun” accommodating lay interpretation in late medieval England’, in B. A. Hanawalt and D. Wallace (eds), *Medieval Crime and Social Control* (Minneapolis, 1999), pp. 90–123, esp. pp. 108–10; S. E. Lahey, ‘Reginald Pecock on the authority of reason, scripture and tradition’, *Journal of Ecclesiastical History*, 56 (2005), pp. 235–60, esp. pp. 248, 256, 258–9.

even predominantly) as part of a career-advancement strategy, nor an obligation they must discharge as tenants-in-chief, but rather as part of their spiritual vocation. Arguably, when senior clergy sat on conciliar tribunals or parliamentary committees, they will have understood themselves to have been discharging a vital pastoral role as guardians of a legal/moral code created by God Himself.⁵⁶ Thus, service to the English state by the higher clergy was indeed conceived as a symbiotic relationship, as Robert Swanson suggests, but this worked on much more than a pragmatic calculation of mutual interest borne out of material gain. From the perspective of the clergy, the high-profile role taken by bishops in discharging prerogative justice on behalf of the king will have reinforced the relevance and authority of the clergy in society. It may also, to an extent, have helped the English church expiate itself for apparently conceding to the crown – in relation to civil cases – the fundamental canonical principle that no clergyman should be subject to the jurisdiction of a secular court: if some of these courts, and especially those that dealt with civil cases, were dominated by clergymen anyway, the subjection of the church to secular jurisdiction could be conveniently hidden.⁵⁷ From the perspective of the crown, the placement of bishops on these tribunals underlined the alignment of the church, and ultimately of the Divinity, with royal government, and significantly increased the legitimacy and authority of the decisions taken on cases that often required careful negotiation between individuals or communities in conflict.

These points suggest new ways of looking at the emergence of the chancellor as the focal point of equitable jurisdiction in the fifteenth century, for this was the ultimate expression of the mutuality of interests that existed between the church and state in the provision of discretionary justice. Whereas in the council or in parliament bishops usually shared their duties with lay lords, judicial experts and other suitably qualified personnel, in chancery the responsibility for bringing remedies to cases presented by litigants rested solely on the shoulders of the chancellor. In the fourteenth century, the chancellor's office was dominated by senior clergymen, mainly bishops, and by the fifteenth century they exercised a virtual monopoly. The development of what would later be known as 'equity' in chancery has therefore quite understandably been regarded as a phenomenon closely tied to, and explained by, the ecclesiastical background of the men who occupied the office. As a result of the control of the chancellorship by prelates, canonical and civil law precepts were applied to its proceedings in much the same way as they informed the workings of ecclesiastical courts.⁵⁸ It may be

⁵⁶ This perspective is considered in more general terms by Thompson, 'Prelates and politics', pp. 75–81.

⁵⁷ R. H. Helmholz, *Ius Commune in England: Four Studies* (Oxford, 2001), ch. 4. In practice, in England (unlike the Continent) benefit of clergy extended only to cases subject to criminal law.

⁵⁸ P. Vinogradoff, 'Reason and conscience in sixteenth-century jurisprudence', *Law Quarterly Review*, 24 (1908), pp. 373–84; W. T. Barbour, 'Some aspects of fifteenth-century chancery', *Harvard Law Review*, 31 (1918), pp. 834–59; M. Beilby, 'The profits of expertise: the rise of the civil

further pointed out that the period when clerical chancellors began to monopolize the office at the end of the fourteenth century coincided with the period when chancery itself emerged as a court in its own right, handling supplications directly from the king's subjects. Arguably, this was no coincidence. As chancery developed a much clearer independent jurisdictional role, the power of the chancellor came under increasing scrutiny, and particularly from the late fourteenth century the parliamentary Commons began to voice concerns about the potential for despotic and arbitrary judgments to be taken against the king's subjects.⁵⁹ Arguably, having senior clergy appointed as chancellors was the most effective way of addressing these concerns because of a contemporary assumption that bishops and archbishops were best suited, besides the king himself, to make judgments according to the principles of natural law and reason. The ecclesiastical background of the chancellor was thus becoming vital to the integrity of the court and its reputation as a place where impartial justice could be obtained.

To some extent this perspective is borne out by an important shift in linguistic usage. At the end of the fourteenth century, alongside 'reason', the term 'conscience' began to be used in the records. It is important to stress that conscience was not a word used exclusively in a chancery setting,⁶⁰ but it had particular resonance with chancery once it began to handle cases requiring discretionary judgments *en masse*, and became part of the regular petitionary lexicon of chancery bills after the middle years of the fifteenth century.⁶¹ In 1391, a number of petitions handed into parliament were forwarded to the chancellor with the instruction that he should summon the relevant warring parties before him into chancery where he was to provide a remedy according to 'what justice and reason and good faith and good conscience demand is to be done, by authority of parliament'.⁶² There is a record of Henry V ordering his chancellor to show a supplicant 'all the fauour and ese pat may de don by lawe and conscience', and at another time, to do 'what

lawyers and chancery equity', in M. Hicks (ed.), *Profit, Piety and the Professions in Later Medieval England* (Gloucester, 1990), pp. 72–90, at pp. 73–4; T. S. Haskett, 'The medieval English Court of Chancery', *Law and History Review*, 14 (1996), pp. 245–313, esp. pp. 256–66. Note, however, the caution expressed by J. Baker, *The Oxford History of the Laws of England*, VI: 1483–1558 (Oxford, 2003), pp. 180–1.

⁵⁹ *PROME*, parliament of October 1383, item 51; parliament of January 1390, item 33; parliament of 1394, item 52; parliament of 1437, item 25.

⁶⁰ For example, see *PROME*, parliament of 1394, item 10, where Richard II instructed his council to adjudicate in a dispute between Sir Robert Lisle and John Windsor, stating that they should 'bring about a good and reasonable settlement thereof between the aforesaid parties, as reason and good conscience demand'; and SC 8/340/16034 – an endorsement to a petition instructing the council to give redress to the petitioner according to 'what good faith and conscience demand in this case'. For other contexts, see D. R. Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Farnham, 2010), pp. 22–4.

⁶¹ Beilby, 'Profits of expertise', p. 82.

⁶² SC 8/21/1041A; 21/1042; 95/4707; 95/4709; 97/4904.

may be doon by Lawe conscience and reson'.⁶³ In an oft-quoted passage from a chancery bill presented early in the fifteenth century, a supplicant asked that his debtors be summoned before the chancellor 'to come before you in the king's chancery, *which is the court of conscience*, there to answer thereto as reason and conscience demand'.⁶⁴ In 1468 the chancellor Robert Stillington, bishop of Bath and Wells noted that he was both a temporal judge and a 'judge of conscience'.⁶⁵ A year later he remarked that 'in Chancery a man shall not be prejudiced by mispleader, or for default of form, but by conscience'.⁶⁶ Other cases have been found where conscience is mentioned in more negative terms, for example where a defendant was said to have acted 'against conscience'.⁶⁷ In all these instances, it is worth noting that conscience was not used in a personal sense (i.e. *his* or *her* conscience), but in more abstract terms, as a shared set of moral and legal standards against which what was right, fair and just could be measured.

It was a concept which senior clergy were particularly well qualified to invoke. According to Fortescue, the word conscience came from '*con* and *scioscis*. And so together they make "to know with God"; to wit: to know the will of God as near as one reasonably can'.⁶⁸ This highlighted a contemporary belief that making a judgment according to conscience was not a matter of subjective opinion, but was an objective truth attained through applied knowledge and learning.⁶⁹ Bishops in general, and chancellors in particular, were a highly educated elite and so amply fulfilled this requirement.⁷⁰ Fifteenth-century chancellors were notably learned men: only three of the nineteen individuals appointed as chancellor between 1399 and 1504 had *not* secured advanced degrees at Oxford or Cambridge in divinity, civil law or canon law, and of these three, two were laymen.⁷¹ Historians have been quick to suggest that the educational background of fifteenth-century chancellors was a key determinant in establishing the core principles upon which equity, as a

⁶³ J. H. Fisher, M. Richardson and J. L. Fisher (eds), *An Anthology of Chancery English* (Knoxville, TN, 1984), nos. 39, 73.

⁶⁴ W. P. Baildon (ed.), *Select Cases in Chancery, A.D. 1364 to 1471*, Selden Society, 10 (1896), no. 123 (my emphasis).

⁶⁵ Cf. A. W. B. Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford, 1975), pp. 397–8.

⁶⁶ Cf. Beilby, 'Profits of expertise', p. 78.

⁶⁷ Klinck, *Conscience, Equity*, p. 14, n. 6.

⁶⁸ Cf. Doe, *Fundamental Authority*, p. 133. For more general discussions of conscience see T. Potts, 'Conscience', in Kretzmann, Kenny and Pinborg (eds), *Cambridge History of Later Medieval Philosophy*, pp. 687–704; and D. C. Langston, *Conscience and Other Virtues: From Bonaventure to MacIntyre* (University Park, PA, 2001), chs 1–4.

⁶⁹ *St German's Doctor and Student*, ed. Plucknett and Barton, p. xxvi; T. C. Potts, *Conscience in Medieval Philosophy* (Cambridge, 1980), pp. 2–5; Langston, *Conscience and Other Virtues*, esp. p. 8.

⁷⁰ J. T. Thomas, 'The training of an elite group: English bishops in the fifteenth century', *Transactions of the American Philosophical Society*, n.s., 60 (1970), pp. 1–54, at pp. 12–19.

⁷¹ Jefferson, 'Uses of natural law', table 3, p. 108.

distinct body of law, was to emerge in the early modern period;⁷² but it is equally possible to argue from the opposite direction and suggest that the expanding remit of chancellors in the field of discretionary justice placed a particular premium on their educational background and their familiarity with the intellectual traditions surrounding natural law, so it became expedient for the king and for the proper running of chancery to have men appointed at its head who were of the highest intellectual calibre.

The use of the term ‘conscience’ in a chancery context underlined the interconnectivity of the religious and secular worlds and the role of the wise and learned chancellor in acting as a bridge between the two, determining what was the will of God in a secular civil-law context. It might be said, then, that the emergence of conscience to describe the moral/legal code underpinning the exercise of discretionary jurisdiction indicated a desire to imbue this type of jurisdiction more explicitly with theological learning and spiritual authority. The significance of the shift in language is described by Norman Doe, who observes that ‘whereas reason may have been largely something of a technical idea of right . . . conscience was a distinct moral force known directly, principally through the pulpit and the confessional, by the ordinary citizen . . . Everyone knew that to offend one’s conscience would imperil the soul’.⁷³ Taken to an extreme, the appearance of the term ‘conscience’ explicitly underlined the idea that the chancellor, in meting out justice, was simultaneously in the business of saving people’s souls. A. W. B. Simpson puts it succinctly: ‘as a judge of conscience [the chancellor’s] primary function and concern was not with the petitioner but with the respondent and of the good of his soul’.⁷⁴ There were, indeed, aspects of chancery procedure which suggested a close correlation with the moral standing of the individuals concerned, for whereas the common law courts were bound by a strict system of written legal proofs, in chancery legal truth was often obtained by means of cross-examination and confession under oath before the chancellor.⁷⁵ Thus, in a bill presented late in the fourteenth century the chancellor was asked to obtain a remedy for the supplicants ‘by examination or confession’; and in 1408, a record

⁷² Barbour, ‘Aspects of fifteenth-century chancery’, p. 859; Simpson, *Common Law of Contract*, pp. 400–2; Beilby, ‘Profits of expertise’, pp. 74–5; Haskett, ‘Medieval English Court of Chancery’, pp. 257–66, 311–13; P. Tucker, ‘The early history of the Court of Chancery: a comparative study’, *English Historical Review*, 115 (2000), pp. 791–811, at pp. 795–6, 802.

⁷³ Doe, *Fundamental Authority*, p. 132.

⁷⁴ Simpson, *Common Law of Contract*, pp. 398–9. There is also useful discussion of the application of the term/concept ‘conscience’ in chancery by T. S. Haskett, ‘Conscience, justice and authority in the late-medieval English Court of Chancery’, in A. Musson (ed.), *Expectations of the Law in the Middle Ages* (Woodbridge, 2001), pp. 151–63, at pp. 158–61.

⁷⁵ The best summary of the differences between common law and chancery procedure is in J. H. Baker, *An Introduction to English Legal History*, 4th edn (London, 2002), pp. 102–4. See also M. Macnair, ‘Equity and conscience’, *Oxford Journal of Legal Studies*, 27 (2007), pp. 659–81, esp. pp. 673–76; and Klinck, *Conscience, Equity*, pp. 29–30. According to Baker, ‘the clerical chancellors were exercising the temporal counterpart of the confessional’ (p. 90).

of proceedings in chancery noted that the defendant had been ‘sworn upon the Holy Gospels to speak the truth on the matter’.⁷⁶ Clerical chancellors were especially well suited to pass judgments on cases involving broken or disputed pledges over feoffments-to-use, as this was often a matter of establishing the personal integrity and honesty of the disputing parties. Such cases constituted a large proportion of chancery business by the mid-fifteenth century.⁷⁷

There is an especially illuminating parliamentary petition presented in Henry V’s reign which underlines the contemporary perception of the close links that existed between chancery process, on the one hand, and canon and civil law on the other, though in this context the connection was made in decidedly negative terms. In their petition, presented during the parliament of March 1416, the Commons complained about the use made by chancery and the exchequer of writs of *sub poena* and *certis de causis* for matters which they claimed could just as easily be determined by the common law.⁷⁸ They asserted that the writs were reducing the income of the king from the fines, issues and amercements made in his other courts, and that royal justices were distracted from their judicial work by having to spend too much of their time examining the writs. The key accusation, however, related to chancery (and exchequer) process itself, of which, incidentally, the people were said to be ignorant because nothing was on record about how and why the writs were issued – a reference to the arbitrary nature of the chancellor’s authority. The Commons stated that cases brought into chancery and exchequer ‘are unable to be concluded except by means of examination and the sworn testimony of the parties, according to the terms of the civil law and the law of holy church, which is to the subversion of your common law’. By way of underlining the clerical source of these new procedures, the Commons specified that the ‘deceitful innovation’ had been introduced by the late John Waltham, bishop of Salisbury.⁷⁹ The implication was clear: chancery was undermining the common law as a result of the imposition of civil and canon law processes and doctrines by a senior cleric. It was not an especially rounded assessment of the origins or nature of the chancellor’s jurisdiction, for it ignored the wider contexts and applications of discretionary justice and natural law – something modern historians have also tended to do. But it did

⁷⁶ *Select Cases in Chancery*, nos 42 and 95, cf. Klinck, *Conscience, Equity*, p. 30.

⁷⁷ O. W. Holmes, ‘Early English equity’, *Law Quarterly Review*, 1 (1885), pp. 162–74; W. T. Barbour, ‘The history of contract in early English equity’, in P. Vinogradoff (ed.), *Oxford Studies in Social and Legal History* (Oxford, 1914), pp. 66–168; M. Avery, ‘The history of the equitable jurisdiction of chancery before 1460’, *Bulletin of the Institute of Historical Research*, 42 (1969), pp. 129–44; Beilby, ‘Profits of expertise’, pp. 78–9.

⁷⁸ *PROME*, parliament of March 1416, item 84. For discussion, see *St German’s Doctor and Student*, ed. Plucknett and Barton, pp. xl–xlii; and Beilby, ‘Profits of expertise’, pp. 72–3.

⁷⁹ In fact, Waltham became bishop of Salisbury in 1388, after working in chancery as Master of the Rolls between 1381 and 1386, the period during which he is most likely to have overseen these changes. He died in 1395.

underline the perception that chancery, run by clergymen, was heavily imbued with a canon law ethos.

It was not in chancery but in parliament, however, that clerical chancellors most clearly articulated the immutable connection between God's will and the rule of law. In so doing, they implicitly claimed for themselves a position of supreme authority on legal matters within the kingdom and a special role in guiding and leading the king's subjects on what they understood to be the fundamental basis of the law in the fifteenth-century English state. A common thread in these parliamentary sermons was the exhortation to observe and abide by the principles of justice and right not because together these formed an immutable legal code emanating from the king and parliament, but because they derived from God. Thus, in 1414, Bishop Beaufort urged MPs to follow the king's example by adhering to 'the most commendable disposition and governance of the holy law of God'.⁸⁰ Similarly, in December 1421, Thomas Langley, bishop of Durham, delivered a sermon to parliament drawing on Psalm xix.7 ('God's Law is perfect, and converts the soul').⁸¹ He posited the existence of three types of law: first, the law of power, which makes men abstain from wrongdoing because of the penalty prescribed; second, the law of cupidity, or mercenary law, which played on man's acquisitive nature; and third, the law of charity 'which makes a man generous and liberal, in accordance with the law of God, "which is the greatest of these, and the root of all good"'.⁸² What, exactly, Beaufort and Langley meant by the 'law of God' was perhaps deliberately left unclear, for it was a catch-all phrase that suggested a superior moral code that ought to underpin all worldly affairs. In the minds of the theologians, as we have seen, the law of God was synonymous with natural law.⁸³

The superiority of God's law in relation to all other legal codes was heavily pushed by fifteenth-century chancellors. Thus, in 1439, John Stafford, bishop of Bath and Wells opened parliament with a speech which alluded to the central importance of divine law in the proper functioning of society and government. He declared that the king had summoned parliament in order that the estates should be 'fixed and indissolubly united with regard to matters of state, and be opened to the observance of God's laws and rules, putting aside or removing all harshness, so that good and perpetual peace . . . may be sought and eventually obtained'.⁸⁴ In 1467 Robert Stillington, bishop of Bath and Wells similarly declared that 'justice was the foundation and root of all prosperity, peace and politic rule of every realm, upon which all the laws of

⁸⁰ *PROME*, parliament of April 1414, item 1. For the following two paragraphs I have greatly benefited from the research of Jefferson, 'Uses of natural law', pp. 74–80. See also discussion by Chrimes, *English Constitutional Ideas*, pp. 196–8.

⁸¹ *PROME*, parliament of December 1421, item 1.

⁸² *Ibid.* The biblical reference is 1 Corinthians xiii.13.

⁸³ See above pp. 224–5.

⁸⁴ *PROME*, parliament of 1439, item 3.

the world have been established and based, which depends on three things: that is to say, the law of God, the law of nature and positive law'.⁸⁵ In this context the law of God and the law of nature were presented as distinct legal codes, though the differences between them are likely to have been blurred in the minds of the MPs who heard Stillington speak. Finally, in the parliament of 1489 John Morton provided one of the most lucid accounts of the fundamental precepts of medieval law. For him three types of justice existed: 'commutative, distributive and that which is a special virtue, establishing equality in commutations and distributions'.⁸⁶ In other words, discretionary justice, founded on the natural law principle of even-handed fairness, or 'equality', transcended all other legal classifications. Morton further expounded on the origins of justice, stating that it derived in the first instance 'from God, which is justly called eternal law, from which the natural law imprinted on other creatures is said to be inextinguishable'. As the fifteenth century progressed, the articulation of these ideas appears to have become more elaborate and definitive. Clerical chancellors were fulfilling a special role in bringing to a wide lay audience concepts that had long informed theological thinking and writing.

Alongside the evocation of God's law in a political context, parliamentary sermons noticeably began to employ the term 'equity'. Its greater prominence in fifteenth-century public discourse did not point to the existence of a distinct and self-sufficient body of jurisprudence: this is what 'equity' came to mean in the context of the sixteenth-century chancery.⁸⁷ Instead, it referred to a principle closely linked to, and in many ways synonymous with, reason and conscience, and like them it was deeply embedded in the natural law tradition. Equity pointed to the doctrine of reasonableness, where transgressions were treated according to what was fundamentally fair, right and just, especially where the common law proved deficient or otherwise inadequate.⁸⁸ Like reason and conscience, equity had a firm grounding in canon law and so it was entirely fitting that highly educated senior clergymen should have spoken authoritatively on the subject and asserted its relevance in a secular legal context.⁸⁹ Thus, in 1431, William Lynwood, a distinguished doctor of civil and canon laws, delivered the opening sermon to parliament on behalf of the chancellor John Kemp, archbishop of York, who was absent due to ill-health. In his speech, Lynwood declared that the rule of the realm of England sprang from three virtues: namely, union

⁸⁵ *PROME*, parliament of 1467, item 24.

⁸⁶ *PROME*, parliament of 1489, item 0. Thomas Aquinas outlines the differences between commutative and distributive justice in his *Summa Theologiae*, 37, 2a2æ, Question 61, articles 1–4.

⁸⁷ This point is most clearly elucidated by Beilby, 'Profits of expertise', pp. 77–83.

⁸⁸ *St German's Doctor and Student*, ed. Plucknett and Barton, pp. xlvii–li; Wilks, *Problem of Sovereignty*, p. 217; Doe, *Fundamental Authority*, pp. 101–6; Jefferson, 'Uses of natural law', pp. 56–60.

⁸⁹ See above nn. 51 and 52.

and unity; peace and tranquillity; and justice and equity.⁹⁰ He stated that of late, these virtues had been eroded by intolerable evils, in particular, justice and equity had been undermined by ‘the maintainers of suits and the oppressors of the poor’. Parliament had therefore been summoned to provide suitable remedies.

Two years later, in 1433, the chancellor John Stafford, bishop of Bath and Wells drew on Psalms (72:3) to explain the obligations of the three estates to their king: the prelates and lords ought to bring ‘peace, unity and true concord without fraud or dissimulation’; the knights and those of the middle estate should ensure that ‘equity and true justice existed without maintenance and oppression of the poor’; and the common people and those of lower status were required to show ‘willing obedience to the king and his laws, without dissembling or grudging’.⁹¹ It is interesting to observe how Stafford, like Lynwood, equated equity with the fair and just treatment of the poor. The implication of both sermons, moreover, was that equity was not a quality exhibited only by chancellors in the context of chancery but was *universal*, and especially associated with, or expected to be found in the actions of, the gentry – the law-keepers of the land. Equity coexisted with justice. It did not replace it. But by the same token its frequent linkage with justice, as connected but distinct categories, implied that justice was not sufficient on its own to ensure that equity was shown in all cases. There was, moreover, an implication that justice might result in an inequitable verdict. The chancellor’s prominent role in lecturing – or sermonizing – to the political community on the importance of equity and other basic legal principles obviously resonated with his role as the ultimate arbiter in cases brought before chancery, but his declaration to the parliament of 1453 that a council was to be formed to which ‘all people might have recourse for the administration of justice, equity and wisdom’ is another reminder that neither the chancellor nor chancery exercised a monopoly on the workings of equitable jurisdiction.⁹²

There is one final area of ecclesiastical involvement in secular jurisdiction which pushes the discussion in an altogether new direction, but which, more than any other of the examples cited so far, demonstrates an underlying assumption that senior clergy should be fully integrated into a secular legal context. So far, the role which bishops fulfilled as the king’s judges has been described purely in the context of discretionary justice. The rationale seems fairly clear: discretionary justice required sound judgment and moral probity. These qualities were underpinned by the concepts of reason, conscience and equity, which bishops were considered to possess, and which they claimed to possess, by virtue of their training and vocation. But this rather distorts the picture, for it has

⁹⁰ *PROME*, parliament of 1431, item 2. For his life and career, see R. H. Helmholz, ‘Lyndwood, William (c. 1375–1446)’, *Oxford Dictionary of National Biography*, online edn.

⁹¹ *PROME*, parliament of 1433, item 3.

⁹² *PROME*, parliament of 1453, item 30.

long been recognized that reason, conscience and equity were as relevant to the workings of the common law as they were in other legal contexts.⁹³ More to the point, from July 1424, prelates were regularly appointed as peace commissioners, which placed their legal activities firmly in a common law context.⁹⁴ What prompted these appointments is not immediately clear. There was a precedent, of sorts, at the end of Henry V's reign when, on 28 February 1422, the bishops of Winchester, Salisbury, Bath and Wells, and Exeter, as well as the archbishop of Canterbury, were assigned a supervisory role on the peace commissions issued to southern counties.⁹⁵ By this point Henry V had been away from England campaigning in France for over six months, and it seems likely that the bishops were involved in order to address growing concerns about lawlessness in the absence of large numbers of gentry who filled the ranks of his army and who normally shouldered the burden of local peacekeeping. In December 1421, as we have seen, the chancellor Thomas Langley, bishop of Durham, opened proceedings with a speech about the obligation of everyone to follow his conscience and obey God's law, and he went on to state that the aim of the assembly was to ensure 'the proper preservation of the peace and the laws of the land' – clearly law and (dis)order were high up on the agenda.⁹⁶ The focus on southern counties may have reflected particular anxiety about the lawlessness of soldiers returning from the continent.

In 1424, prelates were incorporated in the peace commissions on a permanent basis. Twenty-seven counties were affected on this first occasion. Almost all dioceses were involved, with the exception of Lincoln and York. They were in the king's hands following the death of Archbishop Henry Bowet in 1423 and the subsequent dispute over the election of Richard Flemming, bishop of Lincoln as Bowet's successor.⁹⁷ Durham was also excluded, because the bishop (Thomas Langley) already exercised full regalian jurisdiction within his bishopric. There was a strong geographical correlation between diocese and county: bishops were associated with those commissions which fell within, or close to, the area of their diocesan control. Thus, the majority of counties whose commissions *omitted* bishops in 1424 (Bedfordshire, Leicestershire, Lincolnshire, Northamptonshire, Rutland, and Yorkshire) came under the purview of the vacant dioceses of York and Lincoln. It

⁹³ O. Pike, 'Common law and conscience in the ancient Court of Chancery', *Law Quarterly Review*, 1 (1885), pp. 443–54; Vinogradoff, 'Reason and conscience', p. 379; Holdsworth, 'Early history of equity', pp. 293–5; L. A. Knafla, 'Conscience in the common law tradition', *University of Toronto Law Journal*, 26 (1976), pp. 1–16; Doe, *Fundamental Authority*, ch. 6.

⁹⁴ *CPR, 1422–1429*, pp. 559–73. For brief consideration, see P. Heath, *Church and Realm, 1272–1461: Conflict and Collaboration in an Age of Crisis* (London, 1988), pp. 320–1; and Swanson, *Church and Society*, pp. 123–4.

⁹⁵ *CPR, 1416–22*, p. 413. The counties affected were: Berkshire, Cornwall, Devon, Dorset, Hampshire, Kent, Oxfordshire, Somerset and Sussex.

⁹⁶ *PROME*, parliament of December 1421, items 2 and 4.

⁹⁷ R. N. Swanson, 'Flemming, Richard (d. 1431)', *Oxford Dictionary of National Biography*, online edn.

is also interesting to note that the bishop of Durham was omitted from the commission of peace for Northumberland, a county which provided most of the territory for the diocese of Durham. This probably reflected the regional sensitivities surrounding the powers of the bishops of Durham and suggests, in particular, a desire of the crown to avoid encouraging an extension of the bishop's secular powers outside the immediate area and jurisdiction of the palatinate.⁹⁸ All the remaining bishops were nominated to between one and three county commissions each, except for Henry Beaufort, bishop of Winchester, who was nominated to no fewer than fourteen commissions. Beaufort's predominance in this instance, as well as in 1421, when his name appeared on all nine of the peace commissions issued to the southern counties, strongly suggests that he was the driving force behind the new policy. Beaufort was a man of almost unparalleled influence in politics in these years and, crucially, he was a key member of the royal council on both occasions when the bishops became involved on the peace commissions, for the first time in 1421 and then permanently in 1424. In 1424 he was not only *de facto* leader of the council, but also chancellor.⁹⁹ It is thus difficult to imagine that the decision to incorporate bishops on the peace commissions could have come from anyone other than Beaufort.

His reasons for doing so also begin to become clear. Just as the temporary strengthening of the peace commissions in 1421 seems to have been done in response to the perceived threat of lawlessness caused by Henry V's prolonged absence abroad, it is likely that the decision in 1424 to extend the policy across the kingdom stemmed from similar anxieties brought about by the minority of Henry VI and the complete – and long-term – absence of royal oversight over the judicial system. Additionally, the council might have been acting in the knowledge of the duke of Gloucester's planned expedition to the Low Countries in October 1424, concerned that the absence of the Protector of the Realm would result in increased levels of lawlessness and disorder.¹⁰⁰ Such fears will no doubt have supplemented general levels of anxiety about the breakdown of the rule of law, for in the parliament which met in October 1423, the Commons presented a number of petitions concerning misdemeanours which they expected the justices of the peace to address, including, notably, the enforcement of past labour legislation.¹⁰¹ A desire to strengthen the peace commissions in light of Gloucester's impending absence may thus have been complemented by

⁹⁸ R. L. Storey, *Thomas Langley and the Bishopric of Durham, 1406–1437* (London, 1961), pp. 164–76; Liddy, *Bishopric of Durham*, pp. 17, 184–5, 208–9.

⁹⁹ G. L. Harriss, *Cardinal Beaufort: A Study of Lancastrian Ascendancy and Decline* (Oxford, 1988), pp. 118–33.

¹⁰⁰ *Ibid.*, pp. 134–5, 145.

¹⁰¹ *PROME*, parliament of 1423, item 47 (expulsion of Irishmen from England); item 51 (weirs in the Thames); item 53 (deceitful measures); item 56 (enforcement of the Statute of Labourers).

increased levels of expectation *vis-à-vis* the peace commissions' law-enforcement duties.

The inclusion of prelates was in many ways a natural development of changes that had occurred to the commissions in the second half of the fourteenth century when the baronage and titled nobility were formally integrated in peacekeeping activities.¹⁰² The involvement of men of such high standing highlighted the contemporary presumption that a direct link existed between the quality and effectiveness of the implementation of justice, on the one hand, and the political and social status of the justices, on the other. There is, however, no evidence that the prelates actually sat and dispatched the routine business of the quarter sessions, even though the commissions themselves were carefully framed to exempt them from handling business inappropriate to their clerical status.¹⁰³ Like secular lords, their nomination was probably emblematic of a desire to reinvigorate royal justice in the localities and indicated a growing importance attached to this agency of law enforcement.¹⁰⁴ In one sense, of course, one might minimize the significance of this development by arguing that the bishops, as the king's tenants-in-chief, were simply providing the service to the crown that was expected of them as major landholders in the localities.¹⁰⁵ But it is questionable whether the basis of the bishops' authority was considered to lie in their regional, temporal power or whether in fact it was the moral and spiritual authority invested in their high religious office, and their position as spiritual peers of the realm, which really underpinned the prestige they brought to the commissions. The year 1424 thus represented an important watershed. Symbolically, it marked the final and irrevocable breaking down of the barrier that had hitherto limited prelates' involvement in the implementation of royal justice to the traditional discretionary courts of parliament, council and chancery. From this point onwards senior clerics were also, at least symbolically, engaged in regular common law processes throughout the kingdom.

¹⁰² Summarized by A. Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Basingstoke, 1999), pp. 70–2. For more detailed discussion, see S. Walker, 'Yorkshire Justices of the Peace, 1389–1413', *English Historical Review*, 108 (1993), pp. 281–311, at pp. 284–9.

¹⁰³ B. H. Putnam (ed.), *Proceedings Before the Justices of the Peace in the Fourteenth and Fifteenth Centuries, Edward III to Richard III* (London, 1938), p. xxvii (and for an example of commission, see pp. 257–62). I have checked gaol delivery rolls for the counties of Suffolk, Buckinghamshire, Bedfordshire, Huntingdonshire, Devon, Dorset and Wiltshire in the first twenty years of Henry VI's reign (i.e. Just 3/65, 219, 224) and have discovered no clergymen who were active as justices of the peace. The clerical members of peace commissions were, in any case, banned from involvement in 'matters of blood', that is to say, cases of felony, counterfeiting and the prosecution of heretics (i.e. after their handing over from the ecclesiastical courts).

¹⁰⁴ See C. Carpenter, *Locality and Polity: A Study of Warwickshire landed Society, 1401–1499* (Cambridge, 1992), pp. 267–72. In addition to the appointment of bishops to the 1424 peace commissions, some members of the high nobility, including the duke of Exeter and the earls of Warwick and Stafford, were also nominated.

¹⁰⁵ See Swanson, *Church and Society*, pp. 122–39.

II

Understanding why bishops served the king as judges has been the central task of this discussion. The aim has been to move away from the more traditional and rather crude characterization of bishops who entered royal service as merely career-minded pen-pushers with a penchant for secular affairs, to a more nuanced appreciation of the theoretical and theological principles which underpinned these activities. In 2004 Benjamin Thompson described the late medieval church as an institution ‘always facing two ways’, struggling to reconcile the irreconcilable tension that existed between a desire for spiritual and vocational separation from society, on the one hand, with an acknowledgement of the importance of integration in society and government, on the other hand.¹⁰⁶ The one perspective asserted that God was best served when the leaders of the church devoted themselves to ‘quiet ministry in the diocese’; the other perspective asserted that the spiritual welfare of the people was best served when the clergy were thoroughly immersed in worldly affairs. The key point is that those bishops who chose the latter route and who held public office or discharged key responsibilities in government did not place themselves fundamentally at loggerheads with church teaching or their own individual spiritual vocation – except perhaps, that is, in the minds of the church reformers and critics.¹⁰⁷ Dispensing justice lay at the very heart of the service bishops performed both for the crown and for their spiritual flocks.

I have shown that prelates were especially central to the workings of ‘discretionary’ justice in the period, as core members of the committees of parliamentary triers and the royal council, as chancellors spearheading the development of chancery as a court of first instance, and as occasional members of judicial inquiries in the localities. Many factors explain why bishops were involved in these activities. What has perhaps been underplayed, however, is the deep-seated canonical and theological concepts which underpinned the judicial activities of these institutions and which were themselves shaped and informed by the fundamental precepts of natural law and natural justice. This is what made the council, chancery and parliament the supreme courts of the land, because they adhered more closely and explicitly than any other of the king’s courts to the precepts of natural law. Natural law was akin to God’s law. The spiritual and educational background of prelates thus made them the obvious and ideal arbiters of natural justice in medieval society and government. All this suggests that the characterization of bishops who served the king in high office as ‘civil servants and statesmen rather than

¹⁰⁶ Thompson, ‘Prelates and politics’, pp. 88–9.

¹⁰⁷ See A. Hudson, ‘*Hermofodrita or Ambidexter*: Wycliffite views on clerks in secular office’, in M. Aston and C. Richmond (ed.), *Lollardy and the Gentry in the Later Middle Ages* (Stroud, 1997), pp. 41–51.

ecclesiastics'¹⁰⁸ may in fact draw too stark a distinction between secular and religious affairs, and overlooks the fact that the spiritual vocation of 'civil service' bishops may to some extent have been fulfilled by their office-holding duties. This is not to say that bishops might still have been motivated by political or material considerations when serving the king. My intention is to suggest that these factors were counterbalanced by, and perhaps merged with, an ideological standpoint which made such service entirely compatible with the bishop's spiritual duties. Insofar as it was an important expectation of a bishop that he should foster peace and harmony amongst God's people, there seemed every good reason why he should engage in secular affairs.¹⁰⁹ That at least, we might suspect, is how bishops in royal service will have argued their case.

Whilst in the fourteenth century and earlier, the implementation of natural justice was often conceived in terms of the application of the critical faculty of 'reason', in the fifteenth century a shift in perspective is indicated by the introduction of the term 'conscience' in legal and political discourse. I have argued that this signalled a stronger association of the workings of discretionary justice with theological and canonical concepts, as well as a more clearly defined role for members of the episcopate in providing judgments under the pretext of natural law principles. The emergence of chancery as a discretionary court in its own right, where senior clerics were now almost always appointed as chancellors, greatly contributed to this new emphasis. The educational background of fifteenth-century chancellors, many of whom held higher degrees in canon or civil law, provided vital intellectual context for this development. Indeed, the preponderance of men who had received university training in law amongst the prelate in general probably goes far to explain why bishops willingly embraced a more prominent role in legal matters during the fifteenth century.¹¹⁰ Jeremy Catto has suggested that in this period a new emphasis on the moral underpinning of secular politics and government was brought about by the influx of highly educated clergy into the 'councils of princes'. Because these clergy were 'disturbed by their involvement in the brutal world of politics and worldly ambition', Catto argues, a new conception of power and authority based upon the concept of conscience emerged 'to offer graduate careerists both self-respect and material comfort, [so they were] gently guiding the caravan of state while grazing in the pastures of the church'.¹¹¹ In broad outline, this dynamic might hold true of the

¹⁰⁸ Moorman, *Church Life in England*, p. 164.

¹⁰⁹ A. Vauchez, *Sainthood in the Later Middle Ages* (Cambridge, 1997), p. 289.

¹¹⁰ T. H. Aston, G. D. Duncan and T. A. R. Evans, 'The medieval alumni of the university of Cambridge', *Past & Present*, 86 (1980), pp. 9–86, at p. 70.

¹¹¹ J. Catto, 'The burden and conscience of government in the fifteenth century', *Transactions of the Royal Historical Society*, 17 (2007), pp. 83–99, at pp. 87 and 89. Similar themes are touched on in V. Gillespie, 'Chichele's church: vernacular theology in England after Thomas Arundel', in V. Gillespie and K. Ghosh (eds), *After Arundel: Religious Writing in Fifteenth-Century England* (Turnhout, 2011), pp. 3–42, esp. pp. 12–15, 19–20, where he suggests that under Chichele's leadership the

developing fifteenth-century chancery. By expressing the moral imperative behind the proper and fair provision of natural justice, here was an effective way of addressing those critics and reformers who argued for the complete separation of the church and state. By sitting as a judge *of conscience*, chancellors were not simply serving the king, they were serving God and the church. As such, their service underlined the indivisibility of the church and state: natural law, and its derivative concepts of reason, conscience and equity, provided a vital ideological bridge between the two, allowing clergymen to legitimately serve both at the same time. All this had the effect of thrusting fifteenth century chancellors far more prominently than their fourteenth century predecessors into the role of head of the judiciary, a point not lost on Richard, duke of York, who declared to the chancellor, Thomas Bourchier, archbishop of Canterbury in 1455 that ‘you are the head of justice in this land’.¹¹² In an age when the church had generally lost ground to the crown in terms of its jurisdiction and influence, there was perhaps some comfort to be gained by York’s acknowledgement that the laity were still subject to the authority of a single clergyman.

These considerations are reinforced by the problematic nature of secular government in the period. Apart from the brief interlude of Henry V’s reign, for much of the fifteenth century England experienced a prolonged period of troubled kingship, when the reigning monarch was either incapacitated by youth or illness, or his authority was seriously compromised by questionable claims to legitimacy and/or political dissent. As we have seen, it was the vacuum of power at the centre which initially prompted, and then sustained, the addition of prelates to the commissions of the peace in the early years of Henry VI. Perhaps also, it was no coincidence that in the same period chancellors began to sermonize to the political community about the superiority of the natural law and the obligation of everyone to adhere to its main tenets. In other important contexts the natural law was similarly invoked as part of a rhetorical agenda. In the early 1460s John Fortescue penned *De Natura Legis Naturae*, a tract which explicitly affirmed the principle that the power of the monarchy derived above all from the Law of Nature.¹¹³ This had particular resonance at a time when the Lancastrian monarchy could not count on the personal dynamism of the king to generate feelings of loyalty and obedience in the population, so legitimacy and the right to rule became a matter of asserting the primacy of

English church underwent a process of spiritual reinvigoration which enabled it to rediscover its confidence after years of doubt and turmoil induced by Lollardy and anti-clericalism at the end of the fourteenth century.

¹¹² *PROME*, parliament of 1455, item 19.

¹¹³ John Fortescue, *The Works of Sir John Fortescue*, ed. Lord Clemon (London, 1869), pp. 60–184; E. F. Jacob, ‘Sir John Fortescue and the law of nature’, *Bulletin of the John Rylands Library*, 18 (1934), pp. 359–76; and E. F. Jacob, ‘Sir John Fortescue and the law of nature’, in *idem*, *Essays in the Conciliar Epoch* (Manchester, 1953), pp. 106–20. *De Natura* was written before 1463 by Fortescue when he was in exile with Queen Margaret in Scotland.

the Laws of Nature, which alone were said to be able to decide royal succession.¹¹⁴ This went to the very heart of Fortescue's theory of dominion.¹¹⁵ From the perspective of fifteenth-century chancellors, it was perhaps natural – in the absence of a strong monarch asserting his position as the supreme source of justice and equity in the kingdom, and also in view of a perception that the legal system was compromised by the political interests it served – to shift the emphasis, so that the obligation on the king's subjects to behave in a law-abiding and obedient manner now became a matter of that individual's relationship with God. The legal system had always been underpinned by a strong moral compass; the novelty was that in the fifteenth century this connection became part of mainstream political dialogue and was used by chancellors to persuade, and even cajole, the community of the realm into accepting their obligation to ensure that peace and justice should prevail.

¹¹⁴ This interpretation chimes nicely with the views recently expressed by Rosemarie McGerr on a statute book commissioned for Prince Edward of Lancaster by Margaret of Anjou in c.1470. In her view, the biblical iconography displayed in this work served to emphasize 'the divine source for Henry VI's authority in the establishment and administration of earthly justice' at a time when there was no hiding the catastrophic weakness of his kingship: R. McGerr, *A Lancastrian Mirror for Princes: The Yale Law School 'New Statutes of England'* (Bloomington, 2011), pp. 56–66 (quotation at p. 66).

¹¹⁵ S. B. Chrimes, 'Sir John Fortescue and his theory of dominion', *Transactions of the Royal Historical Society*, 4th ser., 17 (1934), pp. 117–47, esp. pp. 123–5, 134; P. E. Gill, 'Politics and propaganda in fifteenth-century England: the polemical writings of Sir John Fortescue', *Speculum*, 46 (1971), pp. 333–47, at p. 339–42; J. H. Burns, 'Fortescue and the political theory of dominium', *The Historical Journal*, 28 (1985), pp. 777–97, at pp. 786, 788–91.